

Commitment and Compliance: Impact of International Human Rights Institutions
in Sri Lanka and Nepal

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Abstract

Can international organisations improve the human rights practices of persistent rights violators? The UN Human Rights Council (HRC) and the Office of the High Commissioner for Human Rights (OHCHR) are mandated to respond to human rights emergencies. Two instances where international human rights institutions enlisted the cooperation of persistent human rights violators are Sri Lanka's cooperation with the HRC from 2015 to 2019 and OHCHR's presence in Nepal from 2005 to 2012. Using qualitative data and process tracing this study examines why these states made international human rights commitments and what factors shaped compliance. When making commitments Sri Lanka and Nepal were guided by rational calculations and socialisation. Each country wished to avoid further censure and sanctions and being perceived as 'pariah states,' as this was at odds with how they perceived themselves. Compliance requires a range of steps, from refraining from harmful behaviour to enacting, operationalising, and enforcing norms. The most significant impact of commitment was sustained improvements in physical integrity rights and political freedoms. Due to these improvements and their continued cooperation with international human rights institutions, the two countries no longer faced the threat of censure or sanctions from bilateral partners. As a result, rational calculations became less relevant in inducing compliance. Instead, the preferences of domestic elites and socialisation mechanisms such as dialogue and capacity building became more relevant. Both states adopted law reforms that strengthened the legal protection of rights. However, the operationalisation of reforms was poor due to weak bureaucratic capacity. The weakest aspect of compliance was enforcement. Government elites in both countries interfered in the criminal justice process, preventing accountability for human rights violations. During their engagement with the two countries, international institutions acted as both agents of states and as independent actors that interpreted human rights developments and shaped how the international community understood, interpreted, and responded to the situation within each country.

To my parents, Wimal and Yasamalie Jayakody

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Table of Contents

<i>List of Tables</i>	vii
<i>List of Figures</i>	vii
<i>List of Abbreviations</i>	viii
<i>Chapter 1: Introduction</i>	1
Literature review	4
Case selection.....	22
Method	25
Dissertation outline and chapter overview.....	28
<i>Chapter 2: Sri Lanka</i>	30
Introduction.....	30
Country context.....	32
International response to the human rights situation in Sri Lanka.....	35
India	35
UK.....	37
Canada.....	39
European Union	40
United States	42
UN.....	52
Sri Lanka before the Human Rights Council.....	59
Commitment	68
Compliance	82
Political context	82
President Sirisena.....	89
Prime Minister Wickremesinghe.....	94
Bureaucracy	101
Legislature.....	106
Role of international actors.....	112

The Human Rights Council	112
Role of member states.....	117
International assistance towards implementation	120
Reduction in violations of physical integrity rights and political freedoms	123
New laws.....	126
Constitutional reform	140
New institutions	143
Existing institutions	156
Criminal investigations and prosecutions	156
Operationalisation of the Enforced Disappearances Act	159
Lack of independence	160
Capacity constraints	164
Release of lands	167
Security sector reform.....	169
Certificates of Absence	174
Long term impact.....	175
Conclusion	183
<i>Chapter 3: Nepal</i>	194
Introduction.....	194
Country context.....	196
International response to the human rights situation in Nepal.....	201
India	202
United Kingdom.....	204
European Union	206
United States	207
United Nations	209
Commitment	212
Compliance	218
Political context	220
Executive.....	228
King.....	228

President.....	229
Prime Minister	231
Bureaucracy	244
Legislature.....	247
Role of international actors.....	254
Office of the High Commissioner for Human Rights.....	254
Role of member states.....	268
Reduction in physical integrity rights violations	272
Law reform.....	275
Constitutional reform	276
Legal reform.....	278
Policy reform	284
Draft laws.....	287
New institutions	289
Existing institutions	290
National Human Rights Commission	292
Law enforcement agencies.....	295
Police.....	298
Attorney General.....	302
Security sector reform.....	303
Longer term impact.....	309
Conclusion	313
<i>Chapter 4: Conclusion</i>	330
Theoretical contribution.....	330
Policy implications.....	340
Areas for further research	342
<i>Glossary</i>	344
<i>Bibliography</i>	345

List of Tables

Table 1.1 Break down of votes on Resolution 11/1 (2009)	66
Table 1.2 Break down of votes on Resolution 19/2 (2012)	66
Table 1.3 Break down of votes on Resolution 22/1 (2013)	66
Table 1.4 Break down of votes on Resolution 25/1 (2014)	66

List of Figures

Figure 1.1 Hypothesis and Causal Mechanisms	28
Figure 2.1 Composition of Parliament 2015- 2019	108

List of Abbreviations

CAT	Convention against Torture
CPA	Comprehensive Peace Agreement
CPN (UML)	Communist Party of Nepal (Unified Marxist Leninist). CPN (UML) established in the early 1970s supported the democratic movement in 1990. It had a leftist orientation and advocated for a measure of income re-distribution.
CPN(M)	Communist Part of Nepal (Maoists). CPN (M) launched the insurgency in 1996 with the goal of establishing a communist state in Nepal.
CRC	Convention on the Rights of the Child
DMK	Dravida Munnetra Kazhagam (Tamil political party based in South India)
DPA	UN Department of Political Affairs
DRL	US Department of Democracy, Human Rights and Labour
EU	European Union
GSP	General Scheme of Preferences
HRC	United Nations Human Rights Council
ICCPR	International Covenant on Civil and Political Rights

ICRC	International Committee of the Red Cross
JVP	Janatha Vimukthi Peramuna (A communist political party in Sri Lanka)
LLRC	Lessons Learnt and Reconciliation Commission
LTTE	Liberation Tigers of Tamil Eelam (Tamil separatist group that was based in the North and East of Sri Lanka and waged a war against the state from 1983-2009)
NGOs	Non-Governmental Organizations
NC	Nepali Congress. NC established in 1948, was at the forefront of Nepal's struggle for democracy; it advocated for a free market with safety nets for the poor.
OHCHR	Office of the High Commissioner for Human Rights
OISL	Office of the High Commissioner for Human Rights' Investigation on Sri Lanka
PLA	People's Liberation Army. PLA was the armed wing of the CPN(M).
RAW	Research and Analysis Wing. RAW was India's external intelligence agency.
SLFP	Sri Lanka Freedom Party (One of two dominant political parties in Sri Lanka, formerly lead by President Rajapaksa)

TNA	Tamil National Alliance (A coalition of Tamil political parties based in the North and East of Sri Lanka)
UK	United Kingdom of Great Britain and Northern Ireland
UN	United Nations
UNMIN	United Nations in Mission in Nepal
UNP	United National Party (One of two dominant political parties in Sri Lanka, formerly lead by Prime Minister Wickremesinghe)
US	United States

Chapter 1: Introduction

Can international human rights organisations improve the human rights practices of persistent human rights violators? The Office of the High Commissioner for Human Rights (OHCHR) and the Human Rights Council (the Council) have a mandate to protect and promote human rights.¹ Both institutions are also mandated to respond to on-going human rights violations and human rights emergencies.² The two institutions have succeeded in intervening in states with persistent human rights challenges and enlisted their cooperation and commitment to human rights obligations. This study seeks to answer why rights violating states make international human rights commitments and whether such commitments lead to better compliance with human rights obligations.

OHCHR was established in 1993 and is the primary agency for promoting and protecting human rights.³ The High Commissioner has a dual role. First it supports the work of the Council by functioning as a secretariat to the latter's work. As a secretariat, OHCHR is responsible for supporting the Council, the Treaty Bodies,

¹ United Nations General Assembly, "High Commissioner for the Promotion and Protection of All Human Rights A/RES/48/141," January 7, 1994, <https://digitallibrary.un.org/record/180226?ln=en&v=pdf>; United Nations General Assembly, "Human Rights Council A/RES/60/251," April 3, 2006, https://www2.ohchr.org/english/bodies/hrcouncil/docs/a.res.60.251_en.pdf.

² United Nations General Assembly, "High Commissioner for the Promotion and Protection of All Human Rights A/RES/48/141", para 4(f); United Nations General Assembly, "Human Rights Council A/RES/60/251," para 3, 5(f).

³ United Nations General Assembly, "High Commissioner for the Promotion and Protection of All Human Rights A/RES/48/141."

and the Special Procedures.⁴ Where the Council is seized of a country situation, OHCHR can provide advice and technical support to the state concerned on human rights compliance issues. Second, the High Commissioner can also function independently of the Council as a separate autonomous actor, bringing attention to country situations and thematic human rights issues using dialogue, diplomacy, and advocacy.⁵ The High Commissioner is appointed by the Secretary General and approved by the General Assembly with due regard to geographical rotation.⁶ Each High Commissioner is appointed for a term of four years, with the possibility of one renewal.

The UN Human Rights Council was established in 2006 as a subsidiary organ of the General Assembly. It is the only global deliberative body with an exclusive mandate to protect and promote international human rights.⁷ The Council's core mandate includes protecting and promoting human rights and responding to human rights emergencies.⁸ It is mandated to provide advisory services, technical assistance and capacity building to member states to facilitate the implementation of their human rights obligations.⁹ The Council is mandated to act as a forum for dialogue on all human rights issues.¹⁰ The Council has a President and forty-seven

⁴ Ibrahim Salam, "Human Rights Diplomacy from a UN Perspective A Complement to Advocacy," in *Human Rights Diplomacy: Contemporary Perspectives*, ed. Michael O'Flaherty et al., vol. 1, Nottingham Studies on Human Rights (Brill, 2011), 129–53. 132.

⁵ Ibid.

⁶ United Nations General Assembly, "High Commissioner for the Promotion and Protection of All Human Rights A/RES/48/141," para 2(b).

⁷ United Nations General Assembly, Human Rights Council A/RES/60/251.

⁸ United Nations General Assembly, Human Rights Council A/RES/60/251, para 5(a).

⁹ Ibid.

¹⁰ United Nations General Assembly, Human Rights Council A/RES/60/251, para 5(b).

member states elected proportionately among regional groups.¹¹ Members of the Council are elected by a majority of votes of the General Assembly.¹² Special Procedures and Independent Experts, and the Universal Periodic Review report to the Council on the state of human rights practices on the basis of country situations and on thematic issues.

The Council and OHCHR's handling of the country situations in Sri Lanka and Nepal were at the time considered unique successes.¹³ This project will examine the origins and impact of the Council and OHCHR's interventions in Sri Lanka and Nepal. It will examine why Sri Lanka and Nepal opted to make international human rights commitments and cooperate with the Council and OHCHR. Further the study will assess the impact that commitment had on the protection of human rights within each country.

¹¹ United Nations General Assembly, Human Rights Council A/RES/60/251, para 7. The seats are divided as follows: 13 seats for the Africa Group, 13 seats for the Asian Group, 8 seats for the Eastern European Group, 6 seats for the Latin American and Caribbean Group and 7 seats for the Western Europe and Others Group.

¹² United Nations General Assembly, Human Rights Council A/RES/60/251, para 7.

¹³ Ted Piccone, "Ten Years Later: The Status of the U.N. Human Rights Council," Brookings, accessed March 13, 2024, <https://www.brookings.edu/articles/ten-years-later-the-status-of-the-u-n-human-rights-council/>; "10 Years of the United Nations' Human Rights Council: Remarks by Salil Shetty," Amnesty International, February 29, 2016, <https://www.amnesty.org/en/latest/news/2016/02/10-years-of-the-united-nations-human-rights-council/>; Rebecca Brubaker and Akhilesh Upadhyay, "Breaking the Mold: Lessons from Sixteen Years of Innovative UN Political Engagement in Nepal" (International Peace Institute, February 2021), 6, <https://www.ipinst.org/2021/02/lessons-from-sixteen-years-of-innovative-un-political-engagement-in-nepal>.

Literature review

The starting point for international relations explanations is informed by realist theories, which argue states are the primary actors and calculate their interests primarily in terms of power and survival, and are trying to maximise their relative gains over other states.¹⁴ Realists argue that the content of international laws and institutions reflects the self-interest and relative power of states.¹⁵ Stephen Krasner went as far as to argue that international law is epiphenomenal, and any compliance is coincidental.¹⁶ However, other scholars have pushed back, arguing that realism does have a place for international law and that both classical and structural realists view international law as a positive force that can shape state behaviour.¹⁷ Nonetheless, even these scholars also agree that the preferences of states are fixed and that they are motivated by a logic of consequences. Given the absence of enforcement mechanisms in international human rights law, states comply to avoid sanctions and censure or because of inducements, such as material aid, access to markets, trade concessions, or membership in security arrangements.¹⁸

¹⁴ Hans Morgenthau, *Politics among nations the struggle for power and peace* (New York: Knopf, 1978); Kenneth Waltz, *Theory of International Politics* (Reading Mass: Addison Wesley, 1979).

¹⁵ Mearsheimer John, "The False Promise of International Institutions" *International Security* (1994/1995) 19(5): 5-49, 13; Joseph Grieco, "Anarchy and the Limits of Cooperation: A Realist Critique of the Newest Liberal Institutionalism," *International Organization* 41 (1988): 485–507; Jack Goldsmith and Eric Posner, *The Limits of International Law* (Oxford University Press, 2007).

¹⁶ Stephen Krasner, "Structural Causes and Regime Consequences: Regimes as Inventing Variables," in *International Regimes* (Ithaca New York: Cornell University, 1983).

¹⁷ Richard Steinberg, "Wanted - Dead or Alive: Realism in International Law," in *Interdisciplinary Perspectives on International Law and International Relations The State of the Art* (New York: Cambridge University Press, 2013), 146–74, 154; Naiade el-Khoury, *Irrational Human Rights? An Examination of International Human Rights Treaties* (Online: Brill, 2021), 52.

¹⁸ Emilie Hafner-Burton, *Making Human Rights a Reality* (New Jersey: Princeton University Press, 2013), 179; Emilie Hafner-Burton, "Trading Human Rights: How Preferential Trade Agreements Influence Government Repression," *International Organization* 59, no. 1 (2005): 593–629, 624; Emilie Hafner-Burton and Kiyoteru Tsutsui, "Justice Lost! The Failure of International Human

Institutionalists accept the claims made by realists concerning the role of power and rational calculation of self-interest but argue that international institutions have a role to play in promoting cooperation among states.¹⁹ They view reciprocity and reputation as important causal mechanisms that can induce compliance. Reciprocity recognises that although states may have an incentive to not comply in the short-term, their current behaviour can influence the future.²⁰ Over the long-term, states will respond to each other's compliance by reciprocating the same. States have an incentive not to renege from their commitments, as that too could be reciprocated and escalated over the long-term. Similarly, a reputation for compliance with international law can induce further cooperation and result in rewards.²¹

Rights Law to Matter Where Needed Most" *Journal of Peace Research* 44, no. 4 (2007): 407-425, 414; Emilie Hafner Burton, Kiyoteru Tsutsui and John W. Meyer, "International Human Rights Law and the Politics of Legitimation: Repressive States and Human Rights Treaties" *International Sociology* 23, no. 1 (2008): 115-141, 123; Krishna Chaitanya Vadlamannati, Nicole Janz, and Øyvind Isachsen Berntsen, "Human Rights Shaming and FDI: Effects of the UN Human Rights Commission and Council," *World Development* 104 (April 2018): 222-37; Rochelle Terman and Joshua Byun, "Punishment and Politicization in the International Human Rights Regime," *American Political Science Review* 116, no. 2 (2022): 385-402; Mathis Lohaus and Soren Stapel, "Who Commits to Regional Human Rights Treaties? Reputational Benefits, Sovereignty Costs and Regional Dynamics," *Journal of Human Rights* 22, no. 3 (2023): 386-405; Chad Clay, "Threat by Example: Economic Sanctions and Global Respect for Human Rights," *Journal of Global Security Studies* 3, no. 2 (2018): 133-49.

¹⁹ Robert Keohane, *After Hegemony: Cooperation and discord in the world political economy* (Princeton New Jersey: Princeton University Press, 1984), 244-5.

²⁰ Andrew Guzman, *How International Law Works: A Rational Choice Theory* (New York: Oxford University Press, 2008)

²¹ Rachel Brewster, "Reputation in International Relations and International Law," in *Interdisciplinary Perspectives on International Law and International Relations The State of the Art* (Cambridge University Press, 2013), 524-44.

Institutionalist theories emphasise that international organisations can facilitate transparency, reduce transaction costs, and reduce the risk of cheating.²² Repeated interactions encourage states to value long term mutual engagement and develop patterns of reciprocity and stable expectations about the future behaviour of other states. Even without coercion or a central enforcement mechanism, laws, procedures, and institutions can shape the structure of international politics by creating incentives for rational, self-interested states to engage in sustained cooperation with one another.

However, the institutionalist perspective is harder to apply to human rights law and human rights institutions, as it fails to account for the unique nature of human rights obligations. States generally experience minimal costs when making human rights commitments. However, the process of implementing human rights commitments is costly and can require significant internal structural changes. Unlike other areas of international law such as international trade, there is no immediate material loss to third party states, if one state was to renege on its human rights commitments.

It is difficult to conceive of circumstances where states retaliate against persistent human rights violations in one state by violating the rights of their citizens. An exception can arise when human rights are violated in the context of armed conflict, where states may reciprocate the protection of certain norms such as humane

²² Keohane, *After Hegemony: Cooperation and discord in the world political economy*; Guzman, *How International Law Works: A Rational Choice Theory*.

treatment of prisoners of war.²³ When states fail to comply with their human rights obligations, other states that are complying with their obligations may experience costs only in rare and extreme cases, for example, when there is a refugee crisis. Further, except in such rare circumstances, human rights compliant states are generally unwilling to bear the political and material costs of enforcing human rights obligations in non-complying third party states.

Liberal theorists argue that state behaviour is shaped by demands emanating from domestic actors who collectively shape states' preferences.²⁴ International human rights agreements and institutions result from the bargaining among interest groups and institutions at the domestic level, such as state institutions, elites, and non-governmental organizations.²⁵ Given that human rights obligations apply vertically, *visa a vis* state and citizens, as opposed to other international law obligations that apply horizontally, there has been increasing focus on how interactions among domestic actors influence commitment and compliance. Similar to the argument that liberal democratic states are more likely to comply with international law, there have been studies confirming that democratic states and states on the path to democracy are more likely to commit and comply with international human rights

²³ Sean Watts, "Reciprocity and the Law of War," *Harvard International Law Journal* 50, no. 3 (2009): 365–434.

²⁴ See Andrew Moravcsik, "The New Liberalism" in *The Oxford Handbook of International Relations*, ed. Christian Reus-Smit and Duncan Snidal, (New York: Oxford University Press, 2010) 234-255.

²⁵ Andrew Moravcsik, "Taking preferences seriously: a liberal theory of international politics" *International Organizations* 51, no. 4 (1997): 513-53, 517; Andrew Moravcsik, "Explaining International Human Rights Regimes: Liberal Theory and Western Europe" *European Journal of International Relations* 1, no. 2 (1995): 157-89, 162.

obligations.²⁶ There is increasing understanding that the extent to which domestic actors such as the legislature, courts and non-governmental actors can restrain the executive can shape the decision to comply with international human rights obligations.²⁷ Formal design of the executive, such as the powers of the executive to commit to international human rights obligations, can also influence commitment.²⁸ Practical considerations such as the level of personal commitment of domestic elites and whether there is a hardliner leader or a fragmented coalition in power can shape the extent to which states commit and comply.²⁹

Constructivists depart from the rationalist explanations and argue that shared knowledge, understanding, and expectations define relationships between states.³⁰ They respond to realists by arguing that even understandings about material resources and power are partly determined through social practices.³¹ To understand international politics, it's important to understand the identity and self-understanding of the actors who make up world politics. A state's sense of identity

²⁶ Simmons, *Mobilising for Human Rights*, 359-360; Moravcsik, "Origins of Human Rights Regimes: Democratic Delegation in Post-war Europe", Hafner-Burton, Mansfield and Pevehouse, "Human Rights Institutions, Sovereignty Costs and Democratisation", 3; Xinyuan Dai and Alexandros Tokhi, "New Democracies and Commitment to Human Rights Treaties," *International Studies Quarterly* 67, no. 4 (December 2023): sqad092. See also Ann Marie Slaughter, "International Law in a World of Liberal States" *European Journal of International Law* 6, no. 3 (1995):503-538.

²⁷ Courtney Hillebrecht, *Domestic Politics and International Human Rights Tribunals: The Problem of Compliance* (New York: Cambridge University Press, 2014).

²⁸ Audrey Comstock, *Committed to Rights UN Human Rights Treaties and Legal Paths for Commitment and Compliance* (UK: Cambridge University Press, 2021), 53.

²⁹ Sonia Cardenas, *Conflict and Compliance State Response to International Human Rights Pressure* (University of Pennsylvania Press, 2007), 87.

³⁰ Wendt Alexander, "Constructing International Politics" *International Security* 20, no. 1 (1995):71-81, 73-4; Alexander Wendt, *Social Theory of International Politics* (New York: Cambridge University Press, 1999), 114-15.

³¹ Ibid.

can be informed by their own unique set of cultural, historical, and institutional traditions. Power and interests are important considerations in global politics; however, their impact is shaped by shared knowledge among actors. For constructivists, actors make decisions based on the logic of appropriateness, and therefore states are influenced by international norms that prescribe what is appropriate and inappropriate behaviour.³² Viewed within a constructive lens, causal mechanisms based on norms and identity such as socialisation, persuasion and acculturation induce compliance.

Processes such as socialisation and persuasion require states to internalise the norm when complying. Socialisation refers to a process where beliefs about right and wrong are accepted as normative principles, which in turn shape a state's identity, their priorities and behaviour.³³ Persuasion refers to changing the minds and attitudes of a state in the absence of inducements.³⁴ Social influence can induce compliance where, even though a state may not agree with the norm, because of a state's desire to be viewed as legitimate in the eyes of peers and to avoid the costs of being shamed for non-compliance.³⁵ Acculturation is a process where states

³² J. G. March and J. P. Olsen, *Democratic Governance* (New York: Free Press, 1995); J. G. March and J. P. Olsen, "The Logic of Appropriateness" in *The Oxford Handbook of Political Science*, ed. Robert Goodin (New York: Oxford University Press, 2011), 478-497.

³³ Martha Finnemore and Kathryn Sikkink, "International Norm Dynamics and Political Change", *International Organization* 52, no. 4 (1998):887-917, 895; Thomas Risse and Kathryn Sikkink, "The socialization of international human rights norms into domestic practices: introduction" in *The Power of Norm Dynamics International Norms and Domestic Change*, eds. Thomas Risse, Stephen Ropp and Kathryn Sikkink (New York: Cambridge University Press, 1999, 11.

³⁴ Iain Johnston, "Treating International Institutions as Social Environments", *International Studies Quarterly* 45, no. 3:487-515, 493; Ian Johnstone, *The Power of Deliberation International Law, Politics and Organizations* (New York: Oxford University Press, 2011), 14.

³⁵ Johnston, "Treating International Institutions as Social Environments", 494.

adopt the beliefs and behavioural patterns that surround them without internalising the norm, assessing its merits or the material consequences of the social costs associated with not complying.³⁶ Compliance is determined by cognitive pressure to comply and the sense of belonging in acquiring membership in a perceived group. Thus, states may opt to cooperate with international institutions and comply with human rights obligations because other states it perceives as similar or aspire to become like are engaging in the same conduct.

Constructivists argue that international institutions may be created for reasons of legitimacy, for what they represent symbolically and the values they embody.³⁷ Unlike rationalist approaches, constructivists argue that international institutions can have autonomous effects based on the legitimacy of their legal authority and control over technical expertise and information.³⁸ International institutions classify the world, creating categories of actors and actions, fix meaning in the social world and articulate and diffuse norms and principles.³⁹ They can serve as a social environment that can persuade or exert social influence on states to comply with international norms.⁴⁰ International institutions can also produce pathologies

³⁶ Derek Jinks and Ryan Goodman, *Socialising States: Promoting Human Rights Through International Law* (New York: Oxford University Press, 2013).

³⁷ Michael Barnett and Martha Finnemore, "The Politics, Power, and Pathologies of International Organizations," *International Organization* 53, no. 4 (1999): 699–732, 707.

³⁸ Barnett and Finnemore, "The Politics, Power, and Pathologies of International Organizations," 707.

³⁹ Barnett and Finnemore, "The Politics, Power, and Pathologies of International Organizations," 710.

⁴⁰ Johnston, "Treating International Institutions as Social Environments."

when they take rationalisation to extremes, become inattentive to local contexts, consistently deviate from rules, or become insulated from feedback.⁴¹

Other approaches, such as the New Haven School, Transnational Legal Process and Managerial Model, include both constructivist and rationalist elements. All three approaches emphasise a form of communicative action which burrows from constructivist theories. The New Haven School suggests that interactive communicative action among various actors creates fixed patterns of expectations, forming the basis for the World Public Order.⁴² The Managerial Model cites argumentation, persuasion and justificatory discourse as mechanisms that induce state compliance.⁴³ Transnational Legal Theory suggests that repeated interactions among international and domestic actors can reconstitute interests and identities, resulting in norm internationalisation.⁴⁴ However, all three theories also incorporate elements of rationalist theories, explaining that compliance is either in furtherance of an ulterior goal or part of a cost-benefit calculation. For the New Haven School, international law serves ulterior policy goals, including power, wealth, enlightenment, and well-being.⁴⁵ The Managerial Model suggests that compliance

⁴¹ Barnett and Finnemore, "The Politics, Power, and Pathologies of International Organizations," 716.

⁴² Myers McDougal, "The Identification and Appraisal of Diverse Systems of Public Order," *Faculty Scholarship Series Paper 2615* (1959), http://digitalcommons.law.yale.edu/fss_papers/2615.

⁴³ Abram Chayes and Antonia Handler Chayes, *The New Sovereignty Compliance with International Regulatory Agreements* (Cambridge MA: Harvard University Press, 1998) 26-27.

⁴⁴ Harold Koh, "The 1994 Roscoe Pound Lecture: Transnational Legal Process," *Nebraska Law Review* 75, no. 1 (1996): 181–207.

⁴⁵ McDougal, "The Identification and Appraisal of Diverse Systems of Public Order," 22-23.

is in the self-interest of states as they are increasingly dependent on one another.⁴⁶

Transnational Legal Process argues that repeated interactions shape the state's instrumental concerns to accept that the promotion of rule of law is in their national interest.⁴⁷

Critical legal theorists argue that international relations theories are conditioned by social, cultural, and ideological influence and seek to unpack the effects of such conditioning.⁴⁸ They echo the claim made by realists and argue that the structure of the international system matters. However, for them, instead of coercive capabilities and sanctions and rewards, powerful states use ideology to induce commitment and compliance.⁴⁹ International law cannot be isolated from historical events such as colonialism.⁵⁰ Like colonialism, international law has a civilising mission and concepts such as human rights are presented as universal and apolitical even though they represent euro-centric ideas.⁵¹ Western powers have constructed an order founded on values and ideas that work to their advantage and legitimises their interests. Thus, the development and application of international law is part of

⁴⁶ Chayes and Chayes, *The New Sovereignty Compliance with International Regulatory Agreements*, 27.

⁴⁷ Koh, "The 1994 Roscoe Pound Lecture: Transnational Legal Process," 200-201.

⁴⁸ Richard Devetak, "Critical Theory," in *Theories of International Relations* (UK: Palgrave Macmillan, 2013).

⁴⁹ Thomas Bates, "Gramsci and the Theory of Hegemony," *Journal of the History of Ideas* 36, no. 2 (1975): 351-66.

⁵⁰ Anthony Anghie, "Finding the Peripheries: Sovereignty and Colonialism in Nineteenth-Century International Law," *Harvard International Law Journal* 40, no. 1 (1999): 1-80.

⁵¹ Muttua Makau, "Savages, Victims, and Saviours: The Metaphor of Human Rights" 42, no. 1 (2001): 201-46.

a colonial project to universalise a racialized hierarchy of norms and institutions that subordinate non-European states to European states.⁵²

Given that the dominant theoretical approaches cannot explain all aspects of compliance, there have been calls for more “problem-driven” approaches to theorising about international law.⁵³ This project examines why rights violating state elect to cooperate and make international human rights commitments, and whether that improves their compliance with human rights obligations. Commitment in this context is a stand-alone act taken by leaders within the executive. I argue that commitment can be explained by rational calculation of state interests and socialisation, or a combination of both.

Unlike commitment, compliance requires a series of actions by the state. All major human rights treaties require a series of steps to achieve compliance.⁵⁴ States are required to refrain from harmful behaviour, enact, operationalise, and enforce human rights reforms. Some aspects of compliance with human rights obligations require a longer-time frame, and multiple actors at different levels of the state must

⁵² Muttua Makau, “What Is TWAIL,” *Proceedings of the ASIL Annual Meeting* 94, no. 31 (2000).

⁵³ Jeffrey Dunoff and Mark Pollack, “International Law and International Relations Introducing an Interdisciplinary Dialogue,” in *Interdisciplinary Perspectives on International Law and International Relations The State of the Art* (New York: Cambridge University Press, 2013), 3–32, 12.

⁵⁴ For example see, United Nations, “International Covenant on Civil and Political Rights,” U.N.T.S. 999 § (1976), <https://treaties.un.org/doc/Publication/UNTS/Volume%20999/volume-999-I-14668-English.pdf>, Article 2; United Nations, “Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,” U.N.T.S.1465 § (1987), https://treaties.un.org/doc/Treaties/1987/06/19870626%2002-38%20AM/Ch_IV_9p.pdf, Articles 2, 5, 4, 10, 11- 14; United Nations, “International Convention for the Protection of All Persons from Enforced Disappearances,” U.N.T.S. 2716 § (2006), https://treaties.un.org/doc/Publication/CTC/Ch_IV_16.pdf, Articles 4, 5,7,9, 14, 17-19, 23- 25.

be mobilised to carry out a series of steps. At a given point, a state could simultaneously be complying with some steps whilst failing to do so with others. Therefore, in addition to socialisation and rational calculation of state interests, preferences of domestic elites are likely to impact the willingness and ability of a state to comply with international human rights obligations.

Existing multi-causal approaches include the spiral model, which suggests that while states may commit due to rational calculations and socialisation, they achieve routine compliance due to norm internalisation.⁵⁵ Similarly, other scholars have combined both rationalist and constructivist approaches to explain why fragile states comply with international human rights commitments.⁵⁶ The proposed approach seeks to explain how rational calculations, socialisation, and domestic preferences impact commitment and compliance.

The first step in the compliance process is refraining from harmful behaviour, i.e. the protecting negative rights such as physical integrity rights and political freedoms. Both rationalist and constructivist approaches can explain why states refrain from harmful behaviour.⁵⁷ Features of the domestic system, such as whether

⁵⁵ Thomas Risse, Stephen Ropp, and Kathryn Sikkink, eds., *The Power of Human Rights International Norms and Domestic Change* (UK: Cambridge University Press, 1999).

⁵⁶ Antal Berkes, "Compliance of Territorially Fragile States with International Human Rights Law," *Quebec Journal of International Law*, 2021, 11–37.

⁵⁷ Emilie Hafner-Burton, Kiyoteru Tsutsui, and John W. Meyer, "International Human Rights Law and the Politics of Legitimation: Repressive States and Human Rights Treaties," *International Sociology* 23, no. 1 (2008): 115–41; Courtenay Conrad, "Divergent Incentives for Dictators: Domestic Institutions and (International Promises Not to) Torture," *Journal of Conflict Resolution* 58, no. 1 (2014): 34–67; Risse, Ropp, and Sikkink, eds., *The Power of Human Rights International Norms and Domestic Change*.

a state is on the path to democracy and the constraining role played by domestic institutions, can also explain improvements in physical integrity rights.⁵⁸ I contend that the return to democracy in both countries is likely to improve physical integrity rights and political freedoms.

Whether a state incorporates international obligations into domestic law is likely to be determined by socialisation and domestic preferences. Although states can be under significant pressure to ratify a treaty, they do not face similar pressure to incorporate and implement international obligations.⁵⁹ Features of the domestic system, such as the level of elite support and the cohesiveness of decision making within a government (for example, whether it is a fragile coalition or a hardliner government with a strong majority), can strongly influence the likelihood of legislation being adopted.⁶⁰ States are also likely to enact domestic legislation if domestic political preferences already align with the content of the obligation.⁶¹ International human rights commitments can also shape domestic preferences by changing elite agendas and legislative priorities and creating new political alliances, which can also result in the incorporation of international obligations into domestic law.⁶² The type of drafting process adopted by states can also result

⁵⁸ David Richards, Alyssa Webb, and Chad Clay, "Respect for Physical-Integrity Rights in the Twenty-First Century: Evaluating Poe and Tate's Model 20 Years Later," *Journal of Human Rights* 14, no. 3 (2015): 291–311; Simmons, *Mobilizing for Human Rights International Law in Domestic Politics*, 359–360.

⁵⁹ Mark S. Berlin, *Criminalizing Atrocity: The Global Spread of Criminal Laws Against International Crimes* (UK: Oxford University Press, 2020), 31.

⁶⁰ Cardenas, *Conflict and Compliance State Response to International Human Rights Pressure*, 13.

⁶¹ Simmons, *Mobilizing for Human Rights International Law in Domestic Politics*, 364; Hillebrecht, *Domestic Politics and International Human Rights Tribunals: The Problem of Compliance*, 1107.

⁶² Simmons, *Mobilizing for Human Rights International Law in Domestic Politics*, 18–19.

in some obligations being incorporated into domestic law. For example, if a state opts to enact a new criminal code instead of stand-alone legislation, then atrocity legislation is more likely to be incorporated into domestic law.⁶³

Constructivists have concluded that following international commitments, the quality of the dialogue between international and domestic actors will be strengthened, which can result in the adoption of reforms.⁶⁴ However, in some circumstances, discursive engagement between states and international actors fail to produce substantive compliance. States have been accused of merely appearing to engage in discursive engagement whilst simultaneously ensuring the non-implementation of human rights obligations.⁶⁵ Political elites leverage the space provided by donor partnerships and institutional cooperation to stall substantial progress on implementation.⁶⁶ However, I argue that insincere engagement is not necessarily a calculated move by a government but the product of domestic political instability. A state may be agnostic about certain types of reforms and elect to engage international actors about the contours of reform. However, these discursive engagements may not translate into substantive outcomes owing to domestic

⁶³ Berlin, *Criminalizing Atrocity: The Global Spread of Criminal Laws Against International Crimes*, 31.

⁶⁴ Thomas Risse and Kathryn Sikkink, "The Socialization of International Human Rights Norms into Domestic Practices: Introduction," in *The Power of Human Rights International Norms and Domestic Change* (UK: Cambridge University Press, 1999), 1–38.

⁶⁵ Anna Macdonald, "'Somehow This Whole Process Became so Artificial': Exploring the Transitional Justice Implementation Gap in Uganda," *International Journal of Transitional Justice* 13, no. 2 (2019): 225–48, 235; Sydney Leclercq, "Injustice Through Transitional Justice? Subversion Strategies in Burundi's Peace Process and Post Conflict Developments," *International Journal Transitional Justice* 11, no. 1 (2017): 525–44.537.

⁶⁶ Leclercq, "Injustice Through Transitional Justice? Subversion Strategies in Burundi's Peace Process and Post Conflict Developments," 540.

political instability. Where a state is overtly opposed to reforms, they are likely to adopt counter narratives and align with domestic actors that oppose reforms.

Instrumental concerns, such as opportunities to participate in international trade arrangements, can motivate states to adopt human rights related legislation.⁶⁷ However, this study contends that instrumental concerns become less relevant if the state makes human rights commitments, improves physical integrity rights and political freedoms, and cooperates with international human rights institutions. Member states are unlikely to censure or sanction another state responding to their concerns and cooperating with an international human rights institution.

Effective operationalisation of international human rights commitments is the most challenging aspect of compliance. Constructivist approaches suggest that sustained adherence to human rights obligations requires a high degree of norm internalisation which therefore requires a longer time frame.⁶⁸ The path towards norm internalisation and habitual compliance can be inconsistent and simultaneously include reversals as well as gains.⁶⁹ Domestic actors such as opposition political groups and advocacy groups are expected to leverage international support to overcome domestic opponents of human rights reforms.⁷⁰

⁶⁷Hafner-Burton, "Trading Human Rights: How Preferential Trade Agreements Influence Government Repression," 612-613.

⁶⁸ Risse and Sikkink, "The Socialization of International Human Rights Norms into Domestic Practices: Introduction," 17.

⁶⁹ Risse and Sikkink, "The Socialization of International Human Rights Norms into Domestic Practices: Introduction," 23-4.

⁷⁰ Risse and Ropp, "Introduction and Overview," in *The Persistent Power of Human Rights From Commitment to Compliance*, 3-25, 7; Yonatan Lupu, "Legislative Veto Players and the Effects of International Human Rights Agreements," *American Journal of Political Science* 59, no. 3 (2015):

Capacity constraints have been identified as a barrier to compliance. Managerialists argue a state may not be able to comply with “affirmative obligations” due to limitations in scientific and technical expertise, bureaucratic capacity, or limited financial resources.⁷¹ Scholars have identified capacity constraints at a societal or cultural level.⁷² Capacity constraints have also been conceptualised as “areas of limited statehood”. An otherwise functioning state, may experience areas of limited statehood when there are territorial or functional spaces over which it has lost the ability to govern owing to inadequate administrative and bureaucratic systems.⁷³ A functional area of limited statehood could include ‘human rights’.⁷⁴ However, given that the present study seeks to examine compliance as a series of steps, it is important to identify which steps are undermined by capacity constraints. This is in line with studies that suggest, capacity constraints may affect compliance with some rights more than others.⁷⁵ The present study is focused on limited bureaucratic

578–94; Hillebrecht, *Domestic Politics and International Human Rights Tribunals: The Problem of Compliance*; Conrad, “Divergent Incentives for Dictators: Domestic Institutions and (International Promises Not to) Torture.

⁷¹ Chayes and Chayes, *The New Sovereignty Compliance with International Regulatory Arrangements*, 13–14.

⁷² Simmons, *Mobilising for Human Rights*, 359, 361. Wade Cole, “Human Rights as Myth and Ceremony? Reevaluating the Effectiveness of Human Rights Treaties, 1981–2007” *American Journal of Sociology* 117, no. 4 (January 2012): 1131–1181, 1158

⁷³ Tanja Borzel and Thomas Risse, “Human Rights in Areas of Limited Statehood: The New Agenda,” in *The Persistent Power of Human Rights from Commitment to Compliance*, ed. Thomas Risse, Stephen Ropp, and Kathryn Sikkink (UK: Cambridge University Press, 2013), 65; See also Tanja Borzel, Thomas Risse, and Anke Draude, “Governance in Areas of Limited Statehood: Conceptual Clarifications and Major Contributions of the Handbook,” in *The Oxford Handbook of Governance and Limited Statehood* (UK: Oxford University Press, 2018), 3–36.

⁷⁴ Risse and Ropp, “Introduction and Overview,” 17–18.

⁷⁵ David Cingranelli, Mark Skip, and Almira Sadykova-DuMond, “Democracy, Capacity, and the Implementation of Laws Protecting Human Rights,” *Laws* 12, no. 6 (2023), <https://doi.org/10.3390/laws12010006>.

capacity as a barrier to operationalisation.⁷⁶ Bureaucratic capacity has been defined as the logistical ability of states to implement decisions made at the political level.⁷⁷ This logistical ability can refer to technical capacity, and availability of human and material resources.

Both managerialists and limited statehood scholars view capacity constraints as contributing to ‘involuntary non-compliance’.⁷⁸ That is, states that are willing to comply with human rights obligations are unable to do so because of capacity constraints. However, others have pushed back, arguing that capacity and willingness may be related.⁷⁹ In particular, capacity constraints and lack of willingness may go hand in hand to produce non-compliance.⁸⁰ This distinction is again important when compliance is treated as a series of steps, as the willingness and ability of states may vary depending on the type of step required to achieve compliance.

Capacity and willingness can be especially intertwined in the final stage of compliance, enforcement of human rights obligations. Capacity constraints are

⁷⁶ Wade Cole, “Human Rights as Myth and Ceremony? Reevaluating the Effectiveness of Human Rights Treaties, 1981- 2007”, 1158; Alejandro Anaya-Munoz, “Bringing Willingness Back in: State Capacities and the Human Rights Compliance Deficit in Mexico,” *Human Rights Quarterly* 41, no. 2 (2019): 441–64; Ezequiel Gonzales-Ocantos, *The Politics of Transitional Justice in Latin America Power, Norms and Capacity Building* (UK: Cambridge University Press, 2020).

⁷⁷ See Wade M Cole, “Mind the Gap: State Capacity and the Implementation of Human Rights Treaties” *International Organization* 69, no. 2 (2015): 405-441, 406.

⁷⁸ Chayes and Chayes, *The New Sovereignty Compliance with International Regulatory Arrangements*, 13-14; Tanja Borzel and Thomas Risse, “Human Rights in Areas of Limited Statehood: The New Agenda,” 75.

⁷⁹ Anaya-Munoz, “Bringing Willingness Back in: State Capacities and the Human Rights Compliance Deficit in Mexico,” 446-7.

⁸⁰ *Ibid.*

especially relevant when states transitioning out of conflict or authoritarian rule are attempting to provide remedies for past abuses.⁸¹ In such contexts, providing remedies for past violations is both unprecedented and expensive. States are required to have technical capacity over specialised fields and the ability to reorient institutional practices so that they do not further entrench impunity.⁸² Increased capacity within the state can also shield human rights institutions from fluctuations in political support, including backlashes against reforms.⁸³

External actors often seek to address capacity constraints through capacity building efforts. Rational theories explain offers of external assistance as a form of ‘reward’ designed to change the calculations of domestic actors in favour of compliance. Liberal theorists view capacity building efforts as either a method of incentivising sub-national actors in favour of compliance or mitigating the costs of compliance for domestic political elites.⁸⁴ Constructivists view capacity building as a form of “institutionalised social interaction” focused on building knowledge, skills and administrative strength.⁸⁵ Given that capacity building in the context of human rights protection is primarily focused on sharing knowledge and developing skill sets, the present study treats it as a mechanism of socialisation.

⁸¹ Gonzales-Ocantos, *The Politics of Transitional Justice in Latin America Power, Norms and Capacity Building*, 46

⁸² Ibid.

⁸³ Gonzales-Ocantos, *The Politics of Transitional Justice in Latin America Power, Norms and Capacity Building*, 48.

⁸⁴ Andrew Moravcsik, “Liberal Theories of International Law,” in *Interdisciplinary Perspectives of International Law and International Relations The State of the Art* (New York: Cambridge University Press, 2013), 83–119, 93, 99, 106.

⁸⁵ Thomas Risse and Stephen Ropp, “Introduction and Overview,” 15.

Ensuring judicial remedies for past human rights violations is a particularly challenging aspect of operationalisation. States can be motivated by various factors when addressing issues to do with providing remedies for past abuses. In countries where accountability efforts have been successful, domestic preferences, namely political willingness among elites within the executive, have been critical. A common explanation for why states don't pursue judicial remedies is that elites wish to avoid sanctioning themselves and their allies or exposing aspects of their own past.⁸⁶ In select cases, offers of material or reputational rewards have overcome domestic political opposition to criminal investigation and prosecution of past rights abuses.⁸⁷ Constructivist approaches emphasise the global spread of accountability norms and the impact of regional culture and human rights institutions.⁸⁸ I argue that domestic preferences, namely lack of political will is likely to shape the lack of progress on accountability for past human rights abuses.

⁸⁶ Stephen Brown, "Transitional Justice as Subterfuge" OpenCanada. (9 May 2012) <<https://www.opencanada.org/features/transitional-justice-as-subterfuge/>> accessed 6 August 2019; Monika Nalepa, *Skeletons in the Closet: Transitional Justice in Post-Communist Europe* (New York: Cambridge University Press, 2010).

⁸⁷ Benjamin Appel and Cyanne Loyle, "The Economic Benefits of Justice: Post-Conflict Justice and Foreign Direct Investment," *Journal of Peace Research* 49, no. 5 (2012):685-699; Jelena Subotic, "The Paradox of International Justice Compliance: International Journal of Transitional Justice," *International Journal of Transitional Justice* 3 (2009): 367–83.

⁸⁸ Kathryn Sikkink, *The Justice Cascade: How Human Rights Prosecutions are Changing World Politics* (New York: W. W. Norton, 2011); Ellen Lutz and Kathryn Sikkink, "The Justice Cascade: The Evolution of Foreign Human Rights Trials in Latin America", *Chicago Journal of International Law* 2, no. 1 (2001): 1-33; Geoff Dancy and Kathryn Sikkink, "Ratification and Human Rights Prosecutions: Toward a Transnational Theory of Treaty Compliance" *International Law and Politics* 44, (2011): 751-790; Ezequiel Gonzales-Ocantos, "Communicative Entrepreneurs: The Case of the Inter-American Court of Human Rights' Dialogue with National Judges," *International Studies Quarterly* 62, no. 4 (2018): 737–50; Eva Brems, "Transitional Justice in the Case Law of the European Court of Human Rights," *International Journal of Transitional Justice* 5, no. 2 (2011): 282–303; Fionnuala Ni Aolain, "Transitional Justice and the European Convention on Human Rights" (Geneva Academy, 2017).

Case selection

The project will conduct a case study comparison between the Human Rights Council's intervention in Sri Lanka and the Office of the High Commissioner's role in Nepal. Case studies are a preferred methodology where the strategy of research is exploratory and when propositional depth is preferred over breadth.⁸⁹ In particular, when a specific phenomenon is observed only across a smaller number of cases, case studies are a preferred approach.⁹⁰ The case study approach allows for in-depth examination of multiple elements within a single case and for an analysis of the variance in outcomes that is accounted for by an explanation.⁹¹

When attempting to assess the impact of an international organisation within a country, starting conditions such as history, vulnerability to external pressure, state capacity, level of democratization, and strength of rule of law matter.⁹² Sri Lanka and Nepal are two small South Asia countries, rooted in Buddhist and Hindu religious practices and culture. In the period preceding the interventions from the UN, both countries experienced prolonged civil wars between the State and insurgent groups. Sri Lanka waged a thirty-year civil war against a separatist group, the Liberation Tamil Tigers of Eelam (LTTE). From 1996 to 2006 the Communist Party of Nepal (Maoist) and its armed wing, the People's Liberation Army (PLA) led an insurgency against the Nepali state.⁹³ Sri Lanka has a longer record in

⁸⁹ John Gerring, "The Case Study: What it is and What it Does?" in Robert E. Goodin (ed), *The Oxford Handbook of Political Science* (New York: Oxford University Press, 2011), 1157.

⁹⁰ John Gerring, "The Case Study: What it is and What it Does?", 1156.

⁹¹ Ibid.

⁹² Risse and Ropp, "Introduction and Overview," 17-18.

⁹³ Deepak Thapa, "The Making of the Maoist Insurgency" in Sebastian von Einsidel, David Malone, Suman Pradhan, *Nepal in Transition from People's War to Fragile Peace* (New York: Cambridge University Press): 175-201, 180.

representative democracy, and Nepal, for much of its history was a monarchy; however, during the periods selected for the case studies, both countries shared a similar level of democratization.⁹⁴

Vulnerability to external pressure can be assessed in terms of ‘material vulnerability’ and ‘social vulnerability’.⁹⁵ Material vulnerability refers to a state’s overall level of economic and military resources. For example, China or the United States is far less vulnerable to external criticisms concerning human rights practices than the Philippines or Kenya.⁹⁶ During the periods selected for the case studies, Sri Lanka’s economy remained roughly four times larger than Nepal’s and consistently outspent Nepal in defense spending.⁹⁷ However, the difference in the size of the economies has not had a dramatic difference in their vulnerability to external pressures, as Nepal remains at the higher end of a lower-income country, and Sri Lanka remains at the lower end of a middle-income country.⁹⁸ Social vulnerability refers to an actor’s desire to be accepted as a member of a particular group or community. Both Sri Lanka and Nepal are constrained by neighborhood rivalries within South Asia, and their foreign policy outlook is heavily influenced

⁹⁴ Sri Lanka has had universal suffrage since 1931. During the periods selected for the case studies (2012-2019 for Sri Lanka) and (2005-2012 for Nepal) both countries maintained a partly free status, see Freedom House, Freedom in the World < <https://freedomhouse.org/report/freedom-world/freedom-world-2018>> accessed 1 February 2019.

⁹⁵ Risse and Ropp, “Introduction and Overview,” 11.

⁹⁶ Ibid.

⁹⁷ Sri Lanka 1965 - 2015, Talking Economics <<http://www.tradingeconomics.com/sri-lanka/gdp>> accessed 14 December 2016. / World Bank, Nepal Data Sheet < <https://data.worldbank.org/country/nepal>> accessed 15 January 2019.

⁹⁸ See, World Bank, Nepal Data Sheet < <https://data.worldbank.org/country/nepal>> (2019); World Bank, Sri Lanka Data Sheet < <https://data.worldbank.org/country/sri-lanka>> (2019).

by strategic competition between India and China. External powers such as the United States, United Kingdom and other Western European countries have taken sporadic interest in shaping domestic outcomes within each country. Further, South Asia remains the only region in the world without regional institutions or legal instruments concerning human rights norms. As a result, international human rights institutions play a more influential role in directly shaping the human rights outcomes in the region.

Sri Lanka

Case study one will examine the interventions of the Human Rights Council in Sri Lanka from February 2012 to November 2019. The Council began addressing the country in Sri Lanka in February 2012. Over the next three years it adopted a series of resolutions demanding that Sri Lanka address deteriorating human rights situation and address allegations of grave violations of international law during the last stages of the war.⁹⁹ In September 2015, a newly elected government of Sri Lanka co-sponsored a resolution before the Council committing to an ambitious

⁹⁹ United Nations Human Rights Council, "Promoting Reconciliation and Accountability in Sri Lanka A/HRC/RES/19/2," March 22, 2012, <https://documents.un.org/doc/resolution/gen/g12/126/71/pdf/g1212671.pdf?token=eZzdaUBhTmJhqQqMOs&fe=true>; United Nations Human Rights Council, "22/1 Promoting Reconciliation and Accountability in Sri Lanka A/HRC/22/2," April 9, 2013, <https://documents.un.org/doc/undoc/gen/g13/127/55/pdf/g1312755.pdf?token=Pix1j2uv71CrZ3g42Z&fe=true>; United Nations Human Rights Council, "25/1 Promoting Reconciliation, Accountability, and Human Rights in Sri Lanka A/HRC/RES/25/1," April 9, 2014, <https://documents.un.org/doc/undoc/gen/g14/132/86/pdf/g1413286.pdf?token=FWummudWUWpXhwqExv&fe=true>; United Nations Human Rights Council, "30/1 Promoting Reconciliation, Accountability and Human Rights in Sri Lanka A/HRC/RES/30/1," October 14, 2015, <https://documents.un.org/doc/undoc/gen/g15/236/38/pdf/g1523638.pdf?token=9hNScAqMkwDes20pNj&fe=true>.

human rights agenda.¹⁰⁰ The new government continued to cooperate with the Council until the end of its term in November 2019.

Nepal

As the conflict in Nepal escalated, domestic and international human rights organizations advocated for Nepal to be placed on the agenda of the Human Rights Council's predecessor, the UN Commission on Human Rights.¹⁰¹ In 2005, the Nepal government committed to an agreement with OHCHR, allowing the latter to establish a field office.¹⁰² Under the agreement, OHCHR was mandated to monitor and report on human rights and international humanitarian law violations.¹⁰³ The OHCHR maintained its country presence until December 2011.

Method

This study seeks to answer the following research questions: 1) Why did Nepal and Sri Lanka make international human rights commitments, and did it improve

¹⁰⁰ United Nations Human Rights Council, "30/1 Promoting Reconciliation, Accountability and Human Rights in Sri Lanka", para 6-7.

¹⁰¹ Frederick Rawski and Mandira Sharma, "A Comprehensive Peace? Lessons from Human Rights Monitoring in Nepal" in Sebastian von Einsidel, David Malone, Suman Pradhan, *Nepal in Transition from People's War to Fragile Peace* (New York: Cambridge University Press): 175-201, 180.

¹⁰² Gustavo Capdevila, Human Rights: *Nepal avoids censure resolution in UN Commission*, *Inter Press Service* 11 April 2005 < <http://www.ipsnews.net/2005/04/human-rights-nepal-avoids-censure-resolution-in-un-commission/> > accessed 18 December 2018.

¹⁰³ "Agreement Between the United Nations High Commissioner for Human Rights and the Government of the Kingdom of Nepal Concerning the Establishment of an Office in Nepal," April 10, 2005, Article IV (1), Article (V), <https://nepal.ohchr.org/en/resources/Documents/English/mandate/OHCHR%20agreement%20with%20HMG%20MoU.pdf>.

compliance in both countries 2) What role did the UN Human Rights Council and Office of the High Commissioner for Human Rights play during this process?

I will answer these questions by examining the mechanisms that shaped commitment and compliance. Primarily, I examine the impact of rational calculations, socialisation and domestic preferences that shaped commitment and compliance. Rational calculations will be defined as cost-benefit calculations in response to censure and sanctions imposed by member states and international organisations.¹⁰⁴ Socialisation will be defined to include both social influence and dialogue, argumentation, and capacity building. Social influence works where a state is guided by the discomfort experienced as a result of having to confront an image of itself that is in contrast to how it perceives itself.¹⁰⁵ Dialogue, argumentation and capacity building refer to discursive engagements between national and international actors, that seek to socialize domestic actors into adopting human rights reforms.¹⁰⁶ Domestic preferences are defined as the preferences of elites within the executive and the opposition parties within the legislature.¹⁰⁷

Process tracing will be used to analyse qualitative data gathered from primary and secondary documents and semi-structured interviews. Process tracing is used to

¹⁰⁴ Morgenthau, *Politics among nations the struggle for power and peace* ; Waltz, *Theory of International Politics*; Goldsmith and Posner, *The Limits of International Law*.

¹⁰⁵ Johnston, "Treating International Institutions as Social Environments," 499-500. See also Goodman and Jinks, "How to Influence States: Socialization and International Human Rights Law," 640.

¹⁰⁶ Risse and Sikkink, "The Socialization of International Human Rights Norms into Domestic Practices: Introduction", 13-14.

¹⁰⁷ Cardenas, *Conflict and Compliance State Response to International Human Rights Pressure*, 13; Simmons, *Mobilizing for Human Rights International Law in Domestic Politics*, 149 -50.

uncover the evidence and identify the driving factors within cases.¹⁰⁸ Primary and secondary documents were used to gather information on human rights challenges and legal and policy interventions. Primary and secondary documents include reports from inter-governmental organisations, governments and non-governmental organisations and publications and commentary from scholars and subject-matter experts. Media reports and, public statements, and semi-structured interviews were also used to gather contextual information regarding why legal policy decisions were or were not made.

Pursuant to Institutional Review Board approval, field research for the Sri Lanka case study was carried out in Colombo, Sri Lanka, from June to November 2021.

¹⁰⁹ Field Research for the Nepal case study was carried in Kathmandu, Nepal from November to December 2022. Semi-structured interviews were carried out with officials from OHCHR, the Department of Political Affairs (DPA), the Sri Lankan government, the Nepalese government and relevant diplomatic missions, as well as lawyers, human rights defenders, and other individuals that either participated or closely observed the implementation of international human rights obligations. Twenty-three interviews were carried out for the Sri Lanka case study and twenty-eight interviews were carried out for the Nepal case study. Research participants in both contexts were selected based on publicly available information regarding their

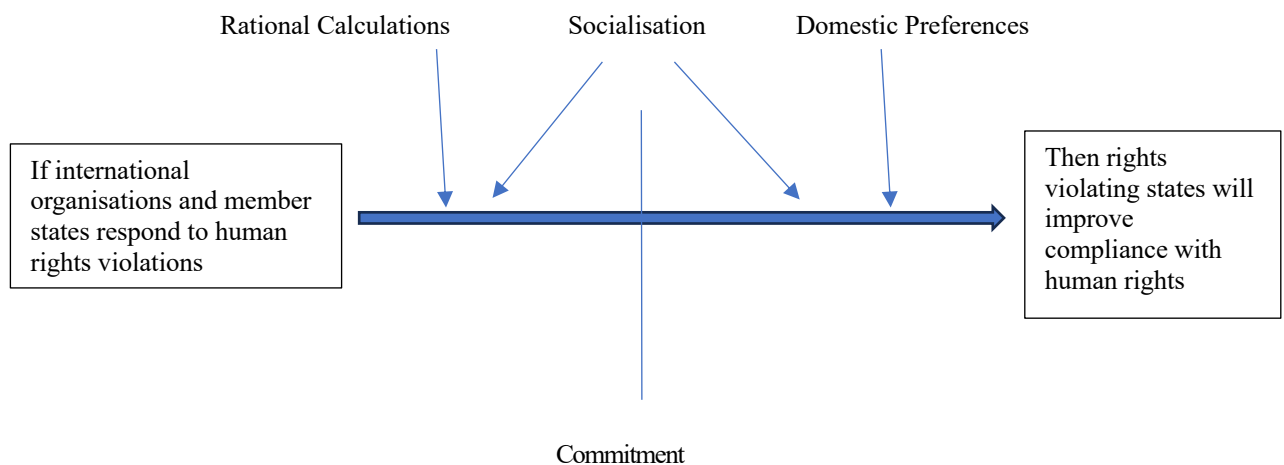
¹⁰⁸ Derek Beach and Rasmus Pedersen, *Process-Tracing Methods Foundations and Guidelines*, 1st Edition (University of Michigan Press, 2013).

¹⁰⁹ Tufts IRB Determination Protocol STUDY00001593, 7 June 2021; Tufts IRB Determination, MOD-01-STUDY00001593 2 September 2022.

involvement in the events that led to commitment and the subsequent implementation of human rights reforms. Few participants were also identified based on information from local contacts and other research participants.

I hypothesise that a mix of socialisation and rational calculations motivated both states to make international human rights commitments. Further, I hypothesise that following commitment, the relevance of rational calculations will decline, and that domestic preferences and socialisation will guide states to carry out steps toward compliance (e.g. refrain from harmful behaviour, and enact, operationalise, and enforce reforms).

Figure 1.1: Hypothesis and Causal Mechanisms



Dissertation outline and chapter overview

Chapter 2 sets out the case study on Sri Lanka. It examines how member states and UN human rights mechanisms responded to human rights violations in Sri Lanka

and factors that shaped commitment. It examines compliance with resolution 30/1, through four aspects: i) improvements in physical integrity rights and political freedoms; ii) enactment of legal and policy reforms; iii) operationalisation of new and existing institutions mandated to adopt reforms. Chapter 3 sets out the case study on Nepal. It lays out the origins of OHCHR's intervention in Nepal and the factors that led Nepal to commit to an agreement with OHCHR. It examines compliance with human rights commitments via the same four aspects used in the Sri Lanka case study. I conclude with Chapter 4 which presents a summary of findings, theoretical contributions and policy implications from the study.

Chapter 2: Sri Lanka

Introduction

During the final stages of the conflict in Sri Lanka, there were allegations of widespread human rights violations. Following the end of the war the government consolidated executive power and presided over shrinking political space. UN human rights mechanism through their monitoring and documenting activities, raised awareness of the human rights challenges and shaped the way member states understood the situation in Sri Lanka. Key bilateral partners, such as the US, UK, EU, and Canada, condemned the Sri Lankan government's actions and withheld trading concessions, military aid, and diplomatic support. A newly elected government in Sri Lanka, opted to change course and cooperate with the Human Rights Council. The government co-sponsored a resolution before the Human Rights Council, committing to an ambitious human rights agenda, including specifically to address conflict related human rights abuses.

In opting to cooperate, Sri Lanka was primarily guided by rational calculation of state interests and identity-based concerns. The government was keen to end Sri Lanka's diplomatic isolation and expand opportunities for cooperation. Related to this was shedding Sri Lanka's image as a 'pariah state', that was too heavily reliant on non-Western states. This was at odds with how the country perceived itself as a traditionally 'non-aligned' state, with a long history of democracy.

Following commitment, physical integrity rights and political freedoms significantly improved. Bilateral partners congratulated Sri Lanka's democratic transition and welcomed its continuing cooperation with the Council. Although Sri Lanka lagged in adopting many reforms, they sought to deepen bilateral ties. Sri Lanka no longer faced the threat of censure or sanctions, and as a result, rational calculation of state interests became less relevant in guiding compliance.

Instead, socialisation mechanisms such as dialogue and capacity building and preferences of domestic elites became more relevant. The new coalition government was formed by two historically rival parties, and the two individuals leading it, President Sirisena and Prime Minister Wickremesinghe, consistently drove the government in opposing directions. Within this context, much of the political capital was spent on ensuring the survival of each party as well as the coalition itself. Opposition parties failed to extract costs from the government for non-compliance or engage in dialogue with the government with a view to socialising the latter to adopting reforms. Discursive engagement between domestic and international actors did contribute to the enactment of important human rights reforms that criminalised enforced disappearances and established new institutions to award reparations and establish the fate of missing and disappeared persons. However, the impact of discursive engagement between the government on reforms, such as the counter-terrorism law and truth and reconciliation commission were limited by domestic political instability.

Weakest area of compliance was operationalisation and enforcement of reforms. Domestic political elites demonstrated a distinct unwillingness to ensure accountability for past human rights violations. Although international actors engaged in capacity building efforts, they failed to overcome weaknesses within the domestic bureaucracy that impeded effective operationalisation.

Country context

Sri Lanka is an island nation and a former British colony that gained independence in 1948. It became a republic and adopted a semi-presidential form of government in 1972. The government comprises of the President, Prime Minister, and a Cabinet of Ministers. The President is directly elected and serves as the head of state, head of government and the armed forces. The Prime Minister and Cabinet of Ministers are also directly elected and are members of a unicameral legislature, the Parliament. Sri Lanka has a mixed legal system, combining roman-dutch and common law traditions. The Supreme Court is mandated to hear constitutional law matters and appeals from lower courts. Criminal investigations are overseen by Magistrate's Courts, and trials for serious crimes are heard before High Courts.

Sri Lanka is a multi-ethnic, multi-religious state with a population of 23 million.¹ The majority of the population is ethnically Sinhala (74.9%), followed by Tamil (15.4%) and Muslim (9.2%). The state's official religion is Buddhism, with 70.2%

¹ "CIA World Factbook," 2012, <https://www.cia.gov/the-world-factbook/countries/sri-lanka/#people-and-society>.

followers; 12.6% identify as Hindu, 9.7% as Muslim and 6.1% as Roman Catholic.²

Sri Lanka has a developing economy and is categorised as a lower middle income earning country.³

Sri Lanka's post-independence history was marked with widespread human rights abuses. Two Marxist insurgencies in 1972 and 1989 led by Sinhala youth from the south were met with strong military responses, and both periods were marked with large-scale extrajudicial killings, enforced disappearances and torture. Successive governments carried out a series of discriminatory policies depriving language and citizenship rights as well as access to education and employment opportunities of the Tamil minority.⁴ War broke out in 1984 between the central government in Colombo, and armed Tamil groups based in the North and the East. Over time the Liberation Tamil Tigers of Eelam (LTTE) emerged as the dominant Tamil armed group; their central demand was a separate state, based in the north and east of the country.

After two failed peace talks in 1990 and 1994, respectively, neighbouring India sought to intervene in 1989, deploying a Peace Keeping Force to the conflict zone. Two years later, after more than 1,100 Indian casualties, India withdrew. As part of its withdrawal, a bilateral agreement was reached under which Sri Lanka agreed to enact a 13th Amendment to the Sri Lankan constitution that would devolve power

² Ibid.

³ "World Bank in Sri Lanka," accessed April 1, 2022, <https://www.worldbank.org/en/country/srilanka/overview#1>. GDP per capita is USD \$ 3852.

⁴ "Tamils in Sri Lanka," October 16, 2023, <https://minorityrights.org/communities/tamils/>.

to provincial governments, including in Tamil majority areas in the northeast. In 2001, a new peace process was initiated, with Norway acting as a facilitator, which led to a ceasefire and a memorandum of agreement where both parties agreed to “find a negotiated solution to the ongoing ethnic conflict in Sri Lanka”.⁵ However, the ceasefire was short-lived and marked with persistent violations. Throughout the period of the conflict, both parties were alleged to have perpetrated serious human rights violations. The LTTE was accused of carrying out direct attacks on civilians using suicide bombers, and forcibly recruiting children. The government was accused of carrying out enforced disappearances, extra-judicial killings, torture, arbitrary detentions, and attacks on the press.

In 2005, Mahinda Rajapaksa was elected as President, and he pursued a military solution to the conflict. In a key strategic win for the government, a top LTTE military commander, Colonel Karuna, and 6,000 of his cadres defected in late 2004. Emboldened by a weakened LTTE, the government accelerated its military operations beginning in September 2008 and brought the war to an end on 18 May 2009. This final stage of the war from September 2008 to May 2009 led to widespread and systemic human rights abuses by both the Sri Lankan Government and the LTTE. Following the end of the conflict, Rajapaksa proceeded to amass executive power and preside over an increasingly shrinking domestic political space.

⁵ Memorandum of Understanding signed between the Government of Sri Lanka and the LTTE (February 6, 2002).

International response to the human rights situation in Sri Lanka

The Human Rights Council's focus on Sri Lanka was led by the US and supported by the UK, Canada, the EU, and India. Each actor had specific domestic factors that motivated their stance on Sri Lanka's human rights record. As the conflict reached its peak, these Western nations responded with censure and sanctions against Sri Lanka. Member states halted or reduced military aid, withdrew trading concessions and diplomatic support.

India

As Sri Lanka's closest neighbour and a country with which it shares strong religious, cultural, and linguistic affinities, Sri Lanka viewed India as a special bilateral partner; India, in turn, viewed Sri Lanka as part of its natural sphere of influence. Four failed attempts at negotiation, the death of over 1,000 Indian soldiers during the Indian intervention in 1987, and the 1991 assassination of Indian Prime Minister Rajiv Gandhi by the LTTE led Indian officials to support a military defeat of the LTTE.⁶ From 2007 onwards, the Indian government provided political support and non-lethal military assistance in the form of training and intelligence to the Sri Lankan government.⁷ Despite its support for a military defeat of the LTTE, India opted not to provide overt assistance to Sri Lanka on the ground that it would hurt the sentiments of the then Indian government's coalition partner, the

⁶ See Shivshankar, Menon, *Choices: Inside the Making of India's Foreign Policy* (Washington DC: Brookings Institution Press, 2016), 93-95.

⁷ Thottam, Jyoti "The Real Lessons of Sri Lanka's War: A Global Power Shift and the End of Human Rights", *Time* (21 November 2011); Destradi, Sandra, "India and Sri Lanka's Civil War The Failure of Regional Conflict Management in South Asia" *Asian Survey* 50, no3 (May/ June 2012), 606-608.

Dravida Munnetra Kazhagam (DMK), a major political party based in India's southernmost state, Tamil Nadu, the home of 68 million Indian Tamils.⁸ During the final stages of the conflict and the ensuing plight of Sri Lankan Tamils, Tamil Nadu's government, opposition politicians and wider society were unified in their vociferous advocacy on behalf of the plight of the Sri Lankan Tamils.⁹

During the final months of 2008-2009, a troika of advisors from Colombo and New Delhi were in regular contact. India sought assurances that the Sri Lankan government would take steps to limit civilian casualties and the humanitarian impact of the military offensive.¹⁰ Further they appear to have been reassured by Colombo's promises that following a military victory the latter would devolve political authority and fully implement the 13th Amendment to the Sri Lankan constitution and possibly even going beyond.¹¹ India played a crucial role in warding off international pressure from western states during the final stages of the war.¹² When western states proposed a ceasefire or that a UN Envoy be appointed to the conflict, India stressed that Sri Lanka would resist an international envoy and

⁸ D.S. Muni, "India's Tamil Politics and the Sri Lankan Ethnic Conflict," *Institute of South Asian Studies Brief 86* (November 6, 2008), <https://www.files.ethz.ch/isn/93801/87.pdf>; Happymon Jacob, "Putting the Periphery at the Centre Indian State's Role in Foreign Policy," October 2016, https://carnegieendowment.org/files/CP_282_Jacob_States_Roles_Final.pdf.

⁹ C Rajan, "Spate of Immolations for Lankan Tamils Rocks TN," *India Today*, February 10, 2009, <https://www.indiatoday.in/latest-headlines/story/spate-of-immolations-for-lankan-tamils-rocks-tn-39271-2009-02-10>.

¹⁰ Menon, *Choices: Inside the Making of India's Foreign Policy*, 94; C. A. Chandraprema, *Gota's War The Crushing of the Tamil Tiger Terrorism in Sri Lanka* (Piyasri: Colombo, 2014), 427.

¹¹ "Sri Lanka assures India: To provide adequate security measures to civilians trapped in war zone", *Asian Tribune* (28 January 2009) <<http://www.asiantribune.com/?q=node/15362>> accessed 1 October 2017.

¹² Subramanian, Nirupama, "How India kept pressure off Sri Lanka", *The Hindu* (16 March 2011); Thottam, "The Real Lessons of Sri Lanka's War: A Global Power Shift and the End of Human Rights; Destradi, "India and Sri Lanka's Civil War The Failure of Regional Conflict Management in South Asia".

pressure to negotiate with the LTTE.¹³ Further Indian officials argued that, although it was necessary to exert pressure on Sri Lanka regarding human rights concerns, it was best to do so within bilateral contexts and avoid censure before a multilateral setting.¹⁴

UK

As a former colony, the UK and Sri Lanka have retained strong bilateral ties. The UK is home to one of the largest communities of overseas Tamil Sri Lankans.¹⁵ Towards the end of war in 2009, Tamil diaspora groups held widespread public protests and privately lobbied the UK government to take steps to end the violence in Sri Lanka.¹⁶ Tamil diaspora communities concentrated in east of London were considered a strategic constituency by the then-governing Labour party.¹⁷ In April 2009, the Foreign Office team leader on Sri Lanka conceded to his American counterpart that, with the UK general election only a year away and many Tamils living in labour electorates with thin margins, Foreign Secretary Miliband was spending sixty percent of his time on Sri Lanka.¹⁸ While large Tamil diaspora communities existed, for example, in Canada and Australia, the UK-based Tamil

¹³ US Embassy in New Delhi, "Foreign Secretary Menon and the Endgame in Sri Lanka," Wikileaks, April 15, 2009, https://search.wikileaks.org/plusd/cables/09NEWDELHI743_a.html.

¹⁴ Political Editor, "Panel Report: Be Realistic and Have Dialogue with UN," *Sunday Times*, May 15, 2011, <https://www.sundaytimes.lk/110515/Columns/political.html>.

¹⁵ Matthew Goodwin, "Winning, Westminster-Style: Tamil Diaspora Interest Group Mobilization in Canada and the UK," *Journal of Ethnic and Migration Studies* 44, no. 8 (2018): 1325–40, 1326.

¹⁶ Goodwin, "Winning, Westminster-Style: Tamil Diaspora Interest Group Mobilization in Canada and the UK," 1326.

¹⁷ Goodwin, "Winning, Westminster-Style: Tamil Diaspora Interest Group Mobilization in Canada and the UK," 1333.

¹⁸ Julian Borger, "Wikileaks Cables: David Miliband Focused on Sri Lankan War 'to Win Votes,'" *The Guardian*, December 2, 2010, <https://www.theguardian.com/world/2010/dec/01/wikileaks-david-miliband-sri-lanka>; Goodwin, "Winning, Westminster-Style: Tamil Diaspora Interest Group Mobilization in Canada and the UK," 1333.

advocacy groups were more savvy and better connected to senior government and political leaders.¹⁹

During the last stages of the war, the British government addressed the situation in Sri Lanka through its bilateral relationship, in concert with other like-minded partners and through multilateral settings. On 29 April 2009, Foreign Secretary David Miliband, and his French counterpart Benard Kouchner travelled to Sri Lanka and visited displacement camps that housed more than 120,000 internally displaced persons and met with senior Sri Lankan government officials. After the visit, Miliband called for a ceasefire and pledged 2.5 million pounds for humanitarian aid. A week after their visit, both French and UK foreign secretaries planned to raise Sri Lanka in their meetings with American officials in Washington on 12 May 2009.²⁰ The UK and French ministers also unsuccessfully called for Sri Lanka to be raised before the UN Security Council in late April and May.²¹ The UK supported the American position of delaying approval for Sri Lanka's proposed standby arrangement with the IMF.²²

From the end of the war in 2009 up to the beginning of the Council process in March 2012, the UK government continued to prioritise the human rights issues in

¹⁹ Human Rights Lawyer, interview with author, July 1, 2021; State Department Official, interview with author, July 2, 2021; Matthew Goodwin, "Winning, Westminster-Style: Tamil Diaspora Interest Group Mobilization in Canada and the UK," 1332.

²⁰ US Embassy in London, "Sri Lanka: Update on UK Action and Thinking," *Wikileaks*, May 7, 2009, <http://wikileaks.flashdance.cx/cable/2009/05/09LONDON1082.html>.

²¹ Internal Review Panel, "Report of the Secretary-General's Internal Review Panel of United Nations Action in Sri Lanka," 2012, para 68, <https://digitallibrary.un.org/record/737299?ln=en>,

²² US Embassy in London, "Sri Lanka: Update on UK Action and Thinking".

its bilateral relationship with Colombo. The Foreign and Commonwealth Office listed Sri Lanka as a country of human rights concern in the two years leading up to 2012.²³ Senior officials from London and the High Commission in Colombo visited conflict affected parts of the country, called for accountability for human rights abuses and stressed the importance of a political settlement with their Sri Lankan counterparts.²⁴

Canada

As members of the Commonwealth, Canada and Sri Lanka have had long-standing bilateral ties with missions in both capitals for more than over fifty years. Canada is home to approximately 200,000 overseas Sri Lankans, the majority of whom are Tamils.²⁵ Similar to the situation in the UK, from February 2009 onwards, the Tamil diaspora in Canada staged large, disruptive protests targeting the Canadian and US governments. The protests demonstrated the electoral strength and capacity for mobilization of the Sri Lankan Tamils and coincided with a broader shift within the governing conservative party to seek increased support from voters of colour.²⁶ In

²³ United Kingdom Foreign & Commonwealth Office, "Human Rights and Democracy: The 2010 Foreign & Commonwealth Office Report," 2010, 282-296, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/408381/accessible-hrd-report-2010.pdf; United Kingdom Foreign & Commonwealth Office, "Human Rights and Democracy: The 2011 Foreign & Commonwealth Office Report," 2011, 318-327, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/408379/Cm-8339.pdf

²⁴ "Human Rights and Democracy: The 2010 Foreign & Commonwealth Office Report," 283, 285, 293, 299,

²⁵ High Commission of Canada to Sri Lanka and Maldives, "Canada- Sri Lanka Relations," 2018, https://www.canadainternational.gc.ca/sri_lanka/bilateral_relations_bilaterales/canada_sri_lanka.aspx?lang=eng

²⁶ Steven Seligman, "Explaining Canadian Foreign Policy toward Sri Lanka under the Harper Government," *International Journal* 71, no. 2 (2016), 258.

the final months of the war, Canada accelerated its public diplomacy efforts in relation to Sri Lanka, calling for a cease fire and humanitarian access and offering humanitarian aid.²⁷

European Union

The EU first came to play a direct role in Sri Lanka's conflict as a co-chair of the 2002 peace process. A key component of the bilateral EU-Sri Lanka relationship was trade, which was based on the EU's trading arrangement with Sri Lanka under the General System of Preferences (GSP+), which exempted Sri Lankan manufactured goods from duties and taxes when sold within the EU, a key factor that fuelled exports to the EU.²⁸ Sri Lanka became an original beneficiary of the

²⁷ Office of the Minister of Foreign Affairs, "Canada Deeply Concerned by Mounting Civilian Casualties in Sri Lanka," *Foreign Affairs and International Trade Canada*, January 28, 2009 <https://www.canada.ca/en/news/archive/2009/01/canada-deeply-concerned-mounting-civilian-casualties-sri-lanka.html>; Office of the Minister of Foreign Affairs, "Canada Supports Political Solution in Sri Lanka," *Foreign Affairs and International Trade Canada*, February 4, 2009, <https://www.canada.ca/en/news/archive/2009/02/canada-supports-political-solution-sri-lanka.html>; Canada, "House of Commons Debates Official Report (Hansard)," Pub. L. No. 008, 372 (2009), <https://www.ourcommons.ca/Content/House/402/Debates/008/HAN008-E.PDF>; Office of the Minister of Foreign Affairs, "Canada Expresses Concern About Civilians Trapped in Conflict in Sri Lanka," *Foreign Affairs and International Trade Canada*, April 11, 2009, <https://www.canada.ca/en/news/archive/2009/04/canada-expresses-concern-about-civilians-trapped-conflict-sri-lanka.html>; Office of the Minister of Foreign Affairs, "Canada Calls on Both Parties to the Conflict in Sri Lanka to Work Toward a Rapid Resolution and to Meet Humanitarian Obligations," *Foreign Affairs and International Trade Canada*, April 19, 2009, <https://www.canada.ca/en/news/archive/2009/04/canada-calls-both-parties-conflict-sri-lanka-work-toward-rapid-resolution-meet-humanitarian-obligations.html>; Office of the Minister of Foreign Affairs, "Statement by Minister Cannon on Sri Lanka Situation," *Foreign Affairs and International Trade Canada*, April 24, 2009, <https://www.canada.ca/en/news/archive/2009/04/statement-minister-cannon-sri-lanka-situation.html>; "Canada Gives \$3 Million in Aid to Sri Lanka," *CP24*, May 4, 2009, <https://www.cp24.com/canada-gives-3-million-in-aid-to-sri-lanka-1.395335>.

²⁷ Report of the Standing Committee on Foreign Affairs and International Development, "Canada and the Crisis in Sri Lanka" (Library of Parliament, May 2009), https://www.ourcommons.ca/Content/Committee/402/FAAE/Reports/RP3895627/402_FAAE_Rpt05/402_FAAE_Rpt05-e.pdf, 2.

²⁸ See Official Journal of the European Journal, "REGULATION (EU) No 978/2012 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 25 October 2012 Applying a Scheme of

scheme in 2005, and it was renewed in 2008 until 2011. To be a beneficiary under the scheme, a country must be deemed vulnerable according to specified development indicators and comply with 27 international instruments relating to human rights, labour standards, environment, narcotics, and corruption.²⁹ The human rights component of the obligations required countries to effectively incorporate the International Covenant on Civil and Political Rights (ICCPR), the Convention against Torture (CAT) and the Convention on the Rights of the Child (CRC).

In 2008, Sri Lanka received \$100 million worth of concessions under the scheme.³⁰ The EU had been Sri Lanka's largest export market, receiving 36% of all Sri Lankan exports.³¹ The GSP+ scheme particularly benefited Sri Lankan manufactured garments that were sold in the EU. At the time, garments accounted for 11% of Sri Lanka's gross domestic product, provided employment for 6% of the workforce, and was the fastest-growing sector of manufacturing industry.³²

Generalised Tariff Preferences and Repealing Council Regulation (EC) No 732/2008”
<https://eurlex.europa.eu/legalcontent/EN/TXT/?uri=celex%3A32012R0978>; See also European Commission, “The EU’s Generalised Scheme of Preferences (GSP),” August 2015, https://trade.ec.europa.eu/doclib/docs/2015/august/tradoc_153732.pdf.

²⁹ Ibid.

³⁰ Muralidhar Reddy, “Report on Human Rights Handed over to EU States: Colombo,” *The Hindu*, November 8, 2009, <https://www.thehindu.com/news/international/Report-on-human-rights-handed-over-to-EU-states-Colombo/article16890838.ece>.

³¹ Reddy, “Report on Human Rights Handed over to EU States: Colombo”.

³² James Yap, “Beyond ‘Don’t Be Evil’: The European Union GSP+ Trade Preference Scheme and the Incentivisation of the Sri Lankan Garment Industry to Foster Human Rights,” *European Law Journal* 19, no. 2 (March 2013): 283–301, 295.

In October 2008, as the conflict in Sri Lanka entered its final phase and allegations regarding the violation of gross human rights abuses were being levelled at both the government and the LTTE, the European Commission appointed three experts to investigate Sri Lanka's compliance with the human rights treaties, as required under the GSP+ conditions.³³ The Sri Lankan government termed the European Commission's investigation "outrageous" and refused to allow the investigators to enter Sri Lanka. In October 2009, the European Commission published the report, which found that the ICCPR, CAT and the CRC were not being effectively implemented, based on credible allegations of extra-judicial killings, widespread use of torture and attacks on civilian infrastructure, including medical facilities, during the hostilities.³⁴ In February 2010, the European Council passed a resolution withdrawing GSP+ benefits for Sri Lanka, an action it had taken only twice before, with respect to Myanmar in 1997 and Belarus in 2006.³⁵

United States

President Obama was elected in November 2008 and assumed office in January 2009, during the critical final stages of the war in Sri Lanka. As the conflict worsened, key figures within the US Congress and the White House raised concerns

³³ The three experts were Judge L. Sevon, Professor F. Hampson and Professor R. Wieruszewski.

³⁴ Commission of the European Communities, "Report on the Findings of the Investigation with Respect to the Effective Implementation of Certain Human Rights Conventions in Sri Lanka" (Brussels, August 19, 2009), https://reliefweb.int/sites/reliefweb.int/files/resources/9501F5EFE0C4F6C449257655000EECA5-Full_Report.pdf.

³⁵ Council of the European Union, "IMPLEMENTING REGULATION (EU) No 143/2010 OF THE COUNCIL of 15 February 2010 Temporarily Withdrawing the Special Incentive Arrangement for Sustainable Development and Good Governance Provided for under Regulation (EC) No 732/2008 with Respect to the Democratic Socialist Republic of Sri Lanka" (February 15, 2010), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32010R0143>.

about the human rights situation in Sri Lanka.³⁶ When President Rajapaksa opted to pursue a military strategy, the US warned of the risks inherent in such a strategy and instead advocated for a ceasefire and a political solution to the conflict.³⁷ US Ambassador to Sri Lanka Robert Blake repeatedly warned the Rajapaksa government that if action was not taken to halt increasing abuses, then US military assistance could be suspended.³⁸ In the same vein, the US Senate enacted an amendment to the Foreign Operations Act prohibiting the issuance of defence export licenses and the sale or transfer of military equipment or technology to Sri Lanka.³⁹ In practical terms, the effect of the prohibition was limited, as US military assistance to Sri Lanka had never reached substantial levels. However, denying military assistance meant that Sri Lanka could no longer have access to spare parts for a range of military equipment.⁴⁰

In January 2009, six former US ambassadors to Sri Lanka wrote a public letter to President Rajapaksa voicing their concerns about attacks on the press and rising

³⁶ US Embassy in Sri Lanka, "Sri Lanka: GSL Complicity in Paramilitary Factions' Human Rights Abuses," *Wikileaks*, May 18, 2007, https://wikileaks.org/plusd/cables/07COLOMBO728_a.html; Editorial, "Violence in Sri Lanka," *The New York Times*, November 15, 2007, <https://www.nytimes.com/2007/11/15/opinion/15iht-edsrilanka.1.8351017.html>; "Sri Lanka." U.S. Department of State. (2008) <http://www.state.gov/j/drl/rls/hrrpt/2007/100620.htm>.

³⁷ Slater, Mark, *To End a Civil War: Norway's Peace Engagement in Sri Lanka*. UK: Hurst and Company London, 2015, 353.

³⁸ Under the Leahy Law both Secretary of Defence and the Secretary of State are required to suspend assistance to foreign militaries where they have credible information that the latter has committed gross violations of human rights (See s 620 M of the *Foreign Assistance Act* of 1961, as amended, and s 8058 of the *Department of Defence Appropriations Act* 2012). The assistance can be renewed where the foreign military has taken necessary corrective steps.

³⁹ Human Rights Watch, "Recurring Nightmare State Responsibility for 'Disappearances' and Abductions in Sri Lanka," March 2008, 120, <https://www.hrw.org/sites/default/files/reports/srilanka0308web.pdf>.

⁴⁰ Kaplan, Robert D. *Monsoon The Indian Ocean and the Future of American Power*. New York: Random House Trade Paperbacks, 2010, 345.

civilian casualties.⁴¹ On World Press Freedom Day, May 1, 2009, President Obama singled out Sri Lankan journalist J. S. Tissanayagam, who had been detained under counterterrorism laws, as an emblematic case of attacks on the press.⁴² In July 2009, citing human rights abuses, the US and the UK abstained from voting on an IMF decision to grant a loan to Sri Lanka.⁴³ In the same month, at a UN Security Council session, Secretary of State Hillary Clinton identified Sri Lanka as one of several countries where rape had been used as a weapon of war.⁴⁴

In February 2009, the Chairman and the ranking Republican member of the Senate Committee on Foreign Relations called for immediate investigations into attacks on journalists and other civilians.⁴⁵ Later that month, the same Committee held a hearing and heard submissions from Human Rights Watch on the attacks on civilians and civilian objects and the inhuman conditions of the “welfare camps” where internally displaced persons were being detained.⁴⁶ One day following the formal conclusion of the war on May 18, the US Senate enacted an amendment to the Supplemental Appropriations Act mandating the Secretary of State to submit a

⁴¹Dr. Mahesh Ladduwahetty. “Letter from 6 Ex-Ambassadors of the US to President Mahinda Rajapaksa.” *The Island*, January 28, 2009. <http://pdfs.island.lk/2009/01/28/p9.pdf>.

⁴² Administration of Barack H. Obama, 2009, “Statement on World Press Freedom Day,” May 1, 2009, <https://www.govinfo.gov/content/pkg/DCPD-200900314/pdf/DCPD-200900314.pdf>.

⁴³ Polgreen, Lydia. “I.M.F. Approves \$2.6 Billion Sri Lanka Loan.” *The New York Times*, July 26, 2009. <http://www.nytimes.com/2009/07/27/world/asia/27lanka.html>.

⁴⁴ “Sri Lanka Angry over Clinton’s Rape Comment.” *Foreign Policy* (blog). October 8, 2009. <https://foreignpolicy.com/2009/10/08/sri-lanka-angry-over-clintons-rape-comment/>.

⁴⁵ U.S. Congress, Senate, Committee on Foreign Relations, *Kerry and Lugar Concerned About Humanitarian Situation in Sri Lanka*. February 2, 2009. <https://www.foreign.senate.gov/press/go/kerry-and-lugar-concerned-about-humanitarian-situation-in-sri-lanka>.

⁴⁶ U.S. Congress, Senate, Subcommittee on Near Eastern and South and Central Asian Affairs of the Committee on Foreign Relations, “Recent Developments in Sri Lanka,” 111th Congress, 1st sess., February 24, 2009, <https://www.govinfo.gov/content/pkg/CHRG-111shrg56129/html/CHRG-111shrg56129.htm>.

report “detailing the incidents during the recent conflict in Sri Lanka that may constitute violations of international humanitarian law or crimes against humanity and to the extent practical identifying the parties responsible.”⁴⁷

The resulting report was prepared under the auspices of Ambassador Stephen Rapp by the Office of Global Criminal Justice within the Department of State and tabled before Congress. It identified alleged incidents that occurred during the last stages of the war, such as the use of child soldiers, attacks on civilians and civilian objects, killing combatants seeking to surrender, disappearances, and dire humanitarian conditions, including allegations of starvation.⁴⁸ The report had merely collated existing allegations, many of which were in the public domain. Despite its lack of detail and reliance on already available allegations, the report was an important document that brought together many of the key allegations against the government and the LTTE.

The US had a direct interest in accountability issues insofar as several individuals implicated in the most egregious violations were either US citizens or green card holders. President Rajapaksa’s brother, then Defense Secretary Gotabhaya Rajapaksa, was a dual US-Sri Lankan citizen, as was another brother, Basil Rajapaksa.⁴⁹ Basil Rajapaksa was a cabinet minister who was also closely involved

⁴⁷ U.S. Department of State. *Report to Congress on Incidents During the Recent Conflict in Sri Lanka*, 2009, <https://2009-2017.state.gov/documents/organization/131025.pdf>

⁴⁸ Ibid.

⁴⁹ He renounced his US citizenship in April 2019, see Political Editor, “Gota Ends His Citizenship,” *Sunday Times*, April 21, 2019, <https://www.sundaytimes.lk/190421/columns/gota-ends-his-us-citizenship-346258.html>.

in running state affairs, and during the last stages of the war, he negotiated the surrender of the LTTE leadership, all of whom were allegedly executed during their surrender. The army chief who prosecuted the war, General Fonseka, was a green card holder. Prominent US legal scholars called on the US government to investigate the defence secretary's conduct under the US War Crimes Act.⁵⁰ Media reports indicate that the US did open an investigation into Gotabaya's conduct, even if the investigation made little progress.⁵¹

The decision to raise Sri Lanka before the Human Rights Council received important support from key officials within the State Department and the White House. The regional and thematic bureaus within the US State Department, influenced the decision to raise Sri Lanka before the Council. The Sri Lanka desk fell within the Bureau of South and Central Asian Affairs and was headed by Assistant Secretary Robert Blake, who had served as Ambassador to Sri Lanka from 2006 until just after the end of the war in 2009. During his time as Ambassador, he had received reports of the alleged abuses within the conflict zone, and he had personally volunteered to negotiate with the LTTE inside the conflict zone during the final months of the war.⁵² As a rule, regional bureaus tend to oppose initiatives

⁵⁰ Goodman, Ryan. "Sri Lanka's Greatest War Criminal (Gotabaya) Is a US Citizen: It's Time to Hold Him Accountable." *Just Security*, May 19, 2014. <https://www.justsecurity.org/10537/sri-lanka-gotabaya-us-citizen-war-crimes-accountability/>; Van Schaack, Beth. "United States War Crimes Statute and Sri Lanka." *Just Security*, May 20, 2014. <https://www.justsecurity.org/10607/united-states-war-crimes-statute-sri-lanka/>.

⁵¹ Sutirtho Patranobis, "Fonseka Leaves US without Being Questioned," *Hindustan Times*, November 4, 2009, <https://www.hindustantimes.com/world/fonseka-leaves-us-without-being-questioned/story-AHN8UOgt18sn1HmnNRX4tK.html>.

⁵² "Robert O. Blake Rejects Plans on Rescuing Prabhakaran," July 14, 2017, <https://www.dailymirror.lk/article/Robert-O-Blake-rejects-plans-on-rescuing-Prabhakaran-132772.html>; Slater, Mark. *To End a Civil War: Norway's Peace Engagement in Sri Lanka*, 353.

that involve public criticism of a bilateral partner, as it can make the relationship more challenging. However, former Ambassador Blake backed the idea of exerting public pressure on the Sri Lankan government. US Ambassadors to Sri Lanka who succeeded Blake, Ambassadors Patricia Butenis and Michele Sisson also supported raising the issue of Sri Lanka before the council.⁵³

At the time DRL was headed by Michael Posner, who had been a founding executive director and later president of the US NGO Human Rights First (formerly known as the Lawyers Committee for Human Rights). Posner had been a key proponent of the Torture Victim Protection Act which allows torture victims to bring civil suits in US courts for acts of torture committed anywhere in the world and was an early supporter of the International Criminal Court. Posner's counterpart, the head of the Office of Global Criminal Justice, Ambassador Stephen Rapp, had served as the chief prosecutor of the International Criminal Tribunal for Rwanda (ICTR) and the Special Court for Sierra Leone (SCSL). Thus, two of the key officials within the State Department had a strong track record for advancing accountability for human rights violations and international crimes.

Outside the State Department, there were several important voices that supported accountability in the aftermath of mass atrocities. One of these was Susan Rice, President Obama's first Ambassador to the UN and later national security advisor, who cited her guilt over the Clinton administration's inaction on the Rwandan

⁵³ "Government Uneasy over Sison's Silent Observer Role." *Sri Lankan Guardian*, January 2, 2013. <http://www.srilankaguardian.org/2013/01/government-uneasy-over-sisons-silent.html>.

genocide for her subsequent support for war crimes tribunals.⁵⁴ Samantha Power, President Obama's Special Assistant and Senior Director for Multilateral Affairs and Human Rights in the National Security Council from January 2009 to February 2013, was also an important voice that supported accountability in Sri Lanka.⁵⁵ Promoted to the cabinet position of US Permanent Representative to the UN during Obama's second term, Power was a lawyer and a former journalist who had authored a Pulitzer Prize winning book on the role of the US in preventing mass atrocities.⁵⁶

At the time, the Sri Lankan media and officials portrayed the US interest in accountability as the result of lobbying by Tamil diaspora groups.⁵⁷ The public record reveals that members of the Tamil diaspora, such as the US Tamil Political Action Group, were lobbying the US embassy in Colombo and officials in DC during the last stages of the war as well as in its aftermath, and submissions from the US Tamil community were included in the official record of the February 2009 Senate hearing.⁵⁸ Tamil diaspora groups had met with Assistant Secretary Blake on several occasions after the war.⁵⁹ Nonetheless, the Sri Lankan community in the

⁵⁴ Annie R. Bird, *US Foreign Policy on Transitional Justice* (New York: Oxford University Press, 2015), 17-18.

⁵⁵ See US Embassy in Sri Lanka, "Remarks by Ambassador Samantha Power, U.S. Permanent Representative to the United Nations, at a Town Hall with Sri Lankan Youth," November 23, 2015, <https://lk.usembassy.gov/remarks-ambassador-samantha-power-u-s-permanent-representative-united-nations-town-hall-sri-lankan-youth/>.

⁵⁶ Samantha Power, *A Problem from Hell: America and the Age of Genocide* (New York: Basic Books, 2003)

⁵⁷ Susan Nossel, "Working Paper: Advancing Human Rights in the UN System," 22.

⁵⁸ Lola Guyot, "From Arms to Politics The New Struggle of the Tamil Diaspora," 2017, <https://norcia-research.com/from-arms-to-politics-the-new-struggle-of-the-tamil-diaspora/>.

⁵⁹ U.S. Congress, Senate, Subcommittee on Near Eastern and South and Central Asian Affairs of the Committee on Foreign Relations, "Recent Developments in Sri Lanka,"; Sylvester U.L.J. Perera, "The Influence of Tamil Diaspora on Stability in Sri Lanka" (Master of Science in Defense

US is relatively small, and US officials often believed the degree of diaspora influence to be exaggerated.⁶⁰

There were voices within the US government that cautioned against raising Sri Lanka before the Council. American officials were concerned about rising Chinese influence in Sri Lanka. Sri Lanka lies in a key location amidst one of the world's principal maritime routes, between the Strait of Hormuz and the Strait of Malacca. The growing relationship between China and Sri Lanka was evidenced by China's rapid increase in investment in Sri Lanka, going from a mere few million in the 80s to more than 6 billion by the end of the war in 2009. Observers identified China's investment in a port in Rajapaksa's hometown of Hambantota as part of China's "string of pearls" strategy through which Beijing acquired ports in strategic locations in the Indian Ocean, adding to similar projects in Bangladesh, Myanmar and Cambodia.⁶¹ The US has long had an overarching strategic interest in ensuring the freedom of sea lanes in the Indian Ocean, and the Obama administration was also sensitive to the needs of one of its longstanding allies, Japan, which was completely dependent on Indian Ocean naval routes for its energy supplies.

Analysis, California, Naval Postgraduate School, 2016),42-3,
<https://apps.dtic.mil/sti/pdfs/AD1026744.pdf>.

⁶⁰ Roberts, Michael. "Loopholes: How Tamil Advocacy Penetrates US Foreign Policy Making." *Colombo Telegraph*, December 9, 2015.
<https://www.colombotelegraph.com/index.php/loopholes-how-tamil-advocacy-penetrates-us-foreign-policy-making/>.

⁶¹ Weiss, *The Cage The Fight for Sri Lanka and The Last Days of The Tamil Tigers*, 202; Maria Abi-Habib, "How China Got Sri Lanka to Cough Up a Port," *The New York Times*, June 25, 2018,
<https://www.nytimes.com/2018/06/25/world/asia/china-sri-lanka-port.html>.

