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Объединенных Наций по правам человека

и доклады Управления Верховного комиссара

и Генерального секретаря

### **Замечания Постоянного представительства Шри-Ланки по докладу Управления Верховного комиссара Организации Объединенных Наций по правам человека о содействии примирению и подотчетности в Шри-Ланке (A/HRC/46/20)\***

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\* Воспроизводятся в полученном виде только на том языке, на котором они были представлены.



## Observations of the Government of Sri Lanka on the report of the OHCHR on Sri Lanka (A/HRC/46/20)

### Preamble:

(i) Without prejudice to the decision by Sri Lanka to withdraw from co-sponsorship of Resolution 40/1 of March 2019, which also incorporates and builds on preceding Resolutions 30/1 of October 2015 and 34/1 of March 2017 and the said position of the Government of Sri Lanka (GoSL) being communicated to the Council at the 43rd Session of the Human Rights Council (HRC), the purported mandate provided to the High Commissioner by resolution 40/1 was to:

(a) *Request 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, to continue to strengthen their advice and technical assistance on the promotion and protection of human rights and truth, justice, reconciliation and accountability in Sri Lanka;*

(b) *Request the Office of the High Commissioner to continue to assess progress on the implementation of its recommendations and other relevant processes relating to reconciliation, accountability and human rights in Sri Lanka, and to present a written update to the Human Rights Council at its forty-third session, and a comprehensive report, to be followed by a discussion on the implementation of Council resolution 30/1, at its forty-sixth session.*

In this regard it may be noted that Resolution 40/1 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 in the Report.

Further, the reference made 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.

As such, having acknowledged the challenges posed by the COVID 19 Pandemic, the reference made that the past year has fundamentally changed the environment for advancing reconciliation, accountability and human rights in Sri Lanka, eroded democratic checks and balances and civic space, and reprised a dangerous exclusionary and majoritarian discourse is misconceived and as such reflects an unsubstantiated and an arbitrary assessment based on surmise, conjecture and assumptions and is clearly in contravention of the principles upon which the work of the Council shall be guided by, inter alia namely the principles of universality, impartiality, objectivity and non-selectivity, constructive international dialogue and cooperation.

(ii) The GoSL observes that many of the contents of document A/HRC/46/20 titled ‘Report of the Office of the United Nations High Commissioner for Human Rights on Sri Lanka’ constitute speculative, presumptive and unsubstantiated opinions and/or assertions on action (including administrative decisions) taken by the democratically elected President and Government of Sri Lanka since November 2019, to execute the mandate received from the people, which do not fall within the scope of resolution 30/1. Only two and a half pages of the 17 pages of the report are dedicated to assess the implementation of resolution 30/1.

(a) Therefore, the GoSL maintains that the High Commissioner’s draft report is inconsistent and / or goes beyond the mandate granted by Resolution 40/1. This has implications for the autonomy of decision making by sovereign States, in matters within their purview.

(b) The GoSL also wishes to respectfully submit that the above is in contravention of the rules governing the conduct of the Council as stipulated in GA resolution 60/251 and HRC resolutions 5/1 and 5/2. It might be well to recall the observations of the Secretary

General of the UN in his report A/59/2005, the rationale which could be used as a benchmark so as to ensure that the Council must conduct itself against the loss of credibility and professionalism.

(c) The following response of the GoSL in respect of matters contained in the High Commissioner's report is provided without prejudice to the above position of the Government as well as the written submission dated 28 December 2020 in response to the OHCHR communication dated 23 November 2020<sup>1</sup> and the responses provided to the OHCHR at the virtual meeting held on 7 January 2021.

## I. Introduction

Subject to the above, observations of the Government Sri Lanka on the specific paragraphs (corresponding with the paragraph numbers) of the report of the Office of the United Nations High Commissioner for Human Rights on Sri Lanka (A/HRC/46/20) are as follows:

### Paragraph. 2

(i) The Government of Sri Lanka wishes to observe that the period of reporting for the subject report is between February 2020 and February 2021, which largely overlapped with the COVID-19 pandemic, which was declared by the WHO as a global health emergency on March 2020. Paragraphs 1 and 2 taken together do not provide an objective assessment as the OHCHR could not have conducted a comprehensive assessment considering the pandemic situation and arrived at a rational observation.

(ii) **It is factually incorrect to state that there was a 'newly elected Government' by February 2020. In this regard it may be noted that since the 43rd Session of the HRC, the new Government was formed in Sri Lanka following the General Elections held in August 2020.**

## II. Opinions on "Context and significance of resolution 30/1"

### Paragraph 6

(i) It is incorrect to state that 'the commitments made by Sri Lanka to the Human Rights Council and to all Sri Lankans remain critical', given that the decision for co-sponsorship had not been obtained through a due procedure including the Parliamentary and/or Cabinet approval, the Resolution contained commitments that are constitutionally undeliverable and the co-sponsorship as well as the Resolution itself had no public endorsement. This is unconstitutional and directly contrary to the mandate of the people, demonstrably expressed both at the Presidential and Parliamentary elections.

### Paragraph. 7

(i) The GoSL rejects the assertion in paragraph 7 of the report that "Sri Lanka's armed conflict grew out of progressively deepening discrimination and marginalization of the country's minorities, particularly the Tamils". It is also incorrect to insinuate that the conflict affected only certain sections of the population, which is a blatant violation of the Principle of Non-Selectivity. Some of the issues confronted by Sri Lankans are colonial legacies and the divide and rule policy adopted.

(ii) In this regard, it is reminded that the conflict that took place in Sri Lanka was between the Government forces and a ruthless terrorist outfit which committed heinous atrocities against not only the armed forces and the Sinhala and Muslim populations, but also against the very community of which it claimed to be the sole representative, i.e. the Tamil community. In 1987, based on the Indo-Lanka Accord, with the able assistance of the Government of India, a number of measures were adopted to end the conflict. However, the LTTE resumed hostilities against the Indian Peacekeeping Force and eventually against the Armed Forces of the Government of Sri Lanka. It is a well recorded fact that the LTTE

<sup>1</sup> GoSL response dated 28th December 2020 submitted to the OHCHR, in response to their communication dated 23rd November 2020.

conscripted Tamil men, women and children by force, and assassinated a large number of Tamil politicians who were pursuing a democratic path to advance the rights of the Tamils, as well as civilians and academics who held dissenting views.

(iii) Further, the UNSG's Special Representatives on Children and Armed Conflict and the Working Group of the UN Security Council on Children and Armed Conflict had recorded that the LTTE had used Tamil children as combatants. Any attempt to attribute the war waged by the LTTE to alleged "discrimination and marginalization" of Tamils, therefore, should only be perceived as an attempt to justify and legitimize the ruthless terrorism unleashed by the LTTE on the people of Sri Lanka including the Tamils themselves.

(iv) With regard to the reference in the same paragraph that thousands of children (with cyanide capsules around their necks) were systematically recruited and used as fighters and in other roles by the LTTE and Government-affiliated paramilitary groups, the GoSL wishes to categorically state that there were no Government-affiliated paramilitary groups at any point of the conflict which occurred in Sri Lanka.

