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**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 Office of the United Nations High Commissioner for Human Rights*

Summary

In the present report, the Office of the United Nations High Commissioner for Human Rights assesses the progress made by Sri Lanka in the implementation of Human Rights Council resolution 30/1 on promoting reconciliation, accountability and human rights in Sri Lanka, between October 2015 and January 2019. It identifies the challenges faced in the operationalization of the reconciliation and accountability agenda to which the Government of Sri Lanka committed under resolution 30/1. The High Commissioner calls upon the Government to demonstrate sustained commitment and leadership to move that agenda forward, and urges the Council to continue to monitor and its engagement in developments in Sri Lanka.

* Agreement was reached to publish the present report after the standard publication date owing to circumstances beyond the submitter's control.



I. Introduction

1. The present report on progress achieved in promoting reconciliation, accountability and human rights in Sri Lanka is submitted to the Human Rights Council pursuant to Council resolutions 30/1 and 34/1. Both of the said resolutions were co-sponsored by the Government of Sri Lanka and adopted by consensus.
2. The report should be read in conjunction with the most recent reports of the Office of the United Nations High Commissioner for Human Rights (OHCHR) on Sri Lanka (A/HRC/34/20 and A/HRC/37/23), the oral update of the High Commissioner delivered to the Human Rights Council at its thirty-fourth session,¹ the comprehensive report of OHCHR on Sri Lanka (A/HRC/30/61) and the detailed findings of the OHCHR investigation thereof.²
3. In its resolution 34/1, the Human Rights Council requested the Government of Sri Lanka to implement fully the outstanding measures identified by the Council in its resolution 30/1. It also requested OHCHR and relevant special procedure mandate holders, in consultation with, and with the concurrence of, the Government of Sri Lanka, to strengthen their advice and technical assistance on the promotion and protection of human rights and truth, justice, reconciliation and accountability. The Council also requested 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, followed by a discussion on the implementation of resolution 30/1, at its fortieth session. The present report was prepared pursuant to that request.
4. In its resolution 30/1, the Human Rights Council made a number of comprehensive recommendations on the judicial and non-judicial measures necessary to advance accountability and reconciliation in Sri Lanka, and on strengthening the protection of human rights, democracy and the rule of law. The resolution reflects the commitment of the Government of Sri Lanka to the international community and to its own people to confronting the past, ending impunity, ensuring justice, achieving reconciliation and preventing the recurrence of violations. In resolution 34/1, the Council extended the period of implementation identified in resolution 30/1 until its fortieth session, namely for a further period of two years.
5. In the present report, OHCHR reviews the progress made by the Government of Sri Lanka between October 2015 and January 2019 in implementing resolution 30/1, paying special attention to the period since January 2018, not covered in previous reports.

II. Engagement of the Government with the Office of the High Commissioner and United Nations human rights mechanisms

6. Since the adoption by the Human Rights Council of its resolution 30/1, the Government of Sri Lanka has regularly engaged with the United Nations system, including with OHCHR. The High Commissioner, the Deputy High Commissioner and senior OHCHR staff have visited Sri Lanka since 2015. OHCHR has continued to provide the Government with technical assistance through its presence in Sri Lanka and by deploying expert missions. In 2018, OHCHR contributed to the human rights screening of Sri Lankan individuals and units to be deployed to United Nations peacekeeping operations, and assisted in the archiving of materials resulting from the national consultations on the reconciliation mechanisms conducted in 2016 by the Consultations Task Force, a group of civil society representatives appointed by the Government of Sri Lanka. OHCHR also provided advice and support on various aspects of transitional justice, including through the United Nations Peacebuilding Fund, in coordination with the United Nations country team and the Resident Coordinator. OHCHR also supported dialogues with the Government on the establishment of a national

¹ See conference room paper A/HRC/32/CRP.4, available from www.ohchr.org/en/hrbodies/hrc/regularsessions/session32/pages/listreports.aspx.

² See conference room paper A/HRC/30/CRP.2, available from www.ohchr.org/en/hrbodies/hrc/pages/oisl.aspx.

mechanism for reporting and follow-up on recommendations made in the context of the universal periodic review and by the treaty bodies and the special procedures of the Council.

7. The constructive engagement of the Government of Sri Lanka with United Nations human rights mechanisms continued throughout the period under review. Since the Government issued a standing invitation to all special procedures in 2015, Sri Lanka has received a visit from the Working Group on Enforced or Involuntary Disappearances (see A/HRC/33/51/Add.2), the Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment (see A/HRC/34/54/Add.2), the Special Rapporteur on the independence of judges and lawyers (see A/HRC/35/31/Add.1), the Special Rapporteur on minority issues (see A/HRC/34/53/Add.3), the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (see A/HRC/40/52/Add.3), the Working Group on Arbitrary Detention (see A/HRC/39/45/Add.2), the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights (see A/HRC/40/57/Add.2) and the Special Rapporteur on truth, justice, reparations and guarantees of non-recurrence, who made one country visit and four advisory visits.³

8. Since 2015, the situation in Sri Lanka has been examined by the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW/C/LKA/CO/2), the Committee on the Elimination of Racial Discrimination (CERD/C/LKA/CO/10-17), the Committee against Torture (CAT/C/LKA/CO/5), the Committee on the Elimination of Discrimination against Women (CEDAW/C/LKA/CO/8), the Committee on Economic, Social and Cultural Rights (E/C.12/LKA/CO/5) and the Committee on the Rights of the Child (CRC/C/LKA/CO/5-6). In November 2017, the State underwent its third universal periodic review by the Human Rights Council (see A/HRC/37/17 and Council decision 37/114).

