

## *Working paper Series 2013*

---

No.13-138

**“War by Other Means?  
An analysis of the contested terrain of  
transitional justice under the ‘Victor’s Peace’ in  
Sri Lanka”**

**Richard Gowing**

**Published: January 2013**

Development Studies Institute

London School of Economics and Political Science

Houghton Street

London

WC2A 2AE UK

Tel: +44 (020) 7955 7425/6252

Fax: +44 (020) 7955-6844

Email: [d.daley@lse.ac.uk](mailto:d.daley@lse.ac.uk)

Web site: [www.lse.ac.uk/depts/ID](http://www.lse.ac.uk/depts/ID)

## **ABSTRACT**

In the wake of Sri Lanka's transition from war to 'peace', a variety of actors have sought to advance competing visions of how to deal with the country's violent past. This paper seeks to critically analyse these efforts with particular attention to the underlying politics which animates them. Drawing on a body of critical scholarship that has recently emerged in the field, it is argued that the case of Sri Lanka provides a particularly stark illustration of the deeply contested nature of transitional justice, in ways which challenge its conceptualisation as a common enterprise or "global project". Moreover, contrary to the notion that transitional justice is most aptly characterised as a 'response' to past abuses of power, the example at hand is used to demonstrate the way in which it is also used to consolidate and legitimize new forms of authority – thus inviting the modification of Foucault's aphorism that transitional justice, like power, may represent 'war by other means'.

## TABLE OF CONTENTS

Acronyms .....	4
<b>1. Introduction .....</b>	<b>5</b>
<b>2. Literature Review: Sri Lanka in Context.....</b>	<b>8</b>
<b>3. Deconstructing the GoSL’s Transitional Justice Discourse: Politics and Performance.....</b>	<b>11</b>
<b>3.1. ‘Reconciliation’ as Economic Development and Resettlement .....</b>	<b>11</b>
<b>3.2. Unpacking the LLRC: the Political Functions of ‘Transitional Justice’ .....</b>	<b>12</b>
3.2.1. Limiting the Scope of ‘Truth Telling’ .....	14
3.2.2. Reconciliation as the Consolidation of Identity .....	15
3.2.3. The LLRC as ‘Localized’ Justice .....	16
<b>3.3. The ‘Performative Logic’ of Sri Lankan Transitional Justice Initiatives.....</b>	<b>17</b>
<b>4. The Tamil Diaspora and Transitional Justice Processes .....</b>	<b>20</b>
<b>4.1. Understanding Diaspora Engagement in Transitional Justice Processes .....</b>	<b>20</b>
<b>4.2. The Human Rights Discourse: Internalized or Instrumentalized? .....</b>	<b>22</b>
<b>4.3. Beyond Accountability: The Politics of Memorialisation and Reconciliation .....</b>	<b>24</b>
<b>5. Transitional Justice and the International Community.....</b>	<b>26</b>
<b>5.1. Accountability-Seeking in a System of States: Between Norms and Interests.....</b>	<b>26</b>
<b>5.2. Compromised by Complicity? .....</b>	<b>27</b>
<b>5.3. Strategic Concerns about Accountability-Seeking.....</b>	<b>28</b>
<b>6. Conclusion.....</b>	<b>30</b>
<b>Bibliography.....</b>	<b>32</b>

## **ACRONYMS**

GoSL	Government of Sri Lanka
HRW	Human Rights Watch
ICG	International Crisis Group
ICTJ	International Center for Transitional Justice
LLRC	Lessons Learnt and Reconciliation Commission
LTTE	Liberation Tigers of Tamil Eelam
TRC	Truth and Reconciliation Commission
UNHRC	United Nations Human Rights Council
UNSG	United Nations Secretary-General

## 1. Introduction

*“... whoever can win the transition can win the peace, and  
whoever can win the peace can win the war.”*

(Bell 2009: 25).

The military defeat of the Liberation Tigers of Tamil Eelam (LTTE) in May 2009 by the government of Sri Lanka (GoSL) brought a precarious conclusion to Sri Lanka's intermittent three-decade civil war in which both parties to the conflict are alleged to have committed serious violations of human rights, particularly in its final months. Since then, the GoSL has embarked upon an effort to consolidate the transition from war to peace primarily through a policy of “securitized development” underpinned by the optimistic logic that a combined package of military containment and economic growth will be sufficient for placating Tamil political grievances in the long-term (Goodhand 2011: 130). Though many of the structural causes of the conflict remain intact and indeed, have been exacerbated under this “victor's peace”, a diverse range of actors have since begun to advance the language and practices of ‘transitional justice’ – a field married to a broad ‘toolkit’ of options for those seeking to address a society's legacy of past violence that includes truth-telling, criminal prosecutions, reparations, institutional reform and memorialisation (ICTJ 2009).

A striking feature of this trend however, has been the divergent manner in which the government, the diaspora and the international community have engaged with the idea of transitional justice, with each of these actors offering a variety of competing visions of how to ‘deal with the past’. Whilst on the one hand the GoSL have been eager to demonstrate an ostensible commitment to ‘reconciliation’ under the auspices of the ‘Lessons Learnt and Reconciliation Commission’ (LLRC) and as part of its economic development and resettlement programmes, the Tamil diaspora have continued to press firmly for the criminal accountability of members of the Rajapakse regime under the charges of war crimes, crimes against humanity and genocide. Whilst the response of the international community has in many ways become increasingly sharp-toothed since the 2009 United Nations Human Rights Council (UNHRC) resolution which congratulated the government's military victory over the LTTE, its ability to pursue a transitional justice agenda grounded in the authority of international law has been persistently

constrained by the dynamics of inter-state politics. Despite the findings of the United Nations Secretary-General's Panel of Experts Report on Accountability in Sri Lanka that deemed 'credible' allegations of gross violations of international law and identified shortcomings in Sri Lanka's domestic transitional justice response, its recommendation for the establishment of an international independent mechanism of investigation is yet to come to fruition.

The aim of this paper is thus to analyse the contested terrain of transitional justice that has materialised under the victor's peace in Sri Lanka. Drawing on a critical literature that has recently emerged in the field which contends that greater attention needs to be paid to the hidden politics of how particular notions of transitional justice are constructed by actors, its core argument is that the case of Sri Lanka offers a rich example of the deeply contested nature of 'dealing with the past'. More precisely, the aim is to demonstrate that there exists a great deal of continuity between Sri Lanka's war-time political dynamics and those that currently animate the contest that is being fought over the meaning of transitional justice. As will be argued, articulations of transitional justice are closely bound up with the political identity and interests of those who express them, with actors utilizing the language and practices of the paradigm as a means of fulfilling their goals. In the context of Sri Lanka, this means that whilst actors may appeal to shared ideals such as 'reconciliation', such terms may often serve to obscure a divergent array of underlying interests and projects. Indeed, as will be seen, such terms and their associated practices may even provide cover for the continuation of the sort of domination and abuse that they purport to be addressing.

Following a literature review, Chapter Three begins by considering the two 'home-grown' transitional justice responses that have emerged in Sri Lanka under the rubric of the LLRC and as part of the government's economic development and resettlement programme. Analysing the discourses in which notions such as 'reconciliation' and 'truth-telling' have been packaged by elites, it is argued that the GoSL have appropriated the language of the transitional justice paradigm whilst simultaneously stripping it of its normative content. Moreover, it is argued that the particular discourses that have been deployed serve important political functions - in terms of consolidating the authority of the regime, in concealing the continued domination of the Tamil population, and in deflecting demands for accountability. In this respect, it is suggested that the puzzle of

why the GoSL have adopted transitional justice initiatives that are lacking in substance can be explained largely in terms of the 'performative function' they serve with regards to the international community.

Chapter Four then considers the engagement of the Tamil diaspora in transitional justice processes, with particular attention to the accountability-seeking efforts of this group. It is suggested that the often very partial nature of these endeavours is illustrative of the paradoxical way in which human rights discourse may remain entangled in the politics of nationalism, as well as of the potential for transitional justice practice and rhetoric to be instrumentalized in pursuit of particularist political goals. Following that, the role of memorialisation and reconciliation initiatives are assessed, and it is argued that these too are subject to political contestation in ways which challenge the assumptions of the transitional justice paradigm. In particular, it is argued that the apparent tension between the dual goals of addressing both human rights and political injustices in the case of Sri Lanka draws our attention to the often implicit assumption within the field, that the transition itself will have involved political transformation.

Finally, Chapter Five analyses the international community's pursuit of accountability in Sri Lanka with a view to demonstrating the very arbitrary nature of the way in which transitional justice functions. In particular, it is argued that accountability-seeking from the international community is strongly contingent on the strategic interests of powerful states, as well as on the broader contest currently being fought between them over the legitimate scope of international judicial intervention in matters of 'counter-insurgency'. Having highlighted the way in which the 'War on Terror' discourse has continued to aggravate accountability-seeking in the post-war period, the chapter then outlines the various strategic considerations relating to Sri Lanka's domestic politics which have also conditioned the application of transitional justice mechanisms by the international community.

