

JUSTICE DENIED:

A REALITY CHECK ON RESETTLEMENT,
DEMILITARIZATION, AND RECONCILIATION IN SRI LANKA



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The Oakland Institute

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Acronyms

| | |
|-------|---|
| CID | Criminal Investigation Department |
| CPA | Centre for Policy Alternatives |
| CTA | Counter Terrorism Act |
| CTF | Consultation Task Force on Reconciliation Mechanisms |
| IDP | Internally Displaced Person |
| ITJP | International Truth and Justice Project |
| LTTE | Liberation Tigers of Tamil Eelam |
| OMP | Office on Missing Persons |
| PTA | Prevention of Terrorism Act |
| UNCAT | United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment |
| UNHRC | United Nations Human Rights Council |

Executive Summary

In January 2015, Sri Lanka elected a new President. After nine years of rule, including overseeing the horrific final offensives of the country's civil war, President Mahinda Rajapaksa was voted out.

The election of Maithripala Sirisena was historic. Running on a platform that promised, among other things, to address corruption, restore an independent and impartial judiciary, and launch an inquiry into war crimes,¹ many saw the support that Sirisena received from minority groups – including the Tamils – as vital to his victory.²

Sri Lanka's 26-year long civil war ended in 2009 with the defeat of Tamil separatists, led by the Liberation Tigers of Tamil Eelam (LTTE). The final military offensive was bloody and involved widespread destruction, killing of tens of thousands of civilians by government shelling and aerial bombing and displacing the entire population living in rebel-controlled territories. The Northern and Eastern provinces – Tamil strongholds, where the final offensives played out – were devastated, with significant losses of life, land, infrastructure, and livelihoods, as well as the massive displacement of people from their homes and land.³

Eight years after the end of the war, tens of thousands of internally displaced persons (IDPs) continue to languish in welfare camps or with relatives in these two regions. Over one hundred thousand more continue to live in communities and refugee camps in the Indian state of Tamil Nadu.⁴ Meanwhile, the military has maintained a significant presence in the North and East, including through the retention of thousands of acres of land for military camps and non-military enterprises, such as luxury resorts.⁵ In addition to the persistent displacement and militarization of the North and East, the Tamil people have experienced decades of marginalization, including 'Sinhalization' – the process of replacing Tamil culture, language, and history with that of the Sinhalese⁶ – that has intensified since 2009.⁷

In addition, war crimes – including numerous alleged cases of rape, torture, kidnapping, and the mass killing of civilians, prisoners, and relief workers – have gone unpunished and unaddressed by the justice system.⁸ According to the government, at least 65,000 people remain missing;⁹ however, the actual figure could be more than twice that many according to other sources.¹⁰

Since 2014, the Oakland Institute has closely monitored the situation in Sri Lanka, and produced several reports documenting, amongst other issues, the on-going military occupation of the North and East, the continued displacement of thousands, and the persistent human rights violations.¹¹ The Institute's most recent research has critically examined the actions of the new Sirisena administration and shared the voices and stories of IDPs.¹²

As the United Nations Human Rights Council (UNHRC) meets in March 2017 to discuss Sri Lanka as part of its 34th session, the Oakland Institute offers another status report focusing on land rights, resettlement, and the process of transitional justice in the country.

In October 2015, the Sri Lankan government co-sponsored UNHRC Resolution 30/1, which outlined its commitment to accelerate the return of land to IDPs, to demilitarize the North and East, and to ensure transitional justice in the country.¹³ However, after examining the actions taken by the government over the past 16 months, this report casts serious doubts over its actual willingness or ability to fulfill these commitments.

On the issues of displacement and land, in 2016 the Sri Lankan government adopted a National Policy on Durable Solutions for Conflict-Affected Displacement,¹⁴ released more than 1,600 acres of additional land,¹⁵ and embarked on several housing and infrastructure projects.¹⁶ However, these steps are marked by numerous problems. These include: the continued occupation of land by the military, including for tourism enterprises; the poor quality of the lands released, which has negatively impacted the ability for many to rebuild their livelihoods; a vast and unmet need for housing and infrastructure for the displaced; and growing mistrust bred by ever-changing timelines for resettlement.

Furthermore, analysis of the country's military budget raises important questions about the ability of the Sirisena government to demilitarize the North and East. The military budget has more than doubled since the end of the war,¹⁷ and under President Sirisena's rule, the past two budgets were historically the highest levels of military spending.

The larger transitional justice process has also been mired with problems.



In August 2016, the newly created “Consultation Task Force on Reconciliation Mechanisms” (CTF) expressed serious concerns about whether genuine consultations can take place in the country, noting that people continue to fear speaking out as allegations of abductions and the intimidation of victims and human rights defenders continue.¹⁸ The CTF process included fast-tracked and inadequate consultations on the creation of an Office on Missing Persons (OMP). The OMP Act, which passed in August 2016, contains provisions around immunity that may undermine future attempts to bring justice for war crimes.¹⁹ Despite the hurried consultations, six months after the OMP Act passed, the office has yet to be established.

Resolution 30/1 clearly specified the importance of including international legal experts in any judicial mechanism created to address war crimes. Yet, since the passage of the resolution, the government has backtracked on this agreement and clearly rejected any foreign involvement. In September 2016, the Minister of Justice warned that anyone alleging that the Sri Lankan forces committed war crimes could face legal action.²⁰

The composition of the National Authority for Victim and Witness Protection provides additional evidence of government’s abandonment of justice for war victims. The body has no Tamil members and includes several

problematic individuals, including at least one alleged perpetrator of torture, and an individual who allegedly played a role in preventing witnesses from testifying against the security forces in the case of the killing of 17 aid workers.²¹

Finally, according to Resolution 30/1, the government was expected to repeal the infamous Prevention of Terrorism Act (PTA). It instead drafted a replacement legislation that appears to be more problematic than the original. The proposed new legislation would, for instance, allow torture to continue and restrict detainees’ legal rights.²²

As President Sirisena enters his third year in power, the international community has a critical role to play. Over the past 16 months, Sirisena has backpedaled on key reconciliation promises²³ while former-President Mahinda Rajapaksa appears to be attempting to regain support and power.²⁴ Divisions in Sri Lanka still run deep, and strong pressure from the international community is vital to keep the process of reconciliation and transitional justice alive.

With tens of thousands still displaced, a continued military presence in the North and East, and numerous human rights issues confronting the country, this report is a reminder to the Sirisena administration and international community that significantly more needs to be done to ensure not only full resettlement, but broader country-wide reconciliation.

Introduction

Sri Lanka’s 26-year-long civil war ended in 2009 with the defeat of Tamil separatists, led by the Liberation Tigers of Tamil Eelam (LTTE). The final military offensives of the war devastated the Northern and Eastern provinces, with significant losses of life, land, infrastructure, and livelihoods, as well as the massive displacement of people from their homes and land.²⁵ Eight years after the end of the war, tens of thousands of internally displaced persons (IDPs) continue to languish in welfare camps or with relatives in Sri Lanka’s North and East.

