



## **EU Parliament: Call to reject the EU Commission's proposal to restore GSP+ to Sri Lanka**

**3<sup>rd</sup> February 2017**

Dear Colleagues,

We are deeply concerned by the EU Commission's recent proposal<sup>1</sup> (11 January 2017) to restore GSP+ status to Sri Lanka, following its suspension in August 2010 in response to the deteriorating human rights situation.

Our objection to the Commission's proposal is based on three grounds:

- i) It is based on a flawed factual analysis of Sri Lanka's implementation of the relevant Conventions - and in particular the Convention Against Torture. The EU Commission's findings on torture are not aligned with the findings of two recent UN reports, the Concluding Observations of the Committee Against Torture (UNCAT) (7 Dec 2016)<sup>2</sup> and the Report of the UN Special Rapporteur on Torture (22 December 2016)<sup>3</sup>;
- ii) It violates the EU Commission's own internal criteria for the restoration of GSP+;
- iii) It is based on a flawed set of assumptions about how effectively to support the accountability and reconciliation process in Sri Lanka mandated by UNHRC resolution 30/1, and indeed, may seriously undermine such support.

**We urge members of the EU Parliament to review the factual basis of the EU Commission's case for restoration of GSP+ and reject the proposal pending progress in the implementation of the respective recommendations of the UN Special Rapporteur on Torture and the UNCAT.** We suggest, at a minimum, that no ratification decision proceed until the UNCAT has had the opportunity to review a further implementation report (due on 7 December 2017) that has been requested from the government of Sri Lanka as part of the Committee's follow up recommendations at the 59<sup>th</sup> UNCAT session.

**As an interim measure, we urge the members of the Committee on International Trade (INTA) to ensure that the deadline for ratification of the Commission's proposal is extended from two to four months** – thereby allowing full consideration of the UN High Commissioner for Human Rights' forthcoming report on Resolution 30/1<sup>4</sup> and maximising the leverage required to secure a robust follow up resolution at the upcoming UN Human Rights Council Session in March 2017.

**In the eventuality that it ratifies the proposal from the Commission, we call on members of the Parliament and the relevant committees to advocate for the strongest possible processes for monitoring and enforcing compliance.** To that end, we have compiled at the bottom of this letter a list of ten concrete recommendations that the government of Sri Lanka should immediately undertake to

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<sup>1</sup> 'Commission Proposes Enhanced Market Access for Sri Lanka as Reform Incentive', 11 January 2017 (<http://bit.ly/2jZf6os>)

<sup>2</sup> 'Concluding Observations on the fifth periodic report of Sri Lanka', UNCAT, 7 December 2016 (<http://bit.ly/2ip6x1F>)

<sup>3</sup> 'Report of the Special Rapporteur on Torture following his mission to Sri Lanka', 22 December 2016 (<http://bit.ly/2kw4Jbu>)

<sup>4</sup> 'Promoting reconciliation, accountability and human rights in Sri Lanka', 29 September 2015 (Available at: <http://bit.ly/2kw6jNV>)

demonstrate its commitment to implementation of the Convention Against Torture. We suggest that the EU Parliament adopt this list as a supplementary benchmark for progress, reviewable at regular intervals, and upon whose implementation Sri Lanka's GSP+ status is made conditional.

**i) Flawed factual analysis of Sri Lanka's implementation of the Conventions**

We note with concern a number of factual inaccuracies and omissions within the EU Commission 'Report on assessment of the application for GSP+ by Sri Lanka'<sup>5</sup> which, taken together, seriously undermine its conclusion that there are "no serious failures" to implement the relevant Conventions.

