



A NARROWING WINDOW: WORRYING PROSPECTS FOR JUSTICE AND LASTING PEACE IN SRI LANKA

March 2018



**SRI
LANKA
CAMPAIGN**
FOR PEACE & JUSTICE

An overview of progress by the government of Sri Lanka in implementing Human Rights Council Resolutions 30-1 and 34-1 on promoting reconciliation, accountability and human rights.

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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 occurring between 2002 and 2011. The document, known as the '[OISL Report](#)'¹ was clear in its view that many of those violations – perpetrated by both government and LTTE (“Tamil Tiger”) forces - could amount to war crimes and crimes against humanity if established in a court of law. Accordingly, it made a number of recommendations as to how Sri Lanka might begin to address these violations, as well as other patterns of abuses, in order to start laying the foundations for a sustainable peace.

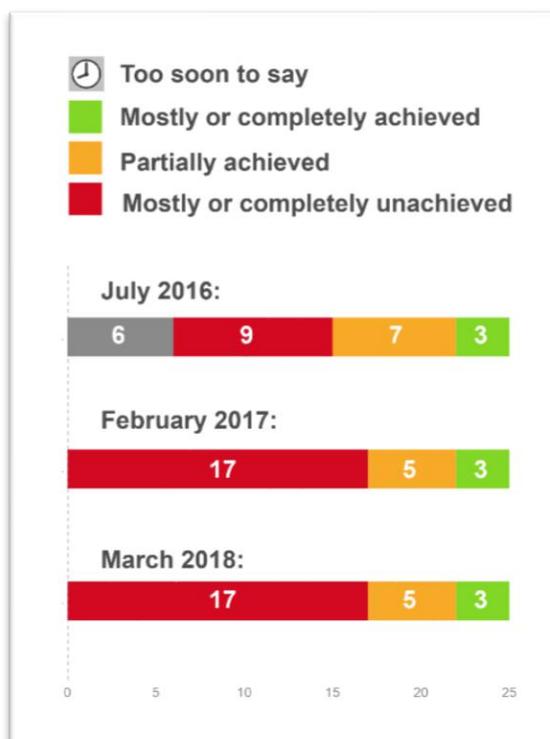
In response, the government that came to power in Sri Lanka in 2015, acting through the UN Human Rights Council, made a series of promises to its citizens pledging to deal with the legacy of the war. **Those promises were contained in Human Rights Council [Resolution 30/1](#), which was co-sponsored by the government and unanimously adopted by Council members in October 2015.** The Resolution requested the UN High Commissioner for Human Rights to provide a comprehensive report on the implementation of these commitments at the 34th Session of the Human Rights Council in March 2017.

At the 34th session, and following “[limited progress](#)” on transitional justice by the government of Sri Lanka (according to the UN High Commissioner for Human Rights), the Human Rights Council adopted [Resolution 34/1](#). Its effect was to renew the outstanding commitments contained within Resolution 30/1. It also extended for a further two years the monitoring mandate of the UN High Commissioner for Human Rights, with a request for a written update to the Council at its 37th Session (March 2018) as well as a comprehensive report at its 40th Session (March 2019).

The progress

Has the government fulfilled its promises? We provide an answer to that question below, by distilling Resolutions 30/1-34/1 into 25 key commitments and assessing the progress that has been made in relation to each. This evaluation – the latest of several conducted by the Sri Lanka Campaign over the past two years – is based on various media reports, analyses by Sri Lankan civil society groups and UN rights mechanisms, as well as the findings of the UN High Commissioner for Human Rights’ recently released [written update](#).

The chart (right) illustrates the overall progress that has been made by the government over time. The table (opposite) illustrates the progress that has been made with respect to establishing the four transitional mechanisms pledged as part of Resolutions 30-1/34-1.



¹ All highlighted references can be found as weblinks in the online report, available at: www.srilankacampaign.org/take-action/keep-the-promise/

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Our findings paint an extremely concerning picture: two-and-a-half years since the adoption of Resolution 30/1, the overwhelming majority of the commitments made by the government of Sri Lanka remain either mostly or completely unachieved. On only a handful could the government be said to have lived up to its word. None of the four key transitional justice mechanisms that were pledged have yet been operationalized. And, crucially, almost nothing has been done to tackle Sri Lanka’s deeply rooted culture of impunity, which lies at the heart of repeated cycles of mass violence in the country.

	 Judicial Mechanism with a Special Counsel	 Office on Missing Persons	 Office for Reparations	 Commission for Truth, Justice, Reconciliation and Non-Recurrence
Legislation passed?	✘	✔	✘	✘
Operational?	✘	✘	✘	✘

Action through the Human Rights Council. What now?

