

46th Session of the Human Rights Council **Promoting reconciliation, accountability and human rights in Sri Lanka**

Suggested Amendments for Canada from the International Tamil Refugee Advocacy Network (I-TRAN) and the Tamil Rights Group (TRG)

Guided by purposes and principles of the Charter of the United Nations, reaffirming the Universal Declaration of Human Rights and recalling the International Covenants on Human Rights and other relevant instruments,

Recalling Human Rights Council resolutions 19/2, 22/1 25/1, 30/1, 34/1 and 40/1 on promoting reconciliation, accountability and human rights in Sri Lanka,

~~*Reaffirming its commitment to the sovereignty, independence, unity and territorial integrity of Sri Lanka,*~~
Acknowledging that the sovereignty, independence, unity and territorial integrity of Sri Lanka should be decided by the peoples of Sri Lanka,

~~*Reaffirming also*~~ that it is the primary responsibility of each State respect, to promote and fulfill human rights as well as to ensure the full enjoyment of all human rights and fundamental freedoms of its entire population,

Expressing concern about the findings from the Office of the High Commissioner for Human Rights that suggest that Sri Lanka has not sufficiently respected, promoted and fulfilled the human rights of the Tamil population in Sri Lanka,

Expressing concern also that the military remains in occupation in the north and east of Sri Lanka, long after the end of the state of emergency in 2009,

Deploring the acts of terrorism which occurred in Sri Lanka in April 2019 leading to high numbers of injuries and deaths,

Deploring also any counter-terrorism measures which do not respect internationally recognized human rights and due process rights,

~~*Acknowledging the holding of free and transparent democratic elections in November 2019 and August 2020,*~~ *Stressing that democratically elected governments have obligations to protect the rights of minority groups, as well as those of the majority,*

Urging the avoidance of ethno-nationalist and divisive rhetoric among politicians and political candidates,

~~*Taking note of the passage and operationalization of the twentieth amendment to the Constitution of Sri Lanka while stressing the importance of democratic governance and independent oversight of key institutions, and also encouraging the Government to respect local governance including holding of elections for provincial councils, and ensure that all provincial councils are able to operate effectively, in accordance with the thirteenth amendment to the Constitution of Sri Lanka,*~~ *Expressing concern regarding the passage and operationalization of the twentieth amendment to the Constitution of Sri Lanka, which*

enhances the executive powers of the President, and which may effectively render the thirteenth amendment to the Constitution of Sri Lanka ineffective,

Recalling the importance of the thirteenth amendment to the Constitution of Sri Lanka, which stresses the importance of democratic governance and independent oversight of key institutions, and also provides for the respect for local governance,

~~*Reaffirming* that all Sri Lankans are entitled to the full enjoyment of their human rights without distinction of any kind such as religion, belief or ethnic origin, in a peaceful and unified land,~~

~~*Acknowledging* the progress made by the Government of Sri Lanka in rebuilding infrastructure, demining, land return, resettling internally displaced persons and improving livelihoods, and encouraging further efforts in these areas,~~ *Expressing concern* at the continued confiscations of Tamil lands, the destruction of Hindu temples then replaced by Buddhist monuments, the desecration of Tamil war memorials and cemeteries, and the continuing high numbers of internally displaced persons in Sri Lanka,

~~*Welcoming* the continued commitment by the Government of Sri Lanka to remain engaged with and seek the assistance of the United Nations and its agencies, including human rights mandates and mechanisms, in capacity building and technical assistance,~~ *Expressing concern also* at the continued failure of the Sri Lankan government to genuinely carry out investigations of alleged war criminals and criminals against humanity, and to cooperate with and implement the recommendations of UN human rights bodies,

Further expressing concern at the appointment of alleged war criminals and criminals against humanity to key administrative and diplomatic positions within the Sri Lankan government,

~~*Reaffirming* also that measures taken to combat terrorism must comply with States' obligations under international law, in particular international human rights law, international refugee law and international humanitarian law,~~

