



## NO WILL, NO WAY: STALLED EFFORTS TO DEAL WITH THE PAST IN SRI LANKA

February 2019



**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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**Cover photo credit:** Suren Karthikesu, a Tamil journalist who bore witness to the final stages of the civil war in Mullivaikkal in 2009. A collection of his photos were released to the public in July 2018 and can be accessed [online](#). Many of the images are extremely distressing and viewer discretion is strongly advised.

**Please note that all of the highlighted references in this report can be accessed via hyperlinks in the online version: [www.srilankacampaign.org/take-action/keep-the-promise/](http://www.srilankacampaign.org/take-action/keep-the-promise/)**

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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 (2002-2011). The document, known as the ‘[OISL Report](#)’<sup>1</sup> 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. It made a number of recommendations as to how Sri Lanka might begin to address these violations in order to lay 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 pledging to deal with the legacy of the war. **Those were contained in Human Rights Council (HRC) [Resolution 30/1](#), which was co-sponsored by the government and unanimously adopted by HRC 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 34<sup>th</sup> Session of the HRC in March 2017.

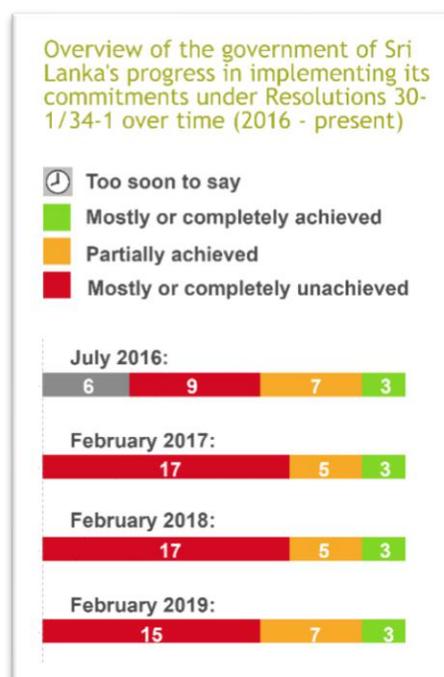
**At the 34<sup>th</sup> session, and in light of the “[limited progress](#)” on transitional justice (in the words of the former UN High Commissioner for Human Rights), the HRC adopted [Resolution 34/1](#) – the effect of which was to ‘roll over’ the commitments contained within [Resolution 30/1](#).** 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 HRC at its 37<sup>th</sup> Session (March 2018) as well as a comprehensive report at its 40<sup>th</sup> 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 by the Sri Lanka Campaign over the past three years – is based on various media reports, analyses by civil society groups, and the findings of UN human rights mechanisms and the UN High Commissioner for Human Rights.

The chart (right) illustrates the overall progress that has been made by the government over time, based on our earlier evaluations. The table (below) illustrates the progress that has been made in establishing the four pledged transitional justice mechanisms.

**Our findings paint a depressing picture. Three 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 can it be said that the government has lived up to its word.** Just one of the four key transitional justice mechanisms pledged has been operationalised. 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.



<sup>1</sup> All references in this report can be accessed via hyperlinks in the online version: <https://bit.ly/2gTrRo5>

Overview of the government of Sri Lanka's progress in establishing the four pledged mechanisms under Resolutions 30/1-34/1

	 Judicial Mechanism with a Special Counsel	 Office on Missing Persons	 Office for Reparations	 Commission for Truth, Justice, Reconciliation and Non-Recurrence
Legislation passed?	✗	✓	✓	✗
Operational?	✗	✓ <small>Ability to carry out core investigatory mandate hampered by capacity constraints and lack of political support.</small>	✗ <small>Not operational. Ongoing concern about the potential for political interference.</small>	✗

## Action through the Human Rights Council. What now?

As this report highlights, that there has been a small amount of progress by Sri Lanka's current government towards addressing the legacy of the war is undeniable. It would be churlish, for example, to fail to recognise the increase in space for dissent, the strengthening of independent institutions, and the modest attempts to advance the mechanisms and laws required for the protection of human rights.

**And yet, what our latest findings also make clear, is that this progress has been of a quality and degree that remains grossly insufficient to heal the wounds of the past and ensure that Sri Lanka does not once again slide into another of the cycles of repression and mass violence (particularly against Tamils) that have marked its recent history.**

As the array of recent reports analysing Sri Lanka's reform process attest, there a variety of ways in which 'progress' can be carved and measured (see *Annex 1*). But, lest the bigger picture become obscured by the detail of these analyses, we think it is important to take a step back and ask a few vital questions when considering what has happened in Sri Lanka over the past three-and-a-half years, as well as what must happen next. Those questions are:

- Do victims and survivors feel reasonably satisfied with the steps that have been taken?
- Do such steps address the root causes of the ethnic conflict in Sri Lanka?
- Are the steps that have been taken of a kind which cannot be easily reversed in the future?

