

**POST 2015: RECONCILIATION MILESTONES IN SRI LANKA  
AUSTIN FERNANDO  
HIGH COMMISSIONER OF SRI LANKA TO INDIA**

**PRESENTATION MADE AT THE FOREIGN CORRESPONDENTS CLUB  
OF SOUTH ASIA, NEW DELHI, INDIA  
JANUARY 18<sup>TH</sup> 2019**

May I first thank the Foreign Correspondents' Club of New Delhi for having invited me this evening as a guest speaker. I was invited by my friend Mr Venkatanarayan for a presentation to be held last week. I could not make it as I had to be in Colombo for some private matter. Apologies for having let you down. Perhaps, I may let you down at the end of this session too and you will say "What a waste of time to have been listening to AustinFernando?" If I perform so, you will certainly walk out and therefore I may apologize in advance since I will not have an audience to even apologize.

I was first requested by Mr. Venkatanarayan to speak on "Indo-Lanka relations." I told him that I had been here only for two months the most and it would be unfair by those present here for me to speak on that topic, because you know much better than I do about our relations. To satisfy Mr Venkataraman I may say that Indo- Lanka relationships are at its best now. It is not said for diplomatic courtesy but for factual reasons.

Therefore, I thought I should speak on something which I know a little better. However, I must confess that it could be timely and most appropriate as we Sri Lankans will be evaluated in March 2019 by UNHRC on our performance on reconciliation. What I hope to share can be given a satisfactory picture of us and we will be treated better and reasonably in Geneva.

Relief and rehabilitation were the two main fields on which all stakeholders were concerned during the conflict period. After the end of conflict in May 2009, interests changed and focussed more on reconstruction on one hand and humanitarian and human rights laws implementation, on the other. Some of your colleagues in Sri Lanka then and in many foreign capitals were responsible for the extra mile run on human rights and humanitarian issues.

The term reconciliation achieved more concern as a result of this status. Some thought of reconciliation as a thing that should move at a speed of a rocket. Then the victorious government and especially the

military in it, most national media, and some political leaders thought that reconciliation is a secondary issue that could go at snail speed.

What we faced as a government in January 2015 was the final outcome of these contradicting situations. The status we faced in 2015 was not a sudden development. There was evolution in the background, which is forgotten by many and hence I thought it is pertinent to remind of what was happening politically, especially in the international field between May 2009 and January 2015. I mention this as we had to plan our reconciliation efforts in 2015 on those platforms.

I must briefly state these political angles which forced Sri Lanka in to a 'reconciliation bias' situation. All those who review and evaluate us have to keep in mind these political developments that coerced us to focus on reconciliation in a certain fashion. Up to 2014 there was immense pressure as you would hear afterwards in my presentation. The pressures were emanating from domestic and international sources.

It commenced with the visit of the then UN Secretary General His Excellency Ban Ki Moon to Sri Lanka on 23<sup>rd</sup> of May 2009, just at the end of the conflict. I may list these "pressure points", if I may call them, for your convenience.

After this visit SG Ban Ki Moon and the then President Mahindra Rajapaksa made **JointStatement**, in which there was some agreement to:

- Firstly, to offer long term development of the North, re-establish of democratic institutions and electoral politics;
- Secondly, to address aspirations and grievances of all communities, work towards a lasting political solution, long term socio-economic development and evolve a national solution acceptable to all sections of people.
- Thirdly, President Rajapaksa firmly resolved to implement the 13<sup>th</sup> Amendment and to begin a dialogue with all parties including Tamil parties to achieve peace and development;
- Fourthly, it was agreed to focus on humanitarian assistance, dismantling camps, reintegrating to the society the former child soldiers; and,

- Fifthly, to promote and protect Human Rights in keeping with international Human Rights standards and Sri Lanka's international obligations.

Secretary General underlined the importance of an accountability process for addressing violations of international humanitarian laws and Sri Lanka stated that she "will take necessary measures to address these grievances".

At the very outset you will see how much of coverage is given for reconciliation by the UN SG. These were more or less the basics of what were demanded by the so called 'remnants' of the LTTE, Tamil Diaspora Organizations and the affected victims, expressed in sobered diplomatic terminology.

