

# UNHRC Report: Increasingly Complex and Widening Conflicts Take Huge Toll on Children in 2015



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Increasingly complex and widening conflicts have taken a huge toll on children in much of the Middle East in 2015, with parts of Africa and Asia facing protracted and relapsing wars that show no signs of abating, wrote Leila Zerrougui, the Special Representative of the Secretary-General for Children and Armed Conflict, in her [annual report to the Human Rights Council](#). The Report covers the period from December 2014 to December 2015.

“Children were disproportionately affected, displaced and often the direct targets of acts of violence intended to cause maximum civilian casualties and terrorize entire communities,” she said in the report, describing how extreme violence affected countries such as Afghanistan, Iraq, Nigeria and Syria. “Groups perpetrating extreme violence also particularly

targeted children pursuing their right to an education.”

### **Promoting a response to extreme violence that protects children**

Military responses targeting groups using tactics of extreme violence continued to generate additional protection challenges for children. Throughout the year, militias and vigilante groups allied with States used children in support roles or as combatants. In addition, the use of airstrikes was of particular concern due, in many instances, to their indiscriminate nature.

The Special Representative reminded all involved that respect for human rights must be the basis of an effective response to extreme violence and actions must be undertaken in full compliance with international, humanitarian, human rights and refugee law. She added it is essential to emphasize the crucial role of prevention, as detailed in the UN Secretary-General’s plan of action to prevent violent extremism. Addressing the root causes of extreme violence, such as poverty and lack of economic opportunities for youth, lack of good governance, alienation of communities and political grievances, are necessary steps to find a lasting solution.

### **Attacks on schools and the right to education**

In the report, Leila Zerrougui expressed her deep concern at the increasing number of attacks on schools, as well as military use of schools, in countries affected by war. Again in 2015, conflict disrupted the education of millions of children, creating a direct challenge to the realization of the Sustainable Development Goal of ensuring quality education for all children. She called for additional funding for education in emergencies and reminded all parties to conflict of their responsibility to ensure safe access to school.

### **Children, not Soldiers**

In 2015, the momentum generated by the campaign Children, Not Soldiers remained strong and led to a significant reduction of verified cases of recruitment and use of children by national security forces, especially in Afghanistan, the Democratic Republic of the Congo and Myanmar. The campaign continued to mobilize political support, provide technical assistance and resources to the Governments in the process of implementing an Action Plan to end and prevent the recruitment of children. Unfortunately, renewed conflict reversed most progress accomplished in South Sudan and Yemen.

A majority of non-state armed groups listed by the Secretary-General for grave violations against children (32 out of 49) are active in countries concerned by "Children, Not Soldiers". The campaign contributed to strengthening the tools in place to address the recruitment of children and generated new openings to engage in dialogue with armed groups on the protection of children.

"Through the campaign, Governments are developing or strengthening the legal framework to criminalize the recruitment of children and investing more resources and energy to fight impunity. This has created new openings to address other grave violations committed against children committed by all parties to conflict," said the Special Representative, who is currently on mission in Afghanistan.

In her report to the Human Rights Council, Leila Zerrougui detailed how she used every opportunity of engagement with non-State armed groups and urges Governments to facilitate dialogue with a view to ending grave violations against children.

In her recommendations, she encourages Member States to treat children associated with armed groups primarily as victims and to use deprivation of liberty as a last resort and for the shortest time possible. She also calls for the universal ratification of the Optional Protocol to the Convention on the

Rights of the Child on the involvement of children in armed conflict and for adequate resources to set up and maintain sustainable reintegration programmes for former child soldiers.

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# **The Island on Washington DC Book Launch**

*The Island* on Washington DC  
**Book Launch**

*At the Atlantic Council early January, 2015. (L-R) Bharath Gopaldaswamy, Director of the Atlantic Council's South Asia Center, Mark Salter, author of To End a Civil War, Erik Solheim and Richard L. Armitage, former US Deputy Secretary of State.*

Here's some nice publicity for the book in yesterday's edition of one of Sri Lanka's best-established newspapers. Only shame is its offering such a jaundiced perspective on the Norwegian mediation effort in the country . . .