9. Noting the efforts made by Sri Lanka to engage with United Nations human rights mechanisms, the High Commissioner welcomes the preparations it has made in view of establishing a national mechanism for reporting and follow-up, which, alongside the National Human Rights Action Plan, could facilitate the implementation of key recommendations made by the said United Nations human rights mechanisms.

III. Developments in reconciliation and accountability

A. Background

10. While the focus of the present report is the implementation by the Government of Sri Lanka of the recommendations made by the Human Rights Council in its resolution 30/1, the High Commissioner notes the political crisis that erupted in October 2018 and the associated concerns about a possible regression in human rights, transitional justice and the reconciliation agenda, and related mechanisms.

11. On 26 October 2018, President Sirisena removed Prime Minister Ranil Wickremesinghe from office and replaced him with former President Mahinda Rajapaksa. Mr. Wickremesinghe argued that President Sirisena had no constitutional power to dismiss him given that he still enjoyed the confidence of the parliament. Sri Lanka was left in an unprecedented situation, with two individuals claiming to be the legitimate Prime Minister.

12. On 9 November 2018, President Sirisena dissolved the parliament and called parliamentary elections. On 13 November, the Supreme Court suspended the dissolution of the parliament, which reconvened on 14 November 2018 and passed two motions of no confidence against the Government of Mahinda Rajapaksa, amidst disruptions and violence among members of parliament. President Sirisena rejected the motions, citing procedural grounds. On 3 December, an interim order from the Court of Appeal, upheld by the Supreme

³ See OHCHR, "Observations by the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Mr. Pablo de Greiff, on the conclusion of his recent visit to Sri Lanka", press release.

Court on 14 December, restrained the functioning of the Prime Minister and Cabinet. On 13 December, the Supreme Court decided that Presidential Gazette No. 2096/70 that dissolved the parliament was ultra vires and unconstitutional. On 15 December, Mahinda Rajapaksa resigned, and on 16 December Ranil Wickremesinghe was once again sworn in as Prime Minister.

13. The High Commissioner joins the Secretary-General in welcoming the resolution of the political crisis in Sri Lanka through peaceful, constitutional means, and applauds the resilience of the country's democratic institutions. Nonetheless, for seven weeks, the legitimacy and the legality of a number of authorities were in question, which led to further delays in the implementation of the recommendations made in Human Rights Council resolution 30/1, for instance owing to staff changes in key institutions and uncertainty with regard to reporting lines.

B. Developments in transitional justice

14. In Human Rights Council resolution 30/1, the Council encouraged the Government of Sri Lanka to implement a transitional process, which would entail the establishment of a judicial accountability mechanism, truth-seeking initiatives, including a truth commission, and an office on missing persons, a reparations programme and institutional reforms.

15. In the most recent report on the implementation of Human Rights Council resolution 30/1 submitted to the Council in February 2018 (A/HRC/37/23), the High Commissioner noted that, while the institutional architecture had been incipiently established to take the transitional justice process forward, concrete results were yet to come. As at December 2018, this remained the case. Although steps have been taken in institution-building (such as adoption of legislation, the recruitment and training of staff and the identification of office space) since 2017, they have yet to produce concrete benefits for individual rights holders (in the form of, for instance, the identification of missing persons, the provision of reparations and the issuance of court verdicts). Such slow progress in establishing meaningful transitional justice measures has engendered mistrust among victims and other stakeholders.

16. The political crisis at the end of 2018 further obstructed progress owing not only to the temporary paralysis of institutions but also because it generated fears that another Government might not embrace the reconciliation agenda. There were also concerns among key stakeholders that a return to power of the pre-2015 administration could have negative implications for their security and the human rights situation in general. In particular, during the crisis, the work of the Secretariat for Coordinating Reconciliation Mechanisms⁴ – the body mandated to lead and coordinate transitional justice efforts – was hampered, given that its Secretary-General had resigned on 30 October and a number of its staff contracts were terminated on 30 November. Some staff members were reportedly subjected to surveillance and threats within hours of the removal of Prime Minister Wickremesinghe. The Secretary-General and staff resumed their work in late December.

17. The High Commissioner acknowledges the efforts made to establish bodies like the Secretariat for Coordinating Reconciliation Mechanisms and the Office for National Unity and Reconciliation, and applauds the commitment and professionalism of their staff. The Government has, however, lagged in the actual implementation of its commitments, beyond the establishment of coordinating bodies. The situation has been compounded by the lack of a comprehensive strategy or action plan setting out a timeline for the establishment of the various transitional justice mechanisms and the linkages between them.

18. The current mandate of the Secretariat for Coordinating Reconciliation Mechanisms, which continues through March 2020, plays a key role in the coordination of initiatives and supporting the design of the processes and communications used in transitional justice and reconciliation.

⁴ See www.scrm.gov.lk.

