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Agenda item 2

### Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

## Promoting reconciliation, accountability and human rights in Sri Lanka

### Report of the United Nations High Commissioner for Human Rights\*

#### *Summary*

The present report is submitted pursuant to Human Rights Council resolution 40/1, in which the Council requested the Office of the United Nations High Commissioner for Human Rights (OHCHR) to continue to assess progress in the implementation of its recommendations and other relevant processes relating to reconciliation, accountability and human rights in Sri Lanka and to present a comprehensive report at its forty-sixth session.

While fully acknowledging the challenges posed by the coronavirus disease (COVID-19) pandemic, the United Nations High Commissioner for Human Rights is deeply concerned by the trends that have emerged over the past year, which may represent early warning signs of a deteriorating human rights situation. In the report, OHCHR highlights that developments over the past year have fundamentally changed the environment for advancing reconciliation, accountability and human rights in Sri Lanka, eroded democratic checks and balances and the civic space, and permitted the resurfacing of a dangerous exclusionary and majoritarian discourse. These trends threaten to reverse the limited but important gains made in recent years and risk leading to a return to the policies and practices that gave rise to the grave violations of the past. The social and economic impact of COVID-19 has been deep. The High Commissioner believes that the Human Rights Council should urgently pay attention to these early warning signs and continue its close monitoring of and engagement on developments in Sri Lanka. She urges Member States to pursue alternative international options for ensuring justice and reparations and to strengthen capacity to make progress.

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\* The present report was submitted after the deadline as a result of consultations with the Member State.



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## I. Introduction

1. The present report is submitted pursuant to Human Rights Council resolution 40/1 on promoting reconciliation, accountability and human rights in Sri Lanka, adopted by consensus with the co-sponsorship at that time of Sri Lanka. In that resolution, the Council requested the Office of the United Nations High Commissioner for Human Rights (OHCHR) to continue to assess progress in the implementation of its recommendations and other relevant processes relating to reconciliation, accountability and human rights in Sri Lanka and to present a comprehensive report at its forty-sixth session.<sup>1</sup>

2. In February 2020, the Government of Sri Lanka informed the Human Rights Council of its decision to withdraw its co-sponsorship of Council resolution 40/1 and related resolutions 34/1 and 30/1, expressing its intention to pursue an “inclusive, domestically designed and executed reconciliation and accountability process”.<sup>2</sup> While fully acknowledging the challenges posed by the coronavirus disease (COVID-19) pandemic, the United Nations High Commissioner for Human Rights is deeply concerned about the trends that have emerged over the past year, which have fundamentally changed the environment for advancing reconciliation, accountability and human rights in Sri Lanka, eroded democratic checks and balances and the civic space, and permitted the resurfacing of a dangerous exclusionary and majoritarian discourse. These trends threaten to reverse the limited but important gains made in recent years and risk leading to a return to the policies and practices that gave rise to the grave violations of the past.

3. In preparing the report, OHCHR sent a detailed list of questions to the Government of Sri Lanka on 23 November 2020, to which it received a response, in the form of a note verbale, on 28 December 2020. OHCHR held a constructive and substantive online meeting with government representatives on 7 January 2021. The Government provided comments on the report.

4. During the reporting period, OHCHR continued to provide technical assistance to the Human Rights Commission of Sri Lanka and the Office on Missing Persons, and worked closely with the Resident Coordinator and United Nations country team in developing programmatic activities under the Peacebuilding Fund and the joint programme for peace. The High Commissioner regrets that the Government did not issue a visa for the deployment of an additional international human rights officer to provide technical assistance to the Government on the promotion and protection of human rights and truth, justice, reconciliation and accountability pursuant to Human Rights Council resolution 40/1.

5. Since Sri Lanka issued a standing invitation to all special procedures in December 2015, 10 special procedures<sup>3</sup> have undertaken official visits to the country. The Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence undertook four additional academic visits during the period. No special procedure has visited the country since August 2019, but the Government is seeking to reschedule visits of the Special Rapporteur on the right to education and the Special Rapporteur on contemporary

<sup>1</sup> The present report should be read in conjunction with the reports and updates of OHCHR on Sri Lanka of 26 February 2020 (A/HRC/43/19), 8 February 2019 (A/HRC/40/23), 25 January 2018 (A/HRC/37/23), 10 February 2017 (A/HRC/34/19) and 28 September 2015 (A/HRC/30/61), as well as in conjunction with the conference room papers of 28 June 2016 (A/HRC/32/CRP.4, available from [www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session32/Pages/ListReports.aspx](http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session32/Pages/ListReports.aspx)) and 16 September 2015, which contains the findings of the OHCHR investigation on Sri Lanka (A/HRC/30/CRP.2, available from [www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session30/Pages/ListReports.aspx](http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session30/Pages/ListReports.aspx)).

<sup>2</sup> Statement dated 26 February 2020 by the Minister of Foreign Relations, Skills Development, Employment and Labour Relations of Sri Lanka. Available from [www.lankamission.org/images/PDF\\_-\\_2020/26-02-2020%20-%20Media%20Release%20-%20Statement%20full%20version.pdf](http://www.lankamission.org/images/PDF_-_2020/26-02-2020%20-%20Media%20Release%20-%20Statement%20full%20version.pdf).

<sup>3</sup> A/HRC/33/51/Add.2, A/HRC/34/54/Add.2, A/HRC/35/31/Add.1, A/HRC/34/53/Add.3, A/HRC/40/52/Add.3, A/HRC/45/45/Add.1, A/HRC/39/45/Add.2, A/HRC/40/57/Add.2, A/HRC/44/50/Add.1 and A/HRC/43/48/Add.2.

forms of slavery, including its causes and consequences, in 2021.<sup>4</sup> Since January 2020, special procedures have issued eight communications on Sri Lanka. The Government has responded to two.<sup>5</sup>

## II. Context and significance of Human Rights Council resolution 30/1

6. At this key juncture of the engagement of the Human Rights Council with Sri Lanka, it is important to recall the history and context that gave rise to Council resolution 30/1 and the reasons why the commitments made by Sri Lanka to the Council and to all Sri Lankans remain critical.

7. In Sri Lanka, armed conflict emerged against a backdrop of deepening discrimination against and the marginalization of the country's minorities, particularly the Tamils. The 30-year war between the Government and the Liberation Tigers of Tamil Eelam (LTTE), as well as earlier insurgencies in the south, were marked by persistent and grave human rights violations and abuses by both parties, including extrajudicial killings, widespread enforced disappearances, arbitrary detention, torture and sexual violence, which affected Sri Lankans from all communities. Thousands of children were systematically recruited and used as fighters and in other roles by LTTE and other armed groups. Muslim and Sinhala communities were forcibly expelled from the north, and civilians were indiscriminately killed by LTTE in terrorist attacks on public places and vehicles. Successive High Commissioners have consistently condemned those acts.

