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Agenda item 2

**Annual report of the United Nations High Commissioner
for Human Rights and reports of the Office of the
High Commissioner and the Secretary-General**

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

1. On behalf of the High Commissioner for Human Rights, I am pleased to provide this oral update on implementation of Human Rights Council resolution A/HRC/22/L.1/Rev.1 on promoting reconciliation and accountability in Sri Lanka. This draws on input from relevant Special Procedures mandate holders and the High Commissioner's own observations during her visit to Sri Lanka from 25-31 August 2013. It focusses in particular on the issues highlighted in resolution A/HRC/22/L.1/Rev.1 and the recommendations contained in her previous report to the Council¹.
2. At the outset, the High Commissioner would like to thank the Government for its invitation and its excellent cooperation during the planning and conduct of her visit, which included field visits in Jaffna, Killinochchi, Mullaitivu and Trincomalee. During the mission, she called on HE President Mahinda Rajapaksa, and held discussions with senior members of the Government, opposition political parties, the judiciary and bar, Human Rights Commission, civil society, United Nations Country Team and diplomatic community. The statement issued by the High Commissioner at the end of her visit is available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13673&LangID=E>
3. The High Commissioner observed at first hand the impressive achievements made by the Government, with the help of the international community, in resettlement, reconstruction and rehabilitation in the relatively short period since the armed conflict with the LTTE ended in 2009, including the construction of new roads, bridges, train connections, medical facilities, schools and housing. Services such as electricity and water supplies have been greatly improved; and much of the de-mining process has been completed.
4. The majority of people who were internally displaced at the end of the armed conflict have now returned or been resettled, although thousands of persons displaced before 2008-9 are still awaiting return, and many of the returnees she met are facing difficulties resuming their livelihoods. We are pleased that the Government has invited the Special Rapporteur on the human rights of internally displaced persons to further assess these issues². This along with planned work on a Joint Needs Assessment can help define actions for durable solutions for all displaced people.
5. The High Commissioner welcomes the elections to the Northern Provincial Council which were successfully held on 21 September, which she hopes will usher in an important new stage in the devolution of power, in accordance with the undertaking given by the President to the Secretary-General and endorsed by the Human Rights Council to proceed with the implementation of the 13th Amendment.³ The High Commissioner recommends the Government work with new Northern Provincial Council to conduct a more comprehensive participation needs assessment to develop new oversight mechanisms for reconstruction and development programs which ensure meaningful participation by representatives of civil society and minorities.
6. The High Commissioner has identified, however, a number of factors impeding normalization, which – if not quickly rectified – may sow the seeds of future discord.
7. Four years since the end of the war, the military presence in the north remains considerable. The High Commissioner received information that a number of military

¹ A/HRC/22/38 <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G13/109/26/PDF/G1310926.pdf?OpenElement>

² The Government has also invited the Special Rapporteur on education, but dates have yet to be settled.

³ Joint Statement, 26 May 2009: Human Rights Council Special Session resolution A/HRC/s-11/L.1/Rev.2, paragraphs 10 and 11

checkpoints and barriers were removed just before her arrival and reinstated after her departure. There is a high level of surveillance of returnees, rehabilitees and detainees who have been released, including of the communities she met. She was particularly concerned to hear about the vulnerability of women and girls, especially in women-headed households, to sexual harassment and abuse, including at the hands of military personnel, and challenged the Government to formulate and rigorously enforce a zero tolerance policy for sexual abuse⁴.

8. The High Commissioner also received documentation on the compulsory acquisition of private land for installing military camps and other installations in Trincomalee, Mullaitivu, Jaffna and Kilinochchi. While the Minister of Economic Development explained that these acquisitions were in part to regularize earlier acquisitions of land for high security zones and thereby compensate the owners, she is concerned these policies will only make the complex land issues even more complicated and difficult to resolve. The Ministry of Justice is developing a comprehensive framework to establish land mediation for the Northern and the Eastern Provinces to deal with some of the main land-related challenges and disputes, and we hope this will empower communities to find appropriate solutions in partnership with administrative authorities at the local level.

9. The role of military is prominent in other areas of civilian administration and economic activity in the north, including education, agriculture and tourism. The Secretary of Defence explained the challenges the Government faces in accommodating a large army throughout the island and transitioning army personnel to other economic activity. The High Commissioner therefore encourages the Government to initiate a meaningful and transparent reduction of the military presence to peacetime levels which would require a clear timeline for demobilisation, disarmament and disengagement from activities that are meant to be civilian.

10. Civil society also expressed serious concerns about the transfer (since April 2010) of the registration, audit and control function of all NGOs country-wide to a secretariat under the Ministry of Defence, and the High Commissioner urges the Government to move the NGO Secretariat under the purview of a civilian Ministry. She also encouraged the Government to remove restrictions and create space for NGO and civil society activity that would support rehabilitation and reconciliation, particularly in the psycho-social field, and to consult with and empower communities to find appropriate forms of local and national commemoration and memorialisation.

