



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

**Human Rights Council
27th Regular Session**

Agenda Item 2

Oral update of the High Commissioner for Human Rights on promoting
reconciliation, accountability
and human rights in Sri Lanka

**Statement by H.E. Mr. Ravinatha P. Aryasinha
Ambassador / Permanent Representative of Sri Lanka
&
Leader of the Sri Lanka Delegation**

(Geneva, 25 September, 2014)

Mr. President, Madam Deputy High Commissioner,

1. During HRC 25, in March 2014, the Government of Sri Lanka categorically rejected Resolution 25/1 and its call for a "OHCHR investigation". During HRC 26 in June 2014, the Government of Sri Lanka made clear its position of non-cooperation with the investigation.
2. To the handful, who so far during this session have urged that Sri Lanka revisit this position and cooperate with the OHCHR investigation, I wish to respectfully reply, that the Government of Sri Lanka does not wish to help legitimize a flawed process and have a detrimental precedent established.
3. This position has been taken after much consideration and represents a clear reflection of not only the will of our people, but also the majority within this Human Rights Council, including those countries that have joined the statement by a like-minded group of countries that will be delivered later this session, who see through this action being taken against Sri Lanka, continuing politicization and polarization of this council.
4. Domestically, I wish to remind this august assembly that a motion moved in the Parliament of Sri Lanka against the investigation on Sri Lanka by the Office of the High Commissioner for Human Rights received an overwhelming endorsement of more than 2/3rds majority in Parliament on 20 June 2014 (144 - 10). The reference by the High Commissioner to the resolutions adopted by the Northern Provincial Council cannot in anyway be equated to the endorsement given in the national legislature. In any event, a Provincial authority constitutionally has no mandate what so ever to adopt resolutions or take decisions on foreign policy issues which is entirely within the purview of the central government.
5. The Government's policy stance also received tacit endorsement by the people of Sri Lanka in successive provincial elections held since resolution 25/1 was adopted, in late March 2014 in the most populous, and more urbane Western and Southern Provincial Councils, and also the Uva Provincial Council election which concluded only a few days ago, where the ruling United People's Freedom Alliance (UPFA) coalition was returned to office with an overall majority.
6. Even internationally, it would be recalled that a majority of the 47 members of the Human Rights Council did not support resolution 25/1, resisting the action taken by the US, the UK and the other co-sponsors of the resolution to impose an OHCHR investigation and continuous monitoring and assessing Sri Lanka's situation. Even more starkly, on the separate vote called on OP 10 which sought the institutionalization of the OHCHR investigation, in contravention to the founding principles and documents 48/141, 60/651 and also the IB package, saw 14 countries opposing and 10 abstaining on the said paragraph. These countries, together with many other non-member countries of this council, have sent a very clear and emphatic message rejecting the

imposition of external mechanisms on Sri Lanka, and warning of the detrimental effect it would have on the ongoing reconciliation process.

Action and engagement by the Government of Sri Lanka

7. Let me re-iterate that notwithstanding the rejection of the Resolution and the 'OHCHR investigation':

i) Sri Lanka continues to engage with the regular mechanisms of the Council, with the OHCHR and the High Commissioner. Having only last week had a bilateral interaction as part of our ongoing engagement with the Chair and members of the Working Group on Enforced or Involuntary Disappearances (WGEID) in Geneva, Sri Lanka looks forward to the opportunity to engage during Sri Lanka's fifth periodic report under the ICCPR next month with the Human Rights Committee, where we would be able to update and inform the international community on developments in Sri Lanka including efforts of the Government to promote and protect human rights.

ii) The Government of Sri Lanka is continuing its own domestic process of accountability, justice, reconciliation and nation building with utmost dedication, guided by the LLRC Report, recognized by the international community and by this Council only 2 years ago, the operationalization for which a National Plan of Action (LLRC NPoA) provides a roadmap. The progress achieved in this regard was detailed in our comprehensive statement during the discussion of the High Commissioner's inaugural report to the HRC on 8 September 2014.

