

Sri Lanka, Canada, the United Nations and the Commonwealth

(revised)

Hon. David Kilgour, J.D.

Canadian Human Rights Voice Forum on Sri Lanka

House of Commons

Room 851, 131 Queen Street

Ottawa

1 February, 2012

Louise Arbour, former U.N. Human Rights Commissioner and current head of the International Crisis Group, began her opinion piece in the January 30th *Globe and Mail*,

For Tamils, the end of Sri Lanka's civil war (in 2009) has brought no peace dividend; for Tamil women, peace has brought with it a continuation—and in some cases an intensification—of violence and insecurity. In the... north and east...tens of thousands of “war widows” have been living under the control of the central government and Sinhalese security since ... the end of the civil war, whose last few months saw as many as 40,000 civilians killed.

Just after the war ended, I visited Sri Lanka (SL) with an international church delegation seeking to learn how its affiliates in 128 nations might help. We found a people in desperate need of healing, good will and forgiveness on both sides. Widespread traumas resulting from almost three decades of violence had left many tens of thousands dead and hundreds of thousands displaced. The major obstacle to reconciliation was the legacy of bitterness and grievances on both sides. The SL government should live up to its declarations about reconciliation and equality for all Sri Lankans. The United Nations and Commonwealth respect for diversity must somehow now start to prevail against the divisions and hate sown by so many years of war. Faith communities around the world can play a constructive role in peace-building within Sri Lanka.

Devolution

One of the recommendations I later made in a personal capacity was to move towards national reconciliation in part by implementing the 13th constitutional amendment, providing for some devolution to regional councils. There has since been little forthcoming in terms of advancing a political solution based on devolution. *Au contraire*, it appears that the powers of the provinces are being further reduced. The passage of the 18th Amendment to the constitution, which centralized more powers in the presidency, has eroded the integrity of other democratic governance institutions in the country. President Rajapaksa has said his government is considering a senate or upper house of parliament as a bridge between the centre and the provinces.

Tamil Diasporas

In mid-2009, Tamils in Sri Lanka and the diasporas voiced concern that the defeat of the LTTE would lead to a weakened Tamil voice and continued discrimination, which appear to

have unleashed the violence in the first place. The plight of the IDPs (Internally Displaced Persons) across Sri Lanka would worsen, they felt, without international oversight and support. To be sure, few terrorist groups anywhere were as vicious as the LTTE became, even killing two heads of Government. Its defeat militarily offered real hope for reconciliation and peace. The government must now address Tamil concerns politically. The diasporas can offer a range of constructive roles in reconstruction within the country.

The main issue is alleged war crimes, strengthened by the conviction that the government has not yet come up with a solution to grievances. The goal of diaspora groups should be lasting political solutions to outstanding equality issues rather than a desire for revenge. Some blame Tamil leaders for what happened at the political level – going back to pre-independence in the 1930's, but the desire for peace and harmony of Sri Lankans generally should be heard.

Two instances of the influence of Tamil diasporas internationally:

- Their representatives attended the 100th anniversary of the African National Congress in South Africa, whose moral influence on the world's conscience due to the enlightened post-apartheid leadership of former President Nelson Mandela can scarcely be overestimated.

Commonwealth Heads of Government Meeting 2013

- Prime Minister Stephen Harper has reiterated that he will boycott the 2013 Commonwealth Summit unless there is progress in Sri Lanka. Since Canada holds the largest Tamil diaspora and has enjoyed long and productive relations with Sri Lankans, its approach could influence other countries.

Report of Lessons Learnt and Reconciliation Commission (LLRC)

In December 2011, the SL government-appointed LLRC released its 388-page findings on conflict between 2002 and 2009. International NGOs, such as Amnesty International, denounced the report on various grounds, including its highlighting of evidence of alleged war crimes and crimes against humanity by the LTTE, but minimizing indications of ones by the government. In contrast, the respected and independent National Peace Council of Sri Lanka said, "(It) exceeded expectations in providing answers to the issues of governance and political reform."

