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TIC PRESS RELEASE

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Resolution of the UN Human Rights Council - March 2021

The Tamil Information Centre (TIC) welcomes the Resolution on Sri Lanka adopted by the United Nations Human Rights Council (UNHRC) on 23 March 2021 at its 46th Session, titled “Promoting Reconciliation, Accountability and Human Rights in Sri Lanka” (A/HRC46/L.1/Rev.1).

The Resolution received support from 22 countries, including France, Germany, Italy, Brazil, Mexico and United Kingdom. The 11 nations that voted against the Resolution included Pakistan, Bangladesh, Russian Federation and China. India was among the 14 abstaining countries.

The earlier Resolution 19/2 titled “Promoting reconciliation and accountability in Sri Lanka” was adopted by the UNHRC in March 2012. Thereafter, the Sri Lankan government was granted time each year to implement recommendations in relation to human rights, transitional justice, accountability and proper war crime probes. The UNHRC adopted further resolutions in 2012 (19/2), 2013 (22/1), 2014 (25/1), 2015 (30/1), 2017 (34/1) and 2019 (40/1).

The Sri Lankan government not only failed to fully implement the recommendations, but has made aggressive attempts to prevent resolutions by the UNHRC. The Sri Lankan Foreign Minister Dinesh Gunawardena said at the Council Session on 23 February 2021 that the report of the UN High Commissioner for Human Rights was a propaganda campaign and rejected the UNHRC resolutions. President Gotabaya Rajapaksa, who is accused of war crimes and crimes against humanity, has publicly stated that he is unaware of any human rights violations in Sri Lanka. Prime Minister Mahinda Rajapaksa had declared on 19 February 2020 that Sri Lanka was withdrawing from the 2015 UNHRC Resolution (30/1) calling for accountability for alleged war crimes and reparations for victims.

Amnesty International noted that many years of support and encouragement to Sri Lanka to pursue justice at the national level achieved nothing. Amnesty emphasized that the real impact of further monitoring and reporting will rely on other UN member states using the resolution as a basis for concrete action, including investigations and prosecutions under universal jurisdiction and a possible referral to the International Criminal Court.

The Resolution

The UNHRC recognized the importance of preserving and analysing evidence relating to violations and abuses of human rights and related crimes in Sri Lanka with a view to advancing accountability. In the circumstances the UNHRC has decided to strengthen the capacity of the UN High Commissioner for Human Rights to collect, consolidate, analyse and preserve information and evidence and to develop

possible strategies for future accountability processes for gross violations of human rights or serious violations of international humanitarian law in Sri Lanka. The UNHRC also authorized the High Commissioner to advocate for victims and survivors, and to support relevant judicial and other proceedings, including in Member States, with competent jurisdiction;

The UNHRC noted the persistent lack of accountability of domestic mechanisms, that the domestic commission of inquiry announced on 22 January 2021 lacks independence and that its mandate is to review reports of previous commissions and committees, and does not include a mandate to pursue accountability for past gross violations of human rights or for serious violations of international humanitarian law. The UNHRC called upon the Sri Lankan government to ensure the prompt, thorough and impartial investigation, and prosecution of all alleged crimes relating to human rights violations and serious violations of international humanitarian law, including for long-standing emblematic cases.

The UNHRC expressed serious concern at the trends emerging over the past year, which represent a clear early warning sign of a deteriorating situation of human rights in Sri Lanka, including the accelerating militarization of civilian government functions; the erosion of the independence of the judiciary and key institutions responsible for the promotion and protection of human rights; ongoing impunity and political obstruction of accountability for crimes and human rights violations in “emblematic cases”; policies that adversely affect the right to freedom of religion or belief; increased marginalization of persons belonging to the Tamil and Muslim communities; surveillance and intimidation of civil society; restrictions on media freedom, and shrinking democratic space; restrictions on public memorialization of victims of war, including the destruction of a memorial; arbitrary detentions; alleged torture and other cruel, inhuman degrading treatment or punishment, and sexual and gender based violence; and that these trends threaten to reverse the limited but important gains made in recent years, and risk the recurrence of policies and practices that gave rise to the grave violations of the past;

The UNHRC also called on the government to protect civil society actors, including human rights defenders, review the Prevention of Terrorism Act, and to ensure that any legislation on combating terrorism complies fully with the State’s international human rights and humanitarian law obligations. The UNHRC urged the government to foster freedom of religion or belief and pluralism by promoting the ability of all religious communities to manifest their religion, and to contribute openly and on an equal footing to society.

The UNHRC also expressed further concern that the response to the coronavirus disease (COVID-19) pandemic has had an impact on freedom of religion or belief and exacerbated the prevailing marginalization of and discrimination against the Muslim community, and that cremations for those deceased from COVID-19 have prevented Muslims and members of other religions from practicing their own burial religious rites, and has disproportionately affected religious minorities and exacerbated distress and tensions;

The UNHRC called upon the Sri Lankan government to ensure the effective and independent functioning of the Human Rights Commission of Sri Lanka, the Office on Missing Persons and the Office for Reparations to deliver on their respective mandates as established.

