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Emma Fullerton

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Dr. Brigitte Holzner, Ph.D. M.A.

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ACRONYMS AND ABBREVIATIONS

Amnesty	Amnesty International
AWAW	Association of War Affected Women
CED	International Convention for the Protection of All Persons from Enforced Disappearances
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CEJ	Centre for Equality and Justice
CENWOR	Centre for Women's Research
Covid-19	Coronavirus Disease 2019
CPA	Centre for Policy Alternatives
CRSV	Conflict Related Sexual Violence
CTF	Consultation Task Force on Reconciliation Mechanisms
CSO	Civil Society Organisation
GoSL	The Government of Sri Lanka
ICCPR	International Covenant on Civil and Political Rights
ICTY	International Criminal Tribunal for the former Yugoslavia
ILO	International Labour Organisation
IPKF	Indian Peace Keeping Force
ISIL	Islamic State of Iraq and the Levant
LLRC	Lessons Learnt and Reconciliation Commission
LTTE	Liberation Tigers of Tamil Eelam
MNIR	Ministry of National Integration and Reconciliation
NGO	Non-Governmental Organisation
NURC	The Office for National Unity and Reconciliation

OHCHR	Office of the United Nations High Commissioner for Human Rights
OMP	Office on Missing Persons
ONUR	Office for National Unity and Reconciliation
OPCAT	Optional Protocol to the Convention against Torture
OR	Office for Reparations
RFEP	Reconciliation Focused Economic Project
SGBV	Sexual and Gender-Based Violence
Sri Lanka	Democratic Socialist Republic of Sri Lanka
Suriya	Suriya Women's Development Centre
SV	Sexual Violence
2014 Summit	2014 Global Summit to End Sexual Violence in Conflict
UN	United Nations
UNHRC	United Nations Human Rights Council
UNSC	United Nations Security Council
WDC	Women's Development Centre
WHH	Women Headed Households
WIN	Women in Need
WPS	Women, Peace and Security

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1. INTRODUCTION

The Democratic Socialist Republic of Sri Lanka is a country of vibrant and diverse people, history, language, religion, and culture. The island has experienced a turbulent history, with phases of dynastic wars, 450 years of colonial rule, and recent civil war, which broke out in 1990 and persisted until 2009 and has had devastating socioeconomic and cultural consequences for the population of Sri Lanka.

The civil war was based on ethnic, religious, linguistic, and territorial divides fought between the Sri Lankan military and separation group, the Liberation Tigers of Tamil Eelam (LTTE).¹ The civil war resulted in up to 100,000 deaths, approximately one million people displaced, and one of the highest global levels of forced disappearances of people.² It is widely acknowledged that both the Government of Sri Lanka (GoSL) and the LTTE committed many war crimes and human rights violations and disappeared people nationally; however, little has been done to address the conflict, punish perpetrators, and promote reconciliation.³ Discussions of transitional justice have become increasingly commonplace and are beginning to involve a broader variety of actors, primarily fuelled by national pressure and international scrutiny.⁴ However, slow progress has been made in implementing transitional justice and providing reparations and reconciliation to all populations.⁵

Women played complex, multi-faceted roles during the armed conflict in Sri Lanka, suffering disproportionately from the effects of the war. Their hardship is exacerbated by the fact that Sri Lanka is traditionally a very patriarchal society, where women are heavily discriminated against. There is a prevalent culture of sexual and gender-based violence (SGBV), in which perpetrators remain unpunished for their

¹ V. Adriana, 'The Sri Lankan Civil War: From Conflict to Peace Building' in *Global Journal of Human-Social Science*, vol. 14, no. 2, pp. 32-42.

² Amnesty International, 'Enforced Disappearances', 2018, Available from <https://www.amnesty.org/en/what-we-do/disappearances/> (accessed 14 Dec 2019).

³ T. Deane, 'Historical and Political Background to the Erosion of the Rule of Law and Human Rights During Sri Lanka's Civil War and the Way Forward', *Small Wars & Insurgencies*, vol. 27, no. 6, 2016, p. 972.

⁴ Amnesty International, 'Flickering Hope: Truth, Justice, Reparation and Guarantees of Non- Recurrence In Sri Lanka', 25 Jan 2019 (a), pp. 1-27, <https://reliefweb.int/report/sri-lanka/flickering-hope-truth-justice-reparation-and-guarantees-nonrecurrence-sri-lanka> (accessed 10 June 2020).

⁵ R. Friedman, 'Culturally Mediated Grieving and Recovery: Reflections on Women's Experiences in Northern Sri Lanka' in *Occasional Paper Series: Women and Transitional Justice*, 2016, p. 27.

actions, thus reinforcing cycles of discrimination.⁶ Women are in need of specific transitional justice and reconciliation measures to tackle the huge socioeconomic and psychological burdens they face as a result of the armed conflict. Women's activism within Sri Lanka recognises this chasm and plays a prominent role in obtaining access to justice for women and challenging social and cultural gender norms.⁷

The political and social situation in Sri Lanka presents a challenging environment in which to discuss and promote transitional justice and women's rights; however, the current context highlights why tackling these issues is of crucial importance to promoting peace and stability in the country. Ethnic and religious violence has been re-emerging in Sri Lanka over the last few years. Furthermore, the new government, which came into power in November 2019 under Gotabaya Rajapaska, sparks concerns over the future of transitional justice and social reconciliation. This highlights the widening social divides within the country and also raises fears about political actions. Previous governments have been fairly responsive to transitional justice pressures and women's rights concerns; however, the new government seems more intent on staying in power through reigniting ethnic tensions.⁸ Furthermore, the new GoSL has withdrawn from international commitments to promoting transitional justice in Sri Lanka.

The first part of the thesis provides a theoretical framework. Chapter three explores the concept of transitional justice, the international frameworks surrounding it, and the debates and challenges around the design and implementation of transitional justice. The concept of reconciliation is highlighted as this plays a recurring theme within transitional justice in Sri Lanka. Chapter four discusses the role of women in armed conflict and transitional justice. Stereotypical narratives versus the reality of women in armed conflict are examined and this dichotomy is used to discuss the effectiveness of transitional justice mechanisms in dealing with post-conflict realities faced by women. Global policy documents are referred to - to reveal international standards of women's rights protection in armed conflict and promotion through transitional justice.

⁶ S. R. Gamage, 'Interview with Shyamala Gomez' in *Women Talk: an alternative space for women's voices in Sri Lanka*, 23 October 2018, <https://womentalksl.wordpress.com/2018/11/16/shyamala-gomez/> (accessed 5 July 2020).

⁷ Interview with Bhavani Fonseka, WhatsApp, 28 July 2020.

⁸ M. Macan-Markar, 'Divide and conquer: Sri Lankan strongman plots an election return', *Asia Review*, 30 October 2019 <https://asia.nikkei.com/Spotlight/Cover-Story/Divide-and-conquer-Sri-Lankan-strongman-plots-an-election-return> (accessed 5 March 2020).

Chapters five and six explore the contextual background to the civil war and post-conflict in Sri Lanka so that the data can be analysed and discussed within the cultural background of Sri Lanka and the context of gendered violence in society. The history of violence and ethnic and religious divisions within society is taken into account, with the ‘divide and rule’ colonial regime explored, as well as the current human rights situation in Sri Lanka. Chapter six considers the role that women play in Sri Lankan culture and how they are defined by gender interpretations. The role of women in armed conflict is examined, along with the current stigma surrounding women involved in the war. To illustrate the importance of understanding and incorporating gendered perspectives into transitional justice processes, perspectives of a variety of women in conflict are observed, taking into account the perspectives of women both as victims and as perpetrators of violence and in leadership roles, and as caretakers, providers and labourers. The varied and different experiences of women in conflict illustrate the necessity for the incorporation of women into the peace-building process.

Once the conceptual, theoretical, and contextual framework is provided, the thesis moves on to an in-depth analysis of the incorporation of women’s human rights in transitional justice in Sri Lanka. International human rights standards are considered when taking each transitional justice process into account. Both macro (national) and micro (individual) effects are studied. Discussion focuses on the role of government mechanisms, non-government organisations (NGOs), and civil society organisations (CSOs) in transitional justice, as the most prominent actors. Sri Lanka’s legal system and the influence of international organisations are addressed to a lesser extent as they operate with less influence.

Chapter seven concentrates on the governmental transitional justice processes carried out in Sri Lanka, including government commissions and institutions and the legal acts establishing these. These mechanisms are analysed for steps taken to promote transitional justice, how gender issues are brought forward and promoted, and how human rights language and approaches are used. Chapter eight explores whether Sri Lanka’s legal system is a hindrance or help in promoting transitional justice by analysing the current legal system and debates around impunity.

The ninth chapter evaluates the role of NGOs and CSOs in promoting women's rights in transitional justice processes in Sri Lanka, looking at how these organisations promote human rights and transitional justice awareness, as well as access to justice.

1.1. Objectives

This paper aims to explore the experiences of women in the Sri Lankan civil war and their contribution to transitional justice. The goal is to investigate women's inclusion and the promotion of women's rights in Sri Lankan transitional justice processes. Levels of SGBV in Sri Lanka are high and a significant proportion of this violence is directed at women, thus it seems important to find new and different ways of tackling it. Furthermore, society is largely patriarchal, with stigma surrounding women who do not conform to traditional norms. This paper aims to challenge this and reflect upon the diverse and important role women play in armed conflict and in promoting peace.

A key objective of this research is to explore methods to help promote women's rights in Sri Lanka and to contribute to the transitional justice process. Failure to address women's rights will make it harder for society to move on from conflict and further isolate those excluded from peace processes, making it less likely for transitional justice processes to succeed and causing individuals to suffer more from the trauma inflicted through these experiences and to lose the rights for which they have been fighting.

The thesis aims to take into account the experiences of women from all of society, including the experiences of Tamil and Muslim women and their incorporation into peace processes, since they have traditionally been – and to some extent currently are – excluded from social policy and political dialogue in Sri Lanka.

A broader goal of this analysis is to discuss Sri Lanka in relation to the theoretical debates surrounding transitional justice and women in conflict, in order to explore the contribution of Sri Lanka in understanding transitional justice concepts on a larger scale.

2. METHODOLOGY

2.1. Research question

Main question: How are the human rights of women addressed in transitional justice processes in Sri Lanka?

Sub-questions:

1. How do government mechanisms include the human rights of women in transitional justice processes?
2. How are women's rights addressed in legal institutions?
3. How do NGOs promote the human rights of women in transitional justice and reconciliation?

2.2. Data collection methods

The methodology was predominantly an analysis of secondary data collected through literature-based research of sources including academic journals, policy documents, and previous studies into gendered violence in Sri Lanka, such as NGO reports. This thesis also includes data from different international documents such as United Nations (UN) documents, news articles, and other websites. The data from the GoSL, judiciary, and NGOs was used to provide a comprehensive insight into transitional justice institutions and give varied perspectives and approaches on the incorporation of women's rights. A table with sub-questions of research, questions for analysis, and the sources used is included in *figure 1* below. The data was analysed and discussed within the context of Sri Lanka and the background of transitional justice and women in conflict.

Initially a thematic analysis was carried out of government reports, government transitional justice websites, and legal acts, outlining the function of each transitional justice mechanism.⁹ These documents were analysed using the questions in *figure 1*, with the data grouped into themes. A similar thematic analysis was conducted of the legal system in Sri Lanka. However, due to the limited number of successful legal cases and the failure of the government to establish a legal transitional justice mechanism, relevant international reports and academic literature were predominantly analysed.

Both primary and secondary data was collected for the chapter on NGO and CSO involvement in transitional justice in Sri Lanka. Secondary data was collected through a thematic analysis of NGO and CSO reports and websites. A list of 16 NGOs and CSOs was compiled, and eight were selected for detailed review. Criteria included the completion of, or engagement in, projects related to women's rights and transitional justice, as well as having a functioning and accessible website. A variety of NGOs and

⁹ A. Bryman, *Social Research Methods* vol. 5, Oxford, Oxford University Press, 2016, p. 584.

CSOs, with different mandates and target groups were chosen to give an inclusive picture of the range of the work covered. Reports and websites were analysed using the questions in *figure 1* and data was grouped into themes.

Figure 1: Questions for analysis and source material

Sub-questions	Sources
<p><i>1. How do government mechanisms include the human rights of women in transitional justice processes?</i></p> <ul style="list-style-type: none"> • What steps has the government taken to promote transitional justice and reconciliation? • To what extent are gender issues brought forward in reconciliation commissions? • Does the commission use human rights language and human rights approaches? How? 	<ul style="list-style-type: none"> • Commission reports • Government websites • Policy acts • NGO and other policy reviews • Academic literature • International reporting mechanisms
<p><i>2. How are women's rights addressed in legal institutions?</i></p> <ul style="list-style-type: none"> • What legal institutions have been established? • What legal cases concerning SGBV have been addressed? • Do perpetrators receive legal punishment? 	<ul style="list-style-type: none"> • International reporting mechanisms • NGO reports • Academic literature • Government reports
<p><i>3. How do NGOs and CSOs promote the human rights of women in transitional justice processes in Sri Lanka?</i></p> <ul style="list-style-type: none"> • What role do NGOs play in supporting access to justice? • Do NGOs argue from a human rights perspective? • How are NGOs composed and do they include intersectional perspectives? • Which women and which rights are encapsulated? 	<ul style="list-style-type: none"> • NGO reports • NGO websites • Interviews • International reporting mechanisms

Primary qualitative data was collected through web-based semi-structured interviews.¹⁰ Ten different NGOs and CSOs were contacted, based on the previous criteria. Participants were individually selected from the organisation's website, with preference given to those with particular experience of transitional justice and/or gender issues. A semi-structured interviewing method was chosen as the most appropriate method to gain knowledge of participants' perspectives of the roles of NGOs and CSOs in promoting women's rights in transitional justice, allowing for free-flowing conversation. Participants were provided with the background and ethical implications of involvement in the research.¹¹ Two interviews were conducted, due to lack of responses and availability. Interviews were held over internet-based audio communication.

¹⁰ Interview Questions, Annex 1.

¹¹ Consent forms will be submitted separately on a USB drive.

2.3. Data processing

Primary data was recorded, with consent and transcribed by hand. Resources included audio software, including a personal audio recorder. Analysis of primary and secondary sources was carried out by hand, with the data grouped into themes to discover recurrent patterns and concepts. Material within different categories was studied to discover the connections between themes. Data was then analysed for possible conclusions.

2.4. Research experience and limitations

Writing a thesis during the unprecedented circumstances caused by a global pandemic – Coronavirus Disease 2019 (Covid-19) – presented challenging circumstances. Initial research plans to travel to Sri Lanka and collect data through existing networks there had to be abandoned. The beginning stages of writing were accompanied by relocating countries; followed by writing and conducting research under quarantine restrictions. Furthermore, the inability to access libraries meant that research had to be collected entirely online. Communication with my supervisor was also online, which was challenging but handled effectively.

Covid-19 also severely impacted communication with organisations in Sri Lanka. Many NGOs and CSOs in Sri Lanka closed their centres because of the global pandemic, or re-directed operations. One of the interviewees had suspected Covid-19 and was admitted to hospital. Thankfully they have been released and have almost recovered. Due to limited success in contacting participants, adaptations to the methodology were made, and reports and website data provided sufficient data for analysis.

Because of the small sample size it is important to take into consideration that the primary data is anecdotal, largely preventing generalisability of the study. However, secondary data, from reports and websites, was used to supplement this. Furthermore, anecdotal evidence is a significant method of exploring individual understandings of an issue and uncovering developing theories and perspectives.

Collecting data and understanding government structures proved difficult. Government sources were challenging to access, with minimal documents available online, and ministries in a constant state of change. Furthermore, official government contact lines were unresponsive. Several emails to governmental organisations in Sri Lanka – including the Office for Reparations (OR), the Office for Missing Persons

(OMP), the Ministry of Women and Child Affairs and the Ministry of National Integration and Reconciliation (MNIR) – yielded no response. As a researcher if it is difficult to access these mechanisms, it seems likely it would be challenging for members of the general public, especially those in rural or disadvantaged areas, considering that, as of 2017, approximately 66 percent of the Sri Lankan population do not have internet access, with that number higher in rural and conflict-affected communities.¹²

Prior to conducting research there was a concern that Sri Lankan society, which is traditionally patriarchal, would make information on women in roles that do not conform with gender norms difficult to access. It was however useful and interesting to discover that NGO reports and some government documents reflected on this. However, NGO and government data on female ex-LTTE members was difficult to collect. Despite the limitations, the available data provided sufficient detail for a comprehensive analysis of the variety of women's rights approaches and needs in the context of transitional justice in Sri Lanka.

3. TRANSITIONAL JUSTICE

3.1. Development of transitional justice

The concept of transitional justice, which emerged in the 1980s, will play an integral theoretical role in this paper.¹³ In 1997 the UN Human Rights Commission accepted a group of principles, proposed by UN Special Rapporteur in his report around the question of impunity of perpetrators of human rights violations, out of which the main approach to transitional justice evolved.¹⁴ The concept contained four main areas of focus to promote human rights: the right to know, the right to justice, the right to reparations, and the guarantee of non-recurrence.¹⁵ Notably, transitional justice was initially introduced to describe the legal process of addressing human rights violations by repressive regimes in

¹² Statista, 'Internet penetration rate in Sri Lanka 2005-2017', 2020, <https://www.statista.com/statistics/765516/internet-penetration-rate-sri-lanka/> (accessed 19 July 2020).

¹³ P. Gready, 'Introduction' in P. Gready and S. Robins, *From Transitional to Transformative Justice*, Cambridge, Cambridge University Press, 2019, p. 1.

¹⁴ Swisspeace, *A Conceptual Framework for Dealing with the Past: Holism in Principle and Practice*, Bern, Swisspeace, 2012, p. 2.

¹⁵ *Ibid.*, p. 2

the progression of democratic transition, with processes centred on designing and implementing international tribunals.¹⁶

In order to promote transitional justice and deal with war crimes during and after the Yugoslavian War, the International Criminal Tribunal for the former Yugoslavia (ICTY) was established in 1993, as the first court implemented under the UN.¹⁷ However, human rights organisations accused this tribunal of focusing too narrowly on the perpetrators thus neglecting the needs of the victims, with no complimentary victims' mechanism.¹⁸ Moreover, there is little evidence that the tribunal had a positive impact upon peace; in Bosnia the opposite occurred, with hostility between ethnic groups increasing after major judgements were held.¹⁹ Thus, legal mechanisms do not always single-handedly lay the foundations for reconciliation and sustainable peace, and a more comprehensive and inclusive approach is necessary to address the intricacies of problems caused by armed conflict. Transitional justice needs to echo the pluralism found in human rights approaches to adapt to fit the complexities of post-conflict societies.²⁰

To deal with the complex realities of conflict, the concept of transitional justice has developed to include the multitude of processes involved in post-conflict transition. Jacobson argues that 'post-conflict' – a term first used at the end of the First World War – is no longer simply the act of 'guns falling silent, soldiers returning home and economic and political life returning to normal', but that there exists a much more complex process at the end of armed conflict.²¹ Alwis, Mertus and Sajjad agree that peace processes do not begin when warring parties commence talks, nor do they finish when peace agreements are signed.²² The end of an armed conflict necessitates the use of multi-layered and dynamic responses to deal with this reality. Jacobson proposes that there are enormous opportunities following wars for political and social

¹⁶ M. Fischer, 'Transitional Justice and Reconciliation: Theory and Practice' In B. Austin, M. Fischer, H. Giessmann (eds.), *Advancing Conflict Transformation: The Berghof Handbook*, vol. 2, 2011, pp. 406-407.

¹⁷ United Nations International Criminal Tribunal for the former Yugoslavia, <https://www.icty.org> (accessed 20 May 2020).

¹⁸ Fischer, p. 408.

¹⁹ J. Meernik, 'Justice and Peace? How the International Criminal Tribunal Affects Societal Peace in Bosnia' in *Journal of Peace Research* vol. 43, no. 3, 2005, p. 287.

²⁰ Gready, p. 13.

²¹ R. Jacobson 'Women "After" Wars' in C. Cohn (ed.) *Women and Wars: Contested Histories, Uncertain Futures*, Cambridge, Polity Press, 2013, p. 215.

²² M. de Alwis, J. Mertus and T. Sajjad, 'Women and Peace Processes' in C. Cohn (ed.), *Women and Wars: Contested Histories, Uncertain Futures*, Cambridge, Polity Press, 2013, p. 170.

transformations.²³ The main purpose of transitional justice processes is to encourage positive social transformations: improving economic, social, and political equality and to ensure that the rights of all individuals are respected in the aftermath of conflict.

3. 2. Transitional justice frameworks

The UN defines transitional justice as ‘the full range of processes and mechanisms associated with a society’s attempt to come to terms with a legacy of large-scale past human rights abuses, ensure accountability, serve justice, and achieve reconciliation’.²⁴ The UN views promoting human rights during peace processes as an essential component of transitional justice.²⁵ Transitional justice mechanisms are comprised of a multitude of processes and can take different forms depending on the context, including, but not limited to: the establishment of tribunals and truth and reconciliation commissions; institutional reform; reparations for victims and communities; individual and collective rehabilitation; witness protection; and remembrance.²⁶ Processes include a combination of formal and informal legal and non-legal mechanisms.²⁷ The International Centre for Transitional Justice describes that this non-legal aspect does not make it a means of ‘soft’ justice, but one that attempts to achieve the most ‘meaningful’ justice for the existing socio-political conditions.²⁸ Robins regards these less formal methods as a type of ‘transformative justice’, which unfold in parallel to legal approaches.²⁹

There is general consensus that the elements within the UN’s transitional justice framework are crucial in promoting sustainable peace: taking account of political and society context; promoting women’s rights; ensuring the centrality of individuals and victims; adopting a wide combination of mechanisms and engaging a variety of actors; and addressing the roots of conflict and violations of all human rights.³⁰

²³ Jacobson, p. 215.

²⁴ UN Security Council, Report of the Secretary-General, *The rule of law and transitional justice in conflict and post-conflict societies*, 23 August 2004, S/2004/616, para. 8.

²⁵ UN, Guidance note of the Secretary-General, *United Nations Approach to Transitional Justice*, March 2010, pp. 2-3.

²⁶ Swisspeace, pp. 1-12.

²⁷ E. M. Grina, Mainstreaming Gender in Rule of Law Initiatives in Post-Conflict Settings, *William & Mary Journal of Women and the Law*, vol. 17, no. 2, 2011, p. 462

²⁸ International Centre for Transitional Justice (ICTJ), ‘What is Transitional Justice?’, 2020, <https://www.ictj.org/about/transitional-justice> (accessed 13 April 2020).

²⁹ S. Robins ‘Conclusion: Towards Transformative Justice’ in P. Gready and S. Robins, *From Transitional to Transformative Justice*, Cambridge, Cambridge University Press, 2019, p. 3.

³⁰ UN, 2010, pp. 3-7.

Importantly, transitional justice processes and mechanisms do not operate in a political vacuum, but are applied to fragile post-conflict and transitional environments.³¹ Thus mechanisms must be designed to take into account and improve often unstable and delicate socio-political systems. Bollaert argues that the link between culture and transitional justice is crucial, and that culture should play a central role in developing these processes and protecting human rights.³² It is important that post-conflict processes take account of the root causes of conflict in society and address related violations of human rights to tackle problems of inequality and discrimination in society.³³

As well as addressing the contextual background, there is consensus that post-conflict approaches must involve a wide variety of social actors to develop an inclusive peace. Contemporary transitional justice discourse highlights the importance of a victim-centred approach for design and implementation, with the rights, needs, interests, and participation of victims as ‘crucial’ in achieving long-lasting transformation.³⁴ The UN holds that successful transitional justice programmes acknowledge the centrality of victims and advocate for the interests and inclusions of victims and other ‘traditionally excluded groups’.³⁵ Reimann and König suggest that past efforts to advance transitional justice and social healing have focused disproportionately on political-legal consequences for perpetrators of violence, rather than on specific mental health needs and rights of victims.³⁶ Similarly, Fischer argues that transitional justice is too focused upon policy-making and institutional responses rather than micro-level engagement to change social discourses and national narratives.³⁷ It is seen as important for successful peace that transitional justice processes do not involve only fighting parties, but take into account perspectives of all of society, including local, national, regional, and international institutions and individual actors, including victims.³⁸ The UN supports this,

³¹ UN, 2010, p. 4.

³² C. Bollaert, ‘Culture: the missing link in transitional justice’ in M. Evans (ed.), *Transitional and Transformative Justice: Critical and International Perspectives*, Abington, Routledge, 2019, p. 6.

³³ UN, 2010, p. 7.

³⁴ B. Fonseka and E. Schulz, ‘Gender and Transformative Justice in Sri Lanka’ in *Centre for Women, Peace and Security* vol. 18, 2018, p. 2.

³⁵ UN, 2010, p. 6.

³⁶ U. König and C. Reimann, ‘Collective Trauma and Resilience. Key Concepts in Transforming War-related Identities’ in B. Austin and M. Fischer (eds.), *Berghof Handbook Dialogue*, Berlin, Berghof Foundation, 2017, p. 3.

³⁷ Fischer, pp. 413-414.

³⁸ Alwis, Mertus and Sajjad, p. 170.

arguing that sustainable peace needs ‘the continued support and active engagement of all relevant actors, working together in a coordinated fashion’.³⁹

For transitional justice approaches to be inclusive and sustainable, the UN stresses the importance of paying special attention to abuses committed against women in armed conflict.⁴⁰ Grina argues that often in post-conflict states movements to improve gender equality become disconnected from larger efforts to implement the rule of law, with states either failing to unite human rights principles with gender issues or cultural and/or religious objections acting as an obstacle.⁴¹ However, this is considered as detrimental to the long-term success of transitional justice. Gender roles play a foundational role in the majority of societies and are a crucial part of the normative social, cultural, and legal frameworks of most states.⁴²

To conclude, transitional justice processes, which are not merely adapted to take gender into account, but view gender as central to conflict transformation have the best chance in ensuring long-term success. It is therefore necessary to frame SGBV as a human rights issue to ensure gender inequality is made a public issue and brought to the forefront in conflict transformation and in ensuring transitional justice.⁴³ It is key that transitional justice processes involve a variety of measures to include gender-specific post-conflict issues, which will be discussed further in the following chapters.

3. 3. Debates around transitional and transformative justice

International groups and academics deliberate over the key components of transitional justice mechanisms and how the process should take place. Swisspeace, a pronounced actor and think tank regarding conflict transformation, argues that transitional justice aims to ‘deal with the past’ and thus needs to involve a wide range of activities to tackle the root causes of conflict, including creating a culture of accountability, strengthening the rule of law, and fostering reconciliation within society.⁴⁴ Alexander Boraine (former member of the South African Truth and Reconciliation Commission and founder of the International Centre for Transitional Justice) recommends that transitional justice is

³⁹ UN, 2010, p. 7.

⁴⁰ *Ibid.*, p. 5.

⁴¹ Grina, p. 436.

⁴² *Ibid.*, p. 437.

⁴³ *Ibid.*, pp. 465-466.

⁴⁴ Swisspeace, p. 1.

implemented under five key pillars: accountability, truth recovery, reparations, institutional reforms, and reconciliation.⁴⁵ Gready suggests that traditionally law based transitional justice should be reinvented as ‘transformative justice’, which encompasses ‘local, everyday needs rather than global fads and priorities’.⁴⁶ Similarly, Evans argues that ‘transformative’ justice is necessary as an alternative to top-down, legalistic approaches.⁴⁷ Fischer, instead, believes that truth mechanisms are central, particularly in divided societies, where different ethnic and religious groups co-exist: to counteract cultures of denial and nationalist myth-making; to provide justice alternatives; and to make amends to victims and contribute to social healing and reconciliation.⁴⁸ Furthermore, different theorists view different stages within the post-war process and debate about when change should begin.

Challenges to transitional justice include national political will, as well as regional and international influences.⁴⁹ Other systemic challenges include unchanging constitutions and legislation, access to justice, and cultures of ‘lawlessness’.⁵⁰ Furthermore, cultures of denial and selective remembrance are easily created, with victimisation becoming mythologised as the dominant narrative.⁵¹

Transitional justice is a complex topic, with a variety of different strategies and mechanisms, encompassing more than just legal processes. The concept of ‘transformative justice’ – an inclusive and encompassing form of transitional justice, which prioritises cultural relevance and victim centrality – will be further explored throughout, with Sri Lanka providing its own contextual answers to many of the issues in the transitional justice debate.

3. 4. Reconciliation

Whilst each part of the transitional justice process is arguably equally important, particular attention will be paid to the concept of reconciliation, as it is given the most

⁴⁵ Fischer, p. 411.

⁴⁶ Gready, p. 2.

⁴⁷ M. Evans, ‘Transitional justice and beyond: an introduction to critical, international and interdisciplinary debates’ in M. Evans (ed.), *Transitional and Transformative Justice: Critical and International Perspectives*, Abington, Routledge, 2019, p. 2.

⁴⁸ Fischer, p. 410.

⁴⁹ Swisspeace, p. 10.

⁵⁰ Grina, p. 465.

