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.

February 2021

REVERSING PROGRESS: THREATS TO HUMAN RIGHTS AND REINFORCED IMPUNITY IN SRI LANKA
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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’, 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.

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 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 “roll over” resolutions: Resolution 34/1 (March 2017) and Resolution 40/1 (March 2019). Resolution 40/1 expires in March 2021, when the High Commissioner is due to represent a comprehensive report.

In February 2020, the government of Sri Lanka, led by newly elected President Gotabaya Rajapaksa, formally withdrew from the resolution process at the Human Rights Council. Instead, the government announced that it would pursue “an inclusive, domestically designed and executed reconciliation and accountability process.”
The progress

*The government has significantly reversed progress on 15 out of the 25 commitments, and halted progress on 7 others.*

This report, the last of our Keep the Promise series, assesses where limited progress made against the 25 commitments in Resolutions 30/1, 34/1, and 40/1 has been reversed since Sri Lanka’s withdrawal. This evaluation 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.

In our last report (February 2020) we found the overwhelming majority of the commitments made by the government of Sri Lanka remained either mostly or completely unachieved. Just one of the four key transitional justice mechanisms pledged had been fully operationalised. Almost nothing had 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.

One year on, and our analysis is deeply troubling. Far from making progress on a “home-grown” process, the government of Sri Lanka has wound back the clock on the admittedly limited progress made by the previous administration. **Key transitional justice mechanisms are no longer independent and under threat, and more fundamentally, respect for the rule of law and human rights has demonstrably diminished.**
Reversing progress

Following his election in November 2019, President Gotabaya Rajapaksa has pursued an increasingly majoritarian, militarised, and authoritarian approach to governance. In his former capacity as Defence Secretary, Gotabaya Rajapaksa has been credibly accused of involvement in war crimes during the final stages of the civil war in 2009, when tens of thousands of Tamil civilians were killed, as well as assassinating and disappearing critics in the period after the war.

There has been a major crackdown on dissent, with lawyers, journalists, human rights defenders, and victim-survivor communities facing increased intimidation, surveillance, and harassment. Hejaaz Hisbullah, a prominent human rights lawyer, has been held without charge under the draconian Prevention of Terrorism Act (PTA) since April and has been denied his due process rights. His case is one among many that have created a climate of fear among activists and minority communities. The COVID-19 pandemic has been used selectively to suppress protests and memorial events, particularly in the Tamil-majority North and East.

In October 2020, parliament passed the 20th Amendment, which represents a major assault on democratic governance and removes almost all checks and balances on the power of the executive President. It severely undermines the independence of key institutions, including the judiciary, the human rights commission and transitional justice mechanisms established under the Resolution 30/1 process, by giving the President sole control over senior appointments.

The rule of law is under attack, with the limited progress made in a few emblematic cases undermined by procedural invasions and intimidation of witnesses and victims. Several key cases have collapsed, including the murder investigation against government ally and former paramilitary Pillayan. Political interference in the police has led to senior investigating officers being transferred away from investigations, and the former head of the Criminal Investigations Department has been arrested. In March 2020, the President pardoned a former soldier who was convicted of murdering eight Tamil civilians in 2000, one of the only soldiers to have been convicted for a wartime atrocity.

The President has appointed family members, allies, and former military leaders who are also accused of mass atrocity crimes, including his brother and former President, Prime Minister Mahinda Rajapaksa, to key government positions. Over a quarter of the current cabinet have been investigated for corruption, violence, and common criminality. Civilian positions have been militarised, with four government departments headed by former military commanders, including health and agriculture.

The heavily militarised response to COVID-19 led by Army Commander Shavendra Silva has created fear among minority communities, especially Tamils. Military intelligence officers have been placed in charge of contact tracing, strengthening surveillance networks which threaten activists and victim communities. The pandemic has been used as a cover for discriminatory policies which particularly affect Muslims including banning the burial of COVID-19 victims contrary to WHO guidelines.
Analysing promises of a domestic process

The Government of Sri Lanka has tried to dismiss calls for greater international action on Sri Lanka, saying that it is committed to a domestic process to deliver reconciliation and justice. But how could a government which has repeatedly promoted individuals credibly accused of mass atrocity crimes deliver a credible accountability process?