- It is regrettable that the reference in the concluding para 53 of the update acknowledging only "the commendable progress the Sri Lankan government has made in resettlement and reconstruction", seeks to gloss over the post-conflict recovery disregarding the remarkable strides the country has made within a short span of five years in several areas such as near completion of demining of conflict-ridden areas, expeditious resolution of IDP needs including provision of livelihood and economic empowerment, holding of local and provincial elections, commencing an all party political process aimed at constitutional reforms, the rehabilitation and reintegration into society of LTTE combatants including child soldiers based on restorative justice rather than retributive justice. These are fundamental prerequisites in any post-conflict country that aspires to address the root causes of conflict and to bring lasting peace, justice and reconciliation to the affected people. Trivializing this is deeply disrespectful to all Sri Lankans, particularly those in the former conflict affected areas, who suffered under the LTTE and whose right to life, liberty and livelihood was severely jeopardized..

It is also observed that there has been a reliance on unsubstantiated allegations on which judicial and due processes are underway.

While most of the other issues referred to in the report have been comprehensively addressed in the Sri Lanka's national statement earlier in this session and do not warrant repetition, permit me to clarify Sri Lanka's position on a few issues not dealt with in that statement.

8. With respect to the arrest, detention and deportation of a number of refugees and asylum seekers, referred to in the High Commissioner's oral update, despite not been a signatory to the 1951 Convention Relating to the Status of Refugees, in keeping with its obligations under customary international law, Sri Lanka has worked closely with the UNHCR in facilitating the processing of applications made by asylum seekers/refugees. In 2006 a working arrangement was arrived at with regard to the issuance of certificates by the UNHCR to asylum seekers/refugees.

The situation however got aggravated during the last few years as Sri Lanka has witnessed almost a 700% increase in the arrival of asylum seekers/refugees. By June 2014 there were 1606 applicants and 321 refugees. Regrettably, the process of resettlement by the UNHCR slowed down considerably in 2013/14. It is therefore questionable whether all of them have a legitimate claim to seek asylum. Investigations have revealed that this sudden increase in the number of asylum seekers in Sri Lanka was a result of people falling victim to commercially driven human trafficking networks which abuse the liberal visa policy in place in the country.

The influx of asylum seekers and their tendency not to have an established place of residence has resulted in serious law & order, security, as well as health related issues for the authorities. In fact, in April 2014, eighteen cases of malaria were detected among these asylum seekers, and one was found working illegally. This detection was made at a time when Sri Lanka, having achieved zero indigenous cases of malaria for the past several years, was under consideration for obtaining WHO certification. There are also instances where foreigners registered with the UNHCR have been involved in criminal activity.

However, being sensitive to the humanitarian aspects of the asylum seekers/refugees, the Government has since March 2013, begun a consultation process with all stakeholders including the UNHCR, to expeditiously address the matters of mutual interest related to the asylum seekers/refugees. Sri Lankan authorities have made several categorical requests including;

- the establishment of a safe house/welfare centre for those identified as refugees until they are accepted for resettlement in a third country;
- the regularization of the process of return of asylum seekers whose claims have been rejected. At present, once rejected, UNHCR bears no responsibility for the welfare or return of rejected asylum-seekers;

- expediting the process of resettlement to ensure its completion within a short period of time; and
- ensuring that asylum seekers are provided with adequate facilities and monetary assistance to live in Sri Lanka until their claims are processed or resettlement is found.

However these issues remain largely unresolved and even in examining the UNHCR's proposed Action Plan for this purpose, it is evident that the timeline on the final resolution remains unchanged from the current practice. It may be noted that in some cases, resettlement applications have been pending with the UNHCR for over 5 years.

Sri Lanka acknowledges its international commitments in terms of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. However, it is also to be noted that the Torture Convention does not exclude any criminal jurisdiction exercised in accordance with internal law. Sri Lanka will continue to look at its state responsibility on these international obligations in a nuanced and balanced manner in the context of domestic compulsions. A State cannot be expected to carry a burden of this nature for an indefinite period of time. The Supreme Court of Sri Lanka is expected to hear a petition on 29 September 2014, which was filed before the recent court of appeal case.

We also take this opportunity to make a sincere call to all partners who have to quicken their receiving processes of refugees, and also assist UNHCR to enhance its resource capacity to respond to the requests by the Government of Sri Lanka.

