



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

**Human Rights Council
25th Regular Session**

Agenda Item 2

**Report of the OHCHR on Promoting Reconciliation and
Accountability in Sri Lanka**

Statement by H.E. Mr. Ravinatha P. Aryasinha
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Leader of the Sri Lanka Delegation

(Geneva, 26th March 2014)

Mr. President,

1. My delegation in its statement at the High Level Segment made Sri Lanka's position clear with regard to the Report of the High Commissioner to this session on Sri Lanka titled A/HRC/25/23. The High Commissioner's Report emanates from HRC resolution 22/1, which is rejected by Sri Lanka. As you would recall, Sri Lanka has upheld that the adoption of resolution 22/1 was in contravention of GA resolution 60/251 as well as Council resolutions 5/1 and 5/2 which guide the work and method of engagement of the Council.
2. While the High Commissioner's report was mandated by HRC resolution 22/1, we note that the intention to present yet another resolution on Sri Lanka in the current session of the Council was made known by the United States in early January 2014, long before the High Commissioner's Report was available in mid-February. This deviation of the mandated sequence only reaffirms our position that the process and the intent to do so were led by political imperatives rather than any objective assessment of the situation on the ground. The sequence, as per the rules governing the work of the Council, would have required the opponents to base their assessment on the Report of the High Commissioner. This action therefore calls into question the validity and credibility of the High Commissioner's Report as well as action in the Council vis-à-vis Sri Lanka.
3. The High Commissioner's recommendation to establish an international inquiry mechanism to further investigate alleged violations, also exceeds the mandate granted by resolution 22/1. Additionally, this recommendation which is not based on a rationalisation of the situation on the ground, is clearly in contravention of the High Commissioner's mandate granted by GA Resolution 48/141, particularly Articles 3(a) which requires the High Commissioner to 'function within the framework of the Charter of the United Nations, the Universal Declaration of Human Rights, other international instruments of human rights and international law, including the obligations, within this framework, to respect the sovereignty, territorial integrity and domestic jurisdiction of States ...' as well as Article 4(g) which requires the High Commissioner 'to engage in a dialogue with all Governments in the implementation of his / her mandate with a view to securing respect for all human rights.'
4. The trajectory that has emerged with regard to the recommendation of the High Commissioner to the HRC for the establishment of an international inquiry mechanism reflects the preconceived, politicized and prejudicial agenda which has been relentlessly pursued with regard to Sri Lanka. It may be recalled that just a week following the defeat of terrorism in Sri Lanka, on 26th May 2009, at the 11th Special Session on Sri Lanka, the High Commissioner in the first instance, called for "an independent and credible international investigation" which was subsequently reiterated by her at the 11th regular session on 3rd June 2009, at the 14th session on 31st May 2010, and at the 17th session on 30th May 2011. In the Report of the OHCHR (A/HRC/22/38) to the 22nd session dated 11th February 2013, she "reaffirms her long-standing call for an independent and credible international investigation..." The reference in the current report that "the High Commissioner remains convinced" of the need for an "independent, international inquiry" demonstrates her persistent efforts against Sri Lanka. It is pertinent to question the factual basis for the High

Commissioner's initial formal call to the Council for an independent, international investigation and its continuation, in order that the international community not be misled.

5. The Government of Sri Lanka therefore reiterates its categorical rejection of the Conclusions and Recommendations contained in the High Commissioner's Report, which are not placed within the ambit of the LLRC, reflects bias and is tantamount to an unwarranted interference in the internal affairs of a sovereign State.

