



ABANDONED PROMISES? PRESERVING HUMAN RIGHTS AND PURSUING ACCOUNTABILITY IN GOTA'S SRI LANKA

February 2020



**SRI
LANKA
CAMPAIGN**
FOR PEACE & JUSTICE

An overview of progress by the government of Sri Lanka in implementing Human Rights Council Resolutions 30/1, 34/1, and 40/1 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 committed during the final stages of the civil war and the surrounding period (2002-2011). The document, known as the '[OISL Report](#)'¹ was clear in its view that many of those violations – perpetrated by both government of Sri Lanka 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 national unity government that came to power in Sri Lanka in 2015, acting through the UN Human Rights Council, made a series of promises to deal with the legacy of the war; promises that included establishing mechanisms capable of investigating serious human rights violations and holding perpetrators to account. **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.**

In response to limited implementation, the HRC has since adopted a further two resolutions: [Resolution 34/1](#) (in March 2017) and [Resolution 40/1](#) (in March 2019). The effect of these has been to ‘roll over’ the commitments contained in the original resolution, and to extend the monitoring mandate of the UN High Commissioner for Human Rights. Under the terms of the most recent resolution, the High Commissioner is due to present a [written update](#) to the HRC at the 43rd session (in March 2020), as well as a comprehensive report at the 46th session (in March 2021).

Overview of the government of Sri Lanka's progress in implementing its commitments under Resolutions 30/1, 34/1 and 40/1 over time (2016-present)

-  Too soon to say
-  Mostly or completely achieved
-  Partially achieved
-  Mostly or completely unachieved








¹ All highlighted references can be found as weblinks in the online report, available at: <https://bit.ly/2Ae9fYg>

The progress

Has Sri Lanka's government fulfilled those promises to date? We provide an answer to that question below, by distilling the contents of Resolution 30/1 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 four 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 (above) illustrates the overall progress that has been made by the government over time. The table (below) illustrates the progress that has been made in establishing the four pledged 'transitional justice mechanisms.'

Overview of the government of Sri Lanka's progress in establishing the four pledged mechanisms under Resolutions 30/1, 34/1 and 40/1

	 Judicial Mechanism with a Special Counsel	 Office on Missing Persons	 Office for Reparations	 Commission for Truth, Justice, Reconciliation and Non-Recurrence
Legislation enacted?	✗	✓	✓	✗
Operational?	✗	✓	 Does not appear to be fully operational	✗

Our findings paint a deeply troubling picture. Four 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. Just one of the four key transitional justice mechanisms pledged has been fully 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.

Abandoned promises?

In November 2019, Gotabaya Rajapaksa ('Gota') - who in his former capacity as Defence Secretary played a leading role commanding government forces during the final stages of the civil war in 2009, a period in which tens of thousands of Tamil civilians were killed - was elected as Sri Lanka's President. Shortly afterwards, Mahinda Rajapaksa, Gota's brother and the former President (2005-2015), was appointed as Prime Minister. Both are credibly implicated in war crimes, crimes against humanity, and other serious human rights violations.

In February 2020, government officials [announced](#) that Sri Lanka would seek to "withdraw" from the HRC process and "seek a closure of the resolution." The announcement is significant but not surprising. In recent months both of the leading figures within the new regime have voiced their staunch opposition to the HRC process. While on the campaign trail in October 2019, Gota [stated](#) that he did not recognise the agreement made by the previous government, [arguing](#) that the country needed to move on from "old allegations" and focus on [economic development](#) instead. As President, he has [said](#) that the resolution cannot be entertained in its current form on the basis that "it is not possible for the government to act against its own country." In December 2019, Mahinda Rajapaksa [described](#) attempts to hold the military accountable for war crimes through the UN resolutions as a "humiliation" and an "injustice."

At time of writing, it was unclear whether the government's latest announcement meant it would attempt to bring a new resolution to revoke the current one, or merely refuse to honor its commitments.

Meanwhile, an effort to reverse some of the limited progress made by the previous regime appears to be well underway. The most concerning recent trends include a spike in intimidation and harassment against journalists and human rights defenders, a wave of attempts to interfere with investigations into serious human rights abuses, and the renewal of pledges by government officials to release convicted perpetrators. All of these trends, if left unchecked, are likely to increase the risk of further human rights violations and undermine Sri Lanka's chances of building a sustainable peace.

Action through the Human Rights Council. What now?

The limited progress made towards the implementation of Resolution 30/1 nearly five years since its adoption, coupled with the shifting political landscape in Sri Lanka, will no doubt raise many questions among members of the international community about the value, scope, and nature of any future engagement on Sri Lanka at the UN Human Rights Council and beyond.

As the Sri Lanka Campaign has repeatedly emphasised, it is the views and wishes of victims and survivors which must fundamentally shape how those questions are answered.

In our previous update, we set out three key considerations for member states seeking to ascertain the current state of play and how to respond it. They were:

- 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?; and
- Are the steps that have been taken of a kind which cannot be easily reversed in the future?

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Unfortunately, the answer to each of these points remains a resounding ‘no’ - a view confirmed not only by the assessment below, but also by the findings of our [recent report](#), ‘*A Decade of Impunity*’, in which we surveyed the views of ten Tamil victims and survivors from Sri Lanka’s Northern province.

As that report highlights, those most affected by the war regard efforts to deal with the past in Sri Lanka as grossly inadequate. Despite tireless protests, demands for the most basic forms of redress – for acknowledgement, truth, and compensation for serious human rights violations – remain largely unmet. Meanwhile, there is deep-seated anger about the failure to bring perpetrators of the very worst abuses to account, coupled with increasing concern about the potential for ongoing impunity to lead to further human rights violations and wider conflict in the future.

Victims and survivors in their own words

“How is it possible to forget what happened? They cannot just leave it like that. They cannot just tell us to look forwards. They must give us an answer.”

