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Agenda Item 2

Interactive Dialogue with the High Commissioner for Human Rights on
'Promoting Reconciliation, Accountability and Human Rights in Sri Lanka

Statement by

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Statement by Hon. Tilak Marapana, P.C. Minister of Foreign Affairs of Sri Lanka and Leader of the Sri Lanka Delegation to the 40th Session of the Human Rights Council on Agenda Item 2 - Interactive Dialogue with the High Commissioner for Human Rights on 'Promoting Reconciliation, Accountability and Human Rights in Sri Lanka: 20 March 2019 - Geneva

Mr. President,

Madam High Commissioner/Deputy High Commissioner,

Members of the Council and Delegates to the 40th Session of HRC,

Ladies and Gentlemen.

I am pleased to be at the 40th Session of the HRC to share Sri Lanka's significant progress on human rights since the last review in 2017. I am joined by my parliamentary colleague Hon. (Dr) Sarath Amunugama, the Governor of the Northern Province Hon (Dr) Suren Raghavan, senior government officials including Foreign Secretary Ravinatha Aryasinha and Deputy Solicitor General Nerin Pulle, and Permanent Representative Ambassador A.L.A. Azeez.

Sri Lanka's engagement in these Council sessions is in keeping with our government's vision for a country that embodies the universal values of human rights, justice, rule of law and good governance, while striving to eradicate poverty and ensure economic dividends to all - providing the people a fundamental assurance of security and a sustainable future.

Madam High Commissioner,

At the outset we thank you for the acknowledgement throughout your report of the open, constructive and cooperative approach adopted by the Government of Sri Lanka, towards all stakeholders, both within and outside the country, and with the processes and mechanisms of this Council. Our intention has been to engage comprehensively so that our deep-rooted commitment to achieving reconciliation is made evident. Sri Lanka remains committed to achieving reconciliation and has made steady progress in pursuit of that objective. We have reported to this Council at consecutive sessions on the substantial progress made among others, with regard to civil and political rights, including advances with respect to freedom of expression and assembly, civil society consultation, establishment of a robust right to information framework, the strengthening of independent commissions, including the Human Rights Commission, among others.

You would agree that the post-conflict milieu of each country is unique. There are no two post-conflict situations where similar prescriptive remedies can be applied. We can learn from others' experiences but our own path to reconciliation will be primarily driven by the domestic context, in which we function. The basic tenet of a Transitional Justice process is the focus on its theoretical principles on State obligations. It is the State that must pursue Truth, Justice,

Reparations and Guarantees of Non-Recurrence. Sri Lanka committed to such a process in 2015, and has been taking concrete action since, to move forward on these pillars.

In the area of Truth Seeking, an Office of Missing Persons (OMP) has been established by law and fully operationalised. The Cabinet of Ministers is currently considering draft legislation to establish a Truth and Reconciliation Commission. In the area of Justice review of cases under the PTA have taken place and trials under the PTA have been expedited, while consultations are ongoing in Parliament to replace the PTA with proposed legislation for Counter Terrorism (CTA) ensuring its conformity to international standards and best practices. As for Reparations, the Office for Reparations Act passed by Parliament in October 2018 has provided for the establishment of an Office of Reparations in terms of the said law and three Commissioners have been recommended for appointment by the Constitutional Council. These institutions are empowered to look into, ascertain, acknowledge and address complaints made to the same. It must be noted that statutory duties performed by such bodies have to accord with a process of fairness and rules of natural justice, in achieving the objectives in respect to which such bodies are established. To ensure Non-recurrence of conflict, we are firmly resolved to fulfilling the agenda on reconciliation.

All these mechanisms and processes have been put in place within a short span. During this period, the Secretariat for Coordinating the Reconciliation Process and the Task Force also undertook a wide-ranging consultation process prior to operationalizing measures. You would agree Madam High Commissioner that such a consultative approach was essential in order to ensure transparency and ownership of these mechanisms by the people of Sri Lanka.