19. The national consultations on reconciliation mechanisms held in 2016 and the establishment of the Office on Missing Persons remain the two main achievements in the field of transitional justice since 2015. The final report on the consultations remains the key document identifying the needs and aspirations of victims.⁵ Commissioners were appointed to the Office on 28 February 2018 for a period of three years. As at December 2018, the Office was the only functioning transitional justice mechanism. It has conducted six consultations with stakeholders throughout the country and made progress towards establishing the 12 regional offices it plans to open. On 5 September 2018, it presented its first interim report.⁶

20. The High Commissioner appreciates the significant efforts made by the Office on Missing Persons in consulting stakeholders and in identifying priorities in its report, and encourages it to continue to strengthen its capacities. The High Commissioner also highlights the importance of promptly delivering results when handling individual cases as the best way to gain the trust of victims, while acknowledging that victim tracing procedures require thorough assessments in multiple areas and therefore take time. The mandate of the Office as defined in Act No. 14 of the Office on Missing Persons (establishment, administration and discharge of functions) (2016) establishing it – to “provide appropriate mechanisms for searching and tracing [...] missing persons, and to clarify the circumstances in which such persons went missing, and their fate” – gives hope to many Sri Lankans who lost their loved ones. Many, however, remain sceptical, such as the families of those who surrendered in the last days of the conflict, who believe that their relatives are either in custody and that no institution is required to release them or acknowledge their whereabouts, or that they have been killed, in which case they do not believe that the Office disposes of the means necessary to identify and prosecute perpetrators. In its report, the Office identified the provision of short-term relief to families of victims as the priority and recommended the measures to that end, while acknowledging that they do not amount to reparations.

21. The High Commissioner is convinced that the Office on Missing Persons, if fully operational, can play a crucial role in tracing individuals, identifying remains and reuniting families. Nonetheless, the lack of a comprehensive strategy and of outreach on the process to address the past has led some to question how the various transitional justice processes and mechanisms envisaged would interact.

22. Addressing disappearances in a comprehensive manner is essential to ensuring the credibility of the entire transitional justice agenda. Experiences from other regions show that securing conclusive results is a process that requires sustained efforts and resources over many years. The Office on Missing Persons must find a balance between the need to establish itself as a lasting institution with solid foundations and the expectation of immediate results, which would give victims the incentive to cooperate with the body. For this reason, the Office should strategically plan both its short-term and long-term goals.

23. On 29 May 2018, human skeletal remains were discovered at a construction site in Mannar (Northern Province). Excavations, conducted with the support of the Office on Missing Persons, revealed a mass grave from which more than 300 skeletons were recovered. It was the second mass grave found in Mannar following the discovery of a site in 2014. Given that other mass graves might be expected to be found in the future, systematic access to grave sites by the Office as an observer is crucial for it to fully discharge its mandate, particularly with regard to the investigation and identification of remains. To strengthen the processes of excavation, investigation and identification of human remains, it is imperative that the proposed reforms on the law relating to inquests, and relevant protocols to operationalize the law be adopted. The capacity of the forensic sector must also be strengthened, including in areas of forensic anthropology, forensic archaeology and genetics, and its coordination with the Office on Missing Persons must be ensured.

24. The High Commissioner welcomes the enactment by the parliament, on 7 March 2018, and subsequent certification by the Speaker, on 21 March, of the Enforced

⁵ Final Report of the Consultations Task Force on Reconciliation Mechanisms, November 2016. Available from <http://war-victims-map.org/onsultation-task-force-on-reconciliation-mechanisms-final-report-volumes-i-and-ii/>.

⁶ Available from https://news.lk/images/Master_Document_Clean_Document_28_August0.pdf.

Disappearances Act, which criminalizes enforced disappearances and allows for the implementation and enforcement of the International Convention for the Protection of All Persons from Enforced Disappearance at the national level.

25. A bill was gazetted in June 2018 providing for the establishment of an office for reparations, to identify “aggrieved persons” eligible for reparations and to provide them with individual and collective reparations. The initial definition of “aggrieved persons” included individuals having “suffered a violation of human rights or international law”. In July 2018, however, the Supreme Court determined that clauses in the bill requiring the Office for Reparations to assess whether a person had suffered a violation of human rights or humanitarian law were contrary to the Constitution, as they vested judicial powers in the Office, which would be part of the executive and not of the judiciary. On the basis of suggestions for amendments by the Supreme Court, the parliament revised the law, essentially removing the link between “aggrieved persons” and human rights violations. Whether the new formulation recognizes a human rights violation as a clear criterion for entitlement to reparations is therefore unclear. The revised bill was adopted by the parliament on 10 October and certified by the Speaker on 22 October. The Constitutional Council called for nominations to select commissioners for the Office on 3 January 2019. In the view of the High Commissioner, recognizing the status of a victim of a violation as such, and not simply as a beneficiary of a welfare programme, is an essential part of a reparations programme. Strong links with the eventual truth-seeking mechanism could help to address this issue, given that a truth commission could identify specific categories of victims for reparations.

26. With regard to the proposed truth and reconciliation commission, OHCHR understands that, while a draft concept has been ready since 2016, it was presented to the Cabinet only on 23 October 2018 before being submitted to the legal draftsman for translation into a bill. The High Commissioner understands that the draft does not contain provisions for amnesties, which, according to international law and United Nations policy, are not permissible if they prevent prosecution of individuals who may be criminally responsible for serious crimes under international law, interfere with a victim’s right to an effective remedy, including reparations, or restrict victims’ or society’s right to know the truth about violations of human rights and humanitarian law.

27. Less progress has been observed in the area of criminal accountability. The Government has not announced any plan to create a special judicial mechanism, despite the commitment it implicitly undertook when it co-sponsored Human Rights Council resolution 30/1 and the recommendations contained therein. It has indeed denied the need for such a mechanism, particularly with respect to the involvement of foreign judges, despite abundant evidence that the ordinary criminal justice system is unable to deal with the nature of allegations and the complexity of crimes. Both the President and the Prime Minister have made statements denying the need of foreign assistance in this matter.⁷ In 2015, the High Commissioner stated that, for accountability to be achieved in Sri Lanka, more than a domestic mechanism would be required (A/HRC/30/61, para. 88). The lack of substantial progress in establishing criminal accountability for serious crimes in the past three years underscores the relevance of that assessment.