The lack of progress identified in this report suggests that the government of Sri Lanka has a long way to go in bringing about a process of justice and reconciliation that deals, meaningfully and effectively, with the country’s past. As our findings indicate, a historic window of opportunity for change is not being capitalised upon – and that window is rapidly closing.

Unfortunately, Sri Lanka is far from the “success story” of international engagement – and of the Human Rights Council in particular – that some have prematurely claimed. Despite some noteworthy areas of progress since the current government was elected in 2015, the bottom line remains that the factors which contributed to past cycles of mass atrocity crimes in Sri Lanka have not been confronted. Ongoing discrimination and rights violations against minority communities – particularly Tamils – have persisted; repressive state institutions have not yet been reformed; and the perpetrators of the most heinous international crimes continue to walk free.

If the final test for a successful transitional justice process – in addition to the measure of truth and accountability obtained – is the guarantee of non-recurrence, Sri Lanka would appear to be a very long way from ‘success’ indeed. As highlighted by this week’s orchestrated anti-Muslim violence in Kandy, the ghosts of Sri Lanka’s past still haunt the country today, and they will continue do so without further action.

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As we approach the expiry of the Human Rights Council (HRC) process in March 2019, and with national elections in 2019 and 2020 looming large on the horizon, the next 12 months will be critical for putting the agenda mandated by Resolutions 30-1 and 34-1 back on track.

That is a responsibility that lies primarily with Sri Lanka's leaders, who, as the results of the recent local elections suggest, have not adequately appreciated the risks of failing to deliver on pledges to their citizens. But it is also a challenge which depends, crucially, on robust, principled and coordinated engagement from the international community. While some in Sri Lanka have already declared closed the window of opportunity on several of the toughest pledges contained under Resolutions 30/1 and 34/1 – and while many war survivors have lost hope and confidence in the ability of the government to deliver entirely – there is still much that can, and must, be done. The consequences of inaction are unacceptably high. And the victims and survivors of human rights abuses in Sri Lanka have already suffered too much and fought too hard.

Recommendations

For the forthcoming general debate on Sri Lanka (21st March 2018), we urge member states to issue the strongest possible statements of concerns on Sri Lanka, which:

- 1) Request the government of Sri Lanka to produce a clear timetable for implementation of its outstanding commitments, including the establishment of the four pledged mechanisms.
- 2) Request the government of Sri Lanka to take urgent steps to deliver on accountability, including through the establishment of a hybrid judicial mechanism, as well as through incremental measures such as the strengthening of witness protection mechanisms, the retroactive incorporation of international crimes and modes of liability into domestic law, and the establishment of a Special Prosecutor's office.
- 3) Reinforce the High Commissioner's warning that cases under universal jurisdiction will be pursued by member states in the absence of a credible accountability mechanism.
- 4) Re-affirm the recommendations of the final report of the Consultation Task Force on Reconciliation Mechanisms, with a request to the government to adopt a timetable for the implementation of its recommendations.
- 5) Acknowledge 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.

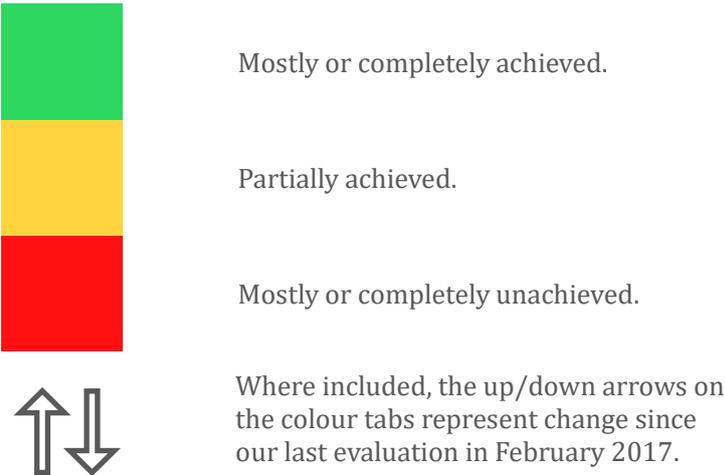
While encouraging member states to issue the strongest possible statements at the forthcoming general debate, we also look to them to begin to send some clear and unequivocal signals that March 2019 does not represent the end of the line for the HRC's formal engagement – and that Sri Lanka will remain on its agenda if Resolutions 30-1 and 34-1 are not fulfilled, as looks almost certain. The window of opportunity to make headway with the kind of changes that are needed, while narrowing at a rapid speed, must be kept ajar.

