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Human Rights Commitments made by the Government of Sri Lanka and Ways Forward

CENTRE FOR POLICY ALTERNATIVES



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மாற்றுக் கொள்கைகளுக்கான நிறையம்

The Centre for Policy Alternatives (CPA) is an independent, non-partisan organisation that focuses primarily on issues of governance and conflict resolution. Formed in 1996 in the firm belief that the vital contribution of civil society to the public policy debate is in need of strengthening, CPA is committed to programmes of research and advocacy through which public policy is critiqued, alternatives identified and disseminated.

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Introduction

2018 is a significant year for Sri Lanka. The country marks the 70th anniversary of its independence on the 4th of February. Long overdue and much anticipated local government elections will take place under a new electoral system a week later on the 10th of February. These elections will be the first under the government elected in January 2015; the first to be conducted by the independent Election Commission established under the 19th Amendment to the Constitution in April 2015; and the first with a historic 25% allocation of seats for women. They will be followed by Provincial Council elections later in the year and depending on constitutional reform, a Presidential Election in 2019, and a General Election in 2020. The results of these elections will impact the course of constitutional reform and transitional justice, the latter half of the Sirisena presidency and the future of the National Unity Government. Limited steps towards improving human rights have been taken by the current government, but the pace of progress has slowed substantially, with persistent regressive moves imperilling human rights. Further, there is widespread concern about the status of promised constitutional reforms and transitional justice processes. Consequently, the government's commitment to the broad reform agenda it was elected on is in serious doubt.

This year is also a crucial year in the context of a number of important deadlines established through Sri Lanka's participation in international human rights mechanisms. Of these, [UNHRC Resolution 30/1](#) of 2015¹ remains a key document concerning human rights, transitional justice and reconciliation in the country, committing the government to enact a comprehensive set of measures by the extended deadline of March 2019. Sri Lanka's human rights record was also reviewed in the third cycle of the UN's Universal Periodic Review (UPR) process in November 2017, where the country made 12 voluntary pledges and supported 177 recommendations thereby accepting [a diverse range obligations](#).² Additionally, Sri Lanka's re-entry into the European Union's (EU) GSP+ scheme in 2017 provides trade concessions from the EU on condition of improving compliance with [27 international conventions](#). This expansive body of international commitments is reaffirmed domestically by the [National Human Rights Action Plan 2017-21](#) (NHRAP).³ Additionally, recommendations made in the report of the Consultation Task Force as well as benchmarks created by civil society actors create a substantive framework and timeline for progress on human rights in Sri Lanka.

In the context of these key milestones and deadlines there must be reflection on present human rights commitments, the status of their implementation and specific timeframes for their possible implementation. The Centre for Policy Alternatives (CPA) has prepared

¹ UN Human Rights Council, A/HRC/RES/30/1, 13 October 2015, available at http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/30/1

² UN Human Rights Council, A/HRC/WG.6/28/L.14, 23 November 2017, available at https://www.upr-info.org/sites/default/files/document/sri_lanka/session_28_-_november_2017/a_hrc_wg.6_28_l.14.pdf

³ Ministry of Foreign Affairs Sri Lanka, *National Action Plan for the Protection and Promotion of Human Rights 2017-21*, available at <http://www.mfa.gov.lk/index.php/en/home/national-action-plan-2017-2021>

this report as a reflection of the commitments and action that is possible within particular time periods with the purpose of encouraging their full implementation.

Report Framework

Key Actions

Using the sources of UNHRC Resolution 30/1, Sri Lanka's third UPR review, GSP+ obligations, the NHRAP and additional domestic recommendations, this report compiles key actions that should be taken to fulfil Sri Lanka's human rights commitments. The report expands on these actions with a full table detailing a range of relevant, attainable and measureable activities.