However, there had been immediate attempts by some countries to demand wider focussed actions from Sri Lanka against which the Sri Lankan Government countered with a resolution numbered **S 11/1 titled "Assistance to Sri Lanka in the promotion and protection of Human Rights"**. Sri Lanka succeeded in getting the Council to adopt it by a majority vote. (29+, 12- and 6 Abstentions)

This resolution which was Sri Lanka's own, reflected the following.

- The President assured that the final solution is not militaristic thus leaving space for negotiations and reconciliation.
- Commitment of a political solution with implementation of the 13<sup>th</sup> Amendment for peace and reconciliation
- Prioritizing provision of assistance to ensure relief and rehabilitation of persons affected by conflict and reconstruction of the country's infrastructure, economy and resettlement of the displaced.
- Provision of humanitarian assistance and focus on health, sanitation, food, medical and health material.
- Assured no discrimination against ethnic minorities in the full enjoyment of human rights answering a larger demand made by Tamils in the North and East.
- Endorsed the communiqué by the SG and President Rajapaksa.
- Urged the international community to cooperate with the government in the reconstruction efforts including increased financial support and continue to ensure the promotion and protection of human rights, including economic, social and cultural rights.

It was not surprising that the achieved result by Sri Lanka at the UNHRC because it was a reconfirmation of the Joint Statement in more specific terms. The masterminds of the Resolution proclaimed it as a great victory. The then pro government media also endorsed it. The implementation of the Resolution was a challenge for the then government.

Most likely having understood the pressures on him or on pure intention to obtain reasoning for him to follow through, President Rajapaksa appointed the **LLRC on 15<sup>th</sup> May 2010** to reflect on the conflict and look ahead for an era of healing, and peace building in the country and to give recommendations. It gave him little breath to counter pressures. My personal belief is that appointing a Commission was advantageous to approach issues formally. It was a good move. However, an immediate pouring of goodwill for the affected would have been a much more effective and politically savvy move.

**LLRC recommended on 11th November 2011** based on what the Commission has heard from the people that the citizens are ready and willing to support consensual approaches advancing national interest, national reconciliation, justice and equality for all citizens, so long as political leaders take the lead in a spirit of tolerance, accommodation and compromise.

Some important recommendations were:

- Emphasized that all allegations should be investigated and wrongdoers prosecuted and punished irrespective of any bias so that confidence is built on the administration of justice and rule of law.
- Adopt a comprehensive approach to address the issue of missing persons.
- The Commission emphasized that the relatives of missing persons have a right to know the whereabouts of their loved ones and to bring the matter to a closure.
- Closure is the first difficult emotive step in that long and complex journey irrespective of whether they are victims of conflict or LTTE terrorism.

- Devolution was supported as a means of empowerment of people.

The international community was watching Sri Lankan government's performance on the commitments given in its own Resolution of May 27<sup>th</sup> 2009. Being somewhat varied of the slow movement, the UNHRC **Resolution 19/2 Of March 22<sup>nd</sup> 2012** was passed calling on the GOSL to implement the constructive recommendations of the LLRC. It wished that all necessary additional steps be taken to fulfil its relevant legal obligations and commitments to initiate credible and independent actions to ensure justice, equity, accountability and reconciliation for all Sri Lankans.

However, the performance was again not satisfactory from the point of view of internationals and in addition some other violations of human and humanitarian laws were being reported and the UNHRC passed **Resolution 25/1 of 27<sup>th</sup> March 2014** requiring Sri Lanka to:

- Conduct credible and independent investigations into allegations of violations of international human rights and humanitarian laws, as applicable and to implement the recommendations in the reports of the Office of the High Commissioner including the establishment of a truth seeking mechanism and a national reparation policy as an integral part of a more comprehensive approach to transitional justice.
- Implement the constructive recommendations of the LLRC Report and take all necessary steps to fulfil legal obligations and commitment to initiate independent actions to ensure justice, equity, accountability and reconciliation for all Sri Lankans.
- Urged the GOSL to investigate all alleged attacks by individuals and groups against religious minorities, human rights defenders, journalists, civil society groupsetc. and to hold perpetrators accountable to actions and prevent such actions in the future.
- Called on GOSL to release publicly results of investigations into allegations of violations by the Security Forces including the attacks on civilians at Weliveriya.
- Strengthen the Provincial administration.
- Encouraged the GOSL to cooperate with Special Procedures mandate holders.

