

HOW HAS THE UNITED NATION INVOLVED THE TRANSITIONAL JUSTICES PROCESS IN POST-WAR SRI LANKA

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ABSTRACT

This research seeks to identify the role of the United Nations in Sri Lanka's transitional justice process. Transitional justice means reaction activities to human rights violations in the past period. It is the legal duty of the government of Sri Lanka to ensure equality, reconciliation, Accountability and the punishment of perpetrators. The purpose of this study is to find out how the United Nations contributes to the post-war transitional justice process in Sri Lanka. Secondary standards are often used for this. As secondary standards: United Nations Reports, Sri Lankan government published report, previous research reports and newspaper article has been used. Primary and secondary data were collected and they were analysed in a descriptive method. The United Nations had made a significant contribution to the recognition of human rights violation in Sri Lanka during the ethnic conflict and to provide justice to the affected people. In contrast with the government, the transitional justice operations are in growing level while they encounter several issues. Typically, the viewpoint of victims on the government is unsatisfactory. Politicians play a big game with these issues for their self-benefits. So this research includes this type of analysis.

Keywords: Human Rights, Transitional justices, United Nation

1.0 INTRODUCTION

The importance of human rights as a determinant of the nature of the state and the interrelationship of nations is greatly emphasized. There are various measures to protect and enjoy human rights. The United Nations was established on 24/10/1945 for the purpose of protecting and upholding peace, security, peace and human rights in the world. Maintaining human rights is an important obligation. (Weston: 2006) For this purpose, the United Nations General Assembly resolution 60/251 was established on March 19th, 2006, as the Human Rights Council. (Clapham: 2006) Its main objective is to oversee international standards, recommend new international standards, investigate human rights violations, submit new proposals and programs, and provide advice and technical services to governments when necessary. Human rights abuses are increasingly seen in developing countries today. The United Nations is making a concerted effort to provide solutions to vulnerable people in the

countries where human rights violations have occurred and to prevent such violations in the future.

In Sri Lanka as a country with multiracial social structure, ethnic conflict has emerged from the shoemaking regime. Several political, social and economic factors underlie this ethnic conflict. In 1983, conflicts between them turned into armed conflicts. The 30-year long civil war ended in 2009 by the Sri Lankan military. Affected people and international countries have claimed that Sri Lanka had witnessed many human rights violations during the final war. Following this, the Secretary-General of the United Nations appointed a panel of experts in 2012 to investigate international human rights and international human rights violations committed in Sri Lanka.

In its statement, the group identified human rights violations committed by the Sri Lankan military and the Liberation Tigers of Tamil Eelam during the final war. (Report of the Secretary-General's Panel of Experts on Accountability in Sri Lanka, 2011, p.137) The following were referred to as human rights violations by the Sri Lankan military. The Sri Lankan government has carried out a series of attacks on cell and heavy weapons in areas declared safe havens and war-torn areas and there is evidence of the use of banned bombs, bombs and white phosphorus. It claimed that 300,000 civilians were killed, and women were subjected to sexual abuse by the Sri Lankan military. (IBID paras89, 92, 94,104,111).

LTTE violations offences, civilians as human shields by using his grip on the government-controlled areas and tried to escape to the people fired on civilians concentrated in areas inhabited firepower directed children forcibly enlisted, through suicide attacks killing civilians, to Tamils, the hospital identified in the report showed that the weapons had protected. (ibid paras89, 92, 94,104,111)

Following the publication of the report, the United Nations Human Rights Council discussed Sri Lanka's affairs. The Sri Lankan government said its forces had not committed any war crimes. The international investigation was also strongly opposed. The Sri Lankan government, which is accused of committing particularly serious offences, cancelled the entries for a hearing by United Nations officials in August 2014. Two months later, no foreigners were refused permission to enter the war zone. (N.C.R. Silva: 2018) Following the regime change in Sri Lanka in 2015, the new government expressed its desire to work with the international community. Co-sponsored the Transitional Justice Procedure of the United Nations to provide justice to the affected people.

