Putting the Home Grown Mechanism into Practice in Post War Sri Lanka: The Presidential Commission of Inquiry on Lessons Learnt and Reconciliation

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Abstract

The aftermath of the prolonged civil war concluded with the defeat over the Liberation Tigers of Tamil Eelam (LTTE) by the Sri Lankan government forces, Sri Lanka entered into post-war peacebuilding phase, encompasses with various measures, to achieve stable peace. In order to pursue peace and reconciliation, Lessons Learnt and Reconciliation Commission (LLRC) has established as a home grown mechanism to address and resolve the injustices subjected throughout the past. Though the long awaited final report’s recommendations, made by the Commission, were met with some shortcomings, it is significant for devising benchmarks for necessary transition from conflict to peace. The aim of this study is to evaluate the prospects of the Presidential Commission of Inquiry in general and to examine the four key issues, related to political solution, rehabilitation and reintegration of former LTTE cadres, demilitarization and resettlement of Internally Displaced Persons (IDPs), and the recommendations the LLRC report holds for genuine reconciliation in Sri Lanka.

1. Introduction

The Civil war in Sri Lanka between the Sri Lankan government and the LTTE, fought to gain a separate state, ended in 2009. After the military defeat on LTTE, the country has been posed itself into conflict transformation and peacebuilding process along with development activities. This transition is highly expected nationally as well as internationally to overcome the past immense suffering and injustices while healing the scars of war. Truth commissions are one of the ways to approach historical injustices and transforming the situation into peaceful and constructive form. Though Sri Lanka has been experiencing with establishing Presidential Commissions of inquiry to investigate injustices, the LLRC is remarkable to the degree that has come up with a quite good list of recommendations for long-term peace and reconciliation in Sri Lanka. Yet, the government has not started to implement the entirety of the report, however, there are several issues addressed in the recommendations have already existing in practice and call for immediate completion while facing challenges in a higher degree. Therefore, this paper chose four main issues that are addressed in the recommendations: political solution and the Thirteenth Amendment to the constitution; rehabilitation and reintegration of former combatants; demilitarization; and, resettlement of IDPs, which all fall under the category of ongoing implementation, with the aim of examining how well the recommendations, related to the above mentioned key issues, have implementability in practice. In order to achieve the goal, this study relied on two broad sources of data: primary and secondary. For primary sources, semi-structured interviews were held in Sri Lanka over a period of five weeks in July and August 2012. Targets of the interviews were drawn from a broad spectrum of society: political and religious leaders, University Professors, government ministers, prominent thinkers, international and non-governmental organizations staffs and journalists. As the secondary sources, related text books, journals and periodicals and other written secondary sources were used in this study. The main sources include numerous documents gathered at the library, in the media and at the offices of the interviewees in Sri Lanka.
2. Defining Truth Commissions

Seminal scholars of transitional justice analyze the truth commissions’ ability to hurdle the legal, political and economic barriers in prosecutions that are encountered during political transition and their use by new governments to improve their stands, at home and abroad, in pursuit of peace and stability. Yet during successive transitions, these commissions have been expanded by governments to suit a broader range of conflict resolution, human rights and socio-emotional goals, sometimes contributing to criminal prosecutions. In this scenario, countries which are emerging from protracted conflict, civil war or authoritarian rule, establish truth commissions are not a new phenomenon in the world now. These commissions, officially sanctioned, temporary, non-judicial investigative bodies, are granted relatively short period, for statement-taking, investigations, and research and public hearings, before completing their work with a final public report. Potential benefits that the truth commissions can gained are: helping to establish truth about the past; promoting the accountability of perpetrators of human rights violations; providing a public platform for victims; informing and catalyzing public debate; recommending for victim reparations and necessary of legal and institutional reforms; promoting social reconciliation; and helping to consolidate a democratic transition. This can be one of the varieties of strategies suggested for healing the wounds of the past and facilitating peacebuilding in post conflict societies. To be noted that, truth commissions have significant political impact, even if unintended, in a context where, typically, some of the individuals or political entities, still hold power or wish to gain power, may be the subject of inquiry.

Apart from these facts, three critical elements should be noticed here that the right moment to create a truth commission. First, there must be a political will to allow and, hopefully, encourage or actively support a serious inquiry into past abuses. Ideally, the government shows its active support for the process by providing funding, openly access to the state archives or clear direction to civil servants to cooperate. Second, the violent conflict, war or repressive practices must have come to an end. It is possible that the de facto security situation will not yet have fully improved, and truth commissions often work in a context where victims and witnesses are afraid to speak publicly or be seen to cooperate with the Commission […] if a war or violent conflict is still actively continuing throughout the country, it is unlikely that there would be sufficient space to undertake a serious inquiry. Third, there must be interest and cooperation on the part of victims and witnesses to have such investigative processes undertaken.

In this context, truth commissions are being established under fundamentally different nature rather courtroom trails, and function with different goals in mind. Many methodological questions which are central to truth commissions that neither can be answered by turning to any established legal norms or general principles, nor can they be well addressed by universal guidelines. However, these questions require a consideration of the specific needs and context of each country. The questions further come up on how a Commission should best collect, organize, and evaluate the many accounts from victims and others; whether to hold public hearings or carry out all investigations confidentially; whether it should name the names of specific perpetrators in its report. These will be answered differently in different countries. The task is made even more difficult by the fact that, many of these questions are unique to these kinds of broad truth inquiries and do not usually come up in relation to trials, for example, where standardized procedures have long been established. The belief of the significance of establishing an official truth in the aftermath of conflict or even civil war realized through the increased emergence to set up truth commissions in the world. Though the truth commissions vary in power, mandate, resources and forms of operation, the common aim is at confronting history by public truth telling.

