



FLICKERING HOPE

TRUTH, JUSTICE, REPARATIONS AND GUARANTEES OF NON-
RECURRENCE IN SRI LANKA

AMNESTY
INTERNATIONAL



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Cover photo: A Sri Lankan protester holds a candle in Colombo on July 23, 2014 in memory of people killed in Anti-Tamil riots on the island thirty-one years ago. Official accounts placed the death toll at 400 while human rights activists put the toll at thousands
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CONTENTS

1. METHODOLOGY	6
2. INTRODUCTION	7
2.1 CONSULTATIONS AND STAKEHOLDER ENGAGEMENT	8
3. TRUTH	10
3.1 TRUTH, JUSTICE, RECONCILIATION AND NON-RECURRENCE COMMISSION	10
3.2 OFFICE ON MISSING PERSONS	10
3.3 PUBLICLY RELEASING PREVIOUS PRESIDENTIAL COMMISSION REPORTS	12
4. JUSTICE	13
4.1 JUDICIAL MECHANISM	13
4.2 ATTACKS AGAINST JOURNALISTS, HRDS, MEMBERS OF RELIGIOUS MINORITY GROUPS, CIVIL SOCIETY AND PLACES OF WORSHIP	14
4.3 ACCOUNTABILITY FOR TORTURE, RAPE, SEXUAL AND GENDER-BASED VIOLENCE	16
4.4 LTTE VIOLATIONS AND ABUSES	16
5. REPARATIONS	18
5.1 OFFICE FOR REPARATIONS	18
5.2 LAND RELEASE	19
5.3 CERTIFICATES OF ABSENCE	20
6. GUARANTEES OF NON-RECURRENCE	21
6.1 LEGAL REFORMS	21
6.2 SECURITY SECTOR REFORM	21
6.3 WITNESS AND VICTIM PROTECTION	22
6.4 PUBLIC SECURITY ORDINANCE AND THE PREVENTION OF TERRORISM ACT	22
6.5 ENFORCED DISAPPEARANCES ACT	24
7. CONCLUSIONS	25

EXECUTIVE SUMMARY

In 2015, Sri Lanka co-sponsored Resolution 30/1 at the UN Human Rights Council to demonstrate the newly elected government's commitment to break with impunity for a past marked by serious human rights violations. While the Resolution was welcomed both domestically and internationally, three years on, progress has been slow and political will, dimming. In 2017, the government was granted a two-year extension to implement the Resolution. A detailed report on Sri Lanka's implementation of Resolution 30/1 will be submitted to the Human Rights Council, by the Office of the High Commissioner for Human Rights, during its 40th Session in March 2019.

The government, in Resolution 30/1, committed to establishing four mechanisms, namely the Commission for Truth, Justice, Reconciliation and Non-Recurrence, the Office on Missing Persons, the Office for Reparations and a Judicial Mechanism with a special counsel. While the Office on Missing Persons has begun operations, and released an interim report, legislation relating to the Office for Reparations was only approved in October 2018. Most recently, applications for the appointment of members of the Office for Reparations were advertised on 03 January 2019. Legislation relating to the Commission for Truth, Justice, Reconciliation and Non-Recurrence has been said to be approved by the Cabinet however no Bill has been made public. Progress on a judicial mechanism that is to involve foreign judges is at a stand-still, with key members of the government backtracking on the Resolution's affirmation of 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.

Notwithstanding a spate of sporadic returns of land to civilian owners, the government continues to occupy large portions of land in the North and East of Sri Lanka. Despite instructions from President Sirisena to release all lands in the North and the East by 31 December 2018, there was no subsequent action taken by the relevant authorities until the Sri Lanka Army issued a media release on 16 January 2019 stating that 1,201.88 acres of Army-used state and private lands were ready to be released on 21 January 2019. Amongst the commitments made in Resolution 30/1, the government of Sri Lanka has also committed to repeal the Prevention of Terrorism Act. Three years later, the Act is yet to be repealed and the proposed replacement, the Counter Terrorism Bill, must be amended if it is to be in accordance with international law, standards and best practices as there are serious concerns with the legislation.

This report stands as Amnesty International's evaluation of the commitments made by the Government of Sri Lanka in Resolution 30/1. Based on this assessment, Amnesty International urges the international community- especially the United Nations Human Rights Council (UNHRC) and the United Nations Office of the High Commissioner for Human Rights- to continue to oversee and monitor Sri Lanka's delivery of commitments until they are achieved in full. Taking into account domestic political challenges, Amnesty International recommends that in its oversight of Sri Lanka, the UNHRC takes a more robust approach to ensure delivery of 30/1 commitments and measures to avoid reversal of progress made so far.

Amnesty International calls on the Human Rights Council, in its March 2019 session, to call on the Government of Sri Lanka to:

- Fulfil its obligations under Resolution 30/1 to ensure justice and effective remedies to victims of crimes under international law committed during the armed conflict, including delivering on all of its commitments in Resolution 30/1.
- Ensure that implementation of the commitments made are in line with the Consultation Task Force recommendations.

- Address the slow progress in the last three years, and ensure that any further extensions of time include specific, time bound, delivery deadlines on each of the promises made and ensure the Government reports back to the Council at regular intervals on its progress;
- Immediately repeal the Prevention of Terrorism Act, and charge persons detained under this law with an internationally recognizable offence or release them;
- Amend the Counter Terror Bill in line with international law, standards and best practices;
- Pass domestic legislation within the next 12 months, to establish a just, fair, effective and independent judicial mechanism that meets the concerns of victims and civil society members, including the recommendations articulated in the report of the Consultation Task Force on Reconciliation Mechanisms (CTF) and Amnesty International's report titled "Sri Lanka: Making the Rights Choices";
- Ensure that the OMP refers evidence of "disappearances" to relevant authorities for the purpose of criminal investigation and, where sufficient admissible evidence exists, prosecution of those suspected of responsibility in fair trials without recourse to the death penalty;
- Publish all Presidential Commission reports, inquiries and investigations into grave human rights abuses;
- Ensure the independence of the Office of Reparation from political interference and that the Office consults with victims to ensure that reparation measures address the harm they have suffered.;
- Return all private land occupied by the military, civil defence forces or other state agencies to their rightful owners as a matter of urgency;
- Effectively investigate unlawful surveillance and attacks against human rights defenders and victims in the North, East and in other parts of the country, and where sufficient evidence exists, ensure that those suspected of responsibility are prosecuted in fair trials without recourse to the death penalty;
- Immediately release the list of those who surrendered to the armed forces in May 2009 to the public domain;
- Amend the Witness and Victim Protection legislation to ensure the independence and effectiveness of the victim and witness protection program

1. METHODOLOGY

The information contained in this report was gathered using desk research. All sources have been cited. Additionally, information was verified by sources in the field.

On 15 January 2019, Amnesty International hand-delivered letters to the Ministry of Foreign Affairs, providing them with an opportunity to reply to the concerns raised and recommendations made by Amnesty International. As of 23 January 2019, there has been no response.

2. INTRODUCTION

The armed conflict in Sri Lanka ended in May 2009, with brutal consequences. The military defeat of the Liberation Tigers of Tamil Eelam ended with large numbers of civilian casualties at the hands of both parties to the war¹, 300,000 internally displaced persons² with little more than the clothes on their back, seeking refuge, justice, truth, and sustenance; and 12,000 estimated to have been detained by the military forces as having links with the LTTE.³ The brutal years and months preceding May 2009 and the 10 years since then have also ended with impunity for those who caused this bloodshed; both the members of armed forces as well as the leadership of the LTTE⁴. By 2015, six years after the end of the armed conflict in Sri Lanka, little had been done to remedy these grave human rights abuses.

In January 2015, Maithripala Sirisena was elected as President of Sri Lanka, defeating the incumbent Mahinda Rajapaksa who presided over the last stages of the war. The new President was elected with substantial voter support from the North and East of Sri Lanka, which were the worst affected regions in the war. Later that year, a new coalition government was sworn in on an election platform that promised good governance. One of the key results of these commitments, was that the Government of Sri Lanka co-sponsored Human Rights Council Resolution 30/1⁵, (Resolution 30/1) on 1 October 2015 to demonstrate the coalitions' support of human rights in Sri Lanka and its willingness to engage with the international community around it.

Resolution 30/1 set out Sri Lanka's commitment to "undertake a comprehensive approach to dealing with the past, incorporating the full range of judicial and non-judicial measures" and made specific recommendations for Sri Lanka to ensure truth, justice, reparation and non-recurrence for victims. These measures included, but were not limited to, law reforms, investigations and reparations for victims.

In March 2019, the Sri Lankan government will present its progress on Resolution 30/1, having already had an extension of time to complete the commitments made in 2015. In the last three years, progress has moved towards meeting some of these commitments, but as this briefing demonstrates, the pace has been slow, and the commitment to accountability for crimes committed during the war, one of the most important aspects of the Resolution 30/1, is absent. The glacial pace at which the Government of Sri Lanka is handling the transitional justice process is telling of the lack of genuine political will to ensure victims of the decades long civil war are provided with truth, justice, reparations and guarantees of non-recurrence.

