



To Permanent Representatives of Member and Observer States of the United Nations Human Rights Council

September 12, 2022

Sri Lanka - Adopt a Strong Resolution on Human Rights in Sri Lanka

Excellencies,

As you prepare for the 51st session of the United Nations Human Rights Council (HRC) we, as a group of four international human rights organizations, call on your delegation to support a strong resolution on human rights in Sri Lanka, which renews the OHCHR Accountability Project and addresses ongoing violations and abuses, including the suppression of freedom of expression and peaceful assembly.

Sri Lanka is currently suffering an economic, political and human rights crisis. In recent months, countless people have taken to the streets to call for reform, accountability for corruption, and for urgent government action to protect their rights. As former High Commissioner Michelle Bachelet made clear in her report to the Human Rights Council, the current situation is due in part to longstanding problems of “deepening militarization and lack of transparency and accountability in governance, which have embedded impunity for serious human rights violations and created an environment for corruption and the abuse of power.”¹ Successive Sri Lankan governments have repeatedly failed to fulfill their pledges, made at the Human Rights Council and elsewhere, to end abuses, protect human rights, and provide for accountability and redress.

The High Commissioner’s report notes that “Sri Lankans came together from various socioeconomic, cultural, ethnic and religious backgrounds in a mass protest movement to demand greater transparency, accountability for corruption and economic mismanagement and increased participation in democratic life.”²

We support the recommendations made by the High Commissioner, and urge member states of the HRC to adopt a resolution addressing the following points.

Justice, truth and reparation

- The OHCHR Accountability Project mandated by Resolution 46/1 is a crucial step towards achieving justice, truth and reparation for crimes under international law linked to the civil war that ended in 2009, which has been blocked by successive Sri Lankan governments despite commitments made by Sri Lanka to the HRC. However,

¹ Comprehensive Report of the United Nations High Commissioner for Human Rights, A/HRC/51/5, September 6, 2022, <https://www.ohchr.org/en/hr-bodies/hrc/regular-sessions/session51/list-reports> (accessed September 6, 2022).

² Ibid.

the Accountability Project lacks sufficient resources and capacity, including to provide witness protection, having received only 8 of the 12 staff posts requested in the original budget. We urge states to support a resolution renewing the mandate of the Accountability Project and requesting the UN to provide the resources required to provide greater investigative capacity and witness protection, greater technical capacity to analyze evidence and to undertake outreach and engagement with civil society and victims.

The resolution should also call upon Sri Lanka to:

- Restore cooperation with the efforts at the Human Rights Council to advance accountability for serious crimes under international law;
- Strengthen and ensure the independence of the Office of Missing Persons and the Office of Reparations, which were established under Resolution 30/1 but currently lack credibility due to political interference;
- Ensure that any truth-seeking mechanism established – which should not replace judicial proceedings before ordinary civilian courts – is in line with the recommendations of the Consultation Task Force on Reconciliation mechanism, including that the mechanism has a clear link to accountability, and does not provide amnesties or any other similar measure for crimes under international law or other serious human rights violations;
- Strengthen the independence of the national witness and victim protection authority to carry out its mandate effectively;
- Renew the commitment made to the Council under Resolution 30/1 to establish an international or hybrid court to appropriately try cases of crimes under international law in Sri Lanka.

Until such a time as appropriate investigations and prosecutions take place within Sri Lanka for crimes under international law committed there, the resolution should recall that all states are permitted to exercise universal jurisdiction over crimes under international law and, sometimes, that states are obligated to do so, in particular, when the alleged perpetrator is present in any territory under their jurisdiction.

Continued monitoring and reporting

The challenges facing Sri Lanka are multifaceted including concerns related to civil, political, economic, social and cultural rights. Indeed, the situation shows the indivisibility of these rights. While the impact of the crisis has been devastating, especially for those living in poverty and from marginalized groups, there is a further risk that economic adjustments intended to address it could further harm those in the most vulnerable situations.

It is important that the HRC receives regular updates from an independent monitor to enable it to respond quickly to the deteriorating human rights situation in Sri Lanka and to prevent further abuses during a politically unstable period. A broad range of expertise is needed to comprehensively cover such a wide spectrum of rights concerns. Therefore, a more robust monitoring capacity with greater resources is required.

The HRC should adopt a resolution that:

- Strengthens the mandate for monitoring and reporting, by establishing an expert mechanism to monitor and report (both to the Human Rights Council and the General

Assembly) on the current rights situation in Sri Lanka and make concrete recommendations to ensure the protection and realization of rights.

