

## AMNESTY INTERNATIONAL PUBLIC STATEMENT

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# AMID PANDEMIC, SRI LANKA PARDONS SOLDIER CONVICTED OF MASSACRE

On 26 March 2020, Sri Lankan President Gotabaya Rajapaksa granted a Presidential pardon to Sergeant Sunil Rathnayaka a former soldier, convicted and sentenced to death by a five-member bench of the Supreme Court for the murder of eight civilians in December 2000 in Mirusuvil, Jaffna. The unarmed civilians were ethnic Tamils, internally displaced during the war in the north of Sri Lanka. Among the victims were three children aged 15, 13, and a five-year-old whose body sustained signs of torture. At least three legal challenges have already been filed against the presidential pardon.

The pardon evoked strong reactions and condemnation from both local and international rights groups, not least for its timing and context.<sup>1</sup> The reprieve comes at a time when there are public calls for the government to ease prison crowding<sup>2</sup> by releasing prisoners held for, amongst others, minor offences, and those who are unable to meet bail conditions, to avoid the spread of COVID-19.<sup>3</sup> Sergeant Rathnayaka was the first prisoner released, before it even became clear which other prisoners would be eligible for a reprieve because of the pandemic. Sri Lanka's National Human Rights Commission expressed concern on the pardon sending a "negative message that reinforces allegations of impunity and lack of justice for victims of violations in Sri Lanka",<sup>4</sup> and the Tamil National Alliance (TNA), Sri Lanka's main party representing Tamils of the north and east, criticized the move, calling it "opportunistic...[done] under guise of dealing with the issue of prisoners" in the wake of COVID-19 pandemic.<sup>5</sup> The UN High Commissioner for Human

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<sup>1</sup> See for e.g. Adayaalam Centre for Policy Research, *Pardon of Ratnayake reinforces Sri Lanka's Culture of Impunity for Military Crimes*, March 2020, <http://adayaalam.org/pardon-of-ratnayake-reinforces-sri-lankas-culture-of-impunity-for-military-crimes/>; Sri Lanka Campaign, *Not letting a good crisis go to waste: threats to human rights and the rule of law in Sri Lanka amid the coronavirus pandemic*, April 2020, <https://www.srilankacampaign.org/not-letting-a-good-crisis-go-to-waste-threats-to-human-rights-and-the-rule-of-law-in-sri-lanka-amid-the-coronavirus-pandemic/>; Human Rights Watch, *Sri Lanka: Justice Undone for Massacre Victims*, March 2020, <https://www.hrw.org/news/2020/03/27/sri-lanka-justice-undone-massacre-victims>; Change.org, *The Decision to Grant Staff Sergeant Sunil Rathnayaka a Pardon is Not in My Name*, April 2020, <https://www.change.org/p/sri-lankan-president-gotabaya-rajapaksa-the-decision-to-grant-staff-sergeant-sunil-rathnayaka-a-pardon-is-not-in-my-name>

<sup>2</sup> Amnesty International, *South Asia: As COVID-19 spreads, fears rise for people at higher risk*, March 2020, <https://www.amnesty.org/en/latest/news/2020/03/south-asia-as-covid19-spreads-fears-rise-for-people-at-higher-risk/>

<sup>3</sup> Groundviews, *Releasing Prisoners to prevent spread of COVID-19 in prisons*, March 2020, <https://groundviews.org/2020/03/26/releasing-prisoners-to-prevent-spread-of-covid-19-in-prisons/>

<sup>4</sup> Human Rights Commission of Sri Lanka, *Granting of a Presidential Pardon to Former Army Corporal Sunil Rathnayake*, March 2020, <http://www.hrcsl.lk/wp-content/uploads/2020/02/Granting-of-a-Presidential-Pardon-to-Former-Army-Corporal-Sunil-Ratnayake.pdf>

<sup>5</sup> The Hindu, *Sri Lanka frees soldier who killed 8 Tamils*, March 2020, <https://www.thehindu.com/news/international/sri-lanka-frees-soldier-who-killed-8-tamils/article31177308.ece>

Rights called the pardon “an affront to victims and yet another example of the failure of Sri Lanka to fulfil its international human rights obligations to provide meaningful accountability for war crimes, crimes against humanity and other gross violations of human rights.”<sup>6</sup>

Following the UN Human Rights Council’s (UNHRC) successive resolutions on promoting reconciliation, accountability and human rights in Sri Lanka<sup>7</sup>, the former coalition government between President Sirisena and Prime Minister Wickremesinghe proposed ‘a judicial mechanism with a special counsel to investigate allegations of violations and abuses of human rights and violations of international humanitarian law’. The resolution affirmed that “a credible justice process should include independent judicial and prosecutorial institutions led by individuals known for their integrity and impartiality”, and asserted the importance of having Commonwealth and other foreign judges, defence lawyers, prosecutors and investigators in a Sri Lankan judicial mechanism.<sup>8</sup> The government failed to establish an accountability during its term, which ended in November 2019.

