

Conflict Resolution and Transitional Justice in Sri Lanka: International Experiences and Applications

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Abstract

"Transitional justice"—how a state emerging from a period of conflict or repression confronts human rights violations committed under previous regimes—is a risky business indeed. Stakes are high and challenges higher, policies must navigate ethical, legal, and political considerations with intensely contesting interests on all sides. The transitional justice literature trends to focus on transitions from authoritarianism to democracy, or post-genocidal contexts. The author has sought to explore applications of transitional justice mechanisms for resolution of protracted ethnic conflicts that have descended into genocide, particularly Sri Lanka. Although the overall record of truth commissions is mixed at best, the South African example may hold key lessons in that it transcended an official fact-finding mission into a vehicle to humanise all sides of the conflict and served as a public ritual to seek reconciliation.

Introduction

As Scheper-Hughes¹ reflects, "[d]emocratic transitions are best understood as a 'dangerous hour.' With the collapse of authoritarian regimes, there emerge new nations full of needs... and full of rage." Accompanying the recent international trend towards democratisation has been a resurgence of interest in "transitional justice"—how a state emerging from a period of civil conflict or political repression confronts human rights violations committed under previous regimes. This matter is often among first and most delicate issue a new government faces. The historical examples and political contexts in which transitional justice occurs are spectacularly diverse. The "third wave" of democracy, the end of the cold war, the eruption of horrific civil conflicts in Rwanda and Yugoslavia, and the recent international controversy over the fate of Augusto Pinochet has fed a growing international interest in this subject. Authors writing on transitional justice universally acknowledge the treacherous—legal, ethical, and political—quicksand that must be traversed in order to achieve the multiple goals of national reconciliation, rule of law, and respect for human rights.

Transitional justice encompasses a range of formal avenues pursued by states to confront human rights abuses committed under a previous regime. There are five broad categories: prosecuting crimes against the state (i.e. treason); prosecuting crimes against individuals (i.e. particular acts of human rights abuses); non-criminal sanctions (e.g. banning former elites from holding political office); truth commissions; and doing nothing (amnesties or simply sweeping the whole matter under the rug). In all cases, the goal is to facilitate a transition from a period of repression and/or armed conflict to one of peace, reconciliation, democratisation, and respect for human rights (although the zeal for which this goal is pursued varies widely, and half-hearted attempts are all too common). Transitional justice should be carefully distinguished from "revolutionary" or "revenge" justice where a political victor seeks to consolidate power through show trials of rivals. The monkey trial and execution of Nikolai

and Elena Ceasescu in Romania in 1989, for example, would certainly fall into this latter category. The deaths of the Ceasescus hardly represented a transition to rule of law and respect for human rights; indeed, to many this failure of justice indicated that the communists remained the masters of the new regime.² The literature agrees that transitional justice has multiple goals that can at times be contradictory, and even paradoxical. As one author has commented, the challenge lies in finding a solution that is acceptable to a population without it turning into a witch-hunt or a whitewash.³ Authors cite various objectives such as acknowledgement and accountability; achieving justice; serving as a deterrent against further human rights abuses; acknowledging and disseminating the truth about the horrors that occurred; and establishing rule of law. Secondary aims may include depolarisation; reconstruction of state institutions; achieving economic stability; marking a clear break from past practices; legitimising a new government; and achieving social reconciliation. In a deeply divided society, this last aim is perhaps the thorniest of all.

Much of the transitional justice literature focuses on legal, ethical, and political considerations, and on a handful of well-known examples such as the Nuremberg trials and the South African Truth and Reconciliation Commission (TRC). The innumerable failed attempts at negotiating such transitions is a sober reminder indeed of the enormity of the challenge. Furthermore, with a few exceptions the literature focuses on two kinds of situations: genocide and transitions from authoritarianism to democracy. Given the nature of contemporary conflicts, however, there is a tremendous need to explore these issues as they relate to ethnic conflict resolution. This article has two major purposes: to review the transitional justice literature (exploring legal, ethical, and political considerations as well as historical examples) and then to examine applications for ethnic conflict in general and Sri Lanka in particular.

I

International Perspectives on Transitional Justice

Legal Considerations

The legal issues that must be addressed in any transitional justice policy are daunting, particularly in contexts where establishing rule of law in a compromised justice system is imperative. The integrity of the legal system as well as that of the emerging government will be undermined if this pursuit descends into witch-hunts and "revenge justice."

One of the greatest dilemmas lies in balancing the rights of the accused with the rights of victims and families seeking justice. Related questions concern what constitutes criminal liability and how widely the net should be cast. Albon⁴ quotes Huntington in identifying three classes of crimes that may be prosecuted: crimes against the state; crimes against individuals; and crimes of collaboration. Treason trials are extremely rare, and collaboration frequently fails standards of criminal liability. The vast majority of human rights crimes that are prosecuted are crimes committed by individuals against other individuals. However, proving criminal liability in a context of widespread violence, within a chain of command, or after a long passage of time may be difficult indeed.

It may furthermore be impossible to prosecute all those involved, especially where there has been widespread communal violence. Some 30,000–100,000 people took part in the Rwandan genocide, for example. While some find selective prosecution acceptable, others criticise Nuremberg-style trials for reaching too few perpetrators, demonising a small group of people, or allowing the population at large to shirk responsibility for their parts in a larger socio-political order.⁵ If the goals of transitional justice include larger issues such as uncovering and disseminating information about atrocities, trials of a few leaders may be inadequate. Ignatieff et al⁶ have criticised transitional justice trials because the "small fry" typically bear the brunt of the blame while collective responsibility is avoided. Meanwhile, the architects of the terror frequently escape censure. The prosecution of East

German border guards but not those who issued shoot-to-kill orders – is a case in point. The higher in a hierarchy one explores, the more difficult it may be to establish criminal liability. On the other hand, focusing exclusively on leaders may not be a satisfactory solution in cases of extreme brutality. Currently, there are efforts underway to bring Khmer Rouge leaders to trial for the 1975-79 genocide. Focusing solely on leaders, however, means that torturers at Tuol Sleng and other "interrogation centres" will never be held accountable for atrocities carried out by Khmer Rouge cadres. Holding trials may also be difficult if the judiciary is weak, lacks independence, or where the judges have been appointed by the previous regime. An associated problem may be a lack of judicial capacity to undertake such measures in accordance with international standards.

