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Sri Lanka: UNHCR & Sri Lankan Diplomacy- Deny, Deceive, Delay And Destroy

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By Prof. Ramu Manivannan

Already four years including a two-year extension granted to the Sri Lankan Government by the Human Rights Council in 2017, there is little progress in addressing the key goals set out in the Human Rights Council adopted resolution on 1st October, 2015 (A/HRC/30/1), titled "Promoting reconciliation, accountability and human rights in Sri Lanka". This resolution was co-sponsored by Sri Lanka and legally implied that it accepted and assented to the resolution in full, and thereby commended it to other members of the Human Rights Council.

Several United Nations high officials and observers are on record that none of the measures so far adopted to fulfill Sri Lanka's transitional justice commitments are adequate to ensure real progress. It is too naive to say that the progress is slow but the entire process seems to have come to a virtual halt. The World Governments are coming to terms with the ground realities in Sri Lanka with little evidence that perpetrators of war crimes committed by members of the Sri Lankan armed forces are being brought to justice.

Any power or the international institution trying to impart a sense of justice to the Sri Lankan government are best advised to learn from the failure of the Indian government in pleading with the successive Sri Lankan governments to implement the provisions of the Indo-Sri Lanka Accord-1987, especially the 13th Amendment to the constitution of Sri Lanka for over three decades.

The refusal of the Sri Lankan government authorities to comply with its own commitment given at the Human Rights Council reveals two

distinct but inter-related realities of international politics and the limitations of global institutions. For the Tamils, this trait of Sri Lankan government co-sponsoring the resolution (A/HRC/30/1) is neither unusual nor unprecedented. This is a characteristic instinct of Sinhala survival in the face of overwhelming crises and walking out of this commitment is being executed through bargains of time and diplomatic maneuvers. There are several historical and contemporary instances to this effect. The international governments including the sponsors of the resolution (A/HRC/30/1) are also responsible for allowing the Sri Lankan government to wriggle away from its own commitment as co-sponsor.

The Sri Lankan government is trying to employ its time-tested tactics of delay and destroying the process of international justice mechanism as conducted at home for seven decades. After presenting the prospects of drafting a new constitution to the UNHRC it has successfully diverted the attention of the global community to the deliberations and divisions within the Sinhala polity than the original commitments it had made through the resolution (A/HRC/30/1).

The current Sri Lankan Government is now trying to seek Cabinet approval for a truth and reconciliation mechanism, when its leaders accepted to address justice and accountability in post-war Sri Lanka. The Sri Lankan Prime Minister Ranil Wickremesinghe has recently called to the masses for a process of truth telling, regret, and forgiveness, similar to the Truth and Reconciliation Commission (TRC) of South Africa, for a true reconciliation without any reference to key promises of justice and accountability.

Former United Nations High Commissioner for Human Rights Navi Pillay has recently observed that "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' (OHCHR) 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." (See., Ceylon Today, 24 February, 2019, Colombo Edition).

There are three different positions held by the Sinhala ruling elites regarding the UNHRC resolution (A/HRC/30/1) –

First, demolish the UNHRC process by demonstrating Sinhala nationalism with the determination of defending the war crimes and crimes against humanity in the name of national sovereignty as advocated by Mahinda Rajapaksa and increasingly held by the president Maithripala Sirisena.

Secondly, tactical negotiations to buy time with delay and deception mechanism at work inside the UNHRC with the prospect of another two-year extension with Sri Lanka as co-sponsor once again.

Thirdly, keep experimenting with the art of balancing act between the Chinese interests and Western pressures through strategic bargains in Indian Ocean and South Asia region. All three positions converge at a single point of permanently denying justice to the Tamils.

If the Sri Lankan government seeks and UNHRC agrees for another two- year extension the council should not be content by insisting upon clear, stringent, time-bound benchmarks and a monitoring framework. The Action Taken Report (ATR) should be followed up with an assessment and responses to ATR. The Geneva process should be followed and respected along with its logical course of a recommendation by the UNHRC that United Nations General Assembly set up an International Criminal Tribunal as a subsidiary organ under Article 22 of the UN Charter such as the International Criminal Tribunal of Yugoslavia (ICTY) / the International Criminal Tribunal of Rwanda (ICTR) or request that the UN Security Council refer the case to the ICC pursuant to its authority under Article 13 of the Rome Statute.

As a first step in the direction, Human Rights Council should come forward to establish an Independent, Impartial and International Mechanism for Sri Lanka. It is only through such a mechanism that evidence of crimes held by the Government of Sri Lanka, other States, the OHCHR and civil society actors will be preserved / available for use by the ICC and other national courts bringing cases under universal jurisdiction.

The international process cannot be subordinated to the parasitic worldview of “Sinhala Only” which tolerates neither democratic dissent from within nor genuine concerns from outside including the United Nations and the global community of nations. If world governments led by influential powers witnessed light in the regime change in 2015 of the Maithripala Sirisena government in Sri Lanka, then the continuing darkness of injustice in Sri Lanka cannot be eliminated by abandoning the well-meaning international process due to the resistance and defiance of Sri Lankan government and its authorities.

H.E. Ms. Michelle Bachelet Jeria, UN High Commissioner for Human Rights in her recent report released on 8th March, 2019 observed “*Since 2015, virtually no progress has been made in investigating or prosecuting domestically the large number of allegations of war crimes or crimes against humanity collected by OHCHR in its investigation, and particularly those relating to military operations at the end of the war .*” In corroborating with the High Commissioner’s warning that “*the gravity of the cases that a specialized accountability mechanism must address cannot be underestimated,*” reveals the dire situation of human rights in Sri Lanka that should undoubtedly remain firmly on the agenda of the Human Rights Council.

Transitional Justice in Sri Lanka suffers from a unique condition of Sinhala chauvinism and ethnic discrimination of Tamils. The UNHRC resolutions has not even generated “top-down” approach to justice in Sri Lanka, leave alone the scope for building the “bottom-up” participatory democratic approach to delivering justice at the grassroots, because of the complete denial and discrimination of ethnic Tamils.

Neither “top-down” nor “bottom-up” approaches to justice are considered feasible under extreme conditions of ethno-centric denial and

deceit as demonstrated by the Sri Lankan government. We need to build a bridge between the two approaches without exhausting the options from either end. On the other, Sri Lanka's approach to justice has been steered by the biases and predispositions of "Sinhala Only" politics combined with the bargains between contending powers as part of the geo-strategic competition in the Indian Ocean region. In this sense, transitional justice in Sri Lanka reflects the reality of global power politics as well as the legal, moral and political dilemmas governing in the international human rights and justice movements in the world today.

The Author is a Professor & Head of the Department of Politics & Public Administration, Chairperson of the School of Politics & International Studies, University of Madras, Chennai, India. He has also published a book on "Sri Lanka: Hiding the Elephant - Documenting Genocide, War Crimes and Crimes Against Humanity," University of Madras, Chennai, 2014.

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