

The Resolution 30/1: National Priorities and Implementation Challenges Towards Sri Lanka

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Abstract: After 30-year of war, the UNHRC advised Sri Lanka to adopt the resolution 30/1 in 2015 to promote reconciliation, accountability and protect human rights. Sri Lanka co-sponsored it and implemented domestic mechanisms and national policies for achieving performance. The researcher identified full implementation of resolution is hindered by internal content and priorities national interest, as research problem. Identifying the challenges of implementing and recognized outcomes of resolution 30/1 is objective of the research. The research was done using the research onion model and Interpretivism philosophy and deductive method for building arguments. The research was conducted with two strategies, case study and other as archival research and mono method qualitative data for building arguments. Used Neo-Realism, Transitional Justice, Restorative Justice, Reconciliation and Human Rights for creating theoretical framework. However, some recommendations were fully or partially implemented without future directions, the progress under the resolution 30/1 showed absence of effective solutions for victims and witness protection and lack of confidence building measures among pluralist communities. Effectiveness of Sri Lankan reconciliation process was questioned after the Easter Sunday attack. On that fact created new cycles of violence and ethnic polarization. And government's absence in implementing credible solution for human rights violation in war and post-war contexts. Silent grievances of victims remained unresolved within society and without a focus on victim-centric approach. Such implementation incompetent to address root

causes of the ethnic conflict with no clarity for dealing with the past or avoid cultural impunity. Deep seated anger remains among victims, offenders and community, as the government favoured domestic interest than international interferences.

Keywords: Neo-Realism, Transitional Justice, Reconciliation

Introduction

The Sri Lankan civil war ended in 2009 with a unilateral war victory. After that Sri Lanka struggled on establishing possible post war reconciliation process according to the domestic legislation arena. According to the Sri Lankan context reconciliation processes, goals, concepts and policies, institutional mechanisms are created by government's own national perspective. But continuously United Nations (UN) put their pressure toward Sri Lanka to establish impartial investigation in investigating final stage of war related crimes. In 2010, the Rajapaksa regime appointed the Lessons Learnt and Reconciliation Commission (LLRC) as a domestic mechanism for investigating these issues. Based on these documents UNHRC adopted several resolutions against Sri Lanka as resolutions 11/1 in 2009, 19/2 in 2012, 22/1 in 2013 and 25/1 in 2014 considering to promote reconciliation and accountability in Sri Lanka. These resolutions continuously highlighted implementing the constructive recommendations suggested by LLRC. Therefore, the international parties recognized there were gaps between the international norms and practice in the domestic implementation of transitional justice process. Nonetheless, the Rajapaksa regime avoided

international pressure and criticized it as external interference to Sri Lankan reconciliation process. In 2015, UNHRC published the report of the Office of the High Commissioner for Human Rights (OHCHR) investigation on Sri Lanka (Office of the High Commissioner for Human Rights (OHCHR) Investigation on Sri Lanka (OISL Report)) which was a human rights investigation report of Sri Lanka. However, investigators had no access to Sri Lanka as the Sri Lankan government rejected the investigation and upcoming special rapporteurs in coming to Sri Lanka.

But in 2015 with the change in regime motives were created to implement international mechanisms toward transitional justice. The 2015 presidential election results clearly showed community needs for a political solution in addressing grievances. Based on the OISL report the UNHRC adopted another resolution named as 30/1 to promote reconciliation, accountability and human rights in Sri Lanka in 2015. The new good governance government already co-sponsored to resolution 30/1 and its turning point to implement transitional justice process according to the international norms; its time-bound implementation process with the engagement of national and international disciplines toward comprehensive reconciliation.

Resolution 30/1 included commitments under some thematic areas, Such as, transitional justice and reconciliation, rights and rules of law, security and demilitarization, power sharing and international engagement (Verite Research, 2019, p.1). Through that UNHRC expected to implement international level best practises for reconciliation and accountability. The government implemented comprehensive transitional justice action plan according to resolution 30/1 implementations, this included establishment of accountability mechanisms, truth-seeking, reparation programmes and institutional reforms (Human Rights Council, 2017, p.3). Other than that, the government

