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

Report of the Office of the United Nations High Commissioner for Human Rights on advice and technical assistance for the Government of Sri Lanka on promoting reconciliation and accountability in Sri Lanka

Addendum

Comments by the State*

* Reproduced in the annex, as received.

Annex

[English only]

Observations of the Government of Sri Lanka on the draft report of the United Nations High Commissioner for Human Rights on advice and technical assistance for the Government of Sri Lanka on promoting reconciliation and accountability in Sri Lanka (A/HRC/22/38)

Reference to the UNSG's PoE Report

1. The Report A/HRC/22/38 refers on several instances to the United Nations Secretary General's Panel of Experts Report (hereafter called the PoE Report) on Sri Lanka. The Government of Sri Lanka (GoSL) would like to request the OHCHR to delete all references to the PoE Report for the following reasons:

(a) The PoE was not referred to in the resolution 19/2 on promoting reconciliation in Sri Lanka, and therefore allusion to it in the Report A/HRC/22/38 takes the Report beyond the scope and mandate of the resolution 19/2.

(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 to advise himself on, and is not the product of a 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 an intergovernmental fora. The PoE's mandate did not extend to fact finding or investigation. 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. For these reasons, the GoSL does not extend any credence or legitimacy to the PoE Report.

2. The 6 specific references to the PoE Report are given below:

(i) **Paragraph 2** of the Report notes '**While the Secretary-General has offered the PoE as a resource to the Government and particularly to the LLRC, the PoE had very limited engagement with the Government and did not meet with the LLRC.**' – This is a misrepresentation of what actually transpired, which is that the Panel of Experts were invited to make representation before the LLRC, whereas the Panel, for reasons best known to them, did not present themselves before the LLRC for this purpose. If all allusions to the PoE in the Report are not deleted as requested above, the GoSL would request that this paragraph be suitably amended to accurately reflect reality bringing in reference to the fact that the PoE was invited to make representation before the LLRC, but did not do so.

(ii) **Footnote 1** contains extensive reference to the PoE Report. If this footnote is not deleted, the GoSL would request that this be qualified with reference to the GoSL position on the PoE as reflected under Item (b) above.

(iii) **Footnote 5** refers to the PoE Report in reference to **Paragraph 10 'concerns regarding its [LLRC's] mandate, composition and methodology'**. The GoSL requests that this reference to the PoE be deleted, given that the PoE is a document which lacks credence and legitimacy, as elaborated above.

(iv) **Paragraph 26** and **corresponding footnote 32** make reference to the PoE. Paragraph 26 states, 'Noting this Act [Registration of Deaths (Temporary Provisions) Act

No 19 of 2010), the PoE however stated that “issuance of a death certificate following an administrative process is not a substitute for a bona fide investigation into the circumstances of an individual’s death, which meets international standards. any further legal recourse in the future”. The GoSL requests that this reference and corresponding footnote be deleted.

(v) **Footnote 49** refers to the PoE in relation to the study of cases of LTTE suspects in detention. The GoSL requests that this reference to the PoE be deleted.

(vi) **Footnote 50 quotes a PoE reference to the rehabilitation of ex-combatants.** The GoSL requests that this reference to the PoE be deleted.

Meetings in Sri Lanka by the OHCHR Technical Mission

3. **Paragraph 7** of the Report has omitted reference to the meeting between the OHCHR technical Mission led by Mr. Hanny Megally and Hon. Mahinda Samarasinghe, Minister of Plantation Industries and Special Envoy of the President on Human Rights. It would be appreciated if this section is updated and amended accordingly.

Reference to the Response dated 17th December 2012 by the Minister of External Affairs of Sri Lanka

4. **Paragraph 7** of last sentence **refers to the letter by the High Commissioner for Human Rights dated 26th November 2012 addressed to the Minister of External Affairs of Sri Lanka.** However, the Report at this instance does not mention that the High Commissioner’s letter was responded to by the Minister of External Affairs of Sri Lanka Hon. Prof. G.L. Peiris by his letter of 17th December 2012 addressed to the High Commissioner, even though we note that reference to the letter by Hon. Prof. Peiris is made in Paragraph 61 of the Report. We therefore request that the response by the Minister of External Affairs be referred to in **Paragraph 7** as well, in order to accurately reflect the course of events.

