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GAP IN INTERNET ACCESS IN SRI LANKA VIOLATES HUMAN RIGHTS

by Gracie Kreth*

INTRODUCTION

Just over half of the world's population has access to the internet—leaving more than forty percent of people without access to connectivity, education, economic opportunities, or a reliable means to perform daily tasks that most wealthy countries and their citizens can do with ease.¹ As the world tries to keep up with technology, almost all aspects of daily life have moved online, and this has left billions of people who still lack internet stranded without access to integral resources like emergency alerts, education, banking, telehealth, and the ability to engage in online discussion. Without the means to communicate online, both by exercising one's voice and receiving information, people without internet access are blocked from their accessing their fundamental human rights, including freedom of speech, freedom of expression, and the right to education.²

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¹ *Fixed Broadband Subscriptions*, WORLD BANK, https://data.worldbank.org/indicator/IT.NET.USER.ZS?most_recent_value_desc=false (last visited Apr. 15, 2022).

² International Covenant on Civil and Political Rights, *opened for signature* Dec. 16, 1966, 999 U.N.T.S. 171, art. 19 [hereinafter ICCPR].

The Telecommunication Regulatory Commission of Sri Lanka reports 2.1 million fixed-broadband subscriptions, which is less than ten percent of its 21.9 million population.³ While the government reports a much higher mobile broadband subscription of 17.2 million,⁴ the Ministry of Digital Technology labeled at least half of the Sri Lankan population as non-internet users—dubbing them “untapped potential.”⁵ As an overwhelming portion of the population lack access to the internet, most Sri Lankans are being deprived of the right to information and of the ability to join the public discourse online, thereby violating their rights to speech, expression, and education, which are protected by Article 14(1)(a) of Sri Lanka's Constitution, Article 19 of the International Covenant on Civil and Political Rights (ICCPR), and Articles of Convention on the Rights of the Child (CRC).⁶

I. BACKGROUND

In a country of nearly 22 million people, less than two million Sri Lankans have fixed broadband access.⁷ Those excluded from the internet are primarily the portion of the population in rural, non-English

³ *Sri Lanka, Freedom of the Net 2021*, FREEDOM HOUSE, <https://freedomhouse.org/country/sri-lanka/freedom-net/2021> (last visited May 16, 2022).

⁴ *Id.*; see also *The Impact of the COVID-19 Pandemic on Internet Performance in Afghanistan, Nepal and Sri Lanka*, INTERNET SOC'Y (Mar. 2021), <https://www.internetsociety.org/wp-content/uploads/2020/12/Asia-Covid-report-EN-March-2021.pdf>. Because of little fixed broadband adoption, the majority of the internet-using population is reliant on mobile broadband, which is available to around ninety percent of the population. *Id.* Consequently, fifty percent of the population are active internet users but primarily through mobile. *Id.*

⁵ *Nearly Half of SL Population Yet to Gain Internet Access – Namal*, NEWSWIRE (Aug. 12, 2021), <https://www.newswire.lk/2021/08/12/nearly-half-of-sl-population-yet-to-gain-internet-access-namal/>.

⁶ The Constitution of the Democratic Socialist Republic of Sri Lanka [Constitution] Oct. 29 2020, art. 14 (Sri Lanka), <https://www.parliament.lk/files/pdf/constitution.pdf> [hereinafter Sri Lanka Constitution]; ICCPR, *supra* note 2, at art. 19; Convention on the Rights of the Child arts. 23–24, 28–29, 35, *opened for signature* Nov. 20, 1989, 1477 U.N.T.S. 3 [hereinafter CRC].

⁷ *Sri Lanka, Fixed Broadband Subscriptions*, WORLD BANK, https://data.worldbank.org/indicator/IT.NET.BBND?locations=LK&most_recent_value_desc=false (last visited Apr. 15, 2022).

speaking areas and who are at the bottom of the socio-economic pyramid.⁸ Only about forty percent of households with children have an internet connection and fifty-two percent have a computer or smartphone.⁹ By failing to ensure that their citizens are guaranteed internet access to the majority of its population, Sri Lanka is violating the ICCPR and the Sri Lankan Constitution—both which protect freedom of speech and freedom of expression and which should guarantee universal internet access. Furthermore, by failing to ensure its children have internet access, Sri Lanka is violating the CRC, as the internet is a crucial part of education.¹⁰

In 1996, Sri Lanka's government created the Telecommunications Regulatory Commission under an amendment to the Sri Lanka Telecommunications Act of 1991.¹¹ The Act's purpose is to "ensure that the telecommunication services in the country are operated in a manner which will best serve and contribute to its overall economic and social development and advancement" and "to ensure compliance by operators with international or other obligations entered into by the Government of Sri Lanka in relation to telecommunication."¹² This Act codifies Sri Lanka's governmental duty to ensure its citizens have access to internet, but the country is currently falling short of this duty.