**Norway failed in SL for want of broader int'l involvement –  
Solheim**

*The Island*, 9 February 2016, by Shamindra Ferdinando

Washington DC-based Atlantic Council was recently told that Norwegian peace efforts, in Sri Lanka, in the 2002-2006 period, would have certainly succeeded had there been a broader international involvement. Nothing could be further from the truth.

The then powerful Norwegian minister and chief peace negotiator in Sri Lanka, Erik Solheim, told the Atlantic

Council that the Norwegian project failed for want of required international support. The participants, at the discussion, as well as the audience, accepted Solheim's assertion.

The Sri Lankan government hadn't been involved in the discussion.

The Norwegian alleged that in the absence of a dedicated international commitment, the Sri Lankan military had waged war until an offensive was brought to a conclusion, in May, 2009. The then government launched a combined forces offensive, in early Sept. 2006, in the wake of the LTTE resuming eelam war IV, with large scale simultaneous operations in both the northern and eastern provinces.

Recalling the role played by India, Japan and Norway to broker peace in Sri Lanka, Solheim said: "a broader and stronger coalition of outside international players was needed." The Norwegian conveniently failed to mention a significant US effort in support of the Norwegian initiative.

Solheim was participating in a panel discussion hosted by the Atlantic Council's South Asia Center. Richard L. Armitage, who has served as Deputy Secretary of State, in the George W. Bush administration, and Mark Salter, author of *To End a Civil War*, which recounts mediation efforts in Sri Lanka, were also part of the panel. Bharath Gopaldaswamy, Director of the Atlantic Council's South Asia Center, moderated the discussion.

Solheim said patience was paramount from the first day on the ground: "Only if you can be patient and accept that there will be ups and downs then you can potentially have some impact on the path to peace."

Solheim identified specific challenges, surrounding the diplomatic mission—namely, the dearth of information his team had on dealing with senior officials in both the Sri Lankan government and the LTTE. "We needed a bigger team to tap into Tamil-Sinhala relationships and, more importantly, we needed

to gain insight into the unique leadership of the Tamil Tigers," he said. "At the end of the day it was about this."

Obviously, Solheim was making a foolish attempt cover up the Norwegian failure in Sri Lanka. Hadn't there been a major international interest, in the Sri Lankan conflict, during the Norwegian project, the Atlantic Council wouldn't even have considered taking it up, nearly seven years after the annihilation of the LTTE. The panel discussion, moderated by Bharath Gopaldaswamy, underscored the abiding international interest in post-war Sri Lanka.

Seven years after her triumph, over terrorism, Sri Lanka is facing war crimes probe under the supervision of the Geneva-based United Nations Human Rights Council. UN High Commissioner for Human Rights, Zeid Ra'ad Al Hussein, today concluded a four-day visit to Sri Lanka.

The heavily US funded Atlantic Council is one of the most influential organizations shaping American and European foreign policy. Established over five decades ago, to promote the North Atlantic Treaty Organization (NATO), the Atlantic Council wields immense power. Having served the Obama administration, former Defence Secretary Chuck Hagel joined the Atlantic Council in early last year. Hagel served the Atlantic Centre as its chairman (2009-2013).

Contrary to Solheim's assertion that a broader and stronger international coalition could have prevented an all out war, thereby ensured a negotiated settlement in Sri Lanka, the grouping, involved in the 2002-2006 peace effort, had been perhaps one of the strongest backing a particular peace initiative.

Indian Bharath Gopaldaswamy, Director of the Atlantic Council's South Asia Center, as well as other panelists, conveniently forgot the circumstances leading to Norway's involvement in Sri Lanka, consequent to New Delhi's diabolical project to

destabilize the neighbouring country. India employed both terrorism and conventional military strategies to subvert Sri Lanka. No less a person than one-time Indian Foreign Secretary, J.N. Dixit, had acknowledged the Indian destabilization project in his memoirs, launched in 2004.

Norway has been involved in Sri Lanka since 1997. Two years, later in May, the then President Chandrika Bandaranaike Kumaratunga secretly requested Norway to explore ways and means of bringing the LTTE back to the negotiating table. Mrs. Kumaratunga revealed the Norwegian role soon after the LTTE made an abortive bid to assassinate her during the third week of December, 1999. Mrs. Kumaratunga's extended an invitation to Norway, with the LTTE's blessings. In fact, Norway was among five countries chosen by the LTTE as the likely third party to spearhead the peace initiative.