“We have to get justice ... for the people who disappeared, for the people who died.”

“Geneva is being very lenient with the government of Sri Lanka. They are giving more time, but nothing has happened.”

“It’s important to get justice because these problems shouldn’t re-occur. Only if they are addressed, our children will not experience them in future. When our children grow up, they have to live in peace.”

“The entire world knows what happened. But we don’t know why the international community remains silent about this matter.”

Testimony from Tamil victims and war survivors collected in 2019 (from [A Decade of Impunity: Unlocking Accountability for the Victims of Sri Lanka’s Killing Fields](#)).

For these reasons, it is essential that members of the international community remain committed to the original mandate of Resolution 30/1, and that they adopt a firm and principled stance on the need to address the legacy of the war. While that must entail continued active engagement at the HRC – both at the upcoming session and, as necessary, beyond the end of the current reporting period in March 2021 – the lack of domestic political will in Sri Lanka means that states should begin to go even further.

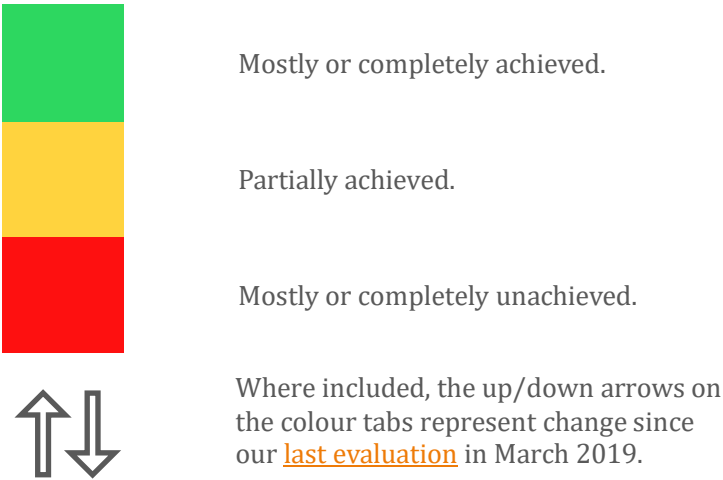
Recommendations

To that end, the Sri Lanka Campaign urges member states to:

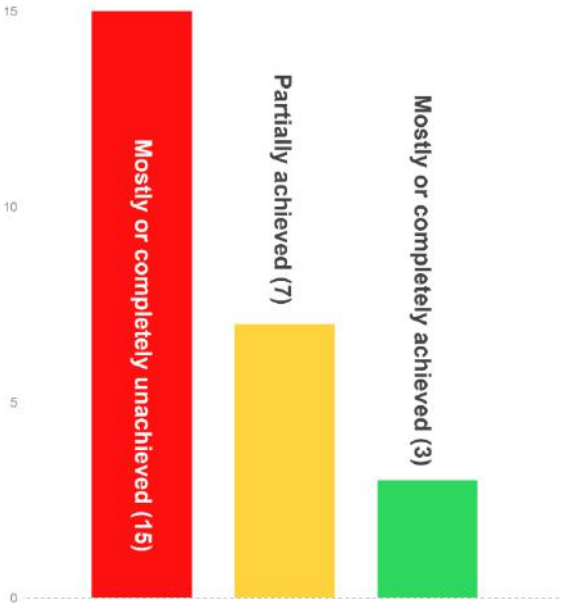
1. **Reaffirm** their commitment to the agenda agreed to by the government of Sri Lanka under Resolution 30/1, and to signal clearly to the government the diplomatic consequences that would result should it seek to terminate its commitments.
2. **Build support**, particularly among states from the global South, for a continuation of the HRC process beyond the end of the current resolution's expiration in March 2021 (including, if necessary, via a contested resolution at that time).
3. **Enhance efforts** to attain accountability for serious human rights violations in the face of limited domestic political will, including by:
 - i. **Supporting** efforts to obtain justice in the small handful of cases that are proceeding through the ordinary criminal justice system in Sri Lanka – and conversely, challenging attempts to obstruct or interfere with them.
 - ii. **Exploring** options for international accountability, including the viability of a 'IIIM-style' mechanism to help consolidate and preserve evidence of serious human rights violations with a view to enabling criminal prosecutions before some later court or tribunal with jurisdiction.
 - iii. **Implement** the recommendation of the UN Human Rights Commissioner, "to prosecute Sri Lankans suspected of crimes against humanity, war crimes or other gross violations of human rights, in accordance with universal jurisdiction principles."
4. **Denounce** the crackdown on civil society that has intensified since Sri Lanka's Presidential elections in November 2019 and call on the government to immediately halt attempts to intimidate and harass activists, journalists, and victim groups, especially the families of the disappeared.
5. **Immediately review** all forms of bilateral engagement with Sri Lanka, including in the spheres of aid, trade, and security cooperation, to ensure that Sri Lankan officials accused of grave human rights violations are deprived of political and material support – and consider the use of targeted sanctions, travel bans, and asset freezes against the most problematic individuals.

A progress evaluation on the 25 commitments in HRC Resolutions 30/1, 34/1, and 40/1

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 the security agencies against human rights defenders (and additionally, victims and war survivors) did not cease under the previous government, despite overall improvements since 2015. The use of surveillance via informant networks and [civil-security bodies](#) has remained widespread in recent years, particularly in the North and East of the country, with chilling effects on freedom of expression, association and assembly.

As indicated in two recent civil society reports, these practises appear to have intensified in the wake of the Easter Sunday attacks in Sri Lanka (in April 2019) and in the run up and aftermath to Presidential elections (in November 2019). Amnesty International [recorded](#) more than a dozen unscheduled visits to human rights and media organisations between May 2019 and January 2020, whereas the International Truth and Justice Project and JDS Lanka [recorded](#) 69 such incidents in the election period alone (up to December 2019).

