



**The Permanent Mission of Sri Lanka to the
United Nations and Other International Organizations
in Geneva**

**Human Rights Council
46th Regular Session**

Agenda Item 2

**Interactive Dialogue on the OHCHR Report 'Promoting
reconciliation, accountability and human rights in Sri Lanka'
(A/HRC/46/20)**

Statement by

**Hon. Dinesh Gunawardena
Foreign Minister of Sri Lanka**

(Geneva, 24 February 2021)



Statement by Hon. Foreign Minister of Sri Lanka
Agenda Item 2: Interactive Dialogue on the OHCHR Report 'Promoting reconciliation, accountability and human rights in Sri Lanka' (A/HRC/46/20)
24th February 2021

Madam President,
Madam High Commissioner,
Excellencies,
Ladies and gentlemen,

Nearly one year ago, I addressed this Council and informed you the decision of the Government of Sri Lanka to withdraw from the co-sponsorship of resolution 40/1 (which was built on resolutions 30/1 and 34/1) Resolution 30/1 carried a host of commitments that were not deliverable and were not in conformity with the Constitution of Sri Lanka. This led to the compromising of national security to a point of reviving terrorist attacks on Easter Sunday 2019 causing the deaths of hundreds. The rejection of this resolution by the peoples of Sri Lanka was clearly manifested in the mandate received by His Excellency President Gotabaya Rajapaksa in November 2019.

As you may recall, at the same time of making this announcement, I also outlined before this Council a clear plan which the Government intended to pursue to achieve sustainable peace through an inclusive, domestically designed and executed reconciliation and accountability process. We also reiterated our commitment to remaining engaged with the UN system including this Council and its mechanisms.

As I speak to you today, I am pleased to inform that, during the 12 months that have passed, the Government has made considerable progress in delivering on these voluntary commitments given to the Council. This progress was achieved even as the country was fighting a global pandemic and its devastating effects throughout the past year, and amidst preoccupations relating to conducting a free and fair general election in 2020.

Let me present to you some highlights of the progress we have achieved to date in keeping with Sri Lanka's voluntary commitment made to this Council last year:

- On 22 January 2021, H.E. the President appointed a three-member Commission of Inquiry (COI) headed by a justice of the Supreme Court to investigate, inquire into and report or take necessary actions on findings of preceding Commissions or Committees appointed to investigate into human rights violations, serious violations of International Humanitarian Law (IHL) and other such offences.

- The Office on Missing Persons (OMP) and the Office for Reparations continue to operate and exercise their mandates and financial provisions have been allocated for that purpose from the 2021 Budget.
- The Office for National Unity and Reconciliation (ONUR) continues to execute its mandate which includes restorative justice and reconciliation, and financial provisions have already been made for this purpose.
- The Human Rights Commission of Sri Lanka (HRCSL) has been reconstituted in accordance with the procedure mandated by the Constitution and financial provisions have been allocated to implement its statutory mandate.
- Of the lands previously held by the security forces, 89.26% of State lands and 92.22% of private lands have already been released to the civilian owners by 31 December 2019. 98.7% of the land in the North and East which had been contaminated due to landmines and Unexploded Explosive Ordnances (UXOs) placed by the LTTE without records in civilian areas, have already been demined, thereby facilitating the process of land return and resettlement.
- The Government remains committed on revisiting the provisions of the PTA having due regard to the progress made in the area of development and reconciliation. The Attorney General continues to review cases pending before the High Courts to ensure the expeditious disposal of cases involving LTTE cadres in order to bring a meaningful end to the said cases.
- A high level inter-ministerial committee led by the Prime Minister has been appointed to steer the SDG implementation process by mobilizing the various government institutions as well as by promoting strong national ownership towards SDGs.
- Despite Covid-19 related challenges, increased financial allocations have been made towards socio-economic development particularly in the Northern and Eastern provinces. As compared to the financial years 2019 and 2020, budgetary allocations to both Northern and Eastern Provincial Councils have been significantly increased in 2021. Additional financial allocations have been made to upgrade rural infrastructure, road networks, education and health facilities and systems, irrigation networks, water supply and housing through special projects to be implemented in the Northern and Eastern provinces through the line ministries.
- The GoSL is confident that these initiatives and actions would contribute to Sri Lanka's achievements of SDGs particularly towards ending poverty and vulnerability, ensuring food security and addressing malnutrition, improving access to and quality of education and health services, creating sustainable livelihoods, and increasing access to housing infrastructure and public services for all Sri Lankan people without discrimination.

