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Sri Lanka: Keep victims at the centre of Justice, Truth and Reparation Efforts

Amnesty International's written statement to the 33rd session of the UN Human Rights Council (13 – 30 September 2016)

In 2015, Sri Lanka co-sponsored Human Rights Council Resolution 30/1 *Promoting reconciliation, accountability and human rights in Sri Lanka*.¹ There have been positive developments since then, including increased openness to engage with Special Procedures. However, slow progress in delivering on many aspects of the ambitious agenda coupled with lack of transparency has led some victims and human rights defenders to express frustration.²

Most crimes under international law allegedly committed before, during, and after Sri Lanka's protracted armed conflict between government forces and the Liberation Tigers of Tamil Eelam (LTTE), which ended in 2009, remain uninvestigated and unpunished. As a co-sponsor of the resolution, Sri Lanka promised to establish mechanisms to deliver justice, truth, reparation and guarantees of non-recurrence, in line with the recommendations of the report of the Office of the High Commissioner for Human Rights Investigation on Sri Lanka (OISL).³ These were to include:

- A judicial mechanism with a Special Counsel to investigate allegations of violations and abuses of human rights and violations of international humanitarian law;
- A Commission for truth, justice, reconciliation and non-recurrence;
- An Office on Missing Persons; and
- An Office for Reparations.

There has been progress, but much more must be done:

Public Consultation

Public consultations, the bedrock on which Sri Lanka's transitional justice process must be built, are underway. However, implementation has been undermined by lack of government resources, including to publicise the process nationally to all affected communities and provide effective protection mechanisms so that victims and their families can participate in safety and confidence. These flaws must be addressed without delay.

¹ Promoting reconciliation, accountability and human rights in Sri Lanka, A/HRC/RES/30/1, 14 October 2015, para. 4.

² Consultation Task Force Interim Report: The Office on Missing Persons Bill and Issues Concerning the Missing, the Disappeared and the Surrendered, <http://groundviews.org/wp-content/uploads/2016/08/CTF-Interim-Report.pdf?72cba1>, accessed 11 August 2016.

³ Report of the OHCHR Investigation on Sri Lanka (OISL), Recommendation 20, page 251, 16 September 2015 A/HRC/30/CRP.2, Available at: <http://un.lk/news/zeid-urges-creation-of-hybrid-special-court-in-sri-lanka-as-un-report-confirms-patterns-of-grave-violations/>, accessed 30 August 2016.

Office on Missing Persons

In August, Parliament adopted legislation establishing an Office on Missing Persons (OMP) to assist families seeking missing loved ones. The final version of the Act has not been made public at the time of writing. Amnesty International understands it contains many positive elements: a broad definition of missing persons; broad powers to conduct investigations with the cooperation of national authorities; a Victims and Witnesses Protection Division; the power to provide certificates of absence to families; provisions directed to keeping victims and families informed of investigations; the establishment of offences of contempt against the authority of the Office; and a mandate to recommend reparation for victims, including guarantees of non-recurrence.

Although the Office does not have prosecutorial powers, it should submit all evidence relating to individual criminal responsibility for disappearances, abductions and other crimes to appropriate authorities, including the proposed justice mechanism, for criminal investigation. The law provides for such referrals.

To be effective, the OMP must provide families with the truth about what happened to their loved ones. Many fear their right to truth might be compromised because Sri Lanka's newly enacted Right to Information Act would not apply to confidential information received by the Office. The OMP must not agree to confidentiality regarding any information that would deny families the truth about the whereabouts or fate of their loved ones or obstruct their access to justice.

The Office will assume the caseload of the Presidential Commission to Investigate into Complaints regarding Missing Persons (Paranagama Commission). It must be provided with sufficient resources to investigate this caseload promptly, thoroughly and effectively. Given that mass graves and other burial sites, thought to contain remains of victims of enforced disappearance have been discovered, Amnesty International agrees with the Centre for Policy Alternatives (CPA), a Sri Lankan policy organisation, that the OMP should have forensic expertise to investigate grave sites, supervise exhumations, and identify remains.⁴

The shortcomings of the OMP law drafting process provide important lessons for the government as it develops other mechanisms. The fact that it largely bypassed public consultation, as well as parliamentary debate created public confusion and distrust. Last minute efforts to engage a small number of handpicked "stake holders," before the thirty-second Council session, were criticised by activists and families of the disappeared, reflected in the interim report of Sri Lanka's Consultation Task Force.⁵

Families of the disappeared, activists and other Sri Lankans say the Government has not adequately explained its reform agenda nor acted on demands for an interim relief policy. Family members of victims who are active on enforced disappearances have advocated for the appointment of victim representatives to work with the OMP to support better public engagement.

Sri Lankan needs to show progress on all four pillars of transitional justice, but there are several steps the Sri Lankan government should take now to sustain public faith in the process:

Priorities for further progress

⁴ Office on Missing Persons: Outstanding Issues for Consideration to Strengthen Legislation and Post-Enactment Implementation, Centre for Policy Alternatives, July 2016, <http://www.cpalanka.org/wp-content/uploads/2016/08/FINAL-OMP-NOTE-JULY-2016-.pdf>, accessed 30 August 2016.

⁵ Consultation Task Force, Interim Report: The Office on Missing Persons Bill and Issues Concerning the Missing, the Disappeared and the Surrendered, <http://groundviews.org/wp-content/uploads/2016/08/CTF-Interim-Report.pdf?72cba1>, accessed 11 August 2016.