2.0 RESEARCH METHODOLOGY

This study is a qualitative one used qualitative analysis method. Both secondary data were used in this study. The secondary data were collected from UN reports, research papers, journal articles, newspapers, and internet sources. Specially used 30/1, 34/1,40/1 HRC resolutions, UN higher commoner and Sri Lankan foreign ministers official and oral reports and Sri Lankan government and public statements are mainly used. These data were analyzed in a descriptive method and presented as direct quotations, quotations of others, summaries and interpretive arguments.

3.0 THEORETICAL FRAMEWORK

Christina Binder Theory of Transitional Justice has used. He points out that international human rights law and international humanitarian law can be drawn within the parameters of how to proceed with the judicial process. TJ involves a variety of non-judicial instruments and mechanisms. There is no mutual exclusion of one another in this endeavour. But they must be viewed in a holistic way. It is a holistic approach to 'fixing a community'. The mechanisms for this may vary according to the socio-cultural context. He mentions that the process of accessing approached in the following ways.

3.1 Criminal prosecutions of those responsible for human rights violation: Criminal prosecution of those responsible for human rights violations. Criminal prosecution of people who have committed massive human rights violations is a great way to deal with the past. However, states cannot prosecute cases where the criminal activity is too large, or committed by national leaders, or the judicial system is weak. He says the involvement and intervention of the international community can be very important in these situations. Truth commission: Truth seekers focus on investigating past human rights violations. They are true commissions of inquiry and to be carried out by other fact-absconding company. Its purpose is to investigate and defend witnesses. Reparation: Financial, asset, can be official apologies. This must be done to provide a psychological return to the affected people. Institutional reform: It aims to create a safe and legitimate agency to prevent human rights violations from occurring again. They can also be constitutional and legal reforms. Institutional reforms lead to democratic frameworks.

Based on these issues, this line has been used to examine post-conflict Sri Lanka's transitional justice process.

3.2 30/1 Resolution and post-war Transitional Justice Process of Sri Lanka

At the 30th Session of the United Nations Human Rights Council in September 2015, Resolution 30/1, entitled "Human Rights, Accountability and Reconciliation," was adopted in coordination with Sri Lanka's co-sponsorship. The resolution consists of five major themes and 36 commitments: Transitional Justice, Reconciliation, Rights and the Rule of Law, Security and Militarization, Power Sharing and International Engagement. The United Nations Office will continue to provide advice and technical assistance for the resolution of the resolution, and it will be reviewed on developments in the process. (A/HRC/30/L.29)

Release of civilian land available to the military with the aim of building trust among the victims, abolishing the existing terrorism statute, investigating pending cases, preparing investigative mechanisms and establishing an office to deal with missing persons. Voting and the creation of a legal mechanism involving international judges for the reliance on military investigations are key functions. It was through this resolution that the Agenda for Transitional Justice was established in Sri Lanka and the role of the United Nations in the interim justice process in Sri Lanka.

3.3 Identifying the role of the United Nations in advancing the interim Transitional justice process of Sri Lanka.

Interim Transitional justices' proceedings were initiated following the 30/1 resolution implemented in 2015 in Sri Lanka. The United Nations has contributed in a variety of ways in advancing this system. Such as.

3.4 Attending the sessions of the United Nations Human Rights Council.

Annual United Nations Human Rights Council Session series discusses the implications of Resolution 30/1. The resolution 34/1 "promoting reconciliation, accountability and human rights in Sri Lanka" was intended to provide a further period of two years to complete the matters specified in Resolution 30/1 during the 34th Human Rights Council session. Similarly, the report on the progress made so far was submitted at the 40th session of the 2019 session on 21st March. The 40/1 "promoting reconciliation, accountability and human rights in Sri Lanka" resolution was passed with the aim of providing a further two-year time limit for the resolution of the 23 countries in the council. The United Nations Human Rights Council and the Government of Sri Lanka must work together in the process of finding out the truth, establishing justice and providing compensation and, it is decided that the Secretary-General of the United Nations should publish the full report in 2021. (A/HRC/40//23V/B 71, 72) with this resolution, the international community should active engage with Sri Lanka toward faster progress on truth, justice, reparation including guarantees of non-recurrence.