The Oakland Institute first reported on land-based human rights abuses in Sri Lanka in mid-2015. The initial report detailed the continued mass displacement, as well as ongoing trends of militarization and Sinhalization – the

process of replacing Tamil culture, language, and history with that of the Sinhalese – in the two provinces.²⁶ Since then, the Institute has continued to examine and track issues of land and displacement in the region.²⁷

This report begins with an overview of the new National Policy on Durable Solutions for Conflict-Affected Displacement, passed by the Sri Lankan government in August 2016, which is followed by a review of the reality on the ground regarding land and displacement. The report then turns to examine the implementation of Sri Lanka’s promises on the larger transitional justice process. Based on this examination, the report discusses the role of the international community in ensuring that resettlement and transitional justice processes are appropriately conducted.



The National Policy on Durable Solutions for Conflict-Affected Displacement

A New Way Forward?

On August 16, 2016, a new National Policy on Durable Solutions for Conflict-Affected Displacement was approved by Sri Lanka's cabinet.²⁸ The policy, which came after ten months of meetings and consultations,²⁹ "affirms the need to respond to all IDPs and displacement-affected populations in a manner that is non-discriminatory ... fair, just, and equitable."³⁰ It also offers a set of rights-based principles and standards meant to be used by all stakeholders who work with IDPs in the country.

At the state level, the policy outlines a host of government responsibilities for addressing the current IDP crisis. Highlights include: a commitment to taking all possible measures to end current displacement;³¹ an acknowledgement that providing protection and assistance to displaced persons is a duty, not an act of charity;³² a recognition that economic security must also be protected;³³ a requirement that aid not be used to further political or religious objectives;³⁴ and an obligation for the state to monitor the policy's implementation.³⁵

The policy also affirms and articulates the rights of all IDPs and "displacement-affected persons" – those who are not awaiting resettlement, but face hardships due to displacement, such as lack of infrastructure and livelihoods. These rights include, but are not limited to: the right to the assistance required to "rebuild their lives in safety and dignity;"³⁶ the right to a wide variety of reparations;³⁷ equal rights for landless persons;³⁸ the right to adequate housing;³⁹ the right of informed and voluntary choices when it comes to resettlement;⁴⁰ access to justice mechanisms; and more.⁴¹

On the issue of land, the policy provides important directives. For landless displaced persons, including people born in welfare camps who lack claims to specific land, the policy notes that "the State must ensure that lands allocated for such [people] are suitable and can support viable lives and livelihoods, with the necessary infrastructure and facilities for transport, electricity, sanitation, water supply, as well as access to health and education."⁴² Concerning livelihoods,

it states that the "access previously enjoyed to communal land and water (marine and inland) for purposes such as pasture, fishing, and foraging" must also be respected.⁴³ And for all displaced people, the policy stresses the importance of participation, consultation, and having full information when it comes to making decisions about resettlement, stating that a choice of where to resettle made "in the absence of the option to return, does not preclude the right to return should that option become feasible at a later date."⁴⁴

Most importantly, the policy enshrines "the right of IDPs and refugees to return to their former homes and land" and "commits the State to release in a timely manner all state-held land from which people were displaced or which they owned."⁴⁵ Should these statements be enacted and upheld in full, this would represent a major breakthrough for Sri Lanka's IDPs. Unfortunately, there is a catch. The policy allows the government to retain land "legitimately required for public purposes in exceptional cases."⁴⁶

What constitutes exceptional cases remains unclear. A critical aspect of displacement in Sri Lanka has been the continued military occupation of land in the North and East, including for explicitly non-military purposes such as luxury resorts, golf courses, and other enterprises.⁴⁷ While the policy states that the government must release land that it uses for non-military purposes, "including, but not limited to, agricultural production, tourist enterprises, or recreation,"⁴⁸ it also stipulates that the government can retain control of land if it is required for "public purposes" which it then clarifies could include matters of "national security or development."⁴⁹ This language, coupled with various government statements that not all land will be released,⁵⁰ suggests that complete resettlement cannot be expected.

While overall this new policy lays out many positive aspirations regarding resettlement, the devil is in the details of how the policy is enacted.



Reality Check on Land Release & Resettlement

An analysis of government and media reports suggests that between President Sirisena's election on January 8, 2015 and December 31, 2016, 4,779.8 acres of land in the North and East was released for resettlement, and an additional 1,254 acres was pledged to be released.⁵¹ For comparison, in a parliamentary speech on January 3, 2017, the Minister of Prison Reforms, Rehabilitation, Resettlement, and Hindu Religious Affairs declared that 4,464 acres had been released between 2015 and 2017.⁵²

While the release of land is positive, significant areas remain under occupation, and tens of thousands remain displaced. In March 2016, the Colombo-based Centre for Policy Alternatives (CPA) reported that approximately 12,750 acres

of state and private land continued to be occupied in the Northern Province alone.⁶⁵

This means that if all the lands released or pledged to be released in the North since March 2016 were honored, there would still be over 10,000 acres held in the region. The Ministry of Prison Reforms, Rehabilitation, Resettlement, and Hindu Religious Affairs likewise estimated that, as of August 31, 2016, 43,607 IDPs were yet to be resettled.⁶⁶ There are also over 100,000 Sri Lankan refugees living in communities and refugee camps in Tamil Nadu, India.⁶⁷

Alongside the large quantities of land that continue to be occupied, and large numbers that continue to be displaced, several vital issues remain.

Table 1: Reports of Lands Released Under Sirisena Administration between January 8, 2015 and December 31, 2016⁵³

| Date | # Acres | Location | Pledged or Released |
|-----------------------------|----------------|--|------------------------|
| February 13, 2015 | 1000 | Palaly High Security Zone, Jaffna District | Released ⁵⁴ |
| August 23, 2015 | 818 | Sampur | Released ⁵⁵ |
| October 6, 2015 | 613 | Kilinochchi and Mullaitivu Districts | Released ⁵⁶ |
| December 31, 2015 | 701.5 | Tellippalai and Kopay | Released ⁵⁷ |
| March 14, 2016 | 707 | Kopay and Tellippalai | Released ⁵⁸ |
| March 2016 | 177 | Former SLNS Vidura, Sampur, Eastern Province | Released ⁵⁹ |
| June 27, 2016 | 701.3 | Tellippalai Divisional Secretariat and Palaly Army Cantonment, Periya Pachchilapalli | Released ⁶⁰ |
| July 3, 2016 | 62 | Valikamam North | Released ⁶¹ |
| July 9, 2016 | 100 | Vavuniya | Pledged ⁶² |
| September 11, 2016 | 700 | Valikamam North | Pledged ⁶³ |
| September 30, 2016 | 454 | Kankasanthurai and Thaiyiddy | Pledged ⁶⁴ |
| Total Released Lands | 4,779.8 | | |
| Total Pledged Lands | 1,254 | | |