The key actions do not constitute an exhaustive list covering all of Sri Lanka's commitments; rather, they highlight areas with the need and potential for action within recommended timeframes. Further, this report does not consider changes promised as part of the Constitutional reform process initiated by the Government in 2016. Whilst this process holds potential for significant human rights improvements, progress on reform has stalled. Due to the current uncertainty around constitutional reform, the focus of this report is on specific and concrete actions outside of the constitutional reform process that can be initiated to fulfil Sri Lanka's human rights commitments. Some of the highlighted actions consist of specific and immediate measures, while others are necessarily broad ones, which should be initiated in the short term but will require ongoing activity.

- 1) Establish the transitional justice mechanisms and commitments in Resolution 30/1
- 2) Repeal and replace the Prevention of Terrorism Act
- 3) Amend the Code of Criminal Procedure Act and related legislation
- 4) Implement domestic and international commitments on preventing torture
- 5) Pursue mainstreaming of human rights and enforcing accountability for violations
- 6) Take action to address violations of freedom of speech and expression; freedom of religion, thought and conscience; and language rights
- 7) Take steps to ensure equality and non-discrimination
- 8) Promote women's rights through legislative reform, policy and support services
- 9) Establish programs for protecting the rights of Internally Displaced Persons (IDPs) and Returning Refugees

Timeframes

The report suggests timeframes for each activity under the key actions, which consider actual deadlines imposed by particular human rights commitments as well as practical considerations. These timeframes should be seen as periods in which a particular commitment both can and should be fulfilled.

- Short term: 0–6 months
- Medium term: 6 months–18 months
- Long term: 18 months–5 years
- Ongoing: will require continued effort beyond initial timeframes

Key Themes

Key cross-cutting themes emerge and are extrapolated from the actions and measures identified. Attention must be paid to these themes when engaging with all human rights commitments:

- **Consolidation of democracy and the rule of law:** Strong and independent institutions will provide a backbone for more efficient and effective progress on human rights protection, rule of law, ending the culture of impunity and ensuring free and fair elections. Important ongoing actions include enhanced training for public officials, the pursuit of judicial independence, guarantees for non-discrimination and improvements to voting and electoral procedures.
- **Comprehensive legislative reform:** Legislative reform across a range of areas is required, with particular priority needed for reviewing legislation for consistency with international human rights commitments, and engaging with civil society and the international community throughout the process.
- **Mainstreaming human rights:** The integration of human rights into public policy will help to anchor Sri Lanka's human rights ideas to practice. This will include judicial review of new legislation, rights education initiatives and public awareness campaigns.
- **Enhancing human rights international cooperation:** Sri Lanka must progressively incorporate all ratified international instruments into domestic legislation. Improving channels of communication and accountability with UN treaty bodies is vital.
- **Take steps to eliminate discrimination:** Many of Sri Lanka's human rights commitments require accounting for the rights of minorities, the vulnerable and the marginalised. Without eliminating discrimination against these groups, providing for the protection of their rights and ensuring inclusive decision-making at all levels, Sri Lanka's human rights commitments cannot be fulfilled in any comprehensive sense.

Activity	Commitment Made	Timeframe	Steps Required
Action 1: Establish all transitional justice mechanisms and fully implement commitments made in Resolution 30/1			
Establish the Office for Missing Persons	<ul style="list-style-type: none"> • UNHRC Res 30/1 Para 4 • UPR 2017 Recs 6.63-6.65, 6.76-6.81, 6.85, 6.87-6.92 & UPR Voluntary Pledge 128 • NHRAP 1:1.3-1.44 	Short Term	Requires immediate appointment of Commissioners and operationalisation of the Office
Establish the Office for Reparations	<ul style="list-style-type: none"> • UNHRC Res 30/1 Para 4 • UPR 2017 Recs 6.77-6.81, 6.85, 6.87-6.92 & Voluntary Pledges 126 and 128 • NHRAP 4:9.3-9.4, 15.1-18.15 	Short – Medium Term	Requires new legislation, budget allocation and appointments Office for Reparations to formulate a comprehensive reparations policy
Establish the Commission for Truth, Justice, Reconciliation and Non-Recurrence	<ul style="list-style-type: none"> • UNHRC Res 30/1 Para 4 • UPR 2017 Rec 6.76-6.81, 6.85, 6.87-6.92 & Voluntary Pledge 1266 	Medium Term	Requires new legislation, budget allocation and appointments
Establish the Special Court with Special Counsel	<ul style="list-style-type: none"> • UNHRC Res 30/1 Para 6 • UPR 2017 Recs 6.77, 6.87-6.92 • UPR 2017 Voluntary Pledge 1267 	Short, Medium and Long Term	Requires new legislation, budget allocation, appointments and trainings in the short-medium term. Court to be established medium-long term

