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THE UN HUMAN RIGHTS COUNCIL MUST STRENGTHEN ITS OVERSIGHT OF SRI LANKA DURING THE CRISIS TRIGGERED BY THE POLITICAL AND ECONOMIC COLLAPSE

Amnesty International urges the United Nations Human Rights Council (UNHRC), when it meets for its 51st session (12 September - 7 October 2022), to strengthen the existing Sri Lanka accountability project of the Office of the UN High Commissioner for Human Rights (OHCHR), that was established to collect, consolidate, analyse and preserve information and evidence for future; and to set up an expert mechanism on Sri Lanka to monitor, report, provide recommendations on human rights concerns that are at the core of the current crisis.

This briefing paper details how the international mechanisms we recommend have a critical role to play in addressing the human rights, economic and political crisis in the country, which are strongly interlinked and deeply rooted in the culture of impunity that has plagued Sri Lanka for decades.

We call on UN member states to reflect the gravity of the situation on the ground and recognise the necessity for these mechanisms and take action to advance human rights protection and accountability in Sri Lanka.

HUMAN RIGHTS IN CRISIS

Sri Lanka is undergoing a serious political and economic crisis.¹ Severe shortages in essential medicines, cooking gas, fuel and food items, combined with sky-high inflation and daily power outages, prompted country-wide protests by disgruntled residents, who blamed the crisis on the mismanagement of the economy by the powerful political elite. Months of largely peaceful, popular, unprecedented demonstrations by tens of thousands of Sri Lankans led to the resignations of the President, Prime Minister, and the cabinet of ministers. Since then, a shaky coalition of politicians now govern the country with a focus on economic reform. However, without addressing the deep-seated structural issues that led to the crisis in the first place: Sri Lanka's ineffective accountability systems and the dysfunctional political culture.

Sri Lanka has a long history of crimes under international law and serious human rights violations, including many that are recent. The Sri Lankan Government's unwillingness to address questions of accountability, rampant impunity, targeted weakening of independent institutions and redress mechanisms, as well as the lack of checks and balances, abuse of power, nepotism and corruption

¹ Amnesty International, *From bad to worse: Rights under attack during Sri Lanka's economic crisis*, 6 May 2022, <https://www.amnesty.org/en/documents/asa37/5564/2022/en/>



have collectively contributed to the current crisis.

The recent change in the Presidency, following unprecedented popular public protests, has not addressed the root causes and the negative trends that led to this crisis. Instead, the political change has only sparked fresh crackdowns on people's rights to freedom of expression, opinion and peaceful assembly. The scrutiny and attention of the international community, in particular the UNHRC, is critical as Sri Lanka makes important decisions that will shape the country's future and have a tremendous impact on human rights – both civil and political as well as economic, social and cultural.

CRACKDOWN ON PEOPLE'S PROTESTS

The Sri Lankan authorities' response to the people's demonstrations intensified as the economic situation worsened, bringing tens of thousands of people on to the roads to protest for six months in 2022. Amnesty International documented a series of these incidents.²

Some largely peaceful protests were met with excessive force, including tear gas and live ammunition by Sri Lankan authorities that claimed the lives of at least two protesters.³ In July, the armed forces and the police forcibly removed the peaceful protest site 'Gotagogama' in Colombo where protesters complained of being beaten and tortured.⁴

In July, the President also issued emergency laws which were subsequently approved by parliament, that gave sweeping powers to authorities, including the armed forces,⁵ to make arrests, some of which flouted due process safeguards. Petty criminal offences, such as causing mischief, carried penalties of 20 years to life imprisonment under the new emergency laws which lapsed in August. Government parliamentarians, and the President himself began demonising protesters by labelling them 'terrorists' and 'fascists',⁶ which set the stage for arrests of protesters demanding accountability from the government. Following this, law enforcement authorities cracked down on protesters by using a sweeping approach which demonstrated a clear intention to repress protests and intimidate protesters and activists, including those perceived to be protest leaders. Some of those arrested were denied basic due process safeguards where they were held in arbitrary detention, sometimes for up to six hours, before being brought to a police station, bringing back fears of enforced disappearances, which were historically prevalent in Sri Lanka. Authorities are yet to explain the circumstances that have led to the discovery of at least half a dozen unidentified bodies in various parts of the country, including close to the protest site in