If we looking at different types of truth commissions that have been employed in post-conflict societies over the last few decades, most were statutory government bodies (e.g. South Africa’s TRC), some have been inaugurated by executive decree (Chile), under a United Nations mandate (El Salvador and Timor-Leste), and others by international (Rwanda) or domestic NGOs (Brazil). Most commissions work to a limited timeframe, although those of Chad and Uganda are to run for an indefinite period. The commission’s terms of reference may allow it to look at a pattern of abuses over a number of decades (Chile and South Africa), or instead focus on specific crimes or particular groups of perpetrators. Some may reveal the identities of perpetrators (Timor-Leste) and some may not (Chile, Guatemala). Some attempt on a massive exercise in public participation and mobilization (South Africa, Sierra Leone), whereas other commissions are smaller and more secretive (Guatemala, Sri Lanka, Haiti). Although there have been a great number of truth commissions created either through national legislation or presidential degree or sometimes incorporated side to side by international bodies with different nature and functions with various goals in mind, this study is to draw attention on the new Presidential Commission of Inquiry on Lessons Learnt and Reconciliation of Sri Lanka. Before turning to the newly formed State Commission, it is pertinent to focus on the past Presidential Commissions in Sri Lanka in brief.

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3. Truth Commission in the Sri Lankan Context

To date Sri Lanka has been employed a range of transitional justice devices: such as truth commissions, trials, reparations and official apologies mainly initiated by the government. Historically, the Presidential Commissions of Inquiries have had a significant role in the Sri Lankan politics. Numerous Presidential Inquiries are dealt with various aspects of the conflict. All those inquiries have regularly operated in the margins; thus, the political will to end impunity is often lacking. During the past thirty-five years, eleven Commissions have been appointed to investigate human rights violations. Out of the eleven, four did not submit a report either because of their mandate was not extended or the Commissioners resigned. In case the Commission submitted a report, it was shelved without publishing and the government did not act upon it. The reports itself rarely criticized the government in power or its agents.

The expectations for truth commissions are often much greater than what these bodies can, in fact, reasonably achieve. Some level of disappointment is not uncommon as a truth commission comes to an end (or as a government accepts but then does not implement a commission’s report). While there is certainly room for improvement, some of these expectations are simply not realistic in circumstances where there were very large numbers of victims, where democratic institutions remain very weak, and where the will of perpetrators to express remorse or participate in reconciliatory exercises is tenuous, at best. However, these grand expectations and the resulting disappointment sometimes prevent people from appreciating the significant contributions that these bodies do sometimes make. These bodies can have significant long-term consequences that may be entirely unexpected at the start. In the Sri Lankan context, receiving criticism on the established Commissions is a common phenomenon due to the lack of integration with justice. Amnesty International pointed that, “the failure of the formal justice system to check grave violations of human rights has been a focus of domestic and international pressure on the Sri Lankan government for decades. That pressure has sometimes led the government to appoint ad hoc Commissions of Inquiry to look into, particularly, high profile cases.”

In this point of view, this paper begins with looking at the earlier Commissions, established by the Sri Lankan government, to investigate and address the past wrongdoings.

In Sri Lanka, legislation for establishing Commissions of Inquiry has evolved since the ‘Commissions of Inquiry Act No.17’ of 1948, however, the President of the country has got the authority to create a Commission under the law cited as ‘Special President Commission of Inquiry Law No.7’ of 1978. The main difference between the ‘Commissions of Inquiry’ and the ‘Special Presidential Commissions of Inquiry’ is that the latter is a Presidential Commission whereas the earlier one was just a Commission of Inquiry which was, however, constituted by the Governor General on the advice of the Prime Minister. Later on, when the Governor General was replaced by the President under the first Republican Constitution of Sri Lanka the Commission of Inquiry was established by the President and this followed later on as well. However, it was not felt to provide for very secure provisions to visit severe and harsh sanctions on people who are found ‘guilty’ by the Commission. Hence, the Special Presidential Commissions of Inquiry Act was brought to find people who were guilty of ‘abuse of power’ as well to lose their civic right as well as other rights enjoyed by a person who enjoys civic rights. The 1978 Constitution has references to: recommendations made by the Special Presidential Commissions of Inquiry; and, how it will have an impact on the people when a report and recommendation of such a Commission is passed by Parliament.

Under this law, President is being authorized to set out the members for the Commission, in case adds new members at his or her discretion; the terms of reference of the commission of inquiry; and requires reports, including interim reports. Commissions put in place under this particular law have powers such as, to procure and receive all such evidence and to examine all such persons as witnesses; to require the evidence of any witness to be given on oath or affirmation; to recommend that any person whose conduct is the subject of inquiry under this law or who is in any way implicated or concerned in the matter under inquiry, be awarded in connections with the inquiry. Furthermore, if the Commission finds at the inquiry and reports to the President that any person has guilt on any act of political victimization, misuse or abuse of power, corruption or any fraudulent act, in relation to any court or tribunal or any public body or in relation to the administration of any law or the administration of justice, the Commission shall recommend whether such person should be made subject to civic disability, and then the President shall cause such finding to be published in the Gazette as soon as possible, and direct that such report be published. In addition, any report, finding, order, determination, ruling or recommendations made by the Commission under this law, shall be final and conclusive, and shall not be called in question in any court or tribunal by way of writ or otherwise. In this context, there are eight Presidential Commissions appointed by the Government of Sri Lanka during the past three decades to investigate the human rights violations: Sansoni Commission of 1977; Kokkaddicholai Commission of 1991; The 1991-93 Presidential Commissions; the 2001 Presidential Truth Commission on Ethnic Violence; the 2006 Presidential Commission of Inquiry; and the 2010 Presidential Commission of Inquiry on Lessons Learnt and Reconciliation.
3.1 Sansoni Commission of 1977