- The resolution has taken note of the recommendations and conclusions of the UNHRC High Commissioner regarding human rights violations and the need for an international inquiry mechanism in the absence of a credible national process with tangible results. It meant direct interventions by the United Nations.

The 2015 reconciliation scenario emerged under such status. The final threat, if I can call it so' was for severe international intervention. It was considered by the pro government supporters as steamrolling to suit LTTE intentions; an attempt against sovereignty of the Nation. The political, military, public thinking inclined to venerate military victory than to consider reconciliation as the more appropriate stand to take. This deteriorated status is not considered by many as a restraint to move towards reconciliation at a rocket speed.

In simple terms, we were facing a threat of being squeezed by international interventions, which would have throttled our deteriorated economy and even brought other headaches of social, security and economic evils within the country. Therefore, the newly appointed government sent its Minister of Foreign Affairs to meet the major powers as well as UN institutional arms to negotiate for some time to deal with the past. He was successful in his attempts and we must for instance thank some of the main players like the USA, the UK, India, and the EU etc.

Under these circumstances the new government of 2015 launched the Dealing with the Past programme by appointing the Manouri Muththetuvegama Committee. It is through an island-wide consultation process to seek the views of the public including victims on the mechanisms were decided. When the government attended the UNHRC Sessions in September 2015 we had four "pillars" or components identified for reconciliation.

They were:

- Seek Truth
- Seek Justice
- Seek Reparation
- Ensure Non-recurrence

Institutional mechanisms were to be found for these components or "Pillars" as we called them. When we went before the UNHRC after

negotiating for a time slot to implement reconciliatory measures we submitted to the High Commissioner a docket containing the would be mechanisms to deal with the past. I may later briefly deal with the mechanisms which were found.

I must confess that we could not achieve each component requirement to the best or to the extent demanded by the victims of conflict. But we vehemently focussed our efforts and passed laws to fulfil the promises made, though somewhat delayed. Some unusually delayed. But, I think better late than never. I do not wish to deal with the laws that were passed due to time constraints. However, one has to keep in mind that the 2015 government was an alliance that had members of the previous government of President Mahinda Rajapaksa and extreme action demanded by the victims or the internationals was not so easy to be agreed due to obvious reasons.

Nevertheless, the **government appointed four informal Working Groups** comprising of professionals including legal minds and also practitioners in the government and civil society and Non-Governmental Organizations. These Working Groups prepared the concept papers for the government and did initial drafting of laws, to be formally reviewed and submitted according to the legal requirements of Cabinet approval, to be later taken up in the Parliament.

I was in three of the Working Groups as the Presidential Secretariat representative when I was the Governor of the Eastern Province. Due to time constraints I had to give up participation when I was appointed Secretary to the President in July 2017. I was the Co Chairman of the Truth and Reconciliation WG, Member of the OMP WG and Chairman of the Reparation WG. I did not participate in the Accountability Mechanism Working Group.

Due to previous personal and political attachments there was a consistent group who opposed any step taken to reconciliation by way of personally protesting, criticising the steps taken as group representations, making use of media to attack the work done in good faith by the government, and a group that challenged the drafted law in the Supreme Court on constitutional points and to create delays too. But these constraints and restraints were of no concern to victims and international players and the demand for the best possible status at the quickest pace and time frame was the order.

## **Truth Seeking Commission/ Truth and Reconciliation Commission**

The Draft Framework on the establishment of the Truth and Reconciliation Commission was submitted to the Cabinet of Ministers by the Hon. Prime Minister, on 23 October 2018. One may question the delay of submission by a government which promised truth seeking three years back. It was due to the need to balance the constraints stated earlier. This is a fact all of us know. The approval of the Cabinet is sought for the Legal Draftsman to draft legislation, in accordance with the Draft Framework, for the establishment of a Truth and Reconciliation Commission. The Cabinet of Ministers, at its meeting on 23 October 2018, had sought a Sinhala Translation of the Framework and by the time it was done the government was not in existence and hence realization of this need was further delayed.