With respect to the Convention Against Torture alone, we wish to draw your attention to the following "significant elements of progress" which we believe the report misidentifies:

- *"The Commanders of the Army, Navy and the Air Force have issued instructions to all service personnel in March and April 2016, that strict action will be taken against any human rights violations."* No information has been made publicly available by the government of Sri Lanka to corroborate its claim that any such instructions have been issued, nor any details about their content or scope.
- *"The Government has made available a complete list of detainees and those released from detention to family members."* No such list has ever been made available – either publicly or to family members. In his September 2015 report the UN High Commissioner confirmed the government's acknowledgement that 258 people were being held under the PTA but no further information about the identities of those held has been disclosed. Assuming this statistic is the "list" to which the Commission report refers, ongoing patterns of arbitrary arrest and the continued use of secret detention sites in any case mean that it is highly unlikely that it is "complete".<sup>6</sup> Moreover a court in Mullaitivu has repeatedly ordered the 68 Division of the Sri Lankan Army to produce a list of detainees taken into their custody on 18 May 2009 and this order has not been obeyed.<sup>7</sup>
- *"[The] Government has committed to replace the PTA with a new Bill on counter-terrorism, to be presented to the Parliament in January 2017"*. As of today, no draft legislation has been made available for scrutiny. An earlier draft framework, leaked in November 2016, was widely criticised by civil society and legal experts as being even more repressive than its predecessor.<sup>8</sup>
- *"...in October 2015, Sri Lanka co-sponsored UNHRC Resolution 30/1 and steps are being taken to implement it, for example, through the adoption in August 2015 of the Office of Missing Persons [OMP] Bill"*. Research by the Sri Lanka Campaign has shown that the overwhelming majority of the 25 specific commitments made in Resolution 30/1 have not yet been implemented. Despite the passage of the OMP Bill, the office is yet to be established in the ensuing six months. Enabling legislation for the other mechanisms has not been passed, and on the key commitment to establish a hybrid court there has been visible backsliding by the government which now says there will be no foreign or commonwealth judges as promised in Resolution 30/1.
- *"...the establishment in January 2016 of a Victim and Witness Protection Authority"*. The many serious shortcomings of this legislation are well-documented<sup>9</sup> and continue to prevent its proper

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<sup>5</sup> 'Report on assessment of the application for GSP+ by Sri Lanka', 11 January 2017 (<http://bit.ly/2jAtmYx>)

<sup>6</sup> Para 12, 'Concluding Observations on the fifth periodic report of Sri Lanka', UNCAT (<http://bit.ly/2ip6xIF>)

<sup>7</sup> <http://www.jdslanka.org/index.php/news-features/human-rights/592-sri-lanka-admi>

<sup>8</sup> In particular, with respect to the exclusionary rule on confessions (Article 15)

<sup>9</sup> 'Victim and Witness Protection: The Need for Further Reform', SACLs (<http://bit.ly/2kXdpZr>)

functioning. These were reiterated in the recent report of the official Consultation Task Force which found “that the institutional and operational set up of [the two witness protection bodies established by the Act] are particularly unsuited to protecting citizens in those cases where public officials or agencies of the state are the alleged perpetrators of crime”<sup>10</sup>. There has been no indication from the government to date of their intention to review or amend the current law in response to these issues.

We further note that:

- The EU Commission report contains no mention of the inclusion of Mr Sisira Mendis as part of Sri Lanka’s delegation to the 59<sup>th</sup> UNCAT session, an individual alleged to have been in a position of command responsibility when systematic torture and sexual violence occurred in sites he controlled as Deputy Inspector General of the Criminal Investigation Department. It is concerning that the inclusion of an alleged perpetrator of torture in a government’s delegation to a Convention monitoring body (let alone the failure to prosecute such an individual) be ignored in the determination of whether there has been “serious failure” of implementation.
- The EU Commission report identifies “*continued and consistent* [emphasis added] allegations of widespread use of torture”. It is unclear to us why these, in the view of the Commission, constitute mere “salient shortcomings” and not “serious failures” in implementation of the Convention.

