



Ontario Centre for Policy Research
364 Moffatt Pond Court, Unit # 12
Ottawa, ON K2J 0C7
Canada
e-mail: office@policy-research.ca
W3: www.policy-research.ca

Technical Report

Date:	February 08, 2021
Subject	46 th UNHRC Session – Sri Lanka
Contact	Neville Hewage, Ph.D. Senior Policy Analyst e-mail: office@policy-research.ca

UNHRC reports on Sri Lanka

The recent report of the Office of the United Nations High Commissioner for Human Rights on Sri Lanka (dated January 21, 2021 – A/HRC/46/20) has repeated allegations against Sri Lanka. These allegations have no logical sequence or legal basis deriving its recommendation. Most importantly, the panel of Experts (PoE) report and the Investigation Report on Sri Lanka (OISL) failed to prove any allegations against Sri Lanka. We concluded from our investigation that the PoE and OISL reports derived their conclusions by unconfirmed allegations that were injudiciously treated as equivalent to hard evidence.

We provided a detailed analysis of the PoE and OISL reports in our study of the post-conflict accountability and reconciliation in Sri Lanka (ARSL).

Please see the attached ARSL report.

The approach to accountability adopted by the UNHRC is a deception

Madame Michelle Bachelet, the commissioner for human rights, has acted beyond her mandate regarding resolution 30/1 and preceding resolutions on Sri Lanka when issuing her report. On many occasions, the commissioners of human rights have proposed referring Sri Lanka to the International Criminal Court (ICC) and applying Universal Jurisdiction to enforce accountability.

During the 37th session of the Human Rights Council (which met in Geneva in February and March 2018), the high commissioner Zeid Ra'ad Al-Hussein also urged member states to explore other avenues to foster accountability on Sri Lanka, including the application of Universal Jurisdiction. We have observed that such recommendations did not deliver any results as of today.

Referring to ICC cannot lead to any outcome. Sri Lanka is not a signatory to the Rome Statute that created the International Criminal Court (ICC) in 2002 to prosecute individuals for serious crimes, such as war crimes. As such, for Sri Lanka's alleged (if any) war criminals to be brought before the ICC, the UN Security Council has to refer Sri Lanka to the ICC. This approach is improbable to succeed as it becomes a function of the geopolitical interests of various parties, primarily China and Russia, who are permanent members of the Security Council and are committed to strengthening their relationships with Colombo.

Similarly, this leaves UNHRC with the other option, Universal Jurisdiction. The term refers to the idea that a national court may prosecute individuals for any serious crime against international law — such as crimes against humanity, war crimes, genocide, and torture — based on the principle that such crimes harm the international community or international order itself. However, this alternative proposal will also not be effectively alleged (if any) criminal is most likely to enjoy diplomatic immunity. It has been tested before the court and never succeeded.¹

High Commissioner's recommendation does not address reality but addresses her frustration

The high commissioner's report shows the frustration of the UNHRC at Sri Lanka's withdrawal from the resolutions. The high commissioner's frustration has no logical justification since Sri Lanka has committed itself firmly to accountability and reconciliation in the statement of the new government's policies.

Sri Lanka's new government is frustrated at the UN approach and wishes to handle the reconciliation internally. Indeed, the new executive President highlighted 'reconciliation' in his inaugural speech and the Foreign Minister in his address to the UNHRC session in February 2020.

An approach based on taking the UK as a model for a domestically developed solution.

Sri Lanka's withdrawal from the co-sponsorship of resolution 30/1 and preceding resolutions shows a similar analogy with the UK regarding the EU's referendum so that the UK can pass their laws and be responsive to the UK's legal system rather than being subservient to European laws and courts.