⁵¹ Fischer, p. 418.

prominence in Sri Lankan processes. Reconciliation is widely recognised as an essential component for achieving long-lasting peace, with the concept growing popular around the 1990s. Reconciliation can be defined as the set of processes that ‘involve building or rebuilding relationships, often in the aftermath of massive and widespread human rights violations’.⁵² Reconciliation is linked to democratic transition and the government’s commitment to human rights.⁵³ Many researchers and practitioners regard a reconciliation process, in which all of society is involved, as a necessary requirement for long-lasting peace.⁵⁴ These processes occur at the individual, community, socio-political, and institutional levels, and are viewed as successful if they encompass all sections of society.⁵⁵ The Nairobi Declaration proposes that reconciliation is an important goal of peace and reparation processes, which can only be achieved with the full social participation, including all sexes, ethnicities, religions, and cultures.⁵⁶ Importantly, reconciliation can be used as a method to address collective trauma, from armed conflict experiences, and promote community healing. Sarkin argues that reconciliation is necessary to provide the openness and transparency for a state to address past trauma.⁵⁷

Seils discusses the extent of reconciliation describing ‘thin’ reconciliation as based on ‘coexistence in the absence of trust, respect and shared values’, with the aim of ‘thick’ reconciliation, which is based on ‘restoration of dignity through trust, respect and shared values’ and ‘reversing structural causes of marginalisation and discrimination’.⁵⁸ There is also a debate around truth and reconciliation and whether truth is a necessary precondition to reconciliation.⁵⁹ Similarly there are questions as to the end point of reconciliation and how this can be measured. Sarkin argues reconciliation can be considered as an ‘evolving process’ rather than with a ‘static end point’.⁶⁰

⁵² P. Seils, ‘The Place of Reconciliation in Transitional Justice’, New York, International Centre for Transitional Justice, 2017, p. 11 <https://www.ictj.org/sites/default/files/ICTJ-Briefing-Paper-Reconciliation-TJ-2017.pdf> (accessed 20 March 2020).

⁵³ *Ibid.*, p. 1.

⁵⁴ Fischer, p. 406.

⁵⁵ *Ibid.*, p. 1.

⁵⁶ Nairobi Declaration On Women’s And Girls’ Right To A Remedy And Reparation, 19 to 21 March 2007, p. 4.

⁵⁷ J. Sarkin, ‘Achieving Reconciliation in Divided Societies: Comparing the Approaches in Timor-Leste, South Africa and Rwanda’ in *Yale Journal of International Affairs*, 2008, p. 9.

⁵⁸ Seils, p. 16.

⁵⁹ Sarkin, 2008, p. 5.

⁶⁰ *Ibid.*, p. 5.

To sum up, reconciliation is a complex process, with many different aspects and debates over its necessity and success. Reconciliation often seems a high demand in a society with deeply ingrained divides, however, it is also highly promising in this regard in terms of its ability to tackle deep-rooted issues and promote social cohesion. Below past reconciliation approaches are presented that illustrate various successes and failures

3. 4. 1. Past reconciliation processes

Reconciliation processes vary largely between states. Truth commissions emerged as the most-favoured and prominent reconciliation model in the 1970s.⁶¹ Kritz describes truth commissions as a means to ‘engage and confront all of society in a painful national dialogue, with serious soul-searching, and attempt to look at the ills within society that make abuses possible’ to lead to something beneficial for the socio-political future.⁶² Truth commissions have been established in El Salvador, Ghana, Morocco, Nigeria, Peru, Sierra Leone, South Africa, and Timor-Leste, with unofficial commissions in Northern Ireland, Greensboro, and North Carolina.⁶³ Reconciliation processes have also occurred in Argentina, and Chile, and are on-going in Syria and Tunisia, for example.⁶⁴ These commissions have been led by different organisations, including the UN, various international and domestic NGOs, and government executive orders and legislation.⁶⁵ No country, however, has promoted reconciliation as a ‘sole alternative’ to trials.⁶⁶

The examples of South Africa and Rwanda will be briefly discussed to highlight the vast differences in reconciliation processes. In South Africa the Truth and Reconciliation Commission was set up in 1995 to deal with past human rights abuses under the apartheid regime, closely linked to the criminal justice process.⁶⁷ Victims were invited to participate in the truth commission process, as witnesses during Human Rights Hearings and as opponents to amnesties being given during Amnesty Hearings.⁶⁸

⁶¹ Sarkin, 2008, p. 12.

⁶² J. N. Kritz, ‘Policy Implications of Empirical Research on Transitional Justice’ in H. van der Merwe, V. Baxter and A. R. Chapman (eds.) *Assessing the Impact of Transitional Justice: Challenges for Empirical Research*, Washington DC, USIP, 2009, p. 18.

⁶³ Sarkin, 2008, pp. 12-13.

⁶⁴ Seils, p. 15.

⁶⁵ *Ibid.*, p. 13.

⁶⁶ *Ibid.*, p. 16.

⁶⁷ The South Africa Truth and Reconciliation Commission, <https://www.justice.gov.za/trc/> (accessed 29 April 2020).

⁶⁸ Sarkin, 2008, p. 15.

Although the idea was victims and perpetrators confronting each other to achieve some kind of peace, perpetrators seldom came forward to admit their crimes and witnesses reported that they felt reconciliation was being forced.⁶⁹ On the other hand, in order to deal with the 1994 genocide in Rwanda, a variety of reconciliation approaches were established.⁷⁰ These have included international trials (the International Criminal Tribunal for Rwanda), national trials in local Rwandan courts, and a traditional dispute resolution mechanism (*gacaca* trials), as well as a government National Unity Reconciliation Commission (NURC).⁷¹ The commission focuses upon education and disseminating national ideas about reconciliation and eliminating discrimination.⁷² Although NURC has flaws, it represents a unique concept that could be tailored to other post-conflict societies.⁷³ Furthermore, the government's willingness to participate fully in a truth commission is key.⁷⁴ These cases illustrate two contrasting reconciliation approaches, with South Africa providing an example of a legal transitional justice process, whilst the Rwandan government implemented a community-based strategy.

Few authors agree on what reconciliation is, or how exactly to achieve it, with various questions around the process of reconciliation: about successful preconditions; who is expected to reconcile; which truth is needed in different post-conflict phases; and how to negotiate a common memory from parties, often with opposing opinions.⁷⁵

To sum up, in transitional justice and reconciliation processes, culture and context seems crucial in shaping and implementing appropriate goals and strategies. A variety of experiences and approaches in different post-conflict states illustrate that different types of transitional justice and reconciliation can contribute to long-term social healing. The concept discussed in this thesis will take transitional justice to include and embrace aims of 'transformative justice' as practical, everyday and individual-based approaches, inclusive of women. Both legal and non-legal approaches to reconciliation will be explored throughout. Reconciliation mechanisms will be discussed, taking context-

⁶⁹ Sarkin, 2008, p. 15.

⁷⁰ J. N. Clark, 'National unity and reconciliation in Rwanda: A flawed approach?' in *Journal of Contemporary African Studies*, vol. 28, no. 2, 2010, p. 137.

⁷¹ *Ibid.*, p. 137.

⁷² *Ibid.*, p. 139.

⁷³ *Ibid.*, p. 147.

⁷⁴ J. Sarkin, 'The Necessity and Challenges of Establishing a Truth and Reconciliation Commission in Rwanda' in *Human Rights Quarterly*, vol. 21, no. 3, 1999, p. 785.

⁷⁵ Fischer, p. 421.

specific and victim-focused reconciliation mechanisms, which incorporate a wide variety of social actors, as the goal. These important elements of transitional justice will be discussed in relation to the promotion of women's rights in post-conflict Sri Lanka.

4. WOMEN IN ARMED CONFLICT AND TRANSITIONAL JUSTICE

4. 1. Narratives and realities of women in armed conflict

To establish effective reconciliation strategies, which are inclusive of women, the myths surrounding women and violence must be addressed and women must be included in the narrative of armed conflict. Grina argues that the first step in gender mainstreaming is to assess and understand current gender roles and evaluate how and why women and men's roles in conflict vary and how this affects their post-conflict needs.⁷⁶ Violence and war are traditionally associated with men and masculinity; meaning women's roles in armed conflict have largely been neglected. Historically gender has been omitted in the study of military conflict, war and violence; with violence viewed as inextricably linked to masculinity. Scholarly work and traditional processes of dealing with conflict resolution mostly fail to take women and gender into consideration and often frame women in a limited or hyperbolic role. In armed conflict most women are assumed as 'innocent Others', in need of protection who merely motivate male soldiers to fight for them.⁷⁷ Similarly, women are presented as passive, innocent, supportive and as 'beautiful souls', incapable of protecting themselves.⁷⁸ Violent women are redefined to fit gender stereotypes; feminised or de-womanised, with their motives to commit violence grouped typically under three different stereotypes: mothers, who use violence to fulfil their biological destiny; monsters, who are pathologically damaged and insane; and whores, whose violence is driven by sexual rejection or depravity.⁷⁹

In reality, women play an active and distinctive role in armed conflict. In militarized societies, women are crucial to the practices that make wars function. Women are used to shame men who do not participate in fighting; act as sexual service for troops (in both prostitution and sexual assault); are caretakers, providers, labourers; and are

⁷⁶ Grina, p. 442.

⁷⁷ L. Sjoberg, *Gender, war and conflict*, Cambridge, Polity Press, 2014, p. 33.

⁷⁸ J. B. Elshtain, *Women and War*, Chicago, The University of Chicago Press, 1987, p. 140.

⁷⁹ C. E. Gentry and L. Sjoberg, *Beyond Mothers, Monsters, Whores: Thinking about Women's Violence in Global Politics*, London, Zed Books, 2015, p. 187.

often involved in the violence themselves.⁸⁰ Women play an active role in militaries, making up over a third of the militias in Eritrea, Israel, and Nepal and eleven percent of American troops in Iraq and Afghanistan.⁸¹ As well as serving as combatants, women act as terrorists, insurgents, and rebels. In addition, women are often included in violence indirectly, as: nurses, family of combatants, and prostitutes, for example.⁸² Women have also historically played roles in terrorist groups, which challenge gender stereotypes, with female terrorists as ‘paradoxical figures’.⁸³ Hence women are constantly defined and re-defined within armed conflict, assuming a variety of different roles.⁸⁴

Due to prevailing gender dynamics women are often especially vulnerable in armed conflict. Gender inequality is one of the most prevalent and deep-rooted forms of inequality and is often intensified by situations of armed conflict and gross human rights violations, with women and girls particularly vulnerable to conflict-related human rights abuses.⁸⁵ Conflict affects women differently depending on religion, caste, class, ethnicity, location, political affiliations, but reveals a commonality in women’s experience, through gendered violence.⁸⁶ SGBV is a tactic often used in armed conflict, particularly against women and girls, who make up the majority of civil victims, with many even murdered in sexualised ways.⁸⁷ The ICTY played a landmark role in establishing the ability to prosecute sexual violence (SV) as torture, which paved the way for acknowledging the severity of gender-specific violence in armed conflict.⁸⁸

Military strategy is also gendered; conflict plays out on women’s bodies, with women and girls subjected to rape, sexual assault, human trafficking, forced prostitution and marriage, slavery, and domestic abuse, amongst other forms of violence.⁸⁹ Furthermore, women are targeted deliberately by armed groups through acts of SGBV as

⁸⁰ Sjoberg, p. 30.

⁸¹ *Ibid.*, p. 35.

⁸² J. Welland, ‘Feminine Trouble and the (Re)Constitution of The Militarised Masculine Subject’ in *Political Perspectives*, vol. 4, no.1, 2010, p. 7.

⁸³ G. Koureas and S. Malvern, ‘Terrorist Transgressions: Exploring the Gendered Representations of the Terrorist’ in *Historical Social Research*, vol. 39, no. 3, 2014, p. 76.

⁸⁴ S. Parashar, ‘Women, militancy, and security: the South Asian conundrum’ in L. Sjoberg, *Gender and International Security*, Abingdon, Routledge, 2010, p. 175.

⁸⁵ UN, 2010, p. 5.

⁸⁶ D. Rajasingham-Senanayake, ‘Between Reality and Representaion: Women’s Agency in War and Post Conflict Sri Lanka’ in *Cultural Dynamics*, no. 16, 2004, p. 149.

⁸⁷ Grina, p. 448.

⁸⁸ *Ibid.*, p. 449.

⁸⁹ Parashar, p. 169.

a means of achieving strategic and ideological aims. The Islamic State of Iraq and the Levant (ISIL), for example, has taken many Yazidi women as sex slaves, as well as forcing them into marriage.⁹⁰ Women and children make up the greatest number of victims of long-lasting armed conflicts, from deaths, displacement, and trauma for example.⁹¹ The 2014 Global Summit to End Sexual Violence in Conflict (2014 Summit) held that sexual violence (SV) acts as a ‘uniquely destructive act and method of war’, flowing from underlying inequalities, which also increases tension and instability, acting as a threat to international peace and security.⁹²

As well as SGBV, women associated with fighting forces often have to deal with high levels of disapproval and marginalisation from within their communities. Women victims of armed conflict can also become linked to the stigma surrounding SGBV. Survivors of sexual violence are often rejected from families and communities.⁹³ Stigma is perpetuated by the media, which tends to generalise and simplify women in armed conflict to narratives of victimhood, or madness, and remove their agency.⁹⁴ The 2014 Summit holds that ‘laws and agreements are not enough if attitudes don’t change’.⁹⁵

Gender dynamics also play a significant role in access to justice, remedies, and support for women involved with armed conflict. Women are also more vulnerable to post-conflict abuse.⁹⁶ In addition, women suffer more from lack of availability of judicial institutions because of gendered socioeconomic inequalities. Gendered physical, social, and economic barriers to participation also impact on women’s abilities to access administrative and humanitarian support, especially those who are disadvantaged or live in rural areas.⁹⁷ In some cases women are given more lenient treatment in the criminal justice process, based on gendered assumptions about limited female agency in violence. Contrary to this, in other cases, women are demonised for violence – as it opposes gender

⁹⁰ S. El-Masri, ‘Prosecuting ISIS for the sexual slavery of the Yazidi women and girls’ in *The International Journal of Human Rights*, vol. 22, no.8, 2018, pp. 1047-1066.

⁹¹ Parashar, p. 169.

⁹² UK Government, ‘Chair’s Summary - Global Summit to End Sexual Violence in Conflict, June 2014, (a) <http://reliefweb.int/report/world/chairs-summary-global-summit-end-sexual-violence-conflict> (accessed 10 May 2020).

⁹³ *Ibid.*

⁹⁴ Gentry and Sjoberg, pp. 181-196.

⁹⁵ UK Government (a).

⁹⁶ Grina, p. 465.

⁹⁷ UN OHCHR, *Rural women and access to justice: FAO’s contribution to a Committee on the Elimination of Discrimination against Women*, 18 February 2013, pp. 1-11, <https://www.ohchr.org/documents/HRBodies/CEDAW/AccessToJustice/FAO.pdf> (accessed 3 May 2020).

norms – and are given harsher sentences, including, for example, the death penalty, for mere association with (male) members of ISIL.⁹⁸ Moreover, post-conflict support for women is more limited.⁹⁹ It is apparent that provisions of justice are also affected by gender: fewer judicial, legal, and institutional personnel are women. Stigmatisation and trauma can make it more difficult for women to report crimes and the exclusion of women from public-decision making bodies can pose an ominous challenge for the engagement of women in transitional justice processes.¹⁰⁰

To summarise, it has become increasingly evident that understanding the role that gender plays is essential in the study of armed conflict and therefore in aiding and understanding peace processes. A deeper understanding of gendered roles enables the promotion of human rights and gender equality and the protection of individual women in transitional justice. In order to introduce appropriate processes, it is crucial to understand the roles women play in armed conflict, the specific effects of armed conflict on women and girls, and how women suffer as victims of violence.

4. 2. Global policy surrounding women in armed conflict

Traditionally, global policy documents reflect stereotypical views of women in armed conflict: as victims or peacekeepers, and failing to take account of the nuanced roles women play. Often international legal documents make only customary references to women or fail to address gender issues entirely.¹⁰¹ International documents refer to the need to incorporate gendered perspectives into transitional justice theories and practices and in particular to tackle SGBV; yet can often fail to unpack the complex issues that surround this. The UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), for the promotion and protection of women's rights was adopted in 1979; however, originally failed to grasp the full complexity of women's roles

⁹⁸ B. Wille, 'Unfair ISIS Trial in Iraq Hands Women Harshes Sentences', Human Rights Watch, 21 February 2018, <https://www.hrw.org/news/2018/02/21/unfair-isis-trial-iraq-hands-women-harshes-sentences>, (accessed 8 May 2020).

⁹⁹ UN Security Council and Counter-Terrorism Committee Executive Directorate, 'Gender Dimensions of the Response to Returning Foreign Terrorist Fighters: Research Perspectives', https://www.un.org/sc/ctc/wp-content/uploads/2019/02/Feb_2019_CTED_Trends_Report.pdf, (accessed 8 February 2020).

¹⁰⁰ UN, 2010, p. 5.

¹⁰¹ Grina, p. 442.

in armed conflict.¹⁰² Since then, there has been a move towards the incorporation of gender in understanding armed conflict and establishing peace processes. Most notably, General recommendation 30 on ‘Women in Conflict Prevention, Conflict and Post-Conflict Situations’ of the CEDAW Committee, adopted in 2013, introduced comprehensive regulations, calling for the recognition of the heterogeneous roles that women play in armed conflict and encouraging women’s integration into ‘peacebuilding, peace-making, and reconstruction processes’.¹⁰³ At the international level there is recognition that women are associated with, and affected by, acts of violence in many ways. It has become increasingly apparent that addressing gender is essential in the study of violence and armed conflict and also in aiding and understanding peace processes.

Various efforts have been made to tackle gender assumptions around women in armed conflict, and to promote women’s inclusion in peace processes. The Resolution on Women, Peace and Security (WPS) – UN Security Council (UNSC) Resolution 1325 – passed in 2000, stresses the importance of women’s involvement in peacekeeping.¹⁰⁴ This resolution – the result of years of advocacy of women’s groups – was groundbreaking as the first UN Resolution to acknowledge women as ‘agents of change for peace’.¹⁰⁵ Resolution 1325 is grouped into four areas: SGBV; women’s access to decision-making; peacekeeping operations; and disarmament, demobilisation, and reintegration of women.¹⁰⁶ This resolution highlighted the need to understand the range of women’s roles in armed conflict and the importance of including women in post-conflict processes, paving the way for future resolutions and broader academic research, although failed to consider women’s role as combatants.¹⁰⁷

Furthermore, the UN General Assembly adopted the Basic Principles and Guidelines on the Right to Remedy and Reparation in 2005.¹⁰⁸ The 2007 Nairobi

¹⁰² Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (adopted 18 December 1979, entered into force 3 September 1981).

¹⁰³ CEDAW, General recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations, 18 October 2013.

¹⁰⁴ UN Security Council Res. 1325, 31 October 2000.

¹⁰⁵ Alwis, Mertus and Sajjad, p. 183.

¹⁰⁶ *Ibid.*, p. 183.

¹⁰⁷ Since UNSCR 1325, several other UNSCR concerning WPS have been published, which emphasize certain details of UNSCR 1325, concerning SGBV, persecution of perpetrators, and CRSV; UN Documents for WPS, *Security Council Report*, <https://www.securitycouncilreport.org/un-documents/women-peace-and-security/> (accessed 10 August 2020).

¹⁰⁸ United Nations General Assembly Res. 60/147, 16 December 2005.

Declaration on Women and Girls' Right to a Remedy and Reparation further discussed women in armed conflict and attempted to redefine notions of women as 'victims'.¹⁰⁹ Moreover, various international documents have been introduced to protect women and tackle issues of SGBV in armed conflict, such as the 'International Protocol on the Documentation and Investigation of Sexual Violence in Conflict' in 2014.¹¹⁰ The 2014 Summit was held to address SGBV in armed conflict, which maintains that SV is not an inevitable side effect of war and that perpetrators need to be held to account.¹¹¹ The summit agreed that a combination of international and national actions is necessary to end SV in conflict.¹¹² The summit argued that four key areas need to be taken into account: improving accountability; providing greater support to survivors; ensuring SGBV responses; and improving international strategic cooperation.¹¹³ Previous truth commissions have also responded to the need to address SGBV in post-conflict mechanisms.¹¹⁴ For example, truth commissions in Haiti, Sierra Leone and East Timor have incorporated mechanisms for tackling SGBV into their mandates, gender hearings were held in South Africa and gender units formed to enact transitional justice in Peru.¹¹⁵

However, there are still critiques that classical transitional justice discourses do not take account of the varied gender dimensions and the effect of armed conflict on women's human rights.¹¹⁶ Despite responses in international documents and truth commissions a 'larger political project' is necessary to recognise women as an 'integral part' of social justice and enable women to participate in socio-political transformation.¹¹⁷ Stephens argues that although international responses to SGBV have improved, a 'disturbing tendency persists... to demand something 'extra' before gender-related crimes will become an international concern'.¹¹⁸

¹⁰⁹ Nairobi Declaration, p. 2.

¹¹⁰ UK Government, *International Protocol on the Documentation and Investigation of Sexual Violence in Conflict: Basic Standards of Best Practice on the Documentation of Sexual Violence as a Crime under International Law*, June 2014, (b) pp. 1-141.

¹¹¹ UK Government (a).

¹¹² *Ibid.*

¹¹³ *Ibid.*

¹¹⁴ Fischer, p. 413.

¹¹⁵ *Ibid.*, p. 413.

¹¹⁶ K. Moyo, 'Gender in Human Rights and Transitional Justice' in J. I. Lahai and K. Moyo, *Gender in Human Rights and Transitional Justice*, Gender in HR and TJ, Cham, Palgrave Macmillan, 2018, p. 2.

¹¹⁷ Fischer, p. 413.

¹¹⁸ B. Stephens, 'Humanitarian Law and Gender Violence: An End to Centuries of Neglect?' in 3 Hofstra Law & Policy Symposium, vol. 3, no. 10, 1999, pp. 87-109.

It is key that global policy documents and human rights standards reflect the variety of roles women play in armed conflict and post-conflict settings. The upward trend of recognition and inclusion of women in international standards is promising for more inclusive and comprehensive promotion and protection of women's rights.

4. 3. Women's rights, peace and transitional justice

As illustrated, historical failure to address women's inclusion has meant that women's potential to contribute to reconciliation was neglected, but also that women failed to receive appropriate post-conflict support.¹¹⁹ However, there have been increasing acknowledgements that women's involvement in reconciliation is essential to ensure long-term peace. UN Women notes the opportunities presented by transitions from conflict to 'strengthen women's leadership, empowerment and rights'.¹²⁰ Grina argues strong national responses are needed to uphold international standards of gender equality and to close the gap left by the lack of international legal mechanisms.¹²¹

The UN guide on transitional justice recommends that special measures must be implemented to: safeguard women's inclusion in these processes; protect women's human rights; and provide redress for women victims.¹²² The 2014 Summit proposed that women's participation in peace processes must be the norm – in the UN, international organisations, police, and military, as well as in the government to protect women's rights in armed conflict and ensure post-conflict needs are addressed.¹²³ The UN Secretary General emphasised the importance of women's empowerment as a 'critical force for sustainable peace', stating that 'societies for which gender equality indicators are higher are less vulnerable'.¹²⁴

In order to understand armed conflict and to improve peace processes gender needs to be a key consideration. Gendered assumptions have strong implications for the ways in which women and men are treated in post-conflict. The Nairobi Declaration considers that women must be empowered by acknowledging their autonomy in

¹¹⁹ S. Buckley-Zistel and M. Zolkos, 'Introduction: Gender in Transitional Justice' In S. Buckley-Zistel and R. Stanley (eds.), *Gender in Transitional Justice*, Basingstoke, Palgrave Macmillan, 2012, p. 6.

¹²⁰ UN Women, *Gender and Post-Conflict Governance: Understanding the Challenges*, 2012, p. 3.

¹²¹ Grina, p. 449.

¹²² UN, 2010, p. 5.

¹²³ UK Government (a), 2014.

¹²⁴ United Nations General Assembly Res 70/674, 24 December 2015.

decision-making.¹²⁵ On the other hand, traditional assumptions that women are ‘natural’ peacemakers are unhelpful as they simplify women’s involvement in armed conflict and fail to take account of individual experiences.¹²⁶

As illustrated above women play a complex and diverse role in armed conflict and thus their post-conflict needs are wide-ranging. Furthermore because women are the most vulnerable in armed conflict, they need to be granted specific attention in transitional justice processes. Women’s role in armed conflict is often reduced to victimhood and although in many cases women are victims, the diversity of women’s roles, including active engagement in combat, must also be considered.

In my opinion adding a gender lens to transitional justice processes is particularly important to address gender-specific issues and to ensure these are incorporated into conflict transformation so women are provided with appropriate support. Incorporating a gender lens should broaden the concept of transitional justice, including a wider proportion of society in the reconciliation process. Whilst transitional justice processes provide a more informal route to conflict transformation, making them more susceptible to discriminatory factors; by reconceptualising transitional justice procedures as sites of feminist activism, greater contributions can be made to peace processes, particularly for women and girls, and contribute to transformation of gender roles and regimes.¹²⁷

5. CIVIL WAR, HUMAN RIGHTS AND POLITICS IN SRI LANKA

In order to understand the current situation in Sri Lanka and the context in which transitional justice processes are taking place, the history of ethnic conflict and civil war in Sri Lanka must first be discussed.

Sri Lanka is multi-ethnic, multi-religious country, with diverse people, history, language, and culture. The island has experienced a turbulent history, with phases of dynastic wars, 450 years of colonial rule, and recent civil war. The British imperial administration took over Sri Lanka, then Ceylon, in the late 18th and early 19th centuries, which was preceded by about 200 years of control by Portuguese and Dutch colonists.

¹²⁵ Nairobi Declaration, p. 3.

¹²⁶ Alwis, Mertus and Sajjad, p. 182.

¹²⁷ F. N. Aoláin, D. F. Haynes and N. Cahn, *On the Frontlines: Gender, War, and the Post-Conflict Process*, Oxford, Oxford University Press, 2011, p. 8.

Nowadays, Sri Lanka is made up of a diverse ethnic and religious population. The largest ethnic group is Sinhalese, representing around 75 percent of the population, followed by Sri Lankan Tamils, who constitute 11 percent, then Sri Lankan Moors (nine percent), Indian Tamils (four percent), and smaller groups of Burghers (from Dutch descent) and Veddhas (from early inhabitants).¹²⁸ Official languages are Sinhala and Tamil. The population was roughly 21.6 million in 2018.¹²⁹ The population is 70 percent Buddhist, 12.5 percent Hindu, ten percent Muslim and 7.5 percent Christian, with the Sinhalese majority predominantly Buddhist and the Tamil population largely Hindu.¹³⁰

5. 1. 'Divide and rule' in colonial Sri Lanka

When examining the potential of transitional justice in Sri Lanka it is important to consider the pre-conflict environment. Years of colonial domination have had drastic effects upon the social and cultural composition of society. The story of Sri Lanka as a 'divided' state – inhabited by two opposing ethnic groups, with different languages, religions, histories and territories, in a constant state of feud – has become the dominant narrative and is portrayed as correct within Eurocentric frameworks. Colonial narratives depicted Sri Lanka as a 'great nation in decline', which Britain could assist.¹³¹ However, in reality, the British colonial administration arrived in Sri Lanka to find a country with a diverse assortment of ethnic, religious and linguistic social groups.¹³² Sri Lanka operated as many 'semi-autonomous' states, with diversity and fluidity of language, culture and territory.¹³³ For example, Kandyan Muslims often worked on Buddhist temple lands and Sinhalese officials were often able to speak and write in Tamil.¹³⁴ Likewise, Tamil

¹²⁸ Central Bank of Sri Lanka, *Economic and Social Statistics of Sri Lanka*, 2019, p. 14, https://www.cbsl.gov.lk/sites/default/files/cbslweb_documents/statistics/otherpub/ess_2019_e.pdf (accessed 4 April 2020).

¹²⁹ *Ibid.*, p. 15.

¹³⁰ *Ibid.*, p. 15.

¹³¹ J. D. Rogers, 'Historical images in the British period' in J. Spencer (ed.) *Sri Lanka: History and the Roots of Conflict*, London, Routledge, 1990, pp. 87-106.

¹³² L. K. Daniel, *Privilege and Policy: the Indigenous Elite and the Colonial Education System in Ceylon, 1912-1948*, Master Thesis, Oxford University, 1992, p. 9, https://ora.ox.ac.uk/objects/uuid:652d093a-bcd6-49ca-aa17-787cd251e4c3/download_file?file_format=application/pdf&safe_filename=602323954.pdf&type_of_work=Thesis (accessed 3 February 2020).

¹³³ E. Nissan and R. L. Stirrat, 'The generation of communal identities' in J. Spencer (ed.) *Sri Lanka: History and the Roots of Conflict*, London, Routledge, 1990, p. 25.