28. Moreover, claims that a domestic specialized process could suffice have not been accompanied by any serious attempt to establish one. No effort has been made to build the capacity required to conduct investigations, including forensic ones, or prosecutorial strategies, despite the repeated recommendations of the Special Rapporteur on truth, justice, reparations and guarantees of non-recurrence.⁸

29. The gravity of the cases that a specialized accountability mechanism must address cannot be underestimated. On that point, the High Commissioner reiterates the principal

⁷ See Munza Mushtaq, “‘As long as I am the President, no international participation in judicial process’, Sirisena declares”, *Colombo Telegraph*, 9 July 2016; “President rejects UN call for foreign judges in war probe”, *Daily FT*, 6 March 2017; and “Sri Lanka says ‘no’ to foreign judges in war crimes probe”, *The Hindu*, 5 March 2017.

⁸ See OHCHR, “Sri Lanka must step up progress on transitional justice, UN expert finds”, press release, 23 October 2017.

findings of the investigation conducted by OHCHR in 2015, which demonstrated that there were reasonable grounds to believe that gross violations of international human rights law, serious violations of international humanitarian law and international crimes had been committed by all parties during the period under review; and that indeed, if established before a court of law, many of the allegations may, depending on the circumstances, amount to war crimes if a nexus were to be established with the armed conflict and/or crimes against humanity if committed as part of a widespread or systematic attack against a civilian population (A/HRC/30/61, para. 24).⁹ Since 2015, virtually no progress has been made in investigating or prosecuting domestically the large number of allegations of war crimes or crimes against humanity collected by OHCHR in its investigation, and particularly those relating to military operations at the end of the war.

C. Preconditions for transitional justice and confidence-building measures

30. In previous reports, the High Commissioner has highlighted that, to be successful, a transitional justice agenda must enjoy the confidence of victims and society at large. This confidence can only develop when grievances are effectively addressed and the Government abides by its commitments, such as to the devolution of political authority, the protection of the rights of minorities and the settlement of long-standing issues relating to militarization, land occupation and security legislation.

31. Some small developments have been witnessed in the constitutional reform process since the Constitutional Assembly debated the interim reports of the steering committee (appointed by the Assembly on 5 April 2016 with, inter alia, a mandate to prepare a proposal for constitutional reform) in October and November 2017. In 2018, the steering committee met four times; on 11 January 2019, a panel of experts tabled its report, drawing on the interim report that could be used as a basis for a constitutional reform proposal. The High Commissioner was encouraged that the political dialogue continued, albeit at a slow pace, and that it focused on political settlement and devolution, and on strengthening the rights framework, including on economic, social and cultural rights. The developments of October 2018 have jeopardized such progress. The heated political confrontation has polarized the political spectrum in ways that could further hamper immediate progress in constitutional reform.

32. A key commitment of the Government in 2015 was to review and repeal the Prevention of Terrorism Act. Draft legislation in the form of a counter-terrorism law, with serious shortcomings, was approved by the Cabinet on 25 April 2017 and later withdrawn for revisions. An improved revised version was presented to the parliament on 9 October 2018. In a determination issued in November 2018 on the constitutionality of the revised bill, the Supreme Court ruled that the death penalty had to be included as punishment to prevent inconsistencies with the Penal Code. It also found that a reference in the bill relating to its compliance with the law, including international human rights instruments to which Sri Lanka is a party, was incompatible with the Constitution, which does not regard “international instruments” as law. The relevant oversight committee of the parliament will be required to take up the amendments proposed by the Supreme Court; meanwhile, there are concerns that other new amendments, reportedly suggested in Cabinet for incorporation at the parliamentary committee stage, might further weaken the bill’s compliance with international best practices.

33. The High Commissioner is concerned that, despite its lengthy preparation and the consultation of expert advice, the final bill might not comply fully with international human rights norms and standards. Even in its present form, the bill contains problematic features, such as an overly broad definition of terrorism. The High Commissioner urges Sri Lanka to continue to uphold the moratorium on the death penalty and to work towards prohibiting the practice altogether, recalling the fact that the United Nations opposes the use of capital punishment in all circumstances. The High Commissioner encourages the Government to seek the opinion of the Human Rights Commission of Sri Lanka when drafting legislation,

⁹ See also A/HRC/30/CRP.2, available from www.ohchr.org/en/hrbodies/hrc/pages/oisl.aspx.

bearing in mind the mandate of the institution to advise on human rights compliance of draft legislation.

34. The adjudication of security detainees held under the Prevention of Terrorism Act remains a matter of concern among the Tamil community, which has identified it as a matter of confidence-building. According to information provided by the Government, as at 25 January 2019, 58 individuals detained under the Act were facing trial and three suspects were awaiting indictment.

35. The return of land occupied by the military in the Northern and Eastern Provinces has continued. In early October 2018, President Sirisena indicated that all civilian land in the North and the East would be released by the end of 2018.¹⁰ According to government figures, around 75 per cent of the land held in 2009 has already been returned.¹¹ Government figures also indicated that, as at 31 December 2018, 46,322 acres of land (of which 40,490 acres of State land and 5,833 acres of private land) had been released between January 2015 and December 2018, including 5,797 acres (of which 4,738 acres of State land and 1,059 acres of private land) in 2018 alone. Government plans in March 2018 indicated, however, the need for the security forces to retain 36,002 acres, including 5,327 acres of private land. While the High Commissioner acknowledges the significant amount of land returned to date, she still has concerns about the process; for example, some restitutions have been only partial or incomplete, allowing for access to dwellings but not to livelihood resources (such as agricultural land or fishing resources) or vice versa. On other occasions, public services, such as schools, remain unavailable. There have also been cases of property being destroyed shortly before it was to be returned. Furthermore, communities have complained about new land grabs and other contentious land issues, such as alleged “colonization” through the establishment of irrigation, forestry and archaeological projects, and of continued military involvement in economic activities. Such situations prevent the resumption of livelihoods, unlike what was encouraged by the Human Rights Council in its resolution 30/1.