In February 2020, at the 43rd regular session of the UNHRC, the new government in Sri Lanka announced that it will no longer honour the commitments made previously at the Council. Instead, the Sri Lankan government declared its commitment to achieve sustainable peace, ‘through an inclusive, domestically designed and executed reconciliation and accountability process, including through the appropriate adaptation of existing mechanisms, in line with the Government’s policy framework.’<sup>9</sup>

This public statement examines the Mirusuvil case in detail and highlights serious concerns and implications of the Presidential pardon of one of the sole perpetrators of a mass atrocity during the Sri Lankan conflict.

## MIRUSUVIL CASE DETAILS<sup>10</sup>

Internal displacement was a common phenomenon during the armed conflict in Sri Lanka, between the government forces and the Liberation Tigers of Tamil Eelam (LTTE), which began in the early 1980s. Large-scale, serious violations of human rights were alleged to have been committed with impunity by both sides to the conflict.<sup>11</sup> The nearly 30 -year conflict came to an end in May 2009, with the government of Sri Lanka militarily defeating the LTTE.

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<sup>6</sup> UN Human Rights Office of the High Commissioner for Human Rights, Press briefing note on Sri Lanka, March 2020, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25752&LangID=E>

<sup>7</sup> For e.g. UNHRC resolutions A/HRC/RES/30/1, A/HRC/RES/34/1 and A/HRC/RES/40/1.

<sup>8</sup> Operative paragraph 6 of UNHRC resolution A/HRC/RES/30/1

<sup>9</sup> Ministry of Foreign Relations Sri Lanka, 3rd Session of the Human Rights Council – High Level Segment Statement by Hon. Dinesh Gunawardena, Minister of Foreign Relations of Sri Lanka, February 2020, <https://www.mfa.gov.lk/43rd-session-hrc/>

<sup>10</sup> Case details are the Supreme Court judgement available at: [http://www.supremecourt.lk/images/documents/sc\\_tab\\_1\\_2016.pdf](http://www.supremecourt.lk/images/documents/sc_tab_1_2016.pdf)

<sup>11</sup> The UN Secretary General’s Panel of Experts Report on Accountability in Sri Lanka (2011) found five core categories of serious violations of human rights by the government of Sri Lanka during the last stages of the war. These include killing civilians through widespread shelling, shelling of hospitals and other humanitarian objects; denial of humanitarian assistance; human rights violations suffered by victims and survivors of the conflict, including both IDPs and suspected LTTE cadre; and human rights violations outside the conflict zone, including against the media and other critics of the Government. The Panel of Experts found six core categories of serious human rights violations by the LTTE, including using civilians as a human buffer; killing civilians attempting to flee

On 19 December 2000, during the height of the armed conflict in Sri Lanka, nine unarmed Tamil villagers headed on bicycles from their temporary residences in Karaweddi in Jaffna to Mirusuvil, Jaffna in the Northern province of Sri Lanka. The nine comprised of 6 adult men - Raviwarman, Thaivakulasingham, Wilvarasa, Gnanachandran, Nadesu Jayachandran, Maheshwaran; and three boys, Prasad, Pradeepan Jayachandran and Shanthan aged 5, 13 and 15 respectively.

During their visit, the group was stopped by some military personnel who ordered them to kneel, questioned them and eventually physically assaulted them. According to 21-year-old Maheshwaran, he was blindfolded and assaulted once more. When regained consciousness, he noticed patches of blood on a nearby cesspit slab and sensed some movements inside it. Fearing for his life, he started running and escaped. Maheshwaran's mother made a complaint regarding the attack to the local office of the Eelam Peoples Democratic Party (EPDP). Four days after the attack, Major Sydney de Soyza, who was in-charge of supervising military police in Jaffna, visited Maheshwaran at his temporary house in Karaweddi and questioned him. On 24 December, Maheshwaran, along with his father, members of the EPDP and the military police including Major de Soyza, visited the location of the cesspit in Mirusuvil. The group found that the perpetrators had swapped human remains for animal remains. Following enquiries, the military police found that the perpetrators belonged to the reconnaissance unit of the 6<sup>th</sup> Gajaba Regiment's Special Operations unit, that was airlifted and deployed in the Mirusuvil area the day before the incident. While Maheshwaran and the military police were still on site, the Chief Officer of that Unit, Sergeant Ranasinghe, approached the scene accompanied by several officers from his unit. Maheshwaran identified two soldiers in the crowd as those who had assaulted him. Following this, the military police placed five soldiers from the unit, including Lance Corporal Sunil Rathnayaka<sup>12</sup> and Private Kumarasinghe in custody. Upon further inquiry, and information from Sunil Rathnayaka himself, on 24 December, the military police conducted a search on the terrain around the cesspit and found an area with loose soil, covered with twigs and small branches. On magisterial orders, the area was dug up and eight bodies were recovered on 25 December 2000. The bodies were of the eight unarmed civilians who had travelled with Maheshwaran on 19 December.