### **Establishment of an Independent and Permanent Office on Missing Persons (OMP)**

The law was passed by the Parliament to deal with the missing persons irrespective of location, date of happening, language, ethnicity or religious background. The Office is based on the humanitarian mandate of truth seeking. OMP Commissioners were **appointed on 28 February 2018** for a period of three years. The budgetary allocation for 2018 was Rs. 1.3 Billion. The Commissioners work closely with the ICRC and bilateral partners. They have visited Cyprus and The Netherlands to learn best practice from similar mechanisms, and also to draw on technical capacity building requirements.

The **OMP presented an interim report containing recommendations on September 5<sup>th</sup> 2018** to the President and the Prime Minister. 2019 Budget will provide funds to implement interim recommendations. The OMP has conducted regional outreach programmes in the North and South. For the first time in the country, a national-level observance was organised by the OMP on 30 August in Colombo, with the participation of families of the missing from all parts of the country, on the International Day of the Disappeared.

The Office has announced that it will be setting up twelve regional offices, eight in the North and the East and four in the rest of the country. The OMP is assisted by the ICRC, UN, UK, and other bilateral partners. The OMP has also moved to fund the excavation of a suspected mass grave site in Mannar.

The law does not permit judicial review of the event around missing persons and this has quite naturally irked organizations of victims. This was taken on the political stride too. So much so there were organized campaigns against the OMP in the North. On the other hand, there was pressure created by the earlier mentioned groups that this Office was meant to take the War Heroes to The Hague, even though there was no possibility of judicial review! The government had to perform in this contradictory situation. However, I must say that the OMP Commissioners have won the confidence of both these groups I believe by performing their duties properly and by having a good dialogue with the victims. The best example is the manner in which the OMP assisted the Mannar Mass Grave case.

### **Office for Reparations**

The **Act to establish an Office for Reparations was passed by Parliament on 10<sup>th</sup> October 2018** and certified by the Speaker on October 22<sup>nd</sup> 2018. The Constitutional Council has called for nominations by advertisement, to select Commissioners on January 3<sup>rd</sup> 2019, the deadline being January 17<sup>th</sup> 2019.

### **Accountability Mechanism**

This was one issue which was sought after with greatest interest by the affected and their spokespersons, domestically and internationally. It is the same that is opposed most vehemently by the earlier mentioned groups in the South who again believe that it is to take the War Heroes to The Hague. I am aware that there was another Working Group that worked on this issue.

A final solution has not been found up to now. Of course, after September 2015 UNHRC Resolution, a section in it is bandied around regarding engagement of foreign judges which has been wrongly interpreted by some groups. However, I do not wish to deal with these legal nuances on some mechanism which is not in existence though I know that the demand for it has not died. There could be optional working steps that could finally be implemented whenever the government decides to find a solution for this matter.

### **Land Release**

The land issue is twofold. The demand is to release State land used by the Military and Police and the release of private land used in the same

manner. Since **October 30<sup>th</sup>2015 to January 9<sup>th</sup>2019, the security forces have released 17,503.68 acres of State land and 4,334.39 acres of private land in the Northern and Eastern Provinces.** Out of the 4,334.39 acres of private land released, 4,094.98 are from the Northern Province and 239.41 are from the Eastern Province. These figures are from government sources and are questioned by some but the fact remains that large land areas have been released.

The extent of remaining Private Land in the Northern Province is 3,462.30 acres.

- Out of this, 2,497.01 acres is land held by the Sri Lanka Army. Out of this, the Sri Lanka Army expects to release 65.31 acres in January 2019.
- The Sri Lanka Army is unable to release 2,210.26 acres due to security installations etc.
- The Sri Lanka Navy holds 965.29 acres of private land. Out of this, the Navy intends to release 121 acres in 2019. The Navy is unable to release 844 acres due to security reasons.
- The extent of remaining Private Land in the Eastern Province is 132.74 acres
- Out of this, the Sri Lanka Army holds 32 acres. In January 2019, they intend to release 3.5 acres. The Army is unable to release 15.07 acres due to security reasons.
- Sri Lanka Navy holds 100.57 acres of land. Out of this, the Navy intends to release 02 acres in 2019. The Navy is unable to release 98.57 acres due to security reasons.