At the same time, we urge member states to recognise that the continuation of a process of international engagement through the HRC is not itself sufficient to help bring about sustainable peace in Sri Lanka. As the Sri Lanka Campaign has said, time and time again, words by member states at the HRC in Geneva must be matched with deeds in both capitals and in Colombo. Too often over the past three years has the prioritization of trade, military-military cooperation, and efforts to shore up perceived political influence, trumped the kind of tough messaging and actions that are needed. It is past time for the international community to move beyond mere rhetoric and to take seriously its responsibility to those who have suffered, and who continue to suffer, in Sri Lanka.

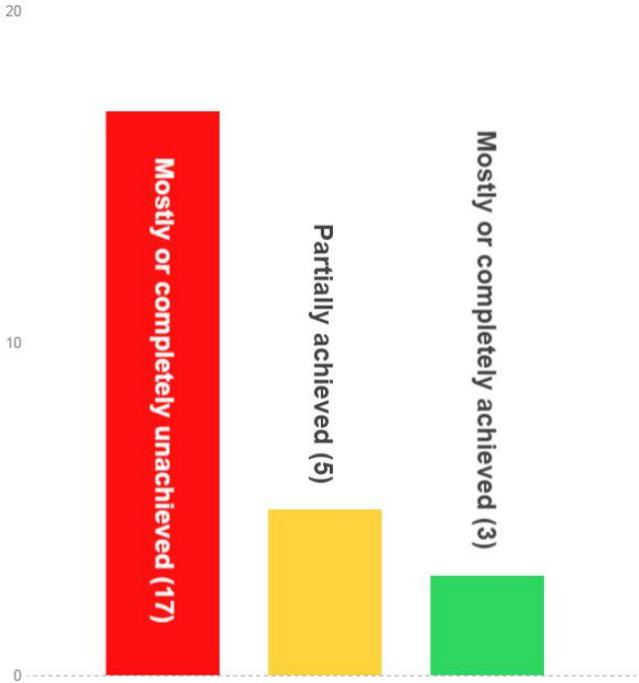
For further information about the contents of this report, or for media inquiries, please contact info@srilankacampaign.org.

An evaluation of progress on the 25 commitments within HRC Resolutions 30/1-34/1

In this section we evaluate the progress made with respect to 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 latest evaluation:



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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 September 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. However, there are a number of key recommendations in the report which do not feature explicitly elsewhere in the resolution. Progress on these has been extremely limited. For example, the OISL recommends the government of Sri Lanka to:

- “...order an end to all surveillance, harassment and reprisals against human rights defenders.”

As highlighted in a [recent report](#) by the Sri Lanka Campaign, the use of surveillance, intimidation and harassment by the security agencies against human rights defenders (and additionally, victims and war survivors) has not ceased, despite improvements since 2015. The use of surveillance via informant networks and civil-security bodies remains widespread, particularly in the North and East of the country, with chilling effects on freedom of expression, association and assembly. There is no evidence to indicate that the government has sought to bring these practises to an end.

- “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. The recently released [written update](#) of the UN High Commissioner for Human Rights notes that, according to government figures, “as of January 2018, the cases still pending under the Prevention of Terrorism Act involved 72 persons on remand, 11 persons pending indictment after completion of investigations and 61 persons with indictments before the high courts.” In July 2017, the government [reported](#) to the then-Special Rapporteur on the Promotion and Protection of Human Rights while Countering Terrorism, Ben Emmerson, that of the prisoners currently in the judicial phase of their pre-trial detention, “70 had been in detention without trial for over five years and 12 had been in detention without trial for over 10 years.” According to a [recent report](#) by Human Rights Watch, “while the government has taken some steps to charge or release PTA detainees, lawyers working on these cases believe that the numbers are not accurate given the discrepancies in official numbers.”

- “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 undoubtedly significantly less than that envisaged by the OISL recommendation.

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- *“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 incipient Office on 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 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 two-and-a-half years. On his [February 2016](#) visit to Sri Lanka, the UN High Commissioner for Human Rights commended the “friendly [and] cooperative” nature of his visit, in comparison to that of his predecessor. In his recent [written update](#), the High Commissioner noted the government’s “constructive engagement” with UN human rights mechanisms.

Cooperation with special procedure mandate holders has been very encouraging, with visits thus far from the Working Group on Enforced Disappearances ([November 2015](#)) and Working Group on Arbitrary Detention ([December 2017](#)), as well as the Special Rapporteurs on Truth, Justice, Reparations and Guarantees of non-Recurrence ([October 2017](#)), on the Independence of Judges and Lawyers ([April 2016](#)), on Torture ([April 2016](#)), on Minority Issues ([October 2016](#)), and on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism ([July 2017](#)).

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.”*

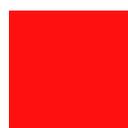
Progress: In February 2016, the government of Sri Lanka appointed an 11-member Consultation Task Force (CTF) to oversee an island-wide programme of consultations on the design of the proposed transitional justice mechanisms. Although this process faced many challenges – including under-resourcing, lack of outreach by central government, and the use of surveillance and intimidation against participants by the security forces – over 7,000 Sri Lankans from across the island came forward to give their views. These formed the basis of the CTF’s final report, which was [published](#) in January 2017.

