

No Justice, No Truth: Unfulfilled Promises of UN Human Rights Council Resolution 30-1 (Promoting Reconciliation, Accountability and Human Rights in Sri Lanka)

Together Against Genocide [TAG]

ABSTRACT

The UN Human Rights Council will discuss the implementation of Resolution 30-1 at its thirty-fourth session. The report of the Office of the High Commissioner for Human Rights (OHCHR) Investigation on Sri Lanka (OISL) makes recommendations in five areas: General, Institutional Reform, Justice, Truth/Right to Know and Reparations. These recommendations form the foundation of Resolution 30-1 and we assess Sri Lanka's progress in each of these five areas.

Sri Lanka's Failure of Political Will and UN Human Rights Council Resolution 30-1

Executive Summary

UN HRC Resolution 30-1 of 2015 contains 20 clauses and incorporates by reference the 39¹ recommendations of the report of the OISL. It encourages ‘*the Government of Sri Lanka to implement the recommendations contained therein (in the report of the OISL) when implementing measures for truth-seeking, justice, reparations and guarantees of non-recurrence*’ (Clause 1). The resolution was passed with the co-sponsorship of the Sri Lankan government, with Foreign Minister Mangala Samaraweera stating that “*The Government of Sri Lanka recognises fully that the process of reconciliation involves addressing the broad areas of **truth seeking, justice, reparations and non-recurrence** and for non-recurrence to become truly meaningful, the necessity of reaching a political settlement that addresses the grievances of the Tamil people.*”

Two years on, this report finds that Sri Lanka has failed to deliver on the promise of 2015. While the Foreign Minister has continued his international diplomacy, in Sri Lanka senior figures have expressed the opposite view, disavowing the commitments to Resolution 30-1 and promising to never charge troops.

The 33 recommendations of the OISL for the Government of Sri Lanka (GOSL) are classified into five areas: General, Institutional Reform, Justice, Truth/Right to Know and Reparations. This TAG assessment, on a best-efforts basis, finds that Sri Lanka has hardly made progress of any long term significance in any of the five areas of recommendation by the OISL. These areas are assessed in more detail, as is the pledge in clause 16 of Resolution 30-1 of a ‘*a political settlement to address the grievances of the Tamil people*’ and other actions taken by Sri Lanka since 2015.

General - Sri Lanka has made partial progress on 3 of 5 OISL recommendations (heretofore OISL-Rs) in this section, though few substantive deliverables have materialised. These 3 areas are setting up high level organisational structures, engaging with UN Human Rights Mechanisms and carrying out consultations. (OISL-Rs 2, 4 and 5).

Institution Reform – The OISL makes 11 recommendations of institutional reform of which 6 pertain to security sector reform. We see good progress on only 2 of 11 recommendations, namely those relating to the Constitutional Council and UN peacekeeper vetting. GOSL has sent counter-signals undermining its commitments in relation to Security sector reform (OISL-Rs 9 and 12).

Justice – Sri Lanka has clearly reneged on its commitments in this crucial area. We see only partial progress on 3 of the 8 recommendations, and also see contra indications on at least 4 recommendations.

Truth/Right to Know – No notable progress has been made on the 5 recommendations in this area, save the passing of the OMP legislation, and counterproductively, the selective publication of controversial past reports.

Reparations – We are not aware of any notable progress on the 4 recommendations in this area.

¹ Of which 33 are for the Government of Sri Lanka and 6 for the UN and Member States

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Devolution of political authority – Constitutional reform has stalled following the 19th amendment, even as key members of the government have engaged more frequently and publicly with Sinhala-Buddhist supremacist parties and backtracked from promises of political devolution to the Tamil population.

Other – Sri Lanka has engaged in other activity that goes against the letter and spirit of the OISL recommendations, including prosecuting two cases of abduction and murder (which are considered crimes against humanity) in existing domestic courts under domestic law as ordinary murder.

The Sri Lankan response over the last two years has been inadequate as indicated by our graphic below. The UN HRC must keep this in mind as Sri Lanka is once again on the agenda for discussion.