Senior figures in the Sri Lankan Government, from the President to the Defence Secretary, have repeatedly said that they will protect the military from prosecution for crimes. No security sector reform has taken place, and individuals accused of human rights violations occupy key positions in the government and the armed forces. Changes to the Constitution which reduce the independence of key institutions and increasing political interference in the judicial process are a serious concern.

Victims and survivors have already been waiting more than ten years for justice. Pardons, delays, and collapse of the few cases that are before the courts show that the domestic justice system is not capable of delivering justice alone.

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**Victims and survivors in their own words**

- “We have to get justice ... for the people who disappeared, for the people who died.”
- “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.”
- “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](#)).
Recommendations

In light of ongoing impunity and threats to the rule of law and human rights, the Sri Lanka Campaign urges member states to:

1. **Support** a new resolution to keep Sri Lanka on the agenda of the Human Rights Council, which mandates enhanced monitoring by the Office for the High Commissioner of Human Rights (OHCHR) and regular reporting to the Council, establishes a mechanism that builds on the work of previous UN investigations to gather, preserve, and analyse evidence for future investigations and prosecutions, and instructs the High Commissioner to produce a report on accountability options.

2. **Enhance efforts** to attain accountability for serious human rights violations in spite of the lack of domestic political will, including by:

   i. **Challenging** state-sponsored obstruction and interference of the small handful of cases that are proceeding through the ordinary criminal justice system in Sri Lanka, including the threats to victims, witnesses, and investigating officers.

   ii. **Implementing** the recommendation of the UN Human Rights Commissioner, “to investigate and prosecute international crimes committed by all parties in Sri Lankan through judicial proceedings in domestic jurisdictions, including under accepted principles of extraterritorial or universal jurisdiction.”

3. **Denounce** the crackdown on civil society and call on the government to immediately halt attempts to intimidate and harass activists, journalists, and victim groups, especially the families of the disappeared.

4. **Immediately review** all forms of bilateral engagement with Sri Lanka, including in the spheres of aid, trade, and security cooperation, to:

   i. ensure that Sri Lankan officials accused of grave human rights violations are deprived of political and material support – and consider targeted sanctions, travel bans, and asset freezes against the most problematic individuals.

   ii. halt engagement with Sri Lanka’s armed forces and police without meaningful security sector reform, including the removal of individuals credibly accused of human rights violations including enforced disappearances, sexual violence, and torture.
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. To take account of the government’s withdrawal from the resolution in February 2020 and illustrate change over the last year, in this year’s update we have retained the colour-coding from last year’s update (left) and added additional symbols (right) to indicate whether progress has halted or been reversed.

Mostly or completely achieved.

Progress reversed

Partially achieved.

Progress halted

Mostly or completely unachieved.

Reversal and halting of commitments since February 2020

Reverse: 15
The current government has significantly reversed progress on 15 of the 25 commitments made under resolution 30/1.

Stop: 7
Progress that was being made on 7 commitments has been stopped or the new government has declared its intention not to progress them.
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 did not cease under the previous government, despite overall improvements since 2015. These practices intensified in the wake of the Easter Sunday attacks in Sri Lanka in April 2019 and in the run up to the Presidential elections. Amnesty International recorded more than a dozen unscheduled visits to human rights and media organisations between May 2019 and January 2020.

Since the election of President Gotabaya Rajapaksa in November 2019, surveillance and intimidation of human rights activists, journalists, lawyers, and victims who challenge government policy has intensified. The intimidation of victims and activists was documented by the UN secretary-general in his annual report on reprisals. Activists working on human rights and accountability issues have been particularly targeted and nongovernmental organisations have reported state officials making detailed enquiries about their funding sources.

The Committee to Protect Journalists has reported that at least two journalists have fled the country since November’s elections. The legal profession has also been targeted. Lawyers have been arrested, faced death threats, and been forced to resign from academic positions because of pressure by the army.

The militarisation of Sri Lanka’s response to Covid-19 has increased opportunities for repression and the UN high commissioner has criticised the government for using the pandemic as a cover to restrict freedom of expression and arrest critics. Activists have reported intense checking by armed personnel at checkpoints in the Northern Province and contact tracing is run by military intelligence rather than health professionals.
“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 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, a recent report by the Law and Society Trust estimates that at least 500 Muslims were arrested and detained after the attacks, many of whom remain in custody at the time of writing.