Ex-post facto proceedings—trying people for acts that were not criminal at the time that they were committed—represents another serious legal concern. While there is some degree of consensus over grievous war crimes and crimes against humanity, where to draw the line for acts of violence committed under a previous regime may be controversial indeed. A similar dilemma arises when statutes of limitations have expired. In Hungary, for example, a law was passed eliminating the statute of limitations for murder and treason committed during the communist era. It was subsequently declared unconstitutional.

Other legal questions may arise regarding amnesties or non-criminal sanctions. Many authors and activists argue that amnesties lead to impunity and thus contribute to brazen disregard for human rights. Damon⁷ makes the further point that when amnesty is used as a tool of conflict resolution, agents are often unclear about who is or is not a "political prisoner," resulting in widespread attempts to have purely criminal cases categorised as political. Reasoning that "letting people out of prisons for political reasons has a history as long and illogical as locking them up for the wrong views," he makes a strong case that "political prisoner" needs to be carefully defined in order to establish appropriate guidelines for amnesties. He cites the example of a murder of an American graduate student in South Africa as a hate crime rather than a political one, and argues that unless an act is specifically related to a political movement or clear chain of command, criminal sanctions should be applied. Krog⁸ similarly points to several cases that came before the South African TRC where the "political" underpinnings of the crimes were dubious at best.

While the needs to balance truth, justice, and due process may be daunting, the legal consequences of alternatives to criminal trials should be examined with great care. Gibney⁹ argues that those who collaborated or economically benefited from abusive former regimes should face sanctions of some sort. He cites the purges of Nazi Party members from public positions after the war as a successful example. Albon¹⁰ however demonstrates that while calling for such measures is common, they remain controversial: they may be counterproductive; run against issues of equality before the law; assign collective (rather than individual) guilt; punish people for political beliefs rather than actions; and may violate international standards against discrimination. The excesses of McCarthyism are an excellent example of where this can lead. The "lustration" law in Czechoslovakia, which placed a temporary ban on certain classes of people from holding certain posts for five years, was widely criticised and perhaps contributed to the splitting of the state.¹¹ Truth commissions—official investigations intended to uncover and disseminate information about crimes, but not prosecute them—are often seen as a palatable alternative to prosecutions, and some argue that they are better suited to meeting the larger social goals of transitional justice. However, there are also serious implications for investigating crimes but not punishing those who committed them. In a context of widespread impunity, lack of punishment may contribute to an ongoing climate of lawlessness or foster dissatisfaction that justice has not been served. There is a consensus in the literature that when amnesties, truth commissions, and other non-prosecutory policies are adopted, other steps should be taken to mitigate these concerns.

Ethical Considerations

The ethical dilemmas associated with transitional justice are immense and inspire intense emotional responses. Pulling against legal formalities and political expediency is the moral imperative to seek and achieve some measure of justice in a context where unspeakable crimes have been committed. In Argentina, for example, atrocities detailed in a truth commission report compelled President Raul Alfonsín to pursue prosecutions of junta leaders, although this course of action had not been the intended outcome. While many are praising the success of the South African TRC, others have written beseechingly of the injustice of letting perpetrators off scot-free. Block¹² questions whether some crimes are beyond pardon, and Braid¹³ writes that many South African victims and their families have difficulty accepting amnesty. She comments that "[t]ruth, not justice, is the best that the new South Africa can offer. And many... still find that hard to understand."

One common theme that stands out in the literature is the need for the state to acknowledge the suffering of victims and their families, regardless of which policy it adopts. Indeed, how successfully this is accomplished is often cited as a primary reason why a particular transitional justice policy did or did not succeed. These acknowledgements may be in the form of official statements, apologies, financial assistance, or otherwise including the participation of victims in the transitional justice process.

Ethical quandaries may arise from balancing the needs of the victims with legal and political considerations. While many hold that ultimately the latter two take precedence, the moral imperative ultimately colours the entire endeavour. Furthermore, when moral and ethical issues are not directly addressed, dissatisfaction with the transition may run higher. In much of Central and Eastern Europe, for example, lack of coherent strategies or systematic policies undermined confidence in new governments. Victims often were left unheard and the most serious offences swept under the rug while prosecutions proceeded for comparatively minor crimes such as embezzlement. Gibney¹⁴ commented that "individuals responsible for the commission of gross human rights abuses are being brought to trial for just about anything but these horrendous crimes." Haphazard strategies that do not encourage public participation or address moral imperatives, as happened in the "decommunisation" period, arguably cheapened the legitimacy of the process and contributed to widespread disappointment and cynicism.

There remains, however, the question whether truth or healing can be achieved, or at what cost. Ignatieff et al,¹⁵ writing from a post-modernist perspective, questions applying psychological terms to entire nations composed of many individuals with widely divergent perspectives and opinions. They question whether a "nation" can be in need of healing, and challenge the assumption that "truth" or "justice"—relative terms—can achieve this.

Finally, it is important to note that the "ostrich approach," i.e. doing nothing at all, may not always be an unacceptable option. Uruguay and Spain are cited as examples of countries that successfully sought to shut the door on the past altogether. In Uruguay a popular vote narrowly upheld a blanket amnesty, and in Spain belligerents in the civil war were pardoned and police records sealed. In any examination of ethical questions relating to transitional justice, it must be considered that silence too may also contribute to peace. Ignatieff et al¹⁶ quote an African proverb that "truth is not always good to say." It is important to acknowledge that the moral imperative of victims to seek justice may conflict with other moral imperatives, such as achieving peace and focusing on future challenges rather than the past's bloody hands.

Political Considerations

Even a cursory view of the literature shows that political constraints often ultimately decide whether and what kind of transitional justice should be pursued, and any recommended strategy must be carefully considered within a nation's unique history and context. On the one hand, political interests may push a country towards accommodation with those implicated in human rights violations. In Central and Eastern Europe (with the exception of Romania), transitions from communism involved some negotiation between outgoing and incoming elites. In Latin America, military governments often issued amnesties before relinquishing power, and pardons were commonly a tool in peace negotiations. On the other hand, transitional justice may serve as an important mechanism to achieve other political purposes, such as establishing rule of law, deterring further human rights violations, ending impunity, legitimising a new government, marking a clear break between new and old regimes, seeking national reconciliation, and securing political stability. However, political considerations too often overwhelm other considerations, and a fledgling government may very well lack the strength and support to pursue transitional justice policies. It is helpful to briefly review political influences on the transitional justice process and how they have played out in various countries.

