

8<sup>th</sup> January, 2016

### **Statement on Accountability, Reconciliation and Human Rights in Sri Lanka**

1. We the undersigned civil society activists and organisations from Sri Lanka, wish to place on record the following observations on human rights, accountability and reconciliation in Sri Lanka. On the eve of the one-year anniversary of the presidential election of 8<sup>th</sup> January 2015, we note some progress made in the last twelve months. Such progress includes the enactment of the Nineteenth Amendment to the Constitution, the appointment of independent institutions including the Human Rights Commission of Sri Lanka, the release of some lands in the Northern and Eastern Provinces, and symbolic reparations including the Declaration of Peace on 4<sup>th</sup> February 2015. While welcoming these, we note that much more is needed if Sri Lanka is to experience genuine peace and reconciliation. We therefore urge the Government of Sri Lanka to immediately initiate much needed reforms in 2016.
2. We call upon the government to fully implement its Resolution 30/1 adopted at the 30<sup>th</sup> Session of the UN Human Rights Council. We emphasize that the solemn commitments made by the government to victims, Sri Lanka's citizenry and the international community constitute the necessary basis on which accountability, reconciliation and human rights in Sri Lanka should be advanced. Any failure to do so in good faith will amount to a betrayal of victims and affected communities, and would drive them to lose hope of receiving any justice.
3. In implementing this Resolution, we wish to highlight the following priority areas for progress in 2016:
  - a. **Legislation on judicial mechanism:** In fulfilment of the government's commitment under Operative Paragraph (OP) 6 of Resolution 30/1, we reiterate that the government must, in 2016, establish a Special Court with an independent Special Counsel's Office exercising prosecutorial and investigative functions. The Court should comprise Trial and Appeals Chambers, an Office for Victim Support and Protection, an Office for the Accused and a competent registry. The Court must also have an effective outreach division. Most critically, the legislation must provide for the participation of foreign judges, defence lawyers, prosecutors and investigators in the work of the Special Court. This participation is necessitated by the lack of public confidence in the regular criminal justice system and the need to infuse the Court with the core competencies necessary to try complex cases involving systematic crimes.
  - b. **Legislation on international crimes:** We also reiterate the importance of new legislation enabling prosecutions of past atrocities as war crimes and crimes against humanity, in terms of Article 13(6) of the Constitution. In keeping with OP 7, such legislation must incorporate modes of liability with respect to international crimes such as command responsibility and joint and co-perpetration.
  - c. **Government proposals on transitional justice:** Besides establishing a Special Court along the lines described above, the government must also honour its commitments in terms of OP 4 and OP 5 to establish an Office for Missing Persons (OMP) to trace the fate of the disappeared, a Commission for Truth, Justice, Reconciliation and Non-Recurrence, and an Office of Reparations. We call upon the government to expedite the establishment of the OMP and ensure that its work includes strong involvement of families of disappeared persons, civil society and international experts.
  - d. **Support from OHCHR:** The government must clarify what forms of support it intends to obtain from OHCHR as envisaged by OP 2, and whether such support includes an OHCHR Office in Sri Lanka.

- e. **National consultation:** The government must ensure that the national consultation on processes of truth-seeking, justice, reparations and guarantees of non-recurrence as envisaged by OP 3 is inclusive and transparent.
- f. **Reparations:** We urge the government to ensure reparations include areas of restitution, compensation, rehabilitation and memorialisation which adhere to international standards and best practices. The government must therefore formulate and publish a comprehensive reparations plan that will be implemented by the new Office of Reparations.
- g. **Security sector reforms:** As envisaged by OP 8, the government must launch comprehensive security sector reforms including the development of policy guidelines on the retention and recruitment of military personnel implicated in serious crimes involving human rights and IHL violations. The government must accordingly undertake to vet all personnel prior to their deployment in overseas peacekeeping missions and ensure that no person suspected of human rights or IHL violations is deployed.
- h. **Victim and Witness Protection:** The government must revise the Assistance to and Protection of Victims of Crime and Witnesses Act of 2015 to bring it in line with international standards as envisaged by OP 9. Such revisions must include the establishment of an effective witness protection programme outside the control and purview of the regular law enforcement apparatus. In particular, the Act must be revised to ensure that the Authority tasked with implementing the Act is independent and not controlled by state functionaries. A witness protection programme must be capable of providing protection to all victims and witnesses including those involved in cases against the police.
- i. **Land and displacement:** As envisaged by OP 10, the government must release all remaining private lands currently occupied by the military. We are particularly disturbed by the continuing military occupation of private land, particularly in the Vallikamam area of the Northern Province and in Sampur in the Eastern Province. A significant number of persons from the Northern and Eastern Provinces continue to be displaced. One of the major causes of such continued displacement is the government's failure to release lands occupied by the military. We also note with concern that although 25 years have passed, the government has not taken adequate steps to facilitate the voluntary return of Northern Muslims forcibly expelled in 1990. We call upon the government to formulate and adopt a National Resettlement Policy that adequately addresses these concerns, and to incorporate the existing National Involuntary Resettlement Policy into law.
- j. **Impunity:** As envisaged by OP 11, we call upon the government to investigate and prosecute perpetrators of attacks on journalists, human rights defenders, members of religious minority groups, and religious places of worship.
- k. **Security legislation:** As envisaged by OP 12, the government must fulfil its commitment to review and repeal the Public Security Ordinance of 1947 and the Prevention of Terrorism Act of 1979 and replace these laws with anti-terrorism legislation that comply with international best practices.
- l. **Enforced disappearances:** We note the thousands of victims of disappearances who continue to go before numerous state initiatives in search of their loved ones. The establishment of the promised OMP should be expedited to address these concerns. We urge the government to ratify the International Convention for the Protection of All Persons from Enforced Disappearance and criminalise enforced disappearances under domestic law.