(v) Children have never been recruited to the Sri Lankan armed forces where, even in the most difficult phases of the conflict, the age of recruitment remained at 18 years, whereas the LTTE recruited, often forcibly, children as young as 10 years for combat and trained them to be suicide cadres. As already mentioned, different bodies/representatives of the UN including the UN Security Council have recorded clear evidence in this regard.<sup>2</sup>

(vi) It is recalled that during the visit of the UNSG's Special Representatives on Children in Armed Conflict, Olara Otunnu in 1998, the LTTE pledged to stop the use of child soldiers, only to renege this undertaking and continue to recruit boys and girls who, let alone being old enough to carry their deadly weapon, hardly understood the mono-ethnic ideology they were being put to fight for by the LTTE<sup>3</sup>. Owing to these crimes against children, the LTTE was included in the Secretary General's list of parties who recruit and use children, kill and maim, commit sexual violence or attack schools and hospitals - the so-called "list of shame".

(vii) Due to the GoSL's progress and true commitment with regard to its children and the former child soldiers and considering Sri Lanka's successful completion of Security Council-mandated programmes to end the recruitment and use of children in armed conflict, Sri Lanka was delisted from the SG's list of shame in June 2012.<sup>4</sup>

(viii) Therefore, the GoSL regrets the attempt made in this paragraph of the OHCHR report to associate the crime of conscription of children, one of the hallmarks of the modus operandi of the LTTE, with the Government of Sri Lanka as well.

#### **Paragraphs 7 - 16**

(i) The GoSL refutes the allegations that have been reproduced in paragraphs 7 - 16 of the report, from the highly contentious Reports of the Panel of Experts (PoE) on Accountability and the OISL Report which have been rejected by Sri Lanka<sup>5</sup>.

**(ii) Sri Lanka requests the OHCHR to delete all references to the reports which the GoSL has considered and rejected, including footnotes (footnote 9,13 and 16 refers to PoE Report and foot notes 7,8,10 and 20 refers to the OISL Report), referring thereto, for the following reasons:**

<sup>2</sup> Statement by the Chairman of the UN Security Council Working Group on Children and Armed Conflict addressed to the leadership of the Liberation Tigers of Tamil Eelam dated 13 June 2007, <http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/CAC%20SAC%2051%202007%2010.pdf>.

<sup>3</sup> Interview of Mr. Olara Otunnu by CNN's 'Insight' on 15 May 2000.

<sup>4</sup> <https://watchlist.org/publications/secretary-generals-11th-annual-report-on-children-and-armed-conflict/>.

<sup>5</sup> Statements 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.

(a) 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.

(b) 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.

(c) 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;

(d) 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.

(e) 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.

(iii) 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.

(iv) The contents of paragraph 9, which have been drawn from the disputed POE and OISL reports, are rife with factual inaccuracies that appear to be aimed at equating atrocities committed by the LTTE, a terrorist organization proscribed internationally, with legitimate action taken by the GoSL to safeguard the territorial integrity of Sri Lanka and the right to life of its people. The following is noted in particular:

(a) The GoSL rejects the claim that "people were detained for months in military-run closed camps" in the aftermath of the conflict. The civilians who fled the clutches of the LTTE during the final phase of the war were accommodated in welfare villages set up for internally displaced persons.

The statement that "strict controls over humanitarian supplies by the Government combined with LTTE actions to prevent civilians from leaving the conflict area, caused additional deaths and suffering" is misleading and is aimed at erroneously imputing the suffering caused by the LTTE to civilians during the final phase of the war, to the GoSL as well. It is recalled that the GoSL sent food, medicines, school supplies and other essential items and paid the salaries of all public servants in the conflict area throughout the conflict, a move described as being "uniquely humanitarian in a conflict situation" by UNICEF Executive Director James Grant. The actions of the LTTE, on the contrary, far exceeded merely "preventing civilians from leaving" as stated in this paragraph and amounted to using innocent civilians as a human shield to cover its military objectives, with a view to deterring attacks against the LTTE by the security forces. The UN Assistant Secretary General for Political Affairs Angela Kane who was on a visit to Sri Lanka at the time expressed total satisfaction with arrangements by Government of Sri Lanka. Moreover, several foreign envoys based in Colombo were members of the Consultative Committee on Humanitarian Assistance (CCHA), appointed by GOSL and endorsed all decisions made.

(b) The use of the term "indiscriminate shelling" is unsubstantiated and blatantly false- ICRC reports of staff in the conflict area have refuted these allegations and noted in several instances where the LTTE fired from protected areas with civilians. In this context, the attention of OHCHR is drawn to the report released by the GoSL in 2011 containing a factual analysis of events occurred during the period of conflict, with particular reference to the humanitarian operations between 2006 – 2009.

The Reports of the Review of the UNSG's Panel of Experts by Geoffrey Nice, QC (UK), Rodney Dixon QC (UK/ South Africa), and the Rt. Hon. Desmond de Silva, QC(UK) and the Opinion to the Commission from Professor David M Crane (USA) and Rt Hon. Desmond de Silva, QC (UK) and the Advisory Council of Experts on the Legal issues pertaining to the

use of Human Shields and Hostage Taking by the Liberation Tigers of Tamil Eelam (LTTE) puts both these issues at rest in very affirmative terms.

#### **Paragraph 11**

(i) 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 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.

#### **Paragraph 12**

(i) 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”.

(ii) 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.

(iii) The previous Commissions of Inquiry<sup>6</sup> have gathered a wide range of data through interviews, consultations and complaints lodged which bears testimony to the wide range of data gathered.

#### **Paragraph 14**

(i) Sri Lanka also rejects the allegations that have been reproduced in paragraph 14 and elsewhere in the current report, taken from the OISL report of 2014, based on the rejected POE report.

(ii) 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.

(iii) 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.

#### **Paragraphs 15, 16**

With regard to references to resolution 30/1 in paragraphs 15 and 16, the GoSL wishes to recall that Sri Lanka’s withdrawal from the said resolution was based on the serious constitutional, substantive and procedural issues which the country and its people had to

<sup>6</sup> <https://parliament.lk/en/news-en/view/1091>.

encounter pursuant to the then Government's decision to co-sponsor the resolution without the concurrence of the Parliament on a matter concerning the sovereignty of the nation and in contravention of its Constitution. These grounds were explained in detail in the statement delivered by the Hon. Minister of Foreign Affairs of Sri Lanka at the High Level Segment of HRC43<sup>7</sup>.

Most seriously, due to the weakening of national intelligence operations and related safeguards Sri Lanka had to suffer the horrific Easter Sunday Attack on 21st April 2019. The proof of this breakdown of national security was evident in the Easter Sunday attack carried out against Christian churches celebrating Easter mass and hotels frequented by foreigners, which killed 277 Sri Lankans and foreigners, severely injured 592 persons and caused extensive damage to property.