The new government continues to use powers under the PTA to arrest activists including lawyer Hejaaz Hisbullah, who was arrested in April 2020 and remains in detention without being charged or seen by a judge. His case has been postponed to February 2021. Ahnaf Jazeem, a poet writing in Tamil, was arrested in May 2020 and remains in detention at the time of writing.

In November 2020, the Human Rights Commission of Sri Lanka (HRCSL) wrote to the Acting Inspector General of Police requesting urgent information on prisoners detained under the PTA, stating that many detainees had complained of being pressured to sign self-incriminating statements and confessions prepared by the police. In December, MP Shanakiyan Rasamanickam told the Sri Lankan parliament that more than 50 young men had been arrested under the PTA in the North and East in the days before his speech.

“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 provide technical assistance. However, the UN High Commissioner’s report reveals that the government refused to issue a visa for an additional international human rights officer during 2020.

“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), in 2018 the then Chairman of the OMP stated his intention to draw on the findings of the Paranagama Commission, including by making use of witness statements given to it. More information on the OMP can be found under promise 5.
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: In previous reports this had been assessed as one notable area of progress. However, recent developments indicate that the current government is changing course. Moreover, the failure to implement recommendations made by Special Procedures mandate holders casts serious doubt on the sincerity of the government of Sri Lanka’s engagement.

In her February 2021 report on Sri Lanka, the UN High Commissioner for Human Rights noted that the Government of Sri Lanka did not issue a visa for an additional international human rights officer to be deployed to Sri Lanka. This was followed by a joint statement by Special Procedures mandate holders later in February, criticizing the government of Sri Lanka for failing to implement the majority of recommendations made by mandate holders since 2015 and expressing their “deep concern” about “regressive steps” taken by the current government on democratic governance and accountability.

While 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), no special procedure mandate holders have visited the country since August 2019. Although a standing invitation to mandate holders issued by the previous government remains in place, no visits have taken place since President Gotabaya Rajapaksatook office and the Government is seeking to reschedule visits by two mandate holders which were scheduled for 2021. Since January 2020, special procedures have issued eight communications on Sri Lanka, of which the government has responded to just two.

The government has appointed C.A. Chandraprema as its ambassador to the Human Rights Council, 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.
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 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.

At time of writing (February 2021), there remains no plan in place for the adoption and implementation of the CTF’s recommendations.

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

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

**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 Rajapaksa’s, 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 2021) 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 extremely unlikely.
Amidst increasing 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 truth and reconciliation process.

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 weaknesses in the Act and concerns about delays in operationalising the Office, it 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 Office is now under threat from a government that has removed its independence and appointed a new chairperson who is deeply inappropriate for the role.

Following its establishment in February 2018, progress towards operationalising the OMP was slow, hampered by a lack of political support and inadequate funding. In 2019, the OMP established regional offices and began receiving information about cases of disappeared persons. In November 2020, the OMP announced that it was in the final stages of consolidating an initial list of disappeared persons and made copies available at its offices. At the time of publication, the list was not available online.

However, the OMP is under serious threat from the current government. Following the resignation of former chairperson Saliya Pieris in September, it has been reported that retired Justice Upali Abeyratne has been appointed as the new chair. Abeyratne chaired the Presidential Commission of Inquiry on “political victimization” during 2020 which has undermined numerous ongoing court cases including cases on enforced disappearances. For example, the Commission heard contradictory evidence from witnesses in the Prageeth Eknaligoda case despite a court order prohibiting it. Prageeth’s wife, Sandya Eknaligoda, has written to the High Commissioner for Human Rights to protest Abeyratne’s appointment, stating that he has actively colluded with those accused of enforced disappearances and is unfit to lead the OMP.

Interim relief payments which the government had begun paying to a small number of qualifying families of the disappeared on the recommendation of the OMP have been stopped by the current government and there has been no allocation for these payments in the 2021 budget.

In an alarming indication of the government’s attitude to the OMP, in January 2021, Defence Secretary Kamal Gunaratne gave an interview in which he said that the OMP was accepting complaints of disappearances without evidence and using “totally wrong procedure.” He said that a new mechanism was needed as the OMP “is of no use”.

Despite increased surveillance and harassment, Tamil relatives of the disappeared have continued to protest at various sites across the North and East of Sri Lanka. In a February 2021 report, Human
Rights Watch described how families of the disappeared feel afraid because they are being watched by the security forces and the Criminal Investigation Department. Seventy-eight parents of the disappeared have now passed away since the beginning of protests in 2017.

