

**SRI LANKA:
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A HUMAN RIGHTS AGENDA FOR SRI LANKA'S PRESIDENTIAL CANDIDATES

AMNESTY INTERNATIONAL PUBLIC STATEMENT

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INTRODUCTION

As the people of Sri Lanka prepare for the presidential election in January 2015, Amnesty International calls on the presidential candidates to commit publicly to ensuring that human rights are protected, respected and fulfilled in accordance with international human rights law, transparency, accountability and through rebuilding strong independent institutions to protect human rights, including civil and political rights as well as social, economic and cultural rights.

Ending impunity, which exists at all levels, is crucial, but it is only part of the challenge Sri Lanka faces in repairing its human rights record and restoring public faith in its justice system and the rule of law.

Amnesty International calls on all candidates to make a firm commitment to end the widespread human rights violations that have plagued Sri Lanka for decades, eliminate the climate of impunity which facilitates these violations and abuses and combat ethnic, religious and gender-based discrimination and violence. Candidates should commit publicly to fulfilling Sri Lanka's international human rights obligations. As a first important step candidates should commit to the human rights agenda outlined below.

1. REPEAL THE 18TH AMENDMENT

The 18th Amendment was introduced through an "urgent bill" on 8 September 2010, thus avoiding public debate on this important constitutional change. It empowered the president to directly appoint and remove key public service posts and senior judges including the Chief Justice, Appeals Court judges and members of the Judicial Service Commission (JSC) responsible for judicial appointments and personnel management of judicial officers and court staff. The impeachment of Chief Justice Shirani Bandaranayake in January 2013 and her subsequent removal by the president was a dramatic exercise of executive power over the judiciary.

The 18th Amendment did away with the Constitutional Council, which sought to preserve the political independence of appointments to other key commissions important to the protection of human rights. Among these were the National Police Commission (NPC), mandated to monitor grave misconduct and abuse by police officers and to ensure an effective public complaints procedure, and the Sri Lankan Human Rights Commission (HRC), charged with investigating reported human rights violations.

- **Sri Lanka's future president and his government should make and abide by a public commitment to respect the independence of judges and institutions critical to protecting human rights, and ensure that this commitment is complied with at all levels of government. Judicial independence also requires systemic changes in the way judges are appointed and overseen. To this end, the 18th Amendment to the Sri Lankan Constitution should be repealed.**

2. REPEAL THE PREVENTION OF TERRORISM ACT

The Prevention of Terrorism Act (PTA) contributes to the problem of arbitrary arrest and detention in Sri Lanka, including incommunicado detention. It also restricts basic rights to freedom of expression, association, assembly and movement. The PTA allows prolonged detention without charge or trial: up to 18 months under a detention order issued by the Minister of Defence while police investigate the possibility of their involvement in illegal activity. The act also allows for indefinite detention on the order of a magistrate pending trial if the detainee is arrested without a detention order, but it does not require that the individual be charged first. People have thus been held for years as they wait for detaining authorities to frame a case against them that often never materializes.

The PTA permits the authorities to hold detainees where they choose and to move detainees from place to place while under investigation. They are not required to disclose this information to the detained person's family or lawyer which increases the risk of torture and can constitute enforced disappearance in some circumstances. The PTA also reverses the burden of proof so that a victim has to prove that a confession has been extracted under torture.

After release from detention the Defence Minister can issue additional orders restricting an individual's freedom of movement, association and expression (such as restricting travel or place of residence, prohibiting his or her involvement in organizations or associations, or preventing the individual from addressing public meetings). These orders cannot be challenged in court. Section 10 of the PTA states specifically that "an order made under section 9 shall be final and shall not be called in question in any court or tribunal by way of writ or otherwise."

- **Candidates should commit to seeking repeal of the Prevention of Terrorism Act.**

3. OPEN UP FREE SPEECH

Since the run-up to the last presidential election in January 2010, the Sri Lankan government has waged an intensive campaign against its critics, including journalists, trade unionists, lawyers, witnesses against state forces, and human rights activists. This has included intimidation, threats and smear campaigns in state-owned media, arrests, physical assaults by assailants with government links, arrests and abductions. The open exchange of ideas and a free media are essential to ensure that Sri Lankan voters have sufficient information to assess candidates, develop informed opinions about policy, and monitor the conduct of officials. As noted by the UN Human Rights Committee, "Freedom of opinion and freedom of expression are indispensable conditions for the full development of the person," and are essential for a healthy, free and well-functioning society¹. Journalists must be able to perform their professional duties without fear of prosecution, harassment or violence.