### III. Alleged “Emerging threats to reconciliation, accountability and human rights”

#### Paragraph 17

(i) The reference made to a ‘constitutional crisis’ in 2018 is rejected as the dissolution of Parliament in October 2018 was duly determined upon by the Supreme Court in the exercise of the jurisdiction under Article 126 of the Constitution in an expeditious manner following the Constitutionally mandated procedure.

The reference made that “In the aftermath, there was communal violence against the Muslim minority, and a prolonged state of emergency, emergency measures and extraordinary deployment of military” is rejected. In this context it must be pointed out that the Easter Sunday attacks in Sri Lanka were one of the most horrific incidents of terrorism since the end of the war over a decade ago. In order to deal with the situation, the President proclaimed a state of emergency and promulgated emergency regulations to address the need for a robust and compelling response from the government in the face of terrorism, so as to reassure and restore public confidence in institutions and a swift return to political, economic, and social normalcy. This unprecedented terrorist attack by suicide bombers on Easter Sunday on 21<sup>st</sup> April 2019, resulted in killing innocent worshipers at churches and several others including foreign nationals including US and EU nationals at hotels around Colombo. The situation was handled by the Police and Armed Forces swiftly and ensured peace and harmony among the diverse communities and religions in Sri Lanka. As such the assertion that the state of Emergency declared in the aftermath of this horrendous attack that was serious a threat to national security was prolonged and there was an extraordinary deployment of the military is incorrect. On the contrary, the measures taken including declaration of a state of emergency and the deployment of the military at this moment of such a horrendous terrorist attack that had a grave threat to national security was commensurate with the prevailing threat and necessary to deal with situation.

#### Foot note 24

Foot note 24 is factually incorrect. The Right to Information Act No 12 of 2016 was passed by Parliament and certified on 4<sup>th</sup> August 2016 and the 19<sup>th</sup> Amendment to the Constitution was passed by Parliament and certified on 15<sup>th</sup> May 2015.

#### Paragraph 18

The approach of the Government of Sri Lanka to address the issues related to COVID-19 pandemic is inclusive and based on regulations and guidelines set by the relevant authorities

<sup>7</sup> Statement by Hon. Dinesh Gunawardena, Minister of Foreign Relations, Skills Development, Employment and Labor Relations of Sri Lanka during the High Level segment of the 43rd Session of the UN Human Rights Council (26th February 2020)  
<https://extranet.ohchr.org/sites/hrc/HRCSessions/RegularSessions/43session/Pages/Statements.aspx?SessionId=33&MeetingDate=26/02/2020%2000:00:00>.

for all citizens without any discrimination. It is not clear as to what the UNHRC refers to as “structural inequalities”.

**Paragraph. 19**

(i) With the politically motivated allegation of the ‘trends’ identified under this paragraph, the OHCHR has totally disregarded the clear explanations given by the Government of Sri Lanka on numerous previous occasions on the issues listed under this paragraph. It is also noted that the OHCHR has taken an unjustifiable and negative perception of a Government that has spent only a few months in office, whilst fighting a global pandemic.

Moreover the OHCHR reports have been highly selective, preconceived, politicized and prejudicial in levelling allegations against the GoSL in terms of the six selected ‘trends’, calling them as ‘early warning indicators that require the Human Right Council’s urgent attention’.

**A. Alleged “Militarization of civilian government functions”**

**Paragraph. 20**

(i) It may be noted that COVID 19 was declared by the WHO as a Pandemic in March 2020. As such, the reference that *the High Commissioner first reported to the HRC in February 2020 – particularly in the context of the COVID -19 Pandemic*, is incorrect.

(ii) The GoSL rejects the allegation of militarization of civilian Government functions. The appointment of key government officials is entirely a domestic matter of a sovereign country, as per the Constitution and the comments made by the OHCHR is clearly outside the mandate of the Council. These appointments are based on subject matter expertise and professional qualifications, with a view of effective implementation of Government policies.

(iii) Unlike some countries, Sri Lanka does not have compulsory military service or conscription. Even at the height of the armed conflict, the GoSL did not resort to any conscription into the armed forces. Sri Lanka adheres to an “All Volunteer” concept and thus enlistment to the armed forces is entirely at the free will of citizens. Under the Sri Lanka law, the supreme legislative organ, the Parliament is the custodian of public finance and as such funds are allocated to all institutions under the control and supervision of Parliament. Sri Lanka’s military is a disciplined entity tasked to protect the country’s territorial integrity, maritime boundary, national strategic interest and overall safety and security of the nation and its citizens. They have played an integral, effective and responsible role in much of the post conflict developments and reconstruction in Sri Lanka and made an active and invaluable contribution to de-mining the former conflict areas. Therefore, considering national security requirements and threat perception as well as other national interests, the size of the armed forces and their responsibilities are evaluated from time to time.

(iv) The strength of the armed forces and their deployment is a matter exclusively vested with an independent sovereign state, and not the mandate of the OHCHR. The GoSL continues to evaluate and rationalize military presence and the military’s role according to national security imperatives. The timelines for such activities correlates directly to the threat perceptions of the GoSL to national security and is one which evolves as situations unfold.

(v) Following the termination of military operations against the LTTE in 2009, the GoSL undertook a gradual process of reduction of military presence in former conflict affected areas and the involvement of the military in civilian functions were reduced to a bare minimum. However, two exceptional challenges that Sri Lanka had to and continues to face during the last 2 years, have necessitated the intervention/involvement of the military. These were (i) renewed threats of terrorism against Sri Lanka, as manifested by the brutal terrorist attacks on Easter Sunday of 2019 which targeted innocent civilians at churches and hotels, resulting in massive loss of life including those of foreign nationals; and (ii) the COVID-19 pandemic which continues to endanger the health and lives of our people and which has caused a devastating impact on economies around the world including in Sri Lanka.

(vi) In a context where for over 30 years the sovereignty and territorial integrity of the country and the right to life of its people were threatened by terrorism, the Easter Sunday



terrorist attacks as well as several revamping attempts by LTTE elements, have raised legitimate and real concerns regarding the security of Sri Lanka and its people. Therefore, national security interests play a crucial role in decisions of the Government with a view to preventing any recurrence of violence in the future.

(vii) 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 seek the help of their military in assisting with containing the transmission of the pandemic and providing necessary relief to the public on emergency grounds.

(viii) As the UN Under-Secretary General for Emergency Relief has noted, coordination of civilians and military is essential during an emergency response. Many countries have deployed the military in post conflict situations for coordination of relief and rehabilitation. In Sri Lanka, the military has always performed an effective and constructive role in humanitarian assistance and disaster relief including in natural disasters such as landslides, mudslides, floods and droughts. Examples from recent history include their contribution in the aftermath of the Tsunami in 2004.

### **Paragraph 21**

(i) The GoSL wishes to clarify that no serving military officials have been appointed to permanent civil administrative positions. With regard to the appointment of retired military personnel, the GoSL maintains 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. The GoSL rejects the report's apparent tendency to vilify individuals on the sole basis of their military service to the country. For instance, it highlights that the current Minister of Public Security is a former Navy Admiral, while overlooking the fact that he holds public office 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, and not on the basis of his service to the Navy as indicated in the report. It must also be noted that as per the Constitution, in order to be appointed as a Minister, one must necessarily be a Member of Parliament.

