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THE UN HUMAN RIGHTS COUNCIL MUST STEP UP EFFORTS TO ADVANCE ACCOUNTABILITY FOR SERIOUS VIOLATIONS IN SRI LANKA

Amnesty International urges the United Nations (UN) Human Rights Council (HRC), when it meets for its 46th session (22 February – 19 March 2021), to establish an international accountability mechanism to continue to monitor and report on the human rights situation in Sri Lanka, and to collect, preserve and assess evidence of gross human rights violations.

As this paper details, such a mechanism is critical in the face of the continued deterioration of the human rights situation on the ground, including: increased attacks on human rights organizations, media, and members of the Muslim community; backsliding on the limited progress made on the implementation of HRC resolution 30/1, including on accountability; and Sri Lanka's announcement they are disengaging from the 30/1 process altogether.

We hope to see states work towards such an appropriate response, in line with the clear recommendations of the UN Office of the High Commissioner for Human Rights (OHCHR), when the HRC meets for its 46th session.

CONTINUED DETERIORATION OF THE HUMAN RIGHTS SITUATION ON THE GROUND

Over the past few years – and the past year in particular – we have witnessed an alarming crackdown on civic space in Sri Lanka, with increased targeting and intimidation of human rights defenders,¹ journalists,² and lawyers.³ Among others, Amnesty International has documented the harassment of New York Times journalist Dharisha Bastians,⁴ the arbitrary detention of blogger Ramzy Razeek (amid deteriorating health),⁵ and lawyer Hejaz Hizbullah,⁶ and has followed the ongoing criminal investigation against writer Shakthika Sathkumara.⁷ The real threat of reprisals is already having a chilling effect. Lawyers, journalists and criminal investigators who pursued accountability for human rights violations have already fled the country. Under new directives, law enforcement officers have arrested social media commentators for criticizing officials in relation to the government's COVID-19 response.

The Secretary-General's latest report on reprisals against human rights defenders cooperating with the United Nations noted that, "OHCHR received continued allegations of surveillance of civil society organizations, human rights defenders and families of victims of violations, including repeated visits by police and intelligence services, questioning organizations about, *inter alia*, their staff and activities related to the UN."⁸ The report noted that a number of Sri Lankans who have travelled to Geneva to attend sessions of the HRC have been subjected to questioning and surveillance.

The issue of "reprisals against judicial and other professionals who try to prosecute human-rights related cases involving State officials," highlighted in the 2015 OHCHR Investigation on Sri Lanka report, also remains a huge challenge. More than 700 law enforcement officials with the Criminal

Investigations Department (CID) within the police who investigated human rights violations were placed under a travel ban soon after the new government came into power in November 2019 and the former Director of the CID who led those investigations was arrested under dubious charges. The former director whose family believes he is being targeted for seeking accountability for human rights violations, recently tested positive for COVID-19 while in the custody of prison authorities, and was denied access to a hospital for days.⁹ Lawyers appearing as counsel in human rights cases have been intimidated and arrested.¹⁰ We are also alarmed by reports that families of the disappeared who have been leading peaceful protests have been harassed by the police Terrorism Investigation Division.¹¹

Amnesty International is also increasingly concerned about the targeting and discrimination of minorities in Sri Lanka. As noted by the UN Special Rapporteur on freedom of religion or belief, Ahmed Shaheed, Muslim communities in Sri Lanka have faced increasing hostility, especially after the April 2019 bombings. In his end of mission report (August 2019), he expressed concern that “prior impunity has strengthened the anti-Muslim groups,” and that “weak and un-coordinated responses to anti-Muslim violence have seen the rise in violence and attacks on individuals and the communities in some parts of the country.”¹² The UN High Commissioner for Human Rights also noted in her February 2020 update the “increasing levels of hate speech, and security and policy measures,” that “appear to be discriminately and disproportionately directed against minorities, both Tamil and Muslim.”¹³ Amnesty International has documented patterns and examples of violence and advocacy of hatred, discrimination against the Muslim community in Sri Lanka dating back to 2013.¹⁴ Despite investigations carried out by the police, the perpetrators of these violent attacks have not been held accountable. The impunity enjoyed by perpetrators have emboldened and precipitated repeat attacks.

