

HRC 30th Session – Draft Resolution

Item 2: Promoting reconciliation, accountability and human rights in Sri Lanka

The Human Rights Council,

Preambular paragraphs

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Reaffirming the purposes and principles of the Charter of the United Nations, (HRC 25/1)

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Guided by the Universal Declaration of Human Rights, the International Covenants on Human Rights and other relevant instruments, (HRC 25/1)

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Recalling also Human Rights Council resolutions 19/2 of 22 March 2012, 22/1 of 21 March 2013, and 25/1 of 27 March 2014 on promoting reconciliation and accountability in Sri Lanka, (HRC 25/1 updated)

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Reaffirming its commitment to the sovereignty, independence, unity and territorial integrity of Sri Lanka, (HRC 25/1)

Pp5

Reaffirming that it is the responsibility of each State to ensure the full enjoyment of all human rights and fundamental freedoms of its entire population, (HRC 25/1)

Pp6

Welcoming the historic free and fair democratic elections in January and August 2015 and peaceful political transition in Sri Lanka,

Pp7

Taking note with interest of the passage of the nineteenth amendment to the Sri Lankan Constitution and its contributions to promoting democratic governance and independent oversight of key institutions,

Pp8

Noting with appreciation the actions taken by the new Government of Sri Lanka to advance respect for human rights and recognizing the positive changes in Sri Lanka as a result of these actions,

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Welcoming the establishment of the Commission to Investigate allegations of bribery or corruption and its initial investigations into major cases of corruption, fraud, and abuses of power, and stressing the importance of such investigations and the prosecution of those responsible, in ending impunity and promoting good governance,

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Welcoming and acknowledging the progress made by the Government of Sri Lanka in rebuilding infrastructure, demining and resettling internally displaced persons, while noting nonetheless that considerable work lies ahead in the areas of justice and reconciliation and to deliver durable solutions for all internally displaced persons , (HRC 25/1 adjusted)

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Expressing concern at the continuing reports of violations of human rights in Sri Lanka, including those involving sexual and gender-based violence, torture , abductions, as well as intimidation of and threats against human rights defenders, and members of civil society, (HRC 25/1 +new language)

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Reaffirming that all Sri Lankans are entitled to the full enjoyment of their human rights regardless of religion, belief or ethnicity, in a peaceful and unified land, (HRC 25/1)

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Reaffirming also that States must ensure that any measure taken to combat terrorism complies with their obligations under international law, in particular international human rights law, international refugee law and international humanitarian law, as applicable, (HRC 25/1)

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Taking note of the new Government of Sri Lanka's commitment to pursuing justice and reconciliation, including the creation of the Office of National Unity and Reconciliation,

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Emphasizing the importance of a comprehensive approach to transitional justice incorporating the full range of judicial and non-judicial measures, including, inter alia, individual prosecutions, reparations, truth-seeking, institutional reform, vetting of public employees and officials, or an appropriately conceived combination thereof, in order to, inter alia, ensure accountability, serve justice, provide remedies to victims, promote healing and reconciliation, establish independent oversight of the security system, restore confidence in the institutions of the State and promote the rule of law in accordance with international human rights law, with a view to preventing the recurrence of violations and abuses, (HRC 25/1)

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Recognizing that transitional justice mechanisms work best when they are independent, impartial, and transparent; are led by individuals known for displaying the highest degree of integrity; utilize consultative and participatory methods that include the views from all relevant stakeholders including, but not limited to, victims, women, youth, representatives from various religions, ethnicities, and geographic locations as well as marginalized groups; and designed and implemented based on expert advice from those with relevant international and domestic experience,

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Recalling the responsibility of States to comply with their relevant obligations to prosecute those responsible for gross violations of human rights and serious violations of international humanitarian law constituting crimes under international law, with a view to end impunity, (HRC 25/1)

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Taking note of the review of High Security Zones and welcomes the initial steps taken to return land previously taken by defense forces to its rightful civilian owners and to help local populations to resume livelihoods and restore normality to civilian life,

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Welcoming the new Government of Sri Lanka's commitments on the devolution of political authority,

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Taking note of the report of the Lessons Learnt and Reconciliation Commission of Sri Lanka its findings and recommendations, and acknowledging its possible contribution to the process of meaningful national reconciliation in Sri Lanka, (HRC 25/1), and recalling its constructive recommendations

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Welcoming the new Government of Sri Lanka's engagement with the UN Secretary General and the Office of the High Commissioner, including its invitation to the High Commissioner to visit Sri Lanka,