OISL recommendation	Area		Progress			
			Good Progress	Poor Progress	No Notable Progress	Contra indications & Counter statements
Recommendation 1	General	Planning/Steering				
Recommendation 2						
Recommendation 3		UN Engagement				
Recommendation 4		Consultations				
Recommendation 5		UN Engagement				
Recommendation 6	Institutional Reform	Legislation				
Recommendation 7						
Recommendation 8						
Recommendation 9		Security Sector				
Recommendation 10						
Recommendation 11						
Recommendation 12						
Recommendation 13						
Recommendation 14		Return of Land				
Recommendation 15		Security Sector				
Recommendation 16						
Recommendation 17	Justice					
Recommendation 18						
Recommendation 19						
Recommendation 20						
Recommendation 21						
Recommendation 22						
Recommendation 23						
Recommendation 24						
Recommendation 25	Truth-Telling					
Recommendation 26						
Recommendation 27						
Recommendation 28						
Recommendation 29	Reparations					
Recommendation 30						
Recommendation 31						
Recommendation 32						
Recommendation 33						

Note: Contra indications are actions whereby GOSL has reversed progress on a commitment². Counter-statements are words whereby GOSL denies it will implement a part of Resolution 30-1.

² In the Justice area, a false or pre-emptive position such as ‘all missing persons are dead’ is also viewed as a contra indication.

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Background

In March 2013 the UN Human Rights Council (UN HRC) passed resolution 25/1 calling on Sri Lanka to conduct an investigation into alleged violations of international human rights law and international humanitarian law. The then government of Sri Lanka ‘categorically and unreservedly rejected’ resolution 25/1 leading the UN HRC to mandate the Office of the High Commissioner for Human Rights’ Investigation on Sri Lanka (OISL) in March 2014.

President Sirisena, who came to power in January 2015, was sent a copy of the report of the OISL and obtained a one-time deferral of its publication in order to be allowed time to form a coalition government that would agree to cooperate with the UNHRC and OHCHR. The recommendations of the OISL fall into the following four categories: **Institutional Reform, Justice, Truth and Reparation.**

In a speech to the HRC on the 14th September 2015, Foreign Minister Mangala Samaraweera laid out the Government of Sri Lanka (GOSL) proposal to cooperate with the UN.³ He said “*The Government of Sri Lanka recognises fully that the process of reconciliation involves addressing the broad areas of **truth seeking, justice, reparations and non-recurrence** and for non-recurrence to become truly meaningful, the necessity of reaching a political settlement that addresses the grievances of the Tamil people.*” It will be seen that in addition to the areas identified by the OISL, the Foreign Minister made a promise of political settlement

The UN High Commissioner for Human Rights finally presented the report to the UNHRC in September 2015, resulting in Resolution 30-1⁴, co-signed by the (new) government of Sri Lanka. The UN HRC will discuss the implementation of Resolution 30-1 at its thirty-fourth session.

Rhetoric versus Reality

Since September 2015, Sri Lanka’s Foreign Minister Mangala Samaraweera has undertaken a vigorous international campaign including bi-lateral and public advocacy via speeches at the United Nations (UN) and in foreign capitals and high profile media briefings of visits from foreign dignitaries. These international pronouncements have paid dividends in signals of revival of economic and military relationships that had been side-lined pending the promised investigation into the crimes against humanity committed by Sri Lanka’s security forces⁵.

However domestic communications from the leadership of the Government of Sri Lanka (GOSL), notably President Sirisena, Prime Minister Wickremasinghe and former Prime Minister Kumaratunga⁶ have often been diametrically opposite to their Foreign Minister’s pronouncements to international donors, the UN and other international counter-parties. President Sirisena has repeatedly publicly disavowed key GOSL commitments to UN Human Rights Council (HRC) Resolution 30-1, including the commitment to include international judges in

³ <https://www.colombotelegraph.com/index.php/sri-lankas-response-to-unhrc-the-full-text-of-foreign-affairs-ministers-speech-today/>

⁴ Passed in October 2015

⁵ <http://www.pacom.mil/Media/News/tabid/5693/Article/706647/blue-ridge-arrives-in-sri-lanka-forging-new-ties.aspx>

⁶ Current head of the Office of National Unity and Reconciliation (ONUR)

any accountability mechanism⁷. A day after the UN High Commissioner for Human Rights released his assessment of Sri Lanka's progress on Resolution 30-1 at the 34th session of the UN HRC, President Sirisena visited troops in military-occupied Jaffna and promised he "will never bring charge sheets against security forces".⁸

Furthermore President Sirisena and his Ministers have repeatedly and publicly met and engaged with Sinhala Supremacist organisation Bodu Bala Sena (Buddhist Power Force) undermining the credibility of their commitment to a pluralistic, multi-ethnic, multi-religious Sri Lanka.

Rhetoric, both international and domestic needs to be assessed against reality. Any assessment of GOSL's progress on implementation of resolution 30-1 is hampered by the lack of transparency of the process as well as Sri Lanka's continued hostility towards INGOs focused on human rights and accountability for crimes against humanity. Our assessment below is thus on a best-efforts basis.