We believe that the answer to all of these questions to be a resounding 'no'. Victims and survivors continue to be denied the most basic forms of redress to their grievances, ranging from the return of private lands occupied by the military, to financial relief for the relatives of the disappeared. Efforts to overhaul Sri Lanka's security sector, or to hold to account the perpetrators of serious human rights abuses, have been almost non-existent. And, as brought into sharp focus by the events of 2018 – among them renewed violent attacks on minorities and a botched coup attempt launched by proven authoritarians – the undented culture of impunity leaves Sri Lanka chillingly exposed to the prospect of swift and sharp reversals in the human rights situation down the line.

Despite the optimism - and early signs of dynamism - that marked the transition in 2015, Sri Lanka's political classes have proven themselves unwilling to begin to address Sri Lanka's two inter-linked deep challenges: the Sinhala Buddhist majoritarian bias of the state, and the ability of those in power, or connected to them, to use violence with impunity.

**It is for these reasons that we believe the international community must remain vigorously engaged in Sri Lanka, including by ensuring that its government remains under the scrutiny of the UN Human Rights Council. This coming month, the monitoring period under Resolution 34/1 will come to an end. UN member states must act to extend it by ensuring the adoption of a further resolution which keeps in play all of the commitments detailed in this report. It should do so with, or without, the government of Sri Lanka's support.**

That in itself, however, will not be enough. Members of the international community must also ask themselves why, three-and-a-half years on, so little has been achieved through the Human Rights Council – and consider what further measures they must take in order to break the impasse. Pressure in Geneva will be necessary. But it will not be sufficient.

As we near the tenth anniversary of the end of the civil war, and amid the continued celebration and promotion of those who stand accused of the worst of the grave crimes committed during it, it would be an under-statement to say that many from the victim-survivor community feel let down. Many are angry, and reasonably so. And while a process that does not deliver justice for victim-survivors will principally be seen as a failure by the government of Sri Lanka, decision-makers outside of the country must not shy from the fact that it will also be perceived as a failure of the international community too.

The risks and potential costs of inaction are becoming increasingly clear. But the window of opportunity to help bring about lasting change continues to narrow.

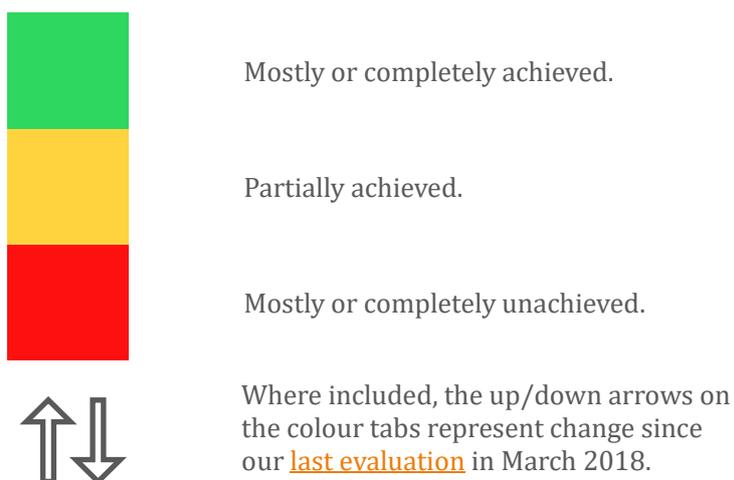
## Recommendations

With that in mind, the Sri Lanka Campaign for Peace and Justice urges UN member states to:

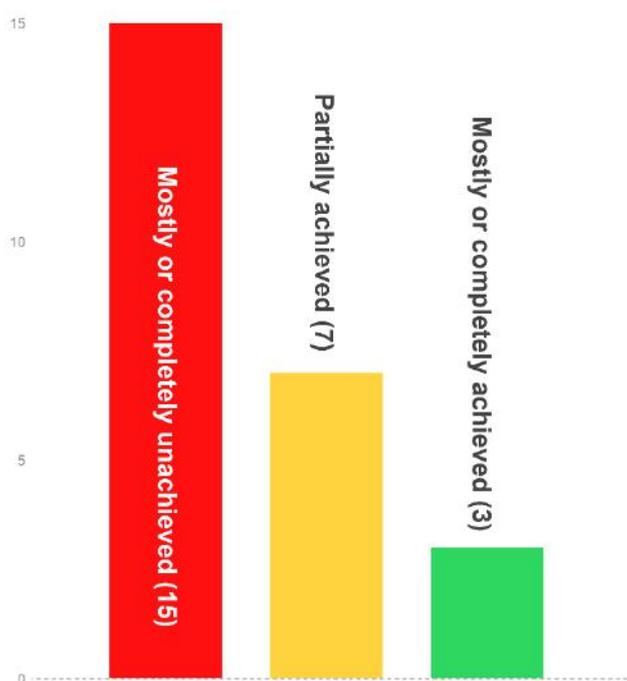
- 1) Ensure the adoption of a further resolution at the 40<sup>th</sup> session of the UN Human Rights Council, with or without the government's co-sponsorship, that keeps in play the commitments made in Resolutions 30/1 and 34/1.
- 2) Request the government of Sri Lanka to produce a clear timetable for implementation of its outstanding commitments, with a particular emphasis on those steps – such as repealing the Prevention of Terrorism Act, returning military occupied lands, and releasing records of war-time surrendees who were later disappeared - which can be taken immediately or within the next 12 months.
- 3) Reaffirm their commitment to the pursuit of accountability for atrocity crimes committed during the civil war in Sri Lanka, including by highlighting the findings of the UN OISL report and signaling an intention to seek, wherever possible, the attainment of justice through alternative avenues such as universal jurisdiction.
- 4) Undertake an urgent review of wider policy engagement towards Sri Lanka, including in the spheres of aid, trade, military-military cooperation and UN Peacekeeping, to establish why the Human Rights Council process has delivered so little to date, and the risks that that poses to Sri Lanka's future peace and security.