By using the Commission of Inquiry Act No: 17 of 1948, the Government of Sri Lanka, headed by the President J.R.Jayawardene, appointed a Commission of Inquiry, popularly referred to as the Sansoni Commission. This Commission heard testimony regarding two events where the Tamils’ rights were violated: the first event is where the Police attacked the attendees of the fourth conference of the International Association of Tamil Research (IATR) in 1972 (death of ten Tamil civilians), and the second event was the riots against Tamils during the period August 13, 1977 to September 15, 1977 (killing over 500 Tamils). The abbreviated mandate of this Commission is as follows: (a) the circumstances and the causes for the communal violence during the period August 13, 1977 to September 15, 1977; (b) whether any person or group of persons were involved in the conspiracy and in the Commission of violent acts; and (c) to recommend measures that would prevent the recurrence of such crimes including any measures for rehabilitation. The Commission, which had only one Commissioner, former Chief Justice of the Sri Lanka Supreme Court Mr. M.C. Sansoni, gave more weight to the Police testimony than to the lay witnesses. The Attorney General acted both as an investigator for the Commission and as a counselor for the accused government employees. In regard to accountability for civilian deaths and property damages, the report identified some police officers who belonged to the majority Sinhalese community. However, no one was prosecuted. Further, the report also did not identify perpetrators on the basis that they acted as a group and not as individuals. Meanwhile, his report also detailed loss and damage caused to property of Sinhalese persons domiciled in the North during the violence (though no Sinhalese person lost his or her life). Undoubtedly, this Commission’s report remains an important reference point for the events of that period. Though there was tremendous political pressure on Commissioner Sansoni to avoid giving a prejudicial impression of the actions of the Sinhalese political leadership in bringing about the outbreak of communal violence.

3.2 The Kokkadicholai Commission of Inquiry (1991)

Massacre occurred in Kokkadicholai was one of the horror and tragedy events in the Sri Lankan conflict history. The Commission was created by then President R.Premadasa, responding to public pressure to identify the perpetrators of the death of sixty seven civilians and the disappearance of another fifty six civilians. Testimony was given against seventeen soldiers and an officer of the army as being allegedly responsible crime caused. The Commission, in its Final Report, found that killings of the civilians directly attributable to the soldiers stationed in the Kokkadicholai army camp. The actions were stated to disclose penal offences; namely murder, arson, robbery, unlawful assembly and similar offences. However, in an assessment of the context and circumstances surrounding the massacre, it was concluded that the civilian killings were the result of unrestrained behavior of soldiers after the explosion and death of two of their colleagues and the injury of yet another. Commission was recommended that the army would undertake its own investigations and sanctions would be imposed under military law against those responsible. The military tribunal acquitted all the soldiers and punished the officer for dereliction of his duties. Nevertheless, the mandate of this Commission was to determine the facts and recommend criminal prosecutions. Therefore, the decision of the Commission not to examine the responsibility of senior officers in command in that particular army camp at the time of the massacre is all the more questionable.


These Commissions mandated to inquire into and obtain information and report, in respect of the period commencing 11 January 1991 (thereafter 13 January 1992 and 25 January 1993) until twenty-four months following upon the date hereof, on the allegations “that persons are being involuntarily removed from their places of residence by persons unknown”. The 1991 Presidential Commissions are difficult to characterize in any other way than as efforts to deflect international criticism of Sri Lanka’s human rights record. Commissions’ hearings were held in secret; their reports on some individual cases reported to it, were not made public; and, their mandate did not include the thousands of cases reported prior to 1991. The findings of the 1991 Presidential Commissions were not made public at any stage.

3.4 The Presidential Truth Commission on Ethnic Violence

This Commission was set-up by President Chandrika Kumaratunga in 2001 to inquire and report on the following matters: investigate acts of ethnic violence that took place between 1981-84; document instances of violence for the historical record; and pay minimum reparations to those who affected, came before the Commission. The three member Commission held public hearing in Colombo, Sri Lanka and heard over 939 cases. The record of this Commission revealed witness testimony and other evidence in regard to the burning of the Jaffna Public Library in 1981, the District Development Council elections (1981), the July riots (1983) and the killing of prisoners at the Welikada Prison (1983). Undoubtedly, there were positive features in this Commission. Most importantly, it was the first official inquiry to investigate the ethnic pogrom of July 1983, an event regarded as a watershed in
the conflict. To this end, it was both a significant and symbolic departure from the typical practice of the state to date, which was to deny or defend its complicity in inciting ethnic violence among communities and failing to take all measures necessary to contain the same. The Commission did little to engage all political parties, particularly the opposition parties, and was soon perceived as a political mud-slinging campaign by the government against the opposition. The Commission also confined its work to the period between 1981-84, ignoring the periods of violence that preceded and followed this period. Most serious lapses in this Commission were to do little to assess the needs of those affected or to consult with civil society or educate and inform the public. As a consequence, it became isolated and viewed largely as a political exercise with little number of expert support and low public participation. As a consequence, it became isolated and viewed largely as a political exercise with little number of expert support and low public participation. Most importantly, there was no implementation of any of these recommendations made by this Commission except for the payment of certain amounts of compensation.

3.5 Presidential Commission of Inquiry 2006

On November 02, 2006, the current President Mahinda Rajapaksa appointed a Commission of Inquiry to investigate serious human rights violations since August 01, 2005 by inviting eleven eminent persons, hailing from India, Indonesia, USA, Netherlands, Bangladesh, France, Canada, Cyprus, UK, Australia, and Japan, were known as the International Independent Group of Eminent Persons (IIGEP) which formed in February of 2007, to ensure that the Commission’s work met international standards. The Commission was to ‘investigate’ (means in camera proceedings) and ‘inquire’ (means open to the public) sixteen cases. Out of these sixteen included in the mandate, the two principal cases investigated by the Commission are the killing of five students in Trincomalee, allegedly by the security forces, and the death of sixteen workers of the international non-governmental organization ‘Action Contre La Faim (ACF) in Mutur. Both cities are located in the Eastern part of Sri Lanka, and all the victims are Tamils. After observing the Commission for fourteen months, the IIGEP publicly stated that the Sri Lankan government does not have the political will to pursue the truth. It also identified the following five factors as incompatible with international standards: (a) the dual role played by the Attorney General’s Office, defending and investigating the accused; (b) lack of witness protection before, during, and after the testimony; (c) the in-camera proceedings and inadequate protection for whistle blowers; (d) lack of cooperation by the government entities to provide information; and (e) the Commission’s lack of financial independence to carry out its duties. After releasing the above statements, the IIGEP terminated its services and left the country. Later, some of the Commissioners resigned and at last the government did not extend the Commission’s mandate, and never published its report.