Status of Implementation of UN HRC Resolution 30-1

UN HRC Resolution 30-1 contains 20 clauses and incorporates by reference the 39 recommendations of the report of the OISL. In clause 1 of Resolution 30-1 the HRC encouraged *'the Government of Sri Lanka to implement the recommendations contained therein (in the report of the OISL) when implementing measures for truth-seeking, justice, reparations and guarantees of non-recurrence;'*

The 33 recommendations of the OISL for GOSL are classified into five areas: General, Institutional Reform, Justice, Truth/Right to Know and Reparations. As of the date of this assessment GOSL has hardly made progress of any long term, significance in any of these five areas. The OISL recommendations constitute the foundation of UN HRC resolution 30-1 and we assess GOSL's progress in each of the five areas identified by the OISL.

Additionally in line with the Foreign Minister's September 14th speech to the HRC, Resolution 30-1, contains clause 16 that gives effect to GOSL's pledge of *'a political settlement to address the grievances of the Tamil people'*. We separately assess progress on this.

Under the heading 'Other' we also consider alternative approaches to Truth, Justice, Reparations and Non Recurrence that GOSL has pursued other than those recommended by the OISL.

Our assessment notes *contra indications: actions* whereby GOSL has reversed progress on a commitment. *Counter-statements* whereby GOSL *says* it will not implement a part of Resolution 30-1 are listed separately.

⁷ Tamilguardian 2017: 'No Foreign Judges reiterates Sirisena' <http://tamilguardian.com/content/no-foreign-judges-reiterates-sirisena>

⁸ <http://www.tamilguardian.com/content/president-sirisena-visits-jaffna-promises-protect-his-troops>

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OISL General Recommendations [1 – 5]

Sri Lanka has made partial progress on 3 of 5 OISL recommendations (heretofore OISL-Rs) in this section, though few substantive deliverables have materialised. These 3 areas are setting up high level organisational structures, engaging with UN Human Rights Mechanisms and carrying out consultations. (OISL-Rs 2, 4 and 5)

1. *Develop a comprehensive transitional justice policy for addressing the human rights violations of the past 30 years and preventing their recurrence;*

Statements: Key HRC member states were promised⁹ a comprehensive transitional justice police and/or plan by December 2015.

Action: No plan has been published.

2. *Set up a high-level executive group to develop a coordinated, time-bound plan and oversee progress in implementing the recommendations contained in this report and previous reports by the High Commissioner to the Human Rights Council, as well as relevant outstanding recommendations of the LLRC and past commissions of inquiry;*

Action: A number of bodies have been set up and staffed as outlined in the Foreign Minister's speech of September 2015.

3. *Invite OHCHR to establish a full-fledged country presence to monitor the human rights situation, advise on implementation of the High Commissioner's recommendations and of all HRC resolutions, and provide technical assistance;*

OHCHR has not been invited to a country presence, let alone a presence in the former war-zone as war-victims have requested. By cherry-picking the agencies that are allowed to have an in-country presence and denying such a presence to critical agencies, such as OHCHR, GOSL is perpetuating the unhealthy dynamics noted in the UN Petrie report that served to silence the UN during the mass atrocities of 2009.

4. *Initiate genuine consultations on transitional justice, in particular on truth-seeking, reparations and memorialization, with the public, victims and witness groups, civil society and other stakeholders. These should be accompanied by public education programmes that ensure informed participation in the process; Invite the Special Rapporteur on truth, justice, reparations and guarantees of non-recurrence to continue his engagement so that he accompanies and advises in this process;*

Statements and Counter-Statements

- (Public Education) In May 2016, a month ahead of the High Commissioner's oral update on Sri Lanka to the UN HRC, Foreign Minister Samaraweera accepted the authenticity of Channel 4's footage of extrajudicial executions by Sri Lankan soldiers. In January 2017 Mr Samaraweera told an audience in London the 'time will come when it is possible to screen the film' suggesting that time was not now.

