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Truth, Memory and Justice in Post-Conflict Transition and Reconciliation



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Editor's Note

It is inevitable that a process of post-conflict reconciliation will be burdened with complexities that are difficult to unravel and address. For those who have suffered loss - the loss of property, land, livelihood, and especially the loss of human life, the path to attaining closure and normalcy is both complex and marked with inconsolable regret and sadness. For these 'victims of loss', a process of reconciliation will inevitably signify for little else than its ability to redress their loss. The two contributions featured in this edition of the LST Review, explore the concepts of 'truth, memory and justice' and their role in addressing, or redressing, loss in the aftermath of conflict or communal violence.

The first is an extract of a larger report, where Gehan Gunatileke explores the scope of truth, memory and justice in relation to the 'complexity of loss', following violence, extra-judicial executions and involuntary disappearances. The analysis of the report is based on the views of persons who have suffered loss through the many instances of communal and ethnic violence that Sri Lanka has witnessed since the communal riots of 1983; including the Marxist insurgency in the late 1980s and the *Aluthgama* riots in 2014. The author engages in an empirical assessment of whether there is one uniform approach to dealing with loss that may be discerned among the group of persons. This is largely in response to the assertion made by Government that the scheme of reconciliation contained in the Lessons Learnt and Reconciliation Commission (LLRC) report is one of 'restorative justice', premised on the virtues of tolerance, forgiveness and leniency that essentially reflects the cultural and religious ethos of the people of Sri Lanka as a whole. The author, through an exploration of the several contexts of loss, the group's views on truth telling, the importance of memorialising loss, and their views on justice in the aftermath of loss; challenges the notion of a 'one Sri Lankan approach' to transitional justice that may be applied in the post-war context. The report-extract points to the injustice of applying a one approach when considering the multiplicity of views expressed by those who have suffered loss.

In the second article, Ambika Sathkunanathan, responds in part to Gunatileke's report-extract. She highlights the inherent difficulties of a transitional justice scheme that views the quest for truth and justice as being innately contradictory to its premise of 'forgiveness and leaving the past behind'. With reference to experts on the subjects, Sathkunanathan highlights among other things, the features of a victim who is vested with the capacity to engage in a process of forgiveness and restoration. That where certain pre-conditions are not met, overarching claims that forgiveness and tolerance are intrinsic to a 'Sri Lankan approach' to reconciliation, will potentially lead to the continued disempowerment of victims who have suffered loss of family and property.

A singular value of both the report-extract and article is that their analyses are framed from a perspective of the 'victims'. The LLRC report, the primary source of reference for reconciliation in Sri Lanka, calls for the investigation and redress of human rights violations resulting in all types of loss. In view of this, and expert writings on restorative justice, it would be defeatist and reductive to dilute the envisaged processes of justice

and redress, based on an assumed version of transitional justice that has not been tested for its relevance to the post-conflict context. As also pointed out, the objects of transitional justice and reconciliation is limited in scope where the focus is forever on narratives of victimisation, rather than on processes of truth, justice and accountability that empowers and mobilises victims of violence and conflict to redress their loss.

Rasika Mendis

Editor



Confronting the Complexity of Loss: Perspectives on Truth, Memory and Justice in Sri Lanka

Gehan Gunatilleke*

1. Introduction

1.1 Background

Historical and contemporary narratives often shape the manner in which a society confronts violence and loss, and the questions of truth, memory and justice that consequentially emerge. The Eighteenth Century revolutions and subsequent anti-slavery movements in Europe and North America contributed towards the development of a liberal-democratic ideology rooted in liberty and justice. Less than two centuries later, two World Wars prompted discourses on international justice and galvanised universal human rights norms. These discourses also grappled with the contradictions of colonialism and the injustices that often lingered in its aftermath. The post-World War era accordingly witnessed a spate of independence struggles in the Global South, which shaped conceptions of rights and justice in those societies. Meanwhile, in Latin America, a recent history of gross injustices under military dictatorships led to remarkable grassroots demands for truth and justice. African experiences, including the anti-apartheid struggle in South Africa and the Rwandan Genocide, have also contributed significantly to the global discourse on transitional justice.

In Sri Lanka, we are yet to fully understand the level to which concepts such as truth, memory and justice permeate the public consciousness. This is particularly true with

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The author and the Law & Society Trust (LST) wish to thank Kasun Chamara Munasinghe, Mathini Vigneswaran and Vigitha Renganathan for their invaluable commitment and courage in conducting interviews and focus group discussions within a challenging, and often dangerous environment. We also thank Donald Reagan, Subhashini Abeysinghe, and Surekha Samarasena for their support during the training of field researchers. We are indebted to Mala Liyanage (former Executive Director of LST), Dr. Nimal Gunatilleke, Dylan Perera, Sanjayan Rajasingham and Rasika Mendis for their useful comments and observations on previous drafts. Above all, we thank the 45 participants who displayed incredible resolve and sincerity in coming forward to tell their stories and share their views with us.

respect to the discourse on transitional justice. Truth telling and justice projects have emerged sporadically, ranging from initiatives to inquire into disappearances in the 1990s to the recent call for accountability in response to wartime atrocities. Meanwhile, contemporary Sri Lankan discourse on transitional justice has produced a curious narrative on what the 'Sri Lankan' version of transitional justice looks like. Certain elements within the Sri Lankan state promoted this narrative, which now finds support even among a limited group of scholars. The narrative first seeks to dichotomise the idea of justice into 'retributive' and 'restorative' forms. It then proceeds to define the Sri Lankan approach to restorative justice further by contending that 'tolerance', 'forgiveness' and 'leniency' is the uniquely Sri Lankan approach to dealing with violence and loss.¹

In *Politics of Memory: Truth, Healing and Social Justice*,² Ifi Amadiume and Abdullahi An-Na'im ask: why are we not learning lessons from the past? The question is raised in the context of repeated conflict in Africa, but the same could be asked of Sri Lanka. Despite recurring violence, the country has been unable to learn from its history and develop an effective approach to combat impunity and prevent violence.

This paper presents excerpts from an exploratory study that attempted to understand the attitudes of victims and survivors towards truth, memory and justice.³ The study did not seek to reach any broad conclusions with respect to a general approach among Sri Lankans towards these concepts. Instead, it sought to grapple with the plurality of views and experiences, and the manner in which personal narratives often shape attitudes towards truth, memory and justice. By consulting a cross-section of victims and survivors who have undergone violence and loss during Sri Lanka's recent history, this study also sought to challenge certain homogenising narratives on a so-called 'Sri Lankan approach'.

Several key events in Sri Lanka's recent history were examined in this study. The 1983 July anti-Tamil pogrom, the 1987-89 Janatha Vimukthi Peramuna (JVP) insurrection, the 1990 expulsion of Muslims from the North, the 30-year ethnic war, including its final stages in 2009, and the Aluthgama riots of 2014, each contained egregious rights violations that are retained in the collective memory of living generations. The study therefore attempted to understand the nature of that memory by engaging those who have suffered personal loss as a direct result of these events.

1.2 Research Method, Limitations and Presentation

The study excerpted in this paper is based on the perspectives of the following stakeholder groups:

1. Tamil persons who lost property during the 1983 July pogrom

¹ See the concluding part of this paper for an analysis of this narrative.

² Ifi Amadiume & Abdullahi An-Na'im, *Politics of Memory: Truth, Healing and Social Justice* (2000).

³ The term 'victim' alone may be inadequate to capture the complexities inherent in how a person who has experienced violence and loss defines him or herself. The term 'survivor' alone may also fall short of capturing these complexities. Thus, throughout this study, the terms 'victim' and 'survivor' are used together and, at times, interchangeably.

2. Sinhalese persons who lost relatives during the government crackdown on suspected members and sympathisers of the JVP during the 1987-89 insurrection
3. Muslim persons who lost land and property during the 1990 expulsion from the North
4. Sinhalese persons who lost family members due to raids by the Liberation Tigers of Tamil Eelam (LTTE) on border villages
5. Persons who lost relatives due to LTTE attacks including bombings of civilian targets
6. Sinhalese persons whose family members served in the military and were either missing or killed in action during the war
7. Tamil persons who lost family members during the war, particularly during the final stages of the war
8. Persons who lost family members during the post-war period due to extra-judicial killings and enforced or involuntary disappearances
9. Muslim persons who lost property during the 2014 Aluthgama riots

The study undertook 32 individual interviews and two focus group discussions to ascertain the views of the identified stakeholder groups. Participants were purposively selected from among networks previously established by the Law & Society Trust.

The selection was based on three criteria. First, between three and four participants from each stakeholder group were selected in order to ensure that the sample captured responses from all the stakeholder groups. Second, participants were selected according to their sex and ethnic profile. The interview sample accordingly included eighteen women and fourteen men, and included sixteen Sinhalese, ten Tamils and six Muslims. The sex or ethnicity of participants, however, was not representative of their respective sex or ethnic group; it is appreciated that the sample was too small to extrapolate conclusions based on sex or ethnicity. The aim in applying such criteria was simply to ensure that the research sample broadly captured perspectives of victims and survivors of specific events that took place in Sri Lanka during the past three decades. Third, participants were selected according to their geographical origin. The selection aimed to cover as many districts as possible, and included Colombo, Gampaha, Galle, Hambantota, Anuradhapura, Kandy, Ampara, Jaffna, Kilinochchi and Mannar.

Additionally, two focus group discussions were conducted. The first involved eight Tamil women from the Eastern Province, who had lost their spouses during the war, and the other involved four Sinhalese women and a Sinhalese man based in the districts of Hambantota and Kandy, who lost family members during the JVP insurrection.

A semi-structured interview guide was used to extract two types of data. First, participants were invited to *recollect* their experiences and personal stories of violence and loss. These stories were documented as factual accounts—or witness testimonials—and are presented

in narrative form.⁴ Second, participants were invited to offer their *observations* and *opinions* on six key areas relevant to truth, memory and justice:

1. The overall context of their loss i.e. loss of family members and property
2. Their own actions and behaviour both during and after they encountered loss
3. The importance of telling others about their experience
4. The importance of memorialising
5. Their conceptions of justice and the importance of identifying and prosecuting perpetrators, and their attitudes on forgiveness and tolerance
6. Future prevention of violence in the country

The study was subject to four limitations. First, the sample size was small; it was thus not intended for the purpose of reaching broad conclusions about the opinions of victims and survivors with *particular* profiles. Instead, it was meant to enable the examination of specific cases for the insights they offer. Second, all except two interviews were conducted in Sinhala or Tamil. Thus certain nuances in the participants' recollections, observations and opinions could have been lost in the process of translating the original interview transcripts and analysing responses. Third, the scope of the study in terms of timeframe was limited (i.e. all events considered took place after 1983). A more comprehensive study on truth, memory and justice may need to take into account the views of a wider cross-section of Sri Lankan society and extend the period of review to include pre-1983 incidents. Finally, the study proceeded on the presumption that participants offered truthful and accurate accounts of their experiences, and that their observations and opinions were genuine. It is noted that memory is often malleable and subjective. In this context, it must be appreciated that the accuracy of recollections may vary; in fact, victims and survivors are often observed to produce different accounts of their experiences at different points of time. The analysis of responses in this study relied on such accuracy despite the fact that independent verification—particularly of anecdotal accounts—was not undertaken. It is therefore reiterated that the study discussed in this paper was an exploratory exercise, which could form the basis for further research on truth, memory and justice in Sri Lanka.

The complete version of the study⁵ contained three parts. However, owing to space constraints, only excerpts from parts two and three are presented in this paper. The first part of the study—which is not reproduced in this paper—grappled with the question of communal relations and set the overall context in which individuals and families suffered loss during the past three decades. This part also presented a timeline that placed violent events in Sri Lanka's history within a chronological context. The second part dealt with the recollections, observations and opinions of the research participants. The data presented in this part was left largely unaltered in order to preserve—as far as possible—the original sentiments of those interviewed. Several incidents were retold briefly. The criteria for

⁴ Due to space constraints, these narratives are not included in the present paper. For a complete version of this study, visit <https://www.academia.edu/>

⁵ *Ibid.*

selecting these incidents from among the many recollected during the interviews and focus group discussions included: (1) the level of clarity and detail in which these incidents were recollected, and (2) the need to capture the entire gamut of events. Therefore, where participants recollected two or three similar incidents, only one incident was presented in detail. Certain excerpts from this part of the study are reproduced in this paper. The third part of the study analysed the recollections and views of participants and attempted to draw from their perspectives, certain lessons on truth, memory and justice in Sri Lanka. The entirety of this part is reproduced in the present excerpt.

2. Reflections on Truth, Memory and Justice

The recollections, observations and opinions of participants were examined through a process of transcribing and translating the original interview records, and analysing responses pertaining to six key areas of discussion. These interview responses were thereafter compared with the responses of participants at the two focus group discussions. Similar to the interviews, the focus group discussions were also divided into two segments: the first focused on the recollections of participants, and the second focused on their observations and opinions with respect to the six areas of discussion.

2.1 The Context of Loss

The participants were presented with a series of questions prompting further reflection on their loss. It is understood that the idea of 'loss' is often subjective and deeply personal. It could range from the abstract—for example, the loss of dignity—to the tangible—for example, the loss of life or property. This study focuses mostly on the latter conception of loss, wherein participants encountered the loss of a family member or property as a direct result of the events they experienced. The loss of dignity, however, undergirds much of the personal recollections offered by the participants.

The first set of questions dealt with the contextual backdrop to the participants' experiences. Sinhala-Tamil ethnic tensions and the rise of Tamil militancy provided the contextual backdrop to the July 1983 pogrom. The context surrounding disappearances during the JVP insurrection was the government's use of military and paramilitary groups to eliminate the insurgents and their sympathisers. The LTTE's antipathy towards the Muslim community along with its campaign to homogenise the North undergirded the mass expulsion of Muslims in 1990. A similar context applied to the LTTE's attacks on Sinhalese border villages. Its struggle for a separate state also provided the contextual backdrop for its indiscriminate attacks on civilians throughout the war. Moreover, the war between the government security forces and the LTTE provided the general context of the casualties suffered on both sides and the disappearances of persons during the military occupation of the North and East. The government's subsequent crackdown of dissenting voices after the war underscored the occurrence of post-war human rights violations including extra-judicial killings and enforced and involuntary disappearances. Finally, increased tensions

between the Sinhalese and Muslim community and the political mainstreaming of Sinhala-Buddhist nationalism formed the contextual backdrop to the Aluthgama riots of 2014.

Those who suffered loss during the JVP insurrection and the post-war era were unanimous in their condemnation of the overall context of their loss. In the case of the JVP insurrection, no participant viewed the government's crackdown on alleged JVP members and sympathisers as 'necessary' or 'inevitable'. These participants held the view that their loss was not in any way or form justifiable within the prevailing political context of the time. Similarly, participants whose family members disappeared soon after the war also felt that such violations could not be understood within any justifiable context. These sentiments underscored their attitudes towards both their loss and those responsible for that loss.