Mr. President,

6. In addition to the clear lack of mandate, and pre-conceived nature of its recommendations, my delegation is surprised by the numerous errors and misperceptions contained in the draft report on Sri Lanka, despite the High Commissioner and her team having undertaken a comprehensive and week-long visit to Sri Lanka where they were provided with unfettered access to study first hand the situation on the ground. Many such instances of errors and misperceptions are referred to in detail in Sri Lanka's "Comments" on the Report. We have drawn attention to the fact that the High Commissioner has raised concerns regarding a range of issues based on information of questionable veracity and conclusions arrived at in a selective and arbitrary manner. We have addressed some of the errors and misperceptions contained in the Report, and we have requested the OHCHR to correct such distortion of facts.
7. For example, the Report makes extensive reference to the Panel of Experts (PoE) Report on Sri Lanka. Sri Lanka's position on this discredited report is well known. It is widely accepted that the PoE report commissioned by the UN Secretary General was the culmination of a private consultation and not the product of any intergovernmental body or process. The repetitive references to it in the High Commissioner's Report are clearly with the intent of according legitimacy to the PoE report, yet again bringing into question the bona fides of the process. The close and consistent association of one member of this PoE with ideologically extreme elements of the Tamil diaspora in events connected with the Council each time Sri Lanka comes under consideration, including in the current session, speaks volumes about the credibility, legitimacy and objectives of this Panel.
8. Similarly, the misplaced attention paid to the Secretary General's Internal Review Panel (IRP) report on Sri Lanka in the High Commissioner's Annual Report to the Council in the current session, whose conclusions are also drawn from the discredited PoE report, and therefore not based on credible sources of information, can be construed as yet another attempt to legitimise the IRP and PoE reports despite clear lack of mandate to do so. We pointed to this attempt at politicisation of the situation of Sri Lanka through the IRP report in our statement at the Interactive Debate with the High Commissioner under Agenda Item 2 of this session.
9. Additionally, over 30 instances of specific factual errors and misperceptions contained in the High Commissioner's draft Report have been corrected based on specific material that Sri Lanka has provided in its Comments in relation to 'demobilisation and disarmament', Government's communications with special procedures mandate holders, reduction of military presence, allegations of land acquisition, method of NGO registration, sexual harassment and violence by military personnel, threats and

violence against the religious communities, the Weliveriya incident, transfer of the Matale magistrate, allegations of non-implementation or partial implementation of the recommendations of the LLRC, and the video footage aired by Channel 4.

10. The GoSL in its "Comments" to the unedited draft report of the OHCHR requested the High Commissioner to also factually substantiate the concerns expressed that "women were vulnerable to sexual harassment and violence when there is a heavy military presence". Consequently, her edited report refers to "concerns" existing without attributing them to the High Commissioner. The High Commissioner also makes the general observation, in the paragraph as it stands in the edited report that "concerns exist that women are vulnerable to sexual harassment and violence when there is a heavy military presence". The corresponding footnote (9) of her Report references figures 1.14, 1.15, 1.16, 1.17 of the UNHCR Protection Assessment of Sri Lankan Internally Displaced Persons who have returned, relocated or are locally integrating ("Tool Three") dated June 2013. It is interesting to note that none of these graphs/figures in the UNHCR Report refer to questions asked about sexual violence due to military presence in the North and East. The question asked is "how safe is it for female members to stay at home without male members?" This does not substantiate the High Commissioner's assertion that there are concerns that women are vulnerable to sexual harassment and violence when there is a heavy military presence as no such concerns have been expressed in the UNHCR report referenced.
11. We are deeply concerned that such glaringly erroneous information was included in a Report of this nature, which leads us to question its motivations. One would have expected that the OHCHR to have undertaken a more stringent scrutiny of facts. Given the compulsion to politicise and the vested interests involved, the Report has also disregarded the factual position provided by Sri Lanka on some other areas, despite our request to correct such misperceptions.
12. Despite the Report's assertion that the GoSL has not responded to offers of technical assistance from OHCHR, Sri Lanka has informed the Council that it remains open to consideration of technical cooperation from the OHCHR in some key areas in reconciliation, in line with the needs of the country in the context of implementing the recommendations of the LLRC contained in the National Plan of Action (NPoA), as well as the accepted recommendations of Sri Lanka's UPR second cycle, in accordance with HRC Resolution 5/1. Our cooperation with UNOHCA under the Joint Needs Assessment (JNA) to support IDPs and the UN Development Assistance Framework (UNDAF) 2013 – 2017 signed between the Government and the UN are recent examples in this regard. Sri Lanka has also continued to benefit from technical cooperation offered by a range of bilateral and multilateral donors in the reconciliation process including the support received for capacity enhancement of the National Human Rights Commission of Sri Lanka.