Actions

⁹ TAG interview October 2015, March 2016

- (Public Education) GOSL has not allowed the screening of the Channel 4 documentary ‘Sri Lanka’s Killing Fields’ nor the follow-up film by Outsider TV¹⁰ ‘No Fire Zone’ both of which played a pivotal role in bringing about resolution 30-1. Despite that the Sinhala language version of NoFireZone is available for download online.
 - GOSL has failed to undertake any public education. Although an executive summary of the OISL report has been available since 2015, it has not been publicised in Sri Lanka and there is little awareness of its contents. As of April 2016, the full report of the OISL had not been made available in Tamil or Sinhala, neither has it been publicised since. The victims of mass atrocities have not been told of the OISLs findings on the crimes against humanity that have been committed and the institutions and hierarchies that have been held responsible. They have not been told what remedies they are entitled to in international law.
 - The National Consultative Task Force on Reconciliation Mechanisms (CTFSL) has carried out consultations on transitional justice (OISL-R4) and published its report in February 2017, one month ahead of the upcoming review at the UNHRC. Tamil civil society have stated that the draconian militarisation of the North East, pervasive surveillance and failure to undertake any form of security sector reform creates an atmosphere of fear and insecurity which is unsuitable for genuine consultations.
 - While CTFSL processes were critiqued for failing to gain broad-based engagement, its report forms the most comprehensive, consultation-based assessments of transitional justice and reconciliation needs to come from within Sri Lanka itself. President Sirisena and Prime Minister Wickremasinghe have signalled disavowal of the CTFSL report by refusing to receive it while the Justice Minister reacted to the report by saying he has no confidence in the CTFSL.¹¹
5. *Ensure full cooperation with the Special Procedures of the Human Rights Council. Invite the Special Representative of the Secretary-General on conflict-related sexual violence and the Special Representative of the Secretary-General on Children and Armed Conflict, the Special Rapporteurs on extrajudicial killings and torture, the Working Group on Arbitrary Detention and other relevant Special Procedures mandate holders to make early country visits.*

Statements: GOSL has rhetorically signalled engagement with the Human Rights Council and allowed UN experts to access the country (OISL-R5).

Action: The visit of the Special Rapporteur for Torture was preceded by a spate of white van abductions/‘arrests’ of predominantly ethnic Tamils, in a chilling signal to survivors of torture who might wish to speak out. Some Tamil representatives of war survivors and families of the disappeared have complained that they have been unable to access visiting UN Special Rapporteurs.

¹⁰ Outsider TV are also the independent production company that produced ‘Sri Lanka’s Killing Fields’ for Channel 4.

¹¹ Daily Mirror 6 January 2017

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OISL Recommendations on Institutional reforms [6-16]

The OISL makes 11 recommendations of institutional reform of which 6 pertain to security sector reform. We see good progress on only 2 of 11 recommendations, namely those relating to the Constitutional Council and UN peacekeeper vetting. GOSL has sent countersignals undermining its commitments in resolution 30-1 in relation to Security sector reform (OISL-Rs 9 and 12).

6. *Ensure that the Constitutional Council is fully operational as soon as possible, so that it can appoint qualified new members of the utmost independence and integrity to key institutions such as the Human Rights Commission of Sri Lanka;*

Actions: The 19th amendment to Sri Lanka's constitution, a key electoral pledge of the Sirisena Presidency, enabled the setting up of the Constitutional Council. Its composition has been controversial in that seven of its ten members are politicians, thus politicising its appointments to key institutions. The three civil society members of the council have also not participated in some key appointment processes.¹²

7. *Review legislation to strengthen the Human Rights Commission's independence and its capacity to refer cases to the courts;*

Actions: The 19th amendment enabled the Constitutional Council to oversee the public commissions including the Human Rights Commission that had previously been under the President's control.

8. *Initiate action to seek Supreme Court review of its decision in the Singarasa case¹³ to affirm the applicability of international human rights treaties in domestic law and reinstate the competence of the UN Human Rights Committee to consider individual complaints;*

No Statements. No such action initiated.

9. *Issue clear, public and unequivocal instructions to all branches of the military and security forces that torture, rape, sexual violence and other human rights violations are prohibited and that those responsible, either directly or as commander or superior, will be investigated and punished. Subject to due process, anyone suspected of being involved in such acts should be immediately suspended until an effective investigation has been completed. Order and end to all surveillance, harassment and reprisals against civil society actors, human rights defenders and journalists;*

Counter Statements

- Prime Minister Ranil Wickremasinghe has denied outright the existence of secret detention centres as well as stated that those who have disappeared 'are dead'.
- The Prime Minister and senior members of government continue to characterise the military as 'war heroes' and deny their responsibility for mass atrocities. The President has denied the military is accused of war crimes¹⁴. A day after the UN High Commissioner for Human Rights released his assessment of Sri Lanka's progress on Resolution 30-1 at the 34th session of the UN HRC, President

¹² TAG interview April 2016

¹³ Nallaratnam Singarasa v Attorney General, SC Special App. (LA) No.182/99, decided on Sept. 15, 2006.