¹³⁴ J. D. Rogers, 'Early British Rule and Social Classification in Lanka' in *Modern Asian Studies*, vol. 38, no.3, 2004, pp. 628-629.

monuments could be found within Sinhalese ‘homelands’ and Tamils lived on what is now considered Sinhalese territory.¹³⁵ Similarly, ideas of cohesion amongst religious groups were limited, with Buddhists, Christians and Muslims taking ideas from wider social movements, outside Sri Lanka, rather than identifying primarily as rival ‘Sri Lankan’ groups.¹³⁶ It is however difficult to grasp exact social divisions or cohesions because of the lack of pre-colonial records and the prejudice found in colonial sources of Sri Lanka. However, there is general recognition that the divisions that exist in Sri Lanka today were not defined in the pre-colonial era; society was far more multicultural and multi-ethnic, with many interacting and overlapping groups and identities.

Once the British imperialists established a common administration in Sri Lanka in 1833, society began to be segregated by colonial politics.¹³⁷ The island was categorised and separated by ethnicity and language, with the British ‘divide and rule’ system formalising cultural difference as the foundation for political representation.¹³⁸ Caste systems were introduced, dividing society based on class, ethnicity, religion, territory, and language. Ethnic cleavage was entrenched into society, from the top down, solidified in the legal constitution. Gamini emphasises how crucial the preconditions of ‘divide and rule’ were in fostering discontent and establishing a path for conflict.¹³⁹

The British withdrew from Sri Lanka by 1948, leaving a weaker and poorer country than they had entered.¹⁴⁰ This exit created the conditions for conflict, leaving an atmosphere where political and economic resources were contested.¹⁴¹ Krishna agrees that the ‘divide and rule carry over’ into postcolonial democratic politics was ‘devastating’ for the future of Sri Lanka as a united state.¹⁴² Ethnic violence became progressively more political, with conflict over state institutions, economics, language, jobs, and territory. From 1956 the conflict grew increasingly violent, with more protests,

¹³⁵ Nissan and Stirrat, p. 22.

¹³⁶ Rogers, 2004, p. 632.

¹³⁷ Nissan and Stirrat, p. 28.

¹³⁸ *Ibid.*, 1990, p. 29

¹³⁹ S. V. D. G. Samarnayake, *Political Violence in Sri Lanka 1971-1987*, New Delhi, Gyan Publishing House, 2008, p. 85

¹⁴⁰ *Ibid.*, 1990, p. 356-362

¹⁴¹ J. S. Murer, ‘Ethnic Conflict: An Overview of Analyzing and Framing Communal Conflicts From Comparative Perspectives’ in *Terrorism and Political Violence*, vol. 24, no.4, London, Routledge, 2012, p. 568

¹⁴² S. Krishna, *Postcolonial Insecurities: India, Sri Lanka and the Question of Nationhood*, Minneapolis, University of Minnesota Press, 1999, p. 207.

deaths, and displacement of persons.¹⁴³ Policies of political, economic, social, and cultural oppression of Tamil and Muslim minorities were implemented increasingly.¹⁴⁴

By 1975 Tamil terrorist groups were developing, nicknamed ‘Tigers’, who attacked police, military officers and government property and officials.¹⁴⁵ By 1976 the Liberation Tigers of Tamil Eelam (LTTE) formed a separatist militant organisation, made up of Tamils fighting for an independent Tamil state (Tamil Eelam), who employed terrorist methods and guerrilla tactics.¹⁴⁶ The movement was ethno-nationalist, but also drew influence from religious ideologies.¹⁴⁷ Civil war in Sri Lanka broke out in 1990, resulting in around 100,000 deaths, with approximately one million people displaced.¹⁴⁸ The civil war was an ethnic, religious and territorial conflict fought between the Sri Lankan military and the LTTE separation group.¹⁴⁹ There were several failed peace-making attempts, with the Indian Peace Keeping Force (IPKF) deployed from 1987 until 1990.¹⁵⁰ In 2002 a ceasefire halted the violence; however, the LTTE withdrew from peace talks in early 2003, and conflict resumed until 2009.¹⁵¹ Philipson proposes that this ‘new cycle of violence’ up to 2009 was caused by lack of attention paid to the ‘underlying roots’ of conflict and that the 2002 ‘victor’s peace’ established a ‘conducive environment’ for the recurrence of militant Tamil nationalism.¹⁵² Since the end of civil war in Sri Lanka there have been outbreaks of ethnic and religious tension. Despite the rapid reconstruction of Sri Lanka, the north remains heavily militarised.¹⁵³

Years of colonial rule, conflict, and the culmination in civil war have left Sri Lankan society ruptured and divided, suffering from many years of human rights abuses. Sri Lanka has amongst the highest global levels of forced disappearances of people: 60,000 to 100,000 from the beginning of the civil war.¹⁵⁴ Other human rights issues

¹⁴³ Nissan and Stirrat, p. 37.

¹⁴⁴ Friedman, p. 23.

¹⁴⁵ *Ibid.*, p. 37.

¹⁴⁶ *Ibid.*, p. 37.

¹⁴⁷ Parashar, p. 169.

¹⁴⁸ Amnesty International, 2018.

¹⁴⁹ Adriana, pp. 32-42.

¹⁵⁰ Friedman, p. 23.

¹⁵¹ L. Philipson, ‘Whose war? Whose peace?’ in J. Goodhand, J. Spencer and B. Korf (eds.) *Conflict and Peacebuilding in Sri Lanka: Caught in the peace trap?* Abingdon, Routledge, 2011, p. 116.

¹⁵² *Ibid.*, p. 116

¹⁵³ Friedman, p. 24.

¹⁵⁴ Amnesty International, 2018 (a).

include impunity for perpetrators, SGBV, and arbitrary arrests and detention.¹⁵⁵ There is widespread recognition that the government committed the majority of war crimes and contributed to enforced disappearances nationally.¹⁵⁶ The UN reports that during the war government forces deliberately shelled safe zones and the LTTE used civilians as human shields and forcibly recruited civilians, including children.¹⁵⁷ The war has also had a devastating economic impact upon the country. Approximately 80 percent of the Sri Lankan population exists in 'rural areas, with higher levels of poverty, lack of health facilities, sanitation, education, water, electricity, transport, employment opportunities, and suffering from higher levels of political neglect'.¹⁵⁸

5. 2. International human rights framework and debates

Following the civil war, Sri Lanka has been under international pressure to address human rights violations and to promote reconciliation. Sri Lanka is party to various human rights conventions, including: the International Covenant on Civil and Political Rights (ICCPR), the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), CEDAW, the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the International Convention for the Protection of All Persons from Enforced Disappearances (CED).¹⁵⁹ Until lately the country has maintained cooperation and showed a willingness to engage with international mechanisms.¹⁶⁰ Sri Lanka received ten UN special rapporteurs in recent years, including on: the promotion of truth, justice, reparation, and guarantees of non-recurrence; on minorities and on protection of human rights and fundamental freedoms while countering terrorism.¹⁶¹ Sri Lanka illustrated further commitment to human rights, with the Optional Protocol to the

¹⁵⁵ Amnesty International, 'Sri Lanka 2019', (b) <https://www.amnesty.org/en/countries/asia-and-the-pacific/sri-lanka/report-sri-lanka/> (accessed 17 March 2020).

¹⁵⁶ Deane, p. 972.

¹⁵⁷ UN Security Council, *Report of the Secretary-General's Panel of Experts on Accountability in Sri Lanka*, 31 March 2011.

¹⁵⁸ I. R. Akurugoda, *NGO Politics in Sri Lanka*, Cham, Palgrave Macmillan, 2018, p. 3.

¹⁵⁹ UN OHCHR, *Ratification status for Sri Lanka*, UN Treaty Body Database, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx (accessed 28 June 2020).

¹⁶⁰ Fonseka and Schulz, p. 4.

¹⁶¹ European Commission, *Joint Staff Working Document The EU Special Incentive Arrangement for Sustainable Development and Good Governance assessment of Sri Lanka covering the period 2018 – 2019*, A/HRC/40/23, 10 February 2020, p. 1.

UN Convention Against Torture (OPCAT) coming into effect and the adoption of the national Enforced Disappearances Act and Right to Information Act.¹⁶²

There is consensus that reconciliation is necessary in Sri Lanka to address victims' needs and help society recover from widespread human rights atrocities and systematic abuses; however, efforts to establish a successful transitional justice process in Sri Lanka have been limited. In 2015 the pro-transitional GoSL committed to the UN Human Rights Council to establish truth, justice and reparation mechanisms, and reforms aimed at non-recurrence; however, little progress has been made.¹⁶³ Furthermore, the government has done little since to address the conflict or implement social integration measures, rejecting proposals of the UN Secretary General for an independent international investigation.¹⁶⁴ Government and civil society efforts to promote transitional justice will be further explored throughout the following chapters.

Although the Sri Lankan Constitution devotes an entire chapter to the promotion and protection of human rights, reconciliation commissions describe the concept of human rights as 'alien to the socio-cultural ethos of Sri Lanka'.¹⁶⁵ Human rights language appears to be found at higher social levels, rather than a topic inherent within Sri Lankan culture. Despite this, the concept of human rights is 'deeply embedded in the core values and ethics espoused by Buddhism and other religions practiced in Sri Lanka'.¹⁶⁶ The government, however, has branded transitional justice a 'foreign imposition' and refused participation of foreign judges within any judicial mechanism.¹⁶⁷ Gender-mainstreamed human rights initiatives should not impose Western ideas of gender equality, but instead empower women and provide the platform to integrate women's rights in a culturally sensitive way.¹⁶⁸ International human rights principles can be adapted to fit specific cultural dynamics, for example in the case of Sri Lanka human rights can be discussed in relation to religious values and frameworks, which already promote equality and peace.

¹⁶² European Commission, p. 1.

¹⁶³ Amnesty, 2019 (a).

¹⁶⁴ Friedman, p. 27.

¹⁶⁵ Report of the Commission of Inquiry on Lessons Learnt and Reconciliation (LLRC), 15 November 2011, <http://slembassyusa.org/downloads/LLRC-REPORT.pdf>. (accessed 17 May 2020), p. 155, para 5.4

¹⁶⁶ LLRC, p. 155, para 5.4

¹⁶⁷ I. Lassée, 'The Sri Lankan Transitional Justice Process: Too Little, Too Late?' in *The Round Table*, vol. 108, no. 6, 2019, p. 713.

¹⁶⁸ Grina, p. 452.

5. 3. Recent developments in Sri Lanka

Recent developments in Sri Lanka, including mass violence and terrorism, make the necessity for effective transitional justice measures more pressing. In March 2018, for the first time since the end of the civil war, Sri Lanka announced a 10-day national state of emergency in response to anti-Muslim violence throughout the Kandy district, with the destruction of mosques, houses, businesses, and vehicles.¹⁶⁹ Furthermore, ethnic conflict has expanded in the ‘absence of the LTTE’ so that not ‘only Tamils but also the Muslim minority became ‘demonised’ others’.¹⁷⁰ Re-emergence of ethnic and religious tension suggests insufficient action has been taken to address the root causes of the civil war.

In April 2019, the deadly terrorist attacks on Easter Sunday, with over 500 injured and 258 people killed, led to the implementation of Emergency Regulations, allowing arbitrary detentions and restrictions to the rights to freedom of expression and religious beliefs.¹⁷¹ These attacks were inspired by the Islamic State and took place at three church services and three luxury hotels, targeting upper classes, foreign tourists and Christian communities.¹⁷² Worryingly, this aggravated widespread tension, particularly against minorities, and the Muslim population has since been subject to retaliation, including hate speech and mob violence, provoked by powerful figures, with little protection provided by the government.¹⁷³

Furthermore, the most recent Sri Lankan election results illustrate how polarised society is along ethnic lines.¹⁷⁴ Gotabaya Rajapaska’s Presidency has led to increased tension and doubts over the future of transitional justice. He was elected in November 2019 having previously served as defence secretary during the civil war.¹⁷⁵ Although he played a key role in ending the civil war – together with his brother Mahinda Rajapaksa, who served as Sri Lankan President from 2005 until 2015 – there are concerns over

¹⁶⁹ M. Ganguly, ‘State of Emergency Declared in Sri Lanka’, Human Rights Watch, 7 March 2018, <https://www.hrw.org/news/2018/03/07/state-emergency-declared-sri-lanka> (accessed 10 Dec 2018).

¹⁷⁰ A. Welikala, ‘Sri Lanka’s Failed Peace Process and the Continuing Challenge of Ethno-Territorial Clefts’ in G. Anderson and S. Choudhry, *Territory and Power in Constitutional Transitions*, Oxford, Oxford University Press, 2019, p. 270.

¹⁷¹ *Ibid.*

¹⁷² *Ibid.*

¹⁷³ Human Rights Watch, ‘Sri Lanka: Muslims Face Threats’, 3 July, 2019 <https://www.hrw.org/news/2019/07/04/sri-lanka-muslims-face-threats-attacks> (accessed 3 February 2020).

¹⁷⁴ UN OHCHR, *Promoting reconciliation, accountability and human rights in Sri Lanka*, 26 February 2020, A/HRC/40/23, p. 2, para 4.

¹⁷⁵ Macan-Markar.

human rights violations committed by the Sri Lanka forces during the conflict.¹⁷⁶ Both the Rajapaksa brothers' campaigns have been built on Sinhalese majoritarianism and ultranationalism, exploiting divisions between ethnic and religious groups, prompting fears of violence, and casting doubt over the future of transitional justice processes.¹⁷⁷ Worryingly, the current government has withdrawn commitments to cooperate with UN Resolution 30/1 to promote reconciliation, accountability and human rights, a resolution that the previous government co-sponsored.¹⁷⁸ Furthermore, Sri Lanka's parliament was dissolved in March, with April elections postponed until August because of Covid-19, allowing Rajapaksa to operate 'without any legislative oversight'.¹⁷⁹ Elections took place on 5 August 2020, with results released on the 7 August, leading to a 'landslide victory' for the Rajapaksa brothers and prompting fears of heightened authoritarianism.¹⁸⁰

The current COVID-19 pandemic has further heightened social tensions. NGOs such as Amnesty International (Amnesty) and Human Rights Watch have expressed concerns that the GoSL are using the Covid-19 crisis to fuel social tensions and violate the rights of the Tamil population in Sri Lanka.¹⁸¹ The government established requirements to cremate bodies, violating freedoms to Islamic religious traditions.¹⁸² Furthermore, there have been hate campaigns against Muslims on social media, including false suggestions that Muslims are intentionally spreading Covid-19, leading to calls to boycott Muslim businesses.¹⁸³ In response, a number of UN Special Rapporteurs expressed concern over religious freedom of minority populations in Sri Lanka and

¹⁷⁶ BBC, 'Gotabaya Rajapaksa: Sri Lanka's powerful new president', 25 November 2019 <https://www.bbc.co.uk/news/world-asia-50389014> (accessed 14 March 2020).

¹⁷⁷ Macan-Markar.

¹⁷⁸ Amnesty International, 'Sri Lanka: Withdrawal from UN commitments requires robust response by Human Rights Council', 27 February 2020, <https://www.amnesty.org/en/latest/news/2020/02/sri-lanka-withdrawal-from-un-commitments-requires-robust-response-by-human-rights-council/> (accessed 4 March 2020).

¹⁷⁹ The New Humanitarian, 'For Sri Lanka's activists, a 'state of fear' resurfaces', 10 June 2020, <https://www.thenewhumanitarian.org/news/2020/06/10/Sri-Lanka-activists-state-of-fear>

¹⁸⁰ Al Jazeera, 'Rajapaksa brothers win by landslide in Sri Lanka's election', <https://www.aljazeera.com/news/2020/08/rajapaksa-brothers-win-landslide-sri-lanka-election-200807025501325.html> (accessed 7 August 2020).

¹⁸¹ M. Ganguly, 'Sri Lankan Officials Stoke Covid-19 Communal Hate', 18 May 2020, <https://www.hrw.org/news/2020/05/18/sri-lankan-officials-stoke-covid-19-communal-hate> (accessed 20 May 2020).

¹⁸² *Ibid*

¹⁸³ *Ibid*.

implored the government to stick to Article 19 of the ICCPR and Political Rights.¹⁸⁴ Likewise, activists, lawyers, and CSOs wrote to President Rajapaksa to encourage the protection of the human rights of minority groups in response to the global pandemic.¹⁸⁵

In conclusion, years of violence in Sri Lanka, combined with the failure to establish transitional justice mechanisms, and presently the social and political discontent caused by the new government and global pandemic, make for a difficult and uneasy human rights situation. This complex and deep-rooted context highlights the need for comprehensive transitional justice processes, which involve the entirety of the population and work towards a long lasting peace.

6. WOMEN, PEACE AND ARMED CONFLICT IN SRI LANKA

In order to comprehensively explore how current transitional justice mechanisms address the human rights of women, it is important to discuss the history of women in armed conflict in Sri Lanka. To identify whether transitional justice processes appropriately cover and reflect the needs of women in post-conflict Sri Lanka, women's roles during and after the armed conflict must be examined. A brief overview of women's roles in Sri Lankan culture and traditional narratives and stereotypes adds depth to the understanding of the roles women played within the armed conflict; whether these roles were new, liberating and empowering for women or if narratives surrounding them reinforced pre-existing gender norms, which women could not escape from in conflict. This chapter will examine women's roles in armed conflict; the notion of 'victimhood' and how appropriately this reflects the experienced reality of women involved in armed conflict; and the new societal roles women were cast into by the armed conflict. Post-conflict experiences will be discussed; to highlight failures of past transitional justice mechanisms in promoting women's human rights and to illustrate how peace processes are often impacted by gender norms rather than guided by women's needs.

¹⁸⁴ UN OHCHR, *Special Rapporteur Comments*, 8 April 2020, AL LKA 2/2020, pp. 1-6, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25175> (accessed 4 May 2020).

¹⁸⁵ CPA, 'Disposal of bodies of deceased persons who were infected with and suspected of being infected with COVID-19', 5 April 2019, <https://www.cpalanka.org/disposal-of-bodies-of-deceased-persons-who-were-infected-with-and-suspected-of-being-infected-with-covid-19/> (accessed 15 April 2020).

6.1 Women in Sri Lankan culture

Sri Lanka is discussed as an ‘anomaly’ in terms of gender equality in society.¹⁸⁶ On paper, women have strong legal rights provisions, with a long history of female suffrage (women gained the vote in 1931), free supported healthcare (keeping rates of maternal mortality very low) and the same educational rights for girls.¹⁸⁷ Women have served as both president and prime minister – Sri Lanka was the first country to have a female prime minister – and women make up 60 percent of the work force, yet women’s voices are not heard on a political or policy level.¹⁸⁸

Sri Lanka is viewed as a ‘success story’ for the region, despite high levels of domestic violence and rising suicide rates among women.¹⁸⁹ Critics say that incorporating women into these high leadership positions, without fundamental structural change is ineffective in promoting gender equality.¹⁹⁰ Women’s issues are often excluded from the ‘high’ politics of international relations.¹⁹¹ Women are generally considered as subordinate to men, constructed as the ‘nurturer’ of the nation.¹⁹² Typically, women begin life under control of their father or brother and tend to remain under the control of a male figure.¹⁹³ Women’s issues are held as a matter of private, rather than public. As a direct result of this culture it is difficult to implement methods of transitional justice.¹⁹⁴

It is important to note that customary norms are not ‘set in stone or totalizing’, with women playing vastly different roles.¹⁹⁵ The struggles of women in Sri Lanka are ‘complex and multifaceted’.¹⁹⁶ Religion, ethnicity and culture intersect with gender and women’s rights in complicated systems. Despite the difference in experiences SGBV is

¹⁸⁶ A. Abeyasekera and H. Amarasuriya, “‘Why aren’t we empowered yet?’ Assumptions and silences surrounding women, gender, and development in Sri Lanka’ in *Charting pathways to gender equality*, CENWOR, 2010, p. 1.

¹⁸⁷ U. M. H. Appuhamilage and J. Marecek, ‘Present but Unnamed: Feminists and Psychologies in Sri Lanka’ in A. Rutherford et al. (eds.), *Handbook of International Feminisms, Handbook of International Feminisms*, New York, Springer, 2011, p. 317.

¹⁸⁸ D. Ebert, ‘Interview: Guerrilla movements like LTTE provide opportunities for women’s emancipation’ in *Northeastern Monthly*, 28 October 2005, p. 4.

¹⁸⁹ Abeyasekera and Amarasuriya, p. 1.

¹⁹⁰ Rajasingham-Senanayake, p. 144.

¹⁹¹ Parashar, p. 180.

¹⁹² M. Denov and K. Jordan, ‘Birds of Freedom? Perspectives on Female Emancipation and Sri Lanka’s Liberation Tigers of Tamil Eelam’ in *Journal of Women’s Studies*, vol. 9, no. 1, 2007, p. 47.

¹⁹³ *Ibid.*, p. 47.

¹⁹⁴ Celermajer and Munasinghe, pp. 616-617.

¹⁹⁵ Appuhamilage and Marecek, p. 318.

¹⁹⁶ J. Guthrie and K. Pinto-Jayawardena, ‘Introduction’ in K. Jayawardena and K. Pinto-Jayawardena, *The Search for Justice: The Sri Lanka Papers*, New Delhi, Zubaan, 2016

perpetuated in every community, often emanating from within women's own communities.¹⁹⁷ Domestic violence against women is high and widespread, and intersects across class, ethnicity and religion, but is 'drastically underreported'.¹⁹⁸ Different communities are and were effected in different ways, with the most intense and long-lasting effects of the armed conflict on Tamil communities in the North and East of Sri Lanka.¹⁹⁹ Although there are no known studies that draw direct links between SGBV and the war, the culture of impunity, militarisation and SGBV has 'pervaded' conflict-affected districts.²⁰⁰ Whilst the gravity of violence is different, for individual women it is felt in the same way, for example, they do not have socio-psychological support.²⁰¹ Violence has become embedded in everyday culture in Sri Lankan homes:

“Justifying men beating up their wives, justifying women being catcalled in the streets, justifying men raping women, justifying child abuse, and justifying gender inequality”.²⁰²

Three out of five women are victims of domestic violence, with 95 percent of women harassed on public transport, 44 percent of pregnant women beaten at home and over two thirds of women believing they cannot refuse sex with their husbands.²⁰³ Only one percent of victims use the Prevention of Domestic Violence Act to obtain redress and 97 percent of rapists face no legal consequence.²⁰⁴ Furthermore, the number of reported cases of rape and SV, particularly in the war affected northern and eastern provinces, has seen a dramatic rise since the end of the war.²⁰⁵

Violence is sustained through institutions, carried out by: 'security personnel and paramilitaries, members of armed groups and gangs, local politicians and police, and often ordinary citizens', even close family members.²⁰⁶ Police violence is normalised and there is a general culture of *lajia-baya* ('shame-fear'), making it difficult to confront

¹⁹⁷ Guthrie and Pinto-Jayawardena.

¹⁹⁸ European Commission, p. 13.

¹⁹⁹ Gamage, 2018.

²⁰⁰ *Ibid.*

²⁰¹ *Ibid.*

²⁰² Women in Need (WIN), 'Why Women and Girls' <https://www.winsl.net/why-women-and-girls/> (accessed 18 June 2020).

²⁰³ *Ibid.*

²⁰⁴ *Ibid.*

²⁰⁵ C. Kodikara, 'Connecting the Egregious and the Everyday: Addressing Impunity for Sexual Violence in Sri Lanka' in P. Gready (ed.), *From Transitional to Transformative Justice*, Cambridge, Cambridge University Press, 2019, p. 209

²⁰⁶ Guthrie and Pinto-Jayawardena.

human rights issues.²⁰⁷ This is a gendered concept, instilled in children, with women taught to feel shameful about ‘private’ issues, including domestic abuse and rape, and men taught to be fearful about coming forward.²⁰⁸

Furthermore, there is a culture of ‘sexual bribery’, where men look for sexual favours as a form of bribery.²⁰⁹ Based on findings from discussions with women at community and grassroots levels sexual bribery is thought of as ‘normal behaviour’, to be expected from officials, with women stating ‘we thought we are supposed to give this favour to get something from these men’.²¹⁰ When women report these issues they are often ridiculed, their experiences trivialised, and many women led to believe they are to blame, especially if the perpetrator is an influential community figure.²¹¹ This mistrust of institutions and *lajia-baya* culture makes opening up a human rights dialogue difficult. Addressing these issues and encouraging human rights-orientated culture is essential and could help to create conditions for successful transitional justice methods.

As discussed, Sri Lanka is a deeply diverse country, composed of different religions, ethnicities, castes, and cultures. Minority populations, particularly Tamil’s, have been, and continue to be, largely discriminated against. Tamils, both men and women, were ‘overwhelmingly vulnerable’ to SV perpetrated by members of the armed forces during the civil war.²¹² Tamil women act as a minority within a minority and have to deal with the intersectional inequality faced as Tamils and as women.

Common discourse presents ‘the good Tamil woman’: a wife and mother.²¹³ Women are rarely centred in these discussions and automatically considered as victims, in patriarchal, caste-ridden cultures, rather than agents of society and culture.²¹⁴ However, this only presents an essentialised version of the truth, with the lived reality of women in Tamil society made up of a variety of very different experiences. However, historically women played a central role in Tamil culture. Prior to colonial rule

²⁰⁷ D. Celermajer and V. Munasinghe, ‘Acute and Everyday Violence in Sri Lanka’ *Journal of Contemporary Asia*, vol. 47, no. 4, 2017, pp. 628-631.

²⁰⁸ *Ibid.*, pp. 628-631.

²⁰⁹ Gamage, 2018.

²¹⁰ *Ibid.*

²¹¹ *Ibid.*

²¹² Kodikara, 2019, p. 209

²¹³ R. Walker, ““Speak to the Women as the Men Have All Gone”: Exploring Networks of Support amongst Women in Eastern Sri Lanka’ in S. Roy (ed.), *New South Asian Feminisms: Paradoxes and Possibilities*, London, Zed Books, 2012, p. 152.

²¹⁴ Rajasingham-Senanayake, p. 152.

matrilineal inheritance for women existed, with property passed down from mother to daughter.²¹⁵ However, these rights were eroded by the end of colonial occupation.

6. 2. Involvement of women in armed conflict in Sri Lanka

The role of women in armed conflict in Sri Lanka has raised questions about gender identity.²¹⁶ Women had a varied and active involvement during and post-conflict, with traditional gender roles uprooted. In accordance with their ethnicity or religion, women were involved in the LTTE, the Sri Lankan Army and Air Force, as well as in peace activism, in groups such as 'Women's Coalition for Peace' and 'Mothers' Front'.²¹⁷ The decision to take up arms is a huge departure from social norms and behaviour expected of women in Sri Lankan culture.²¹⁸ However, despite women's involvement in conflict being viewed as 'liberatory', there are concerns that females in military groups simply adopt masculine militarised attitudes, rather than actively influencing the group.²¹⁹

The concept of widowhood is important in illustrating why women in armed conflict should not be stereotyped as victims and highlights why understanding the complex effects that armed conflict has upon women is important. Armed conflict in Sri Lanka disrupted women's traditional gender roles. Women increasingly became the primary income generators and heads of the household.²²⁰ Men died in higher numbers and were targets of state enforced disappearances, leaving women disproportionately affected, in terms of rebuilding their lives and ensuring support for their families.²²¹ By the end of the war, women were the heads of 23 percent of households, with over 50 percent of these women as widows, and the majority holding only basic levels of education.²²² There are around 90,000 widowed women in the North and East of Sri Lanka and about 58,000 women-headed households (WHH) in the Northern Province

²¹⁵ Rajasingham-Senanayake, p. 152.

²¹⁶ Walker, p. 153.

²¹⁷ Rajasingham-Senanayake, p. 149.

²¹⁸ Denov and Jordan, p. 47.

²¹⁹ *Ibid.*, p. 47.

²²⁰ Walker, p. 153.

²²¹ Friedman, pp. 24-25.

²²² Department of Census and Statistics, *Demographic Characteristics: Female Headed Households, Household Income and Expenditure Survey 2012/2013*, 24 December 2013.

²²² The Office of the United Nations High Commissioner for Human Rights, 'Promoting reconciliation, accountability and human rights in Sri Lanka' 24 February 2014.

alone.²²³ Appuhamilage and Marecek argue that ‘whether divorced, deserted, widowed, or never married, single women often find it difficult to live in safety and to avoid being targets of gossip and social opprobrium’.²²⁴ Widowhood holds a stigma in both Hindu and Buddhist cultures, with widowed women largely ostracized from society.²²⁵ Widowhood is viewed as a negative and ‘polluting’ condition, which prohibits active involvement in community life.²²⁶ Women had to and continue to find new ways to provide for their families and to cope with surviving as widows. In the civil war many women lost husbands and sons, as well as other relatives. Elderly parents also face issues in receiving justice and support, with no mechanism to take care of elderly people, especially elderly women.²²⁷

However, during and after the war many women found new meaning in widowhood. Widows developed informal networks, around experiences of loss and marginalisation.²²⁸ Young widows displayed their independence by wearing the red *pottu* on their foreheads – a mark reserved for married Hindu women – as a refusal to be shunned from society and culture because of their lack of husbands and children.²²⁹ Women whose husbands are still missing are required to obtain death certificates to merit financial assistance; yet, many women have not requested these certificates for the dual motivations to avoid the stigma around widowhood in Tamil society and to maintain hope their husbands are found alive.²³⁰ Women not only have to deal with the economic issues of losing their husbands or sons – including poverty, land rights, and indebtedness – but also psychological trauma and social stigma on top of this.²³¹ These problems persist in society because of structural, cultural, and socioeconomic factors that limit women’s rights and agency.²³² Furthermore, widows and WHH are particularly vulnerable to sexual harassment, exploitation, and bribery because of the ‘lack of a male in the household’.²³³ The Women’s Development Centre (WDC) states that widows

²²³ Fonseka and Schulz, p. 4.