The responses of participants who lost family members due to the war were radically divergent. Three types of sentiments emerged.

First, some participants stated that the war was necessary to bring about peace. One such participant observed: 'Earlier we couldn't go anywhere freely; we lived in fear, but now it is not so.' Another participant—a former member of the Civil Defence Force—stated:

In those days, when we went to cultivate our lands, we carried T56 guns. We always kept watch—we looked this side and that side and worked in fear, for we didn't know when [the LTTE] would appear. At night, we couldn't come out of our houses even for an urgent matter. Now we don't have any such problem.

Some participants whose sons were killed in action stated that they constantly reminded themselves and those around them that their sons were brave soldiers. One participant from Gampaha, whose son was killed in action, stated: 'I always tell [my] grandson about the bravery of his uncle, for I consider it to be very important.'

Second, certain participants remained ambivalent about the actual necessity of the war, but were grateful to the previous government for defeating the LTTE and ending the war. One participant from Mahavilachchiya stated: 'Actually, I'm very happy that the war has ended because both my parents were killed because of the war. When I think of that, I feel very happy that the war is over.' Another from Pemaduwa remarked:

We have been able to live in peace because the war has ended. Now we can spend time in the yard chatting like this because the war is no more. When the war was there we often used to bundle some clothes and run into the forest to hide.

Third, some participants felt that the war was completely unnecessary. In their view, the war caused suffering that they did not experience before it began. Interestingly, these sentiments focused mainly on the stage of the war that began in 2006 and ended in 2009. Hence the participants' interpretation of the word 'war' varied, with some treating it as a 30-year phenomenon and others as essentially taking place during the period between 2006 and 2009. One participant from Mannar expressed extreme bitterness about the manner in which the final stages of the war were waged. From her perspective, 'the army killed as many people as they possibly could'. She commented that she and her family were 'merely

the ones who escaped'. Another participant from Kilinochchi expressed disenchantment with both the government and the LTTE for their actions during the final stages of the war in 2008 and 2009. She stated:

When we were under the movement's [LTTE's] control, we lived well without any problems. People started to hate them during the end stages of the war when they tried to forcibly drag our children into the war. Now, it is only because of the war that we are oppressed by the government. The final stage of the war is the cause for everything.

The polarisation of opinion on the war, however, did not neatly fit into ethnic stereotypes. Some Sinhalese participants did not hold the same view as others with respect to the 'necessity' or 'inevitability' of the war to defeat the LTTE. A male participant from Medawachchiya, whose son was killed in action during the LTTE attack on the Mullaitivu Army camp in 1996, observed:

War is not something that the poor need. War is something that is waged by oppressing the poor in order to establish political power. Other than that, there are no differences among the Sinhalese, Tamils and Muslims of this country. All these are false things created by the politicians in the name of racialism...in order to safeguard their names and their political parties. It is good that the war has come to an end, but it is politicians that are responsible for the eruption of such a war.

The participant was a former member of the Civil Defence Force. The same participant made the following poignant observation:

It is one thing to talk about some heroic deeds done for the sake of the country. Even in our history we have such stories of heroic acts. But, in present Sri Lanka, there are many ethnic groups—not only one. I think we should talk more about how to live in harmony with them and how to prevent such fighting in future.

Not all participants who had lost family members serving in the military held the opinion that soldiers fought for a 'just cause'. In fact, both participants who had a background in the military held the contrary view—that the war was a politically manufactured event, which imposed the greatest cost on the poor. These participants—both of whose sons were killed in action—refused to accept the rhetoric of 'valour' and 'patriotism'. According to these participants, the combination of their personal understanding of the military and their parental experience of loss produced a somewhat distinctive contempt toward war and the glorification of military death. This contempt evokes Wilfred Owen's famous words:

My friend, you would not tell with such high zest
To children ardent for some desperate glory,
The old Lie; *Dulce et Decorum est*
*Pro patria mori*⁶

2.2 Self Reflection

The second set of questions dealt with how participants viewed their own actions and behaviour both during and after their loss. At least two types of responses emerged in this regard.

Some participants had no significant regrets concerning their actions and behaviour both during and after the traumatic event they experienced. Such participants offered various reasons for their lack of regret. Certain participants had no regrets because they either rationalised their loss as 'fate' or *karma*, or associated it with a positive notion. For instance, a participant who lost her husband in an LTTE bombing stated: 'What happened has happened. We can't help it; even my husband couldn't help it.' Another, whose son—an Army officer—was killed in action during military operations, stated that she had no regrets because 'he was engaged in an act of bravery'. Others had no regrets due to the efforts they personally undertook to seek the truth about their loss. For example, one participant who lost her husband during the JVP insurrection stated that she went everywhere possible in search of him and often cooperated with others who were also looking for their spouses. She recalled:

I...went there together with the members of the association we later formed [Association of Missing Persons]. I went to every *devale* (temple) and soothsayer in this country together with four others living in this area who suffered the same problem as I did. We searched for our husbands as far as we could. So, we don't have any regrets about that.

By contrast, certain participants displayed varying degrees of regret concerning their actions or behaviour during the traumatic event concerned. These participants often associated their regret with a perceived failure to prevent the violence or loss they encountered. For instance, one participant who lost her parents during an LTTE raid on a border village felt a deep sense of responsibility for her loss. She recalled that she had left her parents' home after getting married and insisted that their lives might have been spared had she remained with them. Another participant whose son had been killed in action lamented that her biggest regret was not objecting to her son joining the Army. Echoing similar sentiments, another participant recalled the circumstances in which her 20-year-old brother joined the Police before he went missing in 1996:

⁶ Wilfred Owen, *Dulce et Decorum Est* (1920). The Latin phrase means 'it is sweet and right to die for your country'.

Malli [younger brother] did cadetting in school. That is why he wanted to join the Police. One day he told me that he wanted to go for the selection interview. So we took him for the interview. Had we not taken him there that day, he would still be living with us. Later [after he was selected], he wore his full uniform and asked me: 'Akke [older sister], do I look smart?' He was sitting in this same chair [points to chair] when he said: 'Akke, I feel rather reluctant to go [to the police]'. That was the last day we saw him.

Another participant's regrets were more difficult to define, as they related to her failure to act on a premonition she had on the day of her husband's death. She said: 'I had a strong feeling that my husband should have stayed at home without going to work that day.' She mentioned that she regretted that she could not convince him to stay back. The participant's husband was among those who were killed in the LTTE attack on a civilian bus in Kebithigollewa.

These sentiments of regret reflected a tendency among some participants to apportion on themselves part of the blame for their loss. This tendency ranged from the failure to prevent family members from joining the military or anti-state movements, to the failure to act on premonitions of tragic events. This apportionment of blame affected the participants' coping mechanisms in two ways. First, those apportioning such blame saw themselves as struggling to move on from their loss. One participant who lost her husband during the JVP insurrection observed that she was unable to move on because she had to live with her failure to act on her conscience. She strongly felt that her husband should not be involved in the JVP but had kept silent at the time. Second, these participants appeared to have only a limited interest in discovering who was responsible for their loss. Most participants who believed that they were partly to blame for their loss, later expressed ambivalence over the need to investigate and prosecute perpetrators. This ambivalence will be discussed later in this paper.

2.3 Telling Others

The next series of questions related to telling others about loss. Two types of 'truth telling' were captured in the responses of participants: first, the sharing of narratives and experiences in private, among trusted individuals including family members; and second, the sharing of such narratives and experiences in public formal or semi-formal fora including courts of law, commissions of inquiry and public gatherings. It is noted that the terminology of 'truth telling' is used mostly in the context of truth commissions, where victims and perpetrators testify about a particular atrocity. This section uses the terminology more loosely—perhaps in its broadest sense—to mean the act of telling the truth about an event or experience.

Prior to delving into the views of participants, it is perhaps useful to briefly discuss the perceived benefit of truth telling, which has been the subject of debate among scholars and practitioners. Studies on telling others about traumatic events have not reached consensus on whether the process helps victims. Psychoanalyst Sophia Richman—a child survivor of

the Holocaust—argues that dissociation, which is a possible coping mechanism, leads to discontinuity and fragmentation of one's sense of identity.⁷ She contends that telling others is 'an empowering experience that potentially restores a sense of continuity and wholeness'. However, other studies have disputed the value of telling others. In *The Trauma of Truth Telling: Effects of Witnessing in the Rwandan Gacaca Courts on Psychological Health*,⁸ Karen Brounéus counters the conventional view that truth telling is beneficial to the victims and leads to reconciliation. Brounéus examines whether witnessing in the *Gacaca* (the Rwandan village tribunals for truth and reconciliation after the 1994 genocide) was beneficial for psychological health and presents an interesting finding. Her survey of 1,200 Rwandans demonstrated that *Gacaca* witnesses suffered from higher levels of depression and posttraumatic stress disorder (PTSD) than non-witnesses. Her study in fact challenges the claim that truth telling is beneficial and appears to expose the deep complexities inherent in truth telling processes, particularly in post-conflict contexts. Brounéus's study, however, dealt with the process of truth telling in formal or semi-formal public settings. The study does not appear to challenge the possible benefits of telling others in private.

In any event, Brounéus's quantitative analysis is disputed in a later qualitative analysis carried out by Ulrika Funkeson *et al.*⁹ This analysis was based on interviews with eight women who were witnesses at the *Gacaca* Courts. The study led to three findings. The first reaffirms Brounéus's hypothesis that witnessing can have a negative impact on psychological health. However, the remaining two findings appear to add a layer of nuance. Funkeson *et al* found that revealing the truth through the *Gacaca* can be perceived as emotionally distressing, but *also* relieving, and that witnessing can *either* create increased hostility *or* reconciliation in the relationship between the witness and the perpetrator. The principal finding in this study was that there was no uniformity in the effects of truth telling on witnesses. These varied results shed light on the complex experiences of those who witnessed in the *Gacaca* Courts, and suggest that different factors within a particular truth telling process 'contribute to both positive and negative perceptions of the witnessing experience'.¹⁰ The findings of Funkeson *et al* in terms of divergent effects of truth telling appear to be reinforced by the findings of the study excerpted in the present paper.

The first question put to the participants in this regard was open-ended, and did not specify any particular form of telling others. Participants were simply asked whether they have spoken to others about their loss. The responses covered both private and public forms of truth telling.

Several participants stated that they refrained from telling others—both in private and public settings. One participant who had lost his brother during the JVP insurrection said

⁷ Sophia Richman, 'Finding One's Voice: Transforming Trauma into Autobiographical Narrative' [2006] 42.4 Contemporary Psychoanalysis 639-650. Also see James W. Pennebaker, 'Telling Stories: The Health Benefits of Narrative' [Spring 2000] 19.1 Literature and Medicine 3-18.

⁸ [June 2010] 54.3 Journal of Conflict Resolution 408-437.

⁹ Ulrika Funkeson, Emelie Schröder, Jacques Nzabonimpa & Rolf Holmqvist, 'Witnesses to Genocide: Experiences of Witnessing in the Rwandan Gacaca Courts' [2011] 17 Peace and Conflict Journal of Peace Psychology 367-388.

¹⁰ *Ibid.*

that he did not make an effort to speak to others about his loss. He recalled, however, that the matter came up in conversations at social gatherings such as weddings and funerals, and such recollections often saddened him. Another participant who lost her husband to an LTTE bomb attack stated emphatically that she did not speak about it. In fact, the interview held with her for the purpose of the study discussed in this paper was the *first occasion* on which she had recollected her story in detail. Another participant who lost several relatives during the final stages of the war also stated that she preferred not to talk about her loss: 'I usually don't tell anybody anything'. This hesitance in telling others is most poignantly captured in the following remarks by a participant who lost her husband in an LTTE bombing:

I didn't like to speak about it at all; neither did my children. We don't like even the mention of it by anybody at least by chance, for we feel very sad. My second daughter later sent a letter to her aunt in Sweden saying that their father was the best father in the world and the one whose love for his children was the greatest in the world. When our daughters were going to school, my husband accompanied them up to the bus stop. The neighbours once told him not to worry because they [neighbours] would look after them; but he continued to accompany them. He loved the children so much. So we don't like to recollect the fact that he is no more.

Two participants offered unique rationales for their preference not to tell others about their loss. One participant, who lost her relatives during the final stages of the war, said: 'everyone from the Vanni knows people were lost and are missing, so there is no need to tell them about this problem'. She also argued that telling others was counterproductive because there was some resentment in the community that 'only widows get all the benefits'. Hence she argued that refraining from telling others about her loss was more prudent. Another participant related a harrowing account of how an official attempted to take advantage of her as a result of the information she had provided. She recalled:

Telling my story to some people has caused a nuisance. Once, a CID official held an inquiry. He then called my number at 3.30am; there is no need for an official to call me at that time. He spoke to me very vulgarly. He told me to come to Vavuniya to meet him and 'stay with him'. I became angry and scolded him. He might have thought that I would go, as he said, 'since you didn't have your husband around...'. I harshly told him not to try to seduce us while it is they who are holding our husbands captive, and then I disconnected the call. Some officials take advantage of our situation. If our husbands were around, then they will not have the courage to try this. There is fear in sharing my experiences with people. Some sympathise; many try to abuse us.

By contrast, several participants said they spoke about their loss at every given opportunity. The study discussed in this paper revealed two possible aims behind a participant's decision to tell others. While participants did not always draw a clear distinction between private and public forms of truth telling, the two aims discussed below loosely fit into these two forms.

First, participants told others about their loss for the purpose of discovering the truth about the circumstances of their loss. These participants often preferred public, formal or semi-formal settings to tell others about their experiences. It is noted that such processes of truth telling are meant to incorporate opportunities for victims and survivors to hear others including perpetrators speak on the events and circumstances concerned. Many of the participants, whose central purpose was to discover the truth, also expressed a strong desire hear others speak the truth.

Three participants, whose children or spouses went missing during the final stages of the war and during the post-war period, claimed that they spoke about their loss to anyone who inquired. All three of these participants made representations before the Commission of Inquiry (CoI) to Investigate Complaints Regarding Missing Persons.¹¹ One participant claimed that, in addition to making representations before the Commission, she told her story to the media. She also lobbied several Army officials in the hope of securing more information about her husband, who ran a transportation service for the LTTE and was captured by the Navy on 4 June 2008. Another participant, whose daughter went missing during the final stages of the war, stated that her husband constantly reprimanded her for telling others about her missing daughter, and often questioned the benefit of telling others. For this reason, she claimed that she participated in inquiries and consultations without disclosing it to her husband. These participants considered telling others important to the process of discovering the truth about their missing family members. One participant captured this sentiment in the following words:

I speak about my experience in the hope that I will be reunited with my daughter. That is why, where anybody holds an inquiry, I go and tell them about the tragedy that I have faced.