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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 2nd February (nearly a month after its release) the President finally acknowledged the existence of the report, but there remains no plan in place for the adoption and operationalization of its findings and recommendations. As the UN High Commissioner for Human Rights noted in his recent [written update](#), the report has "not yet been endorsed or officially reviewed by the Government or the Parliament."

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."



Progress: A Commission for Truth, Justice, Reconciliation, and Non-Recurrence has not been established. The Sri Lanka Campaign understands that a technical working group has prepared draft legislation for such a mechanism; however, the proposals have never been released and (according to the UN High Commissioner for Human Rights' [written update](#)) are currently "under review."

The government is yet to outline the mandate of a Truth Commission or lay out a vision for how it will be linked to the proposed Judicial 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 to grant amnesties. Amidst ongoing surveillance and intimidation, and in the absence of effective witness protection, major institutional reforms will be required to ensure the safety of individuals participating in any process.

[Several voices](#) within Sri Lankan civil society have raised concerns about a sequential approach to the establishment of a Truth Commission prior to a Judicial Mechanism, arguing that the prevailing "truth first, justice later" approach may be threatening the attainment of both of these goals. A [2016 joint civil society statement](#) 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: Legislation to establish an Office of Missing Persons was [passed on 11th 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 represents a potentially significant step forward in the struggle to obtain answers about the many thousands of unresolved cases of disappeared persons in Sri Lanka.

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Unfortunately, progress in operationalizing the Office has proceeded at a glacial rate and has been marred by irregularities – further eroding the already limited trust and confidence in the mechanism among relatives of the disappeared. It was not until November 2017 that the Constitutional Council advertised publicly for candidate Officers to submit their credentials for consideration. In December 2017, the Council finally submitted its list of 7 nominees to the President, 14 days after which, the nominees ought to have been appointed by operation of law. Worryingly however, in January 2018 [reports emerged](#) that the list of nominees had been altered following political interference by the President, likely in subversion of due process. Concerns abound among civil society and victims groups about the [lack of transparency](#) around the appointments process, as well as about the credibility of several of the reported appointees, who were [announced](#) in February 2018 and include a retired army Major General.

As a backdrop to these developments, recurring blanket statements by the 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. It is also worth noting that, if true, the statements would imply official acceptance of mass extrajudicial killing in Sri Lanka.

In another significant development, in early 2017 Tamil relatives of the disappeared began five separate [continuous protests](#) at various sites across the North and East of Sri Lanka, demanding answers about the fate of their loved ones. On 19th February 2018, the longest running of the protests surpassed the one-year mark. Seven of the mothers are reported to have died in that time. Four of their five key demands – including key confidence-building measures such as the release a list of all those who surrendered or were detained at the end of the war – have not been met by the government, despite various public pledges.

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 has not been established. As with the Truth Commission, the Sri Lanka Campaign understands that a technical working group has prepared draft legislation for such a mechanism; however, the proposals have never been released and (according to the UN High Commissioner for Human Rights' [written update](#)) are currently “under review.” On 11th 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.”*

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Progress: In our February 2017 evaluation, we noted the government’s positive record in permitting the various transitional justice coordination and planning mechanisms – such as the Secretariat for the Coordination of Reconciliation Mechanisms (SCRM) and the Consultation Task Force (CTF) – to obtain financial assistance from international partners.

Unfortunately, we have since been forced to downgrade our evaluation. This follows an amendment to the OMP Act in June 2017 which removed a key paragraph allowing the Office to enter into financing arrangements with external sources. As [expressed](#) by one commentator, “many victims groups and analysts saw this as seriously compromising the independence of the OMP because it would now be entirely dependent on the government for finances.”

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 been held accountable, on either side, for serious crimes committed during the armed conflict. A judicial mechanism that could bring about such accountability has not been established (see promise 10, below).

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

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 by the former government in 2013 for political reasons) and enacting the 19th Amendment (designed to re-empower the independent commissions and judiciary). A particularly positive consequence of the latter has been the strengthening of the National Human Rights Commission, with a recent [independent analysis](#) concluding that its performance had “improved drastically.”

However, despite these positive steps, there remain many areas of serious concern. These include, for example:

- Widespread impunity for serious human rights abuses. In his recent [written update](#), the UN High Commissioner for Human Rights highlighted the inadequate progress made in a range of ‘emblematic cases,’ stating that “the authorities have not yet demonstrated the capacity or willingness to address impunity for gross violations and abuses of international human rights law and serious violations of international humanitarian law.”
- The continued absence of effective witness protection legislation (see promise 13, below).