²²⁴ Appuhamilage and Marecek, p. 318.

²²⁵ Rajasingham-Senanayake, p. 143.

²²⁶ *Ibid.*, p. 159.

²²⁷ Interview with WDC, Zoom, 18 July 2020.

²²⁸ Walker, p. 154.

²²⁹ Rajasingham-Senanayake, pp. 159-160.

²³⁰ Friedman, p. 26.

²³¹ Fonseka and Schulz, p. 4.

²³² *Ibid.*, p. 4.

²³³ CEJ, ‘*Shrouded in Secrecy: Sexual Bribery of Muslim Women in Post-War Districts*, 2018, p. 2.

cannot remarry, because if they do they cannot receive pensions or subsidies for their deceased husbands.²³⁴ Furthermore, widows and single mothers are considered to have ‘*bad karma*’ if they lost their husbands.²³⁵ Thus they are treated differently, ‘*especially by men*’, who treat widows with little respect.²³⁶ WDC notes that after women are widowed they have ‘*no life*’.²³⁷

Throughout the armed conflict violence against women was used as a military tactic and in 2010, 90 percent of women reported sexual harassment in public spaces.²³⁸ War was a sexually risky environment for women, who faced sexual harassment, sex extortion and sexual abuse, particularly at checkpoints and in house-to-house searches.²³⁹ The level of SV at the end of the war is described as ‘unprecedented’, with many women unable to talk about the SV they experienced for many years, and many unable to do this ‘officially’, on any kind of public record.²⁴⁰ Furthermore, more men who return from combat experiences engage in SV.²⁴¹ Women as victims present a complex issue, with many issues continuing to haunt women post-conflict. There is a huge stigma around women victims of rape, which means they cannot marry (since they are no longer virgins).²⁴² It is important to define ‘victimhood’ to encompass the diversity of those affected by violence and war, beyond direct targets of violence, or commonly held stereotypes of ‘victims’, to include the broader suffering experienced by all of society.²⁴³

The displacement of women in the conflict in Sri Lanka illustrates the complex, dual narrative surrounding women’s agency. Not all displaced women can be considered purely as ‘victims’ of the armed conflict; many long-term displacements have provided women with greater ‘personal and group autonomy’ as well as new opportunities for leadership.²⁴⁴ Generally the concept of returning home is romanticised; return is considered as the ideal, with displaced peoples constructed as ‘victims’; however,

²³⁴ Interview with WDC, Zoom, 18 July 2020.

²³⁵ *Ibid.*

²³⁶ *Ibid.*

²³⁷ *Ibid.*

²³⁸ S. Davies and J. True, ‘When there is no justice: gendered violence and harm in post-conflict Sri Lanka’, *The International Journal of Human Rights*, vol. 21, no. 9, 2017, pp. 1320-1322.

²³⁹ Guthrie and Pinto-Jayawardena.

²⁴⁰ *Ibid.*

²⁴¹ *Ibid.*

²⁴² Denov and Jordan, p. 53.

²⁴³ Fonseka and Schulz, p. 3

²⁴⁴ Rajasingham-Senanayake, p. 158.

returning home could be detrimental to the women involved and policy and human rights discourses need to be reconsidered to sustain female empowerment and take the women's agency into account.²⁴⁵ There are concerns that returning home could lead to pre-war caste and gender status, which could be detrimental to women's empowerment.²⁴⁶ Furthermore, the goal of return could prolong armed conflicts, rather than adapting to deal with the new reality.²⁴⁷ Thus, displacement does not, as often assumed, only have detrimental effects upon women in armed conflict and post-conflict, but sometimes allows women to take on new roles, leading to greater empowerment.

The complexity of the role of Tamil women in Sri Lankan society and during the war is also illustrated by women's roles in the LTTE. The LTTE movement paradoxically upholds and reinforces gender stereotypes, whilst allowing women to engage in non-traditional gender roles.²⁴⁸ Women were recruited from the mid-1980s into the LTTE, which projected women's emancipation as an important revolutionary agenda, with women urged to join forces against their oppressors (the Sinhalese and Sri Lankan state).²⁴⁹ The LTTE was described as 'vigorously' recruiting female cadres, for both combat and suicide attacks.²⁵⁰ At least 20 percent of the LTTE were women, with the organisation presenting new opportunities for female political agency.²⁵¹ The LTTE set up a separate section for women in 1983, *Vituthalai Pulikal Munani*, the 'Women's Front of the Liberation Tigers'.²⁵² From 1985 women were trained in mining, explosives, weapons technology, electronics, intelligence work, and combat.²⁵³ Women played active roles in the conflict, with over 20 percent of women in the LTTE performing deadly suicide bombings.²⁵⁴ Women were deliberately selected for suicide bombings, as they had to undergo less intense body searches at checkpoints.²⁵⁵ Thenmozhi Rajaratnam, known commonly as Dhanu, was made commander of the women's wing of the LTTE in

²⁴⁵ Rajasingham-Senanayake, pp. 158-159.

²⁴⁶ *Ibid.*, p. 159.

²⁴⁷ *Ibid.*, p. 158.

²⁴⁸ Denov and Jordan, p. 56.

²⁴⁹ Parashar, p. 173.

²⁵⁰ C. Fair, *Urban Battle Fields of South Asia: Lessons Learned from Sri Lanka, India, and Pakistan*, Santa Monica, RAND, 2004, pp. 11-38.

²⁵¹ Friedman, p. 20.

²⁵² Parashar, p. 173.

²⁵³ Denov and Jordan, p. 46.

²⁵⁴ Parashar, p. 173.

²⁵⁵ Denov and Jordan, p. 46.

1987 and was responsible for the high-level suicide attack of Indian Prime Minister Rajiv Gandhi in 1991 – to prevent him from regaining power and reintroducing the IPKF and other crackdown measures on the LTTE.²⁵⁶ In an interview in 1987 Dhanu described women's liberation as 'necessary' after Tamil Eelam was 'won'.²⁵⁷ Additionally, the leader of the LTTE, Prabhakaran, described the creation of the women's wing as 'one of the greatest achievements of the movement'.²⁵⁸ The LTTE movement was idealised by the Tamil public, particularly the women fighters, who were seen as 'restoring their dignity' by joining the armed conflict.²⁵⁹

However, the LTTE experience was not simply one of empowerment for women. Rita Manchanda, a member of the Advisory panel to the Ministry of Women's Empowerment in 2005, noted that despite the surface level appearance of female emancipation, it is important to examine the motivations behind women joining the LTTE and the role they played within the organisation, such as if they acted as part of the leadership.²⁶⁰ During and post-war, the violence subjugated and marginalised women from political and economic inclusion.²⁶¹ Furthermore, the LTTE was not always an expression of women's agency. Akhila Akka headed the woman's section of the LTTE; however, there was little evidence that she played an active role in decision-making.²⁶² Similarly, ex-LTTE women report that they did not always have a choice of whether to join, with the LTTE requiring every Tamil family to send a child.²⁶³ To avoid this Tamil families in the North married off their daughters at younger ages and in larger numbers to protect them from the LTTE, who did not forcibly recruit married women.²⁶⁴ However, in a study of Sri Lankan Tamil women, some of whom previously served in the LTTE, Jordan and Denov state that many young women 'hold a strong sense of devotion to the

²⁵⁶ A. Mitra, "Rajiv Gandhi assassination: How the plot was hatched and executed by LTTE", India Today, 1991, <https://www.indiatoday.in/magazine/investigation/story/19910715-rajiv-gandhi-assassination-ltte-supremo-pirabhakaran-ordered-the-killing-in-jaffna-in-october-1990-814580-1991-07-15>, (accessed 28 May 2020).

²⁵⁷ Rajasingham-Senanayake, p. 153.

²⁵⁸ N. de Mel, *Women & the Nation's Narrative: Gender and Nationalism in Twentieth Century Sri Lanka*, Maryland, Rowman & Littlefield Publishers, 2001, p. 208.

²⁵⁹ Denov and Jordan, p. 55.

²⁶⁰ Ebert, p. 1.

²⁶¹ Friedman, p. 20.

²⁶² Parashar, p. 174.

²⁶³ *Ibid.*, p. 173.

²⁶⁴ Friedman, p. 20.

LTTE cause and made a conscious and voluntary decision to actively join the LTTE'.²⁶⁵ One participant indicated that instances of forced recruitment were a 'rare occurrence'.²⁶⁶ Furthermore, instead of accepting social ostracisation, many Tamil women instead joined the LTTE.²⁶⁷ There are a large variety of women's experiences in the LTTE, with uncertainty as to what extent participants were willing volunteers or forcibly recruited.

Despite there being grey areas, in which it is difficult to tell if women's agency has been exercised, the LTTE took some active steps to protect women at a more local level within the organisation. The LTTE introduced anti-dowry policies, enforced punishments for domestic violence and rape, and expressed concerns about masculine structures within wider society.²⁶⁸ The LTTE had a policy on domestic violence from around 1999, with a three-stage process, involving local courts and disputes.²⁶⁹ However, LTTE women were also punished for cultural or sexual 'transgressions'.²⁷⁰

LTTE women still experience the gendered effects of war post-conflict. Female LTTE combatants are given shorter sentences, but are subjects of higher social scrutiny than male counterparts, which excludes them from employment and marriage opportunities and makes social reintegration difficult.²⁷¹ Women are in a 'critical' situation after returning from fighting for the LTTE, with community rejection and men abandoning their marriages.²⁷² Women are in a paradoxical situation of rejection, but need to remarry to gain social standing. There is social pressure from communities for former LTTE women combatants to marry quickly to return to 'normal' social order and negate stereotypes of women ex-militants as 'contrarian and uncontrollable'.²⁷³ This has created a phenomenon of early marriages in order to return to some 'normality'.²⁷⁴ However, there is widespread rejection of LTTE women by their husbands (with wives of LTTE men rarely abandoning them in the same way).²⁷⁵ When returning to society

²⁶⁵ Denov and Jordan, p. 51.

²⁶⁶ *Ibid.*, p. 52.

²⁶⁷ *Ibid.*, p. 53.

²⁶⁸ Parashar, p. 174.

²⁶⁹ Rajasingham-Senanayake, p. 153.

²⁷⁰ Guthrie and Pinto-Jayawardena.

²⁷¹ Friedman, p. 26.

²⁷² S. R. Gamage, 'Interview with Sepali Kottegoda' in *Women Talk: an alternative space for women's voices in Sri Lanka*, 17 August 2017 (b), <https://womentalksl.wordpress.com/2018/01/05/dr-sepali-kottegoda/> (accessed 5 July 2020).

²⁷³ *Ibid.*, p. 27.

²⁷⁴ Ebert, p. 2.

²⁷⁵ Gamage, 2017 (b).

LTTE women often do not express they are ex-combatants out of fear of rejection and security concerns; falsely claiming they are ‘disabled’ to request government support.²⁷⁶

In a post-conflict setting the return to pre-war gender-status most often disadvantages women. Enloe expresses apprehension that peace processes should not simply return women to their pre-conflict gender roles, describing the women ‘pushed back into the kitchen after the revolution’.²⁷⁷ In Sri Lanka, when women returned to civilian society they often had to give up their power and independence gained during the armed conflict and return to normative gender roles, like finding a husband.²⁷⁸ Rajasingham-Senanayake argues that this return to pre-war normality seems unsustainable, and that the war in Sri Lanka, which cast women into new roles, has created new ‘macro’ structures in society of women’s agency and empowerment.²⁷⁹

The varied roles of women in war in Sri Lanka illustrate the complexities of dealing with women’s rights and implementing effective policies to deal with the variety of experiences. Although women were disproportionately affected by violence and were victims of SGBV, women’s experiences of armed conflict stand in stark contrast, with inclusion in combat or displacement offering some degree of liberation.

6. 3. Women in the 2003 peace negotiations

During the first stage of negotiations in the 2003 ceasefire, women remained largely excluded from the peace processes. Manchanda argues that there was no presence of civil society nor women’s groups as part of the monitoring mechanism in the Ceasefire Agreement, which gave little recognition to human rights issues.²⁸⁰ The only woman at the negotiating table was the Australian wife of an LTTE spokesman; although she was pro-Tamil feminism, she was not representative of the majority of Tamil women.²⁸¹ The head of the LTTE women’s wing, Tamilini, was also pushed forward during peace talks; however, there are questions about whether she was able to exercise her power, or if it was simply tokenism.²⁸² Additionally, a women’s subcommittee was formed for warring

²⁷⁶ Gamage, 2017 (b).

²⁷⁷ C. Enloe, *Does Khaki Become You? The Militarization of Women’s Lives*. London, South End Press, 1984.

²⁷⁸ Denov and Jordan, p. 59.

²⁷⁹ Rajasingham-Senanayake, p. 145.

²⁸⁰ Ebert, p. 3.

²⁸¹ Rajasingham-Senanayake, p. 144.

²⁸² Ebert, p. 2.

parties to exchange views; however, Rajasingham-Senanayake argues that this led to the ‘ghettoisation’ of women’s concerns, illustrating a limited conceptualisation of a gendered peace, as gender was side-lined.²⁸³ The International Women’s Mission to the North East of Sri Lanka 2003 submitted a report to the GoSL, the LTTE and Norwegian facilitators, demanding to have women’s issues and concerns made an integral part of the peace agenda.²⁸⁴ This was the first time in Sri Lankan history that negotiating a peace settlement had a special gender component (the gender subcommittee).²⁸⁵ However, the ceasefire did not last for long and conflict resumed until 2009. This reflects the desire of women to be included in peace processes, with any reciprocal engagement provided by the government largely superficial. This pattern is further reflected in following sections on the government and NGOs roles in promoting transitional justice in Sri Lanka.

6. 4. Women’s activism and institutional incorporation

Sri Lanka ratified CEDAW in 1981, established a Women’s Charter and developed a ‘National Plan of Action for Women’ in 1996.²⁸⁶ Sri Lanka’s constitution recognises the right to ‘equality and equal protection’ of women as well as ‘the right to protection from discrimination’.²⁸⁷ In Sri Lanka the governmental departments that deal with women are: the Ministry of Child Development and Women’s Empowerment, the Women’s Bureau, and the National Committee on Women.²⁸⁸ Key goals are: ‘to protect women from violence and abuse’, ‘empowerment of women in economic, social and political spheres’, and ‘enabling participation of women in all decision-making bodies’.²⁸⁹ In 2016 Sri Lanka endorsed the Declaration of Commitment to End Sexual Violence in Conflict.²⁹⁰ The National Committee on Women developed the Action Plan on Prevention of Sex and Gender Based Violence (2016 to 2020) and has established five shelters for victims of domestic violence, in collaboration with CSOs.²⁹¹ Furthermore, the National Action Plan

²⁸³ Rajasingham-Senanayake, p. 144.

²⁸⁴ Alwis, Mertus and Saijad, p. 183.

²⁸⁵ Gamage, 2017 (b).

²⁸⁶ C. Kodikara, ‘The National Machinery for the Protection and Promotion of Women’s Rights in Sri Lanka’, WLUMI vol. 29, 2008, p. 119.

²⁸⁷ *Ibid.*, p. 119.

²⁸⁸ C. Kodikara, ‘Political Participation and Representation’ in Women and Media Collective (ed.), *Sri Lanka Shadow Report to CEDAW*, Colombo, Women and Media Collective, 2010, p. 7.

²⁸⁹ *Ibid.*, p. 7.

²⁹⁰ Guthrie and Pinto-Jayawardena.

²⁹¹ European Commission, p. 3.

for Human Rights (2017 to 2021) highlights the importance of incorporating gender issues into transitional justice processes, including investigating SGBV and providing solutions for issues predominantly affecting women.²⁹² However, the Sri Lanka Shadow Report to CEDAW describes these institutions as ineffective: lacking cooperation, understanding of gender and ethnic issues, and political autonomy, and marginalised from central decision-making and planning processes.²⁹³ The institutions also reinforce gender norms, linking the women and children's ministries, to reflect the common attitude that children are a woman's responsibility.²⁹⁴

Sri Lanka does however have a rich history of women's activism. A number of women's NGOs formed in the midst of armed conflict, such as the Mothers' Front, which united women around motherhood.²⁹⁵ In an interview conducted with lead researcher, Bhavani Fonseka, of the Centre for Policy Alternatives (CPA) she stated that:

*"Women in Sri Lanka have been historically very involved in justice and human rights issues, from justice to reparations... both from a victim's perspective but also large advocacy and trying to get a women's centred approach. In different dimensions women have been involved for decades."*²⁹⁶

De Alwis argues that feminist movements in Sri Lanka have grown in strength, shifting to more active campaigning strategies.²⁹⁷ Women's rights collectives have been set up, such as The National Forum against Gender-Based Violence Sri Lanka, which was established in 2005 to facilitate greater coordination in responses to SGBV in the aftermath of the 2004 tsunami.²⁹⁸ This movement is a collective of over 50 agencies, comprising the government, the UN, national and international NGOs, CSOs and individual experts, and now acts as the national level platform for advocacy and actions against GBV.²⁹⁹ Increasingly, mechanisms that centralise women in the effort to

²⁹² Government of Sri Lanka, *National Action Plan for the Protection and Promotion of Human Rights 2017-2021*, 2017.

²⁹³ Kodikara, 2010, p. 7.

²⁹⁴ *Ibid.*, p. 7.

²⁹⁵ *Ibid.*, p. 154.

²⁹⁶ Interview with Bhavani Fonseka, WhatsApp, 28 July 2020.

²⁹⁷ M. de Alwis, 'The "Purity" of Displacement and the Reterritorialization of Longing: Muslim IDPs in North Western Sri Lanka' in W. Giles & J. Hyndman (eds.), *Sites of Violence: Gender and Conflict Zones*, Berkeley, University of California Press, 2005, p. 218.

²⁹⁸ Forum Against Gender Based Violence Sri Lanka, <http://gbvforum.lk/about.php> (accessed 27 May 2020).

²⁹⁹ Forum Against Gender Based Violence.

overcome collective trauma and promote community resilience have also been promoted as part of the post-war peace process.

Women's activism also plays an essential role in advocacy and campaigning for women's inclusion in transitional justice and for women's rights to be addressed. Researcher Bhavani Fonseka argues that one of the most successful initiatives for '*raising the gender dimension*' in transitional justice is:

*"The women victims who've been out there publicly protesting, vigils... that's been most effective in terms of the visibility of the women, you know, on the streets or in public spaces. I would say that has been the most effective, and you know when you see the visuals it's much more, kind of, poignant and emotional to see - the wives, the mothers, the daughters out there."*³⁰⁰

She argues that '*a lot of what you see in terms of even the victim's demands, it's a lot of women who are in the forefront*'.³⁰¹ Women's activism is powerful by giving women a voice in political and social inclusion, forcing the government to listen and to include gender considerations in transitional justice mechanisms.

This illustrates the ways in which women's roles in Sri Lanka are complex and varied. Society is largely patriarchal, with women portrayed and expected to fulfil gendered expectations and supporting roles to men. Furthermore, during and post-conflict, women were presented as victims and largely considered in reference to men's roles. Although women were disproportionately affected by the armed conflict – and in gendered ways, through SV, for example – this does not capture the diverse reality of women's roles. Some women were provided with increased emancipation and empowerment due to their roles in the armed conflict. It is important to consider the diverse experiences of women when discussing transitional justice mechanisms, to determine if these processes address the full scope of women's rights and needs. Progress has been made to include women in institutions; however, the success of this will be considered further in the following chapters.

³⁰⁰ Interview with Bhavani Fonseka, WhatsApp, 28 July 2020.

³⁰¹ *Ibid.*

7. GOVERNMENTAL APPROACHES TO TRANSITIONAL JUSTICE IN SRI LANKA

This chapter will explore the government's efforts in establishing transitional justice mechanisms in Sri Lanka, and to what extent each transitional justice process takes account of gender, including the complex roles women played in the armed conflict. The chapter will first examine the different government-backed commissions on reconciliation and to what extent they take account of and promote human rights, particularly women's rights. The government offices on transitional justice will then be discussed to understand how women's rights are incorporated into their processes.

The commissions, offices and ministries established by the GoSL are constantly changing – in terms of the names, the websites and the structure – and overlapping, with unclear mandates and little differentiation between each body. For example, the website of the MNIR seems to have replaced the Ministry of National Co-existence, Dialogue and Official Languages. Furthermore, the Ministry of National Integration, Official Languages, Social Progress and Hindu Religious Affairs is now the Ministry for Justice, Human Rights and Legal Reforms' website. Each of these websites is unclear and incomplete, with many pages empty or failing to load. Furthermore, there are examples of obvious errors: the OR website includes a report dated 2017, when the office was not established until 2018. The impression given in discussion with Sri Lankan contacts, and from the interviews, was that the ever-changing government mechanisms reflects the lack of commitment to transitional justice, and the lack of clarity generally surrounding these processes. It is also important to note that transitional justice mechanisms and commissions were established under different governments and presidencies, some more pro-reform than others, which also offers explanation regarding the lack of clarity surrounding the mechanisms. Moreover, only the offices and ministries that play a specific role in transitional justice processes will be examined in the scope of this thesis.

The following section gives a brief summary of the transitional justice mechanisms and should be read in conjunction with *figure 2* and *figure 3*, which present a hierarchical summary of the government established mechanisms, and were created to introduce some clarity when researching for this chapter.

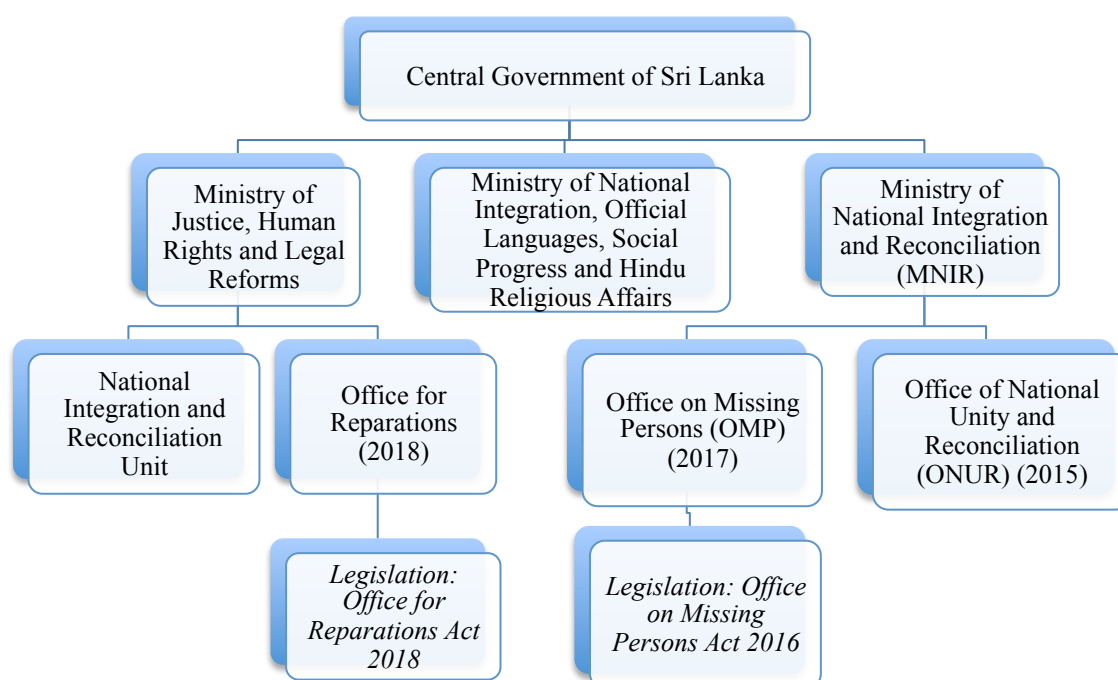


Figure 2: Government bodies concerned with transitional justice

Source: Emma Fullerton

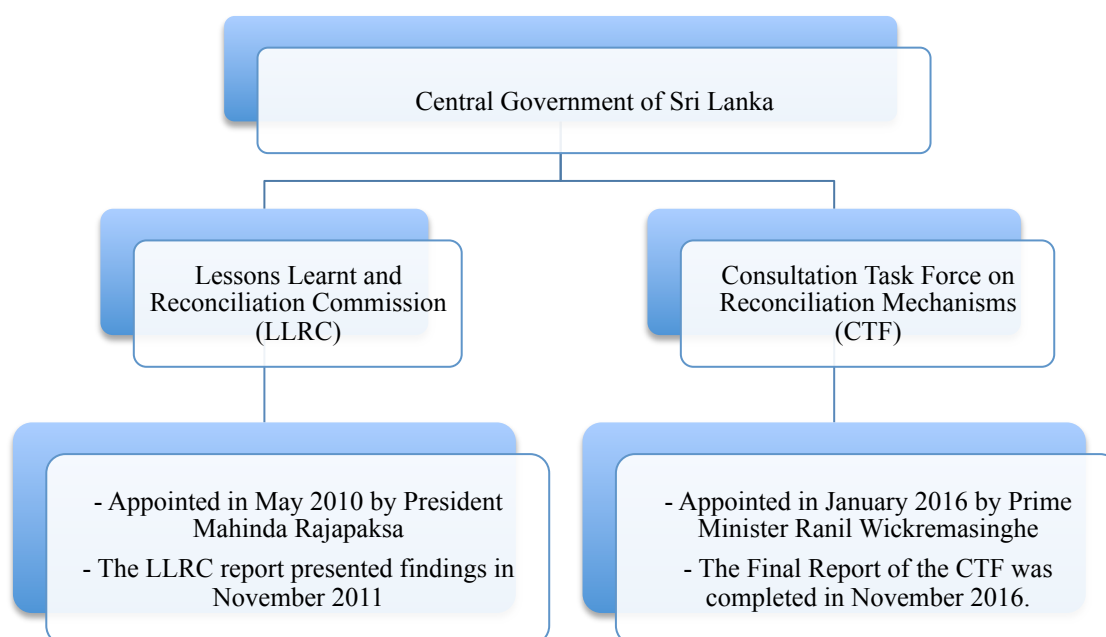


Figure 3: Government commissions concerned with transitional justice

Source: Emma Fullerton

7.1 Transitional justice commissions and institutions in Sri Lanka

This section gives an outline of the different commissions and institutions present in Sri Lanka, with details of their establishment and mandates.

The Lessons Learnt and Reconciliation Commission (LLRC): was set up in 2010 as an initial means of transitional justice and Friedman argues it was the ‘most visible representation of post-war transitional justice’.³⁰² President Mahinda Rajapaksa appointed the commission: to look back at the conflict and ahead for ‘an era of healing and peace building in the country’.³⁰³ It was established with the view that Sri Lankan citizens were ‘ready and willing to support consensual approaches advancing national interest, national reconciliation, justice, and equality for all citizens’.³⁰⁴ The LLRC acted as the most crucial part of the Presidential Commissions of Inquiry, attracting hundreds of witnesses and around 5,000 written submissions.³⁰⁵ The LLRC offered an important opportunity for women to testify and participate, giving their voices recognition.³⁰⁶

The commission defines successful ending of armed conflict and transitional justice as: ‘an all-inclusive political process of dialogue and accommodation so that the conflict’ will not continue.³⁰⁷ It also highlights the importance of the government’s role, adding that political leaders need to have ‘political will and sincerity of purpose’ to ensure the implementation of the recommendations.³⁰⁸ However, implementation of LLRC recommendations was halted soon after completion of the report.

Resolution 30/1: Alongside the introduction of the Office for National Integration and Reconciliation in 2015, the GoSL co-sponsored a landmark UN HRC resolution, 30/1, committing to set up mechanisms to promote reconciliation, accountability, and human rights in Sri Lanka.³⁰⁹ The resolution committed the GoSL to:

“Undertake a comprehensive approach to dealing with the past, incorporating the full range of judicial and non-judicial measures; ...a commission for truth, justice, reconciliation and non-recurrence, an Office on Missing Persons (OMP) and an OR.”³¹⁰

³⁰² Friedman, pp. 27-29.

³⁰³ LLRC, p. 1.

³⁰⁴ *Ibid.*, p. 1.

³⁰⁵ Friedman, p. 28.

³⁰⁶ *Ibid.*, p. 28.

³⁰⁷ LLRC, p. 1.

³⁰⁸ *Ibid.*, p. 1.

³⁰⁹ UN General Assembly, *Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General*, 29 September 2015, A/HRC/30/L.29.

³¹⁰ UN General Assembly Res. 30/1, 14 October 2015, p. 3, para. 4.