The experiences of these participants in telling others about their loss at public fora were not always positive. One of the participants, whose husband went missing after he surrendered to the Army, recalled that her experience before the CoI to Investigate Complaints Regarding Missing Persons was somewhat disconcerting. The Commissioners had asked her if she knew where they had taken her husband, to which she retorted: 'Then what have I come here for?' She also claimed that the Commission did not permit her to speak freely and only 'interrogated' her. She stated that she was deeply disappointed in the process and left the forum feeling discouraged rather than hopeful. She mentioned that she received no answer to her questions about the whereabouts of her husband. It is therefore important to note that repeated negative experiences of this nature may eventually dissuade victims from using such public processes to discover the truth about their missing relatives.

¹¹ The Commission was appointed on 15 August 2013 and is mandated to investigate complaints regarding missing persons who were resident in the North and East between 10 June 1990 and 19 May 2009. This period was revised thereafter to include incidents which took place between 1 January 1983 and 19 May 2009. See Gazette Extraordinary No. 1823/42 on 15 August 2013 and Gazette Extraordinary No. 1855/19 on 25 March 2014.

Second, telling others was cathartic for some participants. This aim applied mostly to telling others in confidence and, on occasion, telling others in semi-formal public settings. Participants who lost their relatives to LTTE raids on border villagers stated that alms giving ceremonies were held each year commemorating their loss. These participants claimed that the process of remembering their relatives and telling others about the event aided their recovery. However, they added that they told only relatives, friends and those who inquired about the past. Participants whose sons were killed in action held the same view. One such participant stated:

We talk about it even today. We attend certain functions at camps. We have almsgivings and do other meritorious deeds. We always remember him. Every year, we have an almsgiving on the day he died.

When asked if telling others helps in the process of coping with loss, one participant remarked that speaking about her loss 'calms her mind'. Another participant stated that she feels relieved when she relates her story to others. Additionally, some participants claimed that they shared their experiences with people because they wanted to tell the world that there were many others like them. These participants revealed that they often met with others who faced similar trauma. Participants whose children and spouses disappeared during and after the war consistently stated that meeting with and organising and lobbying alongside other victims and survivors gave them strength to face their trauma. One recalled: 'talking to them gives me peace of mind'. Similarly, those who lost relatives during the JVP insurrection claimed that the formation of associations was somewhat helpful to the coping process. Moreover, families of soldiers killed or missing in action had a tendency to draw solace from each other. One participant whose son went missing in action stated:

In this village, there are about three families who lost children while serving in the military. We talk to them about these incidents. But we could not even see the corpses—not only of our son, but also of the sons of the other three families. We were told that they had gone missing.

Another participant stated that each year, members of the Ranaviru Seva Authority—an organisation established to promote the welfare of military veterans and their families—met, which provided him with important opportunities to relate his story and listen to the stories of others.

Meanwhile, some participants held the belief that truth should be told for its intrinsic societal value. A participant who lost his home during the July 1983 pogrom stated that neither he nor his family often told others. But they frequently discussed the events among themselves and 'chose' to tell some specific individuals because 'the truth about what happened must be told and never forgotten'. He said: 'these recollections are not meant to gain us pity, but are only told to those who can understand.' Expressing a similar sentiment, one Muslim participant who was expelled from the North in 1990 stated:

I do not expect to earn pity by recounting my experiences. But the truth must be known. I do not wish to sow seeds of revenge and conflict in the minds of our

children. But the younger generation should know their history. They should know about their predecessors. Only when they are told about injustices will further injustice not happen.

The foregoing discussion reveals that the attitudes of victims and survivors with respect to the purpose and the practice of telling others vary significantly. Many participants in the study excerpted in this paper had specific objectives that they pursued in telling others, and they tended to select their fora accordingly. Participants who wished to learn more about the fate of their relatives tended to speak out more frequently and often preferred public fora. Where cathartic aims were being pursued, they often preferred to tell their stories to trusted individuals in safe and private environments.

Participants were also asked about the general response of others and the manner in which others treated them upon learning about their loss. The participants' responses were once again somewhat divergent. One female participant from Mannar whose son disappeared during the final stages of the war stated that 'very few people have listened to her stories with concern and care'. Another from Kilinochchi whose husband disappeared after being captured by the security forces stated:

Wealthy people won't listen to our stories. Even when we go to relatives, they look at us as if we have come for another round of charity. As a result, we are better off not visiting our relatives. We used to live prosperously, but now we are in a helpless situation. Therefore, I try to live in a way that does not require the charity of others.

By contrast, some participants noted the significant support and care offered to them by their relatives and others within their respective communities. One participant observed that many within their community who had lost relatives during the JVP insurrection became much closer as a result of their mutual sharing of experiences. Another participant from Mannar noted that others began to treat them and speak to them 'kindly' when they became aware of their loss.

The experiences of participants with respect to how they were received by others therefore varied. Some participants found the practice greatly beneficial both from a personal and societal point of view, while others found the practice at best unhelpful, and at worst harmful. Thus the participants presented divergent views on the practice and experience of telling others and the benefits of that practice.

2.4 Memorialising

Participants were invited to reflect on the importance of memorialising past events. Such memorialising could take various forms including public monuments, special dates set aside for the purpose of remembrance, and private acts of memorialising, such as almsgiving. The participants were generally divided on the issue. Some were of the view that memorialising was important—even indispensable, while others stated that closure depended on forgetting their loss. This dichotomy is captured vividly in the words of Richard Holmes:

There is a goddess of Memory, Mnemosyne; but none of Forgetting. Yet there should be, as they are twin sisters, twin powers, and walk on either side of us, disputing for sovereignty over us and who we are, all the way until death.¹²

Three attitudes to memorialising were evident from the participants' responses. First, certain participants were hesitant to acknowledge a need for or any benefit in memorialising their loss. One participant who lost a brother during the JVP insurrection stated that remembering his brother was too painful and that he saw no point in memorialising. Similarly, other participants found the act of memorialising pointless, as their lost family members 'would not be returned to them'.

Second, certain participants acknowledged the 'inevitability' of commemoration. These participants claimed that they possessed an emotional desire to memorialise their loss even though they saw no rational basis for it. One participant who lost her husband during an LTTE raid on a border village stated: 'I want to forget my experiences, but forgetting is hard. I can only forget those bitter experiences if my husband comes back.' Another participant whose husband disappeared after surrendering to the army in 2009 observed: 'how could I forget? Even if someone claims that they are trying to forget, it is a lie. If my husband comes back, then I may be able to forget it. If more and more sorrow keeps piling up, then it is hard to forget.'

Finally, certain participants took up the position that memorialising was necessary both for their personal benefit and for the benefit of others who have endured similar loss. Many of these participants in fact related memorialisation to the act of telling others, which is discussed in the previous section. Additionally, they spoke of events and memorials that might facilitate collective remembrance. One participant from Mahawilachchiya stated: 'I do not think that we can forget such things because of the pain we suffered. I think that it is not good to forget them.' Another participant whose son went missing during the JVP insurrection argued that memorialising was essential because 'we must tell our children and the future generations about the damage that was done.' For these participants, remembering past atrocities had both personal and public value. On the one hand, it helped in some way to maintain the memory of lost family members. On the other, it prompted a society to reflect on its past and prevent the recurrence of atrocities in the future. In this context, these participants emphasised the need for a society to collectively remember its past, and for the state to facilitate such remembrance.

It is perhaps an appropriate juncture to briefly comment on the public practice of memorialising in Sri Lanka. There are very few public monuments or memorials in Sri Lanka that commemorate the loss of life due to human action. One such memorial is located in Raddoluwa, Seeduwa, and is dedicated to the disappeared. This memorial is a sculpture of a human figure and is visited by families of the disappeared from all parts of the country. An annual event is held at the site every year on 27 October. It is attended by families who lost family members during the JVP insurrection and by families from the North and East to show solidarity. The date is significant in the area, as the bodies of

¹² Richard Holmes, 'A Meander through Memory and Forgetting', in Harriet Harvey Wood & A. S. Byatt (eds.), *Memory: An Anthology* (2008).

abducted labour activists Ranjith Herath and M. Lionel were found on 27 October 1989 at the Raddoluwa junction in Seeduwa. Another memorial of this nature was located close to the Diyawanna Oya in Battaramulla. However, the Urban Development Authority demolished the site in 2012 to make room for a market centre.¹³ Meanwhile, at least three war memorials commemorating military casualties of war have been erected in Colombo. One is a British War Memorial located in Victoria Park—a site that now features an annual parade by the Sri Lanka Ex-Servicemen's Association, which has no perceivable link to the commemorated British soldiers lost during World War I. Another is a war memorial at Sri Jayawardanapura Kotte for the Indian Peace Keeping Forces. Finally, a larger memorial for Sri Lankan servicemen lost during the ethnic war is located at the parliament grounds. In this context, it is evident that Sri Lanka is yet to adopt a culture of memorialising atrocities against civilians. The only memorial now standing is the one at Seeduwa.

The views of participants on the importance of public forms of memorialising must be received in light of the gross lack of public spaces that commemorate tragic events in Sri Lanka's recent history. For instance, no such site can be found anywhere in Colombo despite the fact that the city is one of the central locations of the July 1983 pogrom, the crackdown on the JVP, and a number of LTTE bombings. Moreover, no national day of remembrance has been set aside thus far to commemorate the loss of civilian life in Sri Lanka. Incidentally, the LLRC recommended that an annual event be held to express solidarity with the victims of the ethnic war.¹⁴ However, the state has neither implemented this recommendation nor has it taken steps to officially remember the loss of life due to other egregious experiences such as the July 1983 pogrom or the JVP insurrection.¹⁵ The sentiments expressed by many of the participants therefore reinforce the need to build public spaces and to set aside dates for memorialising past events.

2.5 Justice and the Perpetrator

One of the objectives of the study discussed in this paper was to better understand how victims interpret and apply the idea of justice to their experiences. Prior to delving into the

¹³ There are very few public sources for this incident. See for example, Subha Wijesiriwardena, 'Keep Off the Grass', *groundviews.org*, 5 August 2014, at <http://groundviews.org/2014/05/08/keep-off-the-grass>. Information on this incident was further corroborated during a conversation the author had with members of the Frontline Socialist Party.

¹⁴ The LLRC Report, at para.8.303. At the time of writing, the newly established Office of National Unity and Reconciliation, chaired by former President Chandrika Kumaratunga Bandaranaike, was in the process of considering an annual event dedicated to remembering victims of the war.

¹⁵ It is noted that the new government under President Maithripala Sirisena continued the practice of celebrating 19 May as 'War Heroes Day' rather than a day of remembrance or mourning. See Official website of the President of Sri Lanka, *Full Text of President's Ranaviru Day Speech*, 19 May 2015, at <http://www.president.gov.lk/news/full-text-of-presidents-ranaviru-day-speech>. However, the government appeared to have shifted its policy on tolerating dissenting voices. This shift in policy has afforded space to civil society organisations including *Aluth Parapura*, which succeeded in organising a 'remembrance day' vigil on 19 May 2015 with no interference from the government. See 'Sri Lanka's Slow Shift on War Attitude', *The Diplomat*, 9 June 2015, at <http://thediplomat.com/2015/06/sri-lankas-slow-shift-on-war-attitude>.

responses of participants, it is perhaps appropriate to briefly comment on the religious and philosophical influences that may shape their views.

Scholars have pointed to certain complexities within Buddhist conceptions of justice. One suggestion that emerges from the literature is that belief in *karma*—the principle of causality in Buddhist teachings—might weaken ‘the sense of the necessity for human intervention’ in terms of advancing the notion of ‘justice’ as defined in Western philosophical thought.¹⁶ *Karma* dictates that a deed done deliberately through body, speech or mind leads to future consequences, which are presumably realised regardless of human intervention.¹⁷ Hence it is suggested that those of Buddhist convictions may be less inclined to intervene to seek justice, given the inevitability of *karma*. However, there are compelling counter-narratives that seek to displace the idea that Buddhist societies are passive or non-interventionists. For instance, in *Engaged Buddhism: Buddhist Liberation Movements in Asia*, authors Christopher Queen and Sallie King discuss contemporary manifestations of Asian Buddhism ‘as a vehicle for social and political activism’.¹⁸ Thus there appears to be no real consensus on the actual extent to which *karmic* determinism influences the thinking of practicing Buddhists. Moreover, there is nothing to suggest that Buddhist practices in Sri Lanka necessarily proceed on a single, consistent philosophical trajectory. Even if there was academic consensus on what a Buddhist version of justice might look like, it is difficult to maintain that such a version of justice is reflected in Sri Lanka’s legal system. The Sri Lankan criminal justice system for instance is based on a British colonial model of justice, and unambiguously contemplates the punishment of offenders. Furthermore, the current system of punishment has strong punitive leanings. In fact, a recent study on the prisons system in Sri Lanka concludes that ‘the rehabilitation model [in Sri Lanka] was overshadowed by judicial as well as executive inclination towards a punitive model’ and that the ‘current crisis of prison overcrowding may be a direct result of this inclination’.¹⁹ Thus, despite Sri Lanka being a majority Buddhist country, there appears to be no real traces of an overarching Buddhist influence on the criminal justice system. The influence Buddhism may have on the views and attitudes of victims and survivors, however, remains hitherto untested, and should not be ruled out.

Meanwhile, a variety of other religious convictions may shape the views of victims and survivors in Sri Lanka—particularly those from non-Buddhist backgrounds. Therefore, it is perhaps useful to briefly discuss alternative religious sources that might support the idea of justice. Justice in Islam encompasses important ideas including equality, moderation, trust

¹⁶ Winston King, ‘Judeo-Christian and Buddhist Justice’ [1995] 2 *Journal of Buddhist Ethics* 67-82, at 79.

¹⁷ See Richard Gombrich, *How Buddhism Began. The Conditioned Genesis of the Early Teachings* (1997), at 55.

¹⁸ Christopher S. Queen & Sallie B. King, *Engaged Buddhism: Buddhist Liberation Movements in Asia* (1996), at ix.

¹⁹ Centre for the Study of Human Rights (University of Colombo), *A Study on Streamlining Rehabilitation Programmes in Prisons* (2013). According to the study, the extent of overcrowding is a cause for serious concern, given the fact that nearly 26,000 inmates are serving sentence in prisons equipped to accommodate only 11,700 persons. Additionally, a staggering number (some estimates suggest a figure of 100,000) of persons occupy these prisons as ‘remandees’.

and solidarity, and is said to cover 'all aspects of life'—particularly socio-political life.²⁰ Tufail Ahmad Qureshi concludes: 'with the advent of Islam, the Qur'an insistently calls upon Muslims and others alike that, as rulers, judges and as members of society; they should never deviate from the path of Justice...' ²¹ He cites a crucial verse in the Qur'an, which enunciates the following principle: 'Do not wrong others, *nor allow yourselves to be wronged* (emphasis added).²² Certain notions of justice also feature in Hindu teachings. In addition to the idea of *karma*, concepts such as *rita*, a cosmological principle that governs human ethical conduct, and *dharma*, a principle which contemplates political and social order, suggest that Hindu doctrines accommodate notions of justice.²³ Christians may also draw from Biblical and canonical teachings to arrive at their own understanding of justice. Justice or 'justness' is articulated in numerous Biblical passages as being part of the essential nature of God.²⁴ The role of humans in the administration of such divine justice is also evident—first in Old Testament accounts of the responsibility of the political ruler, and later in New Testament and early-Church teachings on the semi-divine nature of civil government.²⁵

These religious and philosophical traditions potentially influence the observations and opinions of participants who are exposed to these traditions and hold corresponding convictions. However, such influences do not necessarily explain the diversity of views held by participants, and must be cautiously applied to the present discussion. For instance, a participant with a particular religious profile may define justice in a manner that does not necessarily flow from her religious background. The study excerpted in this paper therefore did not seek to establish a nexus between a religious background and a particular opinion. The responses of participants ought to be interpreted bearing this overarching context in mind.