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- Persistent delays in court proceedings, as demonstrated by the backlog of [3,000 fundamental rights cases](#) before the Supreme Court, as well as widespread [failures](#) by the courts to provide appropriate language services.
- Political interference in a number of high-profile cases, including: statements by President Sirisena criticizing prosecutions against military officials and members of the former regime (in both cases of [corruption](#) and [serious rights abuses](#)); [assurances](#) by the Inspector General of Police to a government Minister that the police would not arrest a criminal suspect; and [allegations](#) of efforts by the Attorney-General's department to obstruct investigations into the disappearance of cartoonist Prageeth Eknilagoda.
- Attempts by government ministers to intimidate members of the legal profession, for example, the [threats](#) made by former Justice Minister Wijeyadasa Rajapakse against Attorney at Law Lakshan Dias in June 2017.
- Acquittals in several high-profile murder cases involving Tamil victims, and police or military perpetrators. Including, for example, the [acquittal](#) of six army officer suspects in relation to the 1996 Kumarapuram massacre, as well as the [acquittal](#) of five men, three of whom were Sri Lankan Navy Intelligence officers, in relation to the 2006 assassination of TNA parliamentarian Nadaraja Raviraj.

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 Judicial Mechanism has [been established](#) and no timeline has been given for doing so. Since his first remarks on the issue in [January 2016](#), President Sirisena has [repeatedly stated](#) his view – in contrast to the recommendations of the [CTF report](#) - that any judicial mechanism should not include the participation foreign judges (an element widely regarded as essential for ensuring the independence and credibility of any mechanism).

In his recent written update, the UN High Commissioner for Human Rights highlighted the recent filing of criminal complaints in Brazil and Colombia, under the universal jurisdiction doctrine, against retired Army General Jagath Jayasuriya, for war crimes and crimes against humanity allegedly committed during the final stages of the civil war. The High Commissioner remarked that “many similar cases could emerge in the absence of a credible domestic solution to the problem of impunity,” and called on UN member states “to exercise universal jurisdiction when required.”

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

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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 commitments. (For further background see [this](#) civil society report on the matter, p. 25-26).

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 *at large*, though there have been some efforts to prevent such individuals from participating in peacekeeping deployments.

In accordance with an agreement between the government of Sri Lanka and the United Nations, a limited number of personnel nominated for deployment to Mali – as part of the United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA) – did undergo screening. In his recent [written update](#), the UN High Commissioner for Human Rights explained that the United Nations has been supporting the “establishment and strengthening of a national screening mechanism hosted by the Human Rights Commission of Sri Lanka ... [which will] undertake domestically the screening of Sri Lankan military personnel for future deployments as peacekeepers.”

It is unclear what, if any, training and incentives have been provided, with a view to improving the protection of human rights by the military. Though the government of Sri Lanka has repeatedly asserted that it has issued instructions to the armed forces that action will be taken against perpetrators of serious human rights violations, the fact that specific details about these instructions have not been disclosed means the claims remain unverified. In this context, [concerns](#) abound regarding actual and proposed deployments of Sri Lankan troops to UN Peacekeeping missions.

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.”*

Progress: In February 2015, prior to the adoption of 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](#) in the legislation that were identified at its inception and which have prevented its proper functioning since.

These shortcomings were reiterated in the [final report](#) of the CTF which stated 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”. A [recent legal analysis](#) described the framework which the Act establishes as “wholly inadequate for Sri Lanka to deal with its long legacy of threats, intimidations and violence towards victims and witnesses.” There have been no firm indications from the government that they intend to review or amend the current law in response to these issues.

In the context of ongoing [reprisals](#), as well as the continued use of [surveillance, harassment and intimidation](#) by the security agencies, ensuring that witnesses can testify freely and securely will be crucial for the credibility and effectiveness of the proposed transitional justice mechanisms. The lack of progress on this commitment 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 return of several significant pockets of land to civilian owners 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. In his recent [written update](#), the UN High Commissioner of Human Rights stated that, “the restitution of land held by the military in the Northern and Eastern Provinces is still incomplete.”

As noted by the High Commissioner in the same update, “the full extent of land under military occupation claimed by civilians remains in question.” While government plans indicating the need for the security forces to retain 36,000 acres (including 5,327 acres of private land) imply that at least that amount is currently under occupation, civil society estimates suggest that the real figure is likely to be even higher. A March 2016 [report](#) published by the Centre for Policy Alternatives, which encountered major gaps in available information, found a total of 12,751 acres of land (6,611 acres of which were private) to be under occupation in the Northern Province alone. A more recent [report](#) by the Adayaalam Centre for Policy Research published in October 2017 deemed “credible” the claim that 30,000 acres of land is currently under occupation in Mullaitivu District alone (1276.5 acres of which it was able to firmly establish as private land under occupation).