Ongoing violations and abuses

For many years there have been regular violations of the rights to freedom of expression, peaceful assembly, association, and religion, and frequent instances of arbitrary arrest and detention, among numerous other violations. The military and other security agencies have resorted to excessive or unnecessary use of force and intimidation to disrupt peaceful protests in the North and East in particular, and have also sought to intimidate and silence civil society organizations and human rights defenders.³ The families of victims of enforced disappearances have faced harassment while maintaining a peaceful protest for over 2,000 days, demanding to know the fate of missing loved ones.⁴

Popular public protests around the country are being suppressed by the government using both unnecessary and excessive force and intimidating tactics.⁵ Nearly 150 protesters have been arrested so far since the new president took office.⁶ The Prevention of Terrorism Act (PTA) has enabled numerous instances of arbitrary detention and torture and other ill-treatment since 1979. At the June session of the Council the then-foreign minister G.L. Pieris announced a “de facto moratorium” on the use of the PTA,⁷ and the same assurances were given to the Sri Lankan parliament in March by the current foreign minister, Ali Sabry.⁸ Nevertheless, since Ranil Wickremesinghe became president in July, the government has used the PTA to arbitrarily detain people accused of involvement in recent anti-government protests in the wake of the economic crisis.⁹

In 2020, the 20th Amendment to the Constitution undermined key institutions responsible for upholding the rule of law and human rights, as well as institutions combatting corruption, including the judiciary, the Human Rights Commission of Sri Lanka, the National Audit Office and the Commission to Investigate Allegations of Bribery or Corruption (CIABOC). A draft Constitutional Amendment currently proposed by the government stops short of reversing those changes.

We urge states to support a resolution that calls upon the Sri Lankan Government to:

- Ensure that people are able to freely and peacefully protest and express their views without fear of reprisal or arrest;

³ “Sri Lanka: Minorities, Activists Targeted,” Human Rights Watch, January 13, 2022, <https://www.hrw.org/news/2022/01/13/sri-lanka-minorities-activists-targeted> (accessed September 6, 2022); *In a Legal Black Hole: Sri Lanka’s Failure to Reform the Prevention of Terrorism Act*, Human Rights Watch, February 7, 2022, <https://www.hrw.org/report/2022/02/07/legal-black-hole/sri-lankas-failure-reform-prevention-terrorism-act> (accessed September 6, 2022).

⁴ Meenakshi Ganguly, “Families of Sri Lanka’s Forcibly Disappeared Denied Justice,” August 25, 2022, <https://www.hrw.org/news/2021/08/25/families-sri-lankas-forcibly-disappeared-denied-justice> (accessed September 6, 2022).

⁵ Joint INGO statement, “Sri Lanka: End government crackdown on peaceful protesters,” August 5, 2022, <https://www.amnesty.org/en/documents/asa37/5928/2022/en/> (accessed September 7, 2022).

⁶ “Penalized for Protesting,” Amnesty International, September 9, 2022, <https://www.amnesty.org/en/documents/asa37/5986/2022/en/> (accessed September 9, 2022).

⁷ “Sri Lanka Foreign Minister Prof GL Peiris addresses Geneva #UNHRC50,” June 13, 2022, <https://www.youtube.com/watch?v=5rN-IWolDR8> (accessed September 6, 2022).

⁸ Parliamentary Debates, *Hansard*, March 22, 2022, <https://www.parliament.lk/uploads/documents/hansard/1648123384056645.pdf> (accessed September 6, 2022).

⁹ “Sri Lanka: End Use of Terrorism Law Against Protesters,” Human Rights Watch, August 31, 2022, <https://www.hrw.org/news/2022/08/31/sri-lanka-end-use-terrorism-law-against-protesters> (accessed September 6, 2022).

- End the harassment, intimidation and arbitrary arrest of people believed to have participated in or supported recent protests;
- End all forms of surveillance and harassment of and reprisals against human rights defenders, civil society activists, journalists, victims and their families;
- Investigate and appropriately prosecute officials and security force personnel suspected of criminal responsibility for human rights violations constituting crimes under international law, regardless of position or rank;
- Repeal the PTA and issue an immediate moratorium on its use in the interim period; review the detention of those held under the PTA, and immediately release all those not facing recognizable charges consistent with human rights obligations, ensure all PTA detainees, including those undergoing pre-trial detention, are tried promptly and fairly in an ordinary civilian court;
- Restore the independence of the judiciary, attorney general, Election Commission, Public Service Commission, Police Commission, Judicial Service Commission, and Human Rights Commission, mandated to protect fundamental rights, which was removed in 2020 by the Gotabaya Rajapaksa government's 20th amendment to the Constitution.
- Cooperate with UN special procedure mandate holders, including responding formally to pending requests for official visits and implementing their recommendations.

Yours faithfully,

Yamini Mishra

South Asia Regional Director, Amnesty International

Ahmed Adam

Programme Manager, UN Advocacy, Asian Forum for Human Rights and Development (FORUM-ASIA)

Lucy McKernan

Acting Geneva Director, Human Rights Watch

Massimo Frigo

UN Representative & Senior Legal Adviser, International Commission of Jurists