⁴ Further Highlighted in *Short-Term Benchmarks for Peace and Reconciliation*, Centre for Policy Alternatives, 2012.

⁵ See also, *Final Report of the Consultation Task Force on Reconciliation Mechanisms*, Consultation Task Force on Reconciliation Mechanisms, 17 November 2016, available at: <https://drive.google.com/file/d/0ByOKvXw6zYVpRHgyZUZZeWZpMDQ/view>, 33-98

⁶ *Ibid.*, 99-174.

⁷ *Ibid.*, 234-287.

			Attention will have to be paid towards incorporating international crimes into domestic legislation
Criminalise Enforced Disappearances	<ul style="list-style-type: none"> • UNHRC Res 30/1 Para 13 • UPR 2017 Recs 6.61, 6.62, 6.66 	Short Term	Enact the Convention on Enforced Disappearances Bill
Release list of all detainees held under PTA, immediately release those held without charges or trial, and strengthen protections for those remaining in custody	<ul style="list-style-type: none"> • NHRAP 1:2.3-2.4 • UPR 2017 Rec 6.688 	Short, Medium and Long Term	Requires action from Attorney General's Department, Ministry of Law & Order and Ministry of Justice
Undertake security sector reforms as part of TJ processes	<ul style="list-style-type: none"> • UPR 2017 Rec 6.69 	Ongoing-	Ministry of Defence working with SCRM, NHRC and relevant stakeholders
Conduct comprehensive investigations and prosecutions into serious violations of human rights during and after the war	<ul style="list-style-type: none"> • NHRAP 1:1.2 • UPR 2017 Recs 6.67, 6.71-6.74 	Short – Medium Term	Requires action by relevant State agencies.
Undertake comprehensive demilitarisation	<ul style="list-style-type: none"> • UPR 2017 Rec 6.1339 	Medium – Long Term	Requires action from armed forces, and coordinating action from Presidential Secretariat and Ministry of Defence
Action 2: Repeal and Replace Prevention of Terrorism Act (PTA)			
Repeal PTA and replace with legislation consistent with international standards	<ul style="list-style-type: none"> • NHRAP 1:2.1 • UNHRC Res 30/1 Para 12 • UPR 2017 Recs 6.51-6.52 & Voluntary Pledge 122 • GSP+ requirement (CAT) 	Short Term	Requires new legislation to be passed with public input and debate

⁸ Further Highlighted in *Short-Term Benchmarks for Peace and Reconciliation*, Centre for Policy Alternatives, 2012.

⁹ Ibid.

Action 3: Amend the Code of Criminal Procedure Act and related legislation			
<p>Ensure rights at point of arrest and detention, and provide for compensation. Ensure independence and integrity of system in line with international standards, and exclude regressive standards such as removing the requirement of presenting a suspect/accused before court when obtaining a remand order</p> <p>Update witness and victim protection legislation; promote rights, compensation, and system's independence and integrity</p>	<ul style="list-style-type: none"> • NHRAP 1:2.2 • UNHRC Res 30/1 Para 9 • UPR 2017 Recs 6.95-6.96 • GSP+ requirement (ICCPR)¹⁰ 	Short Term	Requires amendments to CCPA and Assistance to and Protection of Victims of Crime and Witnesses Act
Action 4: Implement domestic and international commitments on preventing torture			
<p>Improve systems to better detect, document and handle cases of torture</p> <p>Improve enforcement of legislation, complaint investigations and disciplinary action</p>	<ul style="list-style-type: none"> • NHRAP 2:1.1-1.6 • NHRAP 2:2.1-2.2 • UPR 2017 Recs 6.58, 6.67 • GSP+ requirement (CAT)¹¹ 	Short, Medium and Long Term	Specific measures in NHRAP i.e. issuing specific directions can be done in the short term. Other revisions will require legislative and constitutional amendment
<p>Provide legal, psycho-social and medical assistance to victims (through Legal Aid Commission services and new mechanisms)</p>	<ul style="list-style-type: none"> • NHRAP 2:3.2 • GSP+ requirement (CAT) 	Short Term	Requires procedural change within Ministry of Health and Ministry of Justice, and appropriate budgetary allocations
<p>Strengthen mechanisms to discourage and prevent torture</p>	<ul style="list-style-type: none"> • NHRAP 2:4.1-5.2 • UPR 2017 Recs 6.55-6.57 • GSP+ requirement (CAT) 	Short, Medium and Long Term	Requires work by Ministries of Justice, Law and Order, Prisons, Police and the armed forces to establish special units and create procedures