Benomar¹⁷ observes that prosecutions are easiest to pursue against a party that has experienced external defeats and lost all or most of its power. He cites Greece and Argentina as examples. Gibney¹⁸ contrasts "denazification" and "decommunisation" in Europe, but pays inadequate attention to political reasons behind these policies. Denazification was carried out under almost laboratory conditions, with unconditional surrender and clear "bad guys." Post-war Europe also enjoyed higher levels of education, nationhood, and institutional capacity than are seen in many developing countries today that are struggling to overcome civil conflicts and legacies of political violence. While denazification may well be a successful example, its generalisability may be limited. Where strongmen retain some power or popular support, transitional justice may be politically very difficult. In Argentina, although the military was widely discredited, prosecutions of junta leaders had to be halted over threats of army rebellion. Even transitional justice methods that do not involve criminal prosecutions can be excruciatingly difficult to carry out. Zalaquett¹⁹ outlines how various political contexts result in different kinds of political constraints. Benomar²⁰ cites Rupnik as pointing out that the faster political change occurs, the more likely a country is to pursue trials. In contexts of gradual or negotiated transitions, prosecutions are much less likely to be carried out. In a civil conflict when there are plenty of bloody hands on all sides, such as El Salvador, South Africa, and Namibia, trials are very unlikely in the absence of a clear military victory. In El Salvador, for example the FMLN did not oppose government amnesties because it knew that many of its own leaders were also guilty of serious crimes. A pardon appears to have been the only politically feasible solution in this situation; a truth commission was also created, however.

In failed states and countries that suffer severe fractures, such as deep ethnic or religious divisions, it may be extremely difficult to achieve national reconciliation, and some avenues of transitional justice may very well be polarising rather than healing. Benomar²¹ writes that truth commissions are the most common method of transitional justice, perhaps because they are seen as representing a middle path between doing nothing or embarking on politically-charged prosecutions. Truth commissions furthermore represent an important way to address larger issues, such as examining the extent of alleged abuses and social institutions that directly or indirectly supported the violence.

Historical Overview

In reviewing the literature on transitional justice, it is easy to identify clear historical and geographical trends. The issue is, of course, hardly new. However, transitional justice in the modern sense has its origins in the post-World War II era. The Nuremberg trials stand out as the most enduring image from this period, and represent parts of larger efforts to confront the horrors of the Holocaust. The denazification effort led to a purging of Nazi Party members and collaborators from public positions, including teaching. Gibney²² argues that denazification achieved "an appropriate balance between punishing many of those who benefited from Nazi rule, on the one hand, while also attending to the various rebuilding tasks that faced these nations." At the same time, he notes that trials conducted by the Allies in Germany and Japan were less successful and at the time were written off by the public as victor's justice. It was the German-run trials in the 1960s that served "as a vehicle for Germany putting itself on trial." The continuing controversies in Japan over wartime atrocities underscore this failure.

This suggests that domestic involvement in international tribunals may be necessary for them to be effective in meeting the goals of transitional justice.

Following the immediate post-World War II period, transitional justice attracted less international attention. While there are a number of examples of countries that struggled with this issue, e.g. Greece and Spain, approaches do not seem to have struck onto a particular pattern. International criminal law, meanwhile, was swept aside as international relations became subsumed by Cold War rivalries. When the "third wave" of democratisation began to sweep the world, however, the issue of addressing massive human rights violations under previous governments again came to the fore. New democracies in Latin America were confronted with the ghosts of the "dirty wars"—victims demanding answers and justice, and still-influential militaries in the shadows of power. Chile and Argentina have been written about most extensively, but transitional justice was an issue faced by most Latin American nations in the 1980s. Across the continent, security organisations seemed to be willing to let the truth come out, but rarely co-operated with inquiries and fought tenaciously against any measure of punishment. Continuing military threats (both by national and insurgent armed forces) limited the ability of states to pursue prosecutions; truth commissions were the more commonly selected method of transitional justice, but with mixed results. In Uruguay, an amnesty was narrowly upheld by popular referendum, largely because of fears that anything else would destabilise the fledgling democracy; meanwhile the truth commission was limited and inadequate. Zalaquett²³ remarks that the amnesty would have been more acceptable had it been accompanied by fuller disclosure, such as occurred in Argentina. Some authors argue that full disclosure and national soul-searching make politically-necessary amnesties more palatable to the public.

With the fall of the Berlin Wall, the Latin American experience, particularly in Argentina and Chile, was often referred to as a historical guide for the former Soviet bloc. However, decommunisation efforts in Central and Eastern Europe tended to be less than robust. The transitional justice strategies of these countries tended to be limited, haphazard, and incomplete. Gibney²⁴ terms these processes a failure because they did help nations constructively address the past, address larger social goals, or engage society. Welsh²⁵ examines factors as to why these policies were so weak, and questions whether either reconciliation or retribution is constructive, arguing that the healthiest strategy may be to move forward rather than dwell on the past. As in Latin America, it is important to note that in Eastern Europe most of the transitions involved some measure of negotiation, which greatly reduced prospects for prosecutions. Those who did face trial tended to be lower-level or accused of economic mismanagement; political repression seemed to be too controversial to address. Meanwhile, alternative strategies such as truth commissions and lustration tended to be weak, marginalised, and controversial.

The thawing of the Cold War breathed new life into international criminal law even as the outbreak of genocide in the Balkans and Great Lakes galvanised the human rights community. International criminal courts have been established for the first time since the 1940s, and in 1998 all but a handful of nations (the United States being the most significant dissenter) voted to establish a

permanent international criminal court. International momentum on this issue is growing, and there are concerted efforts underway to bring the Khmer Rouge and several former dictators to trial. The effort to extradite Augusto Pinochet to Spain may prove to be a turning point in the use of international criminal law around the world. Meanwhile, the South African TRC, chaired by Archbishop Desmond Tutu, is being credited as a success in that it engaged the whole of society, achieved co-operation of former belligerents, revealed the truth about acts that had been denied, publicised the nature and extent of crimes committed by the state and opposition groups, confronted the evils of the apartheid regime, and contributed to national reconciliation.

It is important to recognise that transitions today have their own characteristics and needs. Today, the transitions—like the conflicts they arise from—are less ideological and more driven by (or at least mobilised around) long-standing strife over religious and ethnic divisions. The considerations and experiences outlined above are extremely valuable for informing transitional justice policies for Sri Lanka as it attempts to emerge from a period of civil war. The second part of this article will examine transitional justice more critically in the context of ethnic conflict and peace-building in deeply divided societies such as Sri Lanka.