## 2. Literature Review: Sri Lanka in Context

Over the last twenty years, transitional justice has emerged as an established field of scholarship connected to a field of practice aimed at addressing the legacies of past human rights abuses in societies in transition. Whilst it is not possible to provide a comprehensive overview of its evolution, three developments are of particular relevance to the aims of this paper.

First, whilst at the field's inception the term 'transition' referred to shifts from authoritarian rule to democracy (based on the experiences of Central America and Eastern Europe in the 1980s and early 1990s), the meaning of the term has been augmented to denote societies undergoing transition from periods of violent conflict to peace more generally. Whilst Sri Lanka has undergone a transition from war to a 'negative peace', it poses a somewhat peculiar case for the paradigm in that the underlying causes of the conflict have not been addressed and in the sense that the 'transition' has been marked by regime continuity. Nonetheless, these apparent tensions have been navigated by scholars who have conceptualised the application of transitional justice mechanisms within both "non-liberal transitions", and indeed somewhat paradoxically, within "non-transitions" (Hansen 2011; Isa 2010). These developments are symptomatic of a broader shift in the field of practice towards "entrenched justice-seeking" in which the question of 'how to deal with the past' is raised increasingly independently of prevailing political contexts (Rangelov and Teitel 2011).<sup>1</sup>

Second, as the field has become increasingly inter-disciplinary, its goals have been increasingly disputed. Not only has the meaning of 'justice' expanded beyond a previously narrow focus on criminal accountability to include a wide range of restorative practices, but the pursuit of justice itself has also been increasingly viewed in terms of its instrumental value for the attainment of a range of other goals, such as peace, stability and the rule of law (Vinjamuri 2010: 192). The significance of this development with regards to the case of Sri Lanka is that it has also meant that the language of transitional justice has become increasingly amorphous, permitting actors much scope to attach divergent meanings to transitional justice concepts. As the following analysis attests, use

---

<sup>1</sup> It is worth noting that some scholars prefer to use the phrase 'dealing with the past' given the conceptual problems they identify with the terms 'transition' and 'justice' (for example Dudai and Cohen 2010: 230-231).



of the term 'reconciliation' in particular may frequently serve to conceal a wide array of positions over its precise content. This paper thus draws on the work of critical scholars such as Bell, Lundy and McGovern, who have stressed the importance of deconstructing the language of transitional justice, and of considering the underlying motives of the actors who employ it (Bell 2009; Lundy & McGovern 2009).

Finally, the growth of the field has been accompanied by the proliferation of a diverse array of institutions and actors engaged in shaping its normative terrain, and in designing and implementing its mechanisms in practice. The study of transitional justice has thus been marked by an increasing awareness of its political dimensions, as international institutions, legal regimes, states and civil society actors seek to implement conflicting visions of what 'dealing with the past' requires. In response to authors such as Nagy who have conceptualised and discussed transitional justice in terms of a "global project" premised on shared universal norms (2008: 276), critical scholars have sought to highlight and emphasize the interests and structures of power that may drive transitional justice initiatives (for example see Woolford 2011 and Hinton 2011). This question of who or what legitimizes a particular transitional justice response at a particular time is hugely pertinent to the case of Sri Lanka, where both the internationalised nature of the actors involved and the non-negotiated character of its transition are suggestive of a highly politicized contest over how to address the past. As the following analysis will seek to demonstrate, it is a case which confirms the idea that 'transitional justice' must be understood not as a common enterprise, but rather as a site of contest. Moreover, it will be argued that transitional justice practice and rhetoric may even be instrumentalized in ways which conceal the pursuit of war-time goals, thereby calling into question the notion that transitional justice processes are necessarily about 'responding' to past abuses. To the contrary, it would appear that they are also capable of concealing the continuation of those abuses.

Whilst some overlap exists with the conflict-resolution and peace-building literature, specific analysis of transitional justice in relation to Sri Lanka has been somewhat limited. The primary texts on the issue consist of a Working Paper Debate Series conducted by the Oxford Transitional Justice Research Group (for example see Anketell 2011a; Welikala 2012), an anonymous article submitted to the *International Journal for Transitional Justice* (Anonymous 2011), and a scoping paper by Hoglund and Orjuela

recently presented at the National Conference for Peace and Conflict Research (2012). This dissertation seeks to make a modest contribution to this literature by considering the case of Sri Lanka through the lens of the more critical scholarship which has recently emerged in the field of transitional justice.

### **3. Deconstructing the GoSL's Transitional Justice Discourse: Politics and Performance**

This chapter analyses the two key 'home-grown' transitional justice processes that have been initiated by the GoSL since May 2009. Outlining their emergence, with particular reference to both the *discourses that sustain them* and their *political functions*, the first two sections of this chapter focus respectively upon: the articulation of economic development and resettlement as part of the reconciliation process; and truth-telling and reconciliation under the rubric of the LLRC. In doing so, this paper employs a Foucauldian notion of the term 'discourse', defined as "a group of statements or practices which provide a language for talking about – a way of representing the knowledge about – a particular topic at a particular historic moment" (Hall 1997: 72). Such an approach thus helps to illustrate the way in which the language surrounding transitional justice processes may be utilised by elites to define acceptable courses of action through its "disciplinary effect" (1997: 75).

In the final section, further consideration is given to the way in which domestically-driven transitional justice initiatives and rhetoric in Sri Lanka have largely followed a "performative logic" that has served to consolidate and legitimize the regime in the context of external pressure for accountability from the international community (Drexler 2012: 51). It is argued that part of the puzzle as to why the GoSL have adopted the language and practices of the transitional justice paradigm lies in its desire to signal progress to the international community in ways which foreclose the possibility of addressing accountability issues.

The overall aim of the chapter is thus to lend support to the view that transitional justice must be understood not as a universalist project, but rather as a set of political contests in which transitional justice discourse and practice may be deployed "as tools of disciplinary power, producing the subjects and subjectivities that best serve the interests of the transitional state, particularly [in terms of] the consolidation of authority" (Illif 2012: 255).

#### ***3.1. 'Reconciliation' as Economic Development and Resettlement***

A notable aspect of Sri Lanka's post-war period has been the GoSL's ostensible focus on resettlement and development programming in the North and East of the country (the latter predominantly in the form of large-scale infrastructure projects). Whilst these appear to have been designed primarily as exercises in stabilization and conflict prevention (Hoglund and Orjuela 2011: 31), it is noteworthy that such projects have often been articulated as part of a process of reconciliation. This discourse is apparent for example in the Minister for External Affairs, G L Peiris' assertion that "we believe in reconciliation, but economic development is a component of a *wider reconciliation*" (*Indian Express* 2012, emphasis added). On this conception, reconciliation as generally understood within the transitional justice paradigm is distinguished from a process of 'wider reconciliation' that is defined in terms of the meeting of economic needs. The term 'reconciliation' is thus appropriated whilst being simultaneously stripped of its thicker set of necessary conditions, which although contested in the literature, may include accountability, truth-telling, admission of historical responsibility and the restructuring of social and political relationships (Rouhana 2009: 300). As the ICG observe with regards to this phenomenon, "resettlement and reconstruction, while necessary preconditions for successful reconciliation, are often conflated by the government with reconciliation itself" (2012: 2). Somewhat strikingly, this discourse has also been echoed in some quarters of the media under the compound term, "economic reconciliation", thus further reproducing the notion that economic development is a sufficient condition for, and indeed is independently constitutive of, reconciliation (for example see *Daily News* 2012)

Whilst the reproduction of this discourse may have a variety of benefits to the GoSL in terms of its standing with the international community (a matter which will be explored in greater detail in the final section of this chapter), it is interesting to note that the government also benefits from its use as a means of simultaneously justifying a large military presence in the North and East of the country. As the ICG has documented with regards to the Northern Province, the army has become increasingly mandated with the implementation and control of these reconciliation-oriented development and resettlement projects – a trend perhaps best epitomised by the takeover of the Urban Development Authority by the Ministry of Defence in 2010 (Fernando 2011). Somewhat paradoxically however, this drift towards securitized development has itself undermined prospects for genuine reconciliation as tensions with parallel civil administrations have

emerged, and as land disputes and creeping ‘Sinhalisation’ produce new grievances among the local population (ICG 2012: 7). This case thus highlights an interesting contradiction, in which the language of reconciliation has been used to justify measures which may run counter to the realization of that goal.

One of the things that this example also illustrates is the way in which the fluidity of the language of the transitional justice paradigm seems to offer actors ample space to appropriate its concepts in order to pursue political goals - in this case, the notion of ‘reconciliation’ appears to have been deployed as a cover for the consolidation of the GoSL’s authority over the Tamil population in the North and East of the country. More generally, it confirms the idea that we should resist conceiving of transitional justice as an unambiguously progressive and unifying project designed to address the legacy of ‘past conflict’. By combining old goals (government domination of the North and East) with new discourses rooted in transitional justice (‘reconciliation’), the Sri Lankan regime has demonstrated the potential, as Bell notes, for transitional justice rhetoric to serve simply “as a vehicle for pursuing the same old conflict” (2009: 25).

