Transitional Justice, Globalization and Friction in Post-war Sri Lanka

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Paper prepared to be presented at the National Conference in Peace and Conflict Research, University of Gothenburg, June 2012

Introduction

Transitional justice has rapidly grown to become a globally prescribed set of measures for post-war societies to deal with mass atrocities of the past. A globalization of transitional justice has taken place, making it part of a dominant discourse that states, international organizations, local civil society and other actors concerned with post-war reconstruction and reconciliation have to relate to (Teitel 2000; 2008). Transitional justice is also globalized in the sense that international law and international (or hybrid) courts have gained importance recently, while global migration implies that victims, perpetrators and others with stakes in the conflict-affected area may live all around the globe. Parallel to the process of globalization, there has been a realization that international law, justice mechanisms and tool kits when applied locally often do not achieve the reconciliation, healing, justice and conflict prevention that is expected. Hence, the need to understand and work with local perceptions, mechanisms and experiences of justice has been emphasized (Hinton 2012; Shaw and Waldorf 2010).

Far from representing universal values of justice, both the globalized and the localized aspects of transitional justice are shaped by power politics. Globally, transitional justice is normally prescribed for non-Western developing countries, while the role of Western democracies and great powers in mass atrocities is silenced (Nagy 2008). In addition, ‘localization’ or ‘vernacularization’ of transitional justice often come to represent the interests of local elites, silencing the voices and concerns of, for instance, minorities and victims of atrocities during certain periods, committed by certain actors or that are of a certain type. While the conflicting aspirations of international and local transitional justice processes have received some interest from the academic community, we know little of the mobilization processes in response to transitional justice institutions (Leebaw 2008:118).

This article engages with the friction between the globalized discourses and mechanisms of transitional justice, and localized responses and initiatives. It does so by analyzing processes at the interface of the international and the local to address war crimes committed during the armed conflict in Sri Lanka.

During the final stages of the war in Sri Lanka human rights were abused on a massive scale as more than 300,000 Tamil civilians, caught in-between the Sri Lankan government’s offensive and the separatist Liberation Tigers of Tamil Eelam (LTTE), were subject to
shelling and air bombings. This was only the culmination of decades of war-related atrocities for which perpetrators are yet to be held accountable.

The way in which the war ended in 2009, with a decisive victory of the Sri Lankan government, has determined how the contested issues of justice and reconciliation are approached. Sri Lanka’s intensified friendship with emerging global powers, most importantly China, both enabled the victory, and has to some extent shielded the country from being held accountable internationally for war crimes. Locally, the asymmetric power relations between the victorious and increasingly Sinhala nationalist government and the Tamil minority, whose interests the LTTE claimed to represent, became even more asymmetric as the defeat of the LTTE to a large extent rendered the Tamils voiceless.

Theoretically this article addresses two questions: How can discourses and actual manifestations of global-local friction be characterized? How can we understand the responses and outcomes in relation to different transitional justice processes? Empirically, we use illustrations from the Sri Lankan case to exemplify theoretical distinctions and arguments. In the next version of this paper we aim to provide a more coherent theoretical framework which will be used to systematically analyze transitional justice in post-war Sri Lanka.

This article looks at three processes that are of particular interest for the globalization and localization of transitional justice and the friction between international and local actors, norms and interests: (a) the release of the UN Expert panel report in 2011, as an attempt by the international community to put pressure on the Sri Lankan government to take responsibility for war crimes committed during the war, (b) the Lessons Learnt and Reconciliation Commission, created by the Sri Lankan government in response to international pressure, which issued its report in 2011, (c) the engagement of the Tamil diaspora in efforts and campaigns to hold accountable those responsible for war crimes in Sri Lanka.

The first case illustrates how international divisions over transitional justice are mirrored domestically, and how the advocates of transitional justice internationally are constructed as external enemies and serve as targets of local mobilization. The second case represents a local process of truth telling, which is closely tied up with political interests of the Sri Lankan government in relation to the global discourse of transitional justice, and which has its own politics of silences. The third case highlights how diasporas and diplomats can be important actors in the quest to define victims and perpetrators, and to gain attention and support by the international community to hold perpetrators accountable.