In addition to these measures at the national level, we have also kept true to our pledge to remain engaged with the Council's mechanisms. Accordingly, in the past year, we have expressed agreement to receive visits to Sri Lanka by two Special Procedure Mandate Holders of this Council, namely the Special Rapporteur on the Right to Education and the Special Rapporteur on Contemporary forms of slavery, including its causes and consequences. We are currently in dialogue with these mandates to finalise dates of their visits irrespective of the ongoing pandemic situation.

We have kept this Council updated of these developments regularly in our interventions. We have also shared detailed information on this progress with the Office of the High Commissioner on three occasions in December 2020 and January 2021.¹

Madam President,

The OHCHR Report(A/HRC/46/20) titled 'Promoting reconciliation, accountability and human rights in Sri Lanka' which is presented to this Council today, emanates from the Resolution 30/1, 34/1 and 40/1, from which the Government of Sri Lanka announced its withdrawal of co-sponsorship, at the 43rd Session of this Council last year.

Sri Lanka rejects the High Commissioner's Report which has unjustifiably broadened its scope and mandate further, incorporating many issues of governance and matters that are essentially domestic for any self-respecting, sovereign country. This is in complete violation of Article 2 (7) of the Charter of the UN that states: "Nothing contained in the present Charter shall authorise the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state..."

The trajectory that has emerged with regard to the recommendations and conclusions reflects the preconceived, politicized and prejudicial agenda which certain elements have relentlessly pursued against Sri Lanka. These recommendations are based on ill-founded allegations.

Sri Lanka categorically rejects the conclusions and recommendations in the High Commissioner's Report.

¹The GoSL provided a detailed response to list of questions received from the OHCHR on 28 December 2020. The GoSL engaged in a constructive and substantive online meeting with the OHCHR officials on 7 January 2021. The GoSL provided written comments on the draft Report of the OHCHR(A/HRC/46/20) on 27 February 2021 through a Note Verbale which is available as a Government Communication (A/HR/46/G/16) at <https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session46/Pages/ListReports.aspx>

In addition to the progress made since last March, Sri Lanka has provided written comments² on instances of erroneous information, misconceived and arbitrary assessments in the Report.

Those of you who had the opportunity to read this report would have observed its complete disconnect with the ground situation in Sri Lanka and the speculative and baseless nature of its contents which contravene the fundamental rules and basic principles governing both this Council and the OHCHR, such as the UN Charter, General Assembly Resolutions 60/251 and 48/141 and HRC resolutions 5/1 and 5/2.

I wish to reiterate some of the key points from the written comments which the Government of Sri Lanka has provided to the OHCHR on 27 January 2021:

- The reference made in the Report that the High Commissioner is “*deeply concerned by the trends emerging over the past year*” is unacceptable, particularly in view of the fact that the public health emergency that has prevailed since March 2020 upon the declaration by the WHO of the COVID-19 as a Pandemic and the worldwide lockdown that ensued, has not enabled the High Commissioner to make such an assessment in an independent and objective manner. The majority of the contents of the report are so-called “emerging trends”, namely a presumptive and biased anticipation by the OHCHR of future events. In fact, only two and a half pages of the 17 pages of the report have been dedicated to assess the implementation of resolution 40/1 which was the principal task entrusted on the High Commissioner by that resolution. It is based on these so-called “trends” that a plethora of unjust and intrusive action has been recommended against Sri Lanka in the report. We deplore, in particular, the report’s predictions on “repeated patterns of human rights violations”, “recurrence of ...grave human rights violations” and “potential conflict in the future” in respect of a country and a resilient people who are enjoying a hard-won peace after nearly three decades of conflict. Equally reprehensible is the OHCHR’s prediction that Sri Lanka - a country that had much success with the Millenium Development Goals - will fail to achieve the 2030 Sustainable Development agenda, on account of withdrawal from resolution 30/1.
- As you may note, many of the speculative “trends” referred to in the report are premised on prejudiced opinions of the OHCHR about legitimate action (including administrative decisions) taken by the democratically elected Government of Sri Lanka since November 2019 to execute the mandate received from the people, which do not fall within the scope of either resolution 30/1 or the purview of the OHCHR.