In *Fernando v. Sri Lanka Broadcasting Corp.*, the Sri Lankan Supreme Court upheld the right to free speech and acknowledged the right to receive information—which principally accompanies free speech.¹³ Sri Lanka's Broadcasting Corporation Education Services launched the Non-Formal

⁸ *Broadband in Sri Lanka: Glass Half Full or Half Empty*, WORLD BANK GRP., <https://documents1.worldbank.org/curated/en/876591468331458029/pdf/691820ESW0P1200oadband0in0Sri0Lanka.pdf> (last visited Apr. 15, 2022).

⁹ *Sri Lanka, Freedom of the Net 2021*, *supra* note 3.

¹⁰ CRC, *supra* note 6, art. 23–24, 28–29, 35; *Sri Lanka, Freedom of the Net 2021*, *supra* note 3.

¹¹ Sri Lanka Telecommunications Act, 1991 (Act No. 25/1991) (Sri Lanka).

¹² *Id.*

¹³ *Wimal Fernando v. Sri Lanka Broad. Corp.* [1996] Sri L.R. 157, 157 (Sri Lanka).

Education Programme (NFEP) in 1991 but abruptly canceled the program in 1995.¹⁴ Two people brought suit against Sri Lanka's Broadcasting Corporation for violating their rights under Article 14(1)(a) and thereby abridging their freedom of speech and expression.¹⁵ The Court ruled for the plaintiffs by reasoning that Article 14(1)(a) should not be interpreted narrowly, and that Article 14(1)(a) specifically extended the freedom of speech and expression to include the right to obtain and record information.¹⁶ The programming included opportunities for the listeners to engage with programs, and the petitioner in the case was an active participatory listener.¹⁷ The Court followed the petitioner's view that speech is protected and requires the receipt of information.¹⁸ Therefore, in Sri Lanka, freedom of speech includes the right to receive information, which also gives rights to the listener.¹⁹

II. LEGAL ANALYSIS

In ratifying the ICCPR and CRC and codifying freedom of speech and expression protection, Sri Lanka's government expresses its goal to protect citizens' freedom of speech and expression and provides the space for internet access to be protected as means of communication develop in unpredictable ways.²⁰ The legal framework exists to protect Sri Lankan citizens' rights to the internet.

¹⁴ *Id.*

¹⁵ *Id.* at 161, 166–67.

¹⁶ *Id.* at 179.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *See id.* at 177 (reasoning that freedom of speech also must also recognize freedom of the recipient to information).

²⁰ *See* Sri Lanka Telecommunications Act, *supra* note 12 (codifying freedom of speech and expression); *see also Corporate Information*, TELECOMMS. REGUL. COMM'N SRI LANKA, <https://www.trc.gov.lk/2014-05-13-12-58-57/corporate-information.html> (last visited Apr. 15, 2022) (stating its goal to be at the "forefront of telecommunication regulation).

In 2016, the United Nations formally declared internet access a human right protected under the ICCPR.²¹ Article 19 of the ICCPR protects the right to free speech, and reads, “Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”²² While “internet” is not specifically mentioned, the language “regardless of frontier” and “other forms of media” has been interpreted as a placeholder for new technology, as forms of communication evolve and develop, including the internet.²³ Sri Lanka signed and ratified the ICCPR in 1980, making its provisions binding on the state.²⁴ Moreover, Sri Lanka’s Constitution mirrors the ICCPR in Article 14(1)(a), which protects human rights and freedom of expression.²⁵ The Court in *Fernando* cited several cases to support its reasoning, including *Visuvalingam v. Liyanage*,²⁶ a case brought after a newspaper was banned by two loyal readers, whom argued that the freedom of receipt of information was within the right to freedom of speech.²⁷ While holding the ban of the newspaper to be a constitutionally lawful restriction

²¹ UN Human Rights Council, The Promotion, Protection and Enjoyment of Human Rights on the Internet, U.N. Doc. A/HRC/32/L.20 (June 27, 2016), https://www.article19.org/data/files/Internet_Statement_Adopted.pdf

²² ICCPR, *supra* note 2, art. 19.