On 26 October 2018, President Maithripala Sirisena created a constitutional crisis, by appointing former President Mahinda Rajapaksa as Prime Minister, ousting the sitting Prime Minister Ranil Wickremesinghe⁶. The crisis resulted in violent outbreaks in Parliament, when MPs who were opposed to the installation of Mahinda Rajapaksa attempted to demonstrate their majority in Parliament⁷. With courts having issued a

¹ As of April 2009, Amnesty International quoted UN figures of 4,500 civilian casualties in the North East region of Sri Lanka

² Amnesty International, *Amnesty International Report 2010 - Sri Lanka*, 28 May 2010, available at: <https://www.refworld.org/docid/4c03a7fb.html> [accessed 22 November 2018]. Some estimates place the numbers as high as 400,000 according to the Internal Displacement Monitoring Centre, Country Profile- Sri Lanka, <http://www.internal-displacement.org/countries/sri-lanka>

³ Amnesty International, *Amnesty International Report 2010 - Sri Lanka*, 28 May 2010, available at: <https://www.refworld.org/docid/4c03a7fb.html> [accessed 22 November 2018]

⁴ Human Rights Watch, *Sri Lanka: Probe into LTTE Crimes Should Start with Karuna* (28 March 2013); <https://www.hrw.org/news/2013/03/28/sri-lanka-probe-ltte-crimes-should-start-karuna>

⁵ Human Rights Council resolution 30/1, *Promoting reconciliation, accountability and human rights in Sri Lanka*, A/HRC/RES/30/1 (1 October 2015) available at undocs.org/EN/A/HRC/RES/30/1

⁶ Straits Times, *Sri Lanka plunges into crisis as President Maithripala Sirisena sacks Prime Minister Ranil Wickremesinghe* (26 October 2018); <https://www.straitstimes.com/asia/south-asia/sri-lanka-president-maithripala-sirisena-sacks-prime-minister-ranil-wickremesinghe>

⁷ The Guardian, *Sri Lanka MPs fight in parliament as power struggle deepens* (15 November 2018); <https://www.theguardian.com/world/2018/nov/15/shameful-day-sri-lanka-mps-fight-in-parliament-as-power-struggle-deepens>

temporary order preventing Mahinda Rajapaksa from holding office⁸, and Parliament having cut the budget of the Prime Minister⁹, the country seemed to have been at a political impasse. Following a Supreme Court verdict declaring the dissolution of Parliament unconstitutional¹⁰, Mahinda Rajapaksa resigned from his post on 15 December 2018¹¹ and Ranil Wickremesinghe was sworn in as Prime Minister on 16 December 2018¹². During Mahinda Rajapaksa's time as President (2005-2015), his government, along with the LTTE, have been accused of serious violations of international humanitarian law by the UN, especially during the final stages of the civil war¹³. President Rajapaksa had created a climate of impunity for human rights violation¹⁴ and if he had returned to power, there were fears that serious human rights violations would return, along with a complete halt of the progress made by the government that was elected to power in 2015¹⁵.

The commitments made by the Government of Sri Lanka in Resolution 30/1 encompassed the 4 pillars of transitional justice – truth, justice, reparations and guarantees of non-recurrence, all essential to remedy the continuing human rights violations that are a result of the decades long civil war. In addition to the establishment of four mechanisms to ensure truth, reparation and justice, the Government of Sri Lanka has undertaken to “ensure the full enjoyment of all human rights and fundamental freedoms of its entire population”¹⁶

2.1 CONSULTATIONS AND STAKEHOLDER ENGAGEMENT

The Consultation Task Force on Reconciliation Mechanisms (CTF), commissioned by the Prime Minister, Ranil Wickremesinghe, and comprising of members of civil society, was mandated to initiate a consultative process with members of the public on their views of the mechanisms of truth, justice, reparations and non-recurrence proposed in Resolution 30/1. The final report, which was published on 3 January 2017¹⁷, provided both observations from the consultative process and recommendations based on these observations.

The 900-odd page report was however met with deafening silence by the same government that appointed the CTF, and neither President Sirisena nor Prime Minister Wickremesinghe attended the formal hand-over of the report to the Government¹⁸. Despite the lacklustre response, the Government has been quick to use the Consultation Task Force process as a showpiece of its efforts in the international sphere. At the 34th Session of the Human Rights Council, MP Harsha de Silva was quoted as saying the Government was “considering the Report of the Consultation Task Force” in the “process of establishing new mechanisms”¹⁹ Only a few of the recommendations in the report are reflected in the reconciliation mechanisms proposed and established so far.

Other factions of the government have even been critical of the CTF, with the then Minister of Justice, Wijeyadasa Rajapaksa, speaking to local media, claiming that he had “no confidence in the CTF”²⁰. The Minister went on to state that the report was “unwarranted”²¹ and therefore the recommendations need not

⁸ The New York Times, *Sri Lanka Court Temporarily Blocks Mahinda Rajapaksa From Prime Minister's Job* (03 December 2018); <https://www.nytimes.com/2018/12/03/world/asia/sri-lanka-mahinda-rajakaksa.html>

⁹ Reuters, *Sri Lanka parliament cuts PM's budget as crisis drags on* (29 November 2018); <https://www.reuters.com/article/us-sri-lanka-politics/sri-lanka-parliament-cut-pms-budget-amid-weeks-long-political-crisis-idUSKCN1NY00I>

¹⁰ Al Jazeera, *Sri Lanka's Supreme Court overturns sacking of parliament* (13 December 2018), <https://www.aljazeera.com/news/2018/12/sri-lanka-supreme-court-overturns-sacking-parliament-181213113720319.html>

¹¹ The Guardian, *Sri Lanka's PM resigns in effort to ease constitutional crisis* (15 December 2018); <https://www.theguardian.com/world/2018/dec/15/sri-lanka-pm-mahinda-rajakaksa-resigns-in-effort-to-ease-constitutional-crisis>

¹² The Guardian, *Sri Lanka: ousted prime minister Wickremesinghe reinstated* (16 December 2018); <https://www.theguardian.com/world/2018/dec/16/sri-lanka-ousted-prime-minister-wickremesinghe-reinstated>

¹³ United Nations, *Report of the Secretary-General's Panel of Experts on Accountability in Sri Lanka* (31 March 2011); http://www.un.org/News/dh/infocus/Sri_Lanka/POE_Report_Full.pdf

¹⁴ First Post, *Mahinda Rajapaksa appointed Sri Lanka's PM: Human Rights Watch says his return to high office 'raises chilling concerns'* (28 October 2018); <https://www.firstpost.com/world/mahinda-rajakaksa-appointed-sri-lankas-pm-human-rights-watch-says-his-return-to-high-office-raises-chilling-concerns-5462181.html>

¹⁵ Al Jazeera, *What happens if Rajapaksa heads Sri Lanka's government?* (01 November 2018);

<https://www.aljazeera.com/indepth/opinion/rajapaksa-heads-sri-lanka-government-181031132306514.html>

BBC, *Mahinda Rajapaksa: Return of Sri Lanka's wartime strongman* (10 November 2018); <https://www.bbc.com/news/world-asia-46137759>

¹⁶ Ibid 5

¹⁷ Final Report of The Consultation Task Force On Reconciliation Mechanisms, *Executive Summary and Recommendations*, (17 November 2016) ; <http://womenandmedia.org/wp-content/uploads/2017/02/CTF-Recommendations.pdf>

¹⁸ Amnesty International, *Sri Lanka: Consultation Task Force report must lead to justice*, (11 January 2017);

<https://www.amnesty.org/en/latest/news/2017/01/sri-lanka-consultation-task-force-report-must-lead-to-justice/>

¹⁹ Department of Government Information, *Hon. Dr Harsha de Silva, MP., Deputy Minister of Foreign Affairs of Sri Lanka Item 2: Interactive Dialogue with the High Commissioner for Human Rights 34th Session of the Human Rights Council* (23 March 2017);

<https://www.dgi.gov.lk/news/features/889-hon-dr-harsha-de-silva-mp-deputy-minister-of-foreign-affairs-of-sri-lanka-item-2-interactive-dialogue-with-the-high-commissioner-for-human-rights-34th-session-of-the-human-rights-council>

²⁰ Daily Mirror, *I have no confidence in the CTF: Wijeyadasa*, (06 January 2017)

²¹ Ibid

be followed²². The former members of the CTF, in a statement released to the media, acknowledge that the lack of government ownership of the report, and the absence of a government process to review the recommendations make them fearful that the recommendations in the report will not be used²³.

In Resolution 30/1, the Sri Lankan government committed to establish mechanisms for both accountability and reconciliation, namely, the Commission for Truth, Justice, Reconciliation, and Non-Recurrence, an Office on Missing Persons, Office for Reparations and a judicial mechanism with a special counsel to investigate allegations of violations and abuses of human rights and violations of international humanitarian law, including the participation of “Commonwealth and other foreign judges, defence lawyers and authorized prosecutors and investigators”. The Resolution encourages financial, material and technical assistance from international partners. As stated earlier, these commitments however have been slow to materialize, if at all, and there is a general lack of transparency around the establishment of the mechanisms in question. For example, there was no indication on when the Office on Missing Persons was to start functioning prior to the Commissioners being given their letters of appointment. Additionally, there is still no indication as to when the Commission on Truth, Justice, Reconciliation and Non-Recurrence will be established

Amnesty International urges the government of Sri Lanka to implement the recommendations of the CTF. It must ensure that the mechanisms committed to in Resolution 30/1 are established in line with the report’s findings.

²² Ibid

²³ Daily News, *Statement by The Former Members Of The Consultation Task Force On Reconciliation Mechanisms* (15 March 2017); <http://www.dailynews.lk/2017/03/17/local/110736/ctf-reconciliation-mechanisms-fear-recommendations-will-not-be-used>

3. TRUTH

3.1 TRUTH, JUSTICE, RECONCILIATION AND NON-RECURRENCE COMMISSION

Amongst the recommendations in the CTF report, on the Commission on Truth, Justice, Reconciliation and Non-Recurrence, it was recommended that the purpose and scope of the mechanism be clearly defined, as there was a “lack of clarity”²⁴ of the mandate of this Commission amongst the public. There is also uncertainty as to whether the Commission will be allowed to grant amnesties for crimes under international law and human rights violations and abuses; MP Mangala Samaraweera²⁵ stated that the Commission is envisaged to include a ‘Compassionate Council’ composed of religious dignitaries. International law however prohibits the granting of amnesties to persons suspected of committing crimes under international law and human rights violations and abuses, including war crimes, crimes against humanity, enforced disappearances and torture. On 20 September 2016, the Secretariat for Coordinating Mechanisms released a document where the Secretary General, Mr. Mano Tittawella, stated that the Truth Commission would be “established and functioning by the end of the 3rd quarter of 2017”²⁶. On 24 October 2018, it was reported that the Cabinet had approved draft legislation to establish the National Truth Commission²⁷. The legislation is yet to be made public, and is therefore delayed even beyond government committed deadlines. In the draft report to the Human Rights Committee’s consideration of reports by State Parties under Article 40 of the International Covenant on Civil and Political Rights, the Sri Lankan Government claimed to be “considering models and options” in respect of a mechanism on truth.²⁸

Amnesty International is unable to see sufficient progress made on this commitment. We urge the government to make public the draft legislation on the Commission on Truth, Justice, Reconciliation and Non-Recurrence. The mechanism must learn lessons from the failures of past commissions of inquiry. The government should have a robust discussion with civil society and affected parties around the proposed legislation to ensure that it meets international law and standards.