established several ad-hoc multi-layered institutional bodies such as Secretariat for Coordinating Reconciliation Mechanisms (SCRM), The Office for National Unity and Reconciliation (ONUR), The Ministry of National Integration and Reconciliation Multiplicities Heterogeneous Reform of Transitional Justice and Reconciliation in Sri Lanka. One of the most credible blooming in national consultation on reconciliation was established through the Consultation Task Force (CTF). 11 members from the civil society were appointed by the Prime Minister to the CTF in January 2016 (CTF Report, 2016, p.1). For this national initiative with a holistic approach, CTF consulted national level respective key sectors such as military, families of the disappeared, religious, women's groups, professional, media organizations and others. CTF coordinated the consultation through civil society, public meetings, and written submissions and focused on group discussion, not limited to email and post. In addition, Sri Lanka welcomed international special rapporteurs to Sri Lanka in investigating specific areas as steps. These high profile visits provided recommendations used to improve national reconciliation initiatives and Sri Lanka tried to adopt these international standards. This was the first time international rapporteurs were allowed to visit Sri Lanka.

Resolution 30/1 expected to create centre-periphery relations and involvement of all people, community, public and private sector and government. Therefore, after several attempts the government implemented Office of Missing Persons (OMP) under the Office on Missing Persons Act No. 14 of 2016 and established Office of Reparations according to the Act of Office of Reparations No. 34 of 2018 as mechanisms for reconciliation (Verite Research, 2019, p.5). Otherwise, through resolution UNHRC expected to create political solution for victims in achieving lasting peace. Therefore, as a legislative implementation the government signed and ratified the International Convention of the protection of

all persons from Enforced Disappearances in 2016, enacted Enforced Disappearance Act. No.5 of 2018 and criminalized enforced disappearances according to international standards. (Verite Research, 2019, p.7). Otherwise, Sri Lanka issued Certificate of Absence for registration of deaths. It created more demands from families of those that disappeared. These thematic areas and implementations directly deal with human rights, accountability and reconciliation in Sri Lanka. Government of Sri Lanka implemented its commitment according to their national legislations. Some progress is completed mentioned above, however, some are partially completed and most commitments were never implemented. Resolution 30/1 specifically highlighted repeal Prevention of Terrorism Act. Therefore, government proposed Counter-Terrorism Bill for replacing the Prevention of Terrorism Act. But the bill was totally challenged in the Supreme Court, as the Supreme Court recognized that this bill was completely inconsistent with the Constitution (Verite Research, 2019, p.5). The resolution 30/1 highlighted political solution for Sri Lankan conflict such as, taking necessary Constitutional reform for political settlement and implementing the 13th amendment to the Constitution (Human Rights Council, 2015, p.5). Through this the UNHRC expected to divide power among provincial council and operate it effectively. Therefore, government tried to implement a new Constitution in Sri Lanka to avoid these legislative barriers. As an extension of it the government enacted the Provincial Council Elections (Amendment) Act No. 17 in 2017 (Verite Research, 2019, p.7). It already introduced changes of election system in Provincial Council. Otherwise established Provincial Council Delimitation Committee according to Act investigation about its power of Provincial Council. In 2018, the committee handed over their report to the Parliament. However, the Parliament rejected this report and recommendation. Parliament speaker Karu Jayasuriya appointed committee for reviewed that Delimitation Committee's

Report but implementations are not effectively implemented because of poor progress in 2018 (Verite Research, 2019, p.7). Therefore, government was unable to implement political solution for ethnic conflict in Sri Lanka to address deep roots in the real question.

Research Problem

Researcher identified full implementation of resolution 30/1 is hindered by internal content and priorities of national interest as problem statement.

Research Objective

Identify the challenges of implementing and recognized strategic outcomes of resolution 30/1 in context of Sri Lanka.

Methodology

The research was designed according to the Research Onion Model. This study used Interpretivism research philosophy to articulate data analyses and logically used deductive research method for building arguments for approaching a research problem. As strategies of research, the researcher implemented two strategies as case study and archival research, in addition to, research time horizon based on cross-sectional approach. The researcher mainly utilizes primary and secondary source of data with mono method qualitative approach as research method.

Researcher mainly focused on the theory of Neo-Realism to create theoretical framework and the concepts of Transitional Justice, Reconciliation, Restorative Justice and Human Rights to create conceptual framework.

Results

I am disappointed to learn that on the eve of the interactive dialogue on the Office of the United Nations High Commissioner for Human Rights' Report on Sri Lanka in the UN Human Rights Council, the government of Sri Lanka is resorting to yet another delaying tactic to

escape... implementation of Resolution 30/1. – Navi Pillay- (Tamil Guardian, 2019).

