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Committed to Human Rights and Community
Development

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On the Government's Terrorism Act 2000 and the proscription of the LTTE

This urgent briefing aims to address the British Members of Parliament and Peers on the impact of proscribing the Liberation Tigers of Tamil Eelam (LTTE) under the Terrorism Act 2000. The contents should be viewed in conjunction with current developments to achieve peace and find a permanent solution to the conflict in Sri Lanka.

On 1 March 2001, British Home Secretary Jack Straw designated the Liberation Tigers of Tamil Eelam (LTTE) among 21 organisations proscribed under Section 3 (3) of the Terrorism Act 2000. The Draft Order of proscription is now before Parliament and requires the approval of both Houses. Appeals from the decision lie to the Home Secretary, the Proscribed Organisations Appeal Commission, Court of Appeal and the House of Lords.

There can be no doubt that the LTTE arose in the face of continued mass-scale human rights violations, violence against the Tamil community, including the use of draconian powers under Emergency rule which is continuing in Sri Lanka, except for brief intervals, for nearly 28 years of 54 years of independence. This is also the result of five decades of discrimination against the Tamil community since Britain granted independence to Ceylon in 1948, particularly relating to citizenship, franchise, education, employment, economic development, health and the use of the Tamil language. Successive governments, through primary and subsidiary legislation and administrative orders carried out discriminatory measures. In addition, deliberate state-sponsored colonisation of Tamil-dominated areas had resulted in a reduction of Tamil representation in Parliament. Agreements to devolve power to Tamil areas, notably the Bandaranaike-Chelvanayakam Pact 1957, were unilaterally abrogated by Sri Lankan governments. The LTTE has undeniably been the main force for the defence of the Tamil people, in the face of joint denials of basic rights and human status resulting in the oppression of the Tamils with developments, which have all the features of what has been called the genocidal process.

Sri Lanka has also ratified a number of treaties under international law which provide for the protection of fundamental rights, in particular the International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture. In spite of these constitutional guarantees and international obligations, a number of discriminatory laws have been passed and are largely in force, providing the legal mechanisms for the violation of fundamental civil and political rights of the Tamil people.

Periodic pogroms against the Tamil population since 1956 severely damaged ethnic relations leading to large-scale internal displacement and flight to foreign countries as refugees. In the absence of any redeeming feature in the Sri Lankan ethnic scene, the Tamils felt that there is an attempt to destroy their culture and identity. In these circumstances, the rise of the LTTE within the Tamil community was inevitable.

The Tamil people continue to suffer in Sri Lanka from the government conduct of war under strict censorship of all reports of war. Independent observers or journalists are not freely allowed into the war zone. Acts of torture and degrading punishment are highly prevalent in Sri Lanka and pose a serious threat to the human rights of the Tamil people. In international law, torture is today considered among the highest crimes, the gravity of which is comparable to crime against humanity and war crimes. Impunity for those responsible for human rights violations remains a serious problem as classified by human rights agencies. UN Special Rapporteur Mr N'diyae has stressed in his report to the Commission on Human Rights in 1997 that impunity is an obstacle to democratic development and peace negotiations. In March 1998, he referred to the impunity enjoyed for human rights violations in Sri Lanka as very pervasive.

The UN has stated that Sri Lanka remains the country with the second largest number of unclarified disappearances next to Iraq. Amnesty International says torture takes place every day and no one has been convicted for the crime of torture although legislation was introduced in 1994. Colombo Human Rights agencies report that 18,000 Tamils were arrested in 2000 and some 2,500 are in detention, many of them for long periods without charge or trial. In February 2001, the EU delegation expressed concern over prolonged detention of Tamils. The Sri Lankan government also has failed to take proper action on killings in high security prisons in 1983, 1997 and January 2000. Referring to the massacre of Tamils in the Bindunuwewa Rehabilitation Centre on 25 October 2000, the Committee on International Relations of the House of Representatives of the US Congress says that in this incident "as well as in other similar cases in the past, the government of Sri Lanka has failed to protect Tamil prisoners under its custody".

The government's new Emergency regulations introduced in May 2000, have increased the powers of government officers and security forces and further eroded the rights of the people. Amnesty has stated that an increase in torture, disappearance and deaths in custody have been reported since the introduction of these new regulations. The introduction of the death penalty adds to the extremely bad human rights record of the country.