Maheshwaran, the sole survivor of the massacre, identified five army officers in an identification parade: Second Lieutenant R.W. Senaka Munasinghe, T.M. Jayaratne, S.A. Pushpa Saman Kumara and Gamini Munasinghe.<sup>13</sup> . Two year later, in October 2002, the five were indicted by the Attorney General (AG) on 17 counts. In 2015 the Colombo High Court Trial-at-Bar convicted Sergeant Sunil Rathnayaka but acquitted the other four accused as there was insufficient evidence to link them to the murders.

## **DELAYS: A 13-YEAR TRIAL**

The case was first taken up at the Chavakachcheri Magistrate's Court in Jaffna but upon the request of the Attorney General, citing fears for the safety of the suspects, the case was transferred to

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LTTE control; using military equipment in the proximity of civilians; forced recruitment of children; forced labour; and killing of civilians through suicide attacks.

<sup>12</sup> The Supreme Court document refers to Sergeant Sunil Rathnayaka as a Lance Corporal.

<sup>13</sup> Daily Mirror, *8 civilians murdered in Jaffna: Soldier sentenced to death*, June 2015, <http://www.dailymirror.lk/77509/8-idps-murdered-in-jaffna-soldier-sentenced-to-death>

Anuradhapura.,<sup>14</sup> It was then transferred to Colombo in the south of Sri Lanka in November 2002 where a Trial-at-Bar<sup>15</sup> at the High Court was appointed.

In 2003, after seven months of trial proceedings from January to July, the defence challenged the evidentiary value of Sergeant Sunil Rathnayaka's confession made to the military police.<sup>16</sup> The High Court of Colombo held the confession admissible. The defence later appealed the order<sup>17</sup> in the Supreme Court and the case was postponed to March 2004. The Supreme Court had previously held in the Krishanthi Kumaraswamy case<sup>18</sup> that a confession made to a military officer is inadmissible as evidence in court. As a result, the State counsel in the Mirusuvil case provided an undertaking to the court that the prosecution would not base their case on the confession made by Sergeant Sunil Rathnayaka to the military police officers.<sup>19</sup> Consequently, the confession was excluded as evidence<sup>20</sup> and the defence counsel withdrew the appeal.<sup>21</sup> The new date for the trial was fixed for November 2004.<sup>22</sup>

The case was further stalled following a series of delays. In November 2004, Judge Sarath Ambepitiya, one of the Colombo High Court judges in the case was assassinated.<sup>23</sup> By the time the case was set to resume, in December 2004, a new judge had still not been appointed. The case was postponed once again, to January 2005. Later, another sitting judge on this case was removed on disciplinary grounds.<sup>24</sup> Finally, in May 2005, the Colombo High Court Trial-at-Bar established a new three-member bench to inquire into the case.<sup>25</sup> In 2007, the trial was stopped temporarily and was taken up once more only in September 2008.<sup>26</sup> The reluctance of the witnesses to travel a long distance from Jaffna to Colombo for

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<sup>14</sup> Centre for Human Rights and Development, *Army Sergeant found guilty and sentenced in the Mirusuvil massacre case*, <https://srilankachrd.org/la-mirusuvil.php>

<sup>15</sup> A trial before a group of judges, usually three or more.

<sup>16</sup> Under section 25 of Sri Lanka's Evidence Ordinance, no confession made to a police officer shall be proved as against a person accused of any offence, unless it is made in the immediate presence of a Magistrate. Law available at: [http://hrlibrary.umn.edu/research/srilanka/statutes/Evidence\\_Ordinance.pdf](http://hrlibrary.umn.edu/research/srilanka/statutes/Evidence_Ordinance.pdf)

<sup>17</sup> TamilNet, *Confessions in Mirusuvil massacre case valid - Supreme Court*, March 2004, <https://www.tamilnet.com/art.html?catid=13&artid=11515>

<sup>18</sup> Somaratne Rajapakse others v. Hon. Attorney General

<sup>19</sup> TamilNet, *Confessions in Mirusuvil massacre case valid - Supreme Court*, March 2004, <https://www.tamilnet.com/art.html?catid=13&artid=11515>