## 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 categorised and colour-coded as follows:



Below is an overview of the findings of our latest 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 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 February 2018 [report](#) by the Sri Lanka Campaign, the use of surveillance, intimidation and harassment by members of the security agencies against human rights defenders (and additionally, victims and war survivors) has not ceased, despite overall improvements since the beginning of 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.

Disappearance activists continue to be harassed and threatened with impunity, as evidenced by [recent statements](#) made against prominent campaigner and relative of the disappeared Sandhya Eknaligoda.

In the North and East, harassment and threats have occasionally given way to [physical attacks](#) against Tamil activists. For example, on 10 July 2018 a female Tamil disappearances activist was [attacked](#) with an iron rod as she travelled by bicycle near her house in Eastern Province. The incident occurred just days after she had returned from a session of the UN Human Rights Council, following which she had also been questioned by the CID (Criminal Investigation Department) of the Sri Lankan Police. On 14 July 2018, another activist involved in assisting families of the disappeared with several *habeus corpus* cases was [attacked](#) with an iron rod in Jaffna, leading to her hospitalisation for injuries sustained to the head and face.

There is almost no evidence to suggest that the government has actively sought to bring these practises to an end.

Throughout the coup attempt at the end of 2018, the Sri Lanka Campaign received [worrying reports](#) of increased activity by the security forces (particularly in the North and East of Sri Lanka), with activists and human rights defenders expressing [heightened fears](#) about the prospect of being targeted by state actors.

- “Review all cases of detainees held under the Prevention of Terrorism Act and either release them or immediately bring them to trial.”

## NO WILL, NO WAY

This has not happened, despite [repeated pledges](#) by the government to ‘fast-track’ cases of those held under the draconian Prevention of Terrorism Act (PTA).

In his July 2018 [report](#), the former Special Rapporteur on the Promotion and Protection of Human Rights while Countering Terrorism re-stated official figures provided to him by the Office of the Attorney General during his July 2017 country visit. Of these, the Special Rapporteur remarked: “It is apparent that out of 81 prisoners at the time 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 ten years.”

In his January 2018 [written update](#), the former UN High Commissioner for Human rights noted that, according to government figures, “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.”

Later in January 2018, a [report](#) by Human Rights Watch observed that, “lawyers working on these cases believe that the [official] numbers are not accurate given the discrepancies [in those that have been reported].”

In July 2018, the EU Commissioner for Trade [stated uncritically](#) that the government of Sri Lanka had assured the EU that “there are no longer any detainees remaining in custody under the PTA.” While there are no precise official figures at time of writing (February 2019), [recent reports](#) suggest that this claim is patently false and that at least dozens continue to be held in detention (including many who are yet to face trial, or even have charges filed against them).

- *“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.

- *“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. While it remains unclear whether there exists a formal process for the transfer of cases to the Office on Missing Persons (OMP), the Chairman of the OMP has stated his intention to [draw on the findings](#) of the Paranagama Commission, including by [making use of witness statements](#) given to it.

## 2. ENGAGE WITH THE OFFICE OF THE UN HIGH COMMISSIONER FOR HUMAN RIGHTS AND SPECIAL PROCEDURE 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 most notable areas of progress over the past three-and-a-half years.

On his [February 2016](#) visit to Sri Lanka, the former UN High Commissioner for Human Rights commended the “friendly [and] cooperative” nature of his visit, in comparison to that of his predecessor. In his January 2018 [written update](#), the former High Commissioner further noted the government’s “constructive engagement” with UN human rights mechanisms.

Cooperation with special procedure mandate holders has been encouraging, with visits thus far from the Working Group on Enforced Disappearances ([November 2015](#)) and the 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](#)).