The paper proceeds as follows. We first outline transitional justice as a global project, followed by a discussion on localization and friction in transitional justice processes. In this part we also make theoretical distinctions in relation to agency involved in transitional justice processes and present concepts relating to the outcomes, responses and dynamics of transitional justice (resistance, acceptance, ignorance, co-option). Next we provide a brief background to the Sri Lankan context, and discuss the three cases which illustrate dynamics of globalized transitional justice processes. We end with a brief discussion on ways forward.

**Transitional Justice and Globalization/Global Connections**

Transitional justice is a concept which has been used to denote mechanisms for addressing past human rights abuses/atrocities in countries emerging from violent conflict or
authoritarian rule. Previous research has been concerned with the different forms of transitional justice, the adoption of influence of transitional justice mechanisms and initiatives on reconciliation, conflict prevention, rule of law, and democratization (Kritz 1995, Teitel 2000). It has been analyzed from a range of different perspectives: historical, political, legal and moral.¹

Transitional justice is becoming increasingly globalized and transnational. In March 2012, more than 20 South African victims were promised compensation from the international car manufacturer General Motors (GM) due to a lawsuit which has been filed against GM for assisting the apartheid regime. In April the same year, the International Criminal Court found former Liberian president and war-lord Charles Taylor guilty on a number of charges related to war crimes and crimes against humanity.

This globalization has been manifested in a number of more or less standard responses in post-war societies and a ratification of many of these mechanisms in existing legal regimes, such as a “right to truth” (Teitel 2008). Transitional justice has been discussed as a ‘global project’, where transitional justice has “emerged as a body of customary law and normative standards” (Nagy 2008, 276) and where the question is not if to do something, but how. By discussing it as a global project, Nagy puts focus on its “three-dimensional landscape … (local, national and global) and its location within broader processes of globalisation.”

There are several problems with transitional justice as a concept and as a practice: 1) ‘transition’ denotes a period in between war and peace or between authoritarian and democratic rule, thus, risking to obscure continuities in violence, 2) power asymmetries (or instance in the case of a victor’s peace) create selective justice and zones of impunity. Limited jurisdiction may mean that foreign involvement is rarely subject to investigation, and that structural violence and violence against women is rarely addressed (Nagy 2008).

Third country prosecution (i.e. when perpetrators are prosecuted in a country other than where the crimes were committed) is one way in which jurisdictional limits are overcome and the globalization of transitional justice is manifested. However, third country prosecutions are far from universally applied, instead it is fairly particularistic: “either some of the victims have the citizenship of the prosecuting state, or the perpetrators (and some of the victims) are physically present in the country” (Wilke 2005: 84). Moreover, processes of third country justice are almost exclusively confined to liberal democracies. The implications for transitional justice processes are worth consideration. With more victims and perpetrators of mass atrocities residing in Western liberal democracies (temporarily or permanently), and with the increased speed of information dissemination and mobilization, the actions of diaspora groups in relation to transitional justice are becoming increasingly important. While third country prosecution does not provide the answer to countries ravaged by war, it is clearly a phenomenon which has been under-researched as part of post-war global-local encounters.

¹ Mannergren Selimovic (2010) organizes transitional justice into two main concepts (truth and justice), each including several components: (1) truth as (a) knowledge and (b) acknowledgement, (2) justice as (a) retribution, (b) deterrence, (c) expressivism.
Localization and Friction in Transitional Justice Processes

Justice is frequently assumed to be universal in nature and transcending national borders in terms of its meaning and importance. This has led to a scant focus on how it is perceived and conceptualized locally (Hinton 2012). Local justice, however, intersects with national, international and transnational processes, where the result is unexpected and unintended outcomes.

Tsing uses the metaphor ‘friction’ to denote encounters in global-local connections (2004). Previous research on transitional justice has picked up the term ‘friction’ and indirectly or directly used it as an analytical concept to capture the contests and disputes which arise in these processes. Transitional justice is a process which is likely to be met by resistance, since it entails the allocation of blame, claims about responsibility, and criminal punishment. It can be ambiguous, and embed very different meanings: it can be framed as a struggle for human rights, as an international intervention, or as a tool for conflict resolution or state building (Bell 2009: 13-15).