These commitments were reaffirmed in two further UNHRC resolutions in 2017 and 2019, with promises of independent judicial mechanisms.³¹¹ Furthermore, the resolution promised national consultations with all of society, including victims and civil society from all affected communities, along with international assistance.³¹²

Of the mechanisms promised, so far only the OR and the OMP have been established. Concerning the truth and reconciliation commission, the conceptual framework was reportedly submitted in October 2018 to the former Cabinet and passed to the Ministry of Defence for review; however, there has been no further progress.³¹³ None of the promised legal systems have been established; this will be further discussed in Chapter 8 on the role of the legal system in transitional justice in Sri Lanka.

Consultation Task Force on Reconciliation Mechanisms (CTF): As a result of resolution 30/1 the government commissioned the CTF to partake in countrywide consultations on proposed transitional justice processes, appointed by Prime Minister Ranil Wickremesinghe in early 2016.³¹⁴ The CTF report was hoped to be the foundation for transformation of violations and impunity into ‘meaningful reconciliation and national unity’.³¹⁵ The CTF provided recommendations for the creation of: the OR; the Truth Justice, Reconciliation and Non-Recurrence Commission; the OMP; and Judicial Mechanisms, as well as further transitional justice beyond these mechanisms.³¹⁶ The CTF engaged large numbers of people, from wide areas of society, including victims and other stakeholders, who made various recommendations, including calls for accountability, and reform of the state system, with greater control to be placed upon activities of politicians and state officials.³¹⁷ The CTF published its recommendations in 2016, including suggestions regarding gender sensitivity in transitional justice mechanisms.³¹⁸ The mandate of the CTF was to carry out:

³¹¹ HRW, 27 Feb 2020

³¹² UN General Assembly Res. 30/1, 14 October 2015., p. 3, para. 3.

³¹³ UN OHCHR, 2020, A/HRC/40/23, p. 5, para 20

³¹⁴ Lassée, p. 711

³¹⁵ Report of the Consultation Task Force on Reconciliation Mechanisms (CTF), 17 November 2016, <http://war-victims-map.org/wp-content/uploads/2017/02/CTF-Final-Report-Volume-I-Nov-16.pdf> (accessed 18 May 2020), p. 1.

³¹⁶ CTF.

³¹⁷ F. Haniffa, ‘Reconciliation, Accountability and International Human Rights in Sri Lanka’ in L. Kadirgamar, *Institute of International Relations and Strategic Studies Policy Briefs*, 2018.

³¹⁸ Fonseka and Schulz, p. 8

“A wide process of consultations involving all stakeholders including victims of conflict, to ascertain their views regarding the steps that they would like the Government to take including mechanisms to be established to ensure a durable peace, promote and protect human rights of all, strengthen the rule of law, administration of justice, good governance, reconciliation and non-recurrence including measures for reparations”.³¹⁹

Ministry of National Integration and Reconciliation (MNIR): was established in September 2015, to promote national integration and reconciliation and durable peace, through a national policy and directed programmes and projects.³²⁰ The Ministry also monitors and evaluates programmes and projects, collaborates with ministries, departments and institutions, and liaises with relevant stakeholders.³²¹ Furthermore, it advises government authorities on policies and actions for reconciliation.³²²

The Office for National Unity and Reconciliation (ONUR): was set up in 2015, alongside the co-signing of resolution 30/1, to formulate and coordinate the implementation of policies and programmes for national unity and reconciliation, whilst promoting fundamental rights and freedoms.³²³ The ONUR is now part of the MNIR, however, it was previously under the Ministry of National Integration, Official Languages, Social Progress and Hindu Religious Affairs and titled the ‘Office for National Integration and Reconciliation’. ONUR initiatives are focused:

“To promote and provide for a society that respects fundamental rights, freedom, rule of law, equality and diversity, treats and respects all citizens with dignity and non-discrimination irrespective of ethnicity, language, caste, age, gender, sexual orientation, birthplace and political opinion.”³²⁴

³¹⁹ CTF, p. 9.

³²⁰ The Ministry of National Integration and Reconciliation (MNIR), http://nirmin.gov.lk/web/index.php?option=com_content&view=article&id=37&Itemid=163&lang=en (accessed 11 June 2020).

³²¹ *Ibid.*

³²² *Ibid.*

³²³ The Office for National Unity and Reconciliation (ONUR), http://nirmin.gov.lk/web/index.php?option=com_content&view=article&id=41&Itemid=205&lang=en (accessed 2 July 2020).

³²⁴ Ministry of National Integration, Official Languages, Social Progress and Hindu Religious Affairs, *Annual Performance Report 2018*,

The mandate of the office is to provide recommendations to the government and to implement measures to resolve conflict issues and to formulate, recommend and implement programmes for reconciliation.³²⁵ So far the office has introduced: a National Reconciliation Policy, education for social cohesion, conflict transformation and psychological support and reconciliation programmes, and an economic engagement programme in the Northern and Eastern Provinces.³²⁶ The government performance report describes this office as ‘key’ in national reconciliation strategy, by winning hearts of the civil and political communities across Sri Lanka.³²⁷

Office on Missing Persons (OMP): was established in 2017, the first transitional justice mechanism established, out of the four promised by the government. UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence reports that the OMP took a long time to establish, despite being an ‘arguably easy’ part of transitional justice.³²⁸ It operationalized in 2018, its mandate to ‘investigate disappearances and abductions of persons and ensure accountability and responsibility on missing persons’, with the wider aim of addressing the needs of affected families and communities.³²⁹ Over 14,000 cases have been recorded, but little progress has been made in discovering whereabouts of missing persons.³³⁰

Office for Reparations (OR): After being promised by the GoSL in 2015, The OR Act was approved in October 2018, with five Commissioners appointed in April 2019.³³¹ The OR took over from the ‘Rehabilitation of Persons, Properties and Industries Authority’ to provide more ‘comprehensive and transformative’ reparations.³³² Additionally, the UN

<https://www.parliament.lk/uploads/documents/paperspresented/performance-report-ministry-of-national-integration-2018.pdf> (accessed 9 June 2020).

³²⁵ *Ibid.*, p. 98.

³²⁶ *Ibid.*, p. 98.

³²⁷ *Ibid.*, p. 98.

³²⁸ Greiff, P., *Observations by the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence on the conclusion of his recent visit to Sri Lanka*, 23 October 2017.

³²⁹ Office of Missing Persons,

http://nirmin.gov.lk/web/index.php?option=com_content&view=article&id=127:office-on-missing-persons-omp&catid=9:projects&lang=en&Itemid=208 (accessed 10 June 2020).

³³⁰ Human Rights Watch, ‘Sri Lanka, Events of 2019’ (a), <https://www.hrw.org/world-report/2020/country-chapters/sri-lanka> (accessed 18 May 2020).

³³¹ European Commission, p. 12.

³³² UN OHCHR, *Promoting reconciliation, accountability and human rights in Sri Lanka*, 26 February 2020, A/HRC/40/23, p. 4, para 16.

Office of the High Commissioner for Human Rights (OHCHR) appealed to the government to take a more ‘considered and comprehensive approach’ to ensure proper investigation of cases, which provides justice and redress to victims and their families, rather than expedited administrative and compensation processes.³³³ The OR describes its mission:

“To provide information and advice to aggrieved persons on their rights, the procedures involved in receiving reparations, truth-seeking mechanisms and other mechanisms through which they might receive redress or remedies”.³³⁴

The office is also responsible for assisting and supporting persons who have suffered grievances under recognised circumstances to ‘rebuild and restore their lives’ in the strive towards national reconciliation.³³⁵ The office conducted stakeholder consultations across Sri Lanka on the ‘design of a reparations policy’.³³⁶ The UN OHCHR stated that although ‘further steps’ need to be taken, both Offices have ‘enormous potential’ for people from all communities affected by armed conflict in Sri Lanka.³³⁷

Overall, government mechanisms and commissions have been designed to promote human rights in transitional justice processes, influenced by national decision-making and international pressure. With a basic overview the established mechanisms appear comprehensive, although slow to be initiated.

7. 2. Power and politicisation of transitional justice mechanisms in Sri Lanka

Despite the overall surface appearance of effective transitional justice commissions and institutions in Sri Lanka, a deeper analysis reveals these mechanisms are flawed; deeply politicised and lacking in transparency.

The LLRC has been heavily criticised as an ineffective and bias space, with some commissioners serving as officials during the war and no power to enforce retributive justice but only make recommendations.³³⁸ Silva argues that the LLRC acted as a

³³³ UN OHCHR, 2020, A/HRC/40/23., p. 5 para 19.

³³⁴ Parliament Of The Democratic Socialist Republic Of Sri Lanka, *Office For Reparations Act*, No. 34 (adopted on 22nd of October, 2018), p. 9 para 11 (1) (1).

³³⁵ Office For Reparations,

http://www.reppia.gov.lk/web/index.php?option=com_content&view=article&id=94&Itemid=246&lang=en (accessed 15 June 2020).

³³⁶ UN OHCHR, 2020, A/HRC/40/23, p. 4, para 16.

³³⁷ *Ibid.*, p.4 para 17

³³⁸ Friedman, p. 27.

‘political manoeuvre’ at the ‘risk of a UN committee being appointed’.³³⁹ Additionally, the CTF reports that those who testified before the LLRC were ‘subsequently threatened’.³⁴⁰ Silva suggests that the LLRC concealed and whitewashed wrongdoings by government officials, with the final report ‘exonerating armed forces from allegations of committing war crimes’ and violations of human rights and humanitarian law.³⁴¹

The CTF has been regarded as a more transparent and inclusive mechanism than the LLRC in promoting inclusivity and transparency in transitional justice. Special Rapporteur, Pablo de Greiff, describes the CTF as a very important establishment, which managed to create a presence ‘broadly and deeply’ in the country, capturing the views of victims and others on transitional justice questions.³⁴² However, the government did not engage with the CTF and also failed to involve public participation in the reconciliation conversation.³⁴³ The consultation also took almost a year and by completion political resistance to transitional justice had emerged.³⁴⁴ Furthermore, Lassée argues that senior government officials failed to unequivocally endorse the CTF recommendations.³⁴⁵

Despite positive intentions behind the LLRC and the CTF, most recommendations have not been implemented.³⁴⁶ Women who testified reported frustrations at the delay of any kind of retributive justice and at the LLRC, which raised and then disappointed expectations.³⁴⁷ The CTF itself understood there would be political obstacles to implementing recommendations and promoting transitional justice with ‘distrust’ of the ‘capacity and political will of the Government in bringing about the conditions for it [reconciliation]’.³⁴⁸ Amnesty describes the CTF report as being met with ‘deafening silence’, with neither President Sirisena nor Prime Minister Wickremesinghe attending the report presentation.³⁴⁹ Although objectives behind commissions are promising, without political engagement implementation is problematic.

³³⁹ N. C. R. Silva, ‘Failure of Reconciliation in Sri Lanka and risk of reproduction of war?’ in *Science Direct*, vol. 212, 2018, p. 1077.

³⁴⁰ CTF, p. 407.

³⁴¹ Silva, pp. 1077-1078.

³⁴² Greiff.

³⁴³ Haniffa.

³⁴⁴ Lassée, p. 711

³⁴⁵ *Ibid.*, p. 713.

³⁴⁶ Friedman, p. 27.

³⁴⁷ *Ibid.*, p. 29.

³⁴⁸ CTF, p. 1.

³⁴⁹ Amnesty International, 2019 (a), p. 8.

Furthermore, lack of political will has created distrust of the OMP. Greiff argues that the OMP's establishment was protracted, with insufficient public communication.³⁵⁰ Amnesty has expressed concerns that families of disappeared persons are 'still waiting for the truth' and 'are losing faith in the government mechanisms, which have not yet provided any answers'.³⁵¹ Moreover, there have been mass protests by relatives of forcibly disappeared persons against the OMP, who question its authority and independence.³⁵² The European Commission argues that the OMP is not equipped with the resources and capabilities to carry out its mandate to deliver truth and accountability to the families of those that disappeared.³⁵³

The UNHRC session in February 2020 reports that there has been some progress by the OMP, which has opened regional offices in Batticaloa, Jaffna, Mannar, and Matara, with trained permanent staff, including victims and family support officers.³⁵⁴ Furthermore, a scheme for immediate relief for vulnerable families of missing persons (who have obtained certificates of absence) began to be rolled-out in 2019, which has 'great significance for victims and their families'.³⁵⁵ The Office was allocated LKR. 500 million in the 2019 government budget to pay a monthly allowance of LKR 6,000 (~€30) to families of disappeared persons who have received a certificate of absence.³⁵⁶ The GoSL reported in February this year that regarding missing persons, 'steps would be taken, after necessary investigations, to issue death certificates or certificates of absence, while also providing livelihood and other assistance to affected families'.³⁵⁷ However, no reference was made to providing justice for the disappeared.³⁵⁸

As a relatively new office it is difficult to analyse the potential of the OR. However, it can be examined through the legislation and the policies already enacted. Lassée expressed concerns that the office has 'no decisional power' with respect to

³⁵⁰ Greiff.

³⁵¹ Amnesty International, 'Sri Lanka: Impunity fuels recurrence of violence', 18 May 2019 (c), <https://www.amnesty.org/en/latest/news/2019/05/sri-lanka-impunity-fuels-recurrence-of-violence/> (accessed 20 June 2020).

³⁵² Human Rights Watch, 2019 (a).

³⁵³ European Commission, p. 15.

³⁵⁴ UN OHCHR, 2020, A/HRC/40/23, p. 4, para. 15.

³⁵⁵ *Ibid.*, p. 4, para. 15.

³⁵⁶ European Commission, p. 12.

³⁵⁷ Sri Lanka Brief, 'Sri Lanka promises death certificates and livelihood assistance for the missing persons but no justice & truth', <https://srilankabrief.org/2020/02/hrc-43-sri-lanka-promises-death-certificates-and-livelihood-assistance-for-the-missing-persons-but-no-justice-truth/> (accessed 2 July 2020).

³⁵⁸ *Ibid.*

policies and guidelines and that they can only be adopted with approval of Cabinet Ministers.³⁵⁹ Furthermore, the legislation and lack of independence is described as creating a situation of ‘politicisation’ and ‘ethnisation’, which will undermine the integrity of reparations and lose the ‘confidence of victims and affected communities’.³⁶⁰

Although these mechanisms present an overall picture of general governmental activism in Sri Lanka, regarding transitional justice, beneath the surface processes have been inefficient and lack transparency. Amnesty state that the ‘glacial pace’ at which the GoSL is handling the transitional justice process illustrates the lack of genuine political will to ensure victims of the civil war are provided with truth, justice, reparations, and guarantees of non-recurrence.³⁶¹ It seems that despite pledged reform efforts the institutions are perfunctory, rather than providing effective reconciliation efforts.

In 2019 Sri Lanka was granted two more years to implement commitments made in Resolution 30/1.³⁶² However, in February 2020 the GoSL withdrew commitments to resolution 30/1, which the previous government had co-sponsored, instead advising implementation of a ‘national effort’ to achieve ‘sustainable peace’ through an ‘inclusive, domestically designed and executed reconciliation and accountability process’.³⁶³ This has created great uncertainty about the future of transitional justice and human rights in Sri Lanka.

7. 3. Women’s rights in governmental transitional justice mechanisms

This section will explore the incorporation of women’s rights within government transitional justice mechanisms. In this discussion it is worth keeping in mind the degree of politicisation of the institutions and commissions and noting the potential implications of this on women’s rights standards.

³⁵⁹ Lassée, p. 710.

³⁶⁰ CPA, ‘Continuing Concerns on the Office for Reparations Bill’, 4 October 2018 <https://www.cpalanka.org/continuing-concerns-on-the-office-for-reparations-bill/> (accessed 9 June 2020).

³⁶¹ Amnesty, 2019, (a), p. 7.

³⁶² European Commission, p. 5.

³⁶³ Amnesty, ‘Sri Lanka: Withdrawal from UN commitments requires robust response by Human Rights Council’, 27 February 2020, <https://www.amnesty.org/en/latest/news/2020/02/sri-lanka-withdrawal-from-un-commitments-requires-robust-response-by-human-rights-council/> (accessed 1 July 2020).

7. 3. 1. *The use of human rights language and approaches*

Each of the commissions and government mechanisms addresses the human rights situation in Sri Lanka and emphasises the necessity for a human rights based approach in achieving transitional justice. Human rights values have become ‘eroded’ in Sri Lanka, as another ‘casualty’ of the armed conflict.³⁶⁴ The LLRC articulates the importance of ‘protecting human rights’ as a ‘catalyst for bringing about reconciliation, lasting peace and security’.³⁶⁵ Moreover, the CTF argues that accountability, justice and redress are required by those affected by human rights violations.³⁶⁶

Both the LLRC and CTF reports set out human rights standards throughout, with entire chapters dedicated to the promotion of human rights. The CTF stresses the importance of incorporating international legal standards, as set out in CEDAW, into domestic law and introducing constitutional provisions to enable implementation.³⁶⁷ It refers to UNSC Resolution 1325 in adopting approaches to gender expressions.³⁶⁸ The LLRC also recognises that post-conflict reconciliation efforts must take into account the relevant provisions of CEDAW and UNSC Resolution 1325.³⁶⁹ Furthermore, the CTF notes UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law and the five forms of reparations: restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition.³⁷⁰ Several of the acts and policy review documents refer to human rights treaties when defining their standards. In the OR Act, ‘aggrieved person’ is defined by the CED, whilst the OMP Act, defines ‘missing person’ using the same convention.³⁷¹ Moreover, the MNIR policies acknowledge Sri Lanka as having ratified human rights treaties, including CEDAW.³⁷²

³⁶⁴ LLRC, p. 156 para 5.11.

³⁶⁵ *Ibid.*, p. 155, para 5.4.

³⁶⁶ CTF, p. 30.

³⁶⁷ *Ibid.*, p. 316.

³⁶⁸ *Ibid.*, p. 355.

³⁶⁹ LLRC, p. 183.

³⁷⁰ CTF, p. 33.

³⁷¹ Parliament Of The Democratic Socialist Republic Of Sri Lanka, *Office On Missing Persons (Establishment, Administration And Discharge Of Functions) Act*, (adopted 23rd August 2016), p. 21 para 27 (iii); Parliament, *Office for Reparations Act*, p. 22, para 27 (a) (iv).

³⁷² MNIR, *National Policy on Durable Solutions for Conflict-Affected Displacement*, 2016, <http://nirmin.gov.lk/web/images/pdf/national-policy-on-durable-solutions.pdf> (accessed 14 June 2020), p. 7.

Human rights language is incorporated throughout the approach of each of the transitional justice institutions. The OR provides recognition of inherent dignity and inalienable rights and the government's obligation to respect, secure and advance these rights.³⁷³ Furthermore, the OMP states that the rights of missing persons and their relatives shall be enforced with equality and 'without discrimination'.³⁷⁴ The MNIR also uses human rights language, maintaining the state's obligation to respect, protect and fulfil civil, political, economic, social, and cultural rights.³⁷⁵ In addition, the MNIR addresses human dignity and the right of every individual to have their dignity respected in a non-discriminatory manner.³⁷⁶ Human rights approaches are also taken into consideration. The CTF requires that commissioners in transitional justice institutions should have 'proven knowledge, expertise and experience in the promotion of international human rights and humanitarian law'.³⁷⁷ Similarly, the OMP Act recognises the need to 'protect the rights and address the needs and concerns of victims, witnesses and relatives of missing persons', calling for establishment of a Victim and Witness Protection Division.³⁷⁸ The OMP stresses the need for members to have experience in human rights law, international humanitarian law and humanitarian response.³⁷⁹

It is significant that each commission and mechanism recognises and acknowledges international human rights standards. The pledge to international laws, standards and approaches is important in maintaining respect for human rights, as well as for allowing the international community and Sri Lankan citizens to hold the government accountable to these standards.

7. 3. 2. Gender issues in governmental transitional justice mechanisms

As previously discussed, understanding and including gender issues in governmental mechanisms is essential to ensure the intersectional rights of women are addressed sufficiently and appropriately in transitional justice processes. This section will explore

³⁷³ Parliament, *Office for Reparations Act*, p. 1.

³⁷⁴ Parliament, *Office on Missing Persons Act*, p. 15 para 14.

³⁷⁵ MNIR, *National Policy on Reconciliation and Coexistence Sri Lanka*, 2017, <http://nirmin.gov.lk/web/images/pdf/national-policy-english.pdf> (accessed 12 June 2020), pp. 4-5.

³⁷⁶ *Ibid.*, pp. 4-5.

³⁷⁷ CTF, p. 150

³⁷⁸ Parliament, *Office on Missing Persons Act*, p. 17, para 18 (1)

³⁷⁹ *Ibid.*, p. 3 para 4 (2) (b)

how women are portrayed in government mechanisms, to investigate how, and if, all women's rights are being promoted.

Multitude of women's roles

Each commission and government mechanism addresses the multitude of women's roles in conflict. The LLRC report touches on the intersectionality of issues faced by women describing the plenitude of challenges, with the need for 'crosscutting' solutions.³⁸⁰ Yet, it also categorises women within 'vulnerable groups', along with 'children, the elderly and disabled'.³⁸¹ The CTF emphasises the importance of recognising the multitude of women's roles, explaining that the duality of women's roles needs to be understood and that women should not solely be understood as victims of sexual violence:

“Women are victims of all forms of violence and crimes, not solely sexual violence, women suffered mass atrocities (such as arbitrary execution and mass killings, detention and torture, disappearance, eviction, denial of medical treatment for war injury, starvation) apart from rape.”³⁸²

Furthermore, the LLRC addresses women's agency, arguing that women 'should be looked at not only as recipients of aid but also as participants in the development and reconciliation process'.³⁸³ This recognition of women's agency is important to develop appropriate transitional justice processes, which reflect the reality of women's needs.

Recognition of gendered issues in armed conflict and in reconciliation processes is highlighted in some of the mechanisms. The MNIR argues that gender relevance in policy implementation and design should be 'proactively' engaged with, with women's rights respected, protected, and fulfilled.³⁸⁴ The MNIR aims to ensure gender equality in all initiatives, with special attention paid to vulnerable women.³⁸⁵ Furthermore, it refers to the need to tackle specific obstacles faced by WHH, war widows, families of the missing, ex-combatants and soldiers, resettled communities, and socially marginalised groups – among others.³⁸⁶ However, it does not expand on what these obstacles are.

³⁸⁰ LLRC, p. 181, para 5.101.

³⁸¹ LLRC, pp. 153-154.

³⁸² CTF, submission from a women's collective, p. 88.

³⁸³ LLRC, p. 182, para 5.104

³⁸⁴ MNIR, *National Policy on Reconciliation And Coexistence*, p. 10.

³⁸⁵ *Ibid.*, p. 4.

³⁸⁶ *Ibid.*, p. 7.

Neither the OR nor the OMP, however, explicitly highlight the need for gender-sensitive approaches. The OR Act refers to specialised policies on ‘children, youths, women and victims of sexual violence and persons with disabilities’, with no separation of these policies.³⁸⁷ Here, again, women are identified as ‘vulnerable’, with no specific allowance for the unique challenges the civil war presented to women, nor how their rights should be addressed as a result.

Harassment, stigma and violence against women

Both reconciliation commissions and offices take into account SGBV, and how this violates women’s rights and has an on-going effect. The CTF highlights the high levels of violence against women, including harassment from state authorities, from male officers in administrative bodies and military officers.³⁸⁸ The LLRC also recognises the role of women in Sri Lankan society, acknowledging the ‘norms and prejudices against women in society and the attitudes and behaviour of power players’, which ‘have led to a culture of violence and impunity’.³⁸⁹

In both commissions, women are considered as the main victims of violence; exposed to ‘various forms of SGBV’, which violates their rights and basic ‘dignity, security and well-being’.³⁹⁰ Women continue dealing with violence even in a post-conflict setting. Women are also affected by structural discrimination, with women in former conflict areas suffering from increased risks of violence, due to ‘discriminatory policies and practices, heavy military presence, lack of authority... limited access to basic needs... weak institutional protection mechanisms and breakdown of traditional support networks’.³⁹¹ Moreover, the LLRC notes that many women were killed even after the conflict ended.³⁹² The reasons for these ‘mysterious murders’ are not addressed, and women have not been provided with justice, while accused have been released on bail.³⁹³ Furthermore, the LLRC discusses the effects of the ‘extreme militarisation’ of the Northern Province and the fears of many families for their daughters, due to harassment

³⁸⁷ Parliament, *Office for Reparations Act*, p. 2, para 2 (b).

³⁸⁸ CTF, p. 89.

³⁸⁹ LLRC, p. 185, para 5.108

³⁹⁰ *Ibid.*, p. 185, para 5.108

³⁹¹ *Ibid.*, p. 185 para 5.108

³⁹² *Ibid.*, p. 182, para 5.1034

³⁹³ *Ibid.*, p. 183, para 5.104

by soldiers.³⁹⁴ The CTF acknowledges the violence against women, including high levels of rape and sexual assault, throughout and after the armed conflict.³⁹⁵ The LLRC argues this should be included within the scope of the government truth and reconciliation commission and state and security forces should ‘bear responsibility’ for the violations of women’s rights committed.³⁹⁶ However, the LLRC in practice did not provide adequate space to investigate sexual violence with few women giving testimonies of rape and sexual violence, despite widespread allegations, and those accused were never arrested or were released without bail.³⁹⁷

The MNIR acknowledges that gendered violence needs to be tackled, with attention paid to vulnerable groups, and to the large numbers of women who have been ‘victims of conflict and violence’, including WHH, war widows, survivors of SGBV, and families of the missing and of ex- combatants and soldiers.³⁹⁸ The MNIR states that women victims of SGBV should be provided with access to ‘treatment for trauma, gender-sensitive medical care, legal assistance, safe shelter, and appropriate counselling’.³⁹⁹ The OR highlights that victims should be central to the process, with due consideration to special needs of women.⁴⁰⁰

Although there is an apparent understanding of the effects of violence upon women in the paperwork of both the commissions and the government offices, the inability to make room for women’s individual cases and failure to punish perpetrators suggests the superficiality surrounding these mechanisms.

Psychological impact for women

The CTF acknowledges the psychosocial implications of the armed conflict upon women and how these needs should be addressed. The CTF report includes a section on the specific psychological impact of the armed conflict upon women, including: isolation, vulnerability, and lack of physical and financial security, as well as suffering from a variety of conflict-related issues, such as displacement, land loss, disappearance, injury,

³⁹⁴ LLRC, p. 277, para 8.101

³⁹⁵ CTF, p. 158.

³⁹⁶ *Ibid.*, p. 158.

³⁹⁷ Friedman, p. 29.

³⁹⁸ MNIR, *National Policy on Reconciliation And Coexistence*, pp. 8-10.

³⁹⁹ MNIR, *National Policy on Durable Solutions*, p. 14.

⁴⁰⁰ Parliament, *Office for Reparations Act*, p. 11, para 12 (1) (c).

and loss of loved ones.⁴⁰¹ However, on top of this, women also have to deal disproportionately with sexual harassment in their everyday lives, while supporting their families economically and emotionally.⁴⁰²

Post-war, women can only apply to receive compensation after obtaining death or absence certificates confirming their husbands or sons disappearances.⁴⁰³ Certificates remain a ‘polarising and sensitive issue’.⁴⁰⁴ The circumstances for issuance of a certificate is unclear and there is no public information of the number issued.⁴⁰⁵ These documents give no details of the circumstances of death and only provide a state grant of between Rs.6,000 to Rs.50,000 (roughly €27 to €230) to rebuild the home, launch an ‘income generating activity’, and pay for children’s education.⁴⁰⁶ The lack of certainty regarding loved ones means families cannot properly grieve and perform cultural or religious services.⁴⁰⁷ The UN OHCHR states it is particularly important to clarify the fate of missing persons and provide reparations.⁴⁰⁸ Again, the disparity between the commission recommendations and the government mechanisms illustrates that transitional justice mechanisms are largely symbolic and fail to actively promote women’s rights.

Women-headed households (WHH) and widows

Both reports focus on women who are affected by the death or disappearance of their husbands, who make up a large proportion of war-affected women. The role of widows and political, social and economic challenges faced are discussed. The CTF pinpoints war widows as particularly vulnerable to harassment, because of the ‘immense’ social stigma that surrounds widows in Sri Lankan society.⁴⁰⁹ The LLRC describes widows as being treated as a ‘bad omen’ within social circles, particularly in traditional Tamil

⁴⁰¹ CTF, p. 392

⁴⁰² *Ibid.*, pp. 392-393.

⁴⁰³ LLRC, p. 185, para 5.107

⁴⁰⁴ European Commission, 2020, p. 3.

⁴⁰⁵ Amnesty, 2019 (a), p. 20.

⁴⁰⁶ LLRC, p. 185, para 5.107

⁴⁰⁷ *Ibid.*, p. 184, para 5.106.