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

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 legislation were not addressed by the government. These include provisions which many fear will leave the office powerless against political interference by the Cabinet and Parliament.

The government reported to OHCHR in 2020 that the Office for Reparations remains operational and has paid out Rs 142m in compensation during the year. However, this is much lower than the Rs 700m which was allocated for 2019. There is no publicly available data on the details of payments made in 2020 and the last updates on the public website date from autumn 2019, so it remains difficult to assess the performance of the Office.

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: Although there has been no formal announcement by the government restricting the ability of mechanisms to obtain international assistance, statements by officials indicate that progress on this front is likely to be reversed. The failure to provide a visa for an additional human rights officer to join the OHCHR country team indicates the government’s hostile attitude to international assistance (see promise two).

While it remains to be seen whether key mechanisms established under the resolutions will be able to draw on foreign assistance, Gotabaya Rajapaksa’s repeated pledges to end so-called “foreign interference” in Sri Lanka’s affairs are a cause for concern.

The government has also been promoting a dangerous narrative that organisations receiving international funding may be involved in terrorism. Human Rights Watch reported in February 2021...
that civil society organisations, especially in the North and East, had been closely questioned about their foreign donors by intelligence officers. Reports that the legislation regulating the operations of NGOs will be reviewed in order to control NGO access to foreign funding are concerning and indicate the government’s hostility to international assistance.

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 and progress has been reversed in the past year as the President pardoned one of the only soldiers to have been convicted of wartime abuses in March 2020 (see promise nine). In withdrawing from the resolution 30/1 process, the government has specifically rejected the need for a process of accountability.

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. However, former members of the LTTE accused of violations who are now government allies, such as Vinayagamoorthi Muralitharan (known as Karuna Amman) and Sivanesathurai Chandrakanthan (known as Pillayan), have not been prosecuted.

The authorities have not brought 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. President Gotabaya Rajapaksa has made repeated pledges to protect so-called ‘war heroes’ from prosecution. In May 2020, the President threatened to pull out of any international bodies “that level baseless allegations” against “war heroes” and in a statement to the Human Rights Council in September 2020, the government stated that allegations against senior military officials were “false and unsubstantiated.”

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: Progress made by the previous government on empowering the independent commissions and the judiciary has been almost entirely reversed by the current government enacting the 20th Amendment in October 2020. This amendment overturns almost all of the provisions in the 19th Amendment, including severely jeopardizing the independence of the judiciary and commissions by placing key appointments at the sole discretion of the President.

In December 2020, UN Special Rapporteurs on the independence of judges and lawyers and the promotion of truth, justice, reparation and guarantees of non-recurrence wrote to the government of Sri Lanka to express concerns about the impacts of the 20th Amendment. A group of Commonwealth associations including the Commonwealth Lawyers Association and the Commonwealth Magistrates and Judges Association has also raised concerns about the impact of the Amendment on the independence and impartiality of the judiciary.

In December 2020, the members of the National Human Rights Commission were removed by the President and replaced with five new members. Civil society activists have noted that the Commission can no longer be regarded as independent and raised concerns that the new chairperson is a politician in the President’s party. Other appointments made by the President have also been criticized. As noted above (promise five), retired Justice Abeyratne has been appointed as head of the OMP despite significant conflicts of interest.

Wider recent developments also demonstrate the deterioration of the rule of law. For example:

- The alleged perpetrators of atrocity crimes continue to be promoted rather than prosecuted (see promise 12).

- As noted below (promise 16), limited progress towards ensuring accountability in the so-called ‘emblematic cases’ has been threatened with political interference and transfer of key investigators away from the cases.

- 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’s attempts to halt criminal proceedings in the ongoing Navy abductions case were just one of a number of procedural invasions into ongoing court cases made by the commission during 2020. Cases against government allies have also come under pressure, with the murder case against Sivanesathurai Chandrakanthan, known as Pillayan, and four other suspects collapsing in December 2020 when the Attorney General decided to drop charges. It has been reported that a leaked version of the final report of the Commission includes recommendations to drop charges and indictments against all the accused in the so-called emblematic cases, take legal action against investigators and respondents in those cases, and provide compensation to the accused.