In an edited volume by Hinton (2012), which includes case analyses from Asia, Africa, Latin America, North America and Europe, several different outcomes of transitional justice processes can be discerned: friction can fan or create new forms of violence; it can undermine the rule of law and encourage impunity; give a partial or biased account of the past; and aggravation ethnic or social tension (Hinton 2012). The vernacularization of justice can also produce friction “as the meaning and forms of transitional justice idioms are mediated, appropriated, translated, modified, misunderstood ignored or even rejected” (2012: 12). Shaw and Waldorf (2010) problematize transitional justice in a similar manner in an edited volume, which includes case studies of as disparate experiences as Guatemala, Uganda and Burma. Mannergren Selimovic (2010) uses friction as an analytical concept to understand the dynamic of ‘particular’ experiences and ‘universalist’ claims in post-war Bosnia, focusing on how transitional justice is perceived by the inhabitants of the small town Foca. Her study illustrates “how external interventions often have unanticipated consequences in the form of new dividing lines or the entrenchment of the pre-existing conflict that they were meant to overcome” (Mannergren Selimovic 2011).

How can we understand friction in the context of transitional justice? A first question relates to agency: who is active and for what purpose? The two key concepts which have received academic attention are ‘local’ and ‘international’ – both of which require elaboration. Critique has been leveled against the idea of conceptualizing the local versus the international as different levels, since it “obscures the fact that no locality … exists in detachment from national and global processes” (Shaw and Waldorf: 6). In contrast to a focus on locality, we place emphasis on the different agents involved in transitional justice processes and in the following discussion we emphasize three clusters of agents of particular interest for globalized transitional justice processes: diasporas, who are transnational citizens and retain ties with their homeland; the internationalized state, whose domestic processes are subject to international pressure via other states, international organizations and transnational groups such as diasporas; and the international community, consisting of state actors and

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2 Shaw (2007) analyses truth-seeking in Sierra Leone from the perspective of friction, but is not very specific in developing the concept.
international organizations who promote transitional justice vis-à-vis national governments, but whose actions are not isolated from the local context.

*Diasporas* are situated in the midst of the local and international dynamics. In general, in transitional justice processes, the position of non-state actors (local and transnational) has been elevated. Diasporas engage in various ways in armed conflicts in their homelands, and migration from conflict-areas implies that both perpetrators and victims of mass violence may belong to the diaspora. As victims they have the entitlement to information about, or reparation as a result of, human rights violations (Young and Park 2009: 350). Persons living outside the borders of their homeland have participated in truth commission processes in various ways: “as conceivers of the process, statement givers in the data collection process, advocates for justice […]” The Truth and Reconciliation Commission in Liberia was unique in including a specific diaspora component (see Young and Park 2009). Other examples include diaspora groups taking the initiative to a truth commission in Haiti in the 1990s, and attempts to include returning migrants as well as diaspora populations in truth commissions in East Timor and Sierra Leone. As will be ascertained in our analysis of the three cases, the Tamil diaspora has played a critical role as an advocate of transitional justice in relation to Sri Lanka.

*The internationalized state.* In the globalized era of transitional justice, states do not exist in isolation. They are subject to pressures from other states, international organizations and transnational actors such as diasporas. As an example, in a transnational context, the diplomatic community represents national interest in foreign countries or international organizations. They transcend national borders, reside abroad, but retain national identity and serve as an official representative for their country. This category of agents is particular interesting in the transitional justice process in Sri Lanka, for two reasons. First, Sri Lankan ambassadors have engaged in offensive diplomacy to protect the Sri Lankan government’s rejection of the international community’s demand for inquiries into war crimes. Second, its relation to diasporas and the foreign country they reside in (or the international organization they work for) are not uncomplicated. Diaspora groups in for instance UK have been trying to take legal action against Sri Lankan diplomats allegedly implicated in war crimes.