¹⁰ Ibid. Also subject to Centre for Policy Alternatives litigation and advocacy in 2017.

¹¹ Further Highlighted in *Short-Term Benchmarks for Peace and Reconciliation*, Centre for Policy Alternatives, 2012.

Take all steps to ensure compliance with OP-CAT	<ul style="list-style-type: none"> UPR 2017 Recs 6.2-6.9 & Voluntary Pledge 121 	Short, Medium and Long Term	Immediate facilitation of OP-CAT inspections and compliance with reporting requirements
Action 5: Pursue the mainstreaming of human rights and enforcing accountability for violations			
Ensure adequate funding for the HRCSL and legislate for regular HR reporting procedures	<ul style="list-style-type: none"> UPR 2017 Recs 6.16-6.17 	Short – Medium Term	Requires increasing HRCSL budget allocation
Review and amend relevant legislation so HRCSL findings are enforceable and taken into consideration	<ul style="list-style-type: none"> NHRAP 1:7.412 	Medium – Long Term	Requires ongoing review and legislative amendment proposals by Ministry of Justice
Establish a mechanism for preserving records and documentation regarding human rights abuses	<ul style="list-style-type: none"> UNHRC Res 30/1 Para 15 	Short – Medium Term	Requires coordination between HRCSL and Ministry of Justice, increased budget allocation
Take legislative measures to ensure protection of the judiciary from improper influences, inducements, pressures, threats or interferences	<ul style="list-style-type: none"> NHRAP 8.1.2 	Short – Medium Term	Adopt new standing orders to regulate impeachment proceedings within Parliament ¹³ Enact new law based on proposed standing orders to establish independent process of investigation in a manner that protects due process of accused judge.

¹² Further Highlighted in *Written Submissions to the Subcommittee of the Constitutional Assembly on Fundamental Rights*, Centre for Policy Alternatives, 2016.

¹³ See: Sri Lanka Parliament, *Report of the Committee on Standing Orders*, 7 November 2017, available at <http://www.parliament.lk/uploads/comreports/1510218604013875.pdf>

Action 6: Take action to address violations of freedom of speech and expression; freedom of religion, thought and conscience; and language rights