²³ See *id.*; UN Human Rights Committee, General Comment No. 34, CCPR/C/GC/34, ¶¶ 15, 39 (Sept. 12, 2011), <https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>; see also Wafa Ben-Hassine, *Government Policy for the Internet Must Be Rights-Based and User-Centred*, UNITED NATIONS CHRONICLE (Dec. 2018), <https://www.un.org/en/chronicle/article/government-policy-internet-must-be-rights-based-and-user-centred>.

²⁴ *Overview*, FOREIGN MINISTRY – SRI LANKA, <https://mfa.gov.lk/overview/> (last visited Apr. 15, 2022).

²⁵ Sri Lanka Constitution, *supra* note 6, art. 14; ICCPR, *supra* note 2, art. 19.

²⁶ *Visuvalingam v. Liyanage*, [1984] 2 Sri L.R. 311, 332 (Sri Lanka).

²⁷ *Wimal Fernando v. Sri Lanka Broad. Corp.* [1996] Sri L.R. 157, 176 (Sri Lanka).

of free speech, the Court acknowledged that public discussion was important for democracy.²⁸

The internet is a vehicle for connection, linking people across time and geographical barriers. While it holds useful tools for everyday life such as banking, education, and healthcare, the internet is also a tool people use to express themselves, engage in public discussion, and receive information. The Sri Lankan Supreme Court agreed that people’s freedom of speech, expression, and receipt of information needs to be protected to protect the human rights of people within their country.²⁹

As held in *Fernando*, the right to freedom of speech includes the “right to equality and right to information needed to make his freedom of speech effective.”³⁰ The internet has joined—if not surpasses—the giants of communication, such as newspapers and broadcasting, where people speak and share ideas. Thus, in Sri Lanka failing to ensure their citizens have access to the internet, the government is impeding their ability to join a primary public forum, and thus violating their fundamental right to freedom of speech. With over half the population lacking the ability to engage on the internet, they are unable to receive information from news sources, connecting with friends and family through social media, accessing education, and perhaps, even receiving information or announcements from their government.³¹ Moreover, *Fernando* acknowledges a person’s right to make their speech effective, which is embedded in the right to freedom of speech.³² If the public conversation is online and a person lacks internet access, their voice risks becoming obsolete, as they are unable to join the dialogue and share their opinion or experience.

²⁸ *Id.*

²⁹ See *Wimal Fernando*, [1996] Sri L.R. at 157; *Visuvalingam*, [1984] 2 Sri L.R. at 332.

³⁰ *Wimal Fernando*, [1996] Sri L.R. at 174.

³¹ *Sri Lanka, Fixed Broadband Subscriptions*, WORLD BANK, https://data.worldbank.org/indicator/IT.NET.BBND?locations=LK&most_recent_value_desc=false (last visited Apr. 15, 2022).

³² *Wimal Fernando*, [1996] Sri L.R. at 174.

The internet has become a necessary tool to uphold democracy, as it is where people speak and listen to the public forum. Free speech is the very pillar which democracy rests because it preserves and informs citizens' consent to be governed. Adequate information is paramount. If a person is restricted from information, their speech may not be informed, and lack of internet access increases this risk. As the Court in *Fernando* emphasized, "The consent of the governed implies not only that consent shall be free but also that it shall be grounded on adequate information and discussion aided by the widest possible dissemination of information from diverse and antagonistic sources."³³ Moreover, *Fernando* cites to the European Court of Human Rights (ECtHR), which held that the "right to receive information 'basically prohibits a government from restricting a person from receiving information that others may wish or may be willing to impart to him.'"³⁴ Although a European Court holding is not binding on domestic Sri Lankan law, it demonstrates the global view that internet has grown to become so absolute in modern day society that one without internet access is blocked from receiving adequate information.³⁵ The internet hosts vast amounts of information at the click a fingertip and can reach across time and geography—a characteristic particularly important to the island of Sri Lanka. As the world grows more dependent on the internet, information is frequently posted exclusively online. A democracy requires the distribution of information to foster an informed population, and

therefore, lack of internet access is not conducive to a democracy.³⁶

Furthermore, the internet is a platform to amplify voices.³⁷ Much like print or simply standing atop a podium with a microphone, the internet strengthens and sharpens voices, providing vast amounts of easily accessible information. As the Sri Lankan Court said in *Visuvalingam*, free speech "rests on the assumption the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public."³⁸ The internet does just that—it amplifies and disseminates voices on the World Wide Web.³⁹ If a pillar holding democracy is embodied in free speech and free speech is extended to the online world, the internet is a necessary platform to which all citizens of the democracy should have access.