This increased discrimination against the Muslim community has also been seen in the government’s response to the COVID-19 pandemic. Amnesty International,¹⁵ and a group of UN special rapporteurs,¹⁶ have raised significant concern over the forced cremations of Muslims who have died of COVID-19 on the directives of the authorities, against the wishes of the families of the deceased. For Sri Lanka’s Muslim community, which makes up close to ten per cent of the population, burials are considered to be a requirement of the final rites in accordance with Islamic traditions.

Sri Lanka has consistently refused to repeal the draconian Prevention of Terrorism Act (PTA), a law which facilitates arbitrary detention and removes safeguards against torture of detainees. The law was used to disproportionately target Sri Lanka’s Muslim community following the bombings in April 2019 and was used to arbitrarily arrest Hejaaz Hizbullah and Ahnaf Jazeem in 2020. Hejaaz Hizbullah, a prominent lawyer, has been in custody since 14 April 2020 without a shred of evidence being produced before the court of any wrongdoing.¹⁷ He has tested positive for COVID-19 during his time in detention, where he was only permitted limited access to family and legal counsel till recently. Ahnaf Jazeem, a Muslim poet was arrested under the PTA for a collection of poems he published under the title ‘Navarasam.’ The poems, written in Tamil, have allegedly been misinterpreted by Sinhalese-speaking law enforcement officers to presume that they contain “extremist” messages. Ahnaf, who is still in custody has had no legal representation for more than six months since his arrest.

With COVID-19 spreading within Sri Lanka’s severely overcrowded prisons, at least 14 inmates in three different prisons have been killed in custody since March, due to unrest that erupted over fears and anxiety over the virus. More than 100 others have been injured.¹⁸

LACK OF ACCOUNTABILITY

The OHCHR Investigation on Sri Lanka concluded that war crimes and crimes against humanity were most likely committed by both sides to the conflict and recommended the establishment of a hybrid special court, integrating international judges, prosecutors, lawyers and investigators, as an essential

step towards justice. Eleven years after the end of the armed conflict, however, the relatives of those disappeared are still awaiting answers and Sri Lanka has the second largest number of enforced disappearance cases in the world registered with the UN Working Group on Enforced or Involuntary Disappearances.

While HRC resolution 30/1¹⁹ fell short of establishing a hybrid court, as recommended by the OHCHR Investigation on Sri Lanka, through negotiation and compromise it did secure Sri Lanka's commitment to establishing a "judicial mechanism with a special counsel to investigate allegations of violations and abuses of human rights and violations of international humanitarian law," with the participation of "Commonwealth and other foreign judges, defence lawyers and authorized prosecutors and investigators." More than five years later, however, no progress has been made towards the creation of such a mechanism. At the same time, we have seen alarming developments at the national level, undermining the limited progress on accountability made to date. For example:

- 13 members of the security forces accused of the murder of five students in the town of Trincomalee in 2006 were acquitted by the court in July 2019, citing "a lack of evidence."²⁰
- A Presidential Commission of Inquiry on political victimization was created in January 2020, which we fear may interfere with ongoing court proceedings, including in the case of the disappearance of Prageeth Eknaligoda.²¹ The Commission²² has already purported to order, without legal authority, the attorney general to halt legal proceedings against navy officers accused of the enforced disappearance and alleged killing of 11 young men in Colombo and its suburbs in 2008 and 2009.²³
- In March 2020, Sergeant Sunil Rathnayaka, a convicted perpetrator of the Mirusuvil massacre in which eight Tamil civilians were killed, received a Presidential pardon and was released from jail. Among the victims of the Mirusuvil massacre were three children, one aged 15, one 13, and a five-year-old whose body sustained signs of torture.²⁴ In a statement issued by her spokesperson, the UN High Commissioner for Human Rights, Michelle Bachelet, lambasted the pardon as "an affront to victims and yet another example of the failure of Sri Lanka to fulfil its international human rights obligations to provide meaningful accountability for war crimes, crimes against humanity and other gross violations of human rights." She noted that, "Pardoning one of the sole convicted perpetrators of atrocities committed during the Sri Lankan conflict further undermines the limited progress the country has made towards ending impunity for mass human rights abuse."²⁵
- The new administration has promoted and appointed several military officials named in the 2015 OHCHR Investigation on Sri Lanka report to senior positions. The High Commissioner²⁶ and Special Procedures²⁷ expressed concern, for example, over the appointment of Lieutenant-General Shavendra Silva as Commander of the Sri Lankan Army in August 2019.
- In January 2021 the Attorney General's department informed the Batticaloa High Court that it will not continue the prosecution in the 2005 murder case of former Tamil National Alliance (TNA) Parliamentarian Joseph Pararajasingham.. Accordingly, the court acquitted all five suspects in the case, including MP Sivanesanthurai Chandrakanthan (alias Pillayan), who is the leader of Tamil Makkal Viduthalai Pulikal (TMVP), a government-aligned political party.²⁸ At the time of the murder, MP Chandrakanthan was a member of the paramilitary group led by Karuna Amman, which broke away from the LTTE.

