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SRI LANKA: UNIVERSAL PERIODIC REVIEW PLEDGES MUST BE FULLY IMPLEMENTED

Eight years after the end of the armed conflict in Sri Lanka, the island nation's human rights record was scrutinized again at the recently held Universal Periodic Review (UPR) in Geneva, Switzerland on 15th November 2017.

At the review, Sri Lanka supported 177 and noted 53 recommendations from a total 230 recommendations. Sri Lanka also made several voluntary pledges including a pledge to fulfill commitments made in September 2015 before the United Nations Human Rights Council (UNHRC) in Resolution 30-1. At the UPR, Sri Lanka made commitments to operationalize the office of missing persons, to establish a truth-seeking commission, an office for reparations and a judicial mechanism with special counsel.

Sri Lanka operationalizes its promise to ratify the OP-CAT

One of the key pledges that Sri Lanka made was to ratify the Optional Protocol to the Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment (OPCAT) - a move that it followed through with on 5 December.

The protocol will come into force in Sri Lanka on 4th January 2018. Amnesty International welcomes the accession but urges the Government to equally prioritize implementing its provisions domestically and end impunity for torture and other ill-treatment. Amnesty International urges the government in this light to establish at the earliest possible time, the national preventive mechanism (NPM) according to its obligations under OP-CAT.

In 2016, Amnesty International called on the government to guarantee victims of torture and other ill-treatment effective reparations, including restitution, compensation, satisfaction and guarantees of non-repetition¹. With the accession to OP-CAT, the domestic implementation of obligations under the protocol can decisively provide a Sri Lanka with a clear and coordinated pathway to end impunity for torture and other ill-treatment.

The hallmarks of the NPM should be its functional and operational independence, adequate funding free from political restrictions, and independent, capable, gender balanced and representative members. In addition, the government must guarantee the widest possible definition of detainees and places of detention and full, unhindered access thereto. The NPM must have unhindered access to information and

¹ Amnesty International, *Sri Lanka: Much Remains to be Done on Torture*, 9 December 2016, available at <https://www.amnesty.org.au/sri-lanka-much-remains-to-be-done-on-torture/>, accessed on 10th December 2017

the public and victims should be guaranteed unhindered access to the NPM. The government must guarantee direct, unhindered and untapped communications between the NPM and the Sub-Committee, and finally, assure functionally and operationally that the NPMs recommendations will be taken seriously.

Amnesty International reminds the Government of its pledge before the UPR to designate the Human Rights Commission of Sri Lanka (HRCSL) as the national preventive mechanism to prevent and monitor implementation of obligations under OP-CAT is welcome.

In this light, Amnesty International calls on Sri Lanka to ensure the Human Rights Commission of Sri Lanka is equipped with sufficient staff, independent funding and other resources, to carry out all of its functions effectively.

Sri Lanka still ambivalent on definitive timeline to guarantee truth, justice and guarantees of non-recurrence

Despite Sri Lanka co-sponsoring the UNHRC Resolution No. 30/1 in September 2015, progress in fulfilling commitments therein has slowed to a glacial pace. Delays have affected key issues include guaranteeing truth and accountability on the issues of enforced disappearances – sparking months-long protests by families of the disappeared in the north and east of the country. Sri Lanka has pledged before the UPR in November that it will formulate a comprehensive reparations policy², and fulfill commitments contained in United Nations Human Rights Council Resolution 30/1. The Government has further specified its commitments under the Resolution and said that it would fulfill its commitment towards ‘operationalizing the Office on Missing Persons’, the ‘establishment of a truth seeking commission, an office for reparations, and a judicial mechanism with a special counsel’³.

While Sri Lanka’s voluntary pledges at the UPR are welcome, the state must meet its human rights obligations and effectively implement measures on truth, justice, reparations and guarantees of non-recurrence, as it had promised to do more than two years ago. Amnesty International reiterates its call made in May 2017 on the government to announce a clear and coordinated roadmap on its commitments on truth, justice, reparations and guarantees of non-recurrence⁴.

Amnesty International called for independent and impartial international investigations into these allegations in its 2016 report ‘*Making the Rights Choices*’⁵, in the context of previous failures by the Government of Sri Lanka to investigate, acknowledge and prosecute alleged war crimes and other crimes committed in the island nation. In this instance, Amnesty International further calls on Sri Lanka to establish a “Special Counsel” to carry out prompt, independent, impartial and effective investigations of

² Voluntary Pledge No. 16, Section III, Draft report of the Working Group on the Universal Periodic Review, 17 November 2017, A/HRC/WG.6/28/L.14

³ Voluntary Pledge No. 18, Section III, Draft report of the Working Group on the Universal Periodic Review, 17 November 2017, A/HRC/WG.6/28/L.14

⁴ Amnesty International, 18 May 2017, *Sri Lanka: The conflict’s legacy of impunity endures*, available at <https://www.amnesty.org/en/latest/news/2017/05/sri-lanka-the-conflicts-legacy-of-impunity-endures/>, accessed on 10th December 2017.