Despite such visits, which government officials have been [eager to cite](#) as evidence of the “priority [that the government] attach[es] to open and candid exchanges,” many have expressed concerns about the lack of meaningful follow up. The government has failed to substantively respond to - let alone implement - many of the recommendations made by the High Commissioner and Special Mandate Holders following the visits outlined above.

Further, many have questioned the sincerity of the government of Sri Lanka’s engagement with international human rights mechanisms. Rights groups were [dismayed](#) when in November 2016, the government of Sri Lanka sent as part of its official delegation to the Committee Against Torture (CAT), 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). The government [failed to respond](#) to concerns raised by CAT about Mendis’ presence.

### 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.

The report provides a rich analysis of the needs of 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.

Just days after its publication, a senior minister [sought to discredit](#) the report – which recommended a 'hybrid court' with the participation of international judges - stating that he had “no confidence in [it]” and that it was “totally unwarranted.”

On 2 February 2017, nearly a month after its release, the President finally [acknowledged](#) the existence of the report, but while pointedly stating his intention to prioritise the issue of constitutional reform.

At time of writing (February 2019), there remains no plan in place for the adoption and operationalisation of the CTF's recommendations, suggesting that the [worst fears](#) of the CTF members – that their report could “suffer the [same] fate as those submitted by previous government commissions” – has come to pass. As the former UN High Commissioner for Human Rights noted in his January 2018 [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. In October 2018, several days prior to the coup attempt, it was [reported](#) that draft legislation to establish a Truth Commission had been approved by Cabinet. Subsequently, in February 2019, it was [reported](#) that the Prime Minister had presented a memo to the Cabinet seeking approval to commence with the establishment of the Commission, but that that approval had not yet been granted.

In August 2018, the government stated that draft legislation for such a mechanism, produced by one of several technical working groups, was “under discussion.” In his January 2018 [written update](#), the former UN High Commissioner for Human Rights stated that the working groups had been “dismantled after submitting their initial drafts.” He further noted that “the results of their efforts have not been made publicly available,” as remains the case at time of writing (February 2019).

The government is yet to outline the mandate of a Truth Commission or lay out a vision for how it will be linked to any 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 – including as [espoused](#) by UN experts - may threaten the attainment of both of those goals. A [2016 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.” 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.”

### 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 (OMP) 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 regarding its design, the legislation represents a potentially significant step forward in the struggle to obtain answers about the many thousands of unresolved cases of enforced disappearances in Sri Lanka.

Unfortunately, progress in operationalising the Office has been slow, further undermining the limited confidence in the mechanism among relatives of the disappeared. While the mandate of the office came into operation in [September 2017](#), it was not until [February 2018](#) that commissioners were appointed. A budget allocation for the office was subsequently made, although [concerns](#) have been raised about the potential for funds to be diverted in view of their discretionary nature.

The OMP embarked on a series of regional outreach meetings across the country throughout 2018, culminating in the publication of an [interim report](#) in August 2018. The report outlines plans to set up twelve regional offices, enhance staffing capacity, and provide urgent interim relief to affected individuals. A January 2019 [analysis](#) by Amnesty International notes that “while the report makes progressive and self-reflective recommendations ... it falls short in addressing concerns of victims groups.” Affected individuals and civil society organisations have continued to express [serious concerns](#) about the inclusion of a retired army Major General among the OMP officers. One group of mothers of the disappeared [highlighted](#) this fact as a reason for their boycott of the OMP. Outreach meetings held in 2018.

In August 2018, the OMP took the welcome step of [undertaking](#) to provide financial assistance to the forensic team currently excavating a mass grave in Mannar, where 230 human skeletons have so far been [unearthed](#).

In another significant development, in early 2017 Tamil relatives of the disappeared began five separate [continuous peaceful protests](#) at various sites across the North and East of Sri Lanka, demanding answers about the fate of their loved ones. Four of their five key demands to the government – 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, despite various public pledges by the President. Some of the protests [continue](#) to this day, having exceeded 700 days. At least eight relatives of the disappeared are reported to have [died](#) since the protests began.

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. It is worth

noting that, if true, the statements would imply official acceptance of mass extrajudicial killing in Sri Lanka. A December 2018 [report](#) by the International Truth and Justice Project (ITJP) and the Human Rights Data Analysis Group (HRDAG), which analysed multiple data sets, found that as many as 500 Tamils may have been forcibly disappeared in the space of just three days at the end of the war (17-19 May 2009).

### 6. ESTABLISH AN OFFICE FOR REPARATIONS

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



**Progress:** Legislation to establish an Office for Reparations was [enacted](#) in October 2018. Unfortunately, [serious concerns raised](#) by civil society in relation to the Bill were not addressed by the government in the intervening period. These include provisions which many [fear](#) will leave the office powerless against political interference by the Cabinet and Parliament.