² Amnesty International, *Penalized for Protesting: Sri Lanka's Crackdown on Protesters*, 8 September 2022, <https://www.amnesty.org/en/documents/asa37/5986/2022/en/>

³ Amnesty International, *Penalized for Protesting: Sri Lanka's Crackdown on Protesters*, 8 September 2022, <https://www.amnesty.org/en/documents/asa37/5986/2022/en/>

⁴ Amnesty International, *Protesters must not be detained under the draconian anti-terror law*, 22 August 2022, <https://www.amnesty.org/en/latest/news/2022/08/sri-lanka-protesters-must-not-be-detained-under-the-draconian-anti-terror-law/>, and Amnesty International, *Penalized for Protesting: Sri Lanka's Crackdown on Protesters*, 8 September 2022, <https://www.amnesty.org/en/documents/asa37/5986/2022/en/>

⁵ Amnesty International, *Emergency regulations must not lead to further crackdown on human rights*, 20 July 2022, <https://www.amnesty.org/en/latest/news/2022/07/sri-lanka-emergency-regulations-must-not-lead-to-further-crackdown-on-human-rights/>

⁶ Joint INGO statement, *End government crackdown on peaceful protesters*, 5 August 2022, <https://www.amnesty.org/en/documents/asa37/5928/2022/en/>



Colombo,⁷ some of which have the hallmarks of extra-judicial executions. All these factors have collectively created a chilling effect and forced protesters to go into hiding.

On 8 August, UN experts warned Sri Lanka of its misuse of emergency measures and condemned the “continued abuse of such measures to infringe on the legitimate exercise of the rights to freedom of peaceful assembly and expression.”⁸ Despite the UN experts’ warning, violations continued in contravention of Sri Lanka’s international obligations under the International Covenant on Civil and Political Rights.

THE PREVENTION OF TERRORISM ACT

In an alarming new development, the President, in his capacity as the Minister of Defence, issued orders to detain three key student protesters for a period of 90 days under Sri Lanka’s draconian ‘anti-terror law’, the Prevention of Terrorism Act (PTA).⁹

The PTA has come under heavy criticism as a law that facilitates arbitrary arrests, prolonged detention for up to a year without charge, and removes safeguards against the custodial torture of detainees. The legislation has disproportionately targeted government critics, journalists and minorities to date. Amnesty International highlighted the cases of lawyer Hejaaz Hizbullah,¹⁰ poet Ahnaf Jazeem¹¹ and others¹² who have faced reprisals under the Act for their human rights work in the past few years.

In the face of mounting pressure from both local and international actors, consecutive Sri Lankan governments have acknowledged that the law does not adhere to international human rights law and standards, and promised reform, repeal and even a moratorium in the interim. That the new leadership has broken this commitment and returned to using the Act as a tool to stifle dissent as part of a crackdown on protesters during a severe economic crisis, is a dangerous development for Sri Lankans who have had to fear reprisals, ill-treatment and torture under the Act for decades.

Ahead of the 51st UNHRC sessions, the Sri Lankan government announced¹³ that it intends to replace the PTA with a new ‘National Security Act’. However, after failing to address critical gaps in the law in multiple proposed amendments, the people of Sri Lanka now await the latest iteration

⁷ Sunday Times, *Unidentified bodies: The case for dignity and reform*, 22 August 2022, <https://www.sundaytimes.lk/220821/sunday-times-2/unidentified-bodies-the-case-for-dignity-and-reform-492331.html>

⁸ Office of the High Commissioner for Human Rights, *UN human rights experts condemn repeated use of emergency measures to crackdown on protests*, 8 August 2022, <https://www.ohchr.org/en/press-releases/2022/08/sri-lanka-un-human-rights-experts-condemn-repeated-use-emergency-measures>

⁹ Amnesty International, *Protesters must not be detained under the draconian anti-terror law*, 22 August 2022, <https://www.amnesty.org/en/latest/news/2022/08/sri-lanka-protesters-must-not-be-detained-under-the-draconian-anti-terror-law/>