Those targeted have remarked upon the increasingly sophisticated and coordinated nature of these practises, with state officials routinely summoning civil society leaders for questioning, and detailed enquiries being made about organisations’ funding sources, project activities and registration status.

Former LTTE combatants and Tamil disappearance activists continue to bear the brunt of the state’s security apparatus. In December 2019, families of the disappeared protesting in the North and East of the country published [a joint letter to the UN](#) which noted an increase in intimidation and surveillance by the military, including home visits and interrogations. In January 2020, a representative of the families of the disappeared in Vavuniya was [physically assaulted](#) by a paramilitary group connected to the government. Such attacks are not new. For example, in July

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2018, a female Tamil disappearances activist was [assaulted](#) with an iron rod just days after returning from a session of the UN Human Rights Council.

There is no evidence to suggest that the government of Sri Lanka has sought to bring these practises to an end.

The Sri Lanka campaign remains concerned about the [wider chilling effect](#) that the election of President Gotabaya Rajapaksa has had on free speech and civil society activism in Sri Lanka, with the withdrawal of several important commentators from social media platforms and widespread reports of self-censorship.

- *“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, despite [pledges](#) by the previous government to ‘fast-track’ cases of those held under the draconian Prevention of Terrorism Act (PTA).

Far from a decrease in the total of those held under the PTA, detainee numbers have rocketed following the [scores of arrests](#) made in the aftermath of the April 2019 Easter Sunday bombings. While no up-to-date official figures have been made available, in January 2020 the International Crisis Group [estimated](#) that at least “hundreds of Muslims remain in custody under the Prevention of Terrorism Act.”

These figures would represent a stark backsliding, in view of [reports](#) that the number of PTA detainees may have been steadily decreasing in recent years.

Despite expressing concern that he was unable to obtain consistent figures, the UN Special Rapporteur on the Promotion and Protection of Human Rights while Countering Terrorism [estimated](#) that “there were between 81 and 111 individuals still in detention [under the PTA]” at the time of his July 2017 visit. Among that estimated total, the Special Rapporteur noted that “70 had been in detention without trial for over five years and 12 had been in detention without trial for over ten years.” In a February 2019 [written update](#), the UN High Commissioner for Human Rights, while not providing any total figure, cited information provided by the government that 58 individuals detained under the Act were facing trial and three suspects were awaiting indictment.

It should be noted in this context that human rights groups have expressed concerns about the reliability of government statistics. In January 2018, a [report](#) by Human Rights Watch remarked on discrepancies in some of the key figures obtained, remarking that “lawyers working on these cases believe that the numbers are not accurate.”

- *“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

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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 from civil society groups, including 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, and to what extent, its cases have been transferred 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 four-and-a-half years. However, recent developments suggest there is a high risk that this progress could be reversed under Sri Lanka’s new government.

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 her February 2019 [written update](#), the current UN High Commissioner noted the government’s continuing “constructive engagement” with UN human rights mechanisms since October 2015.

Cooperation with special procedure mandate holders was encouraging under the previous government, with visits 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 the Independence of Judges and Lawyers ([April 2016](#)), on Torture ([April 2016](#)), on Minority Issues ([October 2016](#)), on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism ([July 2017](#)), on Truth, Justice, Reparations and Guarantees of non-Recurrence ([October 2017](#)), on Freedom of Assembly ([July 2019](#)) and on Freedom of Religion ([August 2019](#)). Despite indications from the current Government that it may seek to curb its engagement with UN human rights mechanisms, at time of writing (February 2020) a standing invitation to UN special procedure mandate holders, issued by the previous government in December 2015, remains in place.

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While the previous government appears to have been [eager to cite](#) its engagement with special procedure mandate holders as evidence of the “priority [that the government] attach[es] to open and candid exchanges,” many 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 following the visits outlined above.

Further, many have questioned the sincerity of the (both the current and previous) government of Sri Lanka’s engagement with international human rights mechanisms. In January 2020, it was announced that the government was [seeking to appoint](#) as its ambassador to the Human Rights Council, C.A. Chandraprema, a former death squad member alleged to have been personally involved in the murder of four human lawyers. Human rights defenders have [described](#) to the Sri Lanka Campaign the “chilling message” that this move would likely send to those who attend Council sessions.

Rights groups were [dismayed](#) when in November 2016, the previous 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.

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At time of writing (February 2020), there remains no plan in place for the adoption and implementation of the CTF's recommendations, suggesting that the [worst fears](#) of the CTF members – that their report could suffer the same fate as those produced by previous government-appointed 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-RECURRENT

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 a botched coup attempt by the Rajapaksas, it was [reported](#) that draft legislation to establish a Truth Commission – [apparently ready](#) “since 2016” – had been approved by Cabinet. Subsequently, in February 2019, it was [reported](#) that the former Prime Minister Wickremesinghe had presented a memo to the Cabinet seeking approval to establish the Commission, but that that approval had not been granted.

At time of writing (February 2020) Sri Lanka's new government was yet to outline whether it intended to take this recommendation forward. However, general remarks made in relation to the HRC process (as highlighted above) suggest that it is very likely they will not.

The previous government failed to outline the mandate of a Truth Commission or lay out a vision for how it would be linked to any Judicial Mechanism. There was no clarity, for example, on what the scope of its investigatory powers would be, and crucially, whether it would 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 would be required to ensure the safety of individuals participating in any process.

Over the past few years, several voices within Sri Lankan civil society have raised concerns about a sequential approach to the establishment of a Truth Commission, 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.”

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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 [enacted](#) in 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 represented a potentially significant step forward in the struggle to obtain answers about the many thousands of unresolved cases of enforced disappearances in Sri Lanka.