In the recent elections, Sri Lanka's government has received a two-thirds (2/3) parliamentary mandate, and the current President (former defence secretary who led the war against LTTE) has received sixty (60%) of popular votes. It is important to note that the previous government's leading political party who has co-sponsored the UN resolution, could not secure even a single parliament seat in the 2020 general election. Sri Lankans have overwhelmingly rejected foreign intervention in domestic affairs such as the International Tribunal and

¹ Pararajasingham, A. (2018, May 03). Can the Application of Universal Jurisdiction Foster Accountability in Sri Lanka? A closer look at an important question. *The Diplomat*. <https://thediplomat.com/2018/05/can-the-application-of-universal-jurisdiction-foster-accountability-in-sri-lanka/>

International Independent Investigation Mechanism. UNHRC and any UN bodies have no legal authority to override the people's overwhelming will expressed in a democratic election.

In our view, any foreign intervention will cause a polarization of forces, rouse identity politics, and damage ethnic harmony and thwart reconciliation efforts.

Canada's position towards accountability and reconciliation

The Canadian government should understand the reality of the Tamils living in Sri Lanka, where their expectations and priorities are different. International investigations or sanctions and asset freeze are not the priority for Tamils living in Sri Lanka. These actions create more tensions and mistrust between the two communities.

In contrast, the Tamils living in Canada wish to enhance their chances for getting easy refugee status, easy immigration for their kith and kin still in Sri Lanka, and justify previous armed conflict by representing Sri Lanka as a place where an alleged crime of Tamils is going on.

Fact-Finding Mission of the Home office, UK

The latest Fact-Finding Mission (FFM)² of the Home Office identified critical criteria for promoting reconciliation, accountability, and Human Rights in Sri Lanka. The FFM identified the following needs: providing housing, employment, land return, and accessing information about relatives who disappeared during the armed conflict. According to the FFM report, Tamils are not explicitly targeted and do not suffer persecution just for being a Tamil. FFM report also noted that while there are increased opportunities in the North, lack of housing and unemployment remains high.

Therefore, we propose that Canada's foreign policy towards Sri Lanka on human rights should be considered on the UK Home office's research findings. Sri Lanka does not need another community insurgency, but what it needs is sustainable peace among communities.

Unfortunately, targeted action recommended by the UNHRC High Commissioner would not deliver such results.

Sri Lanka has engaged itself in a domestic process of accountability and reconciliation

In reality, Sri Lanka has taken positive steps on the four pillars of transitional justice: truth, reconciliation, accountability and guarantees of non-recurrence, which must be taken into account by the Human Rights Council. The Sri Lankan government has demonstrated genuine and significant progress in achieving transitional justice. However, there is still more to do. We request the Canadian government to engage with Sri Lanka and develop a consensus to agree

² Home Office United Kingdom (2020 January) *Report of a Home Office fact-finding mission to Sri Lanka*
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/859277/Sri_Lanka_FFM_report_2020.pdf

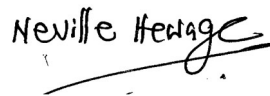
upon what Sri Lanka can deliver the best suite for all ethnic groups with domestic legal and social framework and policies. These actions also should not affect social harmony.

Develop Measurable indicators

The Canadian government should also engage in Government of Sri Lanka (GoSL) to develop measurable indicators for achieving the four pillars of transitional justice; truth, reconciliation, accountability and guarantees of non-recurrence considering a domestic mechanism. This will help GoSL measure the achievement of transitional justice and report back to members of the UNHRC. Without such definite measurable indicators and yardsticks that may be used to compare Sri Lanka's progress with those of other countries dealing with reconciliation and accountability, it is irresponsible to make such serious allegations against Sri Lanka. Furthermore, if such allegations are made, they cannot be given a firm footing if such indicators are not available.

Finally, we request that the Canadian government consider the UK Home office's FFM report and engage with the GoSL to support its accountability and reconciliation effort taking place domestically.

Ontario Centre for Policy Research



Neville Hewage, Ph.D.
Adjunct Professor and Research Fellow
International Centre for Interdisciplinary
Research in Law
Laurentian University, CANADA.

Senior Policy Analyst
Ontario Centre for Policy Research
CANADA.

Mailing Address

2581 River Mist Road
Ottawa, ON K2J 6G1, CANADA.
Tel: + 1 613 612 7615,
e-mail: nx_hewage@laurentian.ca
office@policy-research.ca

Enclosure: ARSL Report