Reference to Rule of Law and Administration of Justice

5. The content of **paragraph 15** expresses an unfounded fear in relation to the exercise of powers vested under Section 12 Part III of the Public Security (Amendment) Act, which empowers the members of the Armed forces to act within a limited scope to maintain public order. According to Section 20 of the Act, immediate steps should be taken to hand over any person arrested to the police authorities to deal with the said person under the provisions of the Criminal Procedure Code. Orders under Section 12 are issued based on objective criteria. The evaluation and assessment of the need to issue these orders are based on the recommendations of the State intelligence services which shall take all objective focus in making appropriate recommendations for the invoking of the powers under Section 12 of the Act.

Reference to Allegations of Extrajudicial Killings

6. **Paragraphs 17 & 18** - Taking cognizance of the LLRC Report, the Commander of the Army appointed a Court of Inquiry to investigate the instances of civilian casualties that are mentioned in the LLRC Report and also to investigate the Channel 4 allegation. The Commander of the Army’s direction to the Court of Inquiry was to investigate the alleged scenes of summary executions that are shown in the Channel 4 video footages **irrespective of the fact whether the video footages are authentic or not.**

7. The Court of Inquiry decided to investigate “**civilian casualties allegation**” first. With regard this inquiry to date 50 witnesses have been examined by the Court of Inquiry. These witnesses were examined on alleged incidents of shelling that are mentioned in the LLRC Report. The Court has to investigate more than 50 incidents mentioned in the LLRC Report that are alleged to have occurred at different localities, extending from the West Coast to the East Coast of Northern Sri Lanka, at different dates and times. The inquiry requires the identification of the Artillery Regiments, Formations and Infantry Battalions that are relevant to the incidents alleged and the examination of the commanders concerned. Such an inquiry is naturally time consuming. The inquiry will be concluded shortly, by mid January 2013.

8. **As regards an independent investigation into the Channel 4 Video to establish the truth or otherwise of the allegations arising from the video footage**, the Court of Inquiry aforesaid has been tasked to investigate this matter. Once the 1st part of the investigation is over, the court will investigate the channel 4 allegations.

Reference to the Vavuniya Prison Riot in Paragraph 21

9. **Paragraph 21** - Excessive force had not been used in either of the incidents described in the paragraph. The Prison and Law Enforcement Officials have acted within the legal framework in responding to the situation that prevailed. Police Investigations into the two cases are currently in progress.

Reference to Missing Persons and Enforced Disappearances

10. **Paragraph 22** - The Government of Sri Lanka has on numerous occasions provided information to the UN Human Rights Council on the process adopted with regard to disappearances. An Inter-Ministerial Working Group to verify cases on alleged disappearances has been established to address cases brought to the attention by the WGEID. In addition, any reported incident of disappearance to the Police is duly investigated and information on such cases was provided in the National Report of Sri Lanka to the UPR 2012.

11. The Government has taken measures to investigate all reported cases of alleged disappearances including those related to the last phase of the conflict.

12. The Government of Sri Lanka continues to clear the backlog of cases brought to its attention by the WGEID and has provided responses to 159 cases in the last two years. Further, investigations are being conducted on remaining allegations. In addition to the Inter Ministerial Working Group, a Working Committee has been appointed headed by a Deputy Inspector General to conduct ground verifications to ascertain present facts.

13. **Paragraph 24** - Despite the non-inclusion of the LLRC recommendation related to cooperation with the ICRC on disappearances, the Ministry of Defence and the ICRC have held a series of discussions on the issue of the disappeared persons and continues to maintain a positive dialogue on possible areas of cooperation. The Ministry of Defence has also shared certain information with the ICRC and continues to work closely on cases of disappearances. Collaboration has included studying practical methodologies adopted by other countries in dealing with cases of alleged disappearances in cooperation with ICRC.