8. Despite these serious violations, impunity prevailed. Cases that reached the courts were the subject of interminable delays, interference, harassment of victims and witnesses and only exceptionally achieved convictions. Numerous commissions of inquiry appointed by successive governments failed to credibly establish truth and ensure accountability. That led to a glaring confidence gap.<sup>6</sup>

9. During the final stage of the conflict with LTTE in 2009, there were credible allegations of indiscriminate shelling by government forces, including in the densely populated "no fire zones", and of attacks on protected objects that resulted in large-scale civilian deaths and casualties.<sup>7</sup> LTTE prevented civilians from leaving the conflict area. Strict controls over humanitarian supplies by the Government caused additional deaths and suffering. LTTE cadres and their dependents are believed to have been subjected to extrajudicial executions after having handed themselves over to the Sri Lankan armed forces.<sup>8</sup> More than 250,000 people were detained for months in military-run closed camps for internally displaced persons.<sup>9</sup>

10. As the fighting ended, on 23 May 2009 the Secretary-General and the then President of Sri Lanka, Mahinda Rajapaksa, issued a joint statement in which the Secretary-General underlined "the importance of an accountability process to address allegations of violations of international humanitarian and human rights law" and the Government committed itself to taking "measures to address those grievances".<sup>10</sup> On 26 and 27 May 2009, the Human Rights

<sup>4</sup> Note verbale dated 28 December 2020 addressed to OHCHR from the Permanent Mission of Sri Lanka to the United Nations Office and other international organizations in Geneva.

<sup>5</sup> See AL LKA 5/2020 (available from <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25415>) and AL LKA 9/2020 (available from <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25592>).

<sup>6</sup> A/HRC/30/CRP.2, paras. 468–524. See also A/HRC/45/45/Add.1, para. 36.

<sup>7</sup> Report of the Panel of Experts on Accountability in Sri Lanka of 31 March 2011. Available from [www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/POC%20Rep%20on%20Account%20in%20Sri%20Lanka.pdf](http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/POC%20Rep%20on%20Account%20in%20Sri%20Lanka.pdf). See also A/HRC/30/CRP.2.

<sup>8</sup> Report of the Panel of Experts on Accountability in Sri Lanka, paras. 149–170.

<sup>9</sup> A/HRC/30/CRP.2, para. 1268.

<sup>10</sup> See [www.un.org/press/en/2009/sg2151.doc.htm](http://www.un.org/press/en/2009/sg2151.doc.htm).

Council held its eleventh special session, at the end of which it adopted resolution S-11/1, by which it endorsed the joint statement and the understandings contained therein.

11. In June 2010, the Secretary-General established the Panel of Experts on Accountability in Sri Lanka. In 2011, the Panel of Experts concluded that there were credible allegations that, in the months prior to May 2009, a wide range of serious violations of international humanitarian law and international human rights law had been committed both by the Government of Sri Lanka and LTTE, some of which could amount to war crimes and crimes against humanity, and recommended an international investigation.<sup>11</sup> The Government rejected the findings of the Panel of Experts.<sup>12</sup>

12. Meanwhile, in May 2010, the Government appointed another inquiry mechanism – the Lessons Learned and Reconciliation Commission – to examine the period between the breakdown in the ceasefire in February 2002 and the end of the armed conflict.<sup>13</sup> Following the publication by the Commission of its final report, in March 2012 the Human Rights Council adopted resolution 19/2, in which it noted with concern that the report did not adequately address serious allegations of violations of international law but nonetheless called upon the Government to implement the constructive recommendations made by the Commission.<sup>14</sup> In August 2013, the then President of Sri Lanka established yet another commission to investigate complaints regarding missing persons (also known as the “Paranagama commission”),<sup>15</sup> which also failed to credibly establish the truth, ensure accountability and provide redress to victims. The Government meanwhile pursued a strategy of resettlement, rehabilitation, reintegration, reconstruction and reconciliation that focused on infrastructure and development, including the rehabilitation of former LTTE cadres and child soldiers.

13. Throughout that period, OHCHR consistently reported to the Human Rights Council that progress on accountability and reconciliation remained extremely limited and that disturbing patterns of extrajudicial killings, abductions, enforced disappearances and torture by the security forces and paramilitary groups continued.<sup>16</sup>

14. Given the failure of national mechanisms to conduct credible investigations, in March 2014 the Human Rights Council adopted resolution 25/1, in which the Council requested OHCHR to undertake a comprehensive investigation into alleged serious violations and abuses of human rights. As a result of that investigation, OHCHR found credible evidence that both Sri Lankan security forces and LTTE were responsible for war crimes and crimes against humanity.<sup>17</sup> It documented the total failure of national mechanisms, including past presidential commissions of inquiry, to ensure accountability and examined the deeply entrenched barriers to justice in the national criminal justice system, particularly for international crimes.<sup>18</sup>

15. It was at that juncture that a national unity government, formed in January 2015, made important commitments to confront the past, strengthen democratic and independent institutions and end impunity. In an effort to fulfil those commitments, Sri Lanka co-sponsored Human Rights Council resolution 30/1, which provided a comprehensive road map of measures to ensure justice, provide redress to victims, achieve reconciliation and

<sup>11</sup> The Secretary-General transmitted the report to the President of the Human Rights Council on 12 September 2011.

<sup>12</sup> Note verbale dated 14 September 2011 addressed to the President of the Human Rights Council from the Permanent Mission of Sri Lanka to the United Nations Office and other international organizations in Geneva.

<sup>13</sup> See the report of the Commission, paras. 515–527. Available from <https://reliefweb.int/sites/reliefweb.int/files/resources/FINAL%2520LLRC%2520REPORT.pdf>.

<sup>14</sup> In its 2011 report, the Panel of Experts on Accountability in Sri Lanka concluded that the Lessons Learned and Reconciliation Commission was deeply flawed, did not meet international standards for effective accountability mechanism and, therefore, did not satisfy the joint commitment of the President of Sri Lanka and the Secretary-General to an accountability process.

<sup>15</sup> See <https://parliament.lk/uploads/documents/paperspresented/report-of-paranagama.pdf>.

<sup>16</sup> A/HRC/22/38.

<sup>17</sup> A/HRC/30/CRP.2.

<sup>18</sup> *Ibid.*, para. 1261.

undertake important legal and institutional reforms to prevent the recurrence of violations. The measures were fleshed out through a civil society-led national consultation process that engaged Sri Lankans from all communities and stakeholders such as religious leaders and the military.<sup>19</sup>

16. In its reports to the Human Rights Council on the implementation of resolution 30/1, OHCHR highlighted that, while the former Government had made some progress on human rights issues, developments related to transitional justice had been inconsistent and subject to considerable delays.<sup>20</sup> Nevertheless, Sri Lanka seemed to be on a new path towards reconciliation, accountability and human rights. The developments since November 2019, however, have reversed that trend and may instead lead to a return to patterns of discrimination and widespread violations of human rights experienced in past decades.