Since coming into power in November 2019, the current government has stopped issuing interim relief payments to families of the "missing" and those subjected to enforced disappearance, putting them under further financial strain. Fearing that the work of Sri Lanka's Office on Missing Persons will enable war crime charges to be brought against the Sri Lankan military, the government has also stated that it will review the Act establishing the Office.²⁹ In December 2020, the President appointed a new Chairperson to the Office on Missing Persons. Retired Supreme Court judge Upali Abeyratne served as the Chairman to the Presidential Commission of Inquiry on political victimization, when the

Commission attempted to interfere in the prosecution of state actors accused of enforced disappearances. Families of the forcibly disappeared have voiced concerns around the future, commitment and the independence of domestic mechanisms like the Office on Missing Persons. Further, there has been no progress in establishing a truth commission and only limited progress has been made towards returning military-occupied land back to its civilian owners, in line with HRC resolution 30/1.

Following clear messages at both national and international level that the new government would reverse the limited and hard-won progress on accountability, in February 2020, it announced³⁰ its “commitment to achieve sustainable peace through an inclusive, domestically designed and executed reconciliation and accountability process.” Sri Lanka has a long history of such processes, however, the repeated failure of which, the OHCHR Investigation on Sri Lanka report noted “has led to skepticism, anger and mistrust on the part of victims.”³¹ In her update to the HRC in February 2020, the High Commissioner made clear her scepticism that the appointment of “yet another Commission of Inquiry” could advance accountability for past violations, noting the “systemic barriers that continue to exist within the criminal justice system remain an impediment to real justice”³² at the national level. These “systemic barriers” were detailed in the OHCHR Investigation on Sri Lanka report and flagged by the former High Commissioner³³: 1) “the absence of any reliable system for victim and witness protection”;³⁴ 2) “the inadequacy of Sri Lanka’s domestic legal framework to deal with international crimes of this magnitude”; and 3) “the degree to which Sri Lanka’s security sector and justice system have been distorted and corrupted by decades of emergency, conflict and impunity.”³⁵ Although the state of emergency has now lapsed, the other issues remain. The 20th amendment to the Constitution, passed into law in October 2020, introduced significant changes to the powers of parliament and the President and has significant effects on the independence of commissions and the judiciary. Following the amendment, many appointments including to independent commissions such as the Election Commission, the National Police Commission, the Human Rights Commission, appointments to the Supreme Court, the Court of Appeal, the Attorney-General and the Inspector-General of Police are made by the President. The Parliamentary Council which replaced the Constitutional Council brought in by the 19th amendment only has powers to make non-binding observations on the appointments to the President. As a consequence of the amendment, at present there is no reliable recourse for accountability for human rights violations domestically.

In short, as noted by the High Commissioner in her February 2020 update to the HRC, “victims remain denied justice and Sri Lankans from all communities have no guarantee that past patterns of human rights violations will not recur.”³⁶

ROLE OF THE UN HUMAN RIGHTS COUNCIL

In this context, the HRC has a critical role to play – both in sending a clear message to victims and perpetrators alike that the international community remains committed to human rights and accountability in Sri Lanka; and by putting in place a mechanism or process to support medium- to long-term accountability efforts, in line with the current and former High Commissioners’ clear and consistent concerns and recommendations in that regard.