While noting the contents in paragraphs 10-13 of the OHCHR report Madam High Commissioner, on the political developments of late 2018, it is also recalled that during the period in question, the Supreme Court embarked upon resolving the constitutional issues that had arisen, in an expeditious manner, giving credence to the independence of Sri Lanka's judiciary. Furthermore, law and order was maintained by the security forces and the police, and the public service conducted itself in an exemplary manner. This clearly demonstrated Sri Lanka's strong democratic credentials and institutional stability.

In the context of paragraph 15, the institutions already established to take the transitional justice measures forward would require that they adhere to the rule of law, and the results of the work carried out by such institutions should be able to withstand the test of any potential judicial process. Thus, while appreciating the acknowledgment in the report that steps have been taken for institution building, it may be recalled that the benefits arising from the functions of such institutions that accrue to individual rights holders should accord with the principles of natural justice as decisions made in haste compromise on principles of natural justice.

With regard to paragraph 17, contrary to the view that the Government of Sri Lanka has lagged in the actual implementation of the commitments beyond the establishment of coordinating bodies, it must be noted that the OMP has been fully operationalized and the Office for Reparations Act passed by Parliament has provided for the establishment of an Office for

Reparations in terms of the said law. These institutions are empowered to examine, ascertain, acknowledge and address complaints made to the same, and perform its statutory duties in accordance with a process of fairness and rules of natural justice. Funding for the Office for Reparations has been allocated in the 2019 National Budget.

In the context of paragraph 19, it may be noted that under the Reparations Act which was passed into law in October 2018, three Commissioners have been recommended for appointment by the Constitutional Council and in the 2019 Budget, the Government has allocated Rs. 500 million to pay a monthly allowance for families of disappeared persons who have received the certificate of absence.

With reference to paragraph 23 of the Report with regard to the discovery of human skeletal remains in Mannar on 29th May 2018, this matter is a case in point for the need to exercise caution in approaching issues of this nature. Contrary to pre-conceived notions, it was scientifically established that the recovered skeletal remains had no nexus to the conflict. Having been facilitated through the Office of Missing Persons (OMP), the test results obtained from a USA laboratory have revealed that the said skeletal remains date back to 1499-1719 AD - a period when Sri Lanka was largely under European colonial rule. This is yet another instance that demonstrates that allegations and mere collection of data should not be pre-judged to cast unjustified aspersions. It also amply demonstrates the need for allegations to always be subject to the due process of investigation in accordance with established legal procedures and not be hastily credited to support unfounded assumptions.

With reference to paragraph 25 of the Report, the amendments suggested by the Supreme Court to the content of the Bill on the “Office for Reparations” complies with the basic structure of our Constitution that recognizes a functional separation of powers pertaining to organs of government. The incorporation of amendments suggested by the Supreme Court, considered by the Parliament to make amendments to the Reparation Law, is a mandatory process that ensures the constitutionality of the said law. Furthermore, contrary to your observation, it may be noted that the proposed amendments suggested by the Supreme Court broadens its applicability to persons who could seek redress before the Office for Reparations, since complaints that can be received and considered, both individually and collectively by the Office, would no longer be limited to alleged violations of human rights or International Humanitarian Law, but would inter alia in terms of the definition provided in section 27 of the Act, include - persons who have suffered damage as a result of loss of life or damage to their person or property - such damage being in the nature of prolonged and grave damage suffered by individuals groups or communities of people of Sri Lanka.

Madam High Commissioner,

At a time the world is confronted with increasing acts of terrorism and violent extremism, as I stated before this Council last year, the action by the Sri Lankan security forces during the conflict was against a group designated as a terrorist organization by many countries, and not against any community. The modus operandi of this terrorist group, which for the first time in

recent history deliberately targeted civilians, have now been adopted by terrorist groups all over the world. All communities in Sri Lanka were united against terrorism, and now that terrorism has been defeated, all communities are working in unison towards reconciliation and economic progress.