11. In resolution A/HRC/22/L.1/Rev.1, the Human Rights Council reiterated its call upon the Government of Sri Lanka to implement effectively the constructive recommendations made in the report of the Lessons Learnt and Reconciliation Commission. The Council took note of the national plan of action to implement the LLRC recommendations, although noted that it did not adequately address all of the findings and constructive recommendations of the Commission. During her visit, the High

⁴ A recent UNHCR baseline survey has been cited by the Government as providing a favourable assessment of the outlook of IDPs on a number of issues including the presence of the military and safety and security. But according to the same report, almost 30% of those interviewed responded negatively when asked how they felt about the military presence, with the highest levels of negative response in Kilinochchi (51%) and Mullaitivu (37%) districts. Furthermore, 57% reported that military installations or posts were less than one mile away from their homes and 87% of respondents reported that the military 'registered' their family at least once, in addition to civilian government registration. Almost 30% of respondents highlighted that the military visited (sometimes repeatedly) their households for reasons other than registration, all of which points to the high level of military presence and intrusion in civilian life.

Commissioner had a detailed discussion with the Permanent Secretary to the President, who is head of the taskforce appointed to monitor the implementation of the LLRC report. She welcomes the Government's move to accept an additional 53 recommendations of the LLRC to be implemented via the National Plan of Action (NPOA), but still believes the Government would benefit from holding public consultations on the LLRC plan of action, and involving national and international NGOs both in its implementation and independent monitoring on the ground. OHCHR will closely follow future developments in the implementation of the LLRC, and report any progress to the Human Rights Council.

12. One welcome step announced on the eve of the visit is the separation of the police from the Ministry of Defence under a new Ministry of Law and Order. This had been recommended by the LLRC. The new Ministry however, like the Ministry of Defence, will be under the President and will be operationally headed by a former general. This step would be further reinforced by strengthening the role of the National Police Commissioner and Human Rights Commissioner to provide oversight and investigate complaints.

13. A second step announced at the time of the visit is the appointment by the President of a new Commission of Inquiry into disappearances. Any new effort to resolve these cases is welcome, but unfortunately the new Commission will only cover disappearances in the Northern and Eastern Provinces between 1990 and 2009, which means that the many "white van" disappearances reported in Colombo and other parts of the country in recent years will not fall within its scope. The High Commissioner urged the Government to broaden the Commission's mandate and stressed the need for it to be more effective than the five previous commissions of this kind, whose recommendations were not always published and never fully implemented. She welcomed the new proposal to amend the penal code to criminalise disappearances, which she hopes will be done without delay. She also encouraged the Government to seize this opportunity to work with OHCHR, the Special Procedures and other international partners to make a comprehensive effort to resolve the disappearances issue once and for all. OHCHR would be willing to lend additional assistance which could speed up the process of resolving pending cases and facilitate efficient sharing of information. The Government could also send a clear signal of its commitment by ratifying the International Convention on Disappearances, and by inviting the Working Group on Enforced and Involuntary Disappearances to visit Sri Lanka, ideally before the High Commissioner reports back to the Human Rights Council in March 2014.

14. In relation to detainees, the High Commissioner followed up on the status of the remaining cases. She has always stressed the importance of the LTTE being held accountable for its crimes and urged the Government to expedite such cases, either by bringing charges, releasing them, or sending them for rehabilitation. The Government has provided figures of over 11,758 detainees rehabilitated and reintegrated into society, 234 currently undergoing rehabilitation and 91 under legal proceedings. The ICRC has resumed visits to detention centres, although lawyers for those detained reported problems in accessing the major camp in Boosa. The Government recently inaugurated special courts to hear cases against LTTE suspects, and we hope these proceedings will be transparent and meet international fair trial standards. The High Commissioner also suggested that it may now be time to repeal the Prevention of Terrorism Act which has long been cause for concern to the international human rights mechanisms, but the response was not encouraging. Meanwhile, cases of arbitrary detention under the PTA continue to be recorded during her mission, 50 such cases of arrests, all recorded between 2009 and 2013, were brought to her attention.

15. In resolution A/HRC/22/L.1/Rev.1 the Human Rights Council also calls upon the Government "to conduct an independent and credible investigation into allegations of

violations of international human rights law and international humanitarian law, as applicable.”

16. Regrettably, the High Commissioner detected no new or comprehensive effort to independently or credibly investigate the allegations which have been of concern to the Human Rights Council. She received little new information about the Courts of Inquiry appointed by the army and navy to further investigate the allegations of civilian casualties and summary executions raised in the LLRC report and Channel Four documentaries, and urges these reports be made public to allow them to be evaluated. The High Commissioner stressed that appointing the armed forces to investigate itself does not inspire confidence in a country where so many past investigations and commissions of inquiry have foundered.

17. The Human Rights Council endorsed the High Commissioner’s recommendation for “the establishment of a truth-seeking mechanism as an integral part of a more comprehensive and inclusive approach to transitional justice”. But the Government has so far not responded positively to my offer of assistance.