4. We note with concern the continued harassment of civilians in the Northern and Eastern Provinces by military intelligence officials and the Criminal Investigation Department of the Police. We are particularly disturbed by reports that former combatants and others who underwent so-called rehabilitation under the PTA regulations were harassed during 2015. We call upon the government to end such harassment, dismantle illegal and unconstitutional rehabilitation programmes and release all remaining political prisoners from custody.
5. We note with concern the longstanding issue of sexual violence and gender-based violence in Sri Lanka, and call upon the government to formulate a comprehensive strategy in 2016 to prevent future violence and to punish perpetrators. We call upon the government to fulfil its commitment contained in OP 17 to issue instructions clearly to all branches of the security forces that violations of human rights and IHL are prohibited and that those responsible will be investigated and punished. While welcoming the recent rape convictions in the High Courts of Jaffna and Nuwara Eliya, we note the significant length of time taken to dispose these cases. We accordingly call upon the government to establish a special mechanism in 2016 to expedite cases of sexual violence against women and children.
6. We also note with concern continued violations of torture, evictions and surveillance of victims and community groups across Sri Lanka and the need for authorities to ensure steps are taken to prevent such practices from occurring.
7. We note the need for confidence building measures, including what has been listed above. The release of political prisoners and the reform of security legislation are key areas that can provide confidence with respect to the government's sincerity towards genuine reconciliation.
8. We reaffirm the importance of transparent processes and the availability of and access to information. We accordingly welcome the government's decision to publish a draft Right to Information law, and call upon the government to enact this law in 2016 without further delay.
9. We welcome the announcement that Parliament will sit as a Constitutional Committee on 9<sup>th</sup> January 2016 with a view to formulating a new Sri Lankan Constitution. We call upon the government to ensure a comprehensive consultative process whereby the public's views on the contents of a new Constitution are obtained and incorporated into the final version to be tabled for debate in Parliament. We hereby call upon the government and all political representatives to commit to a political and constitutional settlement of the ethnic conflict based on meaningful power sharing.

**Signatures:**

**Individuals**

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6. C. Perera

7. Deshamanya Godfrey Yogarajah
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9. Dr. Paikiasothy Saravanamuttu
10. Emil van der Poorten - Community activist
11. Gayathri Gamage
12. Hans Billimoria
13. Kusal Perera – Journalist
14. Lesley Sirimane
15. Luwie Ganeshathasan
16. Mahendran Thiruvarangan
17. Mario Gomez
18. Marisa de Silva
19. P.M. Mujeebur Rahman – Journalist, Mannar
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25. P. Selvaratnam
26. Rani Perera
27. Rev. Fr. Nandana Manatunga
28. Rev. Sr. Noel Christine Fernando
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37. Tanuja Thurairajah
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**Organizations**

40. Alliance Development Trust
41. Centre for Policy Alternatives (CPA)
42. INFORM Human Rights Documentation Centre
43. International Centre for Ethnic Studies (ICES)
44. International Movement Against All Forms of Discrimination and Racism (IMADR) Asia
45. Rights Now Collective for Democracy
46. South Asia Centre for Legal Studies (SACLS)
47. The Grassrooted Trust