


Feature

2ND LEAD (Correction)

Weak resolutions embolden Colombo: civil society activist

[TamilNet, Friday, 07 March 2014, 19:08 GMT]

The draft resolution to be tabled at the UN Human Rights Council (UNHRC) sessions this month in Geneva has not only disappointed the Tamils by failing to demand an international investigation, it has also failed to recognise the domestic failures despite two rounds of similar resolutions at the UNHRC in 2012 and 2013, said Tamil Civil Society Forum (TCSF) representative and Jaffna University law academic Kumaravadivel Guruparan this week at a press briefing to journalists in Jaffna. Pointing out four major flaws in the latest resolution and comparing the draft with the recent report by the High Commissioner of Human Rights, Mr Guruparan explained the positive and negative aspects of Navi Pillay's approach. The SL State has in fact been emboldened with the weak resolutions year by year, he said.

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[Tamil] Guruparan Kumaravadivel on 04 March 2...

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[The comments specified as off-the-record by Guruparan have been removed in the audio]

Mr Guruparan also explained the approach TCSF has chosen already on 21 February in presenting its proposals to the drafting nations.

Apart from failing to call for an international investigation, the draft resolution also raises three other questions, according to Guruparan. Why did the drafting nations avoid demanding a Commission of Inquiry (CoI) by the UNHRC and stop at OHCHR inquiry? What are the international procedures for Tamils to push the process beyond the jurisdiction of UNHRC into the Security Council [which can produce practical results]? Why the continued grave injustices have escaped the attention of the resolution except at one instance?



Guruparan Kumaravadivel

Explaining the differences between CoI and UN High Commissioner carrying out the task of monitoring, reporting and investigating as described in the draft resolution, Guruparan said that the Tamil position should be pushing the issue beyond the jurisdiction of the CoI. The UNHRC process would be just another report making exercise without any legal prosecution. However, Tamils could welcome if it is a CoI approach that could place the ball at the hands of the Security Council to conduct an independent legal prosecution.

When the TSCF members met a senior foreign diplomat visiting the island, we pointed out that following the weak 2013 March resolution,

the Sri Lankan State seized more than 6,000 acres of lands in Valikaamam North on 26 April. Similarly, when the diplomats were visiting the island this year the SL Defence was deploying soldiers in bicycles to monitor the people. The SL Defence establishment wants to pass the message that the current international process is emboldening it. The diplomat said a stronger resolution may fail to pass at all at the voting. In our opinion, the outcome would be same whether a strong resolution getting failed or a weak resolution getting passed, Mr Guruparan said.

There is also a mind-set in a section of Tamil circles that 'some resolution' should be brought out as it is important to keep 'Sri Lanka' on the agenda of the UN Human Rights Council.

We have to ask ourselves what is the impact felt on the ground in the aftermath of a resolution. What are the changes it brings out in the day-to-day life. Our view is that only a strong resolution would put an end to the emboldenment of Colombo.

We are not demanding anything controversial. We are only asking the measures for which there is precedence, he said.

The TSCF has therefore chosen to say that CoI should be welcomed if it could come. But, we need to go beyond the jurisdiction of the UN Human Rights Council. An international investigation should comprise a criminal prosecution process. A transitional administration under UN supervision should be established within a united framework of the island and a UN Special Rapporteur to be appointed exclusively to monitor the human rights situation in the North and East as it was done in the case of Palestine, Mr Guruparan said.

The whole affair unfolds as part of a larger scheme of geopolitics. Tamils should therefore be firm on telling what they want, he said.

Even in Security Council, things could be moved using the geopolitical moments of negotiation between the permanent members of the Security Council.

There is also a danger of extending the 'Kaaththiruppu arasiyal' (wait-and-see politics) on the Tamil side without demanding what they want, he said.

* * *

Further summary of Mr Guruparan's address to journalists in Jaffna:

Certain representatives of Tamils and almost all the mainstream Tamil language media have been telling the Tamil people that international investigations would come in the resolution this year.

Following the recent visits by the US Ambassador for Global Criminal Justice Stephen Rapp in January and US Asst Secretary of State Nisha Desai Biswal in February, the Tamil papers were quoting the Tamil National Alliance (TNA) parliamentarians as telling that international investigation would be included in the resolution to be tabled at UN Human Rights Council this March. Tamil Civil Society Forum (TCSF) also met the visiting diplomats, but we could not firmly assert whether an international investigation would come. I don't want to get into the 'dirty job' of questioning [the TNA politicians] whether they cited the diplomats truly or not.