~~*Emphasizing* the importance of a comprehensive approach to dealing with the past incorporating the full range of judicial and non-judicial measures, in order to ensure accountability, serve justice, provide remedies to victims, avoid recurrence of violations of human rights and promote healing and reconciliation,~~ *Acknowledging* that the continued lack of domestic accountability measures has contributed to diminished confidence among victims, and emphasizing the need for a comprehensive approach for reconciliation, reparations, and transitional justice in which the victims have confidence, have a role, and are supported,

Recognizing that mechanisms to redress past abuses and violations work best when they are independent, impartial and transparent; and use 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 people from marginalized groups,

~~*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,~~

Noting with appreciation the work of the Office of the High Commissioner for Human Rights towards the promotion and protection of human rights and truth, justice, reconciliation and accountability in Sri Lanka,

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1. *Welcomes* the oral update presented by the United Nations High Commissioner for Human Rights to the Human Rights Council at its forty-third session and the report of Office of the High Commission for Human Rights at its forty-sixth session;
 2. ~~*Also welcomes* the positive engagement between the Government of Sri Lanka and the Office of the High Commissioner for Human Rights between 2015 and 2019, urges the continuation of such engagement and calls on Sri Lanka to implement the recommendations of the Office of the High Commissioner for Human Rights;~~ *Regrets* the persistent lack of accountability through domestic mechanisms in Sri Lanka and regrets that the domestic Commission of Inquiry announced on 22 January 2021 lacks independence and does not include a mandate to pursue accountability for past gross violations of human rights, or for serious violations of international humanitarian law [moved up from below];
 3. *Expresses* serious concern over emerging trends over the past year, which represent clear early warning signs of a deteriorating human rights situation in Sri Lanka, including the accelerating militarization of civilian government functions, 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, surveillance and intimidation of civil society and shrinking democratic space, arbitrary detentions, allegations of 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 [moved up from below];
 4. ~~*Acknowledges* the progress achieved by the Office on Missing Persons and the Office for Reparations and stresses the importance of maintaining support to these institutions, safeguarding their independent and effective functioning, providing both offices with sufficient resources and technical means to effectively fulfil their mandates, allowing them to proceed with interim relief measures for affected vulnerable families, with a gender focus, and resolving the many cases of enforced disappearances so that families of the disappeared can know their fate and whereabouts;~~ *Acknowledges* the progress achieved by the Office on Missing Persons and the Office for Reparations, but regrets their inability to investigate serious crimes and stresses the importance of safeguarding their independent and effective functioning, providing both offices with sufficient resources and technical means to effectively fulfil their mandates, allowing them to proceed with interim relief measures for affected vulnerable families, with a gender focus, and resolving the many cases of enforced disappearances so that families of the disappeared can know their fate and whereabouts;
 5. *Appeals* to all States, international agencies and other donors to step up support for victims, including support for refugees, displaced persons and host communities, possibly through the establishment of a trust fund to address their needs, including the needs of those who have been victims of sexual violence, as well as child victims and witnesses [moved up from below];
 6. *Emphasizes* the need to ensure accountability for crimes involving violations of international law, in particular of international humanitarian law and international human rights law, some of which may constitute war crimes or crimes against humanity, committed in Sri Lanka since July 1983 through appropriate, fair and independent investigations and prosecutions at the domestic or international

level, and stresses the need to pursue practical steps towards this goal to ensure justice for all victims and to contribute to the prevention of future violations;