The relevant officials at the Ministry of Defence, the tri-forces, the Ministry of Resettlement, District Administration and the Treasury are working in cooperation towards expediting land release. I have my personal experience of land release in the East in Sampur when I was the Governor of the East of which I am officially and personally proud of. It gave me a good understanding of how difficult it is to deal with this issue after a long conflict status and how dialogue gives us solutions.

**The Presidential Task Force on Coordinating and Monitoring Development Activities in the Northern and Eastern Provinces which meets regularly under the Chairmanship of the President follows up on land release related issues.** The last meeting was held on 17<sup>th</sup> December 2018, and will meet on a monthly basis.

In this regard let me be frank. While I agree that the affected should be returned to their own former habitation, for purpose of national security citizens should stand with the government on the need to secure areas for the security forces. We have seen some political authorities demanding the total withdrawal of military bases from the North and East of Sri Lanka after a 26 year conflict, which saw thousands giving their lives. Negotiating for required extents and the locations is a matter that had to be done in a sane manner. We do not want to forget the past security experiences when we Deal with the Past. I think this is happening through the Presidential Task Force and other Committee interventions. The Sampur experience is a good example of cohabitation between the security forces and civilians.

### **Resettlement of the Displaced**

Since the conclusion of the conflict, **as at September 30<sup>th</sup>2018, 882,216 internally displaced persons (IDPs) belonging to 257,633 families in the Northern and Eastern provinces have been resettled.** The total number remaining to be resettled is 35,954 persons belonging to 10,509 families. Out of the total number of persons to be resettled, 2,216 persons belonging to 627 families are in 25 welfare centres in Jaffna (as at September 30<sup>th</sup>2018). The remaining are with families and friends.

The resettlement of refugees is an issue which is mostly related to India. The Government of Sri Lanka and Indian authorities are working on this issue while there had been some initial resettlement activity that had taken place already.

### **Criminalising Enforced Disappearances**

Sri Lanka ratified the International Convention for the Protection of All Persons from Enforced Disappearance in May 2016, and **Parliament enacted the International Convention for the Protection of All Persons from Enforced Disappearance Act on March 7<sup>th</sup>2018.**

### **Review of the Victim and Witness Protection law Assistance**

**Protection of Victims of Crime and Witnesses Act, No. 4 of 2015 was passed on March 7th 2015**, which established a National Authority to implement the provisions of the Act. An amendment was brought on November 17<sup>th</sup> 2017 to the Act, enabling victims and witnesses to lead evidence from Sri Lanka Missions in foreign States. The Policy and Programme Division, Legal Division and Operations division of the Authority have been set up, while recruitment is ongoing for the Protection Division. **The Special Police Division set up under the Act is in operation since November 2016.**

### **Prevention of Torture**

The government takes allegations of torture very seriously and remains firmly committed to taking all steps to have such allegations investigated and prosecuted, to the full extent of the law. The Government has a firm commitment towards ensuring that its zero tolerance policy on torture is fully implemented. **Sri Lanka deposited the instrument of accession to the Optional Protocol to the Convention against Torture on December 5<sup>th</sup> 2017, which entered into force on January 4<sup>th</sup> 2018.** The Human Rights Commission of Sri Lanka has been designated as the National Preventive Mechanism.

The Sub-Committee on Prevention of Torture is scheduled to visit Sri Lanka from 31<sup>st</sup> March – 11<sup>th</sup> April 2019.

### **Review and Repeal of the PTA**

The Bill on the **Counter Terrorism Act (CTA)** which envisages repeal of the PTA and enactment of new counter terrorism legislation in line with human rights standards was presented to Parliament on October 9<sup>th</sup> 2018. Subsequently, several petitions were filed in the Supreme Court challenging the constitutionality of the Bill. **The Supreme Court, on October 23<sup>rd</sup> 2018, concluded its hearing on the petitions and instructed to file written submission thereon before October 25<sup>th</sup> 2018.** The Supreme Court has communicated its determination to the Speaker which was read out in Parliament on November 14<sup>th</sup> 2018. **The amendments suggested by the Supreme Court will be reviewed by the Oversight Committee of Parliament, after which it will be taken up in Parliament for the second reading and adoption.**

### **PTA Detainees:**

**As at December 18<sup>th</sup>2018, cases against 61 detainees are currently pending before High Courts. AG's Department is yet to file indictment against 3 suspects arrested under the PTA.**

### **Strengthening of the National Human Rights Commission**

A number of steps, including the 19<sup>th</sup> Amendment to the Constitution, have been taken by the GoSL since 2015, to guarantee the independence of the Human Rights Commission of Sri Lanka (HRCSL) and provide it with the necessary resources to carry out its functions.