Ongoing Militarization and Use of Land by the Military

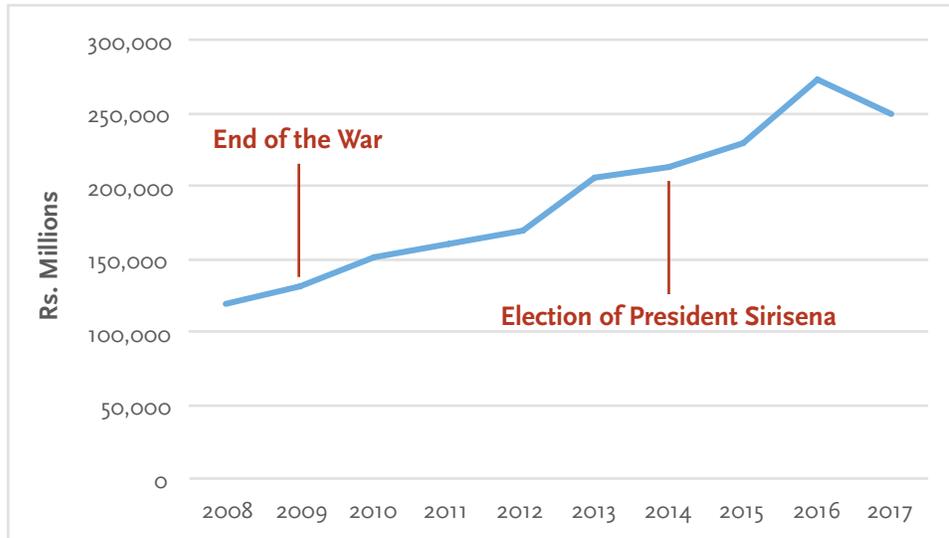
While military check points have decreased since then,⁶⁹ quantifying the exact change in militarization in the North is challenging. The Oakland Institute reached out to the Ministry of Defence to ascertain current numbers, and did not receive a response.⁷⁰

Government budget documents, however, provide some guidance on the issue. Between 2008 and 2016, the annual

appropriations budget for Sri Lanka's Army, Navy, and Air Force steadily increased from Rs. 119,432,000,000 (approximately US\$798 million)⁷¹ to Rs. 272,028,355,000 (approximately US\$1.82 billion).⁷² There was a slight decrease in 2017 to Rs. 250,055,446,000 (approximately US\$1.67 billion).⁷³



Figure 1: Budget Allocations for Army, Navy, and Air Force between 2008 and 2017⁷⁴



It is striking that the military spending has not decreased despite the end of the civil war in 2009, and instead, has reached record levels since President Sirisena came into power in 2015. It is worth noting that the entire governmental budget for Sri Lanka also increased significantly over this period of time.⁷⁵ However, whereas the share of the military budget was 12.91 percent of the overall budget in 2008 (the last full year of the war),⁷⁶ in 2016, seven years after the war and one year into President Sirisena’s term, the government

still planned to spend 14.01 percent of its overall budget on the Army, Navy, and Air Force.⁷⁷

In addition to these troubling budgetary trends is the ongoing occupation of land in the North and East not only for military camps, but also for numerous military-run enterprises.⁷⁸ This includes large-scale enterprises such as luxury resorts and golf courses, as well as smaller enterprises like cafes and barber shops.⁷⁹

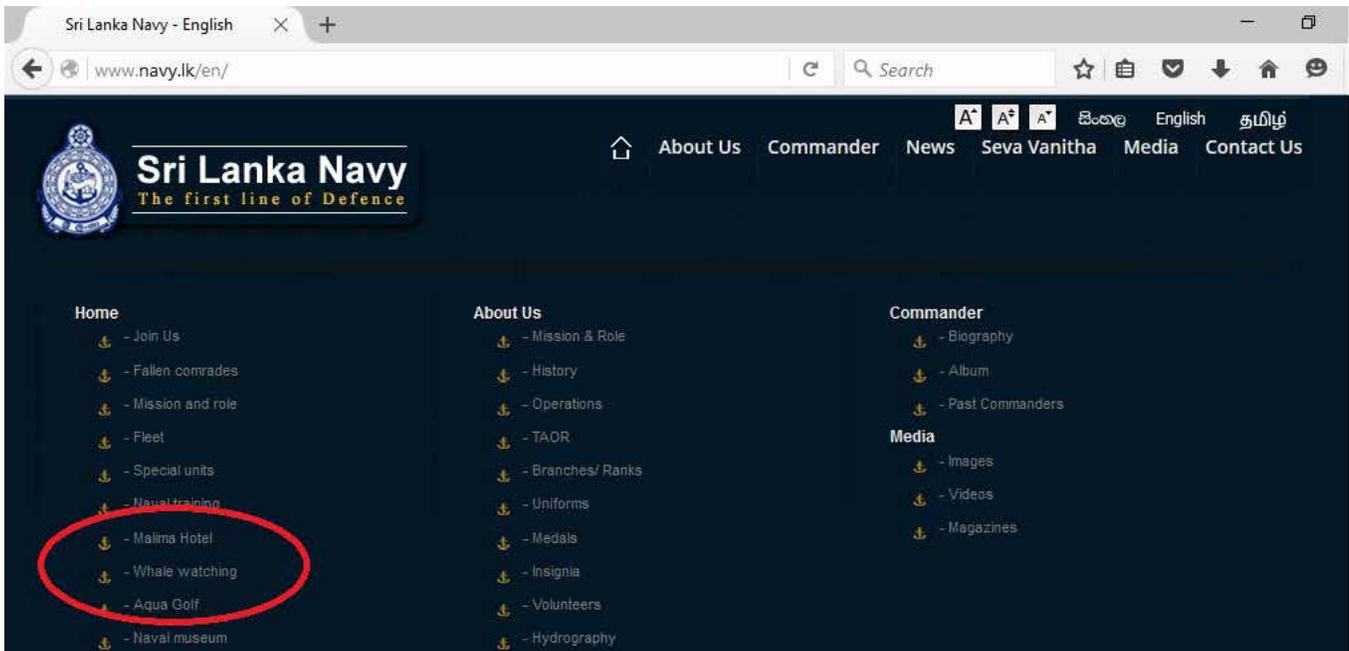
“I don’t think they will close [the resorts] because all are permanent structures. [But] due to international pressure, they have closed [some] tea shops and cafes, which were operated by [the] military alongside main roads. Recently, societies of hair dressers in [the North] handed over [a] petition to Government Agents [asking them] to close all military operated hair dressing centers ... Military salons are provid[ing] service[s] to [the] public [at a] very low cost. [As a result] hair dressers [have] lost their livelihood[s]. [The] same [is happening with] vegetable and fruit production, [which] are carri[ed] out by [the] military ... Due to this situation, local farmers [have also lost] their market[s] and livelihood[s].”