Against the backdrop of Solheim's claim that the 2002-2006 peace initiative had failed for want of broader international involvement, it would be pertinent to examine the Norwegian-led highly publicized effort. The Norwegian arranged Ceasefire Agreement had the backing of the US, EU and Japan. The US, EU, Norway and Japan functioned as Co-chairs to the peace process throughout this period. India, too, threw its weight behind the process though New Delhi refrained from playing a public role.

Regardless of what the likes of Solheim said today, Oslo ran a well coordinated, as well as an expensive project here. In fact, Norway gave the LTTE as much as possible international exposure, consequent to the then Prime Minister, Ranil Wickremesinghe, and LTTE leader, Velupillai Prabhakaran, endorsing the CFA, in February 2002. Norway arranged six rounds of direct negotiations between the two parties at overseas venues – Sattahip Naval Base, Chonburi, Thailand (mid – Sept 2002), Rose Garden Hotel, Nakhorn Pathom, Thailand (Oct-Nov 2002), Radisson SAS Plaza Hotel, Oslo, Norway (early Dec 2002), Rose Garden Hotel, Nakhorn Pathom, Thailand



(January 2003), Norwegian Embassy, Nordic Embassy Complex, Berlin, Germany (early Feb 2003) and Hakone Prince Hotel, Hakone, Japan (mid March 2003).

In spite of Premier Wickremesinghe going out of his way to reach a negotiated settlement, to the conflict, the LTTE acted belligerently. In fact, Wickremesinghe took decisions, even at the risk of his political career, to pursue a peaceful settlement. Unfortunately, those who had been pushing Sri Lanka to reach an understanding with the LTTE never put real pressure on the LTTE. Had Solheim and other international players resorted to tough actions, to rein in the group, Prabhakaran wouldn't have jeopardized the entire process by quitting the negotiating table, in April, 2003. The LTTE move created an environment for then President Chandrika Bandaranaike Kumaratunga to dissolve parliament to pave the way for a general election, in April, 2004.

Western powers could have certainly prevented all out war had they taken tangible measures against the LTTE in the wake of Foreign Minister Lakshman Kadirgamar's assassination, in Aug. 2005, and the assassination attempt on the then Army Chief Lt. Gen. Sarath Fonseka, in April, 2006. Peacemakers turned a blind eye to high profile LTTE operations, thereby further strengthening Prabhakaran's position, as well as those who believed in division of the country on ethnic lines. Instead of taking action against terrorism, perpetrated by the LTTE, Norway engaged in massive propaganda campaign meant to somehow keep the process on track.

Two years after the annihilation of the LTTE, Norway carried out a costly evaluation of its involvement in Sri Lanka under the leadership of Gunnar Sørbo of the Chr. Michelsen Institute (CMI) and Jonathan Goodhand from the University of London's School of Oriental and African Studies (SOAS).

The Norwegian study revealed even the involvement of NATO in support of the Norwegian effort. Both NATO as well as India

had provided intelligence to Norway as well as the Sri Lanka Monitoring Mission, comprising Scandinavian countries. The support received from Norway, from the most powerful military organization in the world, underscored the significance of the Norwegian project here. The amount of secret US diplomatic cables, released by WikiLeaks, revealed the US interest in the conflict here and her efforts to manipulate political parties et al. Solheim had been among about 120 politicians and officials from various countries interviewed by those who had been involved in the Norwegian evaluation.

The report, released in Sept., 2011, revealed the Norwegian project went awry primarily due to wrong Norwegian assessment on Sri Lanka. Norway, and its partners, excluding the US, believed that Sri Lanka should tolerate the high handed actions of the LTTE. They took up this position on the basis of wrong assumption that the LTTE couldn't be defeated on the battlefield, under any circumstances. They asserted that the Sri Lanka military could never succeeded against the Indian Army's failure to crush the LTTE. Had the then President Ranasinghe Premadasa not succumbed to the LTTE ploy, India could have wiped out the LTTE. Premadasa saved the LTTE only to be blasted by a suicide cadre, four years later, on May Day, 1993.