4.0 OFFICIAL REPORTING

The United Nations Human Rights Commissioner will submit an Official Report on the Implementation and Improvement of Subjects in Resolution 301 of the Annual Meeting. The UN high commissioner for human rights, Michelle Bachelet noted in her March 2019 update that Sri Lanka has "Moved too slowly towards meaning the full implementation of the transitional justice agenda" She reiterated concern at the "lack of sufficient progress, particularly towards truth-seeking and accountability and observers of February 04th 2017, noting that this created "Significant obstacles to reconciliation". (A/HRC/34/VI)

The official statements and verbal statements of the Sri Lankan government continue to emphasize the need for international justice. A/HRC/30/para6 refers to the need for an international jurisprudence to investigate allegations of violations of international human rights and humanitarian law during the final war. Human rights violations in Sri Lanka are very serious and internationalized. At the same time, justice systems in Sri Lanka do not have the ability to adjudicate crimes committed by the Sri Lankan military under international law. so, we theretofore reject the call for purely domestic mechanism. (OHCHR Report: 2017)

4.1 Provides necessary advice and technical assistance to the transitional justice process

Provides technical assistance by providing consultants and senior officers to the headquarters of the Office of the Human Rights Commissioner located in Sri Lanka. Provides support and support to the Sri Lankan government's priority for peace. Provides advice and assistance in establishing mechanisms for establishing transitional justice. Policies for the activities of the Office of the Missing Persons Office and the Compensation Office already established; Guidelines are being drawn up on the creation of jurisdictions. The International Inquiry

System is providing advice to the government on ensuring the safety of victims and witnesses, as well as addressing the wishes and dislikes of the victims. (A/HRC/30/CRP.2)

4.2 Sending special reports to observe

Several expert groups and special reporters have been conducting research on Sri Lanka to promote and enhance Sri Lanka's transitional justice process. During the UN Human Rights Commissioner's 2016 meeting, the President met with the Prime Minister, the Foreign Minister, the Commander-in-Chief and the Commander-in-Chief, and discussed matters pertaining to the transitional justice process. He visited the affected areas and supervised the investigation. Special Reporters for Truth, Justice, Compensation and Redevelopment in 2016-2017 carried out their technical expertise. In 2016 Special reporters, judges and lawyers have reviewed torture and humanitarian vandalism and punishments. During their visit, the Sri Lankan government monitored the transit period and submitted a report to the Secretary-General of the Human Rights Council. (OHCHR oral report 2017)

4.3 Government of Sri Lanka and people's views on the involvement of the United Nations in Sri Lankan Transitional Justice activities

4.3.1 Sri Lankan Government and Majority communities Perfective

The United Nations contributes to Sri Lanka's transitional justice process in various ways. However, there are differing opinions between the Sri Lankan government and the minority community regarding the intervention of the United Nations. Today, the Sri Lankan government is completely deviating from the resolution passed by the Co-operation. (Daily news:2019) This is, as a major challenge to the United Nations in defending human rights nationally and internationally. (Weston: 2006) Due to international pressure, the Sri Lankan government co-sponsored the transitional justice process. But due to the foreign policies currently pursued by the Sri Lankan government and its friendship with the VETO powers, the resolution is backing down. The matters covered in the resolution are uninteresting in implementation. It completely rejects the issue of international jurisprudence and supports domestic inquiry. Sri Lankan government argued the government has taken considerable steps to fulfil the matters specified in the resolution. The Office for Missing Persons is set up, especially in the area of truth-finding. The Justice Department is investigating cases under the Terrorism Act. The Compensation Office is set up with respect to compensation. In the North and the East, 75 per cent of the military-owned land has been cleared and Military checkpoints have also been removed. The Sri Lankan military's action in the war is against a group that has been declared a terrorist organization by many countries. Rather, it is not an act against any community. Therefore, the military cannot investigate the matter. (Sri Lankan foreign ministry official reports: 2019)

The Government of Sri Lanka has given importance to the process of drafting a new constitution, bypassing factual and accountability processes. It is a waste of time to claim institutional reform. (Tamil telegram: 2019) Maithripala Sirisena at the 73rd General Assembly he said, we do not want any foreign Power to influence us, adding, as Sri Lankans, we will find solutions to our problems, and we simply need room to resolve them and the support of the United Nations. He also said that the new generation deserved to be heard.

The international community should look upon Sri Lanka from a fresh perspective as it is different today.