II

Applications for Ethnic Conflict and Policy Recommendations for Sri Lanka

Transitional Justice and Ethnic Conflict

There are numerous areas of transitional justice where there has been inadequate research. The literature tends to focus on a few well-known cases (post-World War II Europe and Japan, fallout from Latin American insurgencies in the 1970s/1980s, post-communist Europe, Yugoslavia, Rwanda, and South Africa); examples from Africa and especially Asia are noticeably absent despite the fact that many more countries have grappled with these same issues. Furthermore, while much has been written about the role of transitional justice to facilitate democratisation, its role in conflict resolution and sustainable security are remarkably absent. Finally, the literature focuses largely on abuses committed by national security forces; research addressing those committed by non-state actors are more difficult to find. Given the trends in warfare today, examination of these aspects of transitional justice and their applications to ethnic conflict is critical.

One of the key characteristics of ethnic conflict is the extreme degree of social division. While the social schisms that occurred during such conflicts as the "dirty wars" of Latin America were deep, the dynamics of ethnic conflict can be particularly fierce and divisive. Lederach,²⁶ for example, identifies three major social characteristics of such conflicts:

- Cohesion and identity tend to form within increasingly narrower lines than those that encompass national citizenship.
- Factionalisation, along with diffusion of power among a multiplicity of groups rather than a statist hierarchy.
- Long-standing, protracted relationships that are driven by the groups' animosity and fear.

Protracted ethnic conflicts are thus often characterised by a "siege mentality" on all sides—demonisation of other groups and the perception that one's own security is firmly tied to that of one's communal group, often at the expense of others.' In many violent ethnic conflicts, "atrocious myths" represent central elements of group identity; Baker and Weller²⁷ identify "legacy of vengeance-seeking group grievance or group paranoia" as one of the twelve top indicators of internal conflict and state collapse. While it is often argued that the roots of Sri Lanka's protracted conflict lie not in an ancient animosity but the evolution of modern nationalism in the twentieth century, divisions nevertheless run

deep and are propelled as much by fear and hostility as substantive issues. In this context, transitional justice policies should be designed to address these social dynamics.

The intensity of the violence that occurred should also be considered when devising transitional justice policies. It is likely that widespread indiscriminate slaughter and genocides, such as has occurred in Rwanda, the former Yugoslavia, Cambodia, and East Timor, represent a category unto themselves. The Sri Lankan conflict is a protracted one fought along historical cleavages, but has mercifully not descended into this scale of massive bloodshed; for this reason, the transitional justice mechanisms employed in the Balkans and the Great Lakes were not examined in detail for this article. As in South Africa, Northern Ireland, and Israel/Palestine, the conflict in Sri Lanka has been protracted, entrenched in the political culture of all sides, and accompanied by terrible loss of life, but state collapse has been avoided and communal violence has been episodic rather than unrelenting. The case of South Africa has some parallels with Sri Lanka, and as this country has navigated a remarkable transition against considerable odds, its experience has been examined closely for lessons that may apply to Sri Lanka.

"Peace," however, is not simply something that acknowledged leaders of well-defined groups can negotiate; such an approach is entirely inadequate in confronting the dynamics of ethnic conflict. To achieve the elusive goal of a socially sustainable peace, some kind of process will need to transform the relationships between groups and their members. Such a process will by necessity be lengthy and multifaceted; but transitional justice can represent one of the first and most visible steps. When delving into a subject as problematic as achieving reconciliation, the arenas of political science and legal theory are soon left behind. Scheper-Hughes²⁸ notes the paucity of anthropological literature on remorse and forgiveness. She remarks that this represents either an appalling oversight, or a signal that such concepts are modernist and/or Western. Her reflection on post-apartheid South Africa is one of the most thought-provoking and original pieces on the subject of transitional justice, in no small part because of the breadth of issues it explores, ranging from the political to the intimately personal. Assumptions underlie much of the transitional justice literature, among them that the "truth" can be established, that nations have a collective consciousness, and that societies are subject to psychological transformations (guilt, forgiveness, redemption etc.) much as individuals do. Not a few social scientists have questioned these assumptions on the basis of case studies and post-modernist perspectives; Scheper-Hughes's inquiry is among the most original.

Examining patterns of popular justice, Scheper-Hughes observes that confession is a central dynamic in witch-believing cultures around the world, and often represents rituals of remorse and reparation for collective as well as individual wrongs. She suggests that elements of traditional practices in South Africa, such as public confessions to mediate social tensions, contributed to the TRC's successes. Other elements of popular justice rituals that she examines include immediacy, face-to-face encounters, relative transparency, and greater concern for confronting emotions than hard-core fact-checking.

"When I heard the report on the BBC about what my government had done to the Tamils, I lost my stomach for war. I began to look for other ways this awful problem can be resolved." -- Sinhalese woman quoted by Anderson.²⁹

The woman quoted above is an example of the kind of revelations that truth commissions seek to catalyse. In partial response to the apparent success in South Africa, truth commissions seem to have become popular in international policy circles. However, there are a great many more examples of failed truth commissions than successful ones. These inquiries are often undermined by timid or cowed councils; lack support of key political leaders; and lack of transparency and participation. It must be emphasised that these very flaws have been all too prevalent in previous formal Sri Lankan investigations. For a truth commission to meet the goals of transitional justice in Sri Lanka, it would

have to be of a very different character and composition than has been evident in typical government inquiries, including those of Sri Lanka's recent past.

Several elements of the South African TRC that stand out as having contributed to its success included:

- Strong commitment to support the process by major stakeholders.
- Adequate resources in terms of personnel, funding, translators (into 11 languages!), and time (two years).
- Extensive media coverage and transparency of process.
- Participation of prominent private individuals ("track two" leaders)—not just politicians, judges, or political appointees.
- Amnesty applications being an individual, rather than group, process.
- Policy of inclusion that reached out to survivors and families of victims and gave them a forum to speak freely not only about what occurred, but how it affected their lives.
- Making amnesty contingent on co-operation with the commission, which contributed to breaking the wall of silence on the part of those who committed abuses.
- Face to face encounters between those who committed abuses and those who suffered from them.