9. With regard to the reference that Sri Lanka's 'proscription' of 21 March 2014 of 16 Tamil organizations and 424 individuals being designated pursuant to the UN Security Council Resolution 1373 "included not only the LTTE, but many mainstream Tamil diaspora organizations which have been actively engaged with the Human Rights Council and international human rights mechanisms", the Government regrets that the Oral Update has sought to undermine both the UN Security Council Resolution 1373 as well as a sovereign nation's efforts to safeguard against resurgence of terrorism and adhering to its international obligations under UN Security Council Resolution 1373.

First, I wish to emphasize that in March 2014, the Government of Sri Lanka took measures to designate entities and persons pursuant to UN Security Council Resolution 1373, against whom there was cogent evidence of financing the committing, attempting to commit, facilitating or participating in the commission of acts of terrorism. This designating process is reviewed periodically. Second, this was not an order of proscription as stated in the Oral Update but only a listing of designated entities and persons. Third, those designated entities and persons have recourse to an appeal procedure provided for in the said Regulation where they can furnish evidence that they

are not linked to terrorist organizations and thereby challenge the listing in a Court of Law. But I am constrained to state that none of the designated organizations or persons have up to date chosen to pursue legal remedies seeking de-listing. Therefore, it is regretted that cover is sought to be given to those linked to terrorist organizations on the basis that they are actively engaged with the Human Rights Council and international human rights mechanisms.

Although the LTTE has been militarily defeated in Sri Lanka in May 2009, its overseas network which includes a number of trained cadre, funded by some sections of the expatriate Tamil community, continues to remain in place, posing a medium and long term security challenge to Sri Lanka and the region. Therefore, Sri Lanka has to be continuously vigilant to safeguard against any resurgence of terrorism in the country. Details of such activity has been comprehensively explained during Sri Lanka's intervention at the HRC 26.

The Prevention of Terrorism Act (PTA) is Parliamentary legislation operating in Sri Lanka and as such arrests made in compliance with it cannot be termed as arbitrary arrests and detention. Further, no person can violate the national laws and expect special protection and indemnity on the basis that they are human rights defenders.

Additionally, with regard to issues raised on Weliweriya, Vavuniya and Welikada prisons and mass graves, were previously responded to giving comprehensive information particularly in Sri Lanka's reply to the High Commissioner's Oral Update in September last year as well as her Report on Sri Lanka on HRC 25 (A/HRC/25/G/9). The repetition of these issues demonstrate that information already furnished has not received adequate attention in this Update.

The oral update is also replete with accusations and unsubstantiated statistics. However, it may be noted that whenever details of statistics have been requested from the OHCHR on claims made in their comments and reports to this Council, such information has not been forthcoming.

2. Reasons for opposition in principle to OHCHR investigation

10. Sri Lanka's principled opposition to resolution 25/1, as well as to the "OHCHR Investigation", stems from several well founded concerns;

a) First, it is felt that the emphasis chosen to be made on Sri Lanka is misplaced and contrived by a few countries, with politically motivated agenda emanating inter alia from their domestic electoral compulsions, which had reference in a leaked communication of one such state. As I listened to the statements made in the HRC earlier in this session, about the serious danger the ISIL poses and the need to defeat it, I was struck by the thought that it was

exactly what any objective observer would have said about the LTTE in Sri Lanka a little over 5 years ago, particularly as they held 300,000 people as human shields. It is regrettable that no resolutions were passed in this or the preceding Commission calling for collective action against that terrorist organization. Since their military defeat in 2009, Sri Lanka has come a long way - a reality some in this Council has repeatedly refused to recognize.

b) Second, resolution 25/1 and its mandate for an 'OHCHR investigation' challenged the sovereignty and independence of a member state of the United Nations. It must be remembered 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 universality, impartiality, objectivity, non-selectivity, constructive international dialogue and cooperation, which govern the work of this Council, as stipulated in GA Resolution 60/251 and the IB package.