- **Candidates should call for an end to harassment, threats and attacks on journalists and other people expressing dissenting views, and commit, if elected, to ensuring full and effective investigation and prosecution of all those suspected of attacking journalists, human rights defenders and others for exercising their right to freedom of expression.**
- **Sri Lanka's future president should ensure that no government agencies or officials violate freedom of expression. He should introduce legislation to repeal the Press Council Act, which restricts freedom of expression in violation of Sri Lanka's Constitution and international human rights obligations, as well as legislation facilitating public access to information from governmental institutions.**

4. END DISCRIMINATION; PROTECT ETHNIC AND RELIGIOUS MINORITIES

Discrimination against ethnic, linguistic and religious minorities, including members of Tamil, Muslim and Christian communities remains a serious and growing problem in Sri Lanka. Minorities have been singled out by military authorities and other public officials for restrictions on freedom of expression and association, including bans on cultural and religious gatherings. Police have failed to protect minorities when they have been threatened with violence or attacked, and have not fully investigated such incidents or arrested those suspected of criminal offences, even when there was photographic evidence to identify them. Political leaders have exploited or manufactured religious tensions, leading to attacks and violence against religious minorities, including their places of worship and businesses, which are typically committed with impunity. Buddhist hardline nationalist organizations have organized protests and attacks against religious minorities and places of worship, as well as issuing threats and smear campaigns against human rights defenders, political activists, and international visitors

advocating human rights accountability in Sri Lanka. Hundreds of incidents of threats, harassment and violence against Muslims, Christians and their places of worship have been documented since 2013. In many cases, police officers have been accused of failing to protect congregations under attack or advised them to stop religious activities.

- **Candidates should commit to ending discrimination and attacks against ethnic and religious minorities, their places of worship and businesses, and should denounce and call for the full investigation of such attacks in order to bring to justice those suspected of committing them.**

5. STRENGTHEN THE JUSTICE SYSTEM AND RULE OF LAW

END ABUSE OF DETAINEES AND ENSURE DUE PROCESS:

Arbitrary arrest and detention are widely practiced by Sri Lankan authorities including in irregular and secret places of detention that greatly increase the risk of torture, ill-treatment and can amount to enforced disappearance. Detainees have been held in administrative detention for prolonged periods without charge or trial. They have been denied access to lawyers, doctors and family members, and the opportunity to challenge their detention in court. Torture and ill-treatment in police custody remains widespread. Impunity persists for these crimes as well as alleged enforced disappearances and extrajudicial executions.

- **Candidates should commit to ending the use of administrative detention and should call for an immediate halt to the dangerous practice of incommunicado detention. Sri Lanka's next president should support the release of all detainees, including those arrested and detained on suspicion of links to the LTTE, unless they are charged with internationally recognisable offences and remanded or convicted by an independent court in proceedings that met international standards for fairness. While awaiting or undergoing trials, detainees must be allowed to apply for bail.**
- **Candidates should commit to ending torture, enforced disappearances and other crimes under international law by enacting or amending national laws to ensure justice and reparations for victims and their families, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition, in accordance with international standards.**
- **Candidates should support reforms that ensure that officials follow proper arrest procedures, including identifying themselves to the person being arrested and, on demand, to others witnessing the event. Those arrested must be brought before a judicial authority without delay after being taken into custody and must be allowed access to lawyers, families and doctors from the time of arrest. Relatives and lawyers should be able to find out immediately where a prisoner is held and under what authority. Up-to-date registers of all prisoners should be maintained in every place of detention and centrally; and the information in these registers should be made readily available.**

ENSURE THOROUGH AND EFFICIENT CRIMINAL INVESTIGATIONS WITH WITNESS PROTECTION:

Most complaints of human rights violations and abuses, including crimes under international law, in Sri Lanka are never effectively investigated, let alone heard in court.

- **All candidates should commit to supporting prompt, thorough and effective criminal investigations in relation to cases of serious human rights violations and abuses, including crimes under international law. Full support should be given to the police, and effective mechanisms should be put in place to investigate efforts to obstruct justice. The government should also explore the creation of a mechanism to formalize official co-operation with a strengthened and revitalized National Human Rights Commission.**

Threats and intimidation against witnesses obstruct the prosecution of human rights cases. Despite several attempts to introduce a witness protection bill, Sri Lanka still lacks an effective witness protection scheme.

- **Candidates should support enactment of legislation establishing an effective witness protection programme that is adequately resourced and technically well supported. In particular, the law should permit witnesses,**

where appropriate, to give evidence by video link including from outside the country, and prohibit questioning about the location or new identity of the witness, or other sensitive information, and legally and securely provide new identities for witnesses and their families.

