

## CONFIDENCE BUILDING MEASURES IN SRI LANKA – OCTOBER 2015

- The government of Sri Lanka states that it will consult with all stakeholders between October 2015 and January 2016 on the establishment of transitional justice mechanisms.<sup>i</sup> It further states that these mechanisms will be in place within 18 months, by March 2017.<sup>ii</sup>
- The High Commissioner (HC) is to provide an oral report to the Human Rights Council on the implementation of the OHCHR Report on Sri Lanka (OISL) and other relevant transitional justice processes in June 2016.<sup>iii</sup>
- Given the government's past record of failing to implement credible national mechanisms,<sup>iv</sup> coupled with the great distrust among the victim community,<sup>v</sup> and the ongoing perilous situation in the post-conflict area,<sup>vi</sup> the international community should require the government to implement the following 10 Confidence Building Measures prior to the High Commissioner's oral report in June 2016.

*\*The measures marked with an asterisk were identified by Sri Lankan Foreign Minister Samaraweera for action during his 14 September 2015 address to the UN Human Rights Council.*

1. **Enact Comprehensive Witness and Victim Protection.** Enact legislation that protects victims and witnesses in judicial proceedings during all stages of the criminal justice process, and also protects returnees. This legislation should strengthen and develop the Assistance to and Protection of Victims of Crime and Witness Act (2015). The history of reprisals against Sri Lankans who engage with domestic and international mechanisms is notorious. All Sri Lankans, especially victims, need to be confident that they can engage new mechanisms without fear. (OISL Rec 17, Res OP 9)\*
2. **Repeal the Prevention of Terrorism Act and the Public Security Ordinance Act.** Repeal and replace both Acts with anti-terror legislation that provides for due process and complies with international law. All detainees currently held under the Acts should be released, or charged and immediately brought to trial under ordinary laws. (OISL Rec 16, Res PP 13 & OP 12)\*
3. **Reform the Security Sector.** Initiate independent civilian oversight to disentangle the military, security, intelligence and police forces with the express goals of ensuring the independence of police forces, reducing the role of the military in internal security matters, and making clear the distinct roles and chain of command for all branches. (OISL Recs 10 & 11, Res PP 15 & OP 8)\*
4. **Stop Ongoing Violations by Security Forces.** Issue immediate instructions to all branches of security forces that harassment, surveillance, torture, rape, sexual violence and other human rights violations are prohibited and that those responsible will be investigated and punished. (OISL Rec 9, Res PP 11 & OP 17)\*
5. **Criminalize War Crimes and Crimes against Humanity.** Enact legislation authorizing the prosecution of war crimes and crimes against humanity to ensure the proposed justice mechanism can credibly investigate and prosecute all perpetrators of the crimes, including those most responsible. The magnitude and seriousness of the potential crimes identified and documented in the OISL Report make this a key indicator of the bona fides of the government. (OISL Rec 18, Res PP 18 & OP 7)
6. **Demilitarize the North and East.** Return the military in the North and East to barracks and initiate a process of demobilization from the region. Take administrative and legislative action prohibiting the

military from commercial activities. The heavy military presence perpetuates an atmosphere of fear, puts civilians, especially women, at risk of violations by security forces, and prevents the return to normal life. (OISL Rec 14, Res OP 10)\*

- 7. Accelerate Return of Land and Resettle IDPs.** Set a timetable for return of all occupied land in the North and East to Tamil and Muslim owners. Establish an independent land dispute mechanism. Expedite resettlement for IDPs through land restitution, resettlement and livelihood support programs with direct assistance from the international community. (OISL Rec 33, Res PP 10, OP 10)
- 8. Acknowledge the Plight of Missing Persons.** Sign and ratify the International Convention for the Protection of All Persons from Enforced Disappearances, domestically criminalize enforced disappearances, and provide unfettered access to the Working Group on Arbitrary Detention due to visit Sri Lanka from 9-18 November 2015. (OISL Rec 18, 19 & 25, Res OP 13)\*
- 9. Identify and Protect Evidence of Crimes.** Preserve all records, documentation, and evidence of human rights violations and violations of international humanitarian law, extant in public and private property and institutions, including the military. Accept immediate international assistance to do this. Reinforce the forensic capacity of the judiciary and ensure that it is adequately resourced, including for DNA testing, forensic anthropology and archaeology. (OISL Rec 29, HC Rec P, Res OP 15)
- 10. Cooperate fully with OHCHR and Member States.** Invite the OHCHR to establish field offices in the North, East and South of Sri Lanka to facilitate the implementation of the OISL report, the High Commissioner's report and provide assistance to the government. Invite the SRSG on conflict-related sexual violence, the SRSG on Children and Armed Conflict, the Special Rapporteur on truth, justice, reparations and non-reoccurrence, the Special Rapporteur on extrajudicial killings, the Special Rapporteur on torture, the Working Group on Arbitrary Detention and other relevant Special Procedures mandate holders to make country visits. (OISL Recs 3 & 5, Res OP 2, OP 19, OP 20) \*

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<sup>i</sup> Government of Sri Lanka, Statement by Mangala Samaraweera at the 30th Session of the UNHRC, 14 September 2015, <http://www.news.lk/fetures/item/9742-statement-by-mangala-samaraweera-at-the-30th-session-of-the-unhrc-geneva>

<sup>ii</sup> "Hybrid Mechanism Will Ensure International Support," The Sunday Observer, 20 September 2015, <http://www.sundayobserver.lk/2015/09/20/fea08.asp>

<sup>iii</sup> Human Rights Council, *Promoting reconciliation, accountability and human rights in Sri Lanka*, A/HRC/30/L.29, 29 September 2015, [http://ap.ohchr.org/documents/alldocs.aspx?doc\\_id=25600](http://ap.ohchr.org/documents/alldocs.aspx?doc_id=25600); Human Rights Council, *Report of the OHCHR Investigation on Sri Lanka (OISL)*, A/HRC/30/CRP.2, 16 September 2015, [http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session30/Documents/A\\_HRC\\_30\\_CRP\\_2.docx](http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session30/Documents/A_HRC_30_CRP_2.docx)

<sup>iv</sup> Human Rights Council, Statement by UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein, 30 September 2015, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16539&LangID=E>

<sup>v</sup> Human Rights Council, Statement by Pablo de Greiff, Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, 15 September 2015, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16426&LangID=E>

<sup>vi</sup> Human Rights Council, *Comprehensive Report of the Office of the United Nations High Commissioner for Human Rights on Sri Lanka*, A/HRC/30/61, 28 September 2015, pgs 4-6, [http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session30/Documents/A\\_HRC\\_30\\_61\\_ENG.docx](http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session30/Documents/A_HRC_30_61_ENG.docx);