*The international community.* Just as the state cannot be delinked from the global, so can the international community not be analyzed in isolation from the domestic or local context. For instance, international pressure can be captured by local elites or domestic interest groups as a way of promoting their own political standing or agenda (Subotic 2009). While the term ‘community’ implies a common set of norms and obligations, the international divide is overt in the area of transitional justice. Transitional justice is largely seen as a Western invention and intervention. In spite of international law developing in favor of universal jurisdiction in terms of prosecution of war crimes and crimes against humanity, there are clear divides among key actors in the international arena in terms of how they subscribe to these developing norms. In addition, there is not always consistency between rhetoric and practice of international actors.

A second aspect of local-global frictions, relates to competing ideas and norm in relation to justice. This aspect has both a legal dimension and a normative dimension. Concerning the legal dimension, four rival legal regimes relevant to transitional justice can be outlined: domestic criminal law, international human rights law, humanitarian law and international criminal law. ‘Although often described as complementary, these regimes are distinct and have competing claims to governing transitional justice dilemmas’ (Bell 2009: 19). Moreover, a key question in the field of transitional justice has been in which circumstances it is relevant
to disregard legal obligations and grant amnesties for the sake of stability and reconciliation in the country undergoing the transition. For this reason, transitional justice needs to be problematized in relation to legitimacy and symbolic power struggles. While the transitional justice paradigm claims universalism, it is at the same time very arbitrary in terms of how it functions and in terms of who is held accountable. It is problematic to assume that transitional justice institutions are generally held as legitimate and neutral. In addition, international justice mechanisms are dependent on and interact with interests of local elites (Leebaw 2008: 103). Leebaw argues that “while law can be a tool for regulating violence and exposing abuses of power, law is also utilized to obfuscate and legitimate abuses of power” (Leebaw 2008: 97). As an example, Peskin and Boduszynski shows how in Croatia, the political debate over whether or not to cooperate with the ICTY was manipulated to the advantage of nationalist leaders (Peskin and Boduszynski 2003).

The Case of Sri Lanka

Justice has been contested throughout Sri Lanka’s history. There were asymmetric relations between majority and minority population. Post-independence ‘Sinhalesation’ of the state was seen as an attempt to change an unjust situation (where Tamils had been privileged during British colonial times). These policies were viewed by Tamils as ethnically based discrimination, and became a main motivation for the separatist movement of the Liberation Tigers of Tamil Eelam (LTTE).

What do we mean by transition in the case of Sri Lanka? The decisive end to the war in 2009 – after 26 years of armed struggle – meant that there has indeed been a transition from a country at war, with two warring parties, to one with no war. However, the underlying conflicts that caused the Tamil separatist struggle have not been dealt with. ‘Conflict prevention’ is done by the victorious Sri Lankan government through continued militarization and large-scale development initiatives, while the government avoids taking into account the grievances of minorities, and to deal with the issue of political power sharing (Höglund & Orjuela 2011). Hence, there is no ‘transition’ in Sri Lanka in the sense of transition from a militarized society to a non-militarized society. Nor is there a transition from an undemocratic to a democratic society – in fact, Sri Lanka has been a relatively stable democracy since independence, while after the war, the President has consolidated his power and further diluted the democratic system through constitutional changes.

Sri Lanka has a long history of impunity. From the first outbreaks of ethnic violence, throughout the years of full-scale war, to the continued low-scale violence during the post-war era, hardly anyone has been put on trial, and very rarely have victims received compensation or official recognition.

Nevertheless, Sri Lanka has some earlier experiences of ‘transitional justice’ processes. There have been in total four instances of official initiatives to truth-telling, and there are a few examples of prosecutions. However, these initiatives have often been politicized in the sense that they have served to discredit the opposition party, and/or they have been mere window dressing (i.e. the initiative is there on paper, but there are no results) (Anonymous 2011).