—Communication from IDPs, October 31, 2016

Instead, the government continues to promote tourism as an important aspect of its economic development plan. This has raised concerns that the development of the tourism industry could create additional barriers for the resettlement process.⁸⁰

One such example comes from Panama, in Sri Lanka’s Eastern province. In 2010, approximately 350 families were displaced from their land in Panama. This land was subsequently turned into military camps and ultimately also a hotel, *Panama Lagoon Cabanas*, which is run by Malima Hospitality, a hotel chain managed by the Sri Lankan Navy.⁸¹





Screen shot of the Sri Lanka Navy website, highlighting links to the Malima Hotels, whale watching and aqua golf.

After years of legal battles, in early 2015, the Sri Lankan government agreed to return 340 acres of the seized land to its original owners.⁸² However, as of September 2016, the local government had reportedly not taken the necessary action to allow resettlement to occur. All 350 families remain displaced.⁸³

A recent report by the CPA highlights additional case studies from Sri Lanka's North and East where tourist resorts – many of which are run by the military – have negatively

impacted local communities. The negative effects go beyond displacement and include various economic hardships, such as the expulsion of fishermen from beaches and coastline, the lack of meaningful employment for local residents in new resorts, competition by the Navy for boat tour customers, and more.⁸⁴ Many local communities are not opposed to tourism as a way to develop the region. Their opposition stems from the continued displacement and negative impact of these resorts on local livelihoods.⁸⁵



Uga Bay Resort, Pasikuda, Eastern Province © The Oakland Institute

Box 1: Continued Sinhalization in the North and East

The Oakland Institute's first report on Sri Lanka looked at the impact of government-led efforts of "Sinhalization." Sinhalization is a process whereby Tamil culture and history is replaced with that of the Sinhalese. Examples include: the creation of Sinhalese victory monuments, the establishment of Sinhalese signboards and street and village names, the construction of Buddhist temples and religious relics, and efforts to change the demographics, all in majority Tamil regions. In the years immediately following the war, government-led efforts of Sinhalization intensified in the North and East.⁸⁶

A full examination of ongoing trends of Sinhalization in the North and East is beyond the scope of this report. However, it is worth noting that anecdotal evidence demonstrates that these processes continue to take place. In recent months reports have surfaced of Buddhist statues being built beside Hindu monuments in the Tamil-dominated town of Mannar,⁸⁷ and mounting protests regarding Sinhala housing projects in the North.⁸⁸

In addition, there are plans backed by the Ministries of Land and Tourism to turn a region known to the Sinhalese as Lankapatuna – Illankathurai-Muhutuvaram to the Tamils – into a new tourism development zone.⁸⁹ During the civil war, when the area was held by the LTTE, it was the site of several Hindu temples. After the LTTE were pushed out in 2006, those temples were destroyed and replaced with Buddhist places of worship, marking what Sinhalese Buddhists believe to be an ancient Buddhist holy site.⁹⁰ Lankapatuna remains a source of tension between the Tamils and Sinhalese,⁹¹ raising serious concerns with the announcement of the new tourist zone, which will reportedly cover 450 acres of land and include space for 25-30 luxury hotels.⁹²

Quality & Location of Released Lands in Question

A second issue concerns the quality and location of released lands, especially as it pertains to rebuilding livelihoods. The National Policy on Durable Solutions recognizes that finding lasting solutions to displacement includes economic security⁹³ and that IDPs are entitled to different forms of assistance to "recover and rebuild their lives in safety and dignity."⁹⁴ This suggests that IDPs can expect to be resettled on lands that will allow them to rebuild their livelihoods and allow them to live free from fear and intimidation.

However, this is often not the case. The lands released are not always fit for cultivation, and in some cases, are former stone quarries or overgrown with decades of growth, making the rebuilding of farming livelihoods impossible.⁹⁵ Lands are also often located in the shadows of military and naval bases, posing serious problems and raising fear and anxiety amongst local who faced years of harassment and abuse at the hands of the Sri Lankan army.⁹⁶ As a result, the actual rate of resettlement after lands are officially released can be very low.

"The rate of [families] returning [to released lands] is very low because:

1. Some of the released lands are stone lands and were used for stone mining before displacement.
2. Most of the released farming lands are totally overgrown like jungle and scrub bushes.
3. The landscape of most of the released lands has totally changed. Houses, milestones, and wells have been bulldozed. So, people have difficulties in identifying lands.
4. Some original roads have been closed and new roads have been built by the army, making access to the lands difficult.
5. There are still big army camps in the released areas, creating fear among people who do not want to live along such camps.
6. Infrastructures have to be rebuilt totally. Progress of rebuilding of infrastructure is very slow.
7. Resettled people are struggling to access clean water and decent shelter.
8. Electricity, health, schooling and livelihood are other major issues in the resettled area."⁹⁷



In the face of these issues, IDP communities have petitioned, advocated, and protested for their rights to return to safe and proper land. In Sampur, this advocacy led to the cancellation of the proposed Sampur coal plant – which was to be built alongside released IDP lands, raising serious

concerns about health and environmental harms.⁹⁸ In other regions, the protests continue, with groups threatening self-immolation⁹⁹ and demanding they be returned to their original lands and homes, not alternative lands.¹⁰⁰

On January 31, 2017, a group of IDPs from Keppapilavu, in Mullaitivu District, arrived at an Air Force base, having reportedly been told that their land was to be released that day. When the land was not released, the community launched a sit-in protest that, at the time of this writing, has entered its third week.¹⁰¹ The community was originally displaced in 2009, and after several years at the notorious Menik Farm, were resettled to a “Model Resettlement Village” located on alternate lands. The houses they were resettled to were reportedly of very poor quality and lacked access to proper land for cultivation and groundwater.¹⁰² On February 14, 2017, the Ministry of Prison Reforms, Rehabilitation, Resettlement and Hindu Religious Affairs announced that, after conversation with President Sirisena and a local Army Commander, the land would be released “very soon.”¹⁰³ The villagers have vowed to continue their protest until their land is fully released.¹⁰⁴



House in the “Model Resettlement Village” © Tamil Guardian

Protests to secure livelihoods have also taken place. In the Myladdy area, groups have petitioned for the release of 12 kilometers of coastline that are vital for fishermen to resume their livelihoods.¹⁰⁵ They argue that resettling fishermen with no access to the coastline can only fail. Other groups have raised concerns with the resources taken in the Palaly High

Security Zone, as trees have been felled and sands mined for use in the army’s construction of new houses for landless IDPs.¹⁰⁶ Should this mined and felled land be returned to IDPs, they argue that restoring traditional agricultural livelihoods would be nearly impossible.¹⁰⁷



Box 2: Life after Resettlement¹⁰⁸

In the fall of 2016, most of the land belonging to a group of IDPs living in Sri Lanka's North was released. While this is a cause for celebration, a deeper exploration into their experience highlights the various challenges and barriers to resettlement that stand in the way of many.