¹⁰ Amnesty International, *Authorities must review all ‘terrorism’ cases after granting bail to Hejaaz Hizbullah*, 7 February 2022, <https://www.amnesty.org/en/latest/news/2022/02/sri-lanka-must-review-terrorism-cases-after-hejaaz-hizbullah-granted-bail/>

¹¹ Joint INGO statement, *Joint statement calls for immediate release of poet detained for a year without charge*, 16 May 2021, <https://www.amnesty.org/en/documents/asa37/4124/2021/en/>

¹² Amnesty International, *End the use of and repeal the draconian PTA*, 18 February 2022, <https://www.amnesty.org/en/documents/asa37/5241/2022/en/>

¹³ News First, *Terrorism Act to be relaxed and replaced with National Security Act*, 23 August 2022, <https://www.newsfirst.lk/2022/08/23/terrorism-act-to-be-relaxed-and-replaced-with-national-security-act/>



of the law. Any new legislation must address the concerns flagged by UN human rights experts.¹⁴ However, that authorities are meanwhile punishing protesters using the PTA, does not give adequate assurances of the government's commitments to follow through with its promises.

LACK OF JUSTICE, TRUTH AND REPARATION

In her comprehensive report to the 51st UNHRC, the United Nations High Commissioner for Human Rights says,

"Impunity remains a central obstacle to the rule of law, reconciliation and Sri Lanka's sustainable peace and development, and remains the core risk factor for recurrence of further violations. Thirteen years since the end of the war, victims of past human rights violations continue to await truth and justice. The Sri Lankan State, including through successive governments, has consistently failed to pursue an effective transitional justice process to hold perpetrators of gross human rights violations and abuses accountable and uphold victims' rights to truth, justice and reparations. Rather, they have created political obstacles to accountability, actively promoted and incorporated some military officials credibly implicated in alleged war crimes into the highest levels of government. This impunity emboldened those committing human rights violations and created a fertile ground for corruption and the abuse of power. Without an effective vetting process and comprehensive reforms in the security sector, serious human rights violations and atrocity and economic crimes risk being repeated as the State apparatus and some of its members credibly implicated in alleged grave crimes and human rights violations remain in place."¹⁵

Despite consecutive UN investigations finding credible evidence that indicate crimes under international law and serious human rights violations in Sri Lanka during the three decade-long conflict, and numerous communications by UN special procedures expressing concern of Sri Lanka's deteriorating human rights situation even in the post-war context, Sri Lankan authorities made no progress in holding all those suspected of criminal responsibility to justice in fair trials before ordinary civilian courts. The government failed in its commitment to the Council in 2015, under UNHRC resolution 30/1, to set up a special court with the participation of Commonwealth and other foreign judges, defence lawyers and authorized prosecutors and investigators. Nor did Sri Lankan authorities take steps at genuinely reforming its domestic systems that would set up independent redress systems and facilitate effective prosecutions.

On the contrary, the government rewarded alleged war criminals with government positions and promotions; withdrew its support for the UNHRC process; granted presidential pardons to those found guilty of massacring Tamil civilians; withdrew cases against state actors accused in emblematic cases; and set up Presidential Commissions of Inquiry that recommended to halt investigations and prosecutions of state actors accused of murders and disappearances in the domestic judicial system.

¹⁴ Office of the High Commissioner for Human Rights, *UN experts call for swift suspension of Prevention of Terrorism Act and reform of counter-terrorism law*, 2 March 2022, <https://www.ohchr.org/en/press-releases/2022/03/sri-lanka-un-experts-call-swift-suspension-prevention-terrorism-act-and>

¹⁵ Comprehensive Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Sri Lanka, A/HRC/51/5, 6 September 2022



Domestic transitional justice bodies like the Office on Missing Persons (OMP) and the Office on Reparations – have become largely irrelevant and lost the confidence of victims’ families after being undermined by the appointment of Members who are not sufficiently independent. At least one Member of the OMP has publicly voiced frustration and resigned in protest.¹⁶ The OMP, whose mandate includes to search for and trace missing persons, has not been successful in doing so in a single case before it. Instead, the OMP appears intent on reducing the case load and closing existing files,¹⁷ stopped issuing interim relief to victims pushing them further into financial strain. The victim families have complained of being pressured to accept death certificates and financial compensation, instead of being issued certificates of absence until the fate of those forcibly disappeared is ascertained. According to cases outstanding before the UN Working Group on Enforced or Involuntary Disappearances in 2021, Sri Lanka has the second largest number of enforced disappearances in the world, recorded at 6,259 - second only to Iraq.¹⁸