The Norwegian evaluation report revealed the circumstances under which Oslo pursued a wrong policy, thereby paving the way for the LTTE to dig its own grave. The bottom line is that both Norway and the LTTE failed to realize the previous political-military leadership's commitment to defeat the LTTE. The following section, reproduced verbatim, exposed the weakness in the Norwegian strategy: During an internal strategy session with Foreign Minister Jonas Gahr Store, in May, 2007, the mediation team reiterates that all observers think that this is a conflict that cannot be won by military means and most believe that the government cannot beat the LTTE militarily..." "In hindsight, the Norwegian underestimates

the Sri Lankan government's strength, both militarily and politically. The team considers a wide range of likely and less likely scenarios, but (like most observers at that time), it does not reckon with the sequence of events that is to follow: a strong SLFP-led coalition and military victory.

Even after the assassination of Minister Kadirgamar, and the attempt on Lt. Gen. Fonseka's life, Norway continued to mollycoddle the LTTE. The peace co-chairs, too, failed to bring the LTTE to heel. In fact, they allowed the LTTE a free hand. In between the assassination of Minister Kadirgamar, in Aug., 2005, and the attempt on Lt. Gen. Fonseka's life, the LTTE engineered UNP presidential candidate Ranil Wickremesinghe's defeat at the Nov. 2005 polls.

Although, the TNA, on behalf of the LTTE, announced the polls boycott order, over a week before Nov. 17 polls, Western powers refrained from taking action. The then President Mrs Kumaratunga personally requested the then Norwegian Prime Minister, Kjell Magne Bondvik, to ensure the LTTE didn't interfere with the electoral process. The request was made on the sidelines of UNGA sessions in New York, in late September, 2005 (Norway to facilitate presidential poll-The Island September 2005). Veteran politician, R. Yogarajan, MP, in a brief interview with this writer, on Nov. 22, 2014, explained the LTTE move as well as the UNP's efforts to persuade the LTTE not to interfere with the electoral process.

Had the LTTE listened to reason, perhaps, eelam war IV would never have taken place, Yogarajan asserted. "We knew something was amiss when the LTTE ordered public servants not to exercise their franchise at postal voting during the first week of November, 2005. All of us were seriously concerned. On the advice of the CWC leader, Arumugam Thondaman, I requested LTTE political wing leader, Thamilchelvam not to interfere with the electoral process. Thamilchelvam declined to cooperate. He also turned down my request for an urgent meeting with LTTE leader Velupillai Prabhakaran to discuss the

matter. I was to accompany Thondaman. But Tamilchelvam insisted there is no point in visiting Kilinochchi as the decision cannot be changed under any circumstances. Tamilchelvam faulted the UNP for not making a formal request to the LTTE leader. We never wanted the LTTE to tell the people to vote for the UNP candidate.”

Still the Norwegians continued to appease the LTTE. Having narrowly won the presidential poll, Mahinda Rajapaksa, in spite of strong opposition from those nationalist elements, who had worked tirelessly for his victory, accepted Norwegian mediated talks, in Geneva. Rajapaksa sent top level delegations twice only to be humiliated by the LTTE which believed in swift battlefield victory over the military. The first round of talks, during the Rajapaksa’s presidency, took place in Feb. 2006, and the second, in Oct. 2006. The former President bent backwards to reach an understanding with the LTTE even after the LTTE resumed eelam war IV with large scale attacks in the northern and eastern provinces during the second week of August, 2006.

Solheim should explain Norway’s failure to rein in the LTTE. The Peace co-chairs, too, should examine their wartime strategy. Western powers could have intervened, at least in mid 2007, after the government liberated the Eastern Province. They refrained from exerting pressure on the LTTE to return to the negotiating table because they firmly believed Prabhakaran’s Vanni bastion couldn’t be conquered. Colombo-based Western diplomatic missions, the Indian High Commission, as well as UN, acted on the premise that the LTTE couldn’t be defeated in the Vanni. A section of the media, too, propagated that theory as late as the third week of December, 2008, as the Task Force I/58 Division and the 57 Division advanced on Kilinochchi, which the LTTE considered as its administrative capital. Canada-based veteran journalist, D.B.S. Jeyaraj confidently declared that the advancing Army would be defeated on the Vanni east front.