ENSURE VICTIMS' RIGHTS TO JUSTICE, TRUTH AND REPARATION:

The culture of impunity that was fostered in Sri Lanka before and during the armed conflict continues to undermine the rights of victims and rule of law. Victims of crimes under international law have not received truth, justice and reparation. For example, the Government of Sri Lanka has failed to provide families with information regarding the fate and whereabouts of victims of enforced disappearances. Those who have sought to publicize their grievances have been targets of threats, intimidation and attacks.

- Sri Lanka's new president can demonstrate his commitment to respecting human rights and bringing an end to impunity by committing publicly to ensure the investigation of serious violations and abuses of international human rights and humanitarian law and, where sufficient evidence exists, the prosecution of those suspected of committing crimes under international law, irrespective of the identity of the victim or the suspect including their rank, political status or influence.
- The president should start by initiating a review of the criminal justice system that publicly acknowledges the system's failure to ensure justice, truth and reparation for human rights abuses and the inadequacy of ad hoc commissions which have frequently been presented as a substitute for criminal investigations. This should be a genuine, fully supported, independent and impartial review working within a clear and reasonable deadline. Many shortcomings of the justice system and potential remedies have already been identified. The review should:
 - Expose the flaws that have hindered proper police investigations; commission of inquiry investigations; and the prosecution of persons suspected of crimes under international law;
 - Examine and publish records of such investigations hitherto kept confidential; these should be made easily accessible, along with an official status report on implementation;
 - Suggest ways to address these flaws through legislative, administrative and practical measures, in accordance with international human rights law and standards.

The review's report should be made public.

- Sri Lanka's new president should implement the immediate publication of reports of all inquiries and investigations concluded by the presidential commission appointed in November 2006 to investigate 16 cases of "serious violations of human rights" from August 2005. These include the January 2006 killing in Trincomalee of five youths: Gajendran Shanmugarajah, Rohan Lohitharaja, Sivanantha Thangathurai, Hemachandran Yogaraja and Ragihar Manoharan; and the killing of 17 aid workers of the international NGO, Action Contre la Faim, in early August 2006.

6. END VIOLENCE AGAINST WOMEN

Women's human rights defenders have expressed concern to Amnesty International that gender-based violence including violence amounting to torture is not taken seriously by Sri Lankan authorities; they note that sexual violence is vastly underreported due to fear, social stigma, and the failure of authorities to address victims' complaints with respect, and where it is reported, poorly investigated.

- Candidates should commit to combating violence against women and girls. Sri Lanka's new president should commit to taking comprehensive measures, including enacting legislation, to prevent and prohibit violence against women by all actors, including state actors. The president should support mandatory training for public officials, in particular all law enforcement and military personnel, including commanding officers that violence against women constitutes a criminal offense. He should also support educational outreach on the issue to health service providers and social workers, community leaders and the general public.

7. ABOLISH THE DEATH PENALTY

The death penalty remains on the books in Sri Lanka and there are reported to be hundreds of prisoners on death row, although executions, which require the approval of the president, have not been carried out in recent decades. Amnesty International considers the death penalty to be a violation of the right to life and is the ultimate cruel, inhuman and degrading punishment. There is no proof that it is a more effective deterrent to crime than imprisonment. Moreover, given the significant failings within the Sri Lankan justice system, including frequent reports of torture in custody to extract confessions, the chances of innocent people being sentenced to death are high.

- **Amnesty international urges all presidential candidates to commit to abolishing the death penalty in law.**

FOR MORE INFORMATION:

Sri Lanka: Ensuring justice: Protecting human rights for Sri Lanka's future, ASA 37/011/2014, 7 October 2014, <http://amnesty.org/en/library/info/ASA37/011/2014/en>;

See, Sri Lanka's Assault on Dissent, Amnesty International, 30 April 2013, ASA 37/003/2013, <http://www.amnesty.org/en/library/info/ASA37/003/2013/en>

Sri Lanka: Reconciliation at a crossroads: Continuing impunity, arbitrary detentions, torture and enforced disappearances: Amnesty International Submission to the UN Universal Periodic Review, ASA 37/008/2012, 1 April 2012, <http://amnesty.org/en/library/info/ASA37/008/2012/en>;

Sri Lanka: Locked away: Sri Lanka's security detainees, ASA 37/003/2012, 13 March 2012, <http://amnesty.org/en/library/info/ASA37/003/2012/en>; Sri Lanka: Briefing to the UN Committee against Torture, October 2011, ASA 37/016/2011, 14 October 2011, <http://amnesty.org/en/library/info/ASA37/016/2011/en>;

ⁱ UN Human Rights Committee General Comment 34, para. 2: "Freedom of opinion and freedom of expression are indispensable conditions for the full development of the person. They are essential for any society. They constitute the foundation stone for every free and democratic society. The two freedoms are closely related, with freedom of expression providing the vehicle for the exchange and development of opinions.", CCPR/C/GC/34, 12 September 2011