However, the OMP is now under threat, with indications from the current government that it [plans to review](#) its enabling legislation. While further details about the move are yet to be announced, the OMP has [written](#) to the President and other senior government figures to express the view that any amendments should be consistent with the needs and wishes of affected families, and should follow from consultations with them.

In January 2020, during a meeting with the UN Resident Coordinator in Sri Lanka, President Gotabaya Rajapaksa [remarked](#) that those reported missing since the end of the civil war are “actually dead,” stating that steps to be taken to issue death certificates to family members after “necessary investigations.” The remarks - which echo those of former Prime Minister Wickremesinghe that such individuals are to be [presumed dead](#) - have been [described](#) as “an affront” to the families of the disappeared; families who under Sri Lankan law have a right “to know the truth regarding the circumstances of an enforced disappearance.” They also raise serious concerns about the potentially pre-determined nature of any future inquiries under this government, and suggest that officials may seek to resist any investigations that could unearth criminal conduct by members of the Sri Lankan security forces (in whose custody thousands, mostly Tamils, are believed to have been forcibly disappeared).

Following its establishment in February 2018, progress towards operationalising the OMP was initially slow; hampered by a lack of political support and inadequate funding. After a series of regional outreach meetings throughout 2018, in 2019 the OMP finally [established](#) three regional offices (in Mannar, Matara, and Jaffna), and began the work of receiving information about cases of disappeared persons, and investigating and tracing their fate and whereabouts. In February 2020, the OMP [announced](#) that it had begun the process of “consolidating a provisional list of missing and disappeared persons based on information it has received.”

(Further information about the OMP’s work in issuing of Certificates of Absence can be found under promise 21).

In November 2019, just days before the Presidential elections, Tamil relatives of the disappeared marked 1000 days of continuous protest at various sites across the North and East of Sri Lanka. In a [joint letter](#) to the United Nations to mark International Human Rights Day in December 2019, the families expressed a lack of trust in the OMP, and highlighted the fact that fifty-six mothers of the disappeared had passed away since the beginning of the protests in 2017.

The protestors have issued a list of [five key demands](#) to the government, including for the [release of a list](#) of all those who surrendered or were detained at the end of the war. A December 2018 [report](#),

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which analysed multiple data sets, found that as many as 500 Tamils may have been forcibly disappeared in the space of just three days alone as they entered into the custody of the Sri Lankan army (17-19 May 2009). During the 2019 Presidential election campaign, Gotabaya Rajapaksa – who is [alleged](#) to have closely supervised the surrender process and ordered the killing of any LTTE leaders – [denied](#) the allegations, claiming that all those who surrendered to the army had been rehabilitated and reintegrated into society.

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 [approved](#) in June 2018 and [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.

The Centre for Policy Alternatives [remarked](#) that while the previous government had used the “establishment of the second transitional justice mechanism ... as evidence of positive progress,” the delays and flaws in the design of the office were, “indicative of a government that is clearly fudging in delivering on transitional justice.”

In April 2019, President Maithripala Sirisena [appointed](#) five commissioners to the Office for a three year term and [allocated](#) a budget of Rs 700 million for the year. In November 2019, the Office [advertised](#) for a Director General and other key staff with a closing date in December 2019.

Despite these moves, progress towards operationalising the Office has been limited. In June 2019, it was reported that the Office had begun work to provide compensation to the victims of the Easter Sunday attacks. However, at time of writing (February 2020) it remains unclear how and when the office intends to compensate other victims of serious human rights violations, including the families of the disappeared.

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 on this front has been mixed. In several earlier versions of this scorecard, we commended the previous government’s 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.

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

While it remains to be seen whether these and other mechanisms will be able to draw on foreign assistance in the future, Gotabaya Rajapaksa’s [repeated pledges](#) to end so-called “foreign interference” in Sri Lanka’s affairs provide cause for concern.

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 extremely limited progress towards holding individuals accountable for serious crimes committed during the armed conflict.

Surviving members of the LTTE make up the vast majority of those formally [charged or prosecuted](#) since the end of the war, with most such cases being filed under the Prevention of Terrorism Act. As the Adayalaam Centre for Policy Research has [noted](#), “a piece of legislation dealing with ‘crimes of terrorism’ [the PTA] is inappropriate as the vehicle for an inquiry into violations of international humanitarian law.”

The authorities are yet to bring charges 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. During the 2019 Presidential election campaign, both Gotabaya Rajapaksa and opposition candidate Sajith Premadasa [pledged](#) to protect so-called ‘war heroes’ from prosecution, with the former also [stating](#) that he planned to release members of the armed forces “languishing in prison over false charges.”

An independent and judicial mechanism with international involvement 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 adoption of the 2015 resolution, the previous government enacted a series of measures designed to bolster the rule of law and increase confidence in the justice system, including enacting the 19th Amendment whose purpose was 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. However, the 19th Amendment is now under threat; President Gotabaya Rajapaksa has [pledged to abolish it](#) if he gains a two-thirds majority in forthcoming parliamentary elections, describing it is a “failure.”

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 role in halting the coup inspired some [optimism](#) about the renewed strength of the judiciary, others have remained [cautious](#) about its ability to shield against further assaults on democracy in Sri Lanka.