The Sri Lankan authorities have recently showed renewed interest in setting up a truth and reconciliation commission, a promise it made seven years ago in 2015. A country-wide consultations on transitional justice mechanisms¹⁹ recommended the contours of a credible truth-seeking mechanism, for example: one that is substantially different from past Presidential Commission of Inquiry, is able to determine the root causes of the conflict, make recommendations for non-recurrence, and refer cases for prosecutions with a view of holding perpetrators of violations to account. International law does not permit the grant of amnesties or similar measures of impunity for crimes under international law or serious human rights violations, and this must be understood from the outset. While Amnesty International generally supports the establishment of truth and reconciliation commissions, they should never replace judicial proceedings. Likewise, any truth-seeking mechanism that doesn’t consider the recommendations made in the Consultation Task Force’s findings, may not have the support of affected parties.

In addition, the 20th amendment to the Sri Lankan Constitution weakened the appointment process to independent redress mechanisms, including the Human Rights Commission of Sri Lanka²⁰ and the National Police Commission. Consequently, appointments to these bodies became politicised and its work, ineffective. Efforts to amend this provision further in the new 22nd amendment bill to the Constitution on the back of demands emanating from country-wide protests where issues such as independent systems, accountability, and checks and balances were highlighted, have not resulted in the change sought since the appointment system envisioned in the new bill is still politicised.²¹

In light of the failures of domestic systems to provide redress to victims of crimes under

¹⁶ Tweet by Shiraz Noordeen, Member of the OMP, 1 May 2022,

<https://twitter.com/ShirazNoordeen/status/1520805090474348545?s=20&t=vUF6bpoidZOMRbcRibJbbg>

¹⁷ Amnesty International, *Still no answers: An update on the rights of victims of enforced disappearances in Sri Lanka*, 1 March 2022, <https://www.amnesty.org/en/documents/asa37/5278/2022/en/>

¹⁸ Report of the UN Working Group on Enforced or Involuntary Disappearances, August 2021, A/HRC/48/57, <https://undocs.org/A/HRC/48/57>

¹⁹ Final report of the Consultation Task Force on Reconciliation Mechanisms, 17 November 2016,

https://drive.google.com/drive/folders/OBxbk4wYolphwSXBKSEIMYnhlYTg?resourcekey=0-7qrRlidsOs4o_XDC4tfuWA

²⁰ The Global Alliance of National Human Rights Institutions (GANHRI), downgraded Sri Lanka’s Human Rights Commission of Sri Lanka to ‘B’ status.

²¹ International Commission of Jurists, *22nd Amendment Bill Does Not Guarantee Sufficient Checks and Balances*, 9 August 2022, <https://www.icj.org/sri-lanka-22nd-amendment-bill-does-not-guarantee-sufficient-checks-and-balances/>



international law and grave human rights violations, UNHRC resolution 46/1 enhanced the capacity of the OHCHR to collect, consolidate, analyse and preserve information and evidence for future accountability processes. While the project is slowly making progress after being fully staffed and operational since May 2022, it is not adequately resourced to carry out its mandate effectively.²²

ROLE OF THE UNHRC

International monitoring and reporting on the human rights situation in Sri Lanka is crucial to ensure the prevention of further backsliding on Sri Lanka's international commitments. In her report to the Council in February 2022, the UN High Commissioner for human rights noted,

“The Sri Lankan state, including successive governments, has consistently failed to prosecute international crimes and serious human rights violations and pursue an effective transitional justice process. The current Government has continued to demonstrate its unwillingness to recognise those serious international crimes and pursue accountability but has also incorporated some military officials who may have been implicated in alleged war crimes into the highest levels of Government, reinforcing a narrative of impunity. In the absence of tangible results that ensure justice for victims, the Human Rights Council should continue to pursue international strategies for accountability.”²³

This year marks 10 years of a consistent phase of engagement on Sri Lanka by the UNHRC. Given this long engagement, if the UNHRC fails to adopt a resolution that takes concrete steps to address the seriousness of the situation in a comprehensive manner, it will seriously damage the credibility of the body.