(ii) Similarly, the Government regrets the allegations that the OHCHR appears to repeat in its reports with regard to General Shavendra Silva and General (retired) Kamal Gunaratne against whom no factually substantiated or proven allegations of human rights violations exist. Further persons who had served in the Military have been appointed to Public Office considering their expertise as well as, academic and professional credentials to achieve the objective of the organizations to which they have been so appointed. It may be noted that the appointment of General Shavendra Silva was made by the previous Government which co-sponsored the Resolution 30/1 and the incumbent President only carried forward the continuation of his appointment. Many countries have appointed retired military officials and public officials to key positions on the basis of their expertise.

### **Paragraph. 23**

(i) It has been noted that 'in September 2019, the UN took the decision to suspend all Sri Lanka's Army peacekeeping deployments, except where they would expose UN operations to serious operational risks.' The Government of Sri Lanka has not been informed of any such decision/measure by the United Nations. The integrity and veracity of this report is questionable in that the UN Office for Human Rights is not even aware of Sri Lanka's involvement in peacekeeping. It is regrettable that the High Commissioner has sought to bring disrepute to a country, which has provided its military personnel for UN Peacekeeping Operations since 1960.

(ii) Sri Lanka has recently received a letter from the United Nations appreciating Sri Lanka's commitment and contribution to Peacekeeping and reimbursed Sri Lanka of USD 4.2 Million for two quarters. Sri Lanka has had rotations of its troops in Lebanon and been deployed in Mali and South Sudan. In December 2020, Sri Lanka came to the UN's aid at their appeal for assistance and provided a contingent with Helicopters for post elections in Sudan. It must be emphasized that Sri Lanka is also an active PCC / TCC in UK PK Operations.

(iii) These allegations seem to have emanated from persons lurking in the shadows and lacking the courage to come out in the open, identify themselves, and submit their allegations to an acceptable process of verification. The Government totally rejects these assertions as false and malicious, and convincingly contradicted by a panel of internationally recognized jurists of the caliber of Sir Desmond de Silva QC (UK), Sir Geoffrey Nice QC (UK) and Rodney Dixon QC (UK /South Africa)

## **B. Alleged “Reversal of Constitutional safeguards”**

### **Paragraphs. 24, 25**

With regard to the opinions expressed by the OHCHR in paragraphs 24 and 25 of the report on the Constitutional reforms undertaken in 2020, the GoSL wishes to point out the following:

(i) The election of President Gotabaya Rajapaksa in November 2019 with an overwhelming majority of votes clearly signified the wish of the people of Sri Lanka for the country to be steered on a path that was different to the policies followed by the previous government. Among the 52.25% of the population that voted and gave a clear mandate to President Gotabaya Rajapaksa and the large majority of people who gave a resounding victory to his party at the General Elections held in August 2020 were Sri Lankans of all ethnicities and religions. This was manifestly clear when the parties which campaigned purely on ethnic lines lost the support of the electorate they previously enjoyed. The mandate that was conferred on President Rajapaksa and his Government was therefore one that was inclusive of all communities, i.e. to charter a sustainable path for the country, to follow a non-aligned, neutral foreign policy and 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.

(ii) The Constitutional and other reforms that the GoSL has undertaken since November 2019 constitutes the execution of this mandate conferred by Sri Lankans on its Government, and the standing of extraneous parties to question the Government’s action aimed at implementing the mandate it has received from its own people therefore is questionable and is an intrusion into the inalienable sovereign rights of the People of Sri Lanka.

(iii) The GoSL also wishes to note that the sovereign right to propose and make changes to the supreme law of the land and other legislation and policies of Sri Lanka lies exclusively with its people.

(iv) On the specific concerns raised in respect of the 20th amendment to the Constitution, the GoSL wishes to point out that the amendment concerned was enacted in full compliance with the procedure set out in the Constitution with regard to enacting legislation, which contains a number of in-built safeguards relating to transparency and judicial review aimed at preventing the passage of bills that are in contravention of the Constitution including its fundamental rights chapter. It is recalled that the Bill was challenged in the Supreme Court of Sri Lanka by several petitioners in special determination no. 1-39 of 2020, with a number of other petitioners also intervening in the proceedings. The Supreme Court submitted its determination on the Bill to the Parliament of Sri Lanka. Having considered the determination of the Supreme Court, amendments were moved at the Committee Stage of Parliament before the 20th Amendment to the Constitution was enacted with a 2/3 majority of the Members of Parliament voting in its favour.

(v) It may be also noted that the 20th Amendment to the Constitution was only an interim measure as an immediate remedy for paralysis of the Government existing at the time, and will eventually lead to a comprehensive constitutional reform process which is currently underway.

(vi) The High Commissioner’s assertion that the 20th Amendment has fundamentally eroded the independence of key Commissions and institutions is factually incorrect. In this context, it must also be noted that the judicial oversight provided under the Constitution under the 19th Amendment remains unaffected under the 20th Amendment.

(vii) It may also be noted that the Parliamentary Council under the 20th Amendment consists of Members of Parliament and comprises the following

- (a) the Prime Minister;
- (b) the Speaker;
- (c) the Leader of the Opposition;
- (d) a nominee of the Prime Minister, who shall be a Member of Parliament; and
- (e) a nominee of the Leader of the Opposition, who shall be a Member of Parliament:

Provided that, the persons appointed in terms of sub-paragraphs (d) and (e) above shall be nominated in such manner as would ensure that the nominees would belong to communities which are communities other than those to which the persons specified in paragraphs (a), (b) and (c) above, belong.

The functional independence of the key Commissions including the Human Rights Commission, the Election Commission and the National Police Commission has not been eroded and continue to function under the Constitution and law governing their establishment, powers and functions without any compromise to the independence of such Commissions.

Regrettably Foot note 37 “that the 20th Amendment to the Constitution grants the President unfettered power over appointment and removal of member of these three Commissions” is factually incorrect and is a serious misrepresentation of the law. In this context it is pertinent to note the following provisions of the 20th Amendment to the Constitution, which introduces Article 35 to the Constitution which reads thus:

***35. (1) While any person holds office as President, no proceedings shall be instituted or continued in any court or tribunal in respect of anything done or omitted to be done by him in his official or private capacity:***

***Provided that nothing in this paragraph shall be read and construed as restricting the right of any person to make an application under Article 126 against the Attorney-General, in respect of anything done or omitted to be done by the President, in his official capacity:***

***Provided further that the Supreme Court shall have no jurisdiction to pronounce upon the exercise of the powers of the President under paragraph (g) of Article 33.***

(2). Where provision is made by law limiting the time within which proceedings of any description may be brought against any person, the period of time during which such person holds the office of President shall not be taken into account in calculating the period of time prescribed by that law.