These concerns were reflected in a December 2009 report of the US Senate Foreign Relations Committee that concluded that “if left unchecked [Chinese influence in Sri Lanka] could undermine US strategic interests in the Indian Ocean over the long term.”⁶² The report noted that the US approach was heavily focused on humanitarian issues and political reforms and recommended a shift in US policy to consider wider strategic considerations, warning that the US cannot afford to “lose Sri Lanka.”⁶³ It recommended that the US should expand cooperation in the economic, trade and security areas and then leverage cooperation as an incentive for better outcomes in the humanitarian and political spheres.⁶⁴

American concerns about the freedom of sea lanes and growing Chinese influence were less serious than their Indian and Japanese counterparts. As one official explained, Americans were more concerned about the billions of dollars the Chinese had invested in the American economy than they were about Chinese investment in Sri Lanka.⁶⁵ Moreover, despite limiting development and security cooperation both during and after the war, the US continued to be Sri Lanka’s largest trading partner.⁶⁶ The US remains the top export destination for Sri Lankan goods, which is strategically important to Colombo and therefore increases US influence.

⁶² U.S. Congress, Senate, Committee on Foreign Relations, *Sri Lanka Re-charting U.S. Strategy After the War*, 111th Congress, 1st sess., 7 December 2009, 3, <https://www.foreign.senate.gov/imo/media/doc/SRI.pdf>

⁶³ Ibid.

⁶⁴ Ibid.

⁶⁵ Kaplan, *Monsoon The Indian Ocean and the Future of American Power*, 417.

⁶⁶ Office of the United States Trade Representative. “Sri Lanka.” Accessed May 31, 2017 <countries-regions/south-central-asia/sri-lanka>

A critical reason for the success of the US in raising the issue of Sri Lanka in the Council was US diplomatic strength. Once the decision was made to reverse the Bush era policy and engage with the Council, the Obama administration deployed significant resources to ensure that the policy would succeed. For the first time, the US appointed a Senate-confirmed representative to the Council, ensuring that there was a senior official with an exclusive mandate to focus on the Council, in contrast to most representatives from other countries who had mandates that covered both the Council and other Geneva based UN agencies.⁶⁷ The US also created a Deputy Assistant Secretary for International Organizations, with a mandate to focus on the work of the Council.⁶⁸ Within the US government, the Council team engaged with the regional bureaus within the State Department, as well as with the White House and other parts of the executive branch, ensuring that it could readily enlist their assistance to secure votes before the Council and to identify issues where the Council could be helpful.⁶⁹ The US carried out diplomacy behind the scenes, involving both Washington-based and embassy officials, ensuring that by the time a resolution was publicly announced in Geneva, its successful adoption was guaranteed.⁷⁰

⁶⁷ U.S. Congress, Senate, Committee on Foreign Relations, "Testimony of Eileen Chamberlain," December 1, 2009, 111th Congress, 1st sess.,

<https://www.foreign.senate.gov/imo/media/doc/DonahoeTestimony091201p.pdf>.

⁶⁸ Nossel, "Working Paper: Advancing Human Rights in the UN System".

⁶⁹ Ibid.

⁷⁰ Ibid.

The decision to raise Sri Lanka before the Council was part of a broader initiative by the US to increase the Council's scrutiny of human rights records among persistent violators. Prior to US membership, the Council had adopted a total of 33 country-specific resolutions, and more than half of which concerned Israel.⁷¹ During the US' two terms from 2009 to 2015, the Council passed 180 country-specific resolutions.⁷² Scholars attribute the increase in country-specific resolutions to the US' ability to flex diplomatic muscle and cut across traditional bloc voting patterns within the Council.⁷³

UN

UN human rights mechanisms and the Secretary-General played an important role in responding to the events in Sri Lanka. UN actors, including the UN human rights mechanisms, acted as agents of socialisation by informing and shaping the way the international community understood, interpreted, and responded to the human rights violations unfolding in Sri Lanka. Through their monitoring and reporting role, UN actors also imposed costs for non-compliance by publicly censuring Sri Lanka.

⁷¹ The Jacob Blaustein Institute for the Advancement of Human Rights. "Country-Specific Scrutiny by the UN Human Rights Council: Changes Documented During US Membership, 2009-2015." *JBI Human Rights* (blog), 2016. <http://www.jbi-humanrights.org/jacob-blaustein-institute/2016/02/...n-rights-council-changes-documented-during-us-membership-200.html>.

⁷² Ibid.

⁷³ Patrick, Stewart. "Assessing U.S. Membership in the UN Human Rights Council." *The Internationalist Council on Foreign Relations*, October 9, 2015. <http://blogs.cfr.org/patrick/2015/10/09/assessing-u-s-membership-in-the-un-human-rights-council/>; Piccone, Ted. "Ten Years Later: The Status of the U.N. Human Rights Council." *Brookings Institution*, May 17, 2016. <http://www.brookings.edu/research/testimony/2016/05/17-human-rights-council-status-piccone>.

UN human rights mechanisms monitored and documented human rights violations in Sri Lanka and influenced the narrative regarding what was unfolding within the country.⁷⁴ This was important as both during and after the conflict the Sri Lankan government denied allegations of human rights abuses.⁷⁵ UN's reporting also framed the situation within the country not only as a 'humanitarian concern' but also as requiring a legal response.⁷⁶

The UN Special Procedures, especially the Working Group on Involuntary and Enforced Disappearances and the Special Rapporteur on Extra-judicial killings were active in issuing reports and statements, with the former claiming that Sri Lanka had the second highest rate of reported disappearances in the world.⁷⁷ The High Commissioner for Human Rights, Navi Pillay, was also the first senior figure to raise alarm on the impact on the civilians and publicly state the number of

⁷⁴ "UN Human Rights Chief Deplores Deteriorating Situation for Civilians in Sri Lanka," OHCHR, January 29, 2009, <https://www.ohchr.org/en/press-releases/2009/10/un-human-rights-chief-deplores-deteriorating-situation-civilians-sri-lanka>; "Serious Violations of International Law Committed in Sri Lanka Conflict: UN Human Rights Chief," OHCHR, March 13, 2009, <https://www.ohchr.org/en/press-releases/2009/10/serious-violations-international-law-committed-sri-lanka-conflict-un-human>; "UN Experts Denounce Sri Lanka 'Climate of Fear,'" AFP, February 9, 2009.

⁷⁵ Associated Press, "Sri Lanka Counts Civilian War Dead to Counter War Crimes Claim," *The Guardian*, November 24, 2011, <https://www.theguardian.com/world/2011/nov/24/sri-lanka-counts-civilian-war-dead>; "Sri Lanka Fighting 'Kills Hundreds,'" Al Jazeera, January 28, 2009, <https://www.aljazeera.com/news/2009/1/28/sri-lanka-fighting-kills-hundreds>.

⁷⁶ Martha Finnemore and Kathryn Sikkink, "International Norm Dynamics and Political Change," *International Organization* 52, no. 4 (1998): 887–917, 915.

⁷⁷ See United Nations, "Press Conference by United Nations Human Rights Expert Concerning Authenticity of Channel 4 Videotape Depicting Extrajudicial Executions in Sri Lanka," January 7, 2010, https://press.un.org/en/2010/100107_alston.doc.htm; United Nations Human Rights Council, "Report of the Working Group on Enforced or Involuntary Disappearances" A/HRC/16/48," 90-91, January 26, 2011, <https://documents.un.org/doc/undoc/gen/g11/104/45/pdf/g1110445.pdf?token=fNXoWzLxIhFspp9HNZ&fe=true>.

civilians that had been killed in the conflict.⁷⁸ The independence demonstrated by UN human rights mechanisms was notable, as during the same time, three non-permanent members of the Security Council, made efforts to place Sri Lanka formally on the Security Council's agenda.⁷⁹ However, China repeatedly protected Sri Lanka and moved to block such moves.⁸⁰

Within days of the end of the conflict, UN Secretary-General Ban Ki-Moon visited Sri Lanka at the invitation of President Rajapaksa and signed a Joint Statement under which "Sri Lanka reiterated its strongest commitment to the promotion and protection of human rights, in keeping with international human rights standards and Sri Lanka's international obligations. The Secretary-General underlined the importance of an accountability process for addressing violations of international humanitarian and human rights law. The government will take measures to address those grievances".⁸¹

A year later, in June 2010, citing the Sri Lankan government's failure to uphold commitments under the Joint Statement, the Secretary-General appointed a panel of experts to advise him on accountability issues in Sri Lanka.⁸² High

⁷⁸ Internal Review Panel, "Report of the Secretary-General's Internal Review Panel on United Nations Action in Sri Lanka," para 82.

⁷⁹ Internal Review Panel, "Report of the Secretary-General's Internal Review Panel on United Nations Action in Sri Lanka," para 127-131.

⁸⁰ Weiss, *The Cage The Fight for Sri Lanka and The Last Days of The Tamil Tigers*, 210.

⁸¹ "Joint Statement by United Nations Secretary-General, Government of Sri Lanka," *United Nations*, May 26, 2009, <https://www.un.org/press/en/2009/sg2151.doc.htm>.

⁸² See Yasmin Sooka, Steven Ratner, and Marzuki Darusman, "Report of the Secretary General's Panel of Experts on Accountability in Sri Lanka" (United Nations, 2011), 2.

Commissioner for Human Rights Navi Pillay and civil society stakeholders played a critical role in lobbying the Office of the Secretary-General to act on Sri Lanka.⁸³

The report of the Secretary-General's panel of experts was a landmark development in the international push for accountability in Sri Lanka. It provided a comprehensive account of the alleged abuses, as well as authoritative legal characterisation of those abuses. Importantly, the report concluded that as many as 40,000 civilians may have been killed in the last stages of the war.⁸⁴ The report found that the government had allegedly committed a range of war crimes including widespread shelling of civilians and humanitarian objects, as well as deliberate denial of humanitarian assistance. The report also found that the government had allegedly violated a range of human rights in the aftermath of the war. The LTTE also was found to have committed a range of violations, including using civilians as a human shield, killing civilians attempting to flee LTTE control, using military equipment near civilians, forcibly recruiting children into its ranks, extracting forced labour, and killing civilians through suicide attacks.

⁸³ International Crisis Group, "War Crimes in Sri Lanka" (Brussels, May 17, 2010), <https://www.crisisgroup.org/asia/south-asia/sri-lanka/war-crimes-sri-lanka>; Internal Review Panel, "Report of the Secretary-General's Internal Review Panel of United Nations Action in Sri Lanka", 96.

⁸⁴ Sooka, Ratner, and Darusman, "Report of the Secretary General's Panel of Experts on Accountability in Sri Lanka" 40. There are number of arguments for and against identifying a civilian casualty figure. For example, the UN no longer makes any findings concerning the civilian casualty figures in Syria. This is largely because of concerns relating to accuracy. Some scholars argued that at times identifying a civilian casualty figure can distract from the substantive allegations contained in a report, for example relating to torture, and the extent of damage and violence inflicted on civilians.

The public reporting also informed member states and created pressure on them to respond. For example, the EU, US, UK and Canadian governments welcomed Panel of Experts Report.⁸⁵ To date, the government of India has not formally responded to the report.

Although there had been strong efforts to document human rights abuses during the conflict in Sri Lanka, only modest progress had been made in terms of classifying the abuses as international crimes.⁸⁶ The Panel of Experts Report strengthened the analysis of the abuses and identified alleged international crimes that had occurred. Together, the work of the UN human rights mechanisms and the Panel of Experts emphasised the need for targeted human rights reforms in Sri Lanka, particularly focusing on addressing conflict related abuses.⁸⁷ This was an important evolution, as constitutional reform had been viewed as a long-standing policy prescription to

⁸⁵ "US Envoy Heads to Sri Lanka amid War Flap," *AFP*, April 29, 2011; U.S. Congress, House of Representatives, *Expressing Support for Internal Rebuilding, Resettlement, and Reconciliation within Sri Lanka That Are Necessary to Ensure a Lasting Peace H.RES.177*, 112th Congress, 1st Sess., introduced in the House March 17, 2011, <https://www.congress.gov/bill/112th-congress/house-resolution/177/text?s=1&r=100&q=%7B%22search%22%3A%22sherman%22%7D>; Foreign and Commonwealth Office, "Foreign Office Welcomes UN Panel of Experts Report on Sri Lanka," April 27, 2011, <https://www.gov.uk/government/news/foreign-office-welcomes-un-panel-of-experts-report-on-sri-lanka>; "Declaration by the High Representative, Catherine Ashton, on Behalf of the European Union on the Report of the UN Secretary-General Panel of Experts on Accountability in Sri Lanka," May 10, 2011, https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/cfsp/121899.pdf; European Parliament, "Sri Lanka: Follow-up of the UN Report Resolution P7_TA(2011)0242," May 12, 2011, https://www.europarl.europa.eu/doceo/document/TA-7-2011-0242_EN.pdf?redirect.

⁸⁶ See domestic efforts at documenting conflict related violations: Chitta Ranjan de Silva et al., "Report of the Commission of Inquiry on Lessons Learnt and Reconciliation" (Colombo, Sri Lanka, November 2011); "Final Report of the Commission of Inquiry into Involuntary Removal or Disappearance of Persons in the Western, Southern and Sabaragamuwa Provinces, Volume II, Sessional Paper No. V," 1997.

⁸⁷ Ratner, Sooka, and Darusman, "Report of the Secretary-General's Panel of Experts on Accountability in Sri Lanka," 80-81.

address the root causes of the conflicts. Thus, the UN reporting and recommendations shaped the content of what the reform agenda should be in Sri Lanka.

One of the panel's key recommendations was that the Secretary-General establish an international mechanism to monitor and assess the extent to which the Sri Lankan government was carrying out an effective domestic accountability process, including genuine investigations of the alleged violations.⁸⁸ In a confidential note, the panel advised the Secretary-General that "Sri Lanka is completely unwilling to grapple with its own conduct in the prosecution of the war, as well as the fate and plight of the victims... Thus, we do not believe that the government will seriously undertake any investigations, ... we recommend the immediate establishment of a follow-up United Nations investigation mechanism."⁸⁹ The UN's Office of Legal Affairs advised the Secretary-General that without access to Sri Lanka's territory, any new commission of inquiry or investigation would replicate the work of the panel of experts.⁹⁰ The OLA further advised that the Secretary-General should not attempt to submit the report for consideration by the Security Council, as it would meet "political challenges."⁹¹

⁸⁸ Sooka, Ratner, and Darusman, "Report of the Secretary General's Panel of Experts on Accountability in Sri Lanka", 120.

⁸⁹ Internal Review Panel. "Report of the Secretary-General's Internal Review Panel of United Nations Action in Sri Lanka," para 182.

⁹⁰ Ibid.

⁹¹ Internal Review Panel. "Report of the Secretary-General's Internal Review Panel of United Nations Action in Sri Lanka," para 182.

The Office of Legal Affairs further advised the Secretary-General to forward the report to the president of the Council with an attached statement that he “wished to bring the Report to the attention of the Human Rights Council for its consideration.”⁹² However, the final draft of the letter sought only to “share” the report with the president of the Human Rights Council without requesting that it be considered Council. The Secretary-General’s unwillingness to adopt stronger language was attributed to the timing of the letter, as he was coming up for his second-term election. This seems plausible since China, Russia, and the powerful non-aligned states account for two-thirds of the UN member states, and they had already indicated their displeasure with the Secretary-General’s actions concerning Sri Lanka.⁹³ To complete the circle of non-responsibility, the then-president of the Council, after discussions with “member states at the Human Rights Council Bureau and the Human Rights Council Secretariat, concluded that she could not refer the report to the Human Rights Council for discussion if the Secretary-General had not expressly asked her to do so.”⁹⁴ As a result, the panel of experts’ report never became an official UN document, and the Sri Lankan government attempted to minimise its significance by arguing that it represents only the opinion of its three authors.⁹⁵

⁹² Ibid.

⁹³ See Thalif Deen, “Sri Lanka Garner Support against U.N. Probe: Report,” *Ada Derana*, March 12, 2010, <https://www.adaderana.lk/news.php?nid=7475>.

⁹⁴ Report of the Secretary-General’s Internal Review Panel of United Nations Action in Sri Lanka” para 182.

⁹⁵ See Charles Havilland, “Sri Lanka Rejects Secret UN War Report as ‘Flawed,’” *BBC*, April 13, 2011, <https://www.bbc.com/news/world-south-asia-13069063>.

Sri Lanka before the Human Rights Council

In the final stages of the war, domestic actors engaged in extensive advocacy attempting to get Sri Lanka on the Human Rights Council agenda.⁹⁶ NGOs in Colombo, shared information with OHCHR officers in Sri Lanka, local embassies and international NGOs, such as the International Crisis Group.⁹⁷ The importance of the work carried out by local NGOs was also reflected in the intense harassment and threats carried out by the government against the local NGO community.⁹⁸ NGO stakeholders that spoke on accountability issues were targeted as “traitors”, their homes and offices were attacked, and they were under close government surveillance.⁹⁹ Once the Council process commenced, it injected energy, resources and focus into Sri Lankan NGOs. NGOs began to organise their publications, events, advocacy and trips to Geneva according to the Council’s calendar and agenda.¹⁰⁰ It energised the human rights community within Sri Lanka and encouraged an unlikely alliance between domestic NGOs and overseas based Tamil diaspora groups.¹⁰¹ Importantly, the momentum generated by domestic NGOs helped to maintain the shrinking space for dissent within Sri Lanka and ultimately contributed to building the broad coalition that defeated President Rajapaksa.

⁹⁶ Researcher, interview with author, July 3, 2021.

⁹⁷ Human Rights Lawyer, interview with author, August 9, 2021.

⁹⁸ “Senior UN Official Warns against Harassing Sri Lankan Human Rights Defenders,” UN News, March 23, 2012, <https://news.un.org/en/story/2012/03/407102-senior-un-official-warns-against-harassing-sri-lankan-human-rights-defenders>.

⁹⁹ Human Rights Watch “UN Rights Council: Sri Lanka Vote a Strong Message for Justice,” March 22, 2012, <https://www.hrw.org/news/2012/03/22/un-rights-council-sri-lanka-vote-strong-message-justice>.

¹⁰⁰ Human Rights Lawyer, interview with author, September 8, 2021.

¹⁰¹ Senior NGO stakeholder, interview with author July 7, 2021.

The EU attempted to unsuccessfully bring Sri Lanka before the Council as far back as 2006.¹⁰² Days after the end of the war in May 2009, the EU member states obtained sufficient support to convene a special session of the Council on Sri Lanka, even though the US was not a member of the Council at the time. The Sri Lankan government initially opposed holding a special session; however, once it was scheduled, the government acted swiftly and submitted a draft resolution for the Council's consideration.¹⁰³ Under the procedural rules of the Council the first submitted draft becomes the basis for negotiating the ensuing final resolution.¹⁰⁴ As a result, the Council ended up adopting an amended version of the Sri Lankan government's draft, which condemned the LTTE for violations of international law and welcomed the government's commitment to devolve power as called for in the 13th Amendment to Sri Lankan Constitution and congratulated the government's treatment of internally displaced persons.¹⁰⁵ The resolution is considered a low point for the work of the Council.¹⁰⁶ A Sri Lankan stakeholder involved in human rights advocacy at the time observed that there was a sense of "shock" and a great deal of uncertainty among the EU member states on how to move forward within the Council.¹⁰⁷

¹⁰² "The Geneva Consensus: Safely Intact," *Daily Mirror*, February 17, 2011.

¹⁰³ Catherine Philp, "Sri Lanka Forces West into Retreat over 'war Crimes' with Shock Victory at UN - Sri Lanka," *The Times*, May 28, 2009, sec. News.

¹⁰⁴ Internal Review Panel, "Report of the Secretary-General's Internal Review Panel of United Nations Action in Sri Lanka", para 36.

¹⁰⁵ United Nations Human Rights Council, "S-11/1 Assistance to Sri Lanka in the Promotion and Protection of Human Rights A/HRC/S-11/2," June 26, 2009, <https://digitallibrary.un.org/record/659350?ln=en&v=pdf>.

¹⁰⁶ Sooka, Ratner, and Darusman. "Report of the Secretary General's Panel of Experts on Accountability in Sri Lanka," 122.

¹⁰⁷ Researcher, interview with author, July 3, 2021; Catherine Philp, "Sri Lanka Forces West into Retreat over 'war Crimes' with Shock Victory at UN - Sri Lanka."

In 2012, after the US re-joined the Human Rights Council, it pushed for Sri Lanka to be placed on the Council's agenda. Leading up to the Council process, non-governmental actors had strongly lobbied lawmakers on the need for the international community to undertake an international, credible, independent investigation into wartime abuses. In response, the Sri Lankan government had appointed the Lessons Learnt and Reconciliation Commission (LLRC). The LLRC was mandated to investigate, inter alia, the breakdown of the ceasefire in 2002 and the end of the war in 2009.¹⁰⁸ However, the LLRC was criticized for its lack of explicit reference to conflict-related human rights abuses. Several of the commissioners appointed to the LLRC had conflicts of interests or were closely affiliated with the government.¹⁰⁹

From 2012 to 2014, the Human Rights Council passed three resolutions on Sri Lanka each one more condemnatory in tone and intrusive in substance than the previous. In the 2012 resolution, the Council asked the Sri Lankan government to implement the recommendations of the Sri Lankan government's inquiry, the

¹⁰⁸ The LLRC was mandated to inquire into events between 21st February 2002 and 19th May 2009. Specifically, whether any person or institution had responsibility for the failure of the cease-fire agreement and the subsequent events; what if any lessons could be learned so that there is no recurrence. Further the LLRC was mandated to provide recommendations on a methodology to retribute any person affected by events during that period, as well as any institutional, administrative, and legislative measures to prevent a recurrence and to promote national unity and reconciliation among all communities.

¹⁰⁹ The Chair, Chita Ranjan De Silva had served as the Attorney General during the relevant period and had exercised overall decision-making authority over many of the issues directly falling within the LLRC's mandate. Another commissioner had served as the Sri Lanka's Permanent Representative to the United Nations during the last stages of the war and had played a key role in defending the government's version of events to the international community. Another member had served as a senior legal advisor to the Ministry of Foreign Affairs on issues directly concerning the LLRC's mandate.

LLRC. It welcomed the constructive recommendations of the LLRC report; however, also noted its shortcomings, particularly, the failure to adequately address “serious violations of international law.”¹¹⁰ The operative paragraphs called on the government to implement the “constructive” LLRC recommendations and to take all “necessary additional steps” to fulfil its relevant legal obligations and initiate actions to ensure justice, equity, accountability and reconciliation for all Sri Lankans.¹¹¹ The resolution called on the government to “expeditiously” submit a comprehensive action plan for the implementation of the LLRC recommendations and to address alleged violations of international law.¹¹² The resolution was also notable for what it did not include. There was no reference to the Secretary-General’s Panel of Experts’ report, despite the EU’s support for such a reference.¹¹³

In March 2013, the Council adopted a longer, more sternly worded resolution with added preambular and operative paragraphs. The preambular paragraphs expressed concern over the worsening human rights situation and referred to intimidation and reprisals against human rights defenders and journalists, threats to judicial independence and the rule of law, and discrimination on the basis of religion.¹¹⁴

¹¹⁰ United Nations Human Rights Council, “19/2 Promoting Reconciliation and Accountability in Sri Lanka A/HRC/19/2,” April 3, 2012, preambular paragraph 5, 6 , <https://digitallibrary.un.org/record/724838?ln=ar&v=pdf>.

¹¹¹ Ibid.

¹¹² United Nations Human Rights Council, “19/2 Promoting Reconciliation and Accountability in Sri Lanka A/HRC/19/2,” operative paragraph 1, 2.

¹¹³ “States Debate Sri Lanka Resolution Text,” *UNWATCH*, March 8, 2012, <https://unwatch.org/1803-2/>.

¹¹⁴ United Nations Human Rights Council, “22/1 Promoting Reconciliation and Accountability in Sri Lanka A/HRC/22/1,” April 9, 2013, preambular paragraph 16, <https://documents.un.org/doc/undoc/gen/g13/127/55/pdf/g1312755.pdf?token=DxCJe5WdBovAUJ60Kh&fe=true>.

The operative paragraphs went further than the 2012 resolution by “calling upon” the government to “conduct an independent and credible investigation into allegations of violations of human rights law and international humanitarian law.”¹¹⁵ Earlier drafts of the resolution had referenced High Commission Navi Pillay’s call for an “international investigation”. However, there was a lack of support for references to an international investigation, especially from India.¹¹⁶

In September 2013, the Commonwealth Heads of Government Meeting (CHOGM) was held in Colombo and brought further international attention to the situation in Sri Lanka. Prime ministers from India, Canada and Mauritius declined to attend, citing concerns over Sri Lanka’s human rights record. British Prime Minister David Cameron attended the summit, arguing that it was better to engage rather than shun Sri Lanka. During his visit, Prime Minister Cameron visited the conflict-affected north, the first international leader to do so since 1947. The Prime Minister’s meetings in the north with hundreds of grieving Tamils, who demanded assistance in the search for their missing loved ones, attracted more international media coverage than the summit itself.¹¹⁷ At the end of his visit, Cameron stated that international pressure will help ensure that Sri Lanka makes progress and that the

¹¹⁵ United Nations Human Rights Council, “22/1 Promoting Reconciliation and Accountability in Sri Lanka A/HRC/22/1,” operative paragraph 2.

¹¹⁶ Sri Lanka campaign for peace and justice, “DMK Pull out FAQ,” March 19, 2013.

¹¹⁷ “British PM Upstages CHOGM on Rights,” November 15, 2013.

<http://www.theaustralian.com.au/news/david-cameron-upstages-commonwealth-summit-with-jaffna-trip/news-story/1b587effce76000b0a4d412e0f3e2788>.

UK would support an international inquiry into Sri Lanka at the next session of the Human Rights Council.¹¹⁸

By 2014, there had been a change in atmosphere within the Council. There was a sense five years after the war, it was time for the international community to take more substantive action. The 2014 resolution welcomed and acknowledged the progress made by the government such as the successful holding of provincial council elections in September 2013.¹¹⁹ Nonetheless, it was considerably more condemnatory than the two previous resolutions. The resolution expressed serious concern at a range of on-going human rights abuses, including all those mentioned in the two previous resolutions, as well as a new addition, “sexual and gender-based violence.”¹²⁰

The operative paragraph iterated calls made in previous resolutions to carry out investigations.¹²¹ Critically, paragraph ten of the resolution explicitly called on the High Commissioner to “undertake a comprehensive investigation into alleged

¹¹⁸ “PM Urges Sri Lanka to Act on Rights.” *BBC News*, November 16, 2013. <http://www.bbc.com/news/uk-politics-24970142>.

¹¹⁹ United Nations Human Rights Council, “25/1 Promoting Reconciliation, Accountability, and Human Rights in Sri Lanka A/HRC/RES/25/1,” April 9, 2014, preambular paragraph 10., <https://documents.un.org/doc/undoc/gen/g14/132/86/pdf/g1413286.pdf?token=FWummudWUWpXhwqExv&fe=true>.

¹²⁰ United Nations Human Rights Council, “25/1 Promoting Reconciliation, Accountability, and Human Rights in Sri Lanka A/HRC/RES/25/1,” April 9, 2014, preambular para 13.

¹²¹ United Nations Human Rights Council, “25/1 Promoting Reconciliation, Accountability, and Human Rights in Sri Lanka A/HRC/RES/25/1,” April 9, 2014, operative para 2.

serious violations and abuses of human rights and related crimes by both parties in Sri Lanka during the period covered by the LLRC...”¹²²

Each of the resolutions from 2012 to 2014, garnered support from all the regions represented before the Council.¹²³ One former US official explained that the abstentions were just as important as the votes in favour, as they meant that a member state was not willing to protect Sri Lanka before the council. The most surprising “yes” vote for the 2012 and 2013 resolutions came from India. India had voted “yes” on the pro-Sri Lanka resolution adopted in May 2009. It was expected that India would abstain from the vote in 2012, and an analysis of India’s voting before the Council on country specific resolutions between 2012 and 2016 demonstrates that India abstained on most country specific resolutions and voted no in only a handful of resolutions concerning Iran and Belarus.¹²⁴ India adopts a similar practice before the Security

¹²² United Nations Human Rights Council, “25/1 Promoting Reconciliation, Accountability, and Human Rights in Sri Lanka A/HRC/RES/25/1,” April 9, 2014, operative paragraph 10.

¹²³ See tables 1.1-1.4 on break down of votes on each resolution.

¹²⁴ Human Rights Watch, *Votes Count - India* (2017) < <http://votescount.hrw.org/page/India> > accessed 1 October 2017.

Tables 1.1 -1.4 on Breakdown of Votes of Council Resolutions

Table 1.1 Break down of votes on Resolution 11/1 (2009)					
	Western Europe and Other (7 states)	Asia Pacific (13 states)	Latin America and Caribbean (8 states)	Eastern Europe and other (6 states)	Africa (13 states)
1	Canada	Bahrain	Bolivia	Azerbaijan	Angola
2	France	Bangladesh	Brazil	Russian Federation	Burkina Faso
3	Germany	China	Cuba	Bosnia and Herzegovina	Cameroon
4	Italy	India	Uruguay	Slovakia	Djibouti
5	Netherlands	Indonesia	Nicaragua	Slovenia	Egypt
6	Switzerland	Jordan	Chile	Ukraine	Ghana
7	UK	Malaysia	Mexico		Madagascar
8		Pakistan	Argentina		Nigeria
9		Philippines			Senegal
10		Qatar			South Africa
11		Saudi Arabia			Zambia
12		Japan			Gabon
13		Republic of Korea			Mauritius
YES	0	11	5	2	11
NO	7	0	2	3	0
AB**	0	2	1	1	2
Total: 29 yes; 12 no; 6 abstentions					

Table 1.2 Break down of votes on Resolution 19/2 (2012)					
	Western Europe and Other (7 states)	Asia Pacific (13 states)	Latin America and Caribbean (8 states)	Eastern Europe and other (6 states)	Africa (13 states)
1	Austria	India	Chile	Czech Republic	Benin
2	Belgium	Bangladesh	Costa Rica	Republic of Moldova	Cameroon
3	Italy	China	Guatemala	Romania	Nigeria
4	Norway	Indonesia	Mexico	Hungary	Libya
5	Spain	Kuwait	Peru	Poland	Mauritius
6	Switzerland	Maldives	Uruguay	Russian Federation	Congo
7	USA	Philippines	Cuba		Mauritania
8		Qatar	Ecuador		Uganda
9		Saudi Arabia			Angola
10		Thailand			Botswana
11		Jordan			Burkina Faso
12		Kyrgyzstan			Djibouti
13		Malaysia			Senegal
YES	7	1	6	5	5
NO	0	9	2	1	3
AB**	0	3	0	0	5
Total: 24 yes; 15 no; 8 abstentions					

Table 1.3 Break down of votes on Resolution 22/1 (2013)					
	Western Europe and Other (7 states)	Asia Pacific (13 states)	Latin America and Caribbean (8 states)	Eastern Europe and other (6 states)	Africa (13 states)
1	Austria	India	Argentina	Czech Republic	Benin
2	Germany	Republic of Korea	Brazil	Estonia	Cote d'Ivoire
3	Ireland	Indonesia	Chile	Poland	Libya
4	Italy	Kuwait	Costa Rica	Republic of Moldova	Sierra Leone
5	Spain	Maldives	Guatemala	Romania	Gabon*
6	Switzerland	Pakistan	Peru	Montenegro	Congo
7	USA	Philippines	Ecuador		Mauritania
8		Qatar	Venezuela		Uganda
9		United Arab Emirates			Angola
10		Thailand			Botswana
11		Japan			Burkina Faso
12		Kazakhstan			Ethiopia
13		Malaysia			Kenya
YES	7	2	6	6	5
NO		8	2	0	3
AB**		3	0	0	5
Total: 25 yes; 13 no; 8 abstentions					

Table 1.4 Break down of votes on Resolution 25/1 (2014)					
	Western Europe and Other (7 states)	Asia Pacific (13 states)	Latin America and Caribbean (8 states)	Eastern Europe and other (6 states)	Africa (13 states)
1	Austria	Republic of Korea	Argentina	Czech Republic	Benin
2	France	China	Brazil	Estonia	Botswana
3	Germany	Maldives	Chile	Montenegro	Cote d'Ivoire
4	Ireland	Pakistan	Costa Rica	Romania	Sierra Leone
5	Italy	Saudi Arabia	Mexico	Macedonia	Algeria
6	UK	United Arab Emirates	Peru	Russian Federation	Congo
7	USA	Vietnam	Cuba		Kenya
8		India	Venezuela		Burkina Faso
9		Indonesia			Ethiopia
10		Japan			Gabon
11		Kazakhstan			Morocco
12		Kuwait			Namibia
13		Philippines			South Africa
YES	7	1	6	5	4
NO	0	6	2	1	3
AB**	0	6	0	0	6
Total: 23 yes; 12 no; 12 abstentions					

* Gabon was absent and its vote was not recorded, see Human Rights Council, "Report of the Human Rights Council on Its Twenty-Second Session A/HRC/22/2," November 24, 2017, 9. See also "India Backs Anti-Lanka Resolution," *The Telegraph*, March 22, 2013.

**Abstained

Legend	
	Abstained
	No
	Yes

Council, where it usually abstains on resolutions censuring countries for their poor human rights records.¹²⁵

The Indian Ministry of External Affairs consults with relevant internal stakeholders, including the permanent representative to the Human Rights Council, and makes a recommendation to the office of the Prime Minister, who in turn makes a final decision on whether to vote yes or no. There were several internal and external considerations that resulted in the ‘yes’ vote on the 2012 council resolution on Sri Lanka. Early in 2012, the US had reached out to Indian officials and expressed their desire for Indian support for a resolution on Sri Lanka, indicating the issue’s importance by including it as an item in its annual strategic dialogue with India.¹²⁶ It appears that domestic political considerations were an important factor in India’s ultimate decision to vote ‘yes’.¹²⁷ Indian Tamil political parties such as the DMK publicly supported a strong resolution before the Council.¹²⁸ As the central government’s largest coalition partner and with eighteen seats in the Lok Sabha (India’s lower house), the DMK had considerable leverage over the issue.

¹²⁵ Pai Nitin and Singh Sushant, “Promoting human rights in the Indo-Pacific: Prospects, drivers and constraints”, 39.

¹²⁶ Ibid.; See also “US - India Alliance puts pressure on Sri Lanka” *The Sunday Leader* (12 February 2012) <<http://www.thesundayleader.lk/2012/02/12/us-india-alliance-puts-pressure-on-sri-lanka/>> accessed 1 October 2017.

¹²⁷ Mohan, Raja, “Colombo Correction”, *The Indian Express* (1 April 2014) <<http://indianexpress.com/article/opinion/columns/colombo-correction/>> accessed 1 October 2017; Teresita C. Schaffer and Howard Schaffer, *When India’s Foreign Policy is Domestic* (2 April 2013) <<https://www.brookings.edu/blog/up-front/2013/04/02/when-indias-foreign-policy-is-domestic/>> accessed 10 October 2016; Piccone, *Five rising democracies*, 89.

¹²⁸ Karthick S, “DMK likely to pull out ministers from Centre” *Times of India* (19 March 2012) <<https://timesofindia.indiatimes.com/city/chennai/DMK-likely-to-pull-out-ministers-from-Centre/articleshow/12321744.cms>> accessed 1 October 2017.

Switching its previous position, India abstained from voting on the 2014 resolution. Observers attributed the abstention to upcoming Indian general elections and the relative decline in the importance of its coalition partner, the DMK.¹²⁹ The official explanation for the vote stated that the resolution did not give sufficient recognition to the progress the Sri Lankan government had made.¹³⁰ India had also long resisted all international efforts to investigate conflict-affected regions within its own territory and did not wish to set a precedent before the Council supporting such a move.¹³¹

Commitment

In November 2014, President Rajapaksa called for early elections and attempted to seek a third term, a feat previously unknown in Sri Lanka's independent history. Desperate to stop further descent into authoritarianism, all the major political parties, including the main Tamil parties, formed a coalition and supported a common candidate to defeat Rajapaksa. They agreed upon Maithripala Sirisena, the then health minister who had defected mere days earlier from Rajapaksa's cabinet.

¹²⁹ Kumar, G Pramod, "Why India abstained from voting against Sri Lanka in UNHRC" *First Post* (27 March 2014) <<http://www.firstpost.com/world/understanding-why-india-abstained-from-voting-against-sri-lanka-in-unhrc-1453803.html>> accessed 10 October 2016.

¹³⁰ Ministry of External Affairs, *Explanation of vote by the permanent representative of India to the UN offices in Geneva, Amb. Dilip Sinha at the UNHRC on Agenda Item 2 on the resolution on promoting reconciliation, accountability and human rights in Sri Lanka* (27 March 2014)

¹³¹ See Noopur Tiwari, "India was never against Sri Lanka: Indian envoy speaks to NDTV" *NDTV* (28 March 2014) <<https://www.ndtv.com/india-news/india-was-never-against-sri-lanka-indian-envoy-to-un-speaks-to-ndtv-555386>> accessed 1 October 2017.

In a dramatic upset, Sirisena defeated Rajapaksa with support from Tamils and Muslims in the North and East. President Sirisena was sworn into office in January 2015, and he appointed Ranil Wickremesinghe as his Prime Minister and Mangala Samaraweera as the new Foreign Minister. The new government, headed by President Sirisena and Prime Minister Wickremesinghe, opted to change course and cooperate with the Human Rights Council. Foreign Minister Mangala Samaraweera took the lead in communicating with the Council, with Prime Minister Wickremesinghe endorsing his efforts.¹³² President Sirisena was periodically kept informed of the various steps adopted.¹³³ Cabinet was neither informed nor consulted about the decision to cooperate with the Council.¹³⁴ The government convened a working group of lawyers, academics, and government officials, including personnel from the Ministry of Foreign Affairs, to develop policy proposals for reconciliation.¹³⁵ In developing their recommendations, close attention was paid to the recommendations of previous state mechanisms, especially the recommendations of the Lessons Learnt and Reconciliation Commission, the implementation of which had been a key demand of all three previous Council resolutions.¹³⁶

¹³² Former Prime Minister, interview with author, November 24, 2021.

¹³³ Former Secretary to President Maithripala Sirisena, interview with author, July 10, 2021.

¹³⁴ Ibid.

¹³⁵ "Minister Outlines Plans for Truth Commission and Other Measures," *Sunday Times*, September 20, 2015, <https://www.sundaytimes.lk/150920/columns/what-next-at-unhrc-govt-ponders-its-options-164810.html>; Former Secretary to President Maithripala Sirisena, interview with author, July 10, 2021; See also Mangala Samaraweera, "Foreign Minister Samaraweera Speaks at Carnegie Endowment for International Peace in Washington," *Ministry of Foreign Affairs*, February 11, 2015, <https://mfa.gov.lk/foreign-minister-samaraweera-speaks-at-carnegie-endowment-for-international-peace-in-washington/>

¹³⁶ Former Secretary to President Maithripala Sirisena, interview with author, July 10, 2021.

The government was also worried about the imminent release of the Report of OHCHR's investigation on Sri Lanka (OISL Report), scheduled for March 2015, as mandated by the 2014 Human Rights Council Resolution. This concern stemmed from the potential negative electoral consequences leading up to the August 2015 parliamentary elections.¹³⁷ In one of its first acts, President Sirisena appealed to High Commissioner Zeid Ra'ad Al Hussein to delay the release of the OISL report until September 2015.¹³⁸ In an unprecedented gesture, High Commissioner Zeid granted Sri Lanka's request and explained that the Sri Lankan government had indicated its willingness to cooperate with OHCHR on a range of human rights issues, including allowing the investigation team access to new information that could strengthen the final report.¹³⁹

In opting to cooperate with the Council, Sri Lanka was primarily guided by rational calculation of state interests.¹⁴⁰ First the government was keen to end its diplomatic isolation and the prospect of further sanctions. Within Sri Lanka, the cumulative effects of the three resolutions and international condemnation were being felt, as Sri Lanka was being categorized as a "pariah state" internationally. A media

¹³⁷ David Brunnstrom, "Sri Lanka Minister Optimistic about Delaying War-Crimes Report," *Al Jazeera*, February 13, 2015, <https://www.reuters.com/article/uk-usa-srilanka-warcrimes-idUKKBN0LH05G20150213>.

¹³⁸ Letter from Foreign Minister, Mangala Samaraweera to His Excellency Zeid Al Hussein, High Commissioner for Human Rights, 13 February 2015 < https://dbsjeyaraj.com/dbsj/wp-content/uploads/2015/02/FM_Managalas-letter_UNHRC_text.pdf > accessed 13 March 2021.

¹³⁹ United Nations News Service. "UN News - UN Rights Chief Requests 'One Time Only' Deferral of Key Report on Sri Lanka Conflict." *UN News Service Section*, February 16, 2015. <http://www.un.org/apps/news/story.asp?NewsID=50098#.WUByMsYZOu4>.

¹⁴⁰ Hans Morgenthau, *Politics among nations the struggle for power and peace* (New York: Knopf, 1978); Kenneth Waltz, *Theory of International Politics* (Reading Mass: Addison Wesley, 1979); Jack Goldsmith and Eric Posner, *The Limits of International Law* (Oxford University Press, 2007).

analysis of how Sinhala newspapers covered the Council process found that centrist Sinhala media read by 68% of the readership shifted over time from viewing the Council as an unwarranted intrusion into domestic politics to understanding it as a blemish on Sri Lanka's reputation that required a pragmatic response.¹⁴¹ A former senior government official observed that "we were in a crazy situation by the end of 2014..."¹⁴² A former senior foreign ministry official explained that at that point, "...if not for China and Russia we would have been in the ICC."¹⁴³ Both government officials and the private sector were publicly contemplating the prospect that the next step in international pressure could be sanctions against Sri Lanka, Sri Lankan goods and services, or individuals of Sri Lankan origin.¹⁴⁴

Both Prime Minister Wickremesinghe and President Sirisena also acknowledged this. During the election campaign, Sirisena's manifesto acknowledged that Sri Lanka's "foreign policy was in disarray after the military victory of 2009". It accused the Rajapaksa government of "lowering the image of Sri Lanka in the world."¹⁴⁵ Sirisena promised to achieve a more "balanced foreign policy", focusing on developing closer relations with Asian nations. President Sirisena stressed that the decision to commit to Council resolution 30/1 was motivated by a desire to avoid adverse consequences, such as sanctions and the possibility of Sri Lankan

¹⁴¹ Nishan De Mel, Executive Director Verite Research, "Meeting the challenges of the UN Human Rights Council Resolution on Sri Lanka" Remarks made at *54th LBR LBO CEO Forum*, 23 April 2014 <https://www.youtube.com/watch?v=0S_nvrrvn68>

¹⁴² Former Secretary to President Maithripala Sirisena, interview with author, July 10, 2021.

¹⁴³ Former Ministry of Foreign Affairs Senior Official, interview with author, November 23, 2021.

¹⁴⁴ Former Secretary to President Maithripala Sirisena, interview with author, July 10, 2021; Nisthar Cassim, "Ranil Lists Immediate Priorities for Sri Lanka," *Daily Mirror*, March 27, 2015.

¹⁴⁵ New Democratic Front, "Manifesto A Compassionate Maithri Governance A Stable Country," 2014, 43.

officials being prosecuted overseas and sentenced to death; he often repeated that “the talk of facing an electric chair has ended”.¹⁴⁶ He explained Resolution 30/1 as a step that should have been taken to foster national unity and to ensure that Sri Lanka is respected internationally.¹⁴⁷

Similarly, Prime Minister Wickremesinghe explained that the new government’s strategy towards the Council was not an isolated decision. Rather, it should be seen as part of an overall foreign policy that sought to engage with the world and maintain and build friendships.¹⁴⁸ Unlike the Foreign Minister, who frequently articulated a vision for a liberal Sri Lanka, Wickremesinghe spoke about Sri Lanka’s human rights challenges as the result of a poorly handled foreign policy.¹⁴⁹ For the Prime Minister, the decision to commit to Resolution 30/1 was a matter of honouring the existing obligations of Sri Lanka rather than undertaking new commitments. He viewed the content of Resolution 30/1 as being part of the commitments made under the 2009 Joint Statement of President Rajapaksa and UN

¹⁴⁶ Political Editor, “President Promises Urgent Action to Reduce CoL, Vows to Strengthen Economy,” *Sunday Times*, June 12, 2016, <https://www.sundaytimes.lk/160612/columns/president-promises-urgent-action-to-reduce-col-vows-to-strengthen-economy-197072.html>.

¹⁴⁷ “Speech Delivered by H.E. the President Maithripala Sirisena at the 68th Independence Day Celebrations on February 4, 2016,” Embassy of Sri Lanka to Belgium, Luxembourg and European Union, February 12, 2016, <http://www.srilankaembassy.be/Sri-Lanka/speech-delivered-by-h-e-the-president-maithripala-sirisena-at-the-68th-independence-day-celebrations-on-february-4-2016.html>.

¹⁴⁸ Former Prime Minister, interview with author, November 24, 2021.

¹⁴⁹ Dharisha Bastians, “Human Rights, Foreign Policy and the Battle for Sri Lanka’s Soul,” *Daily Financial Times*, September 10, 2015, <https://www.ft.lk/Columnists/human-rights-foreign-policy-and-the-battle-for-sri-lankas-soul/4-468293>. See also “Parliament Debates (Hansard)” (Colombo, Sri Lanka: Parliament of Sri Lanka, October 23, 2015), 1134, <https://www.parliament.lk/uploads/documents/hansard/1446201996064936.pdf>.

Secretary-General Moon.¹⁵⁰ He observed that President Rajapaksa's failure to uphold the commitments made under the Joint Statement had "reputational costs."¹⁵¹ The Prime Minister asserted that the decision to commit to Resolution 30/1 also improved Sri Lanka's reputation and image, observing that after co-sponsorship of the resolution, "... we ceased to be the accused. Sri Lanka was no longer in the dock with the resolution".¹⁵²

The Prime Minister further noted that the decision to re-engage with the Council assisted in regaining the GSP+ benefits from the European Union in 2017. He observed that although the Council process and the GSP+ process was separate, they were also inter-related. Progress on Resolution 30/1 commitments wasn't formally relevant in assessing Sri Lanka's compliance with conditions attached to the GSP+; however, the European Union did want to see Sri Lanka engaging with the Council process.¹⁵³ This view was also confirmed by an advisor who worked with the Ministry of Foreign Affairs on regaining Sri Lanka's GSP+ benefits.¹⁵⁴

Although these cost-benefit calculations were the most important part of Sri Lanka's decision to cooperate with the Council, identity-based considerations also played a role. Neither President Sirisena nor Prime Minister Wickremesinghe had

¹⁵⁰ Former Prime Minister, interview with author, November 24, 2021. See also "Joint Statement by United Nations Secretary-General, Government of Sri Lanka," *United Nations*, May 26, 2009, <https://www.un.org/press/en/2009/sg2151.doc.htm>.

¹⁵¹ Former Prime Minister, interview with author, November 24, 2021.

¹⁵² Ibid.

¹⁵³ Ibid.

¹⁵⁴ Attorney at Law who advised the Foreign Ministry between 2015 and 2018, interview with author, July 1, 2021.

expressed a commitment to addressing conflict related human rights violations. Instead, they emphasized the need for reconciliation among all ethnic communities.¹⁵⁵ The only reference President Sirisena made about addressing past violations was in his action plan for the first 100 days in office, which promised to establish a domestic judicial mechanism to address accountability.¹⁵⁶ However, both the Prime Minister and the President were elected on a platform to restore ‘good governance’ and ‘democracy’. To this end, they were both committed to a minimum set of human rights reforms to end repression.

The person most responsible for Sri Lanka’s decision to commit to the Council was Foreign Minister Samaraweera.¹⁵⁷ He began his career supporting the mothers of the disappeared and has been described as a “liberal at heart”.¹⁵⁸ Samaraweera consistently and specifically articulated Sri Lanka’s commitment to protecting human rights and viewed cooperation with the Council ‘as the right thing to do’.¹⁵⁹ Samaraweera explained Sri Lanka’s decision to engage with the Council

¹⁵⁵ Bastians, “Human Rights, Foreign Policy and the Battle for Sri Lanka’s Soul”; “Sri Lankan Election - ‘The Tighter the Race, the More Violent It Threatens to Be,’” *DW*, December 11, 2012, <https://www.dw.com/en/sri-lankan-election-the-tighter-the-race-the-more-violent-it-threatens-to-be/a-18123365>.

¹⁵⁶ New Democratic Front, “Manifesto A Compassionate Maithri Governance A Stable Country,” 2014.

¹⁵⁷ Former Secretary to President Maithripala Sirisena, interview with author, July 10, 2021; Member of Parliament for the Tamil National Alliance, interview with author, September 3, 2021; Former Prime Minister, interview with author, November 24, 2021.

¹⁵⁸ Bastians, “Human Rights, Foreign Policy and the Battle for Sri Lanka’s Soul,”. See also remarks by Samantha Power, at a celebration commemorating three decades of politics by Minister Samaraweera: “What We Can Learn From Mangala’s 30 Years In Politics: Ambassador Samantha Power’s Speech – Full Text,” *Colombo Telegraph*, March 28, 2019, <https://www.colombotelegraph.com/index.php/what-we-can-learn-from-mangalas-30-years-in-politics-ambassador-samantha-powers-speech-full-text/>.

¹⁵⁹ “Remarks to Media by Foreign Minister Mangala Samaraweera on Human Rights Day,” *Ministry of Foreign Affairs*, December 10, 2015, <https://mfa.gov.lk/fm-hrday/>.

and co-sponsor Resolution 30/1 as a commitment made by the government not merely towards the international community, but also towards Sri Lankan citizens.¹⁶⁰ Second, Sri Lanka's reputation as a human rights violator, that was closely aligned with non-western states, was also at odds with how the country viewed itself.¹⁶¹ The phrase 'unbalanced foreign policy' used by the President and Prime Minister, referenced Sri Lanka's place in the world. Historically, Sri Lanka pursued a non-aligned foreign policy, seeking to maintain independence from the major powers, especially those in the region, India, and China.¹⁶² Further, although the new government wasn't strongly committed to addressing conflict related abuses, it was committed to ending repression. A central theme of its election platform was focused on restoring democracy, rule of law and good governance to Sri Lanka.¹⁶³ Thus, continuing to be diplomatically isolated and labelled a 'pariah state' was also at odds with how Sri Lanka viewed itself as a non-aligned state, that also had a long-standing record of electoral democracy.

¹⁶⁰ "Parliament Debates (Hansard)" (Colombo, Sri Lanka: Parliament of Sri Lanka, October 23, 2015), 1269, <https://www.parliament.lk/uploads/documents/hansard/1446201996064936.pdf>; "Sri Lanka to Give Priority to Constitution Drafting over Crimes Accountability Mechanisms." *The New Indian Express*, February 8, 2017. <https://www.newindianexpress.com/world/2017/feb/08/sri-lanka-to-give-priority-to-constitution-drafting-over-accountability-mechanisms-1568367--1.html>; Samaraweera, Mangala. "Response to Mahinda Rajapaksa: Shame on You, Mahinda, Shame !!!," March 16, 2017. "Reconciliation Is an Absolute Necessity for Economic Development- Mangala," September 17, 2019, <http://bizenglish.adaderana.lk/reconciliation-is-an-absolute-necessity-for-economic-development-mangala/>.

¹⁶¹ On identity-based concerns see Ryan Goodman and Derek Jinks, "How to Influence States: Socialization and International Human Rights Law," *Duke Law Journal* 54, no. 3 (2004): 621–704, 640; Alastair Iain Johnston, "Treating International Institutions as Social Environments," *International Studies Quarterly* 45 (2001): 487–515, 510.

¹⁶² S. U. Kodikara, "Continuity and Change in Sri Lanka's Foreign Policy: 1974-1979," *Asian Survey* 20, no. 9 (1980): 879–90; S. U. Kodikara, "Major Trends in Sri Lanka's Non-Alignment Policy After 1956," *Asian Survey* 13, no. 12 (1973): 1121–36.

¹⁶³ New Democratic Front, "Manifesto A Compassionate Maithri Governance A Stable Country," 2014.

Co-sponsorship of Council Resolution 30/1

The content of Resolution 30/1 was informed by the three preceding Council resolutions and recommendations made by the investigation mandated by the Council's 2013 resolution, OHCHR's investigation on Sri Lanka (OISL report). The OISL report was released ahead of the October 2015 session of the Council and confirmed many of the findings of the Panel of Experts' report. OISL report new findings for example, that there were credible allegations that a section of the LTTE leadership attempted to surrender and were subsequently executed.¹⁶⁴ Further, the report found credible allegations of extensive use of sexual violence by Sri Lankan police and armed forces.¹⁶⁵ Given that the mandate of the OISL report extended from 2002 to 2009, the report also concluded that there were credible allegations of systematic human rights violations in the years preceding the final stages of the war.¹⁶⁶

The report made an array of recommendations concerning the establishment of new transitional justice mechanisms and broader human rights reforms. The government had been given an advanced copy of the report, and the Foreign Minister made a speech pre-empting many of its recommendations, possibly with a view to limiting

¹⁶⁴ Office of the High Commissioner for Human Rights. "Report of the Office of the High Commissioner for Human Rights Investigation on Sri Lanka A/HRC/30/CRP.2." 63-68, United Nations Human Rights Council, 2015. <https://www.ohchr.org/en/hr-bodies/hrc/oisl>.

¹⁶⁵ Office of the High Commissioner for Human Rights, Report of the Office of the High Commissioner for Human Rights Investigation on Sri Lanka A/HRC/30/CRP.2, 117-127.

¹⁶⁶ Office of the High Commissioner for Human Rights, Report of the Office of the High Commissioner for Human Rights Investigation on Sri Lanka A/HRC/30/CRP.2, see for example the chapters on unlawful killings pages 47-70 and enforced disappearances pages 81-108.

the fallout from the report's findings. The Foreign Minister announced that Sri Lanka plans to establish an Office on Missing Persons, an Office for Reparations, a Truth and Reconciliation Commission, a Domestic Judicial Mechanism, and adopt a range of other human rights reforms.¹⁶⁷

The OISL report made one recommendation that was not included in Foreign Minister Samaraweera's speech: a "hybrid court for Sri Lanka" with the participation of "foreign judges, prosecutors, and investigators."¹⁶⁸ When OHCHR presented the report to the Council, High Commissioner Zeid outlined the range of abuses documented but only highlighted one recommendation – that regarding the establishment of the hybrid court¹⁶⁹

In a rarely seen act within the Council, a resolution involving a country-specific situation was co-sponsored by the government concerned and adopted without a vote.¹⁷⁰ No council resolution is directly legally binding, but Resolution 30/1 articulated the voluntary commitments made by the Sri Lankan government to the Council, and to its own citizens.

¹⁶⁷ "Statement by Mangala Samaraweera, at the 30th Session of the UNHRC, Geneva," *News.Lk The Official Government News Portal*, September 14, 2015, <https://www.news.lk/fetures/item/9742-statement-by-mangala-samaraweera-at-the-30th-session-of-the-unhrc-geneva>.

¹⁶⁸ Office of the High Commissioner for Human Rights, Report of the Office of the High Commissioner for Human Rights Investigation on Sri Lanka A/HRC/30/CRP.2, 251.

¹⁶⁹ "Zeid Urges Creation of Hybrid Special Court in Sri Lanka as UN Report Confirms Patterns of Grave Violations," *United Nations Office of the High Commissioner for Human Rights*, September 16, 2015, <https://www.ohchr.org/en/press-releases/2015/09/zeid-urges-creation-hybrid-special-court-sri-lanka-un-report-confirms?LangID=E&NewsID=16432>.

¹⁷⁰ South Asian Centre for Legal Studies. "United Nations Human Rights Council Resolution on Sri Lanka English Analysis," 2015.

The resolution's preambular paragraphs differed from the previous resolutions and congratulated the government on the recently held elections and the early human rights reforms that had been adopted.¹⁷¹ The resolution did express concern over reports of ongoing sexual violence, torture, abductions, intimidation and threats against human rights defenders and civil society.¹⁷² The first operative paragraph took "note with appreciation" of the OISL investigation's findings and conclusions and encouraged Sri Lanka to implement its recommendations.

Operative paragraphs four, five and six welcomed the Sri Lankan government's commitment to establish several mechanisms, with the assistance of OHCHR and other international partners, including an Office on Missing Persons, a Truth Commission, and a Reparations Office. Operative Paragraph four expressly recognizes the need for a process of accountability and reconciliation for violations and abuses committed by the LTTE to give balance to the resolution by covering conduct by both parties.¹⁷³

In the weeks leading up to the September session of the Council, the US and Sri Lanka had agreed to establish a domestic judicial mechanism, but no mention had

¹⁷¹United Nations Human Rights Council, "30/1 Promoting Reconciliation, Accountability and Human Rights in Sri Lanka A/HRC/RES/30/1," October 14, 2015, preambular paragraph 6-10, <https://documents.un.org/doc/undoc/gen/g15/236/38/pdf/g1523638.pdf?token=9hNScAqMkwDes20pNj&fe=true>.

¹⁷² Human Rights Council, "30/1 Promoting Reconciliation, Accountability and Human Rights in Sri Lanka A/HRC/RES/30/1," preambular paragraph 11.

¹⁷³ South Asian Centre for Legal Studies, English Analysis of Resolution 30/1.

been made of the participation of foreign personnel.¹⁷⁴ The human rights community in Sri Lanka had been concerned about a number of obstacles to accountability in Sri Lanka, including the lack of an independent oversight mechanism for judicial appointments, interference by the executive in the judiciary, and undue delays. The state's dismal prosecutorial record and even worse conviction rate inspired little confidence that Sri Lankan authorities had the willingness or ability to investigate and prosecute human rights abuses, let alone international crimes. Furthermore, in the conflict-affected areas, there was little confidence that the predominantly Sinhala-speaking judges and prosecutors would provide justice for the Tamil victims of the conflict.

Given its previous agreement with the Sri Lankan government, the US attempted to soften the resolution by reminding fellow member states of the political opposition in Colombo to any involvement by foreigners in the Sri Lankan judiciary. However, the UK argued that, as the High Commissioner had specifically highlighted the need for a hybrid court, it must be included in the draft resolution.¹⁷⁵ Anticipating the backlash against the idea of a hybrid court in Colombo, the reference to a hybrid court was replaced with the phrase a "Sri Lankan judicial

¹⁷⁴ Bastians, Dharisha. "U.S. to Support Sri Lanka Plan to Investigate War Crimes." *The New York Times*, August 26, 2015. <https://www.nytimes.com/2015/08/27/world/asia/united-states-supports-sri-lanka-investigation-of-war-crimes.html>; Political Editor, "Consensus on US Resolution before UNHRC," *Sunday Times*, September 27, 2015, <https://www.sundaytimes.lk/150927/columns/consensus-on-us-resolution-before-unhrc-165768.html>.

¹⁷⁵ Dharisha Bastians, "The Long Road from Geneva," *Daily Financial Times*, October 1, 2015, <https://www.ft.lk/Columnists/the-long-road-from-geneva/4-477441>.

mechanism”.¹⁷⁶ This was intended to allow the government to argue that any mechanism to try international crimes would be a Sri Lankan mechanism, not under the supervision of international actors. Reflecting these concerns and compromises, operative paragraph six welcomed Sri Lanka’s commitment to ensure the participation of Commonwealth and other foreign judges, prosecutors, defence lawyers, and investigators in a Sri Lankan judicial mechanism with a special counsel to try those most responsible for committing international crimes during the last seven years of the war.¹⁷⁷

Operative paragraph seven encouraged the Sri Lankan government to reform domestic law inter alia “in a manner consistent with international obligations [to facilitate the] trial and punishment of those most responsible for the full range of crimes under general principles of law recognized by the community of nations, including during the period covered by the LLRC.”¹⁷⁸ The phrase “general principles of law recognized by the community of nations” is borrowed from article 15(2) of the ICCPR, as well as article 13(6) of the Sri Lankan constitution, which has been interpreted by the Sri Lankan Supreme Court to mean customary international law. Thus, this paragraph effectively called on the government to

¹⁷⁶ See “UNHRC Is Trying To Set Up A Branch Of ICC In Sri Lanka: Weerawansa” *Colombo Telegraph*. September 20, 2015. <https://www.colombotelegraph.com/index.php/unhrc-is-trying-to-set-up-a-branch-of-icc-weerawansa/>.

¹⁷⁷ Human Rights Council, “30/1 Promoting Reconciliation, Accountability and Human Rights in Sri Lanka A/HRC/RES/30/1”, operative paragraphs 6,7.

¹⁷⁸ Human Rights Council, “30/1 Promoting Reconciliation, Accountability and Human Rights in Sri Lanka A/HRC/RES/30/1,” operative paragraph 7.

incorporate international crimes under customary international law, such as war crimes and crimes against humanity into domestic law.¹⁷⁹

NGOs lobbying in Geneva successfully advocated for several additional reforms announced by Foreign Minister Samaraweera to be included in the resolution. These included amending the Witness and Victim Protection Law, replacing the Prevention of Terrorism Act and Public Security Ordinance, ratifying and incorporating into domestic law the Convention on Enforced Disappearances, releasing all reports of past commissions of inquiry, introducing security sector reforms, returning occupied lands to civilian owners, issuing Certificates of Absence, devolving political authority via constitutional reforms, and operationalising provincial councils.¹⁸⁰ The resolution called for OHCHR to provide an oral update of Sri Lanka's progress in implementing the resolution at its next session and to submit a comprehensive report on implementation of the resolution at its March 2017 session.¹⁸¹ This timeline was proposed by the Foreign Minister, reportedly to prevent the government from unduly delaying implementation its commitments.¹⁸²

¹⁷⁹ South Asian Centre for Legal Studies, English Analysis of Resolution 30/1.

¹⁸⁰ Human Rights Council, "30/1 Promoting Reconciliation, Accountability and Human Rights in Sri Lanka A/HRC/RES/30/1", operative paragraph 9, 10, 12, 13, 14, 16.

¹⁸¹ Human Rights Council, "30/1 Promoting Reconciliation, Accountability and Human Rights in Sri Lanka A/HRC/RES/30/1", operative paragraph 18.

¹⁸² "Accountability Framework for Lanka's Own Sake: Mangala." Accessed September 16, 2015. <http://www.ft.lk/article/471161/Accountability-framework-for-Lanka-s-own-sake--Mangala>; "Minister Outlines Plans for Truth Commission and Other Measures," *Sunday Times*, September 20, 2015, <https://www.sundaytimes.lk/150920/columns/what-next-at-unhrc-govt-ponders-its-options-164810.html>.

Compliance

Implementation of Resolution 30/1 required significant initiative from the executive and support from the legislature. It required the government to enact new laws, operationalise four new institutions and ensure the effective functioning of existing agencies and ministries. Multiple levels of government, from the centre to the provincial and village levels, had to be mobilised to ensure compliance. The nature and scope of the commitments also required the government to expend significant energy and explain the content of the reforms to the public, diffuse opponents, and build political support.

Political context

Elite level support for human rights reforms can strongly influence compliance.¹⁸³ Where a government is led by a political coalition and decision making is fragmented governments are less likely to adopt human rights reforms.¹⁸⁴ Neither the Prime Minister nor the President was especially committed to the substance of the reforms committed to under Resolution 30/1. As their term progressed, the governing coalition unravelled, undermining their ability to implement human rights commitments, but also threatening their survival as a government.

¹⁸³ Beth A Simmons, *Mobilizing for Human Rights International Law in Domestic Politics* (New York: Cambridge University Press, 2009), 149-50; Courtney Hillebrecht, "The Power of Human Rights Tribunals Compliance with the European Court of Human Rights and Domestic Policy Change" *European Journal of International Relations* 20, no. 4 (2014): 1100-1123, 1107.

¹⁸⁴ Sonia Cardenas, *Conflict and Compliance State Response to International Human Rights Pressure* (Philadelphia: University of Pennsylvania Press, 2007), 13.

The President and Prime Minister from two historically rival parties had entered a coalition to form the government. Although the coalition government was formed based on a commitment to a shared agenda of reforms, in practice, the realities of inter-party rivalry undermined the effective functioning of the coalition.¹⁸⁵ President Sirisena had been a lifelong member of the Sri Lanka Freedom Party (SLFP), the same party led by outgoing President Mahinda Rajapaksa. Within weeks of Rajapaksa's defeat, Sirisena was appointed as party leader. By accepting the leadership of the SLFP, the traditional rival of the UNP, President Sirisena faced a fundamental conflict of interest, which he was unable to resolve for the duration of his term in office. As party leader, Sirisena was required to consolidate his leadership by enlisting the support of his parliamentary colleagues and wrestle control away from ousted President Rajapaksa. Central to consolidating party leadership was demonstrating his dominance over his coalition partner, the UNP, led by Prime Minister Wickremesinghe.

Observers criticised the President for taking leadership of the SLFP, whilst some close to him believed that had he not taken leadership, he would not have been able to rally support within his party for important reforms such as the 19th Amendment

¹⁸⁵ Pradeep Peiris, "Yahapalanaya's Promise of Reconciliation: Merely a Means, Not an End?," *Polity* 7, no. 1 (2016): 18–23; Jayadeva Uyangoda, "Political Crisis in Sri Lanka: Whither Democratic Revival?," *Economic and Political Weekly*, December 15, 2018; Kalana Seneratne, "The Morning after the Political Honeymoon: President Sirisena's Future," *Groundviews* (blog), April 2, 2016, <https://groundviews.org/2016/02/04/the-morning-after-the-political-honeymoon-president-sirisenas-future/>; Asanga Welikala, "An Anatomy of Failure: The 2014-18 Sri Lankan Constitutional Reform Exercise in Context," in *Annual Review of Constitution Building Processes: 2017* (Stockholm: International IDEA, 2018), 80–95.

to the Constitution.¹⁸⁶ Although President Sirisena accepted leadership, he was never able to consolidate control over the party. Instead of installing loyalists in key positions within the party, Sirisena compromised with a view to building a consensus with former President Rajapaksa. Senior party leaders, despite their misgivings about Rajapaksa, advocated this approach because they feared that failure to compromise would split the party and undermine their chances at electoral survival.¹⁸⁷ In executing this approach, President Sirisena offered ministerial positions, key political appointments, and other perks such as security guards and government cars to Rajapaksa allies.¹⁸⁸ Further, he resorted to nationalist rhetoric, pandering to Sinhala hardliners, Buddhist clergy and the military, with a view to securing the support of the SLFP base.¹⁸⁹ These efforts were not successful, as Rajapaksa loyalists, fearing criminal prosecutions and electoral defeat, continued to resist the reform agenda and President Sirisena's leadership.¹⁹⁰ Moreover, these

¹⁸⁶ Former Secretary to President Maithripala Sirisena, interview with author, July 10, 2021. See also "Sirisena To Stay Away From Party Politics Despite Holding SLFP Leadership," *Colombo Telegraph*, January 17, 2015, <https://www.colombotelegraph.com/index.php/sirisena-to-stay-away-from-party-politics-despite-holding-slfp-leadership/>; D.B.S. Jeyaraj, "How Mahinda Trapped Maithripala With The SLFP Party Leadership," *Daily Mirror*, February 17, 2018, <https://www.dailymirror.lk/article/How-Mahinda-Trapped-Maithripala-With-The-SLFP-Party-Leadership-146022.html>.

¹⁸⁷ Dharisha Bastians, "The Emerging Crisis of Cohabitation," *Daily FT*, June 18, 2015, <https://www.ft.lk/article/434465/the-emerging-crisis-of-cohabitation>.

¹⁸⁸ Bastians, "The Emerging Crisis of Cohabitation"; International Crisis Group, "Sri Lanka Between Elections Asia Report No. 272" (Colombo/ Brussels, August 12, 2015), 10, <https://www.crisisgroup.org/asia/south-asia/sri-lanka/sri-lanka-between-elections>; Jayadeva Uyangoda, "After the Lankan Elections," *Economic and Political Weekly*, August 29, 2015.

¹⁸⁹ International Crisis Group, "Sri Lanka's Transition to Nowhere Asia Report No 286," (Brussels, May 16, 2017), 4, <https://www.crisisgroup.org/asia/south-asia/sri-lanka/286-sri-lanka-s-transition-nowhere>.

¹⁹⁰ See Political Editor, "President Defends FCID Even Though SLFP Ministers Call for Its Disbanding," *Sunday Times*, February 7, 2016, <https://www.sundaytimes.lk/160207/columns/president-defends-fcid-even-though-slfp-ministers-call-for-its-disbanding-182076.html>; Political Editor, "Power Failures Deal Blackout Blow to Govt.," *Sunday Times*, March 20, 2016, <https://www.sundaytimes.lk/160320/columns/power-failures-deal-blackout-blow-to-govt-187108.html>.

efforts betrayed President Sirisena's campaign promise to govern without corruption and undermined his credibility among the voters who had elected him to the presidency.

Over time, the relationship between the President and Prime Minister unravelled. The President and the Prime Minister came from different backgrounds and had contrasting policy outlooks. President Sirisena was Sinhala speaking and came from a rural background, whereas the Prime Minister was an English speaking, urban elite. President Sirisena subscribed to traditional SLFP party positions, which called for a significant state role in managing resources, providing services, and maintaining a non-aligned foreign policy.¹⁹¹ In contrast, the UNP and the Prime Minister Wickremesinghe had a pro-western foreign policy outlook and had long viewed economic liberalisation as essential to Sri Lanka's prosperity.¹⁹² Both men have also been described as "introverts" without any communication skills to resolve disputes that arose between them.¹⁹³

Two years into the term of government, in late 2017, the coalition unravelled, and the personal enmity between the two leaders also worsened.¹⁹⁴ The President and

¹⁹¹ Verite Research, "Mapping Sri Lanka's Political Parties: Actors and Evolutions," November 2017, 11 <https://archive.veriteresearch.org/bitstream/handle/456/5225/201711PoliWef02MapSIPolPartiesPub.pdf?sequence=1&isAllowed=y>.

¹⁹² Verite Research, "Mapping Sri Lanka's Political Parties: Actors and Evolutions," 3.

¹⁹³ Senior NGO Stakeholder, interview with author, July 8, 2021.

¹⁹⁴ See Uyangoda, Jayadeva, "The Way We Are : An Essay in Despondency with an Appeal," *Sunday Observer*, March 11, 2018, <https://www.sundayobserver.lk/2018/03/11/columns/way-we-are-essay-despondency-appeal>; Chaturi Dissanayake, "Cabinet Chaos!," *Daily FT*, January 17, 2018, <https://www.ft.lk/top-story/Cabinet-chaos-/26-647429>.

the Prime Minister publicly and privately disagreed on key reform proposals. As the governing coalition had inherited a debt-ridden economy, the Prime Minister sought International Monetary Fund (IMF) bailouts, and the President publicly pushed back on the economic reforms promised in return for the assistance.¹⁹⁵ Prime Minister Wickremesinghe was accused of acting as if he was the real centre of power in government and monopolising decision-making in all areas of government, leaving the President and even members of Cabinet out of key policy decisions.¹⁹⁶ Moreover, Prime Minister Wickremesinghe was viewed as being insular and only confiding in and working with a select group of individuals whom he trusted.¹⁹⁷ The President raised corruption allegations against Prime Minister and pushed for investigations. Both men accused the other of making secret deals with the ousted Rajapaksas to halt ongoing criminal investigations against the Rajapaksa family and their allies, to secure their own political futures.¹⁹⁸ As the

¹⁹⁵ Political Editor, "Sirisena Faces May Day Test of Strength, Growing Challenge from pro-Rajapaksa 'JO,'" *Sunday Times*, April 24, 2016, <https://www.sundaytimes.lk/160424/columns/sirisena-faces-may-day-test-of-strength-growing-challenge-from-pro-rajapaksa-jo-190916.html>.

¹⁹⁶ Jayadeva Uyangoda, "Making Sense of the October Conflict and Its Aftermath," in *Constitutional Reform and Crisis in Sri Lanka* (Colombo, Sri Lanka: Centre for Policy Alternatives, 2019), 105–42, 133.

¹⁹⁷ Peiris, "Yahapalanaya's Promise of Reconciliation: Merely a Means, Not an End?," 20.

¹⁹⁸ Uyangoda, "Making Sense of the October Conflict and Its Aftermath," 130; "Political Influence Blocking Corruption: JVP," *Daily Mirror*, May 29, 2015, <https://www.dailymirror.lk/article/political-influence-blocking-corruption-jvp-74353.html>; Political Editor, "President Claims UNP Delaying Major Probes to Save Rajapaksas," *Sunday Times*, July 9, 2017, <https://www.sundaytimes.lk/170709/columns/president-claims-unp-delaying-major-probes-to-save-rajapaksas-249230.html>; "Exclusive: Ranil Prevents Gota Arrest," *Colombo Telegraph*, March 9, 2015, <https://www.colombotelegraph.com/index.php/exclusive-ranil-prevents-gota-arrest/>; Dharisha Bastians, "President Slams Bribery Commission for 'Hauling' Gota and Navy Chiefs to Court," *Daily Financial Times*, October 13, 2016, <https://www.ft.lk/Front-Page/president-slams-bribery-commission-for-hauling-gota-and-navy-chiefs-to-court/44-573581>; "Sri Lanka's Ex-Defence Secretary; to Arrest or Not: Analysis," *Economy Next*, January 29, 2018, <https://economynext.com/sri-lankas-ex-defence-secretary-to-arrest-or-not-analysis-9323/>; "Sri Lankan Airlines: Ranil Yet To Table 'Weliamuna/Jayarathne' Report In Parliament," *Colombo Telegraph*, June 17, 2015, <https://www.colombotelegraph.com/index.php/sri-lankan-airlines-ranil-yet-to-table-weliamunajayarathne-report-in-parliament/>; Press Trust of India, "Sirisena

coalition unravelled, President Sirisena reneged on his promise only to serve one term and began positioning himself for another presidential run in 2020.¹⁹⁹ Reconciling with the Rajapaksas was essential to consolidating his electoral position. For Prime Minister Wickremesinghe, keeping the Rajapaksas in the political fray meant that President Sirisena's political authority and position within government was weakened, which enhanced Wickremesinghe's own chances of securing the presidency in 2020.²⁰⁰

The President and Prime Minister decided not to face the February 2018 local government elections as a coalition, and instead opted to go their separate ways. Both parties had to face elections without being able to claim any economic achievements or progress on accountability for corruption related crimes or human rights abuses. The Rajapaksas succeeded in making the local government elections a referendum on the coalition's performance. The ensuing election campaign resulted in the two coalition parties attacking each other, and Rajapaksa was able to soundly win the election, placing both the UNP and SLFP in distant second and third places. Rajapaksa's victory in the local government elections undermined the President's authority within his own party and highlighted his failure to consolidate the party. The Prime Minister's party's poor performance brought into question the

Accuses Ranil of Shielding Rajapaksa, Others in Graft Probe," *The Hindu*, May 31, 2018, <https://www.thehindu.com/news/international/sirisena-accuses-ranil-of-shielding-rajpaksa-others-in-graft-probe/article24047480.ece>.

¹⁹⁹ International Crisis Group, "Sri Lanka: Stepping Back from a Constitutional Crisis" (Brussels, October 31, 2018), https://icg-prod.s3.amazonaws.com/B152-sri-lanka-stepping-back-from-a-constitutional-crisis_0.pdf.

²⁰⁰ Jayadeva Uyangoda, "Political Crisis in Sri Lanka: Whither Democratic Revival?," *Economic and Political Weekly*, December 15, 2018.

viability of the Prime Minister's leadership. There were growing calls for him to step down as the leader and make way for party reform.²⁰¹

The bitter infighting culminated on 26th October 2018, when President Sirisena violated the Constitution and purported to dismiss Prime Minister Wickremesinghe and appoint Mahinda Rajapaksa as the new Prime Minister.²⁰² For the ensuing 52 days, Prime Minister Wickremesinghe and all the opposition parties refused to acknowledge the new Cabinet, bringing the country into an unprecedented crisis. In a rare and extraordinary demonstration of Sri Lankan institutional resilience, the coup was overturned by the judiciary, which determined through two landmark decisions that the actions of the President were unconstitutional.²⁰³ In December 2018, Wickremesinghe was re-appointed as Prime Minister and Sirisena continued as President, without being held accountable for his unconstitutional actions.

Despite the resumption of government with Sirisena as President and Wickremesinghe as Prime Minister, the government had fallen into paralysis. On Easter Sunday in April 2019, terrorist groups affiliated with Islamic State of Iraq and Syria (ISIS), a transnational Salafi jihadists group, carried out a series of terrorist attacks in Colombo, resulting in the death of 232 civilians. From April to

²⁰¹ Asanga Welikala, "An Anatomy of Failure: The 2014-18 Sri Lankan Constitutional Reform Exercise in Context," 88.

²⁰² See Dharisha Bastians, "The Siege: Inside 52 Days of Constitutional Crisis in Sri Lanka," in *Constitutional Reform and Crisis in Sri Lanka*, ed. Asanga Welikala (Colombo, Sri Lanka: Centre for Policy Alternatives, 2019), 22–88.

²⁰³ See Rajavarothiam Sampanthan & others v. Attorney General & others SC FR 351/2018, SC Minutes, 13th December 2018; "Writ of Quo Warranto against Mahinda and Others Appeal Court Issues Interim Order," *Daily News*, December 4, 2018, <http://www.dailynews.lk/2018/12/04/law-order/170231/appeal-court-issues-interim-order>.

November 2019, when the presidential elections were held, the government was marred by recriminations over who should bear responsibility for the attacks. A bipartisan parliamentary select committee concluded that early intelligence related to the attacks was not acted upon, in part owing to the total breakdown of the relationship between the Prime Minister and the President.²⁰⁴

President Sirisena

The president, as the head of state, government, and the armed forces, has vast authority to enact and operationalise laws and policies. As described above, President Sirisena played a limited role in making the decision to commit to Resolution 30/1. Once Sri Lanka's relations with Western countries and the UN had normalised, the President demonstrated little interest in ensuring compliance with the resolution and even sought to block or delay its implementation. In the immediate aftermath of the Parliament passing the law to establish the Office on Missing Persons, President Sirisena responded to the concerns of Rajapaksa loyalists and agreed that the law required further study, even though it had received endorsement before Cabinet and Parliament; the gazetting of the law was delayed by more than a year.²⁰⁵ He also sought to delay the domestic incorporation of the

²⁰⁴ "Report of the Select Committee of Parliament to Look into and Report to Parliament on the Terrorist Attacks That Took Place in Different Places in Sri Lanka on 21st April 2019," October 23, 2019, https://www.parliament.lk/en/business-of-parliament/committees/committee-reports?type=committee&category=4&committee=319&search_status=1. See also International Crisis Group, "After Sri Lanka's Easter Bombings: Reducing Risks of Future Violence Asia Report No 302" (Colombo/ Brussels, September 27, 2019), 9-10, <https://www.crisisgroup.org/asia/south-asia/sri-lanka/302-after-sri-lankas-easter-bombings-reducing-risks-future-violence>.

²⁰⁵ "Issues Regarding OMP Bill: President Requests Problems, Shortcomings in Writing: Keheliya," *Daily News*, August 20, 2016; Political Editor, "Sirisena Cracks the Whip; Bites the Bullet, Risks Splitting Party," *Sunday Times*, August 21, 2016,

Enforced Disappearances Convention.²⁰⁶ When the reparations bills was sent to cabinet, he delayed its approval requesting further time to study the bill.²⁰⁷ The draft law to establish a truth and reconciliation mechanism was delayed in a similar manner.²⁰⁸ Sirisena consistently sought to undermine Sri Lanka's commitment to enable the participation of foreign judges in a special judicial mechanism.²⁰⁹ At first, the Prime Minister and Foreign Minister sought to minimise the President's remarks as a misunderstanding or a difference of opinion.²¹⁰ However, each time the Foreign Minister Samaraweera publicly explained that the government was committed to the participation of foreign judges, President Sirisena reiterated his

<https://www.sundaytimes.lk/160821/columns/sirisena-cracks-the-whip-bites-the-bullet-risks-splitting-party-205497.html>.

²⁰⁶ "Parliamentary Debates (Hansard)," March 7, 2018, 213, <https://www.parliament.lk/uploads/documents/hansard/1521196933014535.pdf>; Yusuf Ariff, "Enforced Disappearance Bill Won't Be Taken up for Debate on Sep 21," *Ada Derana*, September 19, 2017, <http://www.adaderana.lk/news/43105/enforced-disappearance-bill-wont-be-taken-up-for-debate-on-sep-21>; Himal Kotelawala, "Government Open to Talking to Mahanayaka Theros - SLFP," *Daily Financial Times*, July 7, 2017, <https://www.ft.lk/article/626659/Govt.-open-to-talking-to-Mahanayaka-Theros—SLFP>.

²⁰⁷ Former staff member of the Secretariat for Reconciliation Mechanisms, interview with author, August 20, 2021.

²⁰⁸ Ibid.; "PM Moots Truth and Reconciliation Commission," *Daily Mirror*, February 13, 2019, <https://www.dailymirror.lk/article/PM-moots-Truth-and-Reconciliation-Commission-162281.html>.

²⁰⁹ "Sri Lankan President: No Allegations of War Crimes." *Al Jazeera*, January 29, 2016. <https://www.aljazeera.com/program/talk-to-al-jazeera/2016/1/29/sri-lankan-president-no-allegations-of-war-crimes>.

²¹⁰ Political Editor, "Domestic War Crimes Probe: Lack of Clarity as Government Tries Balancing Act," *Sunday Times*, January 31, 2016, <https://www.sundaytimes.lk/160131/columns/domestic-war-crimes-probe-lack-of-clarity-as-government-tries-balancing-act-181255.html>; Mushtaq, Munza. "Mangala Contradicts Maithri, Says International Participation Is Needed in War Crimes Investigation." *Colombo Telegraph*, February 27, 2016. <https://www.colombotelegraph.com/index.php/mangala-contradicts-maithri-says-international-participation-is-needed-in-war-crimes-investigation/>; Ramavarman, T. "Sri Lanka Willing for International Probe on War Crimes, Says Lankan PM Ranil Wickremesinghe." *Times of India*, February 12, 2016. <https://timesofindia.indiatimes.com/world/south-asia/sri-lanka-willing-for-international-probe-on-war-crimes-says-lankan-pm-ranil-wickremesinghe/articleshow/50962260.cms>.

view that there would be no foreign judges.²¹¹ When U.S. President Trump was elected in November 2016, President Sirisena announced that he would write to the President-elect to “free Sri Lanka from these [war crimes] allegations”.²¹² President Sirisena’s remarks about judicial participation were more widely reported in the media than his actual support for other parts of Resolution 30/1, such as ending military occupation of land and the release of political prisoners. The government did little to counter these damaging media narratives.

When it came operationalising the new laws, President Sirisena either failed to support or delayed their operationalisation. He declined to assign a Ministry to the Secretariat for Reconciliation Mechanisms (a new office created to coordinate the implementation of Resolution 30/1), which is a pre-requisite for a state institution to receive finances from the treasury, thus undermining its effective functioning.²¹³ He failed to attend the scheduled ceremony where he was supposed to accept the final report of the Consultation Task Force on Reconciliation Mechanisms, thus

²¹¹ For example, after Minister Samaraweera’s statement in Washington DC that President’s comments about not committing to foreign participation were his own opinion, the President through a parliamentary colleague repeated that there will no foreign participation. See Political Editor, “Sirisena Isolating Rajapaksa, Also Brings UPFA under His Fold,” *Sunday Times*, March 13, 2016, <http://ceylon-ananda.com/sirisena-isolating-rajapaksa-also-brings-upfa-under-his-fold/>. Later when the Foreign Minister stated that the government will determine foreign participation in a judicial mechanism after the consideration of the final report of the Consultation Task Force on Reconciliation Mechanisms, the President pre-empted the findings stating that there will be no foreign participation: see Political Editor, “Before and after Geneva: Mangala Explains What Will Happen,” *Sunday Times*, June 5, 2016, <https://www.pressreader.com/sri-lanka/sunday-times-sri-lanka/20160605/281797103256553>; Political Editor, “President Promises Urgent Action to Reduce CoL, Vows to Strengthen Economy,” *Sunday Times*, June 12, 2016, <https://www.sundaytimes.lk/160612/columns/president-promises-urgent-action-to-reduce-col-vows-to-strengthen-economy-197072.html>.

²¹² Meera Srinivasan, “Sirisena to Ask Trump to Drop Rights Abuse Charges,” *The Hindu*, November 28, 2016, <https://www.thehindu.com/news/international/Sirisena-to-ask-Trump-to-drop-rights-abuse-charges/article16712115.ece>.

²¹³ International Crisis Group, “Sri Lanka’s Transition to Nowhere,” 15.

ensuring that a political leader never endorsed the consultation process and its findings.²¹⁴ Although the law enabling the Office on Missing Persons had been enacted, the President delayed the appointment of the board of the office by more than a year, which was required to operationalise the law.²¹⁵

When it came to operationalising existing institutions, President Sirisena's support was mixed. He offered support for critical issues such as the release of lands and detainees under the Prevention of Terrorism Act.²¹⁶ Early on in his term, he championed the importance of both issues and even pardoned Tamil detainees convicted under the Prevention Terrorism Act.²¹⁷

However, President Sirisena could never cooperate with the rival UNP party against their common foe, the ousted Rajapaksa clan. As Sirisena's grip on his party weakened, frustrations with his coalition partners deepened, and rumours emerged that he was in secret talks with the Rajapaksas, including allegations that he was

²¹⁴Fonseka, Bhavani. "Transitional Justice in Sri Lanka: Lessons So Far and the Long Road Ahead." *Groundviews*, November 1, 2017. <https://groundviews.org/2017/01/11/transitional-justice-in-sri-lanka-lessons-so-far-and-the-long-road-ahead/>.

²¹⁵ United Nations Human Rights Council, "Report of the Special Rapporteur on the Independence of Judges and Lawyers on Her Mission to Sri Lanka A/HRC/35/31/Add.1" (United Nations, March 23, 2017), para 92, <https://documents.un.org/doc/undoc/gen/g17/074/80/pdf/g1707480.pdf?token=zQQGpaFBvi3vgnkaEF&fe=true>; International Crisis Group, "Sri Lanka's Transition to Nowhere," ii.

²¹⁶ Dharisha Bastians and Gardiner Harris, "Sri Lanka to Free Tamils and Return Their Land," *New York Times*, January 29, 2015, <https://www.nytimes.com/2015/01/30/world/asia/sri-lanka-vows-to-free-tamil-detainees-and-return-land.html>; "No Political Prisoners in SL: Govt.," *Daily Mirror*, October 25, 2015; Disna Mudalige, "President to Resolve Issue of Prisoners on Hunger Strike," *Daily News*, October 19, 2015, <https://dailynews.lk/2015/10/18/local/president-resolve-issue-prisoners-hunger-strike>; "Sirisena Orders Release of All Tamil Civilian Lands by Dec. 31," *The Hindu*, October 4, 2018, <https://www.thehindu.com/news/international/sirisena-orders-release-of-all-tamil-civilian-lands-by-dec-31/article25125418.ece>; "Sirisena Says Lanka Land Release Will Be Expedited," *Daily Mirror*, September 2, 2016, <https://www.indiatoday.in/pti-feed/story/sirisena-says-lanka-land-release-will-be-expedited-697454-2016-09-02>.

²¹⁷ "Parents Thank President for Pardoning Their Son," *Daily Mirror*, January 25, 2016.

interfering in the progress of criminal investigations.²¹⁸ Sirisena's parliamentary colleagues called such investigations "witch hunts", as many criminal investigations were directed against their party members, who had been ministers during the Rajapaksa administration.²¹⁹ Senior SLFP party members worried that investigations into the Rajapaksa era would target the party and themselves, leaving their rivals in the UNP untouched. Observers speculated that these worries would also extend to President Sirisena, as he had been general secretary of the party and a cabinet minister when much of the alleged abuses took place and could not have been ignorant of their occurrence.²²⁰

President Sirisena held significant responsibility for security sector reforms called for under Resolution 30/1, as he was both head of the armed forces and held ministerial responsibility for the defence portfolio. However, as his term progressed, the President publicly resorted to increasingly nationalist rhetoric, praising members of the military, including those who were the subject of criminal investigations.²²¹

²¹⁸ See reports of secret negotiations between the President and the Rajapaksa's: Political Editor, "Lanka's Role in Solving Maldivian Crisis," *Sunday Times*, January 24, 2016, <https://www.sundaytimes.lk/160124/columns/lankas-role-in-solving-maldivian-crisis-180423.html>. See examples of interference in criminal investigations: Bastians, "President Slams Bribery Commission for 'Hauling' Gota and Navy Chiefs to Court,"; Uyangoda, "Making Sense of the October Conflict and Its Aftermath," 130.

²¹⁹ "FCID and High Profile Investigations," *Daily News*, April 26, 2016, <http://www.dailynews.lk/?q=2016/04/26/editorial/79796>. "SLFP: Will Take Legal Action against FCID Procedure," *Daily Mirror*, May 6, 2015, <https://www.dailymirror.lk/71415/slfp-will-take-legal-action-against-fcid-procedure>; See "Bribery Commission Files Case against A.H.M. Fowzie," *News1st*, October 7, 2016, <https://www.newsfirst.lk/2016/10/07/bribery-commission-files-case-h-m-fowzie/>.

²²⁰ Senior NGO Stakeholder, interview with author, July 8, 2021.

²²¹ Attorney at Law who advised the Foreign Ministry between 2015 and 2018, interview with author, July 1, 2021; Former Chairperson of the Human Rights Commission, interview with author, July 5, 2021; United Nations Human Rights Council, "Report of the Office of the United Nations High Commissioner for Human Rights in Sri Lanka A/HRC/34/20," February 10, 2017, para

Prime Minister Wickremesinghe

The prime minister is appointed by the president based on the support of a majority of members of parliament.²²² The prime minister cannot be dismissed unilaterally by the president and only loses his position upon his resignation or if he loses the support of a majority in parliament.²²³ Where the president deems it necessary, he can seek the advice of the prime minister when appointing ministers and assigning them functions and subjects.²²⁴ Although the prime minister has limited control over executive action, in practice Prime Minister Wickremesinghe wielded significant political authority, as the leader of the coalition that commanded the largest number of seats in Parliament. This fact was reflected within the cabinet, as most ministers were members of the coalition led by the Prime Minister, including those positions that were most relevant to the implementation of Resolution 30/1, such as justice and foreign affairs. Especially in the first two years of his term,

54, 41,

<https://documents.un.org/doc/undoc/gen/g17/030/56/pdf/g1703056.pdf?token=cLQInmZfRWjB CQGKTR&fe=true>; Committee against Torture, "Concluding Observations on the Fifth Periodic Report of Sri Lanka CAT/C/LKA/CO/5," January 27, 2017, para 13, 51

<https://documents.un.org/doc/undoc/gen/g17/020/09/pdf/g1702009.pdf?token=Ee9AfHfSTeUk5 oq33s&fe=true>; Bastians, "President Slams Bribery Commission for 'Hauling' Gota and Navy Chiefs to Court"; AFP, "Sri Lanka's Leaders Backs Arrests of 'Official Killers,'" *Al Jazeera*, March 29, 2017, <https://www.aljazeera.com/news/2017/3/29/sri-lankas-leader-backs-arrests-of-official-killers>. See also News Agencies, "Ex-Leader's Brother 'Led Death Squad' in Sri Lanka," *Al Jazeera*, March 20, 2017, <https://www.aljazeera.com/news/2017/3/20/ex-leaders-brother-led-death-squad-in-sri-lanka>; Meera Srinivasan, "Sirisena Vows to Protect General," *The Hindu*, September 4, 2017, <https://www.thehindu.com/news/international/sirisena-vows-to-protect-general/article19621100.ece>

²²² Constitution of Sri Lanka, Article 42(4).

²²³ Constitution of Sri Lanka, Article 46(2).

²²⁴ Constitution of Sri Lanka, Article 43(1).

Wickremesinghe enjoyed significant support from his parliamentary colleagues, which contrasted sharply with President Sirisena's divided SLFP.

Undoubtedly, the Prime Minister's decision to co-sponsor Resolution 30/1 was critical in securing Sri Lanka's commitment to an ambitious human rights agenda. However, Wickremesinghe offered only tepid leadership when it came to ensuring compliance. One month following the co-sponsorship of Resolution 30/1 in November 2015, the Prime Minister appointed an Action Group to coordinate its implementation among the different ministries involved.²²⁵ A year later, the Prime Minister established another mechanism, a Secretariat for Reconciliation Mechanisms, to coordinate the government's efforts to implement Resolution 30/1.²²⁶ However, even months after its establishment, the new secretariat struggled to find staff.²²⁷ The High Commissioner for Human Rights repeatedly pointed out that these new institutions appeared to have overlapping mandates and that there was a lack of coordination among them.²²⁸

²²⁵ United Nations Human Rights Council, "Oral Update of the High Commissioner Promoting Reconciliation, Accountability and Human Rights in Sri Lanka A/HRC/32/CRP.4," June 28, 2016, para 23, <https://digitallibrary.un.org/record/843517?ln=en>.

²²⁶ "Mano Tittawella Heads Coordinating Reconciliation Mechanisms Secretariat," *Daily News*, March 31, 2016; Political Editor, "SLFP Split at Hand; Sirisena Holds Urgent Talks with CBK and Party Seniors," *Sunday Times*, August 28, 2016, <https://www.sundaytimes.lk/160828/columns/slfp-split-at-handsirisena-holds-urgent-talks-with-cbk-and-party-seniors-206477.html>.

²²⁷ Former staff member of the Secretariat for Reconciliation Mechanisms, interview with author, August 20, 2021; International Crisis Group, "Sri Lanka's Transition to Nowhere," 15.

²²⁸ United Nations Human Rights Council, "Oral Update of the High Commissioner Promoting Reconciliation, Accountability and Human Rights in Sri Lanka A/HRC/32/CRP.4," para 23, 32.

The Prime Minister's principled support for specific human rights reforms ensured that relevant laws were drafted, approved by cabinet, and enacted by Parliament. A special legal advisor appointed by the Prime Minister and a committee convened by the foreign ministry took leadership in preparing the enabling legislation for the new transitional justice mechanisms, such as the Office on Missing Persons and the Office for Reparations.²²⁹ However, regarding other laws and policies required under Resolution 30/1, the government appears to have adopted an ad hoc approach. For example, with respect to the domestic law incorporating the Enforced Disappearances Convention, the drafts were prepared in an ad hoc manner, with few political instructions being issued.²³⁰ Similarly, the government initiated multiple ad-hoc drafting processes to review the Prevention of Terrorism Act, leaving the human rights community sceptical of the government's commitment to substantive reform of the counter-terrorism legal framework.²³¹ The Prime Minister also appeared to be providing leadership to the constitutional reform process by ensuring that whole of Parliament was transformed into a drafting committee and taking chairmanship of the steering committee.²³² However, even his stewardship of the constitutional reform process was viewed by some observers

²²⁹ Legal Advisor to the Prime Minister, interview with author, July 2, 2021.

²³⁰ Attorney at Law who advised the Foreign Ministry between 2015 and 2018, interview with author, July 1, 2021.

²³¹ Dharisha Bastians, "Government's Proposed Counter-Terrorism Policy Faces Storm of Criticism," *Daily FT*, November 11, 2016; K. P. Balachandran, "Tamil National Alliance Fears Law to Replace Anti-Terror Act May Be Old Wine in a New Bottle," *The New Indian Express*, October 9, 2016, <https://www.newindianexpress.com/world/2016/oct/09/tamil-national-alliance-fears-law-to-replace-anti-terror-act-may-be-old-wine-in-a-new-bottle-1526510.html>; Colombage, Quintus. "Sri Lanka's Counter-Terrorism Law Paves Way for Abuse." *Ucanews.com*, October 4, 2018.

