



~~KEEP THE~~ PROMISE

February 2017



**SRI
LANKA
CAMPAIGN**
FOR PEACE & JUSTICE

An overview of progress by the government of Sri Lanka in implementing its commitments for achieving justice and reconciliation under UN Human Rights Council Resolution 30/1

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The promise

Following a landmark international investigation, in September 2015 the United Nations released a major report on serious human rights violations in Sri Lanka between 2002 and 2011. The document, known as the OISL Report ([available here](#)), was clear in its view that many of those violations would amount to war crimes and crimes against humanity if established in a court of law. It also made a number of recommendations as to how Sri Lanka might begin to address these, and other abuses, in order to start laying the foundations for a sustainable peace.

In response, the government of Sri Lanka, acting through the UN Human Rights Council, made a series of promises to war survivors and the international community pledging to address the legacy of the war through a wide-ranging set of measures. **These promises were contained in Human Rights Council [resolution 30/1](#), agreed in October 2015.** The resolution requests the UN High Commissioner for Human Rights to provide a comprehensive update on the implementation of these commitments at the upcoming 34th Session of the Human Rights Council in March 2017.

The progress

Has the government kept its promise? We provide an answer to that question below, by distilling the resolution into 25 key commitments and analysing the progress to date on each. **Our findings paint a disappointing picture: the overwhelming majority of them remain mostly or wholly unimplemented. On only a handful has the government lived up to its word.** None of the four key mechanisms that were pledged have yet been established. And recent reports detailing serious ongoing human rights violations, including widespread torture, suggest that Sri Lanka's culture of impunity has not been addressed. Plainly, the government still has a long way to go in bringing about a process of accountability and reconciliation that deals, meaningfully and effectively, the country's recent past.

What next? Recommendations to the Human Rights Council

For many victims and survivors of human rights abuses in Sri Lanka our findings will represent yet another milestone in the long history of broken promises by the government. Trust and confidence are justifiably in short supply. **Yet as our analysis below suggests, the window of opportunity presented by Resolution 30/1 remains ajar. There is still the time and political space for the government to regain the initiative and undertake the bold steps mandated by the resolution. It can and must use them.**

On March 22nd members of the Human Rights Council will sit to deliberate on Sri Lanka's progress on Resolution 30/1 and, in light of the 'expiry date' on the text, consider the further courses of action available to it. **The international community must not shy away from the frank and robust appraisal that our analysis suggests is needed. And it must not let the government of Sri Lanka's promises slip by the way-side. To that end we are calling on members of the council to pass a second resolution which:**

- 1) Renews, without any dilution, the terms of Resolution 30/1, with a request to the government of Sri Lanka to produce a clear timetable for implementation of the outstanding commitments

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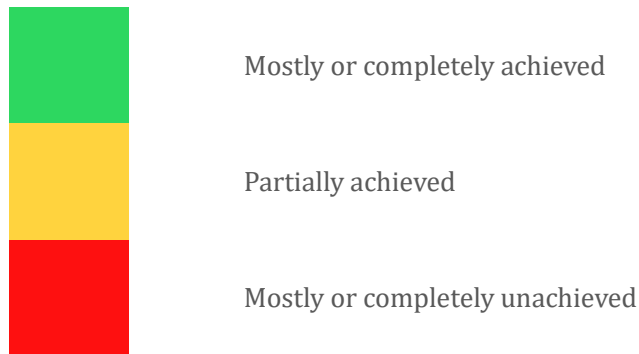
- 2) Requests the Office of the High Commissioner for Human Rights to continue to monitor the implementation of the resolution (including further reporting to the Council on its progress at agreed intervals)
- 3) Welcomes the recommendations of the final report of the Consultation Task Force on Reconciliation Mechanisms
- 4) Acknowledges the prevailing ground situation in the North and East (including persistent patterns of serious human rights violations, militarization, surveillance and intimidation) and the barrier that it poses to lasting reconciliation
- 5) Cautions against an approach to transitional justice which defers accountability for serious crimes

For further information about the contents of this report please contact the Campaign Director at director@srilankacampaign.org.

