

Annexure I

After his most recent visit to Sri Lanka this February, the Commonwealth Secretary-General issued a departure statement. The departure statement issued on 13 February 2013 outlines his good offices initiatives in Sri Lanka. In an annexure to this document he provides a progress report on agreements made with the government of Sri Lanka during his September 2012 visit and in addition to this he identifies new areas of assistance that were agreed upon during his February visit. The document below analyses both the progress report as well as new areas of assistance. The sections in blue are official text from the Commonwealth Secretariat and the sections in red are the analyses.

Analysis of the Progress Report

Public Service Strengthening

Two retreats for 70 senior public servants in leadership positions have been held since September. These were aimed at strengthening leadership capacity, coordination between ministries, and improving service delivery in support of the Mahinda Chintana Economic Development Plan. Another three retreats for 120 senior public servants will be completed by the end of March 2013.

The Commonwealth has worked with the Sri Lankan Institute of Development Administration (SLDA) to formulate a human resource policy framework for the public service aimed at promoting political impartiality in recruitment and promotion practices. Commonwealth expert is to be appointed at the SLDA as a human resource policy adviser is to be appointed.

A Commonwealth expert has also been appointed and deployed in the newly established Policy and Strategic Planning Unit at the Sri Lankan Presidential Secretariat.

Comments

In a country that is being widely condemned for impunity and lack of political will to address egregious human rights violations it is highly improbable that public service can work efficiently and impartially without proper accountability mechanisms. Without such mechanisms the efforts outlined above will only serve to strengthen a government that is alleged to be abusive and guilty of serious human rights abuses. It is no surprise that while all this “progress” was taking place the military became further entrenched in civil administration and economic development activity in the North and East of the country. Furthermore this period also spawned the growth of a new wave of attacks on religious minorities that saw little action from public servants including the police. The Economic Development Plan which the Commonwealth sought to support in the progress report was also connected to the previous Chief Justice’s decision to strike down as unconstitutional a government proposal on development that would have vested disproportionate powers with the Minister of Finance. This decision by the Chief Justice is widely seen as the cause for her illegal removal, a violation that the Secretary-General sought to address when he visited Sri Lanka and issued this progress report.

Youth Entrepreneurship

A *grassroots project* to harness the potential of youth enterprise, entitled, 'Harnessing Aptitude and Potential Entrepreneurial Skills in Youth' (HAPPEY) is being explored in partnership with the Ministry of Youth Affairs and Skills Development and the Sri Lankan Federation of Chambers of Commerce. A project scoping mission to Sri Lanka by the Commonwealth took place in January 2013. Various roles to be played by all the partners are to be settled, and discussions are being advanced to identify the source of a core revolving fund required to generate start-up financing for project proposals.

The Commonwealth has agreed to provide training and other support to build the *long-term capacity of institutions in Sri Lanka* that are focussed on youth enterprise. The Commonwealth will provide 'train-the-trainer' support on youth entrepreneurship and enterprise development to the Ministry of Youth and Skills Development, which is recruiting 120 trainers over the next few months.

The Commonwealth has agreed to deliver the *Asia Conference on Financial Inclusion and Literacy* focusing on youth in March 2013, in partnership with the Central Bank of Sri Lanka. This will be reinforced with a one day financial literacy 'training-of-trainers' programme in March.

The Commonwealth has also supported the establishment and start-up activities of the Commonwealth *Asia Alliance of Young Entrepreneurs* (CAAYE). Sri Lanka is represented by the Federation of Chambers of Commerce and Industry of Sri Lanka (FICCSL) and sent a delegation of young entrepreneurs to CAAYE's inaugural summit in Mumbai in December 2012. A second summit to take place in Colombo is being advanced with the Federation of Chambers of Commerce and Industry.

Comments

The post-conflict situation in Sri Lanka remains grim. War displaced populations are yet to receive adequate resettlement support. Tamil youth involved in the civil war allegedly remain secretly incarcerated or disappeared with whereabouts unknown. Any initiative to provide entrepreneurial skills to the youth can only take place in an environment where human rights and fundamental freedoms thrive. The Commonwealth's sidelining of this core concern will not make it disappear. This is evident from the fact that during the period of "progress" mentioned by the Secretary-General, business run by minorities have come under attacks unimpeded by the state and in the North and East the military has proceeded to monopolise economic opportunities.