(3). The immunity conferred by the provisions of paragraph (1) of this Article shall not apply to any proceedings in any court in relation to the exercise of any power pertaining to any subject or function assigned to the President or remaining in his charge under paragraph 2 of Article 44 or the proceedings in the Supreme Court under paragraph (2) of Article 129 or to proceedings under Article 130 (a) relating to the election of the President or the validity of a referendum or to proceedings in the Court of Appeal under Article 144 or in the Supreme Court relating the election of a Member of Parliament:

***Provided that any such proceedings in relation to the exercise of any power pertaining to any such subject or function shall be instituted against the Attorney General”***

As such it is evident that any contentions that the President has an unfettered discretion is misconceived and the contentions by OHCHR does not take into consideration the legal process embarked upon and the checks and balances embedded in the Constitution in that regard.

### **C. Alleged “Political obstruction of accountability for crimes and human rights violations”**

#### **Paragraphs. 26, 27, 28**

(i) Political obstruction of accountability of crimes and human rights violations referred to under paragraphs 26, 27 and 28 are rejected. It may also be noted that the reference to Mr.

Nishantha Silva in paragraph 28, having left Sri Lanka in 2019 should be noted in the context of the open warrant issued against him by the Magistrate Court of Gampaha, under case no: B 1536/20. In this context it may be noted that the said case under investigation relates to the recovery of a large cache of automatic weapons, explosives and ammunitions and that he had concealed and fabricated false evidence over a case and interfered with the course of justice. Four persons including Nishantha Silva have been named as suspects and an open warrant has been issued on 24 August 2020 in respect of Mr. Nishantha Silva. The case is proceeding before the Magistrate Court of Gampaha and investigations are being conducted subject to judicial supervision and oversight in relation to the following offences:

- (a) Under Section 2(1) b of the Offensive Weapons Act No 18 of 1966 as amended;
- (b) Section 27 (1) of the Explosives Act No 21 of 1956 as amended;
- (c) Section 22 93) of the Fire Arms Ordinance No 33 of 1916 as amended.

As such, the said Mr. Nishantha Silva Candappa aka Nishantha Silva is now a fugitive from justice.

- (ii) The allegations of ‘interference in the criminal justice system in Sri Lanka’ are a prejudgment, and outrageously disrespectful to basic institutions, prejudicial and entirely unwarranted.

#### **D. Alleged “Majoritarian and exclusionary rhetoric”**

##### **Paragraphs. 29, 30**

- (i) The GoSL categorically rejects unsubstantiated opinions expressed in the report with regard to “use of ethno-nationalistic and majoritarian rhetoric and symbols by the President and other senior Government figures” and “public policies that appear to exclusively reflect the perceived interests of the Sinhala Buddhist majority, with minimal consideration for minority communities”.

- (ii) As explained above, the current President and Government of Sri Lanka were elected with an overwhelming majority that derived from all ethnic and religious communities and geographical regions of the country, and 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.

- (iii) The role and contribution of Buddhism in shaping Sri Lanka’s over 2600 years of recorded history has been immense, and the Buddhist teachings of peace and tolerance have helped different faiths and beliefs to flourish and harmoniously co-exist side by side in Sri Lanka for centuries. This has been reflected in Article 9 of the Constitution which requires the State to protect and foster the Buddha Sasana while also assuring all religions the rights granted under the Constitution. No provision in Sri Lanka’s Constitution or national laws 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. This constitutional provision applies to all, including the President and the members of the Government, and it is questionable as to how the President’s statement 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.

The reference therefore in paragraph (30) is a mischievous interpretation, which shows the subjective motive of the OHCHR report in misleading the members of the Council.

The reference made in paragraph 30, (as well as in paragraph 22) needs to be viewed in the context that the Presidential Task Force on Archaeological Heritage Management in the Eastern Province was appointed with a particular objective and a particular mandate, making reference to a particular geographic region. In order to serve its mandate, the Task Force

needs to have relevant experts who can deal with specific issues related to Archaeology, falling within their expertise.

All destroyed sites in the Eastern Province were of a particular religious community which calls for the involvement of its clergy to provide expert guidance on conservation, protection and reconstruction of these monuments as well as for giving a comprehensive understanding about the value of these sites. As it is made evident in the Case No B11330, referring to the incident of vandalizing a monument of religious reverence occurred in December, these extremist elements seem to have the agenda of waging an ideological war, where the ideology of 'one country – one religion' gets perpetrated. This is a violation of the freedom of religion, ensured by the Constitution.

It is observed that heritage sites in the Eastern Province were continuously at risk due to violent extremism, strongly indicating an element of security in relation to this matter. Considering national heritage as well as national security points of view, involvement at the highest level of bureaucracy is required for such matters. Accordingly, Secretary of Defence was appointed as the President of the subject Task Force.

(iv) Archaeology is a subject that needs technical expertise and is not based on any ethnic or religious community. Therefore, the Presidential Task Force was appointed with public servants with technical expertise related to archaeology, those who hold appointments that are relevant to the tasks mandated to it and also civilians whose expertise can be made of use to making our national heritage a part of Sri Lanka's common national identity. When investigating into the destruction of archaeological sites in the Eastern and Northern provinces, it was revealed that the vast majority of destroyed sites were ancient Buddhist monuments and temples. Hence, the nomination of Buddhist monks as members of the Task Force.

#### **With regard to the implementation of SDGs**

(i) Sri Lanka's National Policy Framework 'Vistas of Prosperity and Splendour' which has been formulated after extensive consultations with diverse stakeholders including the public has been aligned with SDGs Framework and commitments. Policy proposals contain targeted interventions to address regional disparities, inequality gaps and the specific needs of the people living in the former conflict areas as well as in the estate sector. 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. In addition, the financial allocations made to the five district secretariats coming within the Northern Province and the three district secretariats coming within the Eastern Province have also increased in 2021. These institutions deliver key public services to the people in the Northern and Eastern provinces where the Tamil and Muslim communities constitute a majority.

(ii) Additional financial allocations have been made to upgrade rural infrastructure, road networks, education and health facilities and systems, irrigation networks, water supply, housing through special projects to be implemented in the Northern and Eastern provinces through the line ministries. The annual allocation towards Samurdhi Relief Programme (a social safety net programme for low income families) is 5576 million and 7182 million rupees and is expected to benefit a total of 170,700 persons and 249,405 persons in the Northern and Eastern provinces respectively.

(iii) 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.

(iv) It is regrettable to note that none of the above facts are reflected in the High Commissioner's Report. The allusions made in the Report regarding lack of inclusivity and

perceived discrimination relating to the sustainable development context in Sri Lanka is devoid of any merit and therefore untenable and unacceptable.

### **Paragraph 31**

(i) With regard to the safe protocol for the safe disposal of human remains of victims of COVID-19 followed by Sri Lanka, the GoSL wishes to reiterate that the protocol of cremation is adopted based exclusively on scientific and public health grounds and not on the basis of religious or ethnic grounds, and with the sole objective of eliminating all possibilities of transmission of the virus. The GoSL wishes to point out that the interim guidance released by the WHO (which the OHCHR report refers to) too guides states to determine handling and disposal of COVID-19 victims' human remains according to national regulations. Health authorities continue to undertake periodic reviews on the evolution of the virus and its reaction on human remains towards exploring alternative methods of safe disposal applicable to the pluralistic Sri Lankan society of multiple faiths, ethnicities and cultures.