Jeyaraj asserted that in spite of vacating the Eastern Province by mid-2007, the LTTE retained an elite fighting cadre capable of routing the Army. Jeyaraj predicted the LTTE rolling back the Army. The Norwegians believed in the LTTE's capability to turn around the situation. The Norwegian evaluation, in May, 2007, prompted the peace facilitator and co-chairs to continue their friendly policy towards the LTTE. They strongly believed that the government lacked the strength to bring the war to a successful conclusion. The Norwegians asserted the LTTE had the wherewithal to cause a battlefield stalemate by either rolling back the Army or resorting to guerrilla tactics. Solheim should peruse *Pawns of Peace: Evaluation of Norwegian peace effort in Sri Lanka 1997-2009* and make available copy to Bharath Gopaldaswamy, Director of the Atlantic Council's South Asia Center.

To be continued on Feb 17

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## **The UN Human Rights Commissioner visits Sri Lanka**

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UN Human Rights Commissioner Zeid Hussein has just wrapped up a four day visit to Sri Lanka. During the course of his visit Hussein reportedly held discussions a wide range of people. The photos below highlight a couple constituencies he met with that particularly interest me. The first, two of the country's

most respected Buddhist leaders, Chief Prelates of the Malwathu and Asgiri Chapters, the Most Venerable Sumangala and Aththadassi Thera.

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he second a group of Tamil civilians, who Hussein met at a welfare centre situated inside one of the numerous IDP camps that still pockmark the north of the country. Hussein's message to them: I hope to see you living back in your own lands next time I visit. The face of the women below suggests that almost seven years after the war's end, belief that this

will actually happen someday soon sits more on the UN Commissioner's side than hers.

Husse

in concluded the visit with a press conference at which he delivered a lengthy, rousing and generally excellent [statement](#). The report below gives a flavour of the overall message. One paragraph, however, particularly caught my attention. I think it offers real insight into both the challenges confronting Sri Lanka for genuine healing of the wounds of its decades-long conflict: and prospective solutions. Here it is:

“If mistakes are made, or significant problems are downplayed or ignored during the first few years, they become progressively harder to sort out as time goes on. While the glass is still molten, if you are quick and skilful, you can shape it into a fine object that will last for years. Once it starts to harden in misshapen form, it becomes more and more difficult to rectify. Likewise if any of the four key elements of post conflict resolution – truth-telling, accountability, reparations and institutional reform – are neglected or mishandled, unresolved resentments will fester, new strains will emerge, and a tremendous opportunity to establish long-

term stability, which in turn should result in greater prosperity, will be lost.”

Here's the news report:

## **Zeid warns of threat from extremists to Lanka's recovery**

Extreme nationalistic tendencies lay at the heart of Sri Lanka's conflict, and they should not be allowed to undermine the country's long term chances of recovery once again, the UN High Commissioner for Human Rights, Zeid Ra'ad Al Hussein said today.

Addressing the media in Colombo at the end of his visit to Sri Lanka, Zeid Ra'ad Al Hussein noted that a year ago, large numbers of Sri Lankans voted for change, for reconciliation, for truth, for justice and it would be a great shame if a minority of extreme voices – on both sides – who are bent on disruption, were allowed to prevail by creating fear where there should be hope.

“Sri Lanka needs a serious debate about these very serious issues, on which its future depends. This needs to start with a thorough, frank and honest discussion of the detailed findings of the September 2015 UN report, as it is important that all Sri Lankans rally behind the process and better understand the point of view of all the victims on all sides,” he said.

He also said that repairing the damage done by a protracted conflict is a task of enormous complexity, and the early years are crucial.

“If mistakes are made, or significant problems are downplayed



or ignored during the first few years, they become progressively harder to sort out as time goes on. While the glass is still molten, if you are quick and skilful, you can shape it into a fine object that will last for years. Once it starts to harden in misshapen form, it becomes more and more difficult to rectify. Likewise if any of the four key elements of post conflict resolution – truth-telling, accountability, reparations and institutional reform – are neglected or mishandled, unresolved resentments will fester, new strains will emerge, and a tremendous opportunity to establish long-term stability, which in turn should result in greater prosperity, will be lost,” he said.