36. The military should only retain land when strictly necessary for security purposes, with proper compensation paid to those dispossessed. As recommended by the High Commissioner in previous reports, independent mechanisms should determine such matters. Moreover, the emotionally and politically charged issue of land, with regard to both individual ownership and communities’ sense of belonging to a given area, should be addressed in a sensitive manner, not least because it is considered by many stakeholders one of the root causes of conflict. Any State-promoted settlement of people or land acquisition on cultural, archaeological, development or environmental grounds should be carefully considered, given the adverse impact on reconciliation. Decision-making with regard to relocation and resettlement should be made through transparent processes and following meaningful consultation with the people and the communities affected.

37. In accordance with the process agreed upon by the United Nations and the Government of Sri Lanka, and consistent with the policy on human rights screening of United Nations personnel, all Sri Lankan individuals and units nominated by the Government for service with the United Nations should be screened on human rights grounds by a domestic human rights screening mechanism established with the support of the United Nations and involving the Human Rights Commission. The High Commissioner notes that the integrity and the effectiveness of the screening process will significantly depend on the independence of the Human Rights Commission and the ongoing cooperation of relevant institutions.

¹⁰ See www.president.gov.lk/president-instructs-the-governors-to-intervene-in-freeing-the-lands-of-north-eastern-provinces-before-31st-of-december/.

¹¹ As at 30 September 2018, security forces retained 17,793 acres in the Northern Province (4,162 acres of private land and 13,631 of State land) and 12,520 acres in the Eastern Province (131 acres of private land and 12,390 of State land). The total occupation in both provinces amounted to 30,313 acres (26,021 State land and 4,293 private land), which is around 25 per cent of the amount occupied in 2009 (118,910 acres).

D. Emblematic cases of human rights violations

38. The criminal justice system has yet to demonstrate its capacity or willingness to address complex emblematic cases. This in turn raises questions about the capacity and will of the State to address impunity for serious violations of international humanitarian law and for gross violations and abuses of international human rights law, and has a negative impact on peoples' trust in the justice system. The status of emblematic cases described below, including worrying instances of political interference in the judicial or investigative process, demonstrate the very limited progress made towards achieving accountability in Sri Lanka.

39. Developments have been witnessed in the investigations into 11 cases of disappearances reported in 2008 and 2009 in Colombo, for which navy intelligence officers were suspected. Six navy officers originally arrested in 2017 were granted bail on 9 January 2018. Several other arrests were made in 2018. A key suspect, a former navy lieutenant commander who had absconded, was arrested on 13 August, and the police informed the court that he had been in hiding with the alleged support of the Armed Forces Chief of Defence Staff, Admiral Ravindra Wijegunaratne. On 9 January, the court remanded two key suspects until 23 January 2019 and scheduled the main inquiry for 27 March 2019. Meanwhile, on 25 November, the Chief of Defence Staff and other officers reportedly threatened a key witness. On 28 November, the Chief of Defence Staff was arrested and remanded in connection to aiding a fugitive and attempts to intimidate witnesses. He was released on bail on 5 December. Further inquiries were scheduled for 16 January 2019. In a related case, a navy officer was arrested on 24 October 2018 in connection with the disappearance of two people in Kotahena in 2009.

40. The death of 27 inmates during a security operation to control a riot at Welikada prison in November 2012 (A/HRC/25/23, para. 24) remains unaddressed. On 28 March 2018, a Narcotics Bureau inspector and a former Prisons Commissioner were arrested in connection with the deaths. On 25 September, the inspector was released on bail and reinstated to his position in the police on 22 November. The former Prisons Commissioner was remanded until 22 January 2019.

41. With regard to the killing of protestors by army personnel at Weliwerya in August 2013, no progress has been made since the release on bail, on 31 August 2017, of a brigadier general and a sergeant arrested in connection with the case. Three other officers remain on remand. On 10 October 2018, the police informed the court that they had forwarded the investigation file to the Office of the Attorney-General.

42. The killing of five students in Trincomalee in January 2006, and of 17 humanitarian workers of the non-governmental organization Action contre la faim, in Muttur in August 2006, remain unpunished. No further effort to address those cases was recorded in 2018. The investigation into the latter case has been put on hold pending a report of the Government Analyst on the firearms used and instructions from the Attorney-General. The progress made in the investigation is to be reported to the court on 4 March 2019.

43. The murder in 2006 of Nadarajah Raviraj, a member of parliament, also remains unpunished. The appeal against the acquittal of five defendants in December 2016 remained pending before the Court of Appeal, with little progress made in 2017 and 2018. The appeal is scheduled to be heard on 10 January 2019.

44. With regard to the disappearance in January 2010 of journalist Prageeth Eknaligoda, an army intelligence officer, Lieutenant Colonel Arantha Peiris, was arrested by the Criminal Investigation Division on 20 September 2018; however, 13 other suspects were released on bail in 2016. Reportedly, the ongoing police investigation has been delayed owing to lack of cooperation by the army in sharing relevant information. The police are due to report to court on the ongoing investigation on 10 January 2019. On 8 August 2018, Buddhist monk and Secretary-General of the Sinhala nationalist movement Bodu Bala Sena, Galagoda Aththe Gnanasara, was sentenced to six years of imprisonment after being found guilty of contempt of court owing to his conduct during a hearing in 2016 regarding the disappearance of Mr. Eknaligoda, when he had stormed into the courtroom and threatened the wife of the journalist.

