Human Rights Issues of Sri Lanka during the Post-Conflict Period and Their Implications

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Abstract

Sri Lankan Government forces defeated the separatist Liberation Tigers of Tamil Eelam in 2009, marking the end of 26 years of disastrous war. During the course of the civil war, both the government forces and the LTTE were constantly accused of violating international human rights and international humanitarian law. With the termination of the war, the Sri Lankan Government is continuously demanded by the international community to address the alleged human rights violations during the terminal phase of the conflict.

This paper examines the challenges that Sri Lanka is currently facing vis-à-vis its alleged human rights and humanitarian law violations. The allegations aimed at Sri Lanka are explained referring to the report of the Panel of Experts on Accountability in Sri Lanka, commonly known as the Darusman Report and the final report of the Lessons Learnt and Reconciliation Commission. Basic rules of International Humanitarian Law (IHL) are referred to, in order to elaborate the gravity of the allegations. Then, this paper further examines the political, social and economic implications of the human rights issues faced by Sri Lanka.

Introduction

"Respect for basic rights and liberties has declined in Sri Lanka in the four years since the government defeated the Liberation Tigers of Tamil Eelam".

The above statement has been written down in the article *"Sri Lanka: No Progress 4 Years On – Since War's End an Erosion of Rights, Absence of Accountability"* posted on the official website of the Human Rights Watch, on 20th of May, 2013, reiterating the voices arising from the international arena regarding the alleged human rights violations in Sri Lanka.

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In May 2009, the Sri Lankan Government emerged triumphant ending 26 years of ethnic conflict and the military hostilities with the separatist Liberation Tigers of Tamil Eelam (LTTE). This ruthless conflict resulted in thousands of war casualties and refugees and many fierce battles were fought between the Tamil rebels and the government forces over this 26 year period. Unprecedented violence was ensued in the final phase of the civil war and the events and the occurrences which took place during the final six months of the conflict came under the scrutiny of the international community. Both the government forces and the LTTE were accused of violating human rights during the passage of the civil war, but, with the elimination of the Tamil Eelam rebels, the Government of Sri Lanka came under much pressure from the human rights activists and the western powers to conduct proper investigations and to implement accountability measures regarding the allegations of human rights violation.

Since the end of the ethnic conflict in Sri Lanka, many human rights groups such as Amnesty International, Human Rights Watch and the western powers such as the United States and the United Kingdom continuously aired their criticisms regarding the alleged violation of human rights and humanitarian law by the Sri Lankan Government. In May 2009, during the visit to Sri Lanka, the United Nations Secretary General emphasized the importance of implementing accountability measures to address the violation of human rights and humanitarian law. The Government of Sri Lanka, pledging its commitment to the protection and promotion of human rights in accordance with international human rights standards, appointed the Lessons Learnt and Reconciliation Commission (LLRC) in May 2010. The mandate of this Commission is to investigate the causes of the failure of 2002 Ceasefire, the lessons that can be learnt from the events occurred during the long protracted war and to promote reconciliation among the nationals of Sri Lanka. Moreover, the UN Secretary General appointed a Panel of Experts (the members of the panel were Marzuki Darusman: chair person, Steve Ratner and Yasmin Sooka) to advise him on the implementation of the ‘joint commitment’ agreed upon by the Sri Lankan Government and the Secretary General. The Panel was authorized to advice the Secretary General on the ‘international standards’ and the ‘modalities’ related to an accountability process while examining the true nature of the alleged

violation of the human rights and the humanitarian law in the final phase of the Sri Lankan ethnic conflict (United Nations 2015).

The United Nations Human Rights Council, mandated to address situations of human rights violations and make recommendations on them, adopted a US-sponsored resolution on Sri Lanka titled "Promoting Reconciliation and Accountability in Sri Lanka" in 2012, urging the Government of Sri Lanka to conduct independent investigations into the alleged international human rights and humanitarian law violations during the terminal phase of the ethnic conflict and implement the constructive recommendations of the LLRC report. In 2013, the Council adopted its second resolution on Sri Lanka, requesting the government to implement the recommendations contained in the report presented by the United Nations High Commissioner for Human Rights, on advice and technical assistance for the Sri Lankan Government on reconciliation and accountability. For the third time, in 2014, the UN Human Rights Council adopted a resolution reiterating the need for the Sri Lankan Government to investigate the human rights violations and launching an international inquiry to investigate the violations committed by all parties in the conflict.