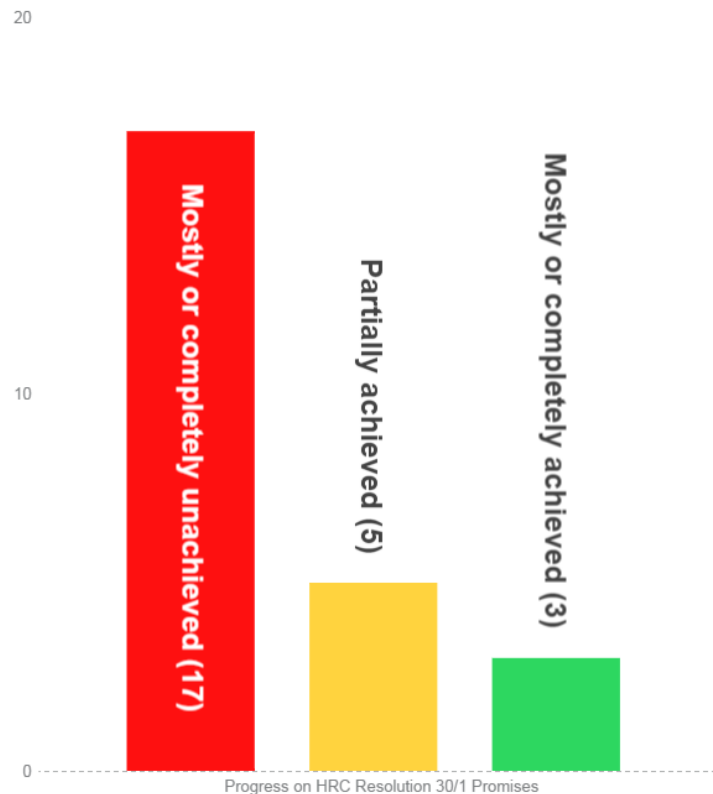
To access the references contained within this report, please refer to the electronic version (which contains hyperlinks) available at www.srilankacampaign.org/take-action/keep-the-promise/.

An evaluation of progress on the 25 commitments within UNHRC resolution 30/1

In this section we evaluate the level of progress on each of the government of Sri Lanka's 25 commitments under Resolution 30/1. These are categorized and colour-coded as follows:



Below is an overview of the findings of our evaluation:



1. IMPLEMENT THE RECOMMENDATIONS OF THE OISL REPORT

UNHRC 30/1 OP.1: *“...encourages the Government of Sri Lanka to implement the recommendations contained [within the report of the Office of the High Commissioner for Human Rights’ investigation on Sri Lanka (OISL)] when implementing measures for truth-seeking, justice, reparations and guarantees of non-recurrence.”*

Progress: The [OISL report](#), released in August 2015, is the most rigorous and authoritative investigation to date on recent human rights violations in Sri Lanka. Its recommendations are wide-ranging and many of them are echoed in the subsequent text of Resolution 30/1. There are a number of key recommendations in the report which do not feature explicitly elsewhere in the resolution. Progress on these has been disappointingly mixed. For example the OISL recommends the government of Sri Lanka to:



- “..order an end to all surveillance, harassment and reprisals against human rights defenders”. There is no evidence of any such action being taken. In their [latest report](#), human rights documentation centre INFORM highlighted the continuation of surveillance and intimidation of human rights activists, particularly in the North and East.
- “Review all cases of detainees held under the Prevention of Terrorism Act and either release them or immediately bring them to trial”. This has not happened.
- “Invite OHCHR to establish a full-fledged country presence to monitor the situation of human rights”. Some progress has been made on this front with the appointment of several OHCHR staff to advise the Secretariat for the Coordination for Reconciliation Mechanisms. However, this presence is arguably significantly less than that envisaged by the OISL recommendation. Furthermore, several voices within civil society have criticised the current OHCHR presence for its perceived closeness to the government’s agenda and in particular its [approach to the sequencing](#) of truth and justice mechanisms.
- “Dispense with the current Presidential Commission on Missing Persons and transfer its cases to a credible and independent institution developed in consultation with families of the disappeared”. Following intense criticism, including from the Sri Lanka Campaign, the Paranagama Commission’s mandate [came to an end](#) (and was not renewed) in July 2016. Its cases are yet to be transferred to the forthcoming Office for Missing Persons.

2. ENGAGE WITH THE OFFICE OF THE UN HIGH COMMISSIONER FOR HUMAN RIGHTS AND SPECIAL MANDATE HOLDERS

UNHRC 30/1 OP.2: *“Welcomes the positive engagement between the Government of Sri Lanka and the High Commissioner and the Office of the High Commissioner since January 2015, and encourages the continuation of that engagement in the promotion and protection of human rights and in exploring*

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appropriate forms of international support for and participation in Sri Lankan processes for seeking truth and justice.”

UNHRC 30/1 OP.20: *“Encourages the Government of Sri Lanka to continue to cooperate with special procedure mandate holders, including by responding formally to outstanding requests.”*

Progress: This has been one of the clearest areas of progress over the past 18 months. On his [February 2016](#) visit to Sri Lanka, the UN High Commissioner for Human Rights remarked on the “much more friendly [and] cooperative” nature of his visit in comparison to that of his predecessor. Cooperation with special procedure mandate holders has been encouraging, with visits thus far from the Working Group on Enforced Disappearances ([November 2015](#)), as well as the Special Rapporteurs on Transitional Justice ([January 2016](#)), on the Independence of Judges and Lawyers ([April 2016](#)), on Torture ([April 2016](#)), and on Minority Issues ([October 2016](#)).