45. The killing of journalist Lasantha Wickrematunge, in January 2009, remains under investigation, although all suspects have been released on bail. The police last reported on the progress made in the investigation to the court in September 2018, and were due to provide the next update on 17 January 2019.

46. With regard to the Killiveddy (or Kumarapuram) massacre of 23 Tamil civilians by army soldiers in 1996, the appeal against the acquittal, in July 2016, of all the accused is ongoing and is scheduled to be taken up for argument on 23 January 2019.

47. On 18 November 2018, in the midst of the political crisis, the officer in charge of the Organized Crime Investigation Unit of the Criminal Investigation Department of the police, Inspector Nishantha Silva, was transferred by order of the Inspector General of the Police, reportedly on “service requirements”. Inspector Silva is the lead investigator in a number of emblematic cases where some progress has been made, such as the murder of Lasantha Wickramatunge, the disappearance of Prageeth Eknaligoda, the abduction of journalist Keith Noyahr, the murder of rugby player Wasim Thajudeen and the 11 enforced disappearances attributed to navy intelligence. His transfer at that particular time was perceived as an attempt to prevent further progress in investigations, leading to outcry from victims and other stakeholders, and an appeal to the National Police Commission. Inspector Silva was reinstated on 20 November.

48. No developments were reported in 2018 with regard to the case filed in 2017 by several human rights groups in Brazil and Colombia, under universal jurisdiction principles, against retired Army General Jagath Jayasuriya. Regarding a different case, on 1 August 2018, prosecutors in Germany applying universal jurisdiction announced that charges of war crimes and of membership in a terrorist organization were being brought against a Sri Lankan national, and former militant of the Liberation Tigers of Tamil Eelam (LTTE), currently living in Germany.

49. Concerns therefore remain regarding the State’s capacity and willingness to prosecute and punish perpetrators of serious crimes when they are linked to security forces or other positions of power. The advances that were made – in the form of arrests or new investigations – were possible thanks to the persistence and commitment of individual investigators despite political interference, patronage networks and a generally dysfunctional criminal justice system. The advances made were, however, often stymied or reversed by political interventions, as demonstrated by the above-mentioned case of the Chief of Defence Staff and the attempted transfer of Inspector Silva.

50. The regular criminal justice system in Sri Lanka continues to suffer from serious structural weaknesses, which are reflected in lengthy delays in investigations and in judicial processes in general, also characterized by long periods of detention on remand and a bail system that is applied inconsistently and in a discriminatory way. Consequently, while prisons are overcrowded with petty criminals (even minor drug possession charges, which are not subject to bail, can lead to pretrial detention), individuals charged with serious crimes, including enforced disappearances, are able to obtain bail.

51. The High Commissioner stresses that the risk of new violations increases when impunity for serious crimes continues unchecked. To date, Sri Lanka has failed to seize the opportunity provided by the Human Rights Council to establish a trustworthy domestic mechanism to address impunity or to show, by consistent progress in emblematic cases, that such a mechanism is not necessary. Some segments of civil society have continued to call for international investigations and for the Security Council to refer the situation in Sri Lanka to the International Criminal Court for international prosecutions and adjudication of those most responsible for these crimes. The High Commissioner once again encourages Member States to prosecute Sri Lankans suspected of crimes against humanity, war crimes or other gross violations of human rights, in accordance with universal jurisdiction principles. This is likely to address only a handful of cases, however, where alleged suspects happen to be in the territory of countries receptive to the application of universal jurisdiction. Alternatives, including some forms of international investigation and prosecution, are therefore needed to ensure that those most responsible for the most serious crimes are prosecuted.

IV. Other human rights issues

52. Since 2015, the general situation has improved with regard to civil and political rights: there have been advances with respect to freedom of expression and assembly, incipient efforts made to consult representatives of civil society, a robust right to information framework has been established, and independent commissions, such as the Human Rights Commission, have been strengthened, and relations between security forces and civilians have improved. As noted above, commendable progress has also been witnessed in the State's cooperation with United Nations human rights mechanisms. Certain parts within the administration, in particular in the Ministry of Foreign Affairs, the Secretariat for Coordinating Reconciliation Mechanisms, the Office for National Unity and Reconciliation and the independent commissions, have been consistent in their commitment and determination to improve the human rights situation.

53. The Human Rights Commission has continued to work in an independent manner. On 29 May, it was re-accredited with A status by the Global Alliance of National Human Rights Institutions, and within the context of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Government has designated it the national preventive mechanism.

54. The Right to Information Act, in force since June 2016, has fostered public accountability and transparency. Applications made under the law have brought to light information about land occupation and the drafting of legislation, and helped to fight corruption, while increasing public participation in policymaking.

55. Some serious concerns nonetheless persist. Reports of harassment or surveillance of human rights defenders and of victims of human rights violations have continued. In 2018, at least two incidents were reported involving the assault of human rights defenders by unidentified aggressors, presumably in connection to their advocacy on cases of disappearance. Other human rights defenders have reported being questioned by the authorities after having travelled to Geneva to attend sessions of the Human Rights Council. One Sri Lankan United Nations staff member was visited by armed men who questioned him about his activities in support of visits by diplomats and United Nations officials, including the United Nations High Commissioner for Human Rights in 2013. Such cases suggest that informal and often extralegal intelligence gathering activities have not ceased, despite the recommendations made thereon. The surveillance or intimidation of victims and activists is incompatible with the reconciliation agenda, and perpetuates a mistrust in State institutions that could undermine the effectiveness of transitional justice mechanisms. If such acts do not represent government policy, as the High Commissioner was repeatedly assured, the Government must denounce them publicly and ban them, and take disciplinary, and when relevant, judicial action against the officers concerned.