The biggest disappointment of Tamils with the draft resolution, released in the intranet in Geneva on 03 March and to be tabled at the UN Human Rights Council, is that the International Community (IC) is still having trust in the domestic investigation mechanisms of the Sri Lankan State, even after the two rounds of resolutions to the same effect without progress. In the words of Sri Lanka's representative to the UN Mr Mahinda Samarasinghe, 'time and space' has again been given to the Sri Lankan State. Further, the draft resolution has gravely failed to point out the inability of the internal processes.

British PM David Cameron, who visited the island, echoed the position of UN Human Rights Commissioner Navi Pillay, who in her oral update to the Council in September

2013 had said that she would be calling for international investigations in March if there was no progress in conducting domestic investigations on war crimes and crimes against humanity. Following British PM David Cameron's visit, there was increased expectation among Tamils on the delivery of a Commission of Inquiry (CoI) on Sri Lanka. That hope has now been dashed by this draft resolution.

In my view, the most damaging aspect is that the draft resolution fails even in recognising the lack of a conducive environment in the island to expect a credible domestic investigation. You will see it when comparing this draft with the recent report [17 February] of the UN High Commissioner for Human Rights.

When it comes to accountability, UN High Commissioner for Human Rights Ms Navi Pillay in her latest report [24 February 2014], recommends an international inquiry mechanism as the Sri Lankan government has failed to conduct credible domestic investigations. In fact, this was her stated policy during her oral update last year [25 September 2013] when she said she would call for international investigations if no credible and independent domestic investigations were not held before March 2014. She has done it.

Following her experience on the two resolutions in the past, in 2012 and 2013, Ms Navi Pillay recognises that Colombo's failure in conducting a credible and independent investigation was not due to technical incapacity or lack of internal mechanism.

The UN human rights chief had correctly identified the problem, as the 'lack of political will' on the part of the Sri Lankan government.

Another positive issue that caught my attention while reading the UN High Commissioner's report is that she has recognized, especially after meeting the traumatized victims in Vanni, that the victims would lose their confidence on the Sri Lankan State. Note the use of State and that she had avoided the term Government here.

However, when it comes to reconciliation, Navi Pillay's report seems to be harping on a domestic LLRC-based discourse.

We disagree with the UN High Commissioner's approach of addressing accountability through international mechanism on one hand while addressing reconciliation through a domestic LLRC process on the other hand.

The view of the TCSF is in sharp contrast to her position on reconciliation. How could one achieve reconciliation without the needed conditions on the ground and addressing the accountability issue, is our question. The opinion of the TCSF is that one could achieve a meaningful reconciliation only through an international accountability mechanism and through delivering political justice.

The High Commissioner is provided with a new responsibility with the draft resolution to monitor, report on the domestic investigations and to investigate the crimes of both the parties. There is a danger that some people will be misinterpreting the latter as a call for international investigation.

Tamil people should know that the maximum the Human Rights Council could come up with is a CoI.

A proper international investigation involving a court procedure would only be possible through moving the Security Council.

There is a slight but significant difference between UN Human Rights Council appointing a CoI and the matter being left to the Office of the High Commissioner for Human Rights (OHCHR).

The difference is that a CoI report cannot be simply called as 'yet another Pillay report'.

We have witnessed how the Sri Lankan government was portraying the report by the three-member expert panel appointed by UN Secretary General as 'Darusman'

report.

It is true that both the UNHRC approaches would only produce just another report. However, if a CoI comes up with a finding that an international investigation involving criminal procedure should be carried out, there is a chance of getting the Security Council to act on it.

Since a CoI, which is often a 3-member-panel, is directly appointed by the multi-government forum of 47 member states of the UN Human Rights Council, which has in turn received the direct mandate from the General Assembly of the UN, such a CoI report cannot be simply denounced.

What we view as most dangerous in the draft resolution being circulated in Geneva is that it still calls upon the Sri Lankan State to conduct a domestic independent and credible investigation. This is more dangerous than the issue of asking the OHCHR to come up with another report.

The IC believes that the Sri Lankan State could still investigate the matter domestically, even after 5 years have gone.

The most serious problem with the resolution is that it has failed to recognize the fact that the domestic accountability mechanisms have miserably failed in the past.

Chronology:

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- 27.03.14 [UNHRC passes resolution on Sri Lanka seeking anoth..](#)
- 26.03.14 [UN resolution neither prevents nor punishes GoSL g..](#)
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- 07.03.14 [Weak resolutions embolden Colombo: civil society a..](#)
- 06.03.14 [IC has deceived Tamils on international investigat..](#)
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