c) Third, resolution 25/1 and its mandate for an 'OHCHR investigation' also violated a fundamental principle of international law, which requires that national remedies have to be exhausted before resorting to international mechanisms which sacrosanct principle has been callously disregarded in the High Commissioner's report when trying to justify that OP 2 and 10 are not contradictory. Therefore as pointed out in this Council on several previous occasions by Sri Lanka and other countries, operative paragraphs 2 and 10 of the Resolution 25/1 remain mutually contradictory, in calling on both the Government and the OHCHR to conduct parallel investigations. It may be recalled that some member states also pointed out this anomaly at the Council's 25th Session. The baseless action by the Council purportedly on the absence of a credible national process is being upheld to justify the OHCHR investigation. The national process has been unfairly prejudged merely within 3 years of its existence and having to cope with examining nearly three decades of terrorist activity. It is logical to say therefore that OP/10 would become necessary, only if the Government of Sri Lanka was not taking domestic measures or that they are unreasonably delayed to address issues, which is clearly not the case. In the contemporary history, the time taken in similar domestic processes, such as the 'Bloody Sunday' Inquiry established in 1988, where the report was published only in 2010, the Royal Commission on Aboriginal Peoples (RCAP) in Canada, established in 1991, where the report was published in 1996, South Africa's Truth and Reconciliation Commission established in April 1996, where the report was published in 2003, the Commission to Inquire into Child Abuse (CICA) in Ireland, established in 2000, where the report was published in 2009, the Truth and Reconciliation Commission in Congo, established in 2003, where the report was published in 2007, the National Commission for Reparation and Reconciliation (CNNR) in Columbia, created in parallel of the Justice and Peace Law 975 of 2005 for a period of eight years, where the report is still to be published, the Truth and Reconciliation Commission of Canada established in 2008, has been granted time until the end of 2015 to publish the report, and the Chilcot Inquiry officially launched on 30 July 2009, the report is yet to see the light of day.

These instances were highlighted to show that inquiries dealing with complex issues as mentioned above cannot be discredited or prejudged merely due to the length of time taken.

This clearly demonstrates that there is no undue delay as regards to the domestic mechanisms in Sri Lanka where the country is coming out of a thirty year old conflict. Therefore it is only fair to give Sri Lanka time and space to conclude our domestic mechanisms. Further, it would be grossly unfair and unreasonable to prejudge the outcome of the ongoing domestic processes. However, we are not surprised of the predictions of doom as we are all too familiar with similar prophecies made on the LLRC, prior to the beginning of its work and subsequently its report being published within a period of 18 months.

In Sri Lanka's case, as recommended by the LLRC, there is an ongoing investigation by a Commission of Inquiry into Missing Persons (COI) which commenced in August 2013. Additionally, the imminent enactment of the bill on 'Assistance to and protection of Victims of Crimes and Witnesses' which was presented in Parliament earlier this month, should strengthen confidence with regard to the effective implementation of these modalities.

Sri Lanka is of the considered view that the domestic mechanism drawing in the competency of the experts of international repute will be possessed with enhanced capacity to effectively apply the principles of international humanitarian law to the several matters that have been presented for its consideration.

Resolution 25/1 of 26 March 2014, called upon the Government of Sri Lanka inter alia "to conduct an independent and credible investigation into allegations of violation of international human rights law and international humanitarian law, as applicable, to hold accountable those responsible for such violation". Addressing accountability issues has to be based on available evidence properly sourced and verified. In order that any appropriate accountability measures can be devised and be meaningful the following key factors must be addressed in evaluating the evidence.

1. The nature and extent of the LTTE's use of the population in the Vanni as part of their armed terrorist campaign in the final phase of the war.
2. The specific circumstances of the particular alleged attacks in the Vanni, that have given rise to concern, to be analysed to include such principles of distinction, necessity and proportionality, to cover and compare both the actions of the Government Forces and the LTTE that did or may have given rise to civilian casualties.
3. The manner in which persons were treated after the conflict in order to ensure that hostilities were at end and to guarantee the human rights of those on both sides, as well as civilian non-combatants.