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Meanwhile, the military has continued to initiate steps to legally acquire lands that are currently under occupation. In a [gazette notification](#) published in August 2017, the government announced that it would acquire 671 acres in Mullaitivu District – intended, it was [later revealed](#), for the exclusive use of the navy.

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

15. END MILITARY INVOLVEMENT IN CIVILIAN ACTIVITIES AND ENSURE 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 highlighted in [research](#) by the Sri Lanka Campaign, as well as the [final report](#) of the CTF, 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 restoration of normal civilian life for war-affected communities. The overall presence of the military remains extremely high, with one recent [civil society report](#) estimating the ratio of soldiers to civilians in Mullaitivu District to be 1:2.

Despite the slight decrease in the visibility of the military in public places which followed the change of government in January 2015, [recent discussions](#) with war affected individuals and human rights activists by the Sri Lanka Campaign attest to the fears which the military – particularly through its intelligence-gathering units - continues to instill in the civilian population in the North. Meanwhile, the military’s involvement in civilian activities, including [tourism](#), commerce, farming, and the provision of public services (such as primary education), has [continued to grow](#), depriving communities of the benefits of post-war economic generation and offering new opportunities for the assertion of control by the military,

Despite [claims](#) in 2016 by the former Foreign Minister that the government had committed to demilitarizing the country and ending military involvement in civilian life by 2018, there appears to be no plan in place for achieving this goal. The defence spending allocation for 2018 was the second highest [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: Efforts to investigate and prosecute attacks on journalists, human rights defenders, members of civil society, members of minority groups and places of worship, have been extremely limited, and have not resulted in perpetrators being held to account.

As highlighted in the recent [written update](#) of the UN High Commissioner for Human Rights, progress on a wide range of ‘emblematic cases’ involving journalists has been inadequate. Among the handful of high-profile cases that have been investigated, such as the murder of journalist [Lasantha](#)

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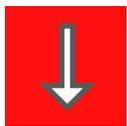
[Wickrematunge](#) and the disappearance of cartoonist [Prageeth Eknaligoda](#), no one has yet been charged or prosecuted in relation to them. In none of the [43 cases](#) involving murdered journalists and media workers identified by Journalists for Democracy has anyone been brought to justice.

No one has been held accountable for attacks against human rights defenders and other members of civil society, including, for instance, the massacre of 17 Action contre le Faim aid workers in August 2006. While such attacks have decreased in both frequency and severity since 2015, they have continued at unacceptable levels. For example, in June 2017, the offices of the Trincomalee District Women's Network (TDWN) were [raided](#) and several items of property damaged and stolen.

There have been no serious efforts to investigate and prosecute those responsible for attacks on religious minorities, such as the episode of [anti-Muslim rioting](#) instigated by hard-line Sinhala Buddhist nationalists in Aluthgama in 2014. Such groups continue to enjoy impunity for hate speech and acts of violence against minorities, as demonstrated by the spate of [anti-Muslim attacks](#) in early 2017, as well as more [recent incidents](#). In June 2017, the former Justice Minister [threatened](#) to dismiss from the legal profession a human rights lawyer who had cited on national television credible reports of attacks against evangelical Christians that had occurred since 2015.

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."*

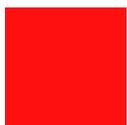


Progress: The [Public Security Ordinance](#) (PSO) is a piece of legislation from 1947 that grants the government wide-ranging powers, including the power to declare states of emergency and the authority to make Emergency Regulations where "in the interests of the public security and the preservation of public order."

There appeared to be signs of an effort to repeal the PSO when the matter was taken up by Law and Order subcommittee of the Constitutional Assembly who, in their [report](#), recommended that the Ordinance 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 in any case, prospects of repeal have since been dimmed by the stalling of the constitutional reform process. The PSO is yet to be taken up the Law Commission for formal review.

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. Scores of individuals continue to be detained under the PTA, many of whom have been held for [well over a decade](#) 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. Following his visit in July 2017, the UN Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism [noted](#) that the

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PTA was used “disproportionately against members of the Tamil community,” stating that the community “had borne the brunt of the state’s well-oiled torture apparatus.”

Since the initiation of a review by the Law Commission in early 2016, several draft replacements have emerged, each of which has fallen significantly short of international human rights standards. In November 2016 a draft framework of a replacement to the PTA – the Counter Terrorism Act (CTA) - was leaked to the press and was [widely condemned](#) by civil society as *increasing*, rather than limiting, the powers available to the state and the associated risk of abuse.