⁵ Amnesty International, 2016, *Making the Right Choices*, London, available at <https://www.amnesty.org/en/documents/asa37/4902/2016/en/>, accessed on 10th December 2017.

all crimes including enforced disappearances and to hold the suspected perpetrators accountable through fair trials without recourse to the death penalty.

Sri Lanka commits to take measures to address truth and justice in the case of Enforced Disappearances

Amnesty International welcomes Sri Lanka's commitment to the families of victims that they will get information on the names and whereabouts of detained persons⁶. However information guarantees must extend to immediately providing answers to the families of the disappeared with regards to any persons who may have been killed in detention, as well as justice and accountability for such crimes. Chronic delays in fulfilling previous promises to guarantee truth and information of those subject to enforced disappearances, have been highlighted before by Amnesty in its 2017 report '*Only Justice can Heal our Wounds*'⁷.

While Sri Lanka has supported the recommendation to enact legislation making enforced disappearances a crime under domestic law in accordance with its treaty obligations, the Government of Sri Lanka must provide clear timelines for such legislative amendments.

Sri Lanka ratified the International Convention for the Protection of All persons from Enforced Disappearance on 25 May 2016 and a draft bill to amend the Penal Code and criminalize Enforced Disappearances was tabled in Parliament in February 2017. However, since then the parliamentary approval for the legislative amendments has seen persistent delays and postponements. Amnesty International calls on the Government to take all necessary steps to give full effect to its obligations under the Convention and immediately pass necessary legislative amendments.

Sri Lanka fails to make a commitment to abolish the Death Penalty

Amnesty International calls on the Sri Lankan government to commute all death sentences to life terms of imprisonment, abolishing the death penalty, and ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights.

As at 2017, 105 countries in the world have already abolished the death penalty for all crimes. There have been no executions in Sri Lanka since 1976. Sri Lanka remains part of the minority of countries that still resorts to the use of the ultimate cruel, inhuman and degrading punishment by continuing to allow capital punishment on its law books.

At the recently concluded UPR, specific recommendations were made to the Government of Sri Lanka to ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty. However, Sri Lanka has only noted such recommendations. The government should reconsider its position and to fully commit to abolishing the death penalty for all crimes, especially given the moratorium which has been in effect for the last forty years.

⁶ Recommendation 6.68, Section I, Draft report of the Working Group on the Universal Periodic Review, 17 November 2017, A/HRC/WG.6/28/L.14

⁷ Amnesty International, 2017, '*Only Justice can Heal our Wounds*', London, available at <https://www.amnesty.org/en/documents/asa37/5853/2017/en/>, accessed on 10th December 2017

Sri Lanka is yet to ratify the Convention relating to the Status of Refugees

Sri Lanka is yet to ratify the 1951 Convention relating to the Status of Refugees (Refugee Convention), despite the current regional and global refugee situation. Amnesty International calls on the Government of Sri Lanka to ratify the Refugee Convention and to pass domestic laws to ensure safety for refugees. Although Sri Lanka has supported a recommendation at the recently concluded UPR, to reinforce its policies to provide asylum seekers and refugees access to education services that are available nationally, this commitment falls short of the full protection guaranteed to refugees under international law. It is important that Sri Lanka adopts domestic laws specifically for the protection of refugees and internationally ratifies the Refugee Convention.

Sri Lanka only notes recommendations to decriminalize same-sex relations

Sri Lanka has thus far failed to decriminalize consensual same-sex relations in Sri Lanka. Sections 365 and 365A of the Penal Code criminalize ‘carnal intercourse against the laws of nature’ and acts of ‘gross indecency with another person’ create a climate which fuels discrimination against LGBTI people.

At the recently concluded UPR, the Government of Sri Lanka has voluntarily pledged to ‘ensure and strengthen respect for fundamental rights of all persons, including those from the LGBTIQ community, and address concerns raised in that regard’⁸. However, it has not firmly committed to decriminalizing consensual same-sex relations. In fact, on specific recommendations to de-criminalize same-sex relations, Sri Lanka has only noted the recommendations⁹. Amnesty International calls on Sri Lanka to fully guarantee the rights of LGBTI people, decriminalize same-sex relationships and to effectively amend or repeal discriminatory laws.

Sri Lankan government commits to Return of Land in the North and East

Eight years after the end of armed hostilities in the north and east, Sri Lanka has failed to fully return private land held by the military. Amnesty International welcomes Sri Lanka’s commitment to expedite the additional release of “occupied private land” to the rightful owners in the north and east and to address allegations of ‘land grabbing’¹⁰. Sri Lanka has further supported a recommendation to ‘accelerate the restitution of lands confiscated by the army and set up a satisfactory compensation system’¹¹. These pledges however must be accompanied by concrete action to release land seized by the military, to the people.