3. ENGAGE IN BROAD NATIONAL CONSULTATIONS

UNHRC 30/1 OP.3: *“Supports the commitment of the Government of Sri Lanka to strengthen and safeguard the credibility of the processes of truth-seeking, justice, reparations and guarantees of non-recurrence by engaging in broad national consultations with the inclusion of victims and civil society, including non-governmental organizations, from all affected communities, which will inform the design and implementation of these processes, drawing on international expertise, assistance and best practices.”*

Progress: In February 2016, the government of Sri Lanka appointed an 11-member Consultation Task Force (CTF) to oversee a country-wide programme of consultations on the design of reconciliation mechanisms. Although this process was marred by many serious issues – including under-resourcing, long delays, failures of outreach and communication, and participant surveillance and intimidation - over 7,000 Sri Lankans came forward to give their views. These formed the basis of the CTF’s final report, which was published in early January 2017.

The report provides a rich analysis of the needs victims and survivors, and of the barriers and impediments to lasting reconciliation in Sri Lanka. Yet despite its many important recommendations - backed by a powerful and historically unprecedented grassroots mandate - the report has not been the catalyst for change that many had hoped for. In the weeks after its publication, several high profile ministers rejected outright its proposal for a ‘hybrid court’ with the participation of international judges. On February 2nd (nearly a month after its release) the President finally acknowledged the existence of the report, but there appears to be no plan in place for the adoption and operationalization of its findings and recommendations.

4. ESTABLISH A COMMISSION FOR TRUTH, JUSTICE, RECONCILIATION AND NON-RECURRENCE

UNHRC 30/1 OP.4: *“Welcomes...the proposal by the Government to establish a commission for truth, justice, reconciliation and non-recurrence”*

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Progress: A Commission for Truth, Justice, Reconciliation, and Non Recurrence has yet to be established. The Sri Lanka Campaign understands that the government of Sri Lanka is currently working on draft legislation for its establishment and that it will seek Cabinet approval for a bill ahead of the March 2017 HRC session.

"There are no guarantees of non-recurrence. I am very worried about the future." (Human Rights Defender, Batticaloa)

The government is yet to outline the mandate of a Truth Commission or lay out a vision for how it will be linked to a Justice Mechanism. It remains unclear, for example, what the scope of its investigatory powers will be, and crucially, whether it will be empowered to refer cases for criminal prosecution or grant amnesties. Amidst ongoing surveillance, intimidation and judicial interference, and in the absence of effective witness protection measures, major institutional reforms will be required to ensure a safe, free and fair process. In its final report, the CTF urged the government of Sri Lanka to pay "adequate attention ... to ensure the security of all participants" involved in such a body.

[Several voices](#) within Sri Lankan civil society have raised concerns about a sequential approach to the establishment of the Truth Commission and Judicial Mechanism, arguing that the prevailing "truth first, justice later" approach may be threatening the attainment of both of these goals. A [recent joint statement](#) by Sri Lankan Human Rights Defenders reiterated "that a truth-telling mechanism that is not accompanied by legislation to establish an accountability mechanism will not be acceptable or credible". A [recent report](#) by the South Asian Centre for Legal Studies warned that "those within government who are opposed to criminal accountability may be tempted to use the truth commission as a delaying mechanism to indefinitely postpone the creation of a special court."

5. ESTABLISH AN OFFICE OF MISSING PERSONS

UNHRC 30/1 OP.4: "Welcomes...the proposal by the Government to establish...an office of missing persons"

Progress: A bill to establish an Office of Missing Persons was [passed on 11 August 2016](#). Despite several weaknesses in the Act, as well as concerns about the lack of substantive input from relatives of the disappeared concerning its design, the legislation is potentially a major step forward in the struggle to obtain answers about the many thousands of unresolved cases of disappeared persons in Sri Lanka.

Since then however, moves to operationalize the Office have proceeded at a glacial rate. As of 26 January a Secretariat for coordinating its work had not been appointed, fuelling [intense frustration and doubt among affected families](#) about its prospects.

Recurring blanket statements by President, Prime Minister and other Cabinet Ministers that all missing persons are to be [presumed dead](#), and that there is [no information](#) about their whereabouts, have caused great distress among affected families and stoked fears about the predetermined nature of any future investigations. As [a report](#) by the South Asian Centre for Legal Studies highlights, significant operational challenges lay ahead if the OMP is to mark a break from the many failed Commissions of Inquiry that have gone before it. The government of Sri Lanka have not yet proven up to the task.

6. ESTABLISH AN OFFICE FOR REPARATIONS

UNHRC 30/1 OP.4: *“Welcomes...the proposal by the Government to establish...an office for reparations.”*



Progress: An Office for Reparations is yet to be established. On 11 January 2017, Foreign Minister Mangala Samaraweera stated that the government was “finalizing the design” of the mechanism.

