

# Legal Experts at TGTE's Conference say Sri Lanka's Ability To Deliver Transitional Justice Grim

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Invited to speak at the annual human rights conference on transitional justice convened by the Transnational Government of Tamil Eelam (TGTE) on Sunday April 3rd, 2016 at the Delta Toronto East Hotel, Canada, an esteemed panel of lawyers expressed serious concerns at the “environment that currently exists in the North and East” and the lack of progress made thus far in implementing the resolution passed at UNHRC’s 30th session – given the High Commissioner for Human Rights is scheduled “to present an oral update to the Human Rights Council at its 32nd session” on June 2016, and “a comprehensive report followed by discussion on its implementation at its thirty-fourth session” on March 2017.

The striking parallels that could be drawn from the discourse that transpired was the need for fundamental, meaningful, substantial, significant and far reaching changes on a range of issues pertaining to the delivery of transitional justice in Sri Lanka.

Among the concerns identified in this in-depth, high calibre panel discussion, which made transitional justice impossible now in Sri Lanka are:

- 1) The Sri Lankan military's fierce grip on the Tamil people of the North and East in the island of Sri Lanka including its civilian and “institutionalised extortion” activities – akin to a “sophisticated” form of control over them.
- 2) The Sinhala Buddhist nationalist nature of the state.
- 3) The ways in which the Sri Lankan government has obfuscated the issue of accountability both internationally and domestically when speaking to the Sinhala population
- 4) The large discrepancy between what the Sri Lankan government is telling the international community it's doing on accountability and rule of law initiatives and what is actually taking place on the ground
- 5) Government's lack of transparency and sincerity to enact reforms – to enable trust and build confidence
- 6) The still ongoing human rights violations and surveillance operations in the North East
- 7) The absence of necessary measures for genuine reconciliation vis-a-vis the Sri Lankan government's failure to return private lands, abolish the Prevention of Terrorism Act, review the Victims and Witness Protection Act and honour its promise to release political prisoners still languishing without charge
- 8) The fact that torture and sexual violence against Tamils still continue
- 9) The absence of answers for the families of the disappeared
- 10) The occupation of public land and the army's involvement in civilian activities, such as running shops, farms, hotels and even pre-schools
- 11) The military's continued distribution of goods to school children and other civilians widely regarded as its attempt to normalise its presence in the North East

- 12) The continued harassment and intimidation of civil society and human rights activists, of families of the disappeared and former members of the LTTE as well as other Tamils
- 13) The fact that testifying before any judicial mechanism would be difficult when the security forces are living next door
- 14) The Sri Lankan government's lack of honesty as evidenced by its statements post resolution, inconsistent with its obligations it was committed to carry out -for international involvement in any 'credible judicial process'
- 15) The fact that the Sri Lankan government has so far not demonstrated the political will to ensure an independent, impartial, victim centred accountability mechanism
- 16) That many people in Sri Lanka have been victimised horribly – and if impunity for those crimes continue they're going to be victimised further

Participants at the panel discussion were, Ms. Barbara Jackman – a Canadian lawyer specialising in immigration and refugee law and US lawyers – Ms. Tasha Manoranjan, an associate in the Litigation practice in the Washington D.C. Office, Prof. Ali Beydoun, Director, UNROW Human Rights Impact Litigation Clinic at the Washington College of Law and Ms. Heather Ryan, currently member of the Sri Lanka Monitoring and Accountability Panel (MAP) and also special consultant for the Open Society Justice Initiative monitoring the Extra-ordinary Chambers of the Courts in Cambodia (ECCC).

Panellists Barbara Jackman and Tasha Manoranjan, in making their observations, given the ground situation in the North and East, took a grim view on Sri Lanka's ability to deliver transitional justice' with Manoranjan calling for significant changes to the "Sinhala Buddhist nationalist nature of the state," believing that: "Sustainable peace and reconciliation will require the government to act meaningfully, expeditiously and in good faith when addressing the Tamil people's legitimate misgivings and trust, while also educating the Sinhala polity on the need for credible accountability in an inclusive pluralistic society."

While Manoranjan was calling for concrete action towards demilitarisation and a halt to ongoing human rights violations, Jackman doubted it would happen. Representing Tamils seeking protection in Canada, she doubted 'transitional justice' which requires in her words, "reparations, accountability and building bridges for the future," was at all possible right now in Sri Lanka.

Jackman making the call to the international community as well as to Canada to review its policies, thinking the terrorism "label must change" and suggested the TGTE, not merely rely on seeking accountability but "start taking other measures, like the 'Boycott Divestment and Sanction' (BDS) campaign against Israel by the Palestinians that's working. "

Recommending that, "Sri Lanka implement a comprehensive transitional justice programme in line with international best practices which include criminal prosecutions, reparations, institutional reforms and a truth commission," Manoranjan maintained that such, "efforts must proceed with robust, meaningful consultations with the Tamil community."