Some participants were cynical about the idea of justice. One participant who lost a family member during the JVP insurrection stated: 'Things like "justice" and "law" exists only in books.' Another who lost a son during the final stages of the war claimed: 'There is no such thing. Everything is injustice. Justice is something that must be offered by the government to the people who have been affected.' A participant from Kilinochchi, who had lost *both her thumbs* due to a shell attack in Mullivaikal, quipped:

²⁰ See Tufail Ahmad Qureshi, 'Justice in Islam' [Summer 1982] 21.2 Islamic Studies 35-51, at 40.

²¹ *Ibid.* at 50.

²² *Ibid.* See Al-Qur'an, 57:25.

²³ See Berkeley Centre for Religion, Peace & World Affairs, Georgetown University, 'Hinduism on Justice and Injustice', at <http://berkeleycenter.georgetown.edu/essays/hinduism-on-justice-and-injustice>. It is noted that *dharma* has 'no direct semantic equivalents in western languages' and may be translated as 'duty', 'religion', 'justice', 'law', 'ethics', 'religious merit', 'principle' and 'right'. See Gavin D. Flood, *An Introduction to Hinduism* (1996), at 52.

²⁴ See Alexander Cruden, *A Complete Concordance to the Holy Scriptures of the Old and New Testaments* (1824). Also see James Wood, *A Dictionary of the Holy Bible* (1813), at 68, entry on 'Justice': 'That essential perfection in God, whereby he is infinitely righteous and just, both in his nature and in all his proceedings with his creatures.'

²⁵ King, *op. cit.* at 72.

I am uneducated. I only know to place my signature [meaning thumbprint]. I have no understanding of the justice you are referring to.

Another participant whose son was killed in action pointed to the inherent inconsistencies in the application of justice. He observed: 'what is called justice prevails only in certain places, and not in other places.' Meanwhile, a participant who lost her husband to the Kebithigollewa attack claimed that the idea of justice had no real relevance to her life. She presented the following observations:

If there was something called justice, why wouldn't anybody look into our problems? My husband joined the Civil Defence Force in 1996, even before he got married. However, we only received Rs.75,000 after he died. We haven't received anything else even from the government. Nobody notices that I have been left alone together with these children. I go out to work...either to make clay bricks...or to work in neighbouring houses. That is how I earn a living and earn to spend on my children's education. I receive my husband's salary. It is difficult to manage with that. I had to buy this land and I built this house with difficulty. I obtained loans to build it. Today, we need money for everything. I do not know anything called 'justice'.

These sentiments were echoed by another participant, who lost her husband to an LTTE bombing in Akuressa. She claimed she did not need any form of justice, as she had 'lost the person she needed'. For many of these participants, justice was an empty idea that they had no personal experience of. They also doubted the relevance of justice due to its perceived inability to offer solace from their current grief. The factors that may govern these particular sentiments are discussed in the concluding part of this paper.

By contrast, some participants adopted a more positive, aspirational attitude towards justice. One participant from Jaffna described justice as a 'right' and claimed that 'justice is something that must be given to those who need it'. She placed the burden of dispensing justice on the state by claiming that '[t]he Tamil people must be *given* their right to justice' (emphasis added). Another stated that justice did not exist in the past, but hoped that it would 'prevail at least in the future'.

These participants often associated the idea of justice with their coping process and the ultimate closure they sought. However, they differed on what they felt the outcome of justice should be for them personally. Some associated justice with compensation and restoration of livelihood means, and interpreted their present economic circumstances when defining the relevance and application of justice. These participants felt receiving adequate compensation would serve the interests of justice, and argued that the lack of adequate compensation was a form of 'injustice'. A participant who lost her husband during the JVP insurrection recalled:

We complained to the Human Rights Commission but nothing yielded. After some time, we were given some compensation by the government. As my husband had been working at the Electricity Board, I received about Rs.100,000, but the others received only about Rs.15,000 each. Is a human being worth only that much? A

man's status has been brought down to that of an animal. Actually...even animals are sold at prices higher than that.

Other participants associated justice with the accountability of those responsible, and contended that the interests of justice would be served once perpetrators are identified and punished. Interestingly, some participants who associated justice with accountability interpreted the idea of justice as 'inevitable' i.e. regardless of human intervention, perpetrators would be held accountable in life—an idea similar to *karma*. A participant whose son disappeared after surrendering to the security forces in May 2009 stated:

Justice...there is no such thing as justice now. There was justice before. The movement [the LTTE] ruled excellently. But during the last stages of war, they carried out an injustice that was forcibly recruiting our children and our husbands. The movement suffered their fate because they attempted to carry out injustice. At present, this government [the Rajapaksa government] also acts in a manner that does not uphold justice. They will also face suitable punishment soon.

Another participant who lost her husband during the JVP insurrection echoed such sentiments:

As far as I know, my husband had never been involved with activities of the JVP. If he had done so, he would have told me. At that time, there was a small [JVP] meeting, which I attended. When my husband returned home he severely scolded me for attending it...He advised me not to create problems by attending those meetings, and asked me not to go thereafter. So I clearly know that he was not involved in JVP activities. It was such innocent people with no connections to the JVP that were taken away...I know of politicians from this area who were involved in such activities and are now in Parliament. They have become members and ministers. If there is *ditta dhamma vedaya* (actions of which the consequences come in this life itself), consequences will come upon them some day.

The identity of perpetrators was explored next. At the outset, it was important to understand whether the precise identity of perpetrators mattered to the participants. Participants were divided on this issue; some stated that the identity mattered to them, while others remained disinterested or ambivalent.

Certain participants maintained a strong interest in knowing the identity of perpetrators. This interest cut across participant profiles. For instance, several focus group discussants from Kandy and Hambantota stated that they wanted to know who precisely abducted and killed their family members during the JVP insurrection. One participant from Panwila, who lost her brother during the JVP insurrection, stated that she wished to know the identity of 'those who committed these crimes.' Similarly, a number of focus group discussants from the Eastern Province, whose spouses went missing during and after the war, maintained that they wished to know the parties responsible—mostly to discover the whereabouts of their missing spouses.

By contrast, certain participants did not display an interest in knowing the identity of perpetrators. Some participants who lost relatives during the JVP insurrection maintained

that the precise identity of those responsible did not matter to them. They observed that knowing the identities of the perpetrators would not return their family members; therefore, such knowledge was not important. Similarly, participants whose sons were killed in action stated that the identity of the individual who killed their son was not important in the context of a war.

Certain participants, while maintaining that perpetrators must be brought to justice, remained ambivalent with regard to the precise identities of individual perpetrators. This contradiction of sorts, once unravelled, revealed that a number of participants in fact wished to see institutional responsibility—accountability at the ‘decision-making’ level. Two female participants who lost their children during the final stages of the war stated that they believed that the government was responsible, and that the identities of individuals who carried out any orders was of no consequence to them. One claimed that the Army was responsible since ‘everybody knows’ it was the Army that arrested her daughter who subsequently disappeared. According to these participants, the blame for their losses should be placed on high-ranking officials, including the President at the time. One of the participants then made the following remarks:

As important as a father is in a family, a country’s President is also important. He must treat everybody in the family equally. We were not respected as citizens of this country; instead we were oppressed. He controls the government. Therefore, he is the one responsible. The people who took my husband were the Navy. Is not the Navy a part of the government?

Similarly, a number of participants blamed the LTTE for their loss. Two categories of participants emerged in this regard. One group blamed the LTTE for the forced recruitment of their family members, which eventually led to their death or disappearance. One participant recalled the circumstances in which her husband disappeared and the implicit responsibility of the LTTE:

During the conflict, we told [the LTTE] to allow us to go to the Army to surrender, but they did not allow us. My daughter vomited blood because she had dysentery. Even when we told the movement this, they did not allow us to go to the Army side. Had they allowed us, we would have escaped with my husband still alive. The Army also moved forward to capture positions. [The LTTE] could have allowed the people to escape. We were depending on the movement. In the end, I managed to leave the areas controlled by the movement. But [my husband] paid with his life.

This participant felt that her husband would have stood a greater chance of surviving had they crossed voluntarily to Army-controlled areas at an earlier stage. Instead, only she and her children crossed over, leaving her husband behind. She explained that it was at that stage that the security forces captured her husband, who later disappeared.

The other group blamed the LTTE more directly for the loss they had suffered. In these cases, the LTTE had been responsible for either expelling the participants from their homes, or causing the deaths of their family members due to bombings or raids. Yet some of these participants appeared to be disinterested in learning the precise identities of the

LTTE members who had perpetrated the forced conscriptions or killings. One Muslim participant stated that the organisation as a whole betrayed the Muslim people and were directly to blame for their predicament today:

We were of great help to the LTTE while they fought for our rights. Some of our people then betrayed the LTTE. But [the LTTE] did not realise that all Muslims are not like them. We have even offered food to the LTTE. Even though they carried out some injustices, their cause was just. Therefore, the LTTE is [ultimately] responsible for expelling us from our own village, while we were living together.

The accountability of individual personnel or cadres carrying out orders appeared to be less important to many participants. In fact, some participants speculated that the actual individuals who perpetrated the killings might no longer be living. One participant who lost family members during an LTTE raid observed that the particular cadres had been hiding in the Wilpattu forest during the time. She speculated that these cadres must have been killed or captured, as none of them were in the area now. Similarly, a number of participants who suffered at the hands of security forces during the final stages of the war stated that holding inquiries to investigate the actions of low ranking individuals was inadequate. One such participant claimed:

The government is neglecting those responsibilities. You can understand this because of their current actions. You can also understand this because of the fake investigations they are holding to please the international community.

Two approaches to the accountability of perpetrators emerged from the views of participants. First, a clear desire for perpetrators to be identified and punished was evident among many participants. This view was held by a variety of participants and was not limited to the circumstances of their loss. For instance, one participant who lost her husband during the JVP insurrection was keen to see those who planned the abductions ultimately punished. She added: 'even if the state did not punish those responsible, such punishment would be encountered eventually'—reinforcing the aforementioned notion of *karma*. These sentiments were echoed during the focus group discussion held with five participants whose family members were abducted or killed during the JVP insurrection. One participant from Aladeniya, Kandy stated: 'those who killed my husband on 26 August 1989 must account for everything they have done. They must receive an appropriate punishment.'

Several participants whose family members disappeared immediately after the war stated that their main priority was to learn the whereabouts of their missing family members. They added, however, that those responsible for the disappearances of their family members should be punished for those crimes. 'Those responsible', however, was not necessarily a reference to the persons who abducted their family members. Responsibility was also—and often specifically—cast on the persons who *planned* or *ordered* the abductions. This view was somewhat consistent with the public discourse in the Eastern Province with respect to allegations against one Iniya Bharathi, a former member of the *Tamil Makkal Viduthalai Pulikal* (TMVP), a group that broke away from the LTTE and supported the government. Several witnesses who made representations before the LLRC

claimed that this individual was directly responsible for abducting their family members.²⁶ Public protests were later organised in Thirukkivil, Ampara in February 2015 pointing to Bharathi's involvement in abductions and calling for such perpetrators to be brought to justice.²⁷ This view was not in any way limited to Tamil participants. A participant from Alawathugoda, Kandy who participated in the focus group discussion expressed the following sentiments in relation to the abduction of her husband on 5 December 1989:

I want to know the identity of the perpetrator. I want to find out what happened to my husband. Also, the person who gave the order to abduct my husband must know more about what happened to him than the persons who abducted him. So I truly want to know who gave the order.

Second, certain participants presented the view that individual perpetrators should be rehabilitated rather than punished. This view was further clarified to mean that individuals carrying out orders should not necessarily face punishment but should undergo some form of rehabilitation. The view was prevalent among a number of participants whose children or spouses were killed or missing in action in the war against the LTTE. They felt that the rehabilitation of former LTTE cadres was 'a good thing'. One such participant did, however, point out that there was a double standard that was 'dangerous', as some former LTTE leaders were permitted to engage in politics. He observed:

Today some of them are engaged in politics. As I see it, rehabilitating [cadres] doesn't matter. But they cannot be allowed to do politics. What a lot of damage they caused! They killed a large number of our children...It is really dangerous that they are doing politics.

These views on punishment and rehabilitation appear to be complementary, as they both distinguish between decision-makers and subordinates. Hence the participants who valued some form of accountability generally fell into two categories. Many who preferred the punishment of perpetrators, opted for the punishment of decision-makers rather than subordinates. Those who preferred rehabilitation recommended the rehabilitation of subordinates, while suggesting that former leaders ought not to be permitted to engage in politics. In both cases, there appears to be a strong association of accountability with decision-making power.

2.6 Future Prevention

The final set of questions put to the participants related to the prevention of similar atrocities in the future. Participants were asked to comment on what they suggest a society should do to prevent the recurrence of violence and conflict. Two types of responses

²⁶ See Verité Research, *Sri Lanka: LLRC Implementation Monitor – Statistical and Analytical Review No.3* (December 2014) for an analysis of 563 original complaints before the LLRC. Many of these complainants directly referred to the role of Iniya Bharathi in abduction, extortion, assault and sexual abuse of civilians in the Eastern Province.

²⁷ 'Tamils call for Sri Lanka's paramilitary leader Iniya Bharathi to face justice', *Tamil Guardian*, 19 February 2015, at <http://www.tamilguardian.com/article.asp?articleid=13842>.

emerged. One type of response associated conflict with the absence of mutual understanding between communities and the denial of rights. The second type of response identified conflict as a political construct that displaces law and order and the general ability of communities to live in harmony. The distinction, though subtle, was clearly evident in the responses of participants.

Some participants contended that conflict emerged from a combination of rights denial and a lack of mutual understanding. Hence the war was seen very much as symptomatic of deeper problems. One participant from Jaffna observed that 'hatred' was the root of conflict and recommended that greater efforts be undertaken to reduce hatred in society. Another participant added that two specific measures needed to be adopted in this regard. First, there should be greater awareness among people about other ethnic groups and religions. Second, basic rights should be provided to all people regardless of ethnicity or religion. The participant, who had lost a son during the final stages of the war, explained that the failure to provide basic rights often led to a lack of awareness. She observed:

When their only worry is their daily life, where do they have time to think about other people? Their worries must be answered first and their rights must be properly provided for them. If not, there will always be conflict among the people.