### **III. Emerging threats to reconciliation, accountability and human rights**

17. Starting in 2015, Sri Lanka took some important steps to strengthen democratic institutions and open up the democratic space, including for civil society and the media. Of fundamental significance was the adoption in April 2015 of the nineteenth amendment to the Constitution, which strengthened the independence of key institutions and the system of checks and balances on executive power. Those gains were tested by the political events of 2018 and, especially, by the Easter Sunday terrorist attacks in April 2019, which killed 277 people and injured 592 others.<sup>21</sup> In the aftermath, there was communal violence against the Muslim minority, a state of emergency was declared, emergency measures were adopted and an extraordinary deployment of the military was ordered.<sup>22</sup>

18. Significant challenges and negative trends that have emerged over the past year have profoundly changed the environment for reconciliation, accountability and human rights, as well as the achievement of the 2030 Agenda for Sustainable Development. Despite some of the successful efforts made by the Government to contain the COVID-19 pandemic, its social and economic impact has been deep and exacerbated social disparities.

19. The following section highlights six of these broader trends: (a) the militarization of civilian government functions; (b) the reversal of Constitutional safeguards; (c) the political obstruction to prevent accountability for crimes and human rights violations; (d) majoritarian and exclusionary rhetoric; (e) the surveillance and obstruction of civil society and a shrinking democratic space; and (f) new and exacerbated human rights concerns. The High Commissioner is concerned that these represent important early warning indicators that require the urgent attention of the Human Rights Council.

#### **A. Militarization of civilian government functions**

20. Human Rights Council resolution 30/1 includes commitments to foster an enabling environment for transitional justice and reconciliation, such as ending military involvement in civilian activities, ensuring the accountability of military personnel and introducing security sector reforms. Yet, the past year has seen a deepening and accelerating militarization of civilian government functions that the High Commissioner first reported to the Council in February 2020.<sup>23</sup>

<sup>19</sup> See <http://war-victims-map.org/wp-content/uploads/2017/02/CTF-Final-Report-Volume-I-Nov-16.pdf>.

<sup>20</sup> A/HRC/32/CRP.4, A/HRC/34/19, A/HRC/37/23, A/HRC/40/23 and A/HRC/43/19.

<sup>21</sup> Note verbale dated 27 January 2021 addressed to OHCHR from the Permanent Mission of Sri Lanka to the United Nations Office and other international organizations in Geneva.

<sup>22</sup> That extraordinary deployment has been extended through regular notifications in the Gazette of Sri Lanka and by virtue of the powers vested in the President by section 12 of the Public Security Ordinance.

<sup>23</sup> A/HRC/43/19, para. 33.

21. On 29 December 2019, the Government brought 31 entities under the oversight of the Ministry of Defence, including the police, the National Secretariat for Non-Governmental Organizations, the National Media Centre, the Telecommunications Regulatory Commission,<sup>24</sup> the Information and Communication Technology Agency,<sup>25</sup> the National Dangerous Drugs Control Board, the Disaster Management Centre and the Department of Emigration and Immigration.<sup>26</sup> On 20 November 2020, the President moved the police under the new Ministry of Public Security and appointed a former Navy Admiral, elected to Parliament in August 2020, as Minister.<sup>27</sup>

22. Since the beginning of 2020, the President has appointed at least 28 serving or former military and intelligence personnel to key administrative posts and has formed several Presidential task forces with vague or overbroad mandates or with mandates that overlap with those of existing institutions.<sup>28</sup> Some task forces are composed almost entirely of military, intelligence and police personnel. The Presidential Task Force to Build a Secure Country, Disciplined, Virtuous and Lawful Society<sup>29</sup> and the Presidential Task Force for Archaeological Heritage Management in the Eastern Province<sup>30</sup> are both headed by the Secretary to the Ministry of Defence, also a General.<sup>31</sup> The Army Commander has headed the COVID-19 response, the military has been tasked with administering quarantine centres and checkpoints, and 25 senior military officers have been appointed chief coordinating officers in all districts to tackle COVID-19.

23. The High Commissioner is particularly troubled that these appointments include senior military officials who have been alleged in United Nations reports to be implicated in alleged war crimes and crimes against humanity during the final years of the conflict, including Lieutenant General Shavendra Silva, appointed Army Commander (August 2019), and Major General (retired) Kamal Gunaratne, appointed as Secretary to the Ministry of Defence (November 2019).<sup>32</sup> Both men commanded army divisions that were credibly alleged to have committed grave violations of international human rights and humanitarian law during the armed conflict.<sup>33</sup> On 28 December 2020, both officers were promoted to the rank of General.<sup>34</sup> In September 2019, the United Nations publicly announced a decision to suspend all deployments to peacekeeping missions of members of the army of Sri Lanka, except where such a suspension would expose United Nations operations to serious operational risk.

## B. Reversal of Constitutional safeguards

24. On 22 October 2020, Parliament passed the twentieth amendment to the Constitution with a two-thirds majority. The amendment changes the balance of power among the different branches of the Government, vastly expanding the scope of presidential and executive powers and reversing many democratic gains introduced with the passage of the nineteenth amendment, in 2015. The High Commissioner is concerned that the latest amendment has fundamentally eroded the independence of key commissions and institutions, including the Human Rights Commission of Sri Lanka, the Election Commission, the National Police

<sup>24</sup> Gazette (Extraordinary) of Sri Lanka, No. 2194/74, 25 September 2020.

<sup>25</sup> Ibid.

<sup>26</sup> Gazette (Extraordinary) of Sri Lanka, No. 2153/12, 10 December 2019.

<sup>27</sup> Ibid., No. 2202/25, 20 November 2020.

<sup>28</sup> See <https://menafn.com/1100162427/Sri-Lanka-Government-defends-appointment-of-military-officers-to-administrative-posts>.

<sup>29</sup> Gazette (Extraordinary) of Sri Lanka, No. 2178/18, 2 June 2020.

<sup>30</sup> Ibid., No. 2178/17, 2 June 2020.

<sup>31</sup> Ibid., No. 2159/64, 25 January 2020; No. 2168/8, 26 March 2020; No. 2172/9, 22 April 2020; No. 2173/4, 27 April 2020; and No. 2173/7, 28 April 2020.

<sup>32</sup> OHCHR, "Bachelet 'deeply troubled' by appointment of new Sri Lankan army chief", 19 August 2019; OHCHR, "Sri Lanka: UN experts say army chief appointment is 'affront to victims' of rights abuses", 27 August 2019.