Bloomfield (2006) emphasized reconciliation process as a long-term, deep and broad process (Bloomfield,2006, p.7-8). The process of reconciliation cannot be implemented within a single day. It had to gradually increase. Sri Lanka achieved both negative peace and no war situation. But it does not mean that they achieved lasting positive peace. Because the government wanted to address hidden social grievances toward achieving durable peace. Therefore, Sri Lanka wanted to re-establish advance political, social, economic, cultural and physiological developments in war-affected pluralist society. UNHRC adopted several resolutions against Sri Lanka since 2009. But Sri Lanka as an independent sovereign state, recognized that commitments as unnecessary interference toward Sri Lanka. Therefore, Rajapaksa regime rejected it and implemented a domestic mechanism towards reconciliation. However, any state action or behaviour can be criticized under the state interest for their survival as a main actor in the world arena. This situation can be identified as a key point which justifies actions by reasoning from state.

Under that pre-circumstance UNHRC implemented resolution 30/1 toward Sri Lanka and the government under Maithripala Sirisena co-sponsored to it to create a more effective reconciliation process. But the question which was raised was that the government failed to fulfil their promises. Since most of the commitments made by the government was still unachieved, partially no-progress or poor progress. The resolution 30/1 created international norms through victim-centric approach toward war affected society. Sri Lanka implemented domestic progress aspects of resolution 30/1. But when it applied to the Sri Lankan context several conceptual, systematic and practical barriers occurred within the progress. Resolution 30/1 and CTF report mainly considered establishing institutional arrangements which included OMP, Office of Reparations, Commission for

Truth, Justice, Reconciliation, Non-Recurrence and special judicial mechanism with participation of foreign judges. Nevertheless, the government was unable to establish these mechanisms effectively as they mentioned.

The OMP was established in 2018 with several commitments. But there were logistical issues raised as disappeared person's families still awaited a positive solution (Human Rights Watch, 2019). Therefore, it was lack of credible progress. Office of Reparations Act was enacted and Prime Minister appointed five members for it. But after that, no further progress was made relating to the Office of Reparations. Other than that, former Prime Minister submitted a cabinet memorandum for establishing a Commission for Truth, Justice, Reconciliation and Non-Recurrence. However, cabinet did not approve this proposal (Verite Research, 2019, p.3). Else, there was no further progress in establishing the judicial mechanism with foreign judges for investigating serious violations under International Humanitarian Law (IHL) and International Human Rights Law (IHRL). Several arguments were escalated against these recommendations. The Sri Lankan Bar Association President opposed to the adopting of foreign judges and recognized it was an insult to the judiciary when government invited foreign judges (Groundviews, 2017). But South Asian Centre for Legal Studies Niran Ankell focused on some constitutional approach towards using foreign judges, since the constitution specifically mentioned not to requested judge's nationality to be a judge in Sri Lanka and only required is for an oath (Groudviews, 2017). But when Sri Lanka has possibility to implement a hybrid court it can be recognized as a confidence-building measurement among people, because victims will feel an independent judicial procedure within it. But in 2016, former Sri Lankan President Maithripala Sirisena, in a BBC interview highlighted that Sri Lanka did not want foreign judges to investigate into allegations of war crimes. Furthermore, highlighted it as follows,

I will never agree to international involvement in this matter... we have more than enough specialists, experts and knowledgeable people in our country to solve our internal issues... This investigation should be internal and indigenous, without violating the law of the country and I believe in the judicial system and other relevant authorities in this regard. The international community need not worry about matters of state interest... we will certainly reach our target but it's a process (Ameen, 2016).

According to Neo-Realist perspective, above statement highlighted that specific point such as "state interest". Therefore, avoiding international involvement and pressures on Sri Lanka recognized state interests for their domestic implementation. International organization can implement several rules and regulation according to their specific mandate. But under the anarchical situation of the world arena the state has authority or ability to accept these mandates or not, as the state will always act according to their national interest.

Otherwise, one of main issue was people had lack of understanding of reconciliation. When the CTF called inquiries from zonal areas people did not have a sense of what CTF was doing (Haniffa, 2018, p.5). Therefore, ethnic based community felt that reconciliation had a biased progress towards ethnicity. Therefore, people did not have better faith and understanding of reconciliation in Sri Lanka. The government failed in progress toward addressing these issues, as within the weak political situation the government showed lack of commitments to the implementation of reconciliation with accountability.

