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Human Rights Council

Thirtieth session

Agenda item 2

Resolution adopted by the Human Rights Council on 1 October 2015

30/1. Promoting reconciliation, accountability and human rights in Sri Lanka

The Human Rights Council,

Reaffirming the purposes and principles of the Charter of the United Nations,

Guided by the Universal Declaration of Human Rights, the International Covenants on Human Rights and other relevant instruments,

Recalling Human Rights Council resolutions 19/2 of 22 March 2012, 22/1 of 21 March 2013 and 25/1 of 27 March 2014 on promoting reconciliation and accountability in Sri Lanka,

Reaffirming its commitment to the sovereignty, independence, unity and territorial integrity of Sri Lanka,

Reaffirming also that it is the responsibility of each State to ensure the full enjoyment of all human rights and fundamental freedoms of its entire population,

Welcoming the historic free and fair democratic elections in January and August 2015 and the peaceful political transition in Sri Lanka,

Noting with interest the passage and operationalization of the nineteenth amendment to the Constitution of Sri Lanka and its contribution to the promotion of democratic governance and independent oversight of key institutions, including the provision on the promotion of national reconciliation and integration as among the constitutional duties of the President of Sri Lanka,

Welcoming the steps taken by the Government of Sri Lanka since January 2015 to advance respect for human rights and to strengthen good governance and democratic institutions,

Welcoming also the efforts of the Government of Sri Lanka to investigate allegations of bribery, corruption, fraud and abuse of power, and stressing the importance of such investigations and the prosecution of those responsible in ending impunity and promoting good governance,

Corruption investigations initiated. Investigations stalled, no prosecutions. Fresh allegations of corruption against new government.



Welcoming further the steps taken to strengthen civilian administration in the former conflict-affected provinces of the North and the East, acknowledging the progress made by the Government of Sri Lanka in rebuilding infrastructure, demining and resettling internally displaced persons, and calling upon the international community, including the United Nations, to assist the Government of Sri Lanka in furthering these efforts, especially in expediting the process of delivering durable solutions for all internally displaced persons,

Over 40,000 IDPs remain, including 3,000 in Jaffna. Government of Sri Lanka (GoSL) resettled some IDPs with UN and approved a National Policy on Durable Solutions for Displacement in August 2016. Inadequate infrastructure provided for resettled IDPs.

Recognizing the improved environment for members of civil society and human rights defenders in Sri Lanka while expressing concern at reports of ongoing violations and abuses of human rights, and recognizing the expressed commitment of the Government of Sri Lanka to address issues, including those involving sexual and gender-based violence and torture, abductions, as well as intimidation of and threats against human rights defenders and members of civil society,

Due to “heavy militarization that still exists in the North and East of the country, surveillance continues to be used as a tool of control and intimidation” - Special Rapporteur on Torture, December 2016.

Reaffirming that all Sri Lankans are entitled to the full enjoyment of their human rights regardless of religion, belief or ethnicity, in a peaceful and unified land,

State complicit in violations against religious and ethnic minorities. President Sirisena continues to meet militant Buddhist nationalist groups despite hate speech and attacks on Tamils, Muslims and Christians.

Reaffirming also that States must ensure that any measure taken to combat terrorism complies with their obligations under international law, in particular international human rights law, international refugee law and international humanitarian law, as applicable,

Welcoming the Declaration of Peace of the Government of 4 February 2015 and its acknowledgement of the loss of life and victims of violence of all ethnicities and religions,

Emphasizing the importance of a comprehensive approach to dealing with the past, incorporating the full range of judicial and non-judicial measures, including, inter alia, individual prosecutions, reparations, truth-seeking, institutional reform, the vetting of public employees and officials, or an appropriately conceived combination thereof, in order to, inter alia, ensure accountability, serve justice, provide victims with remedies, promote healing and reconciliation, establish independent oversight of the security system, restore confidence in the institutions of the State and promote the rule of law in accordance with international human rights law with a view to preventing the recurrence of violations and abuses, and welcoming in this regard the expressed commitment of the Government to ensure dialogue and wide consultations with all stakeholders,

No comprehensive approach. Consultations Task Force (CTF) finds GoSL failed to publicly champion transitional justice despite High Commissioner Zeid’s recommendation in June 2016.