Fully investigate all past attacks on journalists, human rights defenders, religious minorities and places of worship; and prevent and investigate future attacks	<ul style="list-style-type: none"> • UNHRC Res 30/1 Para 11 • UPR 2017 Recs 6.43, 6.94, 6.97-6.105, 6.107 • GSP+ requirement (ICCPR) • NHRAP 1:5.1.314 	Short-Medium Term	Requires compliance with investigation procedures, proceeding with prosecutions, training law enforcement and judiciary. Internal disciplinary action to be implemented by Police, with Attorney-General's Department providing advice on concluded cases
Conduct public awareness campaigns against hate speech, ensure full implementation and enforcement of legislation against hate speech	<ul style="list-style-type: none"> • NHRAP 1:4.1 • UPR 2017 Recs 6.40-6.42 • GSP+ requirement (ICCPR)¹⁵ 	Ongoing	Requires action from Ministry of Finance and Media, Ministry of National Co-existence, Dialogue and Official Languages, Ministry of Law & Order and Ministry of Justice
Fully implement RTI procedures and mechanisms, including public awareness, RTI training for authorities and reviewing implementation	<ul style="list-style-type: none"> • NHRAP 1:4.2.1-4.2.5 • UPR 2017 Voluntary Pledge 120 	Short – Medium Term	Requires initiative of Ministry of Mass Media and increased budget allocation to RTI Commission
Review relevant administrative circulars and make changes to ensure freedom of religion is protected	<ul style="list-style-type: none"> • NHRAP 1:5.1 	Short Term	Requires initiative from Ministry of Justice and Ministry of Buddha Sasana
Fully implement official languages policy and ensure compliance and full enjoyment of rights to language and cultural heritage	<ul style="list-style-type: none"> • NHRAP 1:9.5, 10.1, 7:9.4 • GSP+ requirement (ICCPR & ICESCR) • UPR 2017 Recs 6. 92, 6.112-113, 6.17116 	Short – Medium Term	Requires action from the Ministry of National Co-existence, Dialogue and Official Languages with coordinating support from all public authorities

¹⁴ Further Highlighted in *Short-Term Benchmarks for Peace and Reconciliation*, Centre for Policy Alternatives, 2012.

¹⁵ Ibid.

¹⁶ Ibid.

Greater appreciation of cultural pluralism to promote national integration through policy, legislation, education and practices, including the new National Policy on Strategy and Culture	<ul style="list-style-type: none"> • NHRAP 7:9.1-9.3 • UPR 2017 Rec 6.92, 6.171 • GSP+ requirement (ICESCR) 	Medium – Long Term and ongoing	Requires political leadership to initiate and support legislative reform across a range of areas. This includes conducting reviews and implementing programmes by a range of Ministries including Ministry for National Coexistence, Dialogue and Official Languages
Action 7: Take steps to ensure equality and non-discrimination			
Ratify ILO C189 on Decent Work for Domestic Workers	<ul style="list-style-type: none"> • NHRAP 1:6.1.9 	Medium-Long term	Requires initial work by Ministry of Labour and Trade Union Relations, and domestic procedure for ratification
Establish quotas and incentives for women’s political participation	<ul style="list-style-type: none"> • NHRAP 1:6.2 • UPR 2017 Voluntary Pledge 124 • GSP+ requirement (CEDAW) 	Ongoing	Requires Constitutional Amendment (for national elections)
Decriminalise same-sex sexual conduct. Ensure legal protection for LGBTIQ persons from acts of discrimination and violence	<ul style="list-style-type: none"> • UPR 2017 Recs 6.38-6.39 & Voluntary Pledge 125 	Short Term	Requires Constitutional and legislative reform, including the amendment of the Penal Code and Vagrants Ordinance
Investigate and amend text books, syllabus and other materials to dispel gender stereotypes in school curriculum	<ul style="list-style-type: none"> • NHRAP 3:23.1-24.2 • UPR 2017 Rec 6.129 • GSP+ requirement (CEDAW) 	Short – Medium Term	Requires curricula review by Ministry of Education
Ensure equality for persons with disabilities, including in the areas of employment, social protection, education, health, accessibility, political participation and access to justice	<ul style="list-style-type: none"> • NHRAP 6:1.1-15.9 • UPR 2017 Recs 6.129, 6. 167-6.170 & Voluntary Pledge 130 	Short, Medium and Long Term	Requires enforcement of Protection of the Rights of Persons with Disabilities Act Requires further review and amendments to legislation and procedure across various areas

Action 8. Guarantee and promote women’s rights through legislative, policy and infrastructure reform

