

ISAS Brief

No. 270 – 21 March 2013

469A Bukit Timah Road
#07-01, Tower Block, Singapore 259770
Tel: 6516 6179 / 6516 4239
Fax: 6776 7505 / 6314 5447
Email: isassecc@nus.edu.sg
Website: www.isas.nus.edu.sg



Sri Lanka at the UNHRC: Will it be Useful for Sri Lankans?

Gloria Spittel¹

If at first you do not succeed, keep trying — this adage is befitting of the relationship between Sri Lanka and the United Nations Human Rights Council (UNHRC). All that is left to be seen (again) is who ‘wins’ the latest round now, and if ‘winning’ actually means anything to either side.

Battling with the ‘Against-Us’ Mentality

Sri Lanka’s appearances at the UNHRC sessions since the military defeat of the Liberation Tigers of Tamil Eelam (LTTE) in 2009 and the adoption of the United Nations Resolution (A/HRC/19/L.2/Rev1) on Sri Lanka during the 19th session gave rise to the notion of Sri Lanka being unfairly singled out or bullied. The prime mover of the resolution, the United States of America, and its main supporter, India which has over time involved itself in the conflict in Sri Lanka, are perceived by segments of the Sri Lankan population as the big bullies acting on behalf of and in tandem with those conspiring against Sri Lanka. Some sections of the Sri Lankan people believe this, albeit under the influence of politicians.

Much to the disappointment of many Sri Lankan politicians, mainly in the ruling coalition, Colombo’s military victory against the terrorist LTTE in 2009 was not met with unreserved

¹ Ms Gloria Spittel is Research Associate at the Institute of South Asian Studies (ISAS), an autonomous research institute at the National University of Singapore. She can be contacted at isasgloria@nus.edu.sg. The views expressed in this paper are those of the author and do not necessarily reflect those of ISAS.

congratulations in the international arena. Allegations of violations of international human rights and international humanitarian law, especially during the final stages of the war, abounded – raised mainly by some interested parties in several international quarters. Those who raise these concerns locally are usually branded by the Government of Sri Lanka (GSL) as lackeys receiving funding from Sponsors abroad. The GSL saw this as a vicious conspiracy to tarnish the image of Sri Lanka and as a pathway to the formation of an independent state of ‘Tamil Eelam’, i.e. the division of Sri Lanka.

The GSL officials found a receptive audience as it raised doubts over the genuineness of the international community’s call for accountability. An audience made up of those opposed to separatism, and those who nurture a ‘minority complex’ amongst the majority Sinhalese population. The perceived threats to Buddhism and the Sinhalese language constitute the basis for such sentiments. This state of affairs is easily exploited and continuously bolstered by politicians seeking votes and power. It is in this background that the international pressure on the GSL for accountability and the establishment of the rule of law, especially through the UNHRC, should be viewed.

Human Rights for All: Right?

So, how should the international community, or at least those interested in accountability and the establishment of the rule of law as also a just society for all, operate in the face of such suspicions in Sri Lanka? A no-brainer answer is that the international community should pay equal attention to the rights of all communities in Sri Lanka. Is this not an obvious answer?

The international community has voiced concerns over two important events in Sri Lanka in 2013. First, the impeachment of Chief Justice Dr Shirani A Bandaranayake in January 2013: the process adopted for the impeachment was met with opposition from civil society, from the law-and-justice fraternity, and from ordinary citizens. The Chief Justice was ousted by the Sri Lankan Parliament in a process and procedure that was widely seen as rushed and botched. There is now a situation of two Chiefs of Justice; arguably the de-jure Chief Justice and a de-facto Chief Justice in Mohan Peiris. With lawsuits on the impeachment still unsettled, the matter is anything but done and dusted. In itself, the procedure by which the Chief Justice was impeached sparked a sputtering debate on the need for constitutional reform. Secondly, the shooting of the ‘Sunday Leader’ journalist Faraz Shauketaly came to be highlighted as an example of the continuing deprivation of human rights, intolerance for dissent and the unsafe environment for journalists and journalism in Sri Lanka.