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** (see *promise 12*).
- As noted below (*promise 16*), progress towards ensuring accountability in the so-called ‘**emblematic cases**’ has been limited. In February 2019 the UN High Commissioner for Human Rights [concluded](#) that “the criminal justice system has yet to demonstrate its capacity of willingness to address complex emblematic cases,” stating that progress on achieving accountability had been “very limited.”
- There have been intensifying concerns about **political interference in the judicial system**. In January 2020, President Gotabaya Rajapaksa [appointed](#) a Presidential Commission to “look into alleged political victimisation of public servants” under the previous government. The commission has [reportedly](#) issued a directive to the Attorney General demanding a “halt” to criminal prosecutions in the ongoing Navy abductions case.
- Sri Lanka’s executive has repeatedly sought to **shield convicted perpetrators from justice**. As noted above, during his Presidential election campaign Gotabaya Rajapaksa [stated](#) that he intended to release members of the armed forces “languishing in prison over false charges.” At time of writing (February 2020) there were [serious concerns](#) that the government had pardoned, or was about to pardon, a senior army official convicted for the murder of eight Tamil civilians, including a five-year-old child, near Jaffna in 2000 (known as the Mirusuvil massacre). Such interference is not new. In May 2019, former President Sirisena granted a

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[presidential pardon](#) to the extremist Buddhist monk and leader of the Bodu Bala Sena (BBS), Gnanansara Thero, who was jailed for six years in August 2018 for contempt of court. The pardon was [widely condemned](#) by lawyers and human rights groups. In his last weeks in office, President Sirisena caused outrage when he [pardoned](#) a man convicted for the 2005 murder of a teenager in Colombo.

- There have also been growing concerns about **political interference in the police**. In November 2019, following Presidential elections, a number of key police officers were [transferred](#) including the Director of the Criminal Investigation Department (CID), Shani Abeysekara. The CID Inspector of Police, Nishantha Silva, was forced to [flee](#) the country after his security protection was removed and he received death threats. Silva was leading investigations on a number of key cases, including the Navy abductions case and the murder of Lasantha Wickrematunge.
- There has been no progress towards ensuring accountability for repeated violent and coordinated **attacks on the Muslim community** in Sri Lanka (see *promise 16*).
- There remains no effective system in place for the **protection of victims and witnesses**, despite the enactment of legislation and the establishment of a witness protection authority. (see *promise 13*).
- Those seeking recourse for serious human rights violations continue to face **protracted delays**. In 2017 it was reported that the Supreme Court was facing 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 over the past few years**. In November 2019, the Head of the Department of Law at the University of Jaffna, Kumaravadivel Guruparan, was [barred](#) from private legal practice by the University Grants Commission (UGC), reportedly due to pressure by the military. The move, [perceived](#) as a reprisal for Guruparan's work on behalf of victims of human rights violations by the military and an attempt to stifle ongoing litigation, was widely condemned by members of civil society. Following this decision against Guruparan, the UGC [announced](#) that all academic staff would be barred from practicing as attorneys.
- Several high-profile murder cases involving Tamil victims, and police or military perpetrators, have resulted in **acquittals or 'discharges' of the accused**. This includes, for example, the [acquittal](#) of six army officer suspects in relation to the 1996 Kumarapuram massacre, 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, and the **'discharge' of thirteen defendants** in the 'Trinco Five' case on the execution of five Tamil students in 2006. Most recently in October 2019, four soldiers were [acquitted of the rape of a Tamil woman](#) at Vishwamadu in 2010. They had been convicted in 2015 and sentenced to 25 years imprisonment after being identified by the victim.

10. ESTABLISH A JUDICIAL MECHANISM WITH A SPECIAL COUNSEL AND THE PARTICIPATION OF COMMONWEALTH AND OTHER FOREIGN JUDGES, DEFENCE LAWYERS, AND AUTHORISED 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 members of Sri Lanka’s current government have publicly stated that they are [opposed](#) to such a move. Prime Minister Mahinda Rajapaksa has specifically criticised the proposal for international involvement in any accountability mechanism; an element widely regarded as [essential](#) for ensuring independence and credibility. While arguably more strident today, such opposition is not new: since the early part of 2016, the former [President](#), [Prime Minister](#), and various [senior ministers](#) have [repeatedly](#) voiced their opposition to the participation of foreign judges, prosecutors and investigators in any accountability process.

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. In her February 2019 [written update](#) the current UN High Commissioner for Human Rights “encourage[d] Member States to prosecute Sri Lankans suspected of crimes against humanity, war crimes or other gross violations of human rights, in accordance with universal jurisdiction principles.”

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 international crimes (including war crimes, crimes against humanity, genocide, and enforced disappearances) 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 perfectly [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 ambiguities in the terms adopted.

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 rather than removed from office and prosecuted.

In August 2019 former President Maithripala Sirisena [appointed](#) Major General Shavendra Silva as Commander of the Sri Lankan Army. Silva is named in the UN’s OISL report for his role commanding the 58th division, a unit [accused](#) of repeated attacks on civilian targets during the civil war. In 2012, former UN High Commissioner for Human Rights Navi Pillay described Silva as having a “case of international crimes to answer [for].” In November 2019, incoming President Gotabaya Rajapaksa appointed retired Major General Kamal Gunaratne, who is also named in the OISL report, as Secretary to the Ministry of Defence. During the final stages of the war, Gunaratne was commander of the 53rd division, a unit [accused](#) of shelling hospitals, extra judicial executions, torture, and mass

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disappearances. A raft of other individuals linked to grave human rights abuses were [promoted](#) during the first few months of Gotabaya Rajapaksa's presidency.


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 superseded 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. However, there are several indications that the government of Sri Lanka failed to respect 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."

In response to the appointment of alleged war criminal Shavendra Silva as Army Commander, in September 2019 the UN [suspended](#) the deployment of non-essential Sri Lankan troops from UN peacekeeping operations. Despite the ban, in November 2019 243 Sri Lankan troops were [deployed](#) to a peacekeeping mission to Mali. Before leaving Sri Lanka, the troops [presented](#) a formal military salute to Silva.