Other than that, government's progress towards rights and rules of law for reconciliation is unwilling to address the root causes of the social polarization. Because Sri Lanka signed and ratified The Convention on Enforced Disappearances and enacted Enforced Disappearance Act No. 5 of 2018 and criminalized enforced disappearance (Verite

Research, 2019, p.4). But this ratification was ineffective by not accepting the individual complaint procedures (Nain, 2018). It already banned individual victims to file complaints to the committee. Otherwise, Report of UN High Commissioner continuously highlighted in 2017 and 2018 investigation of attacks on journalist, human rights defenders, religious minority, civil society and serious human rights violation of IHL and IHRL under the emblematic cases.

The government inquired about these human rights violations, minority related violent cases and those with lack of effective progress. Other than that domestic mechanism for reconciliation LLRC report also highlighted that the development of a vision of a shared future requires the involvement of the whole society (Human Rights Council, 2015, p.7). Therefore, government suffered from unwillingness to address culture of impunity for these serious human rights and IHL. Those situations created lack of trust among minorities and less commitment on building confidence building measures by government.

The Report of High Commissioner emphasized that the trust of victims and society can only be built by addressing their grievances with respect to victim protection, militarization, land occupation and security legislation (Human Rights Council, 2017, p.8). Therefore, government adopted Victims and Witness Authority to protect rights of victims and witness but it is not fully functional effectively.

Furthermore, still there were occupied lands by military. According to the SCRM statistics 46,320 acres of state land and 5831 acres of private land are released. As at 31 December 2018, 30,187 acres (25, 946 state land and 4241 private land) were still occupied by the military (SCRM, 2019, as cited in Verite Research, 2019, p.6).

The, government has failed to form strong confidence building measures regarding these lands. Failure of demilitarization of land directly affects resettlement of internally

displaced persons. It's continuously growing mistrust among people and feel mind of militarization. Therefore, government has yet again failed to address grievances of war affected people.

There was political solution for grievances of Tamil community by resolution 30/1 and CTF recommended to fully implement the 13th amendment to the constitution and constitutional reform. Former Prime Minister Ranil Wickramasinghe appointed a committee for drafting a new constitution, but it failed without any progress. Government implemented Provincial Council Elections (Amendment) Act No.17 of 2017 for a changed election system and appointed Provincial Councils Election Committee for investigating it. But upon handing over the report to the parliament it was rejected. However, end of the 2019 six Provincial Council's elections were spoiled and expired their term period (Verite Research, 2019, p.7).

Therefore, according to all these failures in the reconciliation process in Sri Lanka it can be recognized that the former government was unable to implement strong institutional process toward achieving successful reconciliation. There were contradictions between emphasized points to the international community and local implementations. Therefore, the government's domestic implementations process had not achieved into an expected level. They co-sponsored to the resolution and continuously participated in UNHRC meetings. But unable to create a credible transitional justice process relative to the pluralist society.

The Easter Attack created polarization of Sri Lanka according to religion and ethnicity. The previous government failed to prevent the attack when they already received the information about the attack. Therefore, people lost their faith in the previous government about their safety and national security. According to this dilemma a deep sense of insecurity occurred among citizens with

doubts on good governance democratic values. This situation was similar to the aftermath of the 9/11 attack in America. Because the situation created deep insecurities among the majority ethnic communities about democracy values and emerged new tension among ethnic communities in multi-ethnic societies (Uyangoda, 2019).

Therefore, Gotabaya Rajapaksa launched his election manifesto based on national security platform. The Majority Sinhalese was impressed on the idea of national security and replaced the government with a strong leader who has the capacity of protecting citizens (Uyangoda, 2019). According to the Neo-Realist perspective national security is a prime national interest than other objectives. Under those circumstances in November 2019 another regime change happened with the elected new seventh President Gotabaya Rajapaksa who was the former Defence Secretary, who played a leading role in the civil war in 2009. However, the election results clearly highlighted ethnic division between majority Sinhalese and Tamil minority in the country.

Under that circumstance resolution 30/1 implementation toward reconciliation and its progress was questioned, as the newly appointed government speak against implementation of resolution 30/1, 34/1 and 40/1 in several times. Otherwise, they questioned constitutional reformed adopted by former government.