Mr. President,

13. It is also a matter of concern that the OHCHR refused to accede to Sri Lanka's request to publish the "Comments" of Sri Lanka on the High Commissioner's Report, which demonstrated the many anomalies referred to above, as an "Addendum" to the Report, as done last year, thus disregarding established practice and precedent as well as the provisions of the IB package. The "Comments" were published as a 'G' document (A/HRC/25/G/9), seriously impeding the visibility and integrity of subject between the

two documents. We recall that Paragraph 110 of the Annex to Council resolution 5/1, states that “the methods of work, pursuant to GA resolution 60/251, should be transparent, impartial, equitable, fair, pragmatic; lead to clarity, predictability and inclusiveness” and that ‘They may also be updated and adjusted over time.’ Given the wider relevance of this issue to all UN Member States, the Permanent Mission of Sri Lanka as well as the Chair of NAM have in separate correspondence dated 27 February and 18 March respectively, addressed to you Mr. President, requested that you examine this anomaly, with a view to finding a fair and equitable solution, in accordance with the rules of procedure and the IB package.

Mr. President,

14. Earlier this month at the High Level Segment, in keeping with Sri Lanka's consistent policy of continued engagement with the Human Rights Council, the High Commissioner and her Office, the Minister of External Affairs of Sri Lanka provided this august assembly with an update on progress in the reconciliation process, which has been ongoing for just under 5 years since the end of 30 years of brutal terrorism. These included, inter alia, progress in the areas of accountability including the Commission of Inquiry on Disappearances, the National Census on Deaths/Injuries to Persons and Property Damages due to the Conflict in 2013 and the cooperation between GOSL and the ICRC, resettlement of IDPs, rehabilitation and reintegration of ex-combatants, reconstruction, reduction of military presence, demining, resolution of land issues, removal of high security zones, restoration of civil administration, housing, infrastructure development, livelihood development, Northern Provincial Council elections, restoration of democratic governance in former conflict-affected areas, the Parliamentary Select Committee process, and reconciliation. He also elaborated on the multi-faceted progress in implementing the recommendations of the LLRC through the National Plan of Action.

Mr. President,

15. Allow me now, to briefly elaborate on further progress in the reconciliation process made by the Government since delivery of our statement to the High Level Segment earlier this month.

16. We informed the Council that Sri Lanka has initiated action to prepare legislation with regard to **Witness and Victim Protection**, and that consequent to extensive consultations, including examination by the Cabinet Sub-Committee, finalization of legislation is in progress. I wish to inform this Council today that this Bill is envisaged to be submitted to Parliament by the first half of April this year.

17. The Department of Census and Statistics has issued its **interim report on the island wide “Census on Death/ Injuries to Persons and Property Damages Due to Conflict from 1982”**. The interim report contains details of the methodology, training, enumeration and supervision, and the processing of the census data. The preliminary report based on enumerator summaries will be released within a few weeks. Enumeration activities were conducted throughout the country, between 27 November to 20 December 2013. (5 March LLRC NPoA website)

18. The Presidential **Commission to investigate cases of alleged disappearances of persons in the Northern and Eastern Provinces which was initially mandated to**

cover the period 1990 – 2009 has now been extended to cover the period from 1983 due to several requests by aggrieved parties. The Commission has received nearly 16,000 complaints thus far. Public hearings in the Northern Province have been completed. The Commission has also concluded its first public sitting in Batticaloa in the Eastern Province a few days ago. It had received 1,289 complaints during the hearings in Batticaloa that took place from 20 to 22 March, 2014.