In October 2018 it was [reported](#) that the government intends to press ahead with the appointment of officers to the mechanism, which is not yet operational or staffed. The Centre for Policy Alternatives [remarked](#) that while the “government will use the present Bill and the establishment of the second transitional justice mechanism it committed to in UN Human Rights Council Resolution 30/1 as evidence of positive progress,” the delays and flaws in the design of the office are, “indicative of a government that is clearly fudging in delivering on transitional justice.”

### 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:** Progress in this area has been mixed. In several earlier versions of this scorecard, we commended 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.

However, we later downgraded our evaluation following an amendment to the OMP Act in June 2017 which removed a key provision 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.”

The Office for Reparations Act does [permit](#) foreign funding to be received by the mechanism. However, as noted elsewhere, there remain serious concerns about the potential for [political interference](#) in terms of how such funds are used.

### 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:** Sri Lanka has made almost no progress towards holding individuals accountable for serious crimes committed during the armed conflict.

Arrests and prosecutions have almost [exclusively targeted](#) members of the LTTE, largely through the use of the Prevention of Terrorism Act. As the Adayalaam Centre for Policy Research [notes](#), “a piece of legislation dealing with ‘crimes of terrorism’ [i.e. the PTA] is inappropriate as the vehicle for an inquiry into violations of international humanitarian law.”

A senior-ranking officer from the Sri Lankan Navy was arrested in November 2018 and now [faces trial](#) (pending indictment) for his involvement in the abduction and murder of 11 Tamil youths between 2008-2009. However, the authorities are yet to bring proceedings against any members of the security forces in relation to allegations of war crimes and crimes against humanity committed during the final stages of the war. In September 2018, the Sri Lankan President [re-affirmed](#) his oft-repeated commitment to protecting so-called ‘war heroes’ from prosecution.

An independent judicial mechanism that could bring about 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 one [independent analysis](#) conducted in 2017 concluding that its performance had “improved drastically” – despite ongoing [attacks](#) from senior politicians.

Sri Lanka’s judiciary faced a critical test during the 2018 coup attempt, when it became the final arbiter on the [legality](#) of President Sirisena’s dissolution of Parliament and the [legitimacy](#) of Mahinda Rajapaksa’s purported government. While its decisions on those matters have inspired some [optimism](#) about the renewed strength of the judiciary, others have remained [cautious](#) about its ability withstand further assaults on democracy in Sri Lanka so long as the residual powers of the executive presidency and culture of impunity remain intact.

Wider recent developments as regards the rule of law in Sri Lanka have been less encouraging. For example:

- The alleged **perpetrators of atrocity crimes continue to be promoted rather than prosecuted**. In January 2019 Major General Shavendra Silva - named in the UN OISL report for his role commanding the 58<sup>th</sup> division, a unit responsible for repeated [attacks on civilian targets](#) during the civil war - was appointed to Chief of Staff. He is now the second highest ranking official in the Sri Lankan army.
- There has been minimal progress towards ensuring accountability in the so-called '**emblematic cases**' of human rights violations in Sri Lanka. These include, among others, the 2006 murder of five Tamil youths (the 'Trinco Five'), the 2006 murder of 17 Action Contre le Faim humanitarian workers, the 2009 murder of Sunday Leader editor Lasantha Wickrematunge, and the 2010 disappearance of cartoonist Prageeth Ekmaligoda. There has been almost no push-back from senior government officials to reported attempts by the security forces to [actively block](#) investigations. In November 2018, President Sirisena [sought](#) to transfer a key CID officer involved in investigating several of these cases, in a move widely perceived as intended to obstruct.
- There were continued concerns about **further political interferences in the judicial system**, following reports in January 2019 that President Sirisena was [considering](#) pardoning the extremist Buddhist monk and leader of the Bodu Bala Sena (BBS), Gnanansara Thero, who was jailed in August 2018 for contempt of court.
- There has been no progress towards ensuring accountability for violent coordinated **attacks on the Muslim community** in Sri Lanka, including [most recently](#) in Kandy and Ampara in March 2018. Despite dozens of arrests, [no one has been convicted](#) in relation to the incidents. A key instigator of the latest violence, Amith Weerasinghe, was [released on bail](#) just days after the 2018 coup attempt began.
- There remains no effective system in place for the **protection of victims and witnesses** (see *promise 13*, below).
- Those seeking recourse for serious human rights violations continue to face **protracted delays**, with the Supreme Court currently handling a backlog of approximately [3,000 fundamental rights cases](#). In the lower courts, victims from minority communities continue to [complain](#) of the obstacles posed by inadequate language services.
- There have been various reported **intimidations against members of the legal profession** including, for example, [threats](#) made by former Justice Minister Wijeyadasa Rajapakse against Attorney at Law Lakshan Dias in June 2017.
- Several high-profile murder cases involving Tamil victims, and police or military perpetrators, have resulted in **acquittals of the accused**. This includes, 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 there is no discernible political will to suggest that it will be under the current government. Since the early part of 2016 and as recently as late 2018, the [President, Prime Minister](#), and various [senior ministers](#) have [repeatedly and publicly](#) stated their opposition to the participation of foreign judges, prosecutors and investigators - an element widely regarded as [essential](#) for ensuring the independence and credibility of any such mechanism.