²³² Asanga Welikala, "Sri Lanka's (Un)Ending Road to a New Constitution: Technical Progress, Political Collapse," *Constitutionnet* (blog), January 29, 2019, <https://constitutionnet.org/news/sri-lankas-unending-road-new-constitution-technical-progress-political-collapse>.

as primarily a move to exclude the President.²³³ Beyond technical manoeuvring, the Prime Minister made no effort to build support among the electorate for the process or to dispel misinformation regarding the content of the reforms.²³⁴

With respect to new institutions established by the government, the Prime Minister appeared to take a largely hands off approach to ensuring their effective implementation. A particularly egregious example was the Consultation Task Force, which Wickremesinghe appointed to carry out a national consultation on the implementing Resolution 30/1.²³⁵ The Consultation Task Force, in its final report, pointedly noted that, despite repeated requests, the political leadership failed to publicly endorse its work, thus failing to communicate that the national consultations were being carried out on behalf of the government.²³⁶ Moreover, beyond the appointment of individuals to the Consultation Task Force, it was not supported with finances and staff.²³⁷

While the Prime Minister offered support to the release of lands occupied by the military and the release of detainees held under the Prevention of Terrorism Act,²³⁸

²³³ Uyangoda, "Making Sense of the October Conflict and Its Aftermath," 128.

²³⁴ Welikala, "An Anatomy of Failure: The 2014-18 Sri Lankan Constitutional Reform Exercise in Context," 83-84.

²³⁵ Fonseka, "Transitional Justice in Sri Lanka: Lessons So Far and the Long Road Ahead."

²³⁶ Consultation Task Force on Reconciliation Mechanisms, "Final Report of the Consultation Task Force on Reconciliation Mechanisms (Volume I)," November 17, 2016, 12, 31, <http://www.omp.gov.lk/storage/app/uploads/public/5fa/938/65a/5fa93865aa0a0196003109.pdf>

²³⁷ "Final Report of the Consultation Task Force on Reconciliation Mechanisms (Volume I)," 20.

²³⁸ "PTA Cases to Be Fast-Tracked," *Daily News*, September 28, 2018, <https://www.dailynews.lk/2018/09/28/local/163927/pta-cases-be-fast-tracked>; "Over 5,160 Acres Released to Owners," *Daily News*, July 27, 2018, <https://www.news.lk/news/business/item/21556-over-5-160-acres-released-to-owners>.

he failed to ensure that a coherent strategy was in place to release the land; instead, land was released in ad-hoc manner at the discretion of the military.²³⁹ Further, although the Prime Minister issued instructions to the Attorney General's Department regarding detainees, he failed to address obstacles to the process within the Department and security sector.²⁴⁰

A critical omission by Prime Minister Wickremesinghe was his failure to communicate to the electorate the content of the ambitious human rights reforms committed to by the government in Resolution 30/1. The Prime Minister's public remarks outside of Parliament regarding human rights reforms were largely defensive.²⁴¹ Public communication campaigns about human rights reforms were carried out by the Secretariat for Reconciliation Mechanism and the Consultation Task Force, and the former carried out significant outreach to the armed forces.²⁴²

²³⁹ Human Rights Watch, "Why Can't We Go Home? Military Occupation of Land in Sri Lanka," 2018, 22 <https://www.hrw.org/report/2018/10/09/why-cant-we-go-home/military-occupation-land-sri-lanka>; "Final Report of the Consultation Task Force on Reconciliation Mechanisms (Volume I)," 324; "Observations by the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence, Mr. Pablo de Greiff, on the Conclusion of His Recent Visit to Sri Lanka," OHCHR, October 23, 2017, <https://www.ohchr.org/en/statements/2017/10/observations-special-rapporteur-promotion-truth-justice-reparation-and>.

²⁴⁰ See United Nations Human Rights Council, "Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism Visit to Sri Lanka A/HRC/40/52/Add.3," December 14, 2018, para 45, <https://documents.un.org/doc/undoc/gen/g18/365/91/pdf/g1836591.pdf?token=fEpi0kbS2HKS91eQje&fe=true>.

²⁴¹ See "The Missing Are Considered Dead Says Sri Lankan Prime Minister," *Tamil Guardian*, January 16, 2016, <https://www.tamilguardian.com/content/missing-are-considered-dead-says-sri-lankan-prime-minister>; "Sri Lanka Calls for Remedial Action to Help Kin of People Who Disappeared in Civil War," *Firstpost*, June 21, 2017, [Sri Lanka calls for remedial action to help kin of people who disappeared in civil war](https://www.firstpost.com/sri-lanka-calls-for-remedial-action-to-help-kin-of-people-who-disappeared-in-civil-war); "Enforced Disappearances Bill Will Not Apply to Past Incidents, Says Ranil," *The Sunday Times*, September 17, 2017, <http://www.sundaytimes.lk/170917/news/enforced-disappearances-bill-will-not-apply-to-past-incidents-says-ranil-259994.html>.

²⁴² Researcher, interview with author, July 3, 2021; Former staff member of the Secretariat for Reconciliation Mechanisms, interview with author, August 20, 2021.

However, outreach efforts led by technical experts, staff and leadership of these entities failed to gain any traction, especially in contrast to the consistent, visceral anti-human rights reform messaging offered by former President Rajapaksa and his political allies.²⁴³ Observers note that had there been initiative from the government, key counter-reform forces such as the clergy could have been engaged early on and potentially diffused and enlisted as allies.²⁴⁴ The failure to do so ensured that they were mobilised by those opposed to the human rights reforms.

The Prime Minister also wavered when it came to complying with several critical components of Resolution 30/1. Although he defended Sri Lanka's commitment to a special judicial mechanism with foreign participation in 2015, by 2016, he had publicly recanted, arguing that it was not legally and constitutionally permissible to have foreign participation in a domestic judicial mechanism.²⁴⁵ The Prime

²⁴³ Researcher, interview with author, July 3, 2021; Former staff member of the Secretariat for Reconciliation Mechanisms, interview with author, August 20, 2021.

²⁴⁴ Asanga Welikala, "The Sri Lankan Culture of Constitutional Law and Politics: The Lessons of the Constitutional Reform Exercise of 2015-19 and the Constitutional Crisis of 2018," in *Constitutional Reform and Crisis*, 2019, 263–328, 317.

²⁴⁵ United Nations Human Rights Council, "Oral Update of the High Commissioner Promoting Reconciliation, Accountability and Human Rights in Sri Lanka A/HRC/32/CRP.4," para 23. The President, Prime Minister and other Cabinet Ministers made various contradictory claims regarding the government's position on a special judicial mechanism, see "UPDATED: Flip-Flopping on Accountability – A Timeline," *Groundviews* (blog), March 27, 2017, <http://groundviews.org/2017/03/27/updated-flip-flopping-on-accountability-a-timeline/>. Vague legal arguments were raised as to why it was not permissible under the Sri Lankan Constitution. These were largely refuted by local human rights lawyers, see Bhavani Fonseka and Luwie Ganeshanthasan, "Hybrid vs Domestic: Myths, Realities and Options for Transitional Justice in Sri Lanka" (Centre for Policy Alternatives, 2016), <https://www.cpalanka.org/wp-content/uploads/2016/01/Hybrid-vs.-Domestic-Myths-Realities-and-Options-for-Transitional-Justice-in-Sri-Lanka.pdf>; Bhavani Fonseka and Luwie Ganeshathasan, "The Case for Foreign Judges in a Judicial Mechanism in Sri Lanka: Countering Falsehoods," *Groundviews* (blog), March 28, 2019, <https://groundviews.org/2019/03/28/the-case-for-foreign-judges-in-a-judicial-mechanism-in-sri-lanka-countering-falsehoods/>; Radheena De Alwis and Niran Anketell, "A Hybrid Court Ideas for Sri Lanka" (Colombo, Sri Lanka: South Asian Centre for Legal Studies, 2015). A prominent constitutional lawyer and a Tamil law maker argued that even if there were legal hurdles, the solution is not to renege on the commitment, but to amend the existing

Minister's Legal Advisor confirmed that, although a memo was shared on the possible contours of a judicial mechanism, no direction ever came from the political actors to draft enabling legislation.²⁴⁶

The Prime Minister's most startling lack of support was his failure to publicly support the criminal investigation and prosecution of emblematic human rights and corruption crimes, even in the few cases that succeeded in securing successful convictions.²⁴⁷ As the high profile investigations into Rajapaksa era crimes either halted or collapsed, it was alleged that the Prime Minister and other senior ministers from his party, including the minister for justice, were actively seeking to obstruct investigations.²⁴⁸ The Prime Minister denied that he had interfered in the investigation of cases involving the Rajapaksas and maintained that lack of progress was caused by the complexity of the cases and delays among the police in carrying

framework (especially as a constitutional reform process was underway) to enable the creation of a special judicial mechanism, see "Sumanthiran Insists on Foreign Judges," *Daily News*, March 20, 2017.

²⁴⁶ Legal Advisor to the Prime Minister, interview with author, July 2, 2021.

²⁴⁷ See "Army Sergeant Found Guilty and Sentenced in the Mirusuvil Massacre Case," Centre for Human Rights and Development, 2015, <https://srilankachrd.org/la-mirusuvil.php>; "Four Sri Lankan Soldiers Convicted of Raping Tamil Woman," BBC, October 7, 2015, <https://www.bbc.com/news/34470053>.

²⁴⁸ "Political Influence Blocking Corruption: JVP," *Daily Mirror*, May 29, 2015; Political Editor, "President Claims UNP Delaying Major Probes to Save Rajapaksas," *Sunday Times*, July 9, 2017; "Exclusive: Ranil Prevents Gota Arrest," *Colombo Telegraph*, March 9, 2015; "Sri Lankan Airlines: Ranil Yet To Table 'Weliamuna/Jayarathne' Report In Parliament," *Colombo Telegraph*, June 17, 2015; Press Trust of India, "Sirisena Accuses Ranil of Shielding Rajapaksa, Others in Graft Probe," *The Hindu*, May 31, 2018.

out investigations and within the Attorney General's Department in issuing indictments.²⁴⁹

Beyond the potential electoral advantages conferred to the Prime Minister by keeping Rajapaksa in the political fray, it's possible that the Prime Minister and his political allies may have been reluctant to investigate past human rights abuses since they too, had been in government during past violent episodes which saw large scale disappearances and extra judicial killings, for example during the 1983 riots and the two southern insurrections in 1978 and 1989-1990.²⁵⁰ Further, it was widely alleged that the Prime Minister was involved in the running of a well-known torture camp during the 1989-90 insurrection.²⁵¹

Bureaucracy

The five levels Sri Lanka's bureaucracy – national, provincial, district, divisional and village -- are subject to strong central control.²⁵² The bureaucracy was largely

²⁴⁹ Former Prime Minister, interview with author, November 24, 2021. See also Political Editor, "Corruption Cases: No Major Indictments; Blame Game Continues," *Sunday Times*, May 22, 2016, <https://www.sundaytimes.lk/160522/columns/corruption-cases-no-major-indictments-blame-game-continues-194552.html>; International Crisis Group, "Sri Lanka Between Elections," August 12, 2015, 4.

²⁵⁰ See the reports of state appointed investigations into state responsibility for human rights violations during the insurrections: Final Report of the Commission of Inquiry into Involuntary Disappearance of Certain Persons (All Island) Sessional Paper No-1 (2001); Final Report of the Commission of Inquiry into Involuntary Removal or Disappearance of Persons in the Western, Southern and Sabaragamuwa Provinces, Sessional Paper No. V (1997).

²⁵¹ "Final Report of the Batalanda Commission, Sessional Paper No. 1," 2000, 61-63. See also "Demons of Batalanda: Who Was behind Them?," Lankaweb, August 3, 2015, <https://www.lankaweb.com/news/items/2015/08/03/demons-of-batalanda-who-was-behind-them/>.

²⁵² Asian Development Bank, "Country Partnership Strategy: Sri Lanka 2012 -2016 Governance and Public Management in Sri Lanka," 2011, https://www.adb.org/sites/default/files/linked-documents/cps-sri-2012-2016-oth-04_0.pdf.

independent from the colonial era until the first republican constitution of 1972, which granted authority to the cabinet of ministers to appoint, transfer, and discipline the public service.²⁵³ The amendment brought the bureaucracy under the direct control of the cabinet, and political considerations became central to all managerial decisions within the bureaucracy.²⁵⁴ It led to a dramatic undermining of institutional culture and resulted in the bureaucracy moving away from an ethos of public service to advancing the interests of the governing political party.²⁵⁵ Patronage appointments were introduced, and granting public sector jobs became a key method politicians used to garner electoral support.²⁵⁶ The 1978 constitution worsened these trends by increasing the powers of the president without introducing any additional checks and balances. In practice, this meant that as the head of cabinet, government and the ruling party, the president could influence every aspect of administrative decision-making to favour him/herself or the ruling party.²⁵⁷

²⁵³ Constitution of Sri Lanka, (1972), Article 106(1). On the history of the Sri Lankan civil service, see N Bandara, "History and Context of Public Administration in Sri Lanka," in *Public Administration in South Asia: India, Bangladesh and Pakistan*, (CRC Press, 2013), 454–71.

²⁵⁴ Renuka I. Priyantha, Ranjith W. K. Dickwella, and Ravindra Gunasekara, "Public Administration in Sri Lanka: An Analysis of Evolution, Trends, and Challenges in Personnel Management," in *Civil Service Management and Administrative Systems in South Asia* (Palgrave Macmillan, 2019), 193–214, 196.

²⁵⁵ Ibid.

²⁵⁶ U. S. Agency for International Development, "Democracy, Human Rights and Governance Assessment of Sri Lanka Updated Report," by Helf, Gavin, Jason Aplon, Shadrach Ludeman, Mark Silva, Joseph Schaller, Lynn Carter, and Neil DeVotta (2015), 29, https://pdf.usaid.gov/pdf_docs/PNAD1157.pdf. According to a 2002 census, Sri Lankan state employees 835,650 individuals, which in practical terms translates to one public servant for every 25 citizens, which is considerably high ratio for a developing economy.

²⁵⁷ See Renuka I. Priyantha, Ranjith W. K. Dickwella, and Ravindra Gunasekara, "Public Administration in Sri Lanka: An Analysis of Evolution, Trends, and Challenges in Personnel Management," 211.

Modern Sri Lankan bureaucracy is known for its corruption, poor service delivery and routine political interference when implementing laws and policies.²⁵⁸

During the 1980s and 1990s, various reforms were introduced with the backing of the International Monetary Fund and the Asian Development Bank. However, these changes failed to address the rent-seeking and clientelism within the system.²⁵⁹ The 17th Amendment to the Constitution, enacted in 2001 restored bureaucratic independence by conferring the powers of appointment, transfer, and disciplinary action to an independent public service commission.²⁶⁰ However, this amendment was never fully operationalised, and it was repealed in 2010 by President Rajapaksa through the 18th amendment to the Constitution.²⁶¹ President Sirisena and Prime Minister Wickremesinghe attempted to restore the independence of the public service in April 2015 via the 19th Amendment to the Constitution, and the period 2015-2019 saw marginal improvements within the bureaucracy; nonetheless, corruption remained a persistent issue.²⁶²

²⁵⁸ Ramesh Ramasamy, "Governance and Administration in Sri Lanka: Trends, Tensions and Prospects," *Public Administration and Policy* 23, no. 2 (2020): 187–98, 187. See also Transparency International (2019), "Country data: global corruption barometer in Sri Lanka", <https://www.transparency.org/en/countries/sri-lanka> (accessed 15 May 2020).

²⁵⁹ Ramasamy, "Governance and Administration in Sri Lanka: Trends, Tensions and Prospects," 188.

²⁶⁰ Cyrene Siriwardhana, 'Public Institutions and de-politicisation rise and the fall of the 17th Amendment' in Elizabeth Nissan (ed), *Sri Lanka: State of Human Rights 2007* (2007), 237, 237.

²⁶¹ See Aruni Jayakody, "The 18th Amendment and the Consolidation of Executive Power," in *The Eighteenth Amendment to the Constitution: Substance and Process*, ed. Rohan Edrisinha and Aruni Jayakody (Colombo: Centre for Policy Alternatives, 2011.), 23–61.

²⁶² See Asanga Welikala, ed., *The Nineteenth Amendment to the Constitution: Content and Context* (Colombo, Sri Lanka: Centre for Policy Alternatives, 2016); Ramasamy, "Governance and Administration in Sri Lanka: Trends, Tensions and Prospects," *Public Administration and Policy*, 191-192.

Political interference within the public service undermined the implementation of Resolution 30/1 both directly and indirectly. Direct political interference was most acutely seen within the Police and the Attorney General's Department. The lack of progress on accountability for emblematic human rights abuses and corruption cases was largely attributed to interference by political actors.²⁶³ A former secretary to President Sirisena observed that, within the broader public service, the bitter infighting between the President and the Prime Minister may have caused public servants to be cautious in their decision making, as "at times they may have been waiting to see which way the wind would blow."²⁶⁴

Lack of capacity within the bureaucracy also undermined the implementation of commitments under Resolution 30/1. Public servants often lacked general skills in developing and implementing state policy. There was little interest or initiative taken by bureaucrats tasked with implementing human rights reforms. The Prime Minister's Legal Advisor on Transitional Justice observed that the relevant actors within the state worked in silos, with little coordination or sharing of information: "There was no concerted proper network of state apparatus that should have been mobilised to work towards this...It didn't happen. Everyone was in their little corners, in their little watertight compartments working. There was very little transfer of information, which should have taken place..."²⁶⁵

²⁶³ See Bastians, "The Siege: Inside 52 Days of Constitutional Crisis in Sri Lanka, 80-81.

²⁶⁴ Former Secretary to President Maithripala Sirisena, interview with author, July 10, 2021. See also International Crisis Group, "Sri Lanka Between Elections Asia Report No. 272," 5-6.

²⁶⁵ Legal Advisor to the Prime Minister, interview with author, July 2, 2021.

A central issue affecting all the institutions mandated to implement Resolution 30/1 was the recruitment skilled staff. Existing bodies such as the Human Rights Commission, Police and Attorney General's Department, as well as new bodies such as the Office on Missing Persons, Office for Reparations, Victim and Witness Protection Authority, Consultation Task Force and the Secretariat for Coordinating Reconciliation Mechanism, all faced serious challenges in recruiting staff. The recruitment framework applicable to all the relevant institutions had arduous procedural requirements to obtain approval for the recruitment of staff by other state institutions, most commonly the Department of Management Services.²⁶⁶ In practice, this meant that, for the relevant period from 2015 to 2019, these institutions were functioning without competent staff to carry out their mandate.

Several newly established institutions, like the Secretariat for Coordinating Reconciliation Mechanism, opted to recruit external staff either in the form of volunteers or consultants with the assistance of the United Nations. Providing financial assistance for recruiting consultants and contract staff to fill capacity gaps within state institutions was a significant contribution by the member states and the UN towards implementing Resolution 30/1. Although this provided short-term solutions, frequent changes in consultants who developed official policies resulted in knowledge frequently being lost and impeded substantive, long-term capacity development within state institutions.²⁶⁷

²⁶⁶ See Human Rights Commission of Sri Lanka, "Annual Report," 2017, 73; Office on Missing Persons, "Annual Report," 2018, para 4.7, <http://www.omp.gov.lk/storage/app/uploads/public/5fd/1d2/4b2/5fd1d24b23858387495345.pdf>.

²⁶⁷ Legal academic, interview with author, July 6, 2021.

Legislature

Sri Lanka's legislature consists of one house, the Parliament, consisting of 225 members elected to a five-year term. The main function of Parliament is to pass bills and resolutions. Bills become law based on a majority vote and endorsement of the Speaker. Once a law is enacted, it cannot be subject to judicial review. Although Parliament has a committee system, committees can only make recommendations and cannot direct the executive to act.²⁶⁸ Moreover, parliamentary committees are generally chaired by government members and do not have sufficient research support to undertake thorough reviews of laws and policies.²⁶⁹ The most common way parliament attempts to hold the executive accountable is by debating issues on the floor of parliament.

Opposition parties within the legislature can play an important role in advancing human rights reforms. They can act as agents of socialisation by engaging in dialogue and debate with members of the government, persuading them to adopt reforms.²⁷⁰ Parliamentary opposition parties can also facilitate compliance by extracting costs for non-compliance from the government.²⁷¹

²⁶⁸ Asanga Welikala, "Parliamentary Committee Systems" (Sri Lanka: Centre for Policy Alternatives, 2002), 13-14.

²⁶⁹ Welikala, "Parliamentary Committee Systems", 14; Ravi Ratnasabapathy, "The Role of Government in Mal-Governed States," *Groundviews* (blog), April 19, 2022, <https://groundviews.org/2022/04/19/the-role-of-government-in-mal-governed-states/>.

²⁷⁰ Thomas Risse and Kathryn Sikkink, "The Socialisation of International Human Rights Norms into Domestic Practices: Introduction," in *The Power of Human Rights International Norms and Domestic Change*, ed. Thomas Risse, Stephen Ropp, and Kathryn Sikkink (UK: Cambridge University Press, 1999), 1-39, 26.

²⁷¹ Hillebrecht, *Domestic Politics and International Human Rights Tribunals*; Hillebrecht, "The Power of Human Rights Tribunals", 1101; Yonatan Lupu, "Legislative Veto Players and the Effects

The 15th parliament from 2015 to 2019 failed to play a prominent role in overseeing the implementation of Resolution 30/1. Out of the 225 members of parliament, 106 belonged to the United National Front for Good Governance, a coalition led by Prime Minister Wickremesinghe.²⁷² Ninety-five were members of the United Peoples Freedom Alliance, a coalition led by President Sirisena.²⁷³ However, members from President Sirisena's coalition were divided between a group that self-identified as the "Joint Opposition" under the leadership of former President Rajapaksa and those that remained loyal to President Sirisena.²⁷⁴ In fact many within Sirisena's coalition had campaigned criticising Sirisena and had actively promoted Sinhala nationalist narratives championed by the Rajapaksas.²⁷⁵ Twenty-two seats were held by two parties that were in the formal opposition. Six were held by Janatha Vimukthi Peramuna (JVP), a communist party, and 16 seats were held by the Tamil National Alliance (TNA), a coalition of Tamil parties from the conflict affected north and east of the country.²⁷⁶

of International Human Rights Agreements" *American Journal of Political Science* 59, no. 3 (2015): 578-594, 578; Courtney Conrad, "Divergent Incentives for Dictators: Domestic Institutions and (International Promises Not to) Torture", *Journal of Conflict Resolution* 58, no. 1 (2011): 34-67, 55; James Vreeland, "Political Institutions and Human Rights: Why Dictatorships enter into United Nations Convention Against Torture" *International Organizations* 62, no. (2008): 65-101, 78.

²⁷² "Sri Lanka Elections: UNP Victory as Rajapaksa Hopes Rebuffed," *BBC*, August 18, 2015, <https://www.bbc.com/news/world-asia-33970289>.

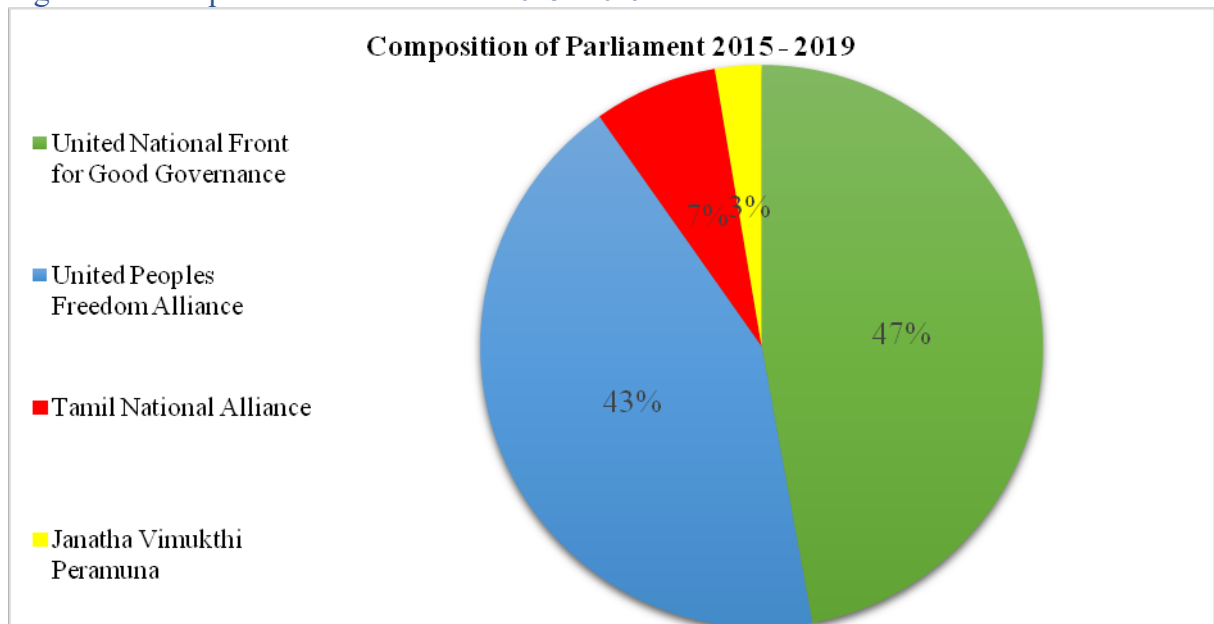
²⁷³ "Sri Lanka Elections: UNP Victory as Rajapaksa Hopes Rebuffed."

²⁷⁴ Peiris, "Yahapalanaya's Promise of Reconciliation: Merely a Means, Not an End?", 19.

²⁷⁵ Ibid.

²⁷⁶ Charudaththa Ekanayake, "Mapping Sri Lanka's Political Parties: Actors and Evolutions" 17-22.

Figure 2.1 Composition of Parliament 2015- 2019



The TNA, one of the two opposition parties, tried to constructively engage the government on compliance; however, its willingness and ability to do so was constrained by the prevailing political context. The TNA had played a critical role in advocating for greater scrutiny of Sri Lanka by the UN Human Rights Council, especially the commitment to foreign participation in a special judicial mechanism.²⁷⁷ The TNA, on several occasions, criticised the government for reneging on its commitment to foreign participation in a judicial mechanism and demanded faster implementation of the resolution.²⁷⁸ During parliamentary debates, TNA MPs offered the most substantive criticism of proposed laws and

²⁷⁷ Member of Parliament for the Tamil National Alliance, interview with author, September 3, 2021.

²⁷⁸ See "Sri Lanka Tamils Demand Foreign Judges in War Crimes Probe," *Economy Next*, March 23, 2019, <https://economynext.com/sri-lanka-tamils-demand-foreign-judges-in-war-crimes-probe-13449/>; "Government Must Fulfill Its Obligations: TNA," *Daily FT*, March 13, 2017, <https://www.ft.lk/article/603157/Government-must-fulfill-its-obligations--TNA>.

policies relevant to Resolution 30/1.²⁷⁹ The TNA directly negotiated with the government on land reform and release of political prisoners.²⁸⁰

Beyond these measures, however, the TNA failed to exercise significant pressure on the government to fully implement 30/1. As the largest party not in government, for the first time, the leader of the TNA was recognised as the formal leader of the opposition, granting it unprecedented resources, including staff, premises and a budget and authority within parliament. However, by its own admission, the TNA failed to utilise many of these resources.²⁸¹ The TNA's position was complicated because it had prioritised negotiating a constitutional reform package that would ensure substantive devolution of power to the north and the east and thus address the root causes of the conflict and not just remedies for abuses that occurred during the conflict.²⁸² As a result, the TNA leadership was criticised for being too partial to the government and failing to rigorously advocate their electoral promises.²⁸³

²⁷⁹ See "TNA'S Proposal on Registration of Deaths (Amendment) Bill Welcomed," *Daily Mirror*, August 27, 2016, <https://www.pressreader.com/sri-lanka/daily-mirror-sri-lanka/20160826/282694751581233>; "Parliamentary Debates (Hansard)." Colombo, Sri Lanka: Parliament of Sri Lanka, March 7, 2018, <https://www.parliament.lk/uploads/documents/hansard/1521196933014535.pdf>

²⁸⁰ Member of Parliament for the Tamil National Alliance, interview with author, September 3, 2021; International Crisis Group, "Sri Lanka's Transition to Nowhere," 18.

²⁸¹ Member of Parliament for the Tamil National Alliance, interview with author, September 3, 2021.

²⁸² Member of Parliament for the Tamil National Alliance, interview with author, September 3, 2021; Human Rights Lawyer, interview with author, July 1, 2021; Isabelle Lassee, "The Sri Lankan Transitional Justice Process: Too Little, Too Late?," *The Round Table The Commonwealth Journal of International Affairs* 108, no. 6 (2019): 709–19, 712; Paikiasothy Saravanamuttu, "Politics of Reconciliation in Sri Lanka," in *Transitional Justice in Sri Lanka: Moving Beyond Promises* (Colombo, Sri Lanka: Centre for Policy Alternatives, 2017), 50; P. K. Balachandran, "Sri Lanka to Give Priority to Constitutional Drafting over Accountability Mechanisms," 2017, <http://www.newindianexpress.com/world/2017/feb/08/sri-lanka-to-give-priority-to-constitution-drafting-over-accountability-mechanisms-1568367-1.html>.

²⁸³ Isabelle Lassee, "The Sri Lankan Transitional Justice Process: Too Little, Too Late?"

However, the strategy did not yield results, as the government failed to enact both constitutional reforms and a special judicial mechanism.

The other opposition party, the JVP, had advocated a range of constitutional and electoral reforms during the electoral campaign and promised to combat corruption. Following co-sponsorship, the JVP offered principled support for Resolution 30/1, although its leader, Anura Kumara Disanayake, criticised the UN for being a politicised institution that works at the behest of western powers and argued that the UN didn't need to instruct Sri Lanka on its domestic policy.²⁸⁴ However, he explicitly acknowledged the desirability of several commitments made under 30/1, including creating a truth commission, replacing the Prevention of Terrorism Act, releasing long-term detainees held under the Prevention of Terrorism Act, and returning lands occupied by the military.²⁸⁵ The JVP further acknowledged that the judiciary lacked independence and was at times corrupt, but stopped short of calling for a special judicial mechanism to deal with conflict-related cases.²⁸⁶ When the government tabled laws relevant to Resolution 30/1, the JVP voted in favour of them.

²⁸⁴ "Parliament Debates (Hansard)" (Colombo, Sri Lanka: Parliament of Sri Lanka, October 23, 2015), 1145-6; "Marxist JVP Presents 20 Proposals for Immediate Implementation," *Lanka Business Online*, September 17, 2015, <https://www.lankabusinessonline.com/marxist-jvp-presents-20-proposals-for-immediate-implementation/>.

²⁸⁵ "Parliament Debates (Hansard)" (Colombo, Sri Lanka: Parliament of Sri Lanka, October 23, 2015), 1145-8.

²⁸⁶ "Parliament Debates (Hansard)" (Colombo, Sri Lanka: Parliament of Sri Lanka, October 23, 2015), 1149-50.

Former President Mahinda Rajapaksa continued to engage in electoral politics even after being defeated in a presidential election.²⁸⁷ Following his election loss in January 2015, instead of resigning from politics as was the norm, Rajapaksa opted to enter the parliament. The campaign was supported by parties within the UPFA coalition that shared an ideological affinity with Rajapaksa's Sinhala Buddhist policy positions and out of self-interest, as many of the supporters required Rajapaksa's support to secure nominations to contest the upcoming parliamentary election and potentially ward off a criminal investigation into past behaviour.²⁸⁸ Once elected, Rajapaksa loyalists formally remained within the Sirisena-led coalition, thus they were never recognised as the formal opposition. However, in practice, they led a vociferous nationalist campaign opposed to President Sirisena and Prime Minister Wickremesinghe. Predictably, Rajapaksa loyalists also strongly opposed Resolution 30/1, portraying it as dangerous and a source of instability. In response to every 30/1 related reform proposal, the Rajapaksa loyalists accused the government of undermining the country's sovereignty and sacrificing Sri Lanka's war heroes.²⁸⁹ The lack of messaging and communication from the government contrasted badly with the ideological clarity offered by the Rajapaksas, and their

²⁸⁷ International Crisis Group, "Sri Lanka Between Elections," 10.

²⁸⁸ Ibid.

²⁸⁹ See Mahinda Aluthgedara, "Bill on Office on Missing Persons, Risky," *Daily News*, August 16, 2016, <http://www.dailynews.lk/?q=2016/08/16/political/90596>.

Press Trust of India, "Mahinda Rajapaksa Slams Sri Lanka Missing Persons Bill," *NDTV*, July 21, 2016, <https://www.ndtv.com/world-news/mahinda-rajapaksa-slams-sri-lanka-missing-persons-bill-1434037>.

"Voting for Law Incorporating International Protocol against Enforced Disappearance Is a Betrayal of Our Country- Mahinda Rajapaksa," *The Island*, July 3, 2017.

nationalist positions were viewed as the only alternative to the reform agenda of the coalition.²⁹⁰

Role of international actors

The Human Rights Council continued to keep Sri Lanka on its agenda. Before the Council, member states prioritised ensuring Sri Lanka's continued cooperation and avoided censuring Sri Lanka on slow and lacklustre efforts towards compliance. Outside the Council, member states deepened bilateral ties with Sri Lanka.

The Human Rights Council

Following Sri Lanka's co-sponsorship, member states largely refrained from criticising Sri Lanka's efforts towards compliance and focused on keeping Sri Lanka engaged in the Council process. Under resolution 30/1, the High Commissioner was required to provide an oral update in June 2016 and a comprehensive written report in February 2017.²⁹¹ To keep Sri Lanka on the Council's agenda beyond 2017, member states were required to pass another resolution, extending the co-sponsorship of resolution 30/1.

By February 2017, although the government had made progress on many reforms they had failed to complete a vast majority of them. In the lead-up to the March 2017 session, the European Union noted that although "Sri Lanka is behind the

²⁹⁰ Welikala, "An Anatomy of Failure: The 2014-18 Sri Lankan Constitutional Reform Exercise in Context," 89.

²⁹¹ United Nations Human Rights Council, "30/1 Promoting Reconciliation, Accountability and Human Rights in Sri Lanka A/HRC/RES/30/1," para 18.

process... we are seeing a commitment from the government to pursue its efforts at reforms.”²⁹² Following a meeting with the Foreign Minister Samaraweera, UK’s Minister for Asia and Pacific called on the Council to “give more time to Sri Lanka to fully implement [the resolution]”.²⁹³ In explaining the lack of criticism from the Council on Sri Lanka’s slow progress, a Western diplomat explained that when a state is cooperating with the Council “it’s very hard to go back with a stick.”²⁹⁴

Sri Lanka agreed to co-sponsor a ‘roll-over’ resolution, extending the time frame granted to comply with Resolution 30/1. In March 2017, a new resolution, co-sponsored by Sri Lanka was adopted, welcoming the steps taken by Sri Lanka to implement 30/1, as well as the country’s cooperation with OHCHR and Special Procedures, and requested the High Commissioner to provide an oral update in February 2018 and a comprehensive written update in February 2019.²⁹⁵ At the March 2017 session Foreign Minister Samaraweera was candid when addressing Sri Lanka’s shortcomings. He explained that despite delays, Sri Lanka remains committed to implementing 301/: “in the face of roadblocks in the day to day world of realpolitik, there may be detours from time to time, but the destination and our resolve to walk the distance remain unchanged.”²⁹⁶ He addressed the domestic

²⁹² “UNHRC Urged to Give More Time to SL,” *Daily News*, March 2, 2017.

²⁹³ Ibid.

²⁹⁴ Western Diplomat, interview with author, August 15, 2023.

²⁹⁵ United Nations Human Rights Council, “Resolution 34/1 Promoting Reconciliation, Accountability and Human Rights in Sri Lanka A/HRC/RES/34/1,” March 15, 2017, para 2, 4, <https://documents.un.org/doc/undoc/gen/g17/082/56/pdf/g1708256.pdf?token=230yvBNSNxNfUcHK5a&fe=true>.

²⁹⁶ “34th Session Of UNHRC: FM Mangala Samaraweera’s Speech – Full Text,” *Colombo Telegraph*, February 28, 2017, <https://www.colombotelegraph.com/index.php/34th-session-of-unhrc-fm-mangala-samaraweerass-speech-full-text/>.

opposition to human rights reforms by stating, “..as we move forward on this journey, the forces of extremism and regression on both sides of the divide are creating roadblocks for narrow and short-term gain.”²⁹⁷ He even acknowledged challenges such as systemic torture. He stated that “the Government has a zero-tolerance policy towards torture” and “[a]s in many other areas, this too is an area in which we require technical assistance, and I hope that countries with experience in this area will come to our assistance.”²⁹⁸

The US introduced the 2017 resolution and stated that “we understand these processes are complex, and that the government has made progress. But more needs to be done.”²⁹⁹ The UK called on the government to “develop and communicate a comprehensive and time bound implementation strategy.”³⁰⁰ Switzerland proposed that the new resolution call for a timetable for implementation; however, this was not included.³⁰¹

In June 2018, two years after the election of President Trump, the United States left the Council, claiming that it was a “cesspool of political bias”.³⁰² Departure of the US didn’t adversely affect the Council’s continued focus on Sri Lanka. In the US’s

²⁹⁷ Ibid.

²⁹⁸ Ibid.

²⁹⁹ “At UNHRC States Call for Timetable from Lanka on Establishing Reconciliation Mechanisms,” *Daily FT*, March 8, 2017.

³⁰⁰ “UK Welcomes Sri Lanka’s Continued Commitment to Improving Human Rights,” *Daily FT*, March 25, 2017.

³⁰¹ “At UNHRC States Call for Timetable from Lanka on Establishing Reconciliation Mechanisms,” *Daily FT*, March 8, 2017.

³⁰² Julian Borger, “US Quits UN Human Rights Council – ‘a Cesspool of Political Bias’”, *The Guardian*, June 20, 2018, <https://www.theguardian.com/world/2018/jun/19/us-quits-un-human-rights-council-cesspool-political-bias>.

place, UK assumed leadership of the Council's efforts to address Sri Lanka, supported by Canada and Germany. Following the 2018, oral update of the High Commissioner, member states expressed concern at some developments in Sri Lanka. The US and UK issued a joint statement noting that Sri Lanka was "safer and freer" than it was; however, they expressed concern at inter-communal violence targeting the Muslim community. The joint statement also expressed disappointment at the 'slow pace of progress' and called for determined leadership and a clear timeline for action.³⁰³

In an address before the Council, the UK stated that despite the modest progress made by Sri Lanka, "the picture in Sri Lanka was remarkably better than it was a decade ago."³⁰⁴ During the 2019 session, the UK identified itself as a "partner and a friend to Sri Lanka" and acknowledged the "very real achievements" made by Sri Lanka and only referred to the lack of progress as follows: "in a number of areas implementation remains a work in progress."³⁰⁵ During the 2019 session, only Switzerland and Canada made critical statements, with the former claiming that it was "alarmed by the lack of progress" and the latter calling for Sri Lanka to fulfil its commitment to establish a special court.³⁰⁶

³⁰³"Sri Lanka Is Safer and Freer, but Progress Is Slow- US and UK," March 23, 2018.

³⁰⁴ "UK to Push for Justice and Accountability in Sri Lanka," *Colombo Gazette*, April 3, 2019.

³⁰⁵ UK Mission to Geneva, "Human Rights Council 40: Resolution Introduction Sri Lanka," GOV.UK, March 21, 2019, <https://www.gov.uk/government/news/human-rights-council-40-resolution-introduction-sri-lanka>.

³⁰⁶ Manjula Fernando, "Lanka Co-Sponsors UNHRC Resolution after 'Setting the Record Straight,'" *Sunday Observer*, March 24, 2019.

It was clear that by March 2019, President Sirisena was no longer willing to follow Prime Minister Wickremesinghe's lead on engaging with the Council.³⁰⁷ A new Foreign Minister, a member of President Sirisena's party, Thilak Marapana, was also more hostile towards the Council, and informed member states that calls to establish a special judicial mechanism with foreign judges were unconstitutional; questioned the accuracy of High Commissioner's progress report; and claimed that the UN is unfairly accusing security personnel of committing international crimes.³⁰⁸ Once again, when former President Rajapaksa was warning Sri Lankans that the government was sponsoring a resolution 'against' the country, only Minister Samaraweera (who was now Minister of Finance) responded by criticising the Rajapaksa's incorrect claims.³⁰⁹

However, despite resistance from President Sirisena, under the leadership of Prime Minister Wickremesinghe, Sri Lanka again co-sponsored a 'roll-over resolution' extending the time frame for compliance. The 2019 resolution again welcomed progress made by Sri Lanka and requested the High Commissioner to provide an oral update in February 2020 and a written update in February 2021.³¹⁰

³⁰⁷ Ibid.

³⁰⁸ "SL Rejects Two Main Proposals by UNHR Chief," *Daily Mirror*, March 21, 2019.

³⁰⁹ "Minister Mangala Samaraweera Responds to Mahinda Rajapaksa: Lanka Will Protect Human Rights of All," *Sunday Observer*, March 24, 2019.

³¹⁰ United Nations Human Rights Council, "Resolution 40/1 Promoting, Reconciliation, Accountability and Human Rights in Sri Lanka A/HRC/40/1," April 4, 2019, <https://documents.un.org/doc/undoc/gen/g19/098/41/pdf/g1909841.pdf?token=uJb4dCqGsVA7LVtbBt&fe=true>.

Role of member states

The political dynamics before the Council were reflected in the bilateral ties between Sri Lanka and the key concerned member states. The core group of countries that had paid particular attention to the situation in Sri Lanka (including the US, UK, Canada, and the EU) were eager to embrace the new democratic government following the election in 2015. They increased their political engagement, aid and military cooperation. Efforts to strengthen bilateral ties were motivated also by a desire to counter Chinese influence, which had grown in Sri Lanka during the Rajapaksa years.

Both the new government and western states were keen to restore ties. In the first eight months of the Sirisena-Wickremesinghe government, it received visits from the British Foreign Secretary, the US Secretary of State and senior State Department officials, and the Indian Prime Minister. In 2016, President Sirisena was invited to a G7 meeting to meet on the side-lines with President Obama and Prime Ministers May and Theroux.³¹¹ Western partners emphasised the importance of undertaking human rights reforms and ensuring accountability.³¹² Sri Lanka returned these visits, and Foreign Minister Samaraweera visited the UK, USA, and India, seeking

³¹¹ Political Editor, "Corruption Probes: President Mindful of Impact of Grilling Public Officials," *Sunday Times*, June 5, 2016, <https://www.sundaytimes.lk/160605/columns/corruption-probes-president-mindful-of-impact-of-grilling-public-officials-196359.html>.

³¹² See for example Associated Press, "John Kerry Praises Sri Lanka on Reforms and Pledges Renewed Ties with US," *The Guardian*, May 2, 2015, <https://www.theguardian.com/world/2015/may/02/john-kerry-praises-sri-lanka-democratic-reforms-pledges-ties-with-us>; "Hugo Swire Arrives," *Sunday Times*, January 14, 2016; "US Embraces Sri Lanka: To Help Gain Respect in Global Community," *Asian Tribune*, February 9, 2015.

support for Sri Lanka's renewed engagement with the world and its decision to engage with the Council.³¹³

During the initial two years, member states praised Sri Lanka for its improved human rights record, even though substantive progress was slow. Strong advocacy by Tamil diaspora groups in the UK led the British government to offer the most critical scrutiny of Sri Lanka's human rights reforms. Although the US administration under President Trump did not assign a significant role for human rights in its foreign policy and left the Council in 2018, US policy on Sri Lanka largely continued unchanged, owing to the commitment of career public servants and long-term budgets that ensured continued funding for human rights initiatives.³¹⁴ India did not focus on compliance with Resolution 30/1 within its bilateral relationship with Sri Lanka. However, it continued to insist on improved relations with the Tamil minority and the full implementation of the 13th Amendment.

The US, UK and EU also significantly increased their development assistance to Sri Lanka.³¹⁵ India focused on providing economic and social assistance to conflict

³¹³ Former Secretary to President Maithripala Sirisena, interview with author, July 10, 2021.

³¹⁴ State Department Official, interview with author, July 2021; Stephen Pomper and Daniel Levine-Spound, "US Human Rights Policy and the Trump Administration," in *Human Rights in a Time of Populism Challenges and Responses*, ed. Gerald Neuman (Cambridge University Press, 2020), 1–19; "Donald Trump's Administration Is Promoting Democracy and Human Rights," *The Economist*, December 6, 2017, <https://www.economist.com/united-states/2017/12/06/donald-trumps-administration-is-promoting-democracy-and-human-rights>.

³¹⁵ John Curtis, Julie Gill, and Nigel Walker, "The UK's Commitment to Reconciliation, Accountability and Human Rights in Sri Lanka" (House of Commons Library, March 16, 2021), 5, <https://researchbriefings.files.parliament.uk/documents/CDP-2021-0015/CDP-2021-0015.pdf>; Press Trust of India, "US Govt Proposes \$31 Million Financial Aid to Sri Lanka," *Business Standard*,

affected Tamil majority areas.³¹⁶ Although neither the US nor UK went as far as restoring military ties, there was an increase in military cooperation with Sri Lanka.³¹⁷ Despite the lack of substantive security sector reforms, member states supported Sri Lanka's decision to contribute troops towards UN Peacekeeping operations.

The European Union restored the GSP+ privileges to Sri Lanka. Although compliance with core human rights treaties was one of the conditions for regaining the privileges, the lack of effective remedies for abuses such as extra-judicial killings and enforced disappearances did not prove fatal when determining Sri Lanka's compliance.³¹⁸ The release of persons detained under the Prevention of Terrorism Act was the only substantive human rights commitment that overlapped with the GSP+ conditions. For the European Union, it was sufficient that Sri Lanka was cooperating with the Council and OHCHR on human rights reforms, and the EU did not require compliance with all of Resolution 30/1 in order to meet the GSP+ conditions.

February 10, 2016, https://www.business-standard.com/article/pti-stories/us-govt-proposes-usd-31-million-aid-to-sri-lanka-116021000331_1.html; Nisthar Cassim, "Tremendous Improvement in EU-Sri Lanka Relationship," *Daily FT*, October 28, 2019, <https://www.ft.lk/Opinion-and-Issues/Tremendous-improvement-in-EU-Sri-Lanka-relationship/14-688423>.

³¹⁶ See Diplomatic Editor, "Package of Joint Ventures with India in MoU signed in Delhi" *The Sunday Times* (30 April 2017) <<http://www.sundaytimes.lk/170430/columns/package-of-joint-ventures-with-india-in-mou-signed-in-delhi-238869.html>> accessed 1 October 2017; PTI, "India, Sri Lanka sign a pact for \$318 million line of credit" *The Economic Times* (6 June 2017) <<https://www.thehindubusinessline.com/economy/policy/india-lanka-sign-pact-for-318-million-line-of-credit/article9721356.ece>>

³¹⁷ Manjula Fernando, "Britain Mulls New Defence Pact with SL," *Sunday Observer*, January 17, 2016, <http://archives.sundayobserver.lk/2016/01/17/sec01.asp>; "US Eases Military Trade Restrictions on Lanka," *Daily FT*, May 9, 2016, <https://www.ft.lk/article/540503/ft>.

³¹⁸ See European Commission, "Report on Assessment of the Application for GSP+ by Sri Lanka" (Brussels: European Commission, January 11, 2017), para 14, 15, https://www.parlament.gv.at/dokument/XXV/EU/128664/imfname_10685250.pdf.

International assistance towards implementation

Aiding implementation of Resolution 30/1 was a decentralised process. OHCHR's presence within Sri Lanka was limited to a Senior Human Rights Advisor, whose main task was to advise the UN Resident Coordinator and all other UN entities operating within Sri Lanka on human rights issues.³¹⁹ The co-sponsorship of Resolution 30/1 gave OHCHR an additional responsibility of an implementation role, which blurred its role with development activities.³²⁰

The UN's assistance to Sri Lanka for implementing 30/1, was pooled via the Secretary General's Peace Building Fund, which supports joint UN peacebuilding efforts.³²¹ Owing to administrative restrictions on the UN secretariat's ability to administer funds, the primary implementing partner for Resolution 30/1 was UNDP.³²² The Peacebuilding Fund provided significant assistance to the Consultation Task Force, and to civil society organisations to enable them to engage with the Task Force.³²³ The UN also funded two international experts to be

³¹⁹ "OHCHR in Sri Lanka," OHCHR, accessed February 12, 2024, <https://www.ohchr.org/en/countries/sri-lanka/our-presence>.<https://www.ohchr.org/en/countries/sri-lanka/our-presence>.

³²⁰ Anonymous, interview with author, October 6, 2023.

³²¹ "Financing for Peacebuilding," accessed February 12, 2024, <https://www.un.org/peacebuilding/fund>.

³²² Anonymous, interview with author, October 6, 2023.

³²³ United Nations Human Rights Council, "Report of the Office of the High Commissioner for Human Rights A/HRC/40/23," February 8, 2019, para 6, <https://documents.un.org/doc/undoc/gen/g19/029/25/pdf/g1902925.pdf?token=hpatBskpyjpcGnHCZ0&fe=true>; Centre for Poverty Analysis, "Support for Sri Lanka to Design Transitional Justice Mechanisms Phase 1 Final Report," March 2020, https://www.un.org/peacebuilding/sites/www.un.org.peacebuilding/files/documents/pbf_lka_a-1_final_report_mar18_1.pdf.

embedded within the government's primary mechanism for coordinating the implementation of Resolution 30/1, the Secretariat for Reconciliation Mechanisms.³²⁴ The experts played a significant role in monitoring and advising government stakeholders on the development of laws and policies.³²⁵ OHCHR's Senior Human Rights Advisor in Sri Lanka also provided feedback on each of the laws drafted as part of 30/1.³²⁶ The UN also provided technical assistance to the operationalise the Human Rights Commission, the Office on Missing Persons, and the Office for Reparations.³²⁷

In addition to this, various embassies such as the UK and US and development agencies such as USAID and the German Development Cooperation aided specific areas of reform, for example, land mine clearance, resettlement, memorialisation, and investigation of financial crimes.³²⁸ An observer closely involved in the process conceded that there was little coordination or strategizing among the donors and agencies involved.³²⁹ One former US embassy official recalled that, although foreign governments were keen and repeatedly offered to help, the Sri Lankan

³²⁴ Former staff member of the Secretariat for Reconciliation Mechanisms, interview with author, August 20, 2021.

³²⁵ Ibid.

³²⁶ Ibid.; Anonymous, interview with author, October 6, 2023 Attorney at Law who advised the Foreign Ministry between 2015 and 2018, interview with author, July 1, 2021.

³²⁷ United Nations Human Rights Council, "Report of the Office of the High Commissioner for Human Rights A/HRC/46/20," January 27, 2021, para 4, <https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F46%2F20&Language=E&DeviceType=Desktop&LangRequested=False>.

³²⁸ John Curtis, Julie Gill, and Nigel Walker, "The UK's Commitment to Reconciliation, Accountability and Human Rights in Sri Lanka"; "Sri Lanka Gets U.S. Support to Probe Corruption, Financial Crime," *EconomyNext*, September 29, 2015, <https://economynext.com/sri-lanka-gets-u-s-support-to-probe-corruption-financial-crime-2749>; "Governance | Sri Lanka," U.S. Agency for International Development, March 30, 2023, <https://www.usaid.gov/sri-lanka/democracy-human-rights-and-governance>.

³²⁹ Anonymous, interview with author, October 6, 2023.

government was slow in how it responded to these offers.³³⁰ As OHCHR had strong relationships with the relevant embassies and aid organisations, it was able to keep track of the various strands of assistance.³³¹

As the government had extended a standing invitation to all Special Procedures, ten Special Procedure Mandate holders visited Sri Lanka.³³² During these visits, the independent experts not only monitored thematic issue areas but also directly engaged with the bureaucrats and institutions mandated to implement human rights reforms. Generally, governments tend to be more receptive to a particular message or a reform recommendation coming from an independent expert than OHCHR staff.³³³ Thus, the independent experts helped amplify the demands and recommendations made by civil society organisations and OHCHR and strengthening the voices within the government that favoured reforms. However, in Sri Lanka's case, despite the dozens of meetings between independent experts and government officials, it was questioned whether the Sri Lankan institutions had the capacity to absorb the advice and assistance being offered.³³⁴

At times, UN agencies were also at cross purposes regarding the assistance they were offering. For example, OHCHR had flagged Sri Lanka's Victim and Witness Authority as problematic, in part because the law mandates the Police to protect the

³³⁰ Former US Embassy Official, interview with author, July 10, 2021.

³³¹ Anonymous, interview with author, October 6, 2023.

³³² United Nations Human Rights Council, "Report of the Office of the High Commissioner for Human Rights A/HRC/46/20," para 5.

³³³ Anonymous, interview with author, October 6, 2023.

³³⁴ Anonymous, interview with author, October 6, 2023.

victims and witnesses of crimes.³³⁵ The Sri Lankan Police were credibly accused of routinely carrying out torture and, in the past, of attacking victims and witnesses of crime.³³⁶ OHCHR had also flagged these issues to the UNDP.³³⁷ However, despite these concerns, UNDP directly funded the Victim and Witness Authority.³³⁸

These capacity building and technical assistance did contribute to addressing short-term resource constraints; however, as discussed below, they failed to overcome the broader capacity constraints that prevented state institutions from being effectively operationalised.

Reduction in violations of physical integrity rights and political freedoms

Following the election of the Sirisena-Wickremesinghe government and co-sponsorship of Resolution 30/1, Sri Lanka saw significant improvements in physical integrity rights and political freedoms.³³⁹ There were no substantiated

³³⁵ Office of the High Commissioner for Human Rights, Report of the Office of the High Commissioner for Human Rights Investigation on Sri Lanka A/HRC/30/CRP.2, para 1186-1191.

³³⁶ Ibid.

³³⁷ Anonymous, interview with author, October 6, 2023.

³³⁸ UNDP, “UNDP Sri Lanka’s Flagship Portfolio on SDG 16: Peace, Justice and Strong Institutions Progress Report,” 2022, 16-17, https://info.undp.org/docs/pdc/Documents/LKA/UNDP%20SDG%2016%20PORTFOLIO%20Norway_29.11.19.pdf.

³³⁹ United Nations Human Rights Council, “Comprehensive Report of the Office of the United Nations High Commissioner for Human Rights on Sri Lanka A/HRC/30/61,” September 28, 2015, para 14, <https://www.ohchr.org/en/hr-bodies/hrc/oisl>; United Nations Human Rights Council, “Report of the Office of the United Nations High Commissioner for Human Rights in Sri Lanka A/HRC/34/20,” para 15; United Nations Human Rights Council, “Report of the Office of the United Nations High Commissioner for Human Rights A/HRC/37/23,” January 25, 2018, para 41, <https://documents.un.org/doc/undoc/gen/g18/018/53/pdf/g1801853.pdf?token=9UN1zCpgSw1N4OD9Oq&fe=true>; United Nations Human Rights Council, “Report of the Office of the High Commissioner for Human Rights A/HRC/40/23,” para 52.

reports of enforced disappearances during the period.³⁴⁰ There were few allegations of extra-judicial killings involving police officers shooting motorists for failing to stop at checkpoints.³⁴¹ Criminal investigations were initiated into all three of these incidents, and the officers were arrested and indicted in one of the cases.³⁴²

Significant improvements were seen in media freedom, freedom of expression and freedom of movement, especially in the conflict affected areas. The government replaced the military personnel who served as governors with experienced civilian public servants.³⁴³ Major military checkpoints leading to the North were removed, enhancing freedom of movement. The government also lifted restriction on access to the North by journalists and foreigners.³⁴⁴ Bans were also lifted on eight Tamil diaspora groups and 267 individuals from entering the country.³⁴⁵ The secretariat for non-governmental organisations was moved from the Ministry of Defence to the Ministry of Policy Planning and Economic Affairs.³⁴⁶ Censorship in the form of blocking websites was reversed and self-censorship by the media reduced. Exiled

³⁴⁰ Bureau of Democracy, Human Rights, and Labour, "Country Reports on Human Rights Practices for 2019," United States Department of State, 2019, <https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/sri-lanka/>; Former Chairperson of the Human Rights Commission, interview with author, July 5, 2021.

³⁴¹ United States Department of State, 2019, <https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/sri-lanka/>.

³⁴² Ibid.

³⁴³ United Nations Human Rights Council, "Comprehensive Report of the Office of the United Nations High Commissioner for Human Rights on Sri Lanka A/HRC/30/61," para 15.

³⁴⁴ Ibid.

³⁴⁵ Bureau of Democracy, Human Rights, and Labour, "Country Reports on Human Rights Practices for 2015," United States Department of State, 2015, <https://2009-2017.state.gov/documents/organization/253187.pdf>.

³⁴⁶ "No More Defence Ministry Supervision for NGOs: Harsha," *Daily Financial Times*, June 16, 2015.

journalists were able to return to the country.³⁴⁷ The parliamentary elections held in August 2015 and local government elections held in January 2018 were among the most peaceful in the country's recent history.³⁴⁸ Overall, there was a significant reduction in surveillance by security forces, creating an enabling environment for civil society activism and journalism.

During 2015 to 2019, the Government was pressured to release detainees held under the Prevention of Terrorism Act, both from the Human Rights Council and the European Commission, as part of the conditions for renewing the GSP+ privileges. The government made some progress and released a list of 81 detainees who are in pre-trial detention, out of which 70 had been in detention for at least five years.³⁴⁹ Human rights groups raised concerns that the government's official reporting was inconsistent and that as many as 12 detainees remain in detention without being charged.³⁵⁰

Despite these improvements, some challenges remained. Torture in the context of police custody remained widespread.³⁵¹ Although significantly reduced, reports of

³⁴⁷ Bureau of Democracy, Human Rights, and Labour, "Country Reports on Human Rights Practices for 2015."

³⁴⁸ Ibid.

³⁴⁹ United Nations Human Rights Council, "Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism Visit to Sri Lanka A/HRC/40/52/Add.3," December 14, 2018, para 15 <https://documents.un.org/doc/undoc/gen/g18/365/91/pdf/g1836591.pdf?token=fEpi0kbS2HKS91eQje&fe=true>.

³⁵⁰ Human Rights Watch, "Locked Up Without Evidence Abuses under Sri Lanka's Prevention of Terrorism Act," 2018, 12, <https://www.hrw.org/report/2018/01/29/locked-without-evidence/abuses-under-sri-lankas-prevention-terrorism-act#:~:text=Prevention%20of%20Terrorism%20Act,-The%20Prevention%20of&text=The%20PTA%20allows%20arrests%20without,held%20without%20charge%20for%20years.>

³⁵¹ United Nations Human Rights Council, "Report of the Office of the United Nations High Commissioner for Human Rights in Sri Lanka A/HRC/34/20," para 57.

harassment, intimidation, and surveillance of human rights defenders by security personnel continued.³⁵² Incidents of hate speech targeting Muslims, evangelical Christians and the LGBTQ community were also reported.³⁵³ Two serious episodes of communal violence against the Muslim community took place in November 2017 and March 2018, where Sinhala Buddhists mobs attacked mosques, Muslim owned businesses, and homes.³⁵⁴ The police were slow to respond; however, subsequent criminal investigations resulted in hundreds of arrests, including ten leaders of radical groups.³⁵⁵

New laws

The government enacted two new laws related to two of the four promised transitional justice mechanisms: the Office on Missing Persons and the Office for Reparations. A third law incorporated the Convention on Enforced Disappearances into domestic law. Amending legislation revised the victim and witness protection framework and provided for the issuance of Certificates of Absence. Draft legislation was prepared to establish a Truth and Reconciliation Commission and repeal and replace the Prevention of Terrorism Act, but neither was enacted into law. A proposal to amend the Constitution and ensure devolution of political authority was also developed but not enacted.

³⁵² United Nations Human Rights Council, “Report of the Office of the United Nations High Commissioner for Human Rights in Sri Lanka A/HRC/34/20,” para 50.

³⁵³ United Nations Human Rights Council, “Comprehensive Report of the Office of the United Nations High Commissioner for Human Rights on Sri Lanka A/HRC/30/61,” para 22.

³⁵⁴ United Nations Human Rights Council, “Report of the Office of the High Commissioner for Human Rights A/HRC/40/23,” para 58; Human Rights Council, “Report of the Office of the United Nations High Commissioner for Human Rights on Sri Lanka A/HRC/37/23” para 46.

³⁵⁵ United Nations Human Rights Council, “Report of the Office of the High Commissioner for Human Rights A/HRC/40/23,” para 58.

The process of drafting reforms was opaque and led by a few individuals. Victims' groups and their allies consistently criticised the government for not consulting those most affected by the laws. A group of Sri Lankan civil servants and lawyers drafted the Office on Missing Persons Act.³⁵⁶ A major concern with the bill was that it was drafted and passed through parliament without incorporating the recommendations presented by the national consultation process, and non-governmental groups complained that the government was only designing a mechanism to appease international audiences rather than to secure the rights of the missing and disappeared and their families.³⁵⁷ Similarly, the Enforced Disappearances Act was drafted at the initiative of a lawyer who was engaged as an external consultant to advise the Foreign Ministry on human rights issues.³⁵⁸ The lawyer recalled that at the time although the Enforced Disappearances Convention had been ratified the government had not taken steps towards drafting a domestic law to incorporate the obligations under the convention.³⁵⁹ The process of drafting

³⁵⁶ Former member of the Office on Missing Persons, interview with author, August 16, 2021.

³⁵⁷ See Consultation Task Force, "Interim Report The Office on Missing Persons Bill and Issues Concerning the Missing, the Disappeared and the Surrendered," August 2016, 11, https://groundviews.org/wp-content/uploads/2016/08/SUMMRECOWD_CTF.pdf. The Interim Report noted that the "hurried briefings organised by the Ministry of Foreign Affairs prior to the gazetting the Bill [that was] external to the broader consultations go contrary to the spirit of the commitment given by the Government". See also concerns of NGOs: "Tamil Civil Organizations Accuse Government of Rushing Through In Setting Up Office For Missing Persons." *Colombo Telegraph*, May 20, 2016. <https://www.colombotelegraph.com/index.php/tamil-civil-organisations-accuse-government-of-rushing-through-in-setting-up-office-for-missing-persons/>; Fernando, Ruki. "Sri Lanka's 65,000 Disappeared: Will the Latest Missing Persons' Office Bring Answers?" *The Wire*, June 14, 2016. <https://thewire.in/world/sri-lankas-disappeared-will-the-latest-missing-persons-office-bring-answers>; Sandasen Marasinghe and Disna Mudalige, "OMP, a Mechanism to Help Truth Finding: Mangala," *Daily News*, August 12, 2016, <https://www.dailynews.lk/2016/08/12/local/90327>.

³⁵⁸ Attorney at Law who advised the Foreign Ministry between 2015 and 2018, interview with author, July 1, 2021.

³⁵⁹ Ibid.

the Enforced Disappearances Act was described as “a decent consultative process”; however, those involved were concerned that if a broader range of stakeholders were consulted, it would generate more opposition to the bill.³⁶⁰

The government appointed at least three separate processes to draft a replacement to the Prevention of Terrorism Act.³⁶¹ Entire effort was again under fire for failing to consult victims and human rights defenders, including the National Human Rights Commission.³⁶² A new draft anti-terror law was tabled before parliament and was subject to a constitutional challenge before the Supreme Court in October 2018. Following the Court’s ruling that several provisions required amendments to ensure constitutionality, a revised version was reportedly approved by Cabinet and sent to parliament.³⁶³ However, the draft law was never enacted. Following the Easter Sunday terrorist attacks in April 2019, plans to review the anti-terror legal framework were taken off the table.³⁶⁴

Like other mechanisms, the process of designing a truth mechanism was opaque and led by outside experts. Media reports indicate that a draft bill was finalised in

³⁶⁰ Ibid.

³⁶¹ Dharisha Bastians, “Government’s Proposed Counter-Terrorism Policy Faces Storm of Criticism”; K. P. Balachandran, “Tamil National Alliance Fears Law to Replace Anti-Terror Act May Be Old Wine in a New Bottle.”

³⁶² Staff Reporter, “If Changes Are Made in the Committee Stage in Parliament, There Will Be No Room to Legally Challenge Draconian Sections of the New Legislation,” *Sunday Observer*, September 16, 2018, <http://www.sundayobserver.lk/2018/09/16/news-features/counter-terrorism-bill-major-break-draconian-pta>.

³⁶³ Voice of America, “Sri Lanka Media Rights Activists Decry New Anti-Terror Law,” March 18, 2019, <https://www.voanews.com/south-central-asia/sri-lanka-media-rights-activists-decry-new-anti-terror-laws>.

³⁶⁴ Former staff member of the Secretariat for Reconciliation Mechanisms, interview with author, August 20, 2021.

October 2018 and was expected to be tabled in parliament in April 2019.

³⁶⁵However, following the terrorist attacks on Easter Sunday 2019, the draft bill was never tabled, and the government did not enact any further reforms. ³⁶⁶

Like how the government approached economic and constitutional reforms, it did not make a concerted effort to explain the content or rationale for any of the human rights reforms to the electorate. Opposition groups led by former President Rajapaksa were vociferous opposing each of the 30/1 related laws. ³⁶⁷ They argued that the proposed Office on Missing Persons was in fact a “tribunal” funded by “western imperials” to ‘target government troops who defeated the LTTE’ and was

³⁶⁵ “Cabinet Approves Laws to Set up Truth Commission.” *Daily Mirror*, October 24, 2018; Former staff member of the Secretariat for Reconciliation Mechanisms, interview with author, August 20, 2021.

³⁶⁶ Former staff member of the Secretariat for Reconciliation Mechanisms, interview with author, August 20, 2021.; “Sri Lanka Responds to UN High Commissioner’s Report,” *Ada Derana*, March 21, 2019, <http://www.adaderana.lk/news/53908/sri-lanka-responds-to-un-high-commissioners-report>; “Truth and Reconciliation Comm. - Defence Ministry Still to Submit Observations,” *Daily Mirror*, February 26, 2019, <https://www.dailymirror.lk/Breaking-News/Truth-and-Reconciliation-Comm-Defence-ministry-still-to-submit-observations/108-162944>

³⁶⁷ Press Trust of India, “Mahinda Rajapaksa Slams Sri Lanka Missing Persons Bill,” *NDTV*, July 21, 2016, <https://www.ndtv.com/world-news/mahinda-rajapaksa-slams-sri-lanka-missing-persons-bill-1434037>; “Govt. Insists Soldiers Will Not Be Target of OMP,” *Daily Financial Times*, August 9, 2016, <https://www.ft.lk/News/govt-insists-soldiers-will-not-be-target-of-omp/56-560317>; “MR Claims Missing Persons Office Will Betray Army,” *Daily Financial Times*, July 21, 2016, <https://www.ft.lk/article/556272/MR-claims-Missing-Persons-Office-will-betray-army>; Chandini Kirinde, “Joint Opposition Attempt to Sabotage Passage of Office of Missing Persons Bill Through Boisterous Conduct Backfires on Them,” *Sunday Times*, August 13, 2013; Mahinda Aluthgedara, “Bill on Office on Missing Persons, Risky,” *Daily News*, August 16, 2016, <http://www.dailynews.lk/?q=2016/08/16/political/90596>; Dharisha Bastians, “The Politics of the ‘Missing,’” *Daily Financial Times*, August 10, 2016, <https://www.ft.lk/dharisha-bastians/the-politics-of-the-missing/10476-560777>; Kamal Jayamanna, “Group of Former LG Members to Boycott SLFP’s 65th Convention,” *Daily News*, August 12, 2016, <http://www.dailynews.lk/?q=2016/08/12/local/90319>; “Enough Is Enough: Mangala Responds to MR,” *Daily Mirror*, July 31, 2016, <https://www.dailymirror.lk/113359/Enough-is-enough-Mangala-responds-to-MR>.

an effort to ‘betray the country’”.³⁶⁸ They also argued that the Enforced Disappearances Act was an attempt to subject Sri Lankan war heroes to the ICC.³⁶⁹

The response from the Government was muted. The High Commissioner repeatedly called on the government to develop a strategy for implementation and communicate it to the public.³⁷⁰ Minister Mangala Samaraweera was the only high-level figure who defended the reforms, publicly pushing back against misinformation and attacks.³⁷¹ An advisor involved in drafting the Enforced Disappearances law recalled that when it was pointed out to members of the government that these attacks needed a response, “no one was interested in defending the bill.”³⁷² The advisor described the process of attempting to enact the

³⁶⁸ Press Trust of India, “Mahinda Rajapaksa Slams Sri Lanka Missing Persons Bill”; “Govt. Insists Soldiers Will Not Be Target of OMP,” *Daily Financial Times*; “MR Claims Missing Persons Office Will Betray Army,” *Daily Financial Times*; Chandini Kirinde, “Joint Opposition Attempt to Sabotage Passage of Office of Missing Persons Bill Through Boisterous Conduct Backfires on Them,”

³⁶⁹ “Voting for Law Incorporating International Protocol against Enforced Disappearance is a Betrayal of Our Country- Mahinda Rajapaksa.” *The Island*, July 3, 2017; Bandara, Kelum. “Sri Lanka Will Be Submitted to Jurisdiction of ICC.” *Daily Mirror*. July 12, 2017.

<http://www.dailymirror.lk/article/Sri-Lanka-will-be-submitted-to-jurisdiction-of-ICC-132608.html>; “International Convention for Protection from Enforced Disappearances Bill A

Response by Professor G.L. Peiris.” *Daily Mirror*, July 21, 2017.

<http://www.dailymirror.lk/article/Int-l-Convention-for-Protection-from-Enforced-Disappearance-Bill-133199.html>; Chandraprema, C.A. “Incorporating Convention on Enforced Disappearances into Local Law Will Be Even More Dangerous than Setting up the Office on Missing Persons.” *Sunday Island*, September 16, 2017. <http://dbsjeyaraj.com/dbsj/archives/55214>.

³⁷⁰ United Nations Human Rights Council, “Report of the Office of the United Nations High Commissioner for Human Rights in Sri Lanka A/HRC/34/20,” February 10, 2017, para 12, 20; United Nations Human Rights Council, “Report of the Office of the High Commissioner for Human Rights A/HRC/40/23,” para 17, 21.

³⁷¹ “Enough Is Enough: Mangala Responds to MR,” *Daily Mirror*; Sandasen Marasinghe and Disna Mudalige, “OMP, a Mechanism to Help Truth Finding: Mangala,” *Daily News*, August 12, 2016, <https://www.dailynews.lk/2016/08/12/local/90327>; Samaraweera, Mangala. “Enforced Disappearance Bill The ICC and Sri Lanka’s International Obligations.”; Gunatilleke, Gehan. “Does Sri Lanka’s Enforced Disappearance Act Apply to the Past?” *Sunday Observer*, September 9, 2018. <https://www.sundayobserver.lk/2018/09/09/opinion/does-sri-lanka%E2%80%99s-enforced-disappearance-act-apply-past>.

³⁷² Attorney at Law who advised the Foreign Ministry between 2015 and 2018, interview with author, July 1, 2021.

law as follows: “I mean there were no champions for this law, so we were constantly trying to balance the ability to push this law through versus get it shot down at the outset... It was a negotiated process; it was not like the government wanted to pass a law and was trying to convince the public that this is a good idea. It was very much like a couple of people in civil society and few people in the foreign ministry, are trying to push this law and they're trying to convince government that this is a good idea.”³⁷³

Once draft laws were prepared, the process of getting Cabinet approval and tabling before parliament was chaotic and revealed both the fault lines within the coalition and the lack of cohesive political support for human rights reforms. Although the government ratified the Convention on Enforced Disappearances promptly, its incorporation into domestic law was delayed by more than two and a half years. The government twice scheduled to present the Enforced Disappearances Bill in parliament; however, in both instances, the bill was withdrawn amidst opposition from within the coalition.³⁷⁴

³⁷³ Ibid.

³⁷⁴ Human Rights Council. “Report of the Office of the United Nations High Commissioner for Human Rights on Sri Lanka.” United Nations, February 10, 2017, para 15; P. K. Balachandran, “Sirisena and Wickremesinghe Finding It Difficult to Implement Commitments on New Constitution and International Convention on Enforced Disappearances,” *Lankabusinessonline*, July 7, 2017, <http://dbsjeyaraj.com/dbsj/archives/54120>; Yusuf Ariff, “Parliament Road Closed Due to Protest over Disappearance Bill,” September 20, 2017, <http://www.adaderana.lk/news/43137/parliament-road-closed-due-to-protest-over-disappearance-bill>; Yusuf Ariff, “Enforced Disappearance Bill Won’t Be Taken up for Debate on Sep 21,” *Ada Derana*, September 19, 2017, <http://www.adaderana.lk/news/43105/enforced-disappearance-bill-wont-be-taken-up-for-debate-on-sep-21>; Himal Kotelawala, “Government Open to Talking to Mahanayaka Theros - SLFP,” *Daily Financial Times*, July 7, 2017, <https://www.ft.lk/article/626659/Govt.-open-to-talking-to-Mahanayaka-Theros—SLFP>

The Enforced Disappearances law was finally presented and debated in Parliament in March 2018, amidst the religious riots that were taking place in multiple parts of the country.³⁷⁵ Following a rushed parliamentary debate, it was enacted into law in March 2018, weeks before the UN High Commissioner for Human Rights was due to provide an update to the Council on the progress made by the government on its commitments under 30/1.³⁷⁶

During the debate on the Office on Missing Persons bill, opposition members aligned with former President Rajapaksa staged a protest inside the well of parliament, resulting in a brawl on the floor of parliament, and the debate was shortened to a mere two hours.³⁷⁷ Opposition groups other than those allied with President Rajapaksa sought to dilute the bill by proposing amendments that limited the ability of the Office to obtain outside financial and technical assistance.³⁷⁸ Once the bill received parliamentary support, President Sirisena delayed gazetting the bill for more than a year, preventing the operationalisation of the law.³⁷⁹

³⁷⁵ "Sri Lanka Violence: State of Emergency Declared over Attacks," *BBC*, March 6, 2018, <https://www.bbc.com/news/world-asia-43300913>.

³⁷⁶ "Parliament Debates (Hansard)." Colombo, Sri Lanka: Parliament of Sri Lanka, 7 March 2018, <https://www.parliament.lk/uploads/documents/hansard/1521196933014535.pdf>

³⁷⁷ Dharisha Bastians, "Govt. Turns Tables on JO to Pass Office of Missing Persons Law"; "Speaker Raps Joint Opposition," *Daily Financial Times*, August 13, 2016, <https://www.ft.lk/article/561362/Speaker-raps-Joint-Opposition>.

³⁷⁸ Office on Missing Persons (Establishment, Administration and Discharge of Functions) Act No. 14 of 2016, Parliament of the Democratic Socialist Republic of Sri Lanka (2016), Section 11, 21(b).

³⁷⁹ "Issues Regarding OMP Bill: President Requests Problems, Shortcomings in Writing: Keheliya," *Daily News*, August 20, 2016; Sulochana Ramiah Mohan, "Was Office of Missing Persons Gazetted by Govt Due to Visiting UN High Official Feltman Making Himself 'Felt' in Sri Lanka?," *Ceylon Today*, July 22, 2017; Centre for Policy Alternatives, "Press Release: Importance of Adhering to the Constitutional and Legal Framework in the Establishment and Operationalizing of the Office on Missing Persons (OMP)," July 24, 2017, <https://www.cpalanka.org/press-release-importance-of-adhering-to-the-constitutional-and-legal-framework-in-the-establishment-and-operationalizing-of-the-office-on-missing-persons-omp/>

The Office on Missing Persons and the Enforced Disappearances Act introduced important legal norms into the domestic context; however, they also had substantive flaws that reflected a reluctance to ensure accountability for human rights abuses. The Office on Missing Persons Act was the most significant law enacted by the government as part of its efforts to comply with Resolution 30/1. It was an explicit acknowledgement of the responsibility of the state to establish the fate and whereabouts of the missing and disappeared in Sri Lanka.³⁸⁰ The Office on Missing Persons Act gave a broad mandate and investigative powers to the Office; however, it prevented the findings of the Office from giving rise to criminal liability. Where it appears that a crime may have occurred, the Office may, after consultation with relatives of the missing person and considering the best interests of the victims, relatives, and society, report the offence to a law enforcement or prosecuting authority.³⁸¹ The ICRC advocates for a humanitarian approach in investigations into missing persons and played a lead role in advising the government during the drafting process in Sri Lanka.³⁸² As the ICRC mandate prevents their information from being used in a criminal justice process, the ICRC may also have been concerned about its ability to share information with the proposed Office.³⁸³ There are missing persons mechanisms elsewhere in the world, for example, in Northern Ireland, South Africa and Cyprus do not coordinate the search for a missing person

³⁸⁰ Office on Missing Persons Act 2016, preamble.

³⁸¹ Office on Missing Persons Act 2016, Section 12(1)(a)-(c).

³⁸² Senior NGO stakeholder, interview with author, July 7, 2021; Human Rights Lawyer, interview with author, September 8, 2021.

³⁸³ Human Rights Lawyer, interview with author, September 8, 2021.

with a criminal investigation.³⁸⁴ Given the opposition attacks that the bill seeks to ‘punish war heroes’, it is likely that the government also preferred for the office to have an exclusively humanitarian mandate.³⁸⁵ However, these provisions were heavily criticised by victims groups and NGOs, especially as international human rights law imposes an obligation to coordinate the search for the disappeared person with a criminal investigation.³⁸⁶

Similarly, the Enforced Disappearances Act was a landmark achievement for the evolution of human rights norms in Sri Lanka. In addition to criminalising enforced disappearances, it imposed an obligation on state authorities to identify the remains of a deceased victim of an enforced disappearances and return the remains to the family.³⁸⁷ Further, the law guaranteed a range of rights to detainees, including, for the first time under Sri Lankan law, the right to access a lawyer.³⁸⁸ The primary criticism regarding the law was that it failed to comprehensively incorporate the

³⁸⁴ Nasia Hadjigeorgiou, “The Committee on Missing Persons in Cyprus: A Humanitarian or Reconciliation-Promoting Institution?,” *Opinio Juris* (blog), December 23, 2020, <http://opiniojuris.org/2020/12/23/the-committee-on-missing-persons-in-cyprus-a-humanitarian-or-reconciliation-promoting-institution/>; “Independent Commission for the Location of Victims Remains,” accessed November 1, 2021, <http://www.iclvr.ie/en/iclvr/pages/confidentiality>.

³⁸⁵ Human Rights Lawyer, interview with author, September 8, 2021.

³⁸⁶ Committee on Enforced Disappearances, “Guiding Principles for the Search for Disappeared Persons,” Article 13, May 8, 2019, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/134/11/PDF/G1913411.pdf?OpenElement>; Working Group on Enforced or Involuntary Disappearances, “Follow-up on the Visits of the Working Group on Enforced or Involuntary Disappearances to Peru and Sri Lanka,” p. 51; Consultation Task Force, “Interim Report The Office on Missing Persons Bill and Issues Concerning the Missing, the Disappeared and the Surrendered,” August 2016; Centre for Policy Alternatives, “Office on Missing Persons: Outstanding Issues for Consideration to Strengthen Legislation and Post-Enactment Implementation,” July 2016; Medhaka Fernando and Isabelle Lassee, “Operationalizing the Office on Missing Persons: Manual of Best Practices” 6, 42.

³⁸⁷ International Convention for the Protection of All Persons from Enforced Disappearances Act 2018, Parliament of the Democratic Socialist Republic of Sri Lanka (2018), section 14, 23.

³⁸⁸ International Convention for the Protection of All Persons from Enforced Disappearances Act 2018, Sections 15, 16.

crime of enforced disappearances.³⁸⁹ The formulation of the offence failed to explicitly recognise the continuing nature of enforced disappearances and capture the full range of perpetrators who could be liable. Further, the law did not recognise enforced disappearances as a crime against humanity.³⁹⁰ The government's efforts to portray the law as only applying to 'future disappearances' drew sharp criticism from NGOs and Tamil lawmakers who argued that the government's real intention was to protect those responsible for widespread occurrences of enforced disappearances in Sri Lanka, whilst appearing to comply with international obligations.³⁹¹ However, it has been argued that in practice, it may be possible even under the existing formulation of the offence or relying on constitutional exception to construe the enforced disappearances as a continuing crime.³⁹² Ultimately, how the law is operationalised will depend on the view of a prosecutor regarding the scope of the offence, and the willingness of a court to accept such an interpretation.³⁹³

³⁸⁹ See Office on Missing Persons, "Interim Report," August 2018, para 26, <http://www.omp.gov.lk/storage/app/uploads/public/5fa/a52/8e4/5faa528e479e0618163564.pdf>; Human Rights Commission of Sri Lanka, Letter to His Excellency Maithripala Sirisena on the International Convention for the Protection of All Persons from Enforced Disappearances Bill (28 September 2017); South Asian Centre for Legal Studies, "Commentary on the Bill Titled International Convention for the Protection of All Persons from Enforced Disappearances" (Colombo, Sri Lanka, May 2017).

³⁹⁰ See International Convention for the Protection of All Persons from Enforced Disappearances Act No. 5 of 2018, Section 3.

³⁹¹ "Parliamentary Debates (Hansard)." Colombo, Sri Lanka: Parliament of Sri Lanka, 7 March 2018, The Hon. M. A. Sumanthiran, 182, <https://www.parliament.lk/uploads/documents/hansard/1521196933014535.pdf>

³⁹² Gunatilleke, Gehan. "Does Sri Lanka's Enforced Disappearance Act Apply to the Past?" *Sunday Observer*, September 9, 2018. <https://www.sundayobserver.lk/2018/09/09/opinion/does-sri-lanka%E2%80%99s-enforced-disappearance-act-apply-past>; South Asian Centre for Legal Studies, "Commentary on the Bill Titled International Convention for the Protection of All Persons from Enforced Disappearances", 22-23.

³⁹³ Attorney at Law who advised the Foreign Ministry between 2015 and 2018, interview with author, July 1, 2021.

The Office for Reparations Act established a framework for awarding reparations; however, it was significantly weaker in adhering to international human rights standards. The narrow powers assigned to the office and the limited way it defined “victims” were especially criticised, as they threatened to undermine the entire purpose of having an Office for Reparations.³⁹⁴ The original bill defined an “aggrieved person” as “a person who has suffered a *violation* of human rights or humanitarian law...” (emphasis added).³⁹⁵ However, prior to its enactment the definition of an “aggrieved person” was reviewed for its constitutionality before the Supreme Court.³⁹⁶ The Supreme Court held that clauses granting the authority to recommend compensation on the basis that a violation had occurred was an exercise of judicial power and was, therefore, unconstitutional.³⁹⁷ The Court proposed that the definition of aggrieved persons be amended to “persons who have suffered damages as a result of loss of life or damage to their person or property”.³⁹⁸

³⁹⁴ See Centre for Equality and Justice, “Reparations for Women in Sri Lanka: What Stakeholders Say” (Colombo, Sri Lanka: Centre for Equality and Justice), accessed March 26, 2024, <https://cejsrilanka.org/wp-content/uploads/Annex-19-Reparations-for-Women-in-Sri-Lanka-2.3.pdf>.

³⁹⁵ South Asian Centre for Legal Studies, “The Office for Reparations An Empty Shell?,” *Association of Tamils of Sri Lanka in the USA*, July 4, 2018, <https://sangam.org/office-reparations/>; Biraj Patnaik and Amnesty International South Asia Regional Director, “Letter to Hon. Prime Minister of Sri Lanka Regarding the Office for Reparations,” July 25, 2018, <https://www.amnesty.org/en/documents/asa37/9219/2018/en/>.

³⁹⁶ Office for Reparations Act No. 34 of 2018, Parliament of the Democratic Socialist Republic of Sri Lanka ((2018), Section 27.

³⁹⁷ G. D. de Silva and W. A. P. Senadeera v Attorney General (Supreme Court of Sri Lanka July 26, 2018).

³⁹⁸ Ibid.

Central to the idea of reparations is that they are awarded not merely on the basis of damage or loss suffered but on the basis of violations of human rights.³⁹⁹ NGOs had proposed that the definition of “aggrieved person” be amended to incorporate the definition of victim provided for in the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross violations of International Humanitarian Law.⁴⁰⁰ At the very least, aggrieved persons could have been defined as victims of *alleged* violations of international human rights law and international humanitarian law, as the Victim and Witness Protection Authority has the power to award compensation to *alleged* victims of crime.⁴⁰¹

With respect to its core mandate of awarding reparations, the Office for Reparations was limited to making recommendations to the cabinet regarding individual and collective reparations.⁴⁰² In such a context, the cabinet of ministers has complete discretion. It could disregard all recommendations made by the Office for Reparations and substitute policies and guidelines of its own making.⁴⁰³ Granting

³⁹⁹ United Nations General Assembly, “Resolution 60/147, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law A/RES/60/147,” December 15, 2007, Article IX <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-and-guidelines-right-remedy-and-reparation>; Fabian Salvioli, “Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence A/HRC/42/45” (United Nations, July 11, 2019), para 78, <https://documents.un.org/doc/undoc/gen/g19/213/93/pdf/g1921393.pdf?token=lmjdj6ZCNxtCCrjozo8&fe=true>; United Nations Human Rights Council, “Report of the Office of the United Nations High Commissioner for Human Rights A/HRC/37/23”, para 18.

⁴⁰⁰ Resolution 60/ 147 Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, para 8.

⁴⁰¹ Assistance to and Protection of Victims of Crime and Witnesses Act, No. 4 of 2015, Democratic Socialist Republic of Sri Lanka (2015), section 13, (f), 29(4). See section 46 of the same act for definition of victim, which includes victims of “alleged” offences.

⁴⁰² South Asian Centre for Legal Studies. “The Office for Reparations An Empty Shell?”.

⁴⁰³ Ibid.

complete and unfettered discretion to the cabinet, which is a political body, raises the risk that reparations could be delayed, awarded based on political considerations, or even exacerbate existing inequities within the state system.⁴⁰⁴ This is particularly worrying given that in the past, the cabinet has ignored standards set by state institutions and awarded compensation at its discretion.⁴⁰⁵

A lawyer involved in drafting the reparations law explained that the power to approve reparations was granted to cabinet out of necessity.⁴⁰⁶ As the office has the mandate to recommend a broad array of reparations policies that goes beyond merely awarding sums of money, for example, building physical infrastructure, providing educational programs and community development programs, the support of other ministries and the broader state apparatus was deemed as essential.⁴⁰⁷ Further it was observed that “no state apparatus is going to take instructions from an office, they need policies approved by cabinet.”⁴⁰⁸

Among the weakest legal reforms adopted were the amendments to Sri Lanka’s victim and witness framework. Under Resolution 30/1, the government committed to review the Assistance to and Protection of Victims of Crime and Witnesses Act

⁴⁰⁴ “Civil Society Raises Concerns with the Office for Reparations Bill.” *Sunday Observer*.

⁴⁰⁵ Patnaik, Biraj, Regional Director, Amnesty International South Asia. “Letter to Hon. Prime Minister of Sri Lanka Regarding the Office for Reparations”. For example, in the past although the Rehabilitation of Persons, Properties, and Industries Authority (REPPA) had determined a compensation amount of LKR 100,000 for victims of specified forms of violence, the cabinet has on an ad hoc basis awarded higher amounts of compensation for similarly situated victims in other contexts.

⁴⁰⁶ Legal Advisor to the Prime Minister, interview with author, July 2, 2021.

⁴⁰⁷ Ibid.

⁴⁰⁸ Ibid.

No. of 4 of (2015) and to strengthen it by making specific accommodations to protect witnesses and victims, investigators, prosecutors, and judges.⁴⁰⁹ The Victim and Witness Protection Act provided for a range of statutory rights to victims of crime and created two governing bodies: a National Authority for the Protection of Victims and Witnesses (the Authority) and a Victims of Crime and Witness Assistance and Protection Division (the Division).⁴¹⁰ OHCHR had highlighted that the victim and witness protection law established weak institutions and an inadequate framework for providing protection.⁴¹¹ The Protection Division, which is mandated to establish a national witness protection program, was staffed by the police personnel and was not financially or hierarchically independent from the Sri Lanka Police, an entity that has routinely faced allegations of perpetrating serious human rights crimes and threats against victims, witnesses and other justice collaborators.⁴¹² OHCHR also expressed concern that the law adopted a narrow definition of those entitled to protection, did not provide clear criteria for determining when protection should be given, and provided limited scope for obtaining testimony from remote locations.⁴¹³ Two years after committing to Resolution 30/1, the government enacted an amendment that only addressed one aspect of the above concerns, by facilitating for evidence to be provided via audio-

⁴⁰⁹ Human Rights Council, “30/1 Promoting Reconciliation, Accountability and Human Rights in Sri Lanka A/HRC/RES/30/1,” operative paragraph 9.

⁴¹⁰ The Protection of Victims of Crime and Witnesses Act (2015), sections 11, 20.

⁴¹¹ Office of the High Commissioner for Human Rights, Report of the Office of the High Commissioner for Human Rights Investigation on Sri Lanka A/HRC/30/CRP.2, para 1186.

⁴¹² Office of the High Commissioner for Human Rights, Report of the Office of the High Commissioner for Human Rights Investigation on Sri Lanka A/HRC/30/CRP.2, para 1188. The Division is headed by a Senior Superintendent of the Police nominated by the Inspector General of Police.

⁴¹³ Office of the High Commissioner for Human Rights, Report of the Office of the High Commissioner for Human Rights Investigation on Sri Lanka A/HRC/30/CRP.2, para 1189. .

visual linkages from overseas Sri Lankan missions.⁴¹⁴ The broader concerns regarding the Victim and Witness Protection Act remained unaddressed.

Constitutional reform

Although Resolution 30/1 included commitments to reform the constitution and devolve power, abolition of the executive presidency had been a central campaign promise of both major parties during the 2015 elections.⁴¹⁵ The devolution of political authority had also been a central political demand of Tamil political parties, even prior to the beginning of the war. Prior to the co-sponsorship of Resolution 30/1, in April 2015, the government enacted the 19th Amendment to the Constitution, which reversed the excesses of the Rajapaksa era. The 19th amendment curbed the powers of the president, re-introduced term limits on the presidency, re-introduced the independent appointment mechanism for senior public servants, enacted a right to information, reduced the size of future cabinets, and expanded the scope for judicial review prior to enactment of a law.⁴¹⁶

To be sure, during the first six months of the new government, the President and Prime Minister worked together to reverse the excesses of the Rajapaksa era by

⁴¹⁴ Assistance to and Protection of Victims of Crime and Witness (Amendment) Act, No. 27 of 2017, Parliament of the Democratic Socialist Republic of Sri Lanka (2017).

⁴¹⁵ Human Rights Council, “30/1 Promoting Reconciliation, Accountability and Human Rights in Sri Lanka A/HRC/RES/30/1,” operative paragraph 16.

⁴¹⁶ Constitution of Sri Lanka, (as amended by the 19th Amendment).

enacting the 19th Amendment. However, even negotiating the 19th Amendment revealed the opposing forces within the coalition.⁴¹⁷

Later, the government initiated broader constitutional reforms, which were never enacted. The government carried out separate national consultations on constitutional reforms, and, in March 2016 a constituent assembly was formed comprising all members of parliament to draft a new constitution.⁴¹⁸ The Constituent Assembly was led by a steering committee chaired by the Prime Minister and leaders of the political parties represented in parliament. Subcommittees of the of Constituent Assembly presented thematic reports to Parliament in December 2016.⁴¹⁹ From late 2016 onwards as infighting within the coalition escalated, the constitutional reform process unravelled. In 2017, the steering committee tabled an interim report presenting reform proposals regarding six areas not addressed by the subcommittees.⁴²⁰ The interim report authored by the steering committee, representing the major parties represented in parliament was

⁴¹⁷ Aruni Jayakody, "The Process of Constitutional Reform January to May 2015," in *The Nineteenth Amendment to the Constitution: Content and Context* (Colombo, Sri Lanka: Centre for Policy Alternatives, 2016), 33–53; Kalana Seneratne, "Constitutional Reform in a Multi-Polar Setting: The Negotiation of Competing Party Political Interests in the Promulgation of the Nineteenth and Twentieth Amendments," in *The Nineteenth Amendment to the Constitution: Content and Context* (Colombo, Sri Lanka: Centre for Policy Alternatives, 2016), 54–68.

⁴¹⁸ Public Representations Committee on Constitutional Reform, "Report on Public Representations on Constitutional Reform," 2016, https://constitutionnet.org/sites/default/files/sri_lanka_prc_report-english-final.pdf;

⁴¹⁹ "Presentation of Reports of the Sub-Committees of the Constitutional Assembly," 2016, <https://www.parliament.lk/en/news-en/view/1274/?category=6>.

⁴²⁰ The Constitutional Assembly of Sri Lanka, "The Interim Report of the Steering Committee," September 21, 2017, https://constitutionnet.org/sites/default/files/2017-09/Interim%20Report%20of%20the%20Steering%20Committee%20of%20the%20Constitutional%20Assembly%20of%20Sri%20Lanka_21%20September%202017.pdf. Subject areas addressed by the steering committee included the unitary nature of the state, role of religion, principles of devolution, state land, second chamber and electoral system and the executive.

intended to form the basis for a draft of the new constitution.⁴²¹ However, owing to the political deadlock, further progress in developing a draft was not possible. To salvage the process, the steering committee appointed another expert committee to develop a discussion paper on possible reforms.⁴²² Although labelled a ‘discussion paper’, the document prepared by the expert committee, in fact, contained draft language for a new constitution. The discussion paper had been prepared and was due to be tabled in October 2018; however, it was never presented to parliament due to the 52-day constitutional crisis and the subsequent Easter Sunday attacks.⁴²³

Both Sirisena and Wickremesinghe were careful when speaking about reform proposals to avoid suggesting that there would be any substantive changes, especially on matters such as power sharing.⁴²⁴ Cabinet and other ministers also made no efforts to explain the content or rationale of the constitutional proposals to the public. At times, key ministers and officials appeared to lack even a basic understanding of proposed reforms.⁴²⁵ As was the case with the human rights reforms, the loudest voices on constitutional reforms were former president Rajapaksa and his allies, who portrayed the reforms as seeking to divide the country

⁴²¹ Welikala, “Sri Lanka’s (Un)Ending Road to a New Constitution: Technical Progress, Political Collapse.”

⁴²² Sandun Jayasekara, “New Constitution for Sri Lanka : Ten Experts Working on Initial Draft of Constitution,” *Daily Mirror*, July 25, 2019, <https://www.dailymirror.lk/article/New-Constitution-for-Sri-Lanka-ten-experts-working-on-initial-draft-of-Constitution-153130.html>.

⁴²³ The Constitutional Assembly of Sri Lanka, “Discussion Paper of the Experts Committee,” January 11, 2019.

⁴²⁴ Welikala, “An Anatomy of Failure: The 2014-18 Sri Lankan Constitutional Reform Exercise in Context.” 85.

⁴²⁵ Welikala, “An Anatomy of Failure: The 2014-18 Sri Lankan Constitutional Reform Exercise in Context.” 89.

through federalism and undermine the foremost place accorded to Buddhism in the Sri Lankan constitution.⁴²⁶

New institutions

The government was required to establish several new institutions to comply with Resolution 30/1. The most urgent and time sensitive was a mechanism for conducting national consultations on the design and implementation of the reforms committed to under Resolution 30/1. It was also required to establish and operationalise the Office on Missing Persons, the Office on Reparations, and two new institutions mandated under the victim and witness protection law.

Like the law-making process, there were significant delays in establishing the new institutions. Three months after the co-sponsorship of Resolution 30/1, the Prime Minister appointed 11 members to the Consultation Task Force on Reconciliation Mechanisms to carry out national consultations on the human rights reforms committed to under Resolution 30/1.⁴²⁷ It was initially due to complete its work within five months; however, the final report of the Consultation Task Force was not handed over to the government until eleven months later on 3 January 2017.⁴²⁸ The Office on Missing Persons was made operational in 2018, following a two-year

⁴²⁶ Welikala, "An Anatomy of Failure: The 2014-18 Sri Lankan Constitutional Reform Exercise in Context." 84.