3.2 OFFICE ON MISSING PERSONS

The establishment of the Office on Missing Persons (OMP) began with draft legislation being gazetted on 27 May 2016. However, the Bill was only signed by President Sirisena on 20 July 2017. After a considerable delay, commissioners for the OMP were given their letters of appointment for a 3-year period, on 28 February 2018²⁹. Additionally, the National Budget for 2018, made allocations for the establishment of the OMP³⁰. The

²⁴ Ibid 17

²⁵ at the 30th Session of the UN Human Rights Council

²⁶ Secretariat for Coordinating Mechanisms; *Open Dialogue with Civil Society: SCRM Takeaways*, (20th September 2016);

http://imadr.org/wordpress/wp-content/uploads/2016/11/SCRM-Takeaways_Open-Dialogue-with-Civil-Society_20September2016.pdf

²⁷ Daily Mirror, *Cabinet approves laws to set up Truth Commission* (24 October 2018); <http://www.dailymirror.lk/article/Cabinet-approves-laws-to-set-up-Truth-Commission-157292.html>

²⁸ Ministry of Foreign Affairs, *Draft Report: Consideration of reports submitted by States parties under Article 40 of the Covenant* (2018); https://www.mfa.gov.lk/tam/wp-content/themes/mfr/img/ICCPR_Eng_Sin_Tam.pdf

²⁹ Times Online, *President appoints commissioners to Office of Missing Persons* (01 March 2018);

<http://www.sundaytimes.lk/article/1039944/president-appoints-commissioners-to-office-of-missing-persons>

³⁰ Ibid

Office finally began its operations on 13 March 2018³¹ and its mandate included searching for and/or tracing missing persons, making recommendations to authorities in relation to incidence of missing persons, and protecting the rights and interests of missing persons and their relatives³².

The construction of the Bill was problematic from its inception in that none of the recommendations made by the CTF submissions were incorporated into the Act. The table in the CTF report titled 'A Summary of Actions Recommended to Amend the OMP Bill'³³ demonstrates that recommendations such as amendments to the mandate, the preamble, and the structure were not incorporated into the Bill³⁴. The recommendations by the CTF on the inclusion of gender sensitization for staff, membership criteria, and security of tenure of members³⁵ were also ignored in the legislation. The Act, once passed, went so far as to weaken Section 11 (a) of the Bill, which allowed the office to enter into agreements with foreign persons or organizations; the final version removed the mention of the word 'foreign'. The CTF criticised this amendment and states that it "makes international involvement and assistance **less** explicit"³⁶. The Bill has also been criticized by Amnesty International, for not explicitly including a duty to "forward information indicating individual criminal responsibility to appropriate authorities for further criminal investigation"³⁷

After six public outreach meetings across the country and meetings with families of the disappeared, the OMP delivered an interim report to President Maithripala Sirisena on the 5th September 2018³⁸. While the report makes progressive, and self-reflective recommendations, highlighting the structural issues that may challenge prosecutions in cases of "disappearances", it also mentions legislation that require reform, the administrative challenges and lack of support faced by the OMP³⁹. The report falls short of addressing concerns of victim groups⁴⁰, particularly the resistance to the commissioner Major General (Rtd) Mohanthy Peiris, and the lack of Tamil speakers, and victim representation. The appointment of Major General Peiris, an officer of the Sri Lankan Army has been met with criticism especially from victim groups as they feel it demonstrates the Government's insensitivity⁴¹. Additionally, the formula used to arrive at the suggested monthly living allowance of Rs. 6,000 to immediate family members of disappeared individuals who have no permanent income⁴² has not been disclosed.

The OMP has also attempted to reach the public using social media campaigns such as on Facebook⁴³ and Twitter⁴⁴ which is an attempt to engage the broader public and make the OMP more accessible to those seeking remedies to human rights violations. While noting these positive efforts, there must be more outreach on the ground, with victims and affected families.

Amnesty International welcomes setting up the OMP. The government must provide full cooperation to the OMP and ensure that the office is able to operate effectively without having to face challenges, as highlighted in the interim report. It must also ensure that recommendations made in the interim report are implemented in full and urgently, including recommendations on further law reform. The OMP must ensure that evidence of "disappearances" is forwarded to relevant authorities for criminal investigations and prosecutions.

³¹ News First, *Office on Missing Persons commence operations* (13 March 2018); <https://www.newsfirst.lk/2018/03/13/office-missing-persons-commence-operations/>

³² The Sunday Times, *Missing links in the Missing Persons' Bill* (31 July 2016); <http://www.sundaytimes.lk/160731/editorial/missing-links-in-the-missing-persons-bill-202883.html>

³³ "A Summary of Actions Recommended to Amend the OMP Bill", Final Report of The Consultation Task Force On Reconciliation Mechanisms, *Vol. I*, (17 November 2016); <http://war-victims-map.org/wp-content/uploads/2017/02/CTF-Final-Report-Volume-I-Nov-16.pdf>

³⁴ Pg 474-489, Final Report of The Consultation Task Force On Reconciliation Mechanisms, *Vol. I*, (17 November 2016); <http://war-victims-map.org/wp-content/uploads/2017/02/CTF-Final-Report-Volume-I-Nov-16.pdf>

³⁵ Ibid

³⁶ Ibid 22

³⁷ Amnesty International; *Sri Lanka Must Deliver On Its Commitments Set Out By Human Rights Council Resolution 30/1* (Index: IOR 40/6975/2017)

³⁸ News First, *Office on Missing Persons submits interim report to the President and PM* (06 September 2018); <https://www.newsfirst.lk/2018/09/06/office-on-missing-persons-submits-interim-report-to-the-president-and-pm/>

³⁹ Amnesty International, *Sri Lanka: The government cannot afford to fail the Office on Missing Persons* (21 October 2018), <https://www.amnesty.org/en/latest/news/2018/10/sri-lanka-the-government-cannot-afford-to-fail-the-office-on-missing-persons/>

⁴⁰ Tamil Guardian, *Families of the disappeared protest at OMP hearing in Jaffna* (14 July 2018);

<https://www.tamilguardian.com/content/families-disappeared-protest-omp-hearing-jaffna>
Sunday Times Online, *Some Trinco families boycott consultations with OMP* (14 June 2018); <http://www.sundaytimes.lk/article/1044295/some-trinco-families-boycott-consultations-with-omp>

⁴¹ The Island, *Appointment of ex-Maj. Gen. to OMP riles some organizations* (01 March 2018), http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=180751

⁴² Daily FT, *Sri Lanka OMP recommends urgent and immediate relief to families of involuntarily disappeared* (07 September 2018); <http://www.ft.lk/news/Sri-Lanka-OMP-recommends-urgent-and-immediate-relief-to-families-of-involuntarily-disappeared/56-662417>

⁴³ Office on Missing Persons Facebook : <https://www.facebook.com/ompsrilanka/videos/21377672886037/>

⁴⁴ Office on Missing Persons Twitter: <https://twitter.com/ompsrilanka/status/1082518435525931010>

3.3 PUBLICLY RELEASING PREVIOUS PRESIDENTIAL COMMISSION REPORTS

A number of Presidential Commissions of Inquiry reports have been withheld from the public, and in Resolution 30/1, the Government undertook to publicly release previous presidential commission reports. The interim report of the 1st Mandate, the final report of the 2nd Mandate of the Paranagama Commission and the report of the Udalagama Commission⁴⁵ were released by the Government in 2015 and 2016; however until 2017, other such reports were withheld. After a Right to Information (RTI) appeal, the Mahanama Tillekeratne Commission report on the death of Roshen Chanaka and the assault on other Katunayake Free Trade Zone workers, was released in July 2017⁴⁶. However, upon the rejection of an RTI application for the release of the Ashraff Commission of Inquiry, a subsequent appeal in 2017 revealed that the Inquiry report had simply 'gone missing'⁴⁷ at the National Archives. On 16 January 2018, the RTI Commissioner ordered the National Archives to conduct a full search of their files⁴⁸; however the report has still not been released.

In keeping with the National Archives Act which specifies that records are to be made public after a minimum of 30 years, the National Archive declassified 42 inquiry commission reports, 17 Presidential Committee reports and 5 committee reports in 2015⁴⁹. Of the 42 inquiry commission reports, the most notable are the Bracegirdle report of 1937, on incidents relating to Sri Lanka's struggle for independence and the treatment of up-country Tamils, or *malayaha makkal*, and the Commission on the 1971 insurgency.

Most notably, the findings from the following Presidential Commission Reports are yet to be made public;

- Presidential Commission of Inquiry appointed to probe the circumstances surrounding the mass graves discovered at Matale (2013)- Commissioned by President M. Rajapaksa
- Final report of the 1st Mandate of the Presidential Commission to Investigate into Complaints Regarding Missing Persons (2013) - Commissioned by President M. Rajapaksa

The Government of Sri Lanka, in Resolution 30/1, further undertook to develop a comprehensive plan to "preserve all existing records and documentation relating to human rights violations and abuses and violations of international humanitarian law"⁵⁰. There is however no evidence to suggest that any plans have been made by the Government.

The Government has not made proactive efforts to implement this commitment. It must urgently make public previous reports of Presidential Commissions of Inquiry and investigations into grave human rights abuse. Making the reports public would also act as a key trust-building measure with the communities, victims and civil society.