We call on states to vote in favour of a resolution on Sri Lanka under agenda item 2, to strengthen the existing Sri Lanka Accountability Project, and additionally set up an expert mechanism on Sri Lanka to monitor, report and provide recommendations on the current crisis. Such a mechanism can further the prevention mandate of the UNHRC and act as an early warning mechanism as Sri Lanka faces a tumultuous period. The challenges facing Sri Lanka are multifaceted and range from concerns related to civil and political rights to those related to economic, social and cultural rights. A broad range of expertise is needed to comprehensively cover such a wide spectrum of concerns. This may be beyond the limited capacity of OHCHR's current enhanced monitoring capabilities, and an expert mechanism can complement OHCHR's ongoing efforts and make recommendations related to human rights concerns to the Sri Lankan government as well as to UN agencies and other multilateral institutions, including international financial institutions.

We urge you to vote for a resolution to set up an expert mechanism on Sri Lanka that can report annually to the UNHRC with additional reports to the UN General Assembly for an initial period

²² Comprehensive Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Sri Lanka, A/HRC/51/5, 6 September 2022

²³ Report of the Office of the United Nations High Commissioner for Human Rights on Promoting reconciliation, accountability and human rights in Sri Lanka, A/HRC/49/9, 11 April 2022, <https://www.ohchr.org/en/documents/reports/ahrc499-promoting-reconciliation-accountability-and-human-rights-sri-lanka-report>



of two years at a minimum, with a mandate to:

1. Act as an independent international observer and analyse, monitor and report on the human rights implications of the current crises, (including those related to: the freedoms of expression, peaceful assembly, association and religion; arbitrary arrest and detention; torture; excessive use of force; abuse under emergency regulations; the situation of human rights defenders; minorities; militarisation; impunity; the lack of accountability and redress for past human rights violations; corruption; rights to health; rights to education; rights to food; the right to social security; the right to an adequate standard of living and the effects of foreign debt)
2. Review previous findings by UN entities including those by OHCHR, UN Special Procedure mechanisms, UN treaty bodies, other relevant mechanisms as well as human rights commitments made by the Sri Lankan government and present a comprehensive report with indicators and benchmarks for progress on human rights and accountability, in order to provide guidance to the Sri Lankan government, the UN and other multilateral bodies including international financial institutions.

Additionally, we urge you vote to extend the mandate of the Sri Lanka accountability project for a minimum of two years and include provisions to strengthen the project by reinforcing resources, mandating additional resources, including, but not limited to enhancing, a) its capacity for engagement with witnesses and their protection, b) capacity to use digital and satellite technology, c) capacity to conduct and coordinate investigations, and d) capacity to maintain and develop its repository.²⁴

Moreover, we call on you to urge the Sri Lankan Government to:

- 1) Repeal the Prevention of Terrorism Act (PTA) and issue an immediate moratorium on its use in the interim period; review the detention of those held under the PTA, immediately release all those not facing internationally recognisable charges, ensure all PTA detainees, including those undergoing pre-trial detention are tried promptly and fairly in a regular court and are provided access to legal counsel on a confidential basis and to family members and friends at regular intervals.
- 2) End the crackdown on peaceful protesters that is having a chilling effect on the freedom of expression, opinion and peaceful assembly.
- 3) Bring in the necessary legislative changes (including constitutional changes) to ensure the effective and independent functioning of the Human Rights Commission of Sri Lanka, the Office on Missing Persons, the Office for Reparations and the National Authority for the Protection of Victims of Crimes and Witnesses (building on operative paragraph 9 of UNHRC resolution 46/1) to deliver on their respective mandates as established.
- 4) Promptly accede to the Rome Statute of the International Criminal Court and implement it fully

²⁴ Comprehensive Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Sri Lanka, A/HRC/51/5, 6 September 2022



under national law.

We urge UN member states to:

5) Explore other options to advance accountability internationally in the absence of credible domestic processes in line with the recommendation made by the High Commissioner for Human Rights in her report (A/HRC/40/23), including investigations and prosecutions under universal jurisdiction and where possible through referral to the International Criminal Court.