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Reconciliation in Sri Lanka: A Flawed Model?

The sectarian violence in the city of Kandy, Sri Lanka, in March 2018 and the immediate imposition of a nationwide state of emergency have signalled that a lasting and just peace remains a distant prospect. Sri Lanka was once viewed as a possible peacebuilding success story on the international front. However, the respective transitional justice framework launched by the previous and current administrations has been largely unsuccessful.

This paper will identify the country's primary stakeholders and their vested interests in the reconciliation efforts. The current reconciliation model in Sri Lanka is a combination of retributive and restorative justice. The paper will argue that the model needs to adopt a complete restorative justice approach in order to achieve reconciliation and reach a peacebuilding (durable peace without the recurrence of violence) stage.

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Background

Sri Lanka went through a highly protracted and intractable civil war between the government and the Liberation Tigers of Tamil Eelam (LTTE) from 1983 to 2009.² The LTTE was a

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² Candela, Miguel, Aldama, Zigor, "The scars of Sri Lanka's civil war", *Al Jazeera*, 6 June 2016. <https://www.aljazeera.com/indepth/inpictures/2015/12/scars-sri-lanka-civil-war-151221062101569.html>. Accessed on 28 March 2018.

separatist militant group formed in 1972 by its founder Velupillai Prabhakaran who fought for a separate homeland for the Tamil minority living in the Northern and Eastern provinces of Sri Lanka. The civil war came to an end in May 2009 after the Sri Lankan army killed many top military top personnel, including the LTTE leader, Prabhakaran.

The military victory came against the backdrop of some of the most sustained and organised peace talks. As a result, there were hopes that Sri Lanka would emerge as a successful peace-building case study.³ However, a report released by the United Nations (UN) in 2011 stated that around 40,000 civilians were killed during the final stages of the war.⁴ Since 2009, Sri Lanka has been under international pressure to investigate the accusations of war crimes committed by both the Sri Lankan military and the LTTE.

The previous government of Mahinda Rajapaksa dismissed the findings of the UN investigation into the crimes committed during the civil war. It also rejected the UN recommendations to establish a hybrid court consisting of both local and international judges, stating that it did not want any foreign engagement in its reconciliation efforts. Rajapaksa's stint saw a period of no just peace where he consciously diminished the influence of Western international actors due to their interventionist and liberal approach to reconciliation.⁵

Rajapaksa did set up a special court of inquiry in May 2010 called the Lessons Learnt and Reconciliation Commission (LLRC). However, the Commission was heavily criticised for falling short of the international criteria. Amnesty International held the view that the local judges' engagement with the witnesses was simply a lip service – they barely made the efforts to establish the facts and follow up on information given to them.⁶ The LLRC concluded its work in November 2015 without making any substantial gains in transitional justice and peace-building.

³ Goodhand, Jonathan, Benedikt Korf, "Caught in the peace trap?" in Goodhand, Jonathan, et al, "Conflict and Peacebuilding in Sri Lanka", (New York: Routledge, 2010), p 1.

⁴ Haviland, Charles, "Sri Lanka government publishes war death toll statistics", *BBC*, 4 February 2012, Sri Lanka government publishes war death toll statistics. Accessed on 19 April 2018.

⁵ Goodhand, Jonathan, Benedikt Korf, "Caught in the peace trap?" in Goodhand, Jonathan, et al, "Conflict and Peacebuilding in Sri Lanka", (New York: Routledge, 2010), p 2.

⁶ Amnesty International, "When will they get justice? Failures of Sri Lanka's Lessons Learnt and Reconciliation Commission", 2011, p 7. https://sydney.edu.au/arts/peace_conflict/docs/reports/failures_SL.pdf. Accessed on 25 March 2018.

A new transitional justice apparatus was set up by the incumbent government when it swept to victory during the 2015 presidential elections. In the same year, the government agreed to a UN consensus resolution where the new reconciliation process will be achieved in an 18-month period. The model consists of four pillars. The first is the truth and reconciliation commission (TRC), the second is the office of missing persons (OMP), the third is the office for reparations and the fourth is the prosecution court. This model is both judicial and non-judicial in nature, and contains features of retributive and restorative justice. However, the deadline is long over and the government has only made progress in the OMP. The retributive justice characteristic is backward looking and hinders the progress of the reconciliation efforts.

Stakeholders in the Reconciliation Model

There are five primary groups of stakeholders in Sri Lanka's transitional justice mechanism today.

The first group of stakeholders is the current coalition government which adopted a new transitional justice apparatus in 2015. The government's vested interest is to expedite the reconciliation process, especially after its glaring defeat in the 2018 local elections. The government will need to restore public confidence, including among the communities who were affected during the civil war. At the same time, it wants to adopt a balancing act with the predominately Sinhalese population.

The second group of stakeholders is the war survivors. They consist of those who have been displaced, injured, tortured and raped during the war. It also includes families of those who have been killed or have gone missing. They also want reparations, prosecutions and some form of closure in order to heal their wounds and move on with their lives.

The third group of stakeholders is the former LTTE members who were released from detention camps in 2010 and were rehabilitated into mandatory government programmes. The programmes provided some education and vocational training to them. Despite being

equipped with vocational skills, the former LTTE members still face difficulty in seeking employment and reintegrating into society.⁷

The fourth group of stakeholders is the military which was involved in the civil war. There are allegations of war crimes and human rights violations against top military officials. Most recently, charges were filed against former general Jagath Jayasuriya by human rights groups for directing the army during the final stages of the war.⁸

The last group of stakeholders is the local and international civil society organisations which have been pressing the government to speed up its reconciliation process. The International Crisis Group said in its 2016 report that the Sri Lankan government should give a timeline on training investigators, lawyers and judges for the prosecution courts and enacting new legislation.⁹ They have a similar position as the war survivors in that they want peace with justice to be met quickly.