Given the relatively non-contentious nature of such a body, and the **important role** that it would undoubtedly play in “build[ing] trust and acknowledg[ing] the dignity of victims”, the unwillingness to establish one is a significant and remarkable failing.

7. MECHANISMS TO HAVE THE FREEDOM TO OBTAIN ASSISTANCE FROM INTERNATIONAL PARTNERS

UNHRC 30/1 OP.4: *“Welcomes the willingness of the Government to give each mechanism the freedom to obtain financial, material and technical assistance from international partners, including the Office of the High Commissioner.”*



Progress: There is little indication that the Sri Lankan government has prevented those mechanisms that it has established to date from obtaining financial assistance from international partners. In August 2016, the Consultation Task Force **received funding** from the UN Office of the High Commissioner for Human Rights in a response to the “unavailability” of funds from government which was preventing it from carrying out its work.

8. A PROCESS OF ACCOUNTABILITY FOR ABUSES BY ALL SIDES IN THE CONFLICT

UNHRC 30/1 OP.4: *“...affirms that these commitments, if implemented fully and credibly, will help to advance accountability for serious crimes by all sides and to achieve reconciliation”*

UNHRC 30/1 OP.5: *“Recognizes the need for a process of accountability and reconciliation for the violations and abuses committed by the Liberation Tigers of Tamil Eelam, as highlighted in the report of the Office of the High Commissioner for Human Rights investigation on Sri Lanka.”*



Progress: No one has yet been held accountable, on either side, for serious crimes committed during the armed conflict. A judicial mechanism has not yet been established (see 10 below).

**“Mixed messages from the government mean there is no trust.”
(Human Rights Defender, Batticaloa)**

9. UPHOLD THE RULE OF LAW AND BUILD CONFIDENCE IN THE JUSTICE SYSTEM

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UNHRC 30/1 OP.6: *“Welcomes the recognition by the Government of Sri Lanka that accountability is essential to uphold the rule of law and to build confidence in the people of all communities of Sri Lanka in the justice system.”*

Progress: Prior to the October 2015 resolution, the government of Sri Lanka enacted a series of measures designed to bolster the rule of law and increase confidence in the justice system – including re-appointing the Chief Justice Shirani Bandaranayake (impeached in 2013 for political reasons) and enacting the 19th Amendment (aimed at re-empowering the independent commissions and judiciary).

Since then, the reform effort has faltered. Various recent developments, as borne out by the many statements on the issue provided to the CTF, underscore the continued lack of public confidence in the justice system. These include, for example:

- Suspected political interference into high-profile [corruption](#) and [disappearance](#) investigations
- The appointment of [various individuals](#) with poor track records of upholding the rule of law and the independence of the judiciary to key cabinet posts
- The [acquittal](#) of six army officer suspects in relation to the 1996 Kumarapuram massacre
- Persistent delays in court proceedings (including the backlog of 3,000 fundamental rights cases before the Supreme Court) and widespread failures to provide appropriate language services
- Continued failures to prosecute serious human rights violations. In his January 2017 [report](#), the UN Special Rapporteur on Torture noted with alarm the “worrying lack of will within the Office of the Attorney-General and the judiciary to investigate and prosecute allegations [of torture].”

10. ESTABLISH A JUDICIAL MECHANISM WITH A SPECIAL COUNSEL AND THE PARTICIPATION OF COMMONWEALTH AND OTHER FOREIGN JUDGES, DEFENCE LAWYERS, AND AUTHORIZED PROSECUTORS AND INVESTIGATORS

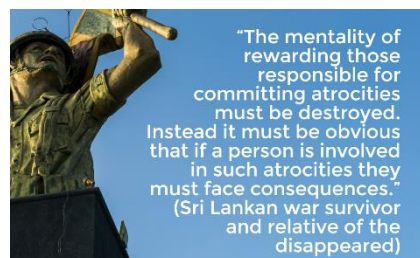
UNHRC 30/1 OP.6: *“...notes with appreciation the proposal of the Government of Sri Lanka to establish a judicial mechanism with a special counsel to investigate allegations of violations and abuses of human rights and violations of international humanitarian law, as applicable [and] affirms that a credible justice process should include independent judicial and prosecutorial institutions led by individuals known for their integrity and impartiality [and also] affirms the importance of participation in a Sri Lankan judicial mechanism, including the special counsel’s office, of Commonwealth and other foreign judges, defence lawyers and authorized prosecutors and investigators.”*

Progress: No independent Judicial Mechanism has [yet been established](#) and no clear timeline has been given for doing so. Since his first remarks on the issue in [January 2016](#), President Sirisena has continued to [re-state](#) his view – in contrast to the recommendations of the [CTF report](#) - that any judicial mechanism should not include the participation foreign judges. In a recent speech, Foreign Minister Samaraweera appeared to shy away from his [previously stated](#) openness to forms of international involvement, [noting merely](#) “[the] clear consensus across the board on the need of an independent and credible domestic mechanism”.