When the IDPs returned to their lands, they found their houses in varying states of disrepair. Some had been totally destroyed, others were damaged during the war and await repair, while others still had been occupied by military forces and were either destroyed or seriously damaged when the military vacated.¹⁰⁹

Local infrastructure also requires serious work. Previously existing roads have been grown over, with new roads created for military purposes. Large, gaping holes exist in the agricultural lands where sand and stone were mined for military facilities. Canals and wells, which were previously used for irrigation and drainage, have been filled with sand and garbage and need to be restored.



A well on returned land in the North filled with debris
© The Oakland Institute



Bulldozed land returned to IDPs in the North © The Oakland Institute

While some government support has been offered to help clear the lands and prepare them for resettlement, the amount offered, according to the IDPs, is insufficient. In addition, they claim that no financing has been offered to fill the holes in the land where sand and stone was mined. Without financial support for these activities, resettlement is nearly impossible.

When asked what infrastructure is needed to ensure the IDPs can rebuild their lives in safety and dignity, they responded that roads and drainage canals need to be restored; consistent supplies of electricity and water must be provided; drinking water and agricultural wells must be rebuilt; agricultural lands must be renovated; schools, hospitals, and other community facilities must be re-established; lands must be re-surveyed; and houses must be constructed or repaired.

In addition to the above, returnees also need the facilities and support to re-establish their livelihoods. This includes support in re-engaging in agriculture; reconstructing fishing infrastructure; and supporting the start-up of small businesses and community-based organizations.

While the return of land to displaced communities is vital, in reality, it is only the first step on the long road to resettlement and justice.



Unmet Infrastructure & Housing Needs

According to the Ministry of Prison Reforms, Rehabilitation, Resettlement, and Hindu Religious Affairs, as of 2016, 137,000 houses are still needed in the North and East for resettlement.¹¹⁰ In addition to this significant housing deficit, successful resettlement requires infrastructure improvements, including access to sanitation facilities, water and irrigation, roads, hospitals, schools and more.

To address these needs, in 2016, several new projects were pledged and/or started with support and funding by the Sri Lankan government. These include the construction of 65,000 houses for IDPs;¹¹¹ the allocation of Rs. 14 billion (approximately US\$93.6 million) for “high impact resettlement projects” including housing and sanitation projects;¹¹² and the approval of Rs. 971 million (approximately US\$6.49 million) to build the houses needed to resettle the 971 families currently residing in welfare camps in the North.¹¹³

This increase in funding and support towards infrastructure and housing is notable.¹¹⁴ However, critics have pointed out that much more will be required before durable solutions to

displacement can be realized. Particular criticism has been raised with the government’s plans to construct 65,000 pre-fabricated steel houses in a process that some argue will not lead to local employment, and will result in high-cost, hastily made, inferior quality housing.¹¹⁵

It is also unclear whether the government will sustain its commitment to resettlement past 2017. While Rs. 14 billion (US\$93.6 million) was allocated for accelerated resettlement activities in the Northern and Eastern provinces in 2016, only Rs. 9 billion (US\$60.16 million) was allocated in 2017, and the government’s 2017 Budget Estimate makes no provisions for accelerated resettlement activities in 2018 and 2019.¹¹⁶

The Oakland Institute reached out to the Ministry of Prison Reforms, Rehabilitation, Resettlement and Hindu Religious Affairs to ask about its future commitments – both to financing resettlement past 2017, and with regard to the remaining 72,000 houses that need to be built to fulfill the Ministry’s own estimate that 137,000 are required to complete resettlement.¹¹⁷ No response was received.

Changing Timelines

Since January 2016, numerous deadlines have been provided for the identification of lands for resettlement, the closure of welfare camps, and the full resettlement of the North and East. These changing timelines and the lack of clarity and transparency regarding this process to date

have been distressing for those awaiting resettlement. As noted by the UN High Commissioner for Human Rights, the “lack of transparency and information is feeding new levels of frustration and disenchantment.”¹¹⁸

Table 2: Announcements on Timelines for Resettlement¹¹⁹

| Date | Pledge |
|-------------------|---|
| January 20, 2016 | President Sirisena gives six-month deadline to resettle over 44,000 IDPs in Northern province. ¹²⁰ |
| June 6, 2016 | Minister of National Dialogue, Mano Ganesan, says that Sri Lanka will resettle all people in the North by the end of the year. ¹²¹ |
| July 3, 2016 | Government says the land issue in the North and East will be resolved next year, including demilitarization and the return of all civilian-owned property, except those required for security reasons. ¹²² |
| July 22, 2016 | <i>The Hindu</i> reports on a leaked government plan to close 31 remaining welfare camps in Jaffna by August 15, including full resettlement of 971 families. ¹²³ |
| August 19, 2016 | Ministry of Prison Reforms, Rehabilitation, Resettlement, and Hindu Religious Affairs says that IDPs currently living in welfare camps in North will be resettled in permanent houses soon. ¹²⁴ |
| September 3, 2016 | President Sirisena says all remaining privately-owned lands in North will be returned to owners within three months. ¹²⁵ |
| September 8, 2016 | Jaffna security forces commander Mahesh Senanayake says all IDPs in northern Jaffna will be resettled by June 2017. ¹²⁶ |



In response, various IDP communities have engaged in ongoing actions, including a hunger strike, marches, and petitions, to demand clear timelines and processes for the return of their lands.¹²⁷ According to one community member:

“As a scattered community for the last 26 years, we don’t have [the] capacity to listen [to these changing timelines]. We are [on] the edge of tolerance. We trusted [the] President’s work and deadline [of June 2016]. That is [why] we expected a land release announcement from [the] President[’s] mouth when he visited Jaffna on [June] 18th... [The] President’s silence during the Jaffna visit related to [the] land release made us extreme[ly] depressed ... During the post-war context, if [the] government want[s] to build reconciliation, [gaining] affected peoples trust is important. [The] government

should maintain fair and free communication with us, related with [the] land release ... All actions need clear and transparent timeline[s].”¹²⁸

Unfortunately, poor communication appears to be a theme throughout Sirisena’s time in office, causing unease and mistrust around a variety of critical issues.¹²⁹

The issues listed above raise serious alarm bells about the speed, appropriateness, transparency, and accountability of resettlement in Sri Lanka. They also demonstrate that, while positive in content, there is a significant gap between the rights and responsibilities set out in the National Policy for Durable Solutions, and the current reality on the ground in the North and East.