<sup>33</sup> Report of the Panel of Experts on Accountability in Sri Lanka, para. 62.

<sup>34</sup> See [www.army.lk/news/commander-chief-armed-forces-he-president-promotes-army-commander-four-star-rank-general-0](http://www.army.lk/news/commander-chief-armed-forces-he-president-promotes-army-commander-four-star-rank-general-0); [www.dailynews.lk/2020/12/28/local/237291/defence-secretary-army-commander-promoted](http://www.dailynews.lk/2020/12/28/local/237291/defence-secretary-army-commander-promoted).

Commission and the judiciary in terms of the procedure for the selection, appointment and dismissal of senior judges and other high-ranking officials. The amendment abolishes the Constitutional Council, which recommended appointments to the President, and re-establishes the Parliamentary Council, which is composed exclusively of politicians and may only make observations. In December 2020, the President proceeded with the appointment of new members to the Human Rights Commission of Sri Lanka, including a former Minister as its Chair. The High Commissioner is concerned that the new appointment process undermines the credibility and independence of the Commission.<sup>35</sup>

25. In September 2020, the Government appointed an expert committee to draft a new Constitution and invited the public to provide contributions on several topics: the nature of the State, fundamental rights, language and decentralization. The High Commissioner notes the importance of an inclusive consultative process that takes into account the diversity of society and encourages the full participation of civil society. In its past resolutions on Sri Lanka, the Human Rights Council has emphasized importance of the devolution of political authority, which is integral to reconciliation and the full enjoyment of human rights by all members of its population.<sup>36</sup> Various United Nations human rights mechanisms have also issued recommendations to Sri Lanka on addressing gaps in the Constitution's chapter on fundamental rights, and OHCHR stands ready to provide further technical assistance in that regard.

### **C. Political obstruction to prevent accountability for crimes and human rights violations**

26. While the criminal justice system in Sri Lanka has long been the subject of interference, the current Government has proactively obstructed or sought to stop ongoing investigations and criminal trials to prevent accountability for past crimes. On 9 January 2020, the Government appointed a Presidential commission of inquiry to investigate allegations of "political victimization" of public officials, members of the armed forces and the police and employees of State corporations by the previous Government.<sup>37</sup> With its broad mandate, the commission has intervened in police investigations and court proceedings and had the effect of undermining the police and the judiciary in several high-profile human rights and corruption cases.

27. Most notably, in January 2020, the commission issued directives to the Attorney General to halt the prosecution of former Navy Commander Admiral Wasantha Karannagoda and former Navy Spokesman Commodore D.K.P. Dassanayake in relation to the disappearance of 11 persons in 2008 and 2009. The Attorney General did not comply with that order, asserting that the commission had no statutory or legal authority to order him to refrain from performing his statutory functions.<sup>38</sup> In addition, the commission has intervened in favour of military intelligence officers in ongoing judicial proceedings, including in the murder of journalist Lasantha Wickrematunge in 2008, and the enforced disappearance of cartoonist Prageeth Eknaligoda in 2010. The commission has also interfered in other criminal trials, including by withholding documentary evidence, threatening prosecutors with legal action and running parallel and contradictory examinations of individuals already appearing before trial courts.<sup>39</sup> The commission submitted its final report to the President on 8 December 2020, but, as at the time of writing the present report, it has not been published.

28. On 31 July 2020, Shani Abeysekera, a former Chief of the Criminal Investigation Department who had led investigations into several high-profile crimes and emblematic

<sup>35</sup> The Human Rights Commission of Sri Lanka had received A status accreditation by the Global Alliance of National Human Rights Institutions in 2018 for its compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles).

<sup>36</sup> See, e.g., Council resolution 25/1.

<sup>37</sup> Gazette (Extraordinary) of Sri Lanka, No. 2157/44, 9 January 2020.

<sup>38</sup> See [www.dailynews.lk/2020/01/29/law-order/209856/pcoi-has-no-power-order-ag-refrain-performing-statutory-functions-ag](http://www.dailynews.lk/2020/01/29/law-order/209856/pcoi-has-no-power-order-ag-refrain-performing-statutory-functions-ag).

<sup>39</sup> See <https://ceylontoday.lk/news/pcoi-probing-political-victimisation-ag-to-testify-today>.

human rights cases, was arrested on charges of fabricating evidence in a murder case. Another Inspector of that Department, Nishantha Silva, left Sri Lanka in 2019 fearing reprisals for his role in leading the investigation into several emblematic cases; since then, he has been charged with various offences.

#### **D. Majoritarian and exclusionary rhetoric**

29. The High Commissioner welcomes the Government's public commitment to implementing the 2030 Agenda for Sustainable Development and the appointment of the new Sustainable Development Council. She notes the Government's affirmation of the rights of all Sri Lankans and the inclusion of the prohibition of discrimination in the Constitution, but is deeply concerned about the increased use of ethno-nationalistic and majoritarian rhetoric and symbols by the President and other senior government figures and about the fact that public policies appear to exclusively reflect the perceived interests of the Sinhala Buddhist majority and show minimal consideration for minority communities. Ethnic and religious minority communities are left behind and excluded in such official discourse and are often perceived and treated as posing a threat. Such an approach has serious negative implications for reconciliation, peacebuilding and religious tolerance, and carries the seeds of future violence and conflict.

30. In his anniversary address on 18 November 2020, the President underlined that he had been elected by the Sinhala majority and invoked "legitimate fears that the Sinhala race, our religion, national resources and the heritage would be threatened with destruction in the face of various local and foreign forces and ideologies that support separatism, extremism and terrorism".<sup>40</sup> The President has set up an advisory council consisting of senior Buddhist monks to seek advice on governance.<sup>41</sup> The Presidential Task Force for Archaeological Heritage Management in the Eastern Province (see para. 22 above) is composed almost entirely of Sinhalese members, including two Buddhist priests, despite the diverse population and heritage of the region. The Government has declined to play the national anthem in the Tamil language on national occasions, for example during the Independence Day celebrations on 4 February 2020, despite the preceding years' practice of singing it in two languages as a significant gesture towards reconciliation.

31. The COVID-19 pandemic has also had an impact on religious freedom and exacerbated the prevailing marginalization and discrimination suffered by the Muslim community. The High Commissioner is concerned that the Government's decision to mandate cremations for all those affected by COVID-19 has prevented Muslims from practising their own religious burial rites and has disproportionately affected religious minorities and exacerbated distress and tensions.<sup>42</sup> Although the Government told OHCHR that the policy was driven by public health concerns and scientific advice, the High Commissioner notes that WHO guidance stresses that "cremation is a matter of cultural choice".<sup>43</sup> Sri Lankan Muslims have also been stigmatized in popular discourse as carriers of COVID-19 – a concern raised by the High Commissioner in her global update to the Human Rights Council in June 2020.<sup>44</sup>

<sup>40</sup> President's address to the nation, 18 November 2020. See [www.presidentsoffice.gov.lk/index.php/2020/11/18/presidents-address-to-the-nation-on-18-11-2020/](http://www.presidentsoffice.gov.lk/index.php/2020/11/18/presidents-address-to-the-nation-on-18-11-2020/).