²See Government Communication (A/HR/46/G/16) at <https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session46/Pages/ListReports.aspx>

- For instance, the report raises concerns about the 20th amendment to the Constitution which was enacted with an overwhelming majority by the Sri Lanka Parliament in full compliance with the procedure set out in the Constitution and after judicial review by the highest court of the country. The OHCHR's assertion that the 20th Amendment has fundamentally eroded the independence of key Commissions and institutions is factually incorrect as the judicial oversight provided under the 19th Amendment remains unaffected under the 20th Amendment.
- The GoSL also rejects opinions expressed in the report on "militarization" of civilian Government functions. While maintaining that the appointment of key government officials is entirely a domestic matter, Sri Lanka reiterates that no actively serving military official has been appointed by the Government to permanent civil administrative positions. We believe that denying an eligible person of his/her opportunity to hold a position in the public service merely on the grounds of their past military service, runs contrary to the principles of fairness. We regret the report's apparent tendency to vilify individuals on the sole basis of their military service to the country. For instance, the report highlights that the current Minister of Public Security is a former Navy Admiral, whereas the Minister concerned holds public office not based on his service to the Navy, but by virtue of his election to Parliament through free and fair elections in August 2020 having obtained the highest number of preferential votes from Colombo.
- With regard to the involvement of the military in the national COVID-19 response, Sri Lanka wishes to point out that in view of the need to contain the rapid spread of the virus which caught the world off guard, not only Sri Lanka but most countries in the world have resorted to seeking the help of their military in assisting with containing the transmission of the pandemic and providing necessary relief to the public. Unlike some countries, Sri Lanka does not have compulsory military service or conscription, a principle that we adhered to even at the height of the armed conflict. Sri Lanka's armed forces are an "All-volunteer" force and have played an integral role in the post conflict development and reconstruction in Sri Lanka and made an active and invaluable contribution to de-mining the former conflict areas.
- Sri Lanka categorically rejects the unsubstantiated opinions expressed in the report with regard to "majoritarian and exclusionary rhetoric" and the reference that "public policies that appear to exclusively reflect the perceived interests of the Sinhala Buddhist majority". No provision in Sri Lanka's Constitution, national laws or policies permits discrimination of an individual based on ethnicity or religion in any sphere of public life. On the contrary, Article 12 of the Constitution prohibits discrimination based on race, religion, language, caste, sex, political opinion, place of birth or any such grounds. It is questionable as to how a statement made by the President against "separatism, extremism and terrorism" could be interpreted as being targeted

at peaceful ethnic and religious minorities of Sri Lanka, when the President, in his inauguration speech itself has identified himself to be the President of all Sri Lankans.