4. To seek to establish the accurate number of civilian deaths during the final period of the conflict to the best extent possible, and the degree to which these were properly to be counted as civilians in all the circumstances of the conflict then prevailing. The figure must naturally include the civilians killed by the LTTE as a result of their actions during the final phase of the conflict.

d) Fourth, notwithstanding that time and again this Council has been told by the proponents that the objective of the ill-conceived successive resolutions on Sri Lanka since March 2012 were intended to help reconciliation. It is amply clear that the actions of the HRC has in effect impeded reconciliation in my country.

Achieving these end goals, can, and have different means and as we have seen in countries that went through transition in the aftermath of bitter conflicts and decades long disputes among communities, they have taken time. In such societies restorative justice has played a crucial role in reconciliation over retributive justice. Ensuring economic wellbeing and helping the affected people to gain their immediate survival needs and to realize true potential as productive citizens, is not an archaic action that should be demeaned or glossed over, for economic reasons are part of the root causes of most conflicts, including that in Sri Lanka.

As a country that has come out of 30 years of terrorism, for Sri Lankans engagement is not a political game, for we have a deep determination not to return to such an era ever again. At a time domestic processes which meets the inherent social, cultural and ethnic susceptibilities of the people of the Sri Lanka is ongoing. The external imposition of politicized processes, will only impede the delicate ongoing domestic reconciliation process in Sri Lanka and erode the credibility and confidence in the mind of most Sri Lankans concerning the work of this Council, particularly in view of the undue and disproportionate attention and resources that are being mobilized on a country that is not in an emergency or in a chronic situation that warrant the international attention and continuous action.

Hence, creating a negative atmosphere in Sri Lanka by misleading a particular community to believe that only an international intervention could help them recover from the feelings of past animosities and ensure justice, only emboldens them to refuse to engage and compromise.

3. Procedural anomalies in the operationalization of Res. 25/1

11. The Government of Sri Lanka's opposition to the "OHCHR Investigation" would seem even more justified today, than it did at the time the resolution 25/1 carried in late March 2014, for in essence, it is clear that over the past 6 months, the operationalization of resolution 25/1 has seen a clear violation of the parametres and mandate that had been laid down for its implementation and clearly violated both the letter and spirit of the said resolution.

Without prejudice to our principled position on resolution 25/1 as well as the ensuing OHCHR investigation, let me also draw this Council's attention to several grave anomalies in terms of procedure and methods of work concerning the conduct of this investigation. This has made the ongoing investigation a not fully defined and ambiguous process, which clearly goes beyond the parameters and the mandate given by resolution 25/1 and its PBI.

- The explanation for the lack of transparency for not revealing details of the OHCHR's investigation team or its sources is that confidentiality is a necessary measure to protect providers of information to the investigation, as well as to ensure the integrity of the investigation itself. This continues the practice that began with the PoE Report of maintaining confidentiality for 20 years, thereby hampering the establishment of sources of credibility. In this instance, this practice is compounded as the confidentiality aspect seems to apply to those of the investigation team. However there seems to be an expectation on the part of the OHCHR for the proceedings of the COI to be observed. While the report states that, the OHCHR has not observed the said proceedings at first hand, it refers to inferences from independent observers, thus demonstrating unequal treatment of a member state by the OHCHR. This is a matter of concern as the integrity of the OHCHR comes into question in this process.

- With regard to the timeframe, OP10(b) of resolution 25/1 requests the OHCHR *"To undertake a comprehensive investigation into alleged serious violations and abuses of human rights and related crimes by both parties in Sri Lanka during the period covered by the Lessons Learnt and Reconciliation Commission,..."* which is from 21 February 2002 to 19 May 2009.

- However, we note under the TOR, the timeframe is given as *"from 21 February 2002 until 15 November 2011, when it presented its report to the President of Sri Lanka"*, which is an extension of 2 years and 6 months beyond the original timeframe agreed upon by resolution 25/1.
- Subsequently, the TOR states that the investigation *"will also take into consideration any contextual and other relevant information that may fall outside this timeframe which may provide a better understanding of events or which may be pertinent regarding continuing human rights violations."*

This expands the timeframe even further and gives an open-ended timeframe for the investigation, in spite of the clear timeframe stipulated in the resolution.