Another participant who lost her family due to shelling during the final stages of the war made a similar remark. She stated:

There should be mutual understanding among the people. They will have to have a state of mind that allows them to help another person. Every individual must understand the effect of racial violence. They have to understand that others have the same rights as they do.

Some participants who were expelled from the North adopted a nuanced view on non-recurrence. These participants contended that conflict stemmed from the lack of sound values within society. One such participant presented the following views on future prevention:

Everyone should follow the ways of their religion. The people should develop their sense of humanity, mutual understanding and humility. Rivalry should not be promoted among the people or their children. A basic sense of humanity in children must be cultivated. When a religious character is developed, the animal instinct will be restrained. There should also be a change in the minds of the people of the majority. We should move from a sense of "I" to a sense of "we". There should be a sense of belonging to the family, home, village, district, province and the nation. We can only reduce problems if we start thinking of it as our country.

Not all participants felt that ensuring rights and mutual understanding was vital to the 'maintenance of peace'. This distinction is evident in the following views expressed by a participant from Mannar who had lost her husband following his surrender to security forces in May 2009:

We are now under the government. If we monitor our children's goings and comings, and as long as we make sure they do not start another war, it is fine. If a war is started, it is our responsibility to ensure that our children do not participate in it...There is no need for more wars...what we faced was more than enough.

This participant held the view that compliance with the law and submission to the state were sufficient conditions for peace. Meanwhile, a number of participants considered the LTTE to have been the main barrier to peace, and claimed that its defeat had given the country a genuine opportunity to avoid conflict in the future. One participant from Ambalangoda, who had lost her husband to an LTTE bombing, argued that the defeat of the LTTE created the space for people to 'live in harmony' and prevent violence in the future. These views were echoed by certain other participants, including those who had not been personally affected by LTTE attacks. One participant from Alawathugoda stated: 'such problems would not be created if law was implemented properly and...people are controlled well.'

Thus the question of how to prevent the recurrence of violence and conflict was approached from two perspectives. According to the first perspective, conflict emerged from the breakdown of law and order and was a political construct of those vying for power. Participants who analysed conflict from this perspective often used the language of 'terrorism' to describe a 'cause' rather than an 'effect'. Hence LTTE bombings were an effect of 'terrorism', which was the *cause* of violence, as opposed to an *effect* of some other grievance. This basic understanding of conflict shaped the manner in which these participants viewed the issue of future prevention. According to the second perspective, conflict was seen as a symptom of a grievance. Participants who analysed conflict from this perspective tended to be aware of the historical and contemporary grievances of minority communities in Sri Lanka and often self-identified with those grievances. They reflected on how minority communities have been deprived of rights such as land rights, employment opportunities and education. They claimed that the deprivation of these basic rights—which led to those historical and contemporary grievances—was at the root of conflict. These participants emphasised the need for raising awareness and mutual understanding between communities, and cultivating values among the next generation in order to guarantee basic rights and ensure non-recurrence of violence and conflict.

3. Findings and Conclusion

This paper presented the main contents of an exploratory study that captured the views of individuals in Sri Lanka who have suffered personal loss during the past three decades. The events recollected by these participants are documented in various journalistic and academic accounts of Sri Lanka's recent history. Yet the study discussed in this paper was perhaps the first—albeit modest—attempt to present a collection of perspectives and experiences across these events. The study therefore attempted to uncover the convergences and divergences in the views held by victims and survivors of violence and conflict in Sri Lanka. It also presented a unique juxtaposition of these experiences: from the despair of not knowing the whereabouts of a relative abducted during the 1987-89 JVP insurrection to

similar despair faced during the post-war period in 2009; from the indignity of losing one's home during the July 1983 pogrom to similar indignities endured during the 1990 Muslim expulsion and the 2014 Aluthgama riots.

Three important findings emerge from the participants' recollections, observations and opinions. The first relates to the extraordinary heterogeneity detectable in the views of participants. The second points to certain factors that appear to shape the views of participants. The third finding relates to the question of remedies. It confronts the question of how international standards on truth, justice and reparations might find meaning within the plethora of preferences and priorities found among victims and survivors in Sri Lanka.

3.1 Heterogeneity and the Reductive Narrative

Following the conclusion of the war, certain quarters within the Sri Lankan government attempted to construct a 'Sri Lankan approach' to justice.²⁸ State officials including then Minister of External Affairs, G.L. Peiris articulated the position that the 'Sri Lankan approach' was not to emphasise on retribution or punishment, but rather on restorative justice.²⁹ This line of reasoning sought to define the concept of restorative justice as closely related to notions of 'forgiveness', 'tolerance' and 'leniency'. Former Attorney-General and advisor to the Cabinet, Mohan Peiris reiterated this position in a speech titled 'Sri Lanka's Approach: Restorative Justice vs. Retributive Justice' delivered at the Inaugural National Conference on Reconciliation in November 2011.³⁰ Peiris in fact claimed that the philosophy of transitional justice '[f]lavours restorative justice rather than retributive justice'. He also claimed that the restorative justice approach resonates with Sri Lanka's own religious tradition, thereby suggesting the 'Sri Lankan approach' was not to seek punitive measures. Peiris observed:

On a close analysis of this concept on philosophy it appears that it [restorative justice] finds a comfortable place in our own philosophy as laid down by the greatest teachers, Gautama, the Buddha, who preached the doctrine of 'Tolerance', of 'Maithri' [compassion] which gives life to the concept of restorative justice. It would therefore appear that restorative justice is a concept that finds its roots in our own religious teachings and cultural values long before the West discovered this concept.

²⁸ At the time of writing (April 2015), the Foreign Affairs Minister, Mangala Samaraweera deviated from the state's original position and pledged to develop 'a credible local mechanism to investigate...alleged crimes'. This deviation, however, may be insufficient to indicate a long-term policy shift, given the interim nature of the present government. See 'New Sri Lankan Foreign Minister: Our Tilt Towards China needs a Course Correction', *swarajyamag.com*, at <http://swarajyamag.com/world/new-sri-lankan-foreign-minister-our-tilt-towards-china-needs-a-course-correction>.

²⁹ See speech by Prof. G.L. Peiris, then Minister of External Affairs at the 9th IISS Asia Security Summit, The Shangri-La Dialogue, Singapore on 6 June 2010, at <http://www.mea.gov.lk/index.php/en/media/ministers-speeches?start=15>.

³⁰ See Mohan Peiris, *Sri Lanka's Approach: Restorative Justice vs. Retributive Justice*, 24 November 2011, at <http://www.kadirgamarinstitute.lk/events/video.htm>.

This narrative on Sri Lanka's so-called approach to transitional justice soon became the official policy position of the previous administration under Mahinda Rajapaksa. Former High Commissioner to the United Kingdom, Chris Nonis stated in an interview with CNN that the approach of the LLRC (which he called Sri Lanka's home-grown solution) was not to focus on 'punitive justice where you punish people' but on restorative justice.³¹

Some scholars have presented similar views, claiming that restorative justice in Sri Lanka 'is very much a part of the Sri Lankan spiritual heritage of forgiveness'.³² These repeated statements have sought to construct a particular narrative about what Sri Lankan justice looks like—fundamentally focused on 'tolerance', 'forgiveness' and 'leniency'. It is noteworthy that, despite the position of the previous administration, the LLRC did not specifically endorse this narrative in its final report. Yet it remains the only narrative that presents itself as 'Sri Lankan'. It is couched in historical, indigenous and cultural terms to reinforce its legitimacy, thereby proclaiming dominance and authenticity over alternative conceptions and approaches. This self-proclaimed 'Sri Lankan approach' is unconvincing for two reasons. First, it is normatively problematic. Second, it is empirically questionable.

The so-called Sri Lankan approach is normatively problematic because it promotes a limited understanding of restorative justice. At least three normative concerns might be raised in this regard.

The first relates to the defined objective of restorative justice. In defining restorative justice, Burt Galaway and Joe Hudson offer three fundamental elements:

First, crime is viewed primarily as a conflict between individuals that results in injuries to victims, communities, and the offenders themselves, and only secondarily as a violation against the state. Second, the aim of the criminal justice process should be to create peace in communities by reconciling the parties and repairing the injuries caused by the dispute. Third, the criminal justice process should facilitate active participation by victims, offenders, and their communities in order to find solutions to the conflict.³³

These elements are clearly found in the preamble to the UN's Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters, which states:

This approach provides an opportunity for victims to obtain reparation, feel safer and seek closure; allows offenders to gain insight into the causes and effects of their behaviour and to take responsibility in a meaningful way; and enables communities

³¹ See 'CNN interview with H.E. Dr. Chris Nonis, Sri Lankan High Commissioner to the United Kingdom', *Official Website of the Sri Lankan High Commission to the United Kingdom* (November 2013), http://www.srilankahighcommission.co.uk/index.php?option=com_content&view=article&id=409:cn-interview-with-he-dr-chris-nonis-sri-lankan-high-commissioner-to-the-united-kingdom-&catid=1:news&Itemid=95.

³² Iromi Dharmawardhane, 'Sri Lanka's Post-Conflict Strategy: Restorative Justice for Rebels and Rebuilding of Conflict-affected Communities' [2013] 7.6 Perspectives on Terrorism.

³³ B. Galaway & J. Hudson (eds.), *Restorative Justice: International Perspectives* (1996), at 2.

to understand the underlying causes of crime, to promote community well-being and to prevent crime.³⁴

Howard Zehr and Harry Mika attempt to provide a working definition of the concept by highlighting three sequential elements: (1) crime is fundamentally a violation of interpersonal relationships; (2) violations create obligations and liabilities; and (3) restorative justice seeks to heal and put right the wrongs.³⁵ The *victim* is therefore at the heart of restorative justice, making the approach fundamentally 'victim centred'. The victim's restoration is presumed to be a multifaceted process, which could entail the need to understand the causes of the crime, and the perpetrator's motives. Restorative justice projects accordingly prioritise restoring victims above other objectives, including demonstrating leniency towards perpetrators. Tolerance, forgiveness and leniency towards perpetrators—though possible components of a restorative process—remain secondary to and contingent on the restoration of victims. In fact, there is no normative inconsistency between restorative justice and the accountability of perpetrators. The accountability of the perpetrators is often critical to a victim's restoration. However, the narrative on the so-called 'Sri Lankan approach' to restorative justice appears to prioritise the facilitation of tolerance, forgiveness and leniency towards perpetrators rather than victim restoration. It seeks to place secondary objectives at the helm of the process. The narrative therefore appears to distort the fundamental objective of restorative justice.

The second normative concern relates to the inability of the so-called 'Sri Lankan approach' to appreciate the interplay between 'restorative' and 'retributive' elements of justice. The narrative appears to rule out prosecutions on the basis that they fall outside the ambit of restorative justice. No consensus has been reached on whether restorative justice programming ought to explicitly include the prosecution of offenders. Yet scholars such as Kathleen Daly have produced empirical research that reveals strong connections between retribution and restoration.³⁶ Detailed studies on restorative justice programmes have also explained the interrelationship between restoration of victims and the accountability of perpetrators.³⁷ Meanwhile, the UN's Basic Principles do not explicitly rule out such interplay. They only suggest that restorative justice programmes include the voluntary participation of victims and offenders, and that restorative justice processes take the form of mediation, conciliation, conferencing, or sentencing circles.³⁸ The latter form—used by First Nations people in Canada—in fact reflects the potential for the integration of

³⁴ The United Nations Economic and Social Council, *Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters*, ECOSOC Resolution 2002/12. Also see T. Marshall, *Restorative Justice: An Overview*, Home Office (United Kingdom) – Research, Development & Statistics Directorate (1999). The author defines restorative justice as 'a process whereby all the parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future.'

³⁵ Howard Zehr & Harry Mika, 'Fundamental Concepts of Restorative Justice' in Eugene McLaughlin & Gordon Hughes (eds.), *Restorative Justice: Critical Issues* (2003), at 40.

³⁶ Kathleen Daly, 'Restorative justice: The real story', [January 2002] 4.1 *Punishment & Society* 55-79.

³⁷ See Lawrence W. Sherman & Heather Strang, *Restorative Justice: The Evidence* (2007).

³⁸ UN Basic Principles, *op. cit.* at Operative Clause 2.

retributive elements such as sentencing into restorative justice programmes and *vice versa*.³⁹ Accordingly, any attempt to automatically dichotomise justice into 'restorative' and 'retributive' forms is normatively problematic.

The third concern relates to the claim that restorative justice is a uniquely indigenous form of justice. Notwithstanding the precise definition of restorative justice, scholars including Kathleen Daly have sought to challenge its claim to indigenous authenticity. She effectively dispels what she terms the 'myth' that 'restorative justice uses indigenous justice practices and was the dominant form of pre-modern justice'.⁴⁰ Such an observation is entirely relevant to Sri Lanka. A glimpse into the historical penal practices of Sri Lanka during pre-colonial times reveals a distinct punitive focus.⁴¹ The idea that restorative justice resonates with pre-modern justice practices in Sri Lanka is therefore unconvincing.

The narrative on the so-called 'Sri Lankan approach' is accordingly based on a limited—perhaps overly simplistic—understanding of restorative justice. The narrative prioritises the leniency of punishment, downplays the preferences of victims and survivors, and exaggerates the indigenous authenticity of its claims. Therefore, at the very outset, the narrative appears to be normatively incompatible with a contemporary understanding of restorative justice.

Scholars have already called into question the empirical validity of this narrative. Niran Anketell argues that there is a 'wide consensus among Sri Lankan Tamils that full accountability ought to be pursued'.⁴² He opines that recent election results in the Northern Province consistently demonstrate the desire among Tamils for an independent accountability mechanism to investigate international crimes.⁴³ Thus the fact that not all Sri Lankans share the state's views on restorative justice is repeatedly demonstrated in certain election results. For instance, the election statement of the Tamil National Alliance prior to the 2013 Northern Provincial Council elections called for an independent investigation into violations of international law;⁴⁴ and the party received nearly 80 percent of the votes in the Northern Province.⁴⁵ These results alone suffice to cast serious doubts over the narrative on the 'Sri Lankan approach'.

The study discussed in this paper demonstrates the wider empirical uncertainty of the narrative. Each account presented by each participant was unique. The responses varied

³⁹ Sherman & Strang, *op. cit.* at 32.

⁴⁰ Daly, *op. cit.*

⁴¹ For example, see Robert Knox, *An Historical Relation of the Island Ceylon in the East-Indies* (1681), Chapters V and IX. The author discusses crime, punishment and the legal system in Sri Lanka particularly in the Kandyan Kingdom, which was not colonised at the time.

⁴² Niran Anketell, 'Sri Lanka and the Urgent Need for Accountability' [April 2012] Oxford Transitional Justice Research Working Paper Series.

⁴³ *Ibid.*

⁴⁴ See Tamil National Alliance, *Northern Provincial Council Election Statement* (2013), at http://tnapolitics.org/?page_id=1845&lang=en.