**ii) Violation of the EU’s own internal criteria for the restoration of GSP+**

Prior to Sri Lanka’s suspension, in June 2010 the EU Commission wrote to the government of Sri Lanka setting out 15 conditions that would need to be met in order for GSP+ to be maintained. The list, available online<sup>11</sup>, provides a clear set of policy benchmarks which dovetail with Sri Lanka’s obligations under the relevant Conventions. As the Sri Lanka Campaign has documented, many of these conditions remain unfulfilled.

On 18 January (presumably in response to this point) the EEAS released a press statement “reiterat[ing] that the ratification and implementation of [the conventions] are the only criteria on which the Government of Sri Lanka’s application to rejoin GSP+ is assessed”. This begs the question as to what the original purpose of the 15 point criteria was, and their current status with respect to monitoring implementation and compliance. If a formal decision was made to drop these criteria, an explanation should be made available.

**iii) Flawed assumptions about how to effectively support the accountability and reconciliation process in Sri Lanka mandated by UNHRC resolution 30/1**

Citing Sri Lanka’s commitments under UN resolution 30/1 the EU Commission assessment report stated that “the monitoring and co-operation under the GSP+, reinforced by the EU-Sri Lanka institutional set-up including a Working Group on Governance, Rule of Law and Human Rights, will provide further incentives to Sri Lanka to resolutely continue with reform.” A statement by Trade Commissioner Malmström further stated that, “the GSP+ dialogue and monitoring features will support this reform process”.

While we welcome the EU’s continued engagement on Sri Lanka, we fear that the power of GSP+ status as an incentive for reform would be mostly lost were it to be restored. Given the extremely limited progress on transitional justice to date in Sri Lanka<sup>12</sup>, and the importance of a robust follow up resolution

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<sup>10</sup> ‘Final Report’, CTF (<http://bit.ly/2kl6F7V>)

<sup>11</sup> <https://www.srilankacampaign.org/wp-content/uploads/2016/11/EU-GSP-15-point-criteria-together.jpg>

<sup>12</sup> <https://www.srilankacampaign.org/take-action/keep-the-promise/>

at the Human Rights Council in March 2017, it is essential that the EU retains all the political and economic leverage at its disposal. That includes, above all, retaining the incentive of GSP+.

**Recommendations to be used as benchmarks for progress:**

In the eventuality that the Commission's proposal is ratified by the Parliament, we propose the adoption of the following recommendations to the government – made by the CAT in their recent concluding observations – as benchmarks for further monitoring by the EU of Sri Lanka's progress in implementing the Convention Against Torture.

1. "Provide detailed information on Mr. Mendis' role and responsibilities with regard to allegations of torture while he was Deputy Inspector General of the Criminal Investigation Department." (p. 4)
2. "...establish an independent, effective, confidential and accessible complaints mechanism for victims of torture..." (p. 5)
3. "...revise the Assistance to and Protection of Victims of Crimes and Witnesses Act..." (p.5)
4. "...share with [the CAT] information regarding the investigation of military staff deployed in MINUSTAH on charges of child abuse ... as well as the number of indictments, prosecutions, if any, and penalties imposed" (p. 12)
5. "...abolish the current system of "rehabilitation" under anti-terrorism regulations" (p. 8)
6. "...ensur[e] that all cases of enforced disappearance and torture, including those that took place in Navy Camp in Trincomalee, are thoroughly, promptly and effectively investigated by an independent mechanism..." (p. 7)
7. "...repeal the PTA and abolish the regime of administrative detention, which confines individuals outside the criminal justice system and makes them vulnerable to abuse." (p. 7)
8. "...immediately embark upon an institutional reform of the security sector and develop a vetting process to remove [personnel] involved in human rights violations..." (p. 4)
9. "...establish an independent body tasked with investigating complaints against law enforcement officers that is independent of the police hierarchy." (p. 6)
10. "Install video surveillance in all places of custody where detainees may be present [except in cases where the right to privacy might be violated]." (p. 3)

For any further information about any of the issues raised in this letter, please do not hesitate to get in touch at [director@srilankacampaign.org](mailto:director@srilankacampaign.org).

Yours sincerely,

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