

**SOME REFLECTIONS ON THE RELATIONSHIP
BETWEEN ‘PEACE’ AND ‘JUSTICE’ IN POST-WAR SRI LANKA**

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The report on accountability in post-war Sri Lanka by the United Nations Secretary General’s (UNSG) panel of experts has raised many difficult questions for those interested in genuine peace and reconciliation in Sri Lanka. According to the panel, it is reasonable to conclude that Sri Lanka’s Tamil community was subjected to extermination and persecution by the Sri Lankan government in the latter’s final war against the Liberation Tigers of Tamil Eelam (LTTE),¹ which ended in May 2009. The report states that Tamils were targeted for being Tamils, for political reasons, on ethnic grounds. The pertinent question is how can Tamils negotiate for peace and a fair political solution not just with a government that sought to persecute them and exterminate a part of their population, but also with the very large majority of the Sinhalese population that endorsed the government’s actions?²

In this short essay I will seek to contextualise and reflect on the complicated but interdependent goals of peace and justice in post war Sri Lanka in light of the UN report. I define peace for the purposes of this essay as a political solution to the ethnic conflict and justice as accountability for the past. The main point I wish to make is that

¹ United Nations, *Report of the Secretary General’s Panel of Experts on Accountability in Sri Lanka*, (31 March 2011) available at www.un.org/News/dh/infocus/Sri_Lanka/POE_Report_Full.pdf, para 251 (b) and (d). Extermination is defined in international law as the killing of one or more persons, including by inflicting conditions of life calculated to bring about the destruction of part of a population International Criminal Court, ‘*Elements of Crimes*’, Adopted by the Assembly of States on 10 September 2002, Official Records ICC/ASP/1/3. p. 117

² At the General Elections of 2010 the incumbent Government received 60.33 per cent of the vote and received a 2/3rds majority in parliament, (the latter was thought to be an impossibility under a proportional representation system). In the Presidential elections of 2009 the incumbent President received 57.88% of the vote. The main opposition party supported the Government’s conduct of the war and also maintains the position that there should be no independent international inquiry into war crimes. See for example speech made by Mr Ranil Wickremesinghe in Parliament on the UN Expert Panel report, May 2011 <<http://www.srilankabrief.org/2011/05/speech-made-by-hon-ranil-wickremesinghe.html>>

international calls for accountability will *not* destabilise any peace initiatives because there are no such genuine peace initiatives underway in post-war Sri Lanka. I will also argue that the trust deficit that exists between the different communities stifles hopes for peace and justice in both the short- and long-term, and that, in order to break the deadlock in Sri Lanka, international calls for accountability, despite their limitations, are important and should be supported.

1.

The conversations around the UN report since it was published in April 2011 reflect deep divisions within Sri Lanka. The Sri Lankan government's official position is that there were no civilian casualties³, a perception shared by many in the majority Sinhalese community.⁴ Even where this view is not shared, two justifications are mooted for the 'inevitability' of the deaths that occurred. First, there is the consequentialist or instrumental justification which says that, if the LTTE was not defeated, then the war would have continued indefinitely, and a greater number of Tamil civilians would have died compared to those 'unfortunate' Tamils who died in the Sri Lankan army's final offensive on the LTTE. It is ironic that an instrumental justification has been relied upon in this context, given that the principle of 'the ends justify the means' was precisely what the LTTE was accused of relying upon during its war with the Sri Lankan armed forces.

A second way in which some parties provide moral justification for these killings is to shift the moral blame to the LTTE, which is alleged to have used those who perished as human shields.⁵ The argument is that, even though the killing of these civilians was

³ Department of Information, Government of Sri Lanka, 'Forces Maintained Zero Civilian Casualty rate at all times- Service Commanders', (13 September 2010) Available at http://www.priu.gov.lk/news_update/Current_Affairs/ca201009/20100913forces_maintained_zero_civilian_casualty_rate.htm

⁴ These are my reflections on what is admittedly a very complex debate. I acknowledge that I engage in certain generalisations. But I think that, for the purposes of this piece and with the limited space that it provides, such generalisations are unavoidable. ⁴ I have also simplified and dichotomized the conflict in Sri Lanka as involving only the Tamils and Sinhalese. Lack of space prevents me from discussing how the problems faced by the Muslim Community and the Up Country Tamil communities relate to the post-war politics of peace and justice in Sri Lanka.

⁵ Victor Ivan, Editor of the left leaning *Ravaya* newspaper recently articulated this in a recent editorial (16 May 2011) For a Tamil translation of this Editorial (written originally in Sinhala) see Thenee.com, <http://thenee.com/html/170511-5.html>

unfortunate, it was inevitable: if a soldier aims at an LTTE cadre, is it not inevitable that he will also hit his/her shield?

The concern with labelling these people as ‘human shields’ is that it dehumanises them.⁶ This in turn downplays, and indeed justifies, the loss of their lives. Such deaths go unacknowledged. They are deemed ungrievable. Indeed, attempts within the Tamil community to acknowledge and grieve these deaths have been vilified by the government as celebrations of LTTE terrorism.⁷ Yet, if Tamils are not allowed to mourn their dead, there is very little hope for reconciliation in Sri Lanka.

2.

