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Still no human rights accountability in Sri Lanka: still no end to serious human rights violations

Sri Lanka has still not taken genuine, substantial measures to meet important human rights obligations. It has done little to end impunity; serious human rights violations remain ubiquitous. Since the Human Rights Council (HRC)'s adoption in March 2013 of Resolution 22/1 on 'Promoting reconciliation and accountability in Sri Lanka,' the government, has made some new promises to investigate alleged violations and to implement more of the recommendations made by its own Lessons Learnt and Reconciliation Commissionⁱ, but it has made little progress implementing the reforms it had already promised.

There is a growing body of evidence of serious violations of human rights and humanitarian law during the armed conflict, some amounting to war crimes or crimes against humanity. These include enforced disappearances, extrajudicial executions and the intentional shelling of civilians and protected areas such as hospitals. The Sri Lankan government continues to deny these violations outright without adequate investigation. It denies credible allegations of crimes under international law committed by its forces during Sri Lanka's armed conflict and resists calls to investigate senior officers allegedly responsible for violations.ⁱⁱ

Authorities continue to threaten and harass critics, particularly media activists, students and even artists. Torture in police custody persists with impunity. They claim to seek reconciliation between communities, but appear to tolerate escalating attacks on minorities.. There have been more than 20 reported attacks on Muslim places of worship, as well as businesses in the past year. There was no known investigation into a July attack on Arafa Jumma mosque in Mahiyangama; a government Minister simply ordered the mosque closed.

In the run-up to the first ever provincial council elections to be held in the Tamil majority Northern Province, opposition candidates, activists and journalists engaged in public debates over key political issues-- such as military control of land -- have come under attack. Unidentified assailants have attacked the staff of Jaffna based Uthayan newspaper three times in the past six months. In July its journalist Kunalan Dileep, who was covering election issues, was assaulted. None of these incidents have been effectively investigated.

On 1 August three people were killed and scores injured when soldiers fired automatic weapons to disperse unarmed villagers protesting against industrial pollution of their water supply.ⁱⁱⁱ One victim was allegedly beaten to death by security forces while sheltering from the violence in a church.

The authorities continue to rely on the Prevention of Terrorism Act (PTA) in lieu of ordinary criminal law for routine policing. The PTA restricts freedom of expression and association and has been used to detain critics. It permits extended administrative detention, and reverses the burden of proof where torture or other ill-treatment of detainees is alleged. The PTA should be substantially amended to conform with international standards or repealed.^{iv}

Human rights and political activists, lawyers and journalists have been interrogated, threatened and assaulted as a result of their work. None of the incidents known to Amnesty International have been effectively investigated, and no prosecutions have been initiated. People calling for accountability for past and ongoing human rights violations, including human rights defenders attempting to communicate concerns to the UN, have been harassed and threatened. In some instances, individuals suspected of 'internationalizing' these issues through associations with foreign colleagues

have been detained and tortured. Producers of a film ‘Flying Fish’ that officials deem to have depicted Sri Lanka’s armed forces in a negative light, were threatened with legal action; its director was called a “traitor” by state-controlled media.

In July, Sri Lanka announced the arrest of security force personnel alleged to have been involved in the January 2006 extrajudicial execution of 5 students in Trincomalee. These suspects were once arrested in 2006, and released, supposedly for lack of evidence. The commanding officer, named by several witnesses as having been present during or ordering the attack, was not arrested. The government also announced that it had directed the police to compile a list of witnesses to the August 2006 massacre of 17 aid workers with Action Contre la Faim (ACF) in Muttur – something that should have happened years ago. These apparent efforts to investigate these cases, albeit seven years late, are encouraging, but it is too early to determine if they are genuine. In both cases, witnesses have reported threats by security forces to prevent them from revealing what they know about the killings, and several have fled the country. Given Sri Lanka’s climate of impunity, relatives of victims have told Amnesty International they fear these investigations will stall. Renewed investigations in these cases must be followed by effective prosecution and punishment of the perpetrators, including all persons in positions of command responsibility who knew or should have known about the killings and did not take measures to prevent them or punish those responsible.

In late July, President Rajapaksa ordered the creation of another commission of inquiry into enforced disappearances during the conflict, the 10th disappearance commission since the early 1990s. Amnesty International has previously questioned the efficacy of such ad hoc bodies, which have lacked independence and effective witness protection, made recommendations that are rarely implemented, and have undermined law enforcement and criminal justice processes.^v Amnesty International is concerned that this new commission may exclude important cases, particularly of persons who were taken from sites other than their places residence – the focus of inquiry identified in its mandate.^{vi}

Meanwhile police have failed to comply with court orders to submit remains for analysis and take witness statements regarding a mass grave recently discovered in Matale, thought to hold victims of enforced disappearances between 1989 and 1990. In 1989, Defence Secretary Gotabhaya Rajapaksa commanded an army unit in Matale.