⁴²⁷ The Consultation Task Force had the following members: Ms. Manouri Muttetuwegama (Chair), Dr. Pakiasothy Saravanamuttu (Secretary), Ms. Shantha Abhimanasingham, Ms. Visaka Dharmadasa, Dr. Farzana Haniffa, Mr. K. W. Janaranjana, Professor Sitralega Maunuguru, Mr. Mirak Raheem, Professor Gameela Samarasinghe, Professor Daya Somasundaram, and Mr. Gamini Viyangoda.

⁴²⁸ "Final Report of the Consultation Task Force on Reconciliation Mechanisms (Volume I)," 13.

delay following its initial enactment. Despite the delay, civil society groups welcomed those finally appointed to the board.⁴²⁹ The Office for Reparations Act was operationalised in April 2019, six months after its enactment. The six-month delay was caused by the constitutional coup that occurred from October to December 2018.

The government initially operationalised the Victim and Witness Protection Act by appointing a chairperson to the Victim and Witness Protection Authority in 2015; however, he resigned, claiming that necessary human and financial resources had been allocated.⁴³⁰ New members were appointed in January 2016; however, it was discovered that an error had been made; although the Minister of Justice is supposed to make the appointments, he had not been assigned the responsibility for operationalising the law by the President prior to making the initial appointment.⁴³¹ The appointment process was repeated, effective from 11 August 2016.⁴³² Two of

⁴²⁹ President's Counsel Mr. Saliya Pieris, a leading criminal defence lawyer who had appeared in fundamental rights cases was appointed as the Chairperson. Three commissioners from civil society backgrounds were appointed: Mr. Mirak Raheem, Dr. Nimalka Fernando, Mr. K. Venthen. A representative of the families of the missing and disappeared Ms. Punniyamoorthy Jayatheepa who had searched for her husband for many years was also appointed. Further a former public servant and lawyer Mr. S. K. Liyanage, and reportedly to appease the various factions one former military official was appointed, Major General (Retired) Mohanti Peiris. The latter appointment drew criticism from some quarters, see: Special Correspondent, "Witness as Investigator: Conflict of Interest in Sri Lanka's OMP," *Journalists for Democracy in Sri Lanka*, August 13, 2018, <http://www.jdslanka.org/index.php/news-features/human-rights/798-omp-conflict-of-interest>.

⁴³⁰ Wijedasa, Namini. "New Police Division to Be Operated Soon to Protect Crime Victims and Witnesses," September 11, 2016. <http://www.sundaytimes.lk/160911/news/new-police-division-to-be-opened-soon-to-protect-crime-victims-and-witnesses-208415.html>.

⁴³¹ Namini, Wijedasa. "Victims and Witnesses: No Protection, but Persecution." *The Sunday Times*, July 31, 2016. <http://www.sundaytimes.lk/160731/news/victims-and-witnesses-no-protection-but-persecution-202919.html>.

⁴³² National Authority for the Protection of Victims of Crime and Witnesses, "Annual Report," 6 2017, <https://www.parliament.lk/uploads/documents/paperspresented/annual-report-national-authority-for-protection-of-victims-2017.pdf>.

the new members were alleged perpetrators of serious human rights abuses and another two had serious conflicts of interests.⁴³³

Once established, each institution failed to operationalise its core mandate. The Office on Missing Persons collated information and observed five magisterial inquiries into human remains.⁴³⁴ It also made recommendations to state authorities related to interim relief, justice, and non-recurrence.⁴³⁵ Notably one of these recommendations was implemented and 153 families of missing and disappeared persons received interim-relief payments.⁴³⁶ The Office on Missing Persons

⁴³³ Nandana Munasinghe had previously served as the Director of the Terrorism Investigation Division and the Criminal Investigation Department. Then Special Rapporteur on Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, Manfred Nowak, following a visit to Sri Lanka in 2006, had singled out Nandana Munasinghe as an alleged perpetrator of torture that should be investigated: see United Nations Human Rights Council, “Report of the Special Rapporteur on Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, Manfred Nowak on His Visit to Sri Lanka A/HRC/7/3/Add.6,” February 26, 2008, para 13, <https://digitallibrary.un.org/record/622163?v=pdf>. Ashoka Wijethilake was a senior police official who had served as the Director of the Criminal Investigation Department in 2006. Given the allegations of torture against the Criminal Investigation Department, especially during the war, questions were raised as to his suitability to serve in Authority. Suhada Gamlath the Chairperson at the time of his appointment also served as the Solicitor General, which is the second highest position in the Attorney General’s Department. Similarly, Yasantha Kodagoda served as the Additional Solicitor General at the time of his appointment, another senior position in the Attorney General’s Department. See International Truth and Justice Project, “Putting the Wolf to Guard the Sheep Sri Lanka’s Witness Protection Authority,” February 13, 2017, <https://sangam.org/wp-content/uploads/2017/02/ITJP-Sri-Lanka-Witness-Protection-Report.pdf>; Asian Human Rights Commission. “Sri Lanka: AHRC Writes to the Ministers of Foreign Affairs and Justice on the Torture Committee under the National Human Rights Action Plan,” September 13, 2016. <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-141-2016/?searchterm=yasantha>.

⁴³⁴ Office on Missing Persons, “Annual Report,” 2020, para 3.1-3.8, <http://www.omp.gov.lk/storage/app/uploads/public/604/847/009/604847009edfb770550416.pdf>. One magisterial inquiry concerning a suspected gravesite where more than 300 skeletons had been uncovered, the Office provided technical and financial assistance to the investigation including to carbon date bone and teeth samples from the site. See Office on Missing Persons, “Annual Report,” 2019, para 3.33-3.42, <http://www.omp.gov.lk/storage/app/uploads/public/601/142/db5/601142db52d27533751009.pdf>.

⁴³⁵ Office on Missing Persons, “Interim Report,” para 47.

⁴³⁶ 153 families had received interim relief valued at 7 million Sri Lankan rupees, see Office on Missing Persons, “Annual Report,” 2020, para 2.25.

became the first state institution to commemorate the International Enforced Disappearances Day and acknowledge the widespread nature of the missing and disappeared in Sri Lanka.⁴³⁷ By the end of its first term, the Office published a list of missing and disappeared persons, including missing in action personnel, the first time a state institution had acknowledged the occurrence of disappearances without any limitations of geography or time.⁴³⁸ However, human rights organisations both within and outside of Sri Lanka remained critical and highlighted that the Office had failed to trace a single missing person during its first term.⁴³⁹ The Office was criticised for acting similar to other ineffectual state commissions of inquiry, merely making observations and recommendations rather than using its investigative powers.⁴⁴⁰ This was made worse by the Office's own admission that its recommendations related to justice and non-recurrence remained unimplemented.⁴⁴¹

⁴³⁷ Office on Missing Persons, "Annual Report," 2018, para 6.2-6.4.

⁴³⁸ "The Office on Missing Persons (OMP) Publishes a List of Complaints and Information Regarding Missing and Disappeared Persons," Sri Lanka Brief, November 26, 2020, <https://srilankabrief.org/the-office-on-missing-persons-omp-publishes-a-list-of-complaints-and-information-regarding-missing-and-disappeared-persons/>.

⁴³⁹ Ratnajeewan Hoole, "As The OMP Celebrates A New Office In Jaffna, I Remember & Will Not Forget," August 25, 2019, <https://www.colombotelegraph.com/index.php/as-the-omp-celebrates-a-new-office-in-jaffna-i-remember-will-not-forget/>; Ruki Fernando, "Disappearances in Sri Lanka: 500 Days of Protests," *Sunday Observer*, May 29, 2022; International Truth and Justice Project and Journalists for Democracy in Sri Lanka, "Continuing Crimes – Matale to Mullivaikkal," December 14, 2020, <https://itjpsl.com/assets/Final-OMP-Press-release-4-December-2020-copy.pdf>; United Nations Human Rights Council, "Report of the Office of the High Commissioner for Human Rights A/HRC/40/23," para 22.

⁴⁴⁰ Amnesty International. "Sri Lanka: The Government Cannot Afford to Fail the Office on Missing Persons," October 21, 2018. <https://www.amnesty.org/en/latest/news/2018/10/sri-lanka-the-government-cannot-afford-to-fail-the-office-on-missing-persons/>; Dibbert, Taylor. "Post-War Justice in Sri Lanka Inches Forward." *The Interpreter*, October 2, 2018. <https://www.lowyinstitute.org/the-interpreter/post-conflict-justice-sri-lanka-inches-forward>.

⁴⁴¹ Office on Missing Persons, "Annual Report," 2019, para 2.23-2.42.

As the Office for Reparations was only operationalised a mere seven months before the end of the Sirisena-Wickremesinghe government in November 2019, its accomplishments were limited. None of newly appointed members had strong human rights credentials.⁴⁴² Unlike other newly established institutions, the Office for Reparations had the advantage of replacing an existing office (the Rehabilitation of Persons, Properties, and Industries Authority); thus, it was able to operationalise its mandate more efficiently. Within weeks of the appointment of the new Board, the Office was mandated by the Cabinet to award compensation to victims of the 2019 Easter Sunday attacks.⁴⁴³

The Authority and Division mandated to protect victims and witnesses also failed to operationalise its core mandate. The Authority received 12 complaints in 2016; 49 complaints in 2017 and 70 in October 2018.⁴⁴⁴ According to the Authority, a majority of these were processed and police protection was provided in two cases.⁴⁴⁵ As of 2018, two Magistrates had made orders relying on the Victim Protection law.⁴⁴⁶ Victims who had sought protection from the Authority complained that the only response was to inform the complainant that the threat

⁴⁴² "Commissioners Appointed to the Office for Reparations." *Colombo Page*, April 4, 2019.

⁴⁴³ Ibid. The Easter Sunday attacks resulted in the death of at least 253 persons and injured more than 500, see "Sri Lanka Attacks: What We Know about the Easter Bombings," *BBC*, April 28, 2019, <https://www.bbc.com/news/world-asia-48010697>; Office for Reparations, "Annual Report," 2019, <https://drive.google.com/file/d/1SLovETbFJhiCrWsmcf59ucH1m9o6-RMB/view>, 78-29.

⁴⁴⁴ Wijedasa, Namini. "Victims and Witness Authority Carries out Duties in Spite of Hurdles," October 21, 2018. <http://www.sundaytimes.lk/181021/news/victims-and-witnesses-authority-carries-out-duties-in-spite-of-hurdles-316842.html>. See also National Authority for the Protection of Victims of Crime and Witnesses. "Annual Report," 2017, 6-7.

⁴⁴⁵ National Authority for the Protection of Victims of Crime and Witnesses. "Annual Report," 2017, 7.

⁴⁴⁶ Wijedasa, "Victims and Witness Authority Carries out Duties in Spite of Hurdles."

was “being analysed” and that no protection was provided in the interim.⁴⁴⁷ At least six individuals involved in high profile criminal investigations had contacted the Authority seeking protection but had not received support.⁴⁴⁸

Operationalisation of these institutions was hampered by lack of financial and human resources, and lack of technical capacity. All the new institutions had challenges accessing funds, securing physical resources, and recruiting skilled staff at approved government salaries. The Consultation Task Force was not provided with timely financial and human resources to carry out its work. None of the members were remunerated for their role, and “most members continued at least a portion of their existing work commitments.”⁴⁴⁹ It identified the “unavailability of funds” as the most significant cause of delay in its work.⁴⁵⁰ Despite being appointed in January 2016, the Consultation Task Force did not have formal offices until six months later in June, and it had no staff in the first three months and only had managed to recruit six staff in the fourth month.⁴⁵¹ Select essential staff, such as skilled translators, declined to carry out their work owing to delays in payments.⁴⁵²

⁴⁴⁷ Borham, Maneshika. “Witness Protection Authority: Still Faltering after Three Years.” *Sunday Observer*, February 24, 2019. <http://www.sundayobserver.lk/2019/02/24/news-features/witness-protection-authority-still-faltering-after-three-years>.

⁴⁴⁸ Five of the six witnesses were involved in the emblematic cases discussed below. The six witnesses who were not provided, assistance or protection included: Sudesh Nadimal a witness in the Welikada Massacre case, Senaka Perera lawyer in the Welikada Massacre case, Shamila Liyanaarachchi, wife of witness in Welikada massacre case, Kasun Pussawela, witness in Welikada case; Lt. Commander Krishan Welagedeara, witness in Navy 11 abduction case, and Priyadarshani Epitawala, Staff at Sri Lankan Airlines. See, Borham, Maneshika. “Witness Protection Authority: Still Faltering after Three Years.”

⁴⁴⁹ “Final Report of the Consultation Task Force on Reconciliation Mechanisms (Volume I),” 12.

⁴⁵⁰ “Final Report of the Consultation Task Force on Reconciliation Mechanisms (Volume I),” 31.

⁴⁵¹ “Final Report of the Consultation Task Force on Reconciliation Mechanisms (Volume I),” 12, 31-2. By the end of the consultations the team had expanded to 48 staff.

⁴⁵² “Final Report of the Consultation Task Force on Reconciliation Mechanisms (Volume I),” 32.

Although the Office on Missing Persons was allocated a generous budget of 1.2 billion Rupees in its first year of operation, the Office could not spend the money and was undermined by lack of staff, technical capacity, and support from other government departments. Onerous red tape, lack of staff and lack of capacity among the existing staff are key reasons for its failure. A former board member of the Office on Missing Persons explained that at the time of their appointment, the Office did not have a physical premises, any physical infrastructure, or any other staff.⁴⁵³ In contrast, other institutions such as the Human Rights Commission, which saw more progress, had the advantage of having basic systems in place that were operational at the time of the appointment of the new board. Despite having a heavy workload, similar to the position within the boards of other state institutions, several of the seven Office on Missing Persons board members worked full time elsewhere.⁴⁵⁴ At least one member was appointed on the condition that they would be free to carry-on full-time employment elsewhere.⁴⁵⁵ Retaining a board that can give their full time to a state institution remains a challenge as salaries for members don't reflect the work required from a full time appointment.⁴⁵⁶

Although the independence of the Office on Missing Persons is provided for through the security of tenure of its board, the institution is not “functionally independent”.⁴⁵⁷ A former member of the board explained that in reality, to carry

⁴⁵³ Former member of the Office on Missing Persons, interview with author, August 16, 2021.

⁴⁵⁴ Ibid.

⁴⁵⁵ Former member of the Office on Missing Persons, interview with author, August 16, 2021.

⁴⁵⁶ Ibid.

⁴⁵⁷ Ibid.

out work, especially anything that requires the expenditure of funds, the Office requires approvals from various other ministries.⁴⁵⁸ When seeking the approval and cooperation of other state agencies “those other agencies and don’t have the same sense of urgency that [the Office] would have”.⁴⁵⁹ As a result, even though a generous budget was allocated in its first year, the money was not physically made available to the Office to spend at its discretion.⁴⁶⁰ The budgetary allocations are available in segments and require the institution to follow lengthy processes and procedures relating to procurement and recruitment, which took the most of its first year and resulted in only a small portion of the allocated budget being used.⁴⁶¹

The Office on Missing Persons proposed recruiting 355 staff for its head office and regional offices, and only obtained approval to do so after negotiating for one year.⁴⁶² Upon advertising the vacancies, it received more than 22,000 responses.⁴⁶³ Despite this overwhelming response, the Office was unable to fill 224 positions.⁴⁶⁴ The Office explained that it faced challenges in recruiting individuals with sufficient skills and experience at the approved remuneration rates.⁴⁶⁵ In particular key positions such as Executive Director for managing day to day operations of the Office, communications unit and most importantly the entire investigations unit remained vacant.⁴⁶⁶

⁴⁵⁸ Ibid.

⁴⁵⁹ Ibid.

⁴⁶⁰ Ibid.

⁴⁶¹ Ibid.

⁴⁶² Office on Missing Persons, “Annual Report,” 2020, para 6.7

⁴⁶³ Ibid.

⁴⁶⁴ Ibid.

⁴⁶⁵ Ibid.

⁴⁶⁶ Ibid.

During its first term the Office on Missing Persons received significant assistance from external donors to build its technical capacity.⁴⁶⁷ The external assistance provided came in the form of United Nations volunteers and consultants and financial assistance to set up two of its regional offices.⁴⁶⁸ In particular, external actors supported the OMP to develop forensic skills, which strengthened the OMP's capacity to participate in five investigations into unidentified human remains.⁴⁶⁹ Through its involvement in these investigations, the OMP facilitated the direct participation of families of the missing and disappeared in investigations.⁴⁷⁰ A former member of the Office stated that "the problem with relying too much on donor assistance is that it's then very dependent on how much the donors are willing to spend and support. In our case they were willing to support...I don't know whether there is anything more donors they could have done... It needed more support from the state."⁴⁷¹

The Office on Missing Person's operationalisation was also hampered by lack of capacity among other state institutions whose mandate is closely connected to the missing and disappeared. For example, the full operationalisation of its mandate required the assistance and cooperation of the Police, Police Scene of the Crime

⁴⁶⁷ Office on Missing Persons, "Annual Report," 2019, paras 3.28, 4.3.1; See United Nations Human Rights Council, "Report of the Office of the High Commissioner for Human Rights .A/HRC/40/23," para 6.

⁴⁶⁸ United Nations Human Rights Council, "Report of the Office of the High Commissioner for Human Rights .A/HRC/40/23," para 6.

⁴⁶⁹ Office on Missing Persons, "Annual Report," 2020, para 3.5, 3.8; Office on Missing Persons, "Annual Report," 2019, para 4.30, 4.31.

⁴⁷⁰ Office on Missing Persons, "Annual Report," 2020, para 3.8.

⁴⁷¹ Former member of the Office on Missing Persons, interview with author, August 16, 2021.

Officers, Judicial Medical Officers and Magistrates who are responsible for the investigation and identification of human remains.⁴⁷² Similarly the full operationalisation of its mandate relating to Certificates of Absence require state authorities responsible for issuing key documents including village and district level officials (e.g. Grama Niladharis, Divisional Secretaries) Police and the Department of the Registrar General to properly carry out their duties.⁴⁷³ Yet, in the course of carrying out its work the Office on Missing Persons observed significant capacity constraints in how these other state institutions carry out their work. For example, state institutions mandated to investigate human remains lacked the necessary procedures, equipment, and knowledge to identify remains.⁴⁷⁴ Village, district, and national level institutions with a mandate to issue Certificates of Absence were unaware or lacked clarity regarding their duties.⁴⁷⁵ Regarding such challenges a former member of the Office stated that “what can you say? ... that is part of various endemic problems which are there in the public service... Well, unless there is a radical change in the way the public service operates those are not going to change.”⁴⁷⁶

Upon establishment, the Victim and Witness Protection Authority was allocated a budget of 15 million Sri Lankan Rupees and premises; however, it lacked staff,

⁴⁷² Office on Missing Persons, “Annual Report,” 2019, para 3.40; Office on Missing Persons, “Annual Report,” 2020, para 2.33-2.47.

⁴⁷³ Office on Missing Persons, “Annual Report,” 2019, paras 2.6 – 2.11.

⁴⁷⁴ Office on Missing Persons, “Annual Report,” 2020, paras 2.33-2.47; Final Report of the Consultation Task Force on Reconciliation Mechanisms, Volume I, 73, 228; Interim Report of the Consultation Task Force on Reconciliation Mechanisms, 27, 50, 73; Western, Southern and Sabaragamuwa Final Report Volume I, p. 178.

⁴⁷⁵ Office on Missing Persons, “Annual Report,” 2019, para 2.11.

⁴⁷⁶ Former member of the Office on Missing Persons, interview with author, August 16, 2021.

furniture, computers, air conditioning or even functioning toilets.⁴⁷⁷ As of 31st December 2017, approximately 50% of staff positions had been filled at the Authority.⁴⁷⁸ However, key positions such as Director General and Director of Assistance and Protection remained vacant. According to Authority, there was “very little experience in the sector,” and “competent professionals were reluctant to join State institutions as salaries and entitlements were not attractive.”⁴⁷⁹ The Authority also stated that it does not have funds to set up safe-houses, re-identification, permanent relocation, temporary or permanent employment.⁴⁸⁰ The Authority’s mandate to provide compensation to victims was not operationalised owing to a lack of funds.⁴⁸¹ International partners provided financial and technical assistance to address these challenges; for example, in 2017, UNDP had provided assistance valued at 40 million rupees to the Authority to develop its programs and secure infrastructure facilities.⁴⁸² Further United Nations Office on Drugs and Crime and the British High Commission had conducted workshops for the Authority.⁴⁸³

⁴⁷⁷ Wijedasa, “Victims and Witness Authority Carries out Duties in Spite of Hurdles.”; National Authority for the Protection of Victims of Crime and Witnesses. “Annual Report,” 2017, p. 7.

⁴⁷⁸ National Authority for the Protection of Victims of Crime and Witnesses. “Annual Report,” 2017, p. 6.

⁴⁷⁹ Wijedasa, “Victims and Witness Authority Carries out Duties in Spite of Hurdles.”

⁴⁸⁰ Ibid.

⁴⁸¹ Ibid.

⁴⁸² National Authority for the Protection of Victims of Crime and Witnesses. “Annual Report,” 2017., p. 4; Wijedasa, “Victims and Witness Authority Carries out Duties in Spite of Hurdles.”

⁴⁸³ National Authority for the Protection of Victims of Crime and Witnesses. “Annual Report,” 2017, p. 7

Ten out of the 11 appointed members of Victim and Witness Authority held other full-time, senior positions elsewhere.⁴⁸⁴ Therefore, it was unclear how the Board could invest time and energy to establish and operationalise a new law to which no other physical or human resources had been allocated.⁴⁸⁵

None of the institutions complained of outright political interference; however, the political instability at the national level had direct and adverse consequences for the ability of these new institutions to effectively operationalise their mandates. The Office on Missing Persons was operationalised in February 2018, as the coalition between the President and Prime Minister was unravelling. Within ten months of the appointment of the Board, a constitutional coup took place, bringing the country to a halt for 52 days, and in its second year, the Easter Sunday bombings took place, adding to the instability. A former member of the Office on Missing Persons explained that although the Office didn't have any problems with direct political interference in its work, no state institution works in an abstract.⁴⁸⁶ The former

⁴⁸⁴ The Authority had seven ex officio appointees: Additional Solicitor General Yasantha Kodhakoda, Deputy Inspector General of Police Nandana Munasinghe, Additional Secretary Ministry of Justice Pyumanthi Peris, Additional Secretary Ministry of Women and Children's Affairs Ashoka Agalawatta, Additional Secretary Ministry of Law and Order and Southern Development, and Vice-Chairman, National Child Protection Authority. The Authority also had three other individuals appointed at the discretion of the President, who also had fulltime positions elsewhere: Dr. Ajith Tennakoon was the State's Chief Judicial Medical Officer, Dr Neil Fernando was a practicing psychiatrist and a senior lecturer, Mr. Udayakumara Amarasinghe was a Senior Lecturer.

⁴⁸⁵ According to media reports, the Board met fortnightly to supervise the work of the Authority. See, Wijedasa, "Victims and Witness Authority Carries out Duties in Spite of Hurdles," October 21, 2018. <http://www.sundaytimes.lk/181021/news/victims-and-witnesses-authority-carries-out-duties-in-spite-of-hurdles-316842.html>.

⁴⁸⁶ Former member of the Office on Missing Persons, interview with author, August 16, 2021.

member explained that although “we didn’t look at the political fallout of a decision... one will think how best to strategize in a political climate.”⁴⁸⁷

Critically, the Consultation Task Force received little political support or endorsement of its work.⁴⁸⁸ Once the work of the national consultation process was completed a formal event had been scheduled to hand over the report to the President and or the Prime Minister; however, neither attended the event. The report was later handed over to the President at a private meeting. Although the Consultation Task Force was appointed by the Prime Minister, a member of the legislature, the final report was also not tabled in parliament. Many saw this as another sign of the lack of political leadership offered to the implementation of 30/1 commitments.⁴⁸⁹ Cabinet ministers showed little enthusiasm for the report, with the then Minister for Justice rejecting the report claiming he had ‘no confidence’ in the Consultation Task Force and noted that some of the members of the Task Force were “representatives of the non-governmental organizations.”⁴⁹⁰ Another cabinet minister similarly dismissed the report as “fulfilling the needs of the LTTE loyalists”.⁴⁹¹

⁴⁸⁷ Ibid.

⁴⁸⁸ “Final Report of the Consultation Task Force on Reconciliation Mechanisms (Volume I),” vii-viii.

⁴⁸⁹ Fonseka, “Transitional Justice in Sri Lanka: Lessons So Far and the Long Road Ahead.”

⁴⁹⁰ Pothmulla, Lahiru. “I Have No Confidence in the CTF: Wijedasa.” *Daily Mirror*, January 6, 2017. <https://www.dailymirror.lk/article/i-have-no-confidence-in-the-CTF-Wijeyadasa-121817.html>.

⁴⁹¹ “Sri Lanka Minister Says CTF SL Report Fulfils LTTE’s Needs,” *Sri Lanka Brief*, December 1, 2017, <https://srilankabrief.org/sri-lanka-minister-says-ctf-sl-report-fulfills-lttes-needs/>.

Existing institutions

Commitments to prosecute human rights abuses, operationalise the Enforced Disappearances Act, undertake security sector reform, release land held by the military required the government to ensure that existing institutions such as the Police, Attorney General's Department and relevant thematic ministries functioned effectively. However, these institutions lacked the technical capacity and independence to function effectively.

Criminal investigations and prosecutions

The government made important progress on eleven of the twelve emblematic criminal investigations initiated under the Rajapaksa era. Observers noted that despite the lack of convictions, the extent of progress made in these criminal investigations was rare, as previous governments had been largely unwilling to carry out criminal investigations into human rights abuses that had occurred under their predecessor, especially where the alleged perpetrator was a state actor.⁴⁹² Twelve criminal investigations and prosecutions into emblematic human rights abuses that begun under the Rajapaksa administration were pursued with renewed vigour and made progress under the new government.⁴⁹³ However, none of the

⁴⁹² Uyangoda, "Making Sense of the October Conflict and Its Aftermath," 124; Bastians, "The Siege: Inside 52 Days of Constitutional Crisis in Sri Lanka," 74.

⁴⁹³ The 12 emblematic cases were into the following incidents: massacre of 23 Tamil civilians by an army soldier in 1996 in Kumarappuram; assassination of Tamil member of parliament Joseph Pararajasingham in 2005; killing of 17 aid workers from Action Contre la Faim, a French NGO in Muttur in 2005; killing of five students in Trincomalee in 2006; assassination of Tamil member of parliament Nadarajah Raviraj in 2006; abduction of 11 youth by Navy personnel 2008-09; abduction of journalist Keith Noyahr in 2008; assassination of journalist Lasantha Wickremetunga in January 2009; disappearance of cartoonist Prageeth Ekneligoda in January 2010; murder of Wasim Thajudeen in 2012; death of 27 inmates at Welikada prison in 2012; and killing of unarmed protestors at Weliweriya in 2013. See United Nations Human Rights Council, "Report of

cases resulted in convictions. Six criminal investigations that were reopened after 2015 were concluded; with indictments being issued in five cases.⁴⁹⁴ Three trials that commenced before 2015, were concluded and resulted in acquittals.⁴⁹⁵ However, hundreds of other cases remained uninvestigated. Despite arresting and detaining one former leader and another member of the LTTE, neither were indicted or prosecuted.⁴⁹⁶ No new investigations were initiated into incidents that were

the Office of the United Nations High Commissioner for Human Rights in Sri Lanka A/HRC/34/20," para 31-42; United Nations Human Rights Council, "Report of the Office of the United Nations High Commissioner for Human Rights A/HRC/37/23," para 31-37; Human Rights Watch, "Open Wounds and Mounting Dangers Blocking Accountability for Grave Abuses in Sri Lanka," 2021, <https://www.hrw.org/report/2021/02/01/open-wounds-and-mounting-dangers/blocking-accountability-grave-abuses-sri-lanka>; Centre for Policy Alternatives, "Revisiting Ten Emblematic Cases in Sri Lanka: Why Justice Remains Elusive," 2021, <https://www.cpalanka.org/wp-content/uploads/2021/01/Revisiting-Ten-Emblematic-Cases-in-Sri-Lanka-final-draft-1.pdf>.

⁴⁹⁴ The criminal investigations concerning abduction of Keith Noyahr was completed but no indictments were issued, see Human Rights Watch, "Open Wounds and Mounting Dangers Blocking Accountability for Grave Abuses in Sri Lanka," 54, 49. Indictments were issued in the abduction of 11 youth, murder of Wasim Thajudeen, and killing of unarmed protestors at Weliveriya cases; however, the criminal trials did not commence, see "Indictments to Be Filed against Former Navy Commander over Abduction of 11 Youths," *Tamil Guardian*, October 16, 2019, <https://www.tamilguardian.com/content/indictments-be-filed-against-former-navy-commander-over-abduction-11-youths>; "The Thajudeen Saga: Murder Cover-up Trial Set to Begin in October," *Sunday Observer*, July 21, 2019, <http://www.sundayobserver.lk/2019/07/21/thajudeen-saga-murder-cover-trial-set-begin-october>; "Brigadier, Three Soldiers Indicted on 96 Counts," *News.Lk*, September 12, 2019, <https://www.news.lk/news/political-current-affairs/item/27210-brigadier-three-soldiers-indicted-on-96-counts>. Indictments were issued and trials commenced into the disappearance of Prageeth Ekneligoda and death of inmates at Welikada prison cases, see "Prageeth Ekneligoda Case: Nine Army Officials Indicted," *Daily Mirror*, November 27, 2019, https://www.dailymirror.lk/breaking_news/Prageeth-Ekneligoda-case-Nine-army-officials-indicted/108-178597; "Indictments Served on Welikada Massacre Accused," *Sunday Observer*, July 21, 2019, <https://www.sundayobserver.lk/2019/07/21/news-features/indictments-served-welikada-massacre-accused>. Some of these cases proceeded to trial after November 2019 and they either stalled or acquittals were delivered.

⁴⁹⁵ "Six Army Officers Acquitted over Kumarapuram Massacre," *Ada Derana*, July 27, 2016, <http://www.adaderana.lk/news/36259/six-army-officers-acquitted-over-kumarapuram-massacre>; Human Rights Watch, "Sri Lanka: No Justice for 'Trinco 5' Magistrate Acquits 13 Police for 'Lack of Evidence,'" July 8, 2015, <https://www.hrw.org/news/2019/07/08/sri-lanka-no-justice-trinco-5>; Meera Srinivasan, "Raviraj Murder: Acquittal Raises Credibility Concerns," *The Hindu*, December 16, 2016, <https://www.thehindu.com/news/international/Raviraj-murder-Acquittal-raises-credibility-concerns/article16943223.ece>.

⁴⁹⁶ In November 2016, two senior leaders of a paramilitary group known by their alias' as Karuna Aman and Pilliayan were arrested. Prior to forming their paramilitary group in 2002, Aman was a senior figure and a Pilliayan was a fighter within the LTTE. However, neither individual was

directly related to the armed conflict, for example allegations of direct shelling of civilians in the No Fire Zones, denial of humanitarian assistance and use of sexual violence and torture.⁴⁹⁷ Out of the 12 emblematic cases investigated from 2015 to 2019, all but one had occurred during the term of former President Rajapaksa.⁴⁹⁸ The 12 cases resulted in many arrests and several high profile individuals being charged and questioned, including a former Deputy Inspector General of Police, former commander of the Navy and the then sitting Chief of Defence Staff, the highest-ranking military official in the country.⁴⁹⁹ Three of the cases directly implicated immediate members of the Rajapaksa family, including Gotabaya

investigated for their role in alleged human rights abuses carried out during their membership of the LTTE or their paramilitary group, including enforced disappearances and forced recruitment of children. See United Nations Human Rights Council, "Report of the Office of the United Nations High Commissioner for Human Rights in Sri Lanka A/HRC/34/20," para 37.

⁴⁹⁷ See Human Rights Watch, "Open Wounds and Mounting Dangers Blocking Accountability for Grave Abuses in Sri Lanka," 30-33.

⁴⁹⁸ The massacre of 23 Tamil civilians by an army soldier in 1996 in Kumarappuram occurred prior to the Rajapaksa presidency from 2005 to 2015.

⁴⁹⁹ For example, during the criminal investigation into the abduction of 11 youth case, it was revealed that three former Commanders of the Navy were aware of Navy personnel abducting Tamil civilians for ransom. One former commander, Wasantha Karanagoda and the then Chief of Defence Staff, Ravindra Wijegunaratne were questioned and charged over their role, see International Truth and Justice Project, "The Sri Lankan Navy: A Collective Blind eye," October 2019, https://www.itjpsl.com/assets/press/ITJP_navy_reportfinal-2-SINGLES.pdf. The former Commissioner General of Prisons was arrested and indicted in the Welikada prison case, see "Indictments Served on Welikada Massacre Accused," *Sunday Observer*. A brigadier was indicted in the Weliweriya case, see "Brigadier, Three Soldiers Indicted on 96 Counts," *News.Lk*. A former Major General of the Army and then Deputy Inspector General of the Police were arrested and questioned over their role in assassinating and later falsifying evidence in Lasantha Wickremetunga case, see Police Correspondent, "Sri Lanka Police Cover up in Lasantha Murder Emerge after Key Arrest," *Economy Next*, February 22, 2018, <https://economynext.com/sri-lanka-police-cover-up-in-lasantha-murder-emerge-after-key-arrest-9594/>. Both former President Mahinda Rajapaksa and his brother Gotabaya were questioned in Keith Noyahr case, see "CID Questions Gota : Over Keith Noyahr Abduction," *Daily News*, June 3, 2017, <http://dailynews.lk/2017/06/03/local/117862/cid-questions-gota-over-keith-noyahr-abduction?page=4096>; AP, "Sri Lankan Ex-President Mahinda Rajapaksa Questioned over Abducted Journalist," *The Hindu*, August 17, 2018, <https://www.thehindu.com/news/international/sri-lankan-ex-president-mahinda-rajapaksa-questioned-over-abducted-journalist/article24719084.ece>.

Rajapaksa and a son of former President Rajapaksa.⁵⁰⁰ The progress of these criminal investigations correlated with the broader findings in international investigations that demonstrated that human rights crimes were being carried out under the orders and acquiescence of senior political and military actors.

Operationalisation of the Enforced Disappearances Act

Both the Police and Attorney General's Department are also responsible for implementing the operationalisation of the Enforced Disappearances Act. To date, the Attorney General's Department has not indicted any individual for the crime of enforced disappearances. In high profile cases that potentially amount to an enforced disappearance, such as the disappearance of journalist Prageeth Ekneligoda no efforts have been made to locate and identify any remains, as required under the Enforced Disappearances Act.⁵⁰¹

The latter part of the Enforced Disappearances Act largely mirrors the Enforced Disappearances Convention, and lays out a comprehensive framework regarding

⁵⁰⁰ It was alleged that Gotabaya Rajapaksa paid 50 million rupees to the paramilitary group led by Karuna Aman to assassinate Tamil parliamentarian Nadarajah Ravirajah, see "Gotabhaya Paid for Assassination of Tamil MP Says Witness," *Tamil Guardian*, February 26, 2016, <https://www.tamilguardian.com/content/gotabhaya-pay-ed-assassination-tamil-mp-says-witness>. It was also alleged the Tripoli platoon, a military intelligence unit under the command of Gotabaya Rajapaksa was used to attack dissidents and was responsible for the assassination of Lasantha Wickremetunga and abduction of Keith Noyahr, see Human Rights Watch, "Open Wounds and Mounting Dangers Blocking Accountability for Grave Abuses in Sri Lanka," 51. It was also alleged that Wasim Thajudeen was killed by security personnel following a personal dispute with President Rajapaksa's son, see "Sri Lankan Rugby Player's Body Exhumed in Murder Inquiry," *BBC*, August 10, 2015, <https://www.bbc.com/news/world-asia-33850551>.

⁵⁰¹ The criminal investigation established that Prageeth Ekneligoda may have been killed and identified the alleged perpetrators. See "Prageeth Ekneligoda Case: Nine Army Officials Indicted," *Daily Mirror*, November 27, 2019, https://www.dailymirror.lk/breaking_news/Prageeth-Ekneligoda-case-Nine-army-officials-indicted/108-178597.

the rights of detainees, mandating the police and prison authorities to maintain registers, databases, and ensure access to the detainee by outside parties.⁵⁰² A human rights lawyer with knowledge of capacity building efforts within the Police noted that in a training program covering all 25 districts in Sri Lanka, not even the Colombo Police was aware of the existence of their obligations vis a viz detainees under the Enforced Disappearance Act.⁵⁰³

Lack of independence

However, due to external political interference, none of the criminal investigations resulted in convictions. Under the 1972 constitution, both the Police and the Attorney General's Department were under the direct control of the President.⁵⁰⁴ As a result, the police had a long-standing history of carrying out serious human rights abuses, turning a blind eye to religious and ethnic violence and obstructing investigations.⁵⁰⁵ The 17th Amendment to the Constitution, enacted in 2001, introduced an independent Constitutional Council, which sought to make independent appointments to the public service, including the Police and the

⁵⁰² United Nations, "International Convention for the Protection of All Persons from Enforced Disappearances," Article 17, 18; International Convention for the Protection of All Persons from Enforced Disappearances Act No. 5 of 2018, Sections 15, 16.

⁵⁰³ Human Rights Lawyer, interview with author, October 5, 2021.

⁵⁰⁴ See Hejaaz Hizbullah, "Changes to the Structure of Law Enforcement and the Administration of Justice by the Nineteenth Amendment," in *The Nineteenth Amendment to the Constitution Content and Context* (Colombo, Sri Lanka: Centre for Policy Alternatives, 2016), 220–27.

⁵⁰⁵ See Moira Lynch, "Human Rights Prosecutions and Institutional Continuity in Sri Lanka," in *Human Rights Prosecutions in Democracies at War* (Switzerland: Palgrave Macmillan, 2019), 35–71; Kishali Pinto-Jayawardena, "Post-War Justice in Sri Lanka Rule of Law the Criminal Justice System and Commissions of Inquiry" (International Commission of Jurists, January 2010), 130, https://icj2.wpenenginepowered.com/wp-content/uploads/2010/01/srilanka_impunity_18_01_20102.pdf; Final Report of the Commission of Inquiry into Involuntary Removal or Disappearance of Persons in the Western, Southern and Sabaragamuwa Provinces, Sessional Paper No. V (1997).

Attorney General's Department. The 17th amendment was reversed in 2010 by President Rajapaksa and worse, the Police was brought under the ministry of defence under the purview of defence secretary Gotabaya Rajapaksa.⁵⁰⁶ President Rajapaksa also brought the Attorney General's Department under his own purview, resulting in an unprecedented degree of politicisation.⁵⁰⁷ Although the 19th Amendment was reintroduced in April 2015, enabling independent appointment to the Police and the Attorney General's department a long-standing culture of politicisation within both institutions remained.⁵⁰⁸ The election of the new government resulted in a change of key personnel within the unit responsible for investigating major crimes within the Police, the Criminal Investigation Department, which resulted in progress on all the emblematic human rights cases and the initiation of criminal investigations in a slew of corruption cases.⁵⁰⁹

The structure of the Attorney General's office also contributed to its politicisation as it is required to function both as the chief legal advisor of the government and public prosecutor.⁵¹⁰ The twin roles create an inherent conflict of interest, as the Attorney General is required to both prosecute crimes and defend state actors who

⁵⁰⁶ See International Commission of Jurists, *Authority without Accountability: The Crisis of Impunity in Sri Lanka* (International Commission of Jurists, 2012), 77-78, <https://www.icj.org/wp-content/uploads/2013/01/ICJ-Srilanka-Report.pdf>.

⁵⁰⁷ Ibid.

⁵⁰⁸ See Hizbullah, "Changes to the Structure of Law Enforcement and the Administration of Justice by the Nineteenth Amendment." 222.

⁵⁰⁹ Bastians, "The Siege: Inside 52 Days of Constitutional Crisis in Sri Lanka."

⁵¹⁰ International Commission of Jurists, *Authority without Accountability: The Crisis of Impunity in Sri Lanka*, 70; Centre for Policy Alternatives, "Rethinking the Attorney General's Department in Sri Lanka: Ideas for Reform" (Colombo, Sri Lanka, 2020), <https://www.cpalanka.org/wp-content/uploads/2020/11/AGs-Dept-Final.pdf>.

may be the alleged perpetrators.⁵¹¹ Despite criminal investigations being completed and forwarded for prosecution to the Attorney General, indictments were either not issued or were done after much delay.⁵¹² A human rights lawyer and a former member of the Attorney General's department observed that in politically sensitive cases, there was a reluctance to issue indictments and the file would get transferred to various officers for further consideration without any action being taken.⁵¹³

Internal politicisation within both Police and the Attorney General's department was reflected in the lack of progress on allegations of conflict related human rights abuses. Tamil politicians for example complained that although significant attention was paid to killings and attacks of Sinhala journalists, the Tamil victims, especially journalists that had operated in the conflict affected areas were largely forgotten.⁵¹⁴ Moreover, both the police and the Attorney General's department were clearly unwilling to touch any crimes that were closely connected to the armed conflict. For example, in a rare legal victory for the government, the state managed to secure a conviction in a 15-year old trial concerning the murder of civilians by an army soldier in a conflict affected part of the country.⁵¹⁵ However, observers

⁵¹¹ Centre for Policy Alternatives, "Rethinking the Attorney General's Department in Sri Lanka: Ideas for Reform."

⁵¹² Political Editor, "Corruption Cases: No Major Indictments; Blame Game Continues," *Sunday Times*, May 22, 2016, <https://www.sundaytimes.lk/160522/columns/corruption-cases-no-major-indictments-blame-game-continues-194552.html>; International Crisis Group, "Sri Lanka Between Elections," 4-5.

⁵¹³ Human Rights Lawyer, interview with author, August 16, 2021.

⁵¹⁴ "'We Cannot Depend on Sri Lankan System for War Crimes Trials' – Sumanthiran," *Tamil Guardian*, January 12, 2019, <https://www.tamilguardian.com/content/%E2%80%98we-cannot-depend-sri-lankan-system-war-crimes-trials%E2%80%99%E2%80%93sumanthiran>.

⁵¹⁵ See "Army Sergeant Found Guilty and Sentenced in the Mirusuvil Massacre Case," Centre for Human Rights and Development, 2015, <https://srilankachrd.org/la-mirusuvil.php>

noted that based on the available evidence, the Attorney General's failure to indict those higher up the chain of command was an example of the lack of willingness to prosecute conflict related abuses.⁵¹⁶ Further another particularly egregious example was the failure to initiate a criminal investigation into arbitrary detention and ransom racket being run out of one of Sri Lanka's major naval bases that was revealed during criminal investigation into the so called "Navy 11" case.⁵¹⁷

Allegations of direct external interference in criminal investigations by both the President and the Prime Minister were widespread. There were media reports that senior political actors were issuing "instructions" to the Attorney General's department to refrain or delay issuing indictments or not target politically sensitive perpetrators, including members of the Rajapaksa family, senior political actors, senior bureaucrats and members of the clergy.⁵¹⁸ As the President's distrust and enmity grew against his coalition partner, he sought to stop or slow down criminal investigations targeting the Rajapaksa family, and other senior members of his party.⁵¹⁹ The President publicly decried criminal investigations that focused on

⁵¹⁶ Anketell, Niran. "The Mirusuvil Case: Why Searching Reform Is Urgent and Necessary." *Groundviews* (blog), July 7, 2015. <https://groundviews.org/2015/07/02/the-mirusuvil-case-why-searching-reform-is-urgent-and-necessary/>; "Colombo Enacts Farcical Show in Mirusuvil Massacre Case." *TamilNet*, July 4, 2015. <https://www.tamilnet.com/art.html?catid=79&artid=37829>.

⁵¹⁷ See, International Truth and Justice Project, "The Sri Lankan Navy: A Collective Blind Eye."

⁵¹⁸ S. W. Premaratne, "Political Interference in the Administration of Justice," *Sunday Observer*, November 17, 2019, <https://www.sundayobserver.lk/2019/11/17/news-features/political-interference-administration-justice>; Political Editor, "UNP-SLFP Marriage of Convenience: Temporary Licence to Be Solemnised for Five Years," *Sunday Times*, July 24, 2016, <https://www.sundaytimes.lk/160724/columns/unp-slfp-marriage-of-convenience-temporary-licence-to-be-solemnised-for-five-years-202213.html>; Political Editor, "President Defends FCID Even Though SLFP Ministers Call for Its Disbanding," *Sunday Times*, February 7, 2016, <https://www.sundaytimes.lk/160207/columns/president-defends-fcid-even-though-slfp-ministers-call-for-its-disbanding-182076.html>.

⁵¹⁹ Bastians, "The Siege: Inside 52 Days of Constitutional Crisis in Sri Lanka," 69-70; Bastians, "President Slams Bribery Commission for 'Hauling' Gota and Navy Chiefs to Court."

military actors; promoted officers alleged to have carried out serious crimes; and in at least one case sought to transfer the main police officer investigating many of the emblematic human rights and corruption cases.⁵²⁰ The Prime Minister was also perceived as interfering in criminal investigations to either slow down or prevent the arrest of alleged perpetrators.⁵²¹ From 2015 to 2019, a member of his governing coalition held the Justice Ministry, which oversaw the functioning of the criminal justice system. This reinforced the perception that the Prime Minister lacked a commitment to ensuring justice.⁵²²

Capacity constraints

Following a visit to Sri Lanka, the Special Rapporteur on Independence of Judges observed that the Attorney General's Department, Police, and the Judiciary does not yet have the capacity to investigate and prosecute complex violations of

⁵²⁰Bastians, "President Slams Bribery Commission for 'Hauling' Gota and Navy Chiefs to Court.," Uyangoda, "Making Sense of the October Conflict and Its Aftermath," 130; AFP, "Sri Lanka's Leaders Backs Arrests of 'Official Killers'"; Meera Srinivasan, "Sirisena Vows to Protect General"; "Sri Lanka: UN Experts Say Army Chief Appointment Is 'Affront to Victims' of Rights Abuses," OHCHR, August 27, 2019, <https://www.ohchr.org/en/press-releases/2019/08/sri-lanka-un-experts-say-army-chief-appointment-affront-victims-rights>; "Sirisena Awards Lanka's Highest Military Ranks To Mass Murder And Corruption Suspects," *Colombo Telegraph*, August 7, 2019, <https://www.colombotelegraph.com/index.php/sirisena-awards-lankas-highest-military-ranks-to-mass-murder-and-corruption-suspect/>; "Navy Abductions Case: OMP Raises Concern over Suspect Dassanayake's Confirmation of Rank," *Sri Lanka Brief*, October 6, 2019, <https://srilankabrief.org/navy-abductions-case-omp-raises-concern-over-suspect-dassanayakes-confirmation-of-rank/>; Bastians, "The Siege: Inside 52 Days of Constitutional Crisis in Sri Lanka," 72-3. See also Nirmala Kannangara, "United Backlash Halts Transfer of Key CID Officer," *Daily Mirror*, November 29, 2018, <https://www.dailymirror.lk/expose/United-Backlash-Halts-Transfer-of-Key-CID-Officer/333-159060>.

⁵²¹"Political Influence Blocking Corruption: JVP," *Daily Mirror*; Political Editor, "President Claims UNP Delaying Major Probes to Save Rajapaksas," "Exclusive: Ranil Prevents Gota Arrest," *Colombo Telegraph*; "Sri Lankan Airlines: Ranil Yet To Table 'Weliamuna/Jayaratne' Report In Parliament," *Colombo Telegraph*; Press Trust of India, "Sirisena Accuses Ranil of Shielding Rajapaksa, Others in Graft Probe".

⁵²²Political Editor, "President Claims UNP Delaying Major Probes to Save Rajapaksas." "Interfering Sagala' Talks About Independence Of Police In UN Anti-Corruption Day Statement," *Colombo Telegraph*.

international human rights law, including international crimes.⁵²³ Moreover, the Police have been cited as lacking in skills to “gather evidence, record statements, handle witnesses, preserve a crime scene and use forensics,” even in the context of ordinary crimes.⁵²⁴ There has been little investment in Police infrastructure and technology.⁵²⁵ The capacity gaps have contributed to the police routinely relying on confessions from suspects that are elicited under duress or torture.⁵²⁶ From 2015 to 2019, many of the investigations into emblematic human rights and corruption cases discussed previously were handled by one officer within the Criminal Investigation Department.⁵²⁷

The Attorney General’s Department was also under similar resource and capacity constraints. Once indictments are issued, criminal proceedings can take more than a decade to reach their conclusion; this is the case even where the crime is not related to conflict or a of a politically sensitive nature.⁵²⁸ The department was

⁵²³ United Nations Human Rights Council, “Report of the Special Rapporteur on the Independence of Judges and Lawyers on Her Mission to Sri Lanka A/HRC/35/31/Add.1,” para 90.

⁵²⁴ United Nations Human Rights Council, “Report of the Special Rapporteur on the Independence of Judges and Lawyers on Her Mission to Sri Lanka A/HRC/35/31/Add.1,” para 53; U. S. Agency for International Development, “Democracy, Human Rights and Governance Assessment of Sri Lanka Updated Report,” 34.

⁵²⁵ M.B.K. Mendis, “A Study on the Digital Forensics Infrastructure in Sri Lanka,” 2014, <http://repository.wyb.ac.lk/bitstream/handle/1/3383/PROCEEDINGS-WINC-2014-29.pdf?sequence=2>.

⁵²⁶ United Nations Human Rights Council, “Report of the Special Rapporteur on the Independence of Judges and Lawyers on Her Mission to Sri Lanka A/HRC/35/31/Add.1,” para 54; U. S. Agency for International Development, “Democracy, Human Rights and Governance Assessment of Sri Lanka Updated Report,” 34.

⁵²⁷ Bastians, “The Siege: Inside 52 Days of Constitutional Crisis in Sri Lanka,” 70.

⁵²⁸ The Parliament of Sri Lanka, Sectoral Oversight Committee on Legal Affairs (anti-corruption) and media, “Recommendations Pertaining to the Expeditious and Efficient Administration of Criminal Justice”, (20 September 2017) 3-4, <https://www.parliament.lk/uploads/comreports/1510738363068517.pdf>, The committee found that on average it takes 10.2 years for a serious crime to be heard: indictments are issued 4.7 years after a crime is committed; prosecutions commence 3.7 years after an indictment has been

chronically short of staff, which was made worse with the decision to pursue an increased case load after the new government's election in 2015. Further, the department has also been noted for its lack of professionalism, and questions have been raised regarding its technical capacity.⁵²⁹

Member states attempted to address these capacity issues by providing training and technical assistance to the police.⁵³⁰ The United States provided technical support, training, and equipment to enhance the Police's capacity to investigate financial crimes, including, for example, methods forensic accounting.⁵³¹ The UK also aided the police training colleges in improve their curriculum and to community policing programs.⁵³²

issued; and on average it takes 1.8 years for the presentation of evidence and for a final ruling to be handed down. If the matter is appealed, it takes 7 years for the completion of two appeals in the Court of Appeal and the Supreme Court after hearing of a case before a High Court. Therefore, it can take on average 17 years for a serious criminal matter to be completed.

⁵²⁹ U. S. Agency for International Development, "Democracy, Human Rights and Governance Assessment of Sri Lanka Updated Report," 35; Human Rights Council. Report of the Special Rapporteur on the Independence of Judges and Lawyers on Her Mission to Sri Lanka A/HRC/35/31/Add.1," para 45, 56, 57; Sectoral Oversight Committee on Legal Affairs (anti corruption) and media. "Recommendations Pertaining to the Expeditious and Efficient Administration of Criminal Justice," 3-4; State Department Official, interview with author, 2 July 2021. One human rights lawyer, who has experience working within the Attorney General's Department, stated that "I think there is no question that they have the capacity to carry out complex prosecutions. Their capacity is not in doubt especially some of the middle ranging and senior officers. But I think the problem is the will, and also the environment in which they function. So, for instance when there are political changes, they are very sensitive to political changes...". On the issue of lawyers within the Department being promoted based on seniority instead of their prosecutorial record, the same lawyer explained that "prosecutorial record doesn't necessarily mean convictions... and there is a degree of competency looked into" when promoting lawyers within the department, Human Rights Lawyer, interview with author, August 16, 2021.

⁵³⁰ Former Prime Minister, interview with author, November 24, 2021.

⁵³¹ State Department Official, interview with author, 2 July 2021.

⁵³² U. S. Agency for International Development, "Democracy, Human Rights and Governance Assessment of Sri Lanka Updated Report," 35.

Release of lands

Concerning other commitments, such as releasing civilian lands occupied by military and other state actors, the government made significant progress. According to official figures, the government released 92% of civilian lands held by the military.⁵³³ However, relevant thematic ministries were unable to implement the government's resettlement policy, ensuring that civilians could access these lands and reclaim their former lives.⁵³⁴ Cabinet approved a rights-based comprehensive national policy on durable solutions for conflict affected displacement in 2016, which, if implemented, could have addressed many of these challenges.⁵³⁵ However, the policy, which was drafted by external consultants, remained unimplemented. One individual closely involved in advising the implementation of the policy observed that state officials mandated to implement it

⁵³³ United Nations Human Rights Council, "Promoting Reconciliation, Accountability and Human Rights in Sri Lanka Report of the United Nations High Commissioner for Human Rights A/HRC/46/20," February 9, 2021, para 37, <https://documents.un.org/doc/undoc/gen/g21/028/52/pdf/g2102852.pdf?token=rQ2UjXbmZKkFjncwW&fe=true>. In 2015, the government released 3,136 acres of land occupied the military in the North and the East to 2,200 families. In 2016, the Armed forces released 2,652 acres of land mostly in Jaffna and Mannar. See United Nations Human Rights Council, "Oral Update of the High Commissioner Promoting Reconciliation, Accountability and Human Rights in Sri Lanka A/HRC/32/CRP.4," para 13.

⁵³⁴ Human Rights Watch, *Why Can't we Go Home? Military Occupation of Land in Sri Lanka*, 3, 62, 63-4.

⁵³⁵ Ministry of Prison Reforms, Rehabilitation, Resettlement and Hindu Religious Affairs, "National Policy on Durable Solutions for Conflict-Affected Displacement," 2016.

See also Laurie Wiseberg and Mirak Raheem, "New Policy on Durable Solutions in Sri Lanka: The Challenge of Implementation," September 2016, <https://www.internal-displacement.org/expert-opinion/new-policy-on-durable-solutions-in-sri-lanka-the-challenge-of-implementation>.

lacked a knowledge of the legal framework and policy issues underpinning the policy.⁵³⁶

Despite the political support for land releases by the President, Prime Minister and Cabinet, there was little bureaucratic support for its implementation.⁵³⁷ Although land was being released, it was not clear which state authority was taking the lead in negotiating the releases with the security sector.⁵³⁸ Provincial governors, former staff of the Secretariat for Reconciliation Mechanisms, and various ministerial committees negotiated the release of land with different arms of the military on an ad hoc basis.⁵³⁹ The military appeared to be the “key and largely unchecked authority” on the release of land.⁵⁴⁰ Both the High Commissioner and NGOs called for the government to map both private and public land under the control of the military and a release plan with clear benchmarks and timelines for release of lands.⁵⁴¹

⁵³⁶ Researcher, interview with author, July 3, 2021.

⁵³⁷ “Observations by the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence, Mr. Pablo de Greiff, on the Conclusion of His Recent Visit to Sri Lanka.”

⁵³⁸ Human Rights Watch, “Why Can’t we Go Home? Military Occupation of Land in Sri Lanka”, 24. See also Consultation Task Force on Reconciliation Mechanisms, “Final Report of the Consultation Task Force on Reconciliation Mechanisms (Volume I),” 323-4.

⁵³⁹ Former Secretary to President Maithripala Sirisena, interview with author, July 10, 2021; Member of Parliament for the Tamil National Alliance, interview with author, September 3, 2021; Former staff member of the Secretariat for Reconciliation Mechanisms, interview with author, August 20, 2021.

⁵⁴⁰ Human Rights Watch, “Why Can’t we Go Home? Military Occupation of Land in Sri Lanka”, 22

⁵⁴¹ United Nations Human Rights Council, “Report of the Office of the United Nations High Commissioner for Human Rights in Sri Lanka A/HRC/34/20,” para 48. For example, a Colombo based NGO assessed that based on statistics collated from the five districts in the northern province and found that nearly 13,000 acres were occupied by state actors. See Centre for Policy Alternatives, “Land Occupation in the Northern Province: A Commentary on Ground Realities and Recommendations for Reform,” March 2016, <https://www.cpalanka.org/wp-content/uploads/2016/03/Land-Occupation-in-the-Northern-Province.pdf>.

Security sector reform

Given the government's lack of willingness to touch the armed forces, it failed to undertake any serious reforms to the security sector. The government re-assigned the Police under the justice and law and order ministry, removing it from the ministry of defence's purview. All three branches of the armed forces, the police, and prison officials were provided training on human rights, including with the assistance of the ICRC and the UK.⁵⁴² The President re-issued a directive issued by the Human Rights Commission of Sri Lanka, which directed the security sector to protect the rights of detainees and refrain from torture.⁵⁴³ However, the High Commissioner observed that the instructions issued under the presidential directive were "insufficient to cover the full range of potential risks that could jeopardise the protection of human rights in cases of arrest and detention."⁵⁴⁴ Further, the Director of the Terrorism Investigation Department, a branch of the Sri Lanka Police, stated under oath that his department had not received the directives and was not aware of

⁵⁴² Committee against Torture, "Consideration of Reports Submitted by States Parties under Article 19 of the Convention Fifth Periodic Reports of States Parties Due in 2012 Sri Lanka CAT/C/LKA/5," December 11, 2015, para 140-1, 143-4, 147-8, <https://documents.un.org/doc/undoc/gen/g15/282/69/pdf/g1528269.pdf?token=xcXlqVysV5nloZuodS&fe=true>; Human Rights Council Working Group of the Universal Periodic Review, "National Report Submitted in Accordance with Paragraph 5 of the Annex to the Human Rights Council Resolution 16/21* Sri Lanka A/HRC/WG.6/28/LKA/1," August 24, 2017, 30-31 <https://digitallibrary.un.org/record/1305336?ln=en&v=pdf>; U. S. Agency for International Development, "Democracy, Human Rights and Governance Assessment of Sri Lanka Updated Report," 35.

⁵⁴³ United Nations Human Rights Council. "Promoting Reconciliation, Accountability and Human Rights in Sri Lanka A/HRC/32/CRP.4," para 17.

⁵⁴⁴ United Nations Human Rights Council. "Report of the Office of the United Nations High Commissioner for Human Rights in Sri Lanka A/HRC/34/20," para 50. See also note 11 in the report.

its contents.⁵⁴⁵ In a rare, instance under pressure from civil society activists the government removed and replaced the chief of the military defence force who had been accused of serious human rights abuses.⁵⁴⁶

The government was perceived to have interpreted security sector reform as a ‘reduction in the military’, which had bloated to more than 200,000 personnel.⁵⁴⁷ A key strategy for doing so was sending personnel overseas as part of peacekeeping operations. When the UN raised questions regarding the human rights records of Sri Lankan personnel, the government agreed to permit the Sri Lankan Human Rights Commission, to vet personnel prior to deployment.⁵⁴⁸ According to the Human Rights Commission, the security sector was largely cooperative in handing over information and abiding by their determinations regarding personnel who were not suited for deployment.⁵⁴⁹

Human Rights Commission of Sri Lanka, “Report of the Human Rights Commission to the Committee Against Torture Review of the 5th Periodic Report of Sri Lanka,” October 2016, para 21, <https://www.hrcsl.lk/wp-content/uploads/2020/01/Report-to-CAT-Committee-.pdf>.

⁵⁴⁶ “Sri Lanka Removes Intelligence Chief after Jaffna Disturbances,” *Arab News*, November 3, 2016, <https://www.arabnews.com/node/1005841/world>.

⁵⁴⁷ Yasmin Sooka and Francis Harrison, “Why Has Sri Lanka’s Transitional Justice Process Failed to Deliver?,” *London School of Economics* (blog), February 6, 2019, <https://blogs.lse.ac.uk/southasia/2019/02/06/long-read-why-has-sri-lankas-transitional-justice-process-failed-to-deliver/>. See also United Nations Human Rights Council, “Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence A/HRC/45/45/Add.1*,” June 18, 2020, para 73, <https://documents.un.org/doc/undoc/gen/g20/152/58/pdf/g2015258.pdf?token=Y3Zl4w6mhRzfNznJQU&fe=true>.

⁵⁴⁸ United Nations Human Rights Council. “Report of the Office of the United Nations High Commissioner for Human Rights A/HRC/37/23,” para 28.

⁵⁴⁹ United Nations Human Rights Council. “Report of the Office of the United Nations High Commissioner for Human Rights A/HRC/37/23,” para 22; Former Commissioner of the Human Rights Commission, interview with author, July 15, 2021.

Beyond these piecemeal efforts, the larger problems of military involvement in civilian functions such as running private enterprises and the presence of personnel credibly accused of serious human rights violations in key state positions continued.⁵⁵⁰ Moreover, despite instructions being issued to the security sector including the police that they should refrain from torture, the national human rights commission found that torture is routinely practiced all over the country, mainly in the context of police detention, regardless of the nature of offence for which the person is arrested.⁵⁵¹

The government failed to carry out security sector reforms due to fear of reprisals and lack of political will. Special Rapporteur on Counter Terrorism observed that

⁵⁵⁰ Sisira Mendis, Deputy Inspector General of Police who has been accused of running an alleged torture site was promoted to the position of Chief of Intelligence and was also part of Sri Lankan government's delegation to the Committee Against Torture. General Jagath Jayasuriya, a commander of units that allegedly committed repeated attacks on hospitals, acts of torture and sexual violence, enforced disappearances and extrajudicial killing was appointed as Sri Lanka's Ambassador to Brazil. Major General Jagath Dias who led the 57th Army Division which has been accused of directly attacking civilians including those trapped in the so called "No Fire Zones" was appointed to be the Chief of Staff of the Army in 2015. Major General Shavendra Silva, who had been the commanding officer of the 58th Army Division, also accused of committing war crimes during the last stages of the war, was promoted to the position of Chief of Staff of the Sri Lanka Army in 2019. See Yasmin Sooka and Francis Harrison, "Why Has Sri Lanka's Transitional Justice Process Failed to Deliver?" The Office on Missing Persons also expressed concerns that senior officials who were under criminal investigation in emblematic human rights cases or had been indicted were being promoted and transferred. See Office on Missing Persons. "Interim Report," August 2018, para 28. See also United Nations Human Rights Council. "Promoting Reconciliation, Accountability and Human Rights in Sri Lanka A/HRC/32/CRP.4," para 13. See also South Asian Centre for Legal Studies, "Power and Profit: Investigating Sri Lanka's Military Businesses," 2018; Dharsha Jegatheeswaran and Mario Arulthas, "Normalising the Abnormal: The Militarisation of Mullaitivu" (Adayaalam Centre for Policy Research and People for Equality and Relief in Sri Lanka, 2017), [https://adayaalam.org/mapping-militarisation-in-mullaitivu/#:~:text=The%20full%20report%20released%20as,military%20structures%20and%20Buddhist%20viharas.](https://adayaalam.org/mapping-militarisation-in-mullaitivu/#:~:text=The%20full%20report%20released%20as,military%20structures%20and%20Buddhist%20viharas.;); Dharsha Jegatheeswaran, "Civil Security Department The Deep Militarisation of the Vanni" (Adayaalam Centre for Policy Research, 2017), <https://adayaalam.org/wp-content/uploads/2018/01/ACPR-Report-Civil-Security-Department-The-Deep-Militarisation-of-the-Vanni-.pdf>.

⁵⁵¹ Human Rights Commission of Sri Lanka. "Report of the Human Rights Commission to the Committee Against Torture Review of the 5th Periodic Report of Sri Lanka," para 13-14.

“it’s difficult to resist the conclusion that the inertia implementing the reforms in Resolution 30/1- including Prevention of Terrorism Act, adopting new human rights compliant counter-terrorism legislation, solving past terrorism cases and ending impunity that surrounds those cases – reflects the continuing influence of certain vested interests in the security sector, who are resistant to change, and above all, to accountability.”⁵⁵²

As expected, there were voices within the military that opposed an accountability mechanism and feared that it would be “counterproductive” and “compromise national security.”⁵⁵³ The Army, in particular, feared that they may be prosecuted for their conduct during the war, which at the time had been endorsed by the civilian leadership.⁵⁵⁴ Some observers noted that the government may have also feared a backlash from the security forces against human rights reforms.⁵⁵⁵ For example, it was reported that government leaders were concerned that sections of the armed forces, including military intelligence that were still loyal to former defence secretary Gotabaya Rajapaksa, might be used to stage uprisings or protests that could destabilise the government.⁵⁵⁶

⁵⁵² Human Rights Council. “Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism visit to Sri Lanka A/HRC/40/52/Add.3,” para 51. See also United Nations Human Rights Council, “Report of the Office of the United Nations High Commissioner for Human Rights in Sri Lanka A/HRC/34/20,” 41.

⁵⁵³ “Final Report of the Consultation Task Force on Reconciliation Mechanisms (Volume I),” IX.

⁵⁵⁴ Ibid.

⁵⁵⁵ Sanjayan Rajasingham, “Overview of the State of Human Rights in 2016,” in *Sri Lanka: State of Human Rights 2017* (Colombo, Sri Lanka: Law and Society Trust, 2017), 2-3; Lecturer in Political Science, interview with author, July 15, 2021; Attorney at Law who advised the Foreign Ministry between 2015 and 2018, interview with author, July 1, 2021; Former Chairperson of the Human Rights Commission, interview with author, July 5, 2021.

⁵⁵⁶ International Crisis Group, “Sri Lanka’s Transition to Nowhere,” 10, see footnote 32.

At the time of co-sponsorship, the government was careful to present human rights reforms as an effort to protect and restore the honour and good reputation of the armed forces.⁵⁵⁷ In effect, human rights reforms were aimed at rooting out the ‘bad apples’ within the security sector. There was evidence that had there been willingness, there was space to engage and possibly enlist the support of the military to advance human rights reforms. For example, returning large amounts of land following negotiations with the security sector was a significant achievement and is evidence of the willingness of the armed forces to collaborate with the government in adopting human rights reforms. Further, the Consultation Task Force concluded that despite apprehensions among the security sector, there was “unequivocal support for the government’s reconciliation efforts” and that the armed forces preferred a restorative as opposed a retributive process.⁵⁵⁸ The Special Rapporteur, Pablo De Grief, who had also engaged with the upper ranks of the security forces, also reported that there was more willingness among the forces to participate in a credible accountability process than the political discourse often suggested.”⁵⁵⁹ The Secretariat for Reconciliation Mechanisms, which had carried out the most extensive awareness and engagement efforts with the security sector, also found that there was strong support for reconciliation related policies, and that more had to be done to quell misinformation and apprehensions within the armed

⁵⁵⁷ For example, preambular paragraph of Resolution 30/1 recognised “that a credible accountability process for those most responsible for violations and abuses will safeguard the reputation of those, including within the military, who conducted themselves in an appropriate manner with honour and professionalism.”

⁵⁵⁸ “Final Report of the Consultation Task Force on Reconciliation Mechanisms (Volume I),” IX.

⁵⁵⁹ United Nations Human Rights Council. “Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence A/HRC/45/45/Add.1*,” para 76.

forces.⁵⁶⁰ A senior NGO stakeholder also observed that “there is a progressive group within the Army and Police that are for accountability and want to see reform, but like any other organisation they want to keep their jobs, get promoted...”.⁵⁶¹ However, the government rarely displayed the political will or deftness required to win over the military in support of human rights reforms.

Certificates of Absence

The government made modest progress on its commitment to issue Certificates of Absence, a legal document that provides for the legal status of a missing or disappeared person and enables families of the missing and disappeared to access administrative and financial services and other benefits in the absence of a Certificate of Death. Although a law enabling the issuance of certificates of absence was passed in 2016, three years later as of 30 June 2019, only 645 certificates of absence had been issued.⁵⁶² Given that Sri Lanka reportedly has more than 25,000 missing and disappeared persons, vast majority of affected families did not benefit under the law. Certificates of Absence were a low-cost measure both financially and politically that had the potential to generate confidence and goodwill towards the government’s human rights reforms. Operationalisation of the law required strong awareness raising to inform affected families on the process of obtaining a certificate and dispel misconceptions regarding the same. It also required strong coordination between the Registrar General’s Department who is responsible for

⁵⁶⁰ Former staff member of the Secretariat for Reconciliation Mechanisms, interview with author, July 4, 2021.

⁵⁶¹ Civil society stakeholder, interview with author, August 4, 2021.

⁵⁶² Office on Missing Persons, Annual Report (2019), para 2.6.

issuing the certificates, and local level officials, who were the first point of contact for the families. Political actors did very little to raise awareness, and bureaucrats charged with issuing the certificates at both the central level in Colombo and in local communities were unaware of the existence of the law.⁵⁶³

Long term impact

Towards the end of President Sirisena's term, the two main political parties that had dominated Sri Lanka politics since independence split. President Sirisena's SLFP split between a faction loyal to him and another headed by Rajapaksa, launching Gotabaya Rajapaksa's candidacy for president. Prime Minister Wickremesinghe's party also split, with one faction remaining loyal to him and a new faction headed by Sajith Premadasa, the son of a former President. At the November 2019, presidential election, Gotabaya beat Premadasa and was elected President. In May 2020, Mahinda Rajapaksa was elected as Prime Minister. The second Rajapaksa administration rolled back the constitutional reforms enacted by its predecessor and concentrated power in the executive to a degree previously unseen in Sri Lanka's history (including Mahinda Rajapaksa's tenure).⁵⁶⁴ The reforms undermined state institutions by enabling politicised appointments to all senior state sector positions. The Human Rights Commission was downgraded to B status and the Office on Missing Persons came under fire for its new Board, which included individuals

⁵⁶³ Consultation Task Force on Reconciliation Mechanisms, "Final Report of the Consultation Task Force on Reconciliation Mechanisms (Volume I)," 225.

⁵⁶⁴ Parliament of Sri Lanka, "Twentieth Amendment to the Constitution of Sri Lanka" (2020). See also International Commission of Jurists, "Sri Lanka: Newly Adopted 20th Amendment to the Constitution Is Blow to the Rule of Law," October 27, 2020, <https://www.icj.org/sri-lanka-newly-adopted-20th-amendment-to-the-constitution-is-blow-to-the-rule-of-law/>.

known for promoting impunity.⁵⁶⁵ President Gotabaya ended Sri Lanka's cooperation with the Human Rights Council and instead promised a "domestically designed accountability process."⁵⁶⁶ In practice, the administration pursued policies that promoted impunity by appointing a commission of inquiry to review the findings of previous commissions of inquiry and another commission to investigate alleged "political victimisation" due to Sirisena administration's investigations into human rights abuses and corruption.⁵⁶⁷ The new administration withdrew indictments, obstructed investigations, and arrested investigators who had carried out criminal investigations into emblematic human rights abuses.⁵⁶⁸ The second Rajapaksa administration also pursued ethnic majoritarianism via its rhetoric and policies, raising increased concerns that Tamil and Muslim citizens were being

⁵⁶⁵ Sri Lanka Brief, "Sri Lanka Human Rights Commission Downgraded by UN Body, the Global Alliance of National Human Rights Institutions," *Sri Lanka Brief* (blog), December 14, 2021, <https://srilankabrief.org/sri-lanka-human-rights-commission-downgraded-by-un-body-the-global-alliance-of-national-human-rights-institutions/>; Luciano Hazan, Mary Lawlor, and Fabian Salvioli, "Letter to President of Sri Lanka," November 17, 2021, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=26789>.

⁵⁶⁶ "43rd Session of the Human Rights Council – High Level Segment Statement by Hon. Dinesh Gunawardena, Minister of Foreign Relations of Sri Lanka," February 26, 2020, <https://www.un.int/srilanka/news/43rd-session-human-rights-council-%E2%80%93-high-level-segment-statement-hon-dinesh-gunawardena>.

⁵⁶⁷ United Nations Human Rights Council, "Promotion Reconciliation, Accountability and Human Rights in Sri Lanka Report of the Office of the High Commissioner for Human Rights A/HRC/46/20," para 41; United Nations Human Rights Council, "Situation of Human Rights in Sri Lanka Comprehensive Report of the United Nations High Commissioner for Human Rights* A/HRC/51/5," October 4, 2022, para 41, 50, <https://documents.un.org/doc/undoc/gen/g22/511/79/pdf/g2251179.pdf?token=LMAm6a8VTrliHJf2F&fe=true>.

⁵⁶⁸ Human Rights Council, "Promotion Reconciliation, Accountability and Human Rights in Sri Lanka Report of the Office of the High Commissioner for Human Rights A/HRC/46/20," para 26-28.

further marginalised.⁵⁶⁹ There were also reports of increased use of surveillance against human rights defenders and victims.⁵⁷⁰

The appointment of senior Army figures that had presided over the worst of the conflict related abuses to key government positions, raised fears that Sri Lanka would once again return to widespread violations of human rights abuses.⁵⁷¹ However, despite increased militarisation and concentration of power in the executive, Sri Lanka never returned to widespread crackdowns on the press, political opponents, and dissenters like the conditions under the presidency of Mahinda Rajapaksa. One factor that plausibly moderated the administration's behaviour was the continued monitoring by the Human Rights Council. Further, the starting conditions for Gotabaya Rajapaksa's tenure as President (as well as his close allies) was markedly different to his tenure as defence secretary. Domestic criminal investigations, as well as foreign litigation, had sharpened focus on Gotabaya Rajapaksa's responsibility for not just gross human rights abuses and war crimes but also serious corruption.⁵⁷² His allies, such as General Shavendra

⁵⁶⁹ Human Rights Council, "Promotion Reconciliation, Accountability and Human Rights in Sri Lanka Report of the Office of the High Commissioner for Human Rights A/HRC/46/20," para 29-31.

⁵⁷⁰ Human Rights Council, "Promotion Reconciliation, Accountability and Human Rights in Sri Lanka Report of the Office of the High Commissioner for Human Rights A/HRC/46/20," para 32.

⁵⁷¹ Maria Abi-Habib and Sameer Yasir, "Sri Lankan Critics Fear a Crackdown Is Underway, and Some Flee," *The New York Times*, November 27, 2019, <https://www.nytimes.com/2019/11/27/world/asia/sri-lanka-rajapaksa-crackdown.html>.

⁵⁷² Centre for Justice and Accountability, "Daughter of Slain Sri Lankan Journalist to Appeal Decision in U.S. Extrajudicial Killing Case against Gotabaya Rajapaksa," accessed December 11, 2023, <https://cja.org/daughter-of-slain-sri-lankan-journalist-to-appeal-decision-in-u-s-extrajudicial-killing-case-against-gotabaya-rajapaksa/>; Beth Van Schaack, "BREAKING: Sri Lankan Presidential Hopeful Sued in Federal Court for Human Rights Violations," *Just Security*, April 8, 2019, <https://www.justsecurity.org/63564/breaking-sri-lankan-presidential-hopeful-sued-in-federal-court-for-human-rights-violations/>; Staff writer, "Avant-Garde: Gotabaya Rajapaksa and 7 Others Discharged of All Charges," *Newsfirst*, September 23, 2019,

Silva and several other military personnel, who were alleged to have committed serious human rights violations, were placed under US sanctions or were the subject of litigation in foreign jurisdictions.⁵⁷³ Moreover, as a former Defence Secretary, he was able to directly observe how censure and sanctions over human rights issues limited his brother, former President Mahinda Rajapaksa's ability to engage in international cooperation in other issue areas.

The new administration also pursued controversial economic policies that resulted in high inflation, high commodity prices, severe fuel shortages, prolonged power cuts.⁵⁷⁴ The resulting economic crisis left 2.5 million Sri Lankans in poverty and 37% households food insecure.⁵⁷⁵ Thousands of citizens mobilised, demanding Gotabaya Rajapaksa's resignation. In response, Prime Minister Mahinda Rajapaksa resigned, and Ranil Wickremesinghe became Prime Minister for the sixth time.⁵⁷⁶ Following large scale protests over four months Gotabaya Rajapaksa resigned in

<https://www.newsfirst.lk/2019/09/23/avant-garde-gotabaya-rajapaksa-and-7-others-aquitted-of-all-charges/>.

⁵⁷³ Sri Lanka Brief, "US Sanctions Major Prabath Bulathwatte for Human Rights Violations," December 10, 2022, <https://srilankabrief.org/us-sanctions-major-prabath-bulathwatte-for-human-rights-violations/>; Human Rights Council, "Report of the Office of the United Nations High Commissioner for Human Rights A/HRC/37/23," para 38.

⁵⁷⁴ "Sri Lanka: Why Is the Country in an Economic Crisis?," *BBC News*, April 8, 2022, sec. Asia, <https://www.bbc.com/news/world-61028138>; Kai Shultz, "How a Powerful Dynasty Bankrupted Sri Lanka in 30 Months," *Al Jazeera*, April 28, 2022, <https://www.aljazeera.com/economy/2022/4/28/how-a-powerful-dynasty-bankrupted-sri-lanka-in-30-months>.

⁵⁷⁵ "Over 9 Million Sri Lankans Have Slipped Into Poverty Since January, Finds Study," *The Wire*, October 18, 2022, <https://thewire.in/south-asia/over-9-million-sri-lankans-have-slipped-into-poverty-since-january-finds-study>.

⁵⁷⁶ Aanya Wipulsen, "Ranil Wickremesinghe: Sri Lanka's Returning Prime Minister" May 12, 2022, <https://www.aljazeera.com/news/2022/5/12/ranil-wickremesinghe-who-is-sri-lankas-new-prime-minister>.

July 2022.⁵⁷⁷ Although the government attempted to clamp down on the protests by suppressing social media, declaring a state of emergency, using tear gas, water cannons and, at times live ammunition, the protests were largely peaceful.⁵⁷⁸ The continued supervision of the Council is likely to have shaped the restrained response by the state.

Following the resignation of Gotabaya Rajapaksa, Prime Minister Wickremesinghe was elected as President by the Parliament with the support of Rajapaksa loyalists.⁵⁷⁹ Although protestors and opposition parties demanded fresh elections, President Wickremesinghe resisted such calls and signalled his intention to serve the remainder of the term due to end in November 2024.⁵⁸⁰ Although President Wickremesinghe quickly reversed some of the worst excesses of the Rajapaksa constitutional reforms, they did not go as far as those enacted under President Sirisena.⁵⁸¹ He also reversed course on the Sinhala Buddhist rhetoric and policies initiated by his predecessor and announced that Sri Lankan military would be

⁵⁷⁷ Mujib Mashal, Emily Schmall, and Atul Loke, "Showdown at the Mansion Gates: How Sri Lankans Rose Up to Dethrone a Dynasty," *The New York Times*, August 12, 2022, <https://www.nytimes.com/2022/08/12/world/asia/sri-lanka-rajapaksa.html>.

⁵⁷⁸ "Sri Lanka: UN Experts Condemn Crackdown on Protests," OHCHR, April 8, 2022, <https://www.ohchr.org/en/press-releases/2022/04/sri-lanka-un-experts-condemn-crackdown-protests>; "Call for Restraint Ahead of Sri Lanka Protest," OHCHR, July 8, 2022, <https://www.ohchr.org/en/press-briefing-notes/2022/07/call-restraint-ahead-sri-lanka-protest> Human Rights Council, "Situation of Human Rights in Sri Lanka Comprehensive Report of the United Nations High Commissioner for Human Rights* A/HRC/51/5," para 5, 33-36.

⁵⁷⁹ "Sri Lanka: Ranil Wickremesinghe Elected President by MPs - BBC News," July 20, 2022, <https://www.bbc.com/news/world-asia-62202901>.

⁵⁸⁰ Jamila Husain, "Ranil to Contest Presidential Election, Hints at Poll Early next Year," *Daily Mirror*, April 8, 2023, <https://www.dailymirror.lk/breaking-news/Ranil-to-contest-Presidential-election-hints-at-poll-early-next-year/108-257384>.

⁵⁸¹ Parliament of Sri Lanka, "22nd Amendment to the Constitution" (2022); "Sri Lanka's 21st Amendment to Constitution an Eyewash: Opposition TNA Legislator," *EconomyNext* (blog), November 22, 2022, <https://economynext.com/sri-lankas-21st-amendment-to-constitution-an-eyewash-opposition-tna-legislator-103711>.

halved by 2030.⁵⁸² The new administration also secured an IMF relief package and adopted measures to alleviate many of the shortages in fuel, electricity and other essential items.⁵⁸³

However, President Wickremesinghe adopted a harsher stance towards the protestors, using tear gas and canons to disperse demonstrations.⁵⁸⁴ Surveillance, intimidation and harassment against human rights defenders continued.⁵⁸⁵ Law enforcement authorities used legal provisions to curtail free expression, arresting comedians and social media content creators for offending Buddhism.⁵⁸⁶ The administration also proposed laws on anti-corruption, drug re-habitation, regulation of broadcast media and ant-terrorism, which threaten political freedoms.⁵⁸⁷

In response to the lack of progress on accountability in Sri Lanka, the Council established an evidence gathering mechanism which has provided limited momentum to international efforts to ensure accountability. The evidence gathering mechanism has established a repository of information and evidence from UN,

⁵⁸² Human Rights Council, "Situation of Human Rights in Sri Lanka Report of the United Nations High Commissioner for Human Rights A/HRC/54/20," September 6, 2023, para 30, <https://documents.un.org/doc/undoc/gen/g23/181/48/pdf/g2318148.pdf?token=KdpPvmtmHYWYLFBCiM&fe=true>.

⁵⁸³ Skandha Gunasekara and Alex Travelli, "Sri Lanka, Its Economy Reeling, Is Approved for \$3 Billion Rescue Loan," *The New York Times*, March 20, 2023, <https://www.nytimes.com/2023/03/20/business/sri-lanka-international-monetary-fund.html>.

⁵⁸⁴ Human Rights Council, "Situation of Human Rights in Sri Lanka Report of the United Nations High Commissioner for Human Rights A/HRC/54/20," para 37.

⁵⁸⁵ Human Rights Council, "Situation of Human Rights in Sri Lanka Report of the United Nations High Commissioner for Human Rights A/HRC/54/20," para 38.

⁵⁸⁶ Human Rights Council, "Situation of Human Rights in Sri Lanka Report of the United Nations High Commissioner for Human Rights A/HRC/54/20," para 33

⁵⁸⁷ Human Rights Council, "Situation of Human Rights in Sri Lanka Report of the United Nations High Commissioner for Human Rights A/HRC/54/20," para 18,19,20.

NGO and academic sources, and identified four primary areas for investigation.⁵⁸⁸

The mechanism responded to requests for information and evidence from member state prosecutorial and judicial authorities in relation to ten named individuals.⁵⁸⁹

At the request of the Council, the High Commissioner is due to provide an oral update on Sri Lanka in February 2024 and a written update that includes further options for advancing accountability in September 2024.⁵⁹⁰ For the Council to remain engaged on Sri Lanka, member states must pass a new resolution at the 57th session, due to be held in September-October 2024. In a departure from his policy as Prime Minister, President Ranil Wickremesinghe opted not to cooperate with the Human Rights Council.⁵⁹¹ The prospects for Sri Lanka remaining on the Council agenda are modest. Unlike other situations before the Council, Sri Lanka is not part of an active armed conflict, under military or authoritarian rule or experiencing widespread physical integrity rights violations. A key reason for the Council's continued focus on Sri Lanka has been advocacy that stressed the need for continued international monitoring even in the absence of a widespread crackdown on human rights. OHCHR's reports to the Council were particularly successful at highlighting how the policies of both the Gotabaya and Wickremesinghe administrations threaten to reverse the gains made under Resolution 30/1 and risk

⁵⁸⁸ Human Rights Council, "Situation of Human Rights in Sri Lanka Report of the United Nations High Commissioner for Human Rights A/HRC/54/20," para 51, 52.

⁵⁸⁹ Human Rights Council, "Situation of Human Rights in Sri Lanka Report of the United Nations High Commissioner for Human Rights A/HRC/54/20," 56.

⁵⁹⁰ Human Rights Council, "51/1 Promoting Reconciliation, Accountability and Human Rights in Sri Lanka A/HRC/RES/51/1," October 12, 2022, para 19.

⁵⁹¹ Ali Sabry, "Statement by the Minister of Foreign Affairs of Sri Lanka at the 51st Regular Session of the United Nation Human Rights Council in Geneva," October 6, 2022, <https://srilankaembassy.at/wp-content/uploads/2022/10/Full-Statement.pdf>.

the recurrence of policies that gave rise to a human rights crisis.⁵⁹² Thus, developments within Sri Lanka will be critical in shaping how member states assess whether to keep the country on the Council's agenda. Ethiopia's successful efforts to pressurise Council members not to renew the mandate of the International Commission of Human Rights Experts on Ethiopia and plans to implement weak transitional justice policies is a precedent likely to inspire Sri Lanka.⁵⁹³ The Sri Lankan government is making nominal improvements to demonstrate to the international community that it should no longer be on the Council's agenda. Despite criticism from human rights groups, President Wickremesinghe has announced plans to go ahead with a South African style Truth and Reconciliation Commission.⁵⁹⁴ The President also announced plans to implement some power sharing provisions under the 13th Amendment to the Constitution – a move rejected by Tamil parties.⁵⁹⁵ Sri Lanka's presidential elections are due to be held before

⁵⁹² Human Rights Council, "Promotion Reconciliation, Accountability and Human Rights in Sri Lanka Report of the Office of the High Commissioner for Human Rights A/HRC/46/20,"; Human Rights Council, "Situation of Human Rights in Sri Lanka Comprehensive Report of the United Nations High Commissioner for Human Rights* A/HRC/51/5"; Human Rights Council, "Situation of Human Rights in Sri Lanka Report of the United Nations High Commissioner for Human Rights A/HRC/54/20."

⁵⁹³ Mehari Taddele Maru, "UN Human Rights Council Should Extend Investigation Commission on Ethiopia," Just Security, October 2, 2023, <https://www.justsecurity.org/89012/un-human-rights-council-should-extend-investigation-commission-on-ethiopia/>; Emma Farge, "Ethiopia Scraps Bid to End UN-Ordered Tigray Abuses Probe Early - Sources," *Reuters*, March 23, 2023, sec. Africa, <https://www.reuters.com/world/africa/ethiopia-scraps-bid-end-un-ordered-tigray-abuses-probe-early-sources-2023-03-23/>;

⁵⁹⁴ Human Rights Watch, "Joint Statement: Sri Lanka's Flawed Plans for a 'Truth Commission,'" September 4, 2023, <https://www.hrw.org/news/2023/09/04/joint-statement-sri-lankas-flawed-plans-truth-commission>.

⁵⁹⁵ "President's Full Speech in Parliament: 'We Must Find Solutions to Our Dilemmas within Our Own Capabilities,'" August 9, 2023, <https://www.adaderana.lk/news/92542/presidents-full-speech-in-parliament-we-must-find-solutions-to-our-dilemmas-within-our-own-capabilities>. Meera Srinivasan, "Focussing on 13th Amendment sans Police Powers 'Practical', Sri Lankan President Ranil Tells Parliament," *The Hindu*, August 9, 2023, <https://www.thehindu.com/news/international/focussing-on-13th-amendment-sans-police-powers-practical-sri-lankan-president-ranil-tells-parliament/article67177145.ece>; Meera Srinivasan, "Tamil National Alliance 'Categorically Rejects' Sri Lankan President's Offer of 13th

November 2024. If they are successfully held before the 57th session, they could also strengthen the government's argument that the country no longer needs international monitoring.

Conclusion

In response to widespread conflict related human rights violations and clamping down on political freedoms, UN human rights institutions and member states responded with censure and sanctions. Key bilateral partners withdrew military aid and trading concessions and withheld diplomatic support. At first, India sought to moderate its stance and offer diplomatic support to Sri Lanka. However, over time, owing to both deteriorating human rights conditions in Sri Lanka and domestic pressure from within India, New Delhi changed its stance, bringing it closer to that of Western partners. Combined effects of this censure and sanctions led to Sri Lanka being labelled as a 'pariah state' and heavily reliant on non-western states. It affected Sri Lanka's ability secure trading concessions, military aid and IMF loans.

As the human rights situation worsened in Sri Lanka UN human rights mechanisms played an important role in shaping how member states interpreted and responded to the situation within the country. In doing so, they acted both as independent actors and as agents of states. As agents of states concerned about human rights, they monitored and reported on violations and brought information to the

Amendment Minus Police Powers," *The Hindu*, July 18, 2023, sec. World, <https://www.thehindu.com/news/international/tamil-national-alliance-rejects-sri-lankan-presidents-offer-of-13th-amendment-minus-police-powers/article67095098.ece>.

international community's attention. They also acted independently by highlighting specific abuses and prioritising areas of reforms. UN reports in Sri Lanka framed the deteriorating human rights situation not just as a humanitarian concern but also as requiring a legal response.⁵⁹⁶ Both the Secretary General's Panel of Experts report and the report of OHCHR's investigation on Sri Lanka concluded that human rights violations in Sri Lanka amounted to international crimes and recommended specific reforms to address conflict related abuses.

In 2012, under the leadership of the United States, Sri Lanka was formally placed on the Human Rights Council's agenda. From 2012 to 2014, the Council passed three resolutions calling on the government to halt ongoing violations and provide remedies for violations during the conflict.

As a multilateral institution, the Council's work was impacted by the external political environment. There are numerous examples of external political dynamics adversely impacting the ability of the Council to address egregious human rights violations in Sri Lanka. For instance, the EU's unsuccessful attempts to get Sri Lanka on the Council in 2006 and later, in 2009, its failure to prevent the adoption of a self-congratulatory resolution by Sri Lanka are notable examples. Another instance is the decision by the President of the Human Rights Council not to table the Panel of Experts Report. All three resolutions adopted on Sri Lanka received support from all regions; however, support from the Asia Pacific region was always

⁵⁹⁶ Finnemore and Sikkink, "International Norm Dynamics and Political Change," 915.

lesser than that of other regions. This trend reflects a general reluctance among states to censure their neighbours. Nonetheless, the Council's engagement on Sri Lanka also demonstrates that it is not a venue for merely laundering superpower interests.⁵⁹⁷ Even after the US ended its engagement with the Council and dismissed it as a "cesspool of bias", the Council continued to remain engaged with the situation in Sri Lanka. Given the consistent support from Western states for the Council's engagement on Sri Lanka, critics have dismissed the Council's involvement in Sri Lanka as a Western preoccupation. However, this overlooks the critical contribution made by the Sri Lankans most affected by the human rights violations: the victims, their allies, human rights defenders, and other non-governmental organisations that advocated for the Council's engagement in Sri Lanka.

In 2015, a new government was elected in Sri Lanka, which opted to change course, cooperate with the Council, and commit to an ambitious human rights agenda under Resolution 30/1. Earlier tactical concessions shaped the contents of the commitments made in 2015.⁵⁹⁸ In response to mounting pressure, President Rajapaksa had appointed the LLRC, a domestic commission of inquiry. The recommendations made by the LLRC became the basis for the Council's three resolutions from 2012 to 2014, all of which called on Sri Lanka to implement the recommendations of its commission of inquiry. When the new government offered

⁵⁹⁷ Goldsmith and Posner, *The Limits of International Law*.

⁵⁹⁸ Thomas Risse, "'Let's Argue!': Communicative Action in World Politics," *International Organization* 54, no. 1 (2000): 1–39.

to commit by establishing new transitional justice mechanisms and adopting a host of other reforms, such as returning land, releasing detainees, these proposals were based on the recommendations of the LLRC.

When deciding to commit to Resolution 30/1, the government was guided predominantly by rational calculation of state interests.⁵⁹⁹ A key priority for the new government was to end Sri Lanka's diplomatic isolation and the prospect of further sanctions. The newly elected government was conscious that its poor human rights record had resulted in an 'unbalanced foreign policy' and limited its ability to cooperate with Western states.

Socialisation also played a role in the government's decision to cooperate with the Council.⁶⁰⁰ The person leading Sri Lanka's efforts to cooperate with the Council, Foreign Mangala Samaraweera, was personally committed to human rights and viewed cooperation as the 'right thing to do'.⁶⁰¹ Although neither the President or the Prime Minister were especially committed to addressing conflict related abuses, the new government was elected on a platform to restore democracy and good governance. Thus, there was a commitment among the two individuals leading the government to a minimum set of human rights reforms required to end repression.

⁵⁹⁹ Goldsmith and Posner, *The Limits of International Law*.

⁶⁰⁰ Alastair Iain Johnston, "Treating International Institutions as Social Environments," *International Studies Quarterly* 45 (2001): 487–515.

⁶⁰¹ J. G. March and J. P. Olsen, "The Logic of Appropriateness" in *The Oxford Handbook of Political Science*, ed. Robert Goodin (New York: Oxford University Press, 2011), 478-497.

Further, the government's commitment to rectify its 'unbalanced foreign policy', was also a reference to Sri Lanka's traditional place in the world. Since independence Sri Lanka had pursued a 'non-aligned' foreign policy and had avoided aligning too heavily with either of the two regional powers India and China. Being viewed as a 'pariah state' that was diplomatically isolated was at odds with how Sri Lanka viewed itself.

Following the co-sponsorship of Resolution 30/1, Sri Lanka continued to expand its cooperation with the UN and improved political freedoms and protection of physical integrity rights. Sri Lanka co-sponsored additional resolutions extending the time frame for compliance and welcomed the visits of ten Special Procedures. As a result of these developments, member states that had previously censured and sanctioned Sri Lanka prioritised making up for lost access and deepening bilateral ties. Given the historic nature of the democratic transition, Sri Lankan leaders, were largely welcomed by the international community, including US, UK, EU and India, that had previously been at the forefront of naming and shaming Sri Lanka for its human rights record. Sri Lanka no longer faced the prospect of continued diplomatic isolation or the threat of losing out on preferential trading arrangements or donor aid.

Following commitment, the path to compliance was uneven. Compliance requires a spectrum of steps, from refraining from harmful behaviour to enacting and operationalising human rights reforms. As member states were no longer willing to censure and sanction Sri Lanka for inadequate progress on reforms, rational

calculation of state interests become a less relevant mechanism in inducing compliance. Socialisation mechanisms such as dialogue, argumentation and capacity building and the preferences of domestic political elites became more relevant in shaping compliance.

Political willingness among domestic political elites can strongly shape compliance.⁶⁰² Although Sri Lankan political leaders were criticised for ‘lacking political willingness’, willingness could be observed in degrees depending both on the content of the norm and the step required for compliance. The Sirisena-Wickremesinghe government had a strong willingness to refrain from harmful behaviour. The biggest contribution made by the Council to improving Sri Lanka’s human rights situation was the improvements to physical integrity rights and political freedoms. The Council process directly contributed to these improvements by expanding the space for dissent. The Council’s engagement energised the human rights community within Sri Lanka and encouraged an unlikely alliance between domestic NGOs and overseas based diaspora groups. Importantly, the momentum generated by domestic NGOs helped to maintain the shrinking space for dissent within Sri Lanka and ultimately contributed to building the broad coalition that defeated President Rajapaksa.

Following the election of the new government and restoration of democracy, violations of physical integrity rights and political freedoms declined. They

⁶⁰² Sonia Cardenas, *Conflict and Compliance State Response to International Human Rights Pressure*.

continued to improve after commitment to Resolution 30/1. Improvements in physical integrity rights did not mean there was an absence of these types of violations, some types of violations, such as torture in the context of custody remained a persistent issue. Both President Sirisena and Prime Minister supported ending military occupation of civilian owned lands in the conflict affected areas and the release of political prisoners. Over the longer-term, these improvements to physical integrity rights and political freedoms have been sustained. Despite the election of President Gotabaya Rajapaksa and the on-going threats to political freedom under current President Wickremesinghe, Sri Lanka has not returned to the authoritarian conditions it was in before 2015.