⁴⁵ See Department of Elections, *Provincial Council Elections 2013: Northern Province* (2013) – votes for the Ilankai Tamil Arasu Kadchi, at <http://www.slelections.gov.lk/2013PPC/Northern%20Province.html>.

significantly on questions of truth telling, memorialising and the dispensation of justice. The participants differed on whether they preferred to tell others about their loss, whether memorialising their lost family members was desirable, whether justice was important to their recovery process, whether the identity of perpetrators was important, and finally whether perpetrators ought to be prosecuted and punished. In each case, participants presented views that reflected their personal experiences and value preferences. The most significant finding of this study is perhaps that the enormity of human loss is simply not reducible to a singular approach. The narrative on the so-called 'Sri Lankan approach' is hence best described as reductive.

The heterogeneity of participant views may be deconstructed to some extent. In the case of telling others, participants were generally divided on several questions, including whether telling others was important and personally beneficial. Participants were also divided on whether memorialising a traumatic event and lost family members was important to them. Many preferred not to revisit their trauma, while others felt memorialising was an important part of their coping process.

Participants differed on how they defined the concept of justice and applied it to their experiences. Many presented views that were somewhat cynical, while others aspired to receive justice in the future. The participants also differed on the importance of identifying and prosecuting perpetrators. A number of participants did not specifically wish for perpetrators to be held accountable; some in fact saw no real purpose in conducting investigations or prosecutions. Yet many of these participants held such views not on the basis of 'tolerance' or 'forgiveness', as suggested by the reductive narrative, but on the basis of their 'acceptance' of the fact that their lost family members would not return in any event. Moreover, the lapse of time played a greater part in denting their demand for justice than any particular approach to justice. This is not to say, however, that no participant subscribed to a lenient approach towards perpetrators. There were some participants who did hold such views, and suggested that the most appropriate approach to dealing with perpetrators was rehabilitation. Yet, as discussed in the next section, these participants had a distinct view on the legitimacy of the context in which they had encountered loss. This distinct view fundamentally shaped their demand for accountability, and perhaps explained what appeared to be 'leniency' towards perpetrators. It is nonetheless clear that this attitude ought not to be mistaken for a homogeneous narrative on restorative justice.

Meanwhile, a number of participants expressed a strong desire to know the identities of perpetrators, and for perpetrators to be held responsible for their actions. It is in this context that a rare convergence in participant views became evident. A majority of those who wished to see accountability appeared to prefer a particular type of accountability. Participants who lost family members during the war (either due to the actions of the security forces or the LTTE), whose family members were killed in action while serving the military, who lost family members during the JVP insurrection, who lost homes during the July 1983 pogrom, and who were expelled from the North in 1990 presented convergent views on 'institutional accountability'. Thus, participants who did in fact wish to see perpetrators prosecuted preferred to see *decision-makers*, including those in government and previously in the LTTE, held accountable. This preference was evident across

participant profiles. Hence it is important to further examine the ostensible preference among victims and survivors in Sri Lanka to see decision-makers held accountable for past atrocities.

3.2 Factors that Shape the Views of Victims

Amidst the remarkable heterogeneity of participant views, certain hypotheses may be presented to define the factors that may have shaped those views. Three such hypotheses warrant brief discussion.

3.2.1 Legitimacy of context

The perceived legitimacy of the context in which a participant suffered loss often influenced that participant's views. This factor applied most significantly to a participant's views on justice and reparations. For instance, some participants who suffered loss during the JVP insurrection or during the post-war period unequivocally rejected the legitimacy of the overall context of their loss. They believed that the government's crackdown on the JVP in the late 1980s or on dissenters in the post-war period was wholly unjustified. Subject to the application of other factors, a positive correlation appears to exist between the denial of contextual legitimacy and the general demand for perpetrators to be held accountable. The identical attitude was evident among some participants who rejected the legitimacy of the government's military operations between 2006 and 2009. These same participants tended to demand that perpetrators who caused the death of their relatives during the military operations be held accountable. Interestingly, some participants whose children were killed in action believed that the war was a politically manufactured event. Their demand for reparations was also distinct in that they believed that those who waged the war should be held to account for the destruction caused to life and property.

By contrast, the few participants who accepted the legitimacy of the overall context of their loss appeared to be less interested in the identification and prosecution of perpetrators. This perceived legitimacy also shaped the manner in which these participants coped with their loss. For instance, certain participants who believed that military operations against the LTTE were justified, treated the loss of their relatives—killed in action—as an unfortunate, but somehow inevitable consequence of war. These participants rationalised the deaths of their relatives as acts of bravery, and appeared to be disinterested in the prosecution of those responsible for the death of their relatives.

The views of participants point to a correlation between the perceived legitimacy of the context of loss and the expectations of justice. Given the small sample size used in the study, this hypothesis ought to be explored further. Bearing this limitation in mind, the responses of the participants appear to suggest that those who considered the context of their loss as 'unjustified' were more likely to demand some form of justice. The possible correlation, though unsurprising, is important to acknowledge, as the converse helps us understand the reductive narrative discussed in the preceding section.

This hypothesis contains two corresponding limbs. First, those who deny the contextual legitimacy of their loss tend to demand accountability. Second, those who accept the context as legitimate tend not to show a strong interest in accountability. Thus there appears to be a tendency for individuals who accept the legitimacy of a particular context to be *less interested* in identifying and prosecuting perpetrators. If the tendency is widespread, it is possible to mistake it for evidence of a 'Sri Lankan approach' to justice i.e. an approach that features leniency of punishment. Therefore, a high concentration of Sri Lankans accepting the legitimacy of military operations against the LTTE may ostensibly translate into a narrative on how Sri Lankans wish to deal with wartime atrocities. Their views on contextual legitimacy could shape their expectations of justice in terms of their own loss—particularly with respect to relatives killed or missing in action. A lack of interest in the accountability of those responsible for such loss could be mistaken for a dominant trend in 'tolerance', 'forgiveness' and 'leniency'.

At the root of this hypothesis is the idea that the demand for justice stems from an acknowledgement or recognition of injustice. Participants who preferred to see those who caused the deaths of their relatives rehabilitated rather than prosecuted also accepted the overall legitimacy of the war; they saw their own loss as part of that legitimate context. They perceived no 'injustice' that could prompt a corresponding demand for 'justice'. This rationalisation of personal loss should not be interpreted as a dominant attitude to justice. Instead, questions of justice must be asked of victims and survivors who genuinely believe that the circumstances of their loss were 'unjust'. The so-called 'Sri Lankan approach' to justice must therefore be located among these participants; and as explained in the preceding section, a singular attitude to justice simply does not exist among such victims and survivors.

3.2.2 Self reflection

In some cases, a participant's tendency to apportion blame on herself appeared to influence her views—particularly with respect to truth telling and justice. Participants who apportioned part of the blame for their loss on themselves often took up the position that they must accept their loss, as they had in some way contributed to it. This sense of responsibility often shaped the extent to which these participants told others about their loss or demanded remedies from the state.

It is important to note that this factor applied only where the participant's relative was no longer living or thought to be dead. For instance, participants who felt that they should have done more to prevent their relatives from joining the security forces or a particular separatist or insurrectionist movement were generally disinclined to demand accountability for the loss of their relatives. Therefore, the hypothesis that such apportionment of blame could shape the views of victims and survivors and limit their interest in the discovery and prosecution of perpetrators ought to be explored further.

This hypothesis had less bearing on those whose family members were still missing. When participants believed that their family members were still among the living, they tended to

associate truth telling and the search for perpetrators with the discovery of their family member's whereabouts. Hence any apportionment of blame on themselves did not necessarily mitigate their efforts to tell others and seek out perpetrators.

3.2.3 Timeframe

Timeframe was observed to be a factor that shaped the desire among some participants to tell others about their experiences. This factor was particularly evident in cases of disappearances. Participants whose family members went missing during the final stages of the war, or during the post-war period, were more inclined to tell others their stories than those whose family members went missing during the JVP insurrection.

A further relationship was apparent between the time that had lapsed since a participant's loss and her desire to seek prosecutions. Most participants whose family members were lost in the late 1980s during the JVP insurrection were disinterested in prosecutions, while those whose losses were more recent appeared to be keener to hold perpetrators accountable.

Timeframe however, cannot be considered to be a determinative factor. In some cases, even a lapse of 28 years had not neutralised the demand among the participants for truth telling and the identification and prosecution of perpetrators. It is worth noting that in some well-known cases, such as the killing of Premakeerthi de Alwis, family members have remained keen to tell their stories and seek prosecutions, despite the significant lapse of time.

The manner in which time shapes the views of participants may be deconstructed further. It is possible to hypothesise that, rather than the time factor alone, the 'stage' of a particular participant's grief shaped her views. The work of Elisabeth Kübler-Ross may be of some relevance in this regard.⁴⁶ She postulates that a person who has suffered loss usually undergoes five stages of grief: denial, anger, bargaining, depression and acceptance—not necessarily in that order. It is then possible to speculate that a particular participant's stage of grief—as opposed to the lapse of time alone—plays a discernible role in shaping her views on truth, memory and justice. This hypothesis is perhaps worth exploring further.

3.3 Truth, Justice and Reparations

Scholars have argued that victims ought to be at the centre of all approaches to justice.⁴⁷ Even where there has been some disagreement over the victim's role in determining

⁴⁶ Elisabeth Kübler-Ross, *On Death and Dying: What the Dying Have to Teach Doctors, Nurses, Clergy and Their Own Families* (1969).

⁴⁷ George P. Fletcher, 'The Place of the Victim in the Theory of Retributive Punishment' [1999] 3.1 *Buffalo Criminal Law Review* 51; Jo-Anne Wemmer, 'Restorative Justice for Victims of Crime: A Victim-Oriented Approach to Restorative Justice' [2002] 9.1 *International Review of Victimology* 43-59.

punishment,⁴⁸ scholarly consensus on the victim-centred approach to transitional justice has grown considerably.⁴⁹ In this context, a victim-centred approach appears to be fundamental to genuine restorative justice. Hence it is important to prioritise the preferences of victims and survivors in devising appropriate remedies.

Additionally, the heterogeneity of views presented by participants is perhaps best accommodated through an approach that prioritises victim and survivor preferences. If the victim is at the centre of a mechanism meant to deliver transitional justice, then her preference in terms of truth, justice and reparations must give substance to that mechanism. Thus the mechanism ought to accommodate the widest possible spectrum of preferences.

It is perhaps appropriate that this paper ends with a brief discussion on how the fundamental precepts of truth, justice and reparations ought to form the basis of a victim-centred approach to combating impunity and preventing the recurrence of violence and conflict in Sri Lanka. These fundamental precepts may be juxtaposed against the findings and recommendations of the LLRC, which is considered by some to be a reasonably constructive local exposition on reconciliation and transitional justice.

3.3.1 Truth

Principle 2 of the Updated Set of Principles on the Promotion and Protection of Human Rights through Action to Combat Impunity states:

Every people has the inalienable right to know the truth about past events concerning the perpetration of heinous crimes and about the circumstances and reasons that led, through massive or systematic violations, to the perpetration of those crimes.⁵⁰

A genuine commitment to truth telling therefore entails a victim-centred approach. A 2006 United Nations study on the right to truth⁵¹ concludes that the right implies:

⁴⁸ See for example, Michael Moore, 'Victims and Retribution: A Reply to Professor Fletcher' [1999] 3.1 Buffalo Criminal Law Review 65-89.

⁴⁹ See Simon Robins, 'Towards Victim-Centred Transitional Justice: Understanding the Needs of Families of the Disappeared in Post-conflict Nepal' [2011] 5.1 International Journal of Transitional Justice 75-98; Jonathan Doak, 'The Therapeutic Dimension of Transitional Justice: Emotional Repair and Victim Satisfaction in International Trials and Truth Commissions' [2011] 11.2 International Criminal Law Review 263-298; Stéphane Leman-Langlois, 'Mobilizing Victimization: The Construction of a Victim-Centred Approach in the South African Truth and Reconciliation Commission' [2000] 33.1 La Victimologie: Quelques Enjeux 145-165.

⁵⁰ Updated Set of principles for the protection and promotion of human rights through action to combat impunity, 8 February 2005, E/CN.4/2005/102/Add.1.

⁵¹ UN Commission on Human Rights, *Study on the Right to the Truth: Report of the Office of the United Nations High Commissioner for Human Rights*, 8 February 2006, E/CN.4/2006/91, at: <http://www.unhcr.org/refworld/docid/46822b6c2.html>.

Knowing the full and complete truth as to the events that transpired, their specific circumstances, and who participated in them, including knowing the circumstances in which the violations took place, as well as the reasons for them.⁵²

The study discussed in this paper recorded the views of multiple participants from diverse backgrounds on their desire both to know and tell the truth. The study presented empirical evidence of a genuine demand among victims and survivors for truth telling—though such a demand was not observed in all cases. Hence a victim-centred approach must feature the option of truth telling, which includes telling others about one's loss, and receiving opportunities to hear others tell the truth about one's loss. This necessary feature is endorsed by the LLRC, which recognised the right to truth, particularly in its observations on missing persons. It observed:

[T]he relatives of missing persons shall have the right to know the whereabouts of their loved ones. They also have the right to know the truth about what happened to such persons, and to bring the matter to closure. Reconciliation is a process. Closure is the first difficult emotive step in that long and complex journey irrespective of whether they are victims of conflict or victims of LTTE terrorism.⁵³

It is pertinent to note the broad consensus among the eight focus group discussants from the Eastern Province on their right to know the truth about the whereabouts of their missing spouses. This consensus further reinforces the idea that a victim-centred approach must include the right to the truth. The LLRC also recognises in particular the rights of women to know the truth by emphasising the fact that 'disappearances have a direct bearing on women, as the victims are most often their husbands, sons, fathers and brothers...who play a vital role in a traditional household as breadwinners as well as providers of security.'⁵⁴ The Commission therefore explicitly recognises the rights of these women to know the whereabouts of their family members, and to the truth.⁵⁵

3.3.2 Justice

Principle 1 of the Updated Set of Principles on the Promotion and Protection of Human Rights through Action to Combat Impunity lists certain state obligations with respect to ensuring justice. These obligations include the obligation to investigate violations, and to take appropriate measures in respect of perpetrators by ensuring that those suspected of criminal responsibility are prosecuted, tried and duly punished.

Several participants clearly indicated that they wished to see those responsible for their loss held accountable. These participants did not confront the nature of punishment. However, they demonstrated a clear preference for holding decision-makers accountable in some way. For many participants, the acknowledgment of that responsibility was the first

⁵² *Ibid.* at 4.

⁵³ See the LLRC Report, at para.5.37.

⁵⁴ *Ibid.* at para.5.117.

⁵⁵ *Ibid.*

and most fundamental step in the process of accountability. Hence a victim-centred approach simply cannot rule out the option of investigating and prosecuting perpetrators—particularly those who made decisions that led to atrocities.