On 19th February 2019, Prime Minister Ranil Wickremesinghe told Tamils “forget the past and move forward”. (Journalists for democracy in Sri Lanka: 2019) on 20 March 2019, Sri Lanka’s Foreign Minister responding to the OHCHR report on Sri Lanka’s implementation of resolution 30/1 stated, ‘The Government of Sri Lanka at the highest political levels, has both publicly and in discussions with the present and former High Commissioners for Human Rights and other interlocutors, explained the constitutional and legal challenges that preclude it from including non-citizens in its judicial processes. It has been explained that if non-citizen judges are to be appointed in such a process, it will not be possible without an amendment to the Constitution by 2/3 of members of the Parliament voting in favour and the approval of the people at a Referendum.’ (Sri Lankan Foreign Minister official report: 2019) For most Sinhalese, the UN considers the resolution to be entirely Tamil-based, anti-military, and simply a war crime investigation. Most Sinhalese people believe that the Sinhala country was saved by the Sinhala army. (The London School of Economics and Political science: 2019) The actions of the majority of Sinhala politicians are justified in this regard. Thus, the Maithiripala Sririsen government should immediately withdraw from the 30/1 resolution. (Ana Pararajasinham: 2019)

4.4 Minority Communities perspective

The Tamil people have welcomed the resolutions of the United Nations in their struggle to secure their justice as victims of the final war. According to the 30/1, they feel that they have some degree of justice through resolution. Their main expectation is, if genuine justice is to be sought, the International Tribunal should be set up to investigate the massive crimes committed by the Government of Sri Lanka or the International Criminal Court and to establish the Office of the Secretary-General of Human Rights in the North and East. (CPA report 2017)

The Tamil people are shocked by the Sri Lankan government's denial of international judicial proceedings and the availability of time and again in a series of human rights meetings. The Sri Lankan government's rejection of the mixed court system makes it even more impossible for Tamils to get justice at the country. The Sri Lankan government has the political will to act in the interests of the affected people. But at the same time, they are trying to posture that this is an option on the international stage. (CPA report 2017)

As for the TNA, it supports a mixed court system. The main reason for this is that when a jury adjudicates with the judges of the country, it must be bound by the country's great military and politicians. This is simply because the Sri Lankan government can deny the rulings of courts with foreign judges. The TNA denies that there is no international inquiry into politics. The party's spokesman MR. Sumanthiran said Article 111 of the Constitution of Sri Lanka does not include any restrictions on the nationality of those appointed to office. The Sri Lankan government has signed the 30/1 resolution and co-sponsored the event. Thus, there is no barrier to the implementation of a specific resolution. (Uthayan Newspaper: 2019) Justice can only be provided to the Tamil people through an independent international investigation. Sri Lankan government had clearly rejected the resolution of the Human Rights

Council's resolution and that granting further time to implement the resolution would affect the credibility of the Human Rights Commission. (Amnesty international: 2018))

5.0 CONCLUSION

The United Nations has made a significant contribution to the recognition of human rights violations in Sri Lanka during the ethnic conflict and to provide justice to the affected people. The Sri Lankan government and the majority of Sinhala people do not want the United Nations to intervene in the affairs of Sri Lanka. The Sri Lankan government has been delaying the implementation of the co-sponsored resolution. Four years have passed since the resolution was passed, but still, none of the matters specified in the resolution has been fully complied with. The United Nations has welcomed the intervention of the affected minority. However, the United Nations continues to be disappointed that the Government has refused to comply with the minimum restrictions set forth in the resolution. The United Nations continues to provide time for the long-term goal of transitional justice towards peace. Delays in implementing the resolution may also pardon the future. So, the United Nations must continue to pressure the Sri Lankan government until the Sri Lankan government fulfils its promise to the Human Rights Council and its own people. Stresses must be put in place to make resolutions within the stipulated time. Reducing tensions will ensure that the government continues to fail to keep its promises. The government and rulers of Sri Lanka must accept and recognize multiculturalism. The rise of communalism has caused Sri Lanka to face such human rights violations and international pressures. Thus, liberal democratic thinking must be embedded in the process of creating a new constitution. Justice for the affected people should be carried out wholeheartedly and wholeheartedly. The United Nations should provide advice and technical assistance to the Sri Lankan government to safeguard the rights of minority peoples and uphold the multi-cultural nature. This will bring about lasting peace by establishing justice.

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