The Sri Lanka Campaign continues to regard the deployment of Sri Lankan troops as peacekeepers as completely inappropriate while members of the Sri Lankan armed forces continue to enjoy impunity for atrocity crimes and individuals alleged to have coordinated such crimes remain in positions of power. Also of concern is 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 to improve the protection of human rights by the military. Though the previous government of Sri Lanka repeatedly asserted that it has issued instructions to the armed forces that action will be taken against perpetrators of serious human rights violations, the Sri Lanka Campaign has not seen any evidence to corroborate those claims.

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, Sri Lanka's 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.

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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.”


While the witness protection authority is currently operational, [serious concerns](#) have been raised about the appointment of several problematic individuals from the police and security forces to its Board of Members. According to the most recent publicly available [data](#), only a handful of individuals have received protection from the authority, with many witnesses complaining that they have been unable to obtain assistance.

There is also evidence to suggest that requirements of the law are not always being complied with. For example, when the notorious extremist Buddhist monk and leader of the Bodu Bala Sena (BBS) Gnanansara Thero was released from prison in May 2019 after being convicted for intimidating disappearances activist Sandhya Ekmaligoda in open court, it was reported that Ekmaligoda was [not notified](#) of the release in advance in accordance with the Victim and Witness Protection Act.

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 judicial system and 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 over the past few years, progress in this area has fallen far short of what is needed. In October 2018, former President Maithripala Sirisena was reported to have [ordered](#) the release of all state-held civilian lands in the Tamil-majority North and East by the end of the year. According to the government’s own data, that target was not met. Official figures shared with the UN High Commissioner for Human Rights in February 2019 indicated that “46,322 acres of land (of which 40,490 acres of State land and 5,833 acres of private land) had been released between January 2015 and December 2018,” a total which the government said amounted to 75% of all lands held at the end of the war in 2009.

The government’s lack of transparency around the land returns process, and its failure to publish a detailed breakdown of its figures, casts serious doubt over the reliability of the data. Civil society groups have indicated to the Sri Lanka Campaign that the actual amount of land returned may be far less than what has been claimed. As highlighted by Human Rights Watch in [October 2018](#) “there is no comprehensive approach to mapping and releasing the lands under military occupation in a systematic and transparent manner.”

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Such doubts have been compounded by some key discrepancies between the government's data and its stated plans. For example, [figures released](#) by the Secretariat for the Coordination of Reconciliation Mechanisms (SCRM) in February 2019 indicating that only 3,531 acres of private land were "still in use" by the military are somewhat at odds with plans [announced](#) by the government in March 2018 to retain 5,327 acres of private land for the security forces (of a total 36,002 acres). It should also be noted that in recent years the government has continued to formally 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.

Meanwhile, the UN High Commissioner for Human Rights has expressed concerns about the quality of land returns to date. In her February 2019 [report](#), she highlighted that some restitutions had been only partial, "allowing access to dwellings but not to livelihood resources (such as agricultural land or fishing resources)." She also cited cases in which property had been destroyed shortly before it was to be returned.

Elsewhere returnees have [complained](#) of the threatening presence of the military in cases where they had retained control of neighbouring lands, and of the destruction of infrastructure and sanitation facilities without compensation. Where land releases have occurred, these have often been conducted in a piecemeal and grudging manner. At a land returns ceremony in April 2018, the former 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 unkept [promises](#) by the government to ensure the return of all lands, displaced landowners have continued to mobilise. In January 2019, the residents of Keppapilavu marked their 700th 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. In February 2019 the protesters launched a public signature campaign and were met by [threats and obstruction](#) from police and intelligence officials.

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 a 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 in war-affected areas has remained very high in recent years. In October 2017 a report by the Adayaalam Centre for Policy Research [estimated](#) the ratio of soldiers to civilians in Mullaitivu District to be 1:2. Having peaked in 2015, Sri Lanka's overall [military expenditure](#) continues to outstrip war-time spending levels.

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Unfortunately, visible forms of militarisation appear to have intensified in recent months, with the re-emergence of dozens of checkpoints along the major roads that intersect the North and East of the country. While many of those checkpoints were set up and justified on national security grounds following the April 2019 Easter Sunday attacks, civil society groups have indicated a discernible spike in their use since the change of government in November 2019.

Since the lapsing of emergency regulations in August 2019 (see *promise 17*) the government has issued a series of extraordinary gazettes calling on the various branches of the Sri Lankan armed forces to “maintain public order,” moves which one civil society group has [described](#) as an attempt to “legalise the role of the military in the securitisation and militarisation of the state.” The most recent such gazette was [issued](#) by President Gotabaya Rajapaksa in January 2020.

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 emphasised the specific and disproportionate impacts of militarisation on women, including through the threat and use 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](#) in recent years, depriving local communities of the benefits of post-war economic regeneration and providing the military with new avenues for the assertion of social and economic control. Civil society groups have [drawn links](#) between militarisation and so-called ‘Sinhalisation’; the process by which the Sri Lankan state has sought to re-engineer the ethnic makeup of the Tamil majority North and East of the country through the building of settlements and religious monuments.

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. Meanwhile, recent trends indicate a shrinking of space for dissent in Sri Lanka.

Investigations into attacks on journalists, HRDs and other members of civil society

Throughout 2019, some limited progress was made in small number of cases involving alleged crimes by state officials. In August 2019, it was reported that the Attorney General (AG) had sought to expedite six key cases, [requesting](#) reports from the Criminal Investigation Department on: the murder of 17 Action contre La Faim aid workers (2006), the abduction and assault of journalist Keith Noyahr (2008), the abduction and disappearance of eleven men and boys from Colombo (2008-

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2009), the murder of newspaper editor Lasantha Wickrematunge (2009), the disappearance of cartoonist Prageeth Eknaligoda (2010), and the murder of Wasim Thajudeen (2012).