56. OHCHR has continued to receive credible information about cases of abduction, unlawful detention, torture and sexual violence by Sri Lanka security forces, which allegedly took place in 2016 to 2018. A preliminary assessment of the information received indicates that there are reasonable grounds to believe that accounts of unlawful abductions and detention and of torture, including incidents of sexual violence against men and women, are credible, and that such practices might be continuing in northern Sri Lanka. Such allegations should be the subject of prompt, effective, transparent, independent and impartial investigations. In the past, the Government has condemned any act of torture, and indicated that any allegation of torture would be properly investigated and prosecuted. OHCHR is not aware of any investigations undertaken to date into the above-mentioned allegations.

57. The High Commissioner expresses her concern at the appointment, on 9 January 2019, of Major General Shavendra Silva as the Chief of Staff of the Sri Lanka Army. Major General Silva was the commanding officer of the 58th Army Division during the last stages of the war, and allegations were documented against troops under his command in connection with violations of international humanitarian law and international human rights law, including by

the Panel of Experts on Accountability in Sri Lanka appointed by the Secretary-General in its report¹² and the OHCHR investigation on Sri Lanka.¹³

58. The High Commissioner is deeply concerned at the aggravation of intercommunal tensions, in particular at several attacks conducted by militant Buddhist groups targeting cultural, religious (including the Muslim community and evangelical Christians) or sexual minorities. The most serious incident was the series of riots that broke out in Kandy district, between 5 and 8 March 2018, when mobs of Sinhala-Buddhist demonstrators attacked mosques and Muslim-owned houses and businesses. Two people were killed during the riots (one Muslim man when his home was set on fire, and a demonstrator as a result of an unclarified explosion) and 28 people were injured, while public property, 445 houses and shops, 24 places of worship and 65 vehicles were vandalized. The initial passive response of the police and the inability to control the situation led to President Sirisena declaring a state of emergency from 6 to 18 March 2018, and restrictions on social media and messaging platforms. A total of 280 people were arrested for the Kandy riots and connected activities. While some of those arrested were demonstrators, on 8 March at least 10 people identified as leaders of radical groups inciting the violence were arrested by the Terrorist Investigation Division, including Amith Jeewan Weerasinghe, the leader of Mahasohon Balakaya. On 1 November 2018, Mr. Weerasinghe, reportedly also one of the leaders of the riots in Kandy, and two other persons charged were granted bail.

59. Incidents targeting evangelical Christians continued to be reported. Since January 2018, one non-governmental organization working on freedom of religion has documented 86 such incidents, including threats and disruption of religious services.

60. The recurrence of incidents of intercommunal violence,¹⁴ the degree of premeditation in some cases, the extensive use of social media to spread misinformation and nurture myths against the Muslim community (ranging from economic dominance to demographic expansion) and the use of hate speech to escalate small local incidents (such as a traffic accident or a land dispute) into communal confrontation combine to form a very dangerous pattern that must be closely watched.

V. Conclusions and recommendations

61. **In 2015, by co-sponsoring Human Rights Council resolution 30/1, the Government of Sri Lanka recognized the need to address the past in order to build a brighter future, grounded in accountability, respect for human rights and the rule of law. The lack of decisive steps to that end, and of appropriate communication, has generated widespread frustration. The lack of accountability for past actions likely contributed to the return of violence against minorities in March 2018, and played a role in undermining the principles of democracy and the rule of law in October and November 2018.**

62. **The High Commissioner notes the constructive engagement of the Government of Sri Lanka with OHCHR and United Nations human rights mechanisms since January 2015. The Government has made progress in human rights issues and its engagement with civil society in some areas. Progress in its commitments to transitional justice has, however, been inconsistent and subject to considerable delay, partly because of the lack of a time-bound comprehensive strategy. Such important achievements as the establishment of the Office on Missing Persons and the Office for Reparations, and the national consultations have been neither adequately supported by the political leadership nor sufficiently linked to the accountability and truth-seeking components that should be at the core of the reconciliation and accountability agenda. The High Commissioner nonetheless praises the commitment of and efforts made by some**

¹² See www.un.org/News/dh/infocus/Sri_Lanka/POE_Report_Full.pdf.

¹³ Available from www.ohchr.org/en/hrbodies/hrc/regularsessions/session30/pages/listreports.aspx.

¹⁴ The riots in Kandy followed a smaller incident in Ampara, in February 2018, and incidents in 2017 in Gintota, Mount Lavinia and other locations reported in previous updates, and the Aluthgama riots of 2014. See A/HRC/37/23, paras. 46-47.

officials, particularly in several ministries, the Secretariat for Coordinating Reconciliation Mechanisms, the Office on Missing Persons, the Office for National Unity and Reconciliation and the Human Rights Commission, who have relentlessly endeavoured to push the human rights and reconciliation agenda forward.

63. The importance of the separation of powers, the independence of the judiciary and other checks and balances in a democratic society was highlighted by a number of situations in 2018. The judiciary and independent commissions, including the Human Rights Commission, continue to play a vital role in strengthening reforms and cementing good governance in Sri Lanka.