These factors had the effect of humanising the process and making the TRC a forum for actors on conflicting sides to see each other as people rather than simply as enemies. The central theme of the TRC was not simply gathering, checking, and disseminating the "facts," but in giving individuals a time and place to air their stories. The remarkable testimonies not only emphasised individual expressions of suffering and redemption, but contributed to the public drama contained that enabled South Africans to symbolically confront the past and, hopefully, transcend it in order to build a common future. For many, of course, it fell insultingly short of succeeding, but overall the TRC achieved remarkable results. Krog³⁰ describes, almost bemusedly, of "trivial" amnesty applications—an artist who did not depict the horrors in her paintings, six black youths asking for amnesty because they did nothing to struggle against the evils of apartheid—but upon reflecting concludes that these cases reveal how the truth commission penetrated the consciousness of South Africans.

Lederach³¹ describes the challenges in building reconciliation in deeply divided societies. He draws upon a framework developed by Dugan that looks at conflicts through multiple levels. Loosely using this framework, linguistic nationalism in Sri Lanka can be interpreted as follows: language as a political issue is a manifestation of the alienated relationship between Sinhalese and Tamils, which ultimately stems from a systemic problem of "competing and mutually exclusive beliefs about legitimate rule, which in turn are rooted in conflicting theories of sacred authority."³² The pressing issues need to be dealt with, but if underlying issues are ignored, the results may be "band-aids" at best. Lederach³³ suggests that perhaps the most fruitful approach may therefore be to confront issues in such a way as to transform relationships between communities, and use this mechanism to address the systemic driving forces behind the conflict. This analysis offers one illuminating way to interpret why the TRC's emphasis on the human dimensions of the violence was so critical to its success, as well as why simply an accord among leaders will be insufficient to meet the demands of transitional justice in Sri Lanka. Some sort of transformative public ritual may nevertheless serve to address relationships between Tamil and Sinhalese communities. As Srivastava³⁴ (1994/1995) comments, "[t]he ultimate goal of negotiations must be to alter the Sri Lankan political culture such that it becomes able to cope with diversity in religion, culture, and language." A truth commission alone will be entirely insufficient, but it can mark an important new start. Krog's argument, as always, is elegant and compelling:

"It is asking too much that everyone should believe the Truth Commission's version of the truth. Or that people should be set free by this truth, should be healed and reconciled. But perhaps these narratives alone are enough to justify the existence of the Truth Commission. Because of these narratives, people no longer can indulge in their separate destinies of denial."³⁵

Overcoming these "separate destinies" is critically necessary in ethnic conflicts; as Goonetilleke³⁶ observes, the fact that a Sri Lankan President can state that "there is no ethnic problem, only a terrorist one"—and have this resonate among large sectors of the Sinhalese community—underscores the need for greater empathy among Sri Lanka's ethnicities. Krog, Lederach, and Scheper-Hughes recognise the critical importance of psychological transformations, and in allowing a space where such change is possible. The goal of transitional justice for Sri Lanka should be to create such a space for individuals affected by the war and to serve as a public forum in which to force us to face the past and develop an inclusive vision for the future.

Transitional Justice: Prospects and Challenges for Sri Lanka

The Sri Lankan conflict that has claimed over 30,000 lives in the past decade is as complex as it is entrenched. As Singer³⁷ points out, "[d]ating the start of the struggle depends upon one's perspective." It is often assumed that ethnic conflicts are expressions of "ancient" hatreds and hostilities, which can certainly be the case. However, preoccupation with historical origins can obscure the ever-changing constructions of history and identity that shape conflict, and can furthermore serve to absolve parties of critically evaluating their own roles and (in)actions. In Sri Lanka, while warfare between the groups is a historical anomaly, Sriskandarajah³⁸ notes that their collective memories go back 2000 years and include legends of mistrust and rivalry. Srivastava³⁹ explains that "[t]he mutual exclusivity of their visions of ancient history and glorious pasts makes it extremely difficult to envision either side making significant concessions or serious compromises." Tamils feel their positions are jeopardised due to their minority status in the present state of Sri Lanka, and look back to "their" kingdom which flourished in the north and east from the thirteenth to early seventeenth centuries to justify notions of an ancestral "homeland." They "resent their inferior status and feel entitled to better treatment"⁴⁰ and indeed enjoyed a privileged position under British rule. But it is also important to recognise the historically precarious position of the Sinhalese compared to the tens of millions of Tamils across the Palk Strait, as well as to British colonists. This sense of vulnerability combined with their role in protecting Theravada Buddhism has contributed to a Sinhalese political consciousness that is democratic but also rooted in reclaiming the political tradition of their pre-colonial Buddhist kings. Sinhalese political culture builds upon their history of preserving and disseminating Theravada Buddhism; federalism has been seen by nationalists as an attack on their sacred destiny. This attitude has been hopelessly inappropriate for a multiethnic society where a quarter of the population is Tamil, Muslim, or Christian. K M de Silva⁴¹ insightfully comments that the Sinhala-Tamil rivalry is "much more than a conflict between a majority and minority.... The conflict is between a majority with a minority complex, and a minority with a yearning for majority status, a minority with a majority complex."

Nevertheless, it must be understood that armed conflict between the two groups is very much a historical anomaly. The Sinhalese and Tamils lived together more or less peacefully for centuries. The communities have long had distinct languages and cultures, but Sri Lanka's civil war is an artifact of the twentieth century, albeit drawing upon conflicting traditions and formulations of identity and the state that were exacerbated by colonial rule. With the onslaught of Westernisation, both groups responded by emphasising their cultural uniqueness and even superiority, and rivalry also emerged over lucrative professional appointments, which were given to Tamils in disproportionate numbers. However, competition between the groups was moderate overall. But after a smooth transition to independence, there arose serious disputes over such issues as language, religion, minority representation in government, access to higher education, civil service appointments, and citizenship

rights for Indian Tamils (this designation is used to refer to recent immigrants from India, rather than the island's long-settled "Sri Lankan Tamil" population). Calls for state support of Buddhism combined with the Official Language Act of 1956, which designated Sinhala as the only official language was interpreted by Tamils as a major betrayal and proved to be a key turning point. Major hostilities between the Sinhalese and Tamils broke out in 1958, Tamil armed struggle began in 1972, and Sri Lanka is generally acknowledged to have been in a state of civil war since 1983. The response of the government has vacillated between reconciliation and repression.

