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SRI LANKA MUST DELIVER ON ITS COMMITMENTS SET OUT BY HUMAN RIGHTS COUNCIL RESOLUTION 30/1

WRITTEN STATEMENT
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Human Rights Council resolution 30/1 sets out concrete steps to ensuring truth, justice, reparation and non-recurrence for human rights violations and abuses. Council resolution 34/1 requested the Government “to implement fully the measures identified by the Council in its resolution 30/1 that are outstanding.” This written statement provides an assessment of Sri Lanka’s progress in delivering on its human rights obligations, and implementation of resolution 30/1.

Overview

Sri Lanka has taken some important steps since the adoption of Resolution 30/1¹, including the ratification of the International Convention for the Protection of All Persons from Enforced Disappearance (June 2016) and the passage of the amended Office on Missing Persons Act (June 2017). However, Amnesty International is disappointed by the lack of progress, and in some cases backsliding, on the important commitments reflected in resolution 30/1 regarding: enforced disappearances; truth, justice and reparation; protection of religious and ethnic minorities and human rights defenders; and the repeal of the Prevention of Terrorism Act (PTA).

Enforced Disappearances

The commitment made by the Government of Sri Lanka to criminalize enforced disappearances has not been fulfilled, and a Parliamentary debate on a bill criminalizing enforced disappearance scheduled for July 2017 was postponed without explanation.

An Act to establish an Office on Missing Persons (OMP) was first passed by Parliament in 2016 but was never operationalised as lawmakers immediately demanded amendments to limit the OMP’s power. The amended Act passed in June and was signed by President Sirisena on 20 July 2017.

¹ http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/30/1.

The legislation permits but does not require the OMP to forward information indicating individual criminal responsibility to appropriate authorities for further criminal investigation. It is essential that it does so routinely or preserves information relating to crimes under international law until an independent and effective judicial mechanism is established.

In June, President Sirisena promised families of the disappeared that he would order the release of lists of those who surrendered to or were detained by the armed forces during and after the armed conflict that ended in 2009.² That list has yet to be made public.

Truth, justice and reparation

Resolution 30/1 welcomed proposals by the Government to establish “a commission for truth, justice, reconciliation and non-recurrence,” and “a judicial mechanism with a special counsel to investigate allegations of violations and abuses of human rights and violations of international humanitarian law.” It recognised the importance of “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.”

Resolution 30/1 called on Sri Lanka to “safeguard the credibility of the processes ... by engaging in broad national consultations.” Sri Lanka appointed the Consultation Task Force on Reconciliation Mechanisms (CTF) in January 2016. It carried out island-wide public consultations with over 7,000 people on their expectations of the new mechanisms, but its final report was not well-received by authorities. To Amnesty International’s knowledge the government has not acted on its recommendations. These included calling on the Government to establish an official roadmap for the creation and efficient functioning of truth, justice, and reparation mechanisms, a national outreach programme and a monitoring body comprised of affected families, civil society groups, and the international community.³

Delay in establishing the necessary accountability mechanisms is not an excuse for inaction on cases already under investigation. Emblematic cases must be pursued in order to put an end to the long wait for truth and justice of the families of those involved. Such cases include: the January 2006 extrajudicial executions of five students in Trincomalee by government security personnel;⁴ the August 2006 shootings of 17 aid workers with Action Contre La Faim;⁵ the enforced disappearance of activist Stephen Sunthararaj in 2009 after his abduction by security personnel;⁶ the disappearance of cartoonist Prageeth Eknaligoda in January 2010;⁷ and the disappearance of political activists Lalith Weeraraj and Kugan Muruganandan, last seen in December 2011.⁸

Security forces have sought to restrict the exercise of freedom of expression and association by those seeking to memorialize their lost relatives, an important aspect of reparation.⁹ For example, Catholic

² <http://www.thehindu.com/news/international/sirisena-meets-kin-of-disappeared/article18967680.ece>

³ <https://drive.google.com/drive/folders/0ByOKvXw6zYVpQ3NhMU5oODJON00>

⁴ <https://www.amnesty.org/en/documents/asa37/013/2006/en/>

⁵ <https://www.amnesty.org/en/documents/asa37/012/2010/en/>

⁶ <https://www.amnesty.org/en/latest/news/2017/04/sri-lanka-victims-of-disappearance-cannot-wait-any-longer-for-justice/>

⁷ Ibid.

⁸ <https://www.amnesty.org/en/documents/asa37/5853/2017/en/> (pp 22-23)

⁹ <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RemedyAndReparation.aspx>.