In his January 2018 [written update](#), the former UN High Commissioner for Human Rights highlighted the recent filing of criminal complaints in Brazil and Colombia against retired Army General Jagath Jayasuriya, in relation to 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 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 criminalising 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.

Progress on this front has been very limited. The Enforced Disappearances Act, enacted in March 2018, is the only relevant piece of legislation to address the aforementioned crimes. Unfortunately, the Act does not provide for the retroactive application of the offence. Many legal commentators regard such retroactivity to be [permissible](#) under Sri Lanka's constitution, in spite of the restriction in Article 13(6). Furthermore, while the Act does provide for 'superior responsibility' for the offence, commentators have [expressed concern](#) about weaknesses in the legislation which could hamper the chances of successful prosecutions (see [promise 20](#)).

For further background on these issues see [this report](#) by the South Asian Centre for Legal Studies.

### 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. As noted elsewhere, the alleged perpetrators of atrocity crimes continue to be promoted. In January 2019 Major General Shavendra Silva - named in the UN OISL report for his role commanding the 58<sup>th</sup> division, a unit responsible for repeated [attacks on civilian targets](#) during the civil war - was appointed to Chief of Staff. He is now the second highest ranking official in the Sri Lankan army.

In June 2016 the government of Sri Lanka entered into an agreement with the UN mandating the National Human Rights Commission of Sri Lanka (NHRC) to conduct vetting and screening of all military personnel to be deployed to UN peacekeeping operations. The agreement succeeded an ad hoc process of vetting and screening by the Office of the UN High Commissioner for Human Rights (OHCHR) in relation to 200 Sri Lankan soldiers being deployed to a mission in Mali.

There are several indications that the government of Sri Lanka has not respected the terms of the arrangement. In April, the NHRC published a letter to the President of Sri Lanka in which they [complained](#) that 49 soldiers had been deployed to Lebanon prior to the completion of vetting and screening by them. A confidential report produced by the International Truth and Justice Project in August 2018 [claimed](#) that senior Sri Lankan officers accused of war crimes have been deployed to UN operations in Mali, Lebanon, Darfur, and South Sudan. In October 2018 the UN [requested](#) the immediate repatriation of a Sri Lankan commander assigned to a peacekeeping mission in Mali, following "a review of [his] human rights background."

The Sri Lanka Campaign continues to regard the deployment of Sri Lankan troops as peacekeepers as completely inappropriate given the total impunity for serious human rights abuses enjoyed by the Sri Lankan armed forces – and, in particular, the government's failure to hold anyone criminally accountable for the [systematic rape](#) of children during a peacekeeping deployment in Haiti between 2004-2007.

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.

### 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 noted 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.” An analysis by the South Asian Centre for Legal Studies conducted in June 2017 [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.” [Concerns](#) have been raised, in particular, about the appointment of problematic individuals from the police and security forces to the authority designed to oversee the implementation of the law.

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 – including [1055 acres](#) in Trincomalee (May 2015), [701 acres](#) in Jaffna (March 2016), and several hundred acres in Mullaitivu (In [January](#), [July](#) and [December](#) 2017) - progress in this area has been faltering and far short of what is needed. In his January 2018 [written update](#), the former 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.”

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.

[Recent claims](#) by the Sri Lankan government that it has released 80% of confiscated lands are almost certainly false, with the true figure likely to be significantly lower. By way of illustration, in January 2018 the former UN High Commissioner for Human Rights [referred](#) to government *plans* to retain 36,002 acres of land, including 5,327 acres of private land. On the (very generous) hypothetical that at time of writing the government of Sri Lanka has reached that goal and a mere 5,327 acres of private land is being held by the military, the government's "80%" claim would imply that at least 26,635 acres of private land has been released. A cursory review of reported land releases suggests the actual amount of land returned to date does not even begin to tally with this figure.

At the root of the problem of verifying government claims and reliably ascertaining the true rate of progress lies the fact that, as [highlighted](#) in an October 2018 report by Human Rights Watch, "there is no comprehensive approach to mapping and releasing the lands under military occupation in a systematic and transparent manner."

As a result, civil society organisations have had to fill the gap. 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).

Where land releases have occurred, these have often been conducted in a piecemeal and grudging manner by the military. In many cases returnees have [complained](#) of the military retaining control of neighbouring lands, and of destruction to buildings, infrastructure and sanitation facilities (without compensation). At a land returns ceremony in April 2018, the Commander of the Sri Lankan Army Mahesh Senanayake issued a [warning](#) to Tamil residents that the army could "take back" lands again in the future.