3 The Sinhalese make up about 75% of the population, while the Tamil minority is about 18% of the population.
After the end of the war in 2009, a victor’s peace make up the context and power balance in which transitional justice is to take place. In post-war Sri Lanka, the pursuit for justice is going on in various ways, with varying support and responses. Our case studies focus on three attempts at transitional justice after 2009, but there are other attempts as well:

• A few prosecutions have been carried out domestically. Most well-known is the prosecution of General Fonseka, who had led the Sri Lankan army to victory, who was found guilty not of war crimes but corruption and misuse of powers. Lower rank soldiers of the army have also been prosecuted after evidence of war crimes were broadcasted by British Channel 4.

• It can be argued that amnesties have been granted to a few former LTTE leaders who have been integrated into the government. However, these have not been explicit amnesties, with recognition of crimes committed, but rather examples of how the government has allowed for impunity if the persons in question are deemed useful for the government. Of the about 11,000 LTTE cadres the government had captured at the end of the war, hardly anyone has been put on trial. Instead they have gone through government ‘rehabilitation programmes’ and most of them have been released. There is however a concern over possible disappearances and ill-treatment in custody.

Responses and Dynamics in Transitional Justice Processes

How can we understand the responses, dynamics and outcomes resulting from global-local encounters in the wake of transitional justice initiatives? Given the nature of these mechanisms, they “are a key site of ongoing struggle in the battle for the nature and direction of the transition” (Bell 2009: 25). In Sri Lanka, the responses to transitional justice mechanisms are inextricably linked to understandings of the meta-conflict.

The responses to transitional justice measures can be clustered in four broad categories: (1) resistance, (2) acceptance, (3) ignorance and (4) cooptation. We focus on how various actors respond in relation to a given initiative or process, in this sense causing friction in local-international encounters.

Internationalized Justice? The UN Panel of Experts’ Report

At a general level, the Sri Lankan government and the majority population understand international calls for transitional justice as illegitimate international intervention. Resistance has most clearly been manifested in the process surrounding international pressures on the Sri Lankan government to take responsibility for the war crimes committed by the state forces in the last phase of the war. This resistance has primarily played out in the UN arena. Initially quite moderate in their stance vis-à-vis the Sri Lankan government, Western powers and the UN have become increasingly critical. The 2011 “Report of the Secretary General’s Panel of

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4 Part of the following section appears in Höglund and Orjuela (2012).

5 In 2009, the UN Human Rights Council—dominated by non-Western countries—refrained from raising crucial human rights issues during a special session and passed a resolution (by a vote of twenty-nine to twelve, with six abstentions) that condemned only the atrocities of the LTTE and not the government. However, in 2012, a US-sponsored resolution which called for the Sri Lankan
Experts on Accountability in Sri Lanka” found credible the allegations of a wide range of serious violations of international humanitarian and human rights law by the Sri Lankan government and the LTTE. These include the government’s killing of civilians through widespread shelling, shelling of hospitals, denial of humanitarian assistance, and human rights violations suffered by internally displaced persons and suspected LTTE cadres as well as media and other critics of the government.6

The findings of the Panel of Experts diverged entirely from the Sri Lankan government’s view that, during the end phase of the war, it pursued a “humanitarian rescue operation” and maintained a policy of “zero civilian casualties.”7 Sri Lanka’s initial response was to completely denounce the report, claiming that it was fabricated and the result of illegitimate procedures. However, the government’s reaction was much more far-reaching than that and included a strategy of mobilization of the Sri Lankan population. For example, the main theme of the May Day rally in 2011 was the rejection of the UN report, as people across the country were bussed to Colombo to praise the president and ridicule the UN Secretary-General. “Ban Ki-moon, we don’t want you. We want our president” was one of the slogans chanted by the demonstrators.8

Simultaneously, a campaign to collect 1 million signatures against the report was under way across the country. Moreover, a wide range of Sri Lankan dignitaries—religious leaders, politicians, civil society representatives—issued statements criticizing the report. These reactions demonstrated the indignation felt in Sri Lanka over the criticism from international actors of a government that had finally managed to end a brutal war of more than twenty-five years. But it also vividly displayed the strength and dominance of the government over the Sri Lankan society. Whether an ordinary citizen or a leading figure in society, going against the government could be risky while supporting it could bring rewards.9

The massive condemnation of the report and the UN served to divert attention from the indictments detailed in the report. The mass mobilization served government interests both domestically and internationally by sending a message to the outside world that there was vast
government’s immediate implementation of the recommendations by the Lesson Learnt and Reconciliation Commission was passed in UNHRC.