14. It may be noted that although the Family Tracing and Reunification Unit (FTR) established in collaboration with UNICEF which was primarily to trace missing children recorded 2,564 untraceable persons out of which 676 were children while 1,888 were adults. Nearly 75% of the tracing request received by the unit are related to adults. It is to

be noted that 64% tracing requests were reported by parents as having been recruited by the LTTE.

15. **Paragraph 25** - The Ministry of Defence has created a data base based on WGEID data and is in the process of cross checking information available with other institutions in order to establish centralized data base.

16. **Therefore the assertions made in the report in paragraphs 22, 24, and 25 that no mechanism has been established to trace the adults gone missing during the last stage of war is inaccurate.**

17. **Paragraph 29** - The Government has already provided responses to 159 cases referred by the WGEID. In addition another 5 urgent cases and 100 cases referred by the WGEID have been processed and will be communicated to the WGEID as soon as possible.

18. The generalization made highlighting a few isolated incidents as a spike in reports of abductions and disappearance in the period last quarter of 2011 to mid 2012 is inaccurate. As a case in point, categorizing the case of a “diplomat’s child” is erroneous. Investigations have revealed that this case cannot be categorized as either an enforced disappearance or abduction and the incident appears to be of a personal nature and the child has not been forthcoming in revealing the truth.

19. All other cases referred to in the report are under investigation by the Law Enforcement Agencies.

20. **Therefore the assertions made in the report indicating that spike of activities in the period last quarter of 2011 to mid 2012 is inaccurate.**

Reference to Detention Policies

21. **Paragraph 31** - The need to strictly adhere to the existing powers under the law to arrest or detain a person has been emphasized by the Supreme Court of Sri Lanka since its inception and any breach of such provisions would attract the infringement of the Fundamental Right enshrined in Article 13 of the Constitution of Sri Lanka. **Under the Prison Ordinance as well as any other written law dealing with detention of persons, no place of detention can be maintained without duly publishing it in a Government Gazette that could be accessed by any member of the public.** It has always been considered as illegal to maintain places of detention without properly gazetting such places and giving publicity to them. **In the circumstances it would be superfluous to make as new recommendation to include this requirement in to the catalogue of new measures to be adopted though NPOA.**

22. **Paragraph 32** - **A centralized, comprehensive database of detainees has been established at the Terrorist Investigation Division of the Police.** This is a round the clock mechanism with units in Colombo, Vavuniya and Boossa where the details of detainees and those who are released from detention can be obtained by the NoK. It may be noted that this information is only provided to NoK as detainees have requested that such information not be released publicly due to the privacy concerns. **There have been no reported instances of hostile or uncooperative behavior of State Officials towards family members who sought assistance at detention centers. Despite the assertion of hostile or uncooperative treatment, 3,073 NoKs have accessed the above units and sought the assistance.**

23. **Paragraph 35** - The rehabilitation process undertaken by the Government has been completely transparent and was supported by international agencies including UNICEF and IOM. The main criterion for rehabilitation to be undertaken was decided on the extent of involvement with the LTTE. Due to the Government’s deep and abiding commitment to the

reconciliation and peace, a vast majority of cadres have been rehabilitated and reintegrated into the society, despite their involvement with the LTTE activities.

24. **Therefore the assertions made in the report indicating that a criterion for rehabilitation has not been transparent is unfounded.**

25. **Paragraph 36 - The characterization of the legitimate rehabilitation process undertaken by the Government, as “a rehabilitation regime against alleged LTTE sympathizers” is inaccurate.** At no time has the rehabilitation process been used against ex-combatants or LTTE sympathizers but have been used for their benefit and to ensure speedy reintegration into society. Despite the sufficient evidence to take legal action on these individuals, as a part of reconciliation process, the Government chose the option of rehabilitation.

26. The same procedure was adopted with regard to the 4 students from Jaffna University who were arrested on charges of involvement in organising, canvassing for and actively taking part in an event of the LTTE which is a banned terrorist organisation in Sri Lanka; amounting to involvement in an unlawful activity under the Prevention of Terrorism Act (PTA). **Two(2) of these students have already been released on 22 January 2013 and other 2 will be released in due course.**

27. **Paragraph 37 -** There is no process in place or requirement for reintegrated ex-combatants to register regularly either with local civil affairs offices of the military or the local Army camps. Furthermore, military and intelligence agencies do not undertake visits to homes or workplaces of those who have been released for interrogation purposes. The claim that women are subjected to stigma following contact with the military is without basis.