The concerns of the international community, particularly the acts forbidden in international law even in the pursuit of a just cause and legitimate goals, are recognised. The LTTE has been fighting for the legitimate rights and aspirations of the Tamil people for many years and as pointed out by the British government earlier, it has political objectives. The LTTE has stated that its objective is the establishment of a separate state for the Tamil people in northeast Sri Lanka. However, since 1985, it has urged the recognition of the Thimpu principles [1) Recognition of the Tamils of Sri Lanka as a nation of people; 2) Recognition of the existence of an identified homeland for the Tamils in the northeast Sri Lanka; 3) Recognition of the Tamil right to self determination; and 4) Recognition of the right to citizenship and fundamental rights of all Tamils who look upon the island as their country]. The international community has now recognised the legitimacy of these principles. In November, British Foreign Office minister Peter Hain said that the principle of self-determination and Tamil control of key policies affecting daily life would be supported by the international community.

The LTTE has emerged as the main party that represents the aspirations of the Tamils in attempts to resolve the conflict. This has been recognised by the Sri Lankan, Indian and other governments. At least four governments have had lengthy discussions with the LTTE. [The Indian government between 1984 and 1987; the Sri Lankan government between 1987 and 1988; the Sri Lankan government between 1989 and 1990; the Sri Lankan government between 1994 and 1995]. The LTTE was also a party to the ceasefire agreements in June 1989 and December 1994. Canada, Netherlands and Norway supervised the latter ceasefire.

The Tamil people reject actions of the LTTE which are forbidden by international law, but as an organisation fighting for Tamil rights, the LTTE has substantial support among the Tamil community within and outside Sri Lanka. Many demonstrations have been held recently in the Tamil-dominated northeast Sri Lanka demanding talks between the LTTE and the Sri Lankan government. Eleven Tamil political parties, some of which have been in conflict with the LTTE, have also demanded talks between the LTTE and the government. Many civil society organisations and religious organisations in Sri Lanka have also urged talks between the two parties. These organisations have held a number of demonstrations in southern Sri Lanka for negotiations. Surveys carried out by the University of Colombo and the National Peace Council, indicate that majority of the people preferred peace negotiations between the government and the LTTE. The main opposition United National Party (UNP) has been demanding the government for some time to invite the LTTE for peace talks.

Several governments, including Britain have also been urging the involvement of the LTTE in peace talks. Foreign Office minister Peter Hain, visiting Sri Lanka in November 2000 urged the Sri Lankan government and the LTTE to begin peace negotiations to find a lasting solution to the island's conflict. In December 2000, the European Union stressed the importance of the first meeting between Norwegian special negotiator Eric Solheim and LTTE leader V Prabhakaran and urged the Sri Lankan 'civil society and political forces to reach national consensus on a peace plan to be presented to the LTTE'. The US and India have also expressed support for peace talks between the two parties.

The LTTE has carried out many bomb attacks and assassinations in violation of international humanitarian law. However, the LTTE has recognised the need to observe humanitarian law and has co-operated with the international community. In February 1988, the LTTE made a deposition to the UN Human Rights Commission undertaking to observe the Geneva Conventions. During a meeting with UN Secretary General's Special Representative on Children and Armed Conflict, Olaru Otunnu, in May 1998, LTTE representatives undertook to observe the provisions of the UN Convention on the Rights of the Child. The LTTE has co-operated with the ICRC in conducting humanitarian law training for members. These indicate the willingness of the LTTE to abide by international norms. The Tamil Information Centre has received reports that there have been improvements in LTTE's human rights record in the recent period. The ban on the LTTE will discourage the current trend of openness and co-operation towards improved human rights standards.

Because of the lessons of recent history in Sri Lanka, the LTTE insisted in 1997 that it would consider a peace proposal jointly made by the ruling People's Alliance (PA) and the opposition United National Party (UNP). In the past, agreements between governments and Tamil leaders have always been violently opposed by opposition parties. In the circumstances, the international community recognised the importance of bipartisanship for any headway in the peace process and Britain brokered a bipartisan agreement in April 1997. But the government's unilateral decisions and electoral ambitions of the two parties made implementation of the agreement impossible. The PA and the UNP resumed talks on constitutional reform in May 2000. Although there has been some progress, it appears unlikely that the two parties will reach agreement on issues that are vital for the resolution of the conflict.