Yet, many concerned about accountability in Sri Lanka overlooked the issue of the mass grave that was uncovered in the Matale district in the Central Province. Over 150 human remains recovered from the grave are presumed to indicate a massacre of members of the previously-militant Janatha Vimukthi Perumuna (JVP), dating back to the insurrections of 1971 or the late-1980s. The JVP has demanded investigations to unearth the truth about this

mass grave, while the Asian Legal Resource Centre (ALRC), a regional non-governmental organisation headquartered in Hong Kong, along with its sister organisation, the Asian Human Rights Commission (AHRC), has called on the UN to aid in the inquiries.

There is general silence from the international community on what should be considered the most damaging (in terms of inter-communal harmony) and ugliest turn in events since the end of the war – the wave of anti-Muslim protests led by an organisation called the Bodu Bala Sena – a minority of extremists Buddhists cloaked in conspiracy theories and misinformation. While Sri Lanka is yet again at the UNHRC, its populace is distracted by such options as supporting the claims of the extremist Buddhist organisation Bodu Bala Sena or refuting these through online campaigns mainly through new media portals such as twitter, Facebook and blogs. Here at least, the people, left to their own devices, are focused on grass-root engagement in addressing these two issues. Who knows what level of engagement the Sri Lankans may have harnessed at home, if there had been no perceived victimisation by the international community on the issue of the rights of the country's Tamil minority.

There is perhaps no domestic matter in Sri Lanka that the international community can ignore, given its indirect involvement especially in the aftermath of the war with the LTTE and the political environment since. If the international community wants to involve itself in the upholding of human rights in Sri Lanka and in its national reconciliation, it must seriously address the perception among the majority community in Sri Lanka that only a segment of the population, namely the minority Tamil community, is supported.

The Current Political Environment

In a recent report, the International Crisis Group² paints a picture of authoritarian rule in Sri Lanka, of which the impeached Chief Justice Dr Bandaranayake is perceived to have played a role by signing into effect the 18th Amendment to the Constitution, which scrapped term limits for the presidency amongst other instruments for the control and centralisation of power. The report also talks of a weakened political opposition, for which members of the main opposition United National Party (UNP) need accept responsibility given the disunity amongst its senior members. Furthermore, as per the ICG report, Sri Lanka's turn to authoritarianism can only be righted by intervention of the international community. In its executive summary, recommendations are demarcated to all of the world and the government of Sri Lanka but not to the people of Sri Lanka. Does this imply that the people in Sri Lanka cannot and will not solve their issues or does it imply a limit to what the ICG believes it can suggest? If these recommendations from an international source are considered paternalistic, there is little to imply that the suggestions will be taken positively by the people in Sri Lanka. Any perceived meddling in the political apparatus (regardless of how corrupt and dysfunctional) may be counterintuitive, giving that the government may see itself as the victim and given that the international community is seen as wanting a regime change.

² International Crisis Group

What did the previous UNHRC resolution achieve in the form of actual reconciliation via the implementation of the Lessons Learnt and Reconciliation Commission's recommendations? Government reports and figures were drafted, published, and now presented by Minister Mahinda Samarasinghe during his opening speech at the UNHRC, stating that action on the LLRC recommendations was in progress. However, the ground situation in Sri Lanka remains strikingly similar to that in 2012. In fact, it could be said, the situation may have worsened since April 2012 when a mosque in Dambulla was attacked. This raises doubt whether reconciliation is only for the Tamil and Sinhalese populations of the country and not for all its inhabitants.