3.6 Lessons Learnt and Reconciliation Commission (LLRC)

A year after the LTTE was decisively defeated by the Government of Sri Lanka, the President of the government Mahinda Rajapaksa appointed the Commission on May 15, 2010 named as “the Commission of Inquiry on Lessons Learnt and Reconciliation (LLRC). The reason for calling as ‘LLRC’ mentioned in its official web page as, “it has become necessary to reflect on the conflict phase and the sufferings that the country has gone through as a whole and learn from this recent history lessons that would ensure that there will be no recurrence of any internecine conflict in the future and assure an era of peace, harmony and prosperity for the people”. The independent eight members comprised Commission, brings together eminent individuals representing all of Sri Lanka’s communities, realized that the enormous responsibility placed upon it at this important moment in Sri Lanka’s history. Moreover, this was entrusted with the task of winning the peace, and holds as home grown solution through wide consultation of all stakeholders. There are disagreements as the LLRC did not go far enough and those who have complained that it has gone beyond its mandate. In fact, the LLRC mandated to generate a report on “the facts and circumstances which led to the failure of the Ceasefire Agreement and the sequence of events that followed [till the end of the war], whether any person, group or institution directly or indirectly bear responsibility, institutional, administrative and legislative measures which need to be taken in order to prevent any recurrence of such concerns in the future, and to promote further national unity and reconciliation among communities […]”. The primary source of information for the Commission’s work was the general public of Sri Lanka and many submissions were also received from international parties residing overseas, some of whom presented their evidence to the Commission personally. The Commission conducted more than five thousand public hearings, including civilians, civil society, defence and military officials, public servants, political and religious leaders, academics, journalists, other professionals, ex-LTTE cadres, and former members of other armed groups across the country. To understand their plight, the Commission did make many field visits to different locals in the North and the East as well as other parts of the country, and it was the testimonies of the victims that propelled the Commission to see that justice was done and seen to be done. Though opportunities provided for people to make their representations relate their ‘stories of grief and victimization’, it did not however, provide opportunities for truth telling as how the South African Truth and Reconciliation Commission did after the collapse of apartheid. While it is irreparable...
that a system worked in one country, the scope of the mandate given to the LLRC was not meant to be or sufficient enough to provide an occasion for truth telling and unburdening the hearts of victims or perceived as victims.\textsuperscript{36} In addition to public hearings, the Commission made use of several issues raised in previously published materials, in the form of reports by national and international organizations, including the UN Secretary General’s \textit{Advisory Report} on Sri Lanka. In addition, despite being invited, Amnesty International, Human Rights Watch, the International Crisis Group, the Tamil National Alliance (TNA), the United National Party (UNP)\textsuperscript{48}, and former President Chandrika Bandaranaike Kumaratunga did not make presentations before the Commission.\textsuperscript{41}

Most importantly, the appointment of the Commission was followed by responses of all sorts. They included distrust on the neutrality of several members of the Commission who had close relations with the regime in power, uncertainty derived from the track records of the previous Commissions on disappearances and human rights violations, including the IIGEP.\textsuperscript{42} Moreover, the President was to prevent the appointment of an International Commission by the United Nations to inquire into the alleged human rights violations during the last stages of war between the Sri Lankan military and the LTTE and also to find fault with the previous government that initiated a peace process with the LTTE.\textsuperscript{43} While the formation of the panel, it should be noted here that, after the joint statement made together with UN Secretary General Ban Ki-moon, President Mahinda Rajapaksa undertook to ensure accountability for violations of international humanitarian and human rights law perpetrated during the six-year conflict. Then in May 2010, he established the LLRC.

The UN Panel reported to the Secretary-General Ban Ki-moon in March 2011 finding ‘credible allegations, which if proven, indicate that a wide range of serious violations of international humanitarian and human rights law was committed by both parties, some of which amount to war crimes and crimes against humanity. The Panel’s central recommendation imposed the Secretary General to create an independent international mechanism, which should be establish by a political organ of the United Nations, rather than him, with various functions to ensure justice and accountability. Two and a half years, after the President Rajapaksa’s commitment to ensure accountability, President released the LLRC’s Final Report\textsuperscript{44} in the Sri Lankan Parliament on December 16, 2011 after breaking the doubts lingered about whether be made in public.\textsuperscript{45}

Likewise the remarks met when the LLRC was appointed, the report received a cautious welcome, comments, and criticism from local civil society and the international community and these responses rightly stressed that the success of the reconciliation process would depend significantly on the implementation of the Commission’s recommendations in full. Amnesty International has condemned that the report is “fundamentally flawed” and unable to provide accountability for alleged atrocities and would never deliver justice, truth and full reparations for the war victims. According to Human Rights Watch (HRW), “it was an inadequate response to the many serious allegations of wartime abuses; lacked independence and a proper mandate; members weren’t impartial or competent; failed to provide adequate and effective protection for witnesses; didn’t have adequate resources; and that the government wouldn’t give serious consideration to the Commission’s recommendations”. The International Crisis Group (ICG) believed that the flawed LLRC would neither provide accountability nor reconciliation.\textsuperscript{46} From the domestic point of view: TNA criticized that, processes and practices of the LLRC have failed to win confidence of the Tamil community and dramatically short in international standards applicable to the accountability processes. Furthermore, TNA got unsatisfied with some features of the report, such as the ethnic and gender imbalance in the membership; methodology assigned relatively lower importance to victims’ perspectives; under-resourced and understaffed for the task of pursuing genuine accountability for violations occurred during the final war; did not have an effective witness protection program; delaying progress in implementing the LLRC’s interim recommendations; fails to correctly apply the law to the facts; wrongly concluded that the actions of the security forces complied with the Principle of Proportionality; and issues that are not directly related to accountability have positive elements.\textsuperscript{47} UNP somehow accepted this report and showed its support to the government to implement the recommendations made in the report.\textsuperscript{48} The Jathika Hela Urumaya (JHU) and ultra nationalist political movement said that the LLRC had over passed their mandate and had failed to look into the 9,878 civil assassinations carried out by the LTTE.\textsuperscript{49} The Catholic Bishops’ Conference of Sri Lanka has made a fervent appeal to the Government towards the implementation of the recommendations.\textsuperscript{50} Next move onto the international responses regarding this report: Australia welcomed the report’s recommendations however, expressed its concern on the failure to fully address alleged violations of international humanitarian and human rights law. While strongly urging the Sri Lankan government to implement the report’s recommendations, Canada expressed its concern about the absence of addressing the human rights violations during the last phase of war. The European Union expressed its hope on the report which will contribute to the process of reconciliation in Sri Lanka. Likewise, India welcomed the public release of the report and expressed its hope to act decisively and with vision on devolution of power and genuine national reconciliation. South Africa, while noting the release of the Final Report and its positive recommendations, pointed the failure of addressing the people who were responsible for human rights violations to account in detail. Although the publication of the report welcomed by the United Kingdom, disappointment also expressed at the report’s findings and recommendations on accountability. UN Secretary-General Ban Ki-moon greeted the public
release of the report and put the hope on to the Sri Lankan Government to move forward on its commitments to deal with accountability. The United States expressed its concern on the failure to fully address the human rights violations during the final stages of war.\(^5\)