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Welcoming also the 30 March - 3 April 2015 visit and observations of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, and the invitation to visit extended to the Working Group on Enforced and Involuntary Disappearances,

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Welcoming the work of the Office of the High Commissioner of Human Rights requested by HRC 25/1 to undertake a comprehensive investigation into alleged serious violations and abuses of human rights and related crimes by both parties in Sri Lanka during the period covered by the Lessons Learnt and Reconciliation Commission, and to establish the facts and circumstances of such alleged violations and of the crimes perpetrated with a view to ending impunity and ensuring accountability, with assistance from relevant experts and special procedures mandate holders,

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Encouraging the Government of Sri Lanka to continue its dialogue and cooperation and to increase cooperation with the Office of the High Commissioner, including with regard to technical assistance, (new language, + HRC 25/1)

Operative paragraphs

1. Welcomes the oral update presented by the High Commissioner to the Human Rights Council at its twenty-seventh session, the report of the Office of the High Commissioner for Human Rights on promoting reconciliation and accountability in Sri Lanka and the report of its Investigation on Sri Lanka requested in Human Rights Council resolution 25/1 including its findings, and conclusions, and calls upon the Government of Sri Lanka to implement the recommendations contained therein;

2. Takes note of the new Government of Sri Lanka's commitment to undertaking a comprehensive approach to transitional justice incorporating the full range of judicial and non-judicial measures, including, inter alia, criminal prosecutions, truth-seeking, reparations, institutional reforms and other guarantees of non-repetition;

3. Encourages the new Government of Sri Lanka to respect its positive commitment to bolster and safeguard the credibility of these justice processes by engaging in broad national consultations with the inclusion of victims and civil society, including non-governmental organizations, from all affected communities that will inform the design and implementation of these processes, as well as assistance from international experts and the international community throughout the process, and to ensuring strong and effective witness and victim protection measures are in place;
4. Welcomes the government's recognition that accountability is essential to uphold the rule of law and build confidence in the people of all communities of Sri Lanka in the justice system, takes note with appreciation of the Government of Sri Lanka's proposal to establish a Judicial Mechanism with a Special Counsel to investigate allegations of violations and abuses of human rights and violations of international humanitarian law, as applicable; and affirms that credible transitional justice process should include independent judicial and prosecutorial institutions led by individuals known for integrity and impartiality; and calls upon the Government of Sri Lanka, to involve international investigators, prosecutors and judges in Sri Lanka's justice processes;
5. Encourages the Government of Sri Lanka to review and, where required, reform domestic law to ensure that it allows for prosecution of the full range of crimes under domestic and international law involving violations and abuses of human rights and violations of international humanitarian law;
6. Welcomes the proposal by the Government of Sri Lanka to establish a Commission for Truth, Justice, Reconciliation, and Non Recurrence; an Office of Missing Persons; and an Office for Reparations; and stresses the need for these mechanisms to be independent, impartial, and transparent as well as led by individuals known for professionalism, integrity and impartiality;
7. Welcomes also the commitment by the Government of Sri Lanka to ensure that each transitional justice mechanism has the freedom to obtain assistance, including financial, material and technical assistance, from international partners, including the Office of the High Commissioner for Human Rights;
8. Encourages the Government of Sri Lanka to introduce effective security sector reforms as part of its transitional justice process that include ensuring that no scope exists for retention in or recruitment into the security forces of anyone credibly implicated in serious crimes involving human rights violations or abuses or violations of international humanitarian law including members of the security and intelligence units; and increasing training and incentives focused on the promotion and protection of human rights of all Sri Lankans;
9. Welcomes the Government of Sri Lanka's recent passage of an updated Witness and Victim Protection Law, and urges the Government of Sri Lanka to strengthen these essential protections by making specific accommodations to effectively protect witnesses and victims participating in transitional justice processes who may be under threat due to information they have that allegedly implicates any public official, including members of the security forces or those with effective control over those forces.
10. Underscores the importance of the government taking additional steps on return of land previously taken by defense forces to its rightful civilian owners, encouraging the acceleration of such transfers of land back to the rightful owners, and encouraging the government to undertake further efforts to tackle the considerable work that lies ahead in the areas of land use and ownership, in particular the ending of military involvement in civilian activities, the resumption of livelihoods and the restoration of normality

to civilian life, and stressing the importance of the full participation of local populations, including representatives of civil society and minorities, in these efforts, (new language + HRC 25/1)

