



THE RELATIONSHIP BETWEEN TRUTH-SEEKING AND PROSECUTION:
GIVING MEANING TO
SRI LANKA'S TRANSITIONAL JUSTICE PROCESS

Context

Almost seven years after the end of the war, Sri Lanka is on the verge of beginning the long and arduous road of transitional justice. In January 2015, Sri Lanka underwent a dramatic shift in political power, with the fall of the Rajapakse regime and the election of Maithripala Sirisena as the President of Sri Lanka. The Parliamentary elections in August 2015 saw further change, with traditional rivals in Sri Lankan politics, the United National Party and the Sri Lanka Freedom Party, joining forces and forming a National Unity Government.

One of the consequences of the shift in political power has been that 'transitional justice' was put on the agenda by the Government. The Government's plan for pursuing justice and accountability was first articulated by the Foreign Minister, Mangala Samaraweera, during his address to the 30th Session of the Human Rights Council in Geneva on 14th September 2015. The Foreign Minister laid out the Government's commitments in securing truth, justice, accountability, and reconciliation. The commitments included the creation of four transitional justice mechanisms: a Commission for Truth, Justice, Reconciliation, and Non-recurrence; an Office of Missing Persons (OMP); a Judicial Mechanism with a Special Counsel; and an Office for Reparations.¹

These commitments were further confirmed through the Human Rights Council resolution, co-sponsored by Sri Lanka and adopted on 1 October 2015.² The commitments that the Government has made are extensive, complex, and ambitious. While the commitments are welcomed, there is trepidation around whether and how the Government will give effect to the commitments.

¹ Speech by Hon Mangala Samaraweera at the 30th session of the Human Rights Council, Geneva, 14 September 2015.

² Human Rights Council Resolution, Promoting reconciliation, accountability, and human rights in Sri Lanka, 14 October 2015, UN Doc. A/HRC/RES/30/1 (adopted 1 October 2015).



In January 2016, the Government created a Consultation Task Force, comprising members of civil society, to lead the process of national consultations on transitional justice. The Consultation Task Force began consultations in February 2016. The Government has also established a working group to assist with the formulation of concrete proposals.

While the broad contours of a transitional justice process have been unveiled, the specifics remain ambiguous, perhaps intentionally. The four proposed mechanisms are complex and are inherently legalistic and technical, yet other than their titles, there is no publicly available information about them.

To ensure a comprehensive, just, and feasible truth-seeking and prosecution strategy, it is now crucial to focus on the details and specifics of the proposed process. The importance is threefold: to draw out the relevant issues that ought to be discussed, both in the design and content of the mechanisms and on issues that have a bearing on truth-seeking and prosecution; to present concrete ideas to policy makers and shapers; and to inform wider society.

Objectives

The objective of the meeting is to help refine and contribute to the further development of the transitional justice architecture proposed by the Government, as well as to strengthen stakeholders' understanding of the issues, and identify challenges. Through this meeting ICES hopes to create a robust discussion that will elicit specific recommendations with the potential to inform and shape the truth-seeking and prosecution structures and processes to be initiated by the Sri Lankan Government. The meeting will seek to contribute constructively to the practice and policy on transitional justice, specifically in relation to truth-seeking and prosecution, both within civil society and political society.

'Truth-Seeking' and 'Prosecution'

The concepts of truth-seeking and prosecution are inextricably linked and the meeting will approach them as part of a holistic process of transitional justice. The discussions will focus on *inter alia*: the inter-relationship between truth-seeking and prosecution in the Sri Lankan context; the viability of achieving reconciliation through truth-seeking and prosecution; and the balancing of truth and punishment.



The meeting will discuss the issues of the cultural relevance/religious traditions and heritage; the role/mandate of a truth commission in achieving long term legal reforms/institutional reforms; the challenges of building confidence in the process and the importance of 'buy-in' from stakeholders; and incentives to elicit the truth, including amnesties, plea bargains, and guarantees against prosecution.

The design and composition of the truth commission, the special court, and the OMP, including their respective powers, temporal mandate, and subject-matter mandate; co-operation strategies between the truth commission, the OMP, and the special court, including relating to investigations and the priority to be given to cases; setting prosecutorial policy, including the crimes to prosecute and the perpetrators to target; the offences/crimes that can and should be prosecuted; the legislation that needs to be passed; legal barriers to achieving criminal accountability; investigating large scale crimes; sexual and gender-based crimes; witness evidence and prior statements; witness protection; victim participation; psychosocial support/counselling; the relationship and interaction between the truth commission, the special court, the OMP, and the reparations office; and the relationship between the truth commission, the special court, and the OMP with the process of constitutional reform that has also commenced, are among the issues the meeting will address.

There will also be a session on general themes, cross-cutting issues, sequencing, the relevance of the International Criminal Court and the role of international justice, and the links between transitional justice, constitutional reform, and corruption trials.

A detailed agenda will be available closer to the meeting.

Expert panel

Six individuals who have expertise in matters relating to truth-seeking and prosecution from other post-war and post-conflict country situations will be invited to provide strategic inputs. The experts will share comparative experiences, discuss specific issues and challenges relevant to Sri Lanka, and respond to the available Government and civil society proposals on transitional justice.



ICES

Established in 1982, ICES is an independent research centre, focusing on ethnicity, identity politics, conflict and conflict resolution, post-war reconstruction, democracy and governance, human rights, and gender. The mission of ICES is to *deepen the understanding of ethnicity, identity politics and conflict, and to foster conditions for an inclusive, just and peaceful society nationally, regionally and globally, through research, publication, dialogue, creative expression and knowledge transfer*. In recent years, ICES has carved a niche for itself as a centre for the study and promotion of diversity within a framework of democracy and human rights.

ICES engages in academic research, advocacy on key policy matters and endeavours to create a critical mass of people who believe in cultural pluralism and tolerance. It has been particularly influential in shaping policy and public imagination on issues of ethnic diversity and constitutional reform in Sri Lanka. In the past, ICES has championed policy interventions through direct engagement and advocacy with policy makers, elected officials and civil society, typically through constructive, non-confrontational consultative meetings, in which ICES advocates for and promotes viable alternatives based on empirical findings and rigorous analysis. With two offices in Colombo and Kandy, ICES provides a vibrant and dynamic intellectual environment for academic and policy dialogues, discussions, seminars, publications and socially-engaged literature, art, and cinema. The ICES library houses a range of publications on ethnicity, culture, identity, religion, women's studies, politics, law, and history.

Since 2013, ICES has been actively engaged in initiatives relating to transitional justice in Sri Lanka. In 2014, ICES organised a dialogue on 'Justice, Memory, and Social Reconstruction' which provided a forum for Sri Lankans to engage with scholars and activists from other post-war and post-conflict societies.

In 2015, ICES conducted a series of transitional justice dialogues in different parts of the country (Colombo, Galle, Jaffna, Nuwara Eliya, and Trincomalee), with a view to increasing capacity within civil society and adding fresh ideas to the public debate. This initiative has generated a report, a video documentary and strong library-based collection of works on transitional justice. The 2016 meeting on truth-seeking and prosecution is the natural next step in ICES's vision to assist with the generation of an organic transitional justice process in Sri Lanka.