The report of the OHCHR Investigation on Sri Lanka made clear that the HRC should “continue to monitor human rights developments and progress towards accountability and reconciliation,” and that “if insufficient progress is made, the [HRC] should consider further international action to ensure accountability for international crimes.”³⁷ As detailed above, five years later, not only has insufficient progress been made, but the new government is rolling back on previous gains and has made clear its commitment to impunity for serious crimes.

In this context, on the basis of the clear findings of the OHCHR Investigation on Sri Lanka report and subsequent updates and reports by the OHCHR, the HRC must launch a new process or mechanism to pursue the objectives of resolution 30/1: to end the cycle of impunity and advance accountability for international crimes with a view to deterring future violations, particularly against minority communities and civil society groups. Central to the new approach must be continued monitoring and reporting on the situation, as well as the collection, analysis, and preservation of evidence for future prosecutions. The empty promises of national-level accountability processes should – on the basis of experience and clear analysis by the High Commissioner (see above) – not be considered an alternative to an international approach. Nor should Sri Lanka’s brazen rejection of a consensus-based international framework for pursuing human rights and accountability, and refusal to cooperate in this regard, be rewarded by the HRC taking a step back. Rather, the HRC should strengthen its resolve.

We urge all States at the HRC to encourage and support the robust approach necessary. To do otherwise would be to send a very dangerous message to perpetrators everywhere that even a state accused of the most grave crimes under international law can escape meaningful scrutiny by the HRC and benefit from rewards by merely refusing to cooperate with a carefully negotiated process. States should stand on the side of victims, their families, and all those pursuing justice and the protection of human rights on the ground, often at great personal risk, by putting in place a mechanism that can monitor and report on the situation, and collect and preserve evidence for future prosecutions.

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⁵ Although Ramzy Razeek was released on bail on 17 September, the criminal investigation against him has not been closed. Amnesty International issued an Urgent Action in May on Ramzy’s deteriorating health condition before he was released on bail. At the time of his release he had a fractured arm due to a fall while in custody and had not received the required medical attention. Due to an infection, one of his toes were also amputated (see <https://www.amnesty.org/en/documents/asa37/2357/2020/en/>). In the cases of both Ramzy Razeek and Shakthika Sathkumara, the police reports cite the domestic International Covenant on Civil and Political Rights (ICCPR) Act as one of the legal bases for the arrest. The ICCPR Act was adopted to implement Sri Lanka’s international human rights obligations as a state party to the International Covenant on Civil and Political Rights. Using the ICCPR Act in this manner is a misuse of a law that is supposed to protect, not violate, human rights.

⁶ Hejaaz Hizbullah remains in detention without charge or any credible evidence of wrongdoing. During his detention for more than six months under Sri Lanka’s draconian Prevention of Terrorism Act (PTA), he has only been granted restricted access to legal counsel or to his family. A third detention order to hold him for another 90 days was issued this month. He must be released without further delay.

⁷ Writer Shakthika Sathkumara was arrested on April 1, 2019 after publishing a short fictional story on his Facebook page, in which he hinted at child sexual abuse taking place in a Buddhist monastery. While he was released on bail on August 5, 2019, the criminal investigation against him has not been closed. If charged and convicted, he could face up to 10 years in prison. The hearings have been repeatedly delayed, with the next hearing not scheduled until early 2021. Amnesty International declared him a Prisoner of Conscience, as he was imprisoned solely for peacefully exercising his right to freedom of expression and called his immediate and unconditional release. In the cases of both Ramzy Razeek and Shakthika Sathkumara, the police reports cite the domestic International Covenant on Civil and Political Rights (ICCPR) Act as one of the legal bases for the arrest. The ICCPR Act was adopted to implement Sri Lanka’s international human rights obligations as a state party to the International Covenant on Civil and Political Rights. Using the ICCPR Act in this manner is a misuse of a law that is supposed to protect, not violate, human rights.

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