Hence, in the context of paragraph 27 and 29, with reference to criminal accountability, it must be re-stated that Sri Lanka guarantees to all its citizens their rights in accordance with the constitutional and judicial process of Sri Lanka. However, the reference in the said paragraph to the abundant evidence that the ordinary criminal justice system is unable to deal with the nature of the allegations, and the complexity of the crimes is misconceived. On the contrary, the judicial system in Sri Lanka is adequately equipped to deal with complex crimes.. Criminal investigations pertaining to cases referred have been taken cognizance of by the investigating agencies to be conducted under established legal procedures and are periodically being monitored in terms of the judicial process. Any complex criminal investigation is time consuming. The acknowledgement in paragraph 20 of the report that 'victim tracing procedures' require thorough assessments in multiple areas and takes time, is an indicator that establishes the said assertion. It also negates the alleged inability of the Sri Lankan criminal justice system to deal with the nature of allegations and complexity of crimes.

Further, it must be asserted that there are no proven allegations against individuals on war crimes or crimes against humanity in the OISL report of 2015 or in any subsequent official document. It is an injustice to deprive any serving or retired officer of the Sri Lankan security forces or the police their due rights.

There has been persistent and repeated reference in official documents of the OHCHR and this Council to exaggerated numbers as the alleged death toll during the last stages of the conflict. These assertions remain in direct contradiction to independent assessments sent by foreign missions, UN agencies as well as other international organizations, including the ICRC - and some heavily redacted accounts of which have been presented not only in the House of Lords in the UK on 12 October 2017, citing dispatches by the UK Defence Attaché in Colombo during the last stages of the conflict, but also in writings by academics and journalists which is found in the public domain¹.

The Government of Sri Lanka believes that it is indeed erroneous that more attention has not been paid to the above mentioned information, by agencies including the OHCHR, which is required to seek the truth.

¹ [https://hansard.parliament.uk/Lords/2017-10-12/debates/14CAA83D-8895-4182-8C4F-D964E0A5B399/SriLanka;](https://hansard.parliament.uk/Lords/2017-10-12/debates/14CAA83D-8895-4182-8C4F-D964E0A5B399/SriLanka)
<https://parliament.lk/uploads/documents/paperspresented/report-of-paranagama.pdf>
[http://margastorehouse.org/The%20Last%20Stages%20of%20the%20war%20in%20Sri%20Lanka.pdf;](http://margastorehouse.org/The%20Last%20Stages%20of%20the%20war%20in%20Sri%20Lanka.pdf)

With reference to paragraph 31, it must be noted that constitutional reform is a continuing process conducted in accordance with the procedures of Parliament, which has moved forward unimpeded notwithstanding other political developments in the country. This process requires addressing all issues relevant to the diverse populace of Sri Lanka and is necessarily embarked upon taking cognizance of the concerns of all stakeholders.

Madam High Commissioner,

With reference to paragraph 32, it may be noted that the draft legislation with regard to the counter terrorism law had inputs from a multiplicity of stakeholders, as well as technical assistance from UN agencies, who were fully engaged in developing the proposed draft to ensure compliance with international norms and best practices. In this exercise, all stakeholders were afforded the opportunity to contest the contents of the proposed Bill before the Supreme Court of Sri Lanka, which was availed of by several parties. Accordingly, the contested sections have received consideration of the Supreme Court and its views on the contents of the Bill are now before the Sectoral Oversight Committee on International Relations in Parliament, where committed discussions have been held, including with civil society. It is also pertinent to note that certain segments of Sri Lanka's civil society have advocated the repeal of the PTA and non-introduction of any further legislation to deal with terrorism-related issues. These matters that have been placed before the Oversight Committee of Parliament, have resulted in a further prolonged deliberation process in enacting the CTA.

With reference to the paragraph 35, Sri Lanka appreciates the recognition by the Council of the considerable efforts taken by GOSL in releasing lands held by the security forces.

As I pointed out in the Sri Lanka Parliament on 14th March 2019, I would like to emphasize that the data reflected in the High Commissioner's report that only 75% of the land held in 2009 by the security forces has been released is at significant variance with the actual numbers.