Repealing the Prevention of Terrorism Act (PTA)

In June, President Sirisena instructed the Sri Lankan police and armed forces to comply with directives issued by the Human Rights Commission of Sri Lanka (HRCSL) on 18 May 2016, designed to protect those arrested under the PTA and other emergency measures. The directives seek to end practices that can lead to abuse, such as the failure of arresting officials to identify themselves, the transport of suspects in unmarked vehicles, and the use of unofficial places of detention.⁶ In August, Sri Lanka made a declaration under article 22 of the UN Convention against Torture, recognising the competence of the Committee to receive and consider individual communications.

These are positive steps aimed to protect detainees, but the government should proceed with its commitment to repeal the PTA, which has been associated with arbitrary detention, torture and enforced disappearances and stop using the law immediately.

Reforming the Public Security Ordinance

In August, the HRCSL called on the Sri Lankan authorities to review the Public Security Ordinance, which enables the imposition of emergency regulations, to bring it into line with international standards. Now lapsed, the state of emergency and its accompanying regulations replicated many of provisions in the Prevention of Terrorism Act and were often used in combination to extend periods of detention.⁷

Showing progress on emblematic human rights cases

Despite repeated promises to progress investigations, impunity persists in most cases, including the January 2006 extrajudicial executions of five students in Trincomalee by Sri Lankan security personnel; the August 2016 shootings of 17 aid workers with *Action Contre La Faim*; the enforced disappearance of human rights defender Stephen Sunthararaj in 2009 after his abduction by security personnel; the disappearance of cartoonist Prageeth Eknaligoda in January 2010; and the disappearance of political activists Lalith Weeraraj and Kugan Muruganandan, last seen in Jaffna in December 2011. Families have waited years for truth and justice in these cases.

Taking strong action to protect human rights defenders and journalists

Threats against human rights defenders and journalists persist. For example, Amnesty International was disturbed to learn of the beating on 2 June of journalist Freddy Gamage by supporters of a Negombo politician. Gamage, who received head injuries and required hospitalisation, had been threatened over

⁶ Directives Issued by The Human Rights Commission of Sri Lanka on Arrest and Detention under the Prevention of Terrorism (Temporary Provisions) Act No 48 of 1979, 18 May 2016, <http://hrctl.lk/english/wp-content/uploads/2016/05/Directives-on-Arrest-Detention-by-HRCSL-E-.pdf>, accessed 22 August 2016, Note: Similar, though less exhaustive directives were issued by Mahinda Rajapaksa in issued in July 2006 and re-circulated to the security forces in April 2007 but they were not enforced. The new HRCSL directives attempt to reinforce those earlier orders and bring them in line with international standards. The directives require arrest receipts be issued to families, providing the name and rank of the arresting officer, the time and date of arrest, and the place of detention. They mandate special measures to prevent gender-based violence and protect children in custody, prohibitions on torture, requirements that the arrestee be allowed to meet with his or her lawyer during interrogation, and that detentions be limited to officially acknowledged and authorized detention centres. They order security forced to give the HRCSL unimpeded access to anyone arrested under the PTA and any place of detention or confinement and to be informed of all detentions, releases or transfers within 48 hours. They warn that “the PTA should be construed narrowly” and should not be used for ordinary crimes. They also require that police and military personnel be informed that human rights violators will be prosecuted.

⁷ See, Locked Away; Sri Lanka’s Security Detainees, Amnesty International March 2012, ASA 37/003/2012, <https://www.amnesty.org/en/documents/asa37/003/2012/en/https://www.amnesty.org/en/documents/asa37/003/2012/en/>

articles he wrote exposing the politician's alleged corruption and links to organised crime. Gamage told Amnesty International that he was further threatened by one of the men he accused of attacking him when they met in court after he pointed him out in an identification parade. The government must ensure he is protected.

Providing interim reparation to victims who need immediate assistance

Developing a reparation program in full consultation with victims takes time. It is essential that interim measures are initiated that provide assistance and services to those in urgent need. These should include rehabilitation, compensation and restitution of property and lands seized by the military during the conflict. Amnesty International welcomes a Cabinet decision in August approving a national policy to provide durable solutions for persons displaced by armed conflict and encourages early implementation of measures to relieve immediate needs.

To support continued progress, the United Nations system and Member States should:

- Provide Sri Lanka with technical assistance and financial support for justice, truth and reparation mechanisms that meet international standards; legal reform and other steps to ensure non-recurrence.
- Emphasise the rights of victims to effective remedies, in particular effective access for women to justice, truth and reparation, as well as guarantees of non-recurrence that address underlying causes of gender and other discrimination.
- Insist that all mechanisms created coordinate and share information to ensure the effective delivery of justice, truth, reparation and guarantees of non-recurrence.
- Assist Sri Lankan authorities to establish an independent and effective system of victim and witness protection in line with international standards.
- Enter into agreements with Sri Lanka to relocate to their countries victims and witnesses who face serious risk due to their engagement with the justice, truth or reparation mechanisms.
- Assist Sri Lanka to develop a rigorous human rights vetting program for law enforcement agencies and the military for domestic purposes, and ensure the vetting of all Sri Lankan personnel provided to UN peacekeeping operations, training or exchange programs.
- Provide cooperation and mutual legal assistance to support efforts to prosecute persons suspected of crimes under international law or other serious human rights violations, subject to fair trial safeguards and precluding the imposition of the death penalty.