

Sri Lanka: Resolution 30/1 Implementation Monitor

Statistical and Analytical Review No. 2

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**LAW &
GOVERNANCE**

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IN JANUARY 2015, Sri Lanka underwent its first major political transition since the end of the armed conflict in 2009. The immediate post-war years saw limited progress on reconciliation and accountability. In this context, the election of President Maithripala Sirisena and a coalition government broadened political space to pursue a pending agenda of reconciliation, accountability and sustainable peace. The government has since made a range of commitments to this effect, both at home and internationally.



Image source: <https://www.flickr.com/photos/narendramodiofficial/16370255238>

In September 2015, Sri Lanka co-sponsored Resolution 30/1 at the 30th Session of the United Nations Human Rights Council (UNHRC).¹ In doing so, the Sri Lankan government committed to a range of measures dealing with human rights, accountability and transitional justice. The endorsement of the Resolution represented a marked shift in Sri Lanka's engagement with the Council - from confrontation under the former government, to some level of consensus and cooperation. Resolution 30/1 has since come to denote the main features of Sri Lanka's transitional justice agenda, particularly with regard to accountability mechanisms for abuses suffered by victims of the conflict.

Resolution 30/1 contains 36 distinct commitments that fall into five broad thematic categories:

1. Transitional justice and reconciliation
2. Rights and rule of law
3. Security and demilitarisation
4. Power sharing
5. International engagement

In June 2016, VR released an analysis of government progress in implementing the 36 actionable commitments in Resolution 30/1. This briefing note contains an updated analysis of progress since June 2016.

THE METHODOLOGY pertaining to this study has been developed in an attempt to create, as far as possible, an objective basis.

		PERFORMANCE INDICATORS			
		Fully met	1/2 met	1/4 met	Not met
IMPLEMENTATION PLAN	Workable	Fully implemented	Partial progress	Poor progress	Poor progress
	Flawed				No progress
	Not included				

Figure 1: Methodology

The methodology involves two assessments:

1. Assessment of performance indicators:

- **Step 1:** Quantitative and qualitative assessment of progress in terms of performance indicators. In the absence of a specific documented plan of implementation by the government, this assessment is based on independently devised performance indicators.
- **Step 2:** Classification of all commitments into ‘completed’, ‘partial progress’, ‘poor progress’ or ‘no progress’, based on the degree to which performance indicators have been met.*

*N.B. Even if performance indicators have not been met to any degree, the commitment would be classified as ‘poor progress’ (as opposed to ‘no progress’) *if* it

possesses a workable implementation plan. Hence the second assessment detailed below may retrospectively determine the final classification of a commitment as ‘poor progress’ or ‘no progress’.

2. Assessment of implementation plans:

- This assessment entails determination of whether the commitment has an identifiable plan for implementation, as verified by evidence of steps taken towards their fulfilment.

The above matrix illustrates the manner in which the status of fulfilment of each individual commitment is classified. It also illustrates the manner in which the implementation plan pertaining to a commitment may determine its classification.

1. TRANSITIONAL JUSTICE AND RECONCILIATION

The government made **9 commitments** on transitional justice and reconciliation in Resolution 30/1.

The Consultation Task Force for Reconciliation Mechanisms (CTF) completed islandwide consultations in 2016, and published its final report in January 2017. However, Minister of Justice Wijeyadasa Rajapakse has dismissed the CTF’s recommendations as ‘unwarranted’ in ongoing reconciliation processes.²

Meanwhile, the Office on Missing Persons (OMP) Act was passed in August 2016. However, the Act is yet to come into operation, as the President has not assigned the subject of the Act to a Cabinet minister who may subsequently assign a date on which the Act becomes operational. Furthermore, Cabinet has recently approved proposals – including those forwarded by the Janatha Vimukthi Peramuna (JVP) – to amend the OMP Act. Contrary to the government’s commitments in Resolution 30/1, the proposed amendments seek to restrict the OMP’s powers to enter into agreements with foreign or domestic entities, including for the purpose of securing technical support, assistance, and collaboration.³

Draft legislation pertaining to the following mechanisms is yet to be finalised:

1. An office of reparations;
2. A Commission for truth, justice, reconciliation and non-recurrence; and
3. A judicial mechanism with a special counsel and the participation of Commonwealth and other foreign judges, defence lawyers and authorised prosecutors and investigators.