Among the most notable positive developments in those cases: in June 2019 an indictment was [served](#) against former Senior DIG Anura Senanayake in relation to the murder of Thajudeen; In November 2019 indictments were [served](#) against 9 military intelligence officers in relation to the disappearance of Eknaligoda; and in January 2020 indictments were [served](#) against 13 Navy intelligence officials in relation to abduction and disappearance of the eleven men and boys.

With regard to the latter case – widely known as the ‘Navy abductions case’ – in February 2020 a Colombo High Court was [informed](#) that the police were unable to serve an indictment against a 14th suspect, former navy commander Admiral Wasantha Karannagoda. Just days earlier Karannagoda was [photographed](#) sitting near the Attorney General at an Independence Day celebration event. A report by the International Truth and Justice Project has highlighted the multiple [failures in this case](#), including the narrow focus of the investigation on lower and mid-level perpetrators and the unwillingness of the authorities to investigate the role of more senior officials, including Gotabaya Rajapaksa in his role as former Defence Secretary.

In another of the so-called ‘emblematic cases’, that of the 2006 murder of five Tamil youths in Trincomalee (the ‘Trinco Five’), in July 2018 the magistrates court dealing with the case [‘discharged’](#) the 13 suspects in the case for lack of evidence. Investigations were [recommended](#) by the Attorney General’s department a month later. However, witnesses in the case say that they remain unable to safely give testimony from abroad.

No discernible progress appears to have been made in another of the emblematic cases, that of the 2000 murder of Tamil journalist Mylvaganam Nimalarajan by suspected pro-government paramilitaries. Further, no one has been held accountable in relation to the [murder and disappearance](#) of 43 journalists and media workers, most of whom are Tamil, targeted between 2004-2010.

As noted elsewhere (see *promise 9*) there are ongoing reports of attempts by government officials and members of the security forces to obstruct investigations, while victims and witnesses continue to face unchecked intimidation and harassment (see *promise 13*).

Investigations into attacks on religious minority groups

There has been almost no progress towards ensuring accountability for repeated violent and coordinated attacks on the Muslim community in Sri Lanka, the most recent of which [took place](#) in the aftermath of the April 2019 Easter bombings. Despite dozens of arrests, [no one has been convicted](#) in relation to the incidents.

A key instigator of violence, Amith Weerasinghe, has been arrested on two separate occasions for inciting violence; after the [March 2018](#) mob violence in Kandy and Ampara and following the [May 2019](#) ‘reprisal’ attacks on Muslim communities across the country. On both occasions he was released on bail a few months later and there have been no further hearings.

Recent trends

As noted elsewhere (*promise 1*) the period following the April 2019 Easter Sunday attacks and the period before and after the November 2019 Presidential elections witnessed a surge in attacks against human rights defenders. Recent months have also seen [police raids](#) on news outlets and multiple physical assaults against journalists, with the result that many media workers are now practicing [self-censorship](#).

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 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.”

The PSO was most recently used to [impose](#) a four month state of emergency in the aftermath of the April 2019 Easter Sunday bomb attacks. Under the state of emergency, the security forces were granted [sweeping powers](#), resulting in widespread army raids and the arrest of hundreds of Muslims on “flimsy or fabricated grounds.” As noted elsewhere (*promise 15*), since the lapsing of the emergency regulations in August 2019, a series of gazettes have been issued granting special powers to the various branches of the Sri Lankan armed forces to “maintain public order.”

There appeared to be signs of an effort by the previous government 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 extinguished following the grinding to a halt of the constitutional reform process and the change in government. 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.

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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 under the previous government 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.

In September 2018, the Cabinet approved a CTA Bill and in October 2018 it was presented to Parliament. However, progress stalled the following month when the Supreme Court ordered revisions be made to the Bill to render it consistent with the constitution. An [analysis](#) by Amnesty International concluded that the Bill “raise[d] serious cause for concern on many fronts,” noting “the vaguely worded offences, the ability [of the government] to intercept [personal] data with minimal judicial oversight, and the detention of persons for up to one year without charge.”

In January 2020, following the election of President Gotabaya Rajapaksa, Sri Lanka’s Cabinet [withdrew](#) the CTA Bill, claiming that it had been brought by the previous government under pressure from “international forces.” The new government have not yet announced whether they intend to repeal the PTA; however, according to a February 2020 [report](#) by the European Commission, “the new government has made it clear that the PTA will remain in place until an improved draft has a chance to be adopted by Parliament, probably after the April/May 2020 Parliamentary elections.”

The Sri Lanka Campaign endorses the view, as [set out](#) by the former UN High Commissioner for Human Rights in January 2018, that the government of Sri Lanka should “promptly repeal the Prevention of Terrorism Act and not necessarily wait for the replacement legislation to be finalised.”

In July 2018, the EU Trade Commissioner [stated](#) that the government had given assurances that “there are no longer any detainees remaining in custody under the PTA, and that a moratorium on arrests under the PTA.” While almost certainly false at the time (for example, see [here](#), [here](#) and [here](#)), such claims have been demonstrably contradicted by the [arrest and detention](#) of hundreds of Muslims in the aftermath of the April 2019 Easter Sunday attacks, in many cases without any credible evidence of terrorist involvement.

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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 [enacted](#) in March 2018. While a potentially very positive and important step 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 give rise to the possibility of ongoing abuse and impunity. These include the failure to specify or recognise that enforced disappearance is never a justifiable offence (per Art 1(2) of the Convention), that it is a crime against humanity (per Art 5), and that it is a continuing crime.

Other “[fundamental flaws](#)” that have been highlighted include the lack of retroactive criminalisation of the offence. In February 2019, it was [reported](#) that former Prime Minister Ranil Wickremesinghe referred to this fact – and the purported restriction on retroactive offences under Art 13(6) of the constitution – to assure members of the public that the 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, while acknowledging that the fate or whereabouts of the disappeared individual has not yet been established. They are a vitally important 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 enabling certificates to be issued. However, progress has been slow. In September 2019 it was [reported](#) that only 656 certificates had

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been issued – relative to the nearly 15,000 files that the OMP [reported](#) having received by March 2018. In January 2020, responding to concerns among families about the difficulty of obtaining certificates, the OMP [announced](#) a “special procedure” designed to expedite the process.