18. The High Commissioner encourages the Government to use the time between now and March 2014 to show a credible national process with tangible results, including the successful prosecution of individual perpetrators, in the absence of which she believes the international community will have a duty to establish its own inquiry mechanisms.

19. The High Commissioner was briefed by the Attorney-General on developments in the investigation concerning the killing of five students on the beachfront in Trincomalee in 2006. OHCHR remains ready to lend assistance in this case and will be watching and reporting to the HRC on the outcome, as well as on the other unsolved murder of 17 ACF aid workers in which there seems to have been relatively little progress. The High Commissioner again urges the Government to publish the results of its previous 2006 Commission of Inquiry into these cases.

20. Too many other investigation files remain pending, for instance the custodial deaths of prisoners in Vavuniya and Welikada prisons in 2012. Furthermore, we urge the Government to make public the results of these investigations, as well as the inquiry into the recent deployment of the military in support of police to control a demonstration in Weliweriya, which resulted in at least three deaths. This is the latest in a series of incidents, including at Katunayake in May 2011 and Chillaw in February 2012 which appear to have involved the excessive use of force.

21. Sri Lanka desperately needs strong witness and victim protection legislation, which has been pending in draft form since 2007. OHCHR has offered technical support in this area, as the draft still needs improvement to meet both local challenges and international standards.

22. The High Commissioner also followed up on a number of other human rights concerns expressed by the Human Rights Council⁵. She was particularly alarmed at the recent surge in incitement of hatred and violence against religious minorities, including attacks on churches and mosques, and the lack of swift action against the perpetrators. Since her mission, she has received a compilation of 227 incidents of religious attacks,

⁵ In resolution A/HRC/22/L.1/Rev.1, the Human Rights Council expressed concern at the “continuing reports of violations of human rights in Sri Lanka, including enforced disappearances, extrajudicial killings, torture and violations of the rights to freedom of expression, association and peaceful assembly, as well as intimidation of and reprisals against human rights defenders, members of civil society and journalists, threats to judicial independence and the rule of law, and discrimination on the basis of religion or belief.”

threats, incitement to hatred against Muslims alone that were recorded between January and July 2013, which will be shared with the Government. There have been numerous other attacks or incitement against Christians and Hindus as well.

23. Regrettably, Government interlocutors seemed to downplay this issue or even put the blame on minority communities themselves, and the High Commissioner heard disturbing accounts of state patronage or protection given to extremist groups. She welcomes the President's comments since her visit on the need for religious tolerance, but urges him and the Government to send the strongest possible signal of zero tolerance for such acts by ensuring that those responsible, who are in many cases easily identifiable, are punished.

24. The Minister of National Languages and Social Integration told the High Commissioner that he has proposed new legislation on hate speech. As Council members know, OHCHR has recently concluded a study of such laws and we would be happy to assist in this area. A visit by the Independent Expert on Minorities would also be helpful, and we hope that this can happen as soon as possible.

25. In relation to freedom of expression, the High Commissioner heard complaints about the continuing high levels of harassment and intimidation meted out to human rights defenders, lawyers and journalists. She raised several emblematic cases with the Government, but did not receive any satisfactory responses. This concern was unfortunately borne out during her visit by reports that people in villages and settlements she visited in the Mullaitivu area were visited by police or military officers before and after her arrival. In Trincomalee, people she met were subsequently questioned about the content of their conversation. The High Commissioner raised these concerns with the President and Minister of External Affairs, and will continue reporting any reprisals in connection with the visit to the Human Rights Council.

26. Finally, the High Commissioner observed great disquiet among many commentators and stakeholders about the degree to which the rule of law and democratic institutions in Sri Lanka are being undermined and eroded. The 18th amendment to the Constitution has been a watershed in this respect, as it abolished the Constitutional Council which once recommended appointments to the independent bodies, such as the Elections Commission, Police Commission and Human Rights Commission, and has weakened these important checks and balances on the power of the Executive. The United Nations and Commonwealth are supporting the Human Rights Commission, but it does not seem to be engaged on the critical human rights issues. The controversial impeachment of the Chief Justice earlier this year, and apparent politicization of senior judicial appointments, have shaken confidence in the independence of the judiciary, and separation of powers in general. Sri Lanka has long had an active fundamental rights jurisdiction, but lawyers reported the pressures they are facing when filing petitions. The High Commissioner believes that the reinstatement of the 17th amendment and adoption of LLRC recommendations in relation to good governance, judicial review of legislation, and restoration of independent commissions are key for strengthening democracy in Sri Lanka.

27. The High Commissioner is convinced that the continued attention of the Human Rights Council to the human rights situation in Sri Lanka remains critically important and will be making recommendations in March on appropriate ways it could continue that engagement. She hopes the Government will take this opportunity to issue further invitations to Special Procedures mandate holders to assist in this task, particularly the Working Group on Enforced and Involuntary Disappearances and the Independent Expert on Minorities. OHCHR, as offered by the High Commissioner a number of times, stands ready to provide any technical assistance the Government may require to implement the recommendations of the LLRC and its other obligations.