(ii) The Government rejects that there was “communal violence against the Muslim minority” in the aftermath of the Easter Sunday attacks (paragraph 17). 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.

(iii) The GoSL regrets that the efforts and the success of Sri Lanka in containing the COVID-19 pandemic have not received due recognition in the report, which instead refers in paragraph 18 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.

(iv) 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.

### **E. Alleged “Surveillance and intimidation of civil society and shrinking democratic space”**

The context highlighted under this topic could be emphasized as a biased and incorrect reporting on Sri Lanka where OHCHR may have purposefully omitted to consider the

devastating national security challenges faced by the country during and post-Easter Sunday attacks in 2019, while preparing the report.

**Paragraphs. 32,33,34,35**

(i) 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”. It invites all parties alleged to have faced such harassment, including the 40 organisations that have 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.

(ii) In the aftermath of Easter Sunday attack on 21 April 2019, the process of recording personal information of members of INGO’s and NGO’s had been reviewed in order to minimize any threat to national security of the country. The preliminary investigations on the Easter Sunday attack also revealed the transferring of funds for terrorist related activities/ organization through the accounts of INGO’s and NGO’s without any interference. Therefore, regularizing activities of INGO’s and NGO’s is a precautionary action taken by the GoSL as an effective way of discouraging of unusual fund transferring to illegal and extremist organisations which could ultimately leads to threaten the national security of the country.

(iii) It is reiterated that apart from operating routine security networks in the interest of national security, particularly 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. It is believed that 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. The institutional reforms referred to in the OHCHR report are part of Sri Lanka’s commitment to ensure that the space and privileges afforded to legitimate civil society activism is not abused to raise/channel funds and mobilize support for extremist elements as has been revealed during investigations conducted into the Easter Sunday terrorist attacks.

(iv) In the backdrop of past experience where NGOs have been abetting terrorism in this country, it is essential that the Government has initiated a mechanism to ensure their accountability and transparency. Some of them portray themselves as charity organisations and engage in terrorist financing and money laundering, causing a threat to our national security. Even in the context of the Easter Sunday attacks, there is suspicions and fear that NGOs were engaged in those activities with funds received from overseas through formal and informal systems. It is also to be noted that several assassinations attempts have been carried out in the recent past, targeting Members of Parliament of Tamil ethnicity, representing the Northern and Eastern provinces of Sri Lanka. The Government is responsible for ensuring the security of these VIPs.

(v) The OHCHR report also makes inaccurate and unfounded allegations as attempts on NGOs, which in fact are attempts to regularise and increase transparency as well as accountability. It may be noted that it is a common practice in all countries to screen sources of funding appropriately, in order to ensure that funds are not channeled to listed organisations. The screening of such organizations that promote extremism and contribute to radicalisation by GoSL is in keeping with this international practice. Many requirements for conditions on funding are the same in countries in the West, particularly on the dangers of illegal financing of terrorist and extremist groups. Sri Lanka’s own experience with the LTTE reaching its strength from overseas funding has borne out the dangers of a system with no checks and balances. If more robust mechanisms were in place, some of the funding that were made available to extremist groups responsible for the Easter Sunday terrorist attack could have been identified and prevented.

(vi) The reference to a ‘National Investigations Bureau’ as having harassed and had surveillance over civil society organizations is also factually incorrect. Such an institution as

the ‘National Investigations Bureau’ has been non-existing for over the past decade. This was made redundant after ending the conflict in 2009.

(vii) The GoSL wishes to remind that, just as the rights to peaceful assembly and association and the freedom of expression are vital, it is equally important that they are exercised responsibly, in a manner that does not violate the rights of other persons or groups. This ability to strike an equitable balance between competing human rights is a key challenge for all democratic, rules-based societies, and it is this key consideration, which, in our view, underpins the restrictions permitted on these rights under the ICCPR<sup>8</sup>.

(viii) With regard to the reference made to the case of Mr. Ramzy Razeek, it may be noted that he is suspected of waging an ideological jihad. Investigation in this regard is continuing.

#### **F. Opinions on “New and exacerbated human rights concerns”**

(i) The GoSL categorically rejects the claim in paragraph 38 referring 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 with the Government, evidence that would be of help to conduct investigations into allegations of sexual torture since the end of the conflict. Alternatively, it has been suggested that such information be provided to the independent Human Rights Commission of Sri Lanka for examination, respecting the confidentiality of sources. However, it is observed that no such evidence has been shared with either the Government or the HRCSL to date.

(ii) Sri Lanka has been fully open in its engagement in this area as a party to the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), pursuant to which the UN Sub-Committee on Torture visited Sri Lanka in 2019. Nationally, both the ICRC and the HRCSL have access to all places of detention and detainees at all stages of their detention, as well as to speak to them privately and freely.

(iii) The GoSL recalls 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 of abduction, unlawful detention and sexual violence or information thereon from the entities concerned.

(iv) The GoSL wishes to be informed whether the OHCHR has shared with the HRCSL, an independent entity accredited with A status by Global Alliance of National Human Rights Institutions (GANHRI), the information that it claims to have received, and requests to do so if not done as yet, as the matter concerns the integrity of the Sri Lankan armed forces as well as Sri Lanka.

(v) With regard to specific cases referred to in the report, the GoSL wishes to provide the following information:

##### ***Arrest of Mr. Hejaaz Hizbullah***

i A Fundamental Rights Application has been filed on behalf of Mr. Hizbullah.

ii The Supreme Court has been apprised of the reasons for the arrest and detention of Mr. Hizbullah. (Ref. SCFR 93/2020).

iii The said Fundamental Rights case is presently pending before the Supreme Court and Mr. Hizbullah is represented by a senior Counsel. The said case has not been pursued by his Counsel notwithstanding directions by the Supreme Court that enables any urgent matters to be pursued before the said Court on a Motion being filed before the Court. As such, the said Fundamental Rights Petition is pending to be pursued on behalf of Mr. Hizbullah before the Supreme Court.

<sup>8</sup> “in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others”.



iv It may also be noted that prior to the filing of the aforesaid Fundamental Rights Application, a habeas-corpus application was filed before the Court of Appeal on behalf of Mr. Hizbullah and withdrawn.

v. Investigations regarding the Easter Sunday attacks and Mr. Hizbullah's conduct in that regard is under investigation as he has been perceived to be a threat to national security. The investigations are being conducted and facts are being periodically reported to the Magistrates Court and the said investigations are proceeding under judicial supervision and oversight.

