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Written statement* submitted by Amnesty International, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[10 February 2015]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Sri Lanka: Promises of a new beginning - international cooperation is essential to ensure justice, accountability and an end to impunity

Early in 2015 Sri Lankans elected a new President with promises to implement Constitutional and other changes that could usher in a new era and better protection of human rights.

Amnesty International welcomes official commitments to end impunity and promote the rule of law in Sri Lanka, pursue reconciliation between all communities, and rebuild Sri Lanka's international relationships. Amnesty International is hopeful that these promises will translate into prompt action to repair the enormous damage done to human rights and the rule of law in Sri Lanka over past decades. We acknowledge in particular the importance of Sri Lanka's actions to restore the independence of the judiciary and other institutions essential to the protection and promotion of human rights by remedying the unconstitutional dismissal of the former Chief Justice and restoring constitutionally independent checks on executive power.

For years, Sri Lanka's human rights record has stood in stark contrast to its international obligations. Government assaults on judicial independence have eroded the effectiveness of the justice system, leaving Sri Lanka's citizens without the guarantee of legal recourse when their rights have been violated. The Government's failure to address violent attacks and acts of discrimination against religious and ethnic minorities threatened the safety of Sri Lankan citizens and intensified communal divisions, pushing reconciliation further out of reach. Restrictions on freedom of expression and assaults on dissent were commonplace, and attacks on those speaking out were committed with impunity. There has been a near complete lack of accountability for crimes under international law committed in the course of the long armed conflict between government forces and the Liberation Tigers of Tamil Eelam (LTTE). These are the conditions that led the Human Rights Council (HRC) in March 2014 to request the Office of the High Commissioner for Human Rights to undertake a comprehensive investigation into alleged serious violations and abuses of human rights and related crimes by both parties in Sri Lanka.

Under the preceding Presidency, government officials and their political supporters threatened, sought the arrest of and assaulted activists and journalists – especially those advocating human rights accountability or attempting to engage with the HRC. A pattern of arrests and harassment of those challenging official denials of human rights violations occurred around successive HRC sessions as Sri Lankan authorities attempted to prevent information about human rights violations from reaching the UN and to discredit and retaliate against activists who spoke out about the violations. None of the incidents known to Amnesty International were effectively investigated, and no prosecutions were initiated.

The Sri Lankan government has promised to take action to end impunity, which persists for grave human rights violations. The legacy of impunity in Sri Lanka stretches back years, and includes violations and abuses committed before and during the long armed conflict and since it ended. Much needs to be done. No one has been held accountable for the January 2006 extrajudicial executions of five students in Trincomalee by Sri Lankan security personnel or for the killing of 17 aid workers with Action Contre La Faim in August 2006 despite credible reports in both cases identifying armed service personnel allegedly responsible and repeated government claims over years that authorities were investigating. The new government has pledged to re-investigate high profile killings, including the January 2009 murder of newspaper editor Lasantha Wickrematunge. It should add the ACF case and the Trincomalee case to their list of priority cases, as well as the case of the disappearances of dissident cartoonist Prageeth Eknaligoda in 2010, and political activists Lalith Weeraraj and Kugan Muruganandan in 2011 – who were helping families of the disappeared to organize a demonstration against military abuse of civilians in the north.[1]

Sri Lanka has ratified most core UN human rights treaties and has an obligation to respect, protect and fulfill human rights. As a member of the United Nations, Sri Lanka is obliged to give the UN every assistance in any action it takes in accordance with the Charter, including promoting and encouraging respect for human rights and freedoms. This includes cooperation with the HRC mandated Investigation by the Office of the High Commissioner for Human Rights

(OISL) into alleged serious violations and abuses of human rights and related crimes by both parties in Sri Lanka. Past repudiation of the Investigation by Sri Lanka's leadership was also a rejection of its international obligations, and had a very negative impact on Sri Lanka's international reputation and relationships.

President Maithripala Sirisena and other newly appointed officials have promised Sri Lanka will reform errant systems and conduct domestic investigations into alleged crimes under international law, including allegations that both Sri Lankan forces and the LTTE committed war crimes during the armed conflict. Commitments have also been made to investigate high profile killings of a journalist and two politicians. This is appropriate and welcome, assuming that the investigations are conducted promptly and in good faith, with independence, adequate resources and effective witness protection. Where sufficient admissible evidence exists, they should lead to the prosecution of those suspected of the crimes, regardless of their rank or status. This should include military and civilian superiors who knew or should have known about the commission of crimes under international law and did not take measures to prevent them or punish those responsible.