Taking the all above presented merits and de-merits in mind, the LLRC report, undoubtedly, is a good starting point to address past injustices and bring normalcy in the post war Sri Lanka; this is, to some extent, accepted by the domestic and international community. Once the LLRC’s Final Report came out, it took the center stage and pushed out the UN panel report, which was very critical on the government. Yet, compare with the reports which have been released over the decades from official and semi-official or autonomous Sri Lankan Commissions, the LLRC report provides a framework for setting in motion processes and mechanisms to promote a meaningful process of reconciliation in post war peacebuilding.

Although the report has been made public, its contents have yet to be translated into the country’s two main languages. Furthermore, in substantive terms, the report has effectively dismissed any claim that the Sri Lankan armed forces may have used excessive force or targeted civilians as the war drew to a close in the Jaffna peninsula. Finally, there is a huge criticism on the regime in power as no particular hurry to implement its relatively anodyne recommendations.\(^5\)

The report is a 388-page lengthy document consisting nine chapters, including Preamble, contains a detailed and perspective analysis of past errors, along with those that led to the failure of the peace process. Furthermore, the report came up with a series of nearly 285 recommendations of which 135 may be called main recommendations as they have several sub recommendations. It can be believed that the LLRC labored to bring forth a document that could serve as a blueprint for Sri Lanka’s renewal as a success story of post war development, democracy and reconciliation. Most importantly, the LLRC has recommended to setting up a new mechanism to deal with a specific set of problems. This might be due to its recognition that existing governmental mechanisms are inadequate to resolve those issues. In this point, the LLRC’s findings and recommendations: including the need to credibly investigate widespread allegations of extra judicial killings and enforced disappearances; de-militarize the north of Sri Lanka; implement impartial land dispute resolution mechanisms and resettling the IDPs; re-evaluate detention policies on former combatants; strengthen formerly independent civil institutions; reach a political settlement, involving devolution of power to the provinces, promote and protect the right of freedom of expression for all; and, enact rule of law reforms. However, this study dwells its focus on four major issues addressed in the LLRC recommendations.

### 3.6.1 Political Solution: Thirteenth Amendment to the Constitution and the Provincial Councils

Despite the repeated attempts committed in the past to devise a political solution for Sri Lankan prolonged conflict, there has been little or less progress only met in reaching a consensus on the political solution. In the post war context, the government’s proposal of Parliamentary Select Committee (PSC) to arrive at a consensus regarding political solution has not yet to be commenced. The failure to move forward largely being caused due to the UNP and the TNA, both have not nominated individuals to the PSC, and the lack of progress in the bilateral talks between the government and TNA, who were engaged in eighteen rounds of talks since January 2011 without reaching a positive result. The All Party Conference (APRC), which has established by the current government, met 126 times over three years and the final report was presented to the President in July 2010 and came up with conclusion as fully implement the Thirteenth Amendment to the constitution and that is the way to reach a settlement for the prolonged conflict of Sri Lanka.\(^5\) The above mentioned two parties here too were not part of the process.

In this regard, the LLRC recommendations related to political solution emphasized in two ways. First is a people-centric form of devolution and simultaneously, it is imperative to address the root causes of the ethnic conflict and the genuine grievances of the Tamil people. Second is the Provincial Council (PC) system, which is specially mentioned in the recommendation, to address the needs of the people. The commitment is expected from the all parties to find a solution.\(^5\) In order to examine this aspect, it should be explained that how the PC system evolves with the Sri Lanka’s attempt on political solution, has to be considered.

Devolving the power to PCs envisaged under the Indo-Sri Lanka Agreement of 1987. It is also by means of the 13th Amendment to the Constitution: particularly this system is entrenched in the Constitution (1978); and the legislative provision that has been made for matters concerning the function of the system under the Provincial Council Act No. 42 of 1987; and, the Provincial Councils (Consequential Provisions) Act No. 12 of 1989.\(^5\) In this scenario, the PC system was established in 1988 with the entrusting of the responsibility of disarming the Tamil militants to the Indian Peace Keeping Force (IPKF) through the agreement of 1987. The 13th amendment, which was introduced in the same year, established a second tier government as a political settlement to be policed by the IPKF. At the time of signing the Indo-Lanka accord, there was a belief existed that granting Regional Autonomy to the provinces would facilitate a solution to the ethnic problem. The 13th amendment of the constitution facilitated to devolve the legislative, executive and judicial powers of the government to the PCs.\(^5\) Each PC has a Governor appointed at the sole discretion of the President of the State, to be the executive head of the provincial administration. But he exercises such power through the Chief Minister and the four Provincial Ministers who are appointed by him. Since the Governor
Due to their past activities, physical security is being questioned in one way and they are helpless to get employment in marriage. There are many reasons for this situation. Firstly, people from their own community where they are being reintegrated from the government side but from the rehabilitated cadres’ side too. As far as these nearly 11,000 ex-militants’ life is concerned, reintegration with their own society. By dealing with a quite big number of ex-combatants, it is a huge challenging factor not only for the government but also for the ex-combatants themselves. This particular recommendation raised question in its feasibility that, to what extent the government can ensure their proper reintegration and rehabilitation. Despite the government’s efforts, the LLRC report related to PC system has less feasibility to implement on the ground. The LLRC report stated that the LLRC approach to the issue of former combatants covers a range of areas including detention, prosecution, rehabilitation and reintegration. Regarding prosecutions, the LLRC has indicated that the LTTE cadres found guilty must be punished and account must be taken of the violation of core Human Rights and International Humanitarian Law (IHL) principles in a manner commensurate to the crimes committed. In addition, the next of kin of the detained ex-combatants be informed of their whereabouts and be given access for information.

