

TNA Statement

The TNA is surprised to learn of the contents of the September 12 address to the UN Human Rights Council by Hon. Minister Mahinda Samarasinghe, Head of the Sri Lanka Delegation. We take particular exception to his claim that the government's approach to reconciliation has been predicated on building trust and amity between communities. The experience of the Tamil people in Sri Lanka does not support this claim.

The Lessons Learnt and Reconciliation Commission [LLRC] of the government was appointed in May 2010. This flawed Commission with a limited mandate made very modest interim recommendations to the government, which included the following:

- Publish a list of names of those in detention.
- Expedite prosecution or discharge of detainees.
- Issue a clear statement of policy by the government that private lands would not be utilized for settlements by any government agency.
- Disarm illegal armed groups in the North and East.

Minister Mahinda Samarasinghe claimed that measures have been taken to implement these recommendations 'without delay'. Significantly, this claim comes exactly one year since the interim recommendations were made on 13 September 2010. Yet, not one of the above recommendations has been implemented, in whole or in part. The government, however, has been engaged in a constant flow of misinformation to the international community; for example, the Minister for External Affairs informed the Heads of Missions in Sri Lanka in January 2011 that a database containing the list of Tamil detainees was active and available for perusal by the next of kin. This announcement was pursuant to a concern raised by the TNA at the very first meeting of the talks with the government delegation in January 2011. However, not only was this information untrue, but even after several subsequent promises to make available the list of detainees, it has not been implemented to date.

The failure of the government to implement even the modest interim recommendations of its own domestic mechanism highlights the importance of a genuine, credible and independent mechanism to advance accountability and reconciliation in Sri Lanka. As the democratically elected representatives of the Tamil people of the North and East—the worst affected victims of the war—the TNA affirms its belief that President Rajapaksa's enunciated vision for Sri Lanka as 'a society of peace, pluralism and equality' can only be based on acknowledgment of the truth and securing justice to victims of atrocities committed by both parties in the armed conflict. In this context, the TNA welcomes the transmittal of the Report of the UN Secretary-General's Panel of Experts on Accountability in Sri Lanka to the UN Human Rights Council.

We wish to recall our statement at the time the Panel's Report was released in March 2011. The TNA stated then:

We have consistently emphasized that the Sri Lankan government had a duty to ensure that unarmed Tamil civilians are protected and not harmed in the course of whatever military operations the Government conducts against armed combatants. However, the Sri Lankan government has persistently bombed civilian populated areas, used heavy artillery and multi-barrel rocket launchers in such areas, carried out attacks by deep penetration units resulting in the death of and serious injury to tens of thousands of unarmed Tamil civilians, displaced

hundreds of thousands of such Tamil civilians from their homes, destroyed their homes and all their occupational equipment and other assets, reducing them to a state of destitution, deprived such unarmed Tamil civilians of shelter, food, medicines, drinking water and other essentials, shelled hospitals and relief centers and prosecuted their military operations with scant regard for the safety, well-being and dignity of the unarmed Tamil civilians in conflict areas. The extra-judicial execution and enforced disappearance of unarmed Tamil civilians and the scourge of the white vans has continued unabated. These and other accounts of horrendous incidents were contemporaneously placed on record in Parliament by the TNA and brought to the notice of all concerned.

Despite Hon. Mahinda Samarasinghe's claim of progress on reconciliation, the Tamil people of the North and East continue to be subjected to violence even after the end of the war. Manifestations of such violence include:

1. The internment in 2009 of more than 300,000 persons of Vanni in military run camps. Those who have been subsequently permitted to go to their original places have been deprived of the assistance they are entitled to in order to resettle and recommence their lives.
2. The continuing displacement of near 200,000 persons who have not been returned to their places of origin, who either continue to be confined in transit camps or have been compelled to take shelter with host families. Such persons include those displaced from Valikamam North in the Jaffna Peninsula, Sampur in the Trincomalee District, and several other areas in the Vanni.
3. The forcible occupation of agricultural and occupational lands belonging to the Tamil people by the armed forces and by persons of the majority community. No action has been taken to remedy these blatant violations.
4. The allocation of state land in the North and East without any public notification exclusively to persons of the majority community purportedly for development purposes.
5. The settlement of persons from outside the North and East in different parts of the North and East and more recently, in the coastal areas of Mullaitivu and Vadamaratchi East with the intention of changing the demographic composition of those areas and creating new administrative divisions.
6. The destruction and desecration of Hindu and Christian places of worship and other cultural sites; for example the historical Agasthiar Sthaapanam in Kanguveli and the hot wells in Kanniya, so as to transform the religious and cultural identity of the said areas.
7. The systematic use of physical violence to intimidate opposition political parties during elections.
8. The quelling of legitimate public protests through the use of military force throughout the North and East, recently evidenced in Batticaloa, Pottuvil in Amparai, and Navanthurai, Kokuvil and Chullipuram in Jaffna.
9. The use of sexual violence directed against women as a tool to suppress and subjugate minority communities.

We also caution against any uncritical acceptance of the termination of the state of emergency as evidence of normalcy being restored in post-war Sri Lanka. We have consistently maintained that the termination of the state of emergency needed to be accompanied by the repeal of the Prevention of Terrorism Act [PTA] if Sri Lanka is to ensure a transition towards genuine democratic and constitutional rule. We have often highlighted the fact that some of the most draconian features of the recently lapsed Emergency Regulations—the enabling of arrests, searches and seizures without warrant; executive detention without charge; admission of confessions before police as evidence in

court; and the reversal of the burden of proof in respect of such confessions—are also contained in the PTA and would apply despite the termination of the state of emergency. Notwithstanding the above, we shared the hope of the Tamil people that the end of the state of emergency would lead at the very least to the release of thousands of Tamil detainees and surrendeers held under Emergency (Miscellaneous Provisions and Powers) Regulation No. 1 of 2005. We are thus outraged by the government's decision to retain a number of emergency era powers through the promulgation of Regulations under the PTA. These Regulations ensure the seamless continuation of emergency rule, replete with the grant of extraordinary powers to the executive over the liberty of subjects, despite the termination of the state of emergency.

We recall the preamble to the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law adopted by UN G.A Resolution 60/147. This instrument recognizes that, 'in honouring the victims' right to benefit from remedies and reparation, the international community keeps faith with the plight of victims, survivors and future human generations and reaffirms the international legal principles of accountability, justice and the rule of law.' It is in light of such international norms that the government is inexorably obligated to genuinely address the grievances of the victims of international humanitarian and human rights law violations in Sri Lanka.

In fact, in its Joint Statement with the UN Secretary-General released on 26 May 2009, the Government of Sri Lanka expressed its strongest commitment to the promotion and protection of human rights, in keeping with international human rights standards and Sri Lanka's international obligations. The Secretary-General underlined 'the importance of an accountability process for addressing violations of international humanitarian and human rights law.' The government explicitly undertook to take measures to address those grievances. We urge the government to fulfill this commitment.

In the same Joint Statement, President Rajapaksa and the Secretary-General agreed that 'addressing the aspirations and grievances of all communities and working towards a lasting political solution was fundamental to ensuring long-term socio-economic development.' President Rajapaksa also 'expressed his firm resolve to proceed with the implementation of the 13th Amendment, as well as to begin a broader dialogue with all parties, including the Tamil parties, in the new circumstances, to further enhance this process and to bring about lasting peace and development in Sri Lanka.'

We wish to point out that even after the expiration of over two years there has been no progress whatsoever with regard to the above commitment.

We hence urge the government to be more forthright and honest in its representation of the situation in Sri Lanka to the international community. For our part, we are committed to engaging with the government in a political process to resolve the lingering national problem in Sri Lanka because the multi-ethnic, multi-religious and multi-cultural people of Sri Lanka, in the new circumstances, deserve the best and most sincere efforts of all.

R. Sampanthan

Leader of the Tamil National Alliance

13 September 2011