Even a cursory glance at Sri Lanka's post-independence history chronicles increasing polarisation along ethnic lines. "Sinhala Only" and Buddhist revivalism triggered similar movements among Tamils; the dynamic has been one of increasing alienation. Communication between the groups has been progressively estranged. As Sriskandarajah protests,

"[T]here have never been any earnest attempts to understand the Tamil feelings—the sheer agony of it...There has never been any cognizance of the Tamil sentiments towards the concept of the 'state' itself, as constituted in Sri Lanka—the 'state' (Government) which became the very instrument of oppression, destruction, and murder."⁴²

He further comments that the Sinhalese, "a very politically zealous people," are enthusiastic demonstrators on all sorts of political issues, but never once has there been a public protest against anti-Tamil violence. Response to the ethnic riots of July 1983, which triggered a surge of Tamil popular support for armed rebellion, is a case in point. During these riots, thousands of innocent Tamil men, women, and children were slaughtered and their homes and communities destroyed. The gulf that already existed between the communities was further widened by the lack of outrage expressed by Sri Lanka's Sinhalese and Muslims, to say nothing of the apparent reluctance of security forces to curb anti-Tamil rioters. That the President actually went so far as to publicly sympathise with the perpetrators of these terrible crimes rather than with the victims marked the complete alienation of many Tamils. Many identified this moment as final recognition Tamils did not fall under the government's sphere of obligation, and thus security for themselves and their property could only be guaranteed by self-rule.

Atrocities have been widely committed by both sides. The Sri Lankan security forces have been implicated in torture, "disappearances," political arrests, detention without charge or trial, extra-judicial executions, and massacres against Tamil civilians and separatists alike. The LTTE's human rights record is equally appalling. The LTTE's tactics of violence and intimidation against Sinhalese and Muslim civilians, as well as assassination of Tamil moderates, have effectively sabotaged innumerable peace efforts in Sri Lanka. Srivastava (1994/1995) observes, "[t]he LTTE and other Tamil groups have become involved in infighting often as vicious as the inter-ethnic conflict. It is also the case that the Tamils...exercise a brutal and repressive regime of their own—over their own people."⁴³ In the late 1980s the scale of human rights abuses in Sri Lanka reached alarming proportions. While positive improvements have occurred since the mid-1990s, the fates of many victims remains unknown. Amnesty International observed in a 1998 report that "the country is still prone to upsurges of widespread human rights violations, particularly 'disappearances'." Meanwhile, the country's grim tradition of political assassination continues unabated. While official investigations into human rights abuses have been conducted, they have been plagued by lack of transparency, timidity, and lack of resources, leaving many unanswered questions about the fates of those lost. Although there have been a few well-publicised cases of trials of perpetrators in Sri Lanka (such as the landmark conviction and death sentence of five security force members for the rape and murder of Krishanthi Kumarasamy, and killing of her mother, brother, and, neighbour), these are exceptions to the rule of silence and impunity. Furthermore, the Indemnity (Amendment) Act of 1988 shields all members of the government and security forces from prosecution for abuses that occurred between 1977 and 1988. During Sri Lanka's intermittent peace negotiations, there has been little initiative to withdraw this immunity.

When addressing transitional justice, the South African example is a compelling model for Sri Lanka in that it directly addressed social reconciliation in a deeply divided society. However, present political conditions make pursuing such a path in its entirety very difficult indeed. Negotiating an end to Sri Lanka's civil war will not be easy; lack of commitment to this end on the parts of LTTE and government leadership has contributed to this immeasurably. Singer⁴⁴ observes that the Sinhalese government has always backed away from negotiated agreements; Srivastava⁴⁵ notes that the LTTE has used cease-fires as a pretext to militarily regroup. However, it is abundantly clear that an accord is what is needed to avoid the massive bloodshed that would accompany a military settlement to the civil war. Unfortunately, Sri Lanka has not achieved the level of stalemate or "war weariness" to propel such a settlement. Manogaran,⁴⁶ citing Olson and Stedman (1994), notes that "conflict resolution becomes possible only when actors' fear of continued conflict exceeds their fear of settlement." As long as the government is convinced that it is capable of crushing the LTTE despite its position as "one of the world's most effective guerrilla armies,"⁴⁷ and the LTTE leadership feels that it stands more to lose from peace than war and that its "only true bargaining power... is its military position,"⁴⁸ a negotiated peace will be extraordinarily difficult to secure. In South Africa, despite extraordinary hostility among groups, the genocidal example of neighbouring Rwanda hung over the transition. It was also clear, even to many of its defenders, that the apartheid regime was unsustainable. All sides were weary of the stalemate and enlightened leadership sought to avoid the bloodbath that South Africa was on the brink of. These extreme political circumstances gave birth to a historic political transition that would have been impossible just a few short years before. There are no parallel forces presently in Sri Lanka that will compel a political settlement where one has not been achieved in the past. Indeed, Jayatilleka⁴⁹ comments in frustration that:

"[I]t might have been better if the titanic clash between the Lion and the Tiger had taken place—because then, both sides would have reciprocally ruined each other....All the chauvinists, on both sides, would have bashed their heads against the stone wall of reality. The masses themselves would have realised through their own bitter experience that peace was in their interest and a political settlement based on regional autonomy the only way to achieve it."

He is being provocative, but his point that "Sinhalese and Tamil false consciousness survives today because of this unfinished war" evokes Krog's⁵⁰ description of the South Africans' "separate destinies of denial." Sri Lanka's ethnic conflict is a reflection of a political culture with narrow visions of exclusivity, superiority, and righteousness; sustainable peace will be forged from the painful process of challenging these assumptions and building a common, multicultural society. Furthermore, there are strong elements of denial about what is at stake. One of the ironies on the Sinhalese side is that despite the "rallying the cause," participation in the armed forces is too poor to achieve a military victory. Furthermore, official restrictions on journalists' travel to the military front and the Sinhalese media's reluctance to report on setbacks for "their" side or the legitimate grievances of the Tamils has contributed to dangerous misconceptions among the Sinhalese about the war itself. The "separate destinies of denial" of the Sinhalese and Tamils must be transcended, and transitional justice can play a role.

A second key difference between South Africa and Sri Lanka are the international factors, both at the diplomatic and social levels. In South Africa, the Afrikaners were isolated internationally, which contributed to their recognition that the apartheid state's days were numbered. The indigenous Africans, meanwhile, enjoyed overwhelming international support. External influences on the Sri Lankan conflict are more complex.

India has been a key player in the Sri Lankan civil war. Although sympathy for Tamil separatists had long been a feature of Tamil Nadu politics, the Indian government's direct involvement dates to the early 1980s. After Indira Gandhi returned to power in 1980, India began to express its support for the status of Sri Lankan Tamils in general and subsequently became a player in Sri Lanka's evolving

violent conflict. Indo-Lanka relations soured, and following the July 1983 riots, India's response to the more than hundred thousand refugees who fled there reinforced Mrs Gandhi's sympathies for the Sri Lankan Tamils. Guerrillas were trained and financed in India, and she sought to achieve a settlement to end the political quagmire. India failed to take steps to restrain the flow of arms and funds to the insurgents, and both she and her son Rajiv, according to Kalpage,⁵¹ "nurtured and nourished" Tamil separatists throughout the 1980s.