Beyond compliance, opening of the space for dissent has also witnessed the rise of new political actors and alliances in Sri Lanka. Following the Council's initial intervention in Sri Lanka, in 2014 an alliance was formed among all the main political parties to elect President Sirisena. After the elections, an alliance was formed between the two major parties, the SLFP and UNP, which led a coalition government from 2015 to 2019. However, towards the end of 2019, the SFLP and UNP that dominated politics for the first 70 years since Sri Lanka's independence, split into different parties and lost their hold on national politics.⁶⁰³ These splits and re-alignments within the traditional parties weakened their hold on national

⁶⁰³ The SLFP split between President Sirisena and a new breakaway faction that branded itself as the Sri Lanka People's Front (SLPF) launched President Gotabaya's candidacy. The UNP split between Prime Minister Wickremesinghe and a new faction named the Samagi Jana Bala Vegaya (SJB) was led by Sajith Premadasa, which narrowly lost to President Gotabaya in 2019.

politics and allowed new actors to rise, most notably a leftist alliance led by the JVP, with the support of socialist parties and trade unions.

The fragile nature of the political coalition governing the country limited the scope to adopt reforms and generated significant political instability. The two individuals leading the executive branch, President Sirisena and Prime Minister Wickremesinghe, were in constant conflict, pushing the government in opposite directions. President Sirisena and Prime Minister Wickremesinghe frequently reversed each other's policy positions regarding human rights reforms and other major policy issues including the economy and constitutional reform. Within this context human rights reforms took a lower priority.

The new government, in alignment with its broad commitment to ending repression, was also willing to engage in dialogue and receive technical advice on reforms that sought to strengthen the legal protection of rights. As a result, Sri Lanka adopted the Office on Missing Persons Act, the Officer for Reparations Act, and the Enforced Disappearances Act, and provided for the issuing of Certificates of Absence.

However, domestic political instability limited the scope for discursive engagement on more contentious issues. State officials engaged with UN Officials, technical experts, Special Rapporteurs, and at times non-governmental organisations about human rights reforms; however, dialogue about reforms remained isolated within pockets of the government. Much of the time, lawmakers' personal energy and

political capital were devoted to resolving short-term political disagreements and ensuring the survival of the coalition.

Adding to the complexity and instability of the domestic political environment was the ever-present threat of lapsing back into authoritarianism. The risk of the coalition unravelling, and a Rajapaksa return was ever present. This threat manifested when President Sirisena purported to dismiss the Prime Minister via unconstitutional means and brought the government into limbo for 52 days. Although the courts reversed the constitutional coup, the proper functioning of government was never restored, as tragically evidenced by the failure to act on critical intelligence which resulted in the country's biggest terrorist attack on Easter Sunday 2019. As confirmed by the investigation of a subsequent parliamentary select committee, the failure to act on critical intelligence directly resulted from the breakdown of the relationship between President Sirisena and Prime Minister Wickremesinghe. Following the political uncertainty that followed the attacks, the government didn't engage in any major reform efforts from April to November 2019. Reform efforts, such as establishing a Truth and Reconciliation Commission and reforming the counter terrorism law, only advanced as far as draft laws that were tabled before Cabinet.

The lack of willingness by opposition parties to robustly engage in human rights reforms also undermined the scope for socialisation among domestic actors.⁶⁰⁴ In

⁶⁰⁴ Hillebrecht, *Domestic Politics and International Human Rights Tribunals*; Hillebrecht, "The Power of Human Rights Tribunals", 1101; Yonatan Lupu, "Legislative Veto Players and the Effects

Sri Lanka, the formation of a coalition government meant that two largest parties were formally in government. The opposition was formally led by the TNA, the most important domestic actor pressing the Human Rights Council to take a strong stance on Sri Lanka. However, once Rajapaksa was ousted, although the TNA was more vocal than other opposition parties, it adopted a relatively muted stance on pressurising the government to adopt reforms. The next largest opposition party, the JVP, focused on corruption issues rather than on commitments made to the Human Rights Council, which it perceived as not affecting its largely Sinhala electoral base. Informally and in practice, the opposition was led by a faction of President Sirisena's party, President Rajapaksa and his allies. This latter group of veteran politicians led a consistent and vociferous campaign arguing that the government's human rights reforms undermined the country's war heroes and national security.

The weakest area of compliance was operationalisation and enforcement of reforms. Underlying capacity issues, such as bureaucratic weaknesses, lack of resources, and technical know-how, also adversely impacted the ability of domestic actors to effectively operationalise and enforce reforms. Socialisation mechanisms such as capacity building efforts were absorbed by a weak bureaucracy that remained deeply politicised, inefficient, and lacking in professionalism.

of International Human Rights Agreements," 578; Conrad, "Divergent Incentives for Dictators: Domestic Institutions and (International Promises Not to) Torture"; James Vreeland, "Political Institutions and Human Rights: Why Dictatorships enter into United Nations Convention Against Torture", 78.

Further, capacity building efforts were not always implemented strategically. The efforts to aid implementation of Resolution 30/1, was ad hoc, with various UN agencies, development organisations and embassies focusing on their preferred projects. Capacity building was most effective when it was used over the short-term to address specific gaps within the state sector that directly contributed to guaranteeing the rights and providing remedies. An example of such efforts included the forensic capacity building assistance provided to the OMP, which enabled it to participate in investigations into human remains.

Both capacity constraints and preferences of domestic elites proved fatal to ensuring accountability. As seen elsewhere, leaders were opposed to ensuring accountability, as they were personally implicated and wished to avoid prosecuting themselves or their allies. Both President Sirisena and Prime Minister Wickremesinghe opted to stall or halt proceedings to weaken the other. Although capacity constraints within law enforcement agencies and prosecuting authorities were a factor, executive interference in the criminal justice process was critical to the lack of progress on judicial remedies.

Chapter 3: Nepal

Introduction

In 2005, King Gyanendra of Nepal dismissed the parliament and attempted to rule by royal decree, leading to a systematic crackdown on political opponents, human rights defenders, and the media. Key bilateral partners such as India, the US, and the UK responded with strong condemnation and announced plans to withdraw vital military and donor assistance. Non-governmental groups in Nepal and abroad advocated for Nepal to be assigned a Special Rapporteur by the UN Human Rights Commission.¹ In response to the mounting pressure, King Gyanendra committed to permitting the Office of the High Commissioner for Human Rights (OHCHR) to have a field office in Nepal. This office would be mandated to monitor and document human rights abuses and provide advice and assistance to state and non-state actors. The King's decision was guided by a mix of rational calculations and identity-based concerns. He sought to avoid further censure and sanctions while also being wary of the perception that being assigned a Special Rapporteur would label Nepal a 'failed state', which contrasted sharply with how Nepal viewed itself.

Following commitment, the path to compliance was uneven and incomplete. Compliance requires a spectrum of steps, from refraining from harmful behaviour to enacting, operationalising, and enforcing human rights reforms. In the year and

¹ The Commission was replaced by the UN Human Rights Council in 2006.

a half following Nepal's decision to commit to an OHCHR country office, King Gyanendra resigned, parliament was restored, and the political parties and the Maoists negotiated an end to the armed conflict. With the resignation of the King and the end of the armed conflict, there was a significant improvement in physical integrity rights and political freedoms. OHCHR contributed to the negotiated end of the conflict and the political transition through its monitoring and documenting activities, which helped create enabling conditions for political dissent. OHCHR's monitoring and documenting activities also served as a warning to both the Maoists and the Nepal Army that their conduct was under scrutiny, further contributing to improving the human rights situation in Nepal.

In response to these positive developments, Nepal's bilateral partners largely welcomed Nepal's new leaders despite some wariness of the Maoists. They encouraged successive governments to complete the peace process and consolidate Nepal's democratic transition by adopting a new constitution. Nepal's closest bilateral partners largely refrained from sanctioning or censuring Nepal when it failed to enact or properly operationalise critical human rights reforms. Thus, rational calculation of state interests became a less relevant causal mechanism following commitment.

Instead, domestic political preferences and socialisation mechanisms such as dialogue and capacity building became more relevant to inducing compliance. After the negotiated end of the conflict and the political transition, political priorities shifted to ensuring the successful conclusion of the peace process and the adoption

of the new constitution, relegating human rights reforms to a secondary concern. The willingness of political elites to adopt human rights reforms varied depending on both the content of the norm and the steps required for compliance. Lawmakers prioritised norms related to strengthening democracy and addressing the root causes of the conflict. As a result, important constitutional and legal reforms that strengthened human rights were enacted. However, Nepal's political leaders remained indifferent to reforms relevant to addressing conflict related abuses. Efforts to engage the government on more contentious issues was limited by the extreme political instability that prevailed in the country. Following the resignation of the King, Nepal had five governments, each lasting approximately year. These governments were unwieldy coalitions that struggled to ensure their own survival, let alone govern effectively. Once adopted the operationalisation of human rights reforms remained weak, owing to capacity constraints. The weakest area of compliance was enforcement, as political leaders directly intervened in the criminal justice process, preventing the progress of criminal investigations and prosecutions into human rights violations.

Country context

Nepal's population of 30 million is made up of more than 125 ethnic and caste groups that speak 123 different languages.² The hill-based Chhettri and Brahman groups made up one-third of the ethnic make-up; Madhesi, Janajati, Adivasi and other indigenous groups based outside of the hills constitute the remaining two-

² CIA World Factbook, "Nepal," May 16, 2023, <https://www.cia.gov/the-world-factbook/countries/nepal/#people-and-society>.

thirds.³ Among the main languages spoken are Nepali and Maithali.⁴ Eighty one percent of the population are adherents of Hinduism, followed by Buddhists (9%), Muslims (4.4%) and Christians (1.4%).⁵

Systemic discrimination based on caste, ethnicity, geography, and gender was a prevalent issue.⁶ Nepalese society was stratified along higher and lower Hindu caste groups, non-Hindu indigenous groups, and communities that lived in Nepal's hills and those that lived in the flat plains. Hill-based, upper caste Hindu groups had traditionally dominated politics and monopolised economic resources. Madhesi, Janajati, and Adivasi groups living outside of the hills faced discrimination based on language, different socio-cultural practices and unequal access to state resources.⁷ Dalits, the lowest Hindu caste, were deemed 'untouchables' and, in practice, were denied access to basic services, including land ownership, health, and education services.⁸ Gender inequality was formalised in law and practice, and

³ Ibid.

⁴ Ibid.

⁵ Ibid.

⁶ See Mahendra Lawoti, "Ethnic Politics and the Building of an Inclusive State," in *Nepal in Transition From People's War to Fragile Peace*, ed. David Malone, Suman Pradhan, and Sebastian von Einsiedel (New York: Cambridge University Press, 2012), 129–54.

⁷ Bandita Sijapati, "Regionalism, Madhesi Identity and the Madhesi Andolan," in *Nationalism and Ethnic Conflict in Nepal*, ed. M. Lawoti and S. Hangen (London: Routledge, 2012); Gautam Bhaskar, "Understanding Madhesi Contentions," in *Reading Nepali Transitions (2006-2015)*, ed. Kharel, Pranab (Kathmandu, Nepal: Martin Chautari, 2022), 65–96; Gerard Toffin, "The Janajati/Adivasi Movement in Nepal: Myths and Realities of Indigeneity," *Sociological Bulletin* 58, no. 1 (April 2009): 25–42.

⁸ Durga Sob, "The Situation of the Dalits in Nepal Prospects in a New Political Reality," *Voice of Dalit* 5, no. 1 (2012): 57–62; Yam Bahadur Kisan, "Federalisation and the Dalits," in *Reading Nepali Transition (2006-2015)*, ed. Pranab Kharel (Kathmandu: Martin Chautari, 2022), 237–60.

women members of marginalised groups faced multiple forms of discrimination based on their caste, ethnicity, and geography.⁹

Nepal had been an independent kingdom since 1768 and, unlike its neighbours, had never been colonised.¹⁰ The first democratic elections were held in 1959, following the proclamation of a new constitution by then King Mahendra.¹¹ However, a year later the King deemed the parliamentary system a failure and dismissed the government, suspended the constitution, and banned political parties. Thirty years later, in 1990, student groups and major political parties launched a democracy movement, resulting in then King Birendra handing over power to an interim government. The interim government enacted the 1990 Constitution and established Nepal as a parliamentary democracy with a constitutional monarch as head of state. Most executive powers were vested in a cabinet known as the council of ministers and headed by a prime minister. In the ensuing twelve years, Nepal had ten governments, which were headed by a small group of elites that did little to address longstanding inequalities within the country.

⁹ Daniel Arguirre and Pietropaoli Irene, "Gender Equality, Development and Transitional Justice: The Case of Nepal," *International Journal of Transitional Justice* 2, no. 3 (2008): 345–77; United Nations Committee on the Elimination of Discrimination against Women, "Concluding Observations of the Committee on the Elimination of Discrimination against Women Nepal CEDAW/C/NPL/CO/4-5," August 11, 2011, <https://digitallibrary.un.org/record/712703?v=pdf>.

¹⁰ For an overview of Nepal's history, see John Whelpton, *A History of Nepal* (UK: Cambridge University Press, 2005).

¹¹ See Adhikari Prakash and Mahendra Lawoti, "Nepal," in *An Introduction to South Asian Politics* (London: Routledge, 2015), 112–56; Krishna Hachhethu and David Gellner, *Nepal Trajectories of Democracy and Restructuring of the State* (London: Routledge, 2010).

In 1996, the Communist Party of Nepal (Maoists) (CPN (M)) launched a “people’s war,” seeking to replace the constitutional monarchy with a revolutionary communist regime.¹² At the outset of the conflict, the King refused to involve the Army, and the Nepal Police were deployed instead to address the insurgency. Later, under Prime Minister Koirala, an Armed Police Force was created to combat the Maoists. In November 2001, the Army was deployed and a year later the Nepal Police and the Armed Police were placed under the command of the Army. However, the political parties began to appreciate that there could not be a military solution to the conflict. The Maoists had also come to understand that despite their military successes there was little possibility of an outright victory or establishing a communist republic.¹³ Ceasefires were declared in 2001 and 2003, and negotiations were initiated between the government and the Maoists; however, they collapsed in 2003.

Widespread human rights violations occurred during the conflict (1996-2006), which left an estimated 12,000 dead.¹⁴ The Maoists developed a strong political and military presence and controlled parts of the country. They were alleged to have carried out large-scale forcible recruitment of children, abductions, executions, disappearances, and torture. The security forces were alleged to have carried out

¹² Michael Hutt, ed., *Himalayan People’s War Nepal’s Maoist Rebellion* (Bloomington: Indiana University Press, 2004); Mahendra Lawoti and Anup Kumar Pahari, *The Maoist Insurgency in Nepal Revolution in the Twenty-First Century* (London: Routledge, 2009).

¹³ Prashanth Jha, *Battles of the New Republic* (New Delhi: Aleph Book Company, 2014), 60-61.

¹⁴ United Nations Office of the High Commissioner for Human Rights, “Nepal Conflict Report,” 2012, https://www.ohchr.org/sites/default/files/Documents/Countries/NP/OHCHR_Nepal_Conflict_Report2012.pdf.

disappearances, summary executions, torture, arbitrary detentions and reprisals against journalists, dissidents, and human rights defenders. In 2004, the Maoists escalated the war and began mass abductions, targeted executions and enforced strikes that forced all commerce and transportation in entire districts to be shut down.¹⁵

In July 2001, a massacre within the Royal Palace resulted in the murder of nine members of the royal family.¹⁶ Although a commission of inquiry was established to investigate the massacre, evidence was deemed inconclusive, and no suspects were identified. Prince Gyanendra, the brother of the then crown prince, and next in the line of succession was anointed as King. A year later, in July 2002, at the request of Prime Minister Sher Bahadur Deuba, the King dissolved parliament and declared a three-month extension of emergency rule. Prime Minister Deuba attempted to hold elections in November 2002; however, the elections were postponed owing to insecurity in the country. From 2002 to 2005, Nepal had four prime ministers who either resigned or were dismissed by the King.

On 1 February 2005, the King dismissed the government and declared an emergency, on the grounds that the government had failed to hold elections and defeat the insurgency. Executive authority was exercised directly by the King as

¹⁵ United Nations Office of the High Commissioner for Human Rights, "Advisory Services and Technical Cooperation in the Field of Human Rights Report of the Office of the United Nations High Commissioner for Human Rights on Human Rights Assistance to Nepal* E/CN.4/2005/114," January 31, 2005, para 4-5, <https://digitallibrary.un.org/record/540769?ln=en&v=pdf>.

¹⁶ For a detailed account of the palace massacre see, Sudheer Sharma, *The Nepal Nexus* (India: Penguin Books, 2021).

Chair of the Council of Ministers. In the absence of parliament, legislative action was limited to ordinances issued by the King. The declaration of emergency suspended key constitutional rights, including freedom of expression and assembly. Hundreds of political leaders, human rights defenders, and journalists were detained. Censorship was imposed, and the powers of the security agencies were expanded.¹⁷

International response to the human rights situation in Nepal

Nepal has strong bilateral ties with India, the US, the UK and the EU. Throughout the insurgency, despite serious human rights abuses and the dismissal of parliament in 2002, bilateral partners continued to support the monarchy and the Nepal Army. Although non-governmental groups within and outside Nepal had appealed to UN human rights mechanisms, there was no unified response to Nepal's human rights challenges among the bilateral partners. Each country had domestic interests that motivated their policy towards Nepal. Despite their different approaches, a common position among the bilateral partners was that Nepal's parliament must continue to function. However, the King's decision to renege on this commitment and dismiss the parliament catalysed a common condemnatory response from the bilateral partners. Each country censured and sanctioned Nepal, withdrawing military and development assistance as well as diplomatic support.

¹⁷ International Crisis Group, "Nepal Dealing with a Human Rights Crisis Asia Report No 94" (Kathmandu/Brussels, March 24, 2005), <https://icg-prod.s3.amazonaws.com/94-nepal-dealing-with-a-human-rights-crisis.pdf>.

India

India viewed Nepal as part of its natural sphere of influence. Nepal shares stronger linguistic, cultural, and religious ties with India than any other country. India was Nepal's primary source of exports, and Nepal's only accessible port was Calcutta, India. The 1950 Treaty on Peace and Friendship between the two countries established an open border, granted citizens of both countries the right to work in the other, and India the right to veto any arms deals between Nepal and third countries.¹⁸ Given that Nepal bordered China, India viewed Nepal as part of its "security frontier" and a barrier against Chinese aggression.¹⁹

Indian officials also viewed the insurgency in Nepal as a potential threat to its own domestic security. There was a concern among Indian officials that if the Maoists succeeded in establishing a Communist People's Republic in Kathmandu, it would strengthen leftist insurgents within India's borders.²⁰ India was Nepal's main supplier of military assistance and Indian and Nepalese armies shared close historical ties, which did not change after the dismissal of Nepalese parliament in 2002.²¹ However, Indian officials continued to emphasise the importance of restoring parliament and expressly warned the King not to dismiss the government.²²

¹⁸ Surya Subedi, "India-Nepal Security Relations and the 1950 Treaty: Time for New Perspectives," *Asian Survey* 34, no. 3 (1994): 273–84.

¹⁹ Jha, *Battles of the New Republic*, 144.

²⁰ D.S. Muni, "Bringing Maoists down from the Hills: India's Role," in *Nepal in Transition From People's War to Fragile Peace*, ed. Sebastian von Einsiedel, David Malone, and Suman Pradhan (New York: Cambridge University Press, 2012), 313–32, 319.

²¹ Ranjit Rae, *Kathmandu Dilemma Resetting India-Nepal Ties* (Haryana: Vintage Penguin Random House India, 2021), 28.

²² Rae, *Kathmandu Dilemma Resetting India-Nepal Ties*, 32–33; Sharma, *The Nepal Nexus*, 200.

The Nepalese government viewed the Indians with suspicion and acrimony, based primarily on India's interference in Nepal's domestic politics.²³ Nepal's political class believed that the Indian government relied too heavily on its intelligence agency when dealing with Nepal. Throughout the Maoist insurgency, the Nepalese alleged that Indians were providing moral and material support to the Maoists, especially to Maoist leaders who lived in India.²⁴

India responded strongly against the King's decision to dismiss the government in February 2005. The Indian Minister for External Affairs issued a statement claiming that the events were of "grave concern" to India and "...the developments in Nepal constitute a serious setback to democracy and bring the monarchy and mainstream political parties in direct confrontation with each other. This can only benefit the forces that not only wish to undermine democracy in Nepal but the institution of democracy as well."²⁵ This statement was followed by decisions by Indian Prime Minister Manmohan Singh and the Indian Army Chief General J. J. Singh to cancel planned visits to Nepal.²⁶ The Indian press also reported that India contemplated suspending military assistance to Kathmandu.²⁷

²³ Sharma, *The Nepal Nexus*, 227-230. International Crisis Group, "Nepal's Future: In Whose Hands? Asia Report No 173" (Kathmandu/Brussels, August 13, 2009), 22, <https://icg-prod.s3.amazonaws.com/173-nepal-s-future-in-whose-hands.pdf>.

²⁴ Sharma, *The Nepal Nexus*, 227-230.

²⁵ Waldman, "Nepal's King Ousts the Government and Declares an Emergency," *The New York Times*, February 2, 2005, <https://www.nytimes.com/2005/02/02/world/asia/nepals-king-ousts-the-government-and-declares-an-emergency.html>.

²⁶ ²⁶ Muni, "Bringing Maoists down from the Hills: India's Role," 323.

²⁷ Ibid.

Indian policymakers were divided on how to respond to the royal coup.²⁸ India's National Security Advisor, Home Minister and its domestic intelligence bureau believed that, despite the King's actions, military defeat of the Maoists should continue to be pursued. However, the Ministry of External Affairs and India's foreign intelligence agency, the Research and Analysis Wing (RAW), argued that the Nepali government had, at best, achieved a military stalemate, despite sustained military assistance. Given that the King was using the military stalemate to increase his powers, the only option for these officials was to support a negotiated end to the conflict.

India also cooperated closely with the US and UK in formulating an international response to the royal coup.²⁹ Indian officials maintained "vigorous interactions" with both the US and the UK, which assuaged American concerns and generated a common understanding regarding India's subsequent support for a negotiated end to the conflict.

United Kingdom

The UK's bilateral ties with Nepal date back to the operations of the British East India Company in Nepal. Nepal's Gurkha soldiers had been recruited into the British Army for over a century and had served alongside British soldiers in both

²⁸ Rae, *Kathmandu Dilemma Resetting India-Nepal Ties*, 36; Jha, *Battles of the New Republic*, 96-97.

²⁹ Rae, *Kathmandu Dilemma Resetting India-Nepal Ties*, 40.

world wars. UK's development agency had a large development program in Nepal, and the UK provided non-lethal military assistance to Nepal.³⁰

Following the dismissal of parliament in 2002, the UK hosted a donor meeting in London to develop a coordinated international response to Nepal. Prime Minister Tony Blair appointed a Special Representative on Nepal, Jeffrey James, to act as a focal point on the UK government's relations with Nepal and to facilitate potential negotiations with the Maoists.³¹ The UK also provided financial support for a human rights advisor to the UN Country Team in Nepal, who provided technical assistance to Nepal's National Human Rights Commission. The British embassy in Kathmandu played a coordinating role among diplomatic missions in developing a response to the human rights crisis.³² In response to the royal coup, the UK foreign minister summoned the Nepali Ambassador and expressed "grave concern," stating that "the actions will increase instability in Nepal, undermining the institutions of democracy...."³³ The UK also announced that it would halt military assistance to Nepal.

³⁰ Human Rights Watch, "Between a Rock and a Hard Place: Civilians Struggle to Survive in Nepal's Civil War," October 2004, 90-91, <https://www.hrw.org/report/2004/10/06/between-rock-and-hard-place/civilians-struggle-survive-nepals-civil-war>.

³¹ "UK Appoints Special Representative to Nepal," *The Times of India*, February 26, 2003, <https://timesofindia.indiatimes.com/uk-appoints-special-representative-to-nepal/articleshow/38664266.cms>.

³² Former UN official, interview with author, February 22, 2023.

³³ "UK Expressed Grave Concerns About Political Developments in Nepal," *Dow Jones International News*, February 1, 2005.

European Union

The EU was largely focused on providing development assistance to Nepal.³⁴ Unlike other diplomatic missions, the EU directly engaged with the Maoists, especially in implementing development projects.³⁵ Although the EU had provided historical support to the monarchy and the Nepal Army, there were increasing calls after the dissolution of parliament in 2002 that some of the assistance should be tied to improvements in governance and human rights issues.³⁶ Among the Western partners, the EU was the most vocal in publicly raising human rights concerns and providing financial support to build capacity of the Nepal National Human Rights Commission.³⁷ Following the royal coup in February 2005, similar to the other international partners, the EU issued a strongly worded statement expressing its “grave concern for the human rights crisis in Nepal” and warned that “continued non-compliance with international human rights and humanitarian laws will have a serious implications for Nepal’s standing in the international community.”³⁸ It called for a “negotiated democratically based solution”, and, unlike other

³⁴ Manish Thapa and R.K Jain, “The European Union and Conflict Resolution in Nepal,” in *India, Europe and Conflict Resolution in South Asia* (New Delhi: KW Publishers, 2015), 64–77, 67; Julia Strasheim, “A Challenge to the Liberal Peace? European Union Peacebuilding Faces China in Nepal,” *European Review of International Studies* 8, no. 1 (2021): 353–81, 364.

³⁵ International Crisis Group, “Nepal’s Royal Coup: Making a Bad Situation Worse Asia Report No 91,” February 9, 2005, 14, https://icg-prod.s3.amazonaws.com/91-nepal-s-royal-coup-making-a-bad-situation-worse_0.pdf.

³⁶ Ibid; Thapa and Jain, “The European Union and Conflict Resolution in Nepal,” 74.

³⁷ Human Rights Watch, “Between a Rock and a Hard Place: Civilians Struggle to Survive in Nepal’s Civil War,” 82.

³⁸ “Declaration by the Presidency on Behalf of the EU on the Developments in Nepal,” Federal Ministry of European and International Affairs, Republic of Austria, February 3, 2005, <https://www.bmeia.gv.at/en/the-ministry/press/news/2006/declaration-by-the-presidency-on-behalf-of-the-european-union-concerning-the-current-political-situation-in-nepal-with-alignment-of-third-countries-of-27-april-2006>.

international partners, expressed its belief that “there can be no military solution to Nepal’s problems.”³⁹

United States

The US had a development assistance program for Nepal dating back to 1951.⁴⁰ In the aftermath of the terrorist attacks on 11 September 2001, the Bush administration viewed the conflict in Nepal within the context of the global war on terror. In 2003, the US designated the Maoists as supporters of terrorism, which was reinforced in 2004 when two security guards employed by the US embassy were killed during Maoist attacks.⁴¹

The US viewed the Maoist insurgency as a threat not only to Nepal’s nascent return to democracy but also to regional stability.⁴² US officials compared the Maoists to Al Qaeda, the Shining Path in Peru and the Khmer Rouge in Cambodia.⁴³ Some pundits argued that similar to the Khmer Rouge in Cambodia, a Maoist victory would lead to unprecedented violence.⁴⁴ Consequently, the Bush administration

³⁹ Ibid.

⁴⁰ U.S. Library of Congress, Congressional Research Service, “Nepal: Political Developments and Bilateral Relations with the United States”, by Bruce Vaughn, RL34731 (2008), 10.

⁴¹ Joshua Gross, “Proscription Problems: The Practical Implications of Terrorist Lists on Diplomacy and Peacebuilding in Nepal,” *Praxis* XXVI (2011): 38–59, 43. See also “US Condemns Attack on American Centre in Nepal,” *Times of India*, September 11, 2004, <https://timesofindia.indiatimes.com/us-condemns-attack-on-american-centre-in-nepal/articleshow/847360.cms>

⁴² U.S. Library of Congress, “Nepal: Political Developments and Bilateral Relations with the United States”, 10.

⁴³ Celia Dugger, “Nepal Says over 400 Rebels Are Dead after Several Battles,” *The New York Times*, May 6, 2002, <https://www.nytimes.com/2002/05/06/world/nepal-says-over-400-rebels-are-dead-after-several-battles.html>.

⁴⁴ Robert Kaplan, “Who Lost Nepal?,” *Wall Street Journal*, December 20, 2005.

provided diplomatic and military support to the King and the Nepal Army.⁴⁵ The US gave more than USD \$20 million in military assistance to the Nepal Army from 2002 to 2005, even after the dissolution of Nepal's parliament.⁴⁶ When human rights groups questioned whether military assistance to Nepal was in compliance with a law that prohibited the US from providing military assistance to governments that engage in gross human rights abuses, different branches of the US government provided mixed responses.⁴⁷ The two US Ambassadors to Nepal at the time, Michael Malinowski and James Moriarty, were particularly outspoken in their criticism of the Maoists and opposed efforts to negotiate with them.⁴⁸ Although the State Department's annual human rights reports identified violations by both the Maoists and government forces, the embassy in Kathmandu declined to publicly criticise abuses by the security forces.⁴⁹

The US declined to support efforts by the EU and UK to raise human rights concerns at joint diplomatic meetings and before the UN Human Rights Commission.⁵⁰ Instead, the US claimed that it raised these concerns in private

⁴⁵ John Lancaster, "Peace Hopes Dim Again in Nepal," *Washington Post*, November 7, 2003, <https://www.washingtonpost.com/archive/politics/2003/11/07/peace-hopes-dim-again-in-nepal/6a76015b-4e26-42e5-b77f-d5280b7ba47d/>.

⁴⁶ International Crisis Group, "Nepal's Royal Coup: Making a Bad Situation Worse," 13.

⁴⁷ Human Rights Watch, "Between a Rock and a Hard Place: Civilians Struggle to Survive in Nepal's Civil War", 88.

⁴⁸ Constantino Xavier, "Converting Convergence into Cooperation: The United States and India in South Asia," *Asia Policy* 14, no. 1 (January 2019): 19–50, 40–41; John Lancaster, "Peace Hopes Dim Again in Nepal." Pentagon officials for example didn't agree with US Ambassadors comments comparing the Maoists to other terrorist groups, see Human Rights Watch, "Between a Rock and a Hard Place: Civilians Struggle to Survive in Nepal's Civil War," 80.

⁴⁹ *Ibid.*

⁵⁰ Human Rights Watch, "Between a Rock and a Hard Place: Civilians Struggle to Survive in Nepal's Civil War," 80–2.

settings, including at the highest levels of government.⁵¹ Following the King's dismissal of the government in February 2005, the State Department expressed its concern; however, it did not go as far as India, UK and the EU. The State Department stated that it was "deeply troubled" by the developments in Nepal and noted that "these actions will undermine the Nepali struggle with the Maoist insurgency, a very serious challenge to a peaceful and prosperous future for Nepal."⁵² Referring to the widespread arrests, it stated only that "we expect the detainees to be treated well, charged under appropriate laws or released promptly."⁵³ Despite the State Department's muted statement, both Democratic and Republican senators expressed serious concern over events in Nepal and began publicly questioning continued US military assistance to the Nepal Army.⁵⁴

United Nations

The UN Secretary General had been engaged in Nepal since 2002 and had offered his 'good offices' to resolve the conflict despite the Indian government's reluctance to see the UN play a role in mediating the conflict.⁵⁵ Both Nepalese and international non-governmental organisations had been documenting human rights

⁵¹ Ibid.

⁵² U.S. Department of State, "Dismissal of Government and State of Emergency in Nepal," by Richard Boucher (February 1, 2005), <https://2001-2009.state.gov/r/pa/prs/ps/2005/41457.htm>.

⁵³ Ibid.

⁵⁴ International Crisis Group, "Nepal's Royal Coup: Making a Bad Situation Worse," 13-14.

⁵⁵ For details on DPA's early engagement see Rebecca Brubaker and Akhilesh Upadhyay, "Breaking the Mold: Lessons from Sixteen Years of Innovative UN Political Engagement in Nepal" (International Peace Institute, February 2021), 2-4, <https://www.ipinst.org/2021/02/lessons-from-sixteen-years-of-innovative-un-political-engagement-in-nepal/>; Theresa Whitfield, "Nepal's Masala Peacemaking," in *Nepal in Transition From People's War to Fragile Peace*, ed. Sebastian von Einsiedel, David Malone, and Suman Pradhan (New York: Cambridge University Press, 2012), 155-74; Former UN official, interview with author, March 11, 2023.

abuses and submitting information to UN Special Procedures and Treaty Bodies.⁵⁶ In 2004, the High Commissioner and Special Procedures sent more communications and urgent appeals to Nepal than any other country.⁵⁷ In 2003 and 2004, the UN Working Group on Involuntary Disappearances received the highest number of reports of disappearances from Nepal.⁵⁸ High Commissioner Louise Arbour also publicly threatened that failure to curb the Nepal Army's abuses could threaten its continued participation in UN peacekeeping missions.⁵⁹ Although the Department of Peacekeeping generally doesn't support public criticism of troop contributing armies, the comments by High Commissioner Arbour were also backed by head of UN Peacekeeping, Jean-Marie Guenhanno.⁶⁰

Public reports and statements from UN human rights mechanisms verified allegations of human rights violations taking place and provided legal analysis of those findings. Through their reporting activities UN human rights actors shaped the way member states understood and responded to the situation in Nepal. OHCHR's recommendations on how to address human rights violations, helped to

⁵⁶ "Advisory Services and Technical Cooperation in the Field of Human Rights Report of the Office of the United Nations High Commissioner for Human Rights on Human Rights Assistance to Nepal* E/CN.4/2005/114," para 11.

⁵⁷ Ibid.

⁵⁸ Amnesty International, "Nepal Widespread 'Disappearances' in the Context of Armed Conflict," 2003, 17, <https://www.amnesty.org/en/wp-content/uploads/2021/06/asa310452003en.pdf>.

⁵⁹ Former UN official, interview with author, February 22, 2023.

⁶⁰ Ibid.

shape the domestic reform agenda, and emphasised the need for human rights reforms, in addition to constitutional change.

In the two years leading up to the 2005 session of the UN Human Rights Commission, non-governmental organisations lobbied for the Commission to adopt a resolution on Nepal.⁶¹ Although the European Union was willing to table the resolution, the United States opposed the effort, favouring instead continuing quiet diplomacy.⁶² In April 2004, the Chairperson of the UN Human Rights Commission issued a statement on human rights assistance to Nepal, expressing concern over the growing number of civilian victims in Nepal.⁶³ Two months later, as part of a project led jointly by UNDP and OHCHR, two international advisors were deployed to Nepal's Human Rights Commission to build capacity in the areas of monitoring, reporting and training.⁶⁴ Although the King had committed to allowing the international advisors, as a 'tactical concession' to appease international pressure, it contributed to deepening the dialogue between international and domestic actors and formed the basis for advocacy for a fully-fledged OHCHR office in Nepal.⁶⁵ In December 2004, a Memorandum of Understanding was entered

⁶¹ Former OHCHR staff, interview with author, April 11, 2023; Brubaker and Upadhyay, "Breaking the Mold: Lessons from Sixteen Years of Innovative UN Political Engagement in Nepal," 3.

⁶² Human Rights Watch, "Between a Rock and a Hard Place: Civilians Struggle to Survive in Nepal's Civil War," 81. See also Brubaker and Upadhyay, "Breaking the Mold: Lessons from Sixteen Years of Innovative UN Political Engagement in Nepal", 6, note 38.

⁶³ United Nations Commission on Human Rights, "Commission Adopts Chairman's Statements on Afghanistan, Haiti, Nepal, Timor-Leste and Colombia," April 21, 2004, <https://www.ohchr.org/en/press-releases/2009/10/commission-adopts-chairmans-statements-afghanistan-haiti-nepal-timor-leste>.

⁶⁴ "Advisory Services and Technical Cooperation in the Field of Human Rights Report of the Office of the United Nations High Commissioner for Human Rights on Human Rights Assistance to Nepal* E/CN.4/2005/114," para 2.

⁶⁵ Thomas Risse, "'Let's Argue!': Communicative Action in World Politics," *International Organization* 54, no. 1 (2000): 1–39, 29.

into between Nepal and OHCHR, to grant the international advisors the same freedom of movement and access as the National Human Rights Commission staff.⁶⁶ However, implementation of the MoU and the capacity building project was undermined by Nepal's Home Ministry, which declined to grant access to places of detention.⁶⁷ Further, the terms of the commissioners of the National Human Rights Commission were set to expire in May 2005, and new ones couldn't be appointed as parliament remained dissolved.

Commitment

Leading up to the 61st session of the UN Human Rights Commission, held from 24 March to 20 April 2005, both international and domestic non-governmental groups advocated for international intervention to address Nepal's human rights crisis.⁶⁸ Nepali non-government stakeholders had spent months overseas lobbying lawmakers and officials in Europe and the United States.⁶⁹ Non-governmental groups requested that the Commission establish a Special Rapporteur on Nepal under agenda item 9, which was used to censure countries with poor human rights

⁶⁶ "Advisory Services and Technical Cooperation in the Field of Human Rights Report of the Office of the United Nations High Commissioner for Human Rights on Human Rights Assistance to Nepal* E/CN.4/2005/114," para 14.

⁶⁷ "Advisory Services and Technical Cooperation in the Field of Human Rights Report of the Office of the United Nations High Commissioner for Human Rights on Human Rights Assistance to Nepal* E/CN.4/2005/114," para 18.

⁶⁸ International Crisis Group, "Nepal Dealing with a Human Rights Crisis"; Human Rights Watch, "Nepal: Human Rights Concerns for the 61st Session of the U.N. Commission on Human Rights," March 10, 2005, <https://www.hrw.org/news/2005/03/10/nepal-human-rights-concerns-61st-session-un-commission-human-rights>.

⁶⁹ Civil Society Stakeholder, interview with author, December 10, 2022.

records.⁷⁰ Leading up to the 61th session, there were signals from Kathmandu that the King was keen to avoid placing Nepal under agenda item 9.⁷¹

Anticipating the King's aversion to a Special Rapporteur, civil society actors also advocated an alternative proposal, that of establishing an OHCHR field office in Nepal.⁷² Influential states with close ties to Nepal, such as the UK and Switzerland were keen to see the restoration of democracy in Nepal and assessed that an OHCHR field office would aid the cause. The Swiss government, which had a large development presence in Nepal, initiated quiet negotiations with the palace.⁷³ Pascale Baeriswyl, senior official within the Swiss Federal Department of Foreign Affairs, was especially influential during the negotiations.⁷⁴ As the King had dismissed the government, the issue was being addressed by a very small cabinet and "everything was literally being decided by the King".⁷⁵

The King opted for a compromise that fell under item 19, technical cooperation, of the Commission's agenda, which would allow OHCHR to establish a field office in Nepal. Those involved in the negotiations at the time noted that the King failed to appreciate that the scope for domestic scrutiny through a field presence was far

⁷⁰ Frederick Rawski and Mandira Sharma, "A Comprehensive Peace? Lessons from Human Rights Monitoring in Nepal," in *Nepal in Transition From People's War to Fragile Peace* (New York: Cambridge University Press, 2012), 175–201, 181.

⁷¹ Ibid.; Civil Society Stakeholder, interview with author, December 10, 2022; Former Vice President of the Bar Association of Nepal, interview with author, December 11, 2022.

⁷² Rawski and Sharma, "A Comprehensive Peace? Lessons from Human Rights Monitoring in Nepal," 181; Former OHCHR staff, interview with author, April 11, 2023.

⁷³ Former OHCHR staff, interview with author, April 11, 2023.

⁷⁴ Ibid.; Former Diplomat Based in Kathmandu, interview with author, March 10, 2023; Former Official, Swiss Federal Department of Foreign Affairs, interview with author, November 17, 2022.

⁷⁵ Former UN official, interview with author, March 11, 2023.

greater than it would have been if a Special Rapporteur had been appointed.⁷⁶ The King's decision to commit to the Agreement with OHCHR was informed by a mix of rational calculations and identity-based concerns.⁷⁷ King Gyanendra was keen to avoid further sanctions, censure and diplomatic isolation. The dismissal of government and the ensuing crackdown had been met with condemnation from the international community and especially key bilateral partners. Key partners such as India, US and UK had either announced their intentions to withdraw or were contemplating the withdrawal of vital military and development assistance. Bilateral partners had also withdrawn their diplomatic support for Nepal, with India notably cancelling meetings between the King and Indian Prime Minister as well as between the Army Chiefs of both countries.

The King was also faced a sense of cognitive dissonance at the prospect of being considered under agenda item 9, as other countries that were considered under the same category included states such as North Korea and Iran.⁷⁸ As a country that had never been colonised and a significant troop contributor to UN Peacekeeping operations, Nepal viewed itself as a country that assisted other countries in distress,

⁷⁶ Ibid.; Former OHCHR staff, interview with author, April 11, 2023. See also Brubaker and Upadhyay, "Breaking the Mold: Lessons from Sixteen Years of Innovative UN Political Engagement in Nepal", 6.

⁷⁷ On rational calculation of state interests see Hans Morgenthau, *Politics among nations the struggle for power and peace* (New York: Knopf, 1978); Kenneth Waltz, *Theory of International Politics* (Reading Mass: Addison Wesley, 1979); Jack Goldsmith and Eric Posner, *The Limits of International Law* (Oxford University Press, 2007). On identity based concerns see Ryan Goodman and Derek Jinks, "How to Influence States: Socialization and International Human Rights Law," *Duke Law Journal* 54, no. 3 (2004): 621–704, 640; Alastair Iain Johnston, "Treating International Institutions as Social Environments," *International Studies Quarterly* 45 (2001): 487–515, 499–500.

⁷⁸ Rawski and Sharma, "A Comprehensive Peace? Lessons from Human Rights Monitoring in Nepal," 181; Civil Society Stakeholder, interview with author, December 10, 2022; Former Vice President of the Bar Association of Nepal, interview with author, December 11, 2022.

and not one that required international intervention.⁷⁹ For the King, being placed in the same category as other ‘failed states’ was in sharp contrast to how Nepal viewed itself.⁸⁰

DPA officials that had been engaged in Nepal since 2002, supported an OHCHR field office in Nepal, and exerted influence during negotiations with the King, bearing pressure on him to commit to an agreement with OHCHR.⁸¹ The decisions by US and India to withdraw their objections to a field office were also critical to enlisting commitment from Nepal.⁸² Both India and the US not only wanted to see a restoration of democracy in Nepal but had also run out of patience with the King, as he had repeatedly reneged on his commitments to restore democracy.⁸³

OHCHR’s intervention in Nepal illustrates that while external politics has an impact on its interventions, it’s not merely a platform for advancing the agendas of powerful states.⁸⁴ OHCHR was also able to secure Nepal’s commitment to a field office, despite lack of overt support from India or the United States, Nepal’s key bilateral partners. High Commissioner Louise Arbour had brought attention to the allegations against the Nepal Army, despite strong military and diplomatic support from the US and India for the latter. Further, the working procedures of the

⁷⁹ Former UN official, interview with author, March 11, 2023.

⁸⁰ Ibid.

⁸¹ Ibid.

⁸² Brubaker and Upadhyay, “Breaking the Mold: Lessons from Sixteen Years of Innovative UN Political Engagement in Nepal”, 6.

⁸³ Ibid; Civil Society Stakeholder, interview with author, December 10, 2022; Former Diplomat Based in Kathmandu, interview with author, March 10, 2023; Former OHCHR staff, interview with author, April 11, 2023.

⁸⁴ Goldsmith and Posner, *The Limits of International Law*, 134.

Commission made it an important venue for negotiating international human rights commitments from Nepal. A range of actors were able to influence the process of negotiations, broadening the scope of commitments. The pressure brought by NGOs, the role played by Switzerland and the strong stance adopted by OHCHR, enabled a wide-ranging agreement to be reached with Nepal.

The ensuing Agreement between OHCHR and Nepal granted OHCHR broad authority to monitor human rights and advise domestic institutions in Nepal. The preambular paragraphs of the Agreement recalled Nepal's treaty obligations and other international human rights commitments, the UN Charter and the mandate of OHCHR.⁸⁵ The mandate of the field office was to monitor compliance with international human rights law and international humanitarian law, advise authorities to develop policies to protect human rights, submit reports to the UN, and provide advisory services and support to non-governmental organisations.⁸⁶ The initial duration of the Agreement was for two years, subject to extensions with the consent of both parties.⁸⁷ OHCHR had authority to carry out investigations and verifications through the deployment of human rights officers throughout the country.⁸⁸ It had wide-ranging authority to engage with the state sector, including informing authorities and offering recommendations regarding human rights

⁸⁵ "Agreement Between the United Nations High Commissioner for Human Rights and the Government of the Kingdom of Nepal Concerning the Establishment of an Office in Nepal," April 10, 2005, Article IV (1), Article (V), <https://nepal.ohchr.org/en/resources/Documents/English/mandate/OHCHR%20agreement%20with%20HMG%20MoU.pdf>.

⁸⁶ Ibid, Article IV.

⁸⁷ Ibid, Article XXII, (12).

⁸⁸ Ibid, Article V(1)(a).

violations and domestic laws that did not comply with international law.⁸⁹ This included establishing contacts with civil and military government agencies, providing educational programs, advising the executive, legislative, and judicial branches on the implementation of human rights policies, and assisting and advising the National Human Rights Commission. It also had the authority to maintain contact and engage with the non-state sector, including by providing education and professional training programs and by advising and assisting national and international protection mechanisms.⁹⁰

The Agreement made no explicit references to the People's Liberation Army (PLA), the armed wing of the Maoists, or other armed groups operating within Nepal. However, it provided that all activities of OHCHR shall be guided by the principles of UN and that it shall function as a "centre for consultation and dialogue promoting a climate of trust in all sectors involved in and concerned by human rights issues...".⁹¹ OHCHR also had the authority to "engage all relevant actors including non-state actors for the purpose of ensuring compliance with international human rights law and international human rights law."⁹² This provision was included at the recommendation of the DPA and was intended to enable OHCHR to directly engage with the Maoists.⁹³

⁸⁹ Ibid, Article V(1)(c),(d), (e),(g).

⁹⁰ Ibid, Article V(1)(b),(d), (f),(h).

⁹¹ Ibid, Article IV(2)(b).

⁹² Ibid, Article V(1)(b).

⁹³ Former UN official, interview with author, February 22, 2023.

Compliance

Under the Agreement Nepal was required to halt ongoing violations, enact new laws where required, and operationalise new and existing laws and institutions. The executive and the legislature held primary responsibility for adopting and implementing human rights reforms. During the period that OHCHR was present in Nepal from 2005 to 2011, Nepal formally transformed from a Hindu constitutional monarchy to a secular federal republic. The executive, which initially consisted of the King, prime minister and a cabinet known as the council of ministers, became a ceremonial president and a vice-president, prime minister, and council of ministers. The legislature saw three separate transformations following the resignation of the King.

Elite level support for human rights reforms can strongly influence compliance.⁹⁴ Where a government is led by a political coalition and decision making is fragmented governments are less likely to adopt human rights reforms.⁹⁵ During the relevant period, from 2005 to 2011, Nepal had six governments, and five of them were unwieldy coalition governments. After commitment, much of the political capital of successive governments was focused on ensuring their own survival, completing the peace process and the adoption of a new constitution. Adoption of human rights reforms was a secondary concern. Political willingness

⁹⁴ Beth A Simmons, *Mobilizing for Human Rights International Law in Domestic Politics* (New York: Cambridge University Press, 2009), 149 -50; Courtney Hillebrecht, "The Power of Human Rights Tribunals Compliance with the European Court of Human Rights and Domestic Policy Change" *European Journal of International Relations* 20, no. 4 (2014): 1100-1123, 1107.

⁹⁵ Sonia Cardenas, *Conflict and Compliance State Response to International Human Rights Pressure* (Philadelphia: University of Pennsylvania Press, 2007), 13.

to comply with human rights commitments was not completely absent; however, it varied both depending on the content of the norm and steps required for compliance. Nepal's leaders were willing to refrain from harmful conduct and adopt reforms with respect to some norms whilst remaining opposed to others.

Both the Maoists and the political parties were strongly committed to bringing the conflict to an end and their joint efforts resulted in the signing of the Comprehensive Peace Agreement (CPA). The political parties had to come appreciate that there cannot be a military solution to the conflict. The Maoists had also come to understand that despite their military successes there was little possibility of an outright victory or establishing a communist republic.⁹⁶ Resignation of the King and the end of the armed conflict resulted in significant improvements to physical integrity rights. Following the resignation of the King and the signing of the CPA, extrajudicial killings, enforced disappearances and arbitrary detentions reduced markedly, while political freedoms such as freedom of expression, assembly, and association improved.

Under the CPA the political parties and the Maoists reached a historic domestic agreement to not only end the armed conflict, but also to strengthen democracy and address the root causes of the conflict. As a result, Nepal had a greater willingness to adopt deep constitutional reforms with a view to enhancing the democratic nature of the state. Given the focus on addressing the root causes of the conflict, all the

⁹⁶ Jha, *Battles of the New Republic*, 60-61.

governments that led Nepal during this period focused on addressing issues of historical discrimination.

Despite the array of legal and policy reforms adopted, their implementation remained poor due to weak bureaucratic capacity. Nepal's bureaucracy was among the lowest paid in South Asia and had a long-standing history of corruption and patronage. National human rights institutions and law enforcement agencies were highly politicised, lacked resources and, in some cases, had limited technical capacity to discharge their duties.

Further, Nepal's leaders demonstrated little to no willingness to provide remedies for past human rights violations. Although commitments were made in the CPA and the interim constitution to ensure truth and justice for abuses committed during the armed conflict, all the governments that led Nepal were only willing to go as far as developing draft laws to establish the promised mechanisms. Nepal's leaders were especially averse to ensuring accountability and went as far as directly intervening in the criminal justice process to withdraw criminal investigations and undermine the modest progress made by law enforcement agencies.

Political context

Since the beginning of the armed conflict there were three dominant political forces in Nepal: the King, political parties and the Maoists. Despite misgivings, before the dismissal of government in February 2005, the political parties aligned with the King. However, after February 2005, the King's actions resulted in the unification

of the seven major political parties and greater cooperation between the Maoists and the political parties. Although Nepal's political parties were historically known for corruption, nepotism and in-fighting, the King's actions energised and unified the seven major political parties around three key policy positions: the reconvening of parliament; negotiations with the Maoists; and election of a constitutional assembly to reform the 1990 constitution.⁹⁷ The political parties were led by the leader of the Nepali Congress (NC), former Prime Minister Girija Koirala, who renewed secret negotiations with the Maoists in Delhi, facilitated by the Indian government.⁹⁸ In September 2005, the political parties and the Maoists reached a 12 Point Agreement, committing both sides to multiparty democracy and a constituent assembly.⁹⁹

The 12 Point Agreement set the stage for mass demonstrations across the country in early 2006. Led by the political parties and supported by the Maoists, nineteen consecutive days of protests known as the "*Jana Andolan*" (the people's movement), culminated on 24 April 2006, when King Gyanendra resigned and reconvened parliament.¹⁰⁰ On 30 April 2006, an interim government was formed

⁹⁷ International Crisis Group, "Towards a Lasting Peace in Nepal: The Constitutional Issues Asia Report No 99" (Kathmandu/Brussels, June 15, 2005), 20, <https://icg-prod.s3.amazonaws.com/99-towards-a-lasting-peace-in-nepal-the-constitutional-issues.pdf>.

⁹⁸ On India's role in facilitating the talks, see Muni, "Bringing Maoists down from the Hills: India's Role," 324-329; Sharma, *The Nepal Nexus*, 211-220.

⁹⁹ "12-Point Understanding Reached between the Seven Political Parties and Nepal Communist Party (Maoists)" (United Nations, November 22, 2005), https://peacemaker.un.org/sites/peacemaker.un.org/files/NP_051122_12%20Point%20Understa nding.pdf.

¹⁰⁰ For details on the origins and spread of the demonstrations see Chudamani Basnet, "Debating Civil Society: Nagarik Samaj and Nagarik Discourse in Nepal's People's Movement II," in *Reading Nepali Transitions (2006-2015)*, ed. Pranab Kharel (Kathmandu, Nepal: Martin Chautari, 2022), 37-64.

under the Prime Ministership of Koirala.¹⁰¹ Cabinet ministries were divided among the seven party alliance members. Although the Maoists were disappointed that they had no role in the newly restored parliament, subsequent negotiations resulted in adoption of a 25-point Ceasefire Code of Conduct, which committed both the Government and the Maoists to refrain from mobilising their armies.¹⁰² This was followed up by an 8 Point Agreement, which committed the parties to draft an interim constitution, set dates for the election of a constituent assembly and request the United Nations to provide assistance to monitor and manage personnel and arms of the PLA and the Nepal Army.¹⁰³

During the negotiations for an interim constitution, the Maoists and the government signed the CPA in November 2006.¹⁰⁴ The CPA formally brought the conflict to an end and committed the parties to establish an interim legislature representing Maoists and all the existing parties represented in parliament.¹⁰⁵ On the contentious issues of the future of the monarchy and the role of the PLA a tentative agreement was reached. The fate of the monarchy would be determined at the first sitting of

¹⁰¹ International Crisis Group, “Nepal: From People Power to Peace? Asia Report No 115” (Brussels, May 10, 2006), ii, <https://www.crisisgroup.org/asia/south-asia/nepal/nepal-people-power-peace>.

¹⁰² “The Code of Conduct for the Ceasefire Agreed between the Government of Nepal and CPN (Maoist) on 25 May 2006 at Gokarna” (United Nations), accessed January 31, 2023, https://peacemaker.un.org/sites/peacemaker.un.org/files/NP_060525_25%20Point%20Ceasefire%20Code%20of%20Conduct.pdf, see para 1, 3, 16-19.

¹⁰³ “The Eight-Point SPA-Maoist Agreement (Unofficial Translation),” June 16, 2006, <https://ucdpged.uu.se/peaceagreements/fulltext/Nep%2020060616.pdf>.

¹⁰⁴ “Comprehensive Peace Accord Signed between Nepal Government and the Communist Party of Nepal (Maoist)” (United Nations, November 22, 2006), https://peacemaker.un.org/sites/peacemaker.un.org/files/NP_061122_Comprehensive%20Peace%20Agreement%20between%20the%20Government%20and%20the%20CPN%20%28Maoist%209.pdf.

¹⁰⁵ “Comprehensive Peace Accord Signed between Nepal Government and the Communist Party of Nepal (Maoist)”, Articles 3.2, 6.1.

the constituent assembly, and the Maoists agreed to place the PLA and their weapons and ammunitions at seven agreed locations under the supervision of the UN.¹⁰⁶ The long-term future of the PLA was to be determined by a Special Committee constituted by the Council of Ministers.¹⁰⁷ The CPA included 18 references to human rights and granted explicit authority to OHCHR and Nepal's National Human Rights Commission to monitor the implementation of the human rights commitments.¹⁰⁸ Although neither the Maoists or the political parties were keen to address accountability for conflict related abuses, they were willing to heed the advice of international experts, provided by bilateral partners to support the peace process.¹⁰⁹ As a result the CPA also committed the parties within sixty days to clarify the fate of the disappeared and establish a Truth and Reconciliation Commission.¹¹⁰

In January 2007, the Interim Constitution was adopted which stripped the King of his formal powers and declared Nepal a secular state.¹¹¹ Simultaneously, outside of Kathmandu, Madhesi groups based in the flat plains to the west of Kathmandu known as the Terai, entered the national political arena and demanded

¹⁰⁶ "Comprehensive Peace Accord Signed between Nepal Government and the Communist Party of Nepal (Maoist)", Articles 4.1-4.2, 3.3.

¹⁰⁷ "Comprehensive Peace Accord Signed between Nepal Government and the Communist Party of Nepal (Maoist)", Articles 4.4.

¹⁰⁸ "Comprehensive Peace Accord Signed between Nepal Government and the Communist Party of Nepal (Maoist)", Articles 9.1, 9.4.

¹⁰⁹ Yvette Selim, *Transitional Justice in Nepal Interests, Victims and Agency* (UK: Routledge, 2018), 144-145; Former Vice President of the Bar Association of Nepal, interview with author, December 11, 2022; Former UN official, interview with author, February 22, 2023.

¹¹⁰ "Comprehensive Peace Accord Signed between Nepal Government and the Communist Party of Nepal (Maoist)", Articles 5.2.3, 8.4; Selim, *Transitional Justice in Nepal Interests, Victims and Agency*, 144-145.

¹¹¹ The Interim Constitution of Nepal (2007), Preamble, Article 3.3, 4.

representation in the interim government. Demonstrations erupted in the first half of 2007, profoundly altering Nepal's politics by bringing issues of discrimination and historical marginalisation to the forefront and paving the way for the rise of Madhesi political parties.¹¹² To accommodate the demands of Madhesi, Janajati and other indigenous groups, the interim government agreed to amend the constitution to create a federal structure. This included a new mixed electoral system that utilised both first past the post and proportional elections and increased the number of members of the forthcoming constituent assembly.¹¹³ This period also saw the rise of armed groups, including secessionist groups in the Terai that clashed with Maoists and Maoist affiliated groups in the Terai.

In January 2007, in response to the requests of the Nepali government and the Maoists, the UN Security Council established the United Nations Mission in Nepal (UNMIN). UNMIN was tasked with monitoring the management of arms and personnel of the PLA and Nepal Army, overseeing the ceasefire arrangements and providing technical support for conducting the constituent assembly elections.¹¹⁴ By April 2007 UNMIN registered 31,152 Maoist personnel and 3,475 arms.¹¹⁵ The next required step in the process, that of rehabilitating and reintegrating Maoist combatants, was left to be decided after the constituent assembly elections. The

¹¹² See Bhaskar, "Understanding Madhesi Contentions," 65–96.

¹¹³ The Interim Constitution of Nepal, Preamble, Article 63.

¹¹⁴ United Nations Security Council, "Resolution (1740) S/Res/1740," 2007, <https://digitallibrary.un.org/record/593436?ln=en&v=pdf#>.

¹¹⁵ United Nations Security Council, "Report of the Secretary-General on the Request of Nepal for United Nations Assistance in Support of Its Peace Process S/2007/235," April 26, 2007, para 7, <https://documents.un.org/doc/undoc/gen/n07/313/23/pdf/n0731323.pdf?token=5wLe9hGywcwFAh27Wa&fe=true>.

non-Maoist political parties anticipated that they would win the election and would then be able to dictate the terms on which the PLA would be handled.¹¹⁶ The Maoists believed that having a standing army gave them an electoral advantage and delayed having to address internal divisions over the issue.¹¹⁷

The Maoists preferred to first complete the constitution drafting process and then reintegrate the PLA. The political parties wanted the demobilisation and reintegration to take place as a matter of priority, as they continued to view Maoists participation in democracy with suspicion. There was also serious disagreement over how reintegration would occur. Internal forces within the Maoists wanted to see the PLA intact and avoid the perception that the PLA were being dismantled.¹¹⁸ The Maoists pushed for as many PLA personnel as possible to be reintegrated into the army under one unit. The Nepal Army was firmly opposed to the idea and insisted that PLA personnel must meet minimum criteria to be integrated into the Army. Political parties also had varying ideas about whether the PLA should be integrated into the Nepal Army, Nepal Armed Police or the Police, which units it should be incorporated into, and some supported the idea that the PLA should be placed in a

¹¹⁶ Ian Martin, "The United Nations and Support to Nepal's Peace Process," in *Nepal in Transition From People's War to Fragile Peace*, ed. Sebastian von Einsiedel, David Malone, and Suman Pradhan (New York: Cambridge University Press, 2012), 201–32, 215.

¹¹⁷ Ibid.

¹¹⁸ For a summary of the debates see DB Subedi, "Dealing with Ex-Combatants in a Negotiated Peace Process: Impacts of Transitional Politics on the Disarmament, Demobilisation and Reintegration Program in Nepal," in *Reading Nepali Transition (2006-2015)*, ed. Pranab Kharel (Kathmandu: Martin Chautari, 2022), 455–88; International Crisis Group, "Nepal: From Two Armies to One Asia Report No 211" (Kathmandu/Brussels, August 18, 2011), <https://icg-prod.s3.amazonaws.com/211-nepal-from-two-armies-to-one.pdf>.

specialised unit mandated to provide security for physical infrastructure and natural resources.

The elections to the constituent assembly were twice delayed and were finally held on 10 April 2008. In a surprise upset, the Maoists received the most votes and secured more than one-third of the new legislature. The elections produced the most diverse legislature in Nepal's history, with much greater representation of women and traditionally marginalised caste, ethnic and regional groups. The Nepali Congress, which had led the peace process and worked in cooperation with the Maoists to bring the conflict to end, was expected to win the election. However, upon defeat, they declined to join a Maoist-led government and instead led the opposition. Division also arose between the Maoists and the Nepali Congress when the former refused to back Prime Koirala's attempt to become the first President of Nepal. After more than three months delay, the Maoists formed a government with the support of CPN (UML) and a Madhesi party (MPRF). At its first sitting, the constituent assembly ended Nepal's 263-year constitutional monarchy and established the Federal Democratic Republic of Nepal.¹¹⁹

Despite the resounding victory of the Maoists, they were unable to govern for more than a year. Many Nepalis continued to view the Maoists with suspicion, questioning their commitment to democracy and non-violence. Maoist efforts to

¹¹⁹ The Interim Constitution of Nepal, Preamble, Article 4.

reform the Nepal Army were especially viewed with suspicion, and the government was ultimately brought down by efforts to reform the security sector.

Nepal had three more governments in the next two years. During this period divisions festered within and across political parties based on personal animosity, factionalism and over implementation of key aspects of the CPA such as the future of the PLA and the design of a new constitution.¹²⁰ As the May 2010 deadline for a new constitution loomed, the country faced a crisis. If the deadline lapsed without a new constitution, the constituent assembly would cease to exist and the President would also cease to hold office, leaving the country without its key governing structures. The interim constitution provided that the term of the constituent assembly could only be extended for six months in the event of a national emergency.¹²¹

In response, the political parties amended the interim constitution to extend the term of the constituent assembly by an additional year until May 2011. As part of the deal reached to amend the constitution, Prime Minister Nepal was required to resign. In the ensuing seven months the country was led by a caretaker government. In February 2011, another senior member of the CPN (UML), Jhala Nath Khanel was elected as Prime Minister. Three months later, as the May 2011 deadline for drafting a constitution approached, the previous year's deal was struck again to

¹²⁰ See International Crisis Group, "Nepal: From Two Armies to One"; International Crisis Group, "Nepal: Identity Politics and Federalism Asia Report No 199" (Kathmandu/Brussels, January 13, 2011), <https://icg-prod.s3.amazonaws.com/199-nepal-identity-politics-and-federalism.pdf>.

¹²¹ The Interim Constitution of Nepal, Article 64.

extend the constitution for a year, on the condition that the Prime Minister resign, In August 2011, Baburam Bhattarai, the second in command of the Maoists, became Prime Minister. One month into his term, Bhattarai's government chose not to extend the OHCHR's presence in Nepal.

Executive

To implement the Agreement with OHCHR, Nepal was required to implement an array of new and existing laws, policies, and institutions, for which the executive branch held the primary responsibility. From April 2005 to January 2007, Nepal was governed under the 1990 Constitution and the executive branch consisted of the king, prime minister, and council of ministers. Following the resignation of the King in April 2006, in the absence of any constitutional provisions, Prime Minister Koirala served as the head of state. In 2008, following the constituent assembly elections, the interim constitution was amended to reform the executive branch to include a ceremonial president and vice-president, prime minister, and a council of ministers.

King

From the signing of the Agreement with OHCHR in April 2005 to his resignation a year later in April 2006, the King Gyanendra's actions contributed more towards human rights violations than improvements. In May 2005, he ended the emergency and released select prisoners. However, he refused to reconvene parliament and instead pushed for local government elections. In the absence of parliament, the

King ruled via royal decrees.¹²² The King threatened to ban political parties and restore a modified version of the 1960 constitution. The King also introduced six new media laws that consolidated media restrictions introduced during the emergency, leading Reporters without Borders to claim that Nepal was responsible for more than half of all cases of global censorship.¹²³ Despite pressure on the King to disband the extra-judicial anti-corruption mechanism, the Royal Commission into Corruption, it continued to operate and target political opponents.¹²⁴

President

Following the King's resignation in April 2006, Prime Minister Koirala served as the Acting Head of State until the first sitting of the constituent assembly in May 2008, although there were no formal constitutional provisions that provided for this role. At the first sitting of the constituent assembly, Nepal was declared a republic, and amendments were incorporated into the interim constitution creating two additional executive posts, the president and the vice president. The president was to be elected by the constitutional assembly by a majority vote and the term was to continue until a new constitution was promulgated.¹²⁵ The vice president's role was limited to performing functions of the president in the event of latter's absence or resignation.¹²⁶ Nepal's first President, Ram Baran Yadav, was a former health

¹²² International Crisis Group, "Nepal: Electing Chaos Asia Report No 111" (Kathmandu/Brussels, January 31, 2006), 11, <https://www.crisisgroup.org/asia/south-asia/nepal/nepal-electing-chaos>.

¹²³ Voice of America, "Watchdog Condemns Media Harassment in Nepal," January 10, 2006, <https://www.voanews.com/a/a-13-2006-01-10-voa27/316256.html>.

¹²⁴ Rastriya Samachar Samiti, "King Forms Corruption Control Royal Commission," *The Himalayan Times*, February 17, 2005, <https://thehimalayantimes.com/nepal/king-forms-corruption-control-royal-commission>.

¹²⁵ The Interim Constitution of Nepal, Article 36C.

¹²⁶ The Interim Constitution of Nepal, Article 36G.

minister and general secretary of the Nepali Congress; the first Vice President, Parmananda Jha, was of Madhesi origin and was a former judge of the Supreme Court.

The president was the head of state and on the advice of the prime minister had the authority to make key appointments to the public service and judiciary, declare an emergency, and issue pardons.¹²⁷ The president as the head of the army had the authority on the recommendations of the council of ministers to appoint the chief of the army and to “control, mobilize and manage” the army.¹²⁸ Based on the recommendations of the relevant parliamentary committee, the president also had the authority to prepare and enforce a detailed action plan to reform the army.¹²⁹

As the president was required to always act on the advice of the prime minister and or the council of ministers, the president did not bear any direct responsibility for the implementation of human rights reforms. A former advisor to the President Yadav explained that the President played a key role behind the scenes, as a convenor and facilitator.¹³⁰ The President often brought together political parties, encouraging dialogue and consultation, and facilitated the participation of outside experts (including human rights experts) on relevant thematic issues.¹³¹ The President and his staff were also invited by various committees to share their views

¹²⁷ The Interim Constitution of Nepal, Article 36A, 51, 61A, 103, 125, 143, 150, 151, 152.

¹²⁸ The Interim Constitution of Nepal, Article 144.

¹²⁹ The Interim Constitution of Nepal, Article 144(2).

¹³⁰ Former Advisor to the President, interview with author, November 11, 2022.

¹³¹ Ibid.

on constitutional issues.¹³² The most significant act of the President was the dismissal of Army Chief Katawal by Prime Minister Dahal, which led to the resignation of the Maoist government. The constitutionality of the dismissal was contested but nevertheless sustained, perhaps because the President's actions were supported by eighteen political parties and neighbouring India.¹³³

Prime Minister

The prime minister as the head of government and the chair of the council of ministers had significant responsibility for enacting and implementing human rights reforms.¹³⁴ The prime minister had the authority to appoint members of the council of ministers, ministers of state and assistant ministers.¹³⁵ Nepal had five prime ministers during the period that OHCHR had a field presence in Nepal from April 2005 to December 2011.¹³⁶ Although all five of the Prime Ministers had some willingness to improve human rights, none were keen to provide remedies for conflict related abuses. In part, this was because all five Prime Ministers and many of their colleagues, supporters and other coalition partners were either directly implicated in or had offered political support for past human rights violations.¹³⁷

¹³² Ibid.

¹³³ International Crisis Group, "Nepal's Future: In Whose Hands?", 5-6. For India's role in the events, see Prashanth Jha, *Battles of the New Republic*, 70-80.

¹³⁴ The Interim Constitution of Nepal, Article 39(1),(2), Article 40.

¹³⁵ The Interim Constitution of Nepal, Article 39(1),(2), Article 40.

¹³⁶ Girijia Prasad Koirala served from 25 April 2006 to 18 August 2008; Pushpa Kamal Dahal served from 18 August 2008 to 26 May 2009; Madhav Kumar Nepal served from 25 May 2009 to 6 February 2011; Jhala Nath Khanal served from 6 February 2011 to 29 August 2011; and Baburam Bhattarai served from 29 August 2011 to 14 March 2013.

¹³⁷ Former OHCHR staff, interview with author, November 21, 2022; Civil Society Stakeholder, interview with author, December 10, 2022; International Crisis Group, "Nepal: Peace and Justice Asia Report No 184" (Kathmandu/Brussels, January 14, 2010),1, 4-5, <https://icg-prod.s3.amazonaws.com/184-nepal-peace-and-justice.pdf>; Binod Bhattarai et al., "Impunity in

Prime Minister Koirala's tenure from April 2006 to May 2008 was the longest and proved the most consequential for human rights reforms. Despite being implicated in serious human rights abuses, corruption and nepotism, Koirala was described as the individual that had the strongest vision for the peace process.¹³⁸ His commitment to bringing a negotiated end to the conflict and restoring parliament had a direct impact on ending conflict related violations and reducing physical integrity rights violations and improving free expression and assembly.¹³⁹ Prime Minister Koirala also directly supported OHCHR's presence in the country and requested an expanded UN presence in the form of UNMIN.¹⁴⁰ Koirala's tenure also saw cantonment and verification of Maoist personnel and their weapons, as well as the successful completion of the constituent assembly elections.¹⁴¹ Important legal reforms achieved during Koirala's tenure include the adoption of the interim constitution, declaration of the federal character of Nepal, bringing the Army under formal civilian control, granting formal citizenship to 2 million residents, reforming the electoral system to promote greater diversity in the legislature, and providing for greater representation of marginalised groups in

Nepal an Exploratory Study" (Lalitpur, Nepal, 1999), 10-11, <https://cijnepal.org.np/wp-content/uploads/2018/08/Impunity-in-Nepal.pdf>.

¹³⁸ "Elderly Premier Gets Last Chance to Take Nepal into New Era," *Agence France Presse*, April 26, 2006.

¹³⁹ See United Nations Office of the High Commissioner for Human Rights in Nepal, "Human Rights in Nepal One Year After the Comprehensive Peace Agreement," December 2007, <https://nepal.ohchr.org/en/resources/Documents/English/reports/HCR/CPA%20Report.pdf>.

¹⁴⁰ Jha, *Battles of the New Republic*, 122; "Letters Sent by the Communist Party of Nepal (Maoist) and the Prime Minister of Nepal to the United Nations Secretary-General Requesting the Assistance of the United Nations," August 9, 2006, https://constitutionnet.org/sites/default/files/letter_to_un_by_gon_and_cpn_maoists.pdf.

¹⁴¹ United Nations Security Council, "Report of the Secretary-General on the Request of Nepal for United Nations Assistance in Support of Its Peace Process S/2007/235."

Nepal's civil service, police and armed forces. Koirala's tenure also saw the release of political detainees and the lapse of the Terrorist and Disruptive Activities (Control and Punishment) Ordinance, which had been used to arbitrarily detain political opponents.

The second prime minister during this period was Mr. Pushpa Kamal Dahal, the leader of the Maoists. Prior to becoming Prime Minister, Dahal played a critical role in bringing about Nepal's political transition. Among his key contributions included his role in negotiating the end to the armed conflict; voluntary submission of the PLA and its arms to UN supervised monitoring and verification; and his willingness to participate in new democratic institutions, especially the 2008 constituent assembly elections. As a leader of an armed group that still controlled parts of the country, Dahal's willingness to welcome both the OHCHR and UNMIN to Nepal was critical to the success of both missions.

Given that the Maoists had won an electoral mandate for progressive reforms in the May 2008 elections, Dahal's government had the most potential to enact substantive human rights reforms. Despite their decisive electoral victory, however, the Maoists didn't secure the required majority to form a government on its own right.¹⁴² After more than three months of negotiations, they were unable to form a consensus government as mandated under the interim constitution, and

¹⁴² The Interim Constitution of Nepal, Article 38.

instead formed a coalition government with the support of the CPN (UML) and a Madhesi party.¹⁴³

Despite achieving an improbable electoral victory, the Maoists lacked experience in political leadership and struggled to set national priorities, manage coalition partners, and accurately assess the national political environment.¹⁴⁴ They faced suspicion from other political parties, the Nepal Army as well from sections of the public, regarding the sincerity of their commitment to democracy and non-violence. Some factions of the Maoists like Mohan Baidya, continued to advocate for revolution fuelling these fears.¹⁴⁵ Prime Minister Dahal's efforts to appease these factions sometimes back-fired, exacerbating the situation.¹⁴⁶ Sections of the Indian establishment also shared these fears, and Prime Minister Dahal's decision to visit China as his first official visit, instead of India as was customary, also raised suspicion.¹⁴⁷ India's concerns were also reaffirmed by Nepalese politicians and military figures who regularly briefed India against the Maoists.¹⁴⁸

During their nine-month term, the Maoist coalition nevertheless made modest progress in advancing human rights reforms. It passed an ambitious budget that

¹⁴³ "CA Elects PM Today, UML, MPRF Back Pushpa Kamal Dahal," *The Kathmandu Post*, August 15, 2008.

¹⁴⁴ International Crisis Group, "Nepal's Future: In Whose Hands?", 7.

¹⁴⁵ International Crisis Group, "Nepal's Future: In Whose Hands?", 10.

¹⁴⁶ See for example an analysis of a leaked video where Prime Minister Dahal was apparently encouraging revolution: International Crisis Group, "Nepal's Future: In Whose Hands?", 9-11.

¹⁴⁷ Prashanth Jha, "A Nepali Perspective on International Involvement in Nepal," in *Nepal in Transition From People's War to Fragile Peace*, ed. Sebastian von Einsiedel, David Malone, and Suman Pradhan (New York: Cambridge University Press, 2012), 332-60, 339-340.

¹⁴⁸ Jha, "A Nepali Perspective on International Involvement in Nepal," 340.

focused on rural development, provided free maternity care, expanded free education and launched a national literacy campaign.¹⁴⁹ The government also enacted a law criminalising domestic violence and an ordinance mandating that public institutions, including the Nepal Army, reserve at least 45 percent of their positions for women, Madhesis, Dalits and others from marginalised groups.¹⁵⁰ The Maoist government also enacted an ordinance criminalising enforced disappearances. Several draft laws were proposed but not enacted, including legislation criminalising enforced disappearances, establishing a disappearances commission and a truth and reconciliation commission.¹⁵¹

Like other Nepali Prime Ministers, the Maoist leader, despite public commitments to combating impunity, in practice shielded individuals accused of serious human rights abuses.¹⁵² This is not entirely surprising given that, as the Supreme Commander of the PLA during the ten-year insurgency, those under his command committed serious human rights abuses and violations of international humanitarian law.¹⁵³ Prime Minister Dahal ordered the withdrawal of 349 criminal cases including ones that related to serious human rights abuses.¹⁵⁴ A particularly egregious example was his refusal to facilitate the surrender to law enforcement

¹⁴⁹ "Budget Emphasis on Infrastructure Development," *Kathmandu Post*, September 20, 2008.

¹⁵⁰ "Govt Introduces Three Ordinances," *The Kathmandu Post*, January 29, 2009.]

¹⁵¹ "Govt Lauded for Bill on Disappearances," *The Kathmandu Post*, April 25, 2009; "Govt Roughs out Bill on Commission on Disappeared," *The Kathmandu Post*, November 15, 2008.

¹⁵² "Govt Will End Culture of Impunity: PM," *The Kathmandu Post*, November 12, 2008.

¹⁵³ United Nations Office of the High Commissioner for Human Rights, "Nepal Conflict Report."

¹⁵⁴ United Nations Office of the High Commissioner for Human Rights in Nepal and National Human Rights Commission of Nepal, "Remedies and Rights Revoked: Case Withdrawals for Serious Crimes in Nepal Legal Opinion," June 2011,

[https://www.nhrcnepal.org/uploads/publication/Legal Opinion II - Remedies and Rights Revoked - Case Withdrawals for Serious Crimes in Nepal.pdf](https://www.nhrcnepal.org/uploads/publication/Legal%20Opinion%20II%20-%20Remedies%20and%20Rights%20Revoked%20-%20Case%20Withdrawals%20for%20Serious%20Crimes%20in%20Nepal.pdf).

authorities a Commander of the PLA accused of killing a businessman within the Maoist cantonment.¹⁵⁵ In an effort to appease critics, Prime Minister Dahal would initiate internal party investigations or expel Maoist combatants implicated in serious human rights abuses but would stop short of submitting them to a criminal investigation and prosecution.¹⁵⁶

Prime Minister Dahal's own rhetoric and actions frequently raised questions over the sincerity of his government's commitment to democracy and the peace process.¹⁵⁷ Some of these issues were procedural. Frustrated by its inability to secure a majority to enact legislation, the Maoist led government repeatedly enacted laws via ordinance. Ordinances are enacted by the cabinet and are meant to be temporary measures, usually used during emergencies.¹⁵⁸ They are only valid for three months and require the endorsement of the legislature to remain in effect; failure to secure the legislature's endorsement results in the ordinance lapsing and ceasing to have effect.¹⁵⁹ The government's own coalition partners also complained that even they were not consulted and were not present at the cabinet meetings when key decisions were taken and when ordinances were enacted.¹⁶⁰

¹⁵⁵ "Govt Protecting Bibidh: Dr Mahat," *The Kathmandu Post*, November 8, 2008.

¹⁵⁶ "Maoists Expel Butwal Murder Accused; NC, UML Dub the Move as Drama," *The Kathmandu Post*, April 8, 2009.

¹⁵⁷ "NC Prez Shows Concern at PM's Remarks," *Kathmandu Post*, September 18, 2008; "Arms Ban at CA, Maoist Leader Defiant," *Kathmandu Post*, September 28, 2008.

¹⁵⁸ The Interim Constitution of Nepal, Article 88.

¹⁵⁹ Ibid.

¹⁶⁰ "Govt Introduces Three Ordinances," *The Kathmandu Post*, January 29, 2009.

More serious concerns were raised over Maoist willingness to use violence, failing to comply with their commitments under the CPA and their lack of willingness to reach agreement on the rehabilitation and reintegration of PLA combatants. During the registration and verification process of the PLA, Prime Minister Dahal was revealed to have encouraged an inflated number of people to register, including not only Maoist cadre but also associated militia groups and members of the Young Communist League.¹⁶¹ Despite the Prime Minister publicly promising to curb the excesses of the Young Communist League, a youth wing of the Maoists, the group continued to engage in parallel law enforcement activities and violence, including disrupting protests, meeting and demonstrations, killings, assaults and kidnappings.¹⁶² Political parties viewed the activities of the Young Communist League as a violation of the commitments made under the CPA to dismantle parallel law enforcement structures and end serious human rights abuses.¹⁶³ Opposition parties continued to question the Prime Minister over his failure to deliver on the commitment to return land and properties confiscated by the PLA.¹⁶⁴ When confronted with negative press coverage, the Maoist leader and individuals associated him threatened and attacked journalists and media institutions.¹⁶⁵

¹⁶¹ Ian Martin, "The United Nations and Support to Nepal's Peace Process," 212-3.

¹⁶² See also United Nations Office of the High Commissioner for Human Rights in Nepal, "Allegations of Human Rights Abuses by the Young Communist League (YCL)," June 2007, <https://nepal.ohchr.org/en/resources/Documents/English/reports/IR/Year2007/YCL.ENG.pdf>.

¹⁶³ "Comprehensive Peace Accord Signed between Nepal Government and the Communist Party of Nepal (Maoist)", Article 5.11, 7.1.4; "UML Chief Warns Maoists over Violence," *The Kathmandu Post*, September 14, 2008.

¹⁶⁴ "PM Vows Confiscated Property Return by Mid-Dec," *The Kathmandu Post*, November 11, 2008; "NC to Raise Questions against PM: KC," *The Kathmandu Post*, September 3, 2008; "Implement Pacts: NC to Maoists," *The Kathmandu Post*, October 20, 2008.

¹⁶⁵ Article 19 and Freedom Forum, "Federal Democratic Republic of Nepal Submission to the UN Universal Periodic Review," accessed April 5, 2023, https://www.ohchr.org/sites/default/files/lib-docs/HRBodies/UPR/Documents/Session10/NP/Article19_eng.pdf; "FNJ, Part Leaders Slam Govt," *The Kathmandu Post*, January 18, 2009.

Both opposition parties and the Nepal Army consistently cast the Maoist government as an illegitimate force.¹⁶⁶ These concerns were heightened as Maoists oversaw the state armed forces, whilst still maintaining their own parallel army. These tensions escalated over issues related to security sector reform. Maoists had a strained relationship with Nepal's Army Chief, General Katawal, whom they accused of making political statements. Tensions escalated when General Katwal proceeded with the recruitment of 3000 new personnel, which the Maoists argued as being in violation of the CPA.¹⁶⁷ Maoists responded by dismissing the Army Chief. However, their main coalition partner, opposed this decision, viewing it as a violation of the CPA, which required decisions regarding the Army to be made via consensus among the political parties. The opposition political parties similarly agreed with the CPN (UML). Maoist's own coalition partner and 17 other political parties wrote to the President requesting his intervention. There was a fear among political parties that following the dismissal of the Army Chief, Maoist combatants who still favoured revolution, would join the Nepal Army. This would potentially give the Maoists control of both the government and the Army, jeopardizing not only the peace process but also Nepal's nascent return to democracy.¹⁶⁸

Early on India had stressed to Prime Minister Dahal that any reform of the Nepal Army had to be undertaken on the basis of consensus among the political parties.¹⁶⁹

¹⁶⁶ International Crisis Group, "Nepal's Future: In Whose Hands?", 14.

¹⁶⁷ "Thapa: Recruitment Row May Cost Peace," *The Kathmandu Post*, February 12, 2009; "Govt Seeks Clarification from Army Chief," *The Kathmandu Post*, April 20, 2009.

¹⁶⁸ Former Advisor to the President, interview with author, November 11, 2022.

¹⁶⁹ Jha, *Battles of the New Republic*, 77-80.

India had assured the Nepal Army that their interests would be protected in exchange for the army's continued support for the peace process.¹⁷⁰ India viewed the Nepal Army as the final institution in Nepal capable of preventing a Maoist take-over of the state.¹⁷¹ As a result, India also intervened expressing its strong opposition. India urged the parliamentary political parties including the Maoist's own coalition partners, to withdraw their support for the Maoist led government.¹⁷² The President encouraged by the political parties and India, wrote to the Army Chief instructing him to continue in his position, creating a stand-off between the government on the one side and the President and the Army on the other side. In response the following day Prime Minister Dahal resigned, arguing that the President's actions were unconstitutional.¹⁷³

Following Dahal's resignation, Madhav Kumar Nepal of CPN (UML) became Prime Minister as part of a coalition supported by 22 political parties and remained in power until May 2010.¹⁷⁴ He reversed the decision of the Maoist government and reinstated Army Chief Katawal. Despite being the party with the largest number of seats in the Constituent Assembly, Maoists were now in the opposition, and they lead protests inside and outside the parliament protesting the new government.¹⁷⁵

¹⁷⁰ Jha, "A Nepali Perspective on International Involvement in Nepal," 341.

¹⁷¹ Ibid.

¹⁷² Siddharth Varadarajan, "India's Nepal Policy in Disarray," *The Hindu*, May 7, 2009. For a detailed account of India's role during the dismissal of General Katawal and the resignation of Prime Minister Dahal see: Jha, *Battles of the New Republic*, 77-81; Sharma, *The Nepal Nexus*, 330-337; International Crisis Group, "Nepal's Future: In Whose Hands?", 18-23.

¹⁷³ For a detailed analysis of the events, see International Crisis Group, "Nepal's Future: In Whose Hands?." For an account of Prime Minister Dahal's version of events, see Siddharth Varadarajan, "India Should Have Defended Civilian Supremacy in Nepal," *The Hindu*, May 11, 2009.

¹⁷⁴ "11 Ministers Sown in, Terai Parties Stay Away," *The Kathmandu Post*, June 18, 2009.

¹⁷⁵ "Threat to Deny Constitution," *The Kathmandu Post*, August 7, 2009.

During Prime Minister Nepal's year and a half long term, his government ratified the UN Convention on Rights of persons with Disabilities and launched a special program to combat gender-based violence.¹⁷⁶ During Nepal's tenure, modest progress was made on the rehabilitation and reintegration of PLA combatants, although political disagreements left many initiatives unimplemented. In December 2009, an Action Plan was agreed upon to discharge 4,008 disqualified personnel (which consisted of minors and late recruits) and the process was completed by March 2009.¹⁷⁷ The Prime Minister chaired the Special Committee mandated under the CPA, and in January 2010, submitted a 112 day action plan for the integration and rehabilitation of Maoist personnel and a code of conduct for the PLA.¹⁷⁸ However, owing to disagreements among political representatives of the Special Committee both proposals were unimplemented.¹⁷⁹ The government drafted and tabled a range of bills relevant to human rights. These included bills relevant to the National Human Rights Commission, a Truth and Reconciliation Commission, formalising quotas for the civil service (which had initially been introduced via ordinances) and expanding them to include indigenous communities and physically

¹⁷⁶ "UN: Execute Recommendations," *The Kathmandu Post*, September 14, 2009; "House All Clear for UN Disability Rights Treaty," *The Kathmandu Post*, September 27, 2009.

¹⁷⁷ United Nations Security Council, "United Nations Security Council, "Report of the Secretary-General on the Request of Nepal for United Nations Assistance in Support of Its Peace Process S/2010/214," April 28, 2010, para 18, <https://documents.un.org/doc/undoc/gen/n10/320/17/pdf/n1032017.pdf?token=MTIKLuiI5d7567Qe4s&fe=true>.

¹⁷⁸ United Nations Security Council, "Report of the Secretary-General on the Request of Nepal for United Nations Assistance in Support of Its Peace Process S/2010/214," para 15, 16; "Extremists Want to See Peace Process Derailed," *The Kathmandu Post*, February 1, 2010.

¹⁷⁹ United Nations Security Council, "Report of the Secretary-General on the Request of Nepal for United Nations Assistance in Support of Its Peace Process S/2010/214," para 15, 16.

disabled persons as well as sexual harassment in the workplace.¹⁸⁰ However, none of these draft laws was enacted. Like the others, Prime Minister Nepal also failed to make progress on combatting impunity. He failed to take any action when the Minister for Defence was accused of fabricating evidence in an emblematic case involving the killing of three Dalit women by the Nepal Army, and he promoted military personnel accused of serious human rights abuses.¹⁸¹

With the looming expiry of the constituent assembly in May 2010, Nepal was forced to resign as part of a deal that enabled the interim constitution to be amended to extend the term of the constituent assembly for an additional year.¹⁸² In the following seven months, Prime Minister Dahal sought to return to the Prime Ministership. However, following the General Katawal incident India had warned the Maoists that a return to power would require a clear commitment to democracy and demobilisation of the PLA. The Maoists, refusing to appease India, instead used this period to stage nation-wide protests questioning the legitimacy of the UML government and in opposition to Indian influence. Consequently, India once again intervened urging the Madhesi parties to withhold their support from the Maoists.

¹⁸⁰ "Harassment Bill Heats Up," *The Kathmandu Post*, May 1, 2010; "New Bill Proposes Toothless NHRC," *The Kathmandu Post*, September 11, 2009; "Cabinet Okays Truth Panel Bill," *Himalayan Times*, January 27, 2010; "Reservation Bill to Be Tabled," *The Kathmandu Post*, April 5, 2010. Several of the draft laws related to human rights reforms were set to be debated in the winter session beginning in April 2010; however, a month into the session the government collapsed. See "Parliament to Debate 27 Bills," *Himalayan News Service*, April 4, 2010.

¹⁸¹ "Panels to Probe Bardiya Killings," *The Kathmandu Post*, March 17, 2010; "UN: Execute Recommendations," *The Kathmandu Post*, September 14, 2009; "Revoke Toran's Promotion, Maoist Lawmakers Ask Govt," *The Kathmandu Post*, December 28, 2009. Major General Toran Jun Bahadur Singh allegedly involved in the disappearance of 49 detainees from a Nepal Army Camp was promoted to the position Lieutenant General.

¹⁸² "CA Term Will Be Extended, PM Will Quit Later," May 28, 2010.

¹⁸³ Despite multiple rounds of voting, Mr. Dahal was prevented from gaining the Prime Ministership.

After eighteen rounds of voting within the legislature, in February 2011, another senior member of the CPN (UML), Jala Nath Khanal, who favoured closer cooperation with the Maoists, was elected Prime Minister. Khanal's most significant accomplishment during his six-month tenure was the enactment of a far-reaching law criminalising caste-based discrimination. Like his predecessors, however, the Khanal government also shielded individuals accused of serious human rights abuses, appointing them to the cabinet as well as to other senior public posts, and withdrawing criminal cases and investigations into human rights abuses.¹⁸⁴ Once again, the May 2011 deadline of the constituent assembly loomed without progress having been made on a draft constitution. Repeating the previous year's precedent, another deal was struck in May 2011 to extend the constituent assembly for three months, in exchange for the resignation of the Prime Minister Khanel.

¹⁸³ Jha, *Battles of the New Republic*, 140; Sharma, *The Nepal Nexus*, 358-363.

¹⁸⁴ United Nations Human Rights Council, "Report of the Human Rights Council on Its Seventeenth Session A/HRC/17/2," May 24, 2012, para 325, <https://documents.un.org/doc/undoc/gen/g12/136/30/pdf/g1213630.pdf?token=Z89Sw1Y8QuIp4Y8rSo&fe=true>. Agni Sapkota served as the Minister for Information and Communications from May-July 2011 and Suryaman Dong was appointed for Minister for Energy in November 2011. United Nations Office of the High Commissioner for Human Rights, "Nepal Conflict Report," 195. Amnesty International, Human Rights Watch, and International Commission of Jurists, "Re: Persistent Impunity in Nepal," May 24, 2011, <https://www.amnesty.org/en/wp-content/uploads/2021/06/asa310032011en.pdf>.

The fifth Prime Minister, the second in command of the Maoists, Baburam Bhattarai was elected in August 2011.¹⁸⁵ Prime Minister Bhattarai finally resolved the issue of reintegration of PLA by offering combatants a choice to either accept a voluntary retirement package, which included a financial settlement, or to be integrated into the Nepal Army.¹⁸⁶ Similar to his predecessors, Bhattarai continued to shield perpetrators and obstruct the criminal justice process. As part of the deal that enabled him to become Prime Minister, the government agreed to withdraw criminal proceedings and grant amnesties to “political cadres” that were implicated in human rights abuses that had occurred in the context of the armed conflict or other social justice movements.¹⁸⁷ The Bhattarai government was criticised for promoting individuals within the Nepal Police and Armed Police who had been accused of serious of human rights abuses.¹⁸⁸ The Prime Minister Bhattarai increasingly spoke of the need to focus on “reconciliation” instead of justice and argued in favour of removing the clauses prohibiting amnesty for serious violations of international human rights law and international humanitarian law in the draft bills on the truth and reconciliation commission and a disappearance

¹⁸⁵ “Baburam Bhattarai Elected Prime Minister of Nepal,” *BBC*, August 28, 2011, <https://www.bbc.com/news/world-south-asia-14700892>.

¹⁸⁶ Subedi, “Dealing with Ex-Combatants in a Negotiated Peace Process: Impacts of Transitional Politics on the Disarmament, Demobilisation and Reintegration Program in Nepal,” 463.

¹⁸⁷ United Nations Human Rights Council, “Report on the Human Rights Situation and the Activities of the Office of the High Commissioner, Including Technical Cooperation, in Nepal A/HRC/19/21/Add.4,” December 16, 2011, para 50, https://www2.ohchr.org/english/bodies/hrcouncil/docs/19session/A.HRC.19.21.Add.4_English.pdf. See also “House Put Off,” *The Kathmandu Post*, October 16, 2011; “UM against Clemency to Dhungel,” *The Kathmandu Post*, November 10, 2011; “Immunity from Impunity,” *Nepali Times*, October 20, 2011, <https://archive.nepalitimes.com/news.php?id=18612#.ZEYLCy8RqAU>.

¹⁸⁸ “SAC Grills Gachhadara,” *Himalayan Times*, November 13, 2011.

commission.¹⁸⁹ Four months into his term, in December 2011, Prime Minister Bhattarai decided not to extend OHCHR's mandate and asked the agency to leave Nepal.¹⁹⁰

Bureaucracy

In 2006, Nepal's public sector employees consisted of 100,000 permanent officers, excluding the police and the armed forces.¹⁹¹ Nepal's administrative structure was divided across 75 districts, 100 municipalities and 3,915 village development councils.¹⁹² The civil service was marked by absenteeism, inefficiency, and incompetence, with a prevalent culture of clientelism, patronage, and corruption.¹⁹³ The Nepalese civil service was among the lowest paid in South Asia.¹⁹⁴ The civil service was frequently required to act as a broker between politicians and external parties seeking state jobs, contracts, and other services.¹⁹⁵ Since the 1990s, various reforms and amendments to the civil service were initiated with a view to improving professionalism, productivity, impartiality, and inclusiveness. However, the

¹⁸⁹ United Nations Human Rights Council, "Report on the Human Rights Situation and the Activities of the Office of the High Commissioner, Including Technical Cooperation, in Nepal A/HRC/19/21/Add.4," para 46.

¹⁹⁰ "Maoists Fear OHCHR-N Could Become 'Assertive,'" *The Kathmandu Post*, December 9, 2011.

¹⁹¹ Rabindra Shakya, "Why Civil Service Reforms Fail? A Case of Nepal," *Administration and Management Review* 21, no. 2 (2009): 40–63, 62.

¹⁹² U. S. Agency for International Development, *Democracy, Human Rights and Governance Assessment of Nepal Final Report*, by Guilain Denoeux, Harry Blair, Ameet Dhakal, Christopher Hobbs, Mike Calavan (2012), 39, <https://bpb-us-w2.wpmucdn.com/campuspress.yale.edu/dist/b/405/files/2015/05/Nepal-DRG-Assessment-Report-Oct12final-1gwr9ok.pdf>.

¹⁹³ Shakya, "Why Civil Service Reforms Fail? A Case of Nepal," 45, 48; U. S. Agency for International Development, *Democracy, Human Rights and Governance Assessment of Nepal Final Report*, 17.

¹⁹⁴ Shrestha and Narendra Paudel, "Civil Service Management in Nepal," in *Civil Service Management and Administrative Systems in South Asia* (Switzerland: Palgrave Macmillan, 2019), 99–119, 111.

¹⁹⁵ Shrestha and Paudel, "Civil Service Management in Nepal," 116.

reforms were not successfully implemented due to lack of political will and stability.¹⁹⁶ Some analysts questioned whether public sector reforms could even address defects within the civil service, as challenges facing the bureaucracy represented more structural issues related to state capture and clientelism.¹⁹⁷

Gaps in the legal framework and culture of trade unions within the civil service also contributed to political patronage and nepotism playing a central role in promotion and transfer of staff.¹⁹⁸ Since 1990 it was possible for civil servants to unionise and following reforms in 2007 the categories of eligible officers expanded.¹⁹⁹ The civil service had unions along party lines representing not only the major but also smaller parties. In practice the goal of these unions was to ensure the primacy of their affiliated political party and secure lucrative positions for its members.²⁰⁰ Whenever one political party came to power the activities of the corresponding union would increase to ensure the political success of the party. Civil servants often felt they were either on the ‘winning’ or ‘losing’ side, depending on which political party was in power.²⁰¹ Changes in government or cabinet member resulted in changes to the senior bureaucrats within a ministry.²⁰² Senior posts were routinely handed out based on political patronage instead of skill, experience or

¹⁹⁶ Shrestha and Paudel, “Civil Service Management in Nepal,” 111; Shakya, “Why Civil Service Reforms Fail? A Case of Nepal,” 42

¹⁹⁷ U. S. Agency for International Development, *Democracy, Human Rights and Governance Assessment of Nepal Final Report*, 17.

¹⁹⁸ Shrestha and Paudel, “Civil Service Management in Nepal,” 112; Shakya, “Why Civil Service Reforms Fail? A Case of Nepal,” 50.

¹⁹⁹ Shrestha and Paudel, “Civil Service Management in Nepal,” 115.

²⁰⁰ Ibid.