11. REFORM DOMESTIC LAW TO ENABLE TRIAL AND PUNISHMENT FOR SERIOUS HUMAN RIGHTS VIOLATIONS

UNHRC 30/1 OP.7: *“Encourages the Government of Sri Lanka to reform its domestic law to ensure that it can implement effectively its own commitments, the recommendations made in the report of the Lessons Learnt and Reconciliation Commission, as well as the recommendations of the report of the Office of the High Commissioner, including by allowing for, in a manner consistent with its international obligations, the trial and punishment of those most responsible for the full range of crimes under the general principles of law recognized by the community of nations relevant to violations and abuses of human rights and violations of international humanitarian law, including during the period covered by the Lessons Learnt and Reconciliation Commission.”*

Progress: There are two key commitments within this carefully worded paragraph: first, to introduce legislation criminalizing serious crimes (including war crimes, crimes against humanity, genocide and enforced disappearance) with retroactive effect; and second, to introduce legislation that enables prosecution of those with ‘command responsibility’ for such crimes. To date, no concrete steps have been taken towards the fulfilment of these goals. (For more background see pp.25-26 [here](#)).



12. INTRODUCE EFFECTIVE SECURITY SECTOR REFORMS TO VET AND REMOVE KNOWN HUMAN RIGHTS VIOLATORS FROM THE MILITARY; INCREASE INCENTIVES FOR THE PROTECTION OF HUMAN RIGHTS; AND ISSUE INSTRUCTIONS CONCERNING THE PROHIBITION OF HUMAN RIGHTS VIOLATIONS

UNHRC 30/1 OP.8: *“...encourages the Government of Sri Lanka to introduce effective security sector reforms as part of its transitional justice process, which will help to enhance the reputation and professionalism of the military and include ensuring that no scope exists for retention in or recruitment into the security forces of anyone credibly implicated through a fair administrative process in serious crimes involving human rights violations or abuses or violations of international humanitarian law, including members of the security and intelligence units; and also to increase training and incentives [in the security sector] focused on the promotion and protection of human rights of all Sri Lankans.”*

UNHRC 30/1 OP.17: *“...welcomes the commitment of the Government of Sri Lanka to issue instructions clearly to all branches of the security forces that violations of international human rights law and international humanitarian law, including those involving torture, rape and sexual violence, are prohibited and that those responsible will be investigated and punished.”*

Progress: To date, no concrete steps have been taken towards establishing a process for the vetting and removal of human rights abusers in the military. It is unclear what, if any, training and incentives have been provided, with the aim of improving the protection of human rights by the military. Despite claims by the government of Sri Lanka that it has

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issued instructions to the armed forces that action will be taken against perpetrators of serious human rights violations, it is one which remains completely unverified.

13. REVIEW WITNESS AND VICTIM PROTECTION LAW AND PROTECT WITNESSES, VICTIMS, INVESTIGATORS, PROSECUTORS AND JUDGES

UNHRC 30/1 OP.9: *“Welcomes the recent passage by the Government of Sri Lanka of an updated witness and victim protection law and its commitment to review the law, and encourages the Government to strengthen these essential protections by making specific accommodations to protect effectively witnesses and victims, investigators, prosecutors and judges.”*

“CID are still carrying out house visits. They sometime use loan services as cover to ask for information. They have even taken part in our protests!” (Human Rights Defender, Killinochchi)

Progress: In February 2015, prior to resolution 30/1, the incoming government passed the ‘Assistance to and Protection of Victims of Crime and Witnesses Act’. Regrettably however, the government has failed to address the many [shortcomings](#) identified at its inception which have continued to prevent its proper functioning. These were reiterated in the [final report](#) of the CTF which reported the view among participants “that the institutional and operational set up of [the two witness protection bodies established by the Act] are particularly unsuited to protecting citizens in those cases where public officials or agencies of the state are the alleged perpetrators of crime”. There has been no indication from the government to date of their intention to review or amend the current law in response to these issues.

Given [ongoing reprisals and intimidation](#), ensuring that witnesses can testify freely and securely will be crucial for the credibility and effectiveness of the proposed mechanisms. The lack of progress on this area is therefore deeply concerning.