<sup>20</sup> International Commission of Jurists, *Post-war justice in Sri Lanka: Rule of law, the criminal justice system and commissions of inquiry*, January 2020, [https://www.icj.org/wp-content/uploads/2010/01/srilanka\\_impunity\\_18\\_01\\_20102.pdf](https://www.icj.org/wp-content/uploads/2010/01/srilanka_impunity_18_01_20102.pdf)

<sup>21</sup> TamilNet, *Confessions in Mirusuvil massacre case valid - Supreme Court*, March 2004, <https://www.tamilnet.com/art.html?catid=13&artid=11515>

<sup>22</sup> Centre for Human Rights and Development, *Army Sergeant found guilty and sentenced in the Mirusuvil massacre case*, <https://srilankachrd.org/la-mirusuvil.php>

<sup>23</sup> International Commission of Jurists, *Post-war justice in Sri Lanka: Rule of law, the criminal justice system and commissions of inquiry*, January 2020, [https://www.icj.org/wp-content/uploads/2010/01/srilanka\\_impunity\\_18\\_01\\_20102.pdf](https://www.icj.org/wp-content/uploads/2010/01/srilanka_impunity_18_01_20102.pdf)

<sup>24</sup> *Ibid.*

<sup>25</sup> Amnesty International, *Twenty years of make-believe: Sri Lanka's Commissions of Inquiry*, June 2009, <https://www.amnesty.org/download/Documents/48000/asa370052009eng.pdf>

<sup>26</sup> Centre for Policy Alternatives, *The Pardon in the Mirusuvil Massacre: Sri Lanka's Elusive Quest for Justice*, April 2020, <https://www.cpalanka.org/wp-content/uploads/2020/03/The-Pardon-in-the-Mirusuvil-Massacre.pdf>

court proceedings further contributed to delays in the trial.<sup>27</sup> In 2011 the government analyst<sup>28</sup> produced his own report with evidence that the clothes found at the massacre site were those of the victims'.<sup>29</sup>

Four years later, in July 2015, the Colombo High Court found Sergeant Sunil Rathnayaka guilty on 17 counts, including murder, unlawful assembly with the common object of causing intimidation, and causing hurt. to death. The Court also imposed a Rs. 51,000 fine on the accused. The Sergeant appealed the verdict in the Supreme Court and in 2019, a five judge bench of the Supreme Court unanimously upheld the High Court's conviction and sentence.<sup>30</sup> A 13-year trial ended in a successful conviction against a perpetrator from the military, and rare justice for victims from an ethnic minority.

## JUSTICE AND ACCOUNTABILITY

In the history of Sri Lanka's three decades long internal conflict, the Mirusuvil case represents a rare victory for justice, where military perpetrators of serious human rights violations were successfully prosecuted.<sup>31</sup> Despite several judicial delays, case transfers, and multiple challenges in the accountability mechanism, the Mirusuvil case managed to achieve a successful conviction where many others had failed. It overcame historical and institutional challenges<sup>32</sup> including the lack of will to prosecute, the absence of a dedicated, independent Office of the Prosecutor,<sup>33</sup> and a politicized judiciary<sup>34</sup> to successfully hold the alleged perpetrators to account and deliver justice for victims and their families.<sup>35</sup> In 2015, following the High Court verdict, the army spokesman at the time, Brigadier Jayanath Jayaweera was quoted by the AFP as saying,

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<sup>27</sup> International Commission of Jurists, *Post-war justice in Sri Lanka: Rule of law, the criminal justice system and commissions of inquiry*, January 2020, [https://www.icj.org/wp-content/uploads/2010/01/srilanka\\_impunity\\_18\\_01\\_20102.pdf](https://www.icj.org/wp-content/uploads/2010/01/srilanka_impunity_18_01_20102.pdf)

<sup>28</sup> "The Department provide[s] analytical, consultancy and investigation services pertaining to forensic science and food science. These services are generally provided to public through the Police Department and the Courts of Law in legal matters or in cases of lawsuits. However some of the services are directly provided to the general public and to the private sector." See more:

[http://www.gic.gov.lk/gic/index.php?option=com\\_org&Itemid=4&id=121&task=org&lang=en](http://www.gic.gov.lk/gic/index.php?option=com_org&Itemid=4&id=121&task=org&lang=en)

<sup>29</sup> Centre for Policy Alternatives, *The Pardon in the Mirusuvil Massacre: Sri Lanka's Elusive Quest for Justice*, April 2020, <https://www.cpalanka.org/wp-content/uploads/2020/03/The-Pardon-in-the-Mirusuvil-Massacre.pdf>