⁴⁵ Secretariat for Coordinating Reconciliation Mechanisms, Documents and Resources; <https://www.scrm.gov.lk/documents-reports>

⁴⁶ Colombo Page, *Mahanama Tillekeratne Commission recommends stern action against police officers involved in FTZ factory worker killing in 2011* (17 July 2017), http://www.colombopage.com/archive_17B/Jul17_1500311839CH.php

⁴⁷ The Sunday Times, *RTI reveals 'disappearance' of Commission report on Ashraff's death*, (05 November 2017)

⁴⁸ The Sunday Times, *Right to Information Commission inquiry into missing report* (11 February 2018); <http://www.sundaytimes.lk/180211/news/right-to-information-commission-inquiry-into-missing-report-281491.html>

⁴⁹ Sunday Times. *National Archives lifts its periodic veil* (07 June 2015); <https://www.pressreader.com/sri-lanka/sunday-times-sri-lanka/20150607/281668253590999>

⁵⁰ Ibid 5

4. JUSTICE

4.1 JUDICIAL MECHANISM

The Government of Sri Lanka, recognizing that “accountability is essential to uphold the rule of law...”⁵¹, proposed a judicial mechanism including the participation of Commonwealth and other foreign judges, defence lawyers and authorized prosecutors and investigators in Resolution 30/1. This proposal however has been met with substantial resistance from within the Government, with Ministers, including Prime Minister Wickremesinghe, citing Sri Lanka’s Constitutional provisions that prevent foreign judges from attending any domestic inquiries⁵². Several ministers⁵³, including Minister Wijeyadasa Rajapakse⁵⁴, also criticized the CTF’s recommendation of a hybrid national/international mechanism.

There has been an alarming amount of resistance against the participation of foreign judges in investigations, from President Sirisena himself. In 2016, in an interview with the BBC, President Sirisena stated that he will “never agree to international involvement in this matter”⁵⁵, and subsequent to the CTF recommendations, calling for foreign judges, the President reiterated his stance that he will not allow foreign judges in domestic judicial mechanisms⁵⁶. Most recently, while addressing the 73rd Session of the United Nations General Assembly on the 25th of September 2018, President Sirisena, asked that states respect Sri Lanka’s sovereignty and that Sri Lankans “do not require foreign interference or threats”⁵⁷ demonstrating the Government’s continued disregard for their undertaking to establish judicial mechanisms with foreign judges, as per Resolution 30/1. The President had previously stated that when in Geneva, he would submit a written request to the Human Rights Council to remove “charges”⁵⁸ against Sri Lankan troops, as the country would “amicably resolve this issue”⁵⁹. While no such action was taken, the Government’s continued rhetoric about the protection of ‘war heroes’ from both local⁶⁰ and international⁶¹ investigations suggests a problematic lack of political will to further investigations into war crimes committed by members of the Sri Lankan armed forces.

⁵¹ Ibid 5

⁵² The Hindu, Business Line, *International judges can't operate in Sri Lanka: Minister*, (18 August 2017); <https://www.thehindubusinessline.com/news/variety/international-judges-cant-operate-in-sri-lanka-minister/article9822692.ece> and Daily Mirror, *Govt. can't bring in foreign judges under existing constitution: Mangala* (16 March 2017); <http://www.dailymirror.lk/article/Govt-can-t-bring-in-foreign-judges-under-existing-constitution-Mangala-125632.html>

ICTJ, *Sri Lankan constitution does not allow foreign judges – Ranil* (02 February 2016); <https://www.ictj.org/news/sri-lankan-constitution-does-not-allow-foreign-judges-pm-ranil>

⁵³ Reuters, *Sri Lanka divided as panel backs foreign judges to probe war crimes*, (06 January 2017); <https://www.reuters.com/article/us-sri-lanka-rights-un-idUSKBN14P2CP>

⁵⁴ Ibid 20

⁵⁵ BBC, *Sri Lanka president wants 'internal' war crimes court* (21 January 2016); <https://www.bbc.com/news/world-asia-35376719>

⁵⁶ Daily Mirror, *President rejects foreign judges* (7 January 2017); <http://www.dailymirror.lk/article/President-rejects-foreign-judges-121833.html>

⁵⁷ Ministry of Foreign Affairs- Sri Lanka, *Address by H.E. Maithripala Sirisena, President of Sri Lanka at the 73rd Session of the United Nations General Assembly- 25 September 2018, New York*, (26 September 2018); <https://www.mfa.gov.lk/address-73unga-eng/>

⁵⁸ Channel News Asia, *Sri Lanka seeks UN reprieve over war crimes probe*, (14 September 2018), <https://www.channelnewsasia.com/news/asia/sri-lanka-seeks-un-reprieve-over-war-crimes-probe-10722860>

⁵⁹ Ibid

⁶⁰ Ibid

⁶¹ Daily FT, *President reiterates his pledge to protect war heroes from foreign tribunals* (11 November 2017); <http://www.ft.lk/front-page/President-reiterates-his-pledge-to-protect-war-heroes-from-foreign-tribunals/44-643195>

The New Indian Express, *Sri Lankan President says will not make war heroes suspects in war crime cases* (29 March 2017); <http://www.newindianexpress.com/world/2017/mar/29/sri-lankan-president-says-will-not-make-war-heroes-suspects-in-war-crime-cases-1587398.html>

The Associated Press, *Sri Lankan leader will protect general accused of war crimes* (03 September 2017); <https://www.apnews.com/e80c1af634a74b269af057e2a50fd1a8/Sri-Lankan-leader-will-protect-general-accused-of-war-crimes>

This rhetoric has been echoed by Prime Minister Ranil Wickremesinghe on numerous occasions, having referred to hybrid courts with foreign judges as “not feasible”⁶², and commenting that the Constitution would have to be amended to permit foreign judges to sit in Sri Lanka⁶³. This may however be open to interpretation as there is no express provision in the Constitution barring foreign participation⁶⁴. The Prime Minister has also been reported to have said that the Government is amenable to foreigners in the capacity of observers, but that foreign judges will not be allowed to participate in judicial proceedings⁶⁵.

Amnesty International is unable to see any progress on this commitment. The government must stop backtracking on promises made and ensure that a judicial mechanism is set up in line with its commitments made in Resolution 30/1 in the next 12 months. As set out in the Resolution it is important that this mechanism includes national and international judges, prosecutors, lawyers and investigators

4.2 ATTACKS AGAINST JOURNALISTS, HRDS, MEMBERS OF RELIGIOUS MINORITY GROUPS, CIVIL SOCIETY AND PLACES OF WORSHIP

While Resolution 30/1 – co-sponsored by the Government of Sri Lanka – encouraged the government to “investigate and prosecute perpetrators of attacks against journalists, human rights defenders, members of religious minority groups, civil society and places of worship” and to “take steps to prevent such attacks in the future”⁶⁶, cases such as the murder of Lasantha Wickramatunga, the disappearance of Prageeth Eknaliagoda, the murder of five Tamil youth in Trincomalee (the Trinco 5 Case), and the murder of 17 aid workers in Muttur (the ACF Case), have seen little to no substantial development. While arrests have been made in some cases, there have been no convictions and most cases have come to a standstill. The impunity enjoyed by the perpetrators of these crimes, amongst others, serves as a testament to the lack of willingness by the Sri Lankan authorities to hold those responsible for serious human rights violations accountable for their actions. There have however been no explicit proactive measures taken to prevent attacks against the groups specified in Resolution 30/1.

Anti-Muslim violence flared in March 2018, reminiscent of the attacks against Muslim businesses and homes in Althugama in 2014. The March incidents occurred subsequent to the death of a Sinhalese truck driver; after he was assaulted by 04 Muslim men after a traffic dispute⁶⁷. The incident set off ethnic violence in and around the district of Kandy in March 2018. The violence escalated dramatically after notable figures, such as Amith Weerasinghe of *Mahason Balakaya*, a hard-line Buddhist group, converged with bus-loads of supporters from around the country⁶⁸. Muslim owned shops in Kandy, houses and mosques were attacked using stones, petrol bombs⁶⁹, and even grenades⁷⁰. The violence resulted in the death of two individuals, a 28-year-old⁷¹ who died in an arson attack and another who died in a grenade explosion⁷². The Government eventually declared a State of Emergency; imposing curfews, blocking social media and ensuring heavy military presence in the area to quell the violence. While the Government has arrested Amith Weerasinghe⁷³ and 80 other

⁶² Daily FT, *President rejects UN call for foreign judges in war probe* (06 March 2017); <http://www.ft.lk/article/601537/President-rejects-UN-call-for-foreign-judges-in-war-probe>

⁶³ ICTJ, *Sri Lankan constitution does not allow foreign judges – Ranil* (02 February 2016); <https://www.ictj.org/news/sri-lankan-constitution-does-not-allow-foreign-judges-pm-ranil>

⁶⁴ Chapter XV, The Constitution of The Democratic Socialist Republic of Sri Lanka

⁶⁵ Daily Mirror, *No foreign judges, only foreign observers: PM* (21 February 2017); <http://www.dailymirror.lk/article/No-foreign-judges-only-foreign-observers-PM-125895.html>

⁶⁶ Ibid 5

⁶⁷ Al Jazeera, *In Sri Lanka, hate speech and impunity fuel anti-Muslim violence*, (13 March 2018); <https://www.aljazeera.com/news/2018/03/sri-lanka-hate-speech-impunity-fuel-anti-muslim-violence-180310020253272.html>

⁶⁸ The New York Times, *Where Countries Are Tinderboxes and Facebook Is a Match*, (21 April 2018); <https://www.nytimes.com/2018/04/21/world/asia/facebook-sri-lanka-riots.html>

⁶⁹ Al Jazeera, *Sri Lanka 'on the brink' amid fresh anti-Muslim violence* (8 March 2018); <https://www.aljazeera.com/news/2018/03/sri-lanka-brink-fresh-anti-muslim-violence-180307203031915.html>

⁷⁰ Reuters, *Grenade blast kills one in Sri Lanka communal violence, social media blocked*, (07 March 2018); <https://www.reuters.com/article/us-sri-lanka-clashes/grenade-blast-kills-one-in-sri-lanka-communal-violence-social-media-blocked-idUSKCN1GJ1JT>

⁷¹ The Daily Mirror, *A divided Digana falls Isolated incident used to fuel tension* (07 March 2018); <http://www.dailymirror.lk/article/A-divided-Digana-falls-Isolated-incident-used-to-fuel-tension-146852.html>

⁷² <https://www.reuters.com/article/us-sri-lanka-clashes/grenade-blast-kills-one-in-sri-lanka-communal-violence-social-media-blocked-idUSKCN1GJ1JT> Ibid 48


⁷³ Daily News, *Kandy communal violence: Main suspect arrested*, (09 March 2018); <http://www.dailynews.lk/2018/03/09/local/145064/kandy-communal-violence-main-suspect-arrested>

individuals⁷⁴, there has yet to be a conviction of any individual relating to these incidents. Amith and two others charged in connection with the Kandy violence, were released on bail on 31 October 2018⁷⁵. After similar anti-Muslim violence in Aluthgama, in 2014, Galagoda Aththe Gnanasara Thero of the hard-line Buddhist group, *Bodu Bala Sena* (BBS) turned himself into the police after a warrant was issued for his arrest. He was however released on bail shortly afterwards, and has yet to be convicted for any crimes during the violence that resulted in the death of 4⁷⁶.