64. The lack of progress shows that the situation of human rights in Sri Lanka should remain firmly on the agenda of the Human Rights Council. The High Commissioner therefore urges the Council to remain closely engaged with the Government of Sri Lanka and to continue to monitor developments in the country.

65. In particular, the High Commissioner highlights the recommendations below, and reiterates some already made in previous reports.

A. Government of Sri Lanka

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

(a) Implement the recommendations made in the report of the Consultation Task Force on Reconciliation Mechanisms to frame and guide all future transitional justice processes, and to continue engagement with the public in the design of such mechanisms;

(b) Prepare a comprehensive strategy on transitional justice, with a time-bound plan to implement the pending commitments made within the context of Human Rights Council resolution 30/1 and the recommendations made in the present and previous reports of the High Commissioner submitted to the Council;

(c) Invite OHCHR to establish a full-fledged country office to monitor the situation of human rights in Sri Lanka, to advise on the implementation of the recommendations made by the High Commissioner, the Human Rights Council and other human rights mechanisms, and to provide technical assistance;

(d) Invite the Special Rapporteur on truth, justice, reparations and guarantees of non-recurrence to continue the engagement under his mandate in the above-mentioned process; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment to examine allegations of torture and related human rights violations; and the Special Representative of the Secretary-General on Sexual Violence in Conflict to visit Sri Lanka and to provide expert advice, including on relevant reforms.

67. With regard to institutional reforms, the High Commissioner recommends that the Government:

(a) Publicly issue unequivocal instructions to all branches of the military, intelligence and police forces that torture, sexual violence and other human rights violations are prohibited, and will be investigated and punished; and order all security forces to immediately end all forms of surveillance and harassment of and reprisals against human rights defenders, social actors and victims of human rights violations;

(b) Develop a full-fledged vetting process, respecting due process, in order to remove from office security personnel and other public officials involved in human rights violations; implement other reforms of the security sector to strengthen accountability and civilian oversight; and apply stringent screening procedures for units and individuals applying to serve in United Nations peace operations;

(c) Establish an independent mechanism to determine specific cases in which land must be allocated for military use owing to security reasons, and identify appropriate compensation or substitution for land owners or occupants;

(d) Support the Human Rights Commission, including by ensuring that it receives adequate resources to fulfil its mandate effectively, including review of and advice on draft legislation, and its role as national preventive mechanism;

(e) Support the independent commissions, fully respect their independence, and take into account their recommendations.

68. With regard to legislation and justice, the High Commissioner recommends that the Government:

(a) Accede to the additional protocols to the Geneva Conventions and to the Rome Statute of the International Criminal Court;

(b) Enact legislation to criminalize war crimes, crimes against humanity, genocide and enforced disappearances without statutes of limitation, and enact internationally recognized modes of criminal liability, in particular with regard to command or superior responsibility;

(c) Adopt legislation establishing a hybrid court to investigate allegations of violations and abuses of international human rights law and violations of international humanitarian law;

(d) Review the Assistance to and Protection of Victims of Crime and Witnesses Act with a view to incorporating safeguards for the independence and effectiveness of the victim and witness protection programme, in accordance with international standards;

(e) Strengthen the forensic capacity of the police and judiciary, and ensure that it is adequately resourced, including for DNA testing, forensic anthropology and archaeology;

(f) Replace the Prevention of Terrorism Act with legislation that adheres to the best international practices, seeking advice from the Human Rights Commission;

(g) Review all cases of detainees held under the Prevention of Terrorism Act with the aim of either releasing them or bringing them immediately to trial; establish a moratorium for the use of the Act for new arrests until it is replaced by legislation that adheres to international best practices; and review the cases of those convicted under the Act and are serving long sentences, particularly where convictions were based solely on confessions;

(h) Promptly investigate and prosecute all allegations of torture and other gross human rights violations, and give the highest priority to long-standing emblematic cases so as to regain public confidence in the justice system.

69. With regard to truth and the right to know, the High Commissioner recommends that the Government:

(a) Design, enact and operationalize a truth-seeking mechanism that has appropriate linkages to other transitional justice components, and provide it with sufficient resources and the technical means necessary to carry out its mandate;

(b) Provide the Office on Missing Persons with sufficient resources and technical means to effectively fulfil its mandate, including specific forensic capacity and clear coordination protocols with the judiciary; and take interim relief measures for families of disappeared persons, regardless of their right to comprehensive reparations.

70. With regard to reparations, the High Commissioner recommends that the Government:

(a) Provide the Office for Reparations with the resources and technical means necessary to implement its mandate;

(b) Through the Office for Reparations, develop a national reparations policy that takes into account the specific needs of women and children and psychosocial support for victims.

B. United Nations system

71. **The High Commissioner recommends that the United Nations system:**

(a) **Continue to provide Sri Lanka with technical and financial support for the development of transitional justice mechanisms, provided that they meet international standards;**

(b) **Apply stringent vetting procedures to Sri Lankan police and military personnel in the selection of persons for peacekeeping operations, military exchanges and training programmes.**

C. Member States

72. **The High Commissioner recommends that Member States:**

(a) **Urge the Human Rights Council to continue its close engagement with the Government of Sri Lanka and to monitor developments in the country;**

(b) **Investigate and prosecute, wherever possible, in particular in accordance with universal jurisdiction principles, those allegedly responsible for such violations as torture, enforced disappearance, war crimes or crimes against humanity; and explore other options to advance accountability in the absence of credible domestic processes.**

(c) **Continue to accompany the people of Sri Lanka in their efforts to address past human rights violations by supporting the establishment of adequate systems of accountability, justice and reconciliation.**