The government's most recent promises of action on particularly egregious human rights cases precede the August visit of the High Commissioner for Human Rights (HCHR); the HRC's 24th session, and Sri Lanka's hosting of the Commonwealth Heads of Government Meeting in November. This last is an event of questionable legitimacy due to Sri Lanka's extremely poor human rights performance. The timing of the government's recent announcements shows that the Government of Sri Lanka responds to international attention. Sri Lanka's recent actions leading up to this Council session are evidence of the importance of the HRC continuing to encourage Sri Lanka to meet its international human rights obligations. But the encouragement must be sustained to ensure these latest human rights commitments are fulfilled. The HRC cannot afford to be satisfied by half measures; it should demand proof that Sri Lanka is willing to hold accountable all those responsible for human rights violations.

Even then, there are limits to what change can reasonably be expected from domestic mechanisms, given the enormous backlog in unresolved cases and demonstrated lack of political will to address command responsibility for the most egregious violations.

HRC Resolution 19/2 of 2012 called on Sri Lanka to ensure accountability for alleged violations of international law; Resolution 22/1 of 2013 expressed concern over reports of continuing violations of human rights, reiterated the demand for accountability and noted the call of the HCHR for an "independent and credible international investigation into alleged violations of international human rights law and international humanitarian law" in Sri Lanka. The government's increasing intolerance of dissent and continued failure to ensure justice in even the most publicized cases make it clear that there is insufficient action to end impunity and promote human rights. An independent international investigation remains essential to ensure accountability in Sri Lanka.

Amnesty International urges the HRC to:

- Continue to monitor closely the human rights situation in Sri Lanka, including of the effectiveness of any domestic accountability processes;
- Strengthen UN measures to prevent intimidation or reprisals by or tolerated by the Sri Lankan government against individuals who seek to cooperate or have cooperated with the UN, its representatives and mechanisms in the field of human rights;
- Establish a credible and independent international investigation into allegations of crimes under international law committed by Sri Lankan government forces and allied armed groups as well as the LTTE. The investigation should be conducted in accordance with international standards and, where sufficient admissible evidence is found, lead to the criminal prosecution of individuals found responsible in full conformity with international standards for fair trial;

Amnesty International urges the Government of Sri Lanka to:

- Ensure that all suspected perpetrators of crimes under international law are prosecuted in proceedings that comply with international standards for fair trial.
- Ensure the protection of the rights to freedom of expression, freedom of peaceful assembly and freedom of association, and demonstrate unequivocally that harassment, intimidation and attacks against individuals or groups of individuals exercising those rights will not be tolerated, regardless of the opinions such individuals hold and express, and regardless of the position or political affiliation of the suspected perpetrator;
- Take all measures necessary to end attacks on businesses owned by Muslims and Christians and on Muslim and Christian places of worship;

- Substantially amend to bring into conformance with international standards or repeal the PTA and end the abusive use of other legislation to violate the rights to freedom of expression, freedom of peaceful assembly, and freedom of association;
- Cooperate fully with the UN special procedures including by responding positively to outstanding their requests for invitations to visit Sri Lanka and by providing them with full access.

ⁱ In July the government said it was adding another 53 recommendations to its LLRC National Action Plan and announced that the President had ordered a new Commission of Inquiry into Disappearances.

ⁱⁱ A Sri Lankan Army Court of Inquiry has determined “conclusively” that the final assault on the Liberation Tigers of Tamil Eelam (LTTE) was conducted strictly in accordance with the President’s “Zero Civilian Casualty” directive. At: http://www.defence.lk/new.asp?fname=Army_Court_of_Inquiry_on_Channel_4_Allegations_Referred_20130215_08. The report of the Court has not been published.

ⁱⁱⁱ Amnesty International, *Sri Lanka: Investigators of alleged army killings of protesters should be truly independent*, 5 August 2013 <http://www.amnesty.org/en/news/sri-lanka-investigators-alleged-army-killings-protesters-should-be-truly-independent-2013-08-05>

^{iv} For more information see, Amnesty International, *Locked Away: Sri Lanka’s Security Detainees*, March 2012, pp. 13-14, Index: ASA 37/003/2012, <http://files.amnesty.org/archives/asa370032012eng.pdf>

^v Amnesty International, *Sri Lanka: Twenty years of make-believe. Sri Lanka’s Commissions of Inquiry*, June 2009, <http://amnesty.org/en/library/info/ASA37/005/2009/en>

^{vi} In particular this might leave out the alleged enforced disappearance of surrendered or captured combatants.