¹⁴ Interview to Al Jazeera, January 2016

Sirisena visited troops in military-occupied Jaffna and promised he “will never bring charge sheets against security forces”.¹⁵

Actions

- No such instructions have been issued. The Sri Lankan state’s organised terror network of security service units and paramilitary groups that operated white van abductions and secret torture centres have not been disciplined let alone dismantled.

Contra indications

- As recently as 2017, allegations of the existence of military-run ‘rape camps’ for ethnic Tamil women have been submitted to CEDAW by organisations we consider credible.¹⁶ That mass-rape/gang-rape of Tamil women and men is a feature of Sri Lanka’s secret and official torture centres has long been documented by TAG.¹⁷ In May 2016 the UN Special Rapporteur on Torture and other cruel, inhuman and degrading treatment or punishment noted torture by Sri Lanka’s Security Services was routine.¹⁸
- Surveillance of Tamil civilians in the Tamil North-East is on-going and often carried out openly.
- Countersignalling GOSLs intent to hold the army accountable for human rights violations, Major General Jegath Dias who was accused by the Swiss prosecutor of committing Crimes Against Humanity was promoted to army chief of staff in May 2015. Former army commander General Fonseka, who has also been accused of crimes against humanity was promoted in March 2015 to Field Marshal and appointed as minister of regional development a year later. In Sri Lanka such a ministerial portfolio comes with influence over patronage networks including in areas where survivors live.

10. Prepare an overall plan for security sector reform to ensure the civilian nature, independence and professionalism of the law and order forces, and reducing the role of the military in internal security matters;

- No plan has been published.
- Seven years after the war, the Tamil North-East remains one of the most heavily militarised in the world, occupied by an ethnically pure military engaged in ‘Sinhalisation’¹⁹. Perpetrators of mass atrocities continue to patrol the streets, and intrude into all aspects of civilian life. They run pre-schools, ‘help’ in Temples and hospitals, organise Buddhist festivals, by way of example. Surveillance is all-pervasive though increasingly delegated to paramilitaries and military men in plain clothes. Tamil women are unsafe.

¹⁵ <http://www.tamilguardian.com/content/president-sirisena-visits-jaffna-promises-protect-his-troops>

¹⁶ International Truth and Justice Project, Submissions to CEDAW 2017

¹⁷ TAG report 2012 ‘Sri Lanka’s White Vans’ <http://www.tamilsagainstgenocide.org/read.aspx?storyid=120> , 2012 ‘Returnees at Risk: Detention and Torture in Sri Lanka’

<http://www.tamilsagainstgenocide.org/read.aspx?storyid=120> and 2014 ‘Intent to Destroy: Ongoing Violence and Violations Against Tamil Women’ <http://www.tamilsagainstgenocide.org/Research.aspx>

¹⁸ OHCHR, ‘Preliminary Observations and Recommendations of the Special Rapporteur on Torture and other cruel, inhuman and degrading treatment or punishment , Mr. Juan E. Mendez on the Official Joint Visit to Sri Lanka, 29 April – 6 May 2016’ 6 May 2016

¹⁹ The UK Upper Tribunal on Immigration and Asylum in GJ & Others 2013, upheld on appeal 2014

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11. *Clarify the roles and chain of command for all branches of the security forces, including the different intelligence services, the CID and the TID.*

No such clarification made.

12. *Develop a fully-fledged vetting process respecting due process to remove from office military and security force personnel and any other public official where there are reasonable grounds to believe that they were involved in human rights violations;*

- *Action:* No such vetting implemented.
- *Contra indications:* Instead of being vetted, Sisira Mendis, the Chief of the State Intelligence Service (SIS) under whose command torture is alleged to have been carried out, was chosen by Sri Lanka to represent his country before the UN Committee Against Torture (UNCAT) in 2016.

13. *Ensure that no member of the Sri Lankan security forces is sent on a UN peacekeeping without vetting to establish that the individual, including commanders, have not in any way been involved in human rights violations or criminal acts. Any allegations of abuses by Sri Lankan peacekeepers while on peacekeeping duties must be fully investigated by the authorities;*

Actions: Selectively vetting those sent to UN peace-keeping and thus ensuring ‘good guys have career paths’ as one diplomat told TAG, increases the concentration of mass atrocities perpetrators in the predominantly Sinhala forces stationed in the Tamil North-East and destabilises the area.

14. *Prioritize the return of private land which has been occupied by the military and end military involvement in civilian activities;*

Statements: While GOSL claims to have returned substantive segments of private land, it has not published details of the land it holds and that which is claimed to be returned. The Foreign Minister said in June 2016, ahead of the UN High Commissioners Oral update to the UNHRC that Sri Lanka will return all military held land seized from Tamil citizens by 2018²⁰

Actions: GOSL has returned a fraction of military-occupied Tamil private and public/community-owned²¹ land. Further its land return figures are disputed by Tamil civil society and NGOs.²² Private citizens in the North and East have resorted to lengthy and/or mass protests and strike action to reclaim their land.