7. *Stresses* the need for any political process aimed at resolving the crisis in Sri Lanka to ensure credible and comprehensive accountability for violations of international humanitarian law and human rights violations and abuses committed in the country in order to bring about reconciliation and sustainable peace;
8. *Decides* to establish an international, impartial and independent mechanism to assist in the investigation and prosecution of persons responsible for the most serious international crimes and violations of international law committed in Sri Lanka since 1983, under the auspices of the United Nations, to collect, consolidate, preserve and analyze evidence of violations of international humanitarian law and human rights violations and abuses and to prepare files in order to facilitate and expedite fair and independent criminal proceedings, in accordance with international law standards, in national, regional or international courts or tribunals that have or may in the future have jurisdiction over these crimes, in accordance with international law;
9. *Requests* the Secretary-General, in this regard, to develop, within 20 working days of the adoption of the present resolution, the terms of reference of the International, Impartial and Independent Mechanism, with the support of the Office of the United Nations High Commissioner for Human Rights, and also requests that the Secretary-General undertake, without delay, the steps, measures and arrangements necessary for the speedy establishment and full functioning of the Mechanism, including recruiting or allocating impartial and experienced staff with relevant skills and expertise in accordance with the terms of reference;
10. *Calls upon* all States, including the Government of Sri Lanka, as well as civil society to cooperate fully with the International, Impartial and Independent Mechanism to effectively fulfil its mandate and, in particular, to provide it with any information and documentation they may possess or come to possess, as well as any other forms of assistance pertaining to its mandate;
11. *Requests* the United Nations system as a whole to cooperate fully with the International, Impartial and Independent Mechanism and to respond promptly to any request, including access to all information and documentation;
12. ~~*Stresses* the importance of a comprehensive accountability process for all violations and abuses of human rights committed in Sri Lanka, including those by the Liberation Tigers of Tamil Eelam, as highlighted in the OISL report of September 2015;~~
13. ~~*Notes* the persistent lack of accountability through domestic mechanisms and regrets that the domestic Commission of Inquiry announced on 22 January 2021 lacks independence and does not include a mandate to pursue accountability for past gross violations of human rights, or for serious violations of international humanitarian law,~~
14. ~~*Recognises* the importance of preserving and analysing evidence relating to violations and abuses of human rights in Sri Lanka with a view to advancing accountability and decides to strengthen the capacity of the Office of the High Commissioner for Human Rights to consolidate, analyse and preserve information and evidence and develop possible strategies for future accountability processes for gross violations of human rights or serious violations of international humanitarian law, to advocate for victims and survivors, and to support relevant judicial proceedings in Member States~~

with competent jurisdiction; *Calls on all States to adopt the recommendations of the Office of the High Commissioner for Human Rights, including the recommendation that States with competent jurisdiction should consider initiating relevant judicial proceedings;*

15. ~~Expresses further concern that the COVID-19 pandemic has impacted on freedom of religion or belief and exacerbated the prevailing marginalisation and discrimination suffered by the Muslim community, and that the Government of Sri Lanka's decision to mandate cremations for all those deceased from COVID-19 has 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;~~ *Expresses concern that the COVID-19 pandemic has impacted on freedom of religion or belief and exacerbated the prevailing marginalisation and discrimination suffered by minority groups in Sri Lanka, including the Tamil and Muslim communities, and that the Government of Sri Lanka's decision to mandate cremations for all those deceased from COVID-19 has prevented these communities from practicing their own burial rites, and has disproportionately affected minorities and exacerbated distress and tensions;*
16. ~~*Calls upon the Government of Sri Lanka to ensure the prompt, thorough and impartial investigation and, if warranted, prosecution of all allegations of gross human rights violations and serious violations of international humanitarian law including for longstanding emblematic cases;*~~
17. ~~*Also calls*~~ upon the Government of Sri Lanka to ensure the effective and independent functioning of the National Human Rights Commission, the Office on Missing Persons and the Office for Reparations;
18. *Further calls* upon the Government of Sri Lanka to protect civil society actors, to investigate any attacks and ensure a safe and enabling environment in which civil society can operate free from hindrance, insecurity and reprisals;
19. *Requests* the Government of Sri Lanka review the Prevention of Terrorism Act, and ensure that any legislation to combat terrorism complies with its international human rights and humanitarian law obligations;
20. *Urges* the Government of Sri Lanka to foster religious freedom 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;
21. *Encourages* the Government of Sri Lanka to continue to cooperate with special procedures mandate holders, including responding formally to outstanding requests;
22. *Also 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;
23. *Requests* the Office of the High Commissioner to enhance its monitoring and reporting on the human rights situation in Sri Lanka, including progress on reconciliation and accountability, and to present a written update to the Human Rights Council at its forty-ninth session, and a comprehensive report including further options for advancing accountability at its fifty-first session, both to be discussed in interactive dialogues.