The level of violence escalated, and in 1987 when the Sri Lankan army sought to regain the Jaffna peninsula, India under Rajiv Gandhi attempted to forestall a bloody military campaign by forcing through the Indo-Sri Lankan Agreement to establish peace and normalcy in Sri Lanka. The accord itself was promising in that it recognised Sri Lanka's diversity of cultures, languages, and religions, and also provided for devolution and amnesty. Although initially there were high hopes, the agreement rapidly floundered. According to Jayatilleka,⁵² the fatal flaws included inappropriate timing and stewardship on the part of India, and served as a bilateral agreement between India and Sri Lanka, and thus was imposed upon the Tamils as well as the Sinhalese public and important factions in the Indian bureaucracy. This example highlights the difficulty of achieving peace solely through top-level negotiations and without the participation of major players. The ill-fated Indian Peacekeeping Force was deployed in 1987, and got more than it bargained for. After suffering great losses, it had withdrawn by 1990, having only bolstered the LTTE, and thus exacerbating the civil war. The conflict has dragged down ever since, "a relatively localised, if still expensive and bloody civil war."⁵³ Stung by the consequences of its heavy-handed meddling, since the 1990s, India has pursued a more neutral path.

Support from the Tamil diaspora in India and elsewhere, however, continues to be the LTTE's lifeblood. Where previously the sometimes brutal Sri Lankan army had driven hundreds of thousands of Tamils into exile, the Tamils' own tactics and its rejection of peace efforts has squandered much of its international political capital. Meanwhile, the Sri Lankan government has actively sought to engage other nations in cracking down on overseas Tamil militants.⁵⁴

A further complication from the perspective of transitional justice is that India has tried and prosecuted LTTE agents involved in the assassination of former Indian Prime Minister Rajiv Gandhi in 1991, and have demanded that more face charges or sentencing in India itself. In January 1998 an Indian court sentenced to death under special anti-terrorism laws twenty-six people convicted of involvement in Rajiv Gandhi's 1991 assassination. Sixteen of the defendants were Sri Lankan nationals, and three were tried in absentia, including a senior LTTE leader at large in Sri Lanka. Twelve others had committed suicide rather than allowing themselves to be apprehended by Indian security forces. In May 1999, the Indian Supreme Court confirmed the death sentences of four of the twenty-six. Three others had their sentences commuted to life imprisonment and the remaining 19 were acquitted. In addition, India has sought the extradition of LTTE leader V Prabhakaran from Sri Lanka since 1995. These issues raise another thorny question for transitional justice in Sri Lanka: the fact that many LTTE militants are overseas, or charged with terrorism-related crimes in these other countries. This is clearly not a question that Sri Lanka can address alone, and suggests that any transitional justice mechanism should be supported, at least tacitly, by India and the international community.

Political conditions to facilitate—or force—a peace settlement are sadly absent in Sri Lanka. Chauvinists and extremists still wield much influence, and society is estranged. In this context, it is difficult to see how a commission modelled on South Africa can be established in the near future, although it should be emphasised that political circumstances can and do change suddenly. Singer⁵⁵ suggests that the entire situation could change if LTTE leader V Prabhakaran died or stepped down, for example. If and when a truce can be reached, however, the next steps will be critical in sustaining it. At this stage, tools must be developed to facilitate social reconciliation. It is at this juncture that transitional justice policies will need to be implemented.

A military "victory" is not presently feasible, and even if the government did achieve one, it would be unlikely make compromises to facilitate a sustainable peace.⁵⁶ Indeed, such a victory would probably propel the chauvinists to impose conditions that would only fuel further violence. Negotiating an end to this conflict will almost certainly involve some kind of amnesty; it is inconceivable that the LTTE would willingly lay down their arms only to face criminal prosecution. The nature and extent of the amnesty and its public manifestations may be what the whole affair will hinge upon. But how can rejecting punishment for those who have committed murder be tolerated, much less justified? One way out of this dilemma for Sri Lanka may be to establish a permanent international war crimes tribunal. Referring perpetrators of the most heinous crimes to the United Nations may provide a creative "out" to the quandary of excusing those responsible while including them in a negotiated peace process. While the UN is hardly guaranteed to produce satisfactory results, this option may facilitate acceptable compromises. Despite wide international support for such a tribunal, however, it is highly unlikely to be instituted soon, owing to strong opposition by the United States.

Ideally, those responsible for atrocities committed on both sides should be held fully accountable in a criminal court, but such a path is politically unfeasible. An alternative would be a participatory truth commission similar to the one in South Africa, one that would confront the horrors of the war and challenge Sri Lankans of all ethnicities to reconsider themselves, each other, and their common future. However, given the habit of assassination, such a controversial and painful commission would be difficult to establish, due to the danger posed to both spearheaders who testify. There is little doubt that the attitudes and behaviours of the antagonists' leaders represents the most serious obstacle to peace, and it is difficult to conceive their support for such an incisive soul-searching process as this. Unfortunately, previous reform efforts have left much to be desired in terms of implementation or enforcement,⁵⁷ this is exactly the fate of most truth commissions around the world. There is, however, always hope. This is not intended to sound trite or trivial; after all hope has forged peace where ration had failed before. As Singer⁵⁸ comments,

"The sad thing is that each time a bomb goes off and kills more civilians, whether in Sri Lanka, Israel, or Ireland, more and more people become convinced that 'there will be no peace if bombs keep killing people,' and there is virtually no way to stop those bombs from going off. The question is, does one allow the very small minority with the bombs to have their way and scuttle peace possibilities, or does one go ahead with as much peace as possible?"

