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Universal Periodic Review of Sri Lanka: The Government must strengthen the justice system and agree to re-establish the international monitoring presence

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The International Commission of Jurists (ICJ), following the review of Sri Lanka's human rights record at the 2nd session of the UN Human Rights Council's Working Group on the Universal Periodic Review (UPR), expressed dismay at the Sri Lankan government's complacent responses to mounting criticism of deteriorating human rights situation in the country. The elements of Sri Lanka's national human rights protection system do not function as part of a coherent and regular justice system. The effectiveness of the regular law enforcement mechanisms, including the judiciary, is limited, in part due to security constraints in response to terrorist threats, and also due to variety of *ad hoc* mechanisms and commissions which function with meager results.

"The Government must strengthen the independence, impartiality and capacity of the justice system to ensure adequate investigation, prosecution and conviction of the perpetrators of gross human rights violations, as well of the disproportionate and indiscriminate use of force and other breaches of international humanitarian law by both the Government of Sri Lanka and the LTTE and other non-state actors", said Lukas Machon, ICJ Representative to the UN. The Government must also combat the prevalence of impunity, especially of those who commit extra-judicial executions, arbitrary killings, abductions, enforced disappearances and forced recruitment of child-soldiers.

There are several institutional weaknesses hindering the Sri Lankan justice system from successfully combating impunity. Since March 2005, the Constitutional Council, the body responsible for making recommendations for appointments to independent commissions and approving appointments to high-level positions in the justice system, including Supreme Court Justice, Appeals Court Judge, Attorney General, Human Rights Commissioner, and Inspector-General of Police, has not been constituted. The President has instead made direct appointments to the Human Rights Commission, and is currently attempting to force through an appointment to the position of Parliament Secretary-General. The work of Sri Lanka's justice system is further hampered by witnesses' reluctance to testify, given that Sri Lanka lacks a victim and witness assistance and protection program, although a bill to create one has been under debate in the parliament for months.

It is essential to swiftly appoint the members of the Constitutional Council, allowing this body to return to existence and resume its constitutional function of approving high-level appointments within the justice system. The Government must also finally specify a time-frame for the adoption of the *Victim and Witness Assistance and Protection Act*, which is one of the basic preconditions for ensuring accountability for human rights violations.

During the dialogue, the Government conceded shortcomings in the functioning of the National Human Rights Commission (NHRC) to investigate human rights violations, and in the lack of victim and witness assistance and protection. However, it responded to these concerns only vaguely, referring to planned amendments to the statute of the NHRC, and to

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the mandate of the Constitutional Council, without indicating the improvements it seeks to achieve.

Responding to concerns about mounting attacks against humanitarian personnel, human rights defenders and civilians by non-state actors and government forces alike, the Government selectively quoted numbers of investigations of security personnel, without saying how many resulted in actual prosecutions or convictions for alleged extra-judicial executions or torture.

“The Government must move beyond its vague arguments and denials of impunity, and must speedily progress in the investigation, prosecution and conviction of the perpetrators of gross human rights violations, including extra-judicial executions of 17 *Action Contre la Faim* workers in Muttur and of five students in Trincomalee”, added Mr. Machon. The adequate completion of investigations into the extra-judicial executions of aid workers, which results have been long-awaited, will require restoring the impartiality of the Presidential Commission of Inquiry (CoI) and encouraging it to use its legal investigative powers to their full extent.

In reality, the CoI, mandated to investigate sixteen specific human rights violations, has failed to conclude any investigations in a year-and-a-half of work. The International Independent Group of Eminent Persons, established to support the work of the CoI, has resigned, citing undue interference in the investigative process by the Attorney General’s office, lack of a victim and witness protection program, non-cooperation by state bodies, and the CoI’s lack of transparency, timeliness, and financial independence. Coupled with the withdrawal of the Sri Lankan Monitoring Mission in January 2008, the Sri Lankan government’s cooperation with the international community’s human rights monitoring and technical assistance resources is at an ebb. This is in a stark contrast with the duties stemming from the Sri Lanka’s membership on the UN Human Rights Council.

The Sri Lankan Government is obliged to cooperate in full with all international human rights monitoring and assistance mechanisms. Many independent experts, including the Working Group on Enforced or Involuntary Disappearances, have been waiting for years to visit Sri Lanka. “I call on the Government of Sri Lanka to receive those special procedures requesting a visit and to issue standing invitations to all special procedures”, added Mr. Machon.

The Government has also declined the High Commissioner for Human Rights’ (HCHR) request to establish a UN monitoring and assistance presence, which would be indispensable for clarifying conflicting information about the human rights situation. “While the Government consistently blames shortcomings in human rights protection on the lack of resources and capacities, why is it then afraid of independent international presence offering monitoring along with the assistance?”, asked Mr. Machon. An HCHR’ field presence would provide for unfettered access to monitor, investigate, and report to the public on human rights violations and abuses by all parties to the internal armed conflict. A field presence would also promote remedial measures, including criminal investigation and prosecution and building the capacity of domestic human rights mechanisms.

The Government also declined to address the imperative of speedy ratification of the *International Convention for the Protection of All Persons from Enforced Disappearance* and of the *Rome Statute of the International Criminal Court*. Instead, it referred to its draft human rights Plan of Action and the draft Charter of human rights, which relation to the current Constitution is still unclear. The Government did not explain how these legislative amendments would help to fill the manifold institutional gaps and enforce already-guaranteed human rights.

The Government argued that a military solution can create space for transition to democracy, referring to the recent election in the Eastern Province, which it said should contribute to the restoration of democracy and human rights. “However, the ICJ can not agree with the Government’s strategy of

pursuing military solution to create space for political negotiations. On the contrary, the political solution should be sought first”, concluded Mr. Machon.

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