Contrary to the government’s commitment at the UNHRC, President Sirisena has maintained that no foreign judges will be permitted to participate in the proposed judicial mechanism.⁴

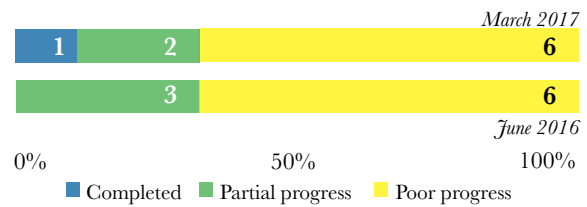


Figure 2: Transitional Justice & Reconciliation



Figure 3: Commitments on Transitional Justice & Reconciliation

2. RIGHTS AND RULE OF LAW

The government made **15 commitments** on rights and rule of law in Resolution 30/1.

The government signed and ratified the International Convention for the Protection of All Persons from Enforced Disappearances in May 2016. A Bill to give effect to the Convention was approved by Cabinet, and subsequently gazetted on 9 February 2017.⁵ In July 2016, Parliament passed the Registration of Deaths (Temporary Provisions) (Amendment) Act, No. 16 of

2016, which enables the issuance of Certificates of Absence for missing persons and victims of enforced disappearances.⁶ Furthermore, the National Authority

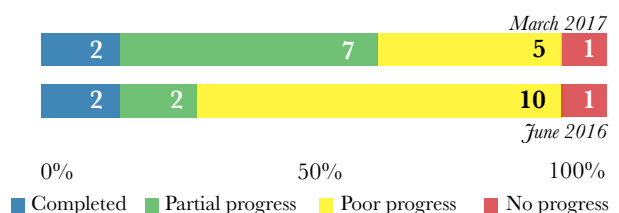


Figure 4: Rights and Rule of Law

for Victims and Witness Protection was established under the provisions of the Assistance to and Protection of Victims of Crime and Witnesses Act, No. 4 of 2015. However, there has been poor progress with respect to reforming this Act to ensure greater compliance with international standards.

There has been some progress in investigations pertaining to certain emblematic cases of violence against journalists. For instance, limited progress has been made in the cases concerning the disappearance of journalist Prageeth Ekmaligoda, the assassination of Sunday Leader editor Lasantha Wickremetunge and the abduction of journalist Keith Noyahr. However, several past attacks on journalists, human rights defenders and religious minorities have yet to be

investigated or prosecuted. For instance, there have been no known prosecutions of perpetrators involved in the Aluthgama riots of 2014.

The government has also reported that it is in the process of repealing and replacing the Prevention of Terrorism Act (PTA). A draft counter-terrorism law, developed by a drafting committee chaired by Minister of Ministry of Law & Order and Southern Development, is currently before the Sectoral Oversight Committee on National Security in Parliament. Revisions recommended by some members of the drafting committee – including repealing provisions on the admissibility of confessions to police officers and reducing the period of detention – were incorporated into the draft law.



Figure 5: Commitments on Rights and Rule of Law

3. SECURITY AND DEMILITARISATION

The government made 7 commitments on security and demilitarisation in Resolution 30/1.

The government has made some progress in releasing military-held land to civilian owners. In June 2016, the military held over 8,200 acres of privately-owned land in the Northern Province.⁷ While periodic land releases have since taken place, the military has reportedly requested that it is permitted to retain 1,000 acres in the Valikamam North area.⁸ Military occupation of privately-owned land continues to prevent resettlement of internally displaced persons (IDPs) in the North –

for instance, in Keppapilavu in the Mullativu district.

Meanwhile, there is no publicly available information to suggest that meaningful security sector reforms have been initiated as pledged in Resolution 30/1.