14. RETURN LAND TO ITS RIGHTFUL CIVILIAN OWNERS

UNHRC 30/1 OP.10: *“...welcomes the initial steps taken to return land, and encourages the Government of Sri Lanka to accelerate the return of land to its rightful civilian owners.”*

Progress: Despite the sporadic release of pockets of military occupied land throughout 2015 and 2016 – including [1055 acres](#) in Trincomalee (May 2015) and [701 acres](#) in Jaffna (March 2016) - progress in this area has been faltering and far short of what is needed. According to a [report](#) published in March 2016 by the Centre for Policy Alternatives, a total of 12,751 acres of land remain under occupation in the Northern Province alone (approximately 0.6% of the total land mass). There is no evidence to indicate that that figure has significantly changed since its publication. As the report highlights, “the lack of information and public consultation around land occupation, releases and reparations is a key impediment for reconciliation efforts, further exacerbating mistrust and tensions among affected communities.”

In September 2016, the Commander of the security forces in Jaffna [stated](#) that: “there would be no further reduction or dismantling of army camps in Jaffna”. Elsewhere, in Mullaitivu, in November 2016 the Sri Lankan army [announced](#) its intention to freshly acquire 617 acres of civilian land.

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Where land releases have occurred, families have often been [resettled](#) without the provision of necessary infrastructure, such as sanitation facilities, and without compensation for property damage resulting from its occupation.

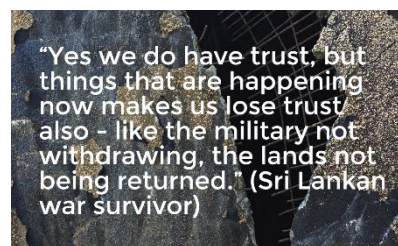
15. END MILITARY INVOLVEMENT IN CIVILIAN ACTIVITIES AND THE RESTORATION OF NORMALITY TO CIVILIAN LIFE

UNHRC 30/1 OP.10: “...encourages the Government of Sri Lanka to...undertake further efforts to [wards]...ending of military involvement in civilian activities, the resumption of livelihoods and the restoration of normality to civilian life.”

Progress: As our May 2016 [report](#) highlighted, the significant military presence in the North and East – and the fear of harassment and intimidation that accompanies it – is one of the main barriers to reconciliation and the return to normal life for war affected communities. Moreover, the extensive involvement of the military in the local economy, in tourism, farming and commerce, continues to deprive communities of the opportunities of post-war economic regeneration.

Despite the slight decrease in the presence of the military in public places which followed the change of government in January 2015, recent discussions with war affected individuals and human rights defenders by the Sri Lanka Campaign attest to an ongoing climate of fear in areas where there is a high military presence and where military camps are situated. This picture is corroborated by the findings of the [final report](#) of the CTF which noted that the issue demilitarisation was “raised repeatedly ... by affected individuals and groups in the North and East”, as a source of insecurity, and as an impediment to the restoration of rights and normalcy.

While the Foreign Minister has committed to ending military involvement in civilian life by 2018 there appears to be no coherent plan in place for achieving this goal. Though defence spending allocation for 2017 [fell slightly](#) from its historic peak in the 2016 budget, this was still the second highest annual spend [on record](#).



16. INVESTIGATE ALL ALLEGED ATTACKS ON CIVIL SOCIETY

UNHRC 30/1 OP.11: “Encourages the Government of Sri Lanka to investigate all alleged attacks by individuals and groups on journalists, human rights defenders, members of religious minority groups and other members of civil society, as well as places of worship, and to hold perpetrators of such attacks to account and to take steps to prevent such attacks in the future.”

Progress: There is little evidence of any serious concerted effort to identify and investigate attacks against journalists and HRDs, and there has been no progress whatsoever in the vast majority of cases that have arisen over the past decade. Among the handful of high-profile cases that have been investigated, such as the murder of journalist [Lasantha Wickrametunge](#) and the disappearance of cartoonist [Prageeth Egnilakoda](#), no one has yet been charged or prosecuted in relation to them.

There have also been no serious efforts to investigate and prosecute those responsible for attacks on religious minorities, such as the episode of [anti-Muslim rioting](#) by hard-line Buddhist Sinhala nationalists in Aluthgama in 2014. A December 2016 [report](#) by Minority Rights Group highlights ongoing patterns of threats, intimidation and hate-speech by such groups against religious minorities, which underscore the “substantial gap [that remains] in terms of legal action against perpetrators of religious violence and discrimination.”

Police inaction during the recent [agitation](#) by BBS members against citizens of Batticaloa, and the friendly [meeting](#) between members of the BBS and Justice Minister Wijeyadasa Rajapakse that followed, seem to suggest that extremist groups continue to act with impunity and enjoy the patronage of the Sri Lankan state at multiple levels.

17. REVIEW THE PUBLIC SECURITY ORDINANCE ACT

UNHRC 30/1 OP.12: *“Welcomes the Government of Sri Lanka’s commitment to review the Public Security Ordinance Act”*

Progress: The [Public Security Ordinance](#) (PSO) is a piece of legislation from 1947 that grants the government wide-ranging powers, including the power to declare states of emergency and the authority to make Emergency Regulations where “in the interests of the public security and the preservation of public order”. A review of the legislation was recently taken up by Law and Order subcommittee of the Constitutional Assembly who, in their [report](#) on the matter, recommended that it be replaced with a “National & Public Security Act” (separate, and pursuant to, a new constitution). The extent to which this legislation would depart from its predecessor remains unclear, and the recommendation is yet to be considered by Parliament.