- With regard to the scope, OP10(b) of resolution 25/1 states that the investigation would be *"into alleged serious violations and abuses of human rights and related crimes by both parties in Sri Lanka, during the period covered by the Lessons Learnt and Reconciliation Commission,..."*

- However, in taking upon itself to *"take into consideration any contextual and other relevant information that may fall outside this timeframe which may provide a better understanding of events or which may be pertinent regarding continuing human rights violations"*, there is an attempt by the OHCHR to expand the scope and subject of discussion, which had not been envisaged to be part of the investigation.
- With regard to personnel involved in the investigation, OP10 (b) also states that the investigation should be undertaken *"...with assistance from relevant experts and special procedures mandate holders."* The PBI of the resolution, which was presented to the Human Rights Council when the resolution was adopted makes provision for the appointment of *"two most relevant experts."*
 - Firstly, in contravention of both the resolution and the PBI, the OHCHR has decided to appoint three experts.
 - Secondly, it was apparent from the discussions during the informals on the resolution in March, that the thinking as stated by the main sponsors of the resolution in trying to rationalize the appointment of experts, was to obtain technical expertise for the investigation, such as forensic expertise, not available 'in house' in the OHCHR.
 - However, in an arbitrary manner, the OHCHR has decided to appoint high level international figures, who are by no means technical experts relevant to the investigation, thereby seeking to tacitly elevate the level of the OHCHR investigation to mimic an international COI.
 - This arbitrary elevation of the so-called pro-bono experts into that of a high-level panel is all the more conspicuous, as during the informals on the resolution there were calls by WEOG countries to establish a standalone mechanism such a COI. This however did not materialize as there was much principled opposition voiced to this move by many others. Hence, any attempt to seek to equate it to a COI is disingenuous and an arbitrary overstepping of the provisions of resolution 25/1.
- *The PBI of the Resolution 25/1 made reference to the involvement of "three most relevant special procedure mandate holders to be invited for consultations as part of the investigation."*
 - The TOR has however increased it to six Special Procedure mandate holders including the Working Group on Enforced or Involuntary Disappearances. This arbitrary action could hinder Sri Lanka's routine engagement and interaction with those special procedure mandate holders, as they have been made a part of the investigation, which was categorically rejected by the Government of Sri Lanka.

- *The proponents of resolution 25/1, as well as the OHCHR, keeps emphasizing the transparency of this process relating to Sri Lanka*
 - However, the names of all but one of the 'investigation team' continue to remain secret.
 - In paragraph 4 of the 'Oral Update' the High Commissioner while giving reasons for not revealing the sources that provide information to the investigation, does not give any justification and inexplicably remains silent about not revealing the names of the 11 investigators. It is a clear breach of natural justice for persons against whom accusations are made to be denied the identity of their investigators, and creates suspicion and brings into question integrity and transparency of the entire process of the "comprehensive investigation" by the OHCHR.

4. Conclusion

12. In recent weeks, we have also heard many countries in this Council express concern about the increasing trend to assign the Office of the High Commissioner with extensive investigative roles, which it is neither mandated to undertake nor equipped for, demonstrating a clear departure from UNGA Resolution 48/141. Deviation from the established mandates and processes, does not bode well for countries like mine that continue to seek a path to cooperate, but have to face obstacles at every turn.
13. The politicization of issues and mandates at hand, selectivity and unequal treatment of UN Member States experienced by Sri Lanka will continue to erode this Council's credibility and its primary responsibility of ensuring universality, objectivity and non-selectivity in the consideration of human rights issues, and the elimination of double standards and politicization, as envisaged by resolution 60/251.
14. Such arbitrary and selective actions , especially with respect to what clearly is a politically motivated and highly polarized issue in the Council, not only calls into question the credibility of the functioning of the OHCHR and OHCHR led processes, but also creates dangerous precedents if left unchecked. This behaviour of the OHCHR has called in to question, time and again, the impartiality and objectivity with which it must carry out mandates given to it by this Council.
15. In conclusion, Mr. President, Madam Deputy High Commissioner, with all the calamities and afflictions around us today, Sri Lanka is clearly not a situation that requires the urgent and immediate attention of this Council. Sri Lanka is continuing on a transformative journey in the interest of all the people of Sri Lanka. What Sri Lanka needs at this juncture is to be encouraged, and not impeded.