<sup>30</sup> The Supreme Court judgement

<sup>31</sup> The Embilipitiya case and the Krishanthi Kumaraswamy case are the two other cases which saw a successful conviction of military personnel. More information on accountability failures available at:

[https://www.icj.org/wp-content/uploads/2010/01/srilanka\\_impunity\\_18\\_01\\_20102.pdf](https://www.icj.org/wp-content/uploads/2010/01/srilanka_impunity_18_01_20102.pdf)

<sup>32</sup> See for e.g. Amnesty International, *Twenty years of make-believe: Sri Lanka's Commissions of Inquiry*, June 2009, <https://www.amnesty.org/download/Documents/48000/asa370052009eng.pdf>; International Commission of Jurists, *Challenges to Accountability for*

*Human Rights Violations in Sri Lanka*, March 2017, <https://www.icj.org/wp-content/uploads/2017/03/Sri-Lanka-FCO-Accountability-1-Advocacy-Analysis-brief-2017-ENG.pdf> and International Commission of Jurists, *Post-war justice in Sri Lanka: Rule of law, the criminal justice system and commissions of inquiry*, January 2020, [https://www.icj.org/wp-content/uploads/2010/01/srilanka\\_impunity\\_18\\_01\\_20102.pdf](https://www.icj.org/wp-content/uploads/2010/01/srilanka_impunity_18_01_20102.pdf)

<sup>33</sup> There are concerns around the independence of the office of the Attorney General, which has the dual role acting as both the prosecutor to the State as well as the legal advisor to the State.

<sup>34</sup> See for e.g., International Commission of Jurists, *Challenges to Accountability for Human Rights Violations in Sri Lanka*, March 2017 and International Crisis Group, *Sri Lanka's Judiciary: Politicised Courts, Compromised Rights*, June 2009, <https://www.crisisgroup.org/asia/south-asia/sri-lanka/sri-lanka-s-judiciary-politicised-courts-compromised-rights>

<sup>35</sup> These cases include, among many others, the Kumarapuram case from 1996, the Trinco five case from 2006, the massacre of the 17 ACF aid workers in 2006, the assassination of Tamil MP Nadaraja Raviraj in 2006, the Viswamadu gang rape case from 2010 and the enforced disappearance of journalist Prageeth Eknaligoda in 2010,

“This (verdict) is a good example to show the (justice) system is working well.”<sup>36</sup> He further stated that Sergeant Rathnayake’s sentence showed that the authorities were following due process in dealing with abuses committed during the war.<sup>37</sup> However, his statement overlooks the near-total impunity for crimes committed by military-men in Sri Lanka, especially high-ranking officers.

With the recent pardon and release of Sergeant Sunil Rathnayaka, the President of Sri Lanka has reversed the hard-won justice for the victims’ families.

## POWER TO PARDON

Article 34 of the Sri Lankan Constitution empowers the President of Sri Lanka to pardon any convicted offender, with or without conditions; grant any respite; substitute the sentence with a less severe punishment or remit the full or any part of the punishment, including any penalty owed.<sup>38</sup>

However, in cases where the sentence is death, the Constitution requires an additional process to be followed before any of the above-mentioned powers are exercised. This includes, first, a report by the trial judge, which is then sent to the Attorney General for his advice, and then both reports are forwarded to the Justice Minister for his final recommendations to the President<sup>39</sup>

But in the Mirusuvil case, there appears no indication that this process was followed before Sergeant Sunil Rathnayaka was pardoned. The AG’s and the trial judge’s recommendations are unlikely to sanction a Presidential pardon, therefore the President may have either dismissed their recommendations or not sought their feedback at all as required by the Constitution. Since there is no obligation to make this information public, the documents linked to Sergeant Sunil Rathnayaka’s release have not been made public. Citing the Right to Information (RTI) Act 2017, and noting that “the pardoning of individuals convicted for murder, and the documents underpinning these pardons, qualify as matters that directly affect the public”, Transparency International Sri Lanka has called on the Presidential Secretariat to publicly disclose all relevant documents in the case of the presidential pardon.<sup>40</sup>

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<sup>36</sup> Bangkok Post, *Sri Lankan soldier handed death sentence for civilian massacre*, June 2015, <https://www.bangkokpost.com/world/604316/sri-lankan-soldier-handed-death-sentence-for-civilian-massacre>

<sup>37</sup> *Ibid.*

<sup>38</sup> Article 34(1) of the Sri Lankan Constitution: (a) grant a pardon, either free or subject to lawful conditions; (b) grant any respite, either indefinite for such period as the President may think fit, of the execution of any sentence passed on such offender; (c) substitute a less severe form of punishment for any punishment imposed on such offender; or (d) remit the whole or any part of any punishment imposed or of any penalty or forfeiture otherwise due to the Republic on account of such offence.