The Tamil National Alliance (TNA) criticised the report as "...a serious assault on the dignity of the victims of the war (It) has not only ...damaged the chances of genuine reconciliation but has further alienated the victims of the war." It called on the international community to take steps to establish an international mechanism for accountability. The TNA has subsequently stated that some of the LLRC recommendations (on issues other than accountability) have positive elements that it would support if implemented.

With estimates as high as 350,000 deaths or disappearances occurring during 26 years of conflict, some accountability for alleged crimes against humanity and war crimes on both sides of the conflict appears essential for meaningful reconciliation to occur. Men with guns

had fought and women and children had suffered probably the most. The LLRC report disappointed war victims on both sides. Many had hoped for solutions to two particular problems: finding out what happened to their missing loved ones, and being compensated for lost property and livelihoods. The LLRC largely exonerates the actions of government forces and ignores the findings of the UN Panel of Experts.

Foreign governments, however, have responded mostly favourably, especially regarding the recommendations on governance and a political solution addressing Tamil grievances.

The Indian government, for example, said the SL government "had assured it... of its commitment (to) a political process, through a broader dialogue with all parties... leading to the full implementation of the 13th Amendment...so as to achieve meaningful devolution of powers and genuine national reconciliation." India expects the government Colombo to deal justly with the Tamil people and address the roots of the ethnic conflict. The UK government endorsed the recommendations of the LLRC on good governance and a political solution, but expressed disappointment on its findings regarding accountability for war crimes.

UN Panel of Experts on Accountability in Sri Lanka

In mid-September, 2011, the UN Secretary General sent the report of his three-member panel to the UN High Commissioner for human rights and the President of the UN Human Rights Council (HRC). The panel found there were credible reports that both Government forces and the LTTE had committed war crimes, including the killing of civilians, in the months leading up to the May 2009 ceasefire

Human Rights Watch (HRW) said in a letter to Human Rights Council (HRC) member countries and observers that nearly three years after the end of the war, the SL government has not kept its commitments to its people, the UN secretary-general, and the HRC to undertake credible measures towards accountability. The letter added that the SL government has indicated that the recommendations of the LLRC report, which will not be submitted to the HRC, will be implemented; however, the SL government has a long history of failed promises to prosecute serious human rights abuses. HRW says it has documented serious abuses by both sides during the 26-year armed conflict, virtually none of which have been prosecuted.

"The Human Rights Council is uniquely positioned to ensure that the deaths and injuries of tens of thousands of civilians in the last months of Sri Lanka's conflict are properly investigated," said Philippe Dam, acting Geneva advocacy director at HRW. "The failure of the council to respond to one of the worst episodes of human rights abuse since its creation would only undermine its relevance." HRW urged the HRC to adopt measures to implement the recommendations made to UN Secretary-General Ban Ki-moon by his Panel of Experts. "It has long been clear that justice and accountability will not come from the Sri Lankan government," said Dam. "Only international action will address the suffering of victims."

UN Human Rights Council

The next HRC session begins in Geneva next month. Some governments appear to want an interactive session with the SL government focused on the LLRC report. A majority of members on the council might well seek to delay any international action until the November meetings. By then, the SL government might have begun implementing LLRC proposals.

The SL government clearly wishes to ensure that the issue of its own alleged war crimes in the last phase of the war is not taken up at any session of the HRC.

Seeking Peace/Harmony for War-affected Tamils

The most productive reconciliation option appears to be to focus on improving the circumstances of Tamils in the North and East and allowing all Sri Lankans to live in peace.

