

Agenda Item 2 General Debate: Presentation of the written update on the implementation of HRC Resolution 30/1 by the High Commissioner for Human Rights pursuant to HRC resolution 40/1, OHCHR Report on 'Promoting reconciliation, accountability and human rights in Sri Lanka' (A/HRC/43/19)

27 February 2020

Statement by Hon. Dinesh Gunawardena, Minister of Foreign Relations, Skills Development, Employment and Labour Relations of Sri Lanka

Madam President,
Madam High Commissioner,
Members of the HRC and Delegates to the 43rd Session of HRC,
Ladies and gentlemen,

As this Council deliberates on the written update presented by the High Commissioner on progress regarding the implementation of HRC Resolution 30/1, I wish to reiterate that Sri Lanka remains committed to engaging with the High Commissioner and her Office, in achieving sustainable development, peace and reconciliation, within the national framework overwhelmingly approved by the people of Sri Lanka during the Presidential Election last November, where President Gotabaya Rajapaksa was elected with an overwhelming majority.

Yesterday, the Government of Sri Lanka, at the High Level Segment made clear its position with regard to HRC Resolution 30/1, particularly, its decision to withdraw from co-sponsorship of Resolution 40/1 of March 2019 on 'Promoting reconciliation, accountability and human rights in Sri Lanka', which is the basis for today's engagement in this Council and which also incorporates and builds on preceding Resolutions 30/1 of October 2015 and 34/1 of March 2017, and associated reports by the OHCHR to this Council.

Notwithstanding withdrawing from co-sponsorship of this Resolution, we emphasised that our commitment to achieving accountability and human rights within the framework of our Constitution, towards sustainable pace and reconciliation - through the appointment of a domestic Commission of Inquiry, by implementing policies rooted in the Government's commitments to operationalise the Sustainable Development Goals (SDGs), and by continuing to work with the assistance of the UN and its agencies.

To those who have expressed disappointment on Sri Lanka's decision to withdraw from co-sponsorship of Resolution 40/1, despite the Government's re-assurance to this Council of our commitment to achieving the goals set on accountability and human rights, towards sustainable peace and reconciliation, it is clear that they are privileging a superficial facade which has failed to deliver for four and half years, over the genuine possibility of reconciliation, underpinned by a people's mandate.

HC Report

In keeping with our consistent policy of continued engagement with the Human Rights Council, Sri Lanka wishes to respond to the current Report¹ of the High Commissioner and engage in a constructive discussion with this august assembly today, with the sincere hope that this Council would recognize the realities on the ground, and facilitate the required space for the GOSL to move forward with an inclusive approach within the provisions and parameters of the Constitution of the country, as explained to this Council during our last formal presentation at its 40th Session.

Sri Lanka presents itself before the distinguished Members of the Council having taken a considered decision by both the Cabinet of Ministers as well as keeping the Parliament duly informed, in contrast to the opaque approach taken during the 30/1 process that bound Sri Lanka to undertake commitments larger than it could realistically deliver. We do so conscious of the fact that, of the period of 1 year since the adoption of Resolution 40/1, and 4 ½ years since the adoption of the initial Resolution 30/1, our government has been in power for only a little over 100 days out of the said period.

In responding to the High Commissioner's Report;

1. I wish to recall that, during the 40th Session of this Council, almost one year ago, the Government of Sri Lanka (GoSL) was represented by a delegation headed by my predecessor, the former Minister of Foreign Affairs, who, in Sri Lanka's statement, explained at length the constitutional, legal and socio-political challenges involved in 'fully implementing' HRC Resolution 30/1. In this context, we consider that the High Commissioner's insistence in the current Report on the "**full implementation**" of the demands made on Sri Lanka in Resolution 30/1 indicates that the OHCHR fails to recognise the rational and legitimate concerns voiced by States that are seeking, in good faith, to address issues.

¹ A/HRC/43/19

2. The Government rejects the reference in the High Commissioner's Report that the results of Sri Lanka's Presidential Election of November 2019 "**reflected an electorate highly polarized along ethnic lines.**" In this regard, we consider it pertinent to remind this Council that particularly with reference to the electorates of the Northern and Eastern provinces where, consistent with the national average, polling averaged over 70%, the two main contenders who were from the Sinhala community, together polled over 90% of the vote. Sri Lankans of all ethnicities and religions forming 52.25% ² of the population of the country gave a clear mandate to President Gotabaya Rajapaksa in this election, which was undisputedly accepted as free and fair, including by foreign election observers. The President's manifesto had pledged to charter a sustainable path for the country, to find home-grown solutions to overcome contemporary challenges in the best interests of all Sri Lankans to usher in security, development and a disciplined society.