⁴⁰⁸ UN OHCHR, 2020, A/HRC/40/23, p. 5 para 19

⁴⁰⁹ CTF, p. 89.

societies.⁴¹⁰ Widows are judged if they remarry too quickly, but are outcast from society if they do not remarry.⁴¹¹

Both commissions discuss the gendered implications of the armed conflict upon households in Sri Lanka. The CTF addresses WHH as a particularly vulnerable group: exposed to harassment from the military and from civilians, as well as faced with economic challenges.⁴¹² The CTF calls for vocational training, self-employment support, and job placement opportunities, to support this group of women.⁴¹³ In pre-conflict situations women typically had unstable employment situations, often with temporary employment, minimum wages, and no employee benefits.⁴¹⁴ The LLRC explores the dual economic and social implications of this. With men in the family missing, women can struggle economically, since men traditionally perform the role of breadwinner in Sri Lankan households.⁴¹⁵ Women are also limited by poorer education, with few women speaking both Sinhala and Tamil.⁴¹⁶ The LLRC recognises the uneven effect of the war on women in this regard. Of the estimated 59,500 houses left as WHH as a result of the armed conflict, the majority are in the Northern and Eastern Province, with 40,000 widows in Jaffna, who need basic economic structures and self-employment facilities.⁴¹⁷ Furthermore, many Northern Muslim women, who have been internally displaced and women whose husbands have died or disappeared, who have relocated to other areas of the country, plan to stay.⁴¹⁸ Women are also unable to return to pre-conflict environments due to financial and social issues; unable to build houses and seek employment, while simultaneously caring for a family.⁴¹⁹

It is significant that both commissions acknowledge widows and WHH as a vulnerable group, in special need of rights protection. By addressing the needs of WHH, the government illustrates a degree of understanding of the necessity and importance of women's rights inclusion in transitional justice.

⁴¹⁰ LLRC, p. 184, para 5.107

⁴¹¹ CTF, p. 196.

⁴¹² *Ibid.*, p. 356.

⁴¹³ *Ibid.*, p. 356.

⁴¹⁴ LLRC, p. 184, para 5.107

⁴¹⁵ *Ibid.*, p. 187, para 5.115 and para 5.117

⁴¹⁶ *Ibid.*, p. 184, para 5.107

⁴¹⁷ *Ibid.*, p. 183, para 5.105

⁴¹⁸ *Ibid.*, p. 194 para 5.143

⁴¹⁹ *Ibid.*, p. 194 para 5.143

Women as combatants

Neither commission addresses the problems faced by women who were active participants in combat, in government forces, or in the LTTE. Instead women are only considered as supporters of husbands' or sons' roles in combat.⁴²⁰ The only mention of women as participants constructs women as forced to participate in violence, with no active agency addressed. The LLRC describes the 'large number of civilians, of all ages and gender' conscripted by the LTTE 'to engage in active combat' or 'coerced to provide support services'.⁴²¹ The report touches upon the recruitment of girls into the LTTE forces: of the 6,259 children recruited by the LTTE, 2,475 were girls.⁴²² Furthermore, ex-LTTE cadres and their families are excluded entirely from the Reparations Act.⁴²³

Without considering the true scope of women's roles and aims within the armed conflict, transitional justice approaches fail to encompass the intersectionality of approaches needed to promote the rights of all women in society.

Rights of conflict-displaced women

The MNIR addresses displaced and displacement-affected women, arguing that a gender and diversity sensitive approach is necessary, particularly for vulnerable women, such as WHH and expectant mothers.⁴²⁴ The rights of conflict-displaced women are also discussed, with the MNIR stating that women should have: rights to their own property and land titles issued in their name; the right to self-development and to embark upon employment; access to education and vocational training for livelihood opportunities; special attention paid to their health needs – with access to female healthcare providers and services, including reproductive and psychosocial care; and the right to physical safety and privacy, with reforms to address SGBV.⁴²⁵ The MNIR identifies providing support for sustainable livelihoods to WHH as a particular challenge.⁴²⁶

Therefore, as illustrated here, the rhetoric surrounding women's rights in both commissions and in the government mechanisms does a sufficient job of discussing the

⁴²⁰ CTF, p. 184

⁴²¹ LLRC, p. 142, para 4.358

⁴²² *Ibid.*, p. 177, para 5.87.

⁴²³ Amnesty, 2019 (a), p. 18.

⁴²⁴ MNIR, *National Policy on Durable Solutions*, p. 12.

⁴²⁵ *Ibid.*, p. 12.

⁴²⁶ *Ibid.*, p. 24.

different issues faced by women in the post-conflict setting, highlighting SGBV against women, the psychological impact for women and issues faced by WHH. However, understanding and analysis of the complexity of women's issues and what this means for transitional justice processes is limited. Mechanisms and commissions fail to take notable account of women as active combatants, which is a barrier to providing appropriate solutions to promote reconciliation in society. Furthermore, in some cases, such as providing solutions for those looking for missing persons - predominantly women- the government addresses civil and political rights, but fails to address the full range of rights, including economic, social and cultural rights. For transitional justice mechanisms to be successful they must take into consideration the diverse spectrum of women's rights issues created by the civil war. The next section will discuss how the portrayal of women in commissions and mechanisms is presented in the actual recommendations produced and the steps taken to include women's rights in transitional justice processes.

7. 3. 3. Recommendations and inclusion of women's rights

In order to contribute to post-war reconciliation, both commissions highlight key recommendations, several of which focus upon the inclusion of women.

Socially inclusive approaches

As previously discussed, an inclusive approach, where all of society's needs are met is necessary for long-lasting peace. The LLRC recognises that a broad spectrum of actors should be involved in a successful reconciliation approach, including women, using a 'coordinated inter-agency effort', to deal with the population's crosscutting needs.⁴²⁷ The LLRC argues that the GoSL should 'make greater and sustained effort to enlist and engage services' and expertise of relevant international organisations.⁴²⁸ Furthermore, the importance of community level associations and support groups is stressed, as playing a 'significant role' in supporting families, villages, and vulnerable populations, such as 'single mothers, those recently resettled, and those who are disabled' to bring women's issues to the attention of governmental institutions and political leadership.⁴²⁹ It is argued

⁴²⁷ LLRC, p. 186, para 5.113

⁴²⁸ *Ibid.*, p. 187, para 5.114

⁴²⁹ *Ibid.*, p. 187, para 5.114

that community level support groups can ‘address emotional and spiritual needs of people’ that have arisen as result of the armed conflict.⁴³⁰

However, in practice these mechanisms are not inclusive or wide-ranging enough. Friedman proposes the LLRC was not entirely inclusive, with limited information or access provided for individuals in remote locations or affected areas.⁴³¹ Lack of inclusivity means that transitional justice is not comprehensive, and basic human rights standards of equality and non-discrimination are not being fulfilled. As illustrated by past global transitional justice processes, the rights and needs of all social groups must be acknowledged and promoted to engage in reconciliation and move towards peace.

Gender-inclusive approaches

Both commissions and mechanisms acknowledge and recommend equal representation of women as vital in promoting women’s rights. The CTF recommends providing an equal number of men and women in institutions and advises that women from all communities should be included at all levels of every mechanism.⁴³² The CTF endorses representation of women in the special judicial mechanism, as prosecutors, judges, lawyers, and staff.⁴³³ The CTF also addresses the fact that women make up the majority of those searching for missing husbands or relatives, so in this regard should constitute a significant part of the OMP.⁴³⁴

The MNIR acknowledges that steps need to be taken to improve safety and to ensure harassment of women is discouraged at an institutional level, by police and security forces, for example.⁴³⁵ The MNIR promotes the increase of representation of women and minority groups in institutions to prevent future abuses, by increasing the number of women police officers and police officers proficient in Tamil and by providing ‘gender-sensitive’ training.⁴³⁶ The OR Act also recognises the need for trained advisors, with relevant expertise in gender responsiveness.⁴³⁷ Furthermore, the MNIR promotes women as active agents of change and as decision-makers, with steps to

⁴³⁰ LLRC, p. 187, para 5.114

⁴³¹ Friedman, p. 29.

⁴³² CTF, p. 158.

⁴³³ *Ibid.*, p. 270

⁴³⁴ *Ibid.*, p. 210.

⁴³⁵ MNIR, *National Policy on Durable Solutions*, p. 15.

⁴³⁶ *Ibid.*, p. 15.

⁴³⁷ Parliament, *Office for Reparations Act*, p. 11, para 12 (1) (b).

incorporate women as ‘equal partners’ on an institutional level.⁴³⁸ The OR Act also proposes that the composition of the Office should reflect the ‘pluralistic nature of Sri Lankan society including gender’.⁴³⁹

As well as considering women’s representation, the commissions and offices address the need for gender-sensitive approaches. The CTF highlights the importance of a gender-sensitive approach and providing specific psychosocial support to women.⁴⁴⁰ Recommendations assert that women ‘need to feel they live in a secure environment and basic human dignity is safeguarded and protected’.⁴⁴¹ The commission states that the government has a ‘responsibility’ to create a conducive environment for women in all areas of the country – especially in conflict-affected areas – as an ‘essential prerequisite for the reconciliation process’.⁴⁴² The CTF also promotes the implementation of gender-sensitive access and procedures in prosecuting sexual violence, with confidentiality, cultural sensitivity, and psychosocial and economic assistance.⁴⁴³ However, the motives behind gender-sensitivity in government institutions are questioned. CPA researcher Bhavani Fonseka argues that:

*“From the state side or the official side there are women involved, I mean if you look at the two state structures that have been established - the OMP and OR – you have women involved in both these processes, including the chair of the OR being a woman.”*⁴⁴⁴

However, according to Bhavani Fonseka, government’s are not ‘gender sensitive on their own’ and the inclusion of women is ‘because it’s hard to ignore the women’.⁴⁴⁵

Despite adequate provisions and intentions to include women in all levels of transitional justice processes, and a fair amount of women’s representation in government offices, there have been prominent critiques of the government’s execution of these promises. UN Special Rapportuer, Greiff questions the representation of women, and argues that it is crucial to select representation that includes all communities.⁴⁴⁶

⁴³⁸ MNIR, *National Policy on Reconciliation And Coexistence*, pp. 7-10.

⁴³⁹ Parliament, *Office for Reparations Act*, p. 2, para 4 (a)

⁴⁴⁰ CTF, p. 270.

⁴⁴¹ LLRC, p. 187, para 5.116

⁴⁴² *Ibid.*, p. 187, para 5.116

⁴⁴³ CTF, p. 271.

⁴⁴⁴ Interview with Bhavani Fonseka, WhatsApp, 28 July 2020.

⁴⁴⁵ *Ibid.*

⁴⁴⁶ Greiff.

Similarly other NGOs in Sri Lanka have expressed that women are not included sufficiently at all levels of the process. Without the representation of all women transitional justice cannot address women's rights comprehensively. If women are not represented at national levels, it is not promising for inclusion of the women at grassroots levels.

Legal justice for women

Legal processes, impunity, and national responsibility are highlighted as key areas in respecting women's rights. The LLRC recommends that the 'plight' of women needs to be 'recognised by the State and due compensation granted'.⁴⁴⁷ The CTF states that sexual violence should be prosecuted as 'war crimes and crimes against humanity' to recognise the 'gravity and scale of the offence' and the 'powerlessness of those affected in the context of armed conflict'.⁴⁴⁸ The CTF recommends that the special judicial mechanism should investigate SGBV, to promote justice for women; however, acknowledges that for this to happen pre-conceived notions and attitudes about SGBV must be overcome.⁴⁴⁹ Removing human rights abusers from positions of responsibility to restore confidence in public institutions and send a message of 'zero-tolerance' for violence is promoted by the CTF.⁴⁵⁰ The CTF argues that a public acknowledgment of the history of SGBV in Sri Lanka and recognition of the work and resistance of women, and women's strength in the 'face of it' is a prerequisite for reconciliation.⁴⁵¹ These recommendations and the implications of legal justice for women will be further discussed in the Chapter 8 on the Sri Lankan legal system.

War widows and women-headed households

The LLRC recommends that the immediate needs of WHH must be met with economic assistance given, livelihoods or 'income-generating means' introduced, and options provided to enable women to continue with their education to facilitate employment and reduce economic hardships and poverty.⁴⁵² Furthermore, the social implications of

⁴⁴⁷ LLRC, p. 185 para 5.107

⁴⁴⁸ CTF, p. 316.

⁴⁴⁹ *Ibid.*, p. 270.

⁴⁵⁰ *Ibid.*, p. 95.

⁴⁵¹ *Ibid.*, p. 271.

⁴⁵² LLRC, pp. 186-187, para 5.112 and 5.115

missing persons upon women are also addressed. Missing persons, and victims of abductions, arbitrary detentions, long and indefinite detentions, and disappearances are most often husbands, sons, fathers and brothers.⁴⁵³ This not only has an economic impact upon women, but also has huge emotional implications. The LLRC states that missing persons should be addressed as a matter of priority, as women (and all other citizens) have a right to truth and to legal remedies.⁴⁵⁴ These are viewed as necessary prerequisites ‘for a successful, durable and all inclusive reconciliation process’.⁴⁵⁵ Furthermore, the commission states that these women need to know that the Government are supporting them’.⁴⁵⁶ The LLRC and CTF address that women constitute the majority of persons approaching the OMP and they are disproportionately affected in terms of searching for the disappeared.⁴⁵⁷ However, none of the recommendations of the CTF were incorporated into the OMP, including those on gender sensitisation.⁴⁵⁸

After identifying vulnerability of widows and WHH, mechanisms have been developed to ensure these women’s needs are met. The MNIR has developed a Reconciliation Focused Economic Project (RFEP), which targets war-affected WHH as a vulnerable population.⁴⁵⁹ This project plans to construct 50,000 permanent houses for conflict-affected areas in Northern and Eastern provinces, with housing priorities given to war-affected WHH, along with families with missing persons, disabled families, and low-income vulnerable groups.⁴⁶⁰ Additionally, the MNIR has set up a livelihood support programme for WHH, to support 68 families in Jaffna, 40 families in Kilinochchi, and 25 families in Mullaitivu. These programmes have been 75 percent, 50 percent, and 50 percent completed respectively, according to the 2017 performance report.⁴⁶¹ The ONUR has also set up projects in Northern, Eastern and North Central Provinces for WHH.⁴⁶² So

⁴⁵³ LLRC, p. 187, para 5.117

⁴⁵⁴ *Ibid.*, p. 187, para 5.117

⁴⁵⁵ *Ibid.*, p. 187, para 5.117

⁴⁵⁶ *Ibid.*, p. 182, para 5.103

⁴⁵⁷ Fonseka and Schulz, p. 7.

⁴⁵⁸ Amnesty, 2019 (a), p. 11.

⁴⁵⁹ MNIR, *Performance Report*, 2017, <http://nirmin.gov.lk/web/images/annual-reports/Performace-report--2017-PDF.pdf> (accessed 12 June 2020).

⁴⁶⁰ *Ibid.*

⁴⁶¹ *Ibid.*

⁴⁶² Ministry of National Integration, Official Languages, p. 103.

far 276 agricultural wells and 247 animal sheds have been built to support commercial gardening projects for women.⁴⁶³

The ONUR views the input of war widows in reconciliation as essential, incorporating them in conflict transformation strategy and interfaith dialogue.⁴⁶⁴ Training and consultation has begun, but no official sessions have taken place, according to the 2018 report.⁴⁶⁵ The ONUR has also set up a project, Viruliya Shakthi, which specifically targets military widows.⁴⁶⁶ Areas of focus involve: health care, public services, legal aid, livelihood support, and financial management.⁴⁶⁷ Initial meetings have been completed with widows in three districts (Kurunegala, Anuradhapura and Galle), training of trainers has commenced, and a health camp has been conducted in Anuradhapura.⁴⁶⁸

These projects are important in illustrating that the government recognises these women as specifically vulnerable and in need of assistance. Furthermore, economic aid programmes and plans to carry out psychosocial projects are positive steps. However, these figures also illustrate that a very small percentage of the affected women, in a long post-conflict period, have been provided with assistance. Furthermore, there is debate over the transparency and accessibility of these mechanisms. An interview with a women's NGO argues that the LLRC did not reflect that it was the right of widowed women to receive support for their loss and '*help to recover their lives*'.⁴⁶⁹ Although the programmes are promising, accessibility and motivation seems limited.

Women ex-combatants

Despite the lack of acknowledgement of women's active agency in commissions, the promotion of the rights of women ex-combatants is addressed by the ONUR through livelihood schemes. The ONUR aims to provide capacity development of the youth including ex-combatants.⁴⁷⁰ The office has provided livelihood assistance to women ex-combatants, including fishing equipment, carpentry, welding tools, and agricultural

⁴⁶³ Ministry of National Integration, Official Languages, p. 103.

⁴⁶⁴ *Ibid.*, p. 100.

⁴⁶⁵ *Ibid.*, p. 100.

⁴⁶⁶ *Ibid.*, p. 101.

⁴⁶⁷ *Ibid.*, p. 101.

⁴⁶⁸ *Ibid.*, p. 101.

⁴⁶⁹ Interview with WDC, Zoom, 18 July 2020.

⁴⁷⁰ Ministry of National Integration, Official Languages, p. 103.

equipment.⁴⁷¹ This is remarkable, as these programs seem to overcome traditional roles and stereotypes, differing from usual caring and domestic housekeeping roles. Inclusion of women ex-combatants in transitional justice will be further discussed in Chapter 9 on NGO approaches to transitional justice. However, generally there is little said in either government sources or NGOs about the role and reception of women ex-combatants when they re-enter society.

As illustrated above government commissions and mechanisms acknowledge gender issues and provide gender-sensitive and gender-inclusive recommendations. Women's representation is addressed, including minority groups, as well as gender-sensitive training for government officials. Furthermore legal justice and punishment for perpetrators is urged. Specific needs of women are highlighted, with government programmes already targeting WHH, war widows, and women ex-combatants. However, these mechanisms are making slow progress, only include a small percentage of society and it is difficult to know how they function in reality and to what extent they are mostly superficial. This problem will be discussed further in the following section.

7. 4. Conclusions: Government transitional justice mechanisms and the meaning for human rights

Human rights processes in Sri Lanka are described as 'fragile', especially regarding accountability and transparency.⁴⁷² UN Special Rapportuer Greiff argues that Sri Lankan transitional justice has become politicised, with fundamental human rights reduced to a matter of partisan politics.⁴⁷³ In a study conducted by CEJ of women from different civil society backgrounds, women were concerned about lack of state transparency, political manoeuvring of reconciliation, and 'gender-blind mandates'.⁴⁷⁴ The GoSL structure has become static, and seems to be more interested in maintaining political power than moving towards peacebuilding and reintegration of society.

Transitional justice is focused upon specific violations of political and civil rights and does not provide support that encompasses all of society, particularly those who

⁴⁷¹ Ministry of National Integration, Official Languages, p. 104

⁴⁷² European Commission, p. 1.

⁴⁷³ Greiff.

⁴⁷⁴ CEJ, *Reconciling Sri Lanka: What the Women Say*, 2019, <http://cejsrilanka.org/wp-content/uploads/RW-Briefing-paper-E-Web-3.pdf> (accessed 19 June 2020), p. 5.

experience the war ‘differently’, including the ‘vast number’ of women who are still experiencing injustice and rights violations in the post-war context.⁴⁷⁵ Friedman argues that reparations must not be prioritised over other methods of transitional justice.⁴⁷⁶ In order to meet the needs of women, structural inequalities in Sri Lanka need to be addressed to ensure genuine transformation.⁴⁷⁷ A broader transformative approach is needed and reparations must be made in a sustainable way, for example: by providing periodic payments and employment training; rehabilitation and health services; institutional reform and gender-inclusive policies; and collective reparations to address the needs of communities.⁴⁷⁸ The CPA argues that reparations should also address economic, social, and cultural rights. For example, in South Africa and Bosnia and Herzegovina reparations included housing and property restitution, whilst in Chile and Peru reparations related to health care (including mental health) were promoted. In other processes educational reforms were implemented to address the loss of educational opportunities and inequality in educational access, as well as institutional reforms to address inequality in society, which was a root cause of the civil war in Sri Lanka.⁴⁷⁹

Although there are a number of government mechanisms in place, which appear to encompass women’s rights and promote truth and justice in Sri Lanka, processes seem superficial. Human rights standards, and inclusion of women’s rights in commissions and mechanisms have little real life affect if they are not being communicated to civil society. In order to move forwards Sri Lanka needs a transparent, clear and equitable transitional justice process, which promotes government and institutional accountability.⁴⁸⁰

Furthermore, the recent change in government and the revocation of resolution 30/1 presents a worrying future for transitional justice. Not only are women’s rights not addressed, but also the entire process of reconciliation seems to be under threat. Bhavani Fonseka of CPA proposes that ‘*the biggest challenge is - there is just no political will to even address transitional justice, let alone gender inclusions*’.⁴⁸¹ The lack of political commitment presents huge uncertainty for the future of sustainable peace in the country.

⁴⁷⁵ Fonseka and Schulz, p. 2.

⁴⁷⁶ *Ibid.*, p. 10

⁴⁷⁷ *Ibid.*, p. 11

⁴⁷⁸ Fonseka and Schulz, p. 9

⁴⁷⁹ B. Foneska and J. Naples-Mitchell, ‘Victim-Centred Transitional Justice in Sri Lanka: What Does it Really Mean?’, *Centre for Policy Alternatives*, 2017, pp. 22-23.

⁴⁸⁰ Grina, 2011, p. 438.

⁴⁸¹ Interview with Bhavani Fonseka, WhatsApp, 28 July 2020.

8. SRI LANKA'S LEGAL SYSTEM: A HINDRANCE OR HELP IN PROMOTING WOMEN'S RIGHTS AND TRANSITIONAL JUSTICE?

This chapter will explore how legal systems in Sri Lanka incorporate and promote transitional justice. The lack of a judicial mechanism for transitional justice and the ineffectiveness of national legal systems will be discussed, together with the implication of this for women's rights. It will be proposed that the absence of transparency and lack of prosecutions of human rights violations committed by high-ranking officials during the war has created a culture of impunity, in which perpetrators are not held accountable and consequently women's rights suffer. Furthermore, the effect of the culture of impunity upon the violation of women's rights will be explored and it will be argued that the lack of transparency and accountability maintains a culture of SGBV.

8. 1. The current legal system

The current legal system in Sri Lanka is lacking in transitional justice mechanisms to defend and promote women's rights. Reforms proposed by international mechanisms will be discussed along with the national legal system to understand its role in promoting women's rights.

In 2015 the GoSL promised reform of the court system.⁴⁸² However, five years on from resolution 30/1 Sri Lanka has failed to establish a hybrid court or a truth commission. Sri Lanka committed to the UN to establish 'a judicial mechanism with a special counsel to investigate allegations of violations and abuses of human rights and violations of international humanitarian law', with 'independent judicial and prosecutorial institutions led by individuals known for their integrity and impartiality'.⁴⁸³ The GoSL agreed to the importance of a judicial mechanism, including 'the special counsel's office, of Commonwealth and other foreign judges, defence lawyers and authorised prosecutors and investigators'.⁴⁸⁴ The resolution also promised the creation of a Special Court and Prosecutor's Office.⁴⁸⁵ None of these institutions have been

⁴⁸² Fonseka and Schulz, p. 5.

⁴⁸³ Human Rights Watch, 2020.

⁴⁸⁴ *Ibid.*

⁴⁸⁵ Lassée, p. 715.

established and the recent decision to revoke resolution 30/1 puts the use of law to promote women's rights in the transitional justice process under question.

Because of the failure to establish a legal transitional justice mechanism, there has been limited progress within national legal systems in Sri Lanka. The European Commission Report on Sustainable Development and Good Governance in Sri Lanka suggested that there has been progress on the prevention of domestic violence through a legal amendment that 'broadens the scope of the law, simplifies application processes, and increases protection and support provision'.⁴⁸⁶ Moreover, Sri Lanka's recent ratification of CED and the passing of domestic legislation on enforced disappearances is a promising sign for investigation of human rights violations.⁴⁸⁷ However, the national legal system is weak and exclusive, with no encouraging atmosphere for women to come forward and speak of human rights abuses.⁴⁸⁸ There are delays with investigations and prosecutions, as well as issues over the integrity of evidence, protection issues, and possibilities of interference.⁴⁸⁹ Most cases either never lead to indictments or continue for years – even up to decades – in the criminal justice system.⁴⁹⁰ Historically, there has been little or no legal restitution for women. According to the International Labour Organisation (ILO), in the 28 years up to 2007 there were only two cases of gender discrimination filed in the Supreme Court.⁴⁹¹ A submission of a collective of women's groups in Sri Lanka, to the CEDAW reporting mechanism in 2017, argues that of the 1,400 approximate complaints made per year (between 2009 and 2014) there were only between zero and seven convictions each year.⁴⁹² Thus, there is no effective international or national legal system to deal with promoting transitional justice and the inclusion of women's rights within this process.

There have been a limited number of successful cases involving women's rights, where perpetrators of SGBV against women have been prosecuted. Foneska and Schulz describe a notable case of the gang rape and murder of Krishanthi Kumaraswamy in 1996 and the subsequent murder of her mother, brother and neighbour who went in

⁴⁸⁶ European Commission.

⁴⁸⁷ Amnesty, 2019 (a), p. 21.

⁴⁸⁸ Fonseka and Schulz, p. 5.

⁴⁸⁹ *Ibid.*, p. 5.

⁴⁹⁰ *Ibid.*, p. 5.

⁴⁹¹ Kodikara, 2008, p. 121.

⁴⁹² Fonseka and Schulz, p. 5.

search of her.⁴⁹³ This case was of particular note, because popular pressure, exerted by civil and international society, encouraged President Chandrika Bandaranaike Kumarasinghe to initiate proceedings, leading to the ‘rare’ convictions of military personnel.⁴⁹⁴ Similarly, the rape and murder of 17-year-old Sivayoganathan Vidhya in 2015 prompted mass demonstrations, calling for the end of impunity for violence against women.⁴⁹⁵ This led to the reopening of the case and debate about socio-political implications of violence against women in Sri Lanka and the state responsibility to ensure justice for victims.⁴⁹⁶ This was a landmark judgment, as only the second prosecution of military personnel for rape and sexual violence, since the first in 1997.⁴⁹⁷ Although cases involving younger victims are sometimes pursued more vigorously, often the official response can violate the rights of perpetrators, with numerous allegations of the police force promoting torture.⁴⁹⁸ These successful cases, however, are not a regular occurrence and have come about after intense public scrutiny, often resulting in detrimental effects to the human rights of perpetrators.

Failures of the GoSL to establish judicial mechanisms to deal with transitional justice – recommended by international mechanisms – as well as failure to introduce national reforms has left the current system deficient in promoting women’s rights and transitional justice. Incidents and reporting are high compared to the few legal cases addressed, which are only brought about by public pressure. This highlights that the Sri Lankan legal system is inadequate in dealing with the promotion of women’s rights in transitional justice and in urgent need of reform.

8. 2. The culture of impunity and its impact on women’s rights

Lack of legal reform has left the justice system corrupt and lacking in protecting women’s rights. The ‘culture of impunity’ will be examined, along with the implications of this upon women’s rights and the goal of long-lasting peace through reconciliation.

The justice system is ripe with corruption; there is limited witness protection, no standardised evidence collection procedures, and interactions with law enforcement

⁴⁹³ Fonseka and Schulz, p. 5.

⁴⁹⁴ *Ibid.*, p. 5.

⁴⁹⁵ Guthrie and Pinto-Jayawardena.

⁴⁹⁶ *Ibid.*

⁴⁹⁷ Kodikara, 2019, p. 212.

⁴⁹⁸ Guthrie and Pinto-Jayawardena.

regularly exposing victims of violence to further abuse.⁴⁹⁹ The culture is one of impunity, weak laws, inefficient processes, stigma, and distrust.⁵⁰⁰ The UN OHCHR describes that ‘very little action has been taken to remove individuals responsible for past violations’ nor to ‘dismantle structures and practices that have facilitated torture, enforced disappearance and extrajudicial killings, and to prevent their recurrence’ and that continued impunity ‘risks fuelling communal or inter-ethnic violence and instability’.⁵⁰¹ Furthermore, the UN OHCHR expresses concern regarding appointments of military officers to senior command positions, despite allegations that troops under their command committed gross human rights and humanitarian law violations during the war.⁵⁰² Recently Amnesty expressed concern over the appointment of Major General Shavendra Silva as Army Chief of Staff, who served as a Commander during the armed conflict, when his division were alleged to have committed violations of humanitarian and human rights law.⁵⁰³ The European Commission states that Sri Lanka has not brought perpetrators of war crimes to justice, nor resolved longstanding emblematic cases.⁵⁰⁴ The ‘minimal progress’ in prosecuting long-term symbolic cases before the courts, which involve victims from all communities in Sri Lanka, highlights the ‘systemic impediments to accountability in the criminal justice system’.⁵⁰⁵

Lassée proposes that uncovering the truth about serious human rights violations would foster support for implementing criminal accountability of alleged perpetrators.⁵⁰⁶ This could lead to mass upheaval of the current political and justice systems, considering that many of the individuals believed to be responsible for past violations are in senior positions. Guthrie and Pinto-Jayawardena question how an institutional culture where political interference and abuse of power – leading to the avoidance of prosecution of sexual violence cases – can be changed, especially when state agents are involved.⁵⁰⁷ The reluctance of the government to promote transitional justice methods becomes clearer

⁴⁹⁹ Guthrie and Pinto-Jayawardena.