### ***3.2. Unpacking the LLRC: The Political Functions of ‘Transitional Justice’***

The LLRC was appointed by President Rajapakse in May 2010 with the task of investigating events in Sri Lanka between February 2002 and May 2009. With its stated goals of “prevent[ing] any *recurrence* of such concerns in the future,” and of promoting “*reconciliation* among all communities” (LLRC 2011, emphasis added) the government has presented this ‘home-grown’ transitional justice response as a panacea for dealing with the past in Sri Lanka. In spite of strong criticism from human rights organisations and the UNSG’s Panel of Experts concerning both the inquiry’s structural flaws and the failure of its report (released in December 2011) to adequately address allegations of violations of international law, the government has continued to insist on the sufficiency of the commission, announcing a ‘National Action Plan’ for the implementation of its recommendations in August 2012.

Rather than to reiterate its various flaws however, the aim of this section is to show how the LLRC serves as a powerful illustration of the way in which transitional justice practice and rhetoric may be instrumentalized by elites in pursuit of political goals.<sup>2</sup> As

---

<sup>2</sup> For criticism of the LLRC, see ICG (2011), HRW (2011) and UNSG Panel of Experts (2011).

the following analysis suggests, the LLRC process both contains and is embedded in three discourses in particular that appear to have been designed to serve the interests of the Rajapakse regime.<sup>3</sup>

*i) Limiting the Scope of 'Truth-Telling'*

First, it can be argued that the LLRC's mandate provides an immediate discursive framing of the appropriate scope of 'truth-telling' which helps to deflect calls for accountability for violations of international law. By seeking to inquire "into the facts and circumstances which led to the *failure of the ceasefire agreement* operationalised on 21st February 2002 and the sequence of events that followed thereafter up to the 19th of May 2009", the report appears to intentionally skew the process of truth-telling towards a very particular set of causes of the conflict (LLRC 2011: 5, emphasis added). Rather than focussing primarily on truth-telling in relation to standards in the conduct of the war within its mandate, the LLRC conceives of its goals of preventing recurrence and promoting reconciliation as principally rooted in an analysis of the failure of the peace process, thereby 'constructing' a particular narrative about the past (LLRC 2011: 5-6; Cherry 2009: 257).

Beyond shielding the government and security services from calls for accountability, this construction of history appears to serve the political interests of the Rajapakse regime in two further ways. First, the promotion of a narrative that depicts those responsible for the failure of the peace process as the dominant wrongdoers helps to sustain the impression that the resumption of military operations in 2006 was an inevitable outcome. Whilst many of the causes of the conflict did indeed stem from the decisions of the previous government, not least in terms of the perverse effects of its neo-liberal reform agenda, such a discourse neglects the agency of the Rajapakse regime in evaluating the reasons behind the escalation of the conflict (Venugopal 2009). Furthermore, the apportioning of blame onto Wickremesinghe's UNP contains many obvious political benefits given its current status as the main opposition party. In this respect the LLRC appears largely to have followed in the tradition of past truth commissions in Sri Lanka, which as one

---

<sup>3</sup> It is worth noting that in making the argument that the nominally independent LLRC has reproduced discourses *designed* to serve the interests of the Rajapakse regime that it is difficult, if impossible, to establish the precise extent of its manipulation. The fact however that its members were hand-picked by the President, that it only considered evidence put before it by the government, and that it operated in an environment in which the intimidation of politicians and journalists had becoming increasingly commonplace, suggest that it is a reasonable argument to make.

scholar writes, have been primarily “motivated by political ambitions to slander members of the opposition at the time (who were members of the sitting government over the periods that were under investigation)” (Anonymous 2011: 39).

ii) *Reconciliation as the Consolidation of Identity*

Second, the LLRC reproduces a discourse, also articulated by GoSL, that ‘reconciliation’ consists of the assimilation of Sri Lanka’s various groups into a single unifying national identity. Whilst the 2011 report makes recommendations for multi-lingual schools, equal opportunities and devolution as a means of reconciliation, such policies are framed within a narrative positing that peace requires, and can be equated with, the elimination of difference. As one section reads, reform “should essentially promote greater harmony and unity and not disharmony and disunity among the people of the country. The promotion of this ‘oneness’ and a common identity should be [its] principal aim” (2010: 306). On this conception of reconciliation, whereby convergence on a singular identity is viewed as constitutive of peace, ‘difference’ is essentialized as an intrinsically harmful quality and the underlying political dimensions of Sri Lanka’s conflict are obscured. In appropriating the language of ‘reconciliation’, whilst ignoring the fact that its attainment may be contingent on the realization of a number of other factors (such as justice, truth, admission of historical responsibility and the re-structuring of political relationships), the government has thereby been able to advance a vision of dealing with the past that is consistent with both an increasing ‘Sinhalisation’ of the country’s institutions and an ongoing centralization of power (Hoglund and Orjuela 2011: 25).

The emergence of this discourse appears to strongly reflect Rouhana’s observation that transitional justice processes characterised by large power asymmetries between parties have a propensity to become “over-psychologized”, focussing heavily on the cognitive aspects of reconciliation whilst neglecting the broader social and political issues that give rise to these in the first place (2011: 300). It is argued that such situations arise because of the tendency of the stronger party to assume that the “essence [of reconciliation] is psychological, instead of treating the psychological manifestations, requirements and consequences in the context of a broader social and political multifaceted process” (2011: 300). From this perspective, it is clear that in the context of a ‘victor’s peace’ the common assumption that transitional justice processes entail responding to and challenging past abuses of power is thrown into doubt. Instead, it is possible that the

language of ‘reconciliation’ may in fact become a vehicle for the exercise of power when articulated as a process of psychological change – in this case, the attempt to deny minority identities and to advance a hegemonic nationalism grounded in Sinhala-Buddhism. What the case of Sri Lanka demonstrates quite strikingly therefore is that reconciliation processes cannot always be assumed to be inherently progressive measures. As Boraine summarises with regards to this potentially janus-faced nature of reconciliation: “...at its best, [it] involves commitment and sacrifice; at its worst, it is an excuse for passivity, for siding with the powerful against the weak and dispossessed” (2004: 48).

*iii) The LLRC as ‘Localized’ Justice*

Finally, the LLRC both reproduces and is embedded within a discourse which emphasizes the superiority of ‘localized’ processes of reconciliation, in ways which serve the government’s ability to resist demands for international accountability. The first element of this discourse consists of the notion that transitional justice mechanisms should reflect indigenous social values – an idea reflected in Rajapakse’s assertion that a model of reconciliation must be “a solution that comes from the people that can be accepted by all the people and all communities” (Shashikumar 2009). This attempt to neutralize accountability issues by balancing the demands of justice against alternative social goods is further apparent in his statement establishing the LLRC, in which he remarked that the commission should “act in a forward looking manner, through focus on restorative justice designed to further strengthen national amity” (News Line 2010). The thrust of this narrative is that issues of accountability must be tempered by the need to maintain order and promote national cohesion. Interestingly, this discourse has been developed and augmented by a number of media commentators, who have suggested that the LLRC aptly follows in the tradition of the Gamsabhawa (or village councils), whose historical mandate has been to maintain “peace and harmony by facilitating the amicable settlement of disputes” (for example Weerakoon 2010). As Illif has argued, narratives such as these that appeal to autochthonous customs and traditions have the potential to be very powerful in terms of the way in which they provide “both a vision of communal solidarity and a readymade authority structure” (Illif 2012: 5). In this respect, the use of these narratives in Sri Lanka appear to mirror several cases in sub-Saharan Africa where



appeals to the ‘localization’ of justice have frequently been used by transitional elites as a means of legitimizing and consolidating their power.<sup>4</sup>

The second element of this discourse advances the idea that the application of international transnational justice norms and standards to Sri Lanka violates the country’s right to non-interference in dealing with its internal affairs. For example, both the UNHRC’s 2012 resolution as well as the UNSG’s 2011 Panel of Experts report have been condemned as “undue meddling in the sovereignty and integrity of Sri Lanka”, and dismissed as diaspora-inspired plots designed to unseat the Rajapakse regime (see Ranjith in Wright 2012; Rajapakse in BBC 2010). The case of Sri Lanka thus poses a somewhat paradoxical case for the field of transitional justice, in that whilst the regime has sought to appropriate some of the language and practices of the paradigm, it has simultaneously rejected many of the international norms and institutions from which that paradigm derives its authority. It is to this peculiar stance which the GoSL has held in relation to transitional justice processes that the following section will now seek to address.

### ***3.3. The ‘Performative Logic’ of Sri Lankan Transitional Justice Initiatives***

As Hoglund and Orjuela have suggested, the position of the GoSL towards transitional justice since the end of the conflict can be characterised as “both acceptance and resistance”, in that their initiatives have given the appearance of adherence to universal transitional justice norms whilst yielding few genuine changes (2012: 10). This puzzle can largely be explained in terms of the pressure that has been applied to the regime by the international community, and the regime’s corresponding desire to undercut calls for accountability by demonstrating an ostensible commitment to transitional justice. Whilst the precise effect of international pressure is difficult to quantify, the timing of the GoSL’s initiatives do seem to suggest that it has been an important factor in incentivising Sri Lankan elites to pursue such measures. For example, it is noteworthy that whilst the GoSL showed little commitment to pursuing transitional justice following the very favourable 2009 UNHRC resolution, its announcement that it would launch the LLRC in May 2010 was largely perceived as a move designed to anticipate the establishment of the UNSG’s Panel of Experts which occurred the following month (Anonymous 2011:

---

<sup>4</sup> For example, Illif argues that this has been the case with regards to the RPF and the *Gacaca* courts in Rwanda.