3.6.2 Rehabilitation and Reintegration of Ex-combatants

Proper reintegration of former militants back into mainstream society is one of the significant components to achieve peace and development in war torn societies. A Demobilization and Reintegration Program (DRP) for ex-combatants is the key to an effective transition from war to peace. The success of this first step following the signing of a peace accord signals the end to organized conflict and provides the security necessary for people affected by war to reinvest in their lives and their country. In the Sri Lankan case, immediately after the end of war, the total surrendered or identified LTTE cadres went up to 11,696 as of March 2011, and rehabilitation of LTTE cadres is being carried out by the Sri Lankan army; about 11,000 cadres were released and reintegrated into societies. According to the source from Sri Lankan army, “the primary focus of the rehabilitation and reintegration program based on to equip the cadres with alternative means to a meaningful existence.” This program was adopted the model of ‘six plus one’ for the beneficiaries and rested on six pillars; namely spiritual, religious and cultural activities, vocational and livelihood activities, psychological and creative therapies, sports and extracurricular activities, sociocultural activities and education. Former LTTE cadres were divided by the Sri Lankan Attorney General’s Department into three categories during their surrender: Hardcore, non-combatants, and those who were forcefully recruited, mostly children. All the former combatants were separated into several “rehabilitation centers” to extract maximum information on the LTTE remnants, their ‘sleeper cells’, further plans of revival, and hidden ammunitions. Meanwhile, community awareness programs were also conducted, and efforts taken to sensitize the public to the needs of the beneficiaries so that they would be more receptive to their integration. Though rehabilitation seems to be taking place as per the ‘National Action Plan for the Re-integration of Ex-combatants’, the exact nature of the rehabilitation process is not clear due to an absence of any external monitoring.

In this regard, during this post war phase, the Government of Sri Lanka committed itself on this issue, even before the LLRC, and has been engaging with the rehabilitation and reintegration of ex-combatants. It is obvious to say that, the recommendations fall under this issue is for the betterment of the implementation particularly concerning the length and transparency of prosecution and detention of the ex-cadres. In this sense, the LLRC approach to the issue of former combatants covers a range of areas including detention, prosecution, rehabilitation and reintegration. Regarding prosecutions, the LLRC has indicated that the LTTE cadres found guilty must be punished and account must be taken of the violation of core Human Rights and International Humanitarian Law (IHL) principles in a manner commensurate to the crimes committed. In addition, the next of kin of the detained ex-combatants be informed of their whereabouts and be given access for information. Most importantly, after the rehabilitation the Government must implement programs to ensure that they are integrated into the mainstream of civilian life. This particular recommendation raised question in its feasibility that, to what extend the government can ensure their proper reintegration with their own society. By dealing with a quite big number of ex-combatants, it is a huge challenging factor not only from the government side but from the rehabilitated cadres’ side too. As far as these nearly 11,000 ex-militants’ life is concerned, they are struggling for getting into normal life back again. In fact, they are facing challenges in two main factors: employment and marriage. There are many reasons for this situation. Firstly, people from their own community where they are being reintegrated are very much scared of these ex-militants since the activities of the ex-combatants are still being followed by the security forces. Due to their past activities, physical security is being under questioned in one way and they are helpless to get employment.
opportunities in their own society in other way. By having this first issue, get into marriage life also aggravate their struggle in another form, thereby causing greater degree of frustration, disappointment and isolation, not only among the ex-militants but also from the entire family as well. Ex-combatants are able to move around but it does not mean that they are enjoying their lives. Therefore, while having these problems, reaching a real reintegration into their own society is the biggest question at present.

Simultaneously, the government still has no more guarantees about the future activities of ex-LTTE cadres after their rehabilitation and reintegration because of their grown up gun culture and held guns in their hands for years. Therefore, no more assertion from the government side about their complete transformation mentally as well as physically though they rehabilitated. In the meantime, looking at the pro-LTTE activities in abroad also made fear and keeping the ex-militants under the watchful eyes of the security forces. Therefore, it is hard to confirm that the Government and its future activities on rehabilitated LTTE cadres will not slip away from the right path.

3.6.3 Demilitarization

In broad terms, demilitarization is a multi-dimensional process that involves the reversal of militarization through the sustained reduction in the size and influence of the military sector in state and society and the reallocation of military resources to civilian purposes. While attempting to deconstruct the cultural, ideological and institutional structures of militarism, this process has divided mainly into two related processes: namely as demilitarization of the State and demilitarization of society. The first one is said to exist when there is an observable combination of the following processes: increasing civilian control over the armed forces; decline in the size of the armed forces; transformation of a state’s behavior in internal affairs, where the use of force is superseded by non-violent approaches to conflict as the primary instrument of foreign policy; disarmament; reduction in military expenditure; and the conversion of arms industries. Demilitarization of society is associated with the de-glorification of the armed forces by the media and society in general, the withdrawal of observable military influences in the education system, and a sustained reduction in consumerist militarism.66

With regard to the issue of demilitarization, the LLRC, as a policy, strongly advocated and recommended to the Government that the security forces should disengage itself from all civil administration related activities as rapidly as possible. “It is important that the Northern Province reverts to civilian administration in matters relating to the day-to-day life of the people, and in particular with regard to matters pertaining to economic activities such as agriculture, fisheries land etc. The military presence must progressively recede to the background to enable the people to return to normal civilian life and enjoy the benefits of peace.”67 Therefore, undoubtedly, this recommendation has significant in terms of bringing normalcy to the nation, especially in the North.