⁵⁰⁰ Fonseka and Schulz, p. 5.

⁵⁰¹ Human Rights Watch, 2019 (a).

⁵⁰² UN OHCHR, 2020, A/HRC/40/23, p. 7 para 34.

⁵⁰³ Amnesty, 2019, (a) p. 21.

⁵⁰⁴ European Commission, pp. 14-15.

⁵⁰⁵ UN OHCHR, 2020, A/HRC/40/23, p. 5, para 21

⁵⁰⁶ Lassée, p. 712.

⁵⁰⁷ Guthrie and Pinto-Jayawardena.

since such a process would come back to bite them. Guthrie and Pinto-Jayawardena refer to a ‘crisis of legal indeterminacy and state impunity’ in Sri Lanka.⁵⁰⁸

Foneska and Schulz also argue that the issues affecting women in Sri Lanka’s post-war context are deeply rooted in the flawed justice system and public institutions, which are influenced by and serve to reinforce the patriarchal culture.⁵⁰⁹ Kodikara argues that the institutional legal architecture in Sri Lanka is hostile to women, having been moulded by ‘patriarchal ideology and attitudes’. Victims are subject to ‘intense scrutiny’ from the outset, so that often the reporting, investigation, and trial amount to ‘revictimisation’.⁵¹⁰ Guthrie and Pinto-Jayawardena explain the culture of violence against women in Sri Lanka as ‘driven by discrimination, tolerated and perpetuated by influential elements of society and reinforced by official conduct’.⁵¹¹ They describe the violence against women as compounded by the overwhelming climate of impunity, which makes it difficult to access justice for most Sri Lankans, especially those in groups that are discriminated against, such as women and ethnic and religious minorities.⁵¹² In a study by the Centre for Equality and Justice (CEJ), of ten Muslim women who reported sexual harassment, each sexual predator was a representative of the state, including police officers, district secretaries, council members, probation officers, and school and university employees.⁵¹³ Each woman failed to seek relief or redress for fear of social stigma, losing respect, and concern for not being believed or of reprisals from perpetrators.⁵¹⁴ Sri Lankan lawyer, Ambika Satkunanathan, argues that:

“Women have faded into the background because the various public demands and discussions have largely focused on everything but the root causes of sexual violence – namely, patriarchy, gender inequality and misogyny.”⁵¹⁵

The culture of impunity and SGBV seem to be intertwined, where lack of transparency and accountability encourages, or at least fails to deter, future human rights violations by illustrating that there is little, or no, legal repercussion for these actions. Guthrie and Pinto-Jayawardena argue that sexual violence is rooted in the culture of impunity and

⁵⁰⁸ Guthrie and Pinto-Jayawardena.

⁵⁰⁹ Fonseka and Schulz, p. 6.

⁵¹⁰ Kodikara, 2019, p. 205.

⁵¹¹ Guthrie and Pinto-Jayawardena.

⁵¹² *Ibid.*

⁵¹³ CEJ, 2018, p. 8.

⁵¹⁴ *Ibid.*, p. 12.

⁵¹⁵ Guthrie and Pinto-Jayawardena.

‘silence’ that exists regarding sex in Sri Lanka.⁵¹⁶ Silences in law ‘mirror and compound’ the silence that surrounds SGBV, which have become entrenched features of society.⁵¹⁷

SGBV was present throughout the war and continues to be a systemic problem within Sri Lanka, with many cases failing to pass through the state criminal justice system.⁵¹⁸ In a system that has seen few prosecutions of SGBV cases, that endorses individuals who have committed human rights violations in high government positions, and lacks accountability, it seems clear why women in Sri Lanka are reluctant to come forward, particularly when they are met with huge levels of stigma. Foneska and Schulz argue that SGBV is a symptom of culture; in this case Sri Lanka’s political and legal systems facilitate violence against women; emphasising that transitional justice processes should deal with the root of these systemic issues, rather than short-term problems.⁵¹⁹

As highlighted above, the culture of SGBV in Sri Lankan society, and the stigma and shame that surrounds this, is inextricably linked with the culture of impunity and the inability of courts to prosecute, in a mutually reinforcing cycle.

8. 3. Conclusions: Legal reform

National constitutional reform has been a topic of discussion within Sri Lanka since the end of the armed conflict. When designing transitional justice mechanisms it is important to include national reform.⁵²⁰ A process of constitutional reform did initially begin in Sri Lanka, including a Bill of Rights; however, it was quickly stalled.⁵²¹ The UN OHCHR recommends that Sri Lanka reforms domestic law to better implement its commitments to human rights and the recommendations made in the LLRC and CTF reports.⁵²² The Women’s Action Network proposes that the transitional justice process should improve the effectiveness of the regular justice system as well.⁵²³ By reforming constitutional law, human rights and women’s rights can be incorporated into national legal systems and interpreted to fit existing cultural norms. However, constitutional reform and transitional

⁵¹⁶ Guthrie and Pinto-Jayawardena.

⁵¹⁷ *Ibid.*

⁵¹⁸ Foneska and Schulz, pp. 4-5.

⁵¹⁹ *Ibid.*, p. 4.

⁵²⁰ *Ibid.*, p. 4.

⁵²¹ European Commission, 10 Feb 2020, p. 14.

⁵²² UN General Assembly, p. 4, para. 7.

⁵²³ Women’s Action Network, *The Four Mechanisms: Ideas from Women in the North and East*, Submission to the CTF, 2016.

justice are discussed independently in Sri Lanka, both competing for political capital, with virtually no connections drawn between the two in the public domain.⁵²⁴

It is clear that Sri Lanka's legal system is in need of reform and initiatives to (1) establish an effective transitional justice system, which prosecutes perpetrators and (2) to incorporate women's rights into this process and promote them more generally in national legal cases. Guthrie and Pinto-Jayawardena argue that there is a need for better laws and better implementation of these laws; along with a stronger investigative and judicial response to SGBV and the attitudes that sustain it.⁵²⁵ Grina emphasises the importance of a rule of law system in which the population has 'equal access to just laws and a trusted system of justice that holds all persons accountable, protects their human rights and ensures their safety and security'.⁵²⁶

NGOs stress the importance of a strong legal system in addressing and promoting women's rights. The CEJ argues that legal reform and the justice system is essential in addressing issues of SGBV, and upholding women's rights and dignity, which are structural and social prerequisites to peace and reconciliation.⁵²⁷

However, Guthrie and Pinto-Jayawardena question whether law and law enforcement procedures and judicial processes are adequate to cater to the specific needs of survivors.⁵²⁸ Certainly, the legal system is just one aspect of transitional justice, and is incapable of dealing with the complexity of post-war reconciliation in isolation. Whilst the legal system in Sri Lanka is deeply flawed, it is important to create accountability and ensure perpetrators face consequences for their actions. Otherwise a culture of 'silence' is maintained, where human rights violations – particularly against the most vulnerable and discriminated against proportions of society – grow, with minimal repercussions.

Despite the success of NGOs and CSOs in promoting transitional justice in Sri Lanka, which will be discussed further in the following chapter, equitable punishment for perpetrators seems necessary to ensure reparations are made and to promote non-recurrence. Establishment of successful rule of law is crucial to create a fair and inclusive

⁵²⁴ Lassée, p. 712

⁵²⁵ Guthrie and Pinto-Jayawardena.

⁵²⁶ Grina, 2011, p. 438.

⁵²⁷ CEJ, *Reconciling Sri Lanka*, 2019, p. 10.

⁵²⁸ Guthrie and Pinto-Jayawardena.

society, where all citizens can trust that there are consequences for violence, discrimination and human rights violations.

9. THE ROLE OF NGOS AND CSO'S IN PROMOTING WOMEN'S RIGHTS IN TRANSITIONAL JUSTICE PROCESSES IN SRI LANKA

9. 1. Development of women's activism in transitional justice

Women's activism and NGOs and CSOs have played an essential and long-lasting role in Sri Lanka. This section will explore the development of NGOs and CSOs in Sri Lanka and introduce a variety of key organisations, which will be examined with regard to their role in supporting women's rights in transitional justice. A summary of these NGOs, with a brief description of their role, can be found in *figure 4*, below.

Figure 4: Table of organisations for analysis and discussion

Name of NGO/CSO	Focus areas
Association of War Affected Women Sri Lanka (AWAW), 2000	<ul style="list-style-type: none"> - Sustainable peace building - Advancement and participation of women
Centre for Equality and Justice (CEJ), 2017	<ul style="list-style-type: none"> - Promotion of gender equality - Women, transitional justice and reconciliation
Centre for Policy Alternatives (CPA), 1996	<ul style="list-style-type: none"> - Promoting civil society in transitional justice - Research and advocacy of women's issues
Centre for Women's Research (CENWOR), 1984	<ul style="list-style-type: none"> - Empowering women through policy and action-orientated research - Gender sensitisation and advocacy
Suriya Women's Centre, 1990s	<ul style="list-style-type: none"> - Promotion of women's rights and assistance for survivors - Focus mainly on Tamil and Muslim women
The Women's Development Centre (WDC), 1989	<ul style="list-style-type: none"> - Violence against women - Transitional justice and peace and reconciliation as a thematic focus
Viluthu, 2003	<ul style="list-style-type: none"> - Social justice and democracy - Gender equality as a means to tackle these issues
Women in Need (WIN), 1987	<ul style="list-style-type: none"> - Eliminating GBV - Promoting gender equality and providing support for women victims of violence

Source: Emma Fullerton

As discussed in chapter three, past transitional justice processes and academic research into concepts of reconciliation illustrate that the inclusion and representation of

each part of society is necessary to achieve long-lasting peace. UN Special Rapporteur on the promotion of truth, justice, reparation, and guarantees of non-recurrence, Grief, highlights that Sri Lankan civil society with its ‘characteristic courage, persistence, and very high capacity’ has been ‘an insufficiently tapped resource’; however, recent transitional justice conversations have extended to include more stakeholders, such as youth groups, academics, the media, diaspora communities, and the armed forces; this inclusivity is essential for the sustainability of the process.⁵²⁹ NGOs and CSOs are crucial in representing and giving voice to civil society across Sri Lanka. However, women from civil society and NGOs have noted the absence of ‘meaningful engagement’ between the government and society, with exclusion of women and minorities as commonplace.⁵³⁰ Akurugoda notes, that although government leaders express hostile attitudes to NGOs, virtually all government departments will work with NGOs if they are ‘seen as allies in support of political goals’.⁵³¹

From 2015, transitional justice became a more visible topic in Sri Lanka, after the government ‘*picked up and touched*’ the concept.⁵³² Prior to 2015 CSOs were less active in transitional justice issues; after this point dialogue between the community and government, reporting and data gathering of missing persons, and development of women’s organisations and activists increased.⁵³³ Women’s organisations began to discuss women’s participation in transitional justice. However, it should be noted that women’s NGOs were already concerned about providing justice and peace and including women in this process. It is likely that, at this point, the notion of ‘transitional justice’ united women’s groups around a specific concept.

There are a significant number of NGOs and CSOs throughout Sri Lanka, dealing with transitional justice; many inclusive of multi-ethnic, multi-religious and multi-linguistic groups, and others focusing on specific categories of women. Numerous NGOs were established during the civil war to address specific issues of conflict-affected women. The Women’s Development Centre (WDC) was established in 1989 and works mainly on issues of violence against women, with transitional justice and peace and

⁵²⁹ Guthrie and Pinto-Jayawardena.

⁵³⁰ CEJ, *Reconciling Sri Lanka*, 2019, p. 5.

⁵³¹ Akurugoda, p. 14.

⁵³² Interview with WDC, Zoom, 18 July 2020.

⁵³³ Interview with WDC, Zoom, 18 July 2020.

reconciliation as a thematic focus.⁵³⁴ WDC established a shelter during the war to provide rehabilitation to women victims of SGBV, whilst taking legal action against perpetrators.⁵³⁵ The Association of War Affected Women Sri Lanka (AWAW) was also established to assist women during the civil war, founded in 2000, in Kandy, for mothers and wives whose sons and husbands are missing, and works towards sustainable peace building in Sri Lanka by including women's perspectives.⁵³⁶ AWAW operates at both the international and national level, supporting 'advancement and participation of women' towards a sustainable peace.⁵³⁷ AWAW works to promote transitional justice at the grassroots through women and civil society leaders; and by using social and mainstream media to promote messages to the wider public.⁵³⁸

Other NGOs focus on specific regions, and women of particular ethnicities and religions. Viluthu was established in 2003, to tackle the 'crisis' of governance in Sri Lanka and strengthen capacities, especially in the Tamil speaking areas of the North and East of Sri Lanka.⁵³⁹ Viluthu focuses on promoting gender equality in its aims to address the issue that 'women and children have the least say in the processes concerning peace negotiations although most affected by the civil war'.⁵⁴⁰

Many NGOs and CSOs present in Sri Lanka concentrate on promoting women's rights and tackling the culture of impunity and SGBV. These NGOs do not specifically address transitional justice in their mandate, but nevertheless work on it indirectly, by promoting women's social, economic and political agency within the country. For example, Suriya Women's Centre (Suriya) was established in the early 1990s to deal with the needs of women and children in welfare centres and camps, due to the mass displacement caused by the civil war in the North and East.⁵⁴¹ The centre now works in the Batticaloa District – where the camps were moved in 1993 – with predominantly Tamil and Muslim women, through programmes on gender empowerment and development and cultural programs.⁵⁴² The centre works at an individual level, to change

⁵³⁴ *Ibid.*

⁵³⁵ The Women's Development Centre (WDC), <http://womendev.org> (accessed 17 June 2020).

⁵³⁶ Association of War Affected Women (AWAW), <https://awawsl.org> (accessed 17 June 2020)

⁵³⁷ Association of War Affected Women (AWAW), *2019 Annual Report Part I*, 2019, p. 3.

⁵³⁸ AWAW, 'Road to reconciliation'.

⁵³⁹ Viluthu, <http://www.viluthu.org> (accessed 17 June 2020).

⁵⁴⁰ Viluthu.

⁵⁴¹ Suriya Women's Centre, 'Our Beginnings', <http://suriyawomen.org> (accessed 17 June 2020).

⁵⁴² Suriya Women's Centre.

discriminatory socio-cultural norms, as well as trying to achieve larger-scale structural and legal reform.⁵⁴³ Suriya works on four main projects: economic rights of women, empowerment, collective activism and cultural activism.⁵⁴⁴ Covering the whole of Sri Lanka, the Centre for Women's Research (CENWOR) was established in 1984, predominantly as a research facility, with programmes to empower women through policy and action-orientated research and gender sensitisation and advocacy.⁵⁴⁵ CENWOR works with other NGOs to lobby the government to address and mainstream gender issues.⁵⁴⁶ Women in Need (WIN) was established in 1987, by a team of Sri Lankan women with the goal of eliminating GBV.⁵⁴⁷ Although their mission does not refer directly to transitional justice, they work with key stakeholders towards transitional justice goals: to promote equal fundamental human rights for women in law and policy; and to provide economic and psychological support to women victims of violence.⁵⁴⁸

Whilst many women's groups focus on targeting GBV and promoting women's rights generally, rather than specifically on transitional justice, Suriya notes that there is a 'strong continuum between the violence against women and girls during conflict and afterwards, resulting from normalisation of violence and brutalisation of communities over a 30 year war'.⁵⁴⁹ In this sense, although these NGOs and CSOs do not explicitly mention transitional justice in their mission, it is encompassed in their aims: to provide women with access to their legal rights, and psycho-social and economic assistance required as a result of the armed conflict and to empower women to engage politically.

Numerous organisations were also founded post-war, stemming from the need to tackle violations and promote women's rights in reconciliation processes. The Centre for Equality and Justice (CEJ) was established in Colombo in 2017 to work on the rights of women affected by war in Sinhala, Tamil and Muslim communities, with the mission to achieve 'gender justice so that men and women live in a society that is free, just and equal', highlighting a key focus as 'women, transitional justice and reconciliation'.⁵⁵⁰

⁵⁴³ *Ibid.*

⁵⁴⁴ Suriya Women's Centre, 'Programmes'.

⁵⁴⁵ Centre for Women's Research (CENWOR), <http://cenwor.lk/policy-action-oriented-research/> (accessed 17 June 2020).

⁵⁴⁶ *Ibid.*

⁵⁴⁷ WIN.

⁵⁴⁸ *Ibid.*

⁵⁴⁹ Suriya Women's Centre.

⁵⁵⁰ CEJ, <http://cejsrilanka.org> (accessed 16 June 2020).

CEJ's main strategy is the promotion of gender equality through law, governance and democratic principles, promoting women's economic empowerment, advocating for the government's commitment to international human rights and women's rights standards and through partnerships with grassroots level women's organisations.⁵⁵¹

NGOs have developed during and post-war in Sri Lanka to address and promote women's rights and human rights. Initially many NGOs and CSOs formed to support women during the armed conflict, and these roles have adapted to support women's post-conflict needs and to ensure women are represented in transitional justice processes.

9. 2. De-politicisation of transitional justice: Awareness of rights, understanding of transitional justice and access to justice

NGOs and CSOs have developed to compensate for a lack of government mechanisms to adequately support women's needs and promote women's rights in transitional justice processes. As a direct consequence of the politicisation of government transitional justice processes, NGOs and CSOs play a key role in unravelling concepts of transitional justice and communicating them in more impartial and transparent ways to general populations.

It is evident that the government does not have the gender-sensitive framework in place to understand and promote women's rights in transitional justice processes. For example, there is no proper categorisation or definition of 'female head of household'.⁵⁵² This is particularly worrying due to the large number of WHH left behind by the armed conflict, who have to deal with economic, social, and psychological challenges. Furthermore, the government are lacking in national statistics, often requesting NGOs provide national-level data, which the government should collect.⁵⁵³ As a result, there is no basic framework to approach or deal with women's issues and little understanding of how gender should permeate through different mechanisms.⁵⁵⁴

An interview with the WDC highlights that transitional justice issues are '*very much politicised*', with each party '*saying they will do more for people in the North and East*', for example, as a political campaign strategy, with politicians skewing the

⁵⁵¹ CEJ.

⁵⁵² Gamage, 2018.

⁵⁵³ *Ibid.*

⁵⁵⁴ Gamage, 2018.

meaning of transitional justice.⁵⁵⁵ From 2009 the GoSL focused on rebuilding and welfare, but did not communicate transitional justice as a '*right of communities*'.⁵⁵⁶ Measures taken were superficial, for example infrastructure development, such as rebuilding roads and cities, rather than dealing with sensitive or complex issues.⁵⁵⁷ WDC argues that transitional justice should have been seen as '*the process of helping the communities who are effected... to reintegrate society again, to become citizens*', as Sri Lankans, with rights.⁵⁵⁸ However, the government failed to communicate the promises or legal aspects of transitional justice, including the promises of the LLRC and discussions in human rights commissions, so that '*no one knew what it was about*'.⁵⁵⁹ Rights were not expressed as entitlements. The government portrayed army combatants as '*war heroes*' when giving out subsidies to build houses and supporting children to go to school, rather than reparations being reflected as rights.⁵⁶⁰

As a result of the politicisation of transitional justice the meaning is unclear for the majority of the population, '*not only for women, but also for every population in Sri Lanka; they don't understand what transitional justice is*'.⁵⁶¹ Most families, throughout the country, did not realise their rights to compensation.⁵⁶² A former woman LTTE cadre expressed that she does 'not know enough about reconciliation and transitional justice' or 'what the government does to bring about change' and that 'grassroots should be informed about these concepts and processes'.⁵⁶³ The WDC suggests that the North and the East of the country were more aware of their rights, with better channels of communication, because of '*good supporting structures maybe from diasporas*'.⁵⁶⁴ However, generally, throughout Sri Lanka, transitional justice was and is not '*recognised as a human right*'.⁵⁶⁵ Moreover, because transitional justice was used as a political game

⁵⁵⁵ Interview with WDC, Zoom, 18 July 2020.

⁵⁵⁶ *Ibid.*

⁵⁵⁷ *Ibid.*

⁵⁵⁸ *Ibid.*

⁵⁵⁹ *Ibid.*

⁵⁶⁰ *Ibid.*

⁵⁶¹ *Ibid.*

⁵⁶² *Ibid.*

⁵⁶³ CEJ, *Reconciling Sri Lanka*, 2019, p. 9.

⁵⁶⁴ Interview with WDC, Zoom, 18 July 2020.

⁵⁶⁵ *Ibid.*

to improve party popularity ‘*valuable time was lost in initiating the process*’, in which much needed progress should have been made.⁵⁶⁶

In order to work on transitional justice, NGOs agree that a clear concept and definition had to be developed and applied to the current context in Sri Lanka.⁵⁶⁷ There were many misunderstandings of the concept – caused by the government’s lack of clarity around transitional justice and rights issues – throughout the country and among women’s organisations.⁵⁶⁸ To develop transitional justice programmes, the government intentions and existing structures, such as the ‘*ONUR and OMP, and responsible officials*’, had to be understood and ‘*connected with*’.⁵⁶⁹ Research into women’s issues is essential in this regard so women’s needs are properly represented and met. In 1996 the CPA was formed to strengthen civil society contribution to public policy through research and advocacy, with an overarching emphasis on human rights, with the belief that the contribution of civil society to public policy debates is vital.⁵⁷⁰ CPA have conducted extensive research, providing recommendations to the government, such as the inclusion of a ‘gender unit’ to ensure women are represented in transitional justice.⁵⁷¹

In developing concepts of transitional justice to disseminate to Sri Lankan society many NGOs and CSOs have highlighted the importance of using international human rights standards. AWAW promotes international human rights standards, with its on-going project on social cohesion and reconciliation; training women on women, on peace and security to ‘take UNSC Resolution 1325 to the grassroots’ to empower local women with the knowledge of their rights.⁵⁷² AWAW also includes and has learnt from regional perspectives and experiences in promoting reconciliation. AWAW conducted a workshop on ‘mutual sharing and learning on women, peace and reconciliation in Nepal and Sri Lanka’, in which organisations working for peace in Nepal exchanged experiences and initiatives.⁵⁷³ This highlights the way that NGOs work actively throughout the country and take influence from international and regional concepts to promote deeper and more developed understanding of transitional justice.

⁵⁶⁶ Interview with WDC, Zoom, 18 July 2020

⁵⁶⁷ *Ibid.*

⁵⁶⁸ *Ibid.*

⁵⁶⁹ Interview with WDC, Zoom, 18 July 2020.

⁵⁷⁰ CPA, <https://www.cpalanka.org>

⁵⁷¹ Fonseka and Naples-Mitchell, p. 26.

⁵⁷² AWAW ‘Social cohesion and reconciliation activity’.

⁵⁷³ AWAW, ‘Mutual sharing and learning on women, peace and reconciliation in Nepal and Sri Lanka’.

Above it is illustrated that NGOs play an essential role in understanding and conceptualising transitional justice and disseminating information throughout Sri Lanka, which stands in stark contrast to the government's disengagement with civil society. The inclusion of international standards and regional approaches highlights the inclusive and wide-ranging approach that is necessary in providing transitional justice. NGOs and CSOs have taken on key role in communicating to the population their rights within transitional justice processes and how they can access justice.

9. 3. Promoting intersectional inclusion of women in transitional justice

NGOs in Sri Lanka introduce, and are involved in, a number of measures that ensure women from different communities and backgrounds are brought together to fight for the rights of women as a whole. They work to include perspectives of different communities to ensure the rights of all women are addressed.

These organisations believe that all women have a vital role to play in reconciliation so actively work to give women a voice and to integrate women's perspectives into initiatives. The CEJ conducted a study in May 2019, of 30 women from different backgrounds in terms of age, ethnicity, educational background and occupation around their thoughts on and needs in reconciliation and transitional justice.⁵⁷⁴ Some women expressed optimism about reconciliation due to the pro-reconciliation government (which is now no longer in place) and the post-war sense of relief and aspiration.⁵⁷⁵ Women emphasised the necessity for institutional structural reform, including: greater accountability and transparency; establishment of a human rights framework; greater civic engagement and responsibility; incentives for political actors to engage with long-term change; and wide scale transformation of a society based on privilege to one based on 'values, mutual respect, social justice and dignity for all'.⁵⁷⁶ Women held it as important that the state 'adopt measures to acknowledge past wrongs and provide compensation where necessary'.⁵⁷⁷ Participants were unanimous that women have a vital role to play in reconciliation and there was consensus that reconciliation was necessary for the country to move forward. It is clear that NGOs recognise the value of

⁵⁷⁴ CEJ, *Reconciling Sri Lanka*, 2019, p. 3.

⁵⁷⁵ *Ibid.*

⁵⁷⁶ *Ibid.*, p. 12.

⁵⁷⁷ *Ibid.*, p. 13.

obtaining women's views and perspectives as essential in promoting an inclusive transitional justice process, where the needs of all women are addressed.

In addition, many organisations have held workshops to explore and develop intersectionality of women's rights approaches. For example, CEJ have held different events to encourage and highlight women's perspectives of war and the transitional justice process, for example a travelling exhibition of art produced by war-affected women from Sinhala, Muslim and Tamil communities.⁵⁷⁸ Furthermore, CEJ promote inclusion of women of all ages in the process of peace and reconciliation. They held workshops throughout 2019 for 75 youth and 20 elders, both male and female, to ensure the voices of youth and women are brought into reconciliation processes.⁵⁷⁹ Advocacy has also helped to create common lineages between different communities of women. AWAJ partnered with other NGOs to provide advocacy trainings on social cohesion and reconciliation throughout Sri Lanka, providing 209 women with training to 'advocate for common issues' whilst keeping 'the unity among the diverse communities'.⁵⁸⁰ This included a series of nine meetings with 50 women and men leaders throughout Sri Lanka, where AWAJ disseminated key components of a gendered transitional justice process, illustrating that NGOs are reaching grassroots levels and working with both men and women to promote women's rights.⁵⁸¹

Promoting representation of women in transitional justice processes is recognised as a key issue by NGOs. Women's issues are not highlighted in commissions and there are few females involved in these procedures, for example only one woman is involved as a commissioner in the OMP, and women are not generally the decision makers.⁵⁸² Sepali Kottegoda, Executive Director of the WMC, suggests that women should be present in reconciliation from grassroots to national level advocacy.⁵⁸³ Women are involved in discussing the issue of missing persons, but need opportunities to address other conflict related issues.⁵⁸⁴ WDC argues that there should be more involvement of

⁵⁷⁸ CEJ, *Annual Report 2019*.

⁵⁷⁹ CEJ, 'Reconciling' Sri Lanka: Making voices of youth count, 2020, <http://cejsrilanka.org/wp-content/uploads/ReconcilingVoices-of-Youth-Count-Eng-8.pdf> (accessed 18 June 2020), p. 1.

⁵⁸⁰ AWAJ, 2019, p. 13.

⁵⁸¹ *Ibid.*, p. 13.

⁵⁸² Interview with WDC, Zoom, 18 July 2020.

⁵⁸³ Gamage, 2017 (b).

⁵⁸⁴ Interview with WDC, Zoom, 18 July 2020.

women and mechanisms to help women ‘*regain their lives*’ again.⁵⁸⁵ Furthermore, there are no indicators or mechanisms that measure women’s participation or contribution.⁵⁸⁶ Questions need to be asked to know ‘*who is there and who is being represented*’ and at what level, as well as the number of women who attend human rights commissions.⁵⁸⁷

The inclusive approach taken by NGOs highlights the importance of addressing all levels and areas of society to understand the impact of the war upon women and to involve women in the decision-making processes to promote women’s rights and address the varied needs of women. Previous transitional justice efforts and concepts illustrate that this is essential to achieve long-lasting stability and peace.

9. 4. Inter-community dialogue

As well as addressing the needs of women throughout Sri Lanka, organisations work to promote inter-community dialogue about conflict-related problems and the issues provoked by civil war. Doing so promotes inclusive reconciliation processes, in which communities work to understand each other’s needs.

CEJ argues that networking between women and women’s representation is essential to ensure adequate gender-sensitive policy is provided and reaches grassroots levels.⁵⁸⁸ Other organisations, including WDC take this approach in promoting women’s rights in reconciliation through inter-community dialogue. The WDC aims to introduce structures throughout the country to highlight transitional justice as a women’s issue.⁵⁸⁹ The aim is to give women a better understanding and to bring women of all languages, religion, caste and ethnicity to a single platform to discuss issues that affect women.⁵⁹⁰ WDC expressed that building trust between communities and using women, who are ‘*very good peace makers*’ to act as change makers ‘*to change their views and to build towards non-recurrence*’ is essential.⁵⁹¹ WDC tries to ensure the intersectionality of women’s rights are addressed, by also promoting the involvement of women with disabilities in discussions and decision-making processes.⁵⁹²

⁵⁸⁵ Interview with WDC, Zoom, 18 July 2020.

⁵⁸⁶ *Ibid.*

⁵⁸⁷ *Ibid.*

⁵⁸⁸ CEJ, *Reconciling Sri Lanka*, 2019, p. 10.

⁵⁸⁹ Interview with WDC, Zoom, 18 July 2020.

⁵⁹⁰ *Ibid.*

⁵⁹¹ *Ibid.*

⁵⁹² WDC, ‘Reconciliation’.