- Sri Lanka’s executive has repeatedly sought to shield convicted perpetrators from justice. In March 2020, the President pardoned a former Staff Sergeant, Sunil Ratnayake, convicted for the murder of eight Tamil civilians, including a five-year-old child, near Jaffna in 2000 (known as the Mirusuvil massacre). Ratnayake’s conviction had been confirmed by the Supreme Court
less than a year before. This interference was widely condemned by civil society and human rights activists in Sri Lanka and internationally. In a statement, the Spokesperson for the UN High Commissioner for Human Rights called the pardon “an affront to victims and yet another example of the failure of Sri Lanka to fulfil its international human rights obligations to provide meaningful accountability for war crimes” and highlighted that Ratnayake’s conviction was one of the rare cases of a state actor being convicted of human rights violations.

- There have also been growing concerns about political interference in the police. In November 2019, following Presidential elections, key police officers were transferred away from posts in the Criminal Investigation Department (CID). Inspector of Police, Nishantha Silva, was forced to flee the country after his security protection was removed. Silva was leading investigations key cases, including the Navy abductions case and the murder of Lasantha Wickrematunge. In July 2020, Shani Abeysekara, former Director of CID, was arrested and charged with concealing evidence. A police officer alleged in a magistrate’s court hearing that he was “pressured” to give a false statement against Abeysekara. In November, it was reported that Abeysekara had tested positive for Covid-19 and was at serious risk due to preexisting health conditions. Amid concerns that he was being refused proper medical treatment, after an outcry by civil society and intervention by the National Human Rights Commission, Abeysekara was eventually moved to a Colombo hospital. At the time of writing, Abeysekara remained in detention.

- There have been serious attacks on members of the legal profession over the last year. Prominent lawyer Hejaaz Hisbullah was arrested under the PTA in April, allegedly in connection to the Easter attacks and remains in detention (see promise one). Swastika Arulingam was briefly arrested in June after enquiring about individuals who were detained following a Black Lives Matter protest. 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 was widely perceived as a reprisal for Guruparan’s work on behalf of victims of human rights violations by the military.

- Allies of the government have been allowed to contest the election and attend parliament from prison. Premalal Jayasekara, an MP from the Rajapaksa-led SLPP, was convicted of the murder of an opposition activist in August 2020 but was nonetheless allowed to contest the election and take up his seat in Parliament following a ruling by the Court of Appeal. Sivanesathurai Chandrakanthan, known as Pillayan, who was in detention awaiting trial for murder, was also elected and both MPs were escorted from prison to parliament.

- There has been no progress towards ensuring accountability for repeated violent and coordinated attacks on the Muslim community in Sri Lanka (see promise 16).

- 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.
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.

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 here: 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 these 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: There have been no steps taken to establish a process for the vetting and removal of human rights abusers within the army. In fact, in the past year, the Sri Lankan government has continued to reverse any minimal steps taken to address impunity and ongoing threats to human rights within the army.

Far from investigating and punishing those credibly accused of violations of international law, perpetrators have been promoted to key positions in the current government. Shavendra Silva was appointed Commander of the Sri Lankan Army in August 2019 and Acting Chief of Defence Staff in
January 2020. Silva also leads Sri Lanka’s Covid-19 response as head of the National Operation Centre for Prevention of Covid-19 Outbreak. Silva is named in the UN’s OISL report for his role leading ground operations during the final phases of the war and commanding the 58th division, a unit accused of repeated attacks on civilian targets. Silva was designated by the US earlier this year on the basis of gross human rights violations including extrajudicial killings.

Kamal Gunaratne was appointed as Secretary to the Ministry of Defence in November 2019. Gunaratne was commander of the 53rd division in the final stages of the war, a unit accused of shelling hospitals, extrajudicial executions, torture, and mass disappearances. Many other individuals linked to gross human rights violations continue to be promoted to positions of power within the government, diplomatic corps, and the army, in the face of international criticism.

The culture of impunity for the military was further strengthened when President Rajapaksa pardoned Sunil Ratnayake, who had been convicted for murdering eight Tamil civilians, including a five-year-old, in March 2020. Ratnayake’s prosecution was among the extremely few examples in which state actors have been held accountable for serious human rights violations in Sri Lanka. His pardon sends a strong signal that the current government has no intention of addressing human rights abuses within the military. Meanwhile, the President has repeatedly promised to protect so-called “war-heroes” from prosecution.