15. *Take immediate steps to identify and disarm groups affiliated with political parties and sever their linkages with security forces, intelligence services and other Government authorities;*

Not Done. Paramilitaries continue to operate with impunity and are also involved in surveillance.

²⁰ <http://indianexpress.com/article/world/world-news/sri-lanka-to-return-all-military-held-land-seized-from-tamil-civilians-foreign-minister-mangala-samaraweera-2885517/>

²¹ Tamil customary law recognizes land held for public benefit under community ownership

²² In April 2016 the British Tamil Forum said the military was still holding 96% of Tamil land estimated as 67,427 acres, having released some 2500 acres of nearly 70K acres held under the Rajapaksa regime. <http://www.britishtamilforum.org/press-release/tamils-land-occupied-by-the-sri-lankan-military/>

16. *Initiate a high-level review of the Prevention of Terrorism Act (PTA) and its regulations and the Public Security Ordinance Act with a view to their repeal and the formulation of a new national security framework fully complying with international law;*

The PTA has yet to be repealed.

Contra Indications: A draft of the proposed replacement legislation, the Counter Terrorism Act (CTA) was leaked in October 2016 and seen to have incorporated a broader range of offenses that the government has determined will amount to terrorism, including ‘words..that threaten the unity of Sri Lanka’.

OISL Recommendations on Justice [17-24]

Sri Lanka has clearly reneged on its commitments in this crucial area. We see only partial progress on 3 of the 8 recommendations, and also see contra indications on at least 4 recommendations.

17. *Review the Victim and Witness Protection Act with a view to incorporating better safeguards for the independence and effectiveness of the witness protection programme. Ensure the independence and integrity of those appointed to the Witness Protection Authority and that the police personnel assigned to this program are fully vetted. Ensure adequate resources for the witness protection system, including with international assistance; Ensure special protection mechanisms for children and victims of sexual violence.*

Actions

- Sri Lanka’s Victim and Witness Protection Act first tabled in 2008, was passed in February 2015, a week before Sri Lanka requested and obtained on 26th February 2016 a deferral of the publication of the OISL report from March to September 2015. The OISL report and others, including TAG, critiqued the act but it has not been amended.

Contra indications

- The National Authority for the Protection of Victims of Crimes and Witnesses has been set up but 3 of 10 members running it (Nandanda Munasinghe, Suhada Gamlath and Yasantha Kodagoda) are themselves alleged torturers.²³

18. *Enact legislation to criminalize war crimes, crimes against humanity, genocide and enforced disappearances, without statute of limitation. Enact various modes of criminal liability, notably command or superior responsibility;*

Not Done.

19. *Ratify the International Convention on the Protection of All Persons from Enforced Disappearances, the Additional Protocols to the Geneva Conventions and the Rome Statute of the International Criminal Court;*

- On or around the 25th May 2016, four weeks ahead of the upcoming UN HRC review, Sri Lanka ratified *the International Convention on the Protection of All Persons from Enforced Disappearances (ICPPED)*.
- Sri Lanka has not ratified the Additional Protocols to the Geneva Convention or the Rome Statute of

²³ International Truth and Justice Project submission to UN CEDAW 2017

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the ICC. Consequently Sri Lanka does not benefit from the ICCs witness protection²⁴ regime, its definition of Crimes against Humanity, the recognition of command responsibility and other international norms. By stalling on this, GOSL is ensuring the legislative framework simply does not exist to bring perpetrators of crimes against humanity and genocide to justice.

20. *Adopt specific legislation establishing an ad hoc hybrid special court, integrating international judges, prosecutors, lawyers and investigators, mandated to try war crimes and crimes against humanity, including sexual crimes and crimes committed against children, with its own independent investigative and prosecuting organ, defence office, and witness and victims protection programme. Resource the court so that it can effectively try those responsible;*

Actions

- No such legislation has been adopted nor has the court been set up.
- The Consultative Task Force on Reconciliation (CTFRM) published its report in January 2017 recommending the participation of international judges and personnel in any war crimes tribunal.