11. Reiterates its call upon the Government of Sri Lanka to implement effectively the constructive recommendations made in the report of the Lessons Learnt and Reconciliation Commission, and to take all necessary additional steps to fulfil its relevant legal obligations and commitment to initiate credible and independent actions to ensure justice, equity, accountability and reconciliation for all Sri Lankans; (HRC 25/1)

12. Urges the Government of Sri Lanka to investigate all alleged attacks by individuals and groups on journalists, human rights defenders, members of religious minority groups and other members of civil society, as well as on temples, mosques and churches, and to hold perpetrators of such attacks to account and to take steps to prevent such attacks in the future; (HRC 25/1)

13. Affirms the Government of Sri Lanka's commitment to review and repeal the Prevention of Terrorism Act and replace it with anti-terrorism legislation in line with contemporary international best practices;

14. Welcomes the Government of Sri Lanka's commitment to sign and ratify the International Convention for the Protection of All Persons from Enforced Disappearances without delay, and to begin issuing Certificates of Absence to the families of the missing as a temporary measure of relief;

15. Urges the Government of Sri Lanka to credibly investigate widespread allegations of extrajudicial killings and enforced disappearances, demilitarize the north and east of Sri Lanka, implement impartial land dispute resolution mechanisms, re-evaluate detention policies, strengthen formerly independent civil institutions, reach a political settlement on the devolution of power to the provinces, promote and protect the right of freedom of expression for all persons and enact rule of law reforms, (HRC 25/1)

16. Welcomes the Declaration of Peace proclaimed by the Government of Sri Lanka on 4 February 2015 and calls on the Government of Sri Lanka to review and, as appropriate, repeal or reform legislation and other measures enacted and implemented during the armed conflict and its aftermath so as to reflect the transition to peace and stability on the island and to ensure compliance with Sri Lanka's international obligations,

17. Calls upon the new Government of Sri Lanka to reform its domestic law to ensure that it can effectively implement its own commitments, the recommendations made in the report of the Lessons Learnt and Reconciliation Commission, as well as the recommendations of the report by the Office of the High Commissioner for Human Rights requested in resolution 25/1, including the investigation and prosecution of those most responsible for the full range of relevant crimes involving violations and abuses of human rights and violations of international humanitarian law;

18. Welcomes the Government of Sri Lanka's commitment to release publicly previous Presidential Commission Reports such as the Udagama and Paranagama reports by the end of this month, and calls for the release of the results of its investigations into alleged violations by security forces, including the attack on unarmed protesters in Weliweriya on 1 August 2013, and the report of 2013 by the court of inquiry of the Sri Lanka Army; (HRC 25/1)

19. Encourages the Government of Sri Lanka to develop a comprehensive plan and mechanism for preserving all existing records and documentation relating to human rights violations and abuses and violations of international humanitarian law, whether held by public or private institutions;
20. Urges the Government of Sri Lanka to fulfill its commitments on the devolution of political authority, which is integral to reconciliation and the full enjoyment of human rights by all members of its population; and encourages the Government of Sri Lanka to ensure that all Provincial Councils, including the Northern Provincial Council, are able to operate effectively, in accordance with the 13th amendment to the Constitution of Sri Lanka; (HRC 25/1 + new language)
21. Underlines that the credibility and success of transitional justice processes wherever they are established are enhanced by international assistance and expert involvement, and encourages the Government of Sri Lanka, the people of Sri Lanka, and the High Commissioner, as well as other relevant international organizations and experts, to work together to determine appropriate forms of international support for and engagement with Sri Lanka's processes;
22. Encourages the government to address all reports of sexual and gender-based violence and torture, holding all perpetrators to account and drawing on relevant international assistance;
23. Requests the Office of the High Commissioner to assess and verify the human rights situation in Sri Lanka; to continue to assess progress on the implementation of OHCHR's recommendations and other relevant processes related to reconciliation, accountability, and human rights; to present an oral update to the Human Rights Council at its thirty-third session, and a comprehensive report followed by discussion on the implementation of the present resolution at its thirty-fourth session;
24. Encourages the Government of Sri Lanka to continue to cooperate with special procedures mandate holders, to set a date for visits to the country by the UN Working Group on Enforced and Involuntary Disappearances, and to respond formally to outstanding requests from other mandate holders, including long-standing requests (new language + HRC 25/1)
25. Encourages the Office of the High Commissioner and relevant special procedures mandate holders to provide, in consultation with and with the concurrence of the Government of Sri Lanka, advice and technical assistance on implementing the abovementioned steps; (HRC 25/1)
26. Takes note of the new Government of Sri Lanka's commitment to cooperate with the Office of the High Commissioner in the implementation of the present resolution. (new language + HRC 25/1)