In the current post-war Sri Lanka, there are no improvements in the ground of phasing out security forces involvement in civil administration, discussed in the LLRC recommendations. Eight months after the LLRC Final report was handed over to the President, the Action Plan made by the Government proposes to formulate plan for further reducing involvement of security forces in civil work which needs another six months. Further it noted that, 95 percent were already withdrawn from civilian duties and the remaining five percent will be covered in another six months. The key performance indicator of the Action Plan is identified as “a marked reduction or withdrawal of security personnel for civil activities”. It is to be noted here that the language confusion where the LLRC pointed “civil administration” rather “civil activities”68 in its text. It is required that the immediate replacement of ex-servicemen in civil administration position instead of such a Major General and the Rear Admiral. In brief, expected demilitarization in post war Sri Lanka is removing the military presence in both civil administration and civil life.

After having experience with three decades war, people are very much scared of the clutches of military. It clearly shows that they have had bitter experiences throughout the past due to the protracted armed struggle. Therefore, demilitarization identified as one of the prime conditions to achieve peace and reconciliation in post war Sri Lanka. However, the Sri Lankan Government claimed that there have been a substantial reduction in military presence in the Jaffna of North is ongoing, according to the available data is says, a ratio of 1 security personnel for every 5.04 ordinary civilians in the Northern Province.69 As earlier mentioned, militarization has got a wider meaning in the Sri Lankan context. For instance, the Governor General of the Northern Province is a retired Major General which is the top level of administrative post in the province, and the entire province is governed under him and most importantly next to the central government he is the in-charge for the entire province. It means only under his guidance and direct purview, all the government agents, government departments, political institutions, and non-governmental institutions are functioning. Therefore, in the name of the Governor on the top level we can see a military person. In the bottom level, the heavy military presence remains in every nook and corner of the area thus; it has highly disturbed the daily life of the ordinary people. Although the war ended, still they have fear in their mind that they may be assaulted; abducted; or even killed. Still people don’t feel security fully because of the isolated incidents such as people are being abducted; still missing and disappearances are being taking place on the ground. By hearing and looking at all these events civilians feel a kind of insecurity in their minds. Furthermore, there are some issues prevailing on the ground related to military encroachment of public lands in the
North. These land grabbing plans looked by the Tamils, who are the majority in the country’s North, as the policy for eliminating the collective national existence of the Tamils and intends to ensure that any future Tamil insurgency would never materialize.

In the meantime, the presence of these regimental units in the North, one cannot simply blame the government since they also have some compulsion to keep the forces on the ground. Undoubtedly, three decades of war has brought a huge destruction to the entire nation and at last obviously the Government could militarily defeat the LTTE. However, the government not utterly feels that the nation fully recovered and liberated from the LTTE. Because there are threats in the ground exist make the environment insecure, especially the nexus between the dormant weapons and the former LTTE carders. There are still thousands of weapons, buried by the LTTE, digging and taking by the Sri Lankan forces while rehabilitating and releasing former LTTE cadres. As a result, the Government is highly aware of this critical situation that can allow the ex-militants to go and take up the buried arms and commit such anti-governmental activities any time. In addition to this, lively engagement in anti-governmental activities by the Tamil diaspora in the countries where they live persists, government has getting suspicion as the efforts in abroad can motivate to re-establish the LTTE again to demand for a separate state with the immense foreign remittance. In this critical adventure, the government has expanded its military activities towards the ex-militants to monitor their day to day activities. While making adjourn on the release of the ex-combatants would create another problem regarding their detention. Therefore, shrinking the military presence in the post war phase is a great challenge and also threat to the Government. It is to be noted that unless or until the anti-governmental activities are being carried by the diaspora is lively on the ground, government has the justification to keep the military presence and function.

Another conditional factor from the Government to retain with military is the number of the mounted military forces. Once the war was rapidly started, the government had to increase the number of fighting troops by way of recruiting large number of army personals to meet the ground kind of demands. However, after the conclusion of war, those recruited forces have nothing to do except carrying weapons and standing at a junction or a street. Therefore, government has started using the forces and engaging them effectively in the ongoing developing activities. By doing so the Government started showing that the necessity of army presence and the difficulty of demilitarization.

3.6.4 Resettlement of IDPs

Resettlement as it is termed by the United Nation’s Guiding Principles on Internal Displacement means, local integration in the areas in which IDPs initially take refuge or relocate to another part of the country. In the framework of the resettlement of conflict-induced IDPs, it is required to exercise basic pre-conditions for resettling families before they are resettled. According to the United Nation’s Guiding Principle 28, “Competent authorities have the primary duty and responsibility to establish conditions, as well as to provide the means which allows IDPs to return voluntarily, in safety and with dignity, to their homes or places of habitual residence or to resettle voluntarily in another part of the country. Usually, the resettlement of the IDPs at their places of residence causes huge strains for the responsible bodies unless done in a proper manner. Therefore, this process expected international assistance in order to prevent those strains and to avoid further related conflicts.

In the Sri Lankan situation, where the country has entered into post-war phase, IDP related issues are considered as a vital factor in peacebuilding, development and reconstruction processes. Ensuring IDP resettlement and reintegration, while having secure livelihoods and access to basic social services in their places of origin, is one of the national priorities of the Government of Sri Lanka at present. Meantime, the Government’s policy towards resettling IDPs is clear in developing people’s livelihood and to build permanent houses. Though the government has met certain obligations through its commitments on resettlement, it has not yet been met IDPs’ expectations.

In this regard, the LLRC called for the enactment on return and resettlement of IDPs in its recommendations as: providing assistance for returnees to repair or build permanent houses, providing infrastructure needs and developments; creation of a uniform state policy on IDPs regardless their ethnicity; facilitating the early return of displaced Muslims to their places of origin in the Northern Province; legal ownership of state-owned land designated to IDP re-settlers; and finally, formal bilateral consultation process between Sri Lanka and India is required to enable the Sri Lankan refugees to return from India.