<sup>41</sup> Ibid.

<sup>42</sup> In its guidelines on the disposal of COVID-19 victims, WHO considers burials an acceptable option. See also AL LKA 2/2020 (available from <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25175>).

<sup>43</sup> WHO, "Infection prevention and control for the safe management of a dead body in the context of COVID-19", 4 September 2020.

<sup>44</sup> See [www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26015&LangID=E](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26015&LangID=E).

## E. Surveillance and intimidation of civil society and a shrinking democratic space

32. A pattern of intensified surveillance and harassment of civil society organizations, human rights defenders and victims appears to have intensified over the past year, including of those who supported the implementation of Human Rights Council resolution 30/1. As of December 2020, over 40 civil society organizations had approached OHCHR with reports of harassment, surveillance and repeated scrutiny by a range of security services, including the Criminal Investigation Department, the Counter-Terrorist Investigation Division and the State Intelligence Service, which questioned them about administrative details and the activities of the organization and requested information on staff, including their personal contact details, donors and funding sources. Some civil society representatives were questioned about the whereabouts of their relatives abroad. The Secretary-General and special procedures have received similar allegations of surveillance and reprisals.<sup>45</sup> While the Government has stated that its objective is to prevent violent extremism, the High Commissioner is concerned that this is creating a chilling effect on civic and democratic space and leading to self-censorship. While Sri Lanka was able to successfully hold parliamentary elections in August 2020 despite COVID-19, the pandemic has also been used to justify excessive or arbitrary limits on freedom of expression and association.<sup>46</sup>

33. This has been reinforced by changed institutional arrangements for the oversight of non-governmental organizations and the use of laws on counter-terrorism or money-laundering to stifle legitimate activities. Significantly, the Government moved the National Secretariat for Non-Governmental Organizations, which supervises and monitors the registration and operations of non-governmental organizations, from a civilian ministry under the purview of the Ministry of Defence and its intelligence arms.

34. Reports that the Voluntary Social Service Organizations (Registration and Supervision) Act, which regulates the operations of non-governmental organizations, will be reviewed, *inter alia*, to control the access of such organizations to foreign funds are also worrying. The High Commissioner stresses that any legislative reforms must comply with the international legal obligations and constitutional provisions of Sri Lanka to respect and protect human rights and should strengthen an enabling environment for civil society, rather than unreasonably restrict their activities and access to resources.<sup>47</sup> OHCHR stands ready to provide technical assistance and advice in this regard.

35. Other laws, such as the International Covenant on Civil and Political Rights (ICCPR) Act, which prohibits incitement to hatred, have also been misused in a discriminatory or arbitrary manner to arrest or detain people for peacefully expressing their opinion. The Special Rapporteur on freedom of religion or belief has observed that the Act has ironically become a repressive tool used for curtailing freedom of thought or opinion, conscience, and religion or belief.<sup>48</sup> For example, an online activist Ramzy Razeek was arrested on 9 April 2020 under that law and the Computer Crime Act for using the expression “ideological jihad” in a post on his Facebook page criticizing anti-Muslim campaigns. A few days before his arrest, he had filed a complaint to the police about death threats that he received following his posting. He was released on bail on 17 September 2020 on account of his deteriorating health.

<sup>45</sup> AL LKA 1/2020 (available from <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25117>) and AL LKA 5/2020. See also A/HRC/45/36, paras. 110–111.

<sup>46</sup> See [www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26226](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26226); and [www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25920](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25920).

<sup>47</sup> See the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, adopted by the General Assembly in resolution 53/144, annex. See also Human Rights Council resolution 22/6.

<sup>48</sup> A/HRC/43/48/Add.2, para. 72.

## F. New and exacerbated human rights concerns

36. The High Commissioner is concerned that the Government has continued to use the Prevention of Terrorism Act despite repeated calls over many years by United Nations human rights mechanisms to repeal it. For instance, on 14 April 2020, police officers arrested prominent lawyer Hejaaz Hizbullah at his house.<sup>49</sup> No detention order was given to him until 25 April 2020. His legal chambers were searched and materials seized. Mr. Hizbullah has been under renewable 90-day detention orders since then, under investigation for alleged involvement in the April 2019 terrorist attack in Colombo and for engaging in activities deemed “detrimental to the religious harmony among communities” and alleged indoctrination of children into extremism. Mr. Hizbullah’s hearing before a magistrate has been postponed to February 2021, and a fundamental rights petition is pending in the Supreme Court. By then, he will have been in detention for 10 months without charge.

37. The High Commissioner is also concerned by a recent series of deaths in police custody and in the context of police encounters with alleged criminal gangs. These incidents have occurred as the President and other senior government figures have announced a tough, militarized approach to law and order and drug control. On 20 October 2020, Samarasinghe Arachchige Madush Lakshitha, the alleged leader of a drug trafficking group, was reportedly killed in a police crossfire while he was in the custody of the Colombo Crime Division. A few days earlier, his family and lawyers had expressed concern about his safety. Four other deaths at the hands of the police of alleged members of organized crime gangs had taken place between June and August 2020. Deaths in custody had also occurred recently in police stations, including allegedly as a result of torture, and in prisons during attempted escapes or riots and protests linked to fears of COVID-19. The most serious incident had resulted in the death of 11 inmates and injuries to over 100 others during a protest in Mahara prison on 29 November 2020. The Government appointed a committee to investigate the incident and an interim report was submitted to the Minister of Justice on 7 December 2020.<sup>50</sup>

38. These incidents reflect the persistence of long-standing and endemic patterns of custodial deaths, torture and other ill-treatment, and extrajudicial killings by law enforcement officials with impunity. Furthermore, OHCHR has continued to receive credible allegations, through well-known human rights organizations, of abductions, torture and sexual violence by Sri Lankan security forces since the adoption of Human Rights Council resolution 30/1, including during the past year, which need to be credibly investigated.

39. The High Commissioner welcomes some of the positive measures taken to mitigate the spread of COVID-19 in prisons, such as the issuance by the Attorney General of instructions to facilitate bail for certain offences and the release of thousands of prisoners during 2020. OHCHR stands ready to assist with more systemic reforms to address the root causes of an overloaded prison system with long-standing problems,<sup>51</sup> such as overcrowding, long pretrial detention and complex bail regimes that have been raised by different special procedures.<sup>52</sup>

## IV. Assessment of the implementation of Human Rights Council resolution 30/1

### A. Transitional justice and confidence-building measures

40. In its resolution 30/1, the Human Rights Council welcomed the proposal by the Government to establish four crucial transitional justice mechanisms: a commission for truth,

<sup>49</sup> AL LKA 4/2020 (available from <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25347>).