²⁰¹ Shrestha and Paudel, “Civil Service Management in Nepal,” 116.

²⁰² U. S. Agency for International Development, *Democracy, Human Rights and Governance Assessment of Nepal Final Report*, 17.

merit.²⁰³ Senior bureaucrats would in turn seek to ensure that lower level positions were secured by their supporters.²⁰⁴ During the 2008 to 2011 period, the frequent changes in government and the rapid increase in the number of political parties meant that rotations and transfers within the bureaucracy also correspondingly increased.²⁰⁵ Although the legal framework was revised to regulate the promotion and transfer of staff, it remained poorly implemented, and gaps in the framework were utilised to advance candidates based on patronage.

In 2007, an inclusion policy was adopted by the civil service to ensure that marginalised groups including women, disabled, Madhesi and other groups were recruited. Although over time this initiative resulted in a change in the composition of the civil service; subsequent studies have found that elites within marginalised communities have utilised the opportunity gain positions.²⁰⁶ In contrast, many disadvantaged groups remain unable to enter the civil service owing to low levels of literacy.²⁰⁷

At the district, municipal and village level the challenges facing the bureaucracy are even more acute. Although representatives to the sub-national governance

²⁰³ Shakya, "Why Civil Service Reforms Fail? A Case of Nepal," 55.

²⁰⁴ U. S. Agency for International Development, *Democracy, Human Rights and Governance Assessment of Nepal Final Report*, 17.

²⁰⁵ U. S. Agency for International Development, *Democracy, Human Rights and Governance Assessment of Nepal Final Report*, 17.

²⁰⁶ Narendra Paudel Raj, "Inclusive Governance: A Case Study of Civil Service in Nepal," *South Asian Journal of Social Sciences* 1, no. 1 (July 1, 2016): 1-14; Shrestha and Paudel, "Civil Service Management in Nepal," 113.

²⁰⁷ Raj, "Inclusive Governance: A Case Study of Civil Service in Nepal," *South Asian Journal of Social Sciences* 1, no. 1 (July 1, 2016): 1-14.

structures were directly elected, no elections had taken place since 2002. The absence of elections had contributed to an increase in corruption, lack of accountability and misuse of resources.²⁰⁸ Given the highly centralised nature of state, local government structures depended on politicians in Kathmandu for resources and funds, which in practice mean that they had severe resource shortages.

All these shortcomings in the bureaucracy had a direct impact in the government's ability to enact and operationalise human rights reforms. Key institutions mandated to implement human rights reforms, including the National Human Rights Commission, National Dalit Commission, National Women's Commission, and police, all suffered from resource scarcity, politicisation and limited technical capacity.

Legislature

Nepal's legislature has the primary authority for enacting laws. From 2006 to 2011 Nepal had three legislatures and the size of the legislature expanded from 202 to 601 members. From April 2005 to April 2006, as the King refused to reconvene the parliament there was no functioning legislature. In April 2006, following the King's stepping down, parliament was reconvened and members that had been elected at the last general elections in 1999 were allowed to re-assume their positions.²⁰⁹ In

²⁰⁸ U. S. Agency for International Development, *Democracy, Human Rights and Governance Assessment of Nepal Final Report*, 39-40.

²⁰⁹ International Crisis Group, "Nepal's Peace Agreement: Making It Work", 2-3.

January 2007, following the adoption of the interim constitution the parliament was dissolved and a new legislature named “legislature-parliament” was established. The legislature-parliament’s membership was increased to 330 members, to include the Maoists and other political parties. Following elections in 2008, the third iteration of the legislature was formed. The newly elected body was known both as the constituent assembly and the “legislature-parliament”, and had a dual mandate to both write a new constitution and carry out normal legislative business.²¹⁰ The constituent assembly provided for 601 members.²¹¹ When nominating candidates political parties were required to nominate at least one third women candidates and ensure the proportional representation of “women, Dalits, oppressed communities/ indigenous groups, backward regions, Madhesi and other classes.”²¹²

The May 2008 Constituent Assembly elections produced the most diverse legislature in the history of Nepal. Twenty-five political parties representing a wide spectrum of regions, communities and ideological positions were elected. The Maoists won a decisive, surprise victory with 220 of the 575 elected seats, exactly twice as many as their nearest rival the Nepali Congress.²¹³ The third largest party

²¹⁰ The Interim Constitution of Nepal, Article 83(1),(2).

²¹¹ The Interim Constitution of Nepal, Article 63. Composition of the 601 members were as follows: 240 members elected under first-past-the-post system representing geographical constituencies; 335 members elected according to the proportional representation system with voting being for political parties; 26 members nominated by the council of ministers on the basis of consensus among “distinguished persons from among ethnic and indigenous groups who failed to be presented as a result of elections and who have made a significant contribution to national life”

²¹² The Interim Constitution of Nepal, Article 63(4),(5).

²¹³ Inter-parliamentary Union, “Nepal Cambidhan Sabha (Constituent Assembly),” 2013, http://archive.ipu.org/parline-e/reports/arc/2386_08.htm.

represented was CPN (UML) with 103 seats.²¹⁴ Parties representing the Madhesi region won 52 seats, elevating them to the fourth largest party represented in the legislature-parliament.²¹⁵ The elections also produced 50 Dalit, 204 Madhesi, 192 Janajati and 191 women members as well as Nepal's first openly gay member of the legislature.²¹⁶ The elections also delivered a significant number of new younger members, with the Maoists and Madhesi parties electing younger candidates, whilst the established parties elected older members.²¹⁷

Most consequential legal and constitutional reforms were enacted from 2006 to 2008. The first eight months of parliament from April to December 2006, saw the most active legislature, as one party, the Nepali Congress had a clear majority, based on the 1999 election results. Among the key successes during the first two years was the adoption of the Interim Constitution of 2007. A range of laws democratising the Nepal Army, combatting domestic violence and human trafficking, enhancing the scope of citizenship rights and the right to seek information from the state were also enacted. Parliamentary committees both before and after the constituent assembly elections reviewed bills and attempted to use their authority to summon ministers and bureaucrats to account for their actions.²¹⁸ Following the May 2008

²¹⁴ Ibid.

²¹⁵ Ibid.

²¹⁶ Ibid.

²¹⁷ International Crisis Group, "Nepal's Election: A Peaceful Revolution? Asia Report No 155" (Kathmandu/Brussels, July 3, 2008), 16, <https://icg-prod.s3.amazonaws.com/155-nepal-s-election-a-peaceful-revolution.pdf>.

²¹⁸ International Crisis Group, "Nepal's Peace Agreement: Making It Work Asia Report No 126" (Kathmandu/Brussels, December 15, 2006), 3, <https://icg-prod.s3.amazonaws.com/126-nepal-s-peace-agreement-making-it-work.pdf>.

elections the legislature-parliament appointed nine parliamentary committees.²¹⁹ The International Relations and Human Rights Committee had the mandate to oversee the government's human rights policies. Lawmakers committed to human rights reforms made modest efforts to use these committees to provide oversight to government's policies.²²⁰ For example, lawmakers summoned Prime Minister Dahal to explain the lack of progress on implementing human rights commitment made under the CPA. The Committee on Women and Children investigated a case involving the alleged rape and killing of three Dalit women by the Nepal Army inside a national park in Bardiya.²²¹ The Committee concluded that contrary to the Army's claims, the three women were innocent and recommended that the families of the women be paid one million rupees each and their children be provided with free education.²²²

From 2008 to 2011 the most important human rights reform enacted was the caste-based discrimination law. Opposition parties within the legislature can play an important role in advancing human rights reforms. They can act as agents of socialisation, by engaging in dialogue and debate with members of the government persuading them to adopt reforms.²²³ Parliamentary opposition parties can also

²¹⁹ "14 Statute Drafting Panels Proposed," *The Kathmandu Post*, March 17, 2009.

²²⁰ U. S. Agency for International Development, *Democracy, Human Rights and Governance Assessment of Nepal Final Report*, 38; "Lawmakers Demand Action against Bardiya Guilty," *Kathmandu Post*, April 13, 2010.

²²¹ "Panels to Probe Bardiya Killings," *The Kathmandu Post*, March 17, 2010.

²²² "Parliamentary Panel Finds NA Men Guilty in Bardiya Killing," *The Kathmandu Post*, April 7, 2010.

²²³ Thomas Risse and Kathryn Sikkink, "The Socialization of International Human Rights Norms into Domestic Practices: Introduction," in *The Power of Human Rights International Norms and*

facilitate compliance by extracting costs for non-compliance from the government.²²⁴

However, the willingness and ability of political parties to play these roles was limited by the prevailing political context. Given the pressing need to adopt a new constitution and the demobilise the PLA, much of the political discourse revolved around these critical issues, leaving little space for discussions on individual human rights reforms. During this period, all political parties except the Nepali Congress participated in the five coalition governments that governed Nepal. Their primary focus was on ensuring the survival of each respective government. Further, all the political parties were also heavily focused on their own survival as a party, as they were grappling with internal divisions and the risk of fragmentation. Both the Nepali Congress and CPN (UML) were split into factions loyal to different party stalwarts; the Maoists were divided between those that advocated continuing on the path of multi-party democracy and others that wanted to pursue revolution; and the six new Madhesi parties that entered national politics in 2008 fragmented into eighteen different parties.²²⁵

Domestic Change, ed. Thomas Risse, Stephen Ropp, and Kathryn Sikkink (UK: Cambridge University Press, 1999), 1–39, 26.

²²⁴ Hillebrecht, *Domestic Politics and International Human Rights Tribunals*; Hillebrecht, “The Power of Human Rights Tribunals”, 1101; Yonatan Lupu, “Legislative Veto Players and the Effects of International Human Rights Agreements” *American Journal of Political Science* 59, no. 3 (2015): 578-594, 578; Courtney Conrad, “Divergent Incentives for Dictators: Domestic Institutions and (International Promises Not to) Torture”, *Journal of Conflict Resolution* 58, no. 1 (2011): 34-67, 55; James Vreeland, “Political Institutions and Human Rights: Why Dictatorships enter into United Nations Convention Against Torture” *International Organizations* 62, no. (2008): 65-101, 78.

²²⁵ Following the death of Mr. Koirala in March 2010, the Nepali Congress was divided between two factions, one led by former Prime Minister Sher Bahadur Deuba and Sushil Koirala, a relative of the late Prime Minister. CPN (UML) was divided between its two Prime Ministers, Madhav Nepal, who was staunchly anti-Maoist and Prime Minister Jhala Nath Khanel who advocated for

The legislature's struggles in fulfilling its fundamental responsibilities were particularly evident in its slow progress in drafting a new constitution. The original mandate required the constituent assembly to complete its work within two years by May 2010; however, despite four extensions, it was unable to complete a draft. The constituent assembly was poorly attended by lawmakers and party leaders opted to discuss critical issues behind closed doors, with little to no information being shared with the other members of the legislature. The rules of the assembly also impeded deliberations, as parties with the largest number of seats were allocated increased physical space and speaking time, to the detriment of smaller parties and independents.

In a similar vein, the ordinary work of the legislature was disrupted by frequent changes in government, lack of support among political elites, and a general culture of political instability.²²⁶ Members would frequently either carry out protests on the floor of the legislature-parliament or boycott the house altogether, preventing any work being carried out.²²⁷ Following disagreements over the declaration of a republic, the Maoist members boycotted the legislature-parliament.²²⁸ Following

greater engagement with the Maoists. See Subedi, "Dealing with Ex-Combatants in a Negotiated Peace Process: Impacts of Transitional Politics on the Disarmament, Demobilisation and Reintegration Program in Nepal," 468-9.

²²⁶ "Lawmakers Irked at Leaders," *The Himalayan Times*, May 13, 2010.

²²⁷ See "House Meeting Stalled Again," *Kathmandu Post*, July 3, 2008; "Budget Session Prorogued," *The Kathmandu Post*, January 20, 2009; "TMLP Boycotts House Once Again," *The Kathmandu Post*, October 21, 2008; Martin Chautari, "The Debilitating Dynamics of Nepal's First Constituent Assembly," in *Reading Nepali Transition 2006-2015*, ed. Pranab Kharel (Kathmandu, Nepal: Martin Chautari, 2022), 293-316, 294.

²²⁸ "No Nepal Polls Unless Maoists Demands Met: Prachanda," *The Press Trust of India*, December 2, 2007.

the resignation of Prime Minister Dahal, the Maoists staged protests inside the legislature and nation-wide, preventing it from carrying out work for more than six months.²²⁹ In 2011, as the country was being governed by a care-taker government, even the national budget was passed via an ordinance. At times the legislature-parliament couldn't be convened owing to lack of agreement among the parties over key issues; and such issues would be delegated to high-level committees, thus preventing the legislature from carrying out its role.²³⁰

Despite the increased representation of diverse groups in the post May 2008 Legislature-Parliament, it did not result in an increase in the independence and competence of lawmakers.²³¹ Many of the first-term lawmakers lacked understanding of their constitutional duties and how to carry them out in practice.²³² Maoist lawmakers embraced their new role reluctantly, as they had spent much of the past decade advocating an end to the parliamentary system. Parliamentarians, including female members and those from marginalised communities were under pressure to follow their respective party leadership instead of adopting principled

²²⁹ "Budget Delay to Bleed Economy," *The Kathmandu Post*, July 2, 2009; "Maoists Still in Shock, PM Nepal Says before House," *The Kathmandu Post*, July 6, 2009; "Maoists Launch Second-Phase Protest," *The Kathmandu Post*, November 1, 2009.

²³⁰ "CA Adjourns, Legislature to Resume Friday," *Kathmandu Post*, June 19, 2008; "No Serious Business in 125 Days," *The Kathmandu Post*, October 6, 2008; "Panel to Monitor PM Commitment," *The Kathmandu Post*, January 21, 2009; "Top Leaders Stress on High-Level Mechanism," *The Kathmandu Post*, October 4, 2009.

²³¹ U. S. Agency for International Development, *Democracy, Human Rights and Governance Assessment of Nepal Final Report*, 38; Chautari, "The Debilitating Dynamics of Nepal's First Constituent Assembly," 312.

²³² U. S. Agency for International Development, *Democracy, Human Rights and Governance Assessment of Nepal Final Report*, 17; International IDEA, "The Constituent Assembly of Nepal: w" (Lalitpur, Nepal, June 2, 2008), 21; GRM International Ltd, "Access to Security, Justice and Rule of Law in Nepal An Assessment Report" (DFID, DanidaHUGOU and United Nations Country Team, 2012), 9.

policy positions.²³³ Parliamentary staff mandated to support lawmakers lacked adequate financial and human resources and these challenges were exacerbated by additional role of having to support the constitutional drafting process.²³⁴

Role of international actors

OHCHR played a significant role in facilitating compliance with Nepal's human rights commitments. In March 2006, the then UN Human Rights Commission was replaced with the present UN Human Rights Council. The mission in Nepal was required to report on its work bi-annually to the Council, but member states were largely passive in their response to OHCHR's work before the council.²³⁵ Member states also worked directly with OHCHR and provided financial assistance to its work.

Office of the High Commissioner for Human Rights

OHCHR established its field presence in May 2005. At its peak, the mission in Nepal was OHCHR's largest field office, with 150 staff, four regional offices and one sub-regional office. From early on OHCHR established a 'noisy and visible' presence both in Kathmandu and in the regions, and its public statements were regularly reported in the media.²³⁶ OHCHR's field presence was viewed as having

²³³ U. S. Agency for International Development, *Democracy, Human Rights and Governance Assessment of Nepal Final Report*,

38; International IDEA, "The Constituent Assembly of Nepal: An Agenda for Women", 21.

²³⁴ GRM International Ltd, "Access to Security, Justice and Rule of Law in Nepal An Assessment Report", 9.

²³⁵ Former OHCHR staff, interview with author, April 11, 2023; Former OHCHR Staff, interview with author, April 28, 2023.

²³⁶ Former UN official, interview with author, February 22, 2023.

a “psychological reach far beyond its physical presence.”²³⁷ A former diplomat that served in Kathmandu observed that OHCHR was able to create the perception that OHCHR’s findings had ‘real-life consequences for domestic actors, when often in fact it didn’t.’²³⁸

One of OHCHR’s lasting contributions was the role it played in advancing the political transition, as it was able to leverage its presence to influence the Maoists, the political parties, and the Nepal Army.²³⁹ At the time of the field office’s establishment, OHCHR was viewed as representing the international community within Nepal, and domestic actors wanted to be seen as doing the ‘right thing.’²⁴⁰ Over the course of the conflict the Maoists had drawn on human rights rhetoric to justify its armed struggle and selectively invited human rights monitors to Nepal.²⁴¹ They were looking for opportunities to be seen as a legitimate and credible actor by the international community.²⁴² Soon after the arrival of OHCHR, the Maoists

²³⁷Ibid.; Former Diplomat Based in Kathmandu, interview with author, March 10, 2023.

²³⁸ Former Diplomat Based in Kathmandu, interview with author, March 10, 2023.

²³⁹ See generally United Nations General Assembly, “Report of the United Nations High Commissioner for Human Rights on the Human Rights Situation and the Activities of Her Office, Including Technical Cooperation, in Nepal A/60/359,” September 16, 2005, para 72, https://nepal.ohchr.org/en/resources/Documents/English/reports/SG/2005_09_16_OHCHRGeneralAssemblyReport_E.pdf; Liam Mahony, Roger Nash, and Indu Taladhar, “Evaluation of the Work of OHCHR in Nepal” (Fieldview Solutions, November 12, 2010), https://www.fieldviewsolutions.org/fv-publications/Evaluation_of_the_work_of_OHCHR_in_Nepal.pdf; Martin, “The United Nations and Support to Nepal’s Peace Process”, 203.

²⁴⁰ Former Vice President of the Bar Association of Nepal, interview with author, December 11, 2022; Official, Swiss Federal Department of Foreign Affairs, interview with author, December 9, 2022.

²⁴¹ Rawski and Sharma, “A Comprehensive Peace? Lessons from Human Rights Monitoring in Nepal,” 177; Sharma, *The Nepal Nexus*, 196-198; Martin, “The United Nations and Support to Nepal’s Peace Process,” 202-3.

²⁴² Martin, “The United Nations and Support to Nepal’s Peace Process,” 202-3.

issued a statement welcoming the mission and expressed its commitment to observe human rights.²⁴³

The Nepal Army had a long history of sending personnel to UN peacekeeping missions and wanted to avoid tarnishing their reputation in the eyes of the newly established UN office.²⁴⁴ The Nepal Army was concerned that additional criticism from OHCHR could jeopardize its participation in peacekeeping missions, leading to negative impacts on its reputation and finances, which it was eager to avoid.²⁴⁵

The political parties had also adopted human rights rhetoric in response to the King's authoritarianism. The use of human rights language was not merely strategic but also represented tangible, practical concerns, as almost all the political leaders had been questioned, arrested or detained following the royal coup and many had directly benefited from OHCHR advocacy, monitoring and detention visits.²⁴⁶ OHCHR's monitoring, and documentation efforts played a crucial role in expanding the space for dissent. This allowed civil society to mobilise, leading to nationwide demonstrations that ultimately resulted in the resignation of the King.²⁴⁷ OHCHR played a critical role during Jana Andolan and later during the Madhesi Movement

²⁴³ Ian Martin, "Opportunities Lost on the Path to Army Integration in Nepal," *European Bulletin of Himalayan Research* 37 (2010): 117–25, 118.

²⁴⁴ Former OHCHR staff, interview with author, April 11, 2023; Martin, "Opportunities Lost on the Path to Army Integration in Nepal," 119.

²⁴⁵ Martin, "Opportunities Lost on the Path to Army Integration in Nepal," 119; Former Diplomat Based in Kathmandu, interview with author, March 10, 2023; Former OHCHR Staff, interview with author, April 28, 2023; Former OHCHR staff, interview with author, April 11, 2023.

²⁴⁶ Former UN official, interview with author, February 22, 2023; Former UN official, interview with author, March 11, 2023.

²⁴⁷ Former Diplomat Based in Kathmandu, interview with author, March 10, 2023

in the Terai, documenting abuses as they unfolded and calling on all parties to respect human rights.²⁴⁸ During the Jana Andolan in April 2006, on the advice of the field office, High Commissioner Louise Arbour exerted public pressure on the Nepal Army to exercise restraint in the face of country-wide demonstrations.²⁴⁹ OHCHR liaised directly with the police and army and carried out detention visits that were viewed as contributing to the humane treatment of detainees.²⁵⁰ Politicians and civil society regularly communicated their human rights concerns to OHCHR, which, where necessary, were publicly expressed by the OHCHR leadership.²⁵¹ Both diplomats and civil society stakeholders noted that, had it not been for OHCHR's presence, the scale of human rights violations would have been far greater.²⁵² In his first speech after the Jana Andolan, Girija Koirala, the leading figure among the political parties, thanked OHCHR for promoting and protecting human rights in Nepal.²⁵³ He also expressed gratitude for the organization's role in "protecting Nepal's democracy at a time of crisis."²⁵⁴

²⁴⁸ United Nations General Assembly, "Report of the United Nations High Commissioner for Human Rights on the Human Rights Situation and the Activities of Her Office, Including Technical Cooperation, in Nepal A/61/374," September 22, 2006, para 7, <https://digitallibrary.un.org/record/584705?ln=en&v=pdf>; United Nations Office of the High Commissioner for Human Rights in Nepal, "The April Protests Democratic Rights and the Excessive Use of Force," September 2006, https://nepalconflictreport.ohchr.org/files/docs/2006-09-00_report_ohchr_eng_a.pdf; OHCHR Nepal, "Summary of Human Rights Concerns Arising from the Terai Protests of 13 – 29 February 2008," March 27, 2008, https://nepal.ohchr.org/en/resources/Documents/English/reports/HCR/2008_03_27_Terai_Protest_E.pdf.

²⁴⁹ Former UN official, interview with author, February 22, 2023.

²⁵⁰ Former UN official, interview with author, March 11, 2023; Former UN official, interview with author, February 22, 2023.

²⁵¹ Former UN official, interview with author, March 11, 2023; Former OHCHR staff, interview with author, December 6, 2022.

²⁵² Official, Swiss Federal Department of Foreign Affairs, interview with author, December 9, 2022; Civil Society Stakeholder, interview with author, December 10, 2022; Former Vice President of the Bar Association of Nepal, interview with author, December 11, 2022.

²⁵³ "Not the Right Time," *The Kathmandu Post*, May 26, 2010.

²⁵⁴ Ibid.

Former diplomats, UN officials and civil society actors also credited the leadership of the first head of mission of OHCHR, Ian Martin in having the skills to both engage domestic actors on human rights issues and offer political good offices.²⁵⁵ OHCHR leadership directly contributed to the negotiated end to the conflict through its engagement with the Maoists. OHCHR leadership travelled to Delhi and met with Maoists and, while discussing “pure human rights issues”, also sought to advance the peace process.²⁵⁶ In doing so OHCHR relied on the provisions in the Agreement granting the authority to engage non-state actors on human rights issues.²⁵⁷ The influence of OHCHR’s presence is also seen in the human rights provisions made in each of subsequent the political agreements that lead to the end of the conflict, as well as the CPA itself.²⁵⁸

OHCHR’s presence also paved a way for a larger UN presence in Nepal.²⁵⁹ The parties had agreed in May 2005 that international assistance would be enlisted to carry out the process of demobilisation, rehabilitation and reintegration of the PLA, and in 2007 the UN was assigned the role.²⁶⁰ In January 2007 the UN Security

²⁵⁵ Former Vice President of the Bar Association of Nepal, interview with author, December 11, 2022. Civil Society Stakeholder, interview with author, December 10, 2022; Former Diplomat Based in Kathmandu, interview with author, March 10, 2023.

²⁵⁶ Former UN official, interview with author, February 22, 2023. See also Rawski and Sharma, “A Comprehensive Peace? Lessons from Human Rights Monitoring in Nepal,” 182.

²⁵⁷ Former UN official, interview with author, February 22, 2023.

²⁵⁸ Former Vice President of the Bar Association of Nepal, interview with author, December 11, 2022. See also “12-Point Understanding Reached between the Seven Political Parties and Nepal Communist Party (Maoists)”; “The Eight-Point SPA-Maoist Agreement (Unofficial Translation),” June 16, 2006, <https://ucdpged.uu.se/peaceagreements/fulltext/Nep%2020060616.pdf>.

²⁵⁹ Martin, “The United Nations and Support to Nepal’s Peace Process”, 203.

²⁶⁰ See 12-Point Understanding Reached between the Seven Political Parties and Nepal Communist Party (Maoists)”; “Letters Sent by the Communist Party of Nepal (Maoist) and the

Council mandated the United Nations Mission in Nepal (UNMIN) to monitor the ceasefire arrangements and the management of arms and personnel of the PLA Nepal Army and to provide technical support to conduct the constituent assembly elections.²⁶¹ At the outset an option was considered to expand the mandate of OHCHR; however, this was ruled out given that OHCHR's authority was limited to the protection and promotion of human rights.²⁶² The UN also anticipated that the peacekeeping mission would have a short lifespan whereas it was expected that OHCHR would have a longer presence in Nepal.²⁶³ UNMIN also made positive contributions to the human rights situation in Nepal, by facilitating the Constituent Assembly elections and by monitoring the Nepal Army and the PLA.

Mr. Martin, who led the OHCHR mission from 2005 to 2006, left to head UNMIN. It left a leadership vacuum within OHCHR and transferred much of OHCHR's political authority to UNMIN.²⁶⁴ Frequent changes to the leadership of OHCHR in Nepal and extended periods where the office lacked a clear leader exacerbated these challenges.²⁶⁵ Although there were some challenges in ironing out the mandates of the two UN missions in Nepal, the presence of Ian Martin, who had strong human

Prime Minister of Nepal to the United Nations Secretary-General Requesting the Assistance of the United Nations."

²⁶¹ United Nations Security Council, "Resolution (1740) S/Res/1740."

²⁶² Martin, "The United Nations and Support to Nepal's Peace Process," 206.

²⁶³ Former UN official, interview with author, February 22, 2023.

²⁶⁴ Former OHCHR staff, interview with author, November 21, 2022.

²⁶⁵ Following Ian Martin's departure in October 2006, Ms. Lena Sundh led the office for a period of six months. In June 2007, Mr. Richard Bennet assumed leadership of the Office until August 2009. From August 2009 until the closure of the Office, it was led by an Acting Representative, Ms. Jyoti Sanghera. See also Mahony, Nash, and Taladhar, "Evaluation of the Work of OHCHR in Nepal", 22.

rights credentials and had led the OHCHR field office, helped to avoid disagreements between the two missions.²⁶⁶

OHCHR carried out a long-term documentation project collating and analysing information on conflict related abuses that remains an important reference archive of information and evidence related to conflict related human rights abuses by all parties to the conflict.²⁶⁷ Observers praised this documentation as an enduring contribution made by OHCHR to combating impunity. The project's findings helped collate, safeguard and archive information that may have been otherwise lost.²⁶⁸ OHCHR's work on conflict related human rights abuses framed the conversation regarding types and patterns of abuses that needed to be addressed, highlighted emblematic cases, and strengthened the advocacy efforts of domestic actors, including in the present.²⁶⁹ Documentation efforts by OHCHR strengthened the analysis of the abuses and identified alleged international crimes that had occurred. Although efforts had been made to document human rights abuses during the conflict, only modest progress was made in terms of classifying the violations

²⁶⁶ Former OHCHR staff, interview with author, November 21, 2022.

²⁶⁷ United Nations Office of the High Commissioner for Human Rights, "Nepal Conflict Report."

²⁶⁸ Former Vice President of the Bar Association of Nepal, interview with author, December 11, 2022.

²⁶⁹ Ibid.; Swiss Federal Department of Foreign Affairs, interview with author, December 9, 2022; Civil Society Stakeholder, interview with author, December 10, 2022.

as international crimes.²⁷⁰ Later, this contributed to litigation, which was ultimately unsuccessful, against a Nepalese Army Colonel based on universal jurisdiction.²⁷¹

OHCHR supported law reform efforts by engaging in dialogue and providing technical assistance to national counterparts. OHCHR was part of a law reform committee formed by the Ministry of Peace and Reconstruction, which led initiatives to draft human rights reforms mandated under the CPA.²⁷² OHCHR provided public and private feedback on draft laws, making recommendations for their review to ensure compliance with international human rights law.²⁷³ However, UN officials conceded that it was difficult to consistently engage with policy makers on human rights issues, as the government as well as relevant policy makers would change almost once a year.²⁷⁴ One former OHCHR recalled that much time was spent trying to track the progress of law reform initiatives, and identifying the appropriate officials and institutions to engage with.²⁷⁵

One UN official observed that OHCHR was too focused on providing technical feedback on draft laws and failed to utilise other tools available to the UN, such as

²⁷⁰ See International Commission of Jurists, “Commissions of Inquiry in Nepal: Denying Remedies, Entrenching Impunity,” 2012, <https://www.icj.org/wp-content/uploads/2012/06/Nepal-Commissions-of-Inquiry-thematic-report-2012.pdf>.

²⁷¹ Devika Hovell, “The ‘Mistrial’ of Kumar Lama: Problematizing Universal Jurisdiction,” *EJIL: Talk!* (blog), April 6, 2017, <https://www.ejiltalk.org/the-mistrial-of-kumar-lama-problematizing-universal-jurisdiction/>.

²⁷² Former OHCHR staff, interview with author, November 21, 2022.

²⁷³ United Nations Office of the High Commissioner for Human Rights in Nepal, “Human Rights in Nepal One Year After the Comprehensive Peace Agreement,” 3.

²⁷⁴ Brubaker and Upadhyay, “Breaking the Mold: Lessons from Sixteen Years of Innovative UN Political Engagement in Nepal,” 22.

²⁷⁵ Former OHCHR Staff, interview with author, April 28, 2023.

offering good offices, convening like-minded parties, connecting state and non-state actors, making subject matter experts available to stakeholders, providing logistical support to meetings and discussions that further the law reform process.²⁷⁶

A former Nepal Human Rights Commissioner echoed similar concerns, stating that issuing press releases criticising bills was less likely to be effective than to quiet engagement and technical assistance to the drafting process.²⁷⁷

OHCHR undertook significant capacity building activities directed at both the state and non-state sector.²⁷⁸ OHCHR carried out a series of trainings and workshops and authored publications providing guidance to the non-governmental sector, including on methods of human rights monitoring and documentation. The work was credited as significantly raising awareness regarding the victim's rights, especially among civil society groups.²⁷⁹ Within the state sector, OHCHR provided training and capacity building assistance to the Nepali Police and Armed Forces and developed publications and training focusing on the use of force during demonstrations and rallies, which reportedly contributed to a reduction in the disproportionate use of force by the police.²⁸⁰

²⁷⁶ UN Official, interview with author, December 2, 2021. See also Mahony, Nash, and Taladhar, "Evaluation of the Work of OHCHR in Nepal", 16.

²⁷⁷ Former National Human Rights Commissioner, interview with author, November 30, 2022.

²⁷⁸ United Nations Human Rights Council, "Report of the United Nations High Commissioner for Human Rights on the Human Rights Situation and the Activities of Her Office, Including Technical Cooperation in Nepal* A/HRC/7/68," February 18, 2008, para 5-10, <https://documents.un.org/doc/undoc/gen/g08/106/24/pdf/g0810624.pdf?token=WRFP0sPOH0hJ36gNI9&fe=true>.

²⁷⁹ Former Vice President of the Bar Association of Nepal, interview with author, December 11, 2022.

²⁸⁰ United Nations Human Rights Council, "Report on the Human Rights Situation and the Activities of the Office of the High Commissioner, Including Technical Cooperation, in Nepal A/HRC/19/21/Add.4," para 41.

OHCHR's most effective capacity building efforts were geared to guaranteeing remedies for victims in the short and medium term. For example, OHCHR assisted in an investigation of human remains and helped to advance investigations into missing and disappeared persons.²⁸¹ OHCHR's assistance directly contributed to the first time excavated human remains were identified in Nepal.²⁸² Further, OHCHR participated in strategic litigation, directly contributing to the development of strong international human rights jurisprudence that enhanced the judicial protection of rights.²⁸³

The primary recipient of capacity building assistance in the state sector was the National Human Rights Commission. As the two bodies had overlapping mandates, to some donors and allies, there was an apparent competition between the two institutions. There were views within the National Human Rights Commission that OHCHR, with its significantly higher budgets and mostly Caucasian staff, was a "white elephant" taking up resources and space that should have been otherwise available to the National Human Rights Commission.²⁸⁴ OHCHR, in turn, took a critical view of the National Human Rights Commission's capacity to discharge its duties and the substandard quality of its monitoring, investigations and

²⁸¹ OHCHR Nepal, "Nepal: UN Congratulates NHRC's Initiative on Exhumation of Suspected Burial Site in Dhanusha," September 19, 2010, https://nepalconflictreport.ohchr.org/files/docs/2010-09-19_press-release_ohchr_eng.pdf.

²⁸² "'Hand over Remains in Presence of Top Officials,'" Kathmandu Post, July 21, 2014, <http://kathmandupost.com/valley/2014/07/21/hand-over-remains-in-presence-of-top-officials>.

²⁸³ Former OHCHR staff, interview with author, November 11, 2022.

²⁸⁴ Former Regional Director of Nepal's National Human Rights Commission, interview with author, November 22, 2022.

documentation.²⁸⁵ Personality differences also led some political appointees within the National Human Rights Commission to adopt an acrimonious stance towards OHCHR.²⁸⁶ In hindsight, some OHCHR staff concede that it was perhaps too presumptuous in dealing with the Human Rights Commission and could have adopted a more constructive approach.²⁸⁷ One donor aware of some of OHCHR's capacity building programs for the National Human Rights Commission claimed that the programs lacked context and appeared to be designed by staff in regional headquarters in Bangkok, who may not have had sufficient knowledge of the local challenges.²⁸⁸ Tensions spilled over in 2010 when members of the National Human Rights Commission wrote a public letter to Prime Minister Nepal, urging him not to extend the mandate of OHCHR.²⁸⁹ To address these disagreements, the two institutions agreed on guidelines that delineated responsibilities and aimed to foster cooperation.²⁹⁰

The non-renewal of OHCHR's mandate in December 2011 resulted from internal leadership issues and an adverse external political environment. In June 2007, Prime Minister Koirala extended OHCHR's original mandate for another two years

²⁸⁵ Former OHCHR staff, interview with author, November 21, 2022.

²⁸⁶ Ibid.

²⁸⁷ Ibid.; Former OHCHR Staff, interview with author, April 28, 2023.

²⁸⁸ Official, Swiss Federal Department of Foreign Affairs, interview with author, December 9, 2022.

²⁸⁹ Former OHCHR staff, interview with author, November 21, 2022.

²⁹⁰ United Nations Human Rights Council, "Report of the United Nations High Commissioner for Human Rights on the Human Rights Situation and the Activities of Her Office, Including Technical Cooperation, in Nepal* A/HRC/13/73," February 5, 2010, para 58, <https://documents.un.org/doc/undoc/gen/g10/104/49/pdf/g1010449.pdf?token=ONMZwgkyEbUgd8JTUd&fe=true>.

until July 2009.²⁹¹ However, by June 2009, a coalition of domestic actors aligned in opposition to OHCHR's continued presence in the country. Predictably Nepal Army opposed OHCHR's continued push for criminal investigations into its conduct.²⁹² The pro-National Human Rights Commission constituency also questioned the need for a long-term OHCHR presence, as the former was constitutionally and legally mandated to have primacy over domestic human rights issues.²⁹³ The political parties which had initially advocated for and directly benefited from OHCHR's presence following the Maoist victory at the Constituent Assembly elections accused the UN agencies of favouring the Maoists.²⁹⁴ The allegations that the UN was favouring the Maoists were unfounded and based on a false claim that UNMIN had understated widespread intimidation by Maoists during the elections.²⁹⁵ In July 2009, as Prime Minister Nepal's government had just assumed power, an interim three-month extension was granted, and later, the mandate was extended again until July 2010. In 2010, the agreement was extended for another year, until June 2011, on the condition that OHCHR close its four

²⁹¹ United Nations Human Rights Council, "Report of the United Nations High Commissioner for Human Rights on the Human Rights Situation and the Activities of Her Office, Including Technical Cooperation, in Nepal* A/HRC/13/73," para 12.

²⁹² "Not the Right Time," *The Kathmandu Post*, May 26, 2010.

²⁹³ Former National Human Rights Commissioner, interview with author, November 30, 2022; Former Regional Director, National Human Rights Commission, interview with author, November 22, 2022.

²⁹⁴ "Prod for OHCHR Extension," *The Kathmandu Post*, May 31, 2010; "Not the Right Time," *The Kathmandu Post*, May 26, 2010; Yubaraj Ghimire, "Meddling and Muddling in Nepal," May 20, 2010; Mahony, Nash, and Taladhar, "Evaluation of the Work of OHCHR in Nepal", 12.

²⁹⁵ See also Martin, "The United Nations and Support to Nepal's Peace Process," 222.

regional offices.²⁹⁶ In June 2011, Prime Minister Bhattarai's government granted an extension until 8 December 2011 and opted not to renew the mandate further.²⁹⁷

Nepal's two closest neighbours India and China were also apprehensive of OHCHR's continued field presence. Both accused OHCHR of using its presence within Nepal to monitor the human rights situation in India and Tibet.²⁹⁸ There was also concern regarding 'mission creep' and the prospect that Nepal's field office could be expanded to a regional OHCHR office covering all South Asia.²⁹⁹ Former OHCHR staff also noted a lack of coordination between leadership in Geneva and Kathmandu, which may have prevented a more strategic approach towards mandate renewal negotiations.³⁰⁰ This is likely to have been the case, as following Richard Bennet's departure in August 2009, OHCHR Nepal lacked a clear leader and, for the remainder of its term, was headed by an acting head of office, Jyoti Sanghera. Diplomats in Kathmandu at the time recalled that there appeared to be lack of planning on the part of OHCHR regarding the mandate extension. When diplomats offered to assist the negotiations early on, OHCHR declined the offers insisting they could manage the process themselves.³⁰¹ However, late in 2011, when it

²⁹⁶ "OHCHR Gets Its Wings Clipped," *Kathmandu Post*, June 10, 2010.

²⁹⁷ United Nations Human Rights Council, "Report on the Human Rights Situation and the Activities of the Office of the High Commissioner, Including Technical Cooperation, in Nepal A/HRC/19/21/Add.4," para 6.

²⁹⁸ Former National Human Rights Commissioner, interview with author, November 30, 2022; These were largely unfounded claims, and stemmed from UNMINS' involvement in the Terai in border areas between India and Nepal, and OHCHR's advocacy on behalf of Tibetan refugees in Nepal. See also Martin, "The United Nations and Support to Nepal's Peace Process," 217.

²⁹⁹ Former National Human Rights Commissioner, interview with author, November 30, 2022.

³⁰⁰ Former OHCHR staff, interview with author, December 2, 2022.

³⁰¹ Former Official, Swiss Federal Department of Foreign Affairs, interview with author, November 17, 2022.

appeared the mandate would not be extended, they once again reached out to the diplomatic community; by this time, it was too late for the latter to intervene.³⁰²

Some observers believe that OHCHR's failure to secure mandate renewal was also owed to a more fundamental gap in their approach to maintaining a field presence. They observed that, given OHCHR's far-reaching mandate, such as its authority to monitor the implementation of the human rights provisions of the CPA, the agency failed to leverage its presence more strategically.³⁰³ OHCHR traditionally has expertise in monitoring and documenting human rights violations and bringing them to the attention of member states and the international community. Its findings and legal conclusions are regarded as authoritative and provide the basis for discussions regarding a given country's domestic human rights situation. However, in the context of Nepal, by carrying out capacity building activities, OHCHR was extending itself into the domain of a development agency to 'implement projects'. Observers noted that OHCHR lacked the institutional know-how to be an implementing agency. OHCHR was criticised for behaving "more like an NGO" than an implementing partner and working too closely with the "demand side of human rights" (i.e. victims and NGO side), rather than engaging with the government.³⁰⁴ Another perspective offered was that OHCHR struggled to adapt to the changing political context and the demands of a post-conflict environment. One former OHCHR officer conceded that, especially during the latter years, 'OHCHR

³⁰² Ibid.

³⁰³ UN Official, interview with author, November 24, 2022.

³⁰⁴ Former Vice President of the Bar Association of Nepal, interview with author, December 11, 2022; Former Chief of Human Rights Section, Office of the Prime Minister, interview with author, December 5, 2022; Civil Society Stakeholder, interview with author, December 10, 2022.

perceived itself as a technical mission and was not very conscious about the political context in a way that we should have been... There is a tendency to approach justice, accountability, human rights issues without necessarily thinking about perhaps what else is going on and how best we can achieve our objectives in that political context...”³⁰⁵ These challenges likely reflected the lack of continuity in leadership, and the absence of a clear leader, which could have otherwise facilitated a strategic approach to mitigating these issues.

Role of member states

Following commitment, the focus of key bilateral partners shifted to supporting Nepal’s democratic transition and the completion of the peace process. Following King’s resignation, each successor governments was largely welcomed by key bilateral partners such as India, UK, EU and the US. Despite reservations among US policymakers, bilateral partners welcomed the Maoist government and extended assistance towards completing the peace process. Political instability and lack of progress on human rights issues did not attract censure and sanctions. None of the five governments to lead Nepal from 2006 to 2011¹¹ faced the threat of diplomatic isolation or of losing out on opportunities for cooperation or development assistance. Although following the General Katawal episode, India sought to isolate the Maoists, India’s pressure on Nepal’s political leaders had more to do with India’s narrowly calculated interests in Nepal and little to do with human rights reforms.

³⁰⁵ Former OHCHR Staff, interview with author, April 21, 2023.

The UK had taken leadership in addressing the human rights crisis in Nepal. Following commitment, the UK supported the negotiations to end the conflict, and following the signing of the CPA, it increased its development assistance to Nepal with a primary focus on democratisation and human rights.³⁰⁶ UK provided financial assistance to hold the Constituent Assembly elections and demobilise the PLA as well as other development issues such as health and de-mining.³⁰⁷ During the latter years, similar to the US, the UK also appealed to the political leadership to ensure political stability and reach a consensus on implementing the peace process.³⁰⁸ However, unlike US and India, the UK was also outspoken about human rights issues. As a member of the EU, the UK spoke out in concert with the EU, calling out the government to ensure freedom of the press, prosecute human rights abuses, including implementing relevant OHCHR recommendations, and criticised the draft TRC bill that sought to grant amnesty to perpetrators of serious human rights abuses.³⁰⁹

³⁰⁶ BBC, "UK Boosts Aid for Nepal," July 27, 2006; BBC Monitoring South Asia, "Envoy Says Britain to Press Nepal Parties on Human Rights," May 14, 2008; The Kathmandu Post, "British Envoy Stresses Unity among Parties," May 19, 2008.

³⁰⁷ BBC Monitoring South Asia, "UK Gives 900m-Rupee Aid to Nepal for Holding Constituent Assembly Polls," April 5, 2008; BBC Monitoring South Asia, "Nepal Maoists to Gain Additional Support from Government, Britain," December 20, 2006; The Kathmandu Post, "US, UK Envoys Call on PM Dahal," September 9, 2008; BBC Monitoring South Asia, "British Envoy Pledges Continued Support for Nepal Health Sector," September 14, 2008; The Kathmandu Post, "Siraha Forest Demined," January 30, 2009.

³⁰⁸ The Kathmandu Post, "US, UK Envoys Call on PM Dahal," September 9, 2008; BBC Monitoring South Asia, "UK Foreign Secretary's Letter Reported Praising Nepal Leaders' Patience," September 4, 2008; Xinhua News Agency, "British Ambassador Supports CPN-M Led Gov't in Nepal," May 19, 2008; The Times of India, "Diplomats Fret over Nepal Govt Deadlock," August 6, 2008; Indo-Asian News Service, "Nepal PM Impasse Makes West Restive," July 23, 2010; Himalayan News Service, "UK, US Envoys Consult PM, Congress," January 7, 2011.

³⁰⁹ The Kathmandu Post, "Leaders: Free Media in Peril," February 6, 2009; Himalayan News Service, "ICJ Urges Justice for War Victims," March 8, 2010; "UK Envoy Reported Warning Nepal

Following commitment, the US remained hesitant to engage directly with the Maoists. Maoists remained on the US's Designated Global Terror List and Terrorist Exclusion List.³¹⁰ US Ambassador Moriarty remained sceptical of the Maoists and warned against continued negotiations to bring the conflict to an end.³¹¹ However, Indian officials successfully persuaded the US to defer to the former's policy of facilitating negotiations between the Maoists and the political parties.³¹² Both the United States and India viewed stability in Nepal as a key priority. In July 2007, with the arrival of Ambassador Powell, the US stance towards the Maoists eased.³¹³ Following the Maoist electoral victory at the Constituent Assembly, although the Maoists were not immediately de-listed as a terrorist organization, the US increased its engagement and stated that "our role...is to encourage the various parties to embrace what we think is a common vision of a stable, democratic and prospering Nepal".³¹⁴ In September 2008, the US invited Maoist leader Prime Minister Dahal to meet with President Bush at a side event of the annual meeting of the UN General Assembly in New York.³¹⁵ The US provided financial support to OHCHR, encouraged US investment in Nepal and remained one of the largest bilateral donors

Army Human Rights Concerns Harm Ties," *BBC*, March 9, 2010; Hindustan Times, "EU Alarmed by Provision of Nepal's Truth Panel Bill," August 9, 2007.

³¹⁰ Jason Miklian, "Nepal – The (Flawed) View from the United States," *Strategic Analysis* 32, no. 3 (May 3, 2008).

³¹¹ Gopal Sharma, "Nepal Maoists Eye Total Power, May Derail Peace - U.S.," *Reuters*, July 13, 2007.

³¹² Muni, "Bringing Maoists down from the Hills: India's Role," 327-37; Xavier, "Converting Convergence into Cooperation: The United States and India in South Asia."

³¹³ Jason Miklian, "Nepal – The (Flawed) View from the United States," 356; U.S. Library of Congress, "Nepal: Political Developments and Bilateral Relations with the United States", 10.

³¹⁴ "United States/Nepal: US Opens Political Contacts with Nepalese Maoist Party," June 2, 2008.

³¹⁵ BBC Monitoring South Asia, "Nepal Paper Comments on Ties between Maoists, US," September 25, 2008.

to Nepal, assisting a range of development activities as well as the peace process.³¹⁶

Public remarks by the US primarily focused on encouraging Nepalese leaders to complete the peace process and ensure the continuity of government.³¹⁷

As described above, India had not overtly supported OHCHR's office in Nepal, and following its establishment India did not provide significant support for its operations. At the outset of Nepal's transition, India contributed to the improvement in the human rights situation in Nepal by facilitating the negotiated end to the armed conflict and bearing pressure on the Nepal Army to refrain from cracking down on the protest movement that resulted in the resignation of the King.³¹⁸ India, however, was keen to limit the influence of international organizations and NGOs in Nepal.³¹⁹ Initially, India opposed the deployment of UNMIN and later insisted on its narrow mandate.³²⁰ Although India initially welcomed the Maoist led government, later, it became distrustful of the former's intentions to complete the peace process.³²¹ The Maoists' decision to sack Army Chief Katawal, coupled with signs that the Maoists sought to develop closer ties with China, prompted India to intervene in Nepal's domestic politics directly. India played a role in ousting the Maoists from power

³¹⁶ Nepalnews.com, "US Offers \$2.3 m for Defending Human Rights in Nepal" December 10, 2007, <https://reliefweb.int/report/nepal/us-offers-23-m-defending-human-rights-nepal>; "US Clears Nepal for Investment," *Indo-Asian News Service*, June 29, 2011; "Friendship Between the U.S. and Nepal Remarks by Robert O. Blake Assistance Secretary, Bureau of South and Central Asia in Kathmandu, Nepal," U.S. Department of State, June 13, 2009, [//2009-2017.state.gov/p/sca/rls/rmks/2009/125070.htm](https://2009-2017.state.gov/p/sca/rls/rmks/2009/125070.htm).

³¹⁷ "Friendship Between the U.S. and Nepal Remarks by Robert O. Blake Assistance Secretary, Bureau of South and Central Asia in Kathmandu, Nepal" ; "US Warns Nepal over Political Unrest," *Agence France Presse*, December 18, 2011.

³¹⁸ Muni, "Bringing Maoists down from the Hills: India's Role," 329.

³¹⁹ Ibid.

³²⁰ Jha, *Battles of the New Republic*, 122.

³²¹ For details on India's initial engagement with the newly elected Maoists, see Jha, *Battles of the New Republic*, 125-6; Sharma, *The Nepal Nexus*, 319-320.

and continued to isolate them politically.³²² In contrast to its earlier role, during the latter part of Nepal's transition, India's actions contributed to Nepal's domestic political instability and undermined the scope for ushering in further reforms.

Reduction in physical integrity rights violations

Through its presence on the ground, monitoring, and documenting activities, as well direct engagement with the peace process, OHCHR contributed to reducing physical integrity rights violations in Nepal. OHCHR carried out unannounced detention visits, documented and publicly reported on individual cases of violations, and deployed a strong presence during protests and demonstrations, especially the Jana Andolan that led to the resignation of the King.³²³ It also directly engaged with the Maoists, security forces and other state actors, requesting information and clarifications and urging adherence to international human rights and humanitarian law. The presence on the ground empowered domestic human rights actors, especially non-governmental actors, to monitor and document abuses and advocate for reform.³²⁴ Domestic pro-human rights constituencies viewed OHCHR as “a big brother” that provided not only moral support but also physical support when they were threatened, attacked, or placed at risk.³²⁵

³²² For an account of India's role during the dismissal of General Katawal and the resignation of Prime Minister Dahal see: Jha, *Battles of the New Republic*, 77-81; Sharma, *The Nepal Nexus*, 330-337. For an account of India's involvement in Nepal's domestic politics during 2006 to 2012 see: Jha, *Battles of the New Republic*, 121-137, 140-157.

³²³ United Nations General Assembly, “Report of the United Nations High Commissioner for Human Rights on the Human Rights Situation and the Activities of Her Office, Including Technical Cooperation, in Nepal A/61/374,” para 5.

³²⁴ United Nations General Assembly, “Report of the United Nations High Commissioner for Human Rights on the Human Rights Situation and the Activities of Her Office, Including Technical Cooperation, in Nepal A/60/359,” para 53.

³²⁵ Former OHCHR staff, interview with author, December 6, 2022.

Modest improvements in physical integrity rights were seen in 2005-2006, the first year of OHCHR's operation, when detainees arrested during the royal coup were released.³²⁶ In 2006, following the resignation of the King and restoration of parliament, domestic and international observers noted a significant improvement in human rights.³²⁷ Following the restoration of parliament, both parties declared ceasefires, ending the offensive operations of the Army and the PLA.³²⁸ The end of armed hostilities also brought to an end international humanitarian law violations and other conflict-related human rights abuses, including "extrajudicial killings, detentions, torture, and ill-treatments in army barracks."³²⁹ Long-term disappearances came to an end in 2005.³³⁰ There were significant improvements in freedom of association, expression and assembly, and political detainees, including minors and those detained under the Terrorist and Disruptive Activities (Control and Punishment) Ordinance (TADO), were released.³³¹ A majority of alleged Maoists held under TADO were released, although some continued to be detained

³²⁶ United Nations General Assembly, "Report of the United Nations High Commissioner for Human Rights on the Human Rights Situation and the Activities of Her Office, Including Technical Cooperation, in Nepal A/60/359," para 56.

³²⁷ United Nations General Assembly, "Report of the United Nations High Commissioner for Human Rights on the Human Rights Situation and the Activities of Her Office, Including Technical Cooperation, in Nepal A/61/374," para 9. "Nepal Human Rights Year Book New Roadmap and Challenges of Transition (English Edition)" (Kathmandu, Nepal: Informal Sector Service Centre, 2007); US Department of State Bureau of Democracy, Human Rights and Labor, "Nepal," March 6, 2007, <https://2009-2017.state.gov/j/drl/rls/hrrpt/2006/78873.htm>.

³²⁸ "The Code of Conduct for Ceasefire Agreed between the Government of Nepal and the CPN (Maoist) at Gokarna."

³²⁹ United Nations General Assembly, "Report of the United Nations High Commissioner for Human Rights on the Human Rights Situation and the Activities of Her Office, Including Technical Cooperation, in Nepal A/61/374," para 10.

³³⁰ Ibid.

³³¹ United Nations General Assembly, "Report of the United Nations High Commissioner for Human Rights on the Human Rights Situation and the Activities of Her Office, Including Technical Cooperation, in Nepal A/61/374," para 9, 10.

under criminal charges.³³² OHCHR'S capacity building and training programs contributed to a decrease in the use of excessive force by the Nepal Police, especially in the context of demonstrations and rallies.³³³

Human rights violations nonetheless continued in the period from 2006 to 2011. However, the acute human rights crisis the country had witnessed in the preceding years had ended. The rise of the Madhesi Movement and armed groups in the Terai led to a breakdown in law and order and an increase in threats, intimidation, and extra-judicial killings.³³⁴ Violence perpetrated by individuals associated with political parties, including especially the youth wing of the Maoists, the Young Communist League, continued to limit the free exercise of expression and

³³² According to the Government 1082 TADO detainees were released, 692 from preventative detention and 390 from pre-trial detention.

³³³ United Nations Human Rights Council, "Report on the Human Rights Situation and the Activities of the Office of the High Commissioner, Including Technical Cooperation, in Nepal A/HRC/19/21/Add.4," para 41.

³³⁴ United Nations Human Rights Council, "Report of the United Nations High Commissioner for Human Rights on the Human Rights Situation and the Activities of Her Office, Including Technical Cooperation in Nepal* A/HRC/7/68," para 25-28; United Nations Human Rights Council, "Report of the United Nations High Commissioner for Human Rights on the Human Rights Situation and the Activities of Her Office, Including Technical Cooperation, in Nepal A/HRC/10/53," March 3, 2009, 12-13

https://documents.un.org/doc/undoc/gen/g09/116/09/pdf/g0911609.pdf?token=bYQZMCnIbVR_EMoFcrv&fe=true; OHCHR Nepal, "Summary of Human Rights Concerns Arising from the Terai Protests of 13 – 29 February 2008,"; United Nations Human Rights Council, "Report of the United Nations High Commissioner for Human Rights on the Human Rights Situation and the Activities of Her Office, Including Technical Cooperation, in Nepal* A/HRC/13/73," para 37; United Nations Human Rights Council, "Report on the Human Rights Situation and the Activities of the Office of the High Commissioner, Including Technical Cooperation, in Nepal A/HRC/19/21/Add.4," para 37; Office of the High Commissioner of Human Rights in Nepal, "Investigating Allegations of Extra-Judicial Killings in the Terai: OHCHR-Nepal Summary of Concerns," 2010, <https://nepal.ohchr.org/en/resources/publications/Investigating%20Allegations%20of%20Extra-Judicial%20Killings%20in%20the%20Terai.pdf>.

assembly.³³⁵ Issues of torture and ill treatment in the context of detention also persisted.³³⁶

Law reform

Significant constitutional, legal and policy reforms were initiated with a view to strengthening the protection of human rights. The most significant contribution to the strengthening of the domestic human rights framework was achieved via the adoption of the interim constitution. It enhanced the democratic features of the state and expanded the scope of fundamental rights protected under the Constitution. Substantive legal reforms were also achieved, which addressed issues of historical discrimination based on gender, caste, and ethnicity. Many policies and executive measures were also adopted to improve healthcare, education and representation in the public sector. However, many of these laws and policies were poorly implemented. Many reforms initiated during this period remained in the form of draft laws and were never enacted. Efforts to fulfil commitments made under the CPA to establish a truth and reconciliation commission and establish the fate of the disappeared progressed only as far as being drafted and tabled in parliament.

³³⁵United Nations Human Rights Council, "Report of the United Nations High Commissioner for Human Rights on the Human Rights Situation and the Activities of Her Office, Including Technical Cooperation in Nepal* A/HRC/7/68," para 24; United Nations Human Rights Council, "Report of the United Nations High Commissioner for Human Rights on the Human Rights Situation and the Activities of Her Office, Including Technical Cooperation, in Nepal A/HRC/10/53," 17-18; United Nations Human Rights Council, "Report of the United Nations High Commissioner for Human Rights on the Human Rights Situation and the Activities of Her Office, Including Technical Cooperation, in Nepal* A/HRC/13/73," para 37.

³³⁶ United Nations Human Rights Council, "Report of the United Nations High Commissioner for Human Rights on the Human Rights Situation and the Activities of Her Office, Including Technical Cooperation, in Nepal A/HRC/10/53," 16-17; United Nations Human Rights Council, "Report on the Human Rights Situation and the Activities of the Office of the High Commissioner, Including Technical Cooperation, in Nepal A/HRC/19/21/Add.4," para 39.

Constitutional reform

The most significant law reform initiative during this period was the adoption of the interim constitution.³³⁷ It formalised the end of the monarchy, declared Nepal a secular, federal republic and committed Nepal to establishing an inclusive, multi-party democracy.³³⁸ The fundamental rights chapter expanded the rights guaranteed under the 1990 constitution. It strengthened due process rights, prohibited caste-based discrimination and expressly prohibited “untouchability”, and recognised the rights of traditionally marginalised groups.³³⁹ The interim constitution also incorporated commitments in the CPA regarding remedies for conflict related abuses and provided that the state must “provide relief to the families of the victims on the basis of the Investigation Commission constituted to investigate the cases of disappearances made during the course of the conflict.”³⁴⁰ Weaknesses in the fundamental rights chapter included the exclusion of non-citizens, absence of provisions prohibiting derogation from core rights during periods of emergency, and the lack of an explicit right to life.³⁴¹ The interim constitution also gave the

³³⁷ On the process of drafting the Interim Constitution, see S Bhandari, “The Landscape of Constitution Making in Nepal,” in *Self-Determination and Constitution Making in Nepal: Constituent Assembly, Inclusion, & Ethnic Federalism* (Singapore: Springer, 2014), 13-14.

³³⁸ The Interim Constitution initially stripped all powers of the King and left the question of the abolition of the monarchy to the Constituent Assembly. In its first sitting the Constituent Assembly voted to abolish the monarchy and declared Nepal a Republic. In 2007 in response to the Madhesi Movement the Interim Constitution was again amended to reflect the federal nature of the state. The Interim Constitution of Nepal, Preamble, Article 4, Article 138.

³³⁹ The Interim Constitution of Nepal, Article 24, 13, 14.

³⁴⁰ The Interim Constitution of Nepal, Article 33(q).

³⁴¹ Nicholas Howen, “Letter to the Speaker of the Legislature-Parliament from the Secretary-General International Commission of Jurists Regarding Interim Constitution,” February 11, 2007, <https://www.icj.org/wp-content/uploads/2012/04/Nepal-comments-on-Constitution-open-letter-2007-eng.pdf>.

National Human Rights Commission constitutional status and introduced quotas for marginalised groups in education, health, housing, food and employment.³⁴² It provided for directive principles of the state, which sought to address demands from the Jana Andolan and included commitments to repeal discriminatory laws, restructure the state to address injustice and set up a Truth and Reconciliation Commission.³⁴³ The interim constitution also brought the Army under civilian control.³⁴⁴

The interim constitution was intended to be a temporary document and provided for establishing a constituent assembly to draft the new constitution.³⁴⁵ The constituent assembly initially had two years from the date of its first sitting, but it extended its term twice.³⁴⁶ There were substantive criticisms of the way the constituent assembly functioned, including lack of technical capacity among lawmakers and support staff, poor attendance (especially by party leaders), and the tendency to discuss and negotiate key issues outside of the assembly, leaving a majority of lawmakers in the dark.³⁴⁷ During the two and a half year period it was operative, the constituent assembly finalised the reports of its thematic committees, including the report on fundamental rights. Proposed improvements to the new constitution included strengthening non-discrimination provisions, collective rights

³⁴² The Interim Constitution of Nepal, Chapter XV and Article 35(10).

³⁴³ The Interim Constitution of Nepal, Article 33, (n), (s).

³⁴⁴ The Interim Constitution of Nepal, Article 144.

³⁴⁵ The Interim Constitution of Nepal, Part IV.

³⁴⁶ The Interim Constitution of Nepal, Article 64.

³⁴⁷ See Chautari, "The Debilitating Dynamics of Nepal's First Constituent Assembly," 293–316; Kanak Mani Dixit, "The Life and Death of the Constituent Assembly of Nepal," *Economic and Political Weekly* 47, no. 31 (August 4, 2012): 35–41.

and the rights of non-citizens. Consultations on these reports and draft provisions were initiated; however, due to frequent changes in government, the schedule was repeatedly amended, and time allocated to public consultations was shortened. Owing to disagreement regarding key aspects of the draft constitution, such as the division of powers between the president and parliament, federalism, and the design of the electoral system, the work of drafting the new constitution had not been completed by the end of OHCHR's presence in December 2011.³⁴⁸

Legal reform

Nepal initiated a wide array of legislative reforms; however, it succeeded in enacting only a handful of laws during the OHCHR's presence. The most consequential legal reforms addressed issues concerning historical discrimination against marginalised groups. The Caste-Based Discrimination and Untouchability (Crime and Offences) Act prohibited the commission or incitement of caste-based discrimination and untouchability in public and private contexts.³⁴⁹ It provided tough penalties for public servants who breached the law and individuals who obstructed investigations, and it required perpetrators to compensate victims.³⁵⁰ Amendments to the Civil Service Act reserved 45 percent of posts for women,

³⁴⁸ First extension to the term of the Constituent Assembly was granted for a one-year period until May 2011. The second extension was granted for three months until August 2011. Third extension was granted for an additional three months until November 2011. A fourth extension was granted for six-months until May 2012.

³⁴⁹ See Caste Based Discrimination and Untouchability (Crime and Offences) Act 2011. See Office of the High Commissioner of Human Rights in Nepal and National Dalit Commission of Nepal, "NDC and OHCHR Welcome the New Law on Caste-Based Discrimination and Untouchability," May 25, 2011, https://nepal.ohchr.org/en/resources/Documents/English/pressreleases/Year%202011/May/2011_05_25_Joint_PR_with%20NDC_new_law_cast_based_discrimination.pdf.

³⁵⁰ Ibid.

Madhesi, Janajati/ Adivasi groups, Dalits, and differently-abled persons.³⁵¹ Nepal Police and Armed Forces regulations were amended to reserve quotas for women and marginalised groups.³⁵² The Constituent Assembly Member Election Act also reserved seats for women, Dalits, Madhesis and other ethnic groups, as well as differently-abled persons.³⁵³ The Citizenship Act adopted in November 2006 enabled more than 2 million individuals to acquire Nepali citizenship certificates for the first time, including in the Terai.³⁵⁴ The most significant legal reform impacting physical integrity rights was the decision to allow the Anti-Terror Ordinance to lapse, which had been used in the past to detain political opponents as well as those suspected of being Maoist insurgents.³⁵⁵ Modest improvements were also made to the domestic violence act, removing the statute of limitations in reporting the crime of rape, and the Human Trafficking (Control) Act provided harsher penalties for perpetrators and improved protections for victims, especially minors.³⁵⁶ The scope of freedom of expression was expanded with the enactment

³⁵¹ United Nations Human Rights Council, “Report of the United Nations High Commissioner for Human Rights on the Human Rights Situation and the Activities of Her Office, Including Technical Cooperation in Nepal” A/HRC/7/68,” para 50.

³⁵² Ibid. As a result of these changes out of 1,757 new police recruits, 150 women, 109 Dalits, 219 Madhesis, 234 Janajatis and 35 others from underdeveloped groups were recruited, see United Nations Human Rights Council, “Report of the United Nations High Commissioner for Human Rights on the Human Rights Situation and the Activities of Her Office, Including Technical Cooperation, in Nepal A/HRC/10/53,” para 16.

³⁵³ Election to the Members of the Constituent Assembly Election Act (2007), Legislature-Parliament of the Federal Democratic Republic of Nepal.

³⁵⁴ United Nations Human Rights Council, “Report of the United Nations High Commissioner for Human Rights on the Human Rights Situation and the Activities of Her Office, Including Technical Cooperation in Nepal” A/HRC/7/68,” para 48.

³⁵⁵ BBC, “Nepalese Rebels Freed from Jail,” June 13, 2006, http://news.bbc.co.uk/2/hi/south_asia/5075594.stm.

³⁵⁶ United Nations Human Rights Council, “Report of the United Nations High Commissioner for Human Rights on the Human Rights Situation and the Activities of Her Office, Including Technical Cooperation, in Nepal” A/HRC/13/73,” para 49; The Human Trafficking Control Act (2007), Legislature-Parliament of the Federal Democratic Republic of Nepal. See also U.S. Agency for International Development, “Human Trafficking Transportation Control Act, 2064 Recommended

of a Right to Information Act, which granted citizens the right to access state documents.³⁵⁷

Enforced Disappearances Ordinance

Efforts to criminalise enforced disappearances were illustrative of the challenges in enacting human rights reforms during this period. Given the occurrence of large-scale disappearances in Nepal, there was a strong push to criminalise such acts.³⁵⁸ Despite several initiatives, none of the proposed laws was enacted.

Initial progress was made in securing the rights of the families of the missing and disappeared in the CPA and the interim constitution; however, neither criminalised enforced disappearances.³⁵⁹ In May 2007, the Koirala government presented an amendment to the Civil Code to the parliament seeking to criminalise enforced disappearances.³⁶⁰ Under pressure from lawmakers, including the Maoists, that a stronger separate law was required, the government withdrew the clauses related to

Revisions to Align with International Law,” December 2018, https://pdf.usaid.gov/pdf_docs/PA00TMNR.pdf.

³⁵⁷ See Right to Information Act (2007), Legislature-Parliament of the Federal Democratic Republic of Nepal.

³⁵⁸ United Nations Office of the High Commissioner for Human Rights, “Nepal Conflict Report,” 109-110. Although there is no official figure on the number of disappeared, the ICRC has received more than 3,400 reports of persons going missing in the context of the conflict, and the fate and whereabouts of more than 1,300 remain unknown.

³⁵⁹ “Comprehensive Peace Accord Signed between Nepal Government and the Communist Party of Nepal (Maoist)”, Articles 5.2.2; 5.2.3; The Interim Constitution of Nepal, Article 33(q).

³⁶⁰ “ICJ Seeks Review of Civil Code Bill,” *The Himalayan Times*, May 31, 2007, <https://thehimalayantimes.com/nepal/icj-seeks-review-of-civil-code-bill>.

enforced disappearances. Instead it enacted amendments criminalising abductions and hostage taking.³⁶¹

In June 2007, the Supreme Court issued a landmark judgement directing the government to criminalise enforced disappearances in accordance with international law and form a high-level commission to investigate the fate of the disappeared.³⁶² Weeks after the Supreme Court decision, the Koirala government formed a three-member high level Investigation Commission on Disappeared Persons headed by a former judge; however, the Commission was never able to commence work, as its members refused to take their oaths of office, citing the Commission's limited mandate.³⁶³

In response to the Supreme Court decision, the Federal Bar Association of Nepal submitted a draft law criminalising enforced disappearances to the government.³⁶⁴ Following the constituent assembly elections, the new Maoist government developed a separate draft law, the draft Bill on Enforced Disappearances (Crime

³⁶¹ Ishwar Khanal, "Maoists Press Govt to Drop Plan on Civil Code," *The Himalayan Times*, November 27, 2007, <https://thehimalayantimes.com/nepal/maoists-press-govt-to-drop-plan-on-civil-code>.

³⁶² Rajendra Dhakal and Others v The Government of Nepal writ no.3575 (Supreme Court of Nepal June 1, 2007). The judgement provided that "it is necessary to urgently enact a law which includes provisions that the act of disappearances is a criminal offence, defining the act of disappearance pursuant to the definition stated in the International Convention for the Protection of All Persons from Enforced Disappearance 2006".

³⁶³ International Commission of Jurists, "Commission of Inquiry in Nepal: Denying Remedies, Entrenching Impunity", 6. See also International Commission of Jurists, "Nepal: ICJ Urges Government to Ensure 'High Level Commission of Inquiry on Disappeared Citizens' Meets International Standards and Complies with Supreme Court Order," July 16, 2007, <https://icj2.wpenginpowered.com/wp-content/uploads/2012/04/Nepal-Inquiry-Disappeared-Citizens-Press-releases-2007.pdf>.

³⁶⁴ Former Vice President of the Bar Association of Nepal, interview with author, December 11, 2022.

and Punishment). Despite the calls by the Maoists two years earlier that a stronger enforced disappearances law was required, the draft law prepared by the Maoist government was sharply criticised for failing to comply with the Supreme Court decision and international human rights law.³⁶⁵ Criticism centred around the definition of an enforced disappearance, lack of individual criminal responsibility for perpetrators, and lack of minimum and maximum penalties.³⁶⁶ As per the Supreme Court order, the bill established a commission to investigate disappearances, which was criticised for lacking independence and a mechanism to protect witnesses and evidence.³⁶⁷ Amidst the criticism of the law and its inability to secure a majority in the legislature, the Maoist government opted to bypass parliament and enact the bill as an ordinance on 12 February 2009.³⁶⁸

The government subsequently revised the ordinance and presented a new bill to parliament, the Bill on Disappearances (Crime and Punishment) Act, 2010 (Disappearances Bill).³⁶⁹ The Bill addressed some criticisms of the ordinance by recognising command responsibility for the crime enforced disappearances and

³⁶⁵ "NHRC Chief Vents Anger," *The Kathmandu Post*, February 7, 2009.

³⁶⁶ Ibid.

³⁶⁷ Ibid.

³⁶⁸ "Three Ordinances Come into Effect," *The Kathmandu Post*, February 10, 2009. See also broader criticism regarding the Maoist led government's preference for law making via ordinance and by-pass the legislature: "Tyranny Raising Head: Koirala," *The Kathmandu Post*, January 31, 2009.

³⁶⁹ Vincent Calderhead, "International Commission of Jurists Letter to Minister Rakam Chemjong, Minister for Peace and Reconstruction," July 16, 2009, <https://www.icj.org/wp-content/uploads/2012/04/Nepal-Recommendation-Letter-to-Peace-Minister-Open-letters-2009.pdf>; United Nations Human Rights Office of The High Commissioner, "Press Release: OHCHR-Nepal Encourages Disappearance Law Consistent with International Standards," April 25, 2009, https://nepal.ohchr.org/en/resources/Documents/English/pressreleases/Year%202009/April%202009/2009_04_25_Disappearance_Bill_E.pdf.

specifying maximum penalties.³⁷⁰ However, both civil society groups and OHCHR noted that the bill needed to be further strengthened to comply with international human rights law.³⁷¹ In particular, revisions were recommended to bring the definitions of an enforced disappearance and victims in line with international law, recognise enforced disappearances as a crime against humanity, expand the scope of perpetrators, and ensure the independence of the commission for investigating disappearances.³⁷² Soon after the tabling of the second draft law, Prime Minister Dahal resigned, marking the end of the Maoist government. The newly formed CPN (UML) government, led by Prime Minister Nepal, opted not to table and vote on the ordinance enacted by the Maoists in February 2009, within the required sixty days, and instead allowed it to lapse.³⁷³

Neither Prime Minister Nepal's government nor the two succeeding governments were willing or able to adopt any legislation.³⁷⁴ In 2011, OHCHR reported that it engaged extensively with the parliamentary subcommittee considering the draft laws on a Truth and Reconciliation Commission and a Commission of Inquiry on Enforced Disappearances and that significant progress had been made to bring both

³⁷⁰ United Nations Human Rights Office of The High Commissioner, "Press Release: OHCHR-Nepal Encourages Disappearance Law Consistent with International Standards."

³⁷¹ Ibid.

³⁷² Ibid.

³⁷³ "ICJ: Correct Flawed Disappearances Bill," *The Kathmandu Post*, July 17, 2009.

³⁷⁴ "Missing in Battle," *The Kathmandu Post*, June 15, 2010. For criticism of the draft law prepared by Prime Minister Nepal's government, see Human Rights Watch et al., "Memorandum on the Disappearances of Persons (Crime and Punishment) Bill," August 31, 2009, <https://www.hrw.org/news/2009/08/31/nepal-joint-memorandum-disappearances-persons-crime-and-punishment-bill>.

laws in compliance with international law.³⁷⁵ However, OHCHR noted with concern the potential impact of an August 2011 high-level political agreement to withdraw criminal investigations and grant general amnesties for serious human rights abuses.³⁷⁶

Policy reform

The government adopted several administrative measures and national plans focused on promoting and protecting human rights. The National Human Rights Action Plans and the Three-Year Interim Plan (2007-2010) were among the most important national policies.³⁷⁷ Nepal also initiated an effort to incorporate human rights in all sectoral development policies and plans.³⁷⁸ Specific policies were adopted in the thematic areas of health, education and labour.³⁷⁹ Additional policies

³⁷⁵ United Nations Human Rights Council, "Report on the Human Rights Situation and the Activities of the Office of the High Commissioner, Including Technical Cooperation, in Nepal A/HRC/19/21/Add.4," para 46.

³⁷⁶ Ibid; Human Rights Watch et al., "Re: Accountability for Human Rights and Concerns over Proposed Withdrawals and Amnesties," September 2, 2011, <https://www.amnesty.org/es/documents/asa31/009/2011/en/>.

³⁷⁷ See His Majesty's Government, Office of the Prime Minister and Council of Ministers, "National Human Rights Action Plan 2004-2008," OHCHR, 2004, https://www.ohchr.org/sites/default/files/Documents/Issues/NHRA/Nepal_NHRAP.pdf; Government of Nepal, "National Human Rights Action Plan 2010-2013," 2010, <https://www.humanrights.dk/files/media/document/Nepal%20NHRAP%202010-2013%20English%20unofficial%20translation.pdf>; National Planning Commission Government of Nepal, "Three Year Interim Plan (2007/08 - 2009/10)," December 2007, https://www.npc.gov.np/images/category/11tyip_eng.pdf. The Three-Year Interim Plan proposes a path for economic development and includes targeted programs for marginalised communities including the Dalit, Adhivasi, Janajati, Madhesi and Muslim groups. It also seeks to institutionalise political agreements reached during the transitions, for example relating to decentralisation and devolution.

³⁷⁸ United Nations Human Rights Council Working Group on the Universal Periodic Review, "National Report Submitted in Accordance with Paragraph 15 (a) of the Annex to Human Rights Council Resolution 5/1 Nepal* A/HRC/WG.6/10/NPL/1," November 12, 2010, para 15, <https://documents.un.org/doc/undoc/gen/g10/174/88/pdf/g1017488.pdf?token=z0XK5Fd3ehiD E8Uive&fe=true>.

³⁷⁹ Ministry of Health and Population Health Sector Reform Unit, "Second Long Term Health Plan 1997-2017 Perspective Plan for Health Sector Development," June 2007,

were adopted focusing on targeted groups such as children and differently abled persons.³⁸⁰

Nepal became the first country to adopt a National Action Plan to implement Security Council Resolutions 1325 and 1820, which call for considering the needs of women and girls in peacebuilding initiatives and fighting against use of sexual violence as weapon of war.³⁸¹ Nepal designated 2010 as a year against gender based violence, and a corresponding national policy was adopted.³⁸² In compliance with

https://nepalindata.com/media/resources/items/20/bSecond_Long_Term_Health_Plan-2.pdf. As of 2009 the government also provided free maternity care for all Nepalese women, see United Nations Human Rights Council, "Report of the United Nations High Commissioner for Human Rights on the Human Rights Situation and the Activities of Her Office, Including Technical Cooperation, in Nepal* A/HRC/13/73," para 44; Ministry of Education, "Education for All National Plan of Action 2001-2015," 2003; Government of Nepal Ministry of Education, "School Sector Reform Plan 2009-2015," UNESCO, August 2009, https://planipolis.iiep.unesco.org/sites/default/files/ressources/nepal_school_sector_reform_2009.pdf; Nepal Law Commission, "Labour and Employment Policy" (2006).

³⁸⁰ Central Child Welfare Board His Majesty's Government of Nepal, Ministry of Women, Children and Social Welfare, "Ten Year National Plan of Action (for Children) 2004/2005 to 2014/2005," 2004, <http://www.ccbw.gov.np/uploads/userfiles/resources/Nepali/other/National%20Plan%20of%20Action.pdf>. For an assessment on the impact of the policy on realising the child rights, see Committee on the Rights of the Child, "Concluding Observations on the Combined Third to Fifth Periodic Reports of Nepal* CRC/C/NPL/CO/3-5," July 8, 2016, <https://digitallibrary.un.org/record/835011?ln=en&v=pdf>; See Government of Nepal Ministry for Women, Children and Social Welfare, "National Policy and Plan of Action on Disability" (2006).

³⁸¹ Government of Nepal Ministry of Peace and Reconstruction, "National Action Plan On Implementation of the United Nations Security Council Resolution 1325 & 1820," February 1, 2011.

³⁸² Government of Nepal, Office of the Prime Minister and Council of Ministers, "National Plan of Action for 'Year Against Gender Based Violence, 2010,'" 2009, <https://evaw-global-database.unwomen.org/-/media/files/un%20women/vaw/full%20text/asia/national%20plan%20of%20action%20for%20year%20against%20gender-based%20violence/national%20plan%20of%20action%20for%20year%20against%20gender-based%20violence%20-%202010.pdf?vs=3331>. See for a summary of progress made under the policy, United Nations Human Rights Council, "Report on the Human Rights Situation and the Activities of the Office of the High Commissioner, Including Technical Cooperation, in Nepal A/HRC/19/21/Add.4," para 20 and United Nations Committee on the Elimination of Discrimination against Women, "Concluding Observations of the Committee on the Elimination of Discrimination against Women Nepal CEDAW/C/NPL/CO/4-5".

a Supreme Court directive regarding the rights of sexual minorities, the government permitted identity cards to include “third gender” as a sex.³⁸³ Finally, ad hoc executive action included the emancipation of bonded labourers working as land tillers, known as “Haliyas”.³⁸⁴ The initiative cancelled inherited debts and committed to providing land and other support services to those affected.³⁸⁵

Despite adopting this significant array of policies and plans, progress on their implementation was limited.³⁸⁶ Both the Committee on Economic Social and Cultural Rights and the Committee on Rights of the Child observed that corruption in the state sector was a key obstacle to protecting human rights.³⁸⁷ Nepali national human rights institutions identified lack of resources and lack of proper

³⁸³ “Nepal Gives Formal Recognition to Third Gender,” *Indo-Asian News Service*, September 18, 2008.

³⁸⁴ “Nepal Abolishes Slave Labour System,” *Reuters*, September 7, 2008.

³⁸⁵ *Ibid.*

³⁸⁶ See a summary of achievements and challenges in thematic areas such as health, education, rights of women: Nepal UN Country Team, “Joint UN Submission for the UN Compilation Report: United Nations Country Team (UNCT) Nepal Report for the Universal Periodic Review- Nepal- Tenth Session, 24 January – 4 February 2011,” 2010, https://www.ohchr.org/sites/default/files/lib-docs/HRBodies/UPR/Documents/Session10/NP/UNCT_UnitedNationsCountryTeam_eng.pdf; United Nations Human Rights Council, “Report on the Human Rights Situation and the Activities of the Office of the High Commissioner, Including Technical Cooperation, in Nepal A/HRC/19/21/Add.4,” December 16, 2011, para 19, https://www2.ohchr.org/english/bodies/hrcouncil/docs/19session/A.HRC.19.21.Add.4_English.pdf. See also the assessments of the UN Treaty Bodies on thematic rights: United Nations Committee on the Elimination of Discrimination against Women, “Concluding Observations of the Committee on the Elimination of Discrimination against Women Nepal CEDAW/C/NPL/CO/4-5”; Committee on the Rights of the Child, “Concluding Observations on the Combined Third to Fifth Periodic Reports of Nepal* CRC/C/NPL/CO/3-5”; United Nations Committee on Economic, Social and Cultural Rights, “Concluding Observations on the Third Periodic Report of Nepal* E/C.12/NPL/CO/3”.

³⁸⁷ United Nations Committee on Economic, Social and Cultural Rights, “Concluding Observations on the Third Periodic Report of Nepal* E/C.12/NPL/CO/3,” December 12, 2014, para 7, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2FC.12%2FNPL%2FCO%2F3&Lang=en; United Nations Committee on Economic, Social and Cultural Rights, “Concluding Observations on the Third Periodic Report of Nepal* E/C.12/NPL/CO/3,” para 12.

management of resources as key challenges to the realisation of human rights.³⁸⁸ A former National Human Rights Commissioner conceded that, although significant resources had been devoted to developing the National Human Rights Action Plan; little thought had been given to how it would be monitored or implemented.³⁸⁹ Lack of coordination and capacity among state actors also contributed to gaps in implementation.³⁹⁰ For example, although the National Plan of Action on Human Rights required NGOs to play an active role in its implementation, the Ministry of Home Affairs opted not to collaborate with NGOs and prohibited its staff from participating in programmes initiated by NGOs.³⁹¹

Draft laws

Nepal drafted several important laws expanding human rights protections that were presented to the legislature-parliament; however, none was enacted prior to the expiry of OHCHR's mandate in December 2011. The draft laws included the Civil Code, Penal Code, Civil Procedure Codes and Criminal Procedure Codes.³⁹² The draft Penal Code and Criminal Procedure Code included significant reforms that criminalised abuses that had been prevalent during the armed conflict, such as

³⁸⁸ National Human Rights Commission of Nepal, National Women Commission of Nepal, and National Dalit Commission of Nepal, "The Report of the NHRI of Nepal on the UPR Processes," July 5, 2010, para 22, https://www.ohchr.org/sites/default/files/lib-docs/HRBodies/UPR/Documents/Session10/NP/NationalInstitutions_JointSubmission_eng.pdf.

³⁸⁹ Former National Human Rights Commissioner, interview with author, November 30, 2022.

³⁹⁰ GRM International Ltd, "Access to Security, Justice and Rule of Law in Nepal An Assessment Report", 13.

³⁹¹ Ibid.

³⁹² "Govt to Introduce New Criminal Justice System," *The Himalayan Times*, June 9, 2010.

torture.³⁹³ The draft Civil Code and Civil Procedure Code included provisions providing for gender equality and equal treatment of minorities. However, several aspects of the draft laws were criticised by stakeholders, including OHCHR, for failing to meet international human rights obligations.³⁹⁴

Nepal also drafted new legislation for the National Human Rights Commission and the National Dalit Commission; however, both proposals were criticised for failing to ensure the commissions' independence, as they provided for a politicised process for appointing Commissioners and failed to allow the institutions to control the appointment and recruitment of their own staff.³⁹⁵ In response to the commitments made in the CPA, the government drafted and presented to parliament laws to establish a Truth and Reconciliation Commission and a Commission of Inquiry on Disappearances. However as of 2011, the drafts were still being considered by a

³⁹³ Richard Langan II, Indu Tulhadhar, and Roshani Poydal, "Outcome Evaluation of UNDP Nepal Access to Justice and Human Rights 2001-2010" (UNDP Nepal, November 29, 2010), 64, <https://erc.undp.org/evaluation/documents/download/4507>.

³⁹⁴ For example, in the Penal Code the definition of rape was deemed inadequate and provided different penalties for marital and non-marital rape. The Penal Code also contained provisions, that undermine the right to a fair trial, for example if a judge had reason to believe that an accused would qualify for a sentence longer than three years, the judge could order pre-trial detention and imprisonment. In the Civil Code, several discriminatory provisions were criticised relating to inheritance and division of property in cases of death, separation or divorce from a spouse. See Langan, Tulhadhar, and Poydal, "Outcome Evaluation of UNDP Nepal Access to Justice and Human Rights 2001-2010," 65, Annex C International Instruments and Domestic Legislation of Nepal: An Analysis. OHCHR criticised the Criminal Procedure Code for including provisions that sanction withdrawal of criminal cases, grant immunity from prosecution for State officials acting in their official capacity and failing to include serious human rights abuses such as torture and enforced disappearances in the list of non-pardonable offences. United Nations Human Rights Council, "Report on the Human Rights Situation and the Activities of the Office of the High Commissioner, Including Technical Cooperation, in Nepal A/HRC/19/21/Add.4," December 16, 2011, para 50 https://www2.ohchr.org/english/bodies/hrcouncil/docs/19session/A.HRC.19.21.Add.4_English.pdf.

³⁹⁵ United Nations Human Rights Council, "Report on the Human Rights Situation and the Activities of the Office of the High Commissioner, Including Technical Cooperation, in Nepal A/HRC/19/21/Add.4," para 32.

parliamentary subcommittee and several provisions were criticised for failing to comply with international human rights law.³⁹⁶ These included a lack of direct linkages with the criminal justice processes, inadequate provisions relating to victim and witness protection and sentencing, short statute of limitation periods, and a lack of proper selection process for Commissioners.³⁹⁷ Following the formation of a new coalition government under Prime Minister Bhattarai in 2011, the governing party reportedly agreed to remove clauses in both bills prohibiting amnesty for serious human rights abuses.³⁹⁸

New Institutions

Under the CPA, Nepal committed to establishing several new institutions, including a Truth and Reconciliation Commission, a Disappearances Commission, and a Property Distribution Commission. As discussed above, despite some drafts being proposed, none of these new institutions were established.

The government did establish several ad hoc temporary commissions and task forces to investigate specific episodes or periods of human rights abuses.³⁹⁹ Among

³⁹⁶ "Call for Action," *The Kathmandu Post*, November 8, 2010.

³⁹⁷ United Nations Human Rights Council, "Report on the Human Rights Situation and the Activities of the Office of the High Commissioner, Including Technical Cooperation, in Nepal A/HRC/19/21/Add.4," para 46; Carlos Torne, "Transitional Justice Process in Nepal The State of the Art and Questions and Scenarios for the Future in Nepal" (Barcelona: Institut Català Internacional per la Pau, 2013), 86-89, https://www.icip.cat/wp-content/uploads/2020/11/transnational_justice_in_nepal.pdf.)

³⁹⁸ United Nations Human Rights Council, "Report on the Human Rights Situation and the Activities of the Office of the High Commissioner, Including Technical Cooperation, in Nepal A/HRC/19/21/Add.4," para 46.

³⁹⁹ For a full list of commissions and ad hoc investigations established from 2006 to 2011, see International Commission of Jurists, "Commissions of Inquiry in Nepal: Denying Remedies, Entrenching Impunity," 2012, 38-44.

these was the 2006 Rayamajhi Commission established by Prime Minister Koirala to investigate human rights abuses that took place during the Jana Andolan. The final report of the commission was tabled in parliament; however, it was never made publicly available nor were its recommendations acted upon.⁴⁰⁰ While additional task forces were created within the Home Ministry to examine high profile incidences of disappearances, it remains unclear whether these task forces ever functioned or completed their work.⁴⁰¹ Again, OHCHR raised concerns as to whether the Home Ministry had adequate resources and capacity to carry out the mandated investigations.⁴⁰²

Existing institutions

Existing institutions relevant to upholding human rights included independent commissions with relevant thematic mandates and law enforcement agencies. Institutions with relevant thematic mandates included the National Human Rights Commission, National Women Commission, National Dalit Commission, and National Foundation for the Development of Indigenous Nationalities. Institutions responsible for enforcing the criminal justice process included the police, the Attorney General's office and the courts.

⁴⁰⁰ International Commission of Jurists, "Commissions of Inquiry in Nepal: Denying Remedies, Entrenching Impunity," 38-39.

⁴⁰¹ United Nations Human Rights Council, "Report of the United Nations High Commissioner for Human Rights on the Human Rights Situation and the Activities of Her Office, Including Technical Cooperation, in Nepal A/HRC/10/53," para 28.

⁴⁰² United Nations Human Rights Council, "Report of the United Nations High Commissioner for Human Rights on the Human Rights Situation and the Activities of Her Office, Including Technical Cooperation, in Nepal A/HRC/4/97," January 17, 2007, para 48, <https://documents.un.org/doc/undoc/gen/g07/105/16/pdf/g0710516.pdf?token=8kynUzqESGdlI7RLAs&fe=true>; United Nations Office of the High Commissioner for Human Rights, "Nepal Conflict Report," 198.

The thematic independent commissions were unable to effectively implement their mandates owing to gaps in the legal framework and lack of sufficient resources and political support.⁴⁰³ The National Dalit Commission had been established in 2002 via an executive order and lacked operational independence. In 2010, it had only four staff members.⁴⁰⁴ A draft enabling law seeking to provide for the independence of the Dalit Commission was tabled in parliament in April 2009, but no subsequent progress was made. There were also long delays in appointing commissioners, and the new commissioners that were appointed lacked impartiality and expertise.⁴⁰⁵ An enabling law was enacted for the National Women Commission, but it was criticised for failing to guarantee the independence of the Commission.⁴⁰⁶ In October 2009, the Maoist-led government directly undermined the Commission's work by removing the Chairperson and all Commissioners from their posts, even though they had two years remaining in their terms.⁴⁰⁷

⁴⁰³ United Nations Human Rights Council, "Report of the United Nations High Commissioner for Human Rights on the Human Rights Situation and the Activities of Her Office, Including Technical Cooperation, in Nepal* A/HRC/13/73," para 59; Nepal UN Country Team, "Joint UN Submission for the UN Compilation Report: United Nations Country Team (UNCT) Nepal Report for the Universal Periodic Review- Nepal- Tenth Session, 24 January – 4 February 2011," 2010, https://www.ohchr.org/sites/default/files/lib-docs/HRBodies/UPR/Documents/Session10/NP/UNCT_UnitedNationsCountryTeam_eng.pdf.

⁴⁰⁴ "Skeleton Staff Hold NDC Fort," *The Kathmandu Post*, April 18, 2010.

⁴⁰⁵ "Lockout at Dalit Commission Lifted," *Himalayan Times*, April 12, 2007, <https://thehimalayantimes.com/nepal/lockout-at-dalit-commission-lifted>; Tika Pradhan, "Cobbler Makes It to Dalit Commission," *The Himalayan Times*, July 18, 2007, <https://thehimalayantimes.com/kathmandu/cobbler-makes-it-to-dalit-commission>.

⁴⁰⁶ United Nations Human Rights Council, "Report of the United Nations High Commissioner for Human Rights on the Human Rights Situation and the Activities of Her Office, Including Technical Cooperation, in Nepal* A/HRC/13/73," para 60.

⁴⁰⁷ Ibid.

National Human Rights Commission

Although the National Human Rights Commission was established via statute in 2000, it was granted constitutional status under the Interim Constitution.⁴⁰⁸ Its core mandate is to investigate allegations of human rights violations, make recommendations, including to act against alleged perpetrators, and provide advice on laws that are inconsistent with human rights. The Commission has broad powers of investigation and the authority to order perpetrators to compensate victims. The CPA gave additional authority to the Commission to monitor the implementation of the human rights provisions of the Agreement.⁴⁰⁹

Following the February 2005 coup, the King had replaced the Commission's leadership with individuals loyal to him. Following the restoration of parliament in 2006, the sitting commissioners were forced to resign.⁴¹⁰ However, new commissioners were not appointed for another seventeen months. In the ensuing four years, the National Human Rights Commission received significant training and capacity building assistance from outside sources, such as OHCHR and friendly governments. The Commission carried out important work monitoring and documenting human rights abuses, even in volatile parts of the country such as the Terai. The National Human Rights Commission re-obtained "A" status from the international coordination committee of national human rights institutions;

⁴⁰⁸ See Human Rights Commission Act (1997) Parliament of the Kingdom of Nepal; The Interim Constitution of Nepal, Part 15.

⁴⁰⁹ "Comprehensive Peace Accord Signed between Nepal Government and the Communist Party of Nepal (Maoist)", para 9.

⁴¹⁰ Andrea Durbach, "Human Rights Commissions in Times of Trouble and Transition: The Case of the National Human Rights Commission of Nepal," in *Human Rights in the Asia-Pacific Region* (Oxford: Routledge, 2011), 13.

however, it was subject to reviews to ensure that the commission maintained its operational independence.⁴¹¹

Despite its positive contributions, political interference and lack of financial and human resources impeded the Commission's work. During the 17-month period when there were no commissioners, more than 5,000 complaints were not investigated, a backlog that hadn't been addressed as of August 2010.⁴¹² Subsequently, on the political front, during critical junctures, staff and commissioners were directly obstructed by security forces when attempting to investigate human rights abuses or monitor places of detention.⁴¹³ The National Human Rights Commission complained that from its inception in 2001 to 2010, 75% of its recommendations were ignored by other state agencies.⁴¹⁴ In most instances the government acted on recommendations related to the awarding of compensation.⁴¹⁵

The Human Rights Commission must first send its recommendations to the Office of the Prime Minister, which reviews the file and forwards it to the relevant state

⁴¹¹ United Nations Human Rights Council, "Report on the Human Rights Situation and the Activities of the Office of the High Commissioner, Including Technical Cooperation, in Nepal A/HRC/19/21/Add.4," para 33. The the international coordination committee of national human rights institutions (now the Global Alliance of National Human Rights Institutions) accredits national human rights institutions based on their compliance with the 1993 Paris Principles. See Global Alliance of National Human Rights Institutions, "Accreditation," GANHRI, accessed February 19, 2024, <https://ganhri.org/accreditation/>.

⁴¹² Langan, Tulhadhar, and Poydal, "Outcome Evaluation of UNDP Nepal Access to Justice and Human Rights 2001-2010", 50.

⁴¹³ Durbach, "Human Rights Commissions in Times of Trouble and Transition: The Case of the National Human Rights Commission of Nepal," 18.

⁴¹⁴ Langan, Tulhadhar, and Poydal, "Outcome Evaluation of UNDP Nepal Access to Justice and Human Rights 2001-2010", 50

⁴¹⁵ Ibid.

agency.⁴¹⁶ Lack of follow up by the Office of the Prime Minister has been cited as a key reason why recommendations are not implemented.⁴¹⁷ Observers noted that all three Prime Ministers from 2007 to 2010 shared the common feature that they lacked the political will to implement recommendations made by the National Human Rights Commission, despite their differences in political orientation.⁴¹⁸ The Attorney General's Department, Police and the Armed Forces claimed that, in addition to the poor quality of investigations carried out by the Human Rights Commission, they did not have the legal authority to initiate criminal investigations based on the Commission's findings.⁴¹⁹ Despite the increase in its workload, financial and human resources allocated to the Commission remained chronically inadequate. The interim constitution was silent on the Commission's financial independence, which was left to be dealt with by statute. As a result, the Commission depended on donors for its physical infrastructure, the recruitment of consultants to fill gaps in human resources, and capacity building.⁴²⁰

⁴¹⁶ Langan, Tulhadhar, and Poydal, "Outcome Evaluation of UNDP Nepal Access to Justice and Human Rights 2001-2010", 51.

⁴¹⁷ Ibid.

⁴¹⁸ Ibid.

⁴¹⁹ Langan, Tulhadhar, and Poydal, "Outcome Evaluation of UNDP Nepal Access to Justice and Human Rights 2001-2010", 51-2.

⁴²⁰ On details of assistance provided by UNDP see Langan, Tulhadhar, and Poydal, "Outcome Evaluation of UNDP Nepal Access to Justice and Human Rights 2001-2010", 45. On details of assistance provided by OHCHR see: United Nations Human Rights Council, "Report of the United Nations High Commissioner for Human Rights on the Human Rights Situation and the Activities of Her Office, Including Technical Cooperation, in Nepal* A/HRC/13/73," para 58; United Nations Human Rights Council, "Report of the United Nations High Commissioner for Human Rights on the Human Rights Situation and the Activities of Her Office, Including Technical Cooperation in Nepal* A/HRC/7/68," para 5-10.