Sri Lankan troops continue to be deployed as peace-keepers, despite the UN’s 2019 suspension of the deployment of “non-essential” Sri Lankan troops. The Sri Lankan government made an agreement that the Human Rights Commission of Sri Lanka (HRCSL) would vet and screen these troops for histories of human rights abuses, yet since the passage of the 20th amendment, the HRCSL cannot be considered independent. Even before its loss of independence, there was evidence to suggest that the vetting process was not effective: a 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.

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: The Sri Lankan government has not reviewed the Assistance to and Protection of Victims of Crime and Witnesses Act which was passed in 2015, nor strengthened essential protections for witnesses and victims, despite the many serious concerns expressed about the functioning of the witness protection authority and the people populating it. Protection for witnesses and victims is weak and many face intimidation and threats.

Campaign groups, survivors, victims, and witnesses have reported increased intimidation and silencing since the election of President Gotabaya Rajapaksa (see promise 1).
The Presidential Commission of Inquiry (PCOI) on political victimisation has interfered with a number of ongoing criminal proceedings, including hearing parallel testimony from witnesses due in court (see promise 9). A key witness in the Prageeth Eknaligoda case appeared before the PCOI in September despite a court order preventing him from testifying. This follows concerns raised by the victim’s wife, Sandya Eknaligoda, in December 2019 that witnesses in the case were being intimidated by military intelligence officers.

In June 2020, all four witnesses in a murder case against former deputy Inspector General of Police Vaas Gunawardena recanted their sworn testimony and instead claimed that weapons used as evidence in the case had been planted by former Director of the Criminal Investigations Department (CID), Shani Abeysekara. A police officer later claimed in court that he had been pressured by officers to make a false statement against Abeysekara (see promise 9).

Intimidation of witnesses and victims in high-profile cases is not new. Sandya Eknaligoda has faced hostility and intimidation for a decade in her search for the truth about what happened to her husband, including death threats against herself and her family. The leader of the extreme Buddhist nationalist movement Bodu Bala Sena (BBS), Gnanasara Thera threatened her in court during a hearing and was subsequently convicted for contempt of court, but was given a Presidential pardon by former President Maithripala Sirisena in May 2019. It was reported that Eknaligoda was not notified of the release in advance in accordance with the Victim and Witness Protection Act.

14. RETURN LAND TO ITS RIGHTFUL CIVILIAN OWNERS

UNHCR 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. Official figures provided by the government to the UN High Commissioner for Human Rights claimed that around 90% of state and private land held in 2009 had been returned by the end of 2019. However, no figures were reported for land returns in 2020 and it is unclear whether the remaining land will be released.

An army spokesperson reportedly stated in March 2020 that all the remaining land held by the military was of “tactical importance” and vital to national security. He refused to provide a timeline for releasing the remaining land.

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.”

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 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). 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.

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 despite 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 towards … ending of military involvement in civilian activities, the resumption of livelihoods and the restoration of normality to civilian life.”

**Progress:** The significant military presence in the North and East remains one of the main barriers to reconciliation and the restoration of normal civilian life for war-affected communities and military involvement in civilian activities has increased in the past year.

The North and East of Sri Lanka continues to be heavily militarised with sixteen out of Sri Lanka’s twenty army divisions based in these two provinces. In 2017, researchers estimated that more than 60,000 troops were based in Mullaitivu district alone, approximately one soldier for every two civilians. There are multiple military checkpoints on all major roads and in 2020 one member of civil society living in the Northern Province said that it was normal to pass through six or seven checkpoints every day. There have been reports of an increase in the number of security checkpoints in the North and East of the country since the coronavirus pandemic.

The Sri Lankan military is involved in many aspects of civilian life, including running farms, pre-schools, luxury hotels, and restaurants. Uniformed soldiers are frequent visitors to schools across the Northern Province, which appears specifically designed to help normalise the militarisation of civilian life, and to facilitate social control and surveillance of the Tamil population.
President Gotabaya Rajapaksa has increased the reach of the military into civilian governance since his election in November 2019. In January 2021, the International Truth and Justice Project and Journalists for Democracy Sri Lanka reported that at least 39 retired military officers had been given key government positions by the President. More than 30 civilian agencies, including the nongovernmental organization (NGO) secretariat (regulating civil society) have now been moved under the remit of the Defence Ministry. Former senior military officials have been put in charge of the ministries of Defence, Health, Agriculture, and Foreign Affairs. The President has also established a number of Task Forces heavily populated with military officers with vague but far-reaching mandates capable of circumventing parliament and civil administration. One example is a 13-member “Presidential Task Force to build a Secure Country, Disciplined, Virtuous and Lawful Society,” composed entirely of military, intelligence and police officials and headed by Defence Secretary Gunaratne. This Task Force has the power to issue instructions to any government official, while military members occupying top spots in the government are subject to little or no civilian oversight.