No vetting. GoSL delegation to UN Committee against Torture included Sisira Mendis, who UN found had command responsibility for police units accused of torture. GoSL appointed Nandana Munasinghe to National Authority for Witness Protection. UN also accused Munasinghe of torture.

Recognizing that mechanisms to redress past abuses and violations work best when they are independent, impartial and transparent; are led by individuals known for displaying the highest degree of professionalism, integrity and impartiality; utilize consultative and participatory methods that include the views of all relevant stakeholders, including, but not limited to, victims, women, youth, representatives of various religions, ethnicities and geographic locations, as well as marginalized groups; and are designed and implemented on the basis of expert advice from those with relevant international and domestic experience,

Recognizing also that a credible accountability process for those most responsible for violations and abuses will safeguard the reputation of those, including within the military, who conducted themselves in an appropriate manner with honour and professionalism,

Recalling the responsibility of States to comply with their relevant obligations to prosecute those responsible for gross violations of human rights and serious violations of international humanitarian law constituting crimes under international law, with a view to ending impunity,

Impunity persists for state perpetrators - Special Rapporteur on Torture, December 2016.

Taking note of the review of the high-security zones undertaken by the Government, and welcoming the initial steps taken to return land to its rightful civilian owners and to help local populations to resume livelihoods and to restore normality to civilian life,

Security forces in North and East prevent return to normality. Military still occupies civilian land and constructs Buddhist structures, while economic activities deprive local populations of income.

Welcoming the commitments of the Government of Sri Lanka to the devolution of political authority,

Requesting the Government of Sri Lanka to implement effectively the constructive recommendations made in the report of the Lessons Learnt and Reconciliation Commission,

Welcoming the visit from 30 March to 3 April 2015 by and the observations of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, and the planned visit of the Working Group on Enforced or Involuntary Disappearances in November 2015,

Recognizing that the investigation into alleged serious violations and abuses of human rights and related crimes in Sri Lanka requested by the Human Rights Council in its resolution 25/1 was necessitated by the absence of a credible national process of accountability,

1. *Takes note with appreciation* of the oral update presented by the United Nations High Commissioner to the Human Rights Council at its twenty-seventh session, the report of the Office of the High Commissioner on promoting reconciliation and accountability in Sri Lanka¹ and its investigation on Sri Lanka requested by the Human Rights Council in its resolution 25/1,² including its findings and conclusions, and encourages the Government of Sri Lanka to implement the recommendations contained therein when implementing measures for truth-seeking, justice, reparations and guarantees of non-recurrence;

2. *Welcomes* the positive engagement between the Government of Sri Lanka and the High Commissioner and the Office of the High Commissioner since January 2015, and encourages the continuation of that engagement in the promotion and protection of human rights and in exploring appropriate forms of international support for and participation in Sri Lankan processes for seeking truth and justice;

Welcome engagement, but action needed on OHCHR recommendations.

¹ A/HRC/30/61.

² See A/HRC/30/CRP.2.

3. *Supports* the commitment of the Government of Sri Lanka to strengthen and safeguard the credibility of the processes of truth-seeking, justice, reparations and guarantees of non-recurrence by engaging in broad national consultations with the inclusion of victims and civil society, including non-governmental organizations, from all affected communities, which will inform the design and implementation of these processes, drawing on international expertise, assistance and best practices;

GoSL appointed CTF. Report released in January 2017 after nationwide consultations. CTF report rejected in whole or in part by high-ranking officials including President Sirisena, Justice Minister Rajapakshe, and former President Kumaratunga.