Most recently, an appeal filed by the Attorney General's department, against the acquittal of Gnanasara for violence against a Christian Center in 2007, was withdrawn⁷⁷. This followed President Sirisena apologizing and calling for an investigation into the use of tear gas and water cannons on monks who were protesting outside of the Presidential Secretariat for the release of Gnanasara⁷⁸. Such impunity does not only apply to the BBS and Gnanasara; Ampitiye Sumangala Thera of Batticaloa was caught on camera screaming racist comments at the area Gramma Niladhari, accusing the Gramma Niladhari of being a "Tamil Tiger"⁷⁹. Unfortunately, no action has been taken against Sumangala Thera to date, even though, shortly after being informed of Sumangala Thera's tirade, President Sirisena ordered that all persons inciting racism should be arrested⁸⁰.

In 2016, Gnanasara threatened to attack the predominantly Muslim suburb of Maligawatte with "stones and poles" if the Secretary of the Sri Lanka Thawheed Jamath, R. Abdul Razik wasn't arrested⁸¹. It was alleged that at a protest and press conference, Razik had made derogatory statements against extremist Buddhist groups, and against Gnanasara himself. Razik was arrested on charges of "insulting a religion and angering a devotee"⁸² on 16 November 2016. Razik's arrest followed the arrest of Dan Priyasad, a Buddhist hardliner, for inciting violence against Muslims at a rally in the Fort area⁸³.

The OMP, in their interim report, denounced the attacks on human rights defenders "Ms. Amitha Priyanthi on the 6th of July 2018 near Aluthgama and on Ms. Srishobana Yogalingam on the 14th of July 2018 in Vaddukodai, Jaffna"⁸⁴, calling them "a serious threat to justice"⁸⁵.



Reporters Without Borders also detailed the harassment faced by Tamil journalist Uthayarasa Shalin by the Terrorist Investigation Division (TID) of the Sri Lankan Police⁸⁶ in 2018, after his coverage of a Hindu festival in Jaffna. Reporters Without Borders stated that Shalin's friends and family, including his brother, have also been harassed by the TID after this incident.

In May 2017, Father Elil Ranjan of the Adayaalam Centre for Policy Research, was summoned to the Police O3 times, in relation to a commemoration event in Mullivaikkal for Tamils killed at the final stage of the war, and also in relation to a remembrance event for Tamils who died in the latter stages of the war⁸⁷. Even though the summons were later withdrawn, the intimidation that is associated with simply being summoned to the police can be traumatic and the Government of Sri Lanka must stop targeting and intimidating human rights defenders.

⁷⁴ Daily Mirror, *81 suspects arrested over Kandy violence, four during curfew*, (08 March 2018), <http://www.dailymirror.lk/article/-suspects-arrested-over-Kandy-violence-four-during-curfew-146962.html>

⁷⁵ Daily News, *Amith Weerasinghe, two others released on bail* (1 November 2018); <http://www.dailynews.lk/2018/11/01/law-order/167190/amith-weerasinghe-two-others-released-bail>

⁷⁶ Daily FT, *Death toll rises to 4 from Aluthgama riots*, (18 June 2014), <http://www.ft.lk/article/308988/Death-toll-rises-to-4-from-Aluthgama-riots>

⁷⁷ BBC Sinhala, *කිතුනු මඩියස්ථානයකට පහර දීම: දොනසාර නිමිට් එරෙහි අභියාචනය නීතිපති ඉවත් කර ගනී*, (23 November 2018), <https://www.bbc.com/sinhala/sri-lanka-46315305>

⁷⁸ Daily Mirror, *Protesting monks teargassed: President calls for probe* (19 November 2018); <http://www.dailymirror.lk/article/Protesting-monks-teargassed-President-calls-for-probe-158593.html>

⁷⁹ Roar, *Of Hate Speech, Extremism, And Impunity* (23 November 2016); <https://roar.media/english/life/reports/hate-speech-extremism-impunity/>

⁸⁰ Daily Mirror, *Arrest all inciters, President orders* (20 November 2016); <http://www.dailymirror.lk/article/Arrest-all-inciters-President-orders-119447.html>

⁸¹ Daily FT, *Police arrest Thawheed Jamath Secretary as hate-speech, religious tensions simmer again* (17 November 2016); <http://www.ft.lk/article/580594/Police-arrest-Thawheed-Jamath-Secretary-as-hate-speech-religious-tensions-simmer-again>

⁸² Ibid

⁸³ Ibid

⁸⁴ The Office on Missing Persons, *Interim Report*, 2018: https://www.news.lk/images/Master_Document_Clean_Document_28_August0.pdf

⁸⁵ Ibid

⁸⁶ Reporters Without Borders, *Tamil reporter harassed by Sri Lanka's anti-terrorism police* (24 October 2018); <https://rsf.org/en/news/tamil-reporter-harassed-sri-lankas-anti-terrorism-police>

⁸⁷ Front Line Defenders; *FATHER ELIL RAJAN SUMMONED FOR THE THIRD TIME IN ONE WEEK* (2018); <https://www.frontlinedefenders.org/en/case/father-elil-rajan-summoned-third-time-one-week>

Amnesty International notes that progress made on this commitment is not substantial. The government must take prompt action to investigate attacks against journalists, HRDs, members of religious minority groups, civil society and places of worship. Where sufficient evidence exist, those suspected of responsibility should be prosecuted in fair trials without recourse to the death penalty.

4.3 ACCOUNTABILITY FOR TORTURE, RAPE, SEXUAL AND GENDER-BASED VIOLENCE

The Government of Sri Lanka, in Resolution 30/1, committed to accountability for “allegations of violations and abuses of human rights and violations of international humanitarian law”⁸⁸. It also committed “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”⁸⁹. There have however, been no sufficient steps taken to carry out these commitments⁹⁰.



One of the few cases when members of the armed forces were held accountable is the Vishwamadu case where members of the armed forces were convicted of crimes of sexual violence committed in the North in 2010. In this case, 04 soldiers of the Sri Lankan Army were convicted of rape of a Tamil women in Kilinochchi when internally displaced persons were being resettled in the Vanni region⁹¹. While the conviction of Army personnel is rare, the conviction in this case is a significant step to challenge the culture of impunity enjoyed by members of the armed forces.

Another noteworthy case of a crime committed by civilian perpetrators in the North was the gang rape and murder of an 18-year-old in Pungudutivu, Jaffna. The case garnered national attention and in the face of political interference and police inefficiency, seven of the nine accused were sentenced to death while two were released due to lack of evidence⁹². Amnesty International is against the death penalty in all circumstances. While the public interest, protests and strikes related to this case may have been a major contributing factor in the conviction of the seven accused, it should be noted that cases of rape, and sexual violence generally proceed slowly, and convictions are few and far apart.

Steps taken to address torture, rape, sexual and gender-based violence are insufficient according to Amnesty International’s assessment. The government must also issue strict and clear instructions to all branches of the security forces that these crimes must be fully investigated and, where sufficient evidence exists, those suspected of responsibility should be prosecuted in fair trials without recourse to the death penalty.

4.4 LTTE VIOLATIONS AND ABUSES

As per Resolution 30/1, the Government further undertook to establish a process to address the violations and abuses committed by the Liberation Tigers of Tamil Eelam (LTTE), to ensure accountability and reconciliation. However there have been no steps taken towards this process.

⁸⁸ Paragraph 6, Human Rights Council resolution 30/1, *Promoting reconciliation, accountability and human rights in Sri Lanka*, A/HRC/RES/30/1 (1 October 2015) available at undocs.org/EN/A/HRC/RES/30/1

⁸⁹ Paragraph 17, Human Rights Council resolution 30/1, *Promoting reconciliation, accountability and human rights in Sri Lanka*, A/HRC/RES/30/1 (1 October 2015) available at undocs.org/EN/A/HRC/RES/30/1

⁹⁰ Sunday Times, *No torture or humiliation of terror suspects*, (19 June 2016). <http://www.sundaytimes.lk/160619/news/no-torture-or-humiliation-of-terror-suspects-197897.html>

⁹¹ BBC, *Four Sri Lankan soldiers convicted of raping Tamil woman* (07 October 2015); <https://www.bbc.com/news/34470053>

⁹² News 1st, *The rape and murder of Sivaloganathan Vidya: Justice Served – What we know* (27 Sep 2017); <https://www.newsfirst.lk/2017/09/27/rape-murder-sivaloganathan-vidya-justice-served-know/>

During the course of the civil war, the LTTE had a brutal impact over the civilian population of the island. Amnesty International, in 2001 called for the end to their recruitment drive, and the forceful recruitment of child soldiers and to release any child soldier back to their families⁹³. In 2004 however there were reports that the LTTE were recruiting over 100 children per month⁹⁴.



The LTTE also used suicide bombers to target predominantly civilian areas⁹⁵ such as the city of Colombo, the international airport, the World Trade Centre, and the Temple of the Tooth, a sacred Buddhist relic⁹⁶. Towards the end of the war, the LTTE was reported to have used civilians as human shields by preventing them from leaving the conflict area⁹⁷, a claim which they have denied.