Alleged Human Rights Violations in Sri Lanka

The report of the Panel of Experts on Accountability in Sri Lanka (2011) reveals a number of allegations of human rights and humanitarian law violations during the terminal phase of the ethnic conflict in Sri Lanka. The panel has analyzed information obtained from various sources and determined several allegations regarding which there were enough evidences to be credible. The report of the Panel of Experts reveals "a very different version of the final stages of the war than that maintained to this day by the Government of Sri Lanka". On the contrary to the Sri Lankan Government's stand that it conducted a humanitarian rescue operation, the panel states that serious violations of international humanitarian and international human rights law have taken place between September 2008 and 19th May 2009, which, if proven, "would amount to war crimes and crimes against humanity". The panel further states that the manner in which the civil war had been conducted posed a "grave assault on the entire regime of International Law" (The report of the Panel of Experts on Accountability in Sri Lanka 2011).

The panel (2011) has found credible allegations that the Sri Lankan Government forces caused the death of thousands of civilians who were trapped in the Vanni area during the final stage of the war through wide-spread shelling. The basic rules of the International Humanitarian Law (IHL) indicate that the parties to a conflict should at all times distinguish between the civilian population and combatants and that the attacks shall be directed solely against military objects. So, the allegation that most of the civilian casualties were caused by shelling by the government forces, if proven, amounts to a violation of International Humanitarian Law. The government is also alleged to have shelled "three consecutive No Fire Zones", "United Nations hubs, food distribution lines and near the International Committee of the Red Cross (ICRC) ships that were coming to pick up the wounded and their relatives from the beaches". The panel further explains that the Sri Lankan Government shelled in spite of the information given by the Sri Lankan intelligence system as well as the notifications presented by the United Nations and ICRC discouraging the shelling. According to the International Humanitarian Law, the wounded and the sick during a war should be cared for and protected and the emblem of the "Red Cross" or of the "Red Crescent" is required to be respected as the sign of protection. Hence, the allegation that the shelling was targeted near the ICRC ships is severe.

The report of the Panel of Experts on the Accountability in Sri Lanka (2011) reveals that the government forces "systematically shelled the hospitals on the frontlines" in spite of knowing the exact places where those humanitarian objects were located. Also, it accuses the government of depriving the civilians in the conflict zone the humanitarian aid "in the form of food and medical supplies, particularly surgical supplies". The panel also reveals that the Government of Sri Lanka purposely underestimated the number of civilians trapped in the conflict zone who might have died anonymously during the final stage of the war.

According to the International humanitarian Law, the captured combatants and civilians must be protected against acts of violence and reprisals and they should have the right to correspond with their families and receive relief. In violation of IHL, the Panel of Experts (2011) states, that the Government of Sri Lanka conducted the screening of the suspected LTTE without transparency and external supervision. The

Panel also states that the suspected LTTE were removed to different facilities with no contact whatsoever with the outside world, and that some of them disappeared, were secretly executed and that "some of the women may have been raped".

According to the report of the Panel of Experts (2011), the Government of Sri Lanka "subjected victims and the survivors of the conflict to further deprivation and suffering after they left the conflict zone". The government is accused of violating the basic social and economic rights of the internally displaced persons (IDP) by detaining them in closed camps which were massively overcrowded and causing many deaths due to the deteriorating conditions in those camps. The report also reveals that some of the detainees were questioned and were "subjected to torture".

The panel states that the Government of Sri Lanka tried to suppress the media and the individuals criticizing the conduct of the war, using threats and white van abductions. So, the Sri Lankan Government has allegedly violated the fundamental IHL rule that the persons hors de combat and those who are not taking part in hostilities should be respected and treated humanely.

Moreover, the Panel of Experts expresses their concerns about the accountability measures taken by the Sri Lankan Government. As Sri Lanka is party to many international conventions on human rights, the Panel states, that it is a duty of Sri Lanka under the domestic and international law to implement accountability measures for the alleged human rights and humanitarian law violations. So, the Government of Sri Lanka is obliged to conduct proper investigations into the alleged human rights violations and prosecute the persons who are responsible for particular actions.

Adding to above mentioned human rights allegations, in 2011, the Channel 4, a British television broadcaster released a video footage which was described as an evidence of the war crimes in Sri Lanka. The video footage was named as "Sri Lanka's Killing Fields" and it showed "extra-judicial executions of prisoners, the aftermath of the shelling of civilian camps and dead female Tamil fighters who appear to have been raped or sexually assaulted, abused and murdered" (Official website of Channel 4). The video footage also shows the atrocities committed by the LTTE combatants. This video was widely circulated through the cyberspace and was

used as a weapon to attack Sri Lankan Government. However, the government denied the allegations shown in the video footage declaring that it is based on fabricated evidences.

The Lessons Learnt and Reconciliation Commission concluded, in their final report, that the Sri Lankan government forces did not deliberately target the civilians during the terminal battles fought with the LTTE rebels and admitted that a number of civilian deaths were caused accidently. The Commission also maintained that the government forces gave the "highest priority" to the protection of civilians from harm unlike the LTTE rebels who used the civilians as a human shield (LLRC Report 2011). This report released the Sri Lankan forces from the burden of human rights violations, but, the findings of the report were criticized heavily by the human rights organizations and other international observers. The Panel of Experts on Accountability in Sri Lanka criticized that the Commission failed to satisfy key international standards of independence and impartiality and that it does not meet the international standard of a proper accountability process. Moreover, the international community criticized Sri Lankan Government that it established the Commission in order to evade the demand of the international actors for an independent international investigation into the alleged human rights violations.