Manoranjan was emphatic about the need for, "the government to respect the right of all of its people to self-determination," which she said, "must form the basis for any political solution," making the point that, "before any political solution can take root the government must immediately take steps to demilitarise and stop all ongoing human rights violations."

Heather Ryan, member of the MAP initiative made up of independent international experts laid out MAP's primary goal, the purpose behind independent monitoring, its criteria for any accountability mechanism, its concerns of what it has seen so far happen and some initial recommendations.

Ryan explained the MAP's goal in this way:

“To take a look and help evaluate the development and implementation of transitional justice broadly and more specifically accountability mechanisms in Sri Lanka, and to bring to bear the experience we developed...to ensure any mechanism, any tribunal established in Sri Lanka is truly perceived to be independent and fair by the people, all of the people, otherwise it will be viewed as another tool of victimisation that cannot be allowed to happen to a country that's already suffered so badly ..And so our goal is to shine a bright light as we can on the developments in this area.”

Ryan is expecting extensive, substantial and far reaching changes in the, legal and judicial systems and laws, including incorporation of the concept of “command responsibility” into its law, in order to “meet international standards”. She believes it is necessary to put in place educational and capacity building initiatives prior to any public consultations taking place. (In this regard MAP is in the process of considering if the government appointed ‘taskforce’ of exclusively civil society members is “truly representative of the variety of different views around the country.”) This is in addition to her calling for witness protection and the participation of foreign judges, prosecutors, investigators and defence counsels, in an independent and impartial victim centered accountability mechanism,” as part of the full implementation of the UNHRC resolution.

Ryan set out MAP’s initial recommendations “at this stage” as follows:

That we recommend the Sri Lankan government should adopt a victim centered approach in which victims have equal and effective access to justice regardless of what side of the conflict they were on. That they have adequate and effective reparations for the harm suffered as a part of the justice tribunal or some other transitional justice mechanism – to ensure that they have access to relevant information concerning violations and reparations.

That we recommend the Sri Lankan government establish a special war crimes chamber comprised of the following general attributes: A trial and appellate chamber with a majority of international judges sitting alongside national counterparts – this is necessary given the judiciary in Sri Lanka, to ensure independence and impartiality. That a selection of all judges includes a consideration for a reasonable balance of gender and ethnicity and for the selection of international judges experienced in dealing with international crimes should be a requirement. That there should be specialised training for all the permanent judges on the aspects of international criminal law , that the prosecutor’s office responsible for gathering evidence in who to prosecute also be composed of both domestic and international players with authority to make decisions. Again this is designed to make sure impartiality and independence at the prosecutorial level; the same would apply to the staff investigating the crime, so that evidence is gathered independently of any political influence or

That we recommend a rigorous witness protection system is put in place, that will truly make victims of crime comfortable that they can come forward and not suffer repercussions. That victims have the right of meaningful participation in the proceedings – another aspect important to international standards and international criminal law is that suspects and accused have the right to counsel including international counsels who are experienced in international criminal law.

That we recommend the application of substantive international customary law – which includes war crimes, crimes against humanity and genocide as well as those recognised forms of criminal liability that will include command responsibility. Again what we are recommending is once the international law of basic crimes are established, the courts then could then apply Sri Lankan procedural law, so that to make sure the procedures that are used in the tribunal are as understandable to the people in Sri Lanka, that they have some impact on improving the general legal rule of law system in Sri Lankan courts.

The other members apart from Heather Ryan that constitute the MAP are, Marie Guiraud (France), Peter Haynes QC (UK), Richard J Rogers (UK), Justice Ajit Prakash Shah (India) with Geoffrey Robertson QC acting as consultant to the Panel, providing additional independent advice.

The proceedings also included a presentation of available alternative accountability mechanisms by Prof. Ali Beydoun who, first, speaking of how governments and UN member countries use sovereignty to create a “shield” for themselves, “not helping the purpose the UN was originally created to do, that is to protect individuals as a global community,” explored other ways of, “holding the people responsible for atrocities committed, in domestic courts outside Sri Lanka, using principles of universal jurisdiction.”

The moderator of the panel discussion, attorney Kubes Navaratnam set the stage by tracing events in Sri Lanka from, “after the 2009 massacre, after the LTTE were defeated.”

A fellowship dinner was held the previous evening at the Scarborough Convention Center consisting of sponsors, supporters and members of the TGTE and invited guests, NGOs and politicians.

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