In 2009, 'Colonel Karuna' or Vinayagamorthy Muralitharan, a commander in the LTTE, accused of "organizing massacres, conscripting child soldiers and executing local journalists"⁹⁸, joined the Sri Lanka Freedom Party (SLFP), after the war ended⁹⁹, and was made Minister for National Integration¹⁰⁰. He then went on to form his own political party, known as Tamil United Freedom Party (TUFP)¹⁰¹ in 2017. Colonel Karuna continues to enjoy impunity for the serious human rights violations carried out by the LTTE during his time as a commander.

There has been no progress by the government of Sri Lanka to implement this commitment. Amnesty International urges government to ensure accountability and effective remedies for victims of violations and abuses committed by the Liberation Tigers of Tamil Eelam (LTTE) in line with international law and standards.

⁹³ Amnesty International, *Sri Lanka: LTTE recruitment drive for child soldiers must stop* (11 October 2011);

<https://www.amnesty.org.uk/press-releases/sri-lanka-ltte-recruitment-drive-child-soldiers-must-stop>

⁹⁴ Human Rights Watch; *Living in Fear: Child Soldiers and the Tamil Tigers in Sri Lanka* (November 2004);

<https://www.hrw.org/report/2004/11/10/living-fear/child-soldiers-and-tamil-tigers-sri-lanka>

⁹⁵ Amnesty International; *SRI LANKA: SUICIDE BOMBING BREACHES INTERNATIONAL LAW* (09 February 2009);

<https://www.amnesty.org/en/press-releases/2009/02/sri-lanka-suicide-bombing-breaches-international-law-20090209/>

⁹⁶ The New York Times; *Masters of Suicide Bombing: Tamil Guerrillas of Sri Lanka* (14 January 2003);

<https://www.nytimes.com/2003/01/14/world/masters-of-suicide-bombing-tamil-guerrillas-of-sri-lanka.html>

⁹⁷ BBC, *Sri Lanka Tamil rebels criticised*, (16 April 2009); http://news.bbc.co.uk/2/hi/south_asia/8001338.stm

⁹⁸ Al Jazeera, *Interview: 'Colonel Karuna'* (29 April 2009); <https://www.aljazeera.com/focus/2009/04/2009428165514786905.html>

⁹⁹ The Hindu, *Rebel LTTE leader Karuna forms political party* (12 February 2017); <https://www.thehindu.com/news/international/Rebel-LTTE-leader-Karuna-forms-political-party/article17291844.ece>

¹⁰⁰ The Guardian, *Tamil Tigers 'finished', says former leader* (21 March 2009); <https://www.theguardian.com/world/2009/mar/21/tamil-tigers-sri-lanka-karuna>

¹⁰¹ Ibid 99

5. REPARATIONS

5.1 OFFICE FOR REPARATIONS

The Government finally approved draft legislation to establish the Office for Reparations, on 25 June 2018, in keeping with their undertaking in Resolution 30/1. There was however a lack of information surrounding the Bill upon its approval by the Cabinet. Leading up to the approval of the Bill, there was a fair amount of conversation around the provision of benefits to families of ex-LTTE cadres. Members of Parliament including Patali Champika Ranawaka, and the Joint Opposition¹⁰² strongly opposed the inclusion of ex-LTTE cadres and their families in the Reparations Act, with Ranawaka stating that “Terrorists would not come under the purview of the Reparations Act.”¹⁰³

Shortly after the public release of the Bill, Sri Lankan civil society issued a joint statement expressing concerns with the Bill¹⁰⁴, calling for the Government to address issues pertaining to the powers and the functions of the Office for Reparations¹⁰⁵ (the Office). The statement explains the fact that policies and guidelines formulated by the Office must be approved by the Cabinet prior to adoption, and underscores the lack of decision-making powers of the Office¹⁰⁶. The statement further goes on to state that the requirement of Parliamentary approval for policies and guidelines approved by the Cabinet, and the distribution of funds by the Office are ‘unnecessary and redundant’¹⁰⁷

Amnesty International, in a letter to Prime Minister Wickremesinghe dated 25 July 2018¹⁰⁸, echoed these concerns around the powers and functions of the Office for Reparations. Amnesty International notes that the limitation of the Office to formulate policies and guidelines will affect the independence of the Office and reinforce inequalities that the Office was positioned to replace. Furthermore, Amnesty International expressed concerns about Clauses 22 (3) and (4), relating to the need for policies approved by Cabinet requiring Parliamentary approval, and requiring Parliamentary approval for the distribution of funds, as these clauses will only delay the operation of the Office for Reparations. Amnesty International calls for reparations to be “prompt, effective, adequate and transparent”¹⁰⁹ and recommended that the Government amend the bill to reflect the concerns raised.

The Office for Reparations Act, was gazetted on 22 October 2018, and the Constitutional Council called for applications for the appointment of members of the Office for Reparations. None of the concerns raised by civil society or Amnesty International were addressed in the legislation

Amnesty International urges that a fully empowered independent Office for Reparations is established without delay to ensure that reparations are provided to all those who have been affected.

¹⁰² The Island, *Reparations office can bind the nation together* (15 October 2018); http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=192798

¹⁰³ Daily News, ‘*Terrorists would not come under Reparations Act’s purview*’ (27 October 2018); <http://www.dailynews.lk/2018/10/27/local/166660/%E2%80%98terrorists-would-not-come-under-reparations-act%E2%80%99s-purview%E2%80%99>

¹⁰⁴ Centre for Policy Alternative, *Civil Society Raises Concerns with the Office for Reparations Bill* (6 July 2018); <http://www.cpalanka.org/civil-society-raises-concerns-with-the-office-for-reparations-bill/>

¹⁰⁵ Ibid

¹⁰⁶ Ibid

¹⁰⁷ Ibid

¹⁰⁸ Amnesty International, *Sri Lanka: Letter To Sri Lankan Prime Minister: Office For Reparations Bill* (Index: ASA 37/9219/2018)

¹⁰⁹ Ibid

5.2 LAND RELEASE

A debilitating consequence of the decades long Sri Lankan civil war is the occupation of civilian land by the armed forces and the Government in 2015. In 2016, the release of small portions of land to its civilian owners commenced. However, this process has continued at a glacial pace, regardless of the commitment in Resolution 30/1 to “accelerate the return of land to its rightful civilian owners”¹¹⁰. According to one source, a report released in October 2017, by The Adayaalam Centre for Policy Research (ACPR), along with People for Equality and Relief in Lanka (PEARL), there is evidence to support the claim that the security forces currently have control of over 30,000 acres of land in Mullativu¹¹¹. The report goes on to state that the Government has been using the Department of Forests to continue with the land grabs. Amnesty International is however unable to verify these claims but is aware of allegations by communities, that the Department of Forests have gazetted private land as forest lands.

The people of Iranaitheevu island, displaced for over 25 years due to the war, have been campaigning for the return of their lands for years. However, even after over a year of uninterrupted protests, they remained displaced¹¹². The Sri Lankan Navy has been occupying the island since 1992 and previously did not allow former residents to return or even stay overnight. Former residents had been in contact with MPs, the Prime Minister, an EU Delegation and President Sirisena. After a number of meetings and a visit by the Survey Department to the island, there had still been no progress. On 23rd April 2018, taking matters into their own hands, around 300-350 former residents sailed to the island, with white flags on their boats, and peacefully reclaimed their land, with no objection from the Navy personnel stationed on the island¹¹³. The residents continue to remain on the island; however the existing infrastructure, after years of neglect, is in dire need of restoration¹¹⁴.

There have also been tense situations in Mullikulam where the Navy, after protests by villagers, released portions of land¹¹⁵. They have however been slow to release the remaining areas of land, forcing villagers to set up make-shift shelters in a bordering jungle, leaving them vulnerable to attacks from torrential rains and wild elephants.

In an absurd twist of fate, in December 2017, the Minister for Resettlement confirmed that the Army was paid LKR 148 Million to ‘relocate’ troops that were occupying 133 acres of civilian land in Keppapulavu¹¹⁶ after the residents protested for 9 months¹¹⁷. 2018 marks one year since the residents of Keppapulavu began protesting for the return of their land, however after the 133 acres were released, there has been no progress on the remaining areas of occupied land. A recent Right to Information (RTI) application uncovered that 600 acres of land near the Nandikadal lagoon have been granted to the Navy for a base camp¹¹⁸.

In a report published on 09 October 2018¹¹⁹, Human Rights Watch claims that lands occupied by the military have not only been used for military purposes, but that some have also been used as farms, or for tourism and other commercial purposes. The report concludes that a lack of transparency, and the “arbitrary and piecemeal approach”¹²⁰ adopted by the current regime have contributed to the absence of remedies, and the non-redressal of rights violations for displaced victims. It must be noted that on occasions where civilian lands are released, the rightful owners have been resettled without compensation or existing infrastructure¹²¹

¹¹⁰ Ibid 5

¹¹¹ Adayaalam Centre for Policy Research (ACPR) and People for Equality and Relief in Lanka (PEARL), *Normalising the Abnormal: The Militarisation of Mullaitivu* (October 2017); <http://adayaalam.org/wp-content/uploads/2018/01/Normalising-the-Abnormal-The-Militarisation-of-Mullaitivu.pdf>

¹¹² Groundviews, *Iranaitheevu; a year of continuous protests to regain Navy-occupied land* (20 April 2018); <https://groundviews.org/2018/04/20/iranaitheevu-a-year-of-continuous-protests-to-regain-navy-occupied-land/>

¹¹³ Groundviews, *Iranaitheevu: a community reclaims their island home from the Navy* (25 April 2018); <https://groundviews.org/2018/04/25/iranaitheevu-a-community-reclaims-their-island-home-from-the-navy/>

¹¹⁴ Al Jazeera, *Displaced Sri Lankans defy military to reclaim homeland* (18 May 2018); <https://www.aljazeera.com/indepth/features/displaced-sri-lankans-defy-military-reclaim-homeland-180517123419643.html>

¹¹⁵ Tamil Guardian, *Tensions between Sri Lanka navy and Mullikulam villagers over unreleased land* (15 October 2018); <https://www.tamilguardian.com/content/tensions-between-sri-lanka-navy-and-mullikulam-villagers-over-unreleased-land>

¹¹⁶ The Island, *Army compensated for vacating Mullaitivu land* (27 December 2017); http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=177249

¹¹⁷ Groundviews, *One Year in Keppapulavu* (2018); <https://groundviews.org/2018/03/05/one-year-in-keppapulavu/>

¹¹⁸ Vikalpa; උතුරේ ජනසාමයේ ඉඩම් යළි පවරා ගැනීමත්, තවත් විශාල හමුදා කඳවුරක්. යහපාලයට අනුව එය ‘පොදු’

කටයුත්තක් (03 January 2018); <https://www.vikalpa.org/?p=31728>

¹¹⁹ Human Rights Watch, *“Why Can’t We Go Home?” Military Occupation of Land in Sri Lanka* (09 October 2018) available at <https://www.hrw.org/report/2018/10/09/why-cant-we-go-home/military-occupation-land-sri-lanka>

¹²⁰ Ibid

¹²¹ Reuters, *Sri Lankans displaced by war wait for government to return land*, (09 October 2018); <https://www.aljazeera.com/news/2018/10/sri-lankans-displaced-war-wait-government-return-land-181009044058691.html>

On 04 October 2018, it was reported that President Sirisena instructed the relevant authorities to conclude the release of lands in the North and East to their legal owners by 31 December 2018, during a meeting with the Presidential Task Force on the development of the North and Eastern Provinces¹²². On 16 January 2019, a media statement by the Sri Lankan Army stated that on 21 January 2019, the Army was set to release 1201.88 acres of Army-used state and private land¹²³.