<sup>50</sup> Note verbale dated 27 January 2021 addressed to OHCHR from the Permanent Mission of Sri Lanka to the United Nations Office and other international organizations in Geneva.

<sup>51</sup> See the *Prison Study by the Human Rights Commission of Sri Lanka*, available from [www.hrsl.lk/documentation/reports](http://www.hrsl.lk/documentation/reports).

<sup>52</sup> A/HRC/34/54/Add.2 and A/HRC/40/52/Add.3.

justice, reconciliation and non-recurrence; an office of missing persons; an office on reparations; and a judicial mechanism with a special counsel to investigate allegations of violations of human rights and of international humanitarian law.

41. Neither the previous nor the current Government have established a truth and reconciliation commission or a judicial mechanism with a special council. A conceptual framework for a truth and reconciliation commission was reportedly submitted to the Cabinet in 2019 but was not taken forward. As for the judicial mechanism, a debate over the participation of foreign judges became highly politicized, with contested claims of incompatibility with the Constitution.<sup>53</sup> On 21 January 2021, the President of Sri Lanka, Gotabaya Rajapaksa, appointed a three-member commission of inquiry to assess the findings and recommendations of preceding commissions and committees of inquiry and to assess the implementation of their recommendations, as well as the steps that needed to be taken to implement those recommendations in line with government policy.<sup>54</sup> Already in February 2020, when the Government had announced its intention to establish such a commission of inquiry, the High Commissioner had noted that domestic processes had consistently failed to deliver accountability and that she was not convinced that the appointment of yet another commission of inquiry would advance that agenda.<sup>55</sup> The High Commissioner had also noted that the new commission's membership lacked diversity and independence and that its terms of reference did not inspire confidence that it would produce any meaningful result.

42. In February 2020, during the forty-third session of the Human Rights Council, the Government stated that the Office on Missing Persons (established in 2016 and operational since 2018) and the Office for Reparations (established in 2018) would "be continued, with appropriate adaptation in line with government policy framework".<sup>56</sup> Despite limited capacity and resources, the Office on Missing Persons has helped to amplify the voices of the families of missing persons and raise awareness of their situation. It has assisted families to secure certificates of absence for families, particularly through the provision of interim reports on each case. It has played an observer role in magisterial court cases, investigations on human remains and the exhumation of mass graves. The Office on Missing Persons has also been able to access the records of past commissions of inquiry in order to establish a centralized database of cases and, in November 2020, it published lists of complaints of registered missing and disappeared persons.<sup>57</sup>

43. Building and maintaining the trust of victims and their relatives will be essential to the success of these institutions. The High Commissioner is concerned therefore that harassment, surveillance and scrutiny by security agencies of families, lawyers and others working on disappearances have undermined the work of the Office on Missing Persons. She recognizes the courage, commitment and determination of families and victims from all communities, who, despite many challenges, have continued to demand justice and answers regarding the fate of their missing loved ones.

44. The High Commissioner is deeply troubled by the appointment in December 2020 of the former Chair of the Presidential commission of inquiry on alleged political victimization as the new Chair of the Office on Missing Persons. As noted above, that commission of inquiry has obstructed and intervened in judicial proceedings on several emblematic human rights cases, including disappearances. His appointment will seriously undermine the independence and credibility of the Office on Missing Persons, eroding the trust of the victims' families and weakening its ability to discharge its mandate effectively. The High Commissioner believes that the Government must demonstrate that the Office on Missing Persons is fully independent and effective, including by ensuring that it is fully able to

<sup>53</sup> See <https://mfa.gov.lk/statement-by-hon-tilak-marapana-p-c-minister-of-foreign-affairs-of-sri-lanka-and-leader-of-the-sri-lanka-delegation-to-the-40th-session-of-the-human-rights-council-on-agenda/>.

<sup>54</sup> Gazette (Extraordinary) of Sri Lanka, No. 2211/55, 21 January 2021.

<sup>55</sup> See [www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25624&LangID=E](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25624&LangID=E).

<sup>56</sup> Statement dated 27 February 2020 by the Minister of Foreign Relations, Skills Development, Employment and Labour Relations of Sri Lanka. Available from [www.lankamission.org/images/PDF\\_-\\_2020/Full%20Statement%20under%20Item%202%20-%202%20PM%2027%20February.pdf](http://www.lankamission.org/images/PDF_-_2020/Full%20Statement%20under%20Item%202%20-%202%20PM%2027%20February.pdf).

<sup>57</sup> See [www.ompsrilanka.org/omp-documents/omp-publications](http://www.ompsrilanka.org/omp-documents/omp-publications).

discharge its mandate to conduct searches and investigations, and is afforded the independence, resources and political support needed for its crucial work.

45. The Office for Reparations remains operational and has produced a draft policy on reparations that was submitted to the Ministry of Justice in May 2020. According to the Government, the Office has received 16,275 applications, 4,385 of which have been processed, from January to November 2020, resulting in a total of 142 million Sri Lanka rupees (750,000 United States dollars) paid in compensation.<sup>58</sup> The High Commissioner encourages the application of a strong gender focus to the reparations programme, given that many victims and survivors are women. OHCHR stands ready to advise on best practices in this regard.

46. The Secretariat for Coordinating Reconciliation Mechanisms, which used to support and coordinate efforts on transitional justice, did not have its mandate extended in March 2020 after its Secretary-General resigned in November 2019. On 21 November 2019, former President Chandrika Bandaranaike Kumaratunga also resigned from her position as the Chair of the Office for National Unity and Reconciliation, whose mandate was to promote an inclusive and diverse society through educational and community-based initiatives. Cabinet approval has been sought for the appointment of a new Chair and Director General of the Office for National Unity and Reconciliation.<sup>59</sup>

47. With regard to the confidence-building measures outlined in Human Rights Council resolution 30/1, progress has been made in terms of returning land in the Northern and Eastern Provinces formerly occupied by the military, with cumulative figures provided by the Government showing that around 89 per cent of State lands and 92 per cent of private lands held by the military in 2009 had been returned by 31 December 2019. The Government has not reported figures for 2020.<sup>60</sup> On 3 January 2021, the Government announced the establishment, under the Governor of the Eastern Province, of a panel of experts on social injustice and invited complaints from the public, primarily about land and property issues over four decades, by 31 January. It is not clear, at the time of writing the present report, how this initiative relates to other reparation mechanisms.