Law enforcement agencies

Law enforcement agencies bore primary responsibility for investigating and prosecuting human rights abuses. However, the functioning of law enforcement agencies was severely hampered by politicisation, resource constraints, gaps in the legal framework and lack of technical capacity. The UN High Commissioner noted that rule of law institutions were “vulnerable to political pressure” and “manipulation”.⁴²¹ As discussed above, the most startling example of lack of political will to advance accountability was the decisions made by successive governments to withdraw pending criminal cases. From 2005 to 2012, more than 689 criminal cases were withdrawn from prosecution at the government’s instructions.⁴²² A large number of the cases recommended for withdrawal were of a serious criminal nature and fell outside the period of the conflict.⁴²³ Although the government cited past laws and a clause in the CPA as justification, the legality of the practice was questioned by both OHCHR and the National Human Rights Commission.⁴²⁴ OHCHR estimated that up to 9,000 incidences of serious violations of human rights or international humanitarian law may have occurred during the

⁴²¹ United Nations Human Rights Council, “Report of the United Nations High Commissioner for Human Rights on the Human Rights Situation and the Activities of Her Office, Including Technical Cooperation in Nepal” A/HRC/7/68,” para 5-10.

⁴²² See United Nations Office of the High Commissioner for Human Rights, “Nepal Conflict Report,” 197. In October 2008, under the Maoist led government, the cabinet ordered 439 cases of a “political nature” that had been filed against political cadres be withdrawn. Under the CPN-UML led government the cabinet withdrew 24 cases in October 2009 and 282 cases in November 2009. In September 2011, the Maoist struck a deal to withdraw 34 cases.

⁴²³ United Nations Office of the High Commissioner for Human Rights, “Nepal Conflict Report,” 197.

⁴²⁴ United Nations Office of the High Commissioner for Human Rights in Nepal and National Human Rights Commission of Nepal, “Remedies and Rights Revoked: Case Withdrawals for Serious Crimes in Nepal Legal Opinion.”

conflict.⁴²⁵ Despite publicly available documentation, Nepal's law enforcement agencies failed to successfully prosecute a single incident of conflict-related human rights abuses.⁴²⁶ In fact, much of the progress made in the most significant cases was due to the use of strategic litigation by victims and their allies.⁴²⁷ Victims and their allies brought habeas corpus applications and other strategic litigation intended to overcome or bypass inaction by the police and the Attorney General.⁴²⁸ Litigation before the Supreme Court, in particular, made important contributions in a number of landmark judgements that directed the executive branch to enact laws and investigate and prosecute human rights abuses.⁴²⁹ However, the failure of the police, army and the PLA to comply with court orders undermined the judiciary's impact.

Failure to criminalise abuses and gaps in the legal framework impeded effective criminal investigations. There were no legal provisions that criminalised widely

⁴²⁵ United Nations Office of the High Commissioner for Human Rights, "Nepal Conflict Report," 176.

⁴²⁶ Ibid. The Asian Legal Resource Centre and Advocacy Forum, "Submission to the Human Rights Council's Universal Periodic Review Concerning the Human Rights Situation in Nepal," 2011, https://www.ohchr.org/sites/default/files/lib-docs/HRBodies/UPR/Documents/Session10/NP/ALRC_TheAsianLegalResourceCentreandAdvocacyForum_eng.pdf.

⁴²⁷ Former OHCHR Staff, interview with author, April 28, 2023; Former OHCHR staff, interview with author, April 11, 2023.

⁴²⁸ Raju Prasad Chapagai and Pankaj Kumar Karn, "Accountability for Conflict-Era Human Rights Violations in Nepal: An Appraisal of Strategic Human Rights Litigation," in *Shifting Horizons of Public International Law*, 2018, 197–219. See Government of Nepal v Devendra Mandal and others, Criminal Appeal No. 0197 of the year 2064(BS), 3 September 2007; Sushil Pyakurel and Others v. Prime Minister Jhalanath Khanal and Others, Writ No 1094 of the year 2068, decision dated 21 June 2011.

⁴²⁹ Kishor Upretty, "Against Enforced Disappearance: The Political Detainees' Case before the Nepal Supreme Court," *Chinese Journal of International Law* 7, no. 2 (2008): 429–57; Mara Malagodi, "Nepal's Most Towering Judge: The Honourable Kalyan Shrestha," in *Towering Judges A Comparative Study of Constitutional Judges* (New York: Cambridge University Press, 2021), 155–73.

prevalent crimes such as torture and enforced disappearances.⁴³⁰ Laws regarding the use of force enabled security forces to act in a manner inconsistent with international human rights obligations.⁴³¹ The legal framework applicable to state officials prevented information obtained in an official capacity from being used in criminal investigations. It also prevented officials from being charged with perjury, undermining the possibility of obtaining information from state actors as part of criminal investigations.⁴³² Investigations into disappearances and human remains were especially challenging, as there was no legal framework that laid out what procedures are to be followed when human remains are discovered, especially in the context of a suspicious death.⁴³³ Finally, the Public Security Act, Police Act and Army Act granted broad immunity to the security sector for acts carried out in the course of official duties.⁴³⁴

⁴³⁰ The Asian Legal Resource Centre and Advocacy Forum, "Submission to the Human Rights Council's Universal Periodic Review Concerning the Human Rights Situation in Nepal," 2011, para 8, https://www.ohchr.org/sites/default/files/lib-docs/HRBodies/UPR/Documents/Session10/NP/ALRC_TheAsianLegalResourceCentreandAdvocacyForum_eng.pdf.

⁴³¹ United Nations Office of the High Commissioner for Human Rights, "Nepal Conflict Report," 192-193; Human Rights Watch and Advocacy Forum, "Waiting for Justice Unpunished Crimes from Nepal's Armed Conflict" (New York, 2008), 51, <https://www.hrw.org/report/2008/09/11/waiting-justice/unpunished-crimes-nepals-armed-conflict#:~:text=During%20the%20armed%20conflict%2C%20the,powerless%20to%20investigate%20their%20superiors.>

⁴³² United Nations Office of the High Commissioner for Human Rights, "Nepal Conflict Report," 193; Human Rights Watch and Advocacy Forum, "Waiting for Justice Unpunished Crimes from Nepal's Armed Conflict," 57.

⁴³³ Human Rights Watch and Advocacy Forum, "Waiting for Justice Unpunished Crimes from Nepal's Armed Conflict," 50. See also Gauri Pradhan, "Nepal's Experience of Mass Grave Investigation: The Godar Exhumation," in *Nepal's Experience of Mass Grave Investigation: The Godar Exhumation*, ed. Ellie Smith and Melanie Klinker (MA, USA: Edward Elgar Publishing Inc, 2023), 23-33.

⁴³⁴ United Nations Office of the High Commissioner for Human Rights, "Nepal Conflict Report," 193 Human Rights Watch and Advocacy Forum, "Waiting for Justice Unpunished Crimes from Nepal's Armed Conflict," 53-55.

Police

There were many problems with how Nepal's police operated in the years covered by the present study. The police were noted for failing to record first information reports, the first step in the criminal justice process that triggers criminal investigations, even when under court orders.⁴³⁵ During the post-conflict period, the police argued that the alleged incident should be investigated by a transitional justice mechanism under the CPA or that they needed "permission from above" to do so.⁴³⁶ Even when first information reports are recorded, police fail to carry out investigations, and officers openly stated that investigation of Nepal Army or Maoist suspects could undermine their security and position.⁴³⁷ During the latter part of the conflict, the police were under the unified command of the Army; as a result, the police were unwilling to investigate crimes allegedly committed by their superiors in the Nepal Army.⁴³⁸

⁴³⁵ For example, on 10 December 2009, when family members of 30 victims of serious human rights abuses tried to file first information reports in 28 police stations, the police declined to record them. See International Commission of Jurists, "International Commission of Jurists Submission to the Universal Periodic Review of Nepal," July 2010, https://www.ohchr.org/sites/default/files/lib-docs/HRBodies/UPR/Documents/Session10/NP/ICJ_InternationalCommissionofJurists_eng.pdf.

⁴³⁶ Human Rights Watch and Advocacy Forum, "Waiting for Justice Unpunished Crimes from Nepal's Armed Conflict", 25; International Commission of Jurists, "International Commission of Jurists Submission to the Universal Periodic Review of Nepal," July 2010, https://www.ohchr.org/sites/default/files/lib-docs/HRBodies/UPR/Documents/Session10/NP/ICJ_InternationalCommissionofJurists_eng.pdf.

⁴³⁷ International Commission of Jurists, "International Commission of Jurists Submission to the Universal Periodic Review of Nepal."

⁴³⁸ Human Rights Watch and Advocacy Forum, "Waiting for Justice Unpunished Crimes from Nepal's Armed Conflict", 31.

The police's failure to investigate extended to crimes that occurred in the post-conflict period.⁴³⁹ Concerns were compounded by the routine failure of the security agencies and the PLA to cooperate with law enforcement agencies or comply with court orders.⁴⁴⁰ Major political parties also failed to support accountability efforts but actively obstructed investigations with the aim of protecting their members.⁴⁴¹ Lack of independence and internal accountability processes provided few incentives for the police to conduct effective investigations, and the police were

⁴³⁹ Two notable examples were the failure to investigate a Maoist Commander accused of killing a businessman Ram Hari Shrestha in a cantonment in May 2009 and another Maoist leader accused of killing Arjun Lama in 2005. See International Commission of Jurists, "International Commission of Jurists Submission to the Universal Periodic Review of Nepal."

⁴⁴⁰ United Nations Human Rights Council Working Group on the Universal Periodic Review, "National Report Submitted in Accordance with Paragraph 15 (a) of the Annex to Human Rights Council Resolution 5/1 Nepal* A/HRC/WG.6/10/NPL/1," para 37, 38. In a high-profile example, 15-year-old girl, Maina Sunuwar, was tortured and killed in the custody of the Nepal Army in 2004. Under intense pressure, the Army proceeded with a court martial, where four Army officers were convicted of disciplinary offences. Their sentences included the payment of fines, temporary suspension of promotions and six months of imprisonment, which were deemed to have been served as they were detained within the barracks during the court martial. Following an application to the Supreme Court, a criminal investigation was initiated, and, in January 2008, a District Court ordered that the officers be arrested. However, the Army challenged the jurisdiction of the civilian courts and claimed that proceeding with a criminal investigation violated the principle of double jeopardy. The Attorney General declined to provide a legal opinion on the question of whether the principle of double jeopardy applied. One of the alleged perpetrators, Captain Basnet, was later promoted to Major and was deployed on a UN Mission in the Central African Republic and Chad; however, he was recalled in December 2009. See International Commission of Jurists, "International Commission of Jurists Submission to the Universal Periodic Review of Nepal," July 2010, https://www.ohchr.org/sites/default/files/lib-docs/HRBodies/UPR/Documents/Session10/NP/ICJ_InternationalCommissionofJurists_eng.pdf; Human Rights Watch and Advocacy Forum, "Waiting for Justice Unpunished Crimes from Nepal's Armed Conflict", 90-91; United Nations Office of the High Commissioner of Human Rights in Nepal, "The Torture and Death in Custody of Maina Sunuwar Summary of Concerns," OHCHR, December 2006, https://nepal.ohchr.org/en/resources/Documents/English/other/Support_Of_Victims_Of_Torture/18.pdf.

⁴⁴¹ Amnesty International, "Nepal Amnesty International Submission to the UN Universal Periodic Review," 2011, 2, https://www.ohchr.org/sites/default/files/lib-docs/HRBodies/UPR/Documents/Session10/NP/AI_AmnestyInternational_eng.pdf.

more focused on responding to political pressure and securing rewards by cultivating political patronage.⁴⁴²

The police were noted for being unprofessional, corrupt, discriminatory, and abusing their power,⁴⁴³ Given the lack of training, experience and internal accountability, police routinely relied on confessions and witness accounts to advance investigations.⁴⁴⁴ They were also described as operating under a ‘presumption of guilt’ and failing to respect the rights of suspects.⁴⁴⁵ The UN Special Rapporteur on Torture, during a visit to Nepal, found that torture was routinely practised by the police and that legal safeguards were “ignored and effectively meaningless.”⁴⁴⁶ The legal framework permitted the police to forward preliminary investigation reports to prosecutors; in practice, however, they were rarely forwarded, and prosecutors rarely took any initiative to follow up.⁴⁴⁷ When the police did forward preliminary investigation reports, it was generally at the last

⁴⁴² Human Rights Watch and Advocacy Forum, “Waiting for Justice Unpunished Crimes from Nepal’s Armed Conflict” 31.

⁴⁴³ The Asian Legal Resource Centre and Advocacy Forum, “Submission to the Human Rights Council’s Universal Periodic Review Concerning the Human Rights Situation in Nepal,” para 7.

⁴⁴⁴ Mandira Sharma, “Nepal Institutions in the Criminal Justice System and the Need for Reforms1,” in *Routledge Handbook of South Asian Criminology*, ed. K. Jaishankar (New York: Routledge, 2019), 61–69, 66.

⁴⁴⁵ Sharma, “Nepal Institutions in the Criminal Justice System and the Need for Reforms,” 65.

⁴⁴⁶ Working Group on the Universal Periodic Review, “Compilation Prepared by the Office of the High Commissioner for Human Rights in Accordance with Paragraph 15 (b) of the Annex to Human Rights Council Resolution 5/1 Nepal A/HRC/WG.6/10/NPL/2” para 27, <https://documents.un.org/doc/undoc/gen/g10/169/42/pdf/g1016942.pdf?token=ajay508j4GJdi pPUcZ&fe=true>. See also safeguards regarding the presumption of innocence have also been poorly implemented: See Sharma, “Nepal Institutions in the Criminal Justice System and the Need for Reforms,” 65.

⁴⁴⁷ Human Rights Watch and Advocacy Forum, “Waiting for Justice Unpunished Crimes from Nepal’s Armed Conflict,” 37

statutorily permitted date (within 25 days of commencement of the investigation), thus preventing prosecutors from requesting any further investigation.⁴⁴⁸

While some observers note that politicisation was more of an obstacle to effective investigations than a lack of technical capacity, the police did suffer from limited expertise and resources, including information technology.⁴⁴⁹ During the decade of armed conflict, the police were deployed for combat activities, as well being responsible for keeping the peace; as a result, they gained little experience in conducting criminal investigations.⁴⁵⁰ The police were also demoralised during this period, as although they were charged with additional duties, they were not politically supported. During the conflict parts of the state had been under Maoist control and had been governed under a parallel justice system; however, these structures were formally disbanded at the end of the conflict.⁴⁵¹ Maoist control of large swathes of the country, also meant that the police were forced to abandon many local posts, and as of 2006, only 500 posts out of 2000 were operational.⁴⁵² As of 2010, the police forces had only 60,000 personnel, lacking the strength to provide law and order for a population of 30 million.⁴⁵³ There was extremely

⁴⁴⁸ GRM International Ltd, "Access to Security, Justice and Rule of Law in Nepal an Assessment Report," 10.

⁴⁴⁹ Former Vice President of the Bar Association of Nepal, interview with author, December 11, 2022; Former OHCHR staff, interview with author, November 21, 2022; Former OHCHR Staff, interview with author, April 28, 2023.

⁴⁵⁰ Sharma, "Nepal Institutions in the Criminal Justice System and the Need for Reforms," 65.

⁴⁵¹ For details on the Maoist justice system, United Nations Office of the High Commissioner for Human Rights, "Nepal Conflict Report," 2012, 187-188.

⁴⁵² GRM International Ltd, "Access to Security, Justice and Rule of Law in Nepal an Assessment Report", 4.

⁴⁵³ Ibid.

limited capacity to carry out forensic investigations within the state sector.⁴⁵⁴ Post-mortems were not carried out in a routine manner and forensic examinations of remains were not carried out at crime scenes.⁴⁵⁵ The police also failed to act when families provided information regarding the location of the remains of their loved ones.⁴⁵⁶

Attorney General

Attorney Generals are political appointees of the prime minister, and they changed frequently.⁴⁵⁷ The Attorney General was subject to significant political pressure, and given the transitory nature of their appointments, there was little development of prosecutorial strategy or practice.⁴⁵⁸ Although some of these challenges were acknowledged and remedies to overcome them were committed to under various reform initiatives including, the National Human Rights Action Plan, Strategic Plan of the Attorney General and Strategic Plan of the Supreme Court, they were poorly implemented.⁴⁵⁹ The Attorney General's department also failed to follow up on the

⁴⁵⁴ Human Rights Watch and Advocacy Forum, "Waiting for Justice Unpunished Crimes from Nepal's Armed Conflict", 39.

⁴⁵⁵ Human Rights Watch and Advocacy Forum, "Waiting for Justice Unpunished Crimes from Nepal's Armed Conflict", 32.

⁴⁵⁶ Human Rights Watch and Advocacy Forum, "Waiting for Justice Unpunished Crimes from Nepal's Armed Conflict", 34.

⁴⁵⁷ The five Prime Ministers that lead Nepal from 2006 to 2011, each appointed their own Attorney General. Mr. Yagya Murti Banjade served at Attorney General from May 2006 to August 2008. Mr. Raghav Lal Baidya served from August 2008 to May 2009. Professor Bharat Bahadur Karki served from June 2009 to October 2010. Dr. Yubaraj Sangroula served from February 2011 to August 2011. Mr. Mukti Narayan Pradhan served from September 2011 to March 2013.

⁴⁵⁸ GRM International Ltd, "Access to Security, Justice and Rule of Law in Nepal an Assessment Report", 6-7.

⁴⁵⁹ GRM International Ltd, "Access to Security, Justice and Rule of Law in Nepal an Assessment Report" 12-13.

investigations forwarded by the National Human Rights Commission for prosecution.⁴⁶⁰

Security sector reform

Security sector reform was primarily concerned with the demobilisation and reintegration of the PLA and bringing the formal security apparatus under civilian control. Nepal's formal security sector consists of the Nepal Army, Nepal Police, Armed Police and the National Intelligence Service. Nepal enacted important constitutional and legal reforms to ensure civilian authority over the security agencies; however, they did not adequately address gaps in the legal framework that ensured impunity for crimes committed by security forces during the conflict. Following a series of setbacks, protracted disagreements and delays, the government agreed on a framework to demobilise and reintegrate the Maoist combatants,

People's Liberation Army

The parties had reached an overarching framework to demobilise and reintegrate the PLA.⁴⁶¹ It was agreed that the weapons of the PLA would be stored in

⁴⁶⁰ United Nations Human Rights Council, "Report of the Human Rights Council on its Seventeenth Session A/HRC/17/2," 323.

⁴⁶¹ "Comprehensive Peace Accord Signed between Nepal Government and the Communist Party of Nepal (Maoist)", Articles 4.1-4.8; "Letters Sent by the Communist Party of Nepal (Maoist) and the Prime Minister of Nepal to the United Nations Secretary-General Requesting the Assistance of the United Nations"; "Decisions of the Summit Meeting of the Seven-Party Alliance and the Communist Party of Nepal (Maoist)," November 8, 2006, https://peacemaker.un.org/sites/peacemaker.un.org/files/NP_061108_Decisions%20of%20the%20Summit%20Meeting.pdf, Section II; "The Code of Conduct for Ceasefire Agreed between the Government of Nepal and the CPN (Maoist) at Gokarna," para 2.5; "12-Point Understanding Reached between the Seven Political Parties and Nepal Communist Party (Maoists)", para 3.

cantonments and monitored by UNMIN.⁴⁶² UNMIN was required to register and verify the combatants, following which a Special Committee would be established to address the issue of rehabilitation and reintegration.⁴⁶³ Despite acrimony amongst the political actors at each step of the process, storage of arms, registration and verification of combatants was carried out successfully.⁴⁶⁴ By December 2007, UNMIN had registered 3,475 weapons and verified that 19,502 individuals were PLA personnel, out of 31,152 individuals that initially registered.⁴⁶⁵ The security agencies pushed back against the large discrepancy between the number of registered weapons and personnel, alleging that during the conflict the PLA had looted more than 4,000 weapons from the Nepal Army and Nepal Armed Police. Security agencies and political parties also expressed scepticism over the number of PLA personnel registered and verified by UNMIN, as both figures were far higher than the estimated Maoist 10,000 cadres. The inflated number of registered personnel was the result of encouragement given by the Maoist leadership not just to their formal combatants but also to associated militia groups and members of the Young Communist League, promising salaries and recruitment into the formal armed forces.⁴⁶⁶ When UNMIN's verification process brought the number of verified personnel down to 19,502 and excluded 3,000 on account of them being

⁴⁶² "Comprehensive Peace Accord Signed between Nepal Government and the Communist Party of Nepal (Maoist)", Article 4.2

⁴⁶³ "Comprehensive Peace Accord Signed between Nepal Government and the Communist Party of Nepal (Maoist)", Article 4.1, 4.4.

⁴⁶⁴ For a summary of political disagreements relating to the monitoring of arms and verification of combatants see Martin, "The United Nations and Support to Nepal's Peace Process."

⁴⁶⁵ United Nations Security Council, "Report of the Secretary-General on the Request of Nepal for United Nations Assistance in Support of Its Peace Process S/2007/235," para 22.

⁴⁶⁶ Subedi, "Dealing with Ex-Combatants in a Negotiated Peace Process: Impacts of Transitional Politics on the Disarmament, Demobilisation and Reintegration Program in Nepal," 476.

minors, Maoist leadership pushed back, questioning the methods of UNMIN.⁴⁶⁷ Maoist leadership also had significant disagreements with the interim government over the poor conditions in the cantonments and delays in payments of salaries.⁴⁶⁸

The next step in the process was reintegration into the armed forces, and all parties were keen to delay decision making regarding the issue until after the April 2008 elections. The major political parties anticipated that they would form government and then be able to dictate the terms regarding the reform of the PLA. Factions within the Maoists believed that continuing to have their Army would continue to strengthen their position vis a viz the political parties. However, the Maoist electoral victory and successive governments' subsequent collapse meant that reintegration process was barely commenced in the ensuing two years. The Special Committee on reintegration, mandated under the CPA, was not functional until January 2009; the reintegration process had not begun when UNMIN's term expired in January 2011.

Debates on the PLA's future took up significant political oxygen, especially following the constituent assembly elections, without any compromises being made.⁴⁶⁹ In November 2011, under Prime Minister Bhattarai, the main political parties agreed upon a plan formulated by the Nepal Army to bring the verified

⁴⁶⁷ Martin, "The United Nations and Support to Nepal's Peace Process." 212. A total of 4,008 individuals were excluded on the grounds of being a minor or a late recruit.

⁴⁶⁸ Martin, "The United Nations and Support to Nepal's Peace Process." 210.

⁴⁶⁹ See Subedi, "Dealing with Ex-Combatants in a Negotiated Peace Process: Impacts of Transitional Politics on the Disarmament, Demobilisation and Reintegration Program in Nepal."

combatants under one directorate of the Nepal Army.⁴⁷⁰ PLA personnel were given a choice over voluntary retirement with a cash and rehabilitation package or integration into the Nepal Army.⁴⁷¹

Nepal Army

Since its inception, the Nepal Army had been outside the control of civilian governments and had been under the direct command of the King. Following the resignation of the King, Prime Minister Koirala's government enacted amendments to the Army Act and formally renamed the Royal Army the Nepal Army. Later, both CPA and the interim constitution explicitly provided that the Nepal Army would be brought under the civilian governments. The CPA committed the council of ministers to enact a new "Military Act"; to "implement a detailed plan to democratise the Nepal Army" and to provide "democratic and human rights values" training to the Army.⁴⁷² The interim constitution incorporated these commitments into the constitutional framework by providing that the council of ministers shall appoint the Army's commander in chief.⁴⁷³ The council of ministers were also mandated to carry out reforms to democratise the Army with the consensus of the political parties and advice of the relevant committee within the legislature-parliament.⁴⁷⁴ Amendments were incorporated into the interim constitution requiring the Army to adopt policies that reflect the "national character" and recruit

⁴⁷⁰ Sharma, *The Nepal Nexus*, 377.

⁴⁷¹ Subedi, "Dealing with Ex-Combatants in a Negotiated Peace Process: Impacts of Transitional Politics on the Disarmament, Demobilisation and Reintegration Program in Nepal," 464.

⁴⁷² "Comprehensive Peace Accord Signed between Nepal Government and the Communist Party of Nepal (Maoist)," Article 4.7.

⁴⁷³ The Interim Constitution of Nepal, Article 144(2).

⁴⁷⁴ The Interim Constitution of Nepal, Article 144(3),(4).

citizens from among marginalised groups, including Madhesi and indigenous groups, Dalits and women.⁴⁷⁵ The interim constitution also provided that the authority to mobilise the Army shall lie with the council of ministers. However, in doing so, it shall receive recommendations from a National Defence Council, comprising among others of the prime minister, home minister, defence minister and such decisions must be approved by a special committee of the legislature-parliament within one month.⁴⁷⁶ Nepal Army, Nepal Police and Nepal Armed Police also introduced a human rights component to their curriculums, which OHCHR supported through the development of handbooks and training sessions.⁴⁷⁷

Civilian oversight of the Army proved challenging in the context of addressing impunity for abuses committed by the security sector. Amendments to the Army Act and other related regulations failed to substantially reform the legal framework that shielded Army personnel from the criminal justice process.⁴⁷⁸ Amendments to the Army Act granted civilian courts jurisdiction over the crimes of rape and

⁴⁷⁵ The Interim Constitution of Nepal, Article 144(4A).

⁴⁷⁶ The Interim Constitution of Nepal, Article 145(4).

⁴⁷⁷ United Nations Human Rights Council Working Group on the Universal Periodic Review, "National Report Submitted in Accordance with Paragraph 15 (a) of the Annex to Human Rights Council Resolution 5/1 Nepal* A/HRC/WG.6/10/NPL/1," para 47; United Nations Human Rights Council, "Report of the United Nations High Commissioner for Human Rights on the Human Rights Situation and the Activities of Her Office, Including Technical Cooperation, in Nepal A/HRC/10/53," para 62.

⁴⁷⁸ See International Commission of Jurists, "Nepal Recommendations for Amendments to the Draft Army Act" (Kathmandu, Nepal, September 2006), <https://www.icj.org/wp-content/uploads/2012/04/Nepal-amendments-draft-army-act-report-2006.pdf>; Hari Phuyal and Marlene Urscheller, eds., *The Security Sector Legislation of the Federal Democratic Republic of Nepal: Commentaries* (Brambauer Publishers, 2009); United Nations Human Rights Council, "Report of the United Nations High Commissioner for Human Rights on the Human Rights Situation and the Activities of Her Office, Including Technical Cooperation, in Nepal A/HRC/4/97," para 49.

murder.⁴⁷⁹ However, other serious human rights abuses, including torture and enforced disappearances, were to be investigated by a special committee and subject to trial before a court martial.⁴⁸⁰ Although the Nepalese Army was mandated to cooperate with law enforcement agencies carrying out criminal investigations it provided broad immunity for acts carried out by Army personnel in the course of their official duties.⁴⁸¹ If the alleged perpetrator had been the subject of a court-martial trial, then under the double jeopardy provisions of the Army Act, the individual was prevented from being tried before civilian courts.⁴⁸² As discussed above, in practice, the Army routinely failed to cooperate with law enforcement agencies and comply with court orders, citing immunity and double jeopardy provisions. The Army and the Police continued to promote officers under investigation, subject to court orders, arrest warrants, and otherwise directly implicated in serious human rights abuses.⁴⁸³

⁴⁷⁹ Army Act (2006), Legislature-Parliament of the Federal Democratic Republic of Nepal (2006), section 66.

⁴⁸⁰ Army Act (2006), section 65.

⁴⁸¹ Army Act (2006), Section 22

⁴⁸² Army Act (2006), Section 70.

⁴⁸³ In November 2011, the Nepal Army promoted to the position of Additional Inspector General an individual identified by a government appointed Commission of Inquiry of having killed demonstrators during the 2006 People's Movement. See also Human Rights Watch, "Nepal: Prosecute, Don't Promote, Notorious Army Officer," July 22, 2012, <https://www.hrw.org/news/2012/07/22/nepal-prosecute-dont-promote-notorious-army-officer>; See also Office of the High Commissioner of Human Rights in Nepal, "UN Human Rights Office Raises Serious Concerns with the Term Extension of Colonel Raju Basnet," October 22, 2010, https://nepal.ohchr.org/en/resources/Documents/English/pressreleases/Year%202010/October/2010_10_22_PR_Col_Raju_Basnet_E.pdf. In another example, despite an order from Kavre District Court that a Nepal Army officer, Niranjana Basnet be suspended owing to his involvement in the rape and murder of 15 year old, he was promoted. See "Court Issues Suspension Order for Army Officer in Maina Case," Advocacy Forum-Nepal, 2010, <https://www.advocacyforum.org/news/2010/11/court-issues-suspension-order-for-army-officer-in-maina-case.php>. See also Human Rights Watch, "UK: Army Chief's Visit to Nepal Should Target Impunity," November 14, 2012, <https://www.hrw.org/news/2012/11/14/uk-army-chiefs-visit-nepal-should-target-impunity>.

Longer term impact

The end of formal cooperation with OHCHR didn't result in a reversal of the human rights gains made in Nepal. Despite experiencing significant political turbulence, Nepal never returned to conflict or widespread violations of physical integrity rights or political freedoms. Although violence in the context of protests, custodial deaths, and torture in the context of detention remained consistent challenges, Nepal witnessed sustained improvements in the protection of physical integrity rights and political freedoms in the decade following OHCHR's departure.

Following the departure of OHCHR in 2012, Nepal succeeded in consolidating the democratic gains achieved during its initial transition. As the interim constitution adopted in 2007 was intended to be a temporary document, Nepal was required to adopt a new constitution to complete the peace process. This gave Nepal a distinct advantage over Sri Lanka, as the leaders were forced to use the transition period to adopt deeper democratic reforms, which, over the longer term, provided a stronger enabling environment for the protection of human rights. As the first constituent assembly elected in 2008 could not complete its work, it was disbanded, and a second was elected in 2012. In 2015, amidst controversy primarily over the demarcation of federal units and efforts to address issues of historical discrimination, a new constitution was adopted by a majority.⁴⁸⁴ Minority groups

⁴⁸⁴ Bhadra Sharma and Nida Najar, "Amid Protests, Nepal Adopts Constitution," *The New York Times*, September 20, 2015, sec. World, <https://www.nytimes.com/2015/09/21/world/asia/amid-protests-nepal-adopts-constitution.html>; International Crisis Group, "Nepal's Divisive New Constitution: An Existential

bitterly contested the constitution and violent protests broke out in the Terai.⁴⁸⁵ The new constitution retained Nepal's status as a federal, secular and republican state, adopted principles of inclusion, provided for 31 fundamental rights, and established 8 commissions mandated to protect human rights.⁴⁸⁶

Since the adopting the new Constitution, Nepal has had several rounds of free and competitive federal, state, and local government elections. However, long-standing features of national politics, such as corruption and instability, remain endemic. To date, no federal government in Nepal has completed their term. Major parties continue to be marked by in-fighting, splits, and re-alignments.⁴⁸⁷ In December 2022, a newly constituted Maoist party won a majority of seats in the lower house, and Mr. Dahal became the Prime Minister for the third time.⁴⁸⁸ Nepal continued to strengthen the legal protection of human rights, addressing historical discrimination, and realising economic, social, and cultural rights. Caste based segregation was formally banned, minimum wage was increased, social security coverage was expanded, select harmful traditional practices relating to women were

Crisis Asia Report No 276," April 4, 2016, <https://icg-prod.s3.amazonaws.com/276-nepal-s-divisive-new-constitution-an-existential-crisis.pdf>.

⁴⁸⁵ Ibid.

⁴⁸⁶ "The Constitution of Nepal," September 20, 2015, Article 4, Part 3, Part 27. The human rights mandated commissions included the National Human Rights Commission, National Women Commission, National Dalit Commission, National Inclusion Commission, Indigenous Nationalities Commission, Madhesi Commission, National Tharu Commission, and National Muslim Commission.

⁴⁸⁷ See Ashish Pradhan, "Oli's Power Grab Endangers Nepal's Fragile Democratic Transition," January 25, 2021, <https://www.crisisgroup.org/asia/south-asia/nepal/olis-power-grab-endangers-nepals-fragile-democratic-transition>.

⁴⁸⁸ Al Jazeera, "Ex-Maoist Rebel Leader Prachanda Becomes Nepal PM for Third Time," December 25, 2022, <https://www.aljazeera.com/news/2022/12/25/ex-maoist-rebel-leader-prachanda-becomes-nepal-pm-for-third-time>.

banned, and same-sex marriage was legalised.⁴⁸⁹ Enforced disappearances, torture and inhumane treatment was formally criminalised under a new Penal Code.⁴⁹⁰ However, not all reforms were positive and successive governments either proposed or enacted laws seeking to restrict media freedom.⁴⁹¹

Like the period during the transition, despite legal and policy reforms, implementation of human rights guarantees remains weak. To date, Nepal has not enacted enabling legislation to guarantee the operational independence of the National Human Rights Commission. Over the past decade, less than ten percent of the Human Rights Commission recommendations were implemented, and in 2022, the Commission was downgraded to B status.⁴⁹² Despite the creating a plethora of other human rights mandated national institutions under the 2015 Constitution, they

⁴⁸⁹ Meenakshi Ganguly, “Nepal’s Historic Achievement on Marriage Equality,” July 5, 2023, <https://www.hrw.org/news/2023/07/05/nepals-historic-achievement-marriage-equality>; United Nations Human Rights Council, “National Report Submitted in Accordance with Paragraph 5 of the Annex to Human Rights Council Resolution 16/21* Nepal A/HRC/WG.6/37/NPL/1,” December 31, 2020, para 52, 76-78, <https://documents.un.org/doc/undoc/gen/g20/278/61/pdf/g2027861.pdf?token=o1uZvAb1QiCJ8OYXjy&fe=true>.

⁴⁹⁰ United Nations Human Rights Council, “National Report Submitted in Accordance with Paragraph 5 of the Annex to Human Rights Council Resolution 16/21* Nepal A/HRC/WG.6/37/NPL/1,” para 28, 30.

⁴⁹¹ United Nations Human Rights Council, “Compilation on Nepal Report of the Office of the United Nations High Commissioner for Human Rights A/HRC/WG.6/37/NPL/2,” October 2022, para 26, <https://documents.un.org/doc/undoc/gen/g20/280/84/pdf/g2028084.pdf?token=x0jtZsE8StuqOQ4Pxy&fe=true>; United Nations Human Rights Council, “National Report Submitted in Accordance with Paragraph 5 of the Annex to Human Rights Council Resolution 16/21* Nepal A/HRC/WG.6/37/NPL/1,” para 31-32.

⁴⁹² “NHRC’s Status Downgraded, Credibility at Stake,” The Himalayan Times, November 14, 2022, <https://thehimalayantimes.com/nepal/nhrccs-status-downgraded-credibility-at-stake>; United Nations Human Rights Council, “Compilation on Nepal Report of the Office of the United Nations High Commissioner for Human Rights A/HRC/WG.6/37/NPL/2” para 10.

have also struggled to discharge their mandate owing to a lack of operational autonomy and capacity constraints.⁴⁹³

The weakest area of compliance continues to be the issue of accountability. Although the two transitional justice mechanisms promised under the CPA, a Truth Commission and a Commission to investigate Enforced Disappearances, were established in 2017, they provided with insufficient staff and resources and to date, neither mechanism has completed a single investigation.⁴⁹⁴ Although the Supreme Court repeatedly ruled that the executive does not have unfettered discretion to withdraw criminal cases, political elites have continued to form pacts conferring impunity on allies.⁴⁹⁵ Victims and their allies have continued to use strategic

⁴⁹³ Rhishav Sapkota, "What Is the National Dalit Commission up To?," *Nepal Live Today* (blog), July 29, 2021, <https://www.nepallivetoday.com/2021/07/29/what-is-the-national-dalit-commission-up-to/>; Tika Pradhan, "Government's Apathy Renders Constitutional Commissions Ineffective," July 6, 2019, <http://kathmandupost.com/national/2019/07/06/governments-apathy-renders-constitutional-commissions-ineffective>. Binod Ghimire, "National Women Commission Remains Defunct as the Cases of Violence against Women Continues," December 1, 2020, <http://kathmandupost.com/national/2020/12/01/national-women-commission-remains-defunct-as-the-cases-of-violence-against-women-continues>; Bhuwan Sharma, "All Seven Constitutional Commissions Remain Ineffective," *My Republica*, July 15, 2023, <http://myrepublica.nagariknetwork.com/news/143035/>; Niti Foundation and Social Science Baha, "Why Nepal's 'Other' Commissions Matter for Justice and Inclusion Strengthening Constitutionalism in Nepal," 2022, 23-27, <https://soscbaha.org/wp-content/uploads/2022/07/strengthening-constitutionalism-in-nepal.pdf>.

⁴⁹⁴ Binod Ghimire, "Law Minister-Led Mechanism to Decide Future of Transitional Justice," January 27, 2019, <http://kathmandupost.com/national/2019/01/27/law-minister-led-mechanism-to-decide-future-oftransitional-justice>; Renee Jeffrey, "Nepal's Truth and Reconciliation Commission Limp on," *Lowy Institute*, February 12, 2019, <https://www.lowyinstitute.org/the-interpreter/nepal-s-truth-reconciliation-commission-limps>; Dewan Rai, "Govt Asked to Provide Necessary Resources Pronto," *The Kathmandu Post*, March 31, 2016, <http://kathmandupost.com/national/2016/03/31/govt-asked-to-provide-necessary-resources-pronto>.

⁴⁹⁵ Human Rights Watch, "No Law, No Justice, No State for Victims the Culture of Impunity in Post Conflict Nepal," 2020, 35 <https://www.hrw.org/report/2020/11/20/no-law-no-justice-no-state-victims/culture-impunity-post-conflict-nepal#:~:text=The%20Nepali%20criminal%20justice%20system%20has%20not%20only%20failed%20to,the%20courts%20or%20the%20police.>; International Commission of Jurists, "Authority without Accountability: The Struggle for Justice in Nepal," 2013, 53-54,

litigation, invoking the writ jurisdiction of the Supreme Court and Appellate Courts to challenge inaction and inadequate action by law enforcement authorities. Although the Courts have ruled in favour of many of these cases, issuing orders directing the state to investigate and prosecute perpetrators, they remain unimplemented.⁴⁹⁶

Conclusion

In response to the human rights crisis in Nepal, non-state actors based in Nepal and elsewhere shared information about abuses with third-party states and international institutions, who in turn exerted pressure on Nepal. The years of documentation and advocacy by domestic and international non-governmental organizations directed to UN special procedures, treaty bodies and the Human Rights Commission laid the foundation for OHCHR's presence in Nepal. The pressure exerted by external actors produced two important effects. First, it created a dialogue between external actors and the rights violating state about the latter's human rights practices. In response to external pressure, Nepal made tactical concessions in the form of half-hearted policy measures to appease international pressure. However, these tactical concessions contributed to deepening the dialogue between international and domestic actors and formed the basis of commitments made later. Second, it created enabling conditions for dissent, contributing to a democratic political transition.

<https://icj2.wpenginepowered.com/wp-content/uploads/2013/10/ICJ-AUTHORITY-WITHOUT-ACCOUNTABILITY-final-1.pdf>.

⁴⁹⁶ See Human Rights Watch, "No Law, No Justice, No State for Victims the Culture of Impunity in Post Conflict Nepal," 2020; National Judicial Academy Nepal, "Study on the Execution Status of Supreme Court and Appellate Court Orders/ Judgments Relating to Transitional Justice," 2016; Chapagai and Karn, "Accountability for Conflict-Era Human Rights Violations in Nepal: An Appraisal of Strategic Human Rights Litigation," 216-217.

The formal role played by OHCHR in Nepal, was only made possible when member states adopted a unified response to Nepal's human rights crisis. Almost a decade of conflict-related human rights abuses, followed by the authoritarian turn of the King, galvanised the bilateral partners to support or withdraw their objections to the creation of an OHCHR field presence in Nepal. A unified approach from within the UN, especially DPA's early engagement in Nepal and support for OHCHR, was also important in persuading Nepal to commit to an ambitious human rights agreement.

In Nepal, the King who presided over abuses opted to enter into an agreement with OHCHR. King Gyanendra was guided by rational calculation of state interests when committing to the Agreement with OHCHR.⁴⁹⁷ Continued censure on human rights practices presented the King with the threat of further diplomatic isolation and loss of military and donor aid. However, amidst these rational calculations, identity-based considerations were also present. The King faced a sense of cognitive dissonance at the prospect of being assigned a Special Rapporteur, as he feared it would brand Nepal as a 'failed state'.⁴⁹⁸ He was keen to avoid such a fate, as it contradicted Nepal's self-perception as an independent country that had never been colonised and aided other countries as a significant contributor of troops to UN peacekeeping missions.

⁴⁹⁷ Morgenthau, *Politics among nations the struggle for power and peace*; Waltz, *Theory of International Politics*; Goldsmith and Posner, *The Limits of International Law*.

⁴⁹⁸ Goodman and Jinks, "How to Influence States: Socialization and International Human Rights Law," 640; Johnston, "Treating International Institutions as Social Environments," 510.

Following the King's resignation, four successive coalition governments continued the agreement with OHCHR. In response to the King's authoritarian turn, the political parties had increasingly engaged with human rights actors and adopted human rights rhetoric. Both the political parties and the Maoists, supported and directly benefited from the OHCHR's early presence. Under the CPA, the seven political parties and the Maoists had committed to ushering in a democratic Nepal that was committed to upholding human rights.⁴⁹⁹ Even if the sincerity and depth of commitment to democracy and human rights of individual leaders were questioned, each government that led Nepal from 2006 to 2011 was normatively committed to a minimum set of human rights reforms related to democracy and ending repression. Thus, there was a broad ideological affinity between the international human rights commitments and the domestic political commitments made by successive post-transition governments.

Following commitment, the path to compliance was uneven and incomplete. Compliance requires a spectrum of steps, from refraining from harmful behaviour to enacting and operationalising human rights reforms. Rational calculation of state interests became a less relevant causal mechanism following commitment. An exception is applied when violations of physical integrity violations and political freedoms continued to persist. The first year following commitment from April 2005 to the King's resignation in April 2006, Nepal continued to witness arbitrary

⁴⁹⁹ "Comprehensive Peace Accord Signed between Nepal Government and the Communist Party of Nepal (Maoist)."

detentions, conflict related abuses, disproportionate use of force in the context of protests and media censorship. The UN and non-governmental organizations reported on these abuses and member states continued withholding critical military aid and diplomatic support from Nepal.

Following the negotiated end to the conflict and the political transition, Nepal experienced significant improvements in physical integrity rights and political freedoms. Nepal also continued to expand its cooperation with the UN by extending its agreement with OHCHR, ratifying additional international human rights treaties, welcoming the visits of Special Procedures, and cooperating with Treaty Body Mechanisms. As a result of these developments, member states that had previously spoken out on human rights concerns, prioritised making up for lost access and deepening bilateral ties. Given the historic nature of the democratic transition in the country, Nepal's leaders were largely welcomed by the international community and key bilateral partners. Nepal no longer faced the threat of losing out on vital military or donor aid or the prospect of continued diplomatic isolation, even though it was lagging in enacting and enforcing critical human rights reforms.

Further, different types of violations were taking place before and after commitment. The ability and willingness of the UN and member states to extend public pressure in the form of conscience raising, shaming, and withholding material rewards were easier when violations of physical integrity rights and political freedoms were commonplace. Following commitment, these types of violations reduced, and the focus shifted to the failure or inadequacy of steps taken

to enact, operationalise, and enforce human rights reforms. This type of non-compliance was harder to monitor and report on. They inflict less visceral harm on victims, attract less attention and, as a result, are harder to use as a basis for censure and pressure. Although non-state actors and the UN regularly publicly reported on shortcomings in adopting and enforcing law reforms, most member states largely refrained from publicly criticising these failures.

Socialization mechanisms such as dialogue, and capacity building were more relevant when enacting and operationalising reforms.⁵⁰⁰ However, the effectiveness of dialogue was limited by three factors. First, the respective governments were aligned with the content of some norms more than others, and compliance was greater where there was a degree of affinity between domestic and international commitments. Second, the extreme political instability that prevailed in Nepal limited the space available for dialogue and persuasion on more contentious issues. The lack of willingness by opposition parties to robustly engage on human rights reforms also undermined the effectiveness of dialogue as a socialization mechanism. Third, underlying capacity issues in the form of bureaucratic and administrative weaknesses adversely impacted the ability of domestic actors to effectively operationalise and enforce reforms.

⁵⁰⁰Risse and Sikkink, "The socialization of international human rights norms into domestic practices: introduction" 11; Johnston, "Treating International Institutions as Social Environments", 493; Ian Johnstone, *The Power of Deliberation International Law, Politics and Organizations*, 14.

Given the wide scope of obligations committed to under the Agreement with OHCHR, the types of reforms enacted was determined by the extent to which there was an alignment with content of a specific commitment. Elite level support for human rights reforms can strongly influence compliance.⁵⁰¹ However, political willingness is not binary. Instead, it varies in degrees depending on both the content of the norm and the steps required for compliance. Although leaders in Nepal were not especially committed to adopting human rights reforms, their willingness to comply also varied based on the substance of the norm (right to life, right to freedom of expression, etc.) and the steps required for compliance, such as refraining from harmful conduct, adopting, and enforcing reforms. Lawmakers demonstrated distinct preferences to engage in dialogue and be persuaded with respect to some norms whilst remaining agnostic or opposed to others.

In Nepal, there was a willingness to end harmful behaviour, i.e., stop conflict related human rights abuses, violations of physical integrity rights and political freedoms. These gains have been among the most significant contributions of OHCHR's intervention in Nepal. Over the longer-term, Nepal has not witnessed a return to conflict or a widespread crackdown on rights as it did prior to OHCHR's intervention. The period from 2006 to 2024, is Nepal's longest continuous experience with democracy.

⁵⁰¹ Simmons, *Mobilizing for Human Rights International Law in Domestic Politics*, 149 -50; Hillebrecht, "The Power of Human Rights Tribunals Compliance with the European Court of Human Rights and Domestic Policy Change," 1107.

Under the CPA, the political parties and the Maoists reached a historic domestic agreement to not only end the armed conflict but also to strengthen democracy and address the root causes of the conflict.⁵⁰² As a result, Nepal had a greater willingness to adopt deep constitutional reforms, with a view to enhancing the democratic nature of the state.⁵⁰³ Further given the focus on addressing the root causes of the conflict, lawmakers were also more focused on adopting reforms guaranteeing equality and non-discrimination, especially with view to addressing historical grievances against marginalised groups. Lawmakers were receptive to engaging with OHCHR on important legal reforms such as the adoption of the interim constitution, criminalisation of caste-based discrimination and permitting the anti-terror ordinance to lapse.

However, there was a lack of support for strengthening norms that combat impunity or provide judicial remedies for human rights abuses. While OHCHR collaborated with successive governments to criminalize enforced disappearances and establish a truth and reconciliation commissions and a commission on disappearances, these efforts only produced draft laws at the conclusion of OHCHR's tenure. Scholars have argued that discursive engagement between external actors and governments can lead to a dynamic implementation gap due to the lack of political will among domestic elites.⁵⁰⁴ They suggest that political elites use dialogue to create a lasting

⁵⁰² "Comprehensive Peace Accord Signed between Nepal Government and the Communist Party of Nepal (Maoist)".

⁵⁰³ "The Interim Constitution of Nepal,.

⁵⁰⁴ Anna Macdonald, "Somehow This Whole Process Became so Artificial: Exploring the Transitional Justice Implementation Gap in Uganda," *International Journal of Transitional Justice*, 2019, 1–24, 10; Sydney Leclercq, "Injustice Through Transitional Justice? Subversion Strategies in

political space that generates activities towards compliance but never achieves substantive compliance.⁵⁰⁵ However, in Nepal's case, the government's willingness to draft laws and sometimes table them before parliament should not be seen as “cheap talk” intended to avoid compliance. Although draft laws, such as those on enforced disappearances and the two commissions addressing conflict-related abuses had technical flaws, the inability to pass them was also influenced by the extreme political instability that prevailed in Nepal. Weak political will is not the same as an absence of political will. The reform initiatives supported by OHCHR remained on the national agenda, and over the long-term Nepal adopted laws criminalising enforced disappearances, torture as well as the two commissions to address conflict related abuses.

A distinct lack of political will was evident in the unwillingness of successive governments to support the criminal justice process carry out investigations and prosecutions into serious human rights abuses. It has been argued that international efforts to promote justice is likely to fail as they are externally imposed, whereas in historically successful examples justice was implemented pursuant to a domestic political bargain.⁵⁰⁶ In Nepal, external influence succeeded in getting the Maoists

Burundi's Peace Process and Post Conflict Developments,” *International Journal Transitional Justice* 11, no. 1 (2017): 525–544, 537.

⁵⁰⁵ Ibid.

⁵⁰⁶ Leslie Vinjamurie, “Review of Kathryn Sikkink’s *The Justice Cascade: How Human Rights Prosecutions are Changing World Politics*” *Journal of Human Rights* 11, no. 2 (2012): 283–288, 286.

and the seven political parties to agree on both a method and timeline for addressing conflict related abuses under the CPA, which all parties failed to uphold.⁵⁰⁷

International norms related to justice were enthusiastically embraced by non-governmental groups. However, opposition parties and members of the government remained agnostic, if not opposed to justice related norms. As seen elsewhere, some leaders were opposed as they were personally implicated and wished to avoid prosecuting themselves or their allies.⁵⁰⁸ Whilst others sought to confer themselves a political advantage by entrenching impunity. Prime Ministers Koirala and Dahal opposed accountability efforts, in part because they were personally implicated as well as their close allies and supporters. Mr. Koirala had been Prime Minister and leader of government during some of the deadliest phases of Nepal's civil war. Prime Minister Dahal, as the Maoist leader had direct command responsibility for many of the alleged Maoist abuses. Other leaders, such as Prime Minister Nepal and Khanal, despite not being directly implicated in conflict related abuses, opted to use impunity as a tool to enlist support from coalition partners.

Although UN human rights mechanisms identified capacity constraints within law enforcement agencies and prosecuting authorities in Nepal, executive interference in the criminal justice process was critical to the lack of progress on judicial remedies. Where domestic actors were unwilling to comply with the content of a

⁵⁰⁷ "Comprehensive Peace Accord Signed between Nepal Government and the Communist Party of Nepal (Maoist)", Article 3.4, 5.2.3, 5.2.4, 5.2.5, 7.1.3

⁵⁰⁸ Stephen Brown, "Transitional Justice as Subterfuge" OpenCanada. (9 May 2012) <<https://www.opencanada.org/features/transitional-justice-as-subterfuge/>> accessed 6 August 2019.

specific obligation, they deployed counterarguments in favour of non-compliance. In Nepal, although all seven major political parties had committed to addressing conflict related abuses, they all resorted to counter narratives either arguing that accountability must be deferred or delayed in favour of political stability and national security.

The political environment in Nepal also limited the scope for socialization. Where a government is led by a political coalition and decision making is fragmented, governments are less likely to adopt human rights reforms.⁵⁰⁹ Nepal was led by unwieldy coalitions, which lend themselves to unstable executives. The post-transition period, when compliance was expected, exposed and stress-tested internal divisions among the coalition partners. Nepal had five governments from 2006 to 2011, each collapsing approximately one year into their term.

Within this context, dialogue on human rights reforms took a lower priority. In Nepal, although members of government engaged with UN officials, technical experts, Special Rapporteurs and, at times, non-governmental organizations about human rights reforms, dialogue about reforms remained isolated within pockets of the government. Much of the political capital and personal energy of members of the government were devoted to resolving short-term political disagreements. The coalition governments were beleaguered by complaints over how the coalition itself functioned, with frequent criticisms from the junior partners over the lack of

⁵⁰⁹ Cardenas, *Conflict and Compliance State Response to International Human Rights Pressure*, 13.

consultation and high handedness of the senior partner. Successive governments were also repeatedly brought to a standstill whenever a coalition partner opted to protest or boycott a key policy proposal.

Adding to the complexity and instability of the domestic political environments was the ever-present threat of lapsing back into authoritarianism and or conflict. The prospect of returning to conflict or the monarchy loomed large in the initial years following the resignation of the King and the signing of the CPA. Nepal had the added pressure to complete the peace process in accordance with its pre-agreed timelines. The failure to draft a new constitution risked the country being left without a constitution and a president. The failure to reach an agreement on demobilisation of Maoists combatants, inflammatory rhetoric by the Maoist leadership, and Nepal Army's defiant attitude, also contributed to fears of a Maoist takeover of the government.

The presence of opposition parties within the legislature can also enhance the scope for dialogue and argumentation regarding human rights reforms.⁵¹⁰ In Nepal, despite the political transition, the parliamentary opposition wasn't successful at effectively leveraging dialogue over human rights. Following the resignation of King Gyanendra, all the opposition parties had the opportunity to lead one of five

⁵¹⁰ Hillebrecht, "The Power of Human Rights Tribunals Compliance with the European Court of Human Rights and Domestic Policy Change"; Lupu, "Legislative Veto Players and the Effects of International Human Rights Agreements" 578-594; Conrad, "Divergent Incentives for Dictators: Domestic Institutions and (International Promises Not to) Torture", 55; Vreeland, "Political Institutions and Human Rights: Why Dictatorships enter into United Nations Convention Against Torture", 78.

coalition governments that governed Nepal from 2006 to 2011. The first post-transition government included all the main political parties and the Maoists. Post the 2008 Constituent Assembly elections, the Nepali Congress led the opposition and opted to raise human rights reforms on a selective basis. Nepali Congress was more focused on taking aim at the Maoists, by focusing on the latter's failure to curb the excesses of party affiliates, prosecute Maoists combatants, return land, and speedily demobilise Maoists combatants.⁵¹¹

Following the constituent assembly elections Nepal's legislature was among the most diverse in the region and trebled in size from 202 to 601 members. However, during this period the willingness and ability of the legislature to carry out meaningful dialogue that advanced reforms was limited. Ordinary work of the legislature was disrupted by the frequent changes in government, and recurrent protest and boycotts on the floor of parliament. Despite the increase in diversity among members, there wasn't a corresponding increase in independence or competence of lawmakers.

The limitations of external capacity building in addressing compliance gaps are also evident in Nepal. External assistance, whether it's in the form of funds, physical resources, training, education, or expert advice, was absorbed by a weak bureaucracy that remained deeply politicised, inefficient, and lacking in

⁵¹¹ Aditya Adhikari and Bhaskar Gautam, "Impunity and Political Accountability in Nepal" (The Asia Foundation, 2014), 5, 66, https://nepalconflictreport.ohchr.org/files/docs/2014-02-00_report_taf_eng.pdf.

professionalism. Although technical assistance and physical and financial resources can be absorbed by small pockets of the bureaucracy to fill a short-term gap, the broader bureaucracy within which any given human rights mandated institution operates remains both resource and knowledge poor.

Moreover, the kind of external assistance provided in Nepal did little to address the causes that prevented the bureaucracy from effectively operationalising human rights reforms. Nepal's the public administration system was by-design intended to politicised.⁵¹² Deep reforms to the public sector administration were required to address these underlying defects.⁵¹³ Nepal did adopt constitutional reforms to ensure the independence of appointments made to leaderships positions of key public servants. Nepal also adopted reforms to ensure representation of historical marginalised groups within the public sector.⁵¹⁴ However, given the short time frame within which the respective reforms were in operation, these reforms had limited impact on improving the quality of the public service.

Moreover, international assistance does not always have the desired effect and can create new challenges. In Nepal, OHCHR's efforts to aid the National Human Rights Commission generated conflict and competition. The National Human Rights Commission, at various points, viewed OHCHR as a competitor for resources and funds and actively advocated for its departure. Moreover, former

⁵¹² Shrestha and Paudel, "Civil Service Management in Nepal," 99–119.

⁵¹³ Ibid.

⁵¹⁴ Raj, "Inclusive Governance: A Case Study of Civil Service in Nepal."

OHCHR staff themselves questioned whether the methods used to provide aid was always the most effective. For example, some staff reflected that the office may have been more successful if they had paid more attention to the political context in which reform initiatives were being negotiated. The frequent changes in the OHCHR leadership as well as the lack of a leader during critical periods, also limited its ability to develop and implement an effective strategy to constructively engage with domestic counterparts. External assistance was most effective when it was used over the short term to address specific gaps within the state sector that directly contributed to guaranteeing rights and providing remedies. For example, OHCHR participated in strategic litigation, directly contributing to the development of strong international human rights jurisprudence that enhanced the judicial protection of rights. Further, OHCHR assisted the investigation of human remains and directly contributed to the first time that excavated remains were identified in Nepal.

Despite assessments that suggest that human rights institutions can be politicised and weak the interventions in Nepal demonstrate that they can make important contributions to improving human rights practices among states that are persistent violators.⁵¹⁵ UN human rights mechanisms acted as agents of states concerned about the human rights situation in Nepal and as autonomous actors. As agents of states UN human rights mechanisms performed tasks that states were unable to

⁵¹⁵ Rosa Freedman, "The United Nations Human Rights Council: More of the Same?," *Wisconsin Law Journal* 31, no. 2 (2013): 209–48; Alston Philip, "Reconceiving the UN Human Rights Regime: Challenges Confronting the New UN Human Rights Council," June 2006.

carry out themselves by monitoring and reporting on human rights practices. However, they also performed autonomous roles by highlighting specific abuses, prioritising areas for reforms, and shaping the way member states interpreted and responded to the situations in both countries.

UN human rights mechanisms played a critical role at every stage of the process of responding to the human rights crisis. At the height of the human rights crisis, the High Commissioner, OHCHR secretariat, Special Procedures and Treaty Bodies documented and reported abuses and amplified the voices of victims, families, and their allies. High Commissioners Louise Arbour who led OHCHR during the worst of the crisis, played an important role in bringing the situation in Nepal and to the attention of member states. Louise Arbour visited Nepal and directly raised the issue of plans to dismiss the government with King Gyanendra.⁵¹⁶

UN human rights mechanisms also shaped the way member states understood and responded to the crisis. Public reports and statements from UN human rights mechanisms verified facts about the nature, pattern and scale of abuses and provided an authoritative legal classification of those facts. These reports both informed member states and created pressure on them to respond the unfolding crisis. During the early stage of a crisis when a state is denying the nature and scope of abuses, the public reporting by the UN is instrumental in shaping a factual

⁵¹⁶ Human Rights Watch, "Nepal: State of Emergency Deepens Human Rights Crisis," February 1, 2005, <https://www.hrw.org/news/2005/02/01/nepal-state-emergency-deepens-human-rights-crisis>.

narrative. Through its field monitoring and reporting OHCHR made a significant contribution to expanding the space for dissent in Nepal, which created enabling conditions for the negotiated end of the conflict and a broader political transition. UN engagement also played a critical role as at the time of the crisis in Nepal, the insurgency in Iraq in 2005 was dominating global media coverage.

UN reports and recommendations also played a role in shaping the content of advocacy of non-governmental actors and member states. For example, OHCHR's Nepal conflict report brought into sharp focus not just serious human rights abuses, but also international crimes. Constitutional reform had been viewed as long-standing policy prescription to address the root causes of Nepal's conflict. The UN reporting and recommendations, however, also stressed the need for specific human rights reforms. Thus, the UN contributed to shaping and expanding the national reform agenda in Nepal.

Chapter 4: Conclusion

This study sought to answer why persistent human rights violators commit and comply with international human rights law? It examined two instances where UN human rights institutions successfully enlisted the cooperation of rights violating states: Sri Lanka's cooperation with the Council from 2015 to 2019 and the OHCHR's presence in Nepal from 2005 to 2011. Both Nepal and Sri Lanka responded to sustained international pressure and made ambitious human rights commitments. In both cases, the interventions positively impacted the human rights situations. Physical integrity rights and political freedoms improved, and important reforms that strengthened the legal protection of rights were adopted. However, due to capacity constraints, both countries struggled to operationalise many of the reforms adopted effectively. The weakest area of compliance was enforcement; both states failed to successfully carry out criminal investigation and prosecution of human rights violations.

Theoretical contribution

The study confirms how rational calculation of state interests and socialisation can work together to induce commitment.¹ At the height of the human rights crisis, Nepal and Sri Lanka both faced widespread conflict related abuses and severe

¹ Thomas Risse and Stephen Ropp, "Introduction and Overview," in *The Persistent Power of Human Rights From Commitment to Compliance* (New York: Cambridge University Press, 2013), 3–25, 26.

restrictions on political freedoms. The resulting sanctions and chorus of censure diplomatically isolated the two countries, limiting their ability to cooperate in a host of other issue areas. Sri Lanka became reliant on non-western states and lost out on military aid and trading concessions. It also faced delays in getting IMF approvals and struggled to enlist cooperation to host events such as the Commonwealth Heads of Government Meeting in 2013. Nepal, too, faced the prospect of losing out on development and military assistance. The resulting diplomatic isolation cast both countries as ‘pariah states’, a perception that was at odds with how they viewed themselves, which contributed to the decisions by leaders in both countries to change course and make human rights commitments.

It also suggests some conditions under which sanctions and censure will likely produce commitment. Namely, censure and sanctions from an international organisation or a few states alone are unlikely to induce commitment. In both Nepal and Sri Lanka, a united stand from key bilateral partners and UN human rights institutions was required before both countries elected to cooperate with human rights institutions.

Some scholars have questioned whether human rights commitment can improve compliance.² Findings from Nepal and Sri Lanka confirm that commitments can improve compliance with some but not all rights. Compliance requires a series of acts, from refraining from harmful behaviour to enacting, operationalising, and

² Oona Hathaway, “Do Human Rights Treaties Make a Difference?” *The Yale Law Journal* 111 (2001): 1935–2034.

enforcing reforms. Both countries succeeded in refraining from harmful behaviour, improving physical integrity rights and political freedoms, and enacting reforms that strengthened the legal protection of rights. The contexts in which compliance improved in Sri Lanka and Nepal also confirm that commitments made by states transitioning to democracy, or those with the potential to transition, can positively effect compliance.³ The intervention of UN human rights institutions also contributed to the democratic transitions in both countries by helping to expand and sustain the space for dissent.

The improvement in physical integrity rights and political freedoms was the most significant contribution made by the intervention of UN human rights institutions in Nepal and Sri Lanka. Although challenges such as torture in the context of custody remain, these gains have held in both countries despite significant political turbulence.

Beyond compliance, the opening of political space in both countries contributed to the emergence of a new and more diverse set of political actors. Although the many splits, re-alignments, and the emergence of new actors contributed to fragmentation and instability, they also prevented any one political coalition from gaining a strong hold for an extended period, as happened in the past, leading to majoritarian and authoritarian policies.

³ Beth Simmons, *Mobilizing for Human Rights International Law in Domestic Politics* (MA: Harvard University Press, 2012), 360.

This study also contributes to the literature on non-binding and insincere commitments. When Nepal and Sri Lanka made commitments via a Human Rights Council Resolution and an Agreement with OHCHR, both were non-binding commitments. When studying human rights compliance, there is a tendency to prioritise binding agreements such as UN human rights treaties. The findings of this study confirm the important contributions to compliance that non-binding human rights instruments can make.⁴ Second, when King Gyanendra committed to having an OHCHR field office, as his subsequent conduct demonstrated, he was being ‘insincere’. Existing literature has confirmed that even insincere commitments to binding instruments can improve compliance.⁵ This study demonstrates that even insincere, non-binding commitments can improve compliance.

However, once commitment occurs, the limits of rational calculation of state interests to induce compliance become evident. If external actors are to continue to extract costs for non-compliance, their perspective of the developments within a country is critical.⁶ How key bilateral partners view human rights issues can be dependent on both the government of the day and the broader political context.⁷ In Sri Lanka and Nepal, key bilateral partners were keen to welcome and encourage the democratic transitions, even if they were lagging in adopting specific human

⁴ Audrey Comstock, *Committed to Rights UN Human Rights Treaties and Legal Paths for Commitment and Compliance* (UK: Cambridge University Press, 2021), 189.

⁵ Heather Smith-Cannoy, *Insincere Commitments Human Rights Treaties, Abusive States and Citizen Activism* (Georgetown University Press, 2012).

⁶ Rachel Brewster, “Reputation in International Relations and International Law,” in *Interdisciplinary Perspectives on International Law and International Relations The State of the Art* (Cambridge University Press, 2013), 524–44, 536.

⁷ Ibid.

rights reforms. The study's findings suggest that an additional condition can also shape how external actors assess the human rights situation. In both Sri Lanka and Nepal, the audience perceived specific types of non-compliance differently. Egregious human rights violations, such as widespread violations of physical integrity rights and political freedoms or conflict related abuses, could generate condemnation with relative ease. They were also easier to understand and provided a more straightforward basis for moral conscious raising. In contrast, the failure to adopt, operationalise and enforce reforms were harder to monitor and explain and didn't generate the same type of concern or censure.

Preferences of domestic political actors can limit the impact of socialisation mechanisms such as dialogue and argumentation. Political willingness to adopt human rights reforms varied in degrees and depended both on the content of the right and the steps required to enact it. In both Sri Lanka and Nepal, re-democratisation coincided with a willingness to refrain from engaging in harmful behaviour. As a result, physical integrity rights and political freedoms improved.

Domestic elites were also willing to support efforts to strengthen the legal protection of rights. However, the extent to which discursive engagement could induce compliance on more contentious commitments was limited by domestic political instability. For discursive engagements to be effective, domestic actors must be willing and able to participate in dialogue. Nepal had five governments in six years. Sri Lanka had a two headed government driving it in opposing directions and the country was brought to a halt by a constitutional coup late in its term. In

both countries, unstable coalition politics meant that law makers spent much personal energy, time and political capital on resolving political disagreements and ensuring the survival of the coalition. Within this context both the willingness and ability of domestic actors to engage in dialogue and argumentation on contentious human rights reforms was limited.

The study also confirm that capacity constraints can impede compliance.⁸ In other contexts, bureaucratic capacity was determined to have impeded an array of both positive and negative rights.⁹ However, the findings of this study demonstrate that capacity constraints prevented the compliance with some but not all rights. Notably both countries were able to improve compliance with physical integrity rights and political freedoms and strengthen the legal protection of rights. However, capacity constraints directly impeded the operationalisation of reforms.

Socialisation mechanisms such as capacity building can play a role in overcoming capacity constraints.¹⁰ In general, capacity building efforts are absorbed by a weak bureaucracy that remains deeply politicised, inefficient, and lacking in

⁸ Abram Chayes and Antonia Chayes, *The New Sovereignty Compliance with International Regulatory Arrangements* (Cambridge MA: Harvard University Press, 1995), 13-14; Tanja Borzel and Thomas Risse, "Human Rights in Areas of Limited Statehood: The New Agenda," in *The Persistent Power of Human Rights from Commitment to Compliance*, ed. Thomas Risse, Stephen Ropp, and Kathryn Sikkink (UK: Cambridge University Press, 2013), 65; Wade M Cole, "Mind the Gap: State Capacity and the Implementation of Human Rights Treaties" *International Organization* 69, no. 2 (2015): 405-441, 434.

⁹ Borzel and Risse, "Human Rights in Areas of Limited Statehood: The New Agenda," 75,78; Cole, "Mind the Gap: State Capacity and the Implementation of Human Rights Treaties" *International Organization*, 434.

¹⁰ Chayes and Chayes, *The New Sovereignty Compliance with International Regulatory Arrangements*; Borzel and Risse, "Human Rights in Areas of Limited Statehood: The New Agenda," 75,78

professionalism. Small pockets of the bureaucracy absorb assistance to fill a short-term gap, which often doesn't directly contribute to securing rights. Meanwhile, the broader bureaucracy within which any given human rights mandated institution operates remains both resource and knowledge poor. To be effective capacity building efforts need to be tailored interventions that seek to guarantee rights in the short and medium term.

Capacity constraints can also contribute to but may not be determinative of why enforcement of human rights reforms are not enforced. In both Sri Lanka and Nepal, executive interference in the criminal justice process was critical to the lack of progress on judicial remedies. Political elites perceived their survival to be tied to preventing accountability for past human rights violations. To counter these domestic preferences, more sophisticated socialisation efforts may be required.

In Europe and Latin America, even when political will was uneven or absent, more progress was made owing to legal provisions that allowed for victim participation in criminal proceedings, which, over the longer term, sustained the demand for justice and generated prosecutorial momentum.¹¹ The presence of regional institutions also played a critical role in socialising European and Latin American states to accept justice related norms.¹² In other regions, over the longer-term, law

¹¹ Geoff Dancy and Veronica Michel, "Human Rights Enforcement From Below: Private Actors and Prosecutorial Momentum in Latin America and Europe," *International Studies Quarterly* 60 (2016): 173–88. See also Veronica Michel, *Prosecutorial Accountability and Victim's Rights in Latin America* (Cambridge University Press, 2017).

¹² Par Engstrom, *The Inter-American Human Rights System Impact Beyond Compliance* (Palgrave Macmillan, 2019); Ezequiel Gonzales-Ocantos, "Communicative Entrepreneurs: The Case of the Inter-American Court of Human Rights' Dialogue with National Judges," *International Studies*

enforcement and prosecuting authorities were reformed to guarantee their independence from the executive.¹³ In South Asia, there are no regional mechanisms before which victims can seek remedies or that could serve as a mechanism to socialise regional actors around justice norms. Further the scope for victims to participate and initiate domestic criminal proceedings in Nepal and Sri Lanka are limited.¹⁴ Although victims in both countries have relied on strategic litigation invoking the writ jurisdiction of the Supreme Court and Appellate Courts, it has done little to advance criminal proceedings.¹⁵ Although constitutional reforms were adopted in Nepal and Sri Lanka, little was done to ensure the operational independence of law enforcement and prosecuting authorities.

Quarterly 62, no. 4 (2018): 737–50; Eva Brems, “Transitional Justice in the Case Law of the European Court of Human Rights,” *International Journal of Transitional Justice* 5, no. 2 (2011): 282–303; Fionnuala Ni Aoláin, “Transitional Justice and the European Convention on Human Rights” (Geneva Academy, 2017).

¹³ Veronica Michel, “Public Prosecutor’s Offices in Latin America,” in *Routledge Handbook of Law and Society in Latin America* (Routledge, 2019), 205–23.

¹⁴ Nepal didn’t have the right to initiate private prosecutions, see United Nations Office of the High Commissioner for Human Rights, “Nepal Conflict Report,” 2012, 181-2. Sri Lanka has a limited right to initiate and participate in criminal investigations and trials, see International Commission of Jurists, *Authority without Accountability: The Crisis of Impunity in Sri Lanka* (International Commission of Jurists, 2012), 90-91 <https://www.icj.org/wp-content/uploads/2013/01/ICJ-Srilanka-Report.pdf>; Aruni Jayakody, “Uncovering the Secrets of Sri Lanka’s Gravesites,” *Groundviews*, March 15, 2022, <https://groundviews.org/2022/03/15/uncovering-the-secrets-of-sri-lankas-gravesites/>.

¹⁵ United Nations Office of the High Commissioner for Human Rights, “Nepal Conflict Report,” 2012, 184, https://www.ohchr.org/sites/default/files/Documents/Countries/NP/OHCHR_Nepal_Conflict_Report2012.pdf; Raju Prasad Chapagai and Pankaj Kumar Karn, “Accountability for Conflict-Era Human Rights Violations in Nepal: An Appraisal of Strategic Human Rights Litigation,” in *Shifting Horizons of Public International Law*, 2018, 197–219; Mario Gomez, “Mixing Writs With Rights: The Implications for Public Law in Sri Lanka,” *Asian Journal of Comparative Law* 18, no. 2 (March 28, 2023): 253–371; Kishali Pinto-Jayawardena and Jayantha de Almeida Guneratne, *Habeas Corpus in Sri Lanka: Theory and Practice of the Great Writ in Extraordinary Times* (Colombo: Law and Society Trust, 2011), <https://searchlibrary.ohchr.org/record/28679?ln=en>.

UN human rights institutions have been criticised for being weak and ineffective.¹⁶ However, this study finds that they can play an important role in addressing persistent human rights violators. The respective high commissioners, Special Procedures, and OHCHR, through their reporting and public statements, brought the human rights situation to the attention of the international community and shaped reputation for good and behaviour. In doing so they acted as agents of socialisation and imposed costs for non-compliance. As agents of socialisation, they framed the human rights violations not only as a humanitarian concern but also an issue that required a legal response.¹⁷ The UN reports also helped to frame the violations as international crimes. Human rights mechanisms made recommendations on how these violations should be addressed, which created expectations as to what should and should not be included in the domestic reform agenda of each country. They extracted costs for non-compliance, as public reports and statements on non-compliance drew censure and condemnation.

Although international human rights institutions have been criticised for merely being a venue for laundering superpower priorities, the case studies of Nepal and Sri Lanka paint a more complex picture.¹⁸ The ability of both the Council and OHCHR to directly intervene in both countries was impacted by the external politics of member states. The interventions in Sri Lanka and Nepal would not have

¹⁶ Rosa Freedman, "The United Nations Human Rights Council: More of the Same?," *Wisconsin Law Journal* 31, no. 2 (2013): 209–48; Alston Philip, "Reconceiving the UN Human Rights Regime: Challenges Confronting the New UN Human Rights Council," June 2006.

¹⁷ Martha Finnemore and Kathryn Sikkink, "International Norm Dynamics and Political Change," *International Organization* 52, no. 4 (1998): 887–917.

¹⁸ Jack Goldsmith and Eric Posner, *The Limits of International Law* (Oxford University Press, 2007).

been possible without the key bilateral partners adopting a unified response to the human rights crisis in each country. A unified response does not require that member states adopt the same condemnatory response; rather, they must refrain from shielding the country from criticism. However, both Nepal and Sri Lanka also demonstrated that super-power backing is not essential to sustain an intervention by a UN human rights institution in a country. In Nepal, non-governmental actors successfully advocated for an OHCHR field office without the explicit support of India and the US. In Sri Lanka, although the US had led the Council process, its subsequent withdrawal from the Council did not adversely affect the Council's continued focus on Sri Lanka. Further, UN engagement also set an important precedent by demonstrating that India, as a powerful regional actor, could not shield either country from external interventions due to their poor human rights practices.

The UN played an outsized role in both Nepal and Sri Lanka due to the lack of robust regional institutions. South Asia remains the least connected and least integrated region in the world. The South Asian Association for Regional Cooperation, after almost three decades in existence, remains weak without financial resources or a strong institutional bureaucracy. The absence of a common external threat and the lack of trust among the smaller neighbours of India's ambitions has proved to be a stumbling block for developing strong regional institutions.¹⁹ Although a regional human rights mechanism has been proposed on multiple occasions, like other efforts at regional institution building, they have

¹⁹ Kishore Dash, "Dynamics of South Asian Regionalism," in *Routledge Handbook of Asian Regionalism* (UK: Routledge, 2011), 406–19.

failed to take off.²⁰ As a result, South Asia remains the only region in the world without a regional declaration or mechanism on human rights. In other contexts, including in Europe, Latin America, and Africa, regional mechanisms have improved commitment and compliance with human rights norms.²¹ The broader Asian region has been historically ambivalent about international law, particularly international human rights law.²² Given this gap, UN human rights mechanisms have had a significant impact on socialising Nepal and Sri Lanka on international human rights obligations.

Policy implications

The study demonstrates that UN human rights institutions can contribute to improving human rights in countries facing persistent human rights challenges. Through their monitoring and reporting activities UN human rights institutions play a critical role in addressing persistent human rights violators. They raise awareness of violations and set expectations regarding how they should be addressed.

²⁰United Nations High Commissioner for Human Rights, “The Case for a SAARC Regional Human Rights Mechanism,” November 23, 2011, <https://www.ohchr.org/en/statements/2011/11/case-saarc-regional-human-rights-mechanism-statement-united-nations-high>.; Asian Centre for Human Rights and Development, “Regional Human Rights Mechanisms in South Asia Past Efforts and Ways Forward,” 2021, <https://forum-asia.org/report-regional-human-rights-mechanisms-in-south-asia-past-efforts-and-ways-forward/>.

²¹ Andrew Moravcsik, “Explaining International Human Rights Regimes: Liberal Theory and Western Europe,” *European Journal of International Relations* 1, no. 2 (1995): 157–89; Par Engstrom, *The Inter-American Human Rights System Impact Beyond Compliance* (Palgrave Macmillan, 2019); Matthew Davies, *Realising Rights How Regional Organizations Socialize Human Rights* (Oxford: Routledge, 2014).

²² Simon Chesterman, “Asia’s Ambivalence about International Law and Institutions: Past, Present and Futures,” *The European Journal of International Law* 27, no. 4 (2017): 945–78; Hurst Hannum, “Human Rights,” in *The Oxford Handbook of International Law in Asia and the Pacific* (Online: Oxford University Press, 2019); Anthony Langlois, “Asian Regionalism and Human Rights The Case of the ASEAN Intergovernmental Commission on Human Rights,” in *Routledge Handbook of Asian Regionalism*, online (Routledge, 2011).

Engagement by UN human rights institutions can strengthen domestic actors that favour reform and sustain and expand the space for dissent over the long term, contributing to a political transition within a country.

It is important to caution that the UN human rights system is designed for states to assume primary responsibility for protecting human rights and engagement in a country should be viewed as an exceptional measure. However, when there is a human rights crisis, for the Council or OHCHR to successfully engage in a country situation, they require the political support of member states. Often it seems unlikely that the necessary political support will be secured. Building political support for a country specific intervention is a lengthy process, potentially spanning years, and can include unsuccessful efforts. However, even failed efforts can build momentum towards securing the necessary political support. Even if a country is willing to shield another country, including a neighbour, once, it may not be willing to do so a second or a third time. Sustained pressure over time can also induce ‘tactical concessions’ which can later form the basis of human rights commitments. Where there is a successful intervention, it is important that any UN staff operating within the concerned country, especially at a leadership level, have the resources and skill set to navigate a complex and evolving political environment.

Over the long term, to create an enabling environment for the protection of human rights, structural reforms that enhance democratic features of the state and reduce executive overreach are required. In Sri Lanka and Nepal the consolidation of executive power by President Rajapaksa and King Gyanendra enabled the human

rights crisis within each country. International financial institutions such as the IMF and World Bank also make recommendations and impose conditions requiring reforms to ensure the independence and accountability of domestic institutions overseeing fiscal and monetary policy. Both human rights and economic reforms, no matter how technically compliant with international standards, remain vulnerable to executive interference if underlying weaknesses of the system are not addressed. Therefore, to address these challenges, there can be greater coordination between international financial and human rights institutions when making recommendations and engaging in dialogue with national actors. International institutions can draw attention to the structural weaknesses in the domestic legal framework and frame the process of adopting economic and human rights reforms as related. Increasing the number of international actors sending the same message to a broader range of domestic stakeholders, can increase the scope for socialising domestic actors in favour of adopting reforms.

Areas for further research

The present study has focused on the external impact of the work of the Human Rights Council and OHCHR. A further area of research is the internal working of the Council and OHCHR. Like this project, other research has examined patterns of voting before the Council.²³ Studies have also examined the factors contributing to the success or failure of individual Council members in sponsoring resolutions.²⁴

²³ James H. Lebovic and Erik Voeten, "The Politics of Shame: The Condemnation of Country Human Rights Practices in UNHCR," *International Studies Quarterly* 50 (2006): 861–88.

²⁴ Smith Karen, "The European Union at the Human Rights Council: Speaking with One Voice but Having Little Influence," *Journal of European Public Policy* 17, no. 2 (March 2010): 224–41; Susan

However, it would be informative to learn about how negotiations on contentious resolutions are carried out in practice and factors that contribute to the success or failure of resolutions.

This study examined how UN human rights institutions addressed persistent human rights violations in two small states. The findings suggested that although external politics impact human rights institutions, their work is not solely guided by superpower preferences. A more direct way to examine how external politics affect UN human rights institutions is to study how they address human rights violations by major powers. For example, despite opposition from China and a lack of support from the Council, High Commissioner Michelle Bachelet made efforts to address the situation of the Uyghur community in China. Similarly, despite strong pushback from the US, High Commissioner Louise Arbour brought attention to human rights violations arising out of the US led global war on terror. An examination of how UN human rights institutions address human rights violations committed by major powers could shed light on whether and how their work extract costs for non-compliance. In both these cases, the High Commissioner, and the Council (or the Commission) were at odds on how to respond to violations committed by major powers. Thus, it could also shed light on the dynamics that drive the relationship between the High Commissioner and the Council, and how it impacts the former's ability to discharge their mandate.

Glossary

<i>Adivasi</i>	Communities that are referred to as the original inhabitants of Nepal.
<i>Chheteri</i>	A caste group that served as administrators, senior military and government officials.
<i>Dalit</i>	The lowest group in the Hindu caste system, also known as “untouchables”.
<i>Haliyas</i>	Agricultural bonded labourers that work on another person’s land.
<i>Jana Andolan</i>	The people’s movement from 4 th to the 24 th of April 2006, which saw 19 consecutive days of country wide protests, and culminated in the resignation of the King.
<i>Janajati</i>	Communities that are outside the Hindu caste system.
<i>Madhesi</i>	Communities that live in the Terai region of Nepal, the flat plains to the west of Kathmandu.

Bibliography

- Adhikari, Aditya, and Bhaskar Gautam. "Impunity and Political Accountability in Nepal." The Asia Foundation, 2014.
https://nepalconflictreport.ohchr.org/files/docs/2014-02-00_report_taf_eng.pdf.
- Advocacy Forum-Nepal. "Court Issues Suspension Order for Army Officer in Maina Case," 2010. <https://www.advocacyforum.org/news/2010/11/court-issues-suspension-order-for-army-officer-in-maina-case.php>.
- Alston, Phillip, and A. H. H. Weiler. "An 'Ever Closer Union' in Need of a Human Rights Policy: The European Union and Human Rights." Harvard Jean Monnet Working Paper 1/99. Cambridge MA: Harvard Law School, 2000.
- Amarasingham, Amarnath. *Pain, Pride, and Politics: Social Movement Activism and the Sri Lankan Tamil Diaspora in Canada*. Athens: University of Georgia Press, 2015.
- Amnesty International. "Countering Terrorism at the Expense of Human Rights Concerns with Sri Lanka's Counter Terrorism Bill," January 2019.
- . "Nepal Amnesty International Submission to the UN Universal Periodic Review," 2011. https://www.ohchr.org/sites/default/files/lib-docs/HRBodies/UPR/Documents/Session10/NP/AI_AmnestyInternational_eng.pdf.
- . "Nepal Widespread 'Disappearances' in the Context of Armed Conflict," 2003. <https://www.amnesty.org/en/wp-content/uploads/2021/06/asa310452003en.pdf>.
- . "Sri Lanka: The Government Cannot Afford to Fail the Office on Missing Persons," October 21, 2018. <https://www.amnesty.org/en/latest/news/2018/10/sri-lanka-the-government-cannot-afford-to-fail-the-office-on-missing-persons/>.
- . "Sri Lanka: Twenty Years of Make Believe. Sri Lanka's Commissions of Inquiry," June 11, 2009.
- Amnesty International, Human Rights Watch, and International Commission of Jurists. "Re: Persistent Impunity in Nepal," May 24, 2011. <https://www.amnesty.org/en/wp-content/uploads/2021/06/asa310032011en.pdf>.
- Anketell, Niran. "Commentary on the Bill Titled Office on Missing Persons." Colombo, Sri Lanka: South Asian Centre for Legal Studies, June 2016.
- . "The Mirusuvil Case: Why Searching Reform Is Urgent and Necessary." *Groundviews* (blog), July 7, 2015. <https://groundviews.org/2015/07/02/the-mirusuvil-case-why-searching-reform-is-urgent-and-necessary/>.
- Arguirre, Daniel, and Pietropaoli Irene. "Gender Equality, Development and Transitional Justice: The Case of Nepal." *International Journal of Transitional Justice* 2, no. 3 (2008): 345–77.
- Article 19, and Freedom Forum. "Federal Democratic Republic of Nepal Submission to the UN Universal Periodic Review." Accessed April 5, 2023. https://www.ohchr.org/sites/default/files/lib-docs/HRBodies/UPR/Documents/Session10/NP/Article19_eng.pdf.
- Asian Centre for Human Rights and Development. "Regional Human Rights Mechanisms in South Asia Past Efforts and Ways Forward," 2021. <https://forum-asia.org/report-regional-human-rights-mechanisms-in-south-asia-past-efforts-and-ways-forward/>.

- Asian Commission on Human Rights. "Families of the Disappeared in a Legal and Emotional Limbo," February 15, 2012. <https://reliefweb.int/report/nepal/families-disappeared-legal-and-emotional-limbo>.
- Bandara, N. "History and Context of Public Administration in Sri Lanka." In *Public Administration in South Asia: India, Bangladesh and Pakistan*, 454–71. CRC Press, 2013.
- Basak, Cali, Nazila Ghanea, and Benjamin Jones. "Big Promises, Small Gains: Domestic Effects of Human Rights Treaty Ratification in the Member States of the Gulf Cooperation Council." *Human Rights Quarterly* 38, no. 1 (2016): 21–57.
- Basnet, Chudamani. "Debating Civil Society: Nagarik Samaj and Nagarik Discourse in Nepal's People's Movement II." In *Reading Nepali Transitions (2006-2015)*, edited by Pranab Kharel, 37–64. Kathmandu, Nepal: Martin Chautari, 2022.
- Bastians, Dharisha. "Accountability Framework for Lanka's Own Sake: Mangala." *Daily FT*, September 16, 2015. <http://www.ft.lk/article/471161/Accountability-framework-for-Lanka-s-own-sake--Mangala>.
- . "Another Son of Sri Lanka's Former Leader Is Arrested." *The New York Times*, July 11, 2016. <https://www.nytimes.com/2016/07/12/world/asia/sri-lanka-namal-rajapaksa-mahinda-rajapaksa.html>.
- . "Government's Proposed Counter-Terrorism Policy Faces Storm of Criticism." *Daily FT*, November 11, 2016.
- . "Govt. Turns Tables on JO to Pass Office of Missing Persons Law." *Daily Financial Times*, August 12, 2016. <https://www.ft.lk/article/561120/ft>.
- . "Human Rights, Foreign Policy and the Battle for Sri Lanka's Soul." *Daily Financial Times*, September 10, 2015. <https://www.ft.lk/Columnists/human-rights-foreign-policy-and-the-battle-for-sri-lankas-soul/4-468293>.
- . "Invisible Crime, Recurring Nightmare." *The Daily Financial Times*, August 17, 2016. <https://www.ft.lk/columns/invisible-crime-recurring-nightmare/4-562065>.
- . "President Slams Bribery Commission for 'Hauling' Gota and Navy Chiefs to Court." *Daily Financial Times*, October 13, 2016. <https://www.ft.lk/Front-Page/president-slams-bribery-commission-for-hauling-gota-and-navy-chiefs-to-court/44-573581>.
- . "The Emerging Crisis of Cohabitation." *Daily FT*, June 18, 2015. <https://www.ft.lk/article/434465/the-emerging-crisis-of-cohabitation>.
- . "The Long Road from Geneva." *Daily Financial Times*, October 1, 2015. <https://www.ft.lk/Columnists/the-long-road-from-geneva/4-477441>.
- . "The Politics of the 'Missing.'" *Daily Financial Times*, August 10, 2016. <https://www.ft.lk/dharisha-bastians/the-politics-of-the-missing/10476-560777>.
- . "The Siege: Inside 52 Days of Constitutional Crisis in Sri Lanka." In *Constitutional Reform and Crisis in Sri Lanka*, edited by Asanga Welikala, 22–88. Colombo, Sri Lanka: Centre for Policy Alternatives, 2019.
- . "U.S. to Support Sri Lanka Plan to Investigate War Crimes." *The New York Times*, August 26, 2015. <https://www.nytimes.com/2015/08/27/world/asia/united-states-supports-sri-lanka-investigation-of-war-crimes.html>.
- Bastians, Dharisha, and Gardiner Harris. "Sri Lanka to Free Tamils and Return Their Land." *The New York Times*, January 29, 2015.

- <https://www.nytimes.com/2015/01/30/world/asia/sri-lanka-vows-to-free-tamil-detainees-and-return-land.html?searchResultPosition=1>.
- Beech, Matt, and Pete Munce. "The Place of Human Rights in the Foreign Policy of Cameron's Conservatives: Sceptics or Enthusiasts?" *The British Journal of Politics and International Relations* 2, no. 1 (2019): 116–31.
- Berger, Tobias, and Milli Lake. "Human Rights, the Rule of Law and Democracy." In *The Oxford Handbook of Governance and Limited Statehood*, 416–37. UK, 2018.
- Bhandari, Ram Kumar. "Transitional Justice After Nepal's CPA: The Victim's Perspectives." In *Nepal Transition to Peace: A Decade of the Comprehensive Peace Accord: (2006-2016)*, 228–37. Nepal Transition to Peace Institute, 2016.
- Bhandari, S. "The Landscape of Constitution Making in Nepal." In *Self-Determination and Constitution Making in Nepal: Constituent Assembly, Inclusion, & Ethnic Federalism*. Singapore: Springer, 2014.
- Bhaskar, Gautam. "Understanding Madhesi Contentions." In *Reading Nepali Transition (2006-2015)*, edited by Pranab Kharel, 455–88. Kathmandu: Martin Chautari, 2022.
- . "Understanding Madhesi Contentions." In *Reading Nepali Transitions (2006-2015)*, edited by Kharel, Pranab, 65–96. Kathmandu, Nepal: Martin Chautari, 2022.
- Bhattarai, Binod, Mohan Mainali, Jogendra Ghimere, and Akhilesh Upadhyay. "Impunity in Nepal an Exploratory Study." Lalitpur, Nepal, 1999.
- <https://cijnepal.org.np/wp-content/uploads/2018/08/Impunity-in-Nepal.pdf>.
- Bird, Annie R. *US Foreign Policy on Transitional Justice*. New York: Oxford University Press, 2015.
- Bisangkhe, Shiva. "Nepal's Transitional Justice: The Role of Civil Society." *National Judicial Academy Law Journal* 13, no. 195 (2019).
- Bishnu Raj, Upreti. "External Engagement in Nepal's Armed Conflict." In *The Maoist Insurgency in Nepal: Revolution in the Twenty-First Century*, by Mahendra Lawoti and Anup Kumar Pahari, 219–39. Oxon: Routledge, 2010.
- Borzel, Tanja, and Thomas Risse. "Human Rights in Areas of Limited Statehood: The New Agenda." In *The Persistent Power of Human Rights from Commitment to Compliance*, edited by Thomas Risse, Stephen Ropp, and Kathryn Sikkink. UK: Cambridge University Press, 2013.
- Borzel, Tanja, Thomas Risse, and Anke Draude. "Governance in Areas of Limited Statehood: Conceptual Clarifications and Major Contributions of the Handbook." In *The Oxford Handbook of Governance and Limited Statehood*, 3–36. UK: Oxford University Press, 2018.
- Boucher, Richard. "Dismissal of Government and State of Emergency in Nepal." US Department of State, February 1, 2005. <https://2001-2009.state.gov/r/pa/prs/ps/2005/41457.htm>.
- Brems, Eva. "Transitional Justice in the Case Law of the European Court of Human Rights." *International Journal of Transitional Justice* 5, no. 2 (2011): 282–303.
- Brewster, Rachel. "Unpacking the State's Reputation." *Harvard International Law Journal* 50, no. 2 (2009): 231–79.
- Brubaker, Rebecca, and Akhilesh Upadhyay. "Breaking the Mold: Lessons from Sixteen Years of Innovative UN Political Engagement in Nepal." *International*

- Peace Institute, February 2021. <https://www.ipinst.org/2021/02/lessons-from-sixteen-years-of-innovative-un-political-engagement-in-nepal>
- Brysk, Allison. *Global Good Samaritans: Human Rights as Foreign Policy*. Oxford University Press, 2009.
- Bureau of Democracy, Human Rights and Labor, US Department of State. “Nepal,” March 6, 2007. <https://2009-2017.state.gov/j/drl/rls/hrrpt/2006/78873.htm>.
- Bureau of Democracy, Human Rights, and Labour. “Country Reports on Human Rights Practices for 2015.” United States Department of State, 2015. <https://2009-2017.state.gov/documents/organization/253187.pdf>.
- . “Country Reports on Human Rights Practices for 2019.” United States Department of State, 2019. <https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/sri-lanka/>.
- . “Country Reports on Human Rights Practices: Sri Lanka,” 2020. <https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/sri-lanka/>.
- Calderhead, Vincent. “International Commission of Jurists Letter to Minister Rakam Chemjong, Minister for Peace and Reconstruction,” July 16, 2009. <https://www.icj.org/wp-content/uploads/2012/04/Nepal-Recommendation-Letter-to-Peace-Minister-Open-letters-2009.pdf>.
- Cats-Baril, Amanda. “Moving beyond Transitions to Transformation: Interactions between Transitional Justice and Constitution-Building.” Sweden: International IDEA, 2019.
- Centre for Equality and Justice. “Reparations for Women in Sri Lanka: What Stakeholders Say.” Colombo, Sri Lanka: Centre for Equality and Justice. Accessed March 26, 2024. <https://cejsrilanka.org/wp-content/uploads/Annex-19-Reparations-for-Women-in-Sri-Lanka-2.3.pdf>.
- Centre for Human Rights and Development. “Army Sergeant Found Guilty and Sentenced in the Mirusuvil Massacre Case,” 2015. <https://srilankachrd.org/la-mirusuvil.php>.
- Centre for Policy Alternatives. “Accountability and Reparations for Victims of Conflict Related Sexual Violence in Sri Lanka.” Colombo, Sri Lanka, July 2016.
- . “Certificates of Absence: A Practical Step to Address Challenges Faced by the Families of the Disappeared in Sri Lanka,” September 2015.
- . “CPA Concerned with Process to Operationalize the Office on Missing Persons (OMP),” September 17, 2017. <https://www.cpalanka.org/cpa-concerned-with-process-to-operationalize-the-office-on-missing-persons-omp/>.
- . “Land Occupation in the Northern Province: A Commentary on Ground Realities and Recommendations for Reform,” March 2016. <https://www.cpalanka.org/wp-content/uploads/2016/03/Land-Occupation-in-the-Northern-Province.pdf>.
- . “Office on Missing Persons: Outstanding Issues for Consideration to Strengthen Legislation and Post-Enactment Implementation,” July 2016. <https://www.cpalanka.org/wp-content/uploads/2016/08/FINAL-OMP-NOTE-JULY-2016-.pdf>.
- . “Press Release: Importance of Adhering to the Constitutional and Legal Framework in the Establishment and Operationalizing of the Office on Missing Persons (OMP),” July 24, 2017. <https://www.cpalanka.org/press-release->

- [importance-of-adhering-to-the-constitutional-and-legal-framework-in-the-establishment-and-operationalizing-of-the-office-on-missing-persons-omp/](#).
- . “Rethinking the Attorney General’s Department in Sri Lanka: Ideas for Reform.” Colombo, Sri Lanka, 2020. <https://www.cpalanka.org/wp-content/uploads/2020/11/AGs-Dept-Final.pdf>.
- . “Revisiting Ten Emblematic Cases in Sri Lanka: Why Justice Remains Elusive,” 2021. <https://www.cpalanka.org/wp-content/uploads/2021/01/Revisiting-Ten-Emblematic-Cases-in-Sri-Lanka-final-draft-1.pdf>.
- Centre for Poverty Analysis. “Support for Sri Lanka to Design Transitional Justice Mechanisms Phase 1 Final Report,” March 2020. https://www.un.org/peacebuilding/sites/www.un.org.peacebuilding/files/documents/pbf_lka_a-1_final_report_mar18_1.pdf.
- Chand, Bibek. “Sino-Indian Relations and EU Development Policies in Post-Conflict Nepal.” In *European Union Development Policies International Political Economy Series*, 95–110. London: Palgrave Macmillan, 2019.
- Chandraprema, C.A. *Gota’s War: The Crushing of Tamil Tiger Terrorism in Sri Lanka*. Colombo, Sri Lanka, 2012.
- Chapagai, Raju Prasad, and Pankaj Kumar Karn. “Accountability for Conflict-Era Human Rights Violations in Nepal: An Appraisal of Strategic Human Rights Litigation.” In *Shifting Horizons of Public International Law*, 197–219, 2018.
- Chapagain, Kiran, and Jim Yardley. “Nepal Avoids Crisis in Deal to Extend Parliament.” *New York Times*, May 28, 2010. <https://www.nytimes.com/2010/05/29/world/asia/29nepal.html>.
- Chapagain, Raju Prasad. “National Application of International Human Rights Law: A Nepali Perspective.” *National Judicial Academy Law Journal* 2, no. 113 (2009).
- Chautari, Martin. “The Debilitating Dynamics of Nepal’s First Constituent Assembly.” In *Reading Nepali Transition 2006-2015*, edited by Pranab Kharel, 293–316. Kathmandu, Nepal: Martin Chautari, 2022.
- Chesterman, Simon. “Asia’s Ambivalence about International Law and Institutions: Past, Present and Futures.” *The European Journal of International Law* 27, no. 4 (2017): 945–78.
- Chulani, Kodikara. “The Krishanthi Kumaraswamy Case.” In *Contesting Impunity A Symposium on Why Sexual Violence on Women Is Unaddressed*, 2017. https://www.india-seminar.com/2017/700/700_interview_prashanthi_m.htm.
- Committee against Torture. “Concluding Observations on the Fifth Periodic Report of Sri Lanka UN Doc. CAT/C/LKA/CO/5,” January 27, 2017. <https://documents.un.org/doc/undoc/gen/g17/020/09/pdf/g1702009.pdf?token=Ee9AfHfSTeUk5oq33s&fe=true>.
- . “Consideration of Reports Submitted by States Parties under Article 19 of the Convention Fifth Periodic Reports of States Parties Due in 2012 Sri Lanka CAT/C/LKA/5,” December 11, 2015. <https://documents.un.org/doc/undoc/gen/g15/282/69/pdf/g1528269.pdf?token=xcXlqVysV5nloZuodS&fe=true>.
- Committee on Enforced Disappearances. “Guiding Principles for the Search for Disappeared Persons**,” May 8, 2019. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/134/11/PDF/G1913411.pdf?OpenElement>.