Amnesty International welcomes the progress made on this commitment but urges the government of Sri Lanka to urgently return remaining land occupied by the military, civil defence forces and other state agencies to their rightful owners.

5.3 CERTIFICATES OF ABSENCE

In June 2016, the Cabinet approved draft legislation¹²⁴ which would provide 'certificates of absence' to families who are unable to locate missing family members¹²⁵, thereby creating a legal status for the thousands missing and easing family members' access to legal processes such as succession of land and payments of pensions. There has however been very little public awareness about the benefits of such a Certificate, and the apprehension (as pointed out in the CTF report) surrounding these Certificates may prevent families from applying.

According to the Office on Missing Persons Act¹²⁶, these Certificates can be issued by the Registrar General, upon the issuance of either an interim report, or a report upon the conclusion of investigations by the OMP. However when speaking to the media, OMP Chairman Saliya Peiris stated that Certificates of Absence would be issued by the regional offices of the OMP¹²⁷. While the circumstances surrounding the issuance of these Certificates are unclear, there is no public information of how many (or if any) Certificates of Absence have been issued.

Amnesty International urges the government to take effective steps to raise awareness of affected communities of the availability of the certificate of absence issued to families of the disappeared, and its potential benefits to ensure this avenue is utilised effectively.

¹²² News First, *President sets deadline for release of lands in the North and East* (04 October 2018);

<https://www.newsfirst.lk/2018/10/04/president-sets-deadline-for-release-of-lands-in-the-north-and-east/>

¹²³ Sri Lanka Army, *1201.88 More Acres of State & Private Land in North Ready for Release* (16 January 2019);

<https://www.army.lk/news/120188-more-acres-state-private-land-north-ready-release>

¹²⁴ An amendment to the Registration of Deaths (Temporary Provisions) Act, No. 19 of 2010

¹²⁵ FirstPost, *Sri Lanka to enable certificates of absence for 65,000 people missing during war* (07 June 2016);

<https://www.firstpost.com/world-fwire/sri-lanka-to-enable-certificates-of-absence-for-65000-people-missing-during-war-2821756.html>

¹²⁶ Office on Missing Persons (Establishment, Administration And Discharge Of Functions) Act, No. 14 Of 2016

¹²⁷ Daily FT, *OMP to present interim report next week* (24 August 2018), <http://www.ft.lk/news/OMP-to-present-interim-report-next-week/56-661502>

6. GUARANTEES OF NON-RECURRENCE

6.1 LEGAL REFORMS

In Resolution 30/1 the Government of Sri Lanka pledged to reform its domestic laws to include the prosecution of those retrospectively responsible for crimes relevant to the violation and abuse of human rights and international humanitarian law. There has been some progress in light of this undertaking (for example ratification of the Convention on Enforced Disappearances, and the passing of domestic legislation on enforced disappearances), however international crimes such as war crimes and crimes against humanity have still not been incorporated into domestic legislation. On the question of accountability however, the rhetoric of the Government seems to suggest that there will be, if at all, very little reformation of laws to hold perpetrators accountable¹²⁸.

Given the limited will to reform legislation, Amnesty International urges the government of Sri Lanka to take this commitment seriously and introduce reforms as a matter of urgency.

6.2 SECURITY SECTOR REFORM

Similarly, there has been little publicly available progress by the Government of Sri Lanka in implementing the UNHRC's recommendation to introduce effective security sector reforms as part of its transitional justice process. Such measures 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".¹²⁹

The Sri Lankan military has been contributing to UN Peacekeeping missions since 1960. In 2018, the Army came to an agreement with the Human Rights Commission of Sri Lanka (HRCSL) and the UN, that Sri Lankan military personnel to be deployed in peacekeeping operations would undergo human rights vetting by the HRCSL. In a letter penned to President Sirisena, the HRCSL criticized the deployment of 49 personnel to Lebanon without such vetting, or prior notice to the HRCSL¹³⁰ in breach of the previously reached agreement.

On 11 January 2019, Amnesty International expressed concern over the appointment of Major General Shavendra Silva as Army Chief of Staff¹³¹. Major General Silva, who previously served as the Commander of the 58th Division, had command responsibility of the division in a period during which they were alleged to have committed violations of international humanitarian law, and international human rights law. Given the

¹²⁸ Ibid 61

¹²⁹ Paragraph 8, Human Rights Council resolution 30/1, *Promoting reconciliation, accountability and human rights in Sri Lanka*, A/HRC/RES/30/1 (1 October 2015) available at undocs.org/EN/A/HRC/RES/30/1

¹³⁰ Human Rights Commission of Sri Lanka; *Re: Briefing Concerning News Reports on the Vetting by the Human Rights Commission of Sri Lanka of Military Personnel to be Deployed for Peacekeeping Operations*, (04 April 2018); <http://hrctl.lk/english/wp-content/uploads/2018/04/Letter-to-H.E.-President-re-Vetting-English.pdf>

¹³¹ Amnesty International, *Sri Lanka: Allegations Against New Army Chief Of Staff Highlight The Urgent Need To Address Impunity* [Index No: ASA 37/9665/2019]

Government's commitments to reform the security sector, this appointment brings to question the Government's will to make such reforms.

Amnesty International calls on the Government of Sri Lanka to introduce effective security sector reforms and ensure that military personnel are vetted in line with the agreement between the Army and the Human Rights Commission prior to their deployment in peacekeeping operations.

6.3 WITNESS AND VICTIM PROTECTION

Resolution 30/1 “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”¹³². The Assistance to and Protection of Victims of Crime and Witnesses Act¹³³ was gazetted in 2015, but its implementation has been problematic. The Office of the High Commissioner, in a report published in 2016¹³⁴ urged the Government to review and amend the Act in question to ensure “better safeguards for the independence and effectiveness of the victim and witness protection program”¹³⁵.

The independence and impartiality of the National Authority for The Protection of Victims of Crimes and Witnesses have been questioned¹³⁶ by organizations such as the International Truth and Justice Project, as representatives of the Police Department have been appointed to the Board of Management¹³⁷.

On 04 April 2017, the Cabinet approved an amendment to the Act to encompass the recording of statements or evidence from a remote location outside of Sri Lanka¹³⁸. While this was a step in the right direction, the amendment specified that such a statement would have to be made at a Sri Lankan diplomatic mission in the relevant country, which may deter some witnesses from giving evidence as there is no adequate protection.

Amnesty International urges the Government of Sri Lanka to guarantee the protection of all victims and witnesses and to amend legislation providing such safeguards, in line with international law, standards and best practices.

6.4 PUBLIC SECURITY ORDINANCE AND THE PREVENTION OF TERRORISM ACT

Resolution 30/1 had the Government committing to review the Public Security Ordinance, and review the Prevention of Terrorism Act, and repeal the same, replacing it with legislation in line with international best practices¹³⁹. While a sub-committee of the Constitutional Assembly was appointed on 05 May 2016, their report¹⁴⁰ that recommended the Public Security Ordinance Act be replaced with the ‘National & Public Security and Emergency Act’ has yet to be implemented by the Government. During the violence which took place in the district of Kandy in 2018, the Government used the powers conferred to the President by Section 2 of the Public Security Ordinance¹⁴¹ to declare a State of Emergency in the area¹⁴². In a statement to the media, the

¹³² Paragraph 9, Human Rights Council resolution 30/1, *Promoting reconciliation, accountability and human rights in Sri Lanka*, A/HRC/RES/30/1 (1 October 2015) available at undocs.org/EN/A/HRC/RES/30/1

¹³³ Assistance to and Protection of Victims of Crime and Witnesses Act, No. 4 of 2015

¹³⁴ Human Rights Council, Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General, *Promoting reconciliation, accountability and human rights in Sri Lanka* (28 June 2016) available at https://www.ohchr.org/EN/HRBodies/HRC/.../JA_HRC_32_CRP_4_AV.docx

¹³⁵ Ibid

¹³⁶ International Truth and Justice Project, *Putting the Wolf to Guard the Sheep: Sri Lanka's Witness Protection Authority* (2017), <http://www.itjpsl.com/assets/Sri-Lanka-Witness-Protection-Report.pdf>

¹³⁷ Ibid

¹³⁸ The Cabinet of Ministers, *Amendment to the Assistance to and Protection of Victims of Crime and Witnesses Act, No.04 of 2015* (04 April 2017)

¹³⁹ Ibid 5

¹⁴⁰ The Constitutional Assembly, *Report of the Sub-Committee on Law and Order* (2017);

<https://english.constitutionalassembly.lk/images/pdf/reports-2018/Subcommittee%20report%20on%20Law%20and%20Order%20English%20final.pdf>

¹⁴¹ Section 2, Public Security Ordinance No. 25 of 1947

¹⁴² Centre for Policy Alternatives, *Understanding a State of Emergency: March 2018*, (16 March 2018); <http://www.cpalanka.org/understanding-a-state-of-emergency-march-2018/>

President instructed law enforcement officials to act in the interests of the people, without violating human rights¹⁴³.