4. *Welcomes* the commitment of the Government of Sri Lanka to undertake a comprehensive approach to dealing with the past, incorporating the full range of judicial and non-judicial measures; also welcomes in this regard the proposal by the Government to establish a commission for truth, justice, reconciliation and non-recurrence, an office of missing persons and an office for reparations; further welcomes the willingness of the Government to give each mechanism the freedom to obtain financial, material and technical assistance from international partners, including the Office of the High Commissioner; and affirms that these commitments, if implemented fully and credibly, will help to advance accountability for serious crimes by all sides and to achieve reconciliation;

No Truth Commission or Office for Reparations as of 20 February 2017. Office of Missing Persons (OMP) legislation passed in August 2016. OMP not funded, staffed, or operational.

CTF received OHCHR funding. However, Cabinet approved proposal in February 2017 to strip OMP of its power to freely enter into agreements with outside individual or organization that could provide assistance.

5. *Recognizes* the need for a process of accountability and reconciliation for the violations and abuses committed by the Liberation Tigers of Tamil Eelam, as highlighted in the report of the Office of the High Commissioner on its investigation on Sri Lanka;

No elements of justice mechanism in place to allow for accountability of either side.

6. *Welcomes* the recognition by the Government of Sri Lanka that accountability is essential to uphold the rule of law and to build confidence in the people of all communities of Sri Lanka in the justice system, notes with appreciation the proposal of the Government of Sri Lanka to establish a judicial mechanism with a special counsel to investigate allegations of violations and abuses of human rights and violations of international humanitarian law, as applicable; affirms that a credible justice process should include independent judicial and prosecutorial institutions led by individuals known for their integrity and impartiality; and also affirms in this regard the importance of participation in a Sri Lankan judicial mechanism, including the special counsel's office, of Commonwealth and other foreign judges, defence lawyers and authorized prosecutors and investigators;

No judicial mechanism. GoSL rejects international judges despite cosponsoring resolution 30/1. In line with High Commissioner Zeid's recommendation, CTF recommends hybrid court with international judges to generate trust and confidence.

7. *Encourages* the Government of Sri Lanka to reform its domestic law to ensure that it can implement effectively its own commitments, the recommendations made in the report of the Lessons Learnt and Reconciliation Commission, as well as the recommendations of the report of the Office of the High Commissioner,¹ including by allowing for, in a manner consistent with its international obligations, the trial and punishment of those most responsible for the full range of crimes under the general principles of law recognized by the community of nations relevant to violations and abuses of human rights and violations of international humanitarian law, including during the period covered by the Lessons Learnt and Reconciliation Commission;

No criminalization of war crimes, crimes against humanity or genocide. GoSL unwilling or unable to reform domestic law.

8. *Also encourages* the Government of Sri Lanka to introduce effective security sector reforms as part of its transitional justice process, which will help to enhance the reputation and professionalism of the military and include ensuring that no scope exists for retention in or recruitment into the security forces of anyone credibly implicated through a fair administrative process in serious crimes involving human rights violations or abuses or violations of international humanitarian law, including members of the security and intelligence units; and also to increase training and incentives focused on the promotion and protection of human rights of all Sri Lankans;

GoSL failure at security sector reform noted most recently by UN Committee against Torture, December 2016.

9. *Welcomes* the recent passage by the Government of Sri Lanka of an updated witness and victim protection law and its commitment to review the law, and encourages the Government to strengthen these essential protections by making specific accommodations to protect effectively witnesses and victims, investigators, prosecutors and judges;

No efforts to strengthen existing witness and victim protection law. CTF reiterated the call for an independent witness protection regime in its January 2017 report.

10. *Also welcomes* the initial steps taken to return land, and encourages the Government of Sri Lanka to accelerate the return of land to its rightful civilian owners, and to undertake further efforts to tackle the considerable work that lies ahead in the areas of land use and ownership, in particular the ending of military involvement in civilian activities, the resumption of livelihoods and the restoration of normality to civilian life, and stresses the importance of the full participation of local populations, including representatives of civil society and minorities, in these efforts;

Stalled after initial return of approx. 3,400 acres. Research finds between 12,500 acres of private land and 67,427 acres of public and private land occupied. Jaffna Army Commander stated army “would not return even an inch” of land. New acquisitions continue, including navy plans in November 2016 to acquire 617 acres in Mullaithivu.

Military-run Civil Security Division engages in civilian activities such as operating Tamil pre-schools.