3. The Government wishes to reject the references made in the High Commissioner's Report, to the OHCHR Investigation on Sri Lanka (OISL) Report of September 2015. As highlighted before this Council on several occasions, Sri Lanka has consistently refuted the credibility of the false and unsubstantiated allegations leveled against Lieutenant General Shavendra Silva, the present Commander of Sri Lanka Army and Actg. Chief of Defence Staff (CDS), which have been repeated in the current Report of the High Commissioner by citing "**the United Nations Secretary-General's Panel of Experts on Accountability in Sri Lanka and the OHCHR Investigation on Sri Lanka**". In this regard, Sri Lanka urges this Council's to take note of the following important facts:
 - It must be reiterated that Lt. Gen. Silva was appointed as the Commander of the Army by the then Head of State, taking into account his seniority and that there were no substantiated or proven allegations of human rights violations against him. His elevation as the Actg. Chief of Defence Staff (CDS) by the current Head of State President Gotabaya Rajapaksa was on account of his being the senior most serving military officer, on the retirement of the previous CDS.

 - The statements in the report in this regard are based on much disputed ex-parte reports. The OISL Report of 2015 also made clear that it was "a human rights investigation and not a criminal investigation"³, and that "the names provided in the description of the chain of command do not imply criminal responsibility for those particularly alleged violations listed in this

² https://elections.gov.lk/web/wp-content/uploads/election-results/presidential-elections/PRE_2019_All_Island_Result.pdf

³ Report of the OHCHR Investigation on Sri Lanka (OISL), A/HRC/30/CRP.2 of 16 September 2015, para. 5 (Page 5) "*It is important at the outset to stress that the OISL conducted a human rights investigation, not a criminal investigation.*" and para. 33 (Page 10)

report, either as direct responsibility or under command or superior responsibility. Individual criminal responsibility can only be determined by a Court of Law with all necessary due process guaranteed.⁴ The Darusman Report of 2011 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.

- The Lessons Learnt and Reconciliation Commission (LLRC)⁵ as well as the Paranagama Commission reports⁶, which were domestic processes that examined the allegations particularly with regard to the last stages of the conflict, have not found substantive evidence against the conduct of the current Army Commander, who has testified in person before both Commissions.

In view of the foregoing, Sri Lanka considers that the continued arbitrary accusations made against Lt. Gen. Silva in OHCHR Reports and other statements made in this Council and unilateral actions by certain countries, are unacceptable and a violation of the principles of natural justice.

We also stress that there are no proven allegations against individuals on war crimes or crimes against humanity in the OISL report or in any subsequent official document. It is an injustice to deprive any serving or retired officer of the Sri Lankan security forces or the police of their due rights.

4. With regard to alleged “**intimidating visits**”, “**surveillance**”, “**complaints of harassment**” and “**reprisals**” referred to in the High Commissioner’s Report, we wish to reiterate our invitation to the parties concerned to make formal complaints to law enforcement authorities or to independent national institutions such as the Human Rights Commission of Sri Lanka or the National Police Commission, so that action can be taken to investigate the alleged incidents. The Government has already publicly refuted these allegations, and is committed to protecting and promoting 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.

At the same time, we consider it pertinent to caution this Council about certain segments who attempt to fabricate false narratives of intimidation and

⁴ Ibid, para. 104, Page 22-23

⁵ https://847da763-17e4-489f-b78a-b09954fec199.filesusr.com/ugd/bd81c0_45c0a406040640818894ce01c0bd8ca3.pdf

⁶ https://847da763-17e4-489f-b78a-b09954fec199.filesusr.com/ugd/bd81c0_7dbfa86dfea6406ab9f89f641f8a5a2f.pdf
https://847da763-17e4-489f-b78a-b09954fec199.filesusr.com/ugd/bd81c0_02a8e91c18ab47359763b405c2d9f89e.pdf

harassment by the State, which the Government of Sri Lanka has, of late, successfully disproved with solid evidence.