He said that his visit has been a much more friendly, cooperative and encouraging visit than the one his predecessor endured in August 2013, which was marred by vituperative attacks on her integrity, simply because she addressed a number of burning human rights issues that any High Commissioner for Human Rights would have raised at that time.

He also said that the number of torture complaints has been reduced but new cases continue to emerge – as two recent reports, detailing some disturbing alleged cases that occurred in 2015, have shown – and police all too often continue to resort to violence and excessive force.

*(Colombo Gazette)*

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## **L’oignon no more**

# L'oignon no more



Janine Wiedel  
– Alamy

Quelle abomination! No wonder the [#JeSuisCirconflexe](#) hashtag is already spreading *comme la foudre* . . .

And what on earth comes next? A friend suggests the following. "2015: *oignon*. 2016: *ognon*. 2030: *le truk ki fe' pleure' ...*"

From *The Guardian*, 5 Feb. 2016

## Not the oignon: fury as France changes 2,000 spellings and ditches circumflex

*#JeSuisCirconflexe* campaigners fight back against decision by the Académie Française to 'fix anomalies' and scrap the circumflex accent

French linguistic purists have voiced online anger at the loss of one of their favourite accents – the pointy little circumflex hat (^) that sits on top of certain vowels.

[Changes to around 2,400 French words](#) to simplify them for schoolchildren, such as allowing the word for onion to be spelled *ognon* as well as the traditional *oignon*, have brought accusations the country's Socialist government is dumbing down the language.

Nothing provokes a Gallic row than changes to the language of Molière, but the storm took officials by surprise as the spelling revisions had been suggested by the [Académie Française](#), watchdogs of the French language, and unanimously accepted by its members as long ago as 1990.

The aim was to standardise and simplify certain quirks in the written language making it easier to learn (among them *chariot* to *charriot* to harmonise with *charrette*, both words for a type of cart and the regrouping of compound nouns like *porte-monnaie/portemonnaie* (purse), *extra-terrestres/extraterrestres* and *week-end/weekend*, to do away with the hyphen.

While the “revised spelling list” was not obligatory, dictionaries were advised to carry both old and new spellings, and schools were instructed to use the new versions but accept both as correct.

The reforms provoked a #JeSuisCirconflexe campaign (derived from the #JeSuisCharlie hashtag) on Twitter. As the row spread across the internet and social networks, some wondered why the reforms, decided 26 years ago, had suddenly become such an issue.

In 2008, advice from the education ministry suggested the new spelling rules were “the reference” to be used, but it appears few people took notice. Last November, the changes were mentioned again in another ministry document about “texts following the spelling changes ... approved by the Académie Française and published in the French Republic Official Journal on 6 December 1990”. Again, the news went unremarked.

It was only when a report by television channel TF1 appeared on Wednesday this week that the *ognon* went pear-shaped.

A furious student union group issued a statement lambasting education minister Najat Vallaud-Belkacem for “believing she was authorised to overturn the spelling rules of the French language”.

The far-right Front National waded in with party vice president Florian Philippot declaring “the French language is our soul” and the centre right mayor of Nice Christian Estrosi calling the reforms “absurd”.

The growing fury forced the education ministry in [France](#) to reassure the public on Friday that the circumflex accent was not disappearing, and that even though school textbooks would be standardised to contain the new spellings, pupils using either would be given full marks.

“It’s just that the publishers of schoolbooks have got together and decided to apply the reforms as of the next school year,” the education ministry said.

[Le Parisien declared the reforms “impossible to apply”](#). Pierre Favre, school headmaster and president of the National Schools Union, said he hoped “wisdom would prevail”

“What makes this subject so controversial is that people are passionate about it. To change spelling touches on their childhood, reminds them of the pain, the effort, the successes needed to learn the rules and triumph. The circumflex accents are a kind of trophy,” Favre added.

Some pointed out that the i-less *ognon* sounds less like a vegetable and more like ‘oh non’, which pretty much summed up France’s reaction to the changes.

“This has been the official spelling in the Republic for 25 years. What is surprising is that we are surprised,” said Michel Lussault, president of the school curriculum board.

“There were strange spelling anomalies linked to historic shifts so the Académie really made sure these changes were understandable,” he said.