18. REVIEW AND REPEAL THE PREVENTION OF TERRORISM ACT

UNHRC 30/1 OP.12: *“Welcomes the Government of Sri Lanka’s commitment to...review and repeal the Prevention of Terrorism Act and replace it with anti-terrorism legislation in accordance with contemporary international best practices.”*

Progress: The [Prevention of Terrorism Act \(PTA\)](#) – an extremely repressive piece of legislation which enables arbitrary arrest and prolonged detention with minimal legal oversight – has not yet been repealed. Hundreds of individuals continue to be detained under the PTA, some of whom have been held for [nearly twenty years](#) pending the conclusion of their cases. In his January 2017 [report](#) the UN Special Rapporteur on Torture concluded that “...the use of torture ... to obtain a confession from detainees under the PTA is a routine practice” and recommended its immediate repeal.

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A draft framework of a replacement the Act was leaked to the press in November and was [widely condemned](#) by civil society as *increasing*, rather than restricting, the scope of the powers available to the state under existing legislation and the associated risk of abuse.

It is understood that the government of Sri Lanka had begun work on a second replacement bill in January 2017, however a draft is yet to be made available for public scrutiny.

"They [the international community] need to witness the current level of surveillance in the North." (Human Rights Defender, Vavuniya)

19. SIGN AND RATIFY THE INTERNATIONAL CONVENTION FOR THE PROTECTION OF ALL PERSONS FROM ENFORCED DISAPPEARANCES

UNHRC 30/1 OP.13: "...welcomes the Government of Sri Lanka's commitment to sign and ratify the International Convention for the Protection of All Persons from Enforced Disappearances without delay."

Progress: On 10 December 2015, Sri Lanka [signed](#) the International Convention for the Protection of All Persons from Enforced Disappearance. It was [ratified](#) on the 25th of March 2016.

20. CRIMINALIZE ENFORCED DISAPPEARANCES

UNHRC 30/1 OP.13: "...welcomes the commitment of the Government of Sri Lanka...to criminalize enforced disappearances."

Progress: After signing the Convention for the Protection of All Persons from Enforced Disappearance on 10 December 2015, Foreign Minister Mangala Samaraweera [said](#) that "the Cabinet of Ministers also authorised the Legal Draftsman to undertake the drafting of necessary legislation to give effect to the provisions of the Convention ... The criminalization of enforced disappearances will provide protection to each and every citizen of this country and will help ensure that the terror of the White Van culture does not reign in our society ever again".

We are not aware of any steps taken since these remarks towards the domestic criminalization of enforced disappearances. [Reports](#) of white van abductions as recently as April 2016 were deemed credible by the UN Special Rapporteur on Torture.

"We feel restless without knowing whether our children exist or not. We need to know whether they are alive or not."
(Sri Lankan War survivor and relative of the disappeared)

21. ISSUE CERTIFICATES OF ABSENCE TO THE FAMILIES OF THE DISAPPEARED

UNHRC 30/1 OP. 13: "...welcomes the commitment of the Government of Sri Lanka...to begin to issue certificates of absence to the families of missing persons as a temporary measure of relief."

Progress: Certificates of Absence provide families of the disappeared with a range of legal rights similar to those afforded by death certificates, whilst acknowledging that the fate of the disappeared individual has not yet been established. [Amendments](#) to existing legislation enabling the issuance of certificates of absence were made in September 2016. It remains unclear how many certificates have been issued to families to date.

22. PUBLICLY RELEASE THE REPORTS OF PREVIOUS PRESIDENTIAL COMMISSIONS

UNHRC 30/1 OP. 14: *“...welcomes the commitment of the Government of Sri Lanka to release publicly previous presidential commission reports.”*

Progress: In August and September 2015, the government released the first and second mandate reports of the Paranagama Commission, which inquired, respectively, into the issues of disappearances and the applicability of international humanitarian law during the conflict. (The latter report, which was accompanied by an annex of ‘military expert opinion’ by Major General John Holmes, was [heavily criticized](#) as a whitewashing exercise based on a distorted factual and legal interpretation of the end of the war).

In October 2015, the government tabled in parliament the report of the [Udalagama Commission](#), which was appointed by former President Rajapaksa to investigate serious human rights violations in Sri Lanka since 2005. It was made publicly available in [June 2016](#).

A large number of other reports, including those by the Mahanama Tillekeratne Commission and various Presidential Commissions of Inquiry, have not been released. Key information about past violations – including the details of perpetrators contained in the reports of the All Island Commission of Inquiry into Involuntary Removal and the three Zonal Commissions of Inquiry – remain unavailable.