#### **Incident in Mahara Prison**

i The Minister of Justice has appointed a five-member Committee to investigate the unrest at the Mahara Prison. The committee is tasked with preparing a report on the facts underlying the incident, the parties responsible, actions to be taken and recommendations to be taken to prevent such incidents. The Committee handed over its interim Report to the Minister of Justice on 7 December 2020. The final report pertaining to the Mahara Prison incident is to be submitted before the end of this month.

ii A credible investigation by an expert team is being conducted into the matter with judicial oversight. A riot in the Prison by its inmates and the resulting damage to public property by mischief and arson involving Prison buildings and other public property by the said inmates is under investigation. The Prison Officers had to use minimum force to quell the riot involving over 2500 prisoners who attempted to break free and thereby cause a threat to public security. The investigations in this regard are twofold: (i) to bring these who are responsible for destruction of public property to justice i. e. prison inmates and (ii) whether the force which was used to quell the riot could be justified and proportionate. The Attorney General is overseeing the investigation.

iii The Human Rights Commission of Sri Lanka (HRCSL) has issued interim recommendations on the incidents that occurred at Mahara Prison on 29 November 2020. The recommendations have been sent to Hon. Chief Justice, Hon. Attorney General, Inspector General of Police, Minister of Prison Reforms, Commissioner General of Prisons, and Director General of Health Services.

#### **Mr. Shani Abeysekara's case**

i. Former Director of the Criminal Investigations Department, Senior Superintendent of Police (SSP) Shani Abeysekara was arrested in July 2020. Investigations are proceeding regarding the matter under judicial supervision and oversight and he is being represented by legal counsel in the Magistrate Court of Gampaha under Case No B 1536/20 in respect of the following offences:

ii. Under Section 2(1) b of the Offensive Weapons Act No 18 of 1966 as amended;

iii. Section 27 (1) of the Explosives Act No 21 of 1956 as amended;

iv. Section 22 93) of the Fire Arms Ordinance No 33 of 1916 as amended.

v. Mr. Shani Abeysekara was in remand custody and was diagnosed with COVID-19. He was transferred to the IDH Hospital for treatment for a heart condition and other chronic medical conditions. He was given all medical assistance and has since recovered. He has recently testified before the Commission of Inquiry on the Easter Sunday attacks.

## **V. Assessment of the implementation of resolution 30/1**

#### **Paragraphs 40 -48:**

(i) The GoSL notes the OHCHR's comments regarding the inconsistency and poor progress in respect of "developments related to transitional justice" pursuant to resolution 30/1. This finding of the OHCHR, in the Government's view, reiterates the necessity for the HRC to focus on deliverable measures of reconciliation that are in line with the interests of

Sri Lanka and its people, instead of the practice of imposing a host of unfeasible commitments for the sake of exemplifying theoretical notions of transitional justice.

(ii) The deliverables that Sri Lanka intends to work toward, to achieve sustainable peace through an inclusive, domestically designed and executed reconciliation and accountability process, were clearly outlined by the Minister of Foreign Affairs at HRC43 as follows:

- 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 issues 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;
- A Commission of Inquiry (COI), headed by a Justice of the Supreme Court, has been 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 the President within six months to implement them keeping in line with the new Government's policy;
- National law enforcement systems will continue to investigate and prosecute cases on all allegations in relation to violations of human rights that are currently before the judicial process.

(iii) In addition to these core processes, with a view to building a just and disciplined society, the Government also pledged to work towards addressing other outstanding concerns in a manner consistent with its voluntary obligations under the 2030 Sustainable Development Agenda.

(iv) As the Foreign Minister of Sri Lanka informed the High Commissioner for Human Rights by letter dated 30 December 2020, certain steps in fulfilling the above commitments undertaken by the Government have already been set in motion within the framework of the Constitution of Sri Lanka. The Government wishes to point out that these steps have been taken even as Sri Lanka was battling the effects of the COVID-19 pandemic for the greater part of the past 11 months, and amidst its preoccupation with an electoral process which led to the general election in August 2020 and the formation of a new Government.

(v) Despite challenges, the following measures have been taken during the short time of 11 months since February 2020:

- The Office of the Missing Persons (OMP) continues to operate and a draft Plan of Action has been requested from the OMP in order to make appropriate financial provisions for the immediate implementation of its statutory mandate. A former Supreme Court Judge has been appointed as the new Chairperson of the OMP. The functional independence of the OMP and the exercise of its powers and functions are regulated by legislation governing its establishment. Further the exercise of powers functions and duties by the OMP in terms of the said law is subject to judicial oversight.
- The Office of National Unity and Reconciliation (ONUR) continues to execute its mandate which includes restorative justice and reconciliation, and financial provision of over Rs. 500 million has already been made for this purpose. Cabinet approval has been sought for the appointment of a senior President's Counsel as its Chairperson, and a senior civil servant as its Director General with a Board of Directors.
- The National Human Rights Commission of Sri Lanka (HRCSL) has been reconstituted in accordance with the procedure mandated by the Constitution and financial provision of over Rs. 229 million has been allocated to implement its statutory mandate.
- The Office for Reparations (OR) continues to function and Rs.910 million has been allocated to the Office from the 2021 Budget. Guidelines have been prepared for the consideration of the applications for reparations. The Office has received 16,275

applications of which 4,358 have been processed from January – November 2020 and a total sum of Rs. 142 million has been paid as compensation.

- On 17 November 2020, the Cabinet of Ministers approved the appointment of a Commission of Inquiry (COI) headed by a Justice of the Supreme Court, 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.

(vi) 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 the civilian owners by 31 December 2019.

(vii) The end of the three decade old conflict left a vast extent of land in the North and East (1311 sq. kms) contaminated with a very high concentration of landmines and Unexploded Explosive Ordnances (UXOs) placed by the LTTE without records in civilian areas. This was a major impediment to the speedy resettlement of families returning to their homes after the conflict. Non-availability of mapping of mines and marking of areas where land mines were laid further complicated the issue. To overcome this challenge the Security Forces conducted a comprehensive demining operation in the North and East, which also received the technical support of several foreign governments and international agencies. As at December 2014, at the point the then Government was concluding its term, 94% of the de-mining had already been completed, while presently it has risen to 98.7%.

(viii) In reference to Paragraph 48, it may be noted that the Counter Terrorism Bill was not pursued with, and withdrawn, having had due regard to the views expressed by Parliamentarians including the Sectoral Oversight Committee on International Relations of the Parliament, religious leaders, trade unions, student organizations, civil society groups and public organizations that such legislation was unwarranted at this point of time.

(ix) The Government, however, is intent on revisiting the provisions of the PTA having due regard to the progress made in the area of development and reconciliation. In that process the Government will draw in aid international best practices adopted by other jurisdictions and the recommendations that may be made by the CoI appointed with regard to the Easter Sunday attacks. It may also be noted that the Attorney General is also reviewing cases pending before the High Courts with a view to ensure the expeditious disposal of cases involving LTTE cadres in order to bring a meaningful end to the said cases.

(x) The Government remains committed to delivering on the assurances given at HRC43 and would continue to work as expeditiously as feasible in the current challenging circumstances.