The draconian Prevention of Terrorism Act (PTA) has been in force since 1979, even though it was initially passed as temporary anti-terrorism legislation. The legislation has since remained in force, and became permanent in 1982. This act allowed for suspects to be held without charge for up to 18 months, admit confessions made to a ranking Police Officer, and to move detainees at authorities' will, amongst other provisions¹⁴⁴ which have significantly raised the risk of torture and other ill-treatment. In 2017, the then UN Special Rapporteur on human rights and counter-terrorism, Ben Emmerson QC, stated that the use of torture was "routine and endemic" against people held under the PTA¹⁴⁵. In April 2016, after the Human Rights Commission of Sri Lanka issued 'Directives on Arrest and Detention under the PTA', the President ordered security personnel to follow these directives¹⁴⁶. These included directives on the arrest process, the process to be followed after an arrest, special measures to be followed on the arrest of a woman and persons under 18 years, and the mandate of the Human Rights Commission¹⁴⁷.

A number of versions of a new Counter Terrorism Bill were leaked in 2017, and civil society was quick to criticize the broad list of offences¹⁴⁸ and the vague, wide-reaching definitions of offences such as terrorism¹⁴⁹. There has since been a proposed Counter-Terrorism Act that was approved by the Cabinet on 11 September 2018, however there are serious concerns surrounding the legislation, namely:

- the vaguely worded definition of the offence of terrorism,
- the fact that the military and coast guard have the authority to make arrests
- the lack of presumption in favour of bail following an arrest
- the authority to hold suspects for up to one year in pre-trial detention
- the power to impose sanctions without a full trial and
- a ministers' power to proscribe an organization.

There is also no express provision that guarantees a right to counsel during an interrogation, which could be problematic for obvious reasons. There were reports that amendments to the Counter Terrorism Bill may be introduced at the committee stage¹⁵⁰. Any amendments made at this stage cannot be reviewed by the judiciary for being in line with the constitution which will be problematic if the amendments violate key safeguards, such as fundamental rights.

In November 2018, the Supreme Court determined that certain clauses of the Counter Terrorism Bill were incompatible with the Constitution. It was decided that Article 4(a), 4(b), 68 (5), and 93(3) of the Bill were incompatible with Articles in the Constitution relating to the sovereignty of the people and the exercise of this sovereignty¹⁵¹. The Supreme Court went on to state that the proposed legislation could only be passed in Parliament with a 2/3 majority, and it must also be approved by the public in a referendum. There has been no new Bill made available to the public reflecting these changes.

Amnesty International calls on the government of Sri Lanka to repeal the Prevention of Terrorism Act. In relation to the proposed Counter Terrorism Act, Amnesty International calls for the amendment of several elements in the legislation, such as the broad, vague definition of the offence of terrorism, post-arrest procedures, prosecutorial and judicial discretion on sanctions on individuals to be amended to conform with international law, standards and best practices, without delay.

¹⁴³ News.lk, *President declares state of emergency*, (07 March 2018), <https://www.news.lk/news/sri-lanka/item/19720-president-declares-state-of-emergency>

¹⁴⁴ Prevention Of Terrorism (Temporary Provisions) Act (No. 48 of 1979)

¹⁴⁵ Office of the United Nations High Commissioner for Human Rights; *Sri Lanka routinely tortures security suspects amid stalled reform process, UN expert finds* (18 July 2017); <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21884&LangID=E>

¹⁴⁶ Ada Derana, *HRCSL welcomes President's directives for arrests under PTA* (23 June 2016); <http://www.adaderana.lk/news.php?nid=35789>

¹⁴⁷ Human Rights Commission of Sri Lanka, *DIRECTIVES ISSUED BY THE HUMAN RIGHTS COMMISSION OF SRI LANKA ON ARREST AND DETENTION UNDER THE PREVENTION OF TERRORISM (TEMPORARY PROVISIONS) ACT NO 48 OF 1979* (18 May 2016); <http://hrcls.lk/english/wp-content/uploads/2016/05/Directives-on-Arrest-Detention-by-HRCSL-E-.pdf>

¹⁴⁸ Roar, *Why A Leaked Counterterrorism Policy Has Civil Society Spooked* (13 May 2017); <https://roar.media/english/life/reports/why-a-leaked-counterterrorism-policy-has-civil-society-spooked/>

¹⁴⁹ Sunday Observer, *Counter-Terrorism Bill: Major break from draconian PTA* (16 September 2018);

<http://www.sundayobserver.lk/2018/09/16/news-features/counter-terrorism-bill-major-break-draconian-pta>

¹⁵⁰ Centre for Policy Alternatives, *Initial Comment on the Proposed Counter Terrorism Bill* (18 September 2018);

<https://www.cpalanka.org/initial-comment-on-the-proposed-counter-terrorism-bill/>

¹⁵¹ Daily FT, *Counter Terrorism bill not consistent with Constitution, SC tells P'ment* (15 November 2018); <http://www.ft.lk/news/Counter-Terrorism-bill-not-consistent-with-Constitution--SC-tells-P-ment/56-666922>

6.5 ENFORCED DISAPPEARANCES ACT

Sri Lanka signed the International Convention for the Protection of All Persons from Enforced Disappearance on 10 December 2015, and ratified the same on 25 May 2016¹⁵², following through with one part of the two-fold commitment in Resolution 30/1.



The latter part of the commitment, to criminalize “disappearances”, was complied with when the Government passed the International Convention for the Protection of All Persons from Enforced Disappearance Bill on 7 March 2018¹⁵³. The urgent need for this legislation, apart from the implementation of the Convention, was to establish the crime of enforced disappearance in accordance with international human rights law, as previously such cases were tried as abductions or kidnapping in Sri Lanka. These penal offences fail to capture the gravity of the offence which is a crime against humanity.

While the legislation was welcomed, it should be noted that Sri Lanka is yet to recognize the competence of the Committee on Enforced Disappearances (CED) to “receive and consider communications”¹⁵⁴ on behalf of victims, as per Article 31 of the UN Convention. Some aspects of the Bill are also problematic.¹⁵⁵ The definition of enforced disappearance, the absence of “modes of liability”¹⁵⁶ and the uncertainty in relation to the retroactive application of the Bill has been raised by a local organization¹⁵⁷, as issues that must be remedied by the Government of Sri Lanka to ensure the Bill provides justice to the victims and families of victims of this crime.

According to media reports, Prime Minister Ranil Wickremesinghe, speaking at an event, claimed that the Enforced Disappearance Bill would not apply retroactively, quoting Article 13 (6) of the Constitution which states “No person shall be held guilty of an offence on account of any act or omission which did not, at the time of such act or omission, constitute such an offence.”¹⁵⁸. Therefore, according to Prime Minister Wickremesinghe, any “disappearances” occurring before the Act was passed in March 2018 would not come under the purview of the Act. This argument fails to note enforced disappearances are crimes under international law that have been condemned and prohibited by the international community for decades. Moreover, an enforced disappearance is an offence that continues until the authorities disclose the fate or whereabouts of the victims.

Amnesty International urges the Government of Sri Lanka to recognize the competence of the Committee on Enforced Disappearances and to amend the existing legislation, taking into consideration recommendations made by civil society organizations, to ensure justice for victims of enforced disappearances and their families.

¹⁵² United Nations Treaty Collection, *International Convention for the Protection of All Persons from Enforced Disappearance*; https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-16&chapter=4&clang=en

¹⁵³ Daily News, *Bill for protection against enforced disappearances passed without amendments*, (08 March 2018); <http://www.dailynews.lk/2018/03/08/political/144963/bill-protection-against-enforced-disappearances-passed-without>

¹⁵⁴ UN General Assembly, *International Convention for the Protection of All Persons from Enforced Disappearance*, (2010), UN Doc. No. 48088

¹⁵⁵ The South Asian Centre for Legal Studies, ‘Introduction’ *Commentary On The Bill Titled International Convention For The Protection Of All Persons From Enforced Disappearances*, 2017

¹⁵⁶ Ibid

¹⁵⁷ Ibid

¹⁵⁸ Article 13 (6), The Constitution of The Democratic Socialist Republic of Sri Lanka

7. CONCLUSIONS

In 2015, the government made clear commitments to the international community to deliver on accountability, truth, justice and reparations. More than three years later, Amnesty International's assessment is that while some progress has been made on some fronts, some of the crucial aspects of each of these issues remain unaddressed. This is seen in the controversies and objections to the Office on Missing Persons for example, and the absolute lack of movement on ensuring accountability of the crimes which have been documented by both domestic mechanisms like the Lessons Learnt and Reconciliation Commission, and by the United Nations in successive reports.

With the political instability that October 2018 has thrown Sri Lanka into and the state of the Government subsequent to the constitutional crisis, the possibility of further delivery of justice, truth, reparation and guarantees of non-recurrence for seems to be receding fast. The international community must ensure that the government of Sri Lanka delivers on its obligations under international law including the commitments it made in Resolution 30/1. Amnesty International is concerned that, without sustained pressure, support and attention to the issue, the possibility of justice and effective remedies for victims, may be squandered yet again.

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FLICKERING HOPE

TRUTH, JUSTICE, REPARATION AND GUARANTEES OF NON-RECURRENT IN SRI LANKA

In 2015, Sri Lanka co-sponsored Resolution 30/1 at the UN Human Rights Council to demonstrate the newly elected government's commitment to break with impunity for a past imbued with serious human rights violations. While the Resolution was welcomed both domestically and internationally, three years on, progress has been slow and political will, dimming. In 2017, the government was granted a two-year extension to implement the Resolution. A detailed report on Sri Lanka's implementation of Resolution 30/1 will be submitted to the Human Rights Council, by the Office of the High Commissioner for Human Rights, during its 40th Session in March 2019. This report stands as Amnesty International's evaluation of the commitments made by the Government of Sri Lanka in Resolution 30/1.