6 Report of the Secretary General’s Panel of Experts on Accountability in Sri Lanka,” March 2011, www.un.org/News/dh/infocus/Sri_Lanka/POE_Report_Full.pdf (accessed 27 June 2011). Violations by the LTTE include the use of civilians as a human buffer and the shooting of civilians attempting to flee LTTE control, forced recruitment of children and forced labor, and the killing of civilians through suicide attacks. The fact that the LTTE was annihilated and its leadership killed in the war, however, has led the focus for postwar accountability to fall mainly on the Sri Lankan government.


popular support for the government and against the report and, therefore, international intervention in matters of postwar accountability was neither motivated nor welcome. Yet the use of the report for political purposes domestically may have been at least equally important. The external powers pressing for postwar accountability were constructed and perceived as external enemies, in the face of which Sri Lankans needed to unite behind the government. President Rajapaksa hence could use the report as an opportunity to build political consensus and form alliances with other political parties to present a common front against the UN and, generally, to tap into patriotic sentiments that could be useful in future elections.

Among the massive backing of the government in its repudiation of the report, there was one political party that stated that the report did in fact reflect the real situation during the war—the Tamil National Alliance (TNA). Although the risks of saying so officially were high, many Tamils felt that the report finally gave voice to their concerns. Since their experiences of loss and suffering at the end of the war had been silenced in Sri Lanka, the report and the international pressure on Sri Lanka to investigate violations and compensate victims potentially could somewhat tilt the balance of power between winners and losers in the war.

Internationally, the UN report illustrates some of the dilemmas and limitations for transitional justice. The dominant principle of nonintervention in the internal affairs of states, combined with the ongoing US-led war against terrorism, had deterred international actors from intervening to stop the carnage in Sri Lanka when the LTTE (labeled as a “terrorist organization” by the United States and the European Union, among others) was on the verge of losing the war. However, disturbing evidence of massive human suffering and gross violations of international law has surfaced and there is concern that UN passivity in the Sri Lankan case sends a message globally that it is acceptable for states to grossly violate international laws when fighting rebels. This has awakened international powers to the need to set an example by making Sri Lanka accountable for its actions during the war. This attempt at an intervention, however, has been limited by the unwillingness of powers like China, Russia, and many of the members of the Non-Aligned Movement to support it. In addition, it has spurred nationalism and patriotism in Sri Lanka and has been used domestically to keep the country “on a war footing.” The UN, the West, and the Tamil diaspora have been constructed as enemies, providing the government with a new reason to foster consensus and strengthen itself.\(^\text{10}\)

The case illustrates additional points of importance for internationalized transitional justice initiatives. Nagy recognizes that “transitional justice almost always applies to non-Western, developing countries” (2008: 281), while the role of the international community in mass violence is often not scrutinized. The culpability of states advocating transitional justice in Sri Lanka, goes beyond the failure to act decisively in response to the atrocities during the last phase of the war. While China and Pakistan were the main arms suppliers, there was, for instance, continued arms trade by the UK and continued support for military training by the US (Lindberg et al 2011). Sri Lanka’s mobilization against Western imperialism and claims of the West’s double standards in relation to transitional justice issues must be understood in light of the West’s prior engagements in Sri Lanka. The international law and the institutions upon which Western countries build their case for transitional justice, are not seen as neutral.

\(^{10}\) In September 2011, UN Secretary-General Ban Ki-moon submitted the report to the UN Human Rights Council, raising pressure for action to be taken.
Instead these institutions are seen as part of a political agenda which serves the self-interest of the West.