Strengthening of Local Government

The Commonwealth Secretariat and the Commonwealth Local Government Forum conducted a joint mission to Sri Lanka in late 2012. This joint mission has led to the completion of the design of a major new project to be launched in June 2013, in partnership with the Sri Lankan Ministry of Local Government and Provincial Councils, the Federation of Sri Lankan Local Authorities, and the Sri Lanka Institute of Local Government. The focus of this project is to reinforce the value and impact of local democracy and government, including in support of the 13th amendment to the Constitution of Sri Lanka and Sri Lanka's National Policy on Local Government.

Comments

Local government can flourish only in an environment where the main arms of government function normally and independently. It is not possible for local democracy to flourish when the entire state machinery is being questioned of its democratic credentials. The executive continues to interfere with independent national institutions in Sri Lanka since the suspension of the Constitutional Council and the introduction of direct Presidential appointments to these institutions. Freedom of expression and assembly continue to be under threat. Most recently both the executive and the legislature have been found ending the independence of the judiciary. In this context it is no surprise that shortly after the Secretary-General's progress report the Sri Lankan President reneged on all promises to implement the 13th Amendment – that has been cited in the progress report as an important component for local government. Following this public change of stance in Sri Lanka there has been no public comment from the Commonwealth and the future of this project remains all the more questionable.

Peace and Reconciliation

Sports for Peace and Development: based on an expression of interest from the Government of Sri Lanka, the Commonwealth is providing technical support in partnership with the Sri Lankan Ministry of Sports to develop a National Action Plan to utilise the power of sport to strengthen development and peace-building efforts, especially in the northern and eastern provinces of the country. A Commonwealth Sports Adviser visited Sri Lanka in December 2012 for a project scoping mission. Pilot projects on the ground are expected to be launched during 2013.

Comments

Without truth and accountability there can be no peace or reconciliation. Several independent UN experts have found allegations of grave humanitarian law violations in the last phase of the Sri Lankan civil war. Chilling evidence has emerged on the atrocities and deaths during this period. The government has refused to independently investigate any of these allegations and has even refused to implement soft recommendations made by a flawed domestic commission of inquiry. The UN and the international community have called for independent investigations and accountability. Tamil inhabited areas of the country remain under military occupation, four years after the war, with an extremely high civilian to military ratio. The military has acquired lands forayed in to civilian administration and established businesses in these areas. There have been several allegations of state sponsored internal migration and colonisation schemes designed to impact the traditional demography of these regions. Several attacks have begun recently against the Muslim community in Sri Lanka and continue with impunity. In this context, it is indeed curious that without addressing core issues the Secretary-General has preferred to identify the promotion of sports as an important means for peace and reconciliation in Sri Lanka.

Analysis on New Areas of Assistance Identified in February

Electoral institutions and processes

It is a Commonwealth norm to have independent election commissions in our member states. Successive Commonwealth Observer Groups present over the years at the time of elections in Sri Lanka have recommended this. While the Government works towards that objective, we shall cooperate to strengthen practically the independence and effectiveness of the existing Office of the Commissioner of Elections, including through technical assistance and other support available through the Commonwealth Electoral Network.

We welcome the implementation of recommendations made earlier by Commonwealth election observers, notably the development of codes of conduct for political parties and the media, as well as the implementation of measures against the misuse of state resources during election campaigns. We shall explore with the Commissioner of Elections how these advances can be further strengthened practically ahead of the next elections.

We welcome the declared intention for elections to be held in the Northern Province in September 2013. We also welcome confirmation we received that preparatory arrangements for those elections are in place.

Human Rights Commission

We have agreed to contribute to enhancing the independence and authority of the Human Rights Commission of Sri Lanka (HRCSL). We welcome the progress by the HRCHL to regain 'A' status in the International Coordinating Committee of National Human Rights Commissions. This will enable the HRCSL to assume a leadership role during Sri Lanka's term as Commonwealth Chair-in-Office.

In practical terms, we have agreed to explore options to provide technical support to the HRCSL in the following areas:

- Training and education of Commission staff
- Expanding training of police personnel on human rights obligations
- Enhancing the training programme for journalists on human rights reporting
- Bolstering capacity to be involved in national reconciliation processes
- Strengthening capacity to investigate human rights abuses

In Sri Lanka, free political participation, freedom of expression, freedom of assembly and separation of powers between the three wings of government remain seriously threatened or compromised. The main opposition candidate in the last Presidential elections was intimidated and subsequently arrested. Commonwealth assistance plans ignore these current ground realities. Unless these realities are directly addressed, it's doubtful that Commonwealth assistance will bear any fruit.