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.” More recently, following [troubling remarks](#) made by President Gotabaya Rajapaksa, relatives of the disappeared have expressed concern that certificates of absence, once issued, could one day be ‘converted’ into death certificates by the government.

The OMP has noted that families in possession of certificates of absence have faced difficulties when dealing with local government, banks and other agencies, suggesting that further work is needed to educate institutions and members of the public about their function.

In March 2019, the previous government [proposed](#) an interim allocation of Rs 500 million to provide certificate holders with a monthly allowance of Rs 6000 (approximately \$30). However, there appears to have been [limited take up](#) thus far, reflecting the small number of families in possession of certificates.

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 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, following a Right to Information (RTI) request, the government released the report of the Commission of Inquiry into the death of Sri Lanka Muslim Congress founder and former leader [M.H.M Ashraff](#).

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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.

In February 2020, the OMP [announced](#) that it was in the process of “consolidating a provisional list of missing and disappeared persons” based on information it had received. However, it remains unclear what wider measures 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.

Meanwhile victims of serious human rights violations have expressed concerns over attempts by the authorities to [destroy evidence](#) following the November 2019 election of President Gotabaya Rajapaksa.

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: Despite some headway by the previous government in curbing the powers of the Executive Presidency and restoring the power of the independent commissions, efforts to secure a devolved political settlement in Sri Lanka have not come to fruition.

Meanwhile, the current government of Sri Lanka has said it will seek to reverse what progress has been made on these fronts.

In March 2016, the previous 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,

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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 2019. Whilst the proposals would, if enacted, have represented a significant [improvement](#) upon the status quo – on devolution, electoral reform, and the abolition of the Executive Presidency, for instance – some [questioned](#) whether they went far enough on power-sharing and religious pluralism.

At an inauguration of Parliament in January 2020, President Gotabaya Rajapaksa [pledged](#) constitutional reforms to ensure the “security, sovereignty, stability and integrity of [the country],” while hinting that he would seek to dilute the system of proportional representation. He has also pledged to [abolish](#) the 19th Amendment to the Constitution, introduced under the previous government to curb the powers of the executive presidency, and [criticised](#) as unworkable certain aspects of the 13th Amendment, which concerns devolution of power to the provinces. It is widely expected that the government will move these plans forward should it gain the 2/3 majority required to amend the constitution (without a public referendum) at upcoming parliamentary elections.

Meanwhile, in January 2020, an opposition MP [brought forward](#) two draft Private Members Bills. The first seeks to restore some of the powers of the executive presidency, including reducing checks on the appointment of judges and permitting the President to hold the defence portfolio. The second seeks to raise the threshold of electoral district votes required for parties to gain representation from 5% to 12.5%, a move that would significantly reduce the participation of Sri Lanka’s minority parties.

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 August 2019, the International Truth and Justice Project [reported](#) that they had documented a total of 78 cases of torture occurring between 2015-2019, including 32 cases in 2015, 34 cases in 2016, 10 cases in 2017, 1 case in 2018 and 1 case in 2019. In February 2019, Freedom from Torture [reported](#) that they had documented 16 cases occurring between 2015 and 2017.

In her February 2019 [written update](#), the UN High Commissioner for Human Rights stated the following in reference to these cases: “a preliminary assessment of the information received indicates that there are reasonable grounds to believe that accounts of unlawful abductions and detention and of torture, including incidents of sexual violence against men and women, are credible, and that such practices might be continuing in northern Sri Lanka. Such allegations should be the subject of prompt, effective, transparent, independent and impartial investigations.”

The National Human Rights Commission of Sri Lanka responded by stating that “no entity that has made such allegations has provided our Commission with specific information sufficient to commence an inquiry,” adding that “the High Commissioner must provide necessary information to inquire into these serious allegations.” Earlier, in a March 2017 Universal Periodic Review [submission](#),

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the Commission stated that they continued “to observe a widespread incidence of custodial violations, including torture.”

Allegations of torture have been corroborated and/or validated by multiple UN bodies:

- 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.”
- In January 2017, the UN Committee Against Torture said in its [concluding observations](#) 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.
- In a July 2018 [report](#), the former UN Special Rapporteur on the Promotion and Protection of Human Rights while Countering Terrorism said the use of torture was “routine and systemic.”

The previous government’s response to allegations of torture was persistently hostile and dismissive, with the former President [suggesting](#) that such claims came from people “close to the tigers.” Despite [insisting](#) that it maintained a “zero-tolerance policy” on torture, in November 2016 the government included Sisira Mendis in its delegation to the UN Committee on Torture – 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 a welcome move, in December 2017 Sri Lanka [ratified](#) the Optional Protocol to the Convention Against Torture (OPCAT). However, there is no evidence to suggest that the government has implemented the UN High Commissioner’s recommendation to investigate allegations of torture and to publicly issue instructions to the military, intelligence and police forces that all forms of torture and sexual violence are prohibited.

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 on the implementation of the HRC Resolutions

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

Amnesty International (January 2020), [Attacks on Human Rights Organisations, Media Organisations, and Journalists in Sri Lanka](#)

ITJP & JDS Lanka (January 2020), [Sri Lanka: And the Crackdown Begins](#)

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](#)]

Sri Lanka Campaign (November 2019), [A Decade of Impunity: Unlocking Accountability for the Victims of Sri Lanka's Killing Fields](#)

Verite Research (March 2019), [Sri Lanka: Resolution 30/1 Implementation Monitor: Statistical & Analytical Review No. 4](#)



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