Localized justice? The Lessons Learnt and Reconciliation Commission

Background to the LLRC: government response to international pressure of an international independent commission, which the government vehemently rejected. LLRC was instead a government initiative. The commission was to enquire into the failure of the 2002 ceasefire, the events proceeding it and with whom responsibility for these developments lie. The purpose was to facilitate reconciliation and to prevent conflict recurrence. Public hearings were held in the war-affected areas and the commission also received written submissions, upon which their final report was based. The report was made public in December 2011, and outlines the atrocities carried out by the LTTE, calls for further inquiries into the deaths and disappearances of civilians, and recommends areas for reform to the end of depoliticizing and demilitarizing key state institutions.

Analysis: the LLRC process can be viewed both as acceptance and resistance. On the government side, it was acceptance on the surface, but resistance in the sense that it yielded no real changes.

Links to globalized transitional justice: the findings and recommendations of the LLRC are taken as the point of departure for the UN and international community to put pressure on the Sri Lankan government to deal with justice issues. They are referring to this as a local initiative, localized justice. At the same time, the Sri Lankan government and actors close to it are dismissing the LLRC findings as non-indigenous, the commissioners as ‘not real Sri Lankans’. The general public was not much involved: although given a chance to be heard, the Tamil voices were silenced through media censorship, the findings and recommendations are not used by the government to create a broad and public effort towards reconciliation. Only a few NGOs are trying to bring them to the public.

Link to the point by Shaw and Waldorf (2010): that when we talk about localized justice, it may be the nation-state that defines what is local, while minority groups or victims of atrocities are silenced/ignored.

Globalized justice? Diaspora Involvements in Transitional Justice Processes

In June 2012, a meeting in London, due to be addressed by President Mahinda Rajapaksa of Sri Lanka, was cancelled, owing to concerns over policing amid the threat of large demonstrations by Tamil rights groups. His arrival to the United Kingdom to attend the Queen’s jubilee celebration provoked demonstrations by diaspora Tamils accusing him for war crimes against Tamils in Sri Lanka. In December 2010, during the president’s last visit to the United Kingdom, his planned address to the Oxford Union debating society was cancelled because of similar security concerns. Before President Rajapaksa leaves the UK this time, Tamil campaign groups plan to launch legal efforts to highlight his alleged command responsibility for war crimes and crimes against humanity. The organization Tamils Against Genocide has written to the Metropolitan Police making a formal complaint against the president’s alleged involvement in war crimes and requesting that it opens an investigation. Separately, lawyers acting for the Global Tamil Forum (GTF) have written to the home secretary asking that visas granted to two members of the president’s security retinue be
withdrawn. The GTF is seeking the prosecution of the men, both senior police officers, under the convention against torture (Miller 2012).

The Tamil diaspora from Sri Lanka is believed to make up between half a million and one million persons – representing at least a quarter of the Sri Lankan Tamil population. India, Canada, Germany, the United Kingdom and Australia host the highest numbers of diaspora Tamils. The Tamil diaspora is largely pictured as a ‘victim diaspora’ (Cohen 1997), driven from Sri Lanka by the violent conflict. However, Tamil migration is not solely a direct reaction to violence; it also reflects hopes for upward mobility, family reunification and marriages and a tradition of mobility founded during colonial times (McDowell 1996). Post-colonial migration to Western countries was initially dominated by English-speaking professionals. From the 1980s onwards, more Tamils, increasingly from lower-class rural backgrounds, came as asylum seekers. The LTTE had a strong presence in the diaspora through its own networks, front organizations and sympathetic bodies and individuals. LTTE raised funds efficiently. Many Tamils gave willingly, others reluctantly, and some who resisted met threats. In many places, the LTTE had significant influence over temples, schools and sports events, which was used to canvass support for the struggle and to collect funds. There was thus a politicization of Tamil life in the diaspora. Large-scale mobilization and advocacy work in the diaspora, as well as the importance of the Tamil voting base in certain areas in Canada and the UK, contributed to putting the Tamil plight in Sri Lanka on the agenda of Western powers.