- Of the 71,172.56 acres of State lands held by the Security Forces, since May 2009, 63,257.48 acres have been released, as at 12th March 2019, i.e. a release of 88.87% of land originally held.
- Of the 28,215.29 acres of the private land held by the Security Forces since May 2009, 26,005.17 acres (92.16%) have been released as at 12th March 2019.

These significant figures highlight the utmost priority accorded by the Government to the incremental and expeditious release of lands held by the security forces.

However, the remaining lands, which are a necessity in the context of national security, would continue to be held by the security forces, with compensation being paid in respect of privately owned lands.

I wish to emphasize here that President Maithripala Sirisena's pledge to complete the release of land and the appointment of a Presidential Task Force on Northern and Eastern Provinces Development through the Gazette Notification (No 2074/11 of 5 June 2018), considerably expedited the process over the past year. This Task Force which meets regularly to monitor and advice on development activities in the two Provinces, includes the Hon. Prime Minister, Cabinet Ministers, Governors of the Northern and Eastern Provinces, Chief Ministers, Chief Secretaries, all Heads of Departments and Members of Parliament representing the Northern and the Eastern Provinces, as well as the Secretaries of the Ministries of Defence, Finance and Foreign Affairs.

With regard to the issue of "lack of Infrastructure", 66,100 houses have been constructed and handed over in the North and East to civilians during the period of 2009 to 2018. In 2019, work commenced, on the construction of 4,750 houses on an "owner driven model". It is anticipated that this programme would be completed by June 2019. The Hon. Prime Minister has taken keen interest to see to the progress of the development in the North and East. On his recommendation a programme to construct 10,000 houses has commenced.

Other infrastructure development projects that have taken place since 2015 - 2018 are as follows:

1. Livelihood Assistance	-	23,548 families (Rs. 100,000/- per family)
2. No of domestic common wells	-	1,817 nos.
3. No of Water Connections	-	10,245 families (Rs. 25,000/- per family)
4. Electricity Supply	-	14,374 families
5. Internal Roads	-	254 nos.
6. No of Sanitation facilities	-	14,238 families (Rs.60,000/- per family)
7. Hospitals/Health Centers	-	56 nos.

The above represent only a few of the many development projects launched by the Government of Sri Lanka for the economic well-being of the people of the Northern and Eastern Provinces.

With reference to the concern raised on the alleged destruction of property before return, it needs to be categorically stated that there is no such government policy. On the contrary, the security forces have dismantled military infrastructure before the handover in the interest of the safety and facilitation for civilians.

It must also be noted, Madam High Commissioner, that the Government of Sri Lanka has no policy of "Colonization" of either the Northern Province or Eastern Province, or as a matter of fact, of any province in the country. As regards the contention that land owners are deprived their land by declaring their land as forest cover or as archeological projects, it must be clearly and categorically stated that the Government has not resorted to any such measures. However, it must be born in mind that the protection of forest land and archaeological projects is an obligation cast on any State in accordance with its international obligations that mandate

protection and preservation of the environment and of cultural heritage. Furthermore, in identifying the relevant forest land and the cultural heritage, respective provincial administrations are also consulted.

While fully acknowledging the mandate of this Council in the prevention of human rights violations and responding promptly to human rights emergencies around the world, Sri Lanka believes that this Council knows only too well the comparative experiences of countries which have traversed the path of post-conflict transition and reconciliation. These countries have often made deliberate efforts to maintain a careful balance between the speed of the transitional justice process and the desired quality, inclusiveness, comprehensiveness and sustainability of the outcomes. This is particularly true for countries like Sri Lanka, where unlike in certain other post-conflict situations, the challenge is not one of 'State building', but of 'peace building'. The Government of Sri Lanka is committed to finding effective and culturally sensitive and viable practices of healing and social co-existence.