<sup>39</sup> Article 34(1) of the Sri Lankan Constitution: Provided that where any offender shall have been condemned to suffer death by the sentence of any court, the President shall cause a report to be made to him by the Judge who tried the case and shall forward such report to the Attorney-General with instructions that after the Attorney-General has advised thereon, the report shall be sent together with the Attorney-General’s advice to the Minister in charge of the subject of Justice, who shall forward the report with his recommendation to the President.

<sup>40</sup> Transparency International also noted that regulation 20/1/iv, promulgated by Gazette No. 2004/66 under the Right to Information (RTI) Act also requires all public authorities to proactively disclose decisions and formal acts, particularly those that directly affect the public, including the data and documents used as the basis for these decisions and acts, and therefore consider the pardoning of individuals convicted for murder, and the documents underpinning these pardons, qualify as matters that directly affect the public. See more at: <https://www.tisirilanka.org/presidential-pardon-tisl-calls-for-public-disclosure-of-documents/>

Prior to Sergeant Sunil Rathnayaka, the Presidential power to pardon was most recently used by former President Maithripala Sirisena to release Buddhist monk Gnanasara Thero and Jude Shramantha Jayamaha. The Thero was sentenced to six years rigorous imprisonment in August 2018 for contempt of court over disrupting proceedings around the case of disappeared journalist Prageeth Eknaligoda. In the Eknaligoda case, members of the military officers are the accused.<sup>41</sup> He received a Presidential pardon in May 2019, and walked free after only nine months in prison. Jayamaha was convicted by the High Court in 2006 with a 12-year sentence, but the Court of Appeal increased his sentence to a death in 2012 for the murder of a teenager in 2005.<sup>42</sup> He had spent 13 years in prison when former President Sirisena pardoned him on 9 November 2019, during the last few days of his term as President.

Both of these pardons are currently being challenged before the Supreme Court<sup>43</sup> for frustrating “the power of the Judiciary to maintain its authority and uphold its dignity and the rule of law” as per the Constitution.<sup>44</sup> To date, there is no clarity as to the rationale or criteria used by the President to determine which prisoners are afforded reprieve.

Historically, the Presidential pardon has drawn criticism for its arbitrary use, especially when it has been used to release notorious prisoners convicted for serious crimes and those with affiliations to the political party in power. In 1981, President Jayewardene pardoned W. K. Sunil (alias ‘Gonawala Sunil’) who was convicted for rape. Sunil was a powerful figure linked to President Jayewardene’s party, the United National Party (UNP).<sup>45</sup> In 1989, President Premadasa prematurely released Manohari Daniels, as a good-will gesture ahead of peace-talks with the LTTE. She was convicted for aiding and abetting the LTTE carry out a bomb attack near Maradana police station in 1987 which killed 40 people.<sup>46</sup> In 2005, President Mahinda Rajapaksa granted reprieve to Mary Juliet Monica Fernando who was the spouse of Milroy Fernando, a cabinet minister. She was convicted of a double murder.<sup>47</sup> In 2006, President Rajapaksa used his Presidential power to pardon to secure the release of S. B. Dissanayake, former opposition minister from the UNP who was sentenced to two-years rigorous imprisonment for making defamatory remarks against the judiciary.<sup>48</sup>

International human rights law imposes on states not only the obligation to investigate serious human rights violations and crimes under international law, but also the obligation to punish the people found

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<sup>41</sup> Aljazeera, *Sri Lanka president pardons hardline Buddhist monk*, May 2019, <https://www.aljazeera.com/news/2019/05/sri-lanka-president-pardons-hardline-buddhist-monk-190522192204588.html>

<sup>42</sup> BBC, *Outrage as Sri Lanka president pardons teen’s killer*, November 2019, <https://www.bbc.com/news/world-asia-50365125>

<sup>43</sup> For e.g. Women and Media Collective challenged Jayamaha’s pardon (see: <https://ceylontoday.lk/print-more/47079>) and the Centre for Policy Alternative challenged Gnanasara’s pardon (see: <http://www.ft.lk/news/CPA-contests-President-s-decision-to-pardon-Ven-Gnanasara-Thero/56-681784>)

<sup>44</sup> Article 12(1) of the Sri Lankan Constitution: All persons are equal before the law and are entitled to the equal protection of the law and Daily FT, *CPA contests President’s decision to pardon Ven. Gnanasara Thero*, July 2019, <http://www.ft.lk/news/CPA-contests-President-s-decision-to-pardon-Ven-Gnanasara-Thero/56-681784>