He notes how in 1995 peace talks became possible not only in Sri Lanka but also Israel and Ireland, where such progress had seemed "unimaginable" only a few years prior. By early 1996, however, extremists' bombs had derailed progress in all three areas although not, as it turned out, permanently. The example of the remarkable achievements in spite of obstacles nevertheless demonstrates the ability to transcend violent saboteurs when the conditions are right. It is furthermore probable that both the Sinhalese and Tamil populations are war-weary and probably willing to make the necessary settlements even as leaders have hardened their positions. Lederach⁵⁹ cites Garcia in asserting that "virtually all of the recent transitions toward peace...were driven largely by the pressure for change that was bubbling up from the grassroots." Among the evidence he points to are examples from El Salvador, the Philippines, and Somalia. One of the interesting things to consider in terms of applying international lessons in transitional justice may be how to harness it to nurture public demand for peace-building. After all, if the transition is not of authoritarianism to democracy but rather ethnic conflict, it may be possible to attempt to initiate transitional justice prior to the onset of the transition itself. Kumaratunga's attempts to achieve a political settlement based on decentralisation of power have been stalemated by disputes with the opposition United National Party (UNP) and continued acts of violence. As Fernando⁶⁰ describes, "[t]he events of 1998 practically extinguished hopes, even for Sri Lankans, of an early end to the war that were raised by the election of President

Chandrika Kumaratunga in 1994." However, she has demonstrated that she is willing to take political risks to pursue a settlement, and she is the first Sri Lankan leader to publicly recognise the legitimate grievances of the Tamils and challenge conservative elements of the Buddhist clergy and other chauvinistic Sinhalese nationalists.⁶¹

There have been previous attempts to jumpstart peace negotiations by appealing directly to the people, such as President Kumaratunga's 1995 announcement of a peace package that would have given the Tamils broad regional autonomy that was seen as an attempt to salvage a process that had been torpedoed by the LTTE. However, this tactic did not incorporate grassroots efforts, particularly those to reach out to suspicious Sinhalese.⁶² Augsburger⁶³ notes that "the parties most directly invested in a dispute are usually the least able, are in the worst position, and are the least equipped to settle the dispute constructively." While the Sri Lankan government has previously refused the assistance of the United Nations in the peace process,⁶⁴ in 1998 for the first time it expressed willingness to consider third-party "facilitation," a role the British government indicated interest in performing.⁶⁵ Some sort of international involvement could conceivably play a valuable role in negotiating peace and establishing an appropriate mechanism for transitional justice.

As a truth commission is not a court of law, it may be possible to establish some sort of commission in anticipation of a political settlement. Such a commission should incorporate the successful elements of the TRC outlined previously (e.g. adequate resources, extensive media coverage, and emphasis on personal testimonies). The criticism, of course, will be that it is biased, that the government will reverse any guarantees of immunity from criminal prosecution, and it will certainly run the risk of being subverted for political purposes. Some elements of anonymity or secrecy of location may be necessary for reasons of safety; however, this could also feed these accusations and lack of a transparent process could undermine its credibility. Moderated by independent parties, however, some kind of outreach effort could be initiated. A more modest example might be a media program featuring individuals from opposing sides of the conflict to speak about how the war has affected their lives, combined with some sort of grassroots initiative to bring together those who have lost loved ones. At minimum, it should seek to humanise groups that have been dehumanising each other by confronting the impact of the war on victims and their families on all sides and provide answers about the fates of the missing. In other words, serious, public soul-searching rather than the comfort of denial and palatable misinformation. With political will, it might even be possible to launch a full-fledged commission of sorts, perhaps with some kind of immunity arrangement. An accompanying effort should also be made to disseminate these activities through the Tamil diaspora.

It is often said that truth is the first casualty of war. When considering a truth commission for Sri Lanka, the thorny post-modern question of the nature of "truth" will be confronted head on. Any such inquiry will not only be faced with the challenge of uncovering and exposing truths that many would like to remain hidden, but also facing why and how these atrocities transpired. As Krog⁶⁶ writes, "What you believe to be true depends on who you believe yourself to be." To forge a common identity among estranged and alienated groups, their divergent truths must be acknowledged and somehow patched together. For the Sinhalese, this will require confronting and reconsidering assertions of the religious and ethnic character and indeed destiny of the country— something that many have resisted. This path will not be easy, and the most successful truth commission would be but a building block in achieving the sea change necessary to reconcile such a deeply divided society. It is possible that public acknowledgement the suffering of the Tamils and other minorities may bring about a new awareness of minority perspectives in Sri Lanka. This is not an easy task, and will be resisted. The South African TRC, in overcoming huge obstacles and achieving important goals, nevertheless remains a powerful example of a transitional justice mechanism that helped lay the foundations for social reconciliation. Its example suggests possible paths for Sri Lanka to pursue peace and reconciliation.

Conclusion

For a country emerging from a period of violence, addressing human rights violations under previous regimes will be among its first and most public opportunities to transcend the past. The stakes are high and the challenges higher; transitional justice policies must navigate a treacherous path between ethical, legal, and political considerations with intensely contesting interests on all sides. During the 1990s, there has been a resurgence of international interest in transitional justice; however, the literature tends to focus on transitions from authoritarianism to democracy. There is a need to reconsider the role of transitional justice in the context of today's ethnic conflicts, where those responsible for human rights abuses may be widely spread throughout society and the need for grassroots peace-building greater. Lessons from international experiences can be applied to ethnic conflict, but with sensitivity to the circumstances of the country.

There are five broad avenues of transitional justice: prosecuting crimes against the state (i.e. treason); prosecuting crimes against individuals (i.e. particular acts of human rights abuses); non-criminal sanctions (e.g. banning former elites from holding political office); truth commissions; and doing nothing (amnesties or simply sweeping the whole matter under the rug). Politically, the easiest thing to do in such a transition may be to simply sweep the whole matter under the rug; however, this is probably unacceptable to an angry or suffering public, and fails to meet the wider goals of transitional justice: to mark a break with and usher in a new political era, and new political culture. In the context of ethnic conflict, where social divisions run particularly deep, overcoming "separate destinies of denial" is all the more imperative.

Amnesty arrangements are almost parts of negotiated truces, and it is difficult to conceive the Sri Lankan government and LTTE brokering an agreement without one. However, such a course of action will be so difficult for many to swallow that it may undermine a truce altogether. It would probably be far better from the perspectives of rule of law, justice, and ending impunity to hold criminal prosecutions, but political realities will probably thwart this. A truth commission represents a creative alternative to criminal trials. The challenges of this path should not be underestimated; most such inquiries end up a wash, and the LTTE will first have to break its habit of assassinating peacemakers. Even if criminal prosecutions to address past human rights violations are to be carried out, it is recommended that a truth commission should be held to address divisions among Sri Lanka's warring communities. The South African TRC represents a remarkable example of a mechanism that transcended an official fact-finding mission into a vehicle to humanise all sides of the conflict and serve as a public ritual to grieve and to move forward to seek reconciliation.

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