Towards a Complete Restorative Justice Model

This section provides some key recommendations for the government to achieve reconciliation.

First, the government should renegotiate the terms/recommendations with the UN by closing down the prosecution court. As mentioned earlier, the majority of the ethnic Sinhalese population are against the criminal proceedings of top military officers. The officials are viewed as war heroes rather than wrong-doers who should be punished. Sri Lanka has a similar political and socio-cultural environment to that of South Africa where there is no room for retributive justice because there isn't a public mandate for it. The alleged wrong-

⁷ "Ex-Tamil Tigers go jobless in Sri Lanka", *IRIN*, 18 January 2016. <http://www.irinnews.org/report/102368/ex-tamil-tigers-go-jobless-sri-lanka>. Accessed on 25 March 2018.

⁸ "Sri Lanka's Jagath Jayasuriya wanted for war crimes", *BBC*, 29 August 2017. <http://www.bbc.com/news/world-asia-41089396>. Accessed on 25 March 2018.

⁹ "Sri Lanka civil war: Reconciliation efforts slammed on anniversary of seven-year conflict", *ABC*, 18 May 2016. <http://www.abc.net.au/news/2016-05-18/sri-lanka-reconciliation-effort-slammed-on-war-anniversary/7425636>. Accessed on 26 March 2018.

doers, who are aware that they may face criminal justice, have already tried to stop the proceedings.

Second, the government should expand the role of the TRC by introducing truth telling and providing conditional amnesty to the alleged perpetrators. South Africa set up its TRC to find out what happened during the apartheid.¹⁰ It focused on getting the truth out from the alleged wrong-doers by incentivising them with conditional amnesty. Although the South African TRC did face challenges from the accused pertaining to amnesty decisions, it managed to move towards a path of peace-building by focusing on forgiveness and healing. The Sri Lankan government can replicate this model that will incentivise the alleged perpetrators (including military personnel) to reveal the truth and receive conditional amnesty for doing so.

Third, the government should set up community-based courts that are run by local judges in the country's Northern and Eastern provinces which will enable former LTTE militants to reintegrate into society. The Gacaca courts were set up in villages across Rwanda to speed up the backlog of hundreds of thousands of cases involving people suspected of committing violent crimes during the genocide. In the end, the Gacaca courts managed to hear all the cases within 10 years.¹¹ Local community courts in Sri Lanka would provide the opportunity to the communities to hear from former LTTE members, mend the wounds of the past, ease tensions and rebuild trust among the people. This method may enable them to reintegrate into society and, eventually, help them to find employment.

Fourth, the government should set up a victims association. Such an institution will serve as a platform for victims of war to speak about their grievances and sorrows. The victims association could address the human needs of self-worth, sense of belonging and even security.¹² Many non-government organisations are willing to help war survivors return to normalcy. The government could start such an initiative with the UN Entity for Gender Equality and the Empowerment of Women, UN Children's Fund or UN Development Programme, or other such organisations that already have offices established in the country.

¹⁰ Truth & Reconciliation Commission, "Welcome to the official Truth and Reconciliation Commission Website". <http://www.justice.gov.za/trc/>. Accessed on 27 March 2018.

¹¹ "Rwanda 'gacaca' genocide courts finish work", *BBC*, 18 June 2012, <http://www.bbc.co.uk/news/world-africa-18490348>. Accessed on 27 March 2018.

¹² Fisher, Roger, et al, "Getting to Yes", (Great Britain: Hutchinson & Co. (Publishers) Ltd, 1982), pp 49-50.

International Backlash

The revised model is likely to raise controversy among international actors. First, the international community is likely to react strongly if the prosecution court is closed down. The UN protocol on the rule of law for post-conflict societies is heavily centred on punishing culprits in order to compensate victims and fulfil justice. Its idea of reconciliation is giving perpetrators their rightful punishment rather than conditional amnesty. The international community is likely to assert that the alleged culprits should not be allowed to live free after committing war crimes.

Second, the conditional amnesty for alleged perpetrators for truth telling is also likely to result in controversy. The international community would want the TRC members to consist of international judges/experts as well. The UN views a truth commission as complementary to prosecution.¹³ However, reconciliation is highly contextual which does not have a one-size-fits-all formula. Retributive justice will endanger the Sri Lankan peace process.

Third, there is a possibility that the community courts will be criticised for not meeting international standards since they will be run by local judges. They may also be undervalued for not having a clear agenda or purpose, or providing any legal representation to former LTTE members.

Conclusion

There is indeed a clash of ideas between domestic and international approaches to transitional justice. The stalemate in Sri Lanka's current reconciliation process is a result of institutional challenges and resistance from alleged war perpetrators. Furthermore, it does not acknowledge that the former LTTE militants also need some form of reconciliation.

Although retributive justice has been successful in certain post-conflict societies, it is not likely to work in Sri Lanka. The current transitional justice model in Sri Lanka should adopt a

¹³ Office of the United Nations High Commissioner for Human Rights, "Rule-of-law Tools for Post-Conflict States Truth Commissions", United Nations, New York and Geneva, p 27. https://www.un.org/ruleoflaw/files/ruleoflaw-TruthCommissions_en.pdf. Accessed on 26 March 2018.

complete restorative justice approach that stresses on healing, reparations, forgiveness and reintegration. The South African and Rwandan reconciliation models could be useful case studies for Sri Lanka to potentially achieve its reconciliation efforts.

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