Priest Father Eliil Rajendram and other community members in Mullaitivu have been subjected to police harassment following their efforts to memorialize family members who died during the armed conflict.¹⁰

Attacks on religious and ethnic minorities and human rights defenders

Attacks on Muslims and Christians, and their places of worship and businesses, by hard-line Buddhist nationalists continue,¹¹ while harassment and threats against human rights defenders by officials undermine reform efforts. For example, instead of ensuring that the reported attacks were investigated, on 17 June 2017 Sri Lanka's Minister of Justice and Buddha Sasana threatened to have lawyer Lakshan Dias disbarred if he did not apologize for speaking publicly about reported attacks on Christians.¹²

Law enforcement agents continue to subject members of the Tamil minority to ethnic profiling, surveillance and harassment. Pressure is especially acute on former members of the Liberation Tigers of Tamil Eelam (LTTE), human rights defenders and activist community members, such as families of the disappeared. Women human rights defenders in the north and east say interactions with law enforcement agents are often degrading. Sexual harassment is common; physical assaults have also been reported.

Review and repeal of the Prevention of Terrorism Act (PTA)

Resolution 30/1 welcomed the commitment of the Government of Sri Lanka "to review and repeal" the PTA, "and to replace it with anti-terrorism legislation in accordance with contemporary international best practices."¹³ Two years later, the PTA is still being applied. Tens of thousands have been detained under the law since its inception, many of whom report long detention periods without charge and torture in custody.¹⁴ During a recent visit by the Special Rapporteur on Counter-Terrorism, officials acknowledged that over 100 persons detained under the PTA are currently in detention without conviction, some of whom have been detained for over a decade.¹⁵ The Special Rapporteur found that "80 per cent of those [...] arrested under the PTA in late 2016 complained of torture and physical ill-treatment."¹⁶

In 2016 President Sirisena instructed security forces¹⁷ to abide by Human Rights Commission of Sri Lanka (HRCSL) directives to protect those arrested under the PTA and called for an end to practices that can lead to its abuse, such as the transport of suspects in unmarked vehicles and the use of unofficial places of detention. Nevertheless, many of the practices continue.¹⁸

While new anti-terrorism legislation to replace the PTA is currently under consideration, the current draft does not offer adequate protection against arbitrary arrest, detention and torture, and therefore cannot be said to be "in accordance with contemporary international best practices."¹⁹

¹⁰ <https://www.amnesty.org/en/documents/asa37/6341/2017/en/>

¹¹ <http://www.reuters.com/article/us-sri-lanka-violence-muslims-idUSKBN18S66P>

¹² <https://www.amnesty.org/en/documents/asa37/6550/2017/en/>

¹³ HRC resolution 30/1, OP 12.

¹⁴ <https://www.amnesty.org/en/documents/asa37/003/2012/en/>

¹⁵ <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21883&LangID=E>.

¹⁶ <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21883&LangID=E>.

¹⁷ http://www.business-standard.com/article/international/sri-lankan-president-issues-new-directives-for-arrests-under-pta-116062000525_1.html

¹⁸ <http://hrctl.lk/english/2016/05/27/directives-issued-by-the-human-rights-commission-of-sri-lanka-on-arrest-and-detention-under-the-prevention-of-terrorism-temporary-provisions-act-no-48-of-1979/>

¹⁹ HRC resolution 30/1, OP 12.

Recommendations

To give full effect to its international human rights obligations and commitments, including those set out in resolution 30/1, the government of Sri Lanka must take the following steps:

- Fulfil the President's pledge to publish a list of all those who surrendered or have been detained;
- Repeal the PTA and ensure that any new legislation to replace it is in accordance with international human rights law and contemporary international best practices;
- Investigate all alleged attacks by individuals and groups on journalists and civil society, and members of religious minority groups, as well as places of worship, holding perpetrators to account, and take steps to prevent such attacks in the future;
- Incorporate crimes under international law (including enforced disappearance, torture, crimes against humanity and war crimes,) and effective principles of criminal responsibility into Sri Lankan law.
- Establish an official roadmap for the creation and efficient functioning of truth, justice, and reparation mechanisms, a national outreach program and a monitoring body comprised of affected families, human rights and civil society groups, and the international community;
- Publish a time-bound action plan for the full implementation of resolution 30/1.

To support continued progress, the Human Rights Council and its member and observer States should:

- Call on the Sri Lankan authorities to ensure they make progress in implementing the commitments reflected in Resolution 30/1, in particular to establish the roadmap recommended by the CTF for the establishment and efficient functioning of truth, justice, and reparation mechanisms, a national outreach program and a monitoring body.
- Provide technical assistance and financial support for justice, truth and reparation mechanisms that meet international standards; legal reform and other steps to ensure non-recurrence.
- Assist and support Sri Lanka to develop and implement rigorous human rights vetting of law enforcement agencies and the military, and ensure 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 investigations into and prosecutions of crimes under international law or other serious human rights violations, subject to fair trial safeguards and precluding the imposition of the death penalty.