<p>Implement National Action Plan to address Gender-Based Violence</p> <p>Undertake widespread law reform, including:</p> <ul style="list-style-type: none"> – Expansion of definition of sexual harassment – Clarify definition of statutory rape – Criminalise marital rape – Broaden torture definition to include sexual violence – Remove discriminatory evidence provisions – Mandatory sexual harassment and abuse guidelines in the workplace – Amend Domestic Violence Act in response to evidence on barriers to effective implementation 	<ul style="list-style-type: none"> • NHRAP 3:11.1, 14.1-14.3 • UNHRC Res 30/1 Para 17 • UPR 2017 Recs 6.144-6.153 • GSP+ requirement (CEDAW)¹⁷ 	<p>Short – Medium Term</p>	<p>Requires amendment of relevant Acts:</p> <ul style="list-style-type: none"> – Penal Code s 345 – sexual harassment – Penal Code s 363 – statutory rape – Penal Code – marital rape as a new criminal offence – Penal Code and Convention Against Torture And Other Cruel, Inhuman Or Degrading Treatment Or Punishment Act – definition of torture – Evidence Ordinance and Criminal Procedure Act – discriminatory evidence – Domestic Violence Act – implementation
<p>Improve training and infrastructure to ensure that law enforcement, justice processes, and support services are equipped to meet the needs of women</p>	<ul style="list-style-type: none"> • NHRAP 3:13.1-13.6 • UPR 2017 Rec 6.154 & Voluntary Pledge 123 • GSP+ requirement (CEDAW) 	<p>Short – Medium Term</p>	<p>Development of procedures by Ministry of Law & Order and Police</p>
<p>Ensure women and gender-related issues are included in TJ processes, including Female Headed Households, livelihoods of war-affected women, accountability for missing and disappeared, SGBV and IDPs</p>	<ul style="list-style-type: none"> • NHRAP 3:13.5-22.1 • UPR 2017 Recs 6.81, 6.124 • GSP+ requirement (CEDAW) 	<p>Short, Medium and Long Term</p>	<p>Lead to be taken by relevant government actors working on TJ working closely with relevant ministries and other stakeholders</p>

¹⁷ Further Highlighted in *Short-Term Benchmarks for Peace and Reconciliation*, Centre for Policy Alternatives, 2012.

Ensure protection of women human rights defenders when dealing with Police	<ul style="list-style-type: none"> • UPR 2017 Recs 6.106, 6.155-6.160 • GSP+ requirement (CEDAW) 	Short – Medium Term	Requires action by Police
Action 9: Establish programmes for protecting the rights of Internally Displaced Persons (IDPs) and Returning Refugees			
Develop national policy, procedures and legislation for IDPs and returnees, drawing from UN resources, consultations and review of existing framework	<ul style="list-style-type: none"> • NHRAP 4:1.1-1.2 • UPR 2017 Recs 6.83, 6.12418 	Short Term	Requires action by the Ministry of Resettlement, Reconstruction and Hindu Religious Affairs, and other relevant state actors
Provide access to comprehensive legal services, ensure access to documentation and ensure access to voting while displaced	<ul style="list-style-type: none"> • NHRAP 4:4.1-4.3, 5.119 	Short – Medium Term	Requires action by the Ministry of Resettlement, Reconstruction and Hindu Religious Affairs, Election Commission and other relevant state actors
Accelerate the process of releasing occupied lands	<ul style="list-style-type: none"> • NHRAP 4:9.1-9.2 • UNHRC Res 30/1 Para 10 • UPR 2017 Recs 6.131-133, 6.176 	Short – Medium Term	Requires legislative reform and development of mapping, surveying and timeframe development within relevant Ministries including Ministry of Lands
Ensure basic needs, economic resources services and infrastructure are addressed in transition and ongoing. Prioritise vulnerable groups throughout	<ul style="list-style-type: none"> • NHRAP 4:13.1-14.1,20.1-22.4, 24.1-29.4 • UNHRC Res 30/1 Para 10 • UPR 2017 Recs 6.83, 6.124, 6.177 	Short – Medium Term and Ongoing	Comprehensive body of services to be provided by relevant Line Ministries. Continued monitoring required

¹⁸ Ibid.

¹⁹ For further detail on legal and other services see NHRAP 4.3 which addresses clinics, system for benefits, assistance via OMP, medical and psychosocial resources, special tribunals, appellate body, etc.