- Committee on Foreign Relations United States Senate, One Hundred Eleventh Congress First Session. “Sri Lanka Recharting U.S. Strategy After the War,” December 7, 2009.
- “Comprehensive Peace Accord Signed between Nepal Government and the Communist Party of Nepal (Maoist).” United Nations, November 22, 2006. https://peacemaker.un.org/sites/peacemaker.un.org/files/NP_061122_Comprehensive%20Peace%20Agreement%20between%20the%20Government%20and%20the%20CPN%20%28Maoist%29.pdf.
- Consultation Task Force. “Interim Report The Office on Missing Persons Bill and Issues Concerning the Missing, the Disappeared and the Surrendered,” August 2016. https://groundviews.org/wp-content/uploads/2016/08/SUMMRECOWD_CTF.pdf.
- Consultation Task Force on Reconciliation Mechanisms. “Final Report of the Consultation Task Force on Reconciliation Mechanisms (Volume I),” November 17, 2016. <http://www.omp.gov.lk/storage/app/uploads/public/5fa/938/65a/5fa93865aa0a0196003109.pdf>.
- Council of the European Union. “IMPLEMENTING REGULATION (EU) No 143/2010 OF THE COUNCIL of 15 February 2010 Temporarily Withdrawing the Special Incentive Arrangement for Sustainable Development and Good Governance Provided for under Regulation (EC) No 732/2008 with Respect to the Democratic Socialist Republic of Sri Lanka,” February 15, 2010. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32010R0143>
- Dahal, Shiva Hari. “Democratising the Security Sector in Nepal: Lessons Learned and Challenges Ahead.” In *The Nepali Security Sector: An Almanac*, edited by Bishnu Sapkota. European Union: Brambauer Publishers, 2009.
- Dancy, Geoff, and Veronica Michel. “Human Rights Enforcement From Below: Private Actors and Prosecutorial Momentum in Latin America and Europe.” *International Studies Quarterly* 60 (2016): 173–88.
- Dash, Kishore. “Dynamics of South Asian Regionalism.” In *Routledge Handbook of Asian Regionalism*, 406–19. UK: Routledge, 2011.
- Davies, Matthew. *Realising Rights How Regional Organisations Socialise Human Rights*. Oxford: Routledge, 2014.
- De Alwis, Radheena, and Niran Anketell. “A Hybrid Court Ideas for Sri Lanka.” Colombo, Sri Lanka: South Asian Centre for Legal Studies, 2015.
- “Decisions of the Summit Meeting of the Seven-Party Alliance and the Communist Party of Nepal (Maoist),” November 8, 2006. https://peacemaker.un.org/sites/peacemaker.un.org/files/NP_061108_Decisions%20of%20the%20Summit%20Meeting.pdf.
- “Declaration by the High Representative, Catherine Ashton, on Behalf of the European Union on the Report of the UN Secretary-General Panel of Experts on Accountability in Sri Lanka,” May 10, 2011. https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/cfsp/121899.pdf.
- Denoëux, Guilain, Harry Blair, Ameet Dhakal, Christopher Hobbs, and Mike Calavan. “Democracy, Human Rights and Governance Assessment of Nepal Final Report.” USAID, October 2012. <https://bpb-us->

w2.wpmucdn.com/campuspress.yale.edu/dist/b/405/files/2015/05/Nepal-DRG-Assessment-Report-Oct12final-1gwr9ok.pdf.

- Department of Government Information Sri Lanka. "President Maithripala Sirisena's Address to the Nation at the 67th Independence Day Celebrations." Accessed April 1, 2022. <https://www.news.lk/fetures/item/6044-president-maithripala-sirisena-s-address-to-the-nation-at-the-67th-independence-day-celebrations>.
- DeVotta, Neil. *Linguistic Nationalism, Institutional Decay and Ethnic Conflict in Sri Lanka*. Stanford California: Stanford University Press, 2004.
- Durbach, Andrea. "Human Rights Commissions in Times of Trouble and Transition: The Case of the National Human Rights Commission of Nepal." In *Human Rights in the Asia-Pacific Region*. Oxford: Routledge, 2011.
- . "Human Rights in the Asia-Pacific Region Towards Institution Building." edited by Hitoshi Nasu and Ben Saul, 209–34. London: Routledge, 2011.
- Edwards, Rosalind, and Janet Holland. *What Is Qualitative Interviewing?* New York: Bloomsbury, 2013.
- Engstrom, Par. *The Inter-American Human Rights System Impact Beyond Compliance*. Palgrave Macmillan, 2019.
- Evans, Gareth. "Nepal: Hold the King to His Promises." International Crisis Group, May 9, 2005. <https://www.crisisgroup.org/asia/south-asia/nepal/nepal-hold-king-his-promises>.
- Federal Ministry of European and International Affairs, Republic of Austria. "Declaration by the Presidency on Behalf of the EU on the Developments in Nepal," February 3, 2005. <https://www.bmeia.gv.at/en/the-ministry/press/news/2006/declaration-by-the-presidency-on-behalf-of-the-european-union-concerning-the-current-political-situation-in-nepal-with-alignment-of-third-countries-of-27-april-2006>.
- Fernando, Medhaka. "Mending Walls: Avenues to Restore Trust in Victim and Witness Protection. Reforming Sri Lanka's National Victim and Witness Protection System." South Asian Centre for Legal Studies, June 2017.
- Fernando, Medhaka, and Isabelle Lassee. "Operationalizing the Office on Missing Persons: Manual of Best Practices." South Asian Centre for Legal Studies, November 2016.
- Fonseka, Bhavani, and Luwie Ganeshanthasan. "Hybrid vs Domestic: Myths, Realities and Options for Transitional Justice in Sri Lanka." Centre for Policy Alternatives, January 2016.
- Fonseka, Bhavani, and Luwie Ganeshathasan. "The Case for Foreign Judges in a Judicial Mechanism in Sri Lanka: Counterin Falsehoods." *Groundviews* (blog), March 28, 2019. <https://groundviews.org/2019/03/28/the-case-for-foreign-judges-in-a-judicial-mechanism-in-sri-lanka- countering-falsehoods/>.
- Forsythe, David. *Human Rights in International Relations*. Cambridge University Press, 2000.
- Frerks, Georg, and Toon Dirkz. "Manoeuvring Wars, Rebels and Governments: The EU's Experience in Sri Lanka." *Peacebuilding* 6, no. 3 (2018): 264–80.
- Gamage, Daya. *Tamil Tigers' Debt to America US Foreign-Policy Adventurism and Sri Lanka's Dilemma*. Vijitha Yapa Publications, 2016.
- General Assembly, United Nations. "Report of the United Nations High Commissioner for Human Rights on the Human Rights Situation and the Activities of Her

- Office, Including Technical Cooperation, in Nepal A/61/374,” September 22, 2006. <https://digitallibrary.un.org/record/584705?ln=en&v=pdf>.
- Godwin, Matthew. “The War at Home: The 2009 Toronto Tamil Demonstrations.” *Canadian Foreign Policy Journal* 18, no. 2 (2012): 164–80.
- Gomez, Mario. “Mixing Writs With Rights: The Implications for Public Law in Sri Lanka.” *Asian Journal of Comparative Law* 18, no. 2 (March 28, 2023): 253–371.
- Gonzales-Ocantos, Ezequiel. “Communicative Entrepreneurs: The Case of the Inter-American Court of Human Rights’ Dialogue with National Judges.” *International Studies Quarterly* 62, no. 4 (2018): 737–50.
- Goodhand, Jonathan, and Korf Benedikt. *Conflict and Peacebuilding in Sri Lanka: Caught in the Peace Trap?* Routledge, 2011.
- Goodman, Ryan, and Derek Jinks. “How to Influence States: Socialisation and International Human Rights Law.” *Duke Law Journal* 54, no. 3 (2004): 621–704.
- Goodwin, Matthew. “Winning, Westminster-Style: Tamil Diaspora Interest Group Mobilisation in Canada and the UK.” *Journal of Ethnic and Migration Studies* 44, no. 8 (2018): 1325–40.
- GRM International Ltd. “Access to Security, Justice and Rule of Law in Nepal An Assessment Report.” DFID, DanidaHUGOU and United Nations Country Team, 2012.
- Gross, Joshua. “Proscription Problems: The Practical Implications of Terrorist Lists on Diplomacy and Peacebuilding in Nepal.” *Praxis* XXVI (2011): 38–59.
- Groundviews. “Excerpts from an Interview with the Chairperson of the Consultation Task Force for Reconciliation Mechanisms (CTF) Manouri Muttetuwegama on Their Recently Released Report.” *Groundviews*, January 1, 2017. <https://groundviews.org/2017/01/17/interview-deconstructing-the-ctf-report/>.
- Groundviews. “UPDATED: Flip-Flopping on Accountability – A Timeline,” March 27, 2017. <http://groundviews.org/2017/03/27/updated-flip-flopping-on-accountability-a-timeline/>.
- . “Updated: Road to OMP Timeline.” *Groundviews* (blog), February 28, 2017. <https://groundviews.org/2017/02/28/updated-road-to-omp-timeline/>.
- Gunaratna, Rohan. *Indian Intervention in Sri Lanka; The Role of India’s Intelligence Agencies*. South Asian Network on Conflict Research, 1993.
- . *Sri Lanka a Lost Revolution? The Inside Story of the JVP*. Institute of Fundamental Studies, 1990.
- Gunatilleke, Gehan. “Does Sri Lanka’s Enforced Disappearance Act Apply to the Past?” *Sunday Observer*, September 9, 2018. <https://www.sundayobserver.lk/2018/09/09/opinion/does-sri-lanka%E2%80%99s-enforced-disappearance-act-apply-past>.
- . “Enforced Disappearances and Torture Act of Sri Lanka: Extradition Explained,” September 26, 2017. <https://srilankabrief.org/enforced-disappearance-bill-torture-act-of-sri-lanka-extradition-explained/> 1/5.
- . “Enforced Disappearances in Sri Lanka: Past, Present and Future.” *Sunday Observer*, August 26, 2018. <http://www.dailymirror.lk/article/Sri-Lanka-will-be-submitted-to-jurisdiction-of-ICC-132608.html>.
- . “GSP+: A Revaluation of Benefits.” *The Bar Association Law Journal* XXII, no. 112 (2016).

- Guyot, Lola. "From Arms to Politics The New Struggle of the Tamil Diaspora," 2017. <https://noria-research.com/from-arms-to-politics-the-new-struggle-of-the-tamil-diaspora/>.
- Hachhethu, Krishna. "The European Union's Role in Democracy Building in Nepal." Sweden: International IDEA, 2009.
- Hachhethu, Krishna, and David Gellner. *Nepal Trajectories of Democracy and Restructuring of the State*. London: Routledge, 2010.
- Hadjigeorgiou, Nasia. "The Committee on Missing Persons in Cyprus: A Humanitarian or Reconciliation-Promoting Institution?" *Opinio Juris* (blog), December 23, 2020. <http://opiniojuris.org/2020/12/23/the-committee-on-missing-persons-in-cyprus-a-humanitarian-or-reconciliation-promoting-institution/>.
- Hafner-Burton, Emilie, Edward Mansfield, and Jon C.W. Pevehouse. "Human Rights Institutions, Sovereignty Costs and Democratization." *British Journal of Political Science* 45 (2015.): 1–27.
- Hafner-Burton, Emilie, and Kiyoteru Tsutsui. "Human Rights in a Globalizing World: The Paradox of Empty Promises." *American Journal of Sociology* 110, no. 5 (March 2005): 1373–1411.
- Harrington, Joanna. "Canada and the United Nations Human Rights Council: Dissent and Division." *University of New Brunswick Law Journal* 60 (2009): 78–115.
- Harvard International Review. "The Sri Lankan Silk Road," November 30, 2012. <http://hir.harvard.edu/youth-on-firethe-sri-lankan-silk-road/>.
- Hazan, Luciano, Mary Lawlor, and Fabian Salvioli. "Letter to President of Sri Lanka," November 17, 2021. <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26789>.
- Health Sector Reform Unit, Ministry of Health and Population. "Second Long Term Health Plan 1997-2017 Perspective Plan for Health Sector Development," June 2007. https://nepalindata.com/media/resources/items/20/bSecond_Long_Term_Health_Plan-2.pdf.
- His Majesty's Government of Nepal, Ministry of Women, Children and Social Welfare, Central Child Welfare Board. "Ten Year National Plan of Action (for Children) 2004/2005 to 2014/205," 2004. <http://www.ccwb.gov.np/uploads/userfiles/resources/Nepali/other/National%20Plan%20of%20Action.pdf>.
- His Majesty's Government, Office of the Prime Minister and Council of Ministers. "National Human Rights Action Plan 2004-2008." OHCHR, 2004. https://www.ohchr.org/sites/default/files/Documents/Issues/NHRA/Nepal_NHRA_P.pdf.
- Hizbullah, Hejaaz. "Changes to the Structure of Law Enforcement and the Administration of Justice by the Nineteenth Amendment." In *The Nineteenth Amendment to the Constitution Content and Context*, 220–27. Colombo, Sri Lanka: Centre for Policy Alternatives, 2016.
- Hovell, Devika. "The 'Mistrial' of Kumar Lama: Problematizing Universal Jurisdiction." *EJIL: Talk!* (blog), April 6, 2017. <https://www.ejiltalk.org/the-mistrial-of-kumar-lama-problematizing-universal-jurisdiction/>.

- Howen, Nicholas. "Letter to the Speaker of the Legislature-Parliament from the Secretary-General International Commission of Jurists Regarding Interim Constitution," February 11, 2007. <https://www.icj.org/wp-content/uploads/2012/04/Nepal-comments-on-Constitution-open-letter-2007-eng.pdf>.
- Human Rights Council Working Group of the Universal Periodic Review. "National Report Submitted in Accordance with Paragraph 5 of the Annex to the Human Rights Council Resolution 16/21* Sri Lanka A/HRC/WG.6/28/LKA/1," August 24, 2017. <https://digitallibrary.un.org/record/1305336?ln=en&v=pdf>.
- Human Rights Watch. "Between a Rock and a Hard Place: Civilians Struggle to Survive in Nepal's Civil War," October 2004. <https://www.hrw.org/report/2004/10/06/between-rock-and-hard-place/civilians-struggle-survive-nepals-civil-war>.
- . "Joint Statement: Sri Lanka's Flawed Plans for a 'Truth Commission,'" September 4, 2023. <https://www.hrw.org/news/2023/09/04/joint-statement-sri-lankas-flawed-plans-truth-commission>.
- . "Locked Up Without Evidence Abuses under Sri Lanka's Prevention of Terrorism Act," 2018. <https://www.hrw.org/report/2018/01/29/locked-without-evidence/abuses-under-sri-lankas-prevention-terrorism-act#:~:text=Prevention%20of%20Terrorism%20Act,-The%20Prevention%20of&text=The%20PTA%20allows%20arrests%20without,held%20without%20charge%20for%20years>.
- . "Nepal: Human Rights Concerns for the 61st Session of the U.N. Commission on Human Rights," March 10, 2005. <https://www.hrw.org/news/2005/03/10/nepal-human-rights-concerns-61st-session-un-commission-human-rights>.
- . "Nepal: Prosecute, Don't Promote, Notorious Army Officer," July 22, 2012. <https://www.hrw.org/news/2012/07/22/nepal-prosecute-dont-promote-notorious-army-officer>.
- . "Nepal: State of Emergency Deepens Human Rights Crisis," February 1, 2005. <https://www.hrw.org/news/2005/02/01/nepal-state-emergency-deepens-human-rights-crisis>.
- . "No Law, No Justice, No State for Victims the Culture of Impunity in Post Conflict Nepal," 2020. <https://www.hrw.org/report/2020/11/20/no-law-no-justice-no-state-victims/culture-impunity-post-conflict-nepal#:~:text=The%20Nepali%20criminal%20justice%20system%20has%20not%20only%20failed%20to,the%20courts%20or%20the%20police>.
- . "Open Wounds and Mounting Dangers Blocking Accountability for Grave Abuses in Sri Lanka," 2021. <https://www.hrw.org/report/2021/02/01/open-wounds-and-mounting-dangers/blocking-accountability-grave-abuses-sri-lanka>.
- . "Recurring Nightmare State Responsibility for 'Disappearances' and Abductions in Sri Lanka," March 2008. <https://www.hrw.org/sites/default/files/reports/srilanka0308web.pdf>.
- . "Sri Lanka: Adopt International Inquiry for Aid Worker Killings." Human Rights Watch, August 3, 2009. <https://www.hrw.org/news/2009/08/03/sri-lanka-adopt-international-inquiry-aid-worker-killings>.

- . “Sri Lanka Draft Counter Terrorism Act of 2018 Human Rights Watch Submission to Parliament,” October 19, 2018.
- . “Sri Lanka: Military Conference to Whitewash War Crimes.” Accessed August 2, 2023. <https://www.hrw.org/news/2011/05/23/sri-lanka-military-conference-whitewash-war-crimes>.
- . “Sri Lanka: No Justice for ‘Trinco 5’ Magistrate Acquits 13 Police for ‘Lack of Evidence,’” July 8, 2015. <https://www.hrw.org/news/2019/07/08/sri-lanka-no-justice-trinco-5>.
- . “UK: Army Chief’s Visit to Nepal Should Target Impunity,” November 14, 2012. <https://www.hrw.org/news/2012/11/14/uk-army-chiefs-visit-nepal-should-target-impunity>.
- . “Why Can’t We Go Home? Military Occupation of Land in Sri Lanka,” 2018. <https://www.hrw.org/report/2018/10/09/why-cant-we-go-home/military-occupation-land-sri-lanka>.
- Human Rights Watch. “Sri Lanka: New Evidence of Wartime Abuses.” Human Rights Watch, May 20, 2010. <https://www.hrw.org/news/2010/05/20/sri-lanka-new-evidence-wartime-abuses>.
- Human Rights Watch, Accountability Watch Committee, Amnesty International, Asian Federation Against Involuntary Disappearances, International Centre for Transitional Justice, International Commission of Jurists, and Informal Sector Service Centre. “Memorandum on the Disappearances of Persons (Crime and Punishment) Bill,” August 31, 2009. <https://www.hrw.org/news/2009/08/31/nepal-joint-memorandum-disappearances-persons-crime-and-punishment-bill>.
- Human Rights Watch, and Advocacy Forum. “Waiting for Justice Unpunished Crimes from Nepal’s Armed Conflict.” 2008. <https://www.hrw.org/report/2008/09/11/waiting-justice/unpunished-crimes-nepals-armed-conflict#:~:text=During%20the%20armed%20conflict%2C%20the,powerless%20to%20investigate%20their%20superiors>.
- Human Rights Watch, Amnesty International, Advocacy Forum, and International Commission of Jurists. “Re: Accountability for Human Rights and Concerns over Proposed Withdrawals and Amnesties,” September 2, 2011. <https://www.amnesty.org/es/documents/asa31/009/2011/en/>.
- Hutt, Michael, ed. *Himalayan People’s War Nepal’s Maoist Rebellion*. Bloomington: Indiana University Press, 2004.
- Hyndman, Jennifer. “Aid, Conflict and Migration: The Canada-Sri Lanka Connection.” *The Canadian Geographer* 47, no. 3 (2003): 251–68.
- Inseconline. “Naina Kala Thapa, Chairperson of the National Women’s Commission.” Accessed August 8, 2023. <https://inseconline.org/en/interview/naina-kala-thapachairperson-of-the-national-womens-commission/>.
- Internal Review Panel. “Report of the Secretary-General’s Internal Review Panel of United Nations Action in Sri Lanka.” United Nations, 2012.
- . “Report of the Secretary-General’s Internal Review Panel on United Nations Action in Sri Lanka,” November 2012. <https://digitallibrary.un.org/record/737299?ln=en>.

- International Commission of Jurists. *Authority without Accountability: The Crisis of Impunity in Sri Lanka*. International Commission of Jurists, 2012. <https://www.icj.org/wp-content/uploads/2013/01/ICJ-Srilanka-Report.pdf>.
- . “Authority without Accountability: The Struggle for Justice in Nepal,” 2013. <https://icj2.wpenginepowered.com/wp-content/uploads/2013/10/ICJ-AUTHORITY-WITHOUT-ACCOUNTABILITY-final-1.pdf>.
- . “Commissions of Inquiry in Nepal: Denying Remedies, Entrenching Impunity,” 2012. <https://www.icj.org/wp-content/uploads/2012/06/Nepal-Commissions-of-Inquiry-thematic-report-2012.pdf>.
- . “International Commission of Jurists Submission to the Universal Periodic Review of Nepal,” July 2010. https://www.ohchr.org/sites/default/files/lib-docs/HRBodies/UPR/Documents/Session10/NP/ICJ_InternationalCommissionofJurists_eng.pdf.
- . “Nepal: ICJ Urges Government to Ensure ‘High Level Commission of Inquiry on Disappeared Citizens’ Meets International Standards and Complies with Supreme Court Order,” July 16, 2007. <https://icj2.wpenginepowered.com/wp-content/uploads/2012/04/Nepal-Inquiry-Disappeared-Citizens-Press-releases-2007.pdf>.
- . “Nepal Recommendations for Amendments to the Draft Army Act.” Kathmandu, Nepal, September 2006. <https://www.icj.org/wp-content/uploads/2012/04/Nepal-amendments-draft-army-act-report-2006.pdf>.
- . “Sri Lanka: Newly Adopted 20th Amendment to the Constitution Is Blow to the Rule of Law,” October 27, 2020. <https://www.icj.org/sri-lanka-newly-adopted-20th-amendment-to-the-constitution-is-blow-to-the-rule-of-law/>.
- International Crisis Group. “After Sri Lanka’s Easter Bombings: Reducing Risks of Future Violence Asia Report No 302.” Colombo/ Brussels, September 27, 2019. <https://www.crisisgroup.org/asia/south-asia/sri-lanka/302-after-sri-lankas-easter-bombings-reducing-risks-future-violence>.
- . “Nepal Dealing with a Human Rights Crisis Asia Report No 94.” Kathmandu/Brussels, March 24, 2005. <https://icg-prod.s3.amazonaws.com/94-nepal-dealing-with-a-human-rights-crisis.pdf>.
- . “Nepal: Electing Chaos Asia Report No 111.” Kathmandu/Brussels, January 31, 2006. <https://www.crisisgroup.org/asia/south-asia/nepal/nepal-electing-chaos>.
- . “Nepal: From People Power to Peace? Asia Report No 115.” Brussels, May 10, 2006. <https://www.crisisgroup.org/asia/south-asia/nepal/nepal-people-power-peace>.
- . “Nepal: From Two Armies to One Asia Report No 211.” Kathmandu/Brussels, August 18, 2011. <https://icg-prod.s3.amazonaws.com/211-nepal-from-two-armies-to-one.pdf>.
- . “Nepal: Identity Politics and Federalism.” Kathmandu/Brussels, January 13, 2011. <https://icg-prod.s3.amazonaws.com/199-nepal-identity-politics-and-federalism.pdf>.
- . “Nepal: Peace and Justice Asia Report No 184.” Kathmandu/Brussels, January 14, 2010. <https://icg-prod.s3.amazonaws.com/184-nepal-peace-and-justice.pdf>.

- . “Nepal’s Divisive New Constitution: An Existential Crisis Asia Report No 276,” April 4, 2016. <https://icg-prod.s3.amazonaws.com/276-nepal-s-divisive-new-constitution-an-existential-crisis.pdf>.
- . “Nepal’s Election: A Peaceful Revolution? Asia Report No 155.” Kathmandu/Brussels, July 3, 2008. <https://icg-prod.s3.amazonaws.com/155-nepal-s-election-a-peaceful-revolution.pdf>.
- . “Nepal’s Future: In Whose Hands? Asia Report No 173.” Kathmandu/Brussels, August 13, 2009. <https://icg-prod.s3.amazonaws.com/173-nepal-s-future-in-whose-hands.pdf>.
- . “Nepal’s Peace Agreement: Making It Work Asia Report No 126.” Kathmandu/Brussels, December 15, 2006. <https://icg-prod.s3.amazonaws.com/126-nepal-s-peace-agreement-making-it-work.pdf>.
- . “Nepal’s Royal Coup: Making a Bad Situation Worse Asia Report No 91,” February 9, 2005. https://icg-prod.s3.amazonaws.com/91-nepal-s-royal-coup-making-a-bad-situation-worse_0.pdf.
- . “Sri Lanka Between Elections Asia Report No. 272.” Colombo/ Brussels, August 12, 2015. <https://www.crisisgroup.org/asia/south-asia/sri-lanka/sri-lanka-between-elections>.
- . “Sri Lanka: Stepping Back from a Constitutional Crisis.” Brussels, October 31, 2018. https://icg-prod.s3.amazonaws.com/B152-sri-lanka-stepping-back-from-a-constitutional-crisis_0.pdf.
- . “Sri Lanka’s Transition to Nowhere.” Asia Report. Brussels Belgium, May 16, 2017. <https://www.crisisgroup.org/asia/south-asia/sri-lanka/286-sri-lanka-s-transition-nowhere>.
- . “Towards a Lasting Peace in Nepal: The Constitutional Issues Asia Report No 99.” Kathmandu/Brussels, June 15, 2005. <https://icg-prod.s3.amazonaws.com/99-towards-a-lasting-peace-in-nepal-the-constitutional-issues.pdf>.
- . “War Crimes in Sri Lanka.” Brussels, May 17, 2010. <https://www.crisisgroup.org/asia/south-asia/sri-lanka/war-crimes-sri-lanka>.
- International Truth and Justice Project. “ITJP: Is Sri Lanka Undermining the Office of Missing Persons?” Ilankai Tamil Sangam, September 24, 2018. <https://sangam.org/sri-lanka-undermining-office-missing-persons/>.
- . “Press Release: Is the Sri Lankan Government Serious about Its Office on Missing Persons?,” September 24, 2018. <https://itjpsl.com/assets/press/24-September-2018-OMP-cabinet-committee.pdf>.
- . “Putting the Wolf to Guard the Sheep Sri Lanka’s Witness Protection Authority,” February 13, 2017. <https://sangam.org/wp-content/uploads/2017/02/ITJP-Sri-Lanka-Witness-Protection-Report.pdf>.
- . “The Sri Lankan Navy: A Collective Blindeye,” October 2019. https://www.itjpsl.com/assets/press/ITJP_navy_reportfinal-2-SINGLES.pdf.
- International Truth and Justice Project, and Journalists for Democracy in Sri Lanka. “Continuing Crimes – Matale to Mullivaikkal,” December 14, 2020. <https://itjpsl.com/assets/Final-OMP-Press-release-4-December-2020-copy.pdf>.
- Jacob, Happymon. “Putting the Periphery at the Centre Indian State’s Role in Foreign Policy,” October 2016. https://carnegieendowment.org/files/CP_282_Jacob_States_Roles_Final.pdf.

- Jayakody, Aruni. "The Process of Constitutional Reform January to May 2015." In *The Nineteenth Amendment to the Constitution: Content and Context*, 33–53. Colombo, Sri Lanka: Centre for Policy Alternatives, 2016.
- Jayasinghe, Pasan, Peter Reid, and Asanga Welikala. *PARLIAMENT, Law, History and Practice*. Centre for Policy Alternatives, 2018.
- Jeffrey, Renee. "Nepal's Truth and Reconciliation Commission Limp on." Lowy Institute, February 12, 2019. <https://www.lowyinstitute.org/the-interpreter/nepal-s-truth-reconciliation-commission-limps>.
- Jegatheeswaran, Dharsha. "Civil Security Department The Deep Militarisation of the Vanni." Adayaalam Centre for Policy Research, 2017. <https://adayaalam.org/wp-content/uploads/2018/01/ACPR-Report-Civil-Security-Department-The-Deep-Militarisation-of-the-Vanni-.pdf>.
- Jegatheeswaran, Dharsha, and Mario Arulthas. "Normalising the Abnormal: The Militarisation of Mullaitivu." Adayaalam Centre for Policy Research and People for Equality and Relief in Sri Lanka, 2017. <https://adayaalam.org/mapping-militarisation-in-mullaitivu/#:~:text=The%20full%20report%20released%20as,military%20structures%20and%20Buddhist%20viharas>.
- Jelena, Subotic. "Bargaining Justice: A Theory of Transitional Justice." In *Transitional Justice Theories*, edited by Susanne Buckley-Zistel, Teresa Koloma Beck, Christian Braun, and Friederike Mieth. Routledge, 2013.
- Jha, Prashanth. "A Nepali Perspective on International Involvement in Nepal." In *Nepal in Transition From People's War to Fragile Peace*, edited by Sebastian von Einsiedel, David Malone, and Suman Pradhan, 332–60. New York: Cambridge University Press, 2012.
- . *Battles of the New Republic*. New Delhi: Aleph Book Company, 2014.
- Kaplan, Robert D. *Monsoon The Indian Ocean and the Future of American Power*. New York: Random House Trade Paperbacks, 2010.
- Karen, Smith. "The European Union at the Human Rights Council: Speaking with One Voice but Having Little Influence." *Journal of European Public Policy* 17, no. 2 (March 2010): 224–41.
- Kisan, Yam Bahadur. "Federalisation and the Dalits." In *Reading Nepali Transition (2006-2015)*, edited by Pranab Kharel, 237–60. Kathmandu: Martin Chautari, 2022.
- Koremenos, Barbra. "Institutionalism and International Law." In *Interdisciplinary Perspectives on International Law and International Relations The State of the Art*, edited by Jeffrey Dunoff and Mark Pollack, 59–82. New York: Cambridge University Press, 2013.
- Kunwar, Tek Narayan. "The Role of the Judiciary and Accountability Measures for Violations of Human Rights in Nepal." *National Judicial Academy Law Journal* 4, no. 71 (2010).
- Lake, Milli. "Organizing Hypocrisy: Providing Legal Accountability for Human Rights Violations in Areas of Limited Statehood." *International Quarterly* 58, no. 3 (2014): 515–26.
- Lakshman, Narayan. "Top Official Denies U.S. Toned down UNHRC Resolution at India's Behest." *The Hindu*, March 28, 2013, sec. NATIONAL.

<http://global.factiva.com/redir/default.aspx?P=sa&an=THINDU0020130328e93s00039&cat=a&ep=ASE>.

- Landman, Todd. "Comparative Politics and Human Rights." *Human Rights Quarterly* 24 (2002): 890–923.
- . "Measuring Human Rights: Principle, Practice and Policy." *Human Rights Quarterly* 26 (2004): 906–31.
- . "Political Science of Human Rights." *British Journal of Political Science* 35, no. 3 (July 2005): 549–72.
- Langan II, Richard, Indu Tulhadhar, and Roshani Poydal. "Outcome Evaluation of UNDP Nepal Access to Justice and Human Rights 2001-2010." UNDP Nepal, November 29, 2010. <https://erc.undp.org/evaluation/documents/download/4507>.
- Langlois, Anthony. "Asian Regionalism and Human Rights The Case of the ASEAN Intergovernmental Commission on Human Rights." In *Routledge Handbook of Asian Regionalism*, Online. Routledge, 2011.
- Large, Judith. *Push Back Sri Lanka's Dance with Global Governance*. London: Zed Books, 2016.
- Lasee, Isabelle. "Post-War Reforms in Sri Lanka: The Need to Tie Minority Demands to a Rule of Law Discourse." *Indian Law Review* 7 (2023): 201–17.
- . "The Sri Lankan Office on Missing Persons: Truth and Justice in Tandem?" *International Review of the Red Cross* 99, no. 2 (2017): 619–39.
- Lawoti, Mahendra. "Ethnic Politics and the Building of an Inclusive State." In *Nepal in Transition From People's War to Fragile Peace*, edited by David Malone, Suman Pradhan, and Sebastian von Einsiedel, 129–54. New York: Cambridge University Press, 2012.
- Lawoti, Mahendra, and Anup Kumar Pahari. *The Maoist Insurgency in Nepal Revolution in the Twenty-First Century*. London: Routledge, 2009.
- Lui, Andrew. *Why Canada Cares: Human Rights and Foreign Policy in Theory and Practice*. Canada: McGill-Queen's University Press, 2012.
- Lynch, Moira. "Human Rights Prosecutions and Institutional Continuity in Sri Lanka." In *Human Rights Prosecutions in Democracies at War*, 35–71. Switzerland: Palgrave Macmillan, 2019.
- Macdonald, Anna. "Somehow This Whole Process Became So Artificial: Exploring the Transitional Justice Implementation Gap in Uganda." *International Journal of Transitional Justice*, 2019, 1–24.
- Mahony, Liam, Roger Nash, and Indu Taladhar. "Evaluation of the Work of OHCHR in Nepal." Fieldview Solutions, November 12, 2010. https://www.fieldviewsolutions.org/fv-publications/Evaluation_of_the_work_of_OHCHR_in_Nepal.pdf.
- Malagodi, Mara. "Nepal's Most Towering Judge: The Honourable Kalyan Shrestha." In *Towering Judges A Comparative Study of Constitutional Judges*, 155–73. New York: Cambridge University Press, 2021.
- Manandhar, Tri Ratna. "Nepal: From Constitutional Monarchy to a Republican State (1990-2008)." *Journal of International Studies* 10 (2014): 95–109.
- Martin, Ian. "Opportunities Lot on the Path to Army Integration in Nepal." *European Bulletin of Himalayan Research* 37 (2010): 117–25.
- . "The United Nations and Support to Nepal's Peace Process." In *Nepal in Transition From People's War to Fragile Peace*, edited by Sebastian von

- Einsiedel, David Malone, and Suman Pradhan, 201–32. New York: Cambridge University Press, 2012.
- Menon, Shiv Shankar. *Choices Inside the Making of India's Foreign Policy*. Washington DC: Brookings Institution Press, (2016).
- Menz, Christian. *Explaining Croatia's (Non) Compliance with EU Conditionality on ICTY-Cooperation Do External Incentives Make the Difference?* Hamburg: Anchor Academic Publishing, 2013.
- Michel, Veronica. *Prosecutorial Accountability and Victims' Rights in Latin America*. UK: Cambridge University Press, 2018.
- . "Public Prosecutor's Offices in Latin America." In *Routledge Handbook of Law and Society in Latin America*, 205–23. Routledge, 2019.
- Miklian, Jason. "Nepal – The (Flawed) View from the United States." *Strategic Analysis* 32, no. 3 (May 3, 2008): 349–57.
- Mitchell, Neil, and James McCormick. "Economic and Political Explanations of Human Rights Violations." *World Politics* 40 (1988): 476–98.
- Moore, Mick. "Thoroughly Modern Revolutionaries: The JVP in Sri Lanka." *Modern Asian Studies* 27, no. 3 (2008): 593–642.
- Moravcsik, Andrew. "Explaining International Human Rights Regimes: Liberal Theory and Western Europe." *European Journal of International Relations* 1, no. 2 (1995): 157–89.
- Morphet, Sally. "British Foreign Policy and Human Rights: From Low to High Politics." In *Human Rights and Comparative Foreign Policy: Foundations of Peace*, 79–102. United Nations University, 2000.
- Muni, D.S. "Bringing Maoists down from the Hills: India's Role." In *Nepal in Transition From People's War to Fragile Peace*, edited by Sebastian von Einsiedel, David Malone, and Suman Pradhan, 313–32. New York: Cambridge University Press, 2012.
- . "India's Tamil Politics and the Sri Lankan Ethnic Conflict." *Institute of South Asian Studies Brief* 86 (November 6, 2008). <https://www.files.ethz.ch/isn/93801/87.pdf>.
- Namini, Wijedasa. "Victims and Witnesses: No Protection, but Persecution." *The Sunday Times*, July 31, 2016. <http://www.sundaytimes.lk/160731/news/victims-and-witnesses-no-protection-but-persecution-202919.html>.
- National Human Rights Commission of Nepal, National Women Commission of Nepal, and National Dalit Commission of Nepal. "The Report of the NHRI of Nepal on the UPR Processes," July 5, 2010. https://www.ohchr.org/sites/default/files/lib-docs/HRBodies/UPR/Documents/Session10/NP/NationalInstitutions_JointSubmission_eng.pdf.
- National Human Rights Commission of Sri Lanka. "Annual Report," 2016. <https://www.hrcsl.lk/wp-content/uploads/2023/06/Annual-Report-2016-English.pdf>
- . "Annual Report," 2019. <https://www.hrcsl.lk/wp-content/uploads/2020/01/Annual-Report-2019.pdf>
- National Judicial Academy Nepal. "Study on the Execution Status of Supreme Court and Appellate Court Orders/ Judgments Relating to Transitional Justice," 2016.

- “Nepal Human Rights Year Book New Roadmap and Challenges of Transition (English Edition).” Kathmandu, Nepal: Informal Sector Service Centre, 2007.
- “Nepal NGO Coalition Submission to the United Nations Universal Periodic Review,” July 2010. https://www.ohchr.org/sites/default/files/lib-docs/HRBodies/UPR/Documents/Session10/NP/NGOCoalitions_JointSubmission-eng.pdf.
- Nepal UN Country Team. “Joint UN Submission for the UN Compilation Report: United Nations Country Team (UNCT) Nepal Report for the Universal Periodic Review- Nepal- Tenth Session, 24 January – 4 February 2011,” 2010. https://www.ohchr.org/sites/default/files/lib-docs/HRBodies/UPR/Documents/Session10/NP/UNCT_UnitedNationsCountryTeam-eng.pdf.
- New Democratic Front. “Manifesto A Compassionate Maithri Governance A Stable Country,” 2014.
- Ni Aolaian, Fionnuala. “Transitional Justice and the European Convention on Human Rights.” Geneva Academy, 2017.
- Nielsen, Richard, and Beth Simmons. “Rewards for Ratification: Payoffs for Participating in the International Human Rights Regime?” *International Studies Quarterly* 59, no. 2 (May 27, 2015): 197–208.
- Niti Foundation, and Social Science Baha. “Why Nepal’s ‘Other’ Commissions Matter for Justice and Inclusion Strengthening Constitutionalism in Nepal,” 2022. <https://soscbaha.org/wp-content/uploads/2022/07/strengthening-constitutionalism-in-nepal.pdf>.
- Norris, John. “The Nepal Problem.” International Crisis Group, May 23, 2005. <https://www.crisisgroup.org/asia/south-asia/nepal/nepal-problem>.
- Nossel, Susan. “Working Paper: Advancing Human Rights in the UN System.” Council on Foreign Relations, 2012. https://cdn.cfr.org/sites/default/files/pdf/2012/05/IIGG_WorkingPaper8.pdf.
- Office for Reparations Sri Lanka. “Annual Report,” 2019. <https://drive.google.com/file/d/1SLovETbFJhiCrWsmcf59ucH1m9o6-RMB/view>.
- . “Assistance to the Victims Due to Political Violence and Civil Unrest.” Accessed March 21, 2021. https://reparations.gov.lk/web/index.php?option=com_content&view=article&id=90:assistance-to-the-victims-due-to-political-violence-and-civil-unrest&catid=8&Itemid=257&lang=en.
- Office of the High Commissioner for Human Rights. “Report of the Office of the High Commissioner for Human Rights Investigation on Sri Lanka A/HRC/30/CRP.2.” United Nations Human Rights Council, 2015. <https://www.ohchr.org/en/hr-bodies/hrc/oisl>.
- Office of the High Commissioner of Human Rights in Nepal. “Investigating Allegations of Extra-Judicial Killings in the Terai: OHCHR-Nepal Summary of Concerns,” 2010. <https://nepal.ohchr.org/en/resources/publications/Investigating%20Allegations%20of%20Extra-Judicial%20Killings%20in%20the%20Terai.pdf>.
- . “Peace through Justice Project,” 2010. <https://nepal.ohchr.org/en/index.html>.
- . “UN Human Rights Office Raises Serious Concerns with the Term Extension of Colonel Raju Basnet,” October 22, 2010.

https://nepal.ohchr.org/en/resources/Documents/English/pressreleases/Year%202010/October/2010_10_22_PR_Col_Raju_Basnet_E.pdf.

Office of the High Commissioner of Human Rights in Nepal, and National Dalit Commission of Nepal. “NDC and OHCHR Welcome the New Law on Caste-Based Discrimination and Untouchability,” May 25, 2011.

https://nepal.ohchr.org/en/resources/Documents/English/pressreleases/Year%202011/May/2011_05_25_Joint_PR_with%20NDC_new_law_cast_based_discrimination.pdf.

Office of the High Commissioner of Human Rights in Nepal, and National Human Rights Commission of Nepal. “NHRC and OHCHR Recommended the Prompt Adoption of NHRC Bill, in Full Conformity with Paris Principles,” January 24, 2011.

https://nepal.ohchr.org/en/resources/Documents/English/pressreleases/Year%202011/January/2011_01_24_NHRC_OHCHR_Joint_PR_NHRC_Bill_E.pdf.

Office of the High Commissioner of Human Rights in Nepal, United Nations. “The Torture and Death in Custody of Maina Sunuwar Summary of Concerns.” OHCHR, December 2006.

https://nepal.ohchr.org/en/resources/Documents/English/other/Support_Of_Victims_Of_Torture/18.pdf.

Office of the Minister of Foreign Affairs. “Canada Calls on Both Parties to the Conflict in Sri Lanka to Work Toward a Rapid Resolution and to Meet Humanitarian Obligations.” *Foreign Affairs and International Trade Canada* (blog), April 19, 2009. <https://www.canada.ca/en/news/archive/2009/04/canada-calls-both-parties-conflict-sri-lanka-work-toward-rapid-resolution-meet-humanitarian-obligations.html>.

———. “Canada Deeply Concerned by Mounting Civilian Casualties in Sri Lanka.” *Foreign Affairs and International Trade Canada* (blog), January 28, 2009. <https://www.canada.ca/en/news/archive/2009/01/canada-deeply-concerned-mounting-civilian-casualties-sri-lanka.html>.

———. “Canada Expresses Concern About Civilians Trapped in Conflict in Sri Lanka.” *Foreign Affairs and International Trade Canada* (blog), April 11, 2009. <https://www.canada.ca/en/news/archive/2009/04/canada-expresses-concern-about-civilians-trapped-conflict-sri-lanka.html>.

———. “Canada Supports Political Solution in Sri Lanka.” *Foreign Affairs and International Trade Canada* (blog), February 4, 2009. <https://www.canada.ca/en/news/archive/2009/02/canada-supports-political-solution-sri-lanka.html>.

———. “Statement by Minister Cannon on Sri Lanka Situation.” *Foreign Affairs and International Trade Canada* (blog), April 24, 2009. <https://www.canada.ca/en/news/archive/2009/04/statement-minister-cannon-sri-lanka-situation.html>.

Office of the High Commissioner for Human Rights. “Advisory Services and Technical Cooperation in the Field of Human Rights Report of the Office of the United Nations High Commissioner for Human Rights on Human Rights Assistance to Nepal* E/CN.4/2005/114,” January 31, 2005. <https://digitallibrary.un.org/record/540769?ln=en&v=pdf>.

- Office on Missing Persons Sri Lanka. “Annual Report,” 2018.
<http://www.omp.gov.lk/storage/app/uploads/public/5fd1d2/4b2/5fd1d24b23858387495345.pdf>.
- . “Annual Report,” 2019.
<http://www.omp.gov.lk/storage/app/uploads/public/601/142/db5/601142db52d27533751009.pdf>.
- . “Annual Report,” 2020.
<http://www.omp.gov.lk/storage/app/uploads/public/604/847/009/604847009edfb770550416.pdf>.
- . “Interim Report,” August 2018.
<http://www.omp.gov.lk/storage/app/uploads/public/5fa/a52/8e4/5faa528e479e0618163564.pdf>.
- OHCHR. “Call for Restraint Ahead of Sri Lanka Protest,” July 8, 2022.
<https://www.ohchr.org/en/press-briefing-notes/2022/07/call-restraint-ahead-sri-lanka-protest>.
- OHCHR. “Observations by the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence, Mr. Pablo de Greiff, on the Conclusion of His Recent Visit to Sri Lanka,” October 23, 2017.
<https://www.ohchr.org/en/statements/2017/10/observations-special-rapporteur-promotion-truth-justice-reparation-and>.
- OHCHR. “Serious Violations of International Law Committed in Sri Lanka Conflict: UN Human Rights Chief,” March 13, 2009. <https://www.ohchr.org/en/press-releases/2009/10/serious-violations-international-law-committed-sri-lanka-conflict-un-human>.
- OHCHR. “Sri Lanka: UN Experts Condemn Crackdown on Protests,” April 8, 2022.
<https://www.ohchr.org/en/press-releases/2022/04/sri-lanka-un-experts-condemn-crackdown-protests>.
- OHCHR. “Sri Lanka: UN Experts Say Army Chief Appointment Is ‘Affront to Victims’ of Rights Abuses,” August 27, 2019. <https://www.ohchr.org/en/press-releases/2019/08/sri-lanka-un-experts-say-army-chief-appointment-affront-victims-rights>.
- OHCHR. “Sri Lanka: UN Human Rights Experts Condemn Repeated Use of Emergency Measures to Crackdown on Protests,” August 8, 2022.
<https://www.ohchr.org/en/press-releases/2022/08/sri-lanka-un-human-rights-experts-condemn-repeated-use-emergency-measures>.
- OHCHR. “The Case for a SAARC Regional Human Rights Mechanism’: Statement by the United Nations High Commissioner for Human Rights.” Accessed October 24, 2023. <https://www.ohchr.org/en/statements/2011/11/case-saarc-regional-human-rights-mechanism-statement-united-nations-high>.
- OHCHR. “UN Human Rights Chief Deplores Deteriorating Situation for Civilians in Sri Lanka,” January 29, 2009. <https://www.ohchr.org/en/press-releases/2009/10/un-human-rights-chief-deplores-deteriorating-situation-civilians-sri-lanka>.
- OHCHR Nepal. “Nepal: UN Congratulates NHRC’s Initiative on Exhumation of Suspected Burial Site in Dhanusha” September 19, 2010.
https://nepalconflictreport.ohchr.org/files/docs/2010-09-19_press-release_ohchr_eng.pdf.

- OHCHR Nepal. "OHCHR Initiates Mapping of Conflict Related Rights Violations," 2007. <https://nepal.ohchr.org/en/mapping%20of%20HR%20violation.html>.
- . "Summary of Human Rights Concerns Arising from the Terai Protests of 13 – 29 February 2008," March 27, 2008. https://nepal.ohchr.org/en/resources/Documents/English/reports/HCR/2008_03_27_Terai_Protest_E.pdf.
- "Opening Remarks by UN High Commissioner for Human Rights Navi Pillay at a Press Conference during Her Mission to Sri Lanka Colombo, 31 August 2013," August 31, 2013. <https://www.ohchr.org/en/statements/2013/08/opening-remarks-un-high-commissioner-human-rights-navi-pillay-press-conference>.
- Ottendorfer, Eva. "Contesting International Norms of Transitional Justice: The Case of Timor Leste." *International Journal of Conflict and Violence* 7, no. 1 (n.d.): 23–35.
- Pandey, Nischal. "Security Sector Reforms in Nepal: If Not Now, When?" *South Asian Survey* 16, no. 2 (2009): 253–71.
- "Parliament Debates (Hansard)." Colombo, Sri Lanka: Parliament of Sri Lanka, October 23, 2015. <https://www.parliament.lk/uploads/documents/hansard/1446201996064936.pdf>.
- Patnaik, Biraj, and Amnesty International South Asia Regional Director. "Letter to Hon. Prime Minister of Sri Lanka Regarding the Office for Reparations," July 25, 2018. <https://www.amnesty.org/en/documents/asa37/9219/2018/en/>.
- Patrick, Stewart. "Assessing U.S. Membership in the UN Human Rights Council." *The Internationalist Council on Foreign Relations* (blog), October 9, 2015. <http://blogs.cfr.org/patrick/2015/10/09/assessing-u-s-membership-in-the-un-human-rights-council/>.
- Paudel Raj, Narendra. "Inclusive Governance: A Case Study of Civil Service in Nepal." *South Asian Journal of Social Sciences* 1, no. 1 (July 1, 2016): 1–14.
- Peiris, Pradeep. "Yahapalanaya's Promise of Reconciliation: Merely a Means, Not an End?" *Polity* 7, no. 1 (2016.): 18–23.
- Perera, Sylvester U.L.J. "The Influence of Tamil Diaspora on Stability in Sri Lanka." Master of Science in Defense Analysis, Naval Postgraduate School, 2016. <https://apps.dtic.mil/sti/pdfs/AD1026744.pdf>.
- Perera, U. L. J. Sylvester. "The Influence of Tamil Diaspora on Stability in Sri Lanka." Monterey, California: Naval Postgraduate School, 2016.
- Philip, Alston. "Reconceiving the UN Human Rights Regime: Challenges Confronting the New UN Human Rights Council," June 2006.
- Phuyal, Hari, and Marlene Urscheller, eds. *The Security Sector Legislation of the Federal Democratic Republic of Nepal: Commentaries*. Brambauer Publishers, 2009.
- Piccone, Ted. "Obama's Human Rights Policy Combines Rules and Flexibility." *Brookings Institution* (blog), December 16, 2009. <https://www.brookings.edu/blog/up-front/2009/12/16/obamas-human-rights-policy-combines-rules-and-flexibility/>.
- . "Ten Years Later: The Status of the UN Human Rights Council." Brookings Institution, May 17, 2006. <http://www.brookings.edu/research/testimony/2016/05/17-human-rights-council-status-piccone>.

- Piccone, Ted, and Naomi McMillen. "Country-Specific Scrutiny at the United Nations Human Rights Council More than Meets the Eye." Working Paper. Brookings Institution, May 2016.
- Pinto-Jayawardena, Kishali. "Post-War Justice in Sri Lanka Rule of Law the Criminal Justice System and Commissions of Inquiry." International Commission of Jurists, January 2010. https://icj2.wpenginepowered.com/wp-content/uploads/2010/01/srilanka_impunity_18_01_20102.pdf.
- Pinto-Jayawardena, Kishali, and Jayantha de Almeida Guneratne. *Habeas Corpus in Sri Lanka; Theory and Practice of the Great Writ in Extraordinary Times*. Colombo: Law and Society Trust, 2011. <https://searchlibrary.ohchr.org/record/28679?ln=en>.
- Poe, Steven, and Neil Tate. "Repression of Human Rights to Personal Integrity in the 1980s: A Global Analysis." *American Political Science Review*, American Political Science Review, 88 (1994): 853–72.
- Poe, Steven, Neil Tate, and Linda Champ Keith. "Repression of the Human Right to Personal Integrity Revisited: A Global Cross-National Study Covering the Years 1976-1993." *International Studies Quarterly* 43 (1999): 291–1993.
- Political Editor. "Before and after Geneva: Mangala Explains What Will Happen." *Sunday Times*, June 5, 2016. <https://www.pressreader.com/sri-lanka/sunday-times-sri-lanka/20160605/281797103256553>.
- . "Campaigns Lacking Vision and Direction." *Sunday Times*, December 27, 2009. <http://www.sundaytimes.lk/091227/Columns/political.html>.
- . "Consensus on US Resolution before UNHRC." *Sunday Times*, September 27, 2015. <https://www.sundaytimes.lk/150927/columns/consensus-on-us-resolution-before-unhrc-165768.html>.
- . "Corruption Cases: No Major Indictments; Blame Game Continues." *Sunday Times*, May 22, 2016. <https://www.sundaytimes.lk/160522/columns/corruption-cases-no-major-indictments-blame-game-continues-194552.html>.
- . "Corruption Probes: President Mindful of Impact of Grilling Public Officials." *Sunday Times*, June 5, 2016. <https://www.sundaytimes.lk/160605/columns/corruption-probes-president-mindful-of-impact-of-grilling-public-officials-196359.html>.
- . "Domestic War Crimes Probe: Lack of Clarity as Government Tries Balancing Act." *Sunday Times*, January 31, 2016. <https://www.sundaytimes.lk/160131/columns/domestic-war-crimes-probe-lack-of-clarity-as-government-tries-balancing-act-181255.html>.
- . "Lanka's Role in Solving Maldivian Crisis." *Sunday Times*, January 24, 2016. <https://www.sundaytimes.lk/160124/columns/lankas-role-in-solving-maldivian-crisis-180423.html>.
- . "Panel Report: Be Realistic and Have Dialogue with UN." *Sunday Times*, May 15, 2011. <https://www.sundaytimes.lk/110515/Columns/political.html>.
- . "Power Failures Deal Blackout Blow to Govt." *Sunday Times*, March 20, 2016. <https://www.sundaytimes.lk/160320/columns/power-failures-deal-blackout-blow-to-govt-187108.html>.
- . "President Claims UNP Delaying Major Probes to Save Rajapaksas." *Sunday Times*, July 9, 2017. <https://www.sundaytimes.lk/170709/columns/president-claims-unp-delaying-major-probes-to-save-rajapaksas-249230.html>.

- . “President Defends FCID Even Though SLFP Ministers Call for Its Disbanding.” *Sunday Times*, February 7, 2016. <https://www.sundaytimes.lk/160207/columns/president-defends-fcid-even-though-slfp-ministers-call-for-its-disbanding-182076.html>.
- . “President Promises Urgent Action to Reduce CoL, Vows to Strengthen Economy.” *Sunday Times*, June 12, 2016. <https://www.sundaytimes.lk/160612/columns/president-promises-urgent-action-to-reduce-col-vows-to-strengthen-economy-197072.html>.
- . “Sirisena Cracks the Whip; Bites the Bullet, Risks Splitting Party.” *Sunday Times*, August 21, 2016. <https://www.sundaytimes.lk/160821/columns/sirisena-cracks-the-whip-bites-the-bullet-risks-splitting-party-205497.html>.
- . “Sirisena Faces May Day Test of Strength, Growing Challenge from pro-Rajapaksa ‘JO.’” *Sunday Times*, April 24, 2016. <https://www.sundaytimes.lk/160424/columns/sirisena-faces-may-day-test-of-strength-growing-challenge-from-pro-rajapaksa-jo-190916.html>.
- . “Sirisena Isolating Rajapaksa, Also Brings UPFA under His Fold.” *Sunday Times*, March 13, 2016. <http://ceylon-ananda.com/sirisena-isolating-rajapaksa-also-brings-upfa-under-his-fold/>.
- . “UNP-SLFP Marriage of Convenience: Temporary Licence to Be Solemnised for Five Years.” *Sunday Times*, July 24, 2016. <https://www.sundaytimes.lk/160724/columns/unp-slfp-marriage-of-convenience-temporary-licence-to-be-solemnised-for-five-years-202213.html>.
- Pomper, Stephen, and Daniel Levine-Spound. “US Human Rights Policy and the Trump Administration.” In *Human Rights in a Time of Populism Challenges and Responses*, edited by Gerald Neuman, 1–19. Cambridge University Press, 2020.
- Pradhan, Gauri. “Nepal’s Experience of Mass Grave Investigation: The Godar Exhumation.” In *Mass Graves Truth and Justice*, edited by Ellie Smith and Melanie Klinker, 23–33. MA, USA: Edward Elgar Publishing Inc, 2023.
- Prakash, Adhikari, and Mahendra Lawoti. “Nepal.” In *An Introduction to South Asian Politics*, 112–56. London: Routledge, 2015.
- “Presentation of Reports of the Sub-Committees of the Constitutional Assembly,” 2016. <https://www.parliament.lk/en/news-en/view/1274/?category=6>.
- Priyantha, Renuka I., Ranjith W. K. Dickwella, and Ravindra Gunasekara. “Public Administration in Sri Lanka: An Analysis of Evolution, Trends, and Challenges in Personnel Management.” In *Civil Service Management and Administrative Systems in South Asia*, 193–214. Palgrave Macmillan, 2019.
- Public Representations Committee on Constitutional Reform. “Report on Public Representations on Constitutional Reform,” 2016. https://constitutionnet.org/sites/default/files/sri_lanka_prc_report-english-final.pdf.
- Rae, Ranjit. *Kathmandu Dilemma Resetting India-Nepal Ties*. Haryana: Vintage Penguin Random House India, 2021.
- Rajasingham, Sanjayan. “Overview of the State of Human Rights.” In *Sri Lanka: State of Human Rights 2016*. Colombo, Sri Lanka: Law and Society Trust, 2017.
- Ramanathan, Mano, Priyanthi Suranjana Vidyaratne, and Maxwell Paranagama. “Report On the Second Mandate of the Presidential Commission of Inquiry into Complaints of Abductions and Disappearances,” August 2015.

- Ramasamy, Ramesh. "Governance and Administration in Sri Lanka: Trends, Tensions and Prospects." *Public Administration and Policy* 23, no. 2 (2020): 187–98.
- Ratner, Steven. "Accountability and the Sri Lankan Civil War." *American Journal of International Law* 106, no. 4 (October 2012): 795–808.
- Ratner, Steven, Yasmin Sooka, and Marzuki Darusman. "Report of the Secretary-General's Panel of Experts on Accountability in Sri Lanka," March 31, 2011.
- Rawski, Frederick, and Mandira Sharma. "A Comprehensive Peace? Lessons from Human Rights Monitoring in Nepal." In *Nepal in Transition From People's War to Fragile Peace*, 175–201. New York: Cambridge University Press, 2012.
- "Report of the Select Committee of Parliament to Look into and Report to Parliament on the Terrorist Attacks That Took Place in Different Places in Sri Lanka on 21st April 2019," October 23, 2019. https://www.parliament.lk/en/business-of-parliament/committees/committee-reports?type=committee&category=4&committee=319&search_status=1.
- "Report of the Standing Committee on Foreign Affairs and International Development. "Canada and the Crisis in Sri Lanka." Library of Parliament, May 2009. https://www.ourcommons.ca/Content/Committee/402/FAAE/Reports/RP3895627/402_FAAE_Rpt05/402_FAAE_Rpt05-e.pdf.
- Reporters Without Borders. "Less Anti-Media Violence in 2010 but More Obstruction and Self-Censorship," December 30, 2010. <https://rsf.org/en/news/less-anti-media-violence-2010-more-obstruction-and-self-censorship>.
- "Resolution for the Appointment of the Constitutional Assembly," 2016. https://www.parliament.lk/files/documents_news/ca-motion/motion-en.pdf.
- Risse, Thomas. "'Let's Argue!': Communicative Action in World Politics." *International Organization* 54, no. 1 (2000): 1–39.
- Risse, Thomas, and Stephen Ropp. "Introduction and Overview." In *The Persistent Power of Human Rights From Commitment to Compliance*, 3–25. New York: Cambridge University Press, 2013.
- Risse, Thomas, and Kathryn Sikkink. "The Socialization of International Human Rights Norms into Domestic Practices: Introduction." In *The Power of Human Rights International Norms and Domestic Change*, edited by Thomas Risse, Stephen Ropp, and Kathryn Sikkink, 1–39. UK: Cambridge University Press, 1999.
- Robinson, Sven J. "Justice and Human Rights: Inspiring Canadian Foreign Policy." *Canadian Foreign Policy Journal* 1, no. 1 (1992): 17–35.
- Ropp, Stephen, and Kathryn Sikkink. "International Norms and Domestic Politics in Chile and Guatemala." In *The Power of Human Rights International Norms and Domestic Change*, 172–204. Cambridge University Press, 1999.
- Rotberg, Robert, ed. *Creating Peace in Sri Lanka Civil War and Reconciliation*. Washington DC: Brookings Institution Press, 1999.
- Rupesinghe, Kumar. "Ethnic Conflicts in South Asia: The Case of Sri Lanka and the Indian Peace-Keeping Force (PIKF)." *Journal of Peace Research* 25, no. 4 (1988): 337–50.
- Salvioli, Fabian. "Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence A/HRC/42/45." United Nations, July 11, 2019.

<https://documents.un.org/doc/undoc/gen/g19/213/93/pdf/g1921393.pdf?token=lm dj6ZCNxtCCrjozo8&fe=true>.

Samaraweera, Mangala. "Enforced Disappearance Bill The ICC and Sri Lanka's International Obligations." *Sri Lanka Brief*, August 1, 2017.

<https://srilankabrief.org/enforced-disappearance-bill-the-icc-and-sri-lankas-international-obligations/>.

———. "Foreign Minister Samaraweera Speaks at Carnegie Endowment for International Peace in Washington." *Ministry of Foreign Affairs*, February 11, 2015. <https://mfa.gov.lk/foreign-minister-samaraweera-speaks-at-carnegie-endowment-for-international-peace-in-washington/>.

Saravanamuttu, Paikiasothy. "Politics of Reconciliation in Sri Lanka." In *Transitional Justice in Sri Lanka: Moving Beyond Promises*. Colombo, Sri Lanka: Centre for Policy Alternatives, 2017.

Satkunanathan, Ambika. "Integrity of the Person." In *Sri Lanka: State of Human Rights 2009-2010*. Colombo, Sri Lanka: Law and Society Trust, 2011.

Schaack, Beth Van. "Sri Lankan Presidential Hopeful Sued in Federal Court for Human Rights Violations." *Just Security*, April 8, 2019.

<https://www.justsecurity.org/63564/breaking-sri-lankan-presidential-hopeful-sued-in-federal-court-for-human-rights-violations/>.

Schmitz, Hans Peter. "Transnational Activism and Political Change in Kenya and Uganda." In *The Power of Human Rights International Norms and Domestic Change*, 39–77. New York: Cambridge University Press, 1999.

Schüller, Andreas. "Universal Jurisdiction — the Most Difficult Path to Achieve Justice for Sri Lanka." *Just Security*, February 24, 2021.

<https://www.justsecurity.org/74941/universal-jurisdiction-the-most-difficult-path-to-achieve-justice-for-sri-lanka/>, <https://www.justsecurity.org/74941/universal-jurisdiction-the-most-difficult-path-to-achieve-justice-for-sri-lanka/>.

Sectoral Oversight Committee on Legal Affairs (anti corruption) and media.

"Recommendations Pertaining to the Expeditious and Efficient Administration of Criminal Justice." The Parliament of Sri Lanka, September 20, 2017.

<https://www.parliament.lk/uploads/comreports/1510738363068517.pdf>.

Seligman, Steven. "Explaining Canadian Foreign Policy toward Sri Lanka under the Harper Government." *International Journal* 71, no. 2 (2016): 249–65.

Selim, Yvette. *Transitional Justice in Nepal Interests, Victims and Agency*. UK: Routledge, 2018.

Senanayake, Renuka. "Internally Displaced Persons: Some Key Human Rights Issues." In *Sri Lanka: State of Human Rights 2003*, 19–38. Colombo, Sri Lanka: Law and Society Trust, 2003.

Seneratne, Kalana. "Constitutional Reform in a Multi-Polar 54 Setting: The Negotiation of Competing Party Political Interests in the Promulgation of the Nineteenth and Twentieth Amendments." In *The Nineteenth Amendment to the Constitution: Content and Context*, 54–68. Colombo, Sri Lanka: Centre for Policy Alternatives, 2016.

———. "The Morning after the Political Honeymoon: President Sirisena's Future." *Groundviews* (blog), April 2, 2016. <https://groundviews.org/2016/02/04/the-morning-after-the-political-honeymoon-president-sirisenas-future/>.

- Shakya, Rabindra. "Why Civil Service Reforms Fail? A Case of Nepal." *Administration and Management Review* 21, no. 2 (2009): 40–63.
- Sharma, Bhadra, and Nida Najar. "Amid Protests, Nepal Adopts Constitution." *The New York Times*, September 20, 2015, sec. World.
<https://www.nytimes.com/2015/09/21/world/asia/amid-protests-nepal-adopts-constitution.html>.
- Sharma, Mandira. "Addressing Impunity in Transition: A Case of Nepal." *National Judicial Academy Law Journal* 5, no. 1 (2011).
- . "Nepal Institutions in the Criminal Justice System and the Need for Reforms." In *Routledge Handbook of South Asian Criminology*, edited by K. Jaishankar, 61–69. New York: Routledge, 2019.
- Sharma, Sudheer. *The Nepal Nexus*. India: Penguin Books, 2021.
- Sharman, J.C., and Mette Eilstrup-Sangiovanni. *Vigilantes beyond Borders: NGOs as Enforcers of International Law*. Princeton University Press, 2022.
- Shrestha, Shree, and Narendra Paudel. "Civil Service Management in Nepal." In *Civil Service Management and Administrative Systems in South Asia*, 99–119. Switzerland: Palgrave Macmillan, 2019.
- Sieglinde, Granzer. "Changing Discourse: Transnational Advocacy Networks in Tunisia and Morocco." In *The Power of Human Rights International Norms and Domestic Change*, 109–33. New York: Cambridge University Press, 1999.
- Sijapati, Bandita. "Regionalism, Madhesi Identity and the Madhes Andolan." In *Nationalism and Ethnic Conflict in Nepal*, edited by M. Lawoti and S. Hangen. London: Routledge, 2012.
- Silva, Chitta Ranjan de, Amrith Rohan Perera, Karunaratne Hangawatte, Chandirapal Chanmugam, Hewa Matara Gamage Siripala Palihakkara, Manohari Ramanathan, Maxwell Parakrama Paranagama, and Mohamed Thowfeek Mohamed Bafiq. "Report of the Commission of Inquiry on Lessons Learnt and Reconciliation." Colombo, Sri Lanka, November 2011.
- Smith, Karen. "Speaking with One Voice? European Union Co-Ordination on Human Rights Issues at the United Nations*." *JCMS* 44, no. 1 (2006): 113–37.
- Smith, Rhona, Conall Mallory, and Sean Molloy. "Brexiting Human Rights Diplomacy at the United Nations Human Rights Council: Opportunity or Cause for Concern?" *The International Journal of Human Rights* 24, no. 4 (2020): 414–38.
- Smith-Cannoy, Heather. *Insincere Commitments Human Rights Treaties, Abusive States and Citizen Activism*. Georgetown University Press, 2012.
- Sob, Durga. "The Situation of the Dalits in Nepal Prospects in a New Political Reality." *Voice of Dalit* 5, no. 1 (2012): 57–62.
- Sooka, Yasmin, and Francis Harrison. "Why Has Sri Lanka's Transitional Justice Process Failed to Deliver?" *London School of Economics* (blog), February 6, 2019. <https://blogs.lse.ac.uk/southasia/2019/02/06/long-read-why-has-sri-lankas-transitional-justice-process-failed-to-deliver/>.
- South Asian Centre for Legal Studies. "Power and Profit: Investigating Sri Lanka's Military Businesses," 2018.
- . "The Office for Reparations An Empty Shell?" *Association of Tamils of Sri Lanka in the USA*, July 4, 2018. <https://sangam.org/office-reparations/>.
- . "United Nations Human Rights Council Resolution on Sri Lanka English Analysis," 2015.

- Srinivasan, Meera. "Focussing on 13th Amendment sans Police Powers 'Practical', Sri Lankan President Ranil Tells Parliament." *The Hindu*, August 9, 2023, sec. World. <https://www.thehindu.com/news/international/focussing-on-13th-amendment-sans-police-powers-practical-sri-lankan-president-ranil-tells-parliament/article67177145.ece>.
- . "Raviraj Murder: Acquittal Raises Credibility Concerns." *The Hindu*, December 16, 2016. <https://www.thehindu.com/news/international/Raviraj-murder-Acquittal-raises-credibility-concerns/article16943223.ece>.
- . "Sirisena to Ask Trump to Drop Rights Abuse Charges." *The Hindu*, November 28, 2016. <https://www.thehindu.com/news/international/Sirisena-to-ask-Trump-to-drop-rights-abuse-charges/article16712115.ece>.
- . "Sirisena Vows to Protect General." *The Hindu*, September 4, 2017. <https://www.thehindu.com/news/international/sirisena-vows-to-protect-general/article19621100.ece>.
- . "Tamil National Alliance 'Categorically Rejects' Sri Lankan President's Offer of 13th Amendment Minus Police Powers." *The Hindu*, July 18, 2023, sec. World. <https://www.thehindu.com/news/international/tamil-national-alliance-rejects-sri-lankan-presidents-offer-of-13th-amendment-minus-police-powers/article67095098.ece>.
- Stein, Arthur. "Neoliberal Institutionalism." In *The Oxford Handbook of International Relations*, edited by Christian Reus-Smit and Duncan Snidal, 201–21. New York: Oxford University Press, 2008.
- Strasheim, Julia. "A Challenge to the Liberal Peace? European Union Peacebuilding Faces China in Nepal." *European Review of International Studies* 8, no. 1 (2021): 353–81.
- Subedi, DB. "Dealing with Ex-Combatants in a Negotiated Peace Process: Impacts of Transitional Politics on the Disarmament, Demobilisation and Reintegration Program in Nepal." In *Reading Nepali Transition (2006-2015)*, edited by Pranab Kharel, 455–88. Kathmandu: Martin Chautari, 2022.
- Subedi QC, Surya P. *The Workings of Human Rights, Law, and Justice A Journey from Nepal to Nobel Nominee*. Routledge, 2022.
- Subotic, Jelena. "The Paradox of International Justice Compliance: International Journal of Transitional Justice." *International Journal of Transitional Justice* 3 (2009): 367–83.
- Subramanian, Nirupama. "How India Kept Pressure off Sri Lanka." *The Hindu*, March 16, 2011.
- Thapa, Manish, and R.K Jain. "The European Union and Conflict Resolution in Nepal." In *India, Europe and Conflict Resolution in South Asia*, 64–77. New Delhi: KW Publishers, 2015.
- The Asian Legal Resource Centre, and Advocacy Forum. "Submission to the Human Rights Council's Universal Periodic Review Concerning the Human Rights Situation in Nepal," 2011. https://www.ohchr.org/sites/default/files/lib-docs/HRBodies/UPR/Documents/Session10/NP/ALRC_TheAsianLegalResourceCentreandAdvocacyForum_eng.pdf.
- The Brookings Institution. "U.S. Security Assistance and Human Rights," December 12, 2016. https://www.brookings.edu/wp-content/uploads/2016/12/20161212_security_human_rights_transcript.pdf.

- “The Code of Conduct for Ceasefire Agreed between the Government of Nepal and the CPN (Maoist) on at Gokarna,” May 25, 2006.
https://peacemaker.un.org/sites/peacemaker.un.org/files/NP_060525_25%20Point%20Ceasefire%20Code%20of%20Conduct.pdf.
- “The Eight-Point SPA-Maoist Agreement (Unofficial Translation),” June 16, 2006.
<https://ucdpged.uu.se/peaceagreements/fulltext/Nep%2020060616.pdf>.
- Thiranagama, Sharika. *In My Mother’s House: Civil War in Sri Lanka (The Ethnography of Political Violence)*. University of Pennsylvania Press, 2013.
- Toffin, Gerard. “The Janajati/ Adivasi Movement in Nepal: Myths and Realities of Indigeneity.” *Sociological Bulletin* 58, no. 1 (April 2009): 25–42.
- Torne, Carlos. “Transitional Justice Process in Nepal The State of the Art and Questions and Scenarios for the Future in Nepal.” Barcelona: Institut Català Internacional per la Pau, 2013. https://www.icip.cat/wp-content/uploads/2020/11/transnational_justice_in_nepal.pdf.
- UN Committee Against Torture (CAT). “Consideration of Reports Submitted by States Parties under Article 19 of the Convention - Sri Lanka,” December 8, 2011.
<https://www.refworld.org/docid/4ef088252.htm>.
- UNDP. “Catalytic Support to Peacebuilding in Sri Lanka,” 2017.
https://info.undp.org/docs/pdc/Documents/LKA/Joint%20Programme%20Doc_Signed.PDF.
- . “UNDP Sri Lanka’s Flagship Portfolio on SDG 16: Peace, Justice and Strong Institutions Progress Report,” 2022.
https://info.undp.org/docs/pdc/Documents/LKA/UNDP%20SDG%2016%20PORTFOLIO%20Norway_29.11.19.pdf.
- United Kingdom Foreign & Commonwealth Office. “Human Rights and Democracy: The 2010 Foreign & Commonwealth Office Report,” 2010.
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/408381/accessible-hrd-report-2010.pdf.
- . “Human Rights and Democracy: The 2011 Foreign & Commonwealth Office Report,” 2011.
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/408379/Cm-8339.pdf.
- United Nations. “Joint Statement by United Nations Secretary-General, Government of Sri Lanka.” May 26, 2009. <https://www.un.org/press/en/2009/sg2151.doc.htm>.
- United Nations. “Press Conference by United Nations Human Rights Expert Concerning Authenticity of Channel 4 Videotape Depicting Extrajudicial Executions in Sri Lanka,” January 7, 2010.
https://press.un.org/en/2010/100107_alston.doc.htm.
- United Nations Association – UK. “The UK’s Role on the UN Human Rights Council Priorities for the UK’s 2014–16 Term.” UNA-UK Briefing Report. UK, 2014.
- United Nations Commission on Human Rights. “Commission Adopts Chairman’s Statements on Afghanistan, Haiti, Nepal, Timor-Leste and Colombia,” April 21, 2004. <https://www.ohchr.org/en/press-releases/2009/10/commission-adopts-chairmans-statements-afghanistan-haiti-nepal-timor-leste>.
- United Nations Committee on Economic, Social and Cultural Rights. “Concluding Observations on the Third Periodic Report of Nepal* E/C.12/NPL/CO/3,” December 12, 2014.

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2FC.12%2FNPL%2FCO%2F3&Lang=en.

United Nations Committee on the Elimination of Discrimination against Women.

“Concluding Observations of the Committee on the Elimination of Discrimination against Women Nepal CEDAW/C/NPL/CO/4-5,” August 11, 2011.

<https://digitallibrary.un.org/record/712703?v=pdf>.

United Nations Committee on the Rights of the Child. “Concluding Observations on the Combined Third to Fifth Periodic Reports of Nepal* CRC/C/NPL/CO/3-5,”

July 8, 2016. <https://digitallibrary.un.org/record/835011?ln=en&v=pdf>.

United Nations Human Rights Council. “Report of the United Nations High Commissioner for Human Rights on the Human Rights Situation and the Activities of Her Office, Including Technical Cooperation, in Nepal A/60/359,” September 16, 2005.

https://nepal.ohchr.org/en/resources/Documents/English/reports/SG/2005_09_16_OHCHRGeneralAssemblyReport_E.pdf.

———. “Resolution 60/147, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law A/RES/60/147,” December 15, 2007. <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-and-guidelines-right-remedy-and-reparation>.

———. “22/1 Promoting Reconciliation and Accountability in Sri Lanka A/HRC/22/1,” April 9, 2013.

<https://documents.un.org/doc/undoc/gen/g13/127/55/pdf/g1312755.pdf?token=DxCJe5WdBovAUJ60Kh&fe=true>.

———. “25/1 Promoting Reconciliation, Accountability, and Human Rights in Sri Lanka A/HRC/RES/25/1,” April 9, 2014.

<https://documents.un.org/doc/undoc/gen/g14/132/86/pdf/g1413286.pdf?token=FWummudWUWpXhwqExv&fe=true>.

———. “30/1 Promoting Reconciliation, Accountability and Human Rights in Sri Lanka A/HRC/RES/30/1,” October 14, 2015.

<https://documents.un.org/doc/undoc/gen/g15/236/38/pdf/g1523638.pdf?token=9hNScAqMkwDes20pNj&fe=true>.

———. “Compilation on Nepal Report of the Office of the United Nations High Commissioner for Human Rights A/HRC/WG.6/37/NPL/2,” October 2022.

<https://documents.un.org/doc/undoc/gen/g20/280/84/pdf/g2028084.pdf?token=x0jtZsE8StuqQQ4Pxy&fe=true>.

———. “Comprehensive Report of the Office of the United Nations High Commissioner for Human Rights on Sri Lanka A/HRC/30/61,” September 28, 2015. <https://www.ohchr.org/en/hr-bodies/hrc/oisl>.

<https://www.ohchr.org/EN/HRBodies/HRC/Pages/PastMembers.aspx>.

———. “National Report Submitted in Accordance with Paragraph 5 of the Annex to Human Rights Council Resolution 16/21* Nepal.A/HRC/WG.6/37/NPL/1,” December 31, 2020.

<https://documents.un.org/doc/undoc/gen/g20/278/61/pdf/g2027861.pdf?token=o1uZvAb1QiCJ8OYXjy&fe=true>.

- . “Oral Update of the High Commissioner Promoting Reconciliation, Accountability and Human Rights in Sri Lanka A/HRC/32/CRP.4,” June 28, 2016. <https://digitallibrary.un.org/record/843517?ln=en>.
- . “Press Release Human Rights Must Be a Top Priority in Economic Reforms, Says UN Expert,” February 27, 2019. [Original:https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24221&LangID=E](https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24221&LangID=E).
- . “Promoting Reconciliation, Accountability and Human Rights in Sri Lanka Report of the United Nations High Commissioner for Human Rights A/HRC/46/20,” February 9, 2021. <https://documents.un.org/doc/undoc/gen/g21/028/52/pdf/g2102852.pdf?token=rQ2UjXbmZKkFjncwW&fe=true>.
- . “Promoting Reconciliation and Accountability in Sri Lanka :A/HRC/RES/19/2,” March 22, 2012. <https://documents.un.org/doc/resolution/gen/g12/126/71/pdf/g1212671.pdf?token=eZzdaUBhTmJhqQqMOs&fe=true>.
- . “Report of the Human Rights Council on Its Seventeenth Session A/HRC/17/2,” May 24, 2012. <https://documents.un.org/doc/undoc/gen/g12/136/30/pdf/g1213630.pdf?token=Z89SwlY8QuJp4Y8rSo&fe=true>.
- . “Report of the Office of the High Commissioner for Human Rights A/HRC/46/20,” January 27, 2021. <https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F46%2F20&Language=E&DeviceType=Desktop&LangRequested=False>.
- . “Report of the Office of the High Commissioner for Human Rights A/HRC/40/23,” February 8, 2019. <https://documents.un.org/doc/undoc/gen/g19/029/25/pdf/g1902925.pdf?token=hpAtBskpyjpcGnHCZ0&fe=true>.
- . “Report of the Office of the United Nations High Commissioner for Human Rights in Sri Lanka A/HRC/34/20,” February 10, 2017. <https://documents.un.org/doc/undoc/gen/g17/030/56/pdf/g1703056.pdf?token=cLQlnmZfRWjBCQGKTR&fe=true>.
- . “Report of the Office of the United Nations High Commissioner for Human Rights A/HRC/37/23.” United Nations, January 25, 2018. <https://documents.un.org/doc/undoc/gen/g18/018/53/pdf/g1801853.pdf?token=9UNlZCpgSwlN4OD9Oq&fe=true>.
- . “Report of the Special Rapporteur on the Independence of Judges and Lawyers on Her Mission to Sri Lanka A/HRC/35/31/Add.1.” United Nations, March 23, 2017. <https://documents.un.org/doc/undoc/gen/g17/074/80/pdf/g1707480.pdf?token=zQQGpaFBvi3vgknaEF&fe=true>.
- . “Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism Visit to Sri Lanka A/HRC/40/52/Add.3,” December 14, 2018. <https://documents.un.org/doc/undoc/gen/g18/365/91/pdf/g1836591.pdf?token=fEpi0kbS2HKS9leQje&fe=true>.

- . “Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence A/HRC/45/45/Add.1*,” June 18, 2020.
<https://documents.un.org/doc/undoc/gen/g20/152/58/pdf/g2015258.pdf?token=Y3Zl4w6mhRzfNznJQU&fe=true>.
- . “Report of the Special Rapporteur on Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, Manfred Nowak on His Visit to Sri Lanka A/HRC/7/3/Add.6,” February 26, 2008.
<https://digitallibrary.un.org/record/622163?v=pdf>.
- . “Report of the United Nations High Commissioner for Human Rights on the Human Rights Situation and the Activities of Her Office, Including Technical Cooperation, in Nepal A/HRC/4/97,” January 17, 2007.
<https://documents.un.org/doc/undoc/gen/g07/105/16/pdf/g0710516.pdf?token=8kynUzqESGdl17RLAs&fe=true>.
- . “Report of the United Nations High Commissioner for Human Rights on the Human Rights Situation and the Activities of Her Office, Including Technical Cooperation in Nepal* A/HRC/7/68,” February 18, 2008.
<https://documents.un.org/doc/undoc/gen/g08/106/24/pdf/g0810624.pdf?token=WRfP0sPOH0hJ36gNI9&fe=true>.
- . “Report of the United Nations High Commissioner for Human Rights on the Human Rights Situation and the Activities of Her Office, Including Technical Cooperation, in Nepal A/HRC/10/53,” March 3, 2009.
<https://documents.un.org/doc/undoc/gen/g09/116/09/pdf/g0911609.pdf?token=bYQZMCnlbVREMoFcrv&fe=true>.
- . “Report of the United Nations High Commissioner for Human Rights on the Human Rights Situation and the Activities of Her Office, Including Technical Cooperation, in Nepal* A/HRC/13/73,” February 5, 2010.
<https://documents.un.org/doc/undoc/gen/g10/104/49/pdf/g1010449.pdf?token=ONMZwgkyEbUgd8JTUd&fe=true>.
- . “Report of the Working Group on Enforced or Involuntary Disappearances* A/HRC/16/48,” January 26, 2011.
<https://documents.un.org/doc/undoc/gen/g11/104/45/pdf/g1110445.pdf?token=fNXoWzLxIhFsp9HNZ&fe=true>.
- . “Report on the Human Rights Situation and the Activities of the Office of the High Commissioner, Including Technical Cooperation, in Nepal A/HRC/19/21/Add.4,” December 16, 2011.
https://www2.ohchr.org/english/bodies/hrcouncil/docs/19session/A.HRC.19.21.Add.4_English.pdf.
- . “Resolution 34/1 Promoting Reconciliation, Accountability and Human Rights in Sri Lanka A/HRC/RES/34/1,” March 15, 2017.
<https://documents.un.org/doc/undoc/gen/g17/082/56/pdf/g1708256.pdf?token=230yvBNSNxNfUcHK5a&fe=true>.
- . “Resolution 40/1 Promoting, Reconciliation, Accountability and Human Rights in Sri Lanka A/HRC/40/1,” April 4, 2019.
<https://documents.un.org/doc/undoc/gen/g19/098/41/pdf/g1909841.pdf?token=uJb4dCqGsVA7LVtbBt&fe=true>.

- . “S-11/1 Assistance to Sri Lanka in the Promotion and Protection of Human Rights A/HRC/S-11/2,” June 26, 2009.
<https://digitallibrary.un.org/record/659350?ln=en&v=pdf>.
- . “Situation of Human Rights in Sri Lanka Comprehensive Report of the United Nations High Commissioner for Human Rights* A/HRC/51/5,” October 4, 2022.
<https://documents.un.org/doc/undoc/gen/g22/511/79/pdf/g2251179.pdf?token=LMAm6a8VTrliHIJf2F&fe=true>.
- . “Situation of Human Rights in Sri Lanka Comprehensive Report of the United Nations High Commissioner for Human Rights* A/HRC/51/5,” October 4, 2022.
- . “Situation of Human Rights in Sri Lanka Report of the United Nations High Commissioner for Human Rights A/HRC/54/20,” September 6, 2023.
<https://documents.un.org/doc/undoc/gen/g23/181/48/pdf/g2318148.pdf?token=Kd pPvmtmHYWYLfBCiM&fe=true>.
- . “Situation of Human Rights in Sri Lanka Report of the United Nations High Commissioner for Human Rights A/HRC/54/20,” September 6, 2023.
- . “Summary of Stakeholders’ Submissions on Nepal* Report of the Office of the United Nations High Commissioner for Human Rights A/HRC/WG.6/37NPL/3,” November 5, 2020.
- . “The Situation of Human Rights in Myanmar A/HRC/19/L.30,” March 20, 2012.
- United Nations Human Rights Council Working Group on the Universal Periodic Review. “National Report Submitted in Accordance with Paragraph 15 (a) of the Annex to Human Rights Council Resolution 5/1 Nepal* A/HRC/WG.6/10/NPL/1,” November 12, 2010.
<https://documents.un.org/doc/undoc/gen/g10/174/88/pdf/g1017488.pdf?token=z0XK5Fd3ehiDE8Uive&fe=true>.
- United Nations Human Rights Office of The High Commissioner, and Office of the United Nations Resident Coordinator, Nepal. “UN: Transitional Justice Process Must Comply with International Law,” September 13, 2011.
https://nepal.ohchr.org/en/resources/Documents/English/pressreleases/Year%202011/Sep/2011_09_13_Joint%20PR%20TJ%20Process_International%20Law_RC%20&%20OHCHR-Nepal.pdf.
- United Nations Office of the High Commissioner for Human Rights. “Nepal Conflict Report,” 2012.
https://www.ohchr.org/sites/default/files/Documents/Countries/NP/OHCHR_Nepal_Conflict_Report2012.pdf.
- United Nations Office of the High Commissioner for Human Rights. “Zeid Urges Creation of Hybrid Special Court in Sri Lanka as UN Report Confirms Patterns of Grave Violations.” September 16, 2015. <https://www.ohchr.org/en/press-releases/2015/09/zeid-urges-creation-hybrid-special-court-sri-lanka-un-report-confirms?LangID=E&NewsID=16432>.
- United Nations Office of the High Commissioner for Human Rights in Nepal. “Allegations of Human Rights Abuses by the Young Communist League (YCL),” June 2007.
<https://nepal.ohchr.org/en/resources/Documents/English/reports/IR/Year2007/YCL.ENG.pdf>.

- . “Human Rights in Nepal One Year After the Comprehensive Peace Agreement,” December 2007.
<https://nepal.ohchr.org/en/resources/Documents/English/reports/HCR/CPA%20Report.pdf>.
- . “The April Protests Democratic Rights and the Excessive Use of Force,” September 2006. https://nepalconflictreport.ohchr.org/files/docs/2006-09-00_report_ohchr_eng_a.pdf.
- United Nations Office of the High Commissioner for Human Rights in Nepal, and National Human Rights Commission of Nepal. “Remedies and Rights Revoked: Case Withdrawals for Serious Crimes in Nepal Legal Opinion,” June 2011.
https://www.nhrcnepal.org/uploads/publication/Legal_Opinion_II_-_Remedies_and_Rights_Revoked_-_Case_Withdrawals_for_Serious_Crimes_in_Nepal.pdf.
- United Nations Security Council. “Report of the Secretary-General on Children and Armed Conflict in Sri Lanka,” December 21, 2007.
- . “Report of the Secretary-General on the Request of Nepal for United Nations Assistance in Support of Its Peace Process S/2007/235,” April 26, 2007.
<https://documents.un.org/doc/undoc/gen/n07/313/23/pdf/n0731323.pdf?token=5wLe9hGywcwFAh27Wa&fe=true>.
- . “Report of the Secretary-General on the Request of Nepal for United Nations Assistance in Support of Its Peace Process S/2010/214,” April 28, 2010.
<https://documents.un.org/doc/undoc/gen/n10/320/17/pdf/n1032017.pdf?token=MTIKLuII5d7567Qe4s&fe=true>.
- . “Resolution (1740) S/Res/1740,” 2007.
<https://digitallibrary.un.org/record/593436?ln=en&v=pdf#>.
- University Teacher’s for Human Rights Jaffna. “Reports,” 2001.
<https://www.uthr.org/reports.htm>.
- UNWATCH. “States Debate Sri Lanka Resolution Text.” March 8, 2012.
<https://unwatch.org/1803-2/>.
- Upreti, Kishor. “Against Enforced Disappearances: The Political Detainees’ Case before the Nepal Supreme Court.” *Chinese Journal of International Law* 7, no. 2 (2008): 429–57.
- U. S. Agency for International Development, “Democracy, Human Rights and Governance Assessment of Nepal Final Report”, by Guilain Denoeux, Harry Blair, Ameet Dhakal, Christopher Hobbs, Mike Calavan (2012), 39, <https://bpb-us-w2.wpmucdn.com/campuspress.yale.edu/dist/b/405/files/2015/05/Nepal-DRG-Assessment-Report-Oct12final-1gwr9ok.pdf>.
- U.S. Congress, House of Representatives. “Expressing Support for Internal Rebuilding, Resettlement, and Reconciliation within Sri Lanka That Are Necessary to Ensure a Lasting Peace.” 112th Congress, 1st Session, March 17, 2011.
<https://www.congress.gov/bill/112th-congress/house-resolution/177/text?s=1&r=100&q=%7B%22search%22%3A%22sherman%22%7D>.
- U.S. Congress, Senate. “Sri Lanka Re-Charting U.S. Strategy After the War.” 111th Congress, 1st session, December 7, 2009.
<https://www.foreign.senate.gov/imo/media/doc/SRI.pdf>.

- . “Testimony of Eileen Chamberlain Donahoe For a Hearing of the Senate Foreign Relations Committee,” December 1, 2009. <https://www.foreign.senate.gov/imo/media/doc/DonahoeTestimony091201p.pdf>.
- U.S. Department of State. “Dismissal of Government and State of Emergency in Nepal,” February 1, 2005. <https://2001-2009.state.gov/r/pa/prs/ps/2005/41457.htm>.
- U.S. Department of State. “Friendship Between the U.S. and Nepal Remarks by Robert O. Blake Assistance Secretary, Bureau of South and Central Asia in Kathmandu, Nepal,” June 13, 2009. <https://2009-2017.state.gov/p/sca/rls/rmks/2009/125070.htm>.
- U.S. Department of State. “Report to Congress on Incidents During the Recent Conflict in Sri Lanka,” 2009. <https://reliefweb.int/report/sri-lanka/report-congress-incidents-during-recent-conflict-sri-lanka>.
- U.S. Embassy in Sri Lanka. “Remarks by Ambassador Samantha Power, U.S. Permanent Representative to the United Nations, at a Town Hall with Sri Lankan Youth,” November 23, 2015. <https://lk.usembassy.gov/remarks-ambassador-samantha-power-u-s-permanent-representative-united-nations-town-hall-sri-lankan-youth/>.
- U.S. Library of Congress, Congressional Research Service, “Nepal: Political Developments and Bilateral Relations with the United States”, by Bruce Vaughn, RL34731 (2008).
- Uyangoda, Jayadeva. “After the Lankan Elections.” *Economic and Political Weekly*, August 29, 2015.
- Uyangoda, Jayadeva. “Making Sense of the October Conflict and Its Aftermath.” In *Constitutional Reform and Crisis in Sri Lanka*, 105–42. Colombo, Sri Lanka: Centre for Policy Alternatives, 2019.
- . “Political Crisis in Sri Lanka: Whither Democratic Revival? Whither Democratic Revival?” *Economic and Political Weekly*, December 15, 2018.
- . “Sri Lanka in 2009 From Civil War to Political Uncertainties.” *Asian Survey* 50, no. 1 (2010): 10–111.
- Uyangoda, Jayadeva. “The Way We Are: An Essay in Despondency with an Appeal.” *Sunday Observer*, March 11, 2018. <https://www.sundayobserver.lk/2018/03/11/columns/way-we-are-essay-despondency-appeal>.
- Varadarajan, Siddharth. “India Should Have Defended Civilian Supremacy in Nepal.” *The Hindu*, May 11, 2009.
- . “India’s Nepal Policy in Disarray.” *The Hindu*, May 7, 2009.
- Vermunt, Eleanor, and Isabelle Lassee. “‘Fitting the Bill’: Incorporating International Crimes into Sri Lankan Law.” South Asian Centre for Legal Studies, September 2016.
- Ward, Benjamin. “The Value of a UK Strategy on Human Rights.” *The Foreign Policy Centre* (blog), September 29, 2020. <https://fpc.org.uk/the-value-of-a-uk-strategy-on-human-rights/>.
- Weiss, Gordon. *The Cage The Fight for Sri Lanka and The Last Days of The Tamil Tigers*. London: The Bodley Head, 2011.
- Welikala, Asanga. “An Anatomy of Failure: The 2014-18 Sri Lankan Constitutional Reform Exercise in Context.” In *Annual Review of Constitution Building Processes: 2017*, 80–95. Stockholm: International IDEA, 2018.

- . “Constitutional Reforms in Sri Lanka - More Drift?” *The Commonwealth Journal of International Affairs* 108, no. 6 (2019): 605–12.
- . “Sri Lanka: The Nineteenth Amendment to the Constitution - from Start to Finish.” *Constitutionnet* (blog), May 26, 2015. <https://constitutionnet.org/news/sri-lanka-nineteenth-amendment-constitution-start-finish>.
- . “Sri Lanka: The Nineteenth Amendment to the Constitution - from Start to Finish.” *Constitutionnet* (blog), May 26, 2015. <https://constitutionnet.org/news/sri-lanka-nineteenth-amendment-constitution-start-finish>.
- , ed. *The Nineteenth Amendment to the Constitution: Content and Context*. Colombo, Sri Lanka: Centre for Policy Alternatives, 2016.
- . “The Sri Lankan Culture of Constitutional Law and 263 Politics: The Lessons of the Constitutional Reform Exercise of 2015-19 and the Constitutional Crisis of 2018.” In *Constitutional Reform and Crisis*, 263–328, 2019.
- Whelpton, John. *A History of Nepal*. UK: Cambridge University Press, 2005.
- Whitfield, Theresa. “Nepal’s Masala Peacemaking.” In *Nepal in Transition From People’s War to Fragile Peace*, edited by Sebastian von Einsiedel, David Malone, and Suman Pradhan, 155–74. New York: Cambridge University Press, 2012.
- Wijenayake, Vishaka. “The Office on Missing Persons in Sri Lanka: The Importance of a Primarily Humanitarian Mandate.” *International Review of the Red Cross* 99, no. 2 (2017): 641–62.
- Wiseberg, Laurie, and Mirak Raheem. “New Policy on Durable Solutions in Sri Lanka: The Challenge of Implementation,” September 2016. <https://www.internal-displacement.org/expert-opinion/new-policy-on-durable-solutions-in-sri-lanka-the-challenge-of-implementation>.
- Working Group on Enforced or Involuntary Disappearances. “Follow-up on the Visits of the Working Group on Enforced or Involuntary Disappearances to Peru and Sri Lanka A/HRC/42/40/Add.1,” September 10, 2019. <https://documents.un.org/doc/undoc/gen/g19/267/26/pdf/g1926726.pdf?token=r9zKtCxRBjhiNRpxuG&fe=true>.
- Xavier, Constantino. “Converting Convergence into Cooperation: The United States and India in South Asia.” *Asia Policy* 14, no. 1 (January 2019): 19–50.
- Yap, James. “Beyond ‘Don’t Be Evil’: The European Union GSP+ Trade Preference Scheme and the Incentivisation of the Sri Lankan Garment Industry to Foster Human Rights.” *European Law Journal* 19, no. 2 (March 2013): 283–301.