32). Similarly, the Sri Lankan Army's establishment of a panel of inquiry to investigate human rights abuses in March 2012 appears to have served as a ploy to deflect pressure for accountability at an upcoming UNHRC session. In this sense, the behaviour of the GoSL with regards to transitional justice processes can be described as following a "performative logic" – a term which Drexler has recently used to describe the way in which elites from East Timor and Indonesia have jointly initiated truth commissions as a means of dampening demands for a more powerful (and prosecutorial) international tribunal (2011: 51).

In this vein, another striking similarity between these cases and that of Sri Lanka has been the way in which elites have attempted to favourably compare their initiatives to the South African Truth and Reconciliation Commission – an initiative that carries many positive connotations within the international community, but which also coheres with the interests of these transitional elites in terms of its focus on reconciliation via restorative justice, economic reparations, and its appeals to localization (Karthick 2012). The invocation of the imagery of the TRC by the GoSL, as well as its attempts to forge diplomatic ties with South Africa around that process, thus highlights the importance which transitional elites seem to place on the management of external perceptions through the use symbolic measures (Arbour 2011). More generally, it underscores the point that the field of transitional justice needs to pay heed to the underlying political agendas which may explain the question of why particular transitional justice processes are pursued by elites at particular times. As the case at hand suggests, these processes may simply be part of a strategy of 'window-dressing' designed to win the acquiescence of potentially threatening external actors.

This then begs the second question: how effective has the deployment of transitional practice and rhetoric by the GoSL been as a means of subverting accountability issues? Despite the apparent strengthening of the international community's resolve on accountability demonstrated by the UNHRC resolution in March 2012, there are several indications that Sri Lanka's transitional justice discourses have also gained some purchase within the international diplomatic community. For example, as one member of a recent UK parliamentary delegation commented in regards to the implementation of infrastructure projects in North and East, "we can describe these developments as the positive signs of the reconciliation process" (*Sri Lankans Puwath* 2012). Furthermore, in

response to the recent announcement of a 'National Action Plan' for the implementation of the LLRC recommendations, a US government press-statement commended the "very serious" gesture and stated that, "we believe the full implementation of the National Action Plan will benefit all citizens of Sri Lanka by furthering long-term reconciliation and peace" (*Colombo Telegraph* 2012a). Whilst the significance of these examples should not be overstated, they do serve to highlight the potential disparity between the use of transitional justice language, and the actual content of transitional justice initiatives on the ground. More broadly, the acceptance of these notions of reconciliation by the international community, in spite of the lack of any serious commitment by the GoSL to address accountability issues or political reform, highlights the potential for transitional justice concepts to be instrumentalized and abused by elites, thus reinforcing Bell's observation that the seemingly universal language of transitional justice can simply serve as a "cloak [that] obscures a wide variety of moral, normative and political positions" (Bell 2009: 6).

The sorts of interaction described above are perhaps best captured by Tsing's notion of 'friction' – a metaphor used to denote the disputes that often occur at encounters between local and global actors over norms and interests (2004). With regards to transitional justice, such a concept helps to illustrate the way in which global and local actors may articulate conceptions of transitional justice that deviate from one another "as the meaning and forms of transitional justice idioms are mediated, appropriated, translated, modified, misunderstood, ignored, or even rejected" (Hinton 2011: 12). However, in the context of Sri Lanka, it is clear that it is not merely the state and the international community who are engaged in this contest to define transitional justice, but also another key group – the diaspora. It is to this important set of actors which the following chapter now turns.

## **4. The Tamil Diaspora and Transitional Justice Processes**

As Høglund and Orjuela observe, “with more victims and perpetrators of mass atrocities residing in Western liberal democracies (temporarily or permanently), and with the increased speed of information dissemination and mobilization, the actions of diaspora groups in relation to transitional justice are becoming increasingly important” (2012: 6). In the case of Sri Lanka, the role of the Tamil diaspora in transitional justice processes is of particular significance given its size, estimated at 450,000 to one million (at least one-fourth of the Sri Lankan Tamil population), as well as its largely conflict-induced nature which has led to its self-identification and portrayal as a “victim diaspora” (Orjuela 2011; Cohen 2008).

The aim of this chapter is thus to analyse the divergent ways in which this group has been engaged in transitional justice processes since the end of the conflict. It is argued that this engagement needs to be carefully understood in terms of its underlying political dynamics, of which there appears to be substantial continuity with the war-time period despite the defeat of the LTTE. Having briefly introduced the ways in which the Tamil diaspora have been conceptualised in relation to the homeland in the first section, the second section then outlines the various means by which accountability for violations of international law have been sought. It is argued, that the often very partial nature of these enterprises can be explained with regards to both the politics of identity and the desire of organisations to consolidate support, in ways which call into the question the idea of transitional justice as a “global project” based on a set of shared universal norms (Nagy 2008: 276). The final section then outlines diaspora engagement beyond accountability-seeking, in the form of memorialisation and reconciliation efforts, and argues that these too are subject to contestation in ways which challenge the assumptions of the transitional justice paradigm.

### ***4.1. Understanding Diaspora Engagement in Transitional Justice***

The literature on the relationship between the Tamil diaspora and the homeland has largely revolved around the question of how the former has contributed to the prolongation of war. On this there is some agreement that it has historically served as a “peace-wrecker”, given the radical tendencies of its “long-distance nationalism”, as well as its role (both forced and voluntary) in funding the LTTE, a factor which has been

identified as crucial for the continuation of violence at several stages of the conflict (Anderson 1992; Fair 2007). At the same time however, scholars have stressed the ambiguity of this relationship over time, highlighting the way in which it has been contingent on the changing opportunity structures relating to identity maintenance, leadership struggles, organisational interests, and concerns about status in the homeland (Shain 2002: 128).

In many ways, Shain's observation of these war-time dynamics is strongly echoed in the engagement of the Tamil diaspora with transitional justice processes since May 2009. Most significantly, the defeat of the previously hegemonic LTTE has generated political space and opportunities for new organisations and expressions of Tamil nationalism to emerge. On the one hand, and at the risk of over-generalizing, this re-mobilisation has been coupled with a shift towards more democratic and peaceful modes of political organisation (Vimalarajah et al 2010). The question of how to deal with the past since the end of the conflict has largely been dealt with within a rights-based discourse, in which a variety of actors have appealed to the universalist language of human rights whilst seeking accountability through the frameworks of national and international law. On the other hand however, this new trajectory remains strongly linked to the expression of nationalist identity, as well as the diaspora's claim to be advancing the cause of Tamil Eelam on behalf of the voiceless island population.<sup>5</sup> As Orjuela notes therefore, though there has been a marked change in the modes of diaspora organisation, "the discourses related to the conflict were not fundamentally disrupted by the end of the war and the defeat of the LTTE" (2012: 93).

There thus exists a tension within the Tamil diaspora between the old politics of nationalism and the new discourses of transitional justice, in which particularist goals are sought in conjunction with universalist norms. This tension largely derives from the particular nature of Sri Lanka's 'non-negotiated' transition, which has meant that the diaspora have pursued transitional justice strategies 'against' the state. This case thus stands in contrast to those accounts which discuss the involvement of diaspora populations in transitional processes in largely apolitical terms - for example, in Liberia and Sierra Leone - the assertions of which largely appear to rest upon the negotiated

---

<sup>5</sup> Most striking in this regard has been the emergence of the 'Transnational Government of Tamil Eelam' (TGTE) and the 2009/10 referenda which demonstrated a close to 100% support for a separate Tamil state among voting diaspora Tamils.

nature of those transitions and the presumption that the actors involved are generally supportive of the emerging regime (for example see Haider 2012: 7-8). It is thus a stark reminder of the way in which transitional justice, though often assumed to be addressing and responding to the politics of conflict, may also become a vehicle for the pursuit of old war-time goals – in this case, a separate Tamil homeland.

#### ***4.2. Human Rights Discourse: Internalised or Instrumentalized?***

The transitional justice agenda that has emerged within the Tamil diaspora has largely been focussed on seeking the accountability of the Rajapakse regime under the charges of war crimes, crimes against humanity and genocide. In practice, this is manifested in two main ways. First, diaspora groups have engaged in advocacy work as a means of raising public awareness and putting pressure on the international community to act. Notable in this regard has been the increasing orientation of Tamil organisations towards the ‘out-group’, consisting of efforts to disseminate information at government levels and to win the support of the broader populations of their ‘host’ countries (Vimilarajah et al 2009). Second, diaspora organisations have sought justice via third-country prosecution and the exercise of universal jurisdiction. For example, the group *Tamils Against Genocide*, have made formal complaints and launched legal efforts against many members of the Rajapakse regime visiting or residing in Western countries.