- We wish to remind that the current President and Government of Sri Lanka were elected with an overwhelming majority derived from all ethnic and religious communities and geographical regions of the country, and that representatives from the minority communities hold several important positions in the current Government. On certain occasions, the initiatives of the Government have received the constructive support of even the minority representatives from opposition political parties, as demonstrated by the vote on the 20th amendment to the Constitution where 7 opposition MPs representing minority communities voted with the Government in favour of the Amendment.
- Sri Lanka refutes the allegations that have been reproduced in the High Commissioner's report, from the highly contentious Report of the Panel of Experts (PoE) on Accountability and the Report of the OHCHR Investigation on Sri Lanka (OISL), which have been rejected by Sri Lanka for reasons explained to this Council before.³ The contents of the Report which have been drawn from the said disputed reports, are rife with factual inaccuracies that appear to equate atrocities committed by the LTTE, a terrorist organization proscribed internationally, with legitimate action taken by the Government to safeguard the territorial integrity of the country and the right to life of our people.
- The PoE was not referred to in Resolution 40/1 or 30/1 and therefore alluding to it in the present Report clearly takes it beyond the scope and mandate of Resolution 40/1, and in violation of the UN Charter. The PoE Report on Sri Lanka which was commissioned by the UN Secretary General was the culmination of a private consultation that the latter sought for his own advice, and is not the product or request of the UN Human Rights Council, the UN General Assembly or any other UN body. As it has not received the endorsement of the intergovernmental process, it has neither credence nor legitimacy within intergovernmental fora. The PoE's mandate did not extend to fact finding or investigation. This Report has been produced without any direct observations of ground conditions by any of the members of the Panel. In its report, the three-member Panel also makes it clear that the assertions set out therein remain unsubstantiated and require a higher standard of proof. For the above reasons, the GoSL does not extend any credence or legitimacy to the PoE Report and protests reference to it in the Council, and particularly in this instance where it is clearly not mandated by the Council.

³Statements by Hon. Minister Mahinda Samarasinghe, M.P. Special Envoy of H.E. the President of Sri Lanka on Human Rights, at the High Level Segment of the 19th session of the Human Rights Council (HRC) and at the High Level Segment of the 22nd session of the HRC, Statements by Sri Lanka under Agenda Item 2 of the 25th Session of the HRC, Statement by Sri Lanka under Agenda 2 of the 43rd Session of the HRC in February 2020.

- It is further recalled that the PoE though invited by the LLRC to make a representation to the Commission, chose not to present themselves before the Commission for reasons best known to them. It may also be noted that the PoE report was so seriously flawed, that the Human Rights Council at the time had rejected to issue it with a formal number as a UN document.
- As we have consistently maintained, the OISL report constituted a mere subjective narrative of events including “desk-reviewed” information, referring to documents and testimonies of which neither the source nor the credibility could be ascertained. Of unimpeachable value in this regard are the dispatches by Mr. Anton Gash, Military Attaché of the British High Commission in Colombo to the Foreign and Commonwealth Office in London. These constitute evidence which carries the highest degree of conviction and reliability, since:
 - (a) These are observations made contemporaneously i.e. at the time of the events in question
 - (b) These observations have been made by a trained and competent official acting independent of the Government of Sri Lanka.
- It may be noted that this evidence was contradicted, with the greatest difficulty by the Rt. Hon. Lord Michael Naseby, a reputed member of the House of Lords with long experience of Sri Lanka. Even the heavily redacted versions, grudgingly released to Lord Naseby after sustained resistance, presented a true picture of circumstances in Sri Lanka during the closing phases of the military action. This material amply indicates the position of GoSL that the country’s Armed Forces cannot be held responsible for break of any provision of international humanitarian law or human rights law.
- It is inaccurate to state that an effective domestic process of accountability was absent by June 2010 given that the LLRC, which entailed measures to address issues of accountability based on the principles of restorative justice had been established by May 2010. The then President furthermore appointed an Inter- Ministerial Committee to further study and monitor the implementation of LLRC recommendations and to design a National Action Plan on Human Rights, which was later approved by the Cabinet, which embodied the recommendations of the LLRC and other Commissions of Inquiry appointed.
- Sri Lanka disputes the opinion expressed in paragraph 12 that the Paranagama Commission “failed to credibly establish the truth, ensure accountability and provide redress to victims”. It is pertinent to note that the Paranagama Commission was a Commission of Inquiry with a mandate to ‘investigate and report’ and recommend measures for relief and non-recurrence, and not an accountability or redress mechanism. As the report itself admits in paragraph 42, access provided to records of past commissions of inquiry, the latest of which was the Paranagama Commission, has enabled

the Office on Missing Persons to devise a centralized database of cases on missing persons as the basis of its future work. The previous Commissions of Inquiry have gathered a wide range of data through interviews, consultations and complaints lodged which bears testimony to the wide range of data gathered.