In May 2017, the cabinet approved a draft CTA but, in the face of intense public criticism, has not moved forward with enacting the law. The bill marks an improvement on both the PTA and earlier iterations of the CTA but, per the assessment of the Special Rapporteur on Human Rights and Countering Terrorism, contains a number of “central flaws ... which, if enacted, would guarantee the continued violation of the human rights of terrorism suspects.” These flaws include – as outlined in a [independent legal analysis](#) published by the Foundation for Human Rights – provisions preserving the admissibility of confessions, as well as overly broad definitions of terrorism which would allow the legislation to be used in situations “far removed from acts of real terrorism.”²

In his recent [written update](#), the UN High Commissioner for Human Rights “urge[d] the Government to promptly repeal the Prevention of Terrorism Act and not necessarily wait for the replacement legislation to be finalized.”

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 10th December 2015, Sri Lanka [signed](#) the International Convention for the Protection of All Persons from Enforced Disappearance. It was [ratified](#) on 25th 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: On 9th February 2017 the Cabinet [gazetted](#) a Bill to criminalise enforced disappearances. On 7th March 2017 it was [presented](#) to Parliament; however, scheduled debates have [twice](#) been postponed in the face of political opposition.

As highlighted in several recent analyses, the current Bill contains some [key omissions](#) which render it inconsistent with the Disappearances Convention, and which give rise to the possibility of ongoing abuse and impunity. These include, for example, that enforced disappearance is never a justifiable offence (per art 1(2) of the Convention), that the offence of enforced disappearance is a crime against humanity (per art 5), and explicit recognition of enforced disappearance as a continuing crime. Other “[fundamental flaws](#)” that have been highlighted include the absence of a specific provision allowing retroactive criminalization of enforced disappearances per the proviso under Art 13(6) of the Sri

² For more information about the latest version of the CTA, please refer to the infographic in Annex 1

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Lankan Constitution. Some of these concerns, and others, were reiterated in a [recent letter](#) from the Sri Lankan Human Rights Commission to the President.

According to media [reports](#), the Bill has been re-scheduled for debate on 7th March 2018.

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: The purpose of certificates of absence is to provide families of the disappeared with a range of legal rights similar to those afforded by death certificates, whilst acknowledging that the fate or whereabouts of the disappeared individual has not yet been established. In September 2016, [amendments](#) were made to existing legislation which enabled the issuance of certificates. However, it remains unclear how many certificates have been issued to families to date. One recent civil society [submission](#) to the Third Universal Periodic Review on Sri Lanka appeared to suggest that none have been issued thus far.

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: The government of Sri Lanka has made some significant progress in releasing publicly the reports of [recent](#) presidential commissions. By way of example, in October 2015, the government tabled in Parliament [the interim report on the first mandate of the Paranagama Commission](#), which inquired into the issues of disappearances. It also tabled the [full report on the second mandate of the Commission](#), which inquired into the applicability of international humanitarian law during the conflict. (The latter, 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).

Also in October 2015, the government tabled in parliament [the report of the Udalagama Commission](#), which was appointed by former President Mahinda Rajapaksa to investigate serious human rights violations in Sri Lanka occurring after 2005.

In July 2017, the government released the report of the [Mahanama Tillekeratne Commission](#), appointed to investigate the 2011 killing of free trade zone worker Roshen Chanaka and the attack on his fellow protestors, to the victim’s family. And in February 2018, the government – via the RTI Commission – released the report of the Commission of Inquiry into the death of Sri Lanka Muslim Congress founder and former leader [M.H.M Ashraff](#).

Despite this welcome progress, some [older Commission of Inquiry reports](#), including several appointed under President Premadasa, have not yet been released..

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 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, several basic practical measures [including](#), “issu[ing] an order temporarily halting any destruction of government records”, “establishing a temporary body to undertake the preservation of documents and archiving” and “devising a permanent mechanism [to undertake those duties],” have not been taken.

24. TAKE CONSTITUTIONAL MEASURES FOR A DEVOLVED POLITICAL SETTLEMENT

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. In April 2016, the Assembly appointed a Steering Committee which identified twelve main subject areas.

Six of the subject areas – Fundamental Rights, Judiciary, Finance, Law and Order, Public Service, and Centre-Periphery Relations – were assigned to respective Sub-Committees, who submitted their [reports](#) in November 2016. The remaining six subject areas were assigned to the Steering Committee, whose [Interim Report](#) was presented by the Prime Minister in September 2017. Whilst the proposals would, if enacted, represent a significant [improvement](#) upon the status quo in several areas – on devolution, electoral reform, and the abolition of the Executive Presidency, for instance – some have asked whether the proposals go [far enough](#) on power-sharing, and have highlighted key omissions, such as the failure to address the ‘foremost place’ accorded to Buddhism in the Constitution.