Report of the UN High Commissioner for Human Rights

The UN High Commissioner for Human Rights states in her report (A/HRC/46/20) that domestic initiatives for accountability and reconciliation have repeatedly failed to produce results, and that Sri Lanka remains in a state of denial about the past, with truth-seeking efforts aborted. The High Commissioner has raised concerns about the reversal of the inclusive national discourse that promised greater recognition and respect of and reconciliation with minority communities, and warns that “Far from achieving the guarantees of non-recurrence set out in UNHRC Resolution 30/1 of 2015, 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.”

The High Commissioner is deeply concerned about the increased use of ethno-nationalistic and majoritarian rhetoric and symbols by President Gotabaya Rajapaksa and other government figures. Public policies appear to exclusively reflect the interests of the Sinhala Buddhist majority and show minimal consideration for minority communities. Ethnic and religious minority communities are left behind and are often perceived and treated as posing a threat. Such an approach, the High Commissioner asserts, has serious negative implications for reconciliation, peacebuilding and religious tolerance, and carries the seeds of future violence and conflict.

The High Commissioner has also expressed deep concern over recent trends which represent clear early warning signs of a deteriorating human rights situation and a significantly heightened risk of future violations. The High Commissioner calls for strong preventive action. A major concern of the minority communities, as pointed out by the High Commissioner, is the appointment of military officers, including persons implicated in war crimes, to key positions in the civilian administration creating parallel task forces and commissions that encroach on civilian functions. In 2020, the President appointed at least 28 serving or former military or intelligence personnel to important administrative posts. Some Task Forces are composed entirely of military, intelligence or police personnel. Some of the officers appointed are implicated in war crimes and crimes against humanity. The High Commissioner notes that 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.

The Twentieth Amendment to the Sri Lankan Constitution, introduced in October 2020 has vastly expanded the presidential and executive powers reversing the democratic gains by earlier amendments and undermining the independence of bodies such as the Human Rights Commission of Sri Lanka. The government has obstructed or stopped investigations and criminal trials to prevent accountability for past crimes, and in January 2020 appointed a Presidential commission of inquiry to investigate allegations of “political victimization” which has intervened in police investigations and court proceedings and had the effect of undermining the police and the judiciary in human rights and corruption cases. The High Commissioner expresses deep concern that the independence of the judiciary and other accountability bodies has been “deeply eroded” following the Twentieth Amendment and accused the Sri Lankan government of blocking the possibility of genuine progress to end impunity.

The High Commissioner has expressed alarm 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.

The continuing use of the Preventions of Terrorism Act has concerned the High Commissioner. Arrest and treatment of persons in custody 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. The High Commissioner says she continues to receive credible allegations, through well-known human rights organizations, of abductions, torture and sexual violence by Sri Lankan security forces.

The High Commissioner is categorical in the statement that the Sri Lankan government has demonstrated its ‘unwillingness to pursue a meaningful path towards accountability for international crimes and serious human rights violations, and has 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.’

The High Commissioner urged the UNHRC to take further action for three important reasons:

- 1) The failure to deal with the past continues to have devastating effects on tens of thousands of survivors 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.
- 2) 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.
- 3) The trends highlighted represent an 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.

The High Commissioner also urged the UNHRC and Member States to:

(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.

The High Commissioner recommends that United Nations entities:

(a) Ensure that the Secretary-General’s call to action on human rights 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;

The need for urgent action

In a letter to members of the UNHRC, leaders of Sri Lankan Tamil national political parties, members of the Tamil victim communities and Tamil civil society organizations referred to the 23 May 2009 joint communiqué of the Sri Lankan government and the United Nations which said that the ‘UN Secretary-General underlined the importance of an accountability process for addressing violations of international humanitarian and human rights law’ and ‘the government will take measures to address those grievances’. The Tamil leaders and organisations stress that the continuing and intensifying oppression against the Tamils including militarisation, indefinite detention of political prisoners, land grab in the name of archaeological explorations, the denial of traditional, collective land rights like cattle grazing rights, intensifying surveillance of political and civil society activists, the denial of burial rights during COVID19 to Muslims and the denial of the right to memory, underscore the urgency of addressing the deteriorating situation.

The TIC wishes to express concern that it has taken more than ten years for the UNHRC to adopt a meaningful Resolution. The agony of the people meanwhile, particularly the minority communities, has deepened with continuing human rights violations by the State and its agents. The Sri Lankan government failure to investigate and act on human rights violations and war crimes has obstructed meaningful reconciliation. The 2021 Resolution authorization of the Office of the High Commissioner to collect, consolidate, analyse and preserve information and evidence of gross violations of human rights and humanitarian law and the continued reporting and the attention of the UNHRC will assist in monitoring human rights concerns and advancing accountability in Sri Lanka.

The 2021 UNHRC Resolution is an important step forward. **The TIC calls upon the UNHRC and member states to act promptly and effectively to implement the provisions of the Resolution. Delay would encourage further human rights violations and suffering.**

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