Since 10 January 2011, the Tamil National Alliance (TNA) has been engaged in talks with the government. There remains, however, a fundamental disagreement between the two sides. The Tamil side says that a solution cannot be found within the framework of the present unitary constitution. Sri Lankan Tamils have consistently rejected the unitary constitutional framework, as evidenced not just by recent elections but by all elections since 1956.⁸ The government nevertheless claims that its mandate (from the Sinhala majority) is to retain the unitary structure of the state. For the unitary state—a single (non-federal) Sinhala Buddhist polity—is thought by many Sinhalese to be vital in that the preservation of Theravada Buddhism itself would be jeopardised if the island

⁶ Judith Butler argues this. See her *The Precarious Life: The Power of Mourning and Violence* (London: Verso, 2004), 37. It goes without saying that this type of dehumanisation is as bad as the initial dehumanisation of these people in using them as human shields.

⁷ In 2010, in Jaffna, Northern Sri Lanka, a religious observance to mark the first year anniversary of the end of the war was disturbed by heavy military presence. Members of the armed forces furthermore photographed and conducted security checks of all who attended; see Groundviews, ‘*Celebrating War Victory and Banning Commemoration of Dead Civilians*’ (18 June 2010) available at <http://groundviews.org/2010/06/18/celebrating-war-victory-and-banning-commemoration-of-dead-civilians-this-is-%E2%80%9Chome-grown-indigenous%E2%80%9D-reconciliation-and-freedom-in-sri-lanka/>. Similarly, in 2011, the Jaffna University Students Union conducted a remembrance event under strict police scrutiny.

⁸ 1956 was the year in which the Sinhala Only Act was passed by the Ceylon Parliament, which made the majority Sinhalese language the only official language in the country. The LTTE demanded a separate state but post-war the TNA has categorically denounced separatism and seeks a solution within a united Sri Lanka.

fractured into smaller political units.⁹ A stumbling block to any political discourse between the two sides is that each regards its position on this fundamental issue as non-negotiable. This ‘peace’ initiative, therefore, is a sham, lacking any real direction or purpose.

3.

The need for fundamental reform of the state in order to accommodate the wishes of minority populations, however, is downplayed by many influential members of the government. They insist that what ‘ordinary Tamils’ are asking for is not self-government, but economic development of their communities. It goes without saying that an ‘economics approach’ to dealing with political conflicts is grossly inadequate in societies emerging out of protracted conflict. It is also deeply concerning (and Tamil politicians have raised this concern) that, in the name of such development, the government continues to settle Sinhalese in majority Tamil and Muslim areas in the North and East. The government’s hope seems to be that, if it can change the demographic composition in the North and East, that is to say, by diluting the proportion of Tamils in those areas, then this would undermine the Tamil people’s project of territorial self-determination.¹⁰ This approach to normalisation that the government claims is being restored to the war ravaged population in the North and East is built on fear and intimidation. Disturbingly, the government threatens to withdraw even this process of normalisation if war crimes investigations are initiated.

4.

The hard truth, then, is that if there is to be worthwhile and substantive peace in Sri Lanka, accountability must play a part in building it. Peace must, in other words, include accountability. But will the pursuit of accountability deliver on peace? Notably, the UN panel of experts report has put pressure on the Sri Lankan government to take some steps that it would not have otherwise taken. For example, the government has relaxed some

⁹ Cf. H L Seneviratne, *The Work of Kings: The New Buddhism in Sri Lanka*, (Chicago: Chicago University Press, 1999)

¹⁰ Cf. Minority Rights Group International, ‘*No War, No Peace: The Denial of Minority Rights and Justice in Sri Lanka*’, available at <http://www.minorityrights.org/10458/reports/no-war-no-peace-the-denial-of-minority-rights-and-justice-in-sri-lanka.html> pp. 13-15

Emergency Regulations, removed some High Security Zones in the North and East, and released ex-LTTE cadres. But people in the North and East know very well from past experience that government policies that are given the appearance of having been withdrawn have tended to continue to operate extra-legally.¹¹ For example, the released ex-LTTE cadres are still harassed by the armed forces of the government, which maintains a very high-level presence in the North and East; there is also still no proper resettlement initiatives in the High Security Zones that have been claimed by the government to have been desecuritized; and even the Emergency Regulations that have been removed continue to be in ‘force’ extra-legally. It should be apparent, then, that although the UN report has produced some changes in government policy, those changes have been cosmetic rather than substantive. But these cosmetic changes are nonetheless important to the Tamil community in Sri Lanka because they bring important and immediate relief even if they are only short term.

Any solution to a political quagmire that is forced from the outside—that is, not locally owned—will not be sustainable because it will not help bridge the trust deficit that exists between the different constituent communities of Sri Lanka. Yet, the hard truth is that there is no local appetite either towards finding a political solution or dealing with the past, hence the need for international intervention. As argued in this essay, there is currently no genuine commitment by the Sri Lankan government to address the political demands of the Tamils. Worse still, there are denials and justifications for the horrors of the past. If this situation persists, the country will make no progress, either towards justice or peace. Therefore, calls for international accountability should be welcomed despite the inadequacy and many limitations in taking such an approach.

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¹¹ For example, the released ex-LTTE cadres are still harassed by the armed forces of the Government who maintain a very high level presence in the North and East, there is still no proper resettlement initiatives in the High Security Zones that are claimed to have been released, and even the Emergency Regulations that have been removed continue to be in ‘force’ extra legally.