However, the considerable unevenness in the standards of proof applied to the Government of Sri Lanka, compared to those applied to the unsubstantiated allegations made by Sri Lanka's detractors is problematic and confounding. In this context, the Mannar graves referred to in para 23 of the High Commissioner's Report and elaborated earlier is a case in point. While this report may have been compiled over several months ago, at the time of its release, a determination on the dating of the remains had already been made based on forensic evidence. We do not see this important detail included in the report. Moreover, the report presupposes "other mass graves might be expected to be found in the future". An assumption of this nature in a public report, on a matter of this magnitude and seriousness, is not acceptable, and may even cast a doubt as regards other assertions in the report.

Conventional wisdom teaches us that when facts do not fit a theory, the theory has to change. However, conventional wisdom does not seem to be applied to Sri Lanka's case. It seems that even if the theory is disproved through hard evidence that absolves Sri Lanka, as in the case of the Mannar graves, a matter in which some sceptics sought to implicate the Government of Sri Lanka, such facts are cast aside for further inquiry.

At the same time, as stated earlier, when evidence surfaces, which contests the culpability of the Sri Lankan security forces and police in having deliberately caused civilian casualties during the last phase of the conflict, this evidence is summarily disregarded.

Madam High Commissioner,

In referring to para 68 (C) of the OHCHR Report (A/HRC/40/23), which pertains to the Recommendations to GOSL, to '*to adopt legislation establishing a hybrid court to investigate*

allegation of violating and abuses of international law and violations of international humanitarian law',
I wish to make it clear that our position on this matter is as follows',

The Government of Sri Lanka at the highest political levels, has both publicly and in discussions with the present and former High Commissioner for Human Rights and other interlocutors, explained the constitutional and legal challenges that preclude it from including non-citizens in its judicial processes. It has been explained that if non-citizen judges are to be appointed in such a process, it will not be possible without an amendment to the Constitution by 2/3 of members of the Parliament voting in favour and also the approval of the people at a referendum.

In this backdrop, while countries including the co-sponsors acknowledge these ground realities in conversations, these incongruities should be corrected in letter as well, and Sri Lanka should be encouraged and assisted in finding innovative and viable local mechanisms and processes which incorporates international best practices, particularly at a time when as recently demonstrated our judicial, public service and defence institutions have shown independence, resilience, robustness and resolve. It is only then, that we will be able to bring closure to these events, which would "enjoy the confidence of victims and society at large", as referred to in the High Commissioner's Report.

We all are eager to see results. However, pressing for time bound benchmarks to show quick results on decades old, sensitive and complex issues, is bound for failure. As a sovereign state, Sri Lanka must set its priorities in addressing the well-being and sustainable peace for her people. Various historical, cultural, and religious sensitivities therefore need to be managed while pursuing the ultimate objective of upholding and protecting human rights. Sri Lanka's engagement and close cooperation with this Council and with all other human rights mechanisms derive indeed from political will and pledges by the Government in 2015 to the people of Sri Lanka, to build the nation's future guaranteeing equal rights, justice and dignity for all citizens respecting and celebrating the diversity of the nation as a united and prosperous country.

Madam High Commissioner,

In developing these transitional justice mechanisms, Sri Lanka does not believe there is justification for the setting up of an Office of the High Commissioner for Human Rights in Sri Lanka.

This said we welcome the benefit extended by the expertise and support of the UN and OHCHR, and in particular technical assistance from the technical advisers of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence. We also appreciate the understanding shown and the technical and financial assistance offered by other bilateral and multilateral partners. We would also welcome further capacity building, particularly training for judicial, prosecutorial, and investigation officers, in enhancing specialized skills in their respective areas and further improving the functions and credibility of the ongoing local processes.

The Government of Sri Lanka looks forward to continuing our engagement with the Office of the UN High Commissioner for Human Rights, UN Human Rights mechanisms and procedures, and working in close cooperation with the international community in our journey towards achieving civil, political as well as socio-economic and cultural rights, and consolidating durable peace and reconciliation for our people.

I thank you.