There are also doubts about the extent to which the report represents a statement of consensus among the political parties, in light of the large volume of dissenting annexes attached to it and the wider [political opposition](#) to the report’s proposals. In the context of recent local elections in Sri Lanka, in which parties espousing such opposition performed well, the future of the constitutional reform process – which requires a two-thirds majority in Parliament and a simple majority at referendum – remains unclear.

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 alleged the ongoing use of torture and sexual violence in Sri Lanka, particularly against Tamils. In a recent report, the [International Truth and Justice Project](#) stated that they had documented 57 such cases occurring 2015-2017, including 3 cases in 2017, 21 cases in 2016 and 33 cases in 2015. In a submission to the Universal Periodic Review, [Freedom From Torture](#) stated that they had documented 12 cases occurring after January 2015. The government’s response to the allegations has thus far been

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dismissive and hostile, with the President suggesting that such claims came from people “[close to the tigers](#)”. In his recent written update, the UN High Commissioner for Human Rights stated that his Office was “exploring options” for how to further investigate the cases.

In December 2016 the UN Special Rapporteur on Torture [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.” This followed, in an [extraordinary demonstration](#) of the impunity which perpetrators of torture enjoy, the government’s decision to send as part of its official delegation, 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).

In its [concluding observations](#) in January 2017, the Committee Against Torture said that it was “seriously concerned” by reports “indicating that torture is a common practice” in Sri Lanka. 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.

Despite the government’s ostensible “zero-tolerance policy,” the National Human Rights Commission of Sri Lanka noted in a [recent submission](#) to the Universal Periodic Review that, “it continues to observe a widespread incidence of custodial violations, including torture.”

In a welcome move, in December 2017 Sri Lanka [ratified](#) the Optional Protocol to the Convention Against Torture (OPCAT).

Annex 1: an infographic on Sri Lanka's draft Counter-Terrorism Act

Old wine in new bottles: continued risks of state abuse under Sri Lanka's draft Counter Terrorism Act



The government of Sri Lanka is currently in the process of replacing the Prevention of Terrorism (PTA), a draconian piece of law that is often described by rights activists as a license for state oppression, with a new Counter Terrorism Act (CTA). In this infographic, we highlight some of the serious problems with the proposed legislation.

Broadly defined offences

The definition of 'terrorism' in the Act is extremely wide and not based on any recognised or accepted international model. It includes, for example, talking or writing that causes harm to the 'unity, territorial integrity or sovereignty of Sri Lanka'. The Act also includes an array of 'other offences' which are vaguely defined and wide in application - including, in essence, forms of hate speech, and the gathering or supplying of 'confidential information' that could have an adverse effect on national or public security. Some examples of situations where an offence may be committed are outlined below.

SCENARIO:	IMPLICATIONS UNDER THE ACT:	OFFENCE?
<p>"A dock worker involved in a strike over a public sector pay dispute joins a picket line preventing supplies from entering or exiting the dock."</p> 	<p>"He has i) caused the obstruction of essential supplies; ii) when the purpose of the conduct is to compel the Government of Sri Lanka to do something (increase pay for dock workers."</p>	
<p>"As an act of protest on behalf of a peaceful secessionist movement, a person defaces a statue of a former President."</p> 	<p>"She has i) intentionally caused damage to cultural and historical property; ii) when the purpose of the conduct was to cause harm to the unity of Sri Lanka." [1]</p>	

Risk of torture

In July 2017, the UN Special Rapporteur on Human Rights and Counter-Terrorism described the provisions contained within the current PTA as "foster[ing] the endemic and systematic use of torture" in Sri Lanka. Yet the draft CTA contains various similar provisions which would ensure that this effect continues, for example by:

- > Permitting police officers to take suspects out of remand custody, without a time limit or restrictions on where he/she may be taken.
- > Making confessional statements to police admissible at trial.



Restrictions on access to legal counsel

With regards to a suspect's right to independent legal counsel whilst in custody, the draft CTA is linked to the proposed amendment to the Code of Criminal Procedure Act. This amendment places limits on the right in circumstances where access by the legal counsel is deemed "prejudicial to the investigation being conducted."

It effectively gives officers in charge of police stations total discretion as to whether this fundamental right is observed.



Wide-ranging police powers

The draft CTA provides police with a number of extraordinary powers that are not subject to the tests of reasonable cause and necessity, and which are not constrained by effective oversight from the judiciary.

These include powers to:

- > Compel a physical investigation of any person.
- > Compel any person to give their fingerprints.
- > Enter and search any premise or vehicle.
- > To take any vehicle into custody.



* This infographic, and much of the analysis and scenarios contained within, is based on the findings of an independent legal analysis of the CTA published by the Foundation for Human Rights (FHR), an organisation to whom the Sri Lanka Campaign is not formally affiliated. That analysis can be read online at: <http://bit.ly/2tbGMQI>



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