We also reiterate that, apart from operating routine security networks in the interest of national security, particular after the devastating Easter Sunday terrorist attacks, the Security Forces and intelligence agencies are not engaged in monitoring any specific group of people in the country. I believe for any country, compromising its national security interests amidst looming sophistication of strategies of radical and extreme elements world around, is bound to face regrettable consequences. Hence, we invite all parties to this council to be mindful of that stark reality when making recommendations related to security sector reforms.

5. With respect to references in the report to the **Thirteenth Amendment to the Constitution that established Provincial Councils**, it must be noted that, soon after the end of the conflict, the citizens in the Northern Province were able to use their franchise at a Provincial Council election after a lapse of 25 years, a right that had been denied to residents of the Northern Province by the LTTE. Elections for the Eastern Provincial Council had also been held in May 2008 shortly after the liberation of the Eastern province. However, the near two year delay in holding Provincial Council elections in any part of the country, by the previous Government which co-sponsored Resolution 30/1, with the active support of Members of Parliament representing the North and East, has hampered the operationalization of devolution of power as mandated by the constitution of Sri Lanka. The new Government, is committed to holding the Provincial Council elections at the earliest possible opportunity, upon suitable amendments being made to the requirements that are needed to conduct the Provincial Council elections in terms of the law.
6. With regard to **the situation of refugees and asylum seekers following the incidents on 21 April 2019**, that is being referred to in the report, it is worth to inform this council that the Government guaranteed the safety and security of displaced asylum seekers and refugees, in collaboration with the UNHCR. While they were relocated to more secure venues, voluntarily, as a precautionary measure, some have returned to their original places of residence in recent weeks. Police and Army have provided adequate security to locations where they are currently housed, and the GoSL, the UNHCR and NGOs provide food, health and other services. No reprisals, physical attacks or other form of subsequent violence against this vulnerable population has been reported.
7. As to the concerns expressed in the Report on **“steps to resume implementation of the death penalty”**, it may be noted that Sri Lanka continues to maintain a Moratorium on the death penalty since 1976, despite statements on its re-imposition being made from time to time. As may be

recalled, Sri Lanka has voted in favour of the biennial UNGA Resolution on the universal Moratorium on the death penalty in 2007, 2008, 2010, 2016, and as recently as in 2018. As a mature democracy, Sri Lanka believes in accommodating a diverse spectrum of views on any issue of public interest, and the discourse pertaining to the reimplementation of the death penalty. The Council may note that, in contrast to serious and repeated concerns raised in this Council in 2019 on possible revoking of the moratorium on the death penalty, no firm decision has been taken by the Government, to date, to resume implementation of the death penalty and the execution of death penalty is presently under review before the Supreme Court in several Fundamental Rights cases.

8. We wish to reiterate to the Council Sri Lanka's commitment expressed during the High-Level Segment to achieve sustainable peace through an **inclusive, domestically designed and executed reconciliation and accountability process**, in line with the Government's policy framework. To this end, the Government envisages to take the following steps;

- a) The existing reconciliation mechanisms established by an Act of Parliament such as the Office on Missing Persons (OMP) and the Office of Reparations (OR) will be continued, with appropriate adaptation in line with Government policy framework. With regard to the issue on missing persons, steps would be taken, after necessary investigations, to issue death certificates or certificates of absence, while also providing livelihood and other assistance to affected families;
- b) A Commission of Inquiry (COI), headed by a Justice of the Supreme Court, will be appointed to review the reports of previous Sri Lankan COIs which investigated alleged violations of Human Rights and International Humanitarian Law (IHL), to assess the status of implementation of their recommendations, and to propose deliverable measures to implement them keeping in line with the new Government's policy;
- c) National law enforcement systems will continue to investigate and prosecute cases on all allegations of torture and other human rights violations that are currently before the judicial processes.

We hope the Council would appreciate this approach of focusing on deliverable measures of reconciliation that are in line with the interest of Sri Lanka and its people, instead of the practice of taking on a host of undeliverable commitments with the intention of never implementing them.

Madam President,

In addition to these core processes, aiming at building a just and disciplined society, the Government will work towards addressing other outstanding concerns in a manner consistent with its voluntary obligations under the 2030 Sustainable Development Agenda. These measures aimed at advancing individual and collective rights, ensuring justice and reconciliation, and addressing the concerns of vulnerable sections of the society, will be taken through due democratic and legal processes including institutional reform where necessary. In taking these initiatives forward, the Government has before it the National Plan for the Protection and Promotion of Human Rights 2017-2021 including with input from the Human Rights Commission of Sri Lanka.