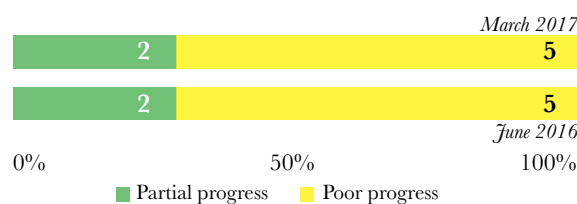


Figure 6: Security and Demilitarisation



Figure 7: Commitments on Security and Demilitarisation

4. POWER SHARING

The government made **2 commitments** on power sharing in Resolution 30/1.

A constitutional reform process led by a Constitutional Assembly is ongoing. The Public Representations Committee on Constitutional Reform (PRC) conducted public consultations on the process, and released its final report in May 2016. Meanwhile, a parliamentary Steering Committee and six thematic Sub-Committees were appointed to submit proposals to the Constitutional Assembly. The six Sub-Committees published their recommendations in November 2016.⁹

Key political parties have expressed reservations over the broad contours of the political settlement

that the constitutional reform process is expected to deliver. For instance, the Central Committee of the Sri Lanka Freedom Party (SLFP) has stated that it would not support reforms that require a referendum or amendments that merge the Northern and Eastern Provinces. It has instead favoured full implementation of the Thirteenth Amendment to the Constitution as a means to devolve power.¹⁰

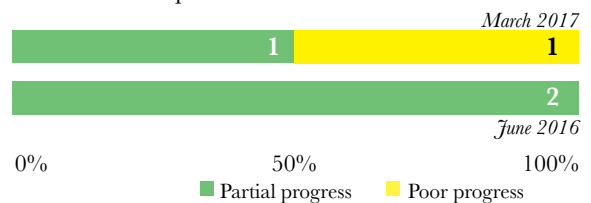


Figure 8: Power Sharing

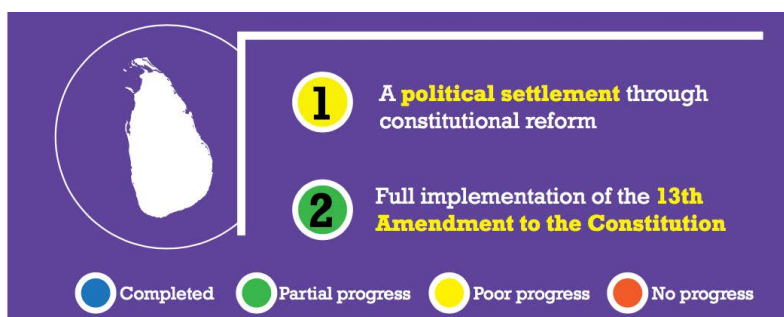


Figure 9: Commitments on Power Sharing



5. INTERNATIONAL ENGAGEMENT

Resolution 30/1 contains **3 commitments** on international engagement.

The government has sustained constructive engagement with the Office of the High Commissioner for Human Rights (OHCHR) and has issued standing invitations to all UN special procedure mandate holders. Meanwhile, there has been poor progress in overall implementation of the recommendations contained in the report of the OHCHR Investigation on Sri Lanka (OISL). The report was tabled at the 30th Session of the UNHRC in September 2015.¹¹ For example, there has been no review of convictions

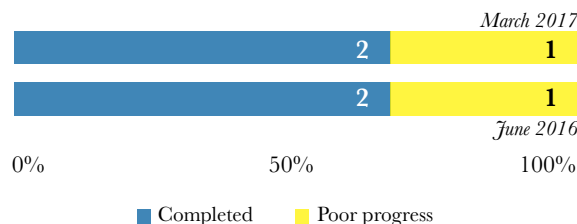


Figure 10: International Engagement

under the PTA, including those secured on the basis of confessions induced through torture in custody. Nor has the government developed a national reparations policy that considers the specific needs of women and children.