On an optimistic account these efforts would appear to support Teitel’s assertion that we have “entered the global phase of transitional justice”, a period in which the paradigm has attained truly global normative reach, underpinned by the growing ability of sub-state actors to seek recourse to “humanity’s law” (2008: 2). From this perspective, the engagement of actors in transitional justice processes is framed as a common enterprise based around a shared set of internalised norms. However, such a view arguably fails to capture the many political dimensions which motivate and condition such engagement. These are most visible when we consider the often very partial ways in which the Tamil diaspora have sought accountability, which suggest human rights discourse has been employed as an instrument for pursuing political goals. As the ICG observe, the justice-seeking initiatives that have emerged among the Tamil Diaspora since May 2009 by and large “refrain from criticising the LTTE or holding it responsible for its own crimes or its contribution to the shattered state of Sri Lankan Tamil society” (ICG 2010: i). This is illustrated for example by the case of *Tamils Against Genocide*, whose 2009 report to the

United States Justice Department urging a grand jury investigation into war-time abuses failed to engage with violations committed by the LTTE. Moreover, an initiative known as the *People's Permanent Tribunal*, a quasi-judicial process to establish accountability claims held in Dublin in 2010, neglected to sufficiently draw upon evidence provided by representatives or advocates of the Sri Lankan government and military (2010: 15).

The partial nature of these endeavours is perhaps in many ways unsurprising given the prominence of nationalism within the politically active sphere of the Tamil diaspora. However, it is worth considering the ways in which transitional justice discourse has been constructed in relation to nationalism, given the tension between the former's universalism and the latter's particularism. In particular, it is interesting to note the peculiar way in which transitional justice discourse has become increasingly *constitutive* of nationalist identity. Whilst Weinstein (et al) have observed that "the identity group to which one belongs influences attitudes toward any form of transitional justice", the present case seems to suggest that an inversion of this account also holds – that forms of transitional justice may also condition the identity group to which one belongs (2010: 42). This is illustrated by the way in which diaspora organisations have employed partial transitional justice processes as a means of mobilizing nationalist attitudes from which they may benefit. For example, as one American Tamil observed with regards to recent efforts to investigate and prosecute war-time abuses, these "appear to be more concerned with reinforcing feelings of victimisation within the diaspora than seeing justice is served" – a fact related to the desire of organisations to consolidate the diaspora's support and resources (quoted in ICG 2010: 15). The prevalence of partial calls for accountability thus not only reflects a general nationalist tendency towards denial of LTTE abuses, but also reflects the propensity of organisations to use one-sided accountability claims as a means of consolidating narratives of victimhood (grounded in human rights discourse) in order galvanize support.

The point of such an analysis is not to cast doubt on the authenticity or legitimacy of the Tamil diaspora's calls for accountability or their nationalist goals, but rather to demonstrate more generally that transitional justice cannot be understood as a universal, apolitical project. As the cases above attest, articulations of transitional justice may be deeply embedded in the politics of identity, in ways which challenge the notion of transitional justice as a mutual enterprise premised on a shared set of norms. In contrast

to the view that ‘transitional justice’ is about addressing the drivers of conflict, the phrase again appears to be capable of concealing the pursuit of a number of war-time goals. In practice, this universalist/particularist tension that has characterised the Tamil diaspora’s articulations of transitional justice has been most visible in terms of the scepticism with which judicial bodies have treated overtly biased accountability-seeking groups. The danger however is not merely that accountability-seeking of this sort won’t be effective, but also that it will serve to promote and reinforce the same kind of oppositional identity politics that has historically fuelled the Sri Lankan conflict.

#### ***4.3. Beyond Accountability: The Politics of Memorialisation and Reconciliation***

Finally, it is worth considering the alternative ways in which the Tamil diaspora have been engaged in transitional justice processes beyond accountability-seeking. First, the Tamil diaspora has been involved in memorialisation - a process which the transitional justice literature suggests is capable of reconciling tensions through the acknowledgement of past atrocities and the honouring of victims (for example ICTJ 2012). Again however, these processes have remained deeply embedded in nationalist discourse in ways which run counter to the goals of the paradigm. For example, the primary diaspora event honouring Sri Lanka’s war dead consists of the annual ‘Hero’s Day’, which combines commemoration of the victims of violence the celebration of the LTTE’s ‘martyrdom’. In this respect, memorialisation efforts by the Tamil diaspora have largely mirrored state sanctioned efforts in Sri Lanka, which as one scholar writes, have been “confined to honouring combatants and not to honouring victims at large or remembering the violence in general” (Anonymous 2011: 44). Absent memorialisation initiatives which seek to bridge the ethno-nationalist divide, such efforts from a transitional justice perspective therefore seem incapable of delivering reconciliation, and indeed, would appear to further aggravate its attainment.

Several diaspora organisations have however sought that goal in a very direct way through specific reconciliation-oriented programmes. Working around accountability issues, groups such as *Voices for Reconciliation* have undertaken projects (such as workshops) which seek to bring together individuals from across the ethnic divide. From a transitional justice perspective, the contribution of such initiatives can be conceptualised in terms of their effect in challenging dominant nationalist narratives of the past, their relationship-building effect, as well as their symbolic importance in



“demonstrating the possibility of dialogue and alternatives” to the homeland population (Haider 2012: 11). Notably however, such initiatives have been criticised by more nationalist elements of the Tamil diaspora who perceive them as legitimizing the same ‘thin’ model of reconciliation offered by the GoSL and thereby consolidating the political status quo. For example, as one *TamilNet* article reads, “the intensification of such activities targeting the Eezham Tamil diaspora in a post-Mu'llivaaykkaal scenario by such organizations, without seeking to address truth of genocide and structural genocide, but talking only about reconciliation, makes the intentions of such actors questionable” (2011).

This contestation poses two challenges to the transitional justice paradigm. First, it again highlights the fact that it cannot be conceptualised as a singular unifying “global project” (Nagy 2008), but rather a contested terrain, in which the language of transitional justice (e.g. ‘reconciliation’) conceals a diverse array of political positions about the specific content of concepts and their practical implementation. Secondly, it highlights the tension between transitional justice and issues of *political* justice more broadly - for example, with regards to the right to self-determination. Whilst the field of transitional justice contains ‘political reform’ within its toolkit of options, in many ways it is ill-equipped to deal with the dual demands of addressing both human and political rights issues. This fact would appear to derive from the assumption, often implicit within the paradigm, that the *transition itself* will have involved the righting of political injustices. In the case of Sri Lanka’s “non-liberal transition” however, such assumptions may simply lead to calls for processes that serve (or at least are perceived) to simply ‘pave over the cracks’ of broader political injustices (Hansen 2011). Having considered the ways in which the meaning of transitional justice is subject to contestation among the diaspora, the following section will now look at the way in which its application has been subject to broader power politics within the international community of states.

## 5. Transitional Justice and the International Community

Whilst there has been growing optimism about the potential for the international community and its associated institutions to implement and positively engage with endeavours related to ‘dealing with the past’, what the case of Sri Lanka illustrates quite starkly is the way in which the application of transitional justice may also be heavily constrained by politics in this sphere. As this chapter will argue, these constraints do not merely result from the state-based nature of international institutions which enables the geo-political interests of powerful non-liberal states to shape transitional justice responses. As will be argued, these constraints also derive from issues relating to the former complicity of Western states in permitting and sustaining the conflict, as well as from strategic concerns about the potentially counter-productive impacts of accountability-seeking in terms of Sri Lanka’s domestic political dynamics. The aim is thus to challenge the dominant conception of transitional justice as a unifying “global project” and to highlight the manifold ways in which it is subject to political contestation at the global level. It will therefore seek to reinforce Høglund and Orjuela’s observation that “while the transitional justice paradigm claims universalism, it is at the same time very arbitrary in terms of how it functions and in terms of who is held accountable” (Høglund and Orjuela 2012: 6).

### *5.1. Accountability-Seeking in a System of States: between Norms and Interests*

Whilst Teitel observes a trend of “growing entrenchment and institutionalization of the norms and mechanisms of transitional justice” epitomised by the establishment of the permanent International Criminal Court (ICC), our present example serves as a strong reminder of the limitations imposed on transitional justice by the state-based nature of this accountability-seeking institution (2008: 3). With its potential scope immediately circumscribed by Sri Lanka’s non-signatory status to the Rome Statute (thereby curtailing the possibility for present or future self-referral and the exercise of the Chief Prosecutor’s *proprio motu* powers), the opportunities for investigation have rested with possibility of referral from the United Nations Security Council (UNSC) under its Chapter VII powers.<sup>6</sup>

---

<sup>6</sup> It has also been argued by several commentators that the UNSG has the power to establish a commission of inquiry of the sort previously used to investigate violations in Guinea (2009) and the assassination of Benazir Bhutto in Pakistan (2010) (for example see Oette 2012). Whilst this would appear to be the kind of

The absence of an effort for a referral thus far however draws our attention to the importance of geo-political considerations in conditioning the application of international transitional justice mechanisms. Two aspects of the Sri Lankan case in particular appear to demarcate it from the previously successful referrals of Darfur and Libya to the ICC. First, unlike these foregoing cases, Sri Lanka is subject to strategic concerns which levitate very strongly against the pursuit of justice - most significantly, in terms of China's desire to consolidate its maritime hegemony over the Indian Ocean with the cooperation of the current regime (a fact illustrated by its emergence as the country's largest donor in recent years) (Holt 2011: 150).

