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Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

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.

[13 February 2017]

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

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Sri Lanka: Victims demand truth, justice, reparation and guarantees of non-recurrence

Sri Lanka committed with Resolution 30/1 to undertake a comprehensive approach to dealing with the past, including ensuring truth, justice, reparation and non-recurrence for human rights violations and abuses. This is an important step towards acknowledging the traumatic experiences of many thousands of victims over decades of armed conflict and insurgency, and accepting its obligations to provide them with effective remedies. Eighteen months later, while some progress has been made, the process has been too slow and non-transparent. Mixed messages from government officials are further eroding the confidence of thousands of families which have suffered deaths and disappearances, material losses and deep physical and psychological harm. Public frustration is evident over the slow pace of progress on these and other official undertakings, such as the concurrent reform of Sri Lanka's Constitution, anti-corruption efforts and efforts to end police torture.

The number of cases potentially covered by the four mechanisms that the government has committed to establish - an office on missing persons, an office for reparations, a judicial mechanism with a special counsel, and a truth justice, reconciliation and non-recurrence commission - is vast. Former President and head of its Office for National Unity and Reconciliation, Chandrika Bandaranaike Kumaratunga, acknowledged that Sri Lanka had received 65,000 complaints of enforced disappearances since 1994 and it is likely that many thousands more have gone unreported. Other alleged violations and abuses include: arbitrary arrest and detention; sexual violence; extrajudicial executions; intentional attacks on civilians and protected buildings such as hospitals; the obstruction of humanitarian relief and the Liberation Tigers of Tamil Eelam's conscription, enlistment and use of child soldiers and use of civilians as human shields during the armed conflict that ended in 2009. Torture has been common practice for decades and remains a matter of on-going and serious concern.

When Sri Lanka co-sponsored Resolution 30/1 in October 2015, it welcomed the participation of international investigators, prosecutors and judges. It must not back away from this commitment. International support will enhance the capacity of Sri Lankan institutions to deal with this large workload effectively. It will also help encourage trust and a perception of fairness on the part of victims, many of whom express deep disillusionment regarding the implementation of Sri Lanka's commitments.

Implementing the Findings of the Consultation Task Force

A key commitment of the Resolution was to "safeguard the credibility of the processes of truth-seeking, justice, reparations and guarantees of non-recurrence by engaging in broad national consultations…"[1], In January 2016, the government appointed the Consultation Task Force on Reconciliation Mechanisms (CTF) to carry out island-wide public consultations on the establishment of the new mechanisms.

These were undertaken by local teams with knowledge of the communities in question. But they lacked sufficient financial and logistical support, and the visible and whole-hearted support of the government that gave them with the consultation mandate in the first place. The process, while rigorous, took far longer than anticipated. Despite these obstacles, the result was an impressive effort to reflect public views in policy decision-making. The report, which reflects the views of more than 7,000 people who were asked to describe their needs and expectations of efforts to deliver justice, truth, reparation and guarantees of non-recurrence, is an invaluable tool for designing the promised mechanisms. The report summarizes often wrenching testimonies and lays out a series of recommendations drawing from public input.

[1] UN Human Rights Council Resolution 30/1(A/HRC/30/L.29), https://documents-dds-ny.un.org/doc/UNDOC/LTD/G15/220/93/PDF/G1522093.pdf?OpenElement

Disappointingly, when the CTF published its report on 3 January, the President and Prime Minister failed to attend the official handover. The justice minister expressed "no confidence" in its findings.[2] A follow- up meeting between the Task Force and President Sirisena at the end of January did little to allay fears that the report 's findings would not be taken seriously, particularly as he reportedly made clear that his priority was constitutional reform. If Sri Lanka's commitment to accountability is to be credible, the government must formally acknowledge and prioritize the Task Force findings and recommendations.

The Sri Lankan government must clarify its implementation plan. Amnesty International supports the CTF's call for the Sri Lankan government to initiate a national outreach program and chart a roadmap for the establishment and efficient functioning of the proposed mechanisms. One of the key ways forward, as suggested by the CTF, should be the establishment of an overall monitoring body for all mechanisms which should include representatives from affected families, human rights and civil society groups, and the international community.

Office on Missing Persons (OMP)

The Act to establish an office to assist families seeking missing relatives was rushed through Parliament before the September Human Rights Council session and circumvented the public consultation process. Despite many positive elements of the legislation, the failure of Sri Lankan authorities adequately to consult with families of victims during the drafting process has undermined public faith in the OMP. Numerous concerns about the content of the Act have also not been addressed. Almost six months later the President has still not signed it into law. In January, Amnesty International received disturbing reports that Sri Lanka's military was also seeking changes to the legislation but the scope and content of the proposed changes are not known.

Amnesty International reiterates its strong concern that no provision of the OMP should deny families the truth about the whereabouts or fate of their loved ones or obstruct their access to justice. All evidence relating to individual criminal responsibility for abuses amounting to serious crimes, including enforced disappearance, torture and other crimes under international law should be submitted to appropriate authorities, including the proposed justice mechanism when it is established, for criminal investigation.

Priorities for Further Progress

Ending Impunity for Emblematic Cases

The process of developing the four mechanisms must not be used as an excuse for inaction on cases that are already under investigation. These long-stalled cases need to be pursued, especially in key emblematic 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 Suntharaj 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.

To give full effect to its obligations and the commitments to undertake a comprehensive approach to the past and establish effective mechanisms for justice, truth, reparation and guarantees of non-repetition, the government should also:

- Publish a list of all detainees and detention centres
- Repeal the Prevention of Terrorism Act (PTA) and release all people held under it without charge
- Ensure that all security forces abide by Presidential Directives of June 2016 to protect the rights of detainees
- Strengthen systems to protect victims and witnesses
- Ensure effective systems are put in place to provide psychosocial support and other assistance to victims and witnesses in all four mechanisms
- Take strong action to protect human rights defenders and journalists

[2] I have no confidence in the CTF: Wijeyadasa, Daily Mirror, 6 January 2017, http://www.dailymirror.lk/article/I-have-no-confidence-in-the-CTF-Wijeyadasa-121817.html

- Provide interim reparation to victims who need immediate assistance, including rehabilitation, compensation and restitution of property and lands seized by the military during the conflict.
- Establish a strong bill of rights, including the right of victims of human rights violations and abuses to effective remedies into Sri Lanka's new constitution.
- Enact legislation to make incorporate crimes under international law (including crimes against humanity, war crimes, enforced disappearance and torture) and effective principles of criminal responsibility into Sri Lankan law.

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 and support Sri Lanka to develop rigorous human rights vetting procedures for law enforcement agencies and the military for domestic purposes, and ensure and support the equally rigorous 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.