- The GoSL refutes the claims in the OHCHR report referring to an alleged “pattern of intensified surveillance and harassment of CSOs, human rights defenders and victims” and invites all parties alleged to have faced such harassment including the 40 organisations that have reportedly approached the OHCHR, to submit their complaints to the different national mechanisms that have the competence and jurisdiction to receive and investigate such claims. These include the law enforcement authorities as well as independent institutions such as the Human Rights Commission of Sri Lanka or the National Police Commission. The Government is committed to protect and promote freedom of expression and civil society space, and ensure that complaints received on alleged attacks against journalists, human rights defenders and civil society are investigated and prosecuted.
- We categorically reject the reference to so called “credible allegations” received by the OHCHR “through well-known human rights organizations” on “abductions, torture and sexual violence by Sri Lankan security forces” including in the past year. The Government is firm in its commitment towards ensuring zero tolerance for torture and sexual violence, and has been repeatedly inviting relevant parties to share evidence that would be of help to conduct investigations into these allegations of sexual torture with the independent Human Rights Commission of Sri Lanka for examination, respecting the confidentiality of sources. We recall that similar baseless allegations had been made in the OHCHR report submitted to HRC40, and that the then Chairperson of the HRCSL herself informed the Council that the Commission had not received complaints or information on such cases.
- We reject the references made in the Report with reference to “eroding the independence of the judiciary”. The recorded history of Sri Lanka portrays that a comprehensive system of dispute resolution existed and the current system introduced by the British in 1801 continues to play a robust role in the administration of justice. In this context, the judicial system that has prevailed in Sri Lanka over the years has proved to be independent and several other jurisdictions including the UN tribunals and the International Court of Justice have invited and drawn from the expertise of Sri Lankan judges and prosecutors in complementing and strengthening the respective judicial systems. It may be noted that Fiji and Seychelles are amongst such countries that have sought the expertise of Sri Lankan judges.
- We categorically reject the High Commissioner’s proposal “to advance accountability options at the international level”, including, in particular, her

proposal to take steps towards referring Sri Lanka to the International Criminal Court. We regret that that OHCHR has submitted itself to the preconceived, politicized and prejudicial agenda which certain elements have relentlessly pursued to trigger such disproportionate and unwarranted measures against Sri Lanka, and caution that any options at the international level would tantamount to an unwarranted interference in the internal affairs of a sovereign State in contravention of the UN Charter.

- We remind that calling for targeted sanctions and travel bans against individuals, in the absence of credible findings by a competent court/body on violations committed by them, itself constitutes a violation of their rights and contravention of the principles of natural justice, and is nothing less than a political agenda aimed at destabilizing a sovereign nation.
- The call for asset freezes, travel bans, references to the ICC and the exercise of universal jurisdiction by individual States, based on evidence that up to date has been denied access to and retained by the High Commissioner's Office with some of it unreleased for thirty years, particularly in relation to a country like Sri Lanka which has consistently and constructively engaged with the UN and its mechanisms, points to a distinct and eminent danger which the international community as a whole need to take note of. Such unilateral actions by certain countries are unacceptable and a violation of the principles of natural justice.
- Sri Lanka also condemns the recommendation in the report to keep Sri Lanka's peacekeeping operations under review. Such measures constitute unreasonable and indiscriminate punitive action against the armed forces of a sovereign state which has engaged in UN peacekeeping for six decades. Several members of Sri Lankan armed forces have paid the ultimate sacrifice while serving under the UN flag. This constitutes an overstepping of the mandate of the OHCHR indicating a clear "loss of credibility and professionalism" which the UN Secretary General warned against in his report A/59/2005.
- The Government rejects that there was "communal violence against the Muslim minority" in the aftermath of the Easter Sunday attacks. The incidents which took place in some areas following the terrorist attacks, particularly targeting the Muslim community and their properties, were politically motivated mob attacks and immediate measures were put in place to maintain law and order and most importantly to ensure the safety and security of all peoples, particularly the Muslim community of Sri Lanka. The constructive and reconciliatory approaches and calls made by civil and political leadership of the country which helped contain the situation that followed the Easter Sunday attacks were widely acknowledged and appreciated. The Muslim community particularly took proactive measures to cooperate with the security agencies in their investigations and search operations.