In outlining the above assistance package the Secretary-General completely overlooks the fact that the Human Rights Commission of Sri Lanka is not an independent body and that since the current regime suspended the Constitutional Council that is to make appointments to independent state institutions, the Commission has been made up of direct Presidential appointees. This is contrary to the Paris Principles and was the reason for the Commission's downgrading by the International Coordinating Committee of National Human Rights Institutions. Unless the independence of the commission is restored there can be little progress and there have been no significant moves towards such restoration.

Reconciliation

A Commonwealth expert round-table on reconciliation will take place in London in May 2013. It will involve the sharing of experiences of the challenges faced and lessons learned during post-conflict reconciliation in Commonwealth member states. Sri Lanka will participate in this forum and share its experiences of reconstruction, rehabilitation and reconciliation.

Sri Lanka's Lessons Learned and Reconciliation Commission (LLRC) Report is a pivotal national plan for moving forward, to achieve a multi-ethnic nation at peace with itself. We urge the report's expeditious implementation, which the Commonwealth remains committed to supporting. We shall continue to explore opportunities where the Commonwealth can offer its collective wisdom and experience, and will aim to agree by mid-2013 on areas where the Commonwealth can support Sri Lanka's implementation of the LLRC Report's recommendations.

In describing this set of assistance initiatives the Commonwealth Secretary-General avoids the fact that the Sri Lankan government has denied all credible allegations of humanitarian law violations by state forces and refuses to independently investigate. As mentioned in the previous section, without truth and accountability there can be no reconciliation. Since the Secretary-General's exhortations no move has been made by Sri Lanka to independently investigate any allegation of humanitarian law violations or implement important LLRC recommendations. The only move from the government was to conclude an inquiry by the Sri Lankan military on itself which as expected cleared the armed forces of all allegations.

Independent media

All Commonwealth member governments are committed in the 2009 Affirmation of Commonwealth Values and Principles and the 2012 Charter of the Commonwealth to freedom of expression and the free flow of information, including through a free and responsible media. To these ends, we have agreed to support the independence, effectiveness and professional standards of Sri Lankan journalists through the following:

With severe curbs on freedom of expression and attacks against journalists Sri Lanka is one of the most dangerous places for journalists in the World. Without any mention of serious allegations against the state in silencing the media and cracking down on all dissent the Secretary-General seeks to "support the independence, effectiveness and professional standards of Sri Lankan journalists". How these efforts will succeed without improvements in the state of freedom of expression in the country remains a matter of suspense.

- Provision of technical expertise for Sri Lanka to undertake an institutional assessment of the Sri Lankan Press Council, with the aim of identifying measurable steps for strengthening the Council's independence and effectiveness, and to provide support for implementing these steps;

- Provision of technical assistance options in support of the Sri Lankan Press Institute, including to help raise the quality of reporting on issues relating to democracy and development.

Judiciary

The recent removal of the Chief Justice generated widespread national debate and differences of view. In this context, I have emphasised the importance of the Commonwealth's Latimer House Principles on the separation of powers, the rule of law and the independence of the judiciary. We welcome the recognition of the need for change, to ensure that any such process in future is free of contention and does not call into question Sri Lanka's commitment to the independence of the judiciary and separation of powers.

The Commonwealth will make available an expert analysis of the practice in Commonwealth countries relating to the appointment and removal of senior judicial figures, and the independence of the judiciary, for Sri Lanka to draw upon in determining legislative and other changes required. Commonwealth assistance would also be available with any related legislative drafting required to ensure that changes can be introduced to Parliament and implemented in a timely manner.

While its evident that by even the lightest reading of the Commonwealth's Latimer House Rules, the removal of Sri Lanka's Chief Justice is a clear violation of core Commonwealth values, the Secretary-General prefers to call the condemnation it attracted "a national debate and differences of view". Throughout, the Secretary-General clearly avoids calling the removal a violation and censuring it. Rather he paints a picture where it could be seen as a minor aberration that could be rectified with technical support and information.

Sri Lanka had all the expertise and information it needed on the matter and this was reflected in the Sri Lankan Supreme Court's ruling which clearly reasoned that the process used for the Chief Justice's impeachment was flawed.

Several legal assessments have been made by legal experts condemning the removal of the Sri Lankan Chief Justice as a violation of Latimer House Rules and very recently all professional legal associations in the Commonwealth came together to join this condemnation.

This is one of the finest examples of inadequacy in the Secretary-General's good offices and assistance vision for Sri Lanka. Not only is it focused on appeasing Sri Lanka and condoning its violations it clearly destroys the Commonwealth's credibility and reduces its assistance projects to cosmetics that risk contributing to the propaganda arsenal of a government accused of gross human rights violations.