It is perhaps this lack of momentum and tangible change that has spurred the second resolution which reiterates the need to implement the recommendations of the LLRC and the report of the Office of the United Nations High Commissioner for Human Rights (2013). In the latest draft, the resolution alludes to the religious tensions preoccupying the attention of local population but the one line inclusion appears obligatory. The resolution also notes the High Commissioner Navi Pillay's call for a credible independent international investigation into alleged violations of human rights but stops short of urging such an investigation. In sum, the resolution reiterates the need for the GSL to strengthen justice and democracy through reconciliation for all Sri Lankans in a similar manner as the resolution in 2012. The first resolution hardly managed to change the situation in Sri Lanka. It appears its main purpose was to give rise to this second (and probably subsequent resolutions) to hold the government to its word; will this strategy work? How does the international community punish the government for non-compliance/ or a lackadaisical effort with reference to the first resolution? International sanctions/actions/interventions or a boycott of the Commonwealth Heads of Government Meeting in November 2013; will these measures adversely affect the government or the people?

The resolution adopted in 2012 was preceded by numerous public protest marches in Sri Lanka against the motion. This was in stark contrast to the absence of these in 2013. Yet, there are other reasons why there may not be fervent public outcry at the new resolution, of which contributing factors could be a preoccupation with the impeachment of justice Dr Bandaranayake, the extremist anti-Muslim vitriol of the Bodu Bala Sena and the burgeoning cost of living. Of course, with the increasing number of times that Sri Lanka has being discussed at the UNHRC since 2009, there might be a sense of fatigue too.

Can Sri Lanka Self-Reconcile?

If the resolution adopted becomes the premise for an international investigation, at this juncture given the divisions in the Sri Lankan polity, it is unlikely to be accepted and eventually unlikely to promote reconciliation among the people. A call for investigations must come from the people of Sri Lanka, regardless of how many years if not decades away that call may be. Further, this call should reflect the need for closure for all communities who

have suffered through all of Sri Lanka's conflicts since independence in 1948, not a just single phase of the longest conflict In Sri Lanka. It simply cannot be imposed, as unjust and cold as it sounds, on those requiring closure and as fantastical it may sound to those familiar with the political environment in Sri Lanka.

In his opening remarks Minister Mahinda Samarasinghe, besides citing a litany of statistics and resorting to oft-repeated rhetoric, stated Sri Lanka needs more time. He is not wrong in this assertion. The country does need more time for reconciliation among the people, but with such a powerful government capable of tabling and passing legislation within a matter of days, time is not an element in establishing stable foundations on which reconciliation and justice can be built. The role the international community has to play in Sri Lanka's post-war reconciliation and recovery is murky. It cannot be relegated to that of advising a stubborn government, or to imposing sanctions that would hurt the people more and (which would eventually) play into the hands of the government. What can the international community do? Sri Lanka today is still a divided populace but these divisions are not only between the Tamils and the Sinhalese. The divisions exist not only between ethnicities, but also across social classes and religions too. They are exacerbated, because the dividends in terms of household income have not materialised as expected with the end of the war. In a twisted manner, Sri Lanka's preoccupation with fighting a war has now given way to concerns almost normal to the rest of the South Asian region; religious, social class tensions and income disparity. Yet, these are not acceptable to segments of the populace. The messages of tolerance, of peace that have appeared on new media sites deserve support, recognition and dissemination. However in the same way that the LTTE was not defeated without the help of the international community, post-war reconciliation and recovery will not be possible without engagement from the international community.

If the international community is to be effective, it should not go the way the Tamil Nadu Government has. Petty political mileage-gaining overtures in Tamil Nadu will do little for the Sri Lankan Tamils, whose voices along with the rest of the populace are hardly heard. These voices will only be heard when the people of Sri Lanka raise them against the policies of the government. The tricky part for the international community is in supporting those voices. Clearly there has to be involvement, but that needs to happen at the level of all communities. Supporting institutions that promote justice and democracy in Sri Lanka and increase awareness of these subjects in Sri Lanka, while easier said than done, could be a possible avenue. The antagonistic tactics thrown at the GSL have not worked, instead these have emboldened the government. If a Sri Lanka that is just and fair to all of its communities is to be built, the people have to be at the centre of that solution, else just as the war lasted 30 years, the post-war years will drag on too.

.....