The LLRC's recommendations pertaining to civilian casualties,⁵⁶ and grave human rights violations perpetrated both by state⁵⁷ and non-state actors⁵⁸ entail an approach to justice that includes investigations and, if necessary, prosecution of perpetrators. These recommendations do not reflect the reductive narrative of 'tolerance', 'forgiveness' and 'leniency', but appear to include retributive elements of justice. The development of an approach that includes investigation and prosecution of perpetrators is therefore crucial to genuinely meeting victim and survivor preferences.

3.2.3 Reparations

The importance of reparations is recognised in Principle 1 of the Updated Set of Principles on the Promotion and Protection of Human Rights through Action to Combat Impunity. Reparations may take either tangible or symbolic form. Tangible forms may include monetary compensation, medical and psychological services, health care, educational support, or restoration of lost or damaged property. Reparations may also take on symbolic forms, such as official public apologies, museums, memorials and official days of commemoration.

A number of participants clearly articulated their desire for certain forms of reparation including compensation, educational support, and restoration of property, and the establishment of memorials. Meanwhile, the LLRC clearly advanced the idea of victim reparation. It specifically recommended the restitution of land rights,⁵⁹ the payment of compensation⁶⁰ and the provision of educational and health care services.⁶¹ Moreover, in the context of the 30-year ethnic war, the Commission made the following recommendation:

Leaders on all sides should reach out to each other in humility and make a joint declaration, extending an apology to innocent citizens who fell victims to this conflict, as a result of the collective failure of the political leadership on all sides to prevent such a conflict from emerging.⁶²

The LLRC also recommended a separate event on Sri Lanka's National Day to 'express solidarity and empathy with all victims of the tragic conflict and pledge our collective commitment to ensure that there should never be such blood-letting in the country again'.

⁵⁶ *Ibid.* at paras.9.9, 9.14, 9.22, 9.23 and 9.37.

⁵⁷ *Ibid.* at para.9.46.

⁵⁸ *Ibid.* at para.9.73.

⁵⁹ *Ibid.* at paras.9.104, 9.108 and 9.142.

⁶⁰ *Ibid.* at paras.9.153, 9.157, 9.161 and 9.164.

⁶¹ *Ibid.* at paras.9.89, 9.93 and 9.96.

⁶² *Ibid.* at para.8.303.

Such recommendations clearly reinforce the value of certain symbolic forms of reparation.⁶³

In this context, it is clear that a victim-centred approach must offer the full gamut of options in terms of both tangible and symbolic reparations. These options ultimately flow from a genuine desire among victims and survivors to receive reparations.

In conclusion, it may be appropriate to reiterate that the study discussed in this paper was only a modest exploration of perspectives on truth, memory and justice in Sri Lanka. Barring certain convergences in participant views, the study does not present clear and precise trends on how Sri Lankans approach these subjects. By displaying and analysing the remarkable heterogeneity among participant views, it does, however, contribute towards displacing any reductive narrative that seeks to construct a particular 'Sri Lankan approach'. The principal finding of the study is simply that no singular or reductive narrative on truth, memory and justice exists in Sri Lanka.

This diversity of views and experiences among victims and survivors ought to be considered carefully when designing a transitional justice mechanism in the future. Such a mechanism must be victim-centred and must cast its net as wide as possible to accommodate a broad spectrum of victim and survivor preferences. Moreover, the mechanism must respond to the diversity of needs and priorities among victims and survivors including their socioeconomic and psychosocial wellbeing, the discovery and telling of the truth, the memorialisation of events and lost relatives, and the accountability of perpetrators. The institutional framework established to deliver such a mechanism must enable contributions by institutions across the thematic spectrum, including those dealing with social integration, health, criminal justice and development. A truly victim-centred approach must therefore seek to accommodate *all* victims and survivors. For they—like human beings in general—are unique, complex and often hold views independent of one another. This reality must be accommodated by any future mechanism aiming to advance transitional justice.

⁶³ For a detailed discussion on reparations policy, see Bhavani Fonseka, *The Need for a Comprehensive Reparations Policy and Package*, Centre for Policy Alternatives (March 2015).



Justice in Transition? Victims, Forgiveness and Truth-Seeking in Post-War Sri Lanka

Ambika Satkunanathan*

This article, discusses issues of transitional justice in post-war Sri Lanka by responding to certain aspects of the findings of Gehan Gunatilleke's study titled 'Truth, Memory and Justice', an extract which is published in this edition of the LST Review, and by drawing from research conducted in the North and East from 2009 to 2014.

Gunatilleke's report seeks to challenge the notion of a "Sri Lankan approach" to transitional justice that is referred to as restorative justice and which gives primacy to forgiveness, as opposed to retributive justice that calls for accountability and punishment. As set out by former Minister of External Affairs G.L. Pieris, the Sri Lankan approach is a 'home grown, home spun mechanism' which has the capacity to bring 'people together, accentuating, not the things that divide them, but the whole reservoir of values which all the people of Sri Lanka share'.¹ Scholars such as Sri Lankan anthropologist Michael Roberts have argued in similar vein that the 'bitterness wrought by the ethnic conflict' could be fuelling the need for retribution, which in turn they fear might lead to the fabrication of allegations of war crimes by Tamils. Hence, the narrative that sought to construct a Sri Lankan notion of transitional justice posited quests for truth and justice as antithetical, while forgetting, forgiving and leaving the past behind are viewed as integral to peace and reconciliation in post-war Sri Lanka.

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¹ *Insurgency and Strengthening Governance*, Speech by Prof. G.L. Peiris, Minister of External Affairs at the Shangri-La Dialogue 2010, available at <http://www.iiss.org/en/events/shangri-la%20dialogue/archive/shangri-la-dialogue-2010-0a26/fifth-plenary-session-cf89/g-l-peiris-748b>. Accessed on 24 July 2015.

Forced forgetting and forgiveness

Daniel Philpott, a leading scholar on the notion of forgiveness, states forgiveness is 'the most dramatically restorative practice . . . which involves not merely a victim releasing her perpetrator of claims but also her constructive invitation to a better future'.² He goes on to state that a 'victim retains his own freedom to decide how he will respond to the perpetrator and thus retains a measure of control over whether the standing victory of the injustice is defeated'.³ This notion of forgiveness views the victim or victims' groups as equal citizens with the power to make the decision to forgive. In reality, victims do not always have such equal status in society. In Sri Lanka, acts of commission and omission by the government led the Tamil population to believe there was little possibility they would be treated as equal citizens and included as full members of a multi-ethnic polity. Instead, those in the conflict-affected areas were made to feel they were living in an occupied territory. As the victor of the war, the government of the day attempted to impose its will on the conflict-affected community and force them to adopt a Sri Lankan identity that was overwhelmingly Sinhala Buddhist, and in the process seemed determined to quash what the people view as their distinct language, culture, heritage, and history.

Philpott argues that 'the standing message of the injustice is defeated further by the victim's decision no longer to hold the perpetrator's wrong against him and to view the perpetrator as a person in good standing'.⁴ In a post-war context where the government shows reluctance to investigate past crimes, injustice remains and victims are unable to exercise their rights, the victim forgiving the perpetrator will only further entrench the 'standing message of the injustice'⁵ and 'a political push toward forgiveness can too easily be exploited by politicians to hide the truth about the past'.⁶ In such instances, the perpetrator's wrongs might be one of the few tools at the disposal of the victim to exert pressure on the state and political actors to engage substantively in the process of restoring a right relationship. The Tamil community's use of alleged human rights and humanitarian law violations committed by the government of Sri Lanka as the main advocacy platform to lobby for international intervention in their quest for justice can be understood as their strategy to force the government to acknowledge historical grievances and violations, bring into being mechanisms to deal with these allegations, as well as achieve a political solution to the ethnic conflict. Hence, forgiveness as Philpott envisages would be applicable only at the point at which a certain level of relationship and trust restoration has already taken place between the communities. Otherwise, some fear that forgiving will not only lead to forgetting, but might 'induce a failure of recognition'.⁷ In post-war Sri Lanka instead of such restoration, the government's strategy has only served to generate anger, resentment and a

² Daniel Philpott, *Just and Unjust Peace: An Ethic of Political Reconciliation* (Oxford: Oxford University Press, 2012), 6.

³ *Ibid*, 264.

⁴ *Ibid*, 266.

⁵ *Ibid*, 266.

⁶ Brandon Hamber, 'Forgiveness and Reconciliation: Paradise Lost or Pragmatism,' *Journal of Peace Psychology* 13(1) (2007): 119.

⁷ John Axelrad Cahan, 'Reconciliation or Reconstruction? Further Thoughts on Political Forgiveness', *Polity* 45 (2) (2013): 182.

sense of disenfranchisement amongst the Tamil people, which in the short-term will make reconciliation impossible, and in the long-term form the catalyst for another conflict. Instead of effecting social reconciliation and re-integration, it will, in the words of Judith Butler, only produce an 'outraged and humiliated and furious people'.⁸

Philpott argues that it is not always necessary to involve the State in political forgiveness because 'at its simplest it involves an individual victim and an individual perpetrator of a political injustice'.⁹ Yet, the reality is that, in instances of conflicts caused by the assertion of, or the struggle for the recognition of a certain identity, and demands for redress for discrimination committed against a group because of that identity, even if individuals might be willing to forgive the perpetrator, the need to secure the political claims of their community might render forgiveness impossible. More important, since in the case of political injustice, it is usually agents of the state who perpetrate crimes in the name of the State, as in Sri Lanka, political forgiveness at an individual level will leave macro political wounds and structural injustice unaddressed. Hence, as Andrew Schaap points out, there has to be awareness that it is the willingness of affected persons to forgive and share the same political institutions as their oppressors that enables discourse on reconciliation. Hence, we have to also recognise that persons subjected to discrimination and violence have the right not to forgive, thereby requiring perpetrators to provide reasons to forgive¹⁰, whether it is in relation to the crimes committed by the State against the Tamils and Muslims, those committed by the LTTE against the Sinhalese or Muslims, or those committed by non-LTTE Tamil armed groups against the Tamil community. Where the Tamil community is concerned, the continued denial of the existence of the ethnic conflict by the government and its resultant failure to address the root causes of the conflict, such as discrimination, has led to an impasse in achieving a political settlement. This in turn makes the political institutions established by the State, lack legitimacy in the eyes of the Tamils, who due to certain acts of the State, such as militarisation of the conflict-affected areas, military acquisition of private land in these areas and ineffectual implementation of Tamil as an official language, continue to feel they are not recognized as equal citizens. For instance, a number of Tamils called for the boycott of the Northern Provincial Council elections in 2013 as they view these structures as inadequate to address the political demands of the Tamil community.¹¹

When will it be safe to tell the truth?

The section titled 'Telling Others', in which Gunatilleke lists a number of reasons families affected by rights violations have not talked about it with others, the fear of reprisals by

⁸Interview with Judith Butler', *The Believer Magazine*, May 2003 at www.believermag.com/issues/200305/?read=interview_butler

⁹ *Supra* n.2, 276.

¹⁰ Andrew Schaap, 'Reconciliation as Ideology and Politics,' *Constellations* 15(2) (2008): 251.

¹¹ Tamil Civil Society Memo to the TNA regarding the Eastern Provincial Council Elections, 29 July 2012 at <http://groundviews.org/2012/07/29/tamil-civil-society-memo-to-the-tna-regarding-the-eastern-provincial-council-elections/>. Accessed on 10 July 2015.

perpetrators, and the fear of being stigmatised and labeled as the family of someone who disappeared or was extra-judicially executed, are not mentioned as reasons for their silence. Yet, during the armed conflict, and even following the end of the war in May 2009, the disappeared or extra-judicially killed were viewed by the state as those with links to the LTTE, which resulted in communities avoiding interaction with these families due to the fear that these families could be arrested, disappeared or harassed by the security forces any time due to their perceived link to the LTTE via the dead or disappeared family member.¹²

Gunatilleke's study finds that many participants are skeptical about obtaining justice. This finding is not surprising and can be directly linked to the breakdown of the rule of law, and the resultant inability of people to live without fear of violence or seek redress for human rights violations, which in turn leads to lack of faith in public institutions¹³; this illustrates a breakdown of political relationships. Colleen Murphy asserts the non-instrumental value of the rule of law and claims that the erosion of the rule of law is damaging to political relationships as it adversely impacts on the social order, which is based on reciprocity between citizens and State officials and a respect for individual agency that restricts abuse of political power.¹⁴ As illustrated by the Sri Lankan context, the abuse of political power and lack of respect for individual agency during conflict or repressive regimes leads to the erosion of reciprocity, and thereby the erosion of political trust. Hence, respect for the rule of law plays an integral role in re-building trust between the citizen and the State.

Murphy states that the value of trust is, like that of the rule of law, not reducible to its instrumental role and argues that respect and reciprocity are realised when political relationships are predicated on two factors: default political trust, i.e. where trust exists as a matter of course and instead of citizens and officials giving each other a positive reason to be trusted there is reciprocal presumption of the existence of competence decency and lack of ill-will, and trust responsiveness, i.e. acknowledging the right of other citizens and officials to make demands and fulfilling their expectations. She acknowledges that the question of whether it is reasonable to adopt a default attitude of trust depends on the social and political environment. Murphy's position is that when people are not trust responsive, it is because they only care about the good opinion of a subset of the population or there is no publicity about the lack of trust responsiveness, which means officials will not have to be concerned about losing the good opinion of others. A serious erosion of the fabric of society would therefore lead to lack of general trust and trust responsiveness. In the Sri Lankan context, the 30 year armed conflict has created default mutual mistrust between the communities, particularly the Tamils and Sinhalese, which has been exacerbated by aggressive post-war militarisation of the conflict-affected areas and the curtailment of the rights of those living in those areas coupled with a general lack of respect for the rule of

¹² See Ambika Satkunanathan, 'Sri Lanka: Impact of Militarisation on Women', *Oxford Handbook on Gender and Conflict* (Oxford: Oxford University Press, forthcoming)

¹³ 'Sri Lanka', *Freedom in the World 2013* (Washington: Freedom House, 2013). Available at <https://www.freedomhouse.org/report/freedom-world/2013/sri-lanka#.Vbr6QgayWfR>. Accessed on 31 July 2015.

¹⁴ Colleen Murphy, *A Moral Theory of Political Reconciliation* (Cambridge: Cambridge University Press, 2012).

law, impunity and corruption.

In cases of human rights abuses, particularly during an internal conflict, people may be aware that abuses took place, but many may be ignorant of the nature and extent of the violations, and erosion of human relations. Especially between communities, these abuses would have led to mistrust and fear.¹⁵ It has been observed that as a result 'A general culture of secrecy, denial and disclosure may develop, not only among those in power, but also among those in a subordinate position'.¹⁶ Such denial can result in collective amnesia which can have dangerous consequences, from creating a culture of suspicion and impunity, to shame and self-blame on the part of the victims.