Amid various [promises](#) by the President to ensure the return of all confiscated lands, displaced landowners have continued to mobilise. In January 2019, the residents of Keppapilavu marked their 700<sup>th</sup> day of continuous protest by [marching](#) to the occupying army camp, where they were met with [surveillance and intimidation](#) by members of the security forces.

### 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 is one of the main barriers to reconciliation and the restoration of normal civilian life for war-affected communities.

Despite the slight decrease in the visibility of the military in public places which followed the change of government in January 2015, the overall presence of the armed forces remains extremely high, with one recent [civil society report](#) estimating the ratio of soldiers to civilians in Mullaitivu District to be 1:2. Sri Lanka's defence spending allocation for 2018 was the second highest [on record](#).

A February 2018 [report](#) by the Sri Lanka Campaign on the use of surveillance, intimidation and harassment by the security forces attests to the sense of fear and oppression which the military - particularly through its intelligence-gathering units - continues to instill in the civilian population in the North. Academic [research](#) has emphasized the specific and disproportionate impacts of militarisation on women, including through the use and threat of sexual violence.

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 providing the military with new avenues for the assertion of social and economic control.

### 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 elsewhere in this evaluation, there has been minimal progress towards ensuring accountability in the so-called ‘emblematic cases’ of human rights violations in Sri Lanka. These include, among others, the 2006 murder of five Tamil youths (the ‘[Trinco Five](#)’), the 2006 murder of 17 Action Contre le Faim [humanitarian workers](#), the 2009 murder of Sunday Leader editor [Lasantha Wickrematunge](#), and the 2010 disappearance of cartoonist [Prageeth Eknaligoda](#).

There are ongoing reports of attempts by members of the security forces to [block](#) such investigations, as well as efforts by senior officials (including the President) to [interfere](#) with the work of investigators. Victims and witnesses [continue to face](#) unchecked intimidation and harassment.

No one has been held accountable in relation to the [43 cases](#) of murdered or disappeared journalists and media workers, most of whom are Tamil, as identified by Journalists for Democracy.

As highlighted elsewhere in this evaluation (see *promise 1*) human rights defenders, particularly in the North and East, have [continued](#) to face harassment, intimidation and even physical attack in relation to their work.

There has been no progress towards ensuring accountability for violent coordinated attacks on the Muslim community in Sri Lanka, including [most recently](#) in Kandy and Ampara in March 2018. Despite dozens of arrests, [no one has been convicted](#) in relation to the incidents. A key instigator of the latest violence, Amith Weerasinghe, was [released on bail](#) just days after the 2018 coup attempt began.

In January 2019 it was reported that President Sirisena was [considering](#) pardoning the extremist Buddhist monk and leader of the Bodu Bala Sena (BBS), Gnanansara Thero, who was jailed in August 2018 for contempt of court.

As noted in a January 2019 [report](#) by Amnesty International, there have been “no explicit proactive measures taken to prevent attacks against the groups specified in Resolution 30/1.”

### 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 dating back to 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.”

It was most recently [used](#) in March 2018 when the President declared a 10 day nationwide state of emergency following coordinated attacks on the Muslim community in Kandy and Ampara.

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 2016 [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 has not, to our knowledge, been taken up by 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.

The role of the PTA in facilitating torture has been widely documented. 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. In his July 2018 [report](#), the former Special Rapporteur on the Promotion and Protection of Human Rights while Countering Terrorism stated that 80% of those arrested under the PTA in late 2016 had complained of torture and physical ill-treatment following their arrest, while also noting the disproportionate use of the PTA against Tamils.

Since the initiation of a review by the Law Commission in early 2016, several draft proposals to replace the PTA 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 April 2017, the Cabinet approved a policy framework for the proposed CTA which, despite making several improvements on the PTA, was widely [criticised](#) for preserving several of its most problematic aspects - including, for example, provisions on the admissibility of confessions and an overly broad definition of terrorism.

## NO WILL, NO WAY

In September 2018, the Cabinet approved a CTA Bill. A recent [analysis](#) by Amnesty International concluded that the Bill “raises serious cause for concern on many fronts,” noting “the vaguely worded offences, the ability to intercept data with minimal judicial oversight, and the detention of persons for up to one year without charge.”

In his January 2018 [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 finalised.” The Sri Lanka Campaign concurs with human rights activists who say that the PTA should be [immediately repealed](#).

Recent [assurances](#) by the government that “there are no longer any detainees remaining in custody under the PTA” are directly contradicted by [civil society reports](#) which suggest that at least dozens are still in detention (including many who are yet to face trial, or even have charges filed against them). Similarly, there are multiple recent examples (e.g. [here](#), [here](#) and [here](#)) to suggest that the PTA is [still being used](#) to arrest and indict suspects, despite government [assurances](#) that a moratorium is in place. Activists and human rights defenders targeted under the PTA by the former regime – including, for example, the prominent rights activist Ruki Fernando - continue to have [investigations pending](#) against them.

