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HRC 30th Session – Draft Resolution

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

The Human Rights Council,

Pp1

Reaffirming the purposes and principles of the Charter of the United Nations,

Pp2

Guided by the Universal Declaration of Human Rights, the International Covenants on Human Rights and other relevant instruments,

Pp3

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,

Pp4

Reaffirming its commitment to the sovereignty, independence, unity and territorial integrity of Sri Lanka,

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,

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 and operationalization of the nineteenth amendment to the Constitution of Sri Lanka and its contributions to promoting democratic governance and independent oversight of key institutions, including the provision on promotion of national reconciliation and integration as among the Constitutional duties of the President of Sri Lanka,

Pp8

Welcoming the steps taken by the Government of Sri Lanka since January 2015 to advance respect for human rights and to strengthen good governance and democratic institutions

Pp9

Welcoming the efforts of the Government of Sri Lanka to Investigate allegations of bribery, 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 as well, the steps taken to strengthen civilian administration in the former conflict-affected provinces of the North and East, and acknowledging the progress made by the Government of Sri Lanka in rebuilding infrastructure, demining and resettling internally displaced persons, and calling on the international community, including the United Nations, to assist the Government of Sri Lanka in furthering these efforts, especially in expediting the process of delivery of durable solutions for all internally displaced persons,

Pp11

Recognizing the improved environment for members of civil society and human rights defenders in Sri Lanka, while expressing concern at reports of ongoing violations and abuses of human rights and recognizing the expressed commitment of the Government of Sri Lanka to address issues including those involving sexual and gender-based violence and torture, abductions, as well as intimidation of and threats against human rights defenders, and members of civil society,

Pp12

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,

Pp13

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,

Pp14

Welcoming the government's Declaration of Peace of 4 February 2015 and its acknowledgement of the loss of life and victims of violence of all ethnicities and religions,

Pp15

Emphasizing the importance of a comprehensive approach to dealing with the past 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, and welcoming in this regard the Government's expressed commitment to ensure dialogue and wide consultations with all stakeholders,

Pp16

Recognizing that mechanisms to redress past abuses and violations work best when they are independent, impartial, and transparent; are led by individuals known for displaying the highest degree of professionalism, integrity, and impartiality; 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

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groups; and designed and implemented based on expert advice from those with relevant international and domestic experience,

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Recognising that a credible accountability process for those most responsible for violations and abuses will safeguard the reputation of those, including within the military, who conducted themselves in an appropriate manner with honor and professionalism.

Pp18

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 ending impunity,

Pp19

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

Pp20

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

Pp21

Requesting the Government of Sri Lanka to implement effectively the constructive recommendations made in the report of the Lessons Learnt and Reconciliation Commission,

Pp22

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 planned visit of the Working Group on Enforced and Involuntary Disappearances in November,

Pp23

Recognizing that the Investigation into alleged serious violations and abuses of human rights and related crimes in Sri Lanka requested in Human Rights Council resolution 25/1 was necessitated by the absence of a credible national process of accountability,

1. Takes note with appreciation 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

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conclusions, and encourages the Government of Sri Lanka to implement the recommendations contained therein when implementing measures for truth seeking, justice, reparations, and guarantees of non-recurrence;

2. Welcomes the positive engagement between the Government of Sri Lanka and the High Commissioner and his Office since January 2015 and encourages the continuation of such engagement in the promotion and protection of human rights and in exploring appropriate forms of international support to and participation in Sri Lankan processes for seeking truth and justice,;

3. Supports the Government of Sri Lanka's commitment to strengthen and safeguard the credibility of the processes of truth seeking, justice, reparations, and guarantees of non-recurrence 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, drawing on international expertise, assistance and best practices;

4. Welcomes the Government of Sri Lanka's commitment to undertaking a comprehensive approach to dealing with the past incorporating the full range of judicial and non-judicial measures; welcomes in this regard 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;; welcomes the Government's willingness to give each mechanism the freedom to obtain assistance, both financial, material and technical from international partners including the OHCHR; and affirms that these commitments, if implemented fully and credibly, will help to advance accountability for serious crimes by all sides and help achieve reconciliation;

5. Recognizes the need for a process of accountability and reconciliation for violations and abuses committed by the Liberation Tigers of Tamil Eelam as highlighted in the OISL report;

6. 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 a credible justice process should include independent judicial and prosecutorial institutions led by individuals known for integrity and impartiality; and further affirms in this regard the importance of participation in a Sri Lankan judicial mechanism, including the Special Counsel's office, of Commonwealth and other foreign judges, defence lawyers, and authorized prosecutors and investigators;

7. Encourages the 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 by allowing for, in a manner consistent with its international obligations, the trial and punishment of those most responsible for the full range of crimes under the general principles of law recognized by the community of nations relevant

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to violations and abuses of human rights and violations of international humanitarian law, including during the period covered by the LLRC;

8. Encourages the Government of Sri Lanka to introduce effective security sector reforms as part of its transitional justice process that will help enhance the reputation and professionalism of the military and include ensuring that no scope exists for retention in or recruitment into the security forces of anyone credibly implicated through a fair administrative process 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 its commitment to review the law, and encourages the Government of Sri Lanka to strengthen these essential protections by making specific accommodations to effectively protect witnesses and victims, investigators, prosecutors, and judges.

10. Welcomes the initial steps taken to return land and encourages the government to accelerate the return of land to its rightful civilian owners, , and 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 stresses the importance of the full participation of local populations, including representatives of civil society and minorities, in these efforts,

11. Encourages 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 places of worship, and to hold perpetrators of such attacks to account and to take steps to prevent such attacks in the future;

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

13. 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, to criminalize enforced disappearances and to begin issuing Certificates of Absence to the families of the missing as a temporary measure of relief;

14. Welcomes the Government of Sri Lanka's commitment to release publicly previous Presidential Commission Reports

15. 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;

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16. Welcomes the government's commitment to a political settlement by taking the necessary constitutional measures and encourages the Government of Sri Lanka's efforts 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, are able to operate effectively, in accordance with the 13th amendment to the Constitution of Sri Lanka;

17. Welcomes the Government's commitment to issue instructions clearly to all branches of the security forces that violations of international human rights law and international humanitarian law, including those involving torture, rape, and sexual violence, are prohibited and that those responsible will be investigated and punished, and encourages the government to address all reports of sexual and gender-based violence and torture;

18. Requests the Office of the High Commissioner 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-second session, and a comprehensive report followed by discussion on the implementation of the present resolution at its thirty-fourth session;

19. Encourages the Government of Sri Lanka to continue to cooperate with special procedures mandate holders, including responding formally to outstanding requests;

20. 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.