The primary areas of concern are:

- Stopping state-sponsored forced colonization,
- Improving the livelihood and housing conditions of war displaced families. Those wanting to return to fishing as a livelihood, for example, must apply for a permit, presumably to avoid “importing” arms. The unverified claim is that Tamils are not issued permits, and if they are caught fishing without a permit, they “disappear”.
- Many infrastructure developments, such as the construction of highways and government buildings, have not improved livelihoods for war affected people. The reconstruction project of the railway to Jaffna has been slow.
- War-affected people continue to live in temporary housing. India’s June 2010 commitment to build 50,000 houses for this population is much appreciated even though to date only a thousand are being built. The government should carry out the development in consultation with the local residents through their representative institutions and in response to their priorities.
- Demilitarizing Tamil regions. Some Tamils feel that they have been downgraded from citizens to subjects in a militarized environment (Updates at: www.tamilnet.com) Management and oversight of the military needs to be changed so that it will become more humane. The government understandably doesn’t want the LTTE to regroup, but dysfunctional civil-military relations, armed groups and vigilante groups posing threats to peaceful residents are harming the crucial process of building trust and reconciliation. On the surface, everything seems calm, but rumours persist that when military men are off duty, they wreak havoc on civilians through sexual crimes, including rape, and theft.

Civilians need to feel that military presence is supporting and empowering their communities by sustaining and protecting democratic and dignity values. The phenomenon of people going missing (as reported in the January 14 – 20/2012 issue of *The Economist*), “grease men” who provoke Tamils to see if they will use firearms to push back, and “off-limit areas”, supposedly due to landmines, but suspected of being

sites for corpses, indicate that the military must be held accountable to a body consisting of local elected persons and civil society leaders. As recommended by the LLRC, the military should be withdrawn to barracks sooner rather than later and the police entrusted with the maintenance of law and order.

- Improving the quality of citizens' day-to-day lives simultaneously with the continuation of the dialogue on political reform. The time is 'now' for the government to make a firm commitment in the form of a timeline to implement devolution of power.

Canadian Parliamentary Delegation

Canadian MPs Joe Daniel and Chungsen Leung, both Conservatives, spent two days in Sri Lanka in early January of 2012. In addition to exploring prospects for trade and investment in the Northern Province, they visited hospitals, resettlement villages, schools and agricultural areas, and expressed appreciation for the SL government's role in reconciliation, reconstruction and infrastructure development programmes. They also commended the government for providing education, health and employment opportunities so that people could "engage in ... normal life after... decades of conflict."

Daniel added earlier today, "Clearly, there is still a great deal to be done and both sides need to work together. There is active participation in the rebuilding by the Tamil community." He mentions as examples the dire need for a cardiac unit in Jaffna and more effective antidotes for snake bites in the north. The MPs were told by the government that approximately 11,000 of the 14,800 Tamil combatants captured have been resettled and that 1.5 million landmines have been cleared, mostly by Tamils.

What Canada Can Do

Our government should lobby Commonwealth governments to reactivate the Commonwealth Ministerial Action Group (CMAG) mechanism, which did good work earlier in promoting good governance and the rule of law among Commonwealth member countries under the Harare Declaration. Its remit lapses every two years and must be renewed; its membership must be reviewed by the biennial Commonwealth Heads of Government Meeting. CMAG was discussed positively in the Report of the Eminent Persons Group to Commonwealth Heads of Government for their meeting in Oct. 2011.

Canada should urge the SL government to continue its process of rebuilding trust and confidence among all communities across SL by establishing a follow-up mechanism for implementation of the LLRC recommendations, along with a time frame. We should lobby on behalf of NGOs in Sri Lanka who need support to do the work recommended by the LLRC.

Tamil-SL government Trust

The process of building trust could be strengthened by:

- making it safe for all citizens to report on matters such as sexual assaults, theft, abductions, and human rights violations. For example, there are indications that

minority citizens currently often do not report crimes to the police (feeling that the police are part of the problem) or speak out (for fear of being targeted by the government).

- following-up on reported crimes and abuses. If the government were to commit itself fully to this process, unhelpful activities could be reined in and trust could be rebuilt with the Tamils and other minorities.

A thoughtful Tamil Canadian told me not long ago that he left the land of his birth mostly because there was “never a day in Colombo that I was not made to feel like a second class citizen”. There must, of course, be equal citizens only to achieve lasting harmony in any country today.

Thank you.