Counter Statements

- Nevertheless, as recently as January 2017 Sri Lanka's Justice Minister Wijedasa Rajapakshe and Cabinet Spokesperson Minister Rajitha Senarathne have reiterated the Prime Minister and President's positions that there will be no foreign judges in Sri Lanka's special court, a renegeing of explicit wording in Resolution 30-1. On 29 May 2016, the Prime Minister had reiterated that there will be no foreign judges, but a purely domestic war crimes tribunal.²⁵ The President had already ruled out foreign judges in January 2016 interviews to Al Jazeera and the BBC. Former President Kumaratunga who heads up the Office for National Unity and Reconciliation (ONUR) has questioned the need for an accountability mechanism.²⁶

21. *Carry out a comprehensive mapping of all pending criminal investigations, habeas corpus, and fundamental rights petitions related to serious human rights violations, as well as the findings of all Commissions of Inquiries where they have identified specific cases, and refer these cases to the special court upon its establishment; Initiate prosecutions in all cases in which the Presidential Commission to Investigate Complaints Regarding Missing Persons has identified perpetrators and prima facie evidence;*

No such mapping has been undertaken and/or published.

22. *Review all of the cases submitted to the Disappearance Investigation Unit and the Missing Persons Unit by the Zonal and All Island Commissions, including in cases where the courts subsequently acquitted the accused, to identify those which require further investigation, including chain of command responsibilities;*

No such review.

23. *Review all the cases of the more than 11,000 individuals perceived or known to be linked to the LTTE reported to have been registered and rehabilitated to account for their current whereabouts to ensure that none subsequently disappeared.*

²⁴ Coalition for the ICC Statement on Sri Lanka 2016

²⁵ <http://www.ceylonews.com/2016/05/no-foreign-judges-purely-domestic-war-crime-probe-ranil/>

²⁶ <http://thediplomat.com/2017/02/a-former-president-shares-a-fairy-tale-on-accountability-in-sri-lanka/>

There has been no review.

Contra indications: In January 2016 Prime Minister Wincremasinghe said those who are still missing should be considered dead.²⁷

24. *Review all cases of detainees held under the PTA and either release them or immediately bring them to trial. Review the cases of those convicted under the PTA and serving long sentences, particularly where convictions were based on confessions extracted under torture;*

Statements and Counter-Statements: President Sirisena said “Tamil political prisoners who have committed “minor offenses” will be released before November 7th 2015”²⁸. However a few days earlier the Justice Minister had said “there are no political prisoners in the country’s prisons”²⁹

Actions: No Progress of any significance has been made on this despite prisoner hunger strikes and protests by the Tamil community. For example, in February 2016 Tamil detainees in Welikada prison went on hunger strike and were supported by protests in the North and East.

OISL Recommendations on Truth/Right to know [25- 29]

No notable progress has been made in this area, save the passing of the OMP legislation and counterproductively, the selective publication of controversial past reports.

25. *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;*

In August 2016, one month ahead of the upcoming UN HRC session, a bill establishing The Office of Missing Persons [OMP] was passed but the OMP has not been set nor has a single case of a missing person been resolved. There was no promised consultation with the families of the missing persons who have expressed disappointment. Crucially the OMP will not be allowed to refer cases to a judicial mechanism, thus failing to advance accountability.

26. *Develop a central database of all detainees, with independent verification, where relatives can obtain information of the whereabouts of family members detained;*

Not done.

27. *Publish a full gazetted list of all detention centres, and close down any unofficial ones still in existence;*

No Progress. In or around January 2016, the Prime Minister has denied any unofficial detention centres were in existence. This is not credible. TAG and other NGOs continue to receive reports of secret detention and torture centres.

28. *Publish all unpublished reports of the many human rights-related commissions of inquiry, the Presidential Commission on the Missing, and the Army Court of Inquiry into civilian casualties;*

Actions: GOSL has selectively published some of the most controversial reports, namely the army’s

²⁷ <http://www.tamilguardian.com/content/missing-are-considered-dead-says-sri-lankan-prime-minister>

²⁸ <http://www.tamilguardian.com/content/sri-lankan-president-assures-release-prisoners-‘minor-offences’>

²⁹ <http://tamilguardian.com/article.asp?articleid=16245>

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own 2012 inquiry into the war crimes alleged against it, and the report of the discredited Udalgama inquiry from which the International Eminent Persons (IEP) walked out in 2008, (Udalagama is also a subject of the 2010 Amnesty criticism in '20 years of make believe: Sri Lanka's failed commissions of inquiry').

Contra Indications: [See also our assessment under recommendation 4] Simultaneously GOSL has not made widely available translations of any of the UN's own reports into war crimes in Sri Lanka nor undertaken public education on these, nor has it allowed the screening of international documentaries that have been found credible by OISL and international courts. This selective publication propagates a false narrative.