<sup>45</sup> Colombo Telegraph, *Black July: Justice Of Peace Gonawela Sunil And The Killings In Prison*, September 2013, <https://www.colombotelegraph.com/index.php/black-july-justice-of-peace-gonawela-sunil-and-the-killings-in-prison/>

<sup>46</sup> Daily News, *A pardon with precedent*, May 2019, <http://www.dailynews.lk/2019/05/30/features/186965/pardon-precedent>

<sup>47</sup> Ceylon Today, *Presidential pardon does not wipe off the record of the criminal: What is wrong is wrong - Kalinga Indatissa PC*, November 2019, <https://ceylontoday.lk/print-more/45206>

<sup>48</sup> BBC Sinhala, *Presidential pardon to SB*, February 2006, [https://www.bbc.com/sinhala/news/story/2006/02/060215\\_sb\\_pardon.shtml](https://www.bbc.com/sinhala/news/story/2006/02/060215_sb_pardon.shtml)

responsible for such unlawful conduct, in accordance with the gravity or seriousness of the crime, in order to avoid impunity and prevent similar acts in future. Under international human rights law, states are therefore prohibited from granting a reprieve or pardon if to do so would have the effect of denying the human rights violations or crimes under international law their rights to justice, truth and reparation. The Office of the High Commissioner for Human Rights at the UN (OHCHR) holds that “amnesties, pardons, exemptions from criminal liability,... are null and void, and have no legal effect” and in the context of covid-19, “the legitimate and necessary measures to protect against covid-19 and overcrowding should not lead, de jure or de facto, to impunity for persons convicted in various parts of the world for serious violations of human rights, crimes against humanity, genocide, or war crimes.”<sup>49</sup>

## ELECTION PLEDGE AND RELEASE DURING COVID-19

In October 2019, then Presidential hopeful Gotabaya Rajapaksa pledged that once in power, he would acquit and release ‘war heroes’ being held on ‘baseless’ charges.<sup>50</sup> Once in power, there were rumours and reports on social media for months of Sergeant Sunil Rathnayaka securing a Presidential pardon.<sup>51</sup> However, the President dismissed them as ‘false news’ stating that any decision taken by him will be communicated through official channels.<sup>52</sup>

Yet, when confirmation of the Presidential pardon for Sergeant Sunil Rathnayaka was reported by the media on 26 March 2020, Sergeant Sunil Rathnayaka had already been released and was on his way home. Unconfirmed reports say that the Sergeant was given 20 years of back wages as a cash payment (compensation).<sup>53</sup> Notably, the pardon came at a time when Sri Lanka was virtually on lockdown due to COVID-19. The number of confirmed cases in Sri Lanka was at 106. Most media were focused on the global pandemic, and pro-government private media institutions that usually send broadcast alerts maintained a complete silence around the announcement. Curfews were in place in several parts of the country, preventing any public protests on the streets. While three petitions have already been filed challenging the Presidential pardon,<sup>54</sup> the Courts are not functioning due to COVID-19, making it impossible for the legal challenges to be heard. The fact that the sole perpetrator convicted in the Mirusuvil massacre had not just walked free but could also potentially leave the country by the time the courts are back in operation, is a significant concern and an additional obstacle for any legal challenge.

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<sup>49</sup> UN Human Rights Office of the High Commissioner for Human Rights, *Information Note: COVID-19, prison overcrowding, and serving sentences for serious human rights violations*, <https://www.ohchr.org/EN/Issues/TruthJusticeReparation/Pages/infonotecovid.aspx>

<sup>50</sup> Sunday Observer, *Gota's pledge to release suspects: Fresh hell for victims?*, October 2019, <http://www.sundayobserver.lk/2019/10/13/news/gota%E2%80%99s-pledge-release-suspects-fresh-hell-victims>

<sup>51</sup> Ceylon Today, *Ajith P. Perera praises President: 35 Military officers to be pardoned?*, January 2020, <https://ceylontoday.lk/print-more/49529>

<sup>52</sup> AFP Fact Check, *Sri Lanka's president denied issuing any such directive; the Prisons Department said the inmate remains in jail*, December 2019, <https://factcheck.afp.com/sri-lankas-president-denied-issuing-any-such-directive-prisons-department-said-inmate-remains-jail>

<sup>53</sup> Sri Lanka Brief, *Status statement II: Sri Lanka's response to Covid-19 – Alliance of Independent Professionals*, April 2020, <https://srilankabrief.org/2020/04/status-statement-ii-sri-lankas-response-to-covid-19-alliance-of-independent-professionals/>

<sup>54</sup> Daily Mirror, *Former Human Rights Commissioner challenges Presidential pardon of convicted army officer*, April 2020, [http://epaper.dailymirror.lk/epaper/iphone/homepage.aspx#\\_article66c15a7e-76d2-4df0-a127-6ad11e00f603](http://epaper.dailymirror.lk/epaper/iphone/homepage.aspx#_article66c15a7e-76d2-4df0-a127-6ad11e00f603)



The Presidential pardon came on the back of instructions given to a committee appointed by the President to examine the possibility of releasing prisoners who were in custody for minor offences and unable to pay bail, amidst growing fears of a COVID-19 outbreak within prisons.<sup>55</sup> Just days preceding this, two prisoners were reportedly killed and others were injured during a shooting incident in the Anuradhapura prison around protests related to COVID-19.<sup>56</sup> However, at the time Sergeant Sunil Rathnayaka was released, no other prisoners had been released.

