
Statement by Attorney-General Mohan Peiris, P.C., at the United Nations Human Rights Council

Tuesday, 15 September 2009

Last Updated Tuesday, 15 September 2009

Statement by Attorney-General Mohan Peiris, P.C., of Sri Lanka at the 12th Session of the United Nations Human Rights Council during the General Debate on the update by the High Commissioner for Human Rights - 15 September 2009, Geneva Mr. President and the distinguished members of the Human Rights Council, Excellencies, ladies and gentlemen, may I congratulate Madam High Commissioner on your 1st anniversary of office, and thank the Council and the High Commissioner for the valuable guidance and support in the last year which has been a difficult one for Sri Lanka in which a fine and difficult balance had to be achieved between the maintenance of civil and political rights in the context of the maintenance of national security. Mr. President, I must and have to respond to some of the observations made by Madam High commissioner.

It is respectfully highlighted that with the dismantling of the LTTE in May 2009, there is not even a semblance of a conflict in Sri Lanka. Sri Lanka has restored normalcy in all parts of the country and is looking forward with renewed hope and optimism for a brighter future for our people. It is quite inaccurate to state that internally displaced persons are detained under conditions of internment. During the conflict and afterwards the people of the north who were wrongfully confined and restrained by the LTTE, voluntarily sought the solace and safety of the government relief villages and welfare centres and in the aftermath of the liberation of the people from the LTTE. They are our people and the government has a constitutional and moral duty to sustain in safety till they are resettled in proper conditions fit for peaceful human habitation. The government has launched numerous programs including disarmament, demobilization, and reintegration that has, as one of its key components, transitional justice. We have put in place a national framework on reintegration with the objective of safeguarding their human rights to ensure sustainable peace, reconciliation and social cohesion also to enhance their capacity to employability and in the case of ex-combatants to minimize the risk of marginalization in the post conflict phase. As at 10th September 2009 approximately 40, 000 IDPs of different categories have been resettled. The resettlement programs have been speeded up and we are confident that by end of January 2010 a bulk of those displaced would be resettled in keeping with our pledges to this Council. This objective is made possible with the de-mining program being put in high gear with the procurement of a large number of state of the art de-mining vehicles that have been rapidly deployed in the former conflict areas. From the date the conflict ended, the government has spent approximately 150 million US dollars on infrastructure facilities for IDPs and connected activities. We have to balance the interests of all stakeholders to the conflict namely victims and the families affected by the conflict as well as ex-combatants. In this process, international humanitarian agencies are extending their help and participating in all earnest. Mr. President, Sri Lanka is in substantial compliance with its treaty obligations governing IDPs. Let me now turn to the question of the conviction of Mr. Tissanayagam. It is submitted that he was accorded a fair trial in respect of the offences for which he was indicted. He was represented by a senior defence attorney of his choice and afforded all guarantees that an accused is entitled to under Article 14 of the ICCPR. Mr. Tissanayagam made use of the facilities available under the law, faced his trial, called evidence on his behalf and was given panoply of rights in rebuttal of the prosecution case. The High Commissioner in her reference to the Tissanayagam case says that she was dismayed by the sentence of 20 years handed to Mr. Tissanayagam for critiquing Sri Lanka's army in two articles which he published. This observation I regret to state is inaccurate and appears to be a result of a misappreciation of the indictment against Mr. Tissanayagam, which contained three charges. It would suffice to say that Madam High Commissioner has failed to make reference to the third and most serious of the charges, that is the receipt of LTTE funds by Mr. Tissanayagam and the application of those funds to propagate the LTTE cause of terrorism. These facts have never been denied by Mr. Tissanayagam at his trial. It is therefore unfair and misleading to insinuate that Mr. Tissanayagam was convicted merely for criticizing Sri Lanka's army in two publications and should not have, if properly appreciated, given rise to any dismay as observed by the High Commissioner. Mr. President, at the end of the trial, the court found him guilty and the minimum punishment that could have been imposed under the provision of law for such crimes had been imposed on him. Madam High Commissioner, we have from colonial times recognized the doctrine of separation of powers and it is not in the common law tradition for other branches of the government to interfere with the workings of the judiciary. Madam High Commissioner, like in any other established jurisdiction, Mr. Tissanayagam is entitled to invoke as of right appellate procedures and the constitutional rights in the review process. I would like to observe that even the European Convention on Human Rights (ECHR) does not confer unfettered freedom of expression which grants a license to indulge in sedition and terrorism. I would invite the attention of Council to the case of Brogan v United Kingdom (1998) 11 European Human Rights Reports (EHRR) where the United Kingdom used derogation in relation to the Prevention of Terrorism (Temporary Provisions) Acts 1974-1989, permitting the detention of terrorist suspects without access to a court of law, which was otherwise in contravention of Article 5 (the right of liberty). Thus, derogable rights are quite common in the EU and it is preposterous that double standard have to be applied when it comes to Sri Lanka. Mr. President, even the Inter-American Commission, in October 2002, had occasion to comment that freedom of expression is qualified and derogable in times when terrorism has to be combated. We see similar procedures used in ample measure in the treatment of such matters in other jurisdictions as well. Mr. President, we ask the International Community to cooperate with us in a true sense of partnership and desist from indulging in a consistent and systematic scheme of criticism intended to tarnish our image which at this time would be counter productive to achieving development in a country which has emerged from a conflict that has plagued our people for more than 25 years. Mr. President, we at this juncture are entitled to enjoy the full dividends of peace and urge that Sri Lanka be supported unconditionally in achieving this end by its home grown solutions within our cultural, religious and social values that have a history of over 2500 years.