28. **Therefore, the content of the report on these matters are inaccurate.**

Reference to Internal Displacement and Land Issues

29. **Paragraph 38 -** The GoSL took the responsibility upon itself to provide relief to the IDPs which was a result of the long conflict. Following the end of the conflict, a 180-day Action program was designed to quickly address the basic infrastructure with \$3.2 billion at its disposal to take care of water, sewerage, electricity, health and education sector with 900 schools now functioning with over 260,000 students and close to 14,000 teachers. 300,000 people have so far benefitted from water supply in the Jaffna peninsula. Water supply and sanitation alone has cost \$164 million. Resettlement package consisting 6 months dry rations, total shelter grant of Rs.25,000 per family, 40 perch land, non-food relief items has been provided to IDPs.

30. **Therefore, it is inaccurate for the OHCHR to state in its Report that Sri Lanka “has no comprehensive national policy on IDPs”. The resettlement process is comprehensive and the Government policy in this regard is reflected in the progress made to date and has been commended by the wider international community. The Ministry of Resettlement functions under a clear policy on resettlement.**

Reference to Demilitarisation

31. **Paragraph 47 -** The contents of this paragraph negatively portrays the otherwise positive role of the military. **There is no institutionalisation of military authority over civilian matters as claimed in the report. The military has no involvement in civil administration in the North and East.** The civil administration system in the North and

East is fully functional with Government Officials at the District, Divisional and grassroots levels being appointed and discharging their functions.

32. The military delivers development assistance as done in other parts of the country. In a post-conflict situation, it is normal for the armed forces to be involved in rebuilding the lives of civilians in the conflict affected areas in the absence of effective civilian institutions. This should be viewed as a temporary measure until the civilian institutions take over these functions. While the military is involved in the development activities in the former conflict areas, the capacity-building of the civilian institutions take place in parallel. Sri Lankan military's assistance in the reconstruction and relief efforts has been welcomed by the people in the area, since the military has been effective in assisting these citizens. If it had not been for the military's involvement, it would have been extremely difficult to provide critical assistance required by the civilians, in the aftermath of the conflict. Delivery of such assistance serves to win the hearts and minds of the population traumatized of the conflict, and is also a confidence building measure.

33. **Paragraph 48** - It is the prerogative of the Government of Sri Lanka to establish military zones in places the Government deems necessary, for valid security reasons, **and the GoSL rejects the claim of increasing militarisation of civilian functions, as the civil administration has always been in the North, even during the conflict.**

34. With regard to observations of OHCHR technical mission, the areas described are a part of Civil Military Cooperation and is in no way intended to usurp the powers of civil administration, and is similar to activities of other militaries in the world.

35. **Paragraph 49** - **All acquisition of land has been done according to the prescribed law and the Government has taken measures to pay compensation to the owners of the property and provide alternate land to them. The claim that the military is involved in economic activities is factually incorrect.**

36. **Paragraph 50** - The content of this paragraph is inaccurate. The members of the general public are not required to give notice to local Army posts for activities referred to in the paragraph. In order for national development priorities to be implemented in an effective and coordinated manner, NGOs are required to provide information to the Government on activities that they intend to undertake. In addition, it is also important for purposes of accountability for NGOs to provide information on their activities and source funding. The need for NGOs to register with the NGO Secretariat is a requirement under the relevant legislation in Sri Lanka, namely the Voluntary Social Services Organisations (Registration & Supervision) Act No 31 of 1980 as amended by Act No 8 of 1998. The requirement for authorisation to undertake activities and for disclosure of sources of funding is stipulated in the relevant Acts and applicable for the whole country, and not restricted to the North. The content of this paragraph convolutes this aspect.

37. **Paragraph 51** - The correlation between military presence and the points discussed in the paragraph is ambiguous.