People have been peacefully protesting for release of military held land for several months in Kepapulavu, Mullaitivu among several locations in the north. Amnesty International reminds Sri Lanka that the return

⁸ Voluntary Pledge No. 15, Section III, Draft report of the Working Group on the Universal Periodic Review, 17 November 2017, A/HRC/WG.6/28/L.14

⁹ Recommendation No. 7.20, Section III, Draft report of the Working Group on the Universal Periodic Review, 17 November 2017, A/HRC/WG.6/28/L.14

¹⁰ Recommendation 6.133, Section I, Draft report of the Working Group on the Universal Periodic Review, 17 November 2017, A/HRC/WG.6/28/L.14

¹¹ Recommendation 6.131, Section I, Draft report of the Working Group on the Universal Periodic Review, 17 November 2017, A/HRC/WG.6/28/L.14

of private land and property is a central element of reparations and is essential if commitments to ensure truth, justice, reparation, and guarantees of non-recurrence are to be meaningful.

Sri Lanka supports recommendation to consider reviewing domestic law to reflect women's rights

Sri Lanka has only noted a specific recommendation to amend or repeal Article 16 of the Constitution. On the other hand, Amnesty International welcomes the commitment by Sri Lanka to consider undertaking a review of domestic law to reflect the rights of women¹², including the absence of minimum age of marriage under Muslim Law¹³. It is imperative that such law reform efforts are after full consultation of stakeholders including civil society groups, and the Human Rights Commission of Sri Lanka.

Amnesty International notes with concern that no voluntary commitment has been forthcoming on the repeal of Article 16 of the Constitution and discriminatory aspects of personal laws which impact the rights of women and girls. Article 16(1) states that laws that were in existence at the time of the promulgation of the Constitution continue to be valid and operative, even if such laws are in contravention of the fundamental rights chapter. In effect, this article permits the existence of laws such as the Muslim Marriage and Divorce Act No. 13 of 1951 as amended (MMDA), under which discriminatory practices against women as well as child marriage is permitted. These laws continue to be operative despite the fact that Article 12(1) and (2) of the Constitution guarantees equality and non-discrimination.

Sri Lanka should repeal or amend Article 16(1) of the Constitution, and amend discriminatory personal laws - including the MMDA, which allows for discrimination against women as well as child marriage among specific groups and communities.

Sri Lanka voluntarily pledges to repeal the PTA

Sri Lanka must immediately stop using and repeal the Prevention of Terrorism Act, which allows authorities broad powers to arrest and detain suspects without effective human rights safeguards. Under the Act, suspects can also be subjected to secret and incommunicado detention – practices that heighten the risk of torture and enforced disappearance.

At the recently concluded UPR, Sri Lanka has voluntarily pledged to 'review and repeal' the PTA¹⁴. Amnesty International welcomes this commitment as a step in the right direction. However, at the same time, the Government refers to 'replacing' it with new counter terrorism legislation that is compliant with international human rights law. Amnesty International urges the Government that it is vital that any new law is consistent with international standards and is subject to full public scrutiny and to independent review by the Human Rights Commission of Sri Lanka. A draft Counter Terrorism Act proposed in 2016

¹² Sri Lanka has supported the recommendation to 'Guarantee equality between men and women through an exhaustive review of national legislation'. Recommendation 6.138, Section I, Draft report of the Working Group on the Universal Periodic Review, 17 November 2017, A/HRC/WG.6/28/L.14

¹³ Recommendation 6.140, Section I, Draft report of the Working Group on the Universal Periodic Review, 17 November 2017, A/HRC/WG.6/28/L.14

¹⁴ Voluntary Pledge 12, Section III, Draft report of the Working Group on the Universal Periodic Review, 17 November 2017, A/HRC/WG.6/28/L.14

contained many, and in some cases broader, problematic powers in the PTA¹⁵. Amnesty International has on previous occasions called on the Government to repeal the PTA given its draconian provisions which has led to alleged violations of human rights on numerous occasions¹⁶.

Conclusions

The Universal Periodic Review process has provided the Sri Lankan government with another opportunity to fulfill its 2015 promises to guarantee justice and accountability in post-war Sri Lanka. This moment should be seized to finally move forward on truth, justice, reparation and guarantees of non-recurrence; to abolish the death penalty; to repeal the PTA; restitution of land seized by the military in the north and the east; to repeal and amend discriminatory laws guarantee the rights of women; and to fully operationalize its obligations under the OP-CAT.

¹⁵ Amnesty International, 21 August 2017, *Sri Lanka must deliver on its commitments set out by human rights council resolution 30/1*, Written Statement, UN Human Rights Council, Thirty-sixth session 11 – 29 September 2017, p.3

¹⁶ Amnesty International, 18 May 2017, *Sri Lanka: The conflict's legacy of impunity endures*, available at <https://www.amnesty.org/en/latest/news/2017/05/sri-lanka-the-conflicts-legacy-of-impunity-endures/>, accessed on 10th December 2017.