According to all these criticisms the government decided to withdraw co-sponsorship to the resolution 30/1, 34/1 and 40/1 and recognized it as against the Sri Lankan constitution which is the supreme law of the country and sovereignty and dignity of Sri Lanka. Therefore, Minister of Foreign Affairs Dinesh Gunawardena formally informed government decision at the council.

Minister of Foreign Affairs Dinesh Gunawardena highlighted in his interview with The Sunday Morning that previous

government's method of implementation was opposed to Sri Lankan context. He further argued that, any government cannot be impeached any provisions of the Constitution or cannot be acted undemocratically. Other than to that, democratically elected parliament has no right to sought on going against own country on false, baseless figures on hearsay figures. Therefore Resolution has no validity. It was overwhelming view of people of Sri Lanka and the Parliament (Gunsekara, 2020).

On the other hand, there were possible action which can be taken by the government for any parliament referencing or Cabinet approval toward bind of resolution 30/1 and former President also expressed that he was not consulted on the adopted resolution 30/1. Therefore, as dualism followed country Sri Lanka have legitimate rights on withdrawing the resolution 30/1 which was not properly implemented. However, current resolution's expiration in March 2021. That session will more important on deciding Sri Lanka's future affairs. Because some contested can be occurred towards Sri Lanka. But, the America withdrew their membership from UNHRC as the partner who proposed the adopted resolution against Sri Lanka. Therefore, there were another question of legitimacy to continue resolution within Sri Lanka with their action against Sri Lankan Army Commander.

According to all these current situations still there were no any further investigation or re-adopted resolution toward Sri Lanka from UNHRC and domestic implementation toward continued transitional justice process in Sri Lanka. But Dinesh Gunawardena delivered his speech on implantation of future domestic mechanism for transitional justice in Sri Lanka with the reference of LLRC, Paranagama and Ugalagama commission reports and other domestic reports (Colombo Telegraph, 2020). In addition, Sri Lanka already mentioned that government continuously engaged with the international community as independent national state.

Discussion and Conclusion

However, all these data foundations and analysis point out what the researcher found conversely, that the full implementation of resolution 30/1 is hindered by internal content. Some recommendations were completed but without future direction, some recommendation was partially implemented and totally not implemented. Therefore, the progress under the resolution 30/1 lacks an effective solution for victims and witness protection and also adds to the lack of confidence in building measures among pluralist communities in Sri Lanka. After the Easter Sunday Attack, a question arose on the effectiveness of Sri Lankan reconciliation process. It caused rebuilding new cycles of violence and ethnic polarization. Therefore the government unsuccessful on implemented credible solutions for human rights violation in war and post-war context in Sri Lanka.

According to all this observations, the researcher found that international organizations can adopt any mandate or recommendations toward country. But under the anarchical situation still state is able to protect their national security and consider it as their prime national interest. As dualist country in the time period from 2009 to 2020 under the three regime in Sri Lanka specifically showed achieved domestic interest than fulfilled international norms. When resolution 30/1 adopted, government unable to implement it according to the international norms and recommendation. Because government favoured to domestic interest than the international interferences.

Reconciliation is a process of achieving a goal of lasting peace. Therefore, author's recommendations towards improvements of transitional justice process in Sri Lanka as follows, 1. The idea of reconciliation must reach every community without considering borders of religion, ethnic or other marginalization, 2. Apply psychological and practical reconciliation procedures and break re-

emerged cycle of violence through including theoretical knowledge for school syllabus as a long-step, 3. Create strong path for confidence building measures among victims and witness. 4. Reconciliation processes have to be equal to all citizens. No racism or ethnicity should be considered. 5. Establish the rule of law and make investigation against the violation of IHL and IHRL from both sides and punish responsible persons without any political interferences. 6. Sri Lanka must have adopted new progress toward reconciliation with the reference to the domestic reports such as CTF Report, LLRC, Paragagama Report and etc.

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Abbreviations

CTF-Consultation Task Force

IHL- International Humanitarian Law

IHRL- International Human Rights Law

LLRC-Lessons Learnt and Reconciliation Commission

OHCHR-Office of the High Commissioner for Human Rights

OISL-Office of the High Commissioner for Human Rights (OHCHR) Investigation on Sri Lanka

OMP-Office on Missing Person

ONUR-Office for National Unity and Reconciliation

UN-United Nations

UNHRC-United National Human Rights Council

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