Second, and perhaps most importantly, the case of Sri Lanka is of particular symbolic importance given the growing divide within the international community about the appropriate scope of international judicial intervention, with China and Russia strongly seeking to resist setting a precedent for investigating states engaged in supposedly legitimate 'counter-insurgency'. In this sense, the application of transitional justice appears to be increasingly subject to what Malloch Brown has recently referred to as a "new cold war of ideas" (quoted in *Channel 4 News* 2011) concerning compliance with human rights norms, in ways which challenge the conceptualization of the paradigm as a "global project" (Nagy 2008).

### ***5.2. Complicated by Complicity?***

Looking beyond the political interests of non-liberal states, it is also worth briefly considering the way in which international justice-seeking has been aggravated by the former complicity of Western powers in the Sri Lankan conflict. In particular, the GoSL's adept harnessing of the West's dominant 'War on Terror' discourse throughout its 'counter-insurgency' campaign appears to have been exceptionally effective in undermining later calls for accountability. Whilst Holt has noted that condemnation of human rights abuses during the conflict was muted given "hypocritical [US and UK] involvement in extraordinary rendition, torture and detention of terror suspects elsewhere" (2011: 158), this dynamic appears to have partly persisted in the aftermath of the conflict. This is perhaps most strongly apparent in terms of the language of the

---

"independent international mechanism" advocated by the Panel of Expert's Report (2011), Ban-Ki Moon has rejected this possibility, insisting that such an initiative would require the consent of either the GoSL or the Security Council.

UNHRC resolution in May 2009 which congratulated the government on its victory over the LTTE, and reaffirmed its “sovereign rights to protect its citizens and to combat terrorism” (UNHRC 2009).

Furthermore, the West’s failure to condemn, or intervene to prevent, abuses during war-time appears to have had the longer-term effect of undermining the opportunities for positive engagement with the Tamil diaspora on transitional justice issues in the wake of the conflict. In particular it has been observed that the second generation of Tamil diaspora, many of whom experienced suspicion and ‘securitization’ as a result of policies during the high-water mark of the ‘War on Terror’ in the mid-2000s, have become increasingly radicalized (Vimalarajah 2010: 8). Thus not only has the complicity of the West in legitimizing Sri Lanka’s so-called ‘War on Terror’ weakened its ability to condemn violations of international law, but it has also aggravated many of the nationalist tendencies of the diaspora in ways which undermine the potential for reconciliation in the longer-term.

### ***5.3. Strategic Concerns about Accountability-Seeking***

Finally, it is important to note that the application of transitional justice has also been discussed in terms of its potential negative impact with regards to Sri Lanka’s domestic political dynamics. More specifically, the view has been articulated that accountability-seeking by the international community may carry with it the risk of a popular backlash which is likely to reinforce the Rajapakse regime’s nationalist base and therefore undermine the prospects for ‘positive’ peace in the long-term. As Welikala argues for example, by projecting international accountability-seeking as a form of persecution of Sri Lanka, “the regime can mobilise popular support, inflame populist paranoia ... and thus further entrench itself” (2011b). As such, she suggests that the international community ought to defer accountability issues and instead focus on a policy of engagement with Colombo.

Whilst critics such as Anketell (2012) have argued to the contrary that international pressure for accountability has had many positive impacts in terms of tackling the structural causes of violence in Sri Lanka (for example in challenging the climate of impunity), the aim here is not to provide adjudication on this debate. Rather, in highlighting the way in which accountability-seeking is being discussed in terms of its

instrumental value to the pursuit of a number of other political goals, the desire is to further challenge the dominant formulation of transitional justice as a global project consisting of a pre-determined list of values and mechanisms. The apparent way in which accountability seeking is subject to these strategic concern instead lends support to Aplant's re-conceptualisation of transitional justice as essentially "a *negotiation* between normative political forces; the infusion of moral (and legal) considerations into what it is an inherently political project" (2012 emphasis added).

In this context, where the possibility for firm investigation into violations of international law has been undermined by the geo-political interests, former actions and strategic concerns of powerful actors within the international community, accountability-seeking from the international community has largely continued to operate via the exhortatory force of both the UNSG's Panel of Experts Report and the UNHRC, the latter of which passed a resolution in March 2012 asking the GoSL to explain how it will investigate allegations of human rights abuses. Whilst from one perspective this last development would appear to signal progress since the resolution in May 2009, it is important to note the way in which it also appears to endorse and condone the government's existing response by urging it to implement the recommendations of the LLRC.

In this respect, it would seem that the international community remains highly vulnerable to judging the progress of the GoSL's transitional justice response in terms of the execution of its 'home-grown' initiatives. As has been argued in Chapter Three however, these flawed initiatives are likely to amount to serving little more than a performative function for the government, enabling it to deflect accountability issues whilst concealing continued domination and abuse under the guise of 'reconciliation'. Whilst it seems unlikely that the recent announcement of the National Action Plan for the implementation of the LLRC's recommendations or the establishment of a panel of inquiry into human rights abuses committed by the army will yield a substantive form of transitional justice, it remains an open question whether these initiatives will be sufficient to "outlast international attention" (*Colombo Telegraph* 2012b). In the meantime, the GoSL's deft manipulation of the perceptions and interests of powerful actors within the international community continues to underscore the highly arbitrary nature of the way in which transitional justice functions, despite the paradigm's claim to universalism.

## 6. Conclusion

It has been suggested in this paper that the critical scholarship which has recently emerged in the field of transitional justice offers an extremely useful way of thinking about the case of Sri Lanka and the recent proliferation of a range of articulations about how to deal with its past. In seeking to bring politics firmly back into the analysis, these perspectives draw our attention to the contested nature of transitional justice in practice, and to the underlying dynamics which animate this “battlefield” (Bell 2009: 24). Through an analysis of the primary actors engaged in transitional justice processes in Sri Lanka, this paper has sought to emphasize and underline the value of three crucial insights in particular.

First, it has been argued that the case of Sri Lanka strongly confirms the need to remain attentive to the way in which the *language* of transitional justice is employed. As the government’s use of the term ‘reconciliation’ seems to suggest in particular, the expansion of the paradigm to incorporate a wide variety goals and practices has provided actors with much scope to appropriate its concepts, whilst simultaneously stripping these of their normative content. In failing to understand the way in which the language of transitional justice may act as a ‘cloak’ that conceals a wide variety of interests and political positions, we run the risk of conferring legitimacy upon responses (such as the LLRC) that deviate heavily in practice from the norms and ideals that they purport to be premised upon.

Second, it has been argued that to understand the emergence and application of transitional justice responses, we need to pay close attention to the *political interests* and *structures of power* which drive them. With regards to the GoSL’s domestic transitional justice initiatives for instance, it has been posited that the emergence of these can be primarily understood in terms of their political usefulness to the regime - both in obviating calls for accountability via their ‘performative function’ and in disguising the ongoing consolidation of authority over the Tamil population. In this respect, we have observed the peculiar way in which transitional justice, while frequently assumed to be addressing conflict, may also contain the potential to conceal ongoing domination and abuse. Furthermore, the instrumentalization of transitional justice in pursuit of political goals leads us to question its conceptualisation as a global project grounded in universally shared norms. As the use of human rights discourse by accountability-seeking

Tamil diaspora organisations attest, transitional justice processes may be tightly intertwined with the particularist goals of nationalism. On a broader level, it would seem that transitional justice responses are also deeply embedded in global structures of power which strongly determine their application. In light of the way in which accountability-seeking in Sri Lanka has been undermined by the geo-political interests, former actions and strategic concerns of powerful actors within the international community, we are reminded of the often very arbitrary nature of the way in which transitional justice functions despite its appeal to universalism.

Finally, the recent body of critical scholarship is hugely pertinent to the case of Sri Lanka because of the way in which it remains attuned to the question of *what is being 'transitioned', and on whose terms*. Not only does this sort of thinking provoke healthy scepticism about appeals to the 'localization' of transitional justice, but it also leads us to consider the parity of those actors involved in seeking to address past abuses. Whilst much of the traditional literature tends to assume that transitional justice responses will take the form of a negotiation between actors, the case of Sri Lanka strongly highlights the need to take into consideration the presence of power asymmetries in conditioning these. In these instances, transitional justice processes contain the potential, as Woolford notes, to simply "pave over the cracks" of broader political injustice whilst serving to "reinforce entrenched patterns of power through the offering of merely palliative forms of redress" (2011: 138). Thus counter to the assumption that transitional justice processes are about challenging old forms of power, what the Sri Lankan case highlights quite starkly is the way in which they may also serve to produce and legitimize new forms of power. In this respect, there is a strong temptation to adjust Foucault's inversion of Clausewitz's axiom that "power is war, a war continued by other means" (Hall 1992: 79). To the extent that transitional justice itself consists of the projection and consolidation of power, we may perhaps also rightfully characterise it as 'war by other means'.