In this respect, we are pleased to inform this Council of the following key initiatives and achievements of the Government:

- a) A majority of the **lands previously held by the security forces**, i.e. 89.26% of State lands and 92.22% of private lands, have already been released to their civilian owners by 31 December 2019. The Government will pay appropriate compensation in respect of private lands that the security forces would need to retain in view of compelling national security imperatives.
- b) The Government will undertake **a review of the Prevention of Terrorism Act (PTA) with a view to proposing necessary amendments** to its provisions. As for persons detained under the **PTA**, in order to expedite the cases, 3 additional courts have been established in Vavuniya, Mannar and Anuradhapura, besides the Colombo High Court.
- c) We will continue to engage in a constructive manner with the regular processes and mechanisms of the UN and this Council including the Special Procedures, Treaty Bodies and the UPR process which we consider as a balanced peer-review mechanism that treats all states equally. As this Council may recognise, Sri Lanka has over the past 6 years, received an unprecedented number of over 10 visits by Special Procedures and Treaty Body mechanisms in official as well as technical capacity, and has constructively engaged in 7 Treaty Body reviews and its third cycle of UPR. In continuation of this engagement, the Special Rapporteur on the Right to Education will visit Sri Lanka in June-July this year.
- d) Efforts will be taken to strengthen important independent institutions such as the Human Rights Commission of Sri Lanka (HRCSL) and the Right to Information Commission.

- e) Steps will be taken to address concerns related to alleged persecution of religious minorities and to safeguard persons of all faiths. An amendment to the Penal code is under consideration on preventing hate speech, inciting hatred among communities through mainstream as well as social media networks.
- f) In view of concerns raised over the existing Victims of Crime and Witnesses Protection Authority Act amendments to the current victim protection regime are being formulated by the Legal Draftsman's Department, pursuant to proposals made by a Committee appointed by the former Minister of Justice and with a view to bringing it on par with international standards and best practices.
- g) In keeping with Sri Lanka's longstanding and Constitutional commitment to advancing the rights of vulnerable groups including women, children and disabled persons, a number of reforms and measures have been initiated. These include the Children (Judicial Protection) Bill, a National Alternative Care Policy, raising the minimum age of employment and education to 16, and an amendment to the Penal Code prohibiting obscene publications using children and preventing child pornography, in line with Article 9 of the Budapest Cybercrime Convention. As this Council deliberated on the implementation of the Convention on the Rights of the Child, I believe these actions would testify to our unwavering commitment to the welfare of our children-the future of the country.
- h) We will continue to protect and promote the rights of women by effectively implementing the National Plan of Action for addressing Sexual and Gender Based Violence, economically empowering female headed households and developing an Action Plan on the implementation of the UN Resolution 1325 titled "Women, Peace and Security" in collaboration with UN Women.
- i) A Draft Bill seeking to incorporate the standards in the Convention on the Rights of Persons with Disabilities into the national law is currently being finalised, with a view to build a society with equal opportunities.
- j) Appropriate steps would be taken, including legislation where necessary, to trace and take action on proceeds of crime, in line with the Financial Action Task Force (FATF) recommendations related to anti-money laundering and countering terrorism financing.
- k) With a view to further eliminating delays in court processes, the 'court automation' project will be strengthened to upgrade the efficiency of court procedure.

Madam President,

The Government intends to undertake a stocktaking of the progress made so far in the implementation of SDGs and will identify areas where international partners including the UN can assist further in measure progress on the “5 Ps” that shape the **SDGs**: People, Planet, Prosperity, Peace, and Partnerships

While acknowledging that international cooperation, technical assistance and capacity- building are provided with the consent of the concerned State as mandated in UNGA resolution 60/251 in line with the needs and priorities of each State to suit its own unique political, economic and social circumstances, we request the international community to provide the GoSL the opportunity to evolve its own mechanisms to address issues of reconciliation and accountability without prejudging.

Within the above parameters, we look forward to continuing our engagement with the Office of the UN High Commissioner for Human Rights, UN Human Rights mechanisms and procedures, and to continue to work in close cooperation with the international community through capacity building and technical assistance in mutually agreed areas, in keeping with domestic priorities and policies.

Thank you.