23. PRESERVE ALL EXISTING RECORDS AND DOCUMENTATION

UNHRC 30/1 OP. 15: *“Encourages the Government of Sri Lanka to develop a comprehensive plan and mechanism for preserving all existing records and documentation relating to human rights violations and abuses and violations of international humanitarian law, whether held by public or private institutions.”*

Progress: A comprehensive plan for the preservation of documentation relating to human rights violations is a central component of any transitional justice mechanism. (For a very useful discussion of the emerging international standards in this area see p.12 of [this report](#) by the South Asian Centre for Legal Studies).

Whilst it remains unclear what exact steps the government has taken towards this goal, at least several basic practical measures – such as establishing a statutory body to collect and oversee documentation – have not been put in place (see [pp.13-14, here](#)). This is very concerning given the urgent need to secure the kinds of information necessary for effective tracing work and investigatory work.

24. TAKE CONSTITUTIONAL MEASURES FOR A DEVOLVED POLITICAL SETTLEMENT

BROKEN PROMISE

UNHRC 30/1 OP. 16: *“Welcomes the government’s commitment to a political settlement by taking the necessary constitutional measures and encourages the Government of Sri Lanka’s efforts to fulfill its commitments on the devolution of political authority, which is integral to reconciliation and the full enjoyment of human rights by all members of its population; and also encourages the Government to ensure that all Provincial Councils are able to operate effectively, in accordance with the thirteenth amendment to the Constitution of Sri Lanka.”*

Progress: In March 2016 the government formed a Constitutional Assembly to consider the options available for constitutional reform. The six sub-committees - appointed by the Assembly to make recommendations on the areas of Fundamental Rights, Judiciary, Finance, Law and Order, Public Service and Centre-Periphery Relations - submitted their [reports](#) in November 2016.

The [next step](#) in the process (yet to be taken) will be for the Steering Committee of the Constitutional Assembly to consolidate the reports into a single bill. This will then be debated before the Constitutional Assembly, who can make amendments before passing it with a simple majority. To be enacted the bill must then be passed with a two-thirds majority in Parliament and with a simple majority at a referendum.

Ongoing political disagreement over a number of key substantive issues, such as the future shape of the Executive Presidency and the preservation of the ‘unitary state’, suggest that the prospects of a just and equitable political settlement that provides for meaningful devolution of power remain far from assured. Moreover, as a [recent report](#) by the Centre for Policy Alternatives warns, there are ongoing concerns about whether the government is taking the necessary steps “to win the confidence of the public [necessary] to ensure success at a referendum.”

25. ADDRESS ALL SEXUAL AND GENDER-BASED VIOLENCE AND TORTURE

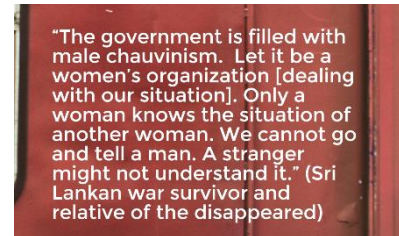
UNHRC 30/1 OP.17: *“...encourages the Government to address all reports of sexual and gender-based violence and torture.”*

Progress: Several recent reports have documented the persistence of widespread and systemic torture and sexual violence in Sri Lanka. In a recent [submission](#) to the Committee Against Torture the International Truth and Justice gave evidence of 36 victims of abduction and torture in 2015 and 2016. In another [submission](#) Freedom From Torture stated that it had received 22 referrals for people who have been tortured since the change of government in January 2015.

The response to these allegations so far by the Sri Lankan government has been reticent at best, and openly hostile at worst, with President Sirisena suggesting that such claims came from people [“close to the tigers”](#). In an [extraordinary demonstration](#) of the impunity which perpetrators enjoy, the government of Sri Lanka chose to send Sisira Mendis – an individual alleged to have been in a position of command responsibility for systematic torture during his previous role as head of the Criminal Investigation Department (CID) – as part of its official delegation to the 59th Session of the Committee Against Torture in November 2016.

BROKEN PROMISE

In its [concluding observations](#), the Committee Against Torture expressed its “serious concern” about the ongoing patterns of torture and sexual violence. It called on the government of Sri Lanka to establish an independent mechanism to investigate allegations of sexual violence and torture committed against individuals undergoing “rehabilitation”, and further, for an independent body to investigate allegations of unlawful detention, torture and sexual violence by the security forces. The government of Sri Lanka are yet to respond to those recommendations.



In his recent report ([December 2016](#)), the UN Special Rapporteur concluded that a “culture of torture persists” in Sri Lanka and noted the “worrying lack of will within the Office of the Attorney-General and the judiciary to investigate and prosecute allegations.”