Furthermore, on 1 April, the Acting Inspector General of Police (IGP) issued a media alert<sup>57</sup> saying that he has instructed the Criminal Investigations Department and all the Police Officers-in-Charge 'to take legal action against those who publish posts on social media criticizing government officials and obstructing their duties.'<sup>58</sup> Such overbroad and vague instructions have a history of being abused in Sri Lanka.<sup>59</sup> Amnesty International is concerned that given the overbroad nature of the instructions, any criticism of any government action or inaction during COVID-19, including criticism of the President's decision to pardon Sergeant Sunil Rathnayaka, could also be dealt with as a criminal charge under these latest instructions.

Amnesty International is concerned that President Gotabaya Rajapaksa's decision to grant a pardon to and order the release of Sergeant Sunil Rathnayaka, whose conviction was a rare victory for victims of crimes under international law and other serious human rights violations committed during the war, severely undermines the country's efforts to break away from impunity and deal with its past. The heinous nature of the crime must not go unpunished and the perpetrators must serve a punishment that is proportionate to the seriousness of their conduct, without recourse to the death penalty. As a party to the International Covenant on Civil and Political Rights, Sri Lanka has an international obligation to ensure that any person whose rights or freedoms have been violated have an effective remedy<sup>60</sup> and to ensure that authorities enforce such remedies when granted.<sup>61</sup>

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<sup>55</sup> Daily FT, *President seeks relief for prisoners amidst fears of COVID-19 spreading to prisons*, March 2020, <http://www.ft.lk/news/President-seeks-relief-for-prisoners-amidst-fears-of-COVID-19-spreading-to-prisons/56-698004#.XnrHat48NEI.twitter>

<sup>56</sup> Economy Next, *Sri Lanka's overcrowded jails tense over COVID 19*, March 2020, <https://economynext.com/sri-lankas-overcrowded-jails-tense-over-covid-19-62500/> and Amnesty International, *South Asia: As COVID-19 spreads, fears rise for people at higher risk*, March 2020, <https://www.amnesty.org/en/latest/news/2020/03/south-asia-as-covid19-spreads-fears-rise-for-people-at-higher-risk/>

<sup>57</sup> See <https://twitter.com/rukitweets/status/1245987392189640712?s=20>

<sup>58</sup> Daily FT, *Police to take strict action against online fake news and malicious attacks*, April 2020, [http://www.ft.lk/breaking\\_news/Police-to-take-strict-action-against-online-fake-news-and-malicious-attacks/10526-698367](http://www.ft.lk/breaking_news/Police-to-take-strict-action-against-online-fake-news-and-malicious-attacks/10526-698367)

<sup>59</sup> See for e.g. Amnesty International, *Sri Lanka: Writer faces up to 10 years jail for story: Shakthika Sathkumara*, July 2019, <https://www.amnesty.org/en/documents/asa37/0800/2019/en/>; Amnesty International, *Sri Lanka: Respect human rights in the aftermath of Easter attacks*, May 2019, <https://www.amnesty.org/download/Documents/ASA3702972019ENGLISH.pdf>; and Amnesty International, *Sri Lanka: Countering terrorism at the expense of human rights: Concerns with Sri Lanka's Counter Terrorism bill*, January 2019, <https://www.amnesty.org/en/documents/asa37/9770/2019/en/>

<sup>60</sup> Article 2(a), ICCPR

<sup>61</sup> Article 2(c), ICCPR

## RECOMMENDATIONS

- Immediately revoke the decision to grant a Presidential pardon and release of Sergeant. Sunil Rathnayaka from prison.
- Ensure that Sergeant Sunil Rathnayaka serves a sentence that is commensurate to the crimes he committed, without recourse to the death penalty. The President must commute Sergeant Sunil Rathnayaka's sentence to life imprisonment.
- Immediately ensure that effective reparations, including compensation, are provided for all the families of the victims of the Mirusuvil massacre.
- Ensure all victims are provided effective and adequate protection, and are not subject to harassment, intimidation or threats by state authorities.