Land is also but one aspect of the larger path to reconciliation in Sri Lanka. Therefore, to fully understand the issue of land and displacement, one must also examine the larger post-war context of the country, including transitional justice.

Failed Promises for the Transitional Justice Process

Eight years after the end of the conflict, war crimes, including numerous alleged cases of rape, torture, kidnapping and mass killing of civilians, prisoners, and relief workers, have gone unpunished and unaddressed by the justice system.¹³⁰ According to the government, at least 65,000 people remain missing,¹³¹ the actual figure could be more than twice that many according to other sources.¹³²

The decision by the Sri Lankan government in October 2015 to co-sponsor the UNHRC Resolution 30/1 was seen

as an important move. By agreeing to the resolution, the government committed to accelerate the return of land to IDPs, demilitarize the North and East, and repeal the notorious Prevention of Terrorism Act. Moreover, it identified four possible mechanisms for a transitional justice process: an Office on Missing Persons; an Office for Reparations; a Truth, Justice, Reconciliation, and Non-Recurrence Commission; and a special judicial mechanism for war crimes.¹³³ This section examines the implementation of some of these commitments to date.

National Consultations in a Climate of Fear and Division

A starting point for the transitional justice process was the appointment by Prime Minister Wickremesinghe of a “Consultation Task Force on Reconciliation Mechanisms” (CTF) in January 2016. The group was tasked to consult the country on transitional justice and make recommendations to the government.¹³⁴ The Task Force soon began a fast-tracked consultation process regarding the proposed Office on Missing Persons (OMP).

The CTF’s Interim Report on the OMP, released in August 2016,¹³⁵ expressed serious concerns about the possibility for genuine consultations to take place in Sri Lanka. It noted that human rights abuses continue in the country, with allegations of abductions and the intimidation of victims and human rights defenders.¹³⁶ It also highlights that fear of speaking out continues.¹³⁷



Box 3: Fear of Speaking Out

The following quotes are excerpted from the CTF's Interim Report on the creation of an Office on Missing Persons.

“Grave concerns were expressed in the submissions about on-going human rights violations in the North and East, including allegations of abductions and incidents of intimidation of victims and human rights defenders. The continuation of these incidents is a matter of serious concern, having a detrimental impact on the credibility of the TJ [transitional justice] process.”¹³⁸

“Fear continues to be a factor impacting consultations, including when family members are asked questions on justice options at public meetings as they believe that their missing family members are being held in custody and so are at risk if the family speaks out.”¹³⁹

“Hurried briefings organized by the Ministry of Foreign Affairs prior to gazetting the Bill and external to the broader consultations go contrary to the spirit of the commitment given by the Government to consult victims and affected communities as a preliminary step to drafting the OMP Bill. A large number of submissions expressed disappointment and concern about the lack of transparency and consultation in the drafting of the OMP Bill and noted the resultant rise in scepticism and fear.”¹⁴⁰

“Written and oral submissions were always prefaced by stories of past efforts and experiences of families to find their loved ones or even to obtain death certificates. It is difficult to describe the desperation and exhaustion that family members from the South, North and East conveyed in their efforts to seek redress. They speak of the failure on the part of various state agencies to respond to or even acknowledge and record complaints relating to the missing, the disappeared and surrendees.”¹⁴¹

“Participants at the FGDs [focus group discussions] spoke of marginalization from their community, past experiences of living under scrutiny and fear, years of living in hope of their loved one's return, social and economic hardships, the failure of past Commissions of Inquiry to the disappeared, missing and surrendees and the inability to respond to bureaucratic demands for death certificates.”¹⁴²

Despite these issues, in January 2017, the CTF released its second report examining the broader need for transitional justice. Totalling over 900 pages in length, the report comprises the submissions or participation of over 7,300 individuals and covers a wide variety of issues, including: the right to grieve; sensitivity regarding monuments; reparations; impunity; amnesty; reforming national school curriculum and its treatment of the war; witness and victim protection programs; the need for robust psychosocial support for war-affected people; as well as details on the scope, function, and make-up of the three additional transitional justice mechanisms included in Resolution 30/1.¹⁴³

While a full review of the report is beyond the scope of this brief, several issues warrant highlighting.

First, the report reiterates the CTF's earlier findings that many in Sri Lanka are angry and bitter that previous consultation efforts have failed to elicit results.¹⁴⁴ It also notes instances of intimidation and the significant challenges the CTF faced in creating safe spaces for people to express themselves.¹⁴⁵

The report highlights the serious divisions that remain between the Sinhalese and Tamil populations. These divisions are particularly stark on issues such as the involvement of international judges in a war crimes court;¹⁴⁶ who should be tried in said court;¹⁴⁷ and people's feelings about existing war monuments in the North.¹⁴⁸

The authors stress that land is an over-arching theme across all mechanisms of transitional justice¹⁴⁹ and that resettlement, the return of land, and demilitarization are issues that should be resolved immediately in order to build confidence regarding the government's reconciliatory promises and actions.¹⁵⁰

Finally, arguably one of the most important and certainly most contentious issues in the report has to do with the recommendation to create a hybrid court involving international judges. This point is discussed later in the report.



The Flaws of the Office on Missing Persons

The OMP Act, which was passed in August 2016, has been criticized both in relation to the process followed and to the contents of the Act.

First, as voiced in the August 2016 Interim Report, many in the country believe that the OMP consultations were hurried and disingenuous on the part of the government.¹⁵¹ Numerous groups have argued that the process of both drafting the OMP legislation and conducting consultations on this matter lacked transparency, government leadership, and good communication.¹⁵² Some have also argued that the fast-tracked process, which took place around the same time as the 32nd session of the UNHRC, may have been done to placate the international community.¹⁵³ Then, in late August 2016, after the passing of the OMP Act, the CTF itself released a statement noting that “key recommendations of the affected families in the Interim Report ... were not included in the Bill.”¹⁵⁴

Shortly after the statement was released, a coalition of five Tamil civil society organizations circulated a public letter to then-United Nations Secretary General Ban Ki Moon, outlining their concerns with the consultations. The

organizations allege that consultations were tokenistic and did not actually impact the design of transitional justice mechanisms like the OMP. The letter also detailed the significant impact that the continued militarization of the North and East has had on the consultation process, and the perceived lack of political will for real justice in the country.¹⁵⁵

The Sri Lanka Monitoring and Accountability Panel (MAP) has pointed out several problems with the Act itself, including that it “provides for civil, criminal, and administrative immunity to persons who ‘in good faith provid[e] evidence or documentation to the OMP.’”¹⁵⁶ MAP argues that this language should have been subjected to more robust debate, as it could have serious implications with regard to future judicial mechanisms.¹⁵⁷

Lastly, six months after the OMP Act was passed and consultations fast-tracked, the OMP itself has yet to be established, and commissioners for the office have not been appointed.¹⁵⁸