## Bibliography

Anderson, B. 1992. *Long-Distance Nationalism: World Capitalism and the Rise of Identity Politics: The Werthem Lecture*. (Amsterdam: Centre for South Asian Studies).

Anonymous. 2011. 'Against the Grain: Pursuing a Transitional Justice Agenda in Postwar Sri Lanka', *International Journal of Transitional Justice*, Vol. 5, No. 1, pp. 31-51.

Anketell, N. 2011. 'The Silence of Sri Lanka's Tamil Leaders on Accountability for War Crimes: Self-Preservation or Indifference?', *Oxford Transitional Justice Research Working Paper Series on Democracy, Justice and Reconciliation in Sri Lanka*, [Online]. Available at: <http://www.csls.ox.ac.uk/otjr.php?show=currentDebate8> [Accessed on 24 May 2012].

Anketell, N. 2012. 'Sri Lanka and the Urgent Need for Accountability', *Oxford Transitional Justice Research Working Paper Series on Democracy, Justice and Reconciliation in Sri Lanka*, [Online]. Available at: <http://www.csls.ox.ac.uk/otjr.php?show=currentDebate8> [Accessed on 25 May 2012].

Apland, K. 2012. 'The Power and Politics of Transitional Justice', *International Relations and Security Network*, 26 January, [Online]. Available at: <http://isnblog.ethz.ch/justice/the-power-and-politics-transitional-justice>. [Accessed 12 July 2012].

Arbour, L. 2011. 'What South Africa Can do to Help with Reconciliation in Sri Lanka', *The Sunday Independent*, 24 July [Online]. Available at: <http://www.crisisgroup.org/en/regions/asia/south-asia/srilanka/What%20South%20Africa%20can%20do%20to%20help%20with%20reconciliation%20in%20Sri%20Lanka.aspx>. [Accessed 22 July 2012].

BBC. 2010. 'Sri Lanka's Rajapaksa Dismisses UN Human Rights Council', 7 March [Online]. Available at: <http://news.bbc.co.uk/1/hi/8553095.stm>. [Accessed 20 July 2012].

Bell, C. 2009. 'Transitional Justice, Interdisciplinarity and the State of the 'Field' or 'Non-Field'', *The International Journal of Transitional Justice*, Vol. 3, No. 1, pp. 5-27.



Borraine, A. 2004. 'Retributive Justice and Restorative Justice: Contradictory or Complimentary?' in Adler, N. (ed), *Genocide and Accountability*. (Amsterdam: Amsterdam University Press). pp. 39-52.

Brinkerhoff, J. 2011. 'Diasporas and Conflict Societies: Conflict Entrepreneurs, Competing Interests or Contributors to Stability and Development', *Conflict, Security & Development*, Vol. 11, No. 2, pp. 115-143.

*Channel 4 News*. 2011. 'Blame Russia and China for Sri Lanka Failure, not UN's Ban', 26 April, [Online]. Available at: <http://www.channel4.com/news/blame-russia-and-china-for-sri-lanka-failure-not-uns-ban>. [Accessed 24 June 2012].

Cherry, J. 2009. 'Truth and Transitional Justice in South Africa' in Van De Merwe, H., Baxter, V. & Chapman, A. (eds), *Assessing the Impact of Transitional Justice: Challenges for Empirical Research*. (Washington: United States Institute of Peace). pp. 249-264.

Cochrane, F., Baser, B. & Swain, A. 2009. 'Home Thoughts from Abroad: Diasporas and Peace-Building in Northern Ireland and Sri Lanka', *Studies in Conflict and Terrorism*, Vol. 32, No. 8, pp. 681-704.

Cohen, R. 2008. *Global Diasporas: An Introduction* (Second Edition). (London: University College London Press).

*Colombo Telegraph*. 2012a. 'US Welcomes Sri Lanka's National Action Plan', 2 August, [Online]. Available at: <http://www.colombotelegraph.com/index.php/u-s-welcomes-sri-lankas-national-action-plan/>. [Accessed 5<sup>th</sup> August].

*Colombo Telegraph*. 2012b. 'Sri Lanka Says Investigations of Alleged Tamil Killings By Government Troops May Take Five Years', 26 July, [Online]. Available at: <http://www.colombotelegraph.com/index.php/sri-lanka-says-investigations-of-alleged-tamil-killings-by-government-troops-may-take-5-years/>. [Accessed 28 July 2012].

*Daily News*. 2012. 'Lanka's Economic Growth Impressive', 28 March, [Online]. Available at: <http://www.dailynews.lk/2012/03/28/bus03.asp>. [Accessed July 15 2012].

Drexler, E. 2011. 'The Failure of International Justice in East Timor and Indonesia' in Hinton, A. (ed), *Transitional Justice: Global Mechanisms and Local Realities after Genocide and Mass Violence*. (New Brunswick: Rutgers University Press). pp. 49-66.

Dudai, R. & Cohen, H. 2010. 'Dealing with the Past when the Conflict is Still Present: Civil Society Truth-Seeking Initiatives in the Israeli-Palestinian Conflict' in Shaw, R. & Waldorf, L. (eds), *Localizing Transitional Justice: Interventions and Priorities After Mass Violence*. (California: Stanford University Press). pp. 228-252.

Dwyer, L. 2011. 'Building a Monument: Intimate Politics of "Reconciliation" in Post-1965 Bali' in Hinton, A. (ed), *Transitional Justice: Global Mechanisms and Local Realities after Genocide and Mass Violence*. (New Brunswick: Rutgers University Press). pp. 227-248.

Fair, C. 2007. 'The Sri Lankan Tamil Diaspora: Sustaining Conflict and Pushing for Peace' in Smith, H. & Stares, P. (eds), *Diasporas in Conflict: Peace-makers or Peace-wreckers?* (New York: United Nations University Press). pp. 172-195.

Fernando, J. 2011. 'The State Defence and City Development Ministry: From Utopia to Dystopia', *Groundviews*, 9 Nov, [Online]. Available at: <http://groundviews.org/2011/11/09/the-state-defense-and-city-development-ministry-from-utopia-to-dystopia/>. [Accessed 10 July 2012].

Guruparan, K. 2011. 'Some Reflections on the Relationship Between 'Peace' and 'Justice' in Post-War Sri Lanka', *Oxford Transitional Justice Research Working Paper Series on Democracy, Justice and Reconciliation in Sri Lanka*, [Online]. Available at: <http://www.csls.ox.ac.uk/otjr.php?show=currentDebate8> [Accessed on 24 May 2012].

Haider, H. 2012. 'Transnational Transitional Justice and Reconciliation: The Participation of Conflict-generated Diaspora in Addressing the Legacy of Mass Violence', *A Scoping Paper*. (Birmingham: Governance and Social Development Resource Center).

Hall, S. 1992. 'The Work of Representation' in Hall, S. (ed), *Representation: Cultural Representation and Cultural Signifiers*. (London: Sage). pp. 72-81.

Hansen, T. 2011. 'Transitional Justice: Towards a Differentiated Theory', *Oregon Review of International Law*, Vol. 13, No. 1, pp. 1-46.

Hinton, A. 2011. 'Introduction' in Hinton, A. (ed), *Transitional Justice: Global Mechanisms and Local Realities after Genocide and Mass Violence*. (New Brunswick: Rutgers University Press). pp. 1-22.

Hoglund, K. & Orjuela, C. 2011. 'Winning the Peace: Conflict Prevention after a Victor's Peace in Sri Lanka.' *Contemporary Social Science*, Vol. 6, No. 1, pp. 19-37.

Hoglund, K. & Orjuela, C. 2012. 'Transitional Justice, Globalization and Friction in Post-War Sri Lanka', paper presented at the *National Conference for Peace and Conflict Research*. (University of Gothenburg).

Holt, S. 2011. *Aid, Peacebuilding and the Resurgence of War: Buying Time in Sri Lanka*. (New York: Palgrave Macmillan).

HRW. 2011. *Sri Lanka: Report Fails to Advance Accountability*, 16 December, [Online]. Available at: <http://www.crisisgroup.org/en/publication-type/media-releases/2011/asia/statement-on-the-report-of-sri-lanka-s-lessons-learnt-and-reconciliation-commission.aspx>. [Accessed 14 July 2012].

ICG. 2010. 'The Sri Lankan Tamil Diaspora after the LTTE', *Asia Report No. 186*, 23 February. (Colombo/Brussels).

ICG. 2011. *Statement on the Report of Sri Lanka's Lessons Learnt and Reconciliation Commission*, 21 December, [Online]. Available at: <http://www.crisisgroup.org/en/publication-type/media-releases/2011/asia/statement-on-the-report-of-sri-lanka-s-lessons-learnt-and-reconciliation-commission.aspx>. [Accessed 12 July 2012].

ICG. 2012. 'Sri Lanka's North II: Rebuilding Under the Military', *Asia Report No. 220*, 16 March. (Colombo/Brussels).

ICTJ. 2009. 'What is Transitional Justice?', *Issues in Transitional Justice Series*, [Online]. Available at: <http://ictj.org/sites/default/files/ICTJ-Global-Transitional-Justice-2009English.pdf>. [Accessed 12 July 2012].