The LTTE has been urging for peace negotiations, with international mediation, since 1998. The involvement of the international community in the early stages would have encouraged both parties to adhere to humanitarian principles enshrined in the Geneva Conventions. It would also have prevented the destruction of life and property due to military operations, civilian deaths as a result of the government economic blockade of the northeast, destruction of the environment and the adverse effects on the economy of the whole country. The Sri Lankan government maintained that the conflict was an internal problem and rejected foreign involvement. But the government later recognised the need for third-party mediation and in January 2000 agreed for the involvement of Norway. Since then LTTE representatives and its leader V Prabhakaran have held discussions with the Norwegian negotiator Eric Solheim and have expressed their willingness to co-operate.

In November 2000, the LTTE called for unconditional peace talks and declared a unilateral ceasefire in December. Following discussions between Eric Solheim and LTTE's advisor Anton Balasingham, the ceasefire was extended twice and is due to expire on 24 March 2001. Several countries, including Britain, have welcomed the LTTE's ceasefire offer. The Sri Lankan government has rejected the ceasefire offer and has continued to launch new operations in the Jaffna peninsula.

LTTE advisor Anton Balasingham has said that the ban will impose a severe strain on the peace process. It will also shatter confidence and undermine the role of Britain in the process. The international community backs Norwegian involvement in the Sri Lankan peace process. As a banned organisation, it would become difficult for the LTTE to express its opinion and take part in activities to promote peace. This will also make it extremely difficult for the LTTE to function as a political organisation. The ban will also undermine the role of the civil society, particularly the Tamil community. It will make it more difficult for the expatriate Tamil community to relate to the LTTE who also have a substantial role in encouraging the LTTE to recognise the rules of international law in armed conflict.

The Tamil people have been urging the LTTE to enter into peace talks and the Tamil community has had a role in the ceasefire offer of the LTTE. The Tamils are concerned that the ban on the LTTE will affect the peace process, particularly the involvement of the Tamil community. The ban will result in a diminished role for community leaders, community organisations and public opinion makers in shaping social policy and deny the right to freedom of association. It would also become easier to accuse people and legitimate organisations of support for a banned organisation, suppressing public expression. The ban will have a tremendous effort on shared political expression. The position is made worse by the actions of organisations set-up or supported by the Sri Lankan government in Britain, which are already engaged in disrupting the legitimate activities of Tamil organisations.

The ban will strengthen extremist organisations in Sri Lanka and contribute further to widen the gulf between the two communities as has already been evidenced by the demonstrations and petitions submitted to British government. The Tamil parties in Sri Lanka have realised the danger of the situation and in this light made joint representation against a ban to the British government. The extremist organisations including the National Movement Against Terrorism and Weeravidhana have campaigned against Tamils and Tamil businesses in southern Sri Lanka. These organisations are said to be responsible for developments which led to the massacre of Tamil detainees in a rehabilitation centre at Bandarawela in the Hill Country in October 2000. The European Union delegation in February 2001 to Sri Lanka, expressed concern that no progress has been made in investigations relating to the killings.

The ban will also encourage the Sri Lankan government to widen and intensify the economic blockade of the northeast region. The government has already accused the LTTE of pilfering and has allowed only 25% of the food and medicines needed in the region. Humanitarian aid is used as a weapon in order to bring pressure on the LTTE. The blockade has caused malnutrition,

disease and deaths and has had a drastic impact on agriculture, industries and fishing making economic development of the Tamil areas almost impossible. The World Bank has expressed concern over worsening maternal and child health, especially the nutritional status of children, due to food shortages and the deterioration of health services. It also has raised concern about psychological trauma associated with the conflict, displacement and disintegration of community and family structures. A recent survey among displaced people in the Vanni shows, 56% pregnant women and 52% lactating mothers are anaemic and 50% of young women between 13 and 19 are malnourished. The British NGO Save the Children Fund (SCF) estimated that nearly 900,000 children in the Northeast have been affected by the war. In areas under its control, the LTTE has co-operated with government officers in looking into the needs of the population, particularly the internally displaced people, which number some 600,000-800,000. The civilians would be badly affected if the government decides to impose any restrictions on government officers. This will make the work of the British and other humanitarian agencies more difficult.

As has been pointed out above, the ban on the LTTE will place a great strain on the peace process. There is no urgent necessity to ban the LTTE at this stage and risk harm to the ongoing peace process. Rushing into banning the LTTE at this juncture may not produce the expected results or help promote peace. It may send wrong signal of approving the war efforts of the government of Sri Lanka. The ban may also result in Britain and the international community losing their ability and opportunity to have 'constructive engagement' with the LTTE in their efforts to resolve the ongoing conflict in Sri Lanka. A positive step forward would be to refrain from banning and strongly urge the LTTE and the government of Sri Lanka to comply with the international law and enter into peace process in good faith.

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