48. During the forty-third session of the Human Rights Council, the Government renewed its pledge to undertake a review of the Prevention of Terrorism Act.<sup>61</sup> The counter-terrorism bill that had been drafted by the previous Government and that would have replaced the Prevention of Terrorism Act had been withdrawn.<sup>62</sup> The Government has confirmed to OHCHR its intention of reviewing certain provisions of the Prevention of Terrorism Act and of establishing a court dedicated to the expeditious disposal of cases concerning the remaining ex-LTTE cadres in detention.<sup>63</sup> As highlighted above (see para. 36), the Prevention of Terrorism Act continued to be used during 2020.

## B. Impunity in emblematic cases

49. In previous reports to the Human Rights Council, OHCHR has tracked the investigation and prosecution of emblematic cases as a key measure of the commitment of Sri Lanka to ending impunity. These include the killing of five Tamil students in Trincomalee and of 17 humanitarian workers in Muttur in 2006, the assassination of journalist Lasantha Wickrematunge in 2009, the disappearance of journalist Prageeth Eknaligoda in 2010, the killing of protesters by army personnel during a demonstration at Weliwerya in August 2013 and the anti-Muslim riots in Aluthgama in 2014 and in Digana in 2018. Despite investigations over the years by national commissions of inquiry and the police, and the arrest of some

<sup>58</sup> Ibid.

<sup>59</sup> Note verbale dated 28 December 2020 addressed to OHCHR from the Permanent Mission of Sri Lanka to the United Nations Office and other international organizations in Geneva.

<sup>60</sup> Ibid.

<sup>61</sup> Statement dated 27 February 2020 by the Minister of Foreign Relations, Skills Development, Employment and Labour Relations of Sri Lanka.

<sup>62</sup> See [www.colombopage.com/archive\\_20A/Jan03\\_1578067614CH.php](http://www.colombopage.com/archive_20A/Jan03_1578067614CH.php).

<sup>63</sup> Note verbale dated 28 December 2020 addressed to OHCHR from the Permanent Mission of Sri Lanka to the United Nations Office and other international organizations in Geneva.

suspects and trials at bar, not a single emblematic case has been brought to a successful conclusion or resulted in a conviction.

50. An illustrative example relates to the enforced disappearance of 11 individuals between 2008 and 2009, allegedly by a special intelligence unit of the Sri Lankan navy.<sup>64</sup> Police investigations concluded that navy squads had conducted abductions, torture and disappearances for ransom or other reasons and operated secret detention sites in navy camps with the knowledge and at least tacit endorsement of navy commanders. While the case has continued before the courts, the proceedings have exemplified many of the shortcomings that affect all other emblematic cases: a lack of equality of arms before the law; perceived bias towards State officials; the conflict of interest in the Attorney General's department in leading both the prosecution and defence of State agents; political or security interference with the courts; tampering with, concealing or destroying evidence; procedural delays; and the arrest of the police investigator and threats to witnesses and lawyers.

51. The decade-long lack of progress and the insurmountable barriers for victims to access justice in emblematic cases of this kind indicate that the State is unable and unwilling to prosecute and punish perpetrators of crimes when State agents are the alleged perpetrators. A rare exception was the conviction of Staff Sergeant Sunil Ratnayake, the only one of the five defendants to be convicted in 2015 for the murder of eight Tamil civilians, including four children, in Mirusuvil in April 2000; he was, however, granted a Presidential pardon in March 2020. The High Commissioner reminds the Government that the exercise of powers of amnesty or pardon must comply with the international obligations of Sri Lanka under international human rights law and international humanitarian law, and should exclude those responsible for international crimes or gross violations of human rights.

## V. Conclusions

52. **Nearly 12 years since the end of the war, domestic initiatives for accountability and reconciliation have repeatedly failed to produce results, more deeply entrenching impunity and exacerbating victims' distrust of the system. Sri Lanka remains in a state of denial about the past, with truth-seeking efforts aborted and State officials at the highest levels refusing to acknowledge past crimes. This has a direct impact on the present and the future. Failure to implement any vetting or comprehensive reforms in the security sector means that the State apparatus and some of its members credibly implicated in alleged grave crimes and human rights violations remain in place. The 2015 reforms that offered more checks and balances on executive power have been rolled back, further eroding the independence of the judiciary and other key institutions. The beginnings of a more inclusive national discourse that promised greater recognition and respect of and reconciliation with minority communities have been reversed. Far from achieving the guarantees of non-recurrence set out in Human Rights Council resolution 30/1, the current trajectory of Sri Lanka sets the scene for a return to the policies and practices that gave rise to grave human rights violations.**

53. **While fully appreciating the challenges posed by the COVID-19 pandemic, the High Commissioner is deeply concerned by the trends that have emerged during the past year, which represent clear early warning signs of a deteriorating human rights situation and a significantly heightened risk of future violations, and therefore calls for strong preventive action. Despite the Government's stated commitment to the 2030 Agenda for Sustainable Development, Tamil and Muslim minorities are being increasingly marginalized and excluded from the national vision and government policy, while divisive and discriminatory rhetoric from State officials at the highest levels risks generating further polarization and violence.**

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<sup>64</sup> In what is commonly referred to as the "Trincomalee 11 case", the disappeared are believed to have been detained in the Gun Site illegal detention facility at Trincomalee naval base. While there are allegations of other disappearances linked to this facility, the police investigation and court case proceeding since June 2019 before the Magistrate's Court Fort in Colombo focuses on 11 of them.

54. The High Commissioner is concerned that the emergency security deployments that followed the Easter Sunday terrorist attacks in 2019 have evolved into an increased militarization of the State. The Government has appointed active and former military personnel, including those credibly implicated in war crimes, to key positions in the civilian administration and created parallel task forces and commissions that encroach on civilian functions. Combined with the reversal of important institutional checks and balances on the executive by the twentieth amendment to the Constitution, this trend threatens democratic gains.

55. The High Commissioner is alarmed that the space for civil society, including independent media, which had widened in recent years, is rapidly shrinking. The High Commissioner urges the authorities to immediately end all forms of surveillance, including intimidating visits by State agents and harassment against human rights defenders, lawyers, journalists, social actors and victims of human rights violations and their families, and to refrain from imposing further restrictive legal measures on legitimate civil society activity.

56. The Human Rights Council therefore is – once again – at a critical turning point in its engagement with Sri Lanka. Twice before, the Council lent its support to domestic accountability and reconciliation initiatives, culminating in the adoption of its resolution 30/1. The Government has now demonstrated its inability and unwillingness to pursue a meaningful path towards accountability for international crimes and serious human rights violations, and signalled instead a fundamentally different approach, one that focuses on reparation and development but also threatens to deny victims their rights to truth and justice and to further entrench impunity.