29. *Develop a comprehensive plan/mechanism for preserving all existing records and documentation relating to human rights violations, whether held by public or private institutions;*

Not done.

OISL Recommendations on Reparations [30-33]

We are not aware of any notable progress in this area.

30. *Develop a national reparations policy in consultation with victims and their families, considering the specific needs of each victims, including women and children and finance appropriately from the state budget;*

Not done.

31. *Develop and strengthen programmes of psychosocial support for all victims of the conflict;*

Not done.

32. *Amend legislation to ensure that those who have received death certificates for the missing are not prevented from pursuing judicial cases to determine what happened to their loved ones;*

Not done. We are not aware of any amendment to legislation.

33. *Ensure durable solutions for old and new displaced populations through land restitution, resettlement and livelihood support;*

Not done. Foreign Minister Samaraweera has said GOSL has built 11,253 houses in 2016 for the internally displaced who number in the hundreds of thousands.

Resolution 30-1, Clause 16: Devolution of Political Authority

Clause 16: Welcomes the commitment of the Government of Sri Lanka to a political settlement by taking the necessary constitutional measures, encourages the Government's efforts to fulfil 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;

- In a continuation of Sri Lanka's familiar past dynamics of ethnic outbidding by the two main Sinhala

parties, constitutional reform has stalled following the 19th amendment, even as the President and key members of GOSL have engaged more frequently and publicly with Sinhala-Buddhist supremacist parties such as Bodu Bala Sena (BBS) and backtracked from promises of political devolution to the Tamil population.

Other

GOSL has sought to bypass the special war crimes tribunal recommended by the OISL by prosecuting two cases of the crimes against humanity of abduction and murder in the existing domestic courts under domestic law as ordinary murder:

- (a) In December 2 (ethnic Sinhala) army intelligence officers were arrested for the post-war disappearance of Sinhala journalist Ekneligoda.
- (b) In October 2015, (ethnic Tamil) paramilitary leader Pillaiyan was arrested over the 2005 assassination of TNA parliamentarian Joseph Pararajasingham.

Independently, judges have been emboldened by resolution 30-1, particularly in the Tamil North East where military crimes have long gone unchecked.

Nevertheless the prosecution of high profile (ethnic Tamil) political figures such as Pillaiyan in the (inadequate) current courts will fall far short of the international standards of trial required. In particular this approach cannot deal with the systemic nature of a crime against humanity and concepts of command responsibility. Of more concern it pre-empts prosecution via the special tribunal recommended by the OISL.

Conclusion

Multi-ethnic, multi-religious and tolerant rhetoric abroad has been simultaneously accompanied by increasing engagement with Sinhala-Buddhist supremacists at home. In a nod to Xenophobia, GOSL has actively reneged on key commitments to the UN Human Rights Council, in particular the inclusion of international judges and personnel in any proposed transitional justice mechanism.

It has also failed to implement its own pledges in the core areas of institutional reform, justice, truth and reparations. While many of GOSL's supporters had hoped that promised progress on political devolution to the Tamil North-East would counter-balance failures related to transitional justice and institutional reform, they had not factored in Sri Lanka's unhealthy historical dynamic of ethnic outbidding among its two main Sinhala-dominated political parties. Consequently despite GOSL's 'diversification' of pledges to the UN HRC to include political devolution, it has delivered neither on political devolution nor on its pledges of institutional reform, justice, truth and reparations, all of which are foundational to reconciliation.

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Appendix: Mapping of OISL Recommendations to Clauses of Resolution 30-1

OISL recommendation		Resolution 30-1	
	Area	Clause	
Recommendation 1	General	4	
Recommendation 2			
Recommendation 3			
Recommendation 4			
Recommendation 5			
Recommendation 6	Institutional Reform	7	
Recommendation 7		Legislation	7
Recommendation 8			7
Recommendation 9			17
Recommendation 10		Security Sector	8, 10
Recommendation 11			8
Recommendation 12			8
Recommendation 13			8
Recommendation 14			Return of Land
Recommendation 15		Security Sector	8
Recommendation 16			12
Recommendation 17		Justice	9
Recommendation 18			7
Recommendation 19			13
Recommendation 20			6
Recommendation 21	11		
Recommendation 22	4		
Recommendation 23	4		
Recommendation 24	4		
Recommendation 25	Truth-Telling		4
Recommendation 26			4
Recommendation 27		29	
Recommendation 28		14	
Recommendation 29		15	
Recommendation 30	Reparations	4	
Recommendation 31		4	
Recommendation 32		7	
Recommendation 33		10	