It was not an upheaval, he added, more a “clean-up”.

When making the new spelling recommendations in 1990, the then

“perpetual secretary” of the Académie Française Maurice Druon wrote that “language is a living thing,”, adding: “Work should begin again in 30 years, if not earlier.”

## 10 spellings that will change

*Oignon* becomes *ognon* (onion)

*Nénuphar* becomes *néufar* (waterlily)

*S'entraîner* becomes *s'entraîner* (to train)

*Maîtresse* becomes *maitresse* (mistress or female teacher)

*Coût* becomes *cout* (cost)

*Paraître* becomes *paraitre* (to appear)

*Week-end* becomes *weekend* (weekend)

*Mille-pattes* becomes *millepattes* (centipede)

*Porte-monnaie* becomes *portemonnaie* (wallet)

*Des après-midi* becomes *des après-midis* (afternoons)

Source: [TF1](#)

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## One Year of ‘Yahapalanaya’ in Sri Lanka: Transitional Justice in Crisis?

# One Year of 'Yahapalanaya' in Sri Lanka: Transitional Justice in Crisis?



Sri Lankan Foreign Minister Mangala Samaraweera

Here's an excellent [Groundviews](#) analysis from [Niran Anketell](#) – well informed for once by comparative international experience – of Sri Lanka's current transitional justice challenges – and what needs to be done to address them. Thoroughly recommended.

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In October 2015, the Sri Lankan government took a giant stride towards reconciliation when it co-sponsored a historic resolution at the Human Rights Council. Despite howls of protest from fringe elements within the Sinhala and Tamil community who opposed it, the Resolution was defended stoutly by mainstream members of both ruling parties, the SLMC and the TNA at a two-day Parliamentary debate also in October. However, [as I noted in an article published last year](#), the Government's attempt to fudge the question of international

participation in trials was, to put it mildly, asking for trouble. My concern was that:

*...instead of patiently doing the work of explaining the importance of a substantial international component in trials relating to serious crimes, the government has chosen instead to play word games, proudly claiming that it has averted the dreaded hybrid court.*

At that time, as I pointed out, it was clear that:

*..the current trajectory is a dangerous one. If the government is eventually forced to deliver on its unequivocal promises, it risks allegations of betrayal from within its constituency. If however it reneges on its commitments, it risks international censure from without and will inflame Tamil opinion from within.*

Just four months after it signed off on the Geneva resolution, the government's fudge has come home to roost. President Sirisena's blunt rejection of any international participation in trials has triggered domestic and international concern over the sincerity of the Yahapalanaya government. Even as the Prime Minister and others scramble to repair the damage, their approach is nonetheless characterized by incoherence because they are unwilling to explicitly commit to any degree of international participation. The reason for this unwillingness is clear: delivering a special court to try international crimes with substantial international participation will involve some political cost. However, this cost will continue to rise if the government does not speedily create an enabling political atmosphere within which that cost is managed. By continuing to fudge the question, the government isn't merely delaying the inevitable; it is also making things more difficult.

It is in creating this enabling political climate that the

government is failing. To ensure political support for any Transitional Justice processes, the government must go beyond the simple appeal to instrumentalism and develop a morally persuasive case as to why Sri Lanka must deal with the past. In contrast, the government's only arguments for dealing with the past appear now to be restricted to the need to manage international pressure and redeem the reputation of the military. Not only do these claims fail to ennoble the Sinhala public, they trap that public in a siege mindset in which it is forced to grudgingly concede on dealing with the past because it is forced to. This attitude is incompatible with genuine Transitional Justice. Moreover, it creates the space for the government's opponents to claim that international pressure could be handled better, while conceding less. It will also, sooner or later, lead to hostility towards international demands for justice – hints of which are beginning to appear in Sirisena's increasingly defensive rhetoric.

The moral case for Transitional Justice could be couched in terms of reconciliation or it could flow from a theory of just desserts. It may be a combination of the two. It may even be the argument that we need to reset our ways after thirty years of war, and that this calls for introspection on the way in which the despicable war or "*mlechcha yuddhaya*"—the term Sirisena used to describe the war one year ago at the 2015 Independence Day celebrations—was fought. There is no shortage of morally persuasive and culturally resonant claims for Transitional Justice. To be clear, this leg work needed to sustain Transitional Justice is political in nature. It requires political leadership and investment, but unless that investment is made, the costs of a Transitional Justice process for the political fortunes of those leading the government will continue to mount.