WDC and Viluthu work together to provide a network for women's organisations and a platform for women leaders to find common ground and have held meetings quarterly over the last two years.⁵⁹³ Furthermore, another national-level platform was established by WDC and Viluthu, bringing women leaders together from eight districts in Sri Lanka to discuss women's issues in transitional justice and advocate and encourage inclusion of women in their individual communities.⁵⁹⁴ This project, 'Empowering Women for an Inclusive and Sustainable Transitional Justice and Reconciliation Process in Sri Lanka', which is on-going from 2017 until 2020, focuses upon 'inclusive and sustainable peace' by empowering women to participate in reconciliation.⁵⁹⁵

This network has proved very useful in successfully addressing current events. After the Easter attack in Sri Lanka in 2018, and the subsequent crisis between Muslim and Sinhalese populations, women leaders from the network were actively involved in speaking at community women's groups against this outburst of tension.⁵⁹⁶ There were a number of issues faced by the Sinhalese women speaking out, particularly from the Sinhalese community, who felt these speakers were betraying their own community.⁵⁹⁷ However, overall people were made aware of each other's perspectives and tension was eased.⁵⁹⁸

Women's support groups have also been useful in providing a forum for legal and emotional support. Suriya has established women's collectives to provide support and spread awareness on gender issues and women's rights. The Puthiya Paathai Nokki (PPN) Group aids women and girls who have been affected by war and need emotional support and legal assistance, supporting members to initiate legal actions and to make representations at government commissions, including the LLRC.⁵⁹⁹

NGOs also address memorialisation as a form of reconciliation between communities. CEJ has created forums for women throughout the country to reflect on memories of the past and find positive ways to move forward to promote peace and

⁵⁹³ Interview with WDC, Zoom, 18 July 2020.

⁵⁹⁴ *Ibid.*

⁵⁹⁵ WDC, 'Programmes'.

⁵⁹⁶ Interview with WDC, Zoom, 18 July 2020.

⁵⁹⁷ *Ibid.*

⁵⁹⁸ *Ibid.*

⁵⁹⁹ Suriya Women's Centre, 'Programmes'.

reconciliation.⁶⁰⁰ Forums included women with missing and disappeared family members, female heads of households, including widows and disabled women, internally displaced women, and women victims of ethnic violence.⁶⁰¹ The CEJ held a forum in October 2019 on memorialisation and transitional justice, to raise awareness on how memorialisation and sharing of experiences between women and girls could help to promote and highlight women's roles in 'memory initiatives' for reconciliation.⁶⁰² Memory was discussed as a 'form of reparations' to reconcile the differences between Sinhala, Tamil and Muslim communities.⁶⁰³ Women highlighted the importance of a common narrative, by working together to explore the different but similar experiences and grief felt by all communities.⁶⁰⁴

Inter-community dialogue is therefore successful and effective in encouraging the promotion of women's rights in transitional justice. Not only does it allow women to voice their needs and seek legal and emotional support, but it also promotes reconciliation between conflicting communities to work towards sustainable peace. Highlighting the differences and linkages in women's experiences is key in creating common experiences over which women can unite and promote their rights.

9. 5. Advocacy of women's rights issues

One of the main roles of national NGOs and CSOs is to lobby and advocate for the inclusion and mainstreaming of women's rights in the transitional justice processes. Some examples of successful advocacy are provided through national level advocacy and dialogue sessions with the government in the areas of language, missing persons, and housing. Bhavani Fonseka of CPA argues that advocacy is essential in '*pushing for the human right's approach*' and that by continuing:

*"to talk about the need for truth and justice and reparations and non-recurrence in different ways we keep raising it publicly and... making it clear that it has to be an issue that's in the forefront - it can't be side-lined, it can't be ignored."*⁶⁰⁵

⁶⁰⁰ CEJ, *Women, Memory, Reconciliation*, 2019, <http://cejsrilanka.org/wp-content/uploads/ENGLISH-Album-CEJ.pdf> (accessed 18 June 2020).

⁶⁰¹ *Ibid.*

⁶⁰² CEJ, 'Community Women and Youth Forum on Memorialisation and TJ'.

⁶⁰³ CEJ, 'Women Unite to Remember: Community Women Forums on Memory Reconciliation'.

⁶⁰⁴ CEJ, *Reconciling Sri Lanka*, 2019, p. 12.

⁶⁰⁵ Interview with Bhavani Fonseka, WhatsApp, 28 July 2020.

Advocacy training has helped groups of women to research, identify issues, and have dialogue sessions with stakeholders, including government officers.⁶⁰⁶ Dialogue sessions held by the WDC have helped to develop relevant transitional justice issues specific to regional concerns and needs.⁶⁰⁷ Platforms of advocacy training for women's equality have worked to broaden the spread of awareness of women's rights in transitional justice.⁶⁰⁸ 29 women have been 'trained' as trainers, who each have created awareness in their own communities and other platforms, with almost 600 individuals now equipped in equality training.⁶⁰⁹ Furthermore, issues identified have been raised with governors, to promote the inclusion of women and their needs in government policies.⁶¹⁰

Advocacy and lobbying is also used to promote women's legal rights. CENWOR has worked successfully to improve women's legal rights, including reform of the Penal Code, as well as the enactment of the Prevention of Domestic Violence Act and Women's Rights Bill.⁶¹¹ Similarly, WIN works to fight for law and policy changes to promote justice and equality for women's fundamental human rights.⁶¹² WDC also strives to address 'gaps and opportunities' in Sri Lanka's laws, including the Sri Lankan Women's Charter and to advocate for gender sensitivity.⁶¹³

Lobbying and advocacy by various NGOs has also created connections with officials to raise women's rights issues and provided opportunities for government and civil society dialogue. An AWA project engaged with and reached 75 armed forces personnel, NGO workers and government officials, enhancing awareness on gender sensitivity in transitional justice.⁶¹⁴ AWA also held a national-level 'peace table' in November 2018, focusing on reconciliation as a collaborative and gender-sensitive process, which was attended by former President, Chandrika Bandaranaike Kumaratunga.⁶¹⁵ The project brought together women, of all ethnicities, religions, and political parties to promote women's integration in reconciliation.⁶¹⁶

⁶⁰⁶ Interview with WDC, Zoom, 18 July 2020.

⁶⁰⁷ *Ibid.*

⁶⁰⁸ WDC, 'Training'.

⁶⁰⁹ WDC, 'Reconciliation'.

⁶¹⁰ *Ibid.*

⁶¹¹ CENWOR, 'Training, Gender Sensitisation, Advocacy and Networking'.

⁶¹² WIN.

⁶¹³ WDC, 'Reconciliation'.

⁶¹⁴ AWA, 'Road to reconciliation', <https://AWA.org/>

⁶¹⁵ *Ibid.*

⁶¹⁶ AWA, '2019 Annual Report Part I', 2019, p. 17.

NGOs and CSOs in Sri Lanka address the environment of transitional justice and create context-specific responses to promote women's rights. For example, in Kandy, which is a multi-ethnic, multi-religious community, not directly affected by armed conflict, the issue of language was highlighted.⁶¹⁷ It was revealed that women, particularly minority (non-Sinhalese) groups, are excluded from active socio-political participation by language barriers: in hospitals and government offices, for example.⁶¹⁸ Without translators, communities did not have the same ability to access their rights.⁶¹⁹ Dialogue sessions between WDC and the government successfully highlighted how women and religious and ethnic minorities are affected, and as a direct result the government have started promoting language rights, including trainings for government officials.⁶²⁰ This project highlights the long-term impact of identifying issues and lobbying and the effectiveness of CSOs in promoting women's rights in transitional justice. Similarly, The CEJ has held awareness-raising workshops with other CSOs, on the issues of the need for 'gender sensitive translators and interpreters' in the OMP and reparations office.⁶²¹ These workshops included lawyers and transitional justice specialists, as well as many conflict-affected women from different regions.⁶²²

Furthermore, NGOs and CSOs work to address conflict-related issues that predominantly affect women. There are many missing persons about whom no information is given; families simply have to wait in dread for news.⁶²³ Moreover, death certificates are rarely given, meaning there can be no compensation or ability to file for land rights or assets.⁶²⁴ The WDC plays a vital role in encouraging women who lost their sons and husbands to seek access to justice by promoting awareness of mechanisms and supporting women's access to their rights through complaints procedures for example.⁶²⁵

NGOs have also performed successful advocacy work in terms of providing women with livelihood and housing support. A national platform of CSOs lobbied the government to provide livelihood support for women who lost their husbands and sons,

⁶¹⁷ Interview with WDC, Zoom, 18 July 2020

⁶¹⁸ *Ibid.*

⁶¹⁹ *Ibid.*

⁶²⁰ *Ibid.*

⁶²¹ CEJ, 'Workshops on OMP and Reparations'.

⁶²² *Ibid.*

⁶²³ Interview with WDC, Zoom, 18 July 2020.

⁶²⁴ *Ibid.*

⁶²⁵ *Ibid.*

leading to the development of a scheme to support women in their own livelihoods.⁶²⁶ Furthermore, a lack of housing was also identified as a significant issue, particularly in Ampara district and border villages, where houses were lost with no compensation, subsidies or support from the government to rebuild.⁶²⁷ There have been various lobbying efforts to obtain access and resources from the government.⁶²⁸

Advocacy provided by NGOs and CSOs has played an essential role in promoting women's rights in transitional justice. Advocacy has created successful ties between women's networks and has been key in identifying and addressing community-specific issues. Furthermore, advocacy has worked successfully to expand concepts of transitional justice to grassroots levels and educate women in their rights, as well as reaching national levels and working to bring about legal reforms and policy changes.

9. 6. NGO support programmes for women's rights

NGOs recognise women as the most vulnerable and disadvantaged populations after an armed conflict has taken place.⁶²⁹ Due to this many initiatives are developed to provide economic and psychosocial support to women to address conflict-related issues. Specific areas of focus include support for WHH and combating SGBV.

Widows and Women-Headed Households

WHH are disadvantaged, particularly in comparison to men, in rights relating to land, labour, credit, insurance, as well as being discriminated against due to the cultural stigma attached to widows.⁶³⁰ This social marginalisation limits the ability of widows to participate in reconciliation.⁶³¹ There is no government mechanism to address the specific post-conflict needs of widows and WHH. Shyamala Gomez, director of Centre for Equality and Justice (CEJ) argues that prior to a CEJ project many '*military widows tell us that no one has ever talked to them, until we talked to them in this project*'.⁶³²

⁶²⁶ Interview with WDC, Zoom, 18 July 2020.

⁶²⁷ *Ibid.*

⁶²⁸ *Ibid.*

⁶²⁹ *Ibid.*

⁶³⁰ Viluthu, *Widows' Charter Sri Lanka*, 2015, <http://www.viluthu.org/wp-content/uploads/2016/03/National-Widows-Charter.pdf>, pp. 1-86 (accessed 17 June 2020).

⁶³¹ *Ibid.*

⁶³² Gamage, 2018.

Suriya has been active in promoting sustainable income support for WHH, who have been marginalized in their communities, and face socio-cultural challenges accessing assistance.⁶³³ 60 percent of women in Suriya's projects have been supported in becoming economically stable, through small businesses, animal rearing and home gardening, for example.⁶³⁴ Furthermore, Suriya works with key stakeholders to improve women's economic rights and aims to raise awareness of women's economic contribution to the country, for example by making documentary films.⁶³⁵

Viluthu also focuses upon the issues faced by WHH and widows, as a consequence of the civil war, in its initiatives, providing gender and advocacy training, livelihood projects and access to rights and services.⁶³⁶ Furthermore, Viluthu has facilitated discussion groups for women to adopt a 'Memorandum of Concerns'.⁶³⁷ This policy document is now used in informing national-level discussion on 'war widows, WHH and post-war process'.⁶³⁸ Viluthu has also facilitated the creation of a 'Widows' Charter', using international standards to raise awareness of the specific issues faced by widows, and to provide recommendations to the government.⁶³⁹ This charter is important as it highlights the necessity of a 'policy document to elevate the status of widows in Sri Lanka and enable them to link with similar networks for widows in South Asia and beyond'.⁶⁴⁰ The Charter is published in English, Sinhala, and Tamil, making it accessible, with recommendations covering: women's safety and security, livelihood, access to entitlements and benefits, education, health, socio-cultural issues, and missing persons.⁶⁴¹ Viluthu has also networked with over 12,000 widows and WHH in the North and East of Sri Lanka, and in Puttalam of the North West.⁶⁴²

As well as providing rights education and economic support, NGOs and CSOs also make up for the lack of psychosocial support provided by government mechanisms. A '*large number of war widows and effected families*' were left in the aftermath of the

⁶³³ Suriya Women's Centre, 'Programmes'.

⁶³⁴ *Ibid.*

⁶³⁵ *Ibid.*

⁶³⁶ Viluthu 'Women Headed Households and the National Widow's Charter'.

⁶³⁷ *Ibid.*

⁶³⁸ *Ibid.*

⁶³⁹ Viluthu, 2015.

⁶⁴⁰ Viluthu 'Women Headed Households and the National Widow's Charter'.

⁶⁴¹ Viluthu, 2015.

⁶⁴² Viluthu 'Women Headed Households and the National Widow's Charter'.

war, throughout the country.⁶⁴³ Some families and widows were provided with subsidies or support to build houses, however it was ‘*more welfare orientated rather than socio-psychological support*’.⁶⁴⁴ NGOs work to remedy this and encompass the full range of human rights, including economic, social and cultural rights. WIN, for example, offers medical support, counselling, food and clothes to women in emergency centres throughout Sri Lanka as well as running help desks for women in six different police stations and crisis centres in five different hospitals.⁶⁴⁵ WIN also provides a 24 hours helpline, available in Sinhala, Tamil, and English and a mobile application for women in crisis, which offers information on ‘legal rights and actions to be taken in emergency’.⁶⁴⁶

As a large population, created by the armed conflict, specific measures to target WHH and widows, providing them with economic, social and psychological support is essential to uphold women’s rights. NGOs have played a crucial role in providing networks between widows for emotional support, advocating for the needs of widows at a national level and providing economic support through livelihood schemes. However, the enormous number of WHH left by the civil war needs a huge amount of support, which should come from national schemes, supported by the government.

Combating corruption and sexual violence

As well as providing women with support to access fundamental rights, women’s rights education is also key to address rights violations in transitional justice processes and to ensure rights are being upheld to international standards. CEJ has held dialogues on sexual bribery and sexual exploitation to give it ‘the visibility that it deserves’ and to pressure policy makers to address sexual bribery.⁶⁴⁷ Other workshops on sexual bribery have worked to educate women on protective and risk factors and knowledge on how to confront perpetrators and how to seek legal support.⁶⁴⁸ CEJ has also initiated social media and social outreach campaigns to protect women from sexual bribery and highlight women’s rights in dealing with institutions and officers.⁶⁴⁹ Furthermore CEJ is

⁶⁴³ Interview with WDC, Zoom, 18 July 2020.

⁶⁴⁴ *Ibid.*

⁶⁴⁵ WIN.

⁶⁴⁶ *Ibid.*

⁶⁴⁷ CEJ, ‘Stakeholder Dialogue on Sexual Exploitation and Sexual Bribery’.

⁶⁴⁸ CEJ.

⁶⁴⁹ CEJ, ‘Social Media and Media Outreach on Sexual Bribery’.

advocating for mechanisms to support reporting of sexual bribery, including the creation of digital complaints mechanisms.⁶⁵⁰ CEJ recently held workshops on conflict-related sexual violence (CRSV) to broaden the understanding of CRSV and the stigma faced by survivors.⁶⁵¹ These workshops highlighted that it was crucial to have a coherent understanding of CRSV, shared by civil society and the government.⁶⁵²

This kind of project seems essential in combatting the culture of SGBV, which is prevalent in Sri Lanka. Educating women on their rights and how to handle sexual harassment is important to combat stigma so women understand they are not the wrongdoers and to encourage more women to speak out. However, educating women alone is not enough to address this issue. The problem is vast and embedded deep within Sri Lankan society. In order to change this, impunity must not be given to perpetrators of SGBV violence. Promoting women's rights, in conjunction with the persecution of perpetrators of SGBV, is key to upholding women's rights by ensuring they receive access to justice and fair retribution.

9. 7. Conclusions: Space for NGOs and CSOs in Sri Lanka

Despite NGO and civil society commitment to women's rights and transitional justice, the lack of government support gives these organisations narrow space to function. NGOs and CSOs receive little government funding and commitment, relying heavily on private donors and international support. Bhavani Fonseka states that currently there is no cooperation between the government and NGOs; from the new government *'there's just no recognition and there's a complete denial now, so that's why I'm saying that's the biggest challenge.'*⁶⁵³ This highlights the general lack of political commitment, especially when NGOs are doing essential work effectively on behalf of the government.

NGOs and CSOs demonstrate recognition of the complexity of transitional justice and work towards deepening understandings of the roles women can and should play within these processes. NGOs and CSOs play a crucial role in uncovering and analysing women's roles and communicating these to grassroots levels, across all communities.

⁶⁵⁰ CEJ, *Annual Report 2019*, 2019, http://cejsrilanka.org/wp-content/uploads/Annual_Report_IF11.pdf (accessed 19 June 2020).

⁶⁵¹ CEJ, 'Colombo CSOs Workshop on CRSV and Reparations'.

⁶⁵² *Ibid.*

⁶⁵³ Interview with Bhavani Fonseka, WhatsApp, 28 July 2020.

Furthermore, programmes are targeted to address the complex and specific post-conflict needs of women, including of the large population of WHH created by the civil war. These organisations have developed inter-community networks of women and dialogue with the government, which seem crucial in promoting an all-encompassing transitional justice strategy at a national level. However, despite best intentions of NGOs and CSOs, lack of government commitment to transitional justice must be hugely restrictive.

10. CONCLUSION

Sri Lanka has suffered many years of civil war, which have caused widespread human rights violations and left society with deep social, political, and cultural divides. Although the civil war ended in 2009 and a number of transitional justice mechanisms were adopted, it is widely recognised that the country is in need of a more robust, workable post-conflict process to address human rights violations and to ensure long-lasting peace. To enable long-term transformation and ensure non-recurrence, transitional justice must stretch beyond civil and political rights and work within the context of this division to address deep socioeconomic disparities. Many of the approaches that work to include women's rights in transitional justice provide useful insights into how these mechanisms can and should be contextually specific and inclusive of all of society.

Since the end of the war, the mechanisms established to promote transitional justice have stemmed from national pressure and the threat of international involvement. These mechanisms seem to encompass women's rights on paper, with women's representation and inclusion of human rights standards that promote gender equality and gender sensitivity. However, in reality they are very superficial: mechanisms are largely inaccessible to most women and women are predominantly considered within gender stereotypes. The OMP and OR merely scratch the surface of transitional justice, offering little more than death certificates and minimal financial compensation, rather than tackling deep-rooted social issues and providing women with the long-term economic and psychosocial support that is fundamental to ensuring their human rights are fulfilled.

Furthermore, the government has failed to implement any form of legal mechanism to ensure transitional justice. The absence of legal reform has created a corrupt justice system, which lacks transparency and fails in protecting women's rights.

This lack of accountability and the failure to prosecute human rights violations – particularly by high-ranking war officials, many of whom hold government positions – has created a culture of impunity, where perpetrators are not held liable.

Sri Lanka's culture of impunity has enormous ramifications for women's rights: few prosecutions are made of SGBV and perpetrators are often set free, creating a system where women are afraid to come forward; SGBV is surrounded by stigma and shame; and perpetrators fear little for the consequences of their actions. The situation in Sri Lanka also illustrates the close link between impunity and SGBV in war and post-war society. Kodikara argues that 'the increasing visibility of sexual violence within transitional justice' provides a 'conjunction of public and private, law and politics, of international law and domestic law' to bridge the dichotomy between 'war related and ordinary sexual violence' and address SGBV as a continuum.⁶⁵⁴ The culture of SGBV is inextricably linked with the culture of impunity. Women who come forward are often chastened, through stigma and social ostracism, while perpetrators go unpunished.

The new government, in power from November 2019, with parliament elected on 7 August 2020, has demonstrated a lack of political will to address transitional justice. Women's rights do not play a part in the transitional justice discussion, because currently there is no discussion. Furthermore, the government has recently revoked previous commitments to transitional justice, which suggests an uncertain future and threatens the limited progress that has been made.

Although the political and legal situation in Sri Lanka presents a relatively depressing outlook for women's rights and for social reconciliation, there is a level of inspiring civil society activism and engagement of NGOs and CSOs in women's rights. These organisations work to empower women and provide a platform for women to become key actors in the transitional justice process, as well as the political system as a whole. Because of the politicisation of government discussions of transitional justice, NGOs and CSOs play an important role in communicating rights to women, especially at the grassroots level. They also play a crucial role in recognising women's different roles and targeting programmes to address the complex and specific post-conflict needs of women, including of the large population of WHH created by the civil war. NGOs and CSOs also go a long way to making up for the lack of long-term economic and

⁶⁵⁴ Kodikara, 2019, p. 214

psychosocial government support, by providing sustainable livelihood projects and support groups, and tackling stigma that surrounds SGBV and the associated institutional corruption.

The lack of political will exemplifies the important role civil society and NGOs play in the transitional justice process. As powerfully stated in an interview with Bhavani Fonseka, it is *‘hard to ignore the women’*, who ask for fairly simple things: for the government to *‘find the disappeared loved ones, or asking for justice, asking for compensation, asking for their men back.’*⁶⁵⁵ Women’s organisations also highlight the important role that addressing women’s rights can play in moving towards peace, particularly in terms of advocacy and promoting reconciliation through inter-community dialogue. NGOs and CSOs work to include the perspectives of all communities and backgrounds in promoting women’s rights. This illustrates the importance of women as a force for reconciliation and creating social links to promote unity and dialogue. Advocacy through dialogue with government bodies and protests for women’s rights has led to the successful prosecution of legal cases, as well as changes in national law.

However, despite the best efforts and intentions of NGOs and civil society, with little governmental support it is difficult to integrate women’s rights comprehensively into transitional justice and wider politics. Providing justice for victims of conflict would ultimately mean holding many of those in power accountable. Lack of political will, on the part of the government, presents a huge obstacle to promoting and protecting women’s rights in transitional justice and throughout Sri Lanka.

Additionally, the situation in Sri Lanka provides a wider insight into post-conflict processes and the successes and failures of transitional justice as a concept. There are debates around the usefulness of reconciliation in society, and whether it is necessary for society to exist in harmony and to be fully integrated, or whether coexistence without conflict is sufficient. Sepali Kottegoda, Executive Director of WMC, proposes:

“Who wants to be reconciled? For example, if I am from the community and I am located in a region where I had bombs falling on my roof, where my brothers disappeared, what do I want for reconciliation? Do I want reconciliation?”⁶⁵⁶

⁶⁵⁵ Interview with Bhavani Fonseka, WhatsApp, 28 July 2020.

⁶⁵⁶ Gamage, 2017 (b).

On the other hand, women's rights activist Nalini Ratnarajah suggests that reconciliation is key to 'make sure it doesn't happen again', expressing that if 'we miss this opportunity of transitional justice, our children are going to suffer again'.⁶⁵⁷ The WDC highlighted non-recurrence as '*the most important thing in terms of transitional justice*' to prevent this sort of crisis from happening again.⁶⁵⁸ In the case of Sri Lanka, there appear to be two pressing issues. In the short-term, those who have had rights affected and violated by the armed conflict most desire redress, through reparations, economic and psychological support, and finding missing loved ones. In the longer-term, a strategy of reconciliation with lasting peace seems to be the most important issue. Overall non-recurrence is a major priority. In this sense reconciliation does not seem like the most pressing or significant goal. However, reconciliation and providing commonalities and linkages between communities appears to be crucial in creating a common experience and overcoming deep-rooted divisions within society.

In discussing the implementation of transitional justice, questions of how and why the process is carried out, it is crucial to keep in mind whom the justice is for. As I have illustrated, there are debates around transformative justice and questions regarding whether transitional justice is a post-colonial or Western concept that is unsuitable for Sri Lankan society, with a discursive struggle between the GoSL and international voices. However, a more appropriate indicator of the usefulness of certain approaches is the victims' voices and their interests in gaining justice. In this regard it is fairly simple to see what conflict-affected women in Sri Lanka desire: most often punishment for perpetrators of violence and answers regarding the fate of missing persons.

Combining the concept of transitional justice and women's rights in Sri Lanka reveals many important insights regarding transitional justice on a broader scale. Women have much to offer to transitional justice; inclusion of women's rights is likely to increase the potential of transformative justice and contribute to long-lasting peace; whilst targeted and effective transitional justice processes are essential in ensuring the protection and promotion of women's rights.

⁶⁵⁷ S. R. Gamage, 'Interview with Nalini Ratnarajah' in *Women Talk: an alternative space for women's voices in Sri Lanka*, 6 October 2017 (a), <https://womentalksl.wordpress.com/2017/10/17/nalini-ratnarajah/> (accessed 5 July 2020).

⁶⁵⁸ Interview with WDC, Zoom, 18 July 2020

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12. ABSTRACT

Sri Lanka is a small, but hugely diverse country, which has suffered from decades of colonial exploitation, civil war, and socio-political upheaval. Years of armed conflict have led to many human rights violations, with women and vulnerable populations bearing the brunt of conflict-related violence, both during and after. The topic of transitional justice in Sri Lanka has been the subject of increasing concern and debate, both nationally and internationally. Despite the civil war ending in 2009 little progress has been made towards post-war peace and reconciliation.

This thesis explores the effectiveness of transitional justice processes in Sri Lanka, and the implications of this upon women's rights. An analysis is provided of the different transitional justice mechanisms and the successes and limitations of each. The roles of the government, legal institutions and non-governmental and civil society organisations are examined to illustrate how women's rights can be considered and promoted in different ways.

It was found that although government mechanisms appear to address women's rights, in reality these processes are fairly superficial and provided in reaction to national and international pressure. Sri Lanka has a 'culture of impunity' the legal system fails both women's rights and transitional justice, in a mutually reinforcing cycle; where perpetrators are not punished for rights violations, whilst women are afraid to come forward. Non-governmental organisations and civil society organisations play a key role in supporting women's rights in the context of transitional justice, attempting to compensate for government failures and lack of political will.

Key words: transitional justice; Sri Lanka; women's rights; reconciliation

13. ABSTRAKT

Sri Lanka hat unter jahrelanger kolonialer Ausbeutung, Bürgerkrieg sowie sozialen und politischen Umwälzungen gelitten hat. Jahre bewaffneter Konflikte haben zu zahlreichen Menschenrechtsverletzungen geführt, wobei Frauen und gefährdete Bevölkerungsgruppen während und nach dem bewaffneten Konflikt die Hauptlast. Das Thema der Übergangsjustiz in Sri Lanka hat auf nationaler, und internationaler Ebene zunehmend Besorgnis erregt und zu Diskussionen geführt. Trotz des 2009 zu Ende gegangenen Bürgerkriegs gab es in der Nachkriegszeit kaum Fortschritte auf dem Weg zu Frieden und Versöhnung.

Diese Masterarbeit untersucht sowohl die Wirksamkeit der Prozesse der Übergangsjustiz in Sri Lanka, als auch die Auswirkungen dieser Prozesse auf die Rechte der Frauen. Die Rollen der Regierung, der Rechtsinstitutionen und der Nichtregierungs- und zivilgesellschaftlichen Organisationen werden untersucht, um zu veranschaulichen, wie die Frauenrechte auf unterschiedliche Weise berücksichtigt und gefördert werden können.

Es stellte sich heraus, dass die Regierungsmechanismen den Anschein geben sich mit Frauenrechten zu befassen, diese Prozesse in der Realität jedoch oberflächlich bleiben und als Reaktion auf nationalen und internationalen Druck stattfinden. In Sri Lanka gibt es eine "Kultur der Straflosigkeit", was dazu führt, dass das Rechtssystem sowohl bei Frauenrechten als auch bei der Übergangsjustiz versagt, und zwar in einem sich gegenseitig verstärkenden Kreislauf, in dem Täter für Rechtsverletzungen nicht bestraft werden, während Frauen Angst haben, sich zu melden. Deshalb haben Nichtregierungsorganisationen und Organisationen der Zivilgesellschaft eine Schlüsselrolle bei der Unterstützung der Frauenrechte im Kontext der Übergangsjustiz, da sie versuchen das Versagen der Regierung und den fehlenden politischen Willen auszugleichen.

Stichworte: Übergangsjustiz; Sri Lanka; Frauenrechte; Versöhnung

14. ANNEX

Annex 1: Interview Questions

- 1- Currently, how do you think women are involved in transitional justice processes in Sri Lanka?
- 2- What role does the government play in this process and is it far-reaching enough?
- 3- What do you think the role of NGOs and CSOs in promoting women's rights and ensuring participation in post-conflict processes is?
- 4- How does your organisation ensure women's rights are promoted?
- 5- How do you think including areas that cover women's issues could have a long-term impact upon Sri Lanka society?
- 6- What measures need to be taken to ensure the participation of women (particularly vulnerable and marginalised groups) in transitional justice processes?