19. In pursuance of our **engagement with Special Procedure Mandate holders**, since our statement to the High Level Segment, we have also bilaterally engaged with the Special Rapporteur on Freedom of Religion or Belief and the Independent Expert on Minority Issues on the sidelines of the current session.
20. GOSL will also seek to process the request for **visit by the Working Group on Enforced or Involuntary Disappearances (WGEID)**, with which Group we have had continued proactive engagement, following the conclusion of the work of the Presidential Commission on Disappearances, as the findings of the latter could have some correlation with that of the Working Group.
21. With reference to action under the **Joint Needs Assessment (JNA)**, also referred to by the Special Rapporteur on the Human Rights of IDPs following his visit to Sri Lanka in December 2013, the Letter of Agreement (LoA) between the Government of Sri Lanka and the UN Humanitarian Country Team was signed earlier this week.
22. Sri Lanka also continues to maintain **vigilance in the face of credible evidence on the resurgence of terrorist activity by the LTTE**. In particular, recent incidents in Kilinochchi which led to the recovery of an arms cache, evidence on attempts to reorganise the terrorist outfit, and a shooting incident involving a former LTTE terrorist, further reaffirms our concerns. Investigations have confirmed that these activities were coordinated by a broader network of LTTE operatives functioning from overseas
23. While progress has been varied in each of these areas, it is a matter of serious concern that some sections of the international community continue to unfairly characterize the Government's efforts in this regard as being of little significance, or somehow distinct from reconciliation. However, it should be noted that from the inception of the post-conflict phase, the international community also highlighted and agreed that these very measures were of the utmost importance to reconciliation. It is therefore a matter of regret that some sections of the international community have continued to shift goal posts as Sri Lanka has continued to successfully meet many of its post-conflict targets, which have gone unacknowledged or at best received a conditional accolade.
24. Among the new demands are requests for concrete action into allegations being leveled on a range of issues, many of which are vague, broad and sweeping, and lack a degree of specificity or evidence that would allow the Government to respond in a comprehensive manner.
25. There are also attempts to portray Sri Lanka as a country in which human rights violations are ongoing. The so called ongoing issues, if any, are only sporadic and far from being perpetuating in nature. Such incidents if any, by no means makes Sri Lanka an exception to any other country, let alone a country emerging

from a protracted conflict. It should be noted that Sri Lanka is a country which has a robust legal structure. The criminal justice system practiced in Sri Lanka has many built-in safeguards such as due process guarantees, the presumption of innocence, right against self incrimination, and standard of proof being beyond reasonable doubt for successful prosecution. The Government has asserted clearly on many occasions that when a complaint is made in respect of any contravention of law, law enforcement authorities set in motion the investigative procedure and if the investigation provides evidence which satisfies the threshold of a prima facie case, the next stage of the legal process namely, the trial procedures begin, with a view to bringing offenders to book.

In conclusion Mr. President,

26. It is in the light of this misplaced attitude, that we are neither able to comprehend nor agree to action in this Council, which fails to acknowledge, let alone appreciate, the consolidation of peace and the very tangible progress Sri Lanka has made in reconciliation. Regrettably, instead, the Council continues to pay disproportionate attention to Sri Lanka, spearheaded by political motivations.
27. Rather than encourage and support the ongoing reconciliation process in Sri Lanka, as well as the constructive engagement Sri Lanka continues to maintain with this Council, it is ironic that the draft resolution on Sri Lanka being mooted by some members of this Council, is reflective of the same partisan politicised agenda through its request to the Office of the High Commissioner for Human Rights (OHCHR) to undertake "a comprehensive independent investigation". Assistance to this process by third party 'experts' whose mandate and credentials are far from clear; and its deliberate exclusion of a significant part of the duration of the terrorist conflict from the period under investigation via the introduction of a particular time frame, would be both precedent setting and prejudicial to the interests of all member and observer states of this Council in the future.
28. The Government of Sri Lanka has consistently and with good reason rejected previous resolutions on Sri Lanka proposed by the US, which have emanated from a politicized process and mandate, and without the consent of the country concerned, and would do so again.
29. Sri Lanka reiterates that any action taken in the promotion and protection of human rights of a country must have the consent of that country, and be based on the principles of cooperation and genuine dialogue, and on the founding principles of universality, impartiality, non-selectivity which govern the work of the Council, as stipulated in GA resolution 60/251 and the IB package.
30. Politicized processes will only impede the delicate balance of the ongoing reconciliation process in Sri Lanka, as well as the constructive engagement Sri Lanka has continued to maintain with the Council.