Sri Lanka’s COVID response has been heavily militarised, with Army Commander Gen. Shavendra Silva being appointed head of the National Operation Center for Prevention of COVID-19 Outbreak. The response has been termed a ‘war on the pandemic’ and a ‘national security challenge,’ while the military has played a key role in contact tracing, surveillance, and running quarantine facilities, raising concerns about confidentiality and the targeted suppression of minorities and activists. In October, garment workers at the Brandix factory were rounded up and quarantined by the military with no warning after an outbreak was reported at their place of work. Workers were met by military buses in the middle of the night and given minutes to gather their things, before being taken to quarantine centres far from their homes. One INGO has said this amounts to arbitrary detention.

**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:** Space for dissent has continued to shrink in Sri Lanka over the past year. Journalists, human rights defenders, lawyers, and members of minority groups have been subjected to increased surveillance, intimidation, and harassment by state actors, with little or no attempt to address attacks on civil society. This worsened during 2020 under the cover of the COVID pandemic, prompting the UN High Commissioner for Human Rights to criticise the Sri Lankan government for using the pandemic to curtail freedom of expression.

The state persists in its attacks on civil society, with Silva recently listing “non-governmental organisations” among security challenges that the state faces. 2020 saw an increase in intimidation and harassment of civil society organisations, particularly those based in the North and East, who were repeatedly questioned by police and intelligence officers (see promise one).

The emblematic cases on which there previously was limited progress (see promise nine) – including the disappearance of journalist Prageeth Eknaligoda, the navy abductions case and the murder of the
“Trinco Five” – have stalled or reversed. For example, witnesses in the Prageeth Eknaligoda case have been intimidated by army officers and the case stalled in September 2020. In June, Sri Lanka’s Court of Appeal prevented the Colombo High Court from hearing a case against Former Navy Commander Wasantha Karannagoda and thirteen others accused of the disappearance and abduction of eleven youth. In July 2019, all thirteen defendants in the “Trinco Five” case, accused of killing five Tamil students, were acquitted due to “lack of evidence.” Human Rights Watch said that the failure of this case, which received an unusual amount of global attention, points to the Sri Lankan state’s inability and unwillingness to address attacks on minority groups. In January 2021, the Centre for Policy Alternatives published a review of ten emblematic cases which demonstrating “the failings and inadequacies of the criminal justice system of Sri Lanka.”

The officers leading the investigations in many of the emblematic cases have been transferred out of the Criminal Investigations Department (see promise nine for more details).

In response to criticism from international NGOs and the UN, the government simply denies that recent attacks have taken place, making no attempt to investigate such attacks, but rather explicitly setting the stage for further attacks in the future. The Rajapaksas have promised to investigate the funding and activities of NGOs and continue to create a climate of fear for civil society in Sri Lanka.

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 current government has not announced plans to review it.

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.”

There appeared to be signs of an effort by the previous government to repeal the PSO when the Law and Order subcommittee of the Constitutional Assembly recommended in their 2016 report that the Ordinance be replaced with a ‘National & Public Security Act’ (separate and pursuant to a new constitution). 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. The current government scrapped draft legislation intended to replace the PTA and have repeatedly used the legislation to arrest and indefinitely detain individuals, particularly from Muslim and Tamil communities (see promise one for details).

In January 2021, during a meeting with the EU, the government suggested that they would not repeal the PTA but would “revisit” the provisions of the legislation and “make appropriate amendments” to address international concerns.

In December 2020, the Human Rights Commission of Sri Lanka (HRCSL) published the National Study of Prisons which found that PTA prisoners suffered discrimination within the prison system including risk of harassment and abuse from fellow prisoners and prison officers and difficulty in retaining legal counsel. Many PTA prisoners reported that they were subjected to torture during interrogations and were forced to sign confessions.

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.

Attempts by the previous government to replace the PTA with a new Counter Terrorism Act (CTA) were much criticised by civil society as increasing, rather than limiting, the powers available to the state and the associated risk of abuse. A CTA Bill was presented to parliament in late 2018 but progress stalled after the Supreme Court order it to be revised. 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.”