### 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 25 May 2016.

### 20. CRIMINALISE ENFORCED DISAPPEARANCES

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



**Progress:** A Bill criminalising enforced disappearances was [passed](#) in March 2018. While a potentially very positive and important step forward towards ending the scourge of enforced disappearances in Sri Lanka, the legislation is yet to be tested in a court of law.

Prior to its passing, activists and civil society groups expressed concern about various weaknesses in the Bill, including [key omissions](#) which render the legislation 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 for retroactive criminalisation of enforced disappearances. Prime Minister Ranil Wickremesinghe is reported to have recently [emphasised](#) the restriction on retroactive offences

under Art 13(6) of the Sri Lankan Constitution in explaining why the latest law would not be used to pursue past perpetrators of enforced disappearances.

### 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 relatives 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. They are a vitally important practical tool for relatives of the disappeared, enabling them, for example, to access bank accounts and deal with property that is in the name of the disappeared.

In September 2016, [amendments](#) were made to existing legislation which enabled the issuance of certificates. However, it remains unclear how many – or if any - certificates have been issued to affected families to date. In its August 2018 [interim report](#), the OMP stated that it was “in the process of making recommendations [regarding] the issues surrounding Certificates of Absence (CoA).”

In a February 2019 [report](#), the International Commission of Jurists stated that it had “received reports that many women are hesitant to apply for certificates of absence, fearing that once issued, the State may cease any effort to find the disappeared person on the basis that they have been deemed to have died. There is therefore a need for the OMP to spread awareness about the use and importance of these certificates, especially among women.”

### 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 criticised](#) as a whitewashing exercise based on a distorted factual and legal interpretation of the end of the war).

Additionally, in October 2015 the government tabled in parliament [the report of the Udalgama 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 Right to

Information (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, several key reports are yet to be made public. These include, as [recently noted](#) by Amnesty International, the *full* report on the first mandate of the Paranagama Commission, as well as the report of the presidential commission appointed to probe the Matale mass grave. The Sri Lanka Campaign understands that a number of [older Commission of Inquiry reports](#) are also yet to be 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.

Whilst the OMP [reports](#) that it is currently engaged in compiling records and developing a centralised list relating to cases of disappeared persons, it remains unclear what wider steps the government has taken towards this goal. A number of basic steps including, as [recommended](#) by the South Asian Centre for Legal Studies, “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. A [final report](#) containing the key proposals for a draft constitution was submitted by the Panel of Experts to the Steering Committee in January 2018.

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 [questioned](#) whether the proposals go far enough on power-sharing, while expressing continued concern about the ‘foremost place’ accorded to Buddhism.

In light of the recent coup attempt, and the prevailing political dynamics between the Prime Minister and the President, there is widespread pessimism regarding the prospects of the constitutional reform process.

### 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 July 2017 report, the International Truth and Justice Project [stated](#) that they had documented 57 such cases occurring between 2015-2017, including 3 cases in 2017, 21 cases in 2016 and 33 cases in 2015. The total figure has [since risen](#) to 76. In a submission to the Universal Periodic Review in November 2017, Freedom From Torture [stated](#) that they had documented 12 cases occurring after January 2015. Another [submission](#) from the National Human Rights Commission of Sri Lanka stated that they continue “to observe a widespread incidence of custodial violations, including torture.” These findings were corroborated by the July 2018 [report](#) of the former UN Special Rapporteur on the Promotion and Protection of Human Rights while Countering Terrorism, which found the use of torture to be “routine and systemic.”

Earlier, in December 2016, the UN Special Rapporteur on Torture [concluded](#) that a “culture of torture persists” in Sri Lanka, noting 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 November 2016 delegation to the Committee Against Torture (CAT), 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, CAT 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.

The government’s response to the allegations has thus far been dismissive and hostile, with the President suggesting that such claims came from people [“close to the tigers.”](#) It continues to [insist](#) that it maintains a “zero-tolerance policy” on torture.

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

The government is yet to hold anyone criminally accountable for the [systematic rape](#) of children during a peacekeeping deployment in Haiti between 2004-2007.

## Annex 1: further resources evaluating Sri Lanka's progress on Resolutions 30/1-34/1

Amnesty International (February 2019), [Flickering Hope: Truth, Justice, Reparations and Guarantees of Non-recurrence in Sri Lanka](#)

Monitoring and Accountability Panel (March 2018), [Third Spot Report](#)

PEARL (May 2018), [Delayed or Denied: Sri Lanka's Failing Transitional Justice Process](#)

South Asian Centre for Legal Studies (February 2016), [From Words to Action: A Roadmap for Implementing Sri Lanka's Transitional Justice Commitments](#). [Recent infographics also [available here](#)]

Verite Research (February 2018), [Sri Lanka: Resolution 30/1 Implementation Monitor: Statistical & Analytical Review No. 3](#)





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