- The GoSL regrets that the efforts and the success of Sri Lanka in containing the COVID19 pandemic have not received due recognition in the report, which instead refers to “exacerbated structural inequalities and discrimination” during the pandemic. While rejecting the reference to “structural inequalities”, Sri Lanka wishes to point out that the exacerbation of social disparities on the ground has been an essential aspect of the impact that the pandemic has had on every country, and not in Sri Lanka alone. As a country that has guaranteed free universal healthcare to all its people since 1953, through one of the highest per capita health expenditures in its region, Sri Lanka has been able to successfully contain the spread of COVID-19 through a balanced, multi-sectoral approach that accompanied swift preventive measures at the national level, a well-networked, multi-stakeholder contact tracing mechanism, and a robust healthcare system geared towards screening/testing and hospitalized care. The approach adopted by the Government of Sri Lanka in containing the pandemic, which has also been commended by the World Health Organisation, has been inclusive, non-discriminatory and holistic, providing foremost importance to safeguarding the health and safety of not only its people but foreign nationals in its territory.
- The steps taken by the Government to curb the spread of the virus did not at any point involve resorting to emergency measures that would have required derogations from the exercise of fundamental freedoms, but were strictly limited to minimum temporary restrictions on movement in the interest of public health, in accordance with the due process of law, with the aim of protecting all sections of society during this pandemic. These public health measures were accompanied by a series of policies aimed at advancing the economic and social rights of particularly the vulnerable segments in society, such as support for low-income families, older persons, the differently-abled, day income earners, farmers and industries, with a view to building their resilience to the effects of the pandemic.

Madam President,

Resolution 40/1 which mandated the High Commissioner to present this report required that the Office of the High Commissioner and relevant special procedure mandate holders, in consultation with and with the concurrence of the Government of Sri Lanka, engage with the GoSL. However, the constructive engagement contemplated has not been manifested either in the Report or the conduct of the OHCHR in respect of this report.

In our view, one need not look farther than the past few weeks of OHCHR’s conduct to identify the intended trajectory of its contents and recommendations.

It is regrettable that the High Commissioner’s Office published its Report, accompanied by an unprecedented propaganda campaign on it and refused to publish our Comments on the report as an addendum, disregarding previous practice

and provisions of the IB package. As a result, this has deprived Sri Lanka and members of equal visibility for Sri Lanka's views on the report.

As we have updated members and observers of this Council, the past month has been characterised by a manifestly flawed procedure adopted by the OHCHR in respect of Sri Lanka and an unprecedented negative propaganda launched against Sri Lanka led by the same Office. These included a one-sided press release by the OHCHR on its report, two press releases by a group of UN Special Procedure Mandate Holders, three twitter messages on Sri Lanka by the OHCHR and the Special Procedures and a video published by the OHCHR attempting to misrepresent the real situation in Sri Lanka. On procedure, one could not but help notice an undue haste to publish an advance unedited version of the report on Sri Lanka without translation into UN languages only few hours after receiving Sri Lanka's Comments on 27 January 2021. This version was taken down after two days of intense publicity. The final report posted on 17 February and presented today is a considerably rephrased and edited version of what was initially published, which indicates this undue rush.

Madam President,

Insistence on ever-expanding externally driven prescriptions, notwithstanding our continuous cooperation and engagement with this Council and all UN bodies, can pose numerous challenges and such processes could set a dangerous precedent affecting all member states of the UN.

We regret the disproportionate attention drawn to Sri Lanka by this Council, driven by political motivations. Sri Lanka calls upon the members of this Council that any resolution which is based on this Report, be rejected by the Council and be brought to a closure.

Madam President,

While the world is still grappling with a global pandemic and trying to revive battered economies, the UNHRC should use its scarce resources to help the countries which have offered to cooperate, with their consent, based on the guiding principles of this Council which include universality, impartiality and non-selectivity as stipulated in GA resolution 60/251 and the IB package.

We remain open to engaging constructively with the UN, including this Council, and the international community in mutually agreed areas, in conformity with the Constitution and in keeping with domestic priorities and policies.

Thank you.