Amnesty International has documented Sri Lanka's long history of ad hoc commissions of inquiry that have not delivered justice.[2] Political will is necessary to change that.

Domestic investigations will not negate the need for continued international action and engagement to ensure justice and accountability in Sri Lanka, or Sri Lanka's need to cooperate with the UN, including OISL. The Sri Lankan government has committed to a large number of important reforms in a very short period of time. International expertise and technical assistance could help it to fulfil its reform agenda, particularly where truth seeking, reparation and justice are concerned. The OISL should be viewed as a resource. The UN's offers of technical assistance also provide an opportunity for more effective international cooperation. The adversarial relationship promoted by Sri Lanka's former leadership vis-à-vis the United Nations was unhealthy and unproductive. The Sri Lankan government has now vowed to "prioritize" its engagement with OHCHR. Amnesty International cannot stress enough the need for a thorough accounting and justice for the victims of violations and abuses and their families.

Amnesty International urges the HRC to ensure:

- Where OISL uncovers sufficient admissible evidence of crimes under international law committed by Sri Lankan government forces, allied armed groups or by the LTTE, that information contributes expeditiously to a genuine prosecutorial process of those suspected of the crimes in proceedings that fully conform with international standards for fair trial, as well as truth and reparation for victims, taking advantage of both Sri Lankan and international expertise;

- Ongoing international monitoring of the implementation of the OISL recommendations and the human rights situation in Sri Lanka, including the effectiveness of domestic investigations and prosecutions; and

- Strengthened UN efforts in engaging with the Sri Lankan government to prevent intimidation or reprisals committed or tolerated by government officials, government and opposition supporters or others against individuals who seek to cooperate or have cooperated with the UN, its representatives and mechanisms in the field of human rights.

Amnesty International reiterates its call to the Government of Sri Lanka to:

- Cooperate fully with OISL, OHCHR and UN Special Procedures including in particular the Working Group on enforced or involuntary disappearances; the Special Rapporteur on torture; the Special Rapporteur on extrajudicial executions; and the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, including by responding positively to their outstanding requests to visit Sri Lanka and by providing them with full access;

- Ensure that all allegations of crimes under international law are fully investigated and, where sufficient admissible evidence exists, those suspected of the crimes are prosecuted in genuine proceedings before independent and impartial courts that comply with international standards for fair trial;

- Ensure that the truth is established regarding crimes under international, including the fate and whereabouts of disappeared persons, and that victims are provided with full and effective reparation to address the harm they have suffered;

- Implement with vigour its plans for constitutional changes aimed at guarding the independence of the judiciary and key institutions critical to the protection and promotion of human rights;

- Create a more enabling climate for human rights defenders by ensuring the protection of the rights to freedoms of expression, peaceful assembly and association, and demonstrating unequivocally that harassment, intimidation and attacks against individuals or groups of individuals exercising those rights will not be tolerated, regardless of the peaceful opinions such individuals hold and express, and regardless of the position or political affiliation of the suspected perpetrator;

- Ensure an end to identity-based violence and ensure an effective investigation of such crimes when they take place;
- Review detention orders and custodial records to ensure that no detainee is being held arbitrarily and release all detainees, including all persons held in detention centres, 'rehabilitation' facilities and other places of detention unless they are charged with internationally recognizable crimes; and

- Repeal the Prevention of Terrorism Act and abolish the system of administrative detention.

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[1] Urgent Action: Sri Lanka: Fears for missing Sri Lankan activists: ASA 37/018/2011, 13 December 2011, http://www.amnesty.org/en/library/info/ASA37/018/2011/en; see also, Sri Lanka: Ensuring justice: Protecting human rights for Sri Lanka's future, ASA 37/011/2014, 7 October 2014, pg.23, http://www.amnesty.org/en/library/asset/ASA37/011/2014/en/4c09c88e-a298-4cba-bdee-4b6a077ef55a/asa370112014en.pdf

[2] Sri Lanka: Twenty years of make-believe. Sri Lanka's Commissions of Inquiry, ASA 37/005/2009, 11 June 2009, http://www.amnesty.org/en/library/info/ASA37/005/2009/en