Without access to the internet, people are excluded from information and in turn, excluded from education, which is protected by several provisions within the CRC.⁴⁰ Signed and ratified by Sri Lanka, the CRC mandates that the state recognize a child's right and adequate access to education, as well as education for the parents' as it pertains to the child's health.⁴¹ Much of this critical information is accessible online, and if the public discourse has shifted online, then a crucial part of modern education has to be in the virtual space.⁴²

³³ See *id.* at 176.

³⁴ *Id.* at 174 (first citing *Leander v. Sweden*, App. No. 9248/81 (Mar. 26, 1987), <https://hudoc.echr.coe.int/eng?i=001-57519>, and then citing *Open Door Counselling and Dublin Well Women Centre v. Ireland*, App. No. 14234/88, 14235/8829 (Oct. 29, 1992), <https://hudoc.echr.coe.int/eng?i=001-57789>).

³⁵ See *id.* (relying on reasoning from ECtHR precedent.); see also Catherine Howell & Darell M. West, *The Internet as a Human Right*, BROOKINGS INST. (Nov. 7, 2016), <https://www.brookings.edu/blog/techtank/2016/11/07/the-internet-as-a-human-right/>; Lauren O'Brien et al., *More than 3.5 Billion Left in the Dark: Why We're Still Fighting to Reach U.N. Targets for Internet Access*, ACCESSNOW (Nov. 5, 2020), <https://www.accessnow.org/internet-access/> (arguing for the internet as a human right).

³⁶ See *Wimal Fernando*, [1996] Sri L.R. at 176 (reasoning that a democracy is rooted in the consent of those governed having access to information, which is supported by wide dissemination of information).

³⁷ See, e.g., O'Brien, *supra* note 37 (arguing against government-imposed internet shutdowns as they silence dissent and prevent users and citizens from speaking freely, hurting a nation's development).

³⁸ *Visuvalingam v. Liyanage*, [1984] 2 Sri L.R. 311, 324, 332 (Sri Lanka) (citing *Termini ello v. Chicago* [1949] 93 U.S. Law-ers Edn. 1151).

³⁹ See, e.g., O'Brien, *supra*, note 37.

⁴⁰ CRC, *supra* note 4, art. 23–24, 28–29, 35.

⁴¹ *Id.*, arts. 19, 23–24, 28.

⁴² See *id.*, art. 35 (describing the goals of a child's education as protected by the CRC).

III. RECOMMENDATIONS

Sri Lanka still faces major roadblocks in its efforts to connect its citizens to the internet. While the country does a notable job in ensuring mobile connectivity, it lacks in fixed-broadband penetration rates, resulting in spotty network quality.⁴³ Being an island, Sri Lanka is able to capitalize on submarine fiber-optic cables but lacks the last-mile infrastructure, which is the last link connecting end users.⁴⁴ Therefore, focusing on last-mile deployment that guarantees high-quality service would be the wise prioritization.⁴⁵ With government-funded economic incentives, the island-nation should invest in both private companies for deployment, as well as the partially government-owned broadband provider, Sri Lanka Telecom. While government-launched programs such as *e-Sri Lanka* have made major progress in providing internet access and education across the island, many programs have stalled.⁴⁶ The program should be revisited, expanded, and better funded to provide citizens with the support they need to access the internet and use it confidently with the support of digital literacy programs. Furthermore, the COVID-19 pandemic largely helped the world realize how important staying connected online is for the effective continuation of a functioning society; sending additional funds to broadband deployment may be an easier effort to support politically.

CONCLUSION

Internet should be accessible to all people because it has become an integral part of our world and will only grow with time. Persons left without accessible internet are blocked from public discussion and basic public functions, which threatens the solidity of democracies. With most of its population lacking reliable internet access, Sri Lanka is violating its

citizens' human rights by abridging their freedom of speech, expression, and right to education as protected in Article 14(1)(a) of its Constitution, Article 19 of the ICCPR, and the CRC.

⁴³ *Broadband in Sri Lanka: Glass Half Full or Half Empty*, *supra* note 5.

⁴⁴ *The Impact of the COVID-19 Pandemic on Internet Performance in Afghanistan, Nepal and Sri Lanka*, *supra* note 4.

⁴⁵ *Id.*

⁴⁶ *Broadband in Sri Lanka: Glass Half Full or Half Empty*, *supra* note 5.