11. *Encourages* the Government of Sri Lanka to investigate all alleged attacks by individuals and groups on journalists, human rights defenders, members of religious minority groups and other members of civil society, as well as places of worship, and to hold perpetrators of such attacks to account and to take steps to prevent such attacks in the future;

No investigation of all attacks. No charges in high profile cases against journalists such as the disappearance of Prageeth Ekneligoda and murders of Dharmaratnam Sivaram and Lasantha Wickramatunga.

12. *Welcomes* the commitment of the Government of Sri Lanka to review the Public Security Ordinance Act and to review and repeal the Prevention of Terrorism Act, and to replace it with anti-terrorism legislation in accordance with contemporary international best practices;

Parliament's Law and Order Subcommittee reviewed the Public Security Ordinance (PSO) Act, recommends new replacement act. Unclear if new act would address PSO deficiencies.

No repeal of PTA to date. Its ongoing existence is a destructive symbol of state abuse. GoSL continues PTA arrests. Up to 111 remain imprisoned. Proposed PTA replacement bill fails to remedy serious problems. Human rights defenders report bill retains draconian clauses giving extreme powers to security sector and does not accord with international best practices.

13. *Also welcomes* the commitment of the Government of Sri Lanka to sign and ratify the International Convention for the Protection of All Persons from Enforced Disappearance without delay, to criminalize enforced disappearances and to begin to issue certificates of absence to the families of missing persons as a temporary measure of relief

Welcome ratification of the Convention for the Protection of All Persons from Enforced Disappearances on 25 March 2016. However, no legislation to domestically criminalize enforced disappearances.

14. *Further welcomes* the commitment of the Government of Sri Lanka to release publicly previous presidential commission reports;

15. *Encourages* the Government of Sri Lanka to develop a comprehensive plan and mechanism for preserving all existing records and documentation relating to human rights violations and abuses and violations of international humanitarian law, whether held by public or private institutions;

No plan or mechanism to preserve all existing records and documents.

16. *Welcomes* the commitment of the Government of Sri Lanka to a political settlement by taking the necessary constitutional measures, encourages the Government's efforts to fulfil its commitments on the devolution of political authority, which is integral to reconciliation and the full enjoyment of human rights by all members of its population; and also encourages the Government to ensure that all Provincial Councils are able to operate effectively, in accordance with the thirteenth amendment to the Constitution of Sri Lanka;

GoSL created Constitutional Assembly in March 2016. Constitutional reform stalling. Reform essential to address root causes of ethnic conflict.

17. *Also welcomes* the commitment of the Government of Sri Lanka to issue instructions clearly to all branches of the security forces that violations of international human rights law and international humanitarian law, including those involving torture, rape and sexual violence, are prohibited and that those responsible will be investigated and punished, and encourages the Government to address all reports of sexual and gender-based violence and torture;

GoSL issued weak instructions. No change in conduct. Torture and sexual violence continue with impunity.

18. *Requests* the Office of the High Commissioner to continue to assess progress on the implementation of its recommendations and other relevant processes related to reconciliation, accountability and human rights, and to present an oral update to the Human Rights Council at its thirty-second session, and a comprehensive report followed by discussion on the implementation of the present resolution at its thirty-fourth session;

19. *Encourages* the Government of Sri Lanka to continue to cooperate with special procedure mandate holders, including by responding formally to outstanding requests;

Welcome GoSL cooperation with special procedures mandate holders and 17 December 2015 issuance of standing invitation to accept all visit requests. Action needed on recommendations of the Special Rapporteur on Truth, Justice, Reparations and Guarantees of Non-Recurrence, Special Rapporteur on Torture, Special Rapporteur on the Independence of Judges and Lawyers, Special Rapporteur on Minority Issues and Working Group on Enforced or Involuntary Disappearances.

20. *Encourages* the Office of the High Commissioner and relevant special procedure mandate holders to provide, in consultation with and with the concurrence of the Government of Sri Lanka, advice and technical assistance on implementing the above-mentioned steps.

*40th meeting
1 October 2015*

[Adopted without a vote.]