Arrests under the PTA rose sharply in the aftermath of the April 2019 Easter Sunday attacks with the arrest and detention of hundreds of Muslims. Under the current government, the PTA has repeatedly been used to arrest activists and lawyers (see promise one for more details).
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 abuses and impunity. These include the failure to specify 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.

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:** Progress in issuing certificates of absence, which allow relatives of the disappeared legal access to bank accounts and property in the name of the disappeared, has been slow. In 2019, the previous government announced interim relief payments would be made to families with certificates, but the current government has halted those payments.

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 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 that it would begin to issue Interim Reports to families, a new procedure designed to expedite the process of obtaining certificates. According to the OMP’s website, it began receiving applications for Interim Reports in early 2020 and issued 54 reports between August and September 2020.

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). The OMP reports that up to November 2019 interim payments to a value of Rs 7m were made to just 153 families, likely reflective of the small number of families who possess certificates. However, civil society representatives reported that payments were halted by the current government and no allocation was made for interim relief in the 2021 budget.

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.

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. However, the reports of presidential commissions appointed by the current President, including the PCOI on political victimisation, have not been made public.

By way of example, in October 2015, the government tabled in Parliament the interim report on the first mandate of the Paranagama Commission, and the full report on the second mandate of the Commission, which inquired into the applicability of international humanitarian law during the conflict. The government also tabled the report of the Udalagama Commission, which investigated 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 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 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. 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 has never been established. Such a plan would be a central component of any transitional justice mechanism. Since the election of President Gotabaya Rajapaksa, victims and civil society groups have expressed concerns that evidence may be destroyed.

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 since 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:** The progress made by the previous government in curbing the powers of the Executive Presidency and restoring the power of the independent commissions have been reversed by the current government through the 20th Amendment. Moreover, influential government ministers have called for the abolition of the Provincial Councils and ruled out further devolution.
In January 2020, President Gotabaya Rajapaksa pledged constitutional reforms to ensure the “security, sovereignty, stability and integrity of [the country]” and pledged to abolish the 19th Amendment to the Constitution, introduced under the previous government to curb the powers of the executive presidency. He also criticised as unworkable certain aspects of the 13th Amendment, which concerns devolution of power to the provinces.

Following their general election victory, in which the President’s party and its allies gained a two-thirds majority sufficient to change the Constitution, Parliament passed the 20th Amendment to the Constitution in October 2020. It reverses the progress made by the 19th Amendment by removing checks and balances on the Executive Presidency and removing the independence of key institutions, including the police and the judiciary. There has been significant opposition to the Amendment from Sri Lankan civil society, including from members of the Sangha and the Catholic Bishops Conference. It’s impact on the independence on the judiciary has also been criticised by UN Special Procedure mandate holders and a group of Commonwealth associations.

Shortly after the election, the President also appointed a committee to draft a new Constitution. There has been criticism from the political opposition and civil society that the committee is composed entirely of government allies and that its role is not clearly defined. In January 2021, a government minister announced that the draft Constitution would be presented to Parliament before the end of the year. Although the content of the new draft Constitution is yet to be revealed, there has been speculation that it is likely to remove commitments to devolution in the 13th Amendment of the current Constitution, and that Provincial Councils may be abolished, as influential cabinet minister Sarath Weerasekera has repeatedly called for.

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: Recent reports continue to find evidence of the ongoing use of torture and sexual violence in Sri Lanka, particularly against Tamils. In her January 2021 report, the UN High Commissioner for Human Rights stated that “OHCHR has also continued to receive credible allegations through well-known human rights organisations of abductions, torture and sexual violence by Sri Lankan security forces since the adoption of resolution 30/1, including in the past year, which need to be credibly investigated.”

The National Study of Prisons published by the Human Rights Commission of Sri Lanka in December 2020 found that “violence is an entrenched feature of the criminal justice process” and torture “is inflicted to extract information.” HRCSL received 116 complaints of torture or cruel, inhuman or degrading treatment out of a total 459 complaints during the course of the prison study.

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.
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.”

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*

Human Rights Watch (February 2021), *Open Wounds and Mounting Dangers: Blocking Accountability for Grave Abuses in Sri Lanka*

ITJP & JDS Lanka (January 2020), *Sri Lanka: And the Crackdown Begins*

ITJP & JDS Lanka (February 2021), *Geneva Briefing Notes*

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*