After the demise of the LTTE in 2009, the Tamil diaspora has faced a leadership crisis and a fragmentation of diaspora organizations. However, the Tamil diaspora largely remains engaged in issues of Tamil rights in Sri Lanka, and maintains the vision of an independent Tamil state. As Tamils in Sri Lanka has been rendered voiceless, key diaspora organizations contend that it is now the diaspora that has to continue the struggle for Tamil rights. Particularly, the issue of justice and accountability for crimes committed by the Sri Lankan government, most importantly during the violent end phase of the war, has been high on the agenda of Tamil diaspora groups.

A number of diaspora initiatives have been taken in the field of transitional justice. As described above, diaspora groups have taken action or threatened to take action against alleged war criminals visiting or residing in Western countries. In December 2010, Major General Chagi Gallage, a member of the then Mahinda Rajapaksa’s entourage to London, and a suspect Sri Lankan war criminal, escaped arrest by his premature departure from Britain.

After the war, many former militaries from Sri Lanka have been given diplomatic posts. Analysts argue that this may be a way to reward them for their contribution to the victory over the LTTE, but it can also be a strategy for getting potential threats to president Rajapaksa’s power out of the way. The fact that many of those persons may be guilty of war crimes has led diaspora and human rights groups to protest against their placements and seek to remove them. In September 2011, Maj.Gen.(Retd.) Jegath Dias, deputy counsel in Germany was recalled by Colombo after being informed of imminent investigations by Swiss Government over allegations of war-crimes charges (Tamilnet 2011). In New York, a widow of a senior LTTE member killed in the final battle has filed a civil suit against Major General Shavendra Silva, Deputy Permanent Representative to the United Nations, while in the UK, the Global Tamil Forum has taken legal action against the British foreign secretary for his refusal to
declare Major General Prasanna Silva, the deputy military attaché to the Sri Lankan High Commission in London, persona non grata due to his alleged involvement in war crimes in Sri Lanka.

More generally, the advocacy and campaigns by the Tamil diaspora have served to raise public awareness and put pressure on the international community to take action for justice for the victims in Sri Lanka. Diaspora groups have insisted that the atrocities against Tamils in Sri Lanka should be classified as genocide.

As memorialization of atrocities (other than those committed by the LTTE) have been disabled or repressed in Sri Lanka, the diaspora is a site where commemoration can take place. The tradition of commemorating the martyrs of the Tamil struggle, the victims of the anti-Tamil violence at the onset of the war in 1983 etc. have continued after the end of the war.

Analysis: The diaspora attempts to prosecute war criminals outside of Sri Lanka and lobby the international community to put pressure on the Sri Lankan government on issues of transitional justice can be seen as an example of globalized international justice. When seeking justice and accountability inside the country is impossible, the existence of a large and politically organized diaspora can enable the strife for justice to continue elsewhere. However, as Wilke points out, third country prosecutions will at best only lead to partial and arbitrary processes of justice. They tend to depend on the residence of victims or perpetrators in Western liberal democracies (Wilke 2005). Crimes against humanity in the Sri Lankan war are unlikely to be prosecuted under universal jurisdiction as no state is interested enough of such processes.

The friction of the global-local encounter in transitional justice is here to be found at a globalized level: there is friction between the Tamil diaspora and the Sri Lankan state (represented by its diplomats). Both actors can, in a sense, be seen as both ‘local’ and ‘global.’ Hence, the Sri Lankan government resists diaspora attempts to hold perpetrators accountable, while the diaspora can be seen to resist the Sri Lankan governments silencing of the Tamil war victims.

Conclusions

Transitional justice processes are arenas in which friction between local and global encounters arise. In the interface between universal claims and local understandings of justice, the meaning of justice is fluid and subject to new interpretations (Mannergren Selimovic 2010: 39). An analysis of the pursuit of justice in Sri Lanka in the aftermath of the government victory of the LTTE in 2009, illustrates some of the dynamics at play. As part of a next version of this paper, we want to more systematically explore the concept friction and how different dimensions of the concept can be conceptualized, analyzed and understood. At a general level, friction denotes the processes and changes which are set in motion by local-global encounters and interconnections. In this paper we have outlined actors (agency) and norms and ideas, as two focal points of friction. Are there other focal points of friction which are of particular interest? How can outcomes of friction be understood? And what are implications of friction for sustainable peace?

References