**In March 2018, HRCSL was re-accredited with 'A' status by the Global Alliance of National Human Rights Institutions (GANHRI). The 'A' status recognizes those National Human Rights Institutions (NHRIs) that are in full compliance with the Paris Principles adopted by the UN General Assembly in 1993, which set out the following 6 primary criteria for NHRIs: having a broad mandate based on universal human rights norms and standards, autonomy from Government, independence guaranteed by statute or Constitution, pluralism, adequate resources and adequate powers of investigation)**

### **National Human Rights Action Plan**

For the purpose of formulating the current NHRAP, the **Cabinet of Ministers approved the establishment of an Inter-Ministerial Committee (IMC) on Human Rights on 16th May 2016.** Cabinet approval was also granted to establish a Committee of Officials from relevant government ministries and departments, and committees consisting of members from civil society organisations and the HRCSL to assist the IMC in formulating the Action Plan and carrying out its implementation.

The **NHRAP was formally launched on 1st November 2017.** The Plan contains relevant, measurable and practical action points relating to the promotion and protection of human rights in ten thematic areas namely, (1) civil and political rights, (2) prevention of torture, (3) economic, social and cultural rights, (4) rights of women, (5) rights of children, (6) rights of persons with disabilities, (7) rights of internally displaced persons and refugees, (8) labour rights, (9) rights of migrants, and (10) environmental rights. The Plan is being implemented through a three tier Inter Ministerial Committee headed by the Hon. Prime Minister, assisted by government and non-government agencies.

### **Active engagement with the UN and its systems and processes**

- Sri Lanka became a State Party to the following international conventions since January 2015: International Convention for the Protection of All Persons from Enforced Disappearance in May 2016;
- International Convention on the Rights of Persons with Disabilities (CRPD) in February 2017;
- Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment in December 2017;
- Convention of the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction (Ottawa Treaty) in December 2017;
- Convention on Cluster Munitions in March 2018.

Further;

- Sri Lanka hosted the Special Envoy on the Ottawa Treaty, HRH Prince Mired Raad Al Hussein and the UN under Secretary General for Political Affairs, Mr. Jeffrey Feltman, in March 2018.
- Eight thematic Special Procedure Mandate Holders of the UN including 2 Working Groups have visited Sri Lanka since January 2015. The latest of these visits was by the UN Independent Expert on Foreign Debt, Other International Financial Obligations and Human Rights, Mr. Juan Pablo Bohoslavsky, in September 2018.
- Sri Lanka has had open and constructive dialogues with six UN Treaty Bodies since 2015.

Sri Lanka's review at the 3rd Cycle of the Universal Periodic Review (UPR) took place on 15 November 2017. At the Review, Sri Lanka received 230 recommendations of which we accepted 177 and noted 53. The GoSL also made 12 voluntary pledges.

The following visits are scheduled for 2019

- Visit of the Sub Committee on Prevention of Torture (31 March – 11 April 2019)

- Visit of Independent Expert against violence and discrimination based on sexual orientation and gender identity (27 May – 07 June 2019)
- Visit of SR on the Right to Freedom of Peaceful Assembly and Association (15-26 July 2019)
- Visit of SR on Freedom of Religion or Belief (15-24 August 2019)

I think I have spoken sufficiently to prove how the post 2015 government has acted to reconcile the split Sri Lankan society after a long conflict under the constraints it faced. Of course, if things could have been done faster and inclusively, it would have satisfied everyone, but, one has to bear with the issues that have to be complied with in governing Sri Lanka.

In life sometimes we live with optimism but within our own means. In political management this has other reasons to be bothered. We are dealing with some political creatures on both the demand and supply sides for reconciliation. They are not easy to satisfy. In a nutshell this is what we have experienced post 2015 in managing reconciliation. Of course, we have not given up our commitment to reach the highest possibility in reconciliation. We as a government want to serve our people and it is our responsibility. I hope you in the international media also would gladly support our cause.

Thank you.