Therefore, in view of building 'trust relations' as an integral component of restoration, the focus of any truth seeking exercise should not be confined to acts such as murder, torture or disappearances, as it would ignore the larger context within which these crimes were committed and fail to take into account the various actors and factors that enabled the crimes to take place. Examining and establishing the broader context of the violations can assist victims locate their experiences within the larger political setting. In the aftermath of Apartheid, the South African Truth and Reconciliation Commission conducted hearings for professionals and institutions with the aim of inquiring into their participation in apartheid but abandoned the scheme due to the lack of response by the professional community and other sectors.¹⁷ The lack of response illustrates that truth-seeking processes can be unsuccessful when people are forced to engage in introspection and truth-seeking before they are ready to do, particularly in the absence of default political trust and trust responsiveness. This however also begs the question whether people will ever be ready, unless processes are established to encourage and enable them to progress towards engaging actively in a truth-seeking process.

Minow has a word of caution about truth seeking exercises, which she states should not be used as therapy because it would then ignore "politics, shortchange justice issues, and treat survivors, and their recovery, as a means toward a better society rather than as persons with dignity and entitlements to justice"¹⁸. Care should therefore be taken to ensure the truth seeking process does not result in victims being used as a means of societal catharsis. While it can be argued the victim benefits from this process it cannot be denied that a one-hour session testifying at the truth commission or trial will not provide respite to the victim and enable him/her to deal with psychological "baggage".¹⁹ Hence, truth telling is a complex process that has to be crafted with care in consultation with affected persons to ensure it strengthens and is complementary to broader transitional justice initiatives. Most

¹⁵Margaret Popkin and Naomi Roht-Arriaza, 'Truth as Justice: Investigatory Commissions in Latin America', in Kritz (ed) *Transitional Justice*, p. 263.

¹⁶Nora Sveaas and Nils Johan Lavik, "Psychological aspects of human rights violations: The importance of justice and reconciliation: (2000) 69 *Nordic Journal of International Law*, p.42.

¹⁷ David Dyenhaus, *Judging the Judges, Judging Ourselves, Truth, Reconciliation and the Apartheid Legal Order* 1998, p. 29.

¹⁸ Martha Minow, *Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence* (Boston: Beacon Press, 1998) 80.

¹⁹ *Ibid*, p.73.

importantly, since trust plays a key role in the success of any truth-seeking process and considerable resources and energy have to be allocated to re-building inter and intra-community relations with the aim of enabling a context in which default political and trust responsiveness exist.

Gender (in) justice and transitional justice processes

This sections focuses on women affected by sexual violence/exploitation of women and their place and role in transitional justice processes, since this category of 'victims' has garnered considerable attention in discussions of transitional justice in Sri Lanka. Further, this discussion will also enable an exploration of the notion of victimhood. Despite the visibility of the issue in transitional justice discourse, locally it has been challenging to document cases of sexual violence that took place during the war since women are reluctant to speak of it openly due to numerous reasons, including fear of reprisals from perpetrators, particularly if they happen to be State actors, social stigma and belief they will not obtain any redress. Even when they share their stories, most often they do not wish these stories to be made public. The silence they maintain, particularly following the end of the war, was possibly their way of normalising life and switching to survival mode in the militarised and repressive post-war phase. They may also maintain silence due to fear of losing control of their stories once they are in the open. When a story of sexual violence becomes public, numerous actors including the state, the diaspora, human rights activists, and political parties among others, capture the story, which is then portrayed and used in different ways to further varied agendas. Although such strategies might bring short-term political rewards, 'conscious or unconscious manipulation of victims by politically "hijacking" the victim issue' can alienate victims and is 'seriously counter-productive to sustainable reconciliation'.²⁰

More importantly, women in the conflict-affected areas should not be viewed as passive victims waiting for others to 'recover' their stories. These women have faced unimaginable challenges and have a nuanced understanding of the truth they have to share and truth they have to hide in order to navigate their lives, both within the private and public spheres. In relation to women affected by sexual violence, while the harm they have suffered has to be acknowledged and redress provided, it cannot be denied that the perpetuation of victimhood can be disempowering and create dependency.

The Politics of Victimhood

Luc Huyse classifies victims of conflict on the basis of three broad distinctions, namely: individual/collective victims (the victim of enforced disappearance/members of a particular community who are targeted subject to enforced disappearances), direct/indirect victims (someone who is subject to enforced disappearance/the family of the victim of enforced

²⁰ David Bloomfield, Teresa Barnes & Luc Huyse (eds.) *Reconciliation After Violent Conflict: A Handbook* (Stockholm: International IDEA, 2003), 61.

disappearance) and generational victims (those who have been victimised/the children and even grand-children of those victimised who might still be dealing with its consequences, even if only emotionally as they cope with bitterness and trauma that has been passed down).²¹ In Sri Lanka very little work has been done to ascertain the generational impact of human rights violations. For instance, it would be useful to ascertain how the children and grand-children of those who disappeared during the JVP insurrection in the late 1980s have dealt with their loss, and its impact on their lives. Within the Tamil community, as illustrated by narratives, particularly of second-generation Tamils in the diaspora, it is clear the trauma, fear, anger and bitterness caused by the ethnic conflict has been passed down to the children and grandchildren of those who were affected by it. The riots of 1983 for instance, are deeply embedded in the psyches of the people and passed down to the next generation.²² As Huyse points out, being publicly identified as a 'victim' is a process that involves a number of mechanisms, not merely whether one has been physically, psychologically or economically harmed.²³ Rather, customs, social norms, politics, law and culture are also factors that determine who is categorised as a victim. For instance, following the end of the war even those who were forcibly recruited by the LTTE and served only for a few hours or days were and continue to be viewed as criminals, while the way in which their rights were violated through forced conscription was ignored.

Determining eligibility for reparations is a process that demands victim categories to be defined and hence has the potential to exacerbate or ignore the harm suffered by certain victim-survivors over others. For instance, in the case of disappearances, in Sri Lanka, like in other contexts, the families left behind face innumerable challenges and women, many who for the first time in their lives have become breadwinners for their families, find it extremely difficult to fulfill the basic needs of their families. There are instances women were forced to declare their husbands dead in order to access benefits or compensation due to economic pressure. Despite this, reparation is often provided only for the disappeared person and not for the harm caused to the family member left behind. While Guatemala and Peru recognised the impact of disappearances on family members, the South Africa process, perhaps unwittingly, created a hierarchy of victims by categorising them as primary and secondary victims, and providing reparations only if the primary victim was dead. When providing reparations to those who were impacted by the disappearance a number of issues have to be considered: for instance, many women family members are subject to sexual abuse and harassment when searching for their disappeared family member; this is most often at the hands of the military and police. Are these realities then the collective reality of the victim – part of the disappearance, or is it a separate crime? As the report by the International Centre for Transitional Justice (ICTJ) on the impact of disappearances on women points out, this illustrates the gendered impact of disappearances and could be viewed as part of the crime of disappearance. But reporting it

²¹ *Ibid*, 54.

²² The blog of a local journalist Thulasi Muttulingham is a case in point. Although she was only two years old when the riots took place and says she cannot remember it, she vividly describes based on what she has been told by her mother. <https://eyeofthecyclone.wordpress.com/2012/07/23/jaffna-during-the-83-riots/>

²³ *Ibid*, 57.

as a separate violation might strengthen women's ability to access redress and services.²⁴ In Sri Lanka, women who have faced sexual harassment, extortion and even sexual abuse in their search for the disappeared family member have not come forward to lodge complaints; they have instead approached trusted community organisations and activists to receive either emotional, livelihood or medical support. Reiterating the need to focus on families as well the person who was the victim, the International Criminal Court in its recent decision in the Lubanga case stated that those who suffered direct harm as well as those that suffered due to the impact of it are entitled to reparations; the criteria used to determine eligibility should be whether there was a close personal relationship between victim and indirect victim.²⁵

Determining eligibility for reparations programmes can also result in the construction of a hierarchy of suffering and crimes; for instance, political violence will trump socio-economic violations. Therefore, focusing on specific violations and victims can result in side-lining, or ignoring the system and structures that sustained discrimination, marginalisation and violence. Where women are concerned, the specific crime that receives the most attention is sexual violence while other violations and issues of concern to the victim-survivor, such as socio-economic issues, are sidelined. The link between economic vulnerability, sexual violence, however, cannot be ignored because in the conflict-affected areas, economic needs are pushing women into exploitative relationships with both the military and civilians. For instance, in the North, due to the difficulty faced by women in completing the construction of houses provided via the Indian Housing Project (IHP), there have been instances they have depended on masons and contractors who have entered into relationships with women, exploited them financially, and after a few months absconded.²⁶

Given the lack of options, in many instances marginalised groups, such as women, use the dominant paradigm of victimhood to gain space to make their voices and stories heard, particularly to directly address those in positions of power and authority. Yet, processes that focus solely on the victim may write history in terms of victimhood rather than rights. Non-government organisations contribute to this one-dimensional categorisation of victims by ignoring the multiple and complex identities of affected persons, and instead overstressing their victimhood to the detriment of their other 'experiences, resources, capacities, interests and aspirations, which are equally important in defining and positioning them as individuals and citizens'.²⁷ Hence, in order to avoid writing history in victimhood, the 'good victim' should not be trotted out to perform and tell her sad story and

²⁴ *The Disappeared and the Invisible: Revealing the Enduring Impact of Disappearances on Women* (New York: International Centre for Transitional Justice, 2015) at <https://www.ictj.org/sites/default/files/ICTJ-Global-Gender-Disappearances-2015.pdf>. Accessed on 24 July 2015.

²⁵ Situation in the Democratic Republic of the Congo in the Case of the Prosecutor v. Thomas Lubanga (Decision Establishing the Principles and Procedures to be Applied to Reparations) ICC-01/04-01/06 (7 August 2015).

²⁶ Shadow report on the impact of the Indian housing project on conflict-affected women in the North and East of Sri Lanka. Submitted to the CEDAW Committee review of the combined 4th and 5th periodic reports of India, June 2014.

²⁷ *Supra* n.19, 59

cry; instead they should be empowered to become change agents. Enabling them to speak for and about themselves, at their convenience, within their comfort zone, instead of others speaking on behalf of, or speaking about them, is the first step in this process.

Memorialisation and the grievable life

Gunatilleke's section on memorialising sets out the varied views of the interviewees on the issue. As Butler says, 'People need to be grieved; loss needs to be acknowledged publicly, because it helps to confer a sense of reality on the loss but also because it makes it known that this was a real life...The life doesn't simply get erased. It gets imprinted and remembered. This strikes me as a dignified thing to do...Until we learn that other lives are equally grievable and have an equal demand on us to be grieved, - especially the ones that we've helped to eliminate, - I'm not sure we'll really be on the way to overcoming the problem of dehumanisation'.²⁸

Yet, memorialisation can also be a driver of new conflict if memorial cultures are stuck in entrenched ideological positions, since remembering also sustains antagonism and solidarity. Martha Minow points out the danger of too much memory and too little memory.²⁹ Too much memory might lead to the 'enshrinement of victim-hood' while too little memory might result in 'insufficient memorialising of victims and survivors'.³⁰ Personal trauma, such as sexual violence, is mobilised for political reasons and can be manipulated by different interest groups. As Lorraine Ryan states 'collective memory is fluid and dynamic...a reflection of the collective identity of a group or nation, as a consequence of which it constitutes an immensely valuable tool in any power consolidation process'. For instance, the Parents Circle-Families Forum that works in Israel and Palestine recognises that it cannot be assumed that victims and families of victims are acting to reduce or even eliminate the conflict when they become actively involved in advocacy and activism. Instead, bereaved families who rely on the empathy and public standing can also act to deepen conflict and arouse nationalistic feelings.³¹

Conclusion

The increasing nexus between the liberal peace-building paradigm and transitional justice makes the latter, vulnerable to the 'same flaws and critiques of the peace-building agenda,'³² such as its one-size-fits-all approach.³³ Further, its tendency to ignore social and

²⁸Interview with Judith Butler', *The Believer Magazine*, May 2003 at www.believermag.com/issues/200305/?read=interview_butler

²⁹*Supra* n.17, pp 2-5.

³⁰*Ibid.*

³¹ *Victim Empowerment and Peace-building: Exploring the Role of Local Foundations in Supporting Victim Empowerment Processes in Regions of Conflict* (Belfast: Foundations for Peace Network, 2008) 28.

³² Chandra Lekha Sriram, 'Justice as Peace? Liberal Peacebuilding and Strategies of Transitional Justice,' *Global Society* 21(4) (2007): 586.

gender injustice can also result in a narrowing in the scope of and the depoliticisation of transitional justice processes.³⁴ In reality, in societies emerging from conflict, it is most likely that identity politics will continue to impact on transitional justice processes. This means there is a danger that reconciliation could be made contingent upon a 'population within a state coming to think of itself as a people,' i.e. force groups to give up certain identities and instead to embrace an identity which is touted as a collective/common identity but in reality is based on elements important only to the dominant group within that community.³⁵ This will most likely be done with the purpose of denying the political claims of a specific community. Schaap points out that reconciliation 'perpetuates assimilation to the extent that it takes for granted one nation that needs to be healed rather than recognising two (or more) distinct political communities.'³⁶ Communities might refuse to articulate political claims in terms of reconciliation for this very reason. For example, in Sri Lanka where the government has appropriated the term 'reconciliation' to construct a narrative of a postwar Sri Lanka in which the rights of non-majority communities are being protected and their concerns addressed, there are deep cleavages within civil society regarding the form and manner in which political demands are articulated. While some openly challenge and counter the State's dismissal of the ethno-political nature of the conflict and the need for a political solution, others believe that focusing on the political aspect of the conflict will derail reconciliation efforts and hence work within the paradigm crafted by the State which avoids dealing with issues of truth, justice and political rights.³⁷

Crafting transitional justice processes that satisfy all stakeholders and protect the rights and well-being of all affected persons is a complicated task riddled with a number of risks, not least further victimisation of those affected by the armed conflict. Integral to ensuring affected persons are not re-victimised is enabling them to articulate their concerns freely and without fear, without which a truth-seeking exercise will be ineffective and unsuccessful. In order to achieve this, it is imperative that an environment in which default political trust and trust responsiveness and respect for the rule of law exist is created.

³³ Patricia Lundy and Mark McGovern, 'Whose Justice? Rethinking Transitional Justice from the Bottom Up,' *Journal of Law & Society* 35(2) (2008): 277.

³⁴ Rosemary Nagy, 'Transitional Justice as Global Project: Critical Reflections,' *Third World Quarterly* 29(2) (2008): pp.275-289.

³⁵ *Supra* n.9, 251.

³⁶ *Ibid*, 255.

³⁷ Ambika Satkunanathan, 'Sri Lanka Remembers to Forget,' *Open Security*, 21 May 2013, <http://www.opendemocracy.net/opensecurity/ambika-satkunanathan/sri-lanka-remembers-to-forget> (accessed 20 July 2015)

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