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Human rights situations that require the Council's attention

Written statement* submitted by Amnesty International, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[14 February 2011]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

Sri Lanka: the need to address persistent impunity for violations and abuses of international human rights and humanitarian law

Sri Lanka's human rights record has not improved since Amnesty International last addressed this Council in May 2010. Impunity persists for past violations and abuses of international human rights and humanitarian law, and new and serious violations of human rights continue to be reported. In the two years since fighting ended in Sri Lanka evidence of serious violations and abuses by parties to the conflict has continued to mount, but the Sri Lankan Government has refused to acknowledge credible allegations of war crimes and other crimes under international law by its armed forces in the course of the conflict that ended in May 2009. It continues to subject people to enforced disappearances and torture and other ill-treatment. Thousands of people suspected of ties with the Liberation Tigers of Tamil Eelam (LTTE) remain in detention without charge. Political opponents of the government and other critics have faced severe restrictions on their freedom of expression, assembly and association. New reports of abductions, enforced disappearances and killings in northern Sri Lanka have had a profound effect on public security in that region and people's ability to heal and rebuild. Police killings of criminal suspects in other parts of the country are also on the rise.

Sri Lanka has not even begun the process of identifying persons alleged to be responsible for violations of international human rights and humanitarian law committed in the final stages of the armed conflict, let alone initiating steps necessary to ensure that justice is served. Some officials still claim publicly that there were no civilian casualties at all.

Sri Lanka has not delivered on commitments it made during Sri Lanka's Universal Periodic Review in June 2008, including promises to take all necessary measures to prosecute and punish perpetrators of a variety of violations of international human rights law and humanitarian law. Nor has it made good on promises made in a May 2009 joint communiqué issued at the conclusion of Secretary-General Ban Ki-moon's visit to Sri Lanka when President Rajapaksa reiterated Sri Lanka's "strongest commitment to the promotion and protection of human rights, in keeping with international human rights standards and Sri Lanka's international obligations." Action must therefore take place internationally.

Amnesty International believes that the prolonged failure of the international community to demand accountability for alleged crimes under international law in Sri Lanka has only encouraged official disregard for international law and UN mechanisms aimed at protecting individuals from harm and providing accountability. In turn, the refusal of Sri Lankan authorities to acknowledge and investigate allegations of such violations and bring perpetrators to justice fuels a growing lawlessness in the country, including by members of the state security forces and their paramilitary affiliates. Since late 2010, reports of abductions and alleged enforced disappearances and of extrajudicial killings of people in northern Sri Lanka have again increased, particularly in the Jaffna peninsula. Victims include people recently returned to the area who had been displaced by the armed conflict. Abductions and enforced disappearances have also been reported in southern Sri Lanka, and the police have killed a number of criminal suspects in encounters that are alleged to have been staged by the police.

The world is still waiting for the United Nations to establish an independent international investigation into alleged crimes under international law, which is an essential step to ensuring justice for Sri Lankan victims and their families. The longer we wait, the more

damage is done to the fabric of Sri Lankan society. The Human Rights Council should play a lead role in supporting justice for the victims and their families.

Domestic mechanisms could improve procedures but will not deliver justice:

An international inquiry into the alleged crimes committed in Sri Lanka should not be contingent upon the outcome of any domestic process. Amnesty International is concerned that the Sri Lankan government as well as some UN member states have suggested such a requirement. This concern is heightened by the poor record of national commissions of inquiry as justice mechanisms in Sri Lanka, as decades of failed ad hoc inquiries amply demonstrate¹. More than anything, the Sri Lankan government, which actively suppresses criticism and opposition, has not allowed Commissions to carry out their mandates independently. Sri Lanka's Lessons Learnt and Reconciliation Commission (LLRC) is no exception. The LLRC was appointed in May 2010 by President Mahinda Rajapaksa in an apparent effort to deflect calls for an international investigation into crimes under international law; but the LLRC is not a mechanism for accountability. The Commission's mandate does not require it to investigate alleged violations of international human rights or humanitarian law or to establish accountability for violations, and its members lack sufficient independence. Its focus is on establishing reasons for the failure of the 2002 cease-fire and ways to promote communal reconciliation. The international community must not accept this deeply flawed national process in place of an independent international investigation into crimes under international law committed in the conflict.

The LLRC's proceedings – particularly those held in former conflict areas – have exposed important evidence of crimes under international law and other serious human rights violations and abuses. Thousands of civilians came forward, some at great personal risk, hoping to testify (most were told to submit their complaints in writing). Many were Tamil women seeking news of missing relatives believed to have been taken into the custody of the security forces. Some alleged very serious crimes on the part of state forces as well as the LTTE, including enforced disappearances and murder. This information has emerged despite the LLRC's very real shortcomings, such as the lack of witness protection, and reports of intimidation of witnesses by uniformed military personnel and political party members with ties to the government.

The Commission's interim recommendations, sent to the President in September 2010, did not reflect concern for the protection of witnesses or the gravity of the alleged violations. There was no recommendation aimed at bringing perpetrators of human rights violations to justice. The LLRC did call for practical measures that could, among other things, help speed resolution of detention cases and help families trace detained relatives, but none of these recommendations was new. In October 2010, the Sri Lankan Government announced that it would appoint an Inter-Agency Advisory Committee to facilitate the implementation of these recommendations.

¹ See, Amnesty International, Twenty-years of Make-believe: Sri Lanka's Commissions of Inquiry (AI Index: ASA 37/005/2009)

The consequences of the failure to end the cycle of impunity in Sri Lanka:

The UN's failure so far to investigate the alleged large scale crimes under international law in Sri Lanka sends the message that states which have not ratified the Rome Statute, like Sri Lanka, are beyond the reach of international justice and that crimes committed in the name of "combating terrorism" can simply be ignored. The UN must act to counteract this dangerous precedent.

The Human Rights Council and the members of the United Nations also have a responsibility to support genuine international efforts to encourage the Sri Lankan government to better protect the rights of all Sri Lankans and to avoid a repeat of the violations that became so commonplace.

Recommendations:

Secretary-General Ban Ki-moon's Panel of Experts, appointed in May 2010 to advise him on accountability in Sri Lanka, is expected to issue its report in March while the Human Rights Council is meeting. Amnesty International urges the Secretary-General to issue the report publicly without delay to ensure that the Human Rights Council and other UN bodies can consider its findings and recommendations without further delay. The Council must consider that report carefully.

The Council should call on Sri Lanka to take the following measures to protect human rights:

- Investigate new reports of abductions, enforced disappearances and killings in northern Sri Lanka and throughout the country, and ensure perpetrators identified are brought to justice and tried in full conformity with international standards for fair trial.
- Stop harassment, intimidation and attacks against human rights defenders, journalists and other peaceful critics exposing past or present violations or abuses.
- Fully implement recommendations made in successive reports by the UN Special Rapporteur on extrajudicial, summary or arbitrary executions aimed at ending human rights violations and bringing perpetrators to justice, including by investigation of evidence of possible war crimes.
- Fully implement recommendations accepted and commitments made by Sri Lanka during its Universal Periodic Review in 2008.
- Ensure the independence of key justice institutions in Sri Lanka necessary to protect human rights and combat impunity; initiate reforms to bring domestic institutions into line with international standards, including by establishing an effective witness protection scheme.
- Fully protect and respect the rights of internally displaced persons, in accordance with the UN Guiding Principles on Internal Displacement.
- Release all persons held in "rehabilitation camps" unless they are charged with internationally recognizable crimes and tried in full conformity with international standards for fair trial and without recourse to the death penalty.
- Ratify the Rome Statute and cooperate fully with the International Criminal Court.