Figure 11: Commitments on International Engagement

RESOLUTION 30/1: OVERALL STATUS OF IMPLEMENTATION

Poor progress has been achieved with respect to half of commitments contained in Resolution 30/1. Only five commitments have been fully implemented thus far. Meanwhile, very limited progress has been achieved since in June 2016. In the past eight months, five commitments progressed from poor to partial fulfilment. There was no change in the number of those that were fully implemented.

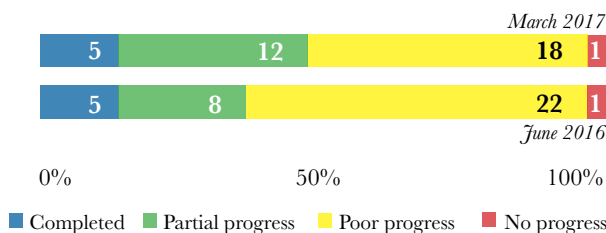


Figure 12: Overall Status of Implementation

¹ Resolution adopted by the Human Rights Council on 1 October 2015 (A/HRC/RES/30/1), 30th Session of the UNHRC.

² ‘I have no confidence in the CTF: Wijeyadasa’, *The Daily Mirror*, 6 January 2017, at <http://www.dailymirror.lk/article/I-have-no-confidence-in-the-CTF-Wijeyadasa-121817.html> [last retrieved: 22 February 2017].

³ ‘Decisions taken by the cabinet of ministers at its meeting held on 07-02-2017’, *News.lk*, 8 February 2017, at <http://www.news.lk/cabinet-decisions/item/15847-decisions-taken-by-the-cabinet-of-ministers-at-its-meeting-held-on-07-02-2017> [last retrieved: 22 February 2017].

⁴ ‘President rules out foreign judges in Sri Lanka war crimes probe’, *News.lk*, 20 March 2016, at: <http://www.news.lk/news/politics/item/12660-president-rules-out-foreign-judges-in-sri-lanka-war-crimes-probe> [last retrieved: 3 March 2017]; ‘President rejects foreign judges’, *The Daily Mirror*, 7 January 2017, at <http://www.dailymirror.lk/121833/President-rejects-foreign-judges> [last retrieved: 3 March 2017]; and ‘I have backbone to reject foreign judges: MS’, *The Daily Mirror*, 4 March 2017, at <http://www.dailymirror.lk/article/I-have-backbone-to-reject-foreign-judges-MS-124881.html> [last retrieved: 4 March 2017].

⁵ International Convention for the Protection of All Persons from Enforced Disappearance Bill, gazetted on 9 February 2017, at http://documents.gov.lk/files/bill/2017/2/01-2017_E.pdf [last retrieved: 22 February 2017].

⁶ Registration of Deaths (Temporary Provisions) (Amendment) Act, No. 16 of 2016, at http://documents.gov.lk/files/act/2016/9/16-2016_E.pdf [last retrieved: 22 February 2017].

⁷ Parliament speech by TNA MP S. Shrivatharan, Adjournment Motion on ‘Return of Military-held Lands and Structured Programmes Aiming the Displaced in the North and East’, *Parliamentary Hansard*, Volume 244 No.09, 929, 10 June 2016.

⁸ ‘Army to release another 700 acres’, *The Sunday Times*, 11 September 2016, at <http://www.sundaytimes.lk/160911/news/army-to-release-another-700-acres-208404.html> [last retrieved: 22 February 2017].

⁹ The reports of the six sub-committees can be accessed at <http://english.constitutionalassembly.lk/interim-report> [last retrieved: 1 March 2017].

¹⁰ ‘Confusion, contradictions over Executive Presidency’, *The Sunday Times*, 15 January 2017, at <http://www.sundaytimes.lk/170115/columns/confusion-contradictions-over-executive-presidency-224880.html> [last retrieved: 22 February 2017].

¹¹ Comprehensive report of the Office of the United Nations High Commissioner for Human Rights on Sri Lanka, 28 September 2015 (A/HRC/30/61), 30th Session of the UNHRC.



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