ICTJ. 2012. 'Truth and Memory', *Issues in Transitional Justice Series*, [Online]. Available at: <http://ictj.org/our-work/transitional-justice-issues/truth-and-memory>. [Accessed 14 July 2012].

Illif, A. 2012. 'Root and Branch: Discourses of 'Tradition' in Grassroots Transitional Justice', *The International Journal of Transitional Justice*, Vol. 6, No. 2, pp. 253-273.

Indian Express. 2012. 'Sri Lanka Cautions Against Imposing External Solution', 16 May, [Online]. Available at: <http://www.indianexpress.com/news/sri-lanka-cautions-against-imposing-external-solution/950039/>. [Accessed 9 July 2012].

Isa, F. G. 2010. 'Challenges for Transitional Justice in Contexts of Non-transition: The Case of Colombia', paper presented at the *XXIX International Congress of Latin American Studies*. (Toronto).

Leebaw, B. 2008. 'The Irreconcilable Goals of Transitional Justice', *Human Rights Quarterly*, Vol. 30, No. 1, pp. 95-118.

LLRC. 2010. *The Mandate* [Online]. Available at: <http://www.llrc.lk/>. [Accessed 22 May 2012].

Lundy, P. & McGovern, M. 2008. 'Whose Justice? Rethinking Transitional Justice from the Bottom Up', *Journal of Law and Society*, Vol. 35, No. 2, pp. 265-292.

Karthick, R. M. 2012. 'Reconciliation of Sri Lanka in Line with that of South Africa', *Global Peace Support Group*, 23 June, [Online]. Available at: <http://www.globalpeacesupport.com/2012/06/reconciliation-of-sri-lanka-in-line-with-that-of-south-africa-by-r-m-karthik/>. [Accessed 15 July 2012].

Nagy, R. 2008. 'Transitional Justice as Global Project: Critical Reflections', *Third World Quarterly*, Vol. 29, No. 2, pp. 275-289.

News Line. 2010. 'Lessons Learnt Commission to Begin Work from Kadirgamar Institute', June 4 [Online]. Available at: [http://www.priu.gov.lk/news\\_update/Current\\_Affairs/ca201006/20100604\\_lessons\\_learned\\_commission.htm](http://www.priu.gov.lk/news_update/Current_Affairs/ca201006/20100604_lessons_learned_commission.htm). [Accessed 22 May 2012].

Orjuela, C. 2012. 'Diaspora Identities and Homeland Politics: Lessons from the Sri Lanka/Tamil Eelam Case' in Lyons, T. & Mandaville, P. (eds), *Politics from Afar: Transnational Diasporas and Networks*. (London: Hurst and Company).

Ranganathan, M. 2010. *Eelam Online: The Tamil Diaspora and the War in Sri Lanka*. (Newcastle upon Tyne: Cambridge Scholars Publishing).

Rangelov, I. & Teitel, R. 2011. 'Global Civil Society and Transnational Justice' in Albrow, M. & Seckinelgin, H. (eds), *Global Civil Society 2011: Globality and the Absence of Justice*. (Basingstoke: Palgrave Macmillan). pp. 162-177.

Renner, J. & Spencer, A. 2012. 'Introduction' in Renner, J. & Spencer, A. (eds), *Reconciliation after Terrorism: Strategy, Possibility or Absurdity?*. (London: Routledge). pp. 1-23.

Rouhana, N. 2011. 'Key Issues in Reconciliation: Challenging Traditional Assumptions on Conflict Resolution and Power Dynamics' in Bar-Tal, D. (ed), *Intergroup Conflicts and Their Resolution: A Social Psychological Perspective*. (New York: Taylor & Francis Group). pp. 291-314.

Shain, Y. 2002. 'The Role of Diasporas in Conflict Perpetuation or Resolution', *SAIS Review*, Vol. 22, No. 2, pp. 115-144.

Shashikumar, V. K. 2009. 'The Rajapaksa Model of Combating Terror', *Indian Defence Review*, Vol. 24, No.4.

Schonthal, B. 2011. 'Translating Remembering' in Holt, J. (ed), *The Sri Lanka Reader: History, Culture, Politics*. (London: Duke University Press). pp. 542-556.

*Sri Lankans Puwath*. 2012. 'UK MPs Commend Rehabilitation and Resettlement Process', 6<sup>th</sup> August, [Online]. Available at: <http://srilankanspuwath.co.uk/web/2012/08/06/uk-mps-commend-rehabilitation-and-resettlement-process/>. [Accessed 6<sup>th</sup> August].

*TamilNet*. 2011. 'Eezham Tamil Diaspora Activists in UK Question Sri Lanka Reconciliation Motives', 19 December, [Online]. Available at: <http://www.tamilnet.com/art.html?catid=79&artid=34715>. [Accessed 20 July 2012].

Teitel, R. 2008. 'Editorial Note – Transitional Justice Globalized', *The International Journal of Transitional Justice*, Vol. 2, No. 1, pp. 1-4.

Tolbert, D. 2012. 'Allegations of Crimes Against Humanity in Sri Lanka Demand Full Investigation', *International Centre for Transitional Justice*, 29 April, [Online]. Available at: <http://ictj.org/news/allegations-crimes-against-humanity-sri-lanka-demand-full-investigation>. [Accessed on 29 June 2012].

United Nations Secretary-General (UNSG) Panel of Experts. 2011. 'Report of the Secretary-General's Panel of Experts on Accountability in Sri Lanka', 31 March, [Online]. Available at: [http://www.un.org/News/dh/infocus/Sri\\_Lanka/POE\\_Report\\_Full.pdf](http://www.un.org/News/dh/infocus/Sri_Lanka/POE_Report_Full.pdf). [Accessed 15 July 2012].

United Nations Human Rights Council (UNHRC). 2009. '11<sup>th</sup> Special on the Human Rights Council: 'The Human Rights Situation in Sri Lanka'', 27 May, [Online]. Available at: <http://www2.ohchr.org/english/bodies/hrcouncil/specialsession/11/index.htm>. [Accessed 15 July 2012].

Venugopal, R. 2009. 'The Making of Sri Lanka's Post-conflict Economic Package and the Failure of the 2001-2004 Peace Process', *CRISE Working Paper No. 64*. (Oxford: Centre for Research on Inequality, Human Security and Ethnicity).

Vimalarajah, L., Kanapathipillai, V., Neuweiler, S. & Kananathan, R. 2010. 'Engaging Tamil Diaspora for Peace and Development: Concepts, Insights and Key Lessons', *Report for the Berghof Peace Support and Centre for Just Peace and Democracy*, Paper No. 31. (Berlin).

Vinajmuri, L. 2010. 'Deterrence, Democracy, and the Pursuit of International Justice', *Ethics & International Affairs*, Vol. 24, No. 2, pp. 191-211.

Weerakoon, P. 2010. 'Winning the Invisible Conflict: Is Sri Lanka Headed for Sustainable Peace', *Groundviews*, 27 May [Online]. Available at: <http://groundviews.org/2010/05/27/3471/>. [Accessed 22 July 2012].

Weinstein, H., Fletcher, L., Vinck, P. & Pham, P. 2010. 'Stay the Hand of Justice: Whose Priorities Take Priority?' in Shaw, R. & Waldorf, L. (eds), *Localizing Transitional Justice: Interventions and Priorities After Mass Violence*. (California: Stanford University Press). pp. 27-48.

Welikala, A. 2011a. 'Sri Lanka's Post-War Constitutional Reform Debate', *Oxford Transitional Justice Research Working Paper Series on Democracy, Justice and Reconciliation in Sri Lanka*, [Online]. Available at: <http://www.csls.ox.ac.uk/otjr.php?show=currentDebate8> [Accessed on 24 May 2012].

Welikala, A. 2011b. 'War Crimes and Accountability in Sri Lanka', *Open Democracy*, 30 May, [Online]. Available at: <http://www.opendemocracy.net/asanga-welikala/sri-lanka-war-crimes-and-accountability> [Accessed 26 May 2012].

Welikala, A. 2011c. 'Inconvenient Truths: International Accountability and Domestic Politics in Sri Lanka', *Open Democracy*, 19 August, [Online]. Available at: <http://www.opendemocracy.net/asanga-welikala/inconvenient-truths-international-accountability-and-domestic-politics-in-sri-lanka> [Accessed 26 May 2012].

Welikala, A. 2012b. 'Reconciliation in Sri Lanka Means the Youth Must Lead the Way': A Sceptical Response', *Open Democracy*, 5 March, [Online]. Available at: <http://www.opendemocracy.net/opensecurity/asanga-welikala/reconciliation-in-sri-lanka-means-youth-must-lead-way-sceptical-respons> [Accessed 20 May 2012].

Woolford, A. 2011. 'Genocide, Affirmative Repair and the British Columbia Treaty Process' in Hinton, A. (ed), *Transitional Justice: Global Mechanisms and Local Realities after Genocide and Mass Violence*'. (New Brunswick: Rutgers University Press). pp. 137-156.

Wright, T. 2012. 'Sri Lankans Split Over UN Resolution', *India Realtime*, March 21, <http://blogs.wsj.com/indiarealtime/2012/03/21/sri-lankans-split-over-u-n-resolution/>. [Accessed 20 July 2012].