(xi) In the above context, it is highly regrettable that the OHCHR has opted to be oblivious to the genuine and feasible commitments undertaken by Sri Lanka at HRC43 and the progress being achieved in their implementation, and instead chosen to make sweeping, impetuous conclusions such as "Sri Lanka remains a state in denial" and "reconciliation with minority communities have been reversed", and more seriously, predicted, without any basis, a "recurrence of ...grave human rights violations" in respect of a country and a resilient people that has remained at peace since 2009 despite challenges and provocations which had the potential of leaving any other nation fragmented. It can only be concluded that Sri Lanka has been selected and targeted by OHCHR for purposes other than promotion of human rights. Sri Lanka has been the victim of a collateral exercise.

(xii) The GoSL rejects, in particular, the baseless forecasts that appear in several paragraphs of the report predicting "repeated patterns of human rights violations" and "potential conflict in the future", and requests that these presumptive and speculative opinions be deleted from the report.

(xiii) It is regretted that the report has, at some points, even gone to the extent of predicting Sri Lanka's failure to achieve the 2030 agenda on account of its withdrawal of support from resolution 30/1. This is nothing less than a deliberate witch-hunt of a country committed for achieving the 2030 SDG agenda, to ensure the prosperity of all people of Sri Lanka. Sri Lanka can only conclude that this is at the behest of hidden hands towards damaging her image. As

a country that has had much success with the MDGs, we remain confident of achieving these goals and it has taken a very central place in the policy framework developed by H.E. the President.

(xiv) The Government wishes to point out that the mutual interest of the HRC, the OHCHR and the GoSL must remain securing peace and prosperity for and advancing the rights of all Sri Lankans, and that the preoccupation of certain parties with resolution 30/1 should not be deemed to render alternative and feasible paths towards achieving the above goal futile or redundant.

(xv) Since the end of the conflict in May 2009, the Government at that time took a number of important steps to foster a peaceful, just and inclusive society. This is acknowledged, rather grudgingly, in the report on page 5 by stating that “The Government meanwhile pursued a strategy of resettlement, rehabilitation, reintegration, reconstruction and reconciliation, focused on infrastructure and development and including the rehabilitation of former LTTE cadres and child soldiers”.

(xvi) It is unfortunate that the OHCHR has decided to omit the majority of the information provided by the GoSL in writing as well as at the meeting between GoSL officials and the OHCHR ahead of the preparation of the report. The Office however appears to have taken a wealth of misinformation to produce a report that puts its credibility and integrity at risk.

(xviii) It is regretted that the OHCHR has resorted to presenting reports based on conjecture and clearly demonstrating biases and thereby attempts to mislead the United Nations and the international community.

(xxi) As a responsible Government, we remain committed to fulfilling the needs and aspirations of all the communities in the country and believe that it is high time for the OHCHR and the Council to acknowledge that it is only with the cooperation of a strong Government that has been democratically elected by the people and not confrontation that would yield the positive outcomes that we all so desire.

## **B. Alleged “Impunity in emblematic cases”**

(i) In reference to paragraph 49 and 50 it may be noted that High Courts at Bar have been appointed in respect of the Welikada Prison Riot issue, the Ekneligoda case, Weliveriya incident and the Rathupaswala Case. The trials before the High Courts at Bar are continuing in accordance with the Criminal Procedure Code. As such the inference that not a single “emblematic case” is being pursued is refuted and it may also be noted that keeping with the Constitutional requirements, law and accepted international norms and practices, a fair trial has to be afforded to all parties to a judicial proceeding.

(ii) With regard to the death of 5 students in Trincomalee, it is noted that the Parliament of Sri Lanka, in 2017, passed an amendment to the Protection of Victims of Crime and Witnesses Act. The amendment was aimed at enabling the leading of evidence from remote locations through an audio-visual linkage, particularly in cases such as that of Dr. Kasipillai Manoharan, the father of one of the deceased students and a key witness in the case who was unwilling to visit Sri Lanka to testify at the trial in the Trincomalee High Court. However, the said witness has yet to avail of the above facility afforded through a legislative amendment.

### **Paragraph 51**

In reference to Paragraph 51, it may be noted that Article 34 of the Constitution confers the President the powers to grant a pardon. It may be further noted that this power of pardon is now subject to judicial reviews before the Supreme Court. It is also noted that this power of pardon is unfettered in several jurisdictions.

## **VI. Conclusions and recommendations**

(i) The GoSL repudiates the conclusions and recommendations that have been erroneously arrived at in the High Commissioner’s Report as they are based on incorrect and/or unsubstantiated and extraneous sources/material, and contravenes the principles of

universality, impartiality, objectivity and non-selectivity, as stipulated in the GA resolution 60/251 that created the HRC.

(ii) The GoSL rejects 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. Sri Lanka regrets 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 cautions 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.

(iii) The GoSL reminds that calling for targeted sanctions and travel bans against individuals, in the absence of credible findings by a competent court/body on violations committed them, itself constitutes nothing less than a political agenda against a sovereign nation, aimed at destabilizing and a violation of their rights and contravention of the principles of natural justice.

(iv) Similarly, the GoSL condemns the recommendation in the report to the UN to keep Sri Lanka's peacekeeping operations under review. As already maintained by Sri Lanka, 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 in a professional manner, and several members of which have paid the ultimate sacrifice while serving under the UN flag. We urge the UN to refrain from such violations of the principles of the UN Charter on non-interference and sovereignty of States.

While categorically rejecting paragraph 54 it may be noted that the 20th amendment to the Constitution has not taken away the institutional checks and balances including the judicial checks that were in existence under the 19th amendment to the Constitution. In this context, specific reference is made to provisions of Article 35 introduced under the provisions of the 20th amendment to the Constitution.

Refuting the contents of paragraph 56, it is maintained that the Government is able, willing and committed to pursuing meaningful mechanisms of accountability and reconciliation, in accordance with its constitutional framework.

While rejecting the assertions of paragraph 59, it is regretted that references to investigations targeted sanctions, assets freezes and travel bans against state officials and other actors, based on 'credibly alleged' is unfounded, unsubstantiated and totally misconceived.

It is important to point out that the tone and substance of the report, going far beyond the legitimate scope of OHCHR, seek to establish a dangerous precedent which has grave repercussions for all sovereign States.

The call for asset freezes, travel bans and the reference to the ICC and the exercise of universal jurisdiction by individual States, without a semblance of evidence in support, particularly in relation to a country like Sri Lanka which has consistently being compliant and engaged with the United Nation and its mechanisms, points to a distinct and eminent danger which the international community as a whole need to take note of.

As a responsible member of the United Nations, Sri Lanka has remained open and committed to constructively engage with the UN system including the Human Rights Council on national as well as global matters of importance. Sri Lanka's commitment in this regard has been amply demonstrated by, among others, its accession and implementation of all 9 core human rights conventions, the unprecedented number of special procedure mandate holders of the HRC and treaty bodies that it has received (10) particularly in recent years, and the constructive engagement that Sri Lanka has had with UN treaty bodies. We look forward to continuing our engagement with the OHCHR, 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.