57. It is vital that the Human Rights Council take further action on Sri Lanka for three important reasons. Firstly, the failure to deal with the past continues to have devastating effects on tens of thousands of survivors – spouses, parents, children and other relatives – from all communities who continue to search for the truth about the fate of their loved ones and to seek justice and who are in urgent need of reparations. Secondly, the failure to advance accountability and reconciliation undermines the prospects for achieving a sustainable peace and development in line with the 2030 Agenda for Sustainable Development and carries the seeds of repeated patterns of human rights violations and potential conflict in the future. Thirdly, the trends highlighted in the present report represent yet another important challenge for the United Nations, including the Council, in terms of its prevention function. An independent review of United Nations actions in Sri Lanka in 2009 concluded there had been a systemic failure to implement the prevention agenda as the conflict concluded. The international community must not repeat those mistakes, nor allow a precedent that would undermine its efforts to prevent and achieve accountability for grave violations in other contexts.

58. The High Commissioner welcomes the Government's stated commitment to implementing the 2030 Agenda for Sustainable Development and to continuing to take measures aimed at peacebuilding, reparation and restitution, but Sri Lanka will only achieve sustainable development and peace if it ensures civic space and effectively addresses the institutionalized and systemic issue of impunity. However, by withdrawing its support for Human Rights Council resolution 30/1 and related measures and by repeatedly failing to undertake meaningful action on the full range of issues set out in that resolution, the Government has largely closed the door on the possibility of making genuine progress to end impunity through a national transitional justice process. In view of recent trends, the High Commissioner calls upon the Council to enhance its monitoring of the human rights situation in Sri Lanka, including the progress made in the Government's new initiatives, and to set out a coherent and effective plan to advance accountability options at the international level.

59. Member States have a number of options to advance criminal accountability and provide measures of redress for victims. In addition to taking steps towards the referral of the situation in Sri Lanka to the International Criminal Court, Member States can actively pursue investigations on and prosecutions for international crimes committed by all parties in Sri Lanka before their own national courts, including under accepted

principles of extraterritorial or universal jurisdiction. The High Commissioner encourages Member States to work with OHCHR, victims and their representatives to promote such avenues for accountability, including by opening investigations into possible international crimes, and to support a dedicated capacity to advance those efforts. Member States can also apply targeted sanctions, such as asset freezes and travel bans against State officials and other actors credibly alleged to have committed or be responsible for grave human rights violations or abuses, as well as support initiatives that provide practical benefits to victims and their families.

## VI. Recommendations

60. The High Commissioner recommends that the Government of Sri Lanka:

(a) Actively promote an inclusive, pluralistic vision for Sri Lanka based on non-discrimination and the protection of human rights for all and in line with the 2030 Agenda for Sustainable Development;

(b) Ensure constitutional and legislative reforms to address the recommendations made by United Nations human rights mechanisms and contained in the resolutions of the Human Rights Council;

(c) Publicly issue unequivocal instructions to all branches of the military, intelligence and police forces indicating that torture, sexual violence and other human rights violations are prohibited and will be systematically investigated and that those responsible will be punished;

(d) Order all security agencies to immediately end all forms of surveillance and harassment of and reprisals against human rights defenders, social actors and victims of human rights violations;

(e) Promptly, thoroughly and impartially investigate and prosecute all allegations of gross human rights violations and serious violations of international humanitarian law, including torture and ill-treatment, and give the highest priority to ensuring accountability in long-standing emblematic cases;

(f) Remove from office security personnel and other public officials credibly implicated in human rights violations, in compliance with human rights standards, and implement other reforms of the security sector to strengthen and ensure accountability and civilian oversight;

(g) Ensure structural safeguards for the Human Rights Commission of Sri Lanka to function independently and receive adequate resources;

(h) Ensure an environment in which the Office on Missing Persons and the Office for Reparations can operate effectively and independently; provide both Offices with sufficient resources and technical means to effectively fulfil their mandate; and proceed with interim relief measures for affected vulnerable families with a gender focus, notwithstanding their rights to effective and comprehensive reparations and to truth and justice;

(i) Establish a moratorium on the use of the Prevention of Terrorism Act for new arrests until it is replaced by legislation that adheres to international best practices;

(j) Establish standard procedures for granting pardons and other forms of clemency by the President, including by subjecting them to judicial review and excluding grave human rights and international humanitarian law violations;

(k) Honour its standing invitation to special procedures by scheduling renewed country visits by relevant thematic mandate holders; continue its engagement with the treaty bodies; and seek continued technical assistance from OHCHR in implementing the recommendations of United Nations human rights mechanisms.

61. The High Commissioner recommends that the Human Rights Council and Member States:

- (a) Request OHCHR to enhance its monitoring of the human rights situation in Sri Lanka, including progress towards accountability and reconciliation, and report regularly to the Council;
- (b) Support a dedicated capacity to collect and preserve evidence and other related information for future accountability processes, to advocate for victims and survivors and to support relevant judicial proceedings in Member States with competent jurisdiction;
- (c) Cooperate with victims and their representatives in investigating and prosecuting perpetrators of international crimes committed by all parties in Sri Lanka through judicial proceedings in national jurisdictions, including under accepted principles of extraterritorial or universal jurisdiction;
- (d) Explore possible targeted sanctions such as asset freezes and travel bans against those credibly alleged to have perpetrated grave human rights violations and abuses;
- (e) Apply stringent vetting procedures to Sri Lankan police and military personnel identified for military exchanges and training programmes;
- (f) Prioritize support to civil society initiatives and efforts for reparation and victims' assistance and prioritize victims and their families for assistance in bilateral humanitarian, development and scholarship programmes;
- (g) Review asylum measures with respect to Sri Lankan nationals to protect those facing reprisals and avoid any refoulement in cases that present a real risk of torture or other serious human rights violations.

62. The High Commissioner recommends that United Nations entities:

- (a) Ensure that the Secretary-General's call to action on human rights<sup>65</sup> guides all United Nations policy and programmatic engagement in Sri Lanka;
- (b) Ensure that all development programmes are founded on principles of inclusion, non-discrimination and support for effective, accountable and inclusive institutions, in line with the 2030 Agenda for Sustainable Development;
- (c) Incorporate strict human rights due diligence in their engagement with the security forces and all bodies under the purview of the Ministry of Defence and the Ministry of Public Security;
- (d) While fully understanding force generation challenges in the context of United Nations peacekeeping, keep under review the contributions of Sri Lanka to United Nations peacekeeping operations and the systems for screening Sri Lanka personnel.

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<sup>65</sup> See [www.un.org/sg/sites/www.un.org.sg/files/atoms/files/The\\_Highest\\_Aspiration\\_A\\_Call\\_To\\_Action\\_For\\_Human\\_Right\\_English.pdf](http://www.un.org/sg/sites/www.un.org.sg/files/atoms/files/The_Highest_Aspiration_A_Call_To_Action_For_Human_Right_English.pdf).