Political leadership in making the case for dealing with the case is important, but it is equally important that the



government develop a comprehensive policy to deal with the past. This requires more than merely identifying mechanisms or offices the government intends to set up. Thus far, the government has identified a Truth Commission, an Office of Missing Persons, a special court and an Office of Reparations. If implemented properly, each of these mechanisms could advance Transitional Justice, but the real measure of success will be if they are able to complement each other. For instance, while trials are essential to ending impunity, they will never be able to bring justice in respect of all crimes.

The resulting 'impunity gap' – the gap between the number of perpetrators and crimes and the cases eventually brought to justice – must be bridged through other mechanisms. One option would be through vetting processes by which armed forces personnel responsible for human rights violations are removed from the military through a fair administrative process – another commitment by the government in the Geneva resolution. Another is through Truth Commissions which identify patterns of wrongdoing and in some cases, wrongdoers. Reparations could also help restore the dignity of victims.

The government must also make decisions about sequencing the rollout of mechanisms. Typically, reparations are undertaken towards the end of a truth-seeking process, once victims are identified and patterns of violations unearthed. In Sri Lanka's case, however, there may be a limited role for reparations in building trust and restoring some normalcy to the lives of those most affected. Another key decision is the division of labour between and sequencing of Truth Commissions and trials. The Sierra Leonean and Peruvian examples offer interesting insights into how trials and truth-seeking commissions could complement each other, but sometimes come into conflict.

To be clear, not all of the outcomes in a Transitional Justice process could or should be choreographed. The interaction between political and other pressures on the one hand, and the

momentum for victims' rights will necessarily be dynamic. The ebb and flow of political space will also influence results. Nevertheless, some political moments offer great promise, and if this promise is to be realized, policy decisions must be made. In making these decisions, expert input and insights into comparative examples are essential, but in the final analysis, nothing can replace political vision and maturity. A tick-the-box approach to establishing mechanisms may impress some diplomats at the Human Rights Council, but it does not make for good Transitional Justice or smart politics.

Unfortunately, this sort of strategic thinking around Transitional Justice is in short supply in Sri Lanka at all levels. Worryingly, this problem is not limited to government. While many stakeholders including within civil society have plenty to say on consultations and the importance of hearing victims' voices, there is a distinct unease with engaging in the hard graft of strategizing the long term vindication of victims' rights. In Chile, Argentina and Peru, civil society organizations strategically used Truth Commissions to change the narrative about the past and discredit perpetrators at a time when trials appeared impossible, while at the same time pressuring the state to prosecute through foreign courts exercising universal jurisdiction and regional human rights mechanisms.

In doing so, some of those activists went into flawed Truth Commissions that were accused of shielding perpetrators, but their work eventually helped set the stage for previously unthinkable criminal trials. In Cambodia, activists and researchers began documenting crimes under the Khmer Rouge regime, collecting thousands upon thousands of pages of documentary and witness evidence many years before a hybrid court was eventually established. When the court eventually arrived, the evidence had already been collected.

In Colombia, where a 2015 peace agreement between the government and the FARC looks set to generate a Transitional

Justice process, activists have built capacity behind the scenes on Transitional Justice within their networks for years, enabling an incredibly rich and multidisciplinary conversation on dealing with the past. If Transitional Justice is to work in Sri Lanka, those of us in civil society will have to rise to the challenge in new and more meaningful ways.

What then is the prognosis for Transitional Justice in 2016? President Sirisena's comments indicate there is trouble brewing, and that is undeniable. Yet, I would argue that the problems facing Transitional Justice in Sri Lanka are more complex than a mere lack of political will. Instead, the present impasse points to the absence of two critical ingredients for success in dealing with the past: political arguments for dealing with the past grounded on comprehensible moral claims, and a strategic and comprehensive vision for Transitional Justice, in contrast to the proliferation of promised mechanisms on an ad hoc basis. Fortunately, it is not too late to change course, but if we do not, *Yahapalanaya* risks going down as yet another false dawn for justice in Sri Lanka.