While considering the feasibility of these above mentioned recommendations to implement on the ground, first obstacle for the government to have an early return of IDPs is the areas that are still remaining with landmines; those are the areas which were in the very heart of the war during the last phase. Land use is a decisive factor for de-mining where residential lands have to be given priority for livelihood purposes. In fact, de-mining does not only mean the physical clearance of mines and Unexploded Ordinances (UXOs), but also is about the reduction of their social, economic and environmental impact. However, still there are lots of works to be done in de-mining. Most importantly de-mining agencies that are engaging with this task have not been fully funded as they should be which means that, their presence is not going to be on the ground for long. As a result, the task will be fallen to the government and its army, and as well as the humanitarian de-mining unit utterly. There is an estimation from the
people who are engaging in this task, is to become as a completely mine freed nation, Sri Lanka will take at least another ten years from to-date. De-mining task is comprised into many ways: there must be done a technical survey and then demarcate the areas that are of risk; giving mine risk education to all returnees before they return therefore, both the humanitarian agencies and the government try to ensure that those aspects are looked in. Yet resettled IDPs are challenging for their livelihood even after they returning back to their places of origin due to the fear of mines. It is very clear that, IDP resettlement can’t be rushed and should be done in a huge concern of safety, further, places of the people should properly clear and certified as cleared.

In the Sri Lankan context, IDPs are being categorized into two main folders: old IDPs, who have been left out from their places of origin before 2008 and having experience of displacement nearly couple of decades, comprised with Tamil and Muslim IDPs; and the new IDPs who have been displaced during the final phase of war. Both of these categorizations based on their length of displacement. Regarding the issue of old IDPs, they have obstacles in returning to their homes due to their lands, which have been occupied by the military forces and still remain as High Security Zones (HSZs). Furthermore, these are the people who are having generations of displacement therefore, finding a solution to them is something nuance. Because the needs to find a solution raised some questions: where they are; whether they locally integrated or not; have they got jobs and houses in the host places; do they want to go back to their original places; and, what are their intentions. Without really understand these facts it is hard to talk about durable solutions for these long term IDPs and their return or resettlement. Those whose lands are still under military presence in the name of HSZs haven’t get any hope that either their lands are going to be released or never. Moreover, considering about the compensation by giving state lands instead of their private lands are still being complicated regard to the location where the land is. Especially, in Jaffna where there are protracted IDPs living in welfare centers, cannot access with their lands yet. Meanwhile, the amount of state land available is very limited; most of the lands are privately owned. The new IDPs’ issues are quite far from the old IDPs’ since the length of their displacement is short; however, the scale of the displacement was huge. While considering their resettlement in a massive number, it is still harder for the government as well as humanitarian agencies to provide soon recover to the wounds and the lost, though, it is still felt that their needs are more immediate. Even though, the primary responsibility yet relies on the government, since IDPs are the citizens of the country, the Government can provide assistance within its financial capacity to facilitate the people to back into normalcy.

All those mentioned above is the practical side problems on the ground. This particular issue has a political side that the interest or willingness to conclude IDP chapter. TNA raised various objections regarding the resettlement issues, accusing that the Government is being deliberately employed Sinhala majority settlements during the resettlement process to change the demographic profile of the northern and eastern parts of the country where ethnic Tamils were a majority. In addition, TNA interpreted this move as an aggressive colonization process is being undertaken by the Government to dilute the Tamil dominance in North and the East. This is also viewed as a political will needed from both, the Government and the Tamil political parties, to implement the recommendation of LLRC related to this issue on the ground.

4. Conclusion

The establishment of LLRC and the release of the report and recommendations are a point of departure to provide a golden opportunity for the people of Sri Lanka after having large number of wounds gained over three decades of cruel war. Although there are questions raised, still linger, with some issues on accountability about the last phase of war, it is ripe moment for the people and powers to act decisively moving forward and achieving endurable positive peace in the country. This article has aimed to demonstrate a full overview of the new State Commission of Lessons Learnt and Reconciliation including various and conflicting perspectives among several groups on this Commission and the Report. Further, it seeks to identify the contribution of the Commission and its Final Report to post war peacebuilding and reconciliation processes in Sri Lanka.

Though Sri Lanka has been experiencing with number of Commissions of Inquiry appointed from time to time in the past to investigate injustices occurred, reports of several Commissions have never been published. The LLRC and its report are significant in various aspects. Even though the Presidential Commission of Inquiry Act does not place any obligation on the part of the President to make public the findings of any Commissions of Inquiry, the LLRC conducted extensive public hearings, submitted report and made its contents public. However, this Commission mandated to inquire only a certain period of time, it adverted to some of the important issues in making it recommendations in an effective manner. Despite the non-implementation of many recommendations of the previous Commissions have given less hope, the LLRC’s recommendations expected to understood properly and therefore, spare efforts expected further to implement efficiently for lasting peace. With the above presented recommendations related with the issues on political solution, rehabilitation and reintegration of former LTTE combatants, demilitarization and resettlement of IDPs, fell under the list of the LLRC report in mind, to some extent, the Commission put its efforts on identifying the issues and grievances of the people to promote and foster a united democratic Sri Lanka while ensuring
transitional justice. However, to some points it has failed to consider feasibility and challenges in the ground in terms of implementation. Moreover, throughout the study it has been realized that making a list of recommendations is not a great contribution while thinking about whether it is feasible enough to put onto the ground. There are no doubts about the importance for bringing reconciliation and changing the attitudes of people while dealing with the issues prevailing on the ground. Those necessities have identified in the LLRC recommendations, which are the most needed things to be done in post-war Sri Lanka. At the same time, reality in the ground can’t unearth, and that should be understood in a genuine manner. The requirements for the existing situation and challenges to implement the entirety of the recommendations, regarding the issues addressed, should be made understandable by the people in the ground in a positive way and trying to reach a positive solution in a justifiable manner.

End Notes

12. According to Amnesty International in this report mentioned about Sri Lanka’s criminal justice system: it has critical shortcomings that obstruct justice for victims of human rights violations. It is subject to political pressure, lacks effective witness protection and is glacially slow. The system is so degraded that the vast majority of human rights violations over the past 20 years have never been investigated, let alone heard in court. Those that do make it to trial rarely conclude with a conviction; defendants are acquitted for want of evidence; witnesses refuse to testify; hearings are subject to repeated delays; even the prosecution has failed to appear in court in key human rights cases. This is not simply a problem of inadequate resources or institutional capacity (although these too are obstacles); it is a problem of political will.
17. Ibid, pp.13
18. Ibid, pp.4
19. Ibid, pp.13
25. Ibid, pp.76-77
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