Government Backpedaling on Judicial Mechanism

Resolution 30/1 clearly specified the importance of including international legal experts in any judicial mechanism created to address war crimes.¹⁵⁹ Since the passage of the resolution, however, President Sirisena has publically backtracked on this agreement several times, arguing that Sri Lanka has “more than enough specialists, experts and knowledgeable people” in the country to address these issues.¹⁶⁰ He has also stated that there are no war crimes allegations against the Sri Lankan government,¹⁶¹ contradicting the findings of an investigation by the Office of the High Commissioner on Human Rights.¹⁶²

If there was still any doubt, faith in the government’s commitment to justice for war crimes vanished in September 2016 when Justice Minister Wijeyadasa Rajapakshe warned that anyone discussing mass graves or alleging that the Sri Lankan forces committed war crimes would be considered an enemy of the nation and could face legal action.¹⁶³

Additional statements by the President in recent months continue to suggest that he will refuse international involvement.¹⁶⁴ In November 2016, Sirisena reached out to

then-US President-elect Donald Trump to get his support in overturning allegations that Sri Lankan soldiers committed war crimes.¹⁶⁵ That same month, in an interview with *The Hindu*, Sirisena commented:

“Before I came to power there was a fear that those who had given commands during the war could be taken to international courts of justice, that they may even face execution, and that they may have to sit on the electric chair.¹⁶⁶ The international community is so satisfied with my performance that they have completely changed their impression of the country. Now there is no threat of international courts, now we don’t have to talk about electric chairs, there is no problem [of foreign judges investigating alleged violations of human rights]; I have told the international community that I cannot accept any proposal that allows foreign judges to probe our domestic matters. This is another great victory I was able to achieve in this time.”¹⁶⁷



In this context, the recommendations of the CTF on this issue – reflecting the voices of Sri Lankans across the country – are particularly important.

The CTF is clear that there are differences of opinion on the matter. During consultations, security forces “categorically rejected international involvement,” submissions “largely from the Sinhala community” rejected international involvement, whereas the “overwhelming majority” of Tamils called for international involvement.¹⁶⁸

Taking these views into account, the CTF recommended the creation of a hybrid court involving international judges.¹⁶⁹

The Sri Lankan government’s response was swift. Shortly after the report was released, a government spokesperson reiterated that the current administration has no intention of including international judges in its special court.¹⁷⁰

At the time of writing, government backing of the CTF report is extremely weak. Neither President Sirisena nor Prime Minister Wickremesinghe were present at the official release of the report,¹⁷¹ and shortly after its release, the Sri Lankan Justice Minister commented that the CTF report was “totally unwarranted.”¹⁷²

Perpetrators of Abuses in the National Authority for Victim and Witness Protection

The composition of the National Authority for Victim and Witness Protection, which was launched in January 2016, provides additional evidence that the government lacks the political will to ensure justice for war victims.

In a February 2017 dossier, *Putting the Wolf to Guard the Sheep*,¹⁷³ the International Truth and Justice Project (ITJP) warned about the composition of the 10-member Authority, which has no Tamil members and includes at least three problematic individuals: Nandana Munasinghe, an alleged perpetrator of torture; Suhada Gamlath, an official in charge of “rehabilitation” camps where detainees were tortured; and Yasantha Kodagoda, who allegedly played a role in preventing witnesses from testifying against the security

forces in the case of the killing of 17 aid workers from the French NGO, Action Contre La Faim, in Muttur in 2006. As explained by ITJP, “Under these circumstances no witness or victim can rely on the state for protection if they testify against the security forces in Sri Lanka at a Truth Commission or court of law.”¹⁷⁴ ITJP cautions that “nobody testifying against the state or security forces should expect witness protection under the current system ... quite the reverse – they would risk their lives if they asked for protection from the state.”¹⁷⁵

These appointments cast further doubts over the government’s commitment to justice for war crimes. Will the National Authority protect the victims or the perpetrators?

Failure to Repeal Repressive Laws & Ongoing Torture Allegations

Another issue related to the transitional justice process is the commitment to repeal the country’s 1979 Prevention of Terrorism Act (PTA). The PTA was used throughout the civil war to arrest and disappear many, and the repeal of the act has been called for by many, including the Resolution 30/1.¹⁷⁶

In October 2016, a draft of a new Counter Terrorism Act (CTA) was circulated, but rather than quell fears, it raised alarm bells amongst many.¹⁷⁷ Issues of particular concern are provisions that prevent detainees from obtaining immediate legal counsel after being detained and the ability of police officers to obtain confessions.¹⁷⁸ Many believe this would allow practices of torture to continue.¹⁷⁹

These concerns are elevated by the findings of a report submitted by the Sri Lanka Human Rights Commission to the United Nations Convention against Torture (UNCAT) in October 2016.¹⁸⁰ The report confirms that torture is routinely practiced “all over the country, mainly in relation to police detentions.” It goes on to note that “the prevailing culture of impunity” regarding torture has contributed to its pervasive use during interrogations. According to the Commission, 420 cases of torture were reported in Sri Lanka in 2015, and 208 in the first eight months of 2016.¹⁸¹

The UNCAT process that this report was submitted to also included an in-person session that took place in Geneva in



According to the Sri Lanka Human Rights Commission, as of May 2016, 111 individuals remained in custody, on charges under the Prevention of Terrorism Act. Of those, 29 have not yet been indicted, and 41 are appealing sentences handed down under the Prevention of Terrorism Act. Lengthy wait times are a serious issue – the Commission reports that there have been trials and appeals that have been ongoing for 14 years, and at least one remains in detention on remand without indictment for 15 years.¹⁸²

November 2016. Incredibly, the 11-person delegation sent by the Sri Lankan government to attend these meetings included Sisira Mendis,¹⁸³ the current chief of State Intelligence Service and formerly the Deputy Inspector General of Sri Lanka's Criminal Investigation Department (CID). Under

Mendis' watch at the CID, many alleged acts of torture took place.¹⁸⁴ Mendis was grilled on his alleged knowledge of and involvement in these acts by UNCAT members, but refused to respond.¹⁸⁵ His presence at the UNCAT proceedings resulted in calls for his arrest by members of the Tamil diaspora.¹⁸⁶

What Role for the International Community?