There are also some criticisms that the freedom of speech is disturbed in Sri Lanka as government officials and the state-owned media publicly named the human rights activists who criticize the government and denounced them as traitors. In June 2012, the Criminal Investigation Department in Sri Lanka raided the news website offices such as Sri Lanka Mirror and Sri Lanka X News and this incident was criticized by the international community as a violation of freedom of speech, but, the Government of Sri Lanka maintained that those news websites were propagating false and unethical news on Sri Lanka. Also, the parliament impeachment of the chief justice Mrs. Shirani Bandaranayake, in December 2012 was seen by the international community as a weakening of the independence of the domestic justice system (Human Rights Watch 2015).

However, the Government of Sri Lanka denies all these accusations of human rights violations denouncing the allegations to be a part of an "international

conspiracy" aimed at tarnishing the image of the Sri Lankan Government and the government forces.

Political, Social and Economic Implications

These allegations of human rights violations and the United Nations Human Rights Council resolutions on Sri Lanka have serious political, social and economic implications.

The Government of Sri Lanka openly defies the recommendations made by the Panel of Experts regarding the human rights issues and the accountability process and considers the allegations to be attempts made by western powers to thwart the emerging development in the country. Repeated demands made by the United Nations Human Rights Council, some western powers as well as human rights organizations and activists to hold an independent international investigation on the alleged human rights violations are opposed and the Sri Lankan Government's stand on such international investigation mechanisms is that such investigations would be an interference in the internal matters of the island and an attack on its sovereignty. However, UNHRC resolutions and the continued pressure from the international community threaten to reinforce antagonism between political actors in Sri Lanka, the international community and non-state actors with ties to the West. Moreover, these human rights issues risk the augmentation of the anti-western attitude in Sri Lanka and push the country closer to countries such as China and Russia. The Government of Sri Lanka constantly accuses that the West is attempting to exert neo-imperial influence in the internal affairs of the country and points out the hypocrisy of the situation because similar allegations have been made against western powers with regard to their conflicts in Libya, Iraq and Afghanistan, but, no international inquiry has been held to assess their conduct. Given the extent of the anti-western sentiments, there is the possibility that the Sri Lankan Government would incline towards closer political relations with illiberal governments in China, Russia and perhaps in Iran (Smith 2014).

The allegations of human rights violations also feed into separatist forces in Sri Lankan diaspora and Tamil-dominated communities in the country. Critics of the Sri Lankan Government's response to human rights allegations maintain that it is the

"Sinhalese chauvinism" which caused the creation of the LTTE and that it still causes suffering to the Tamil minority in the island. Hence, in this situation, existing ethno-nationalist tensions can be aggravated, paving way for ethnic clashes.

Suresh Shah (2014, cited in Sunday Times 2014), the Chairman of the Ceylon Chamber of Commerce states that the negative international public opinion on Sri Lanka can negatively affect the country's economy. Adverse international public opinion generated due to the allegations of human rights and international humanitarian law violations can negatively influence Foreign Direct Investment flows and tourism industry. As an unstable human rights situation taints the image of a country and increases the perception of risk, investors can be reluctant to invest. With the possibility of economic sanctions, Sri Lanka can lose potential opportunities and may be prevented from entering into certain international agreements. Further, 52% of Sri Lanka's exports are bound to countries who voted in favour of the United Nations Human rights Council resolution on Sri Lanka and only 9% of exports go to countries who voted against the resolution (de Mel 2014, cited in Sunday Times 2014). Moreover, the western countries most of whom are critics of the human rights situation in the country remain the main market for Sri Lankan manufactured exports. Thus, it is doubtless that these human rights issues have grave economic implications.

Conclusion

Since the end of the 26 year disastrous ethnic conflict, Sri Lanka is repeatedly accused of violating international human rights and international humanitarian law during the closing months of the war. The international community demands the Government of Sri Lanka to conduct a credible investigation into the alleged human rights violations and war crimes and to implement accountability measures. However, these allegations are denied by the Sri Lankan Government accusing the international actors involved of interference in the affairs which directly come under the domestic jurisdiction. The United Nations Human Rights Council has adopted several resolutions on promoting reconciliation and accountability in Sri Lanka, recommending and encouraging the Government of Sri Lanka to take necessary measures to address the issues of alleged human rights violations. As these allegations of human rights violations have serious political, social and economic

implications, it is imperative that the alleged human right issues be addressed through an effective mechanism to achieve national reconciliation and societal harmony.

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