Throughout 2016, numerous UN officials conducted visits to Sri Lanka to assess the progress made by the government towards reconciliation. These included United Nations High Commissioner for Human Rights Zeid Ra'ad Al Hussein,¹⁸⁷ then-United Nations Secretary General Ban Ki Moon,¹⁸⁸ and United Nations Special Rapporteur on Minority Issues Rita Izsák-Ndiaye,¹⁸⁹ amongst others.¹⁹⁰

In all three cases, the international dignitaries raised issues of land and demilitarization with Sri Lanka's leadership. High Commissioner Zeid called out the Sri Lankan government for making "little progress" on returning land in previous months, noting that "civilian leaders and officials seem to be struggling to secure cooperation from the military."¹⁹² He also called the government out for its ongoing use of IDP land for non-military purposes and noted the importance of demilitarizing the North and East.¹⁹³ Then-Secretary General Ban Ki Moon likewise urged the government "to speed up the return of land,"¹⁹⁴ and Special Rapporteur Rita Izsák-Ndiaye highlighted that resettlement and demilitarization are two of the most significant challenges to reconciliation.¹⁹⁵

This international pressure may have had some effect. In June 2016, a few days before High Commissioner Zeid was set to give an update on Sri Lanka to the UN Human Rights Council, the government announced the release of an additional 700 acres of land.¹⁹⁶ Over the next month, a special task force to address resettlement was created¹⁹⁷

and, as previously noted, significant funds were granted for the resettlement of the families residing in welfare centers.¹⁹⁸ Similarly, in September 2016, just hours after then-UN Secretary General Ban Ki Moon gave his speech in Sri Lanka, President Sirisena declared that land issues in the North would be resolved within three months.¹⁹⁹ Since then, several additional pledges to release land have been made.²⁰⁰

Despite these actions, serious concerns remain that government actions, including the flawed consultation processes, are "just a tool for managing foreign policy goals."²⁰¹ A letter written to Ban Ki Moon by a coalition of Tamil civil society organizations states,

"What Sri Lanka needs is not praise and recognition from the International Community but constructive and critical engagement that reminds the Government of its international obligations and obligations to its own people."²⁰²

This call for greater involvement of the international community is especially important in light of recent domestic developments. In November 2016, former-President Mahinda Rajapaksa's supporters formed a new political party, Sri Lanka People's Front.²⁰³ While Rajapaksa has no formal role with the new party yet, its leaders – including his own brother – have explicitly said that its purpose is to bring the former-President back into power.²⁰⁴ Rajapaksa has



likewise told the press that he wants to “topple” the current government in 2017.²⁰⁵ The presence of a Rajapaksa-led third party could divide Sri Lanka’s current coalition government, resulting in the loss of the majority that President Sirisena needs to enact various reforms – including changes to the constitution – that are aimed at reconciliation.²⁰⁶

Rajapaksa, together with his supporters, vehemently opposes international involvement in a war crimes tribunal.

This has led analysts to suggest that Rajapaksa’s latest efforts could be contributing to Sirisena’s backpedaling on his promises to the UN.²⁰⁷ Regardless, the current situation reinforces how deeply divided the country continues to be.

This is a crucial moment to ensure long lasting peace and justice in Sri Lanka. Given the deep internal divisions, active and continual pressure by the international community and its role as an arbiter for justice is imperative.



Former Secretary-General Ban Ki Moon visits Sri Lanka, September 1, 2016 © Flickr/United Nations Photos. Used under CC BY-NC-ND 2.0.¹⁹¹

Conclusion

On January 8, 2009, Mr. Lasantha Wickrematunge – the editor of *The Sunday Leader* and a prominent human rights advocate – was assassinated on his way to work in Colombo. Days before, he penned an editorial that forecasted his death, and provided a harsh commentary on the state of political affairs in the country. He wrote: “A military occupation of the country’s North and East will require the Tamil people of those regions to live eternally as second-class citizens.”²⁰⁸

Eight years after both Lasantha Wickrematunge’s death and the official end of hostilities, these words ring true. Areas in Sri Lanka’s North and East have rates of poverty that are significantly higher than the country average;²⁰⁹ tens of thousands remain displaced, while military-run tourist resorts thrive; and those who have been resettled face the enormous challenge of restoring their lives and livelihoods without access to proper infrastructure, coastline, or fertile lands.

It is within this context that the limited progress made to date under President Sirisena should be evaluated.

Numerous domestic and international groups have called on Sirisena’s administration to accelerate and prioritize the complete resettlement of IDPs,²¹⁰ with groups including the CTF noting that such an action could boost the dwindling confidence of minority populations.²¹¹ This prioritization is vital, and should be accompanied with strong and clear financial commitment to ensure that the directives outlined in the National Policy on Displacement can be realized. Eight years after the end of the war, nothing else is acceptable.

This report raises serious questions over the government’s willingness to fulfill its commitments under Resolution 30/1 and to lead transitional justice and reconciliation. National organizations and Tamil diaspora groups have called for strong international involvement to hold President Sirisena to the commitments outlined in Resolution 30/1.²¹² Indeed, after Sri Lanka’s Foreign Minister Mangala Samaraweera remarked in February 2017 that he intends to ask the UN for more time to realize the promises outlined in Resolution 30/1,²¹³ additional calls for strong international pressure surfaced.²¹⁴ With Rajapaska appearing to attempt a comeback, it is hard to imagine how Sri Lanka could achieve meaningful transitional justice without strong international involvement and pressure. Whether the international community is willing and able to effectively assert itself will likely become evident at the 34th session of the UNHRC in March 2017.

In a statement made in Sri Lanka in October 2016, UN Special Rapporteur Rita Izsák-Ndiaye said that “truth-seeking, reconciliation, and healing takes time and cannot be done overnight.”²¹⁵ While this is true, there are steps that the Sirisena administration must take today to build trust, improve the lives of thousands, and bring transparency to the truth and reconciliation process.

As the National Policy on Durable Solutions states, “it is time for urgent and comprehensive solutions that leave no one behind.” Indeed, urgent, comprehensive, and inclusive action needs to start now.



Endnotes

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- 31 *Ibid*, p. 4.
- 32 *Ibid*, Section IV, 2.2.
- 33 *Ibid*, Section IV, 2.6.
- 34 *Ibid*, Section IV, 3.3.
- 35 *Ibid*, Section IX, 1.
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- 37 "Reparation measures may include, but are not limited to, restitution in the form of land and property, compensation, medical care and psycho-social assistance, support for recovering and/or rebuilding community facilities and structures, acknowledgement of loss and suffering, memorials and other symbolic measures." *Ibid*, Section IV, 7.5.
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- 39 This includes ensuring that the displaced are able to participate and are consulted with regarding the design, construction, and allocation of housing. *Ibid*, Section V, 4.5.
- 40 "Voluntary choice involves a meaningful choice between genuine alternatives, not a decision forced upon the displaced by a situation that has become untenable. As such, the consent of families to relocate without the choice of return because their land was still under military occupation needs to be re-examined and these families given the right to return, or accept compensation for their lost land and property." *Ibid*, Section IV, 5.2.
- 41 Specific rights of displaced persons who are women, children, disabled, elderly, and victims or survivors of violence are also outlined, as is the recognition that minority groups and women should be better represented in justice and security institutions, in order of avoid the abuses that these groups have committed in the past. *Ibid*, Section IV, 6.
- 42 *Ibid*, Section V, 4.4.
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