



Accountability and justice in Sri Lanka: a new chapter at last?

Lutz Oette, 19th May 2011

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The recommendations in the Report of the United Nations Secretary-General's Panel of Experts on Accountability in Sri Lanka provide a good starting point for what should be done to free the country from its cycle of violence.

About the author

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Implementing the recommendations of the recently published Panel of Experts' report on Sri Lanka, where credible allegations of international crimes are met with complete impunity, constitutes a major challenge for the United Nations.

The [Report of the United Nations Secretary-General's Panel of Experts on Accountability in Sri Lanka](#) [7] relating to the final stages of the war in 2008/2009 was finally published on 25 April 2011. It is the first time that the country has received the attention at UN level that its record of conflict and violations merits. Unsurprisingly, the Report reads as a major indictment of both parties to the conflict that ended with the defeat of the Tamil Tigers (LTTE) in May 2009: *"...the Panel found credible allegations, which if proven, indicate that a wide range of serious violations of international humanitarian law and international human rights law was committed [by both parties], some of which would amount to war crimes and crimes against humanity. Indeed, the conduct of the war represented a grave assault on the entire regime of international law designed to protect individual dignity during both war and peace."* The Panel went further and identified patterns of discrimination, impunity, repressive legislation and the steady erosion of the rule of law as major factors that have facilitated violations over the years. It roundly dismissed the measures taken by the Government of Sri Lanka following the war that focused almost exclusively on the LTTE's role.

The UN: Time to abandon its bystander role

The Report would have missed an important dimension had it not pointed out the UN's failure to provide protection of civilians during the war. If anything, the expert's analysis of the international role is too narrow. Sri Lanka is one of the countries where most international actors have been bystanders for years. This was not for want of knowledge. Yet, despite tens of thousands of deaths and countless well-documented violations, the UN Security Council or others did not take [effective measures](#) [8] to address root causes. The UN Security Council only acted in May 2009 on the conflict in Sri Lanka, without, however, adopting any resolution.

The role played by regional actors in Asia, support for its 'fight against terrorism' and a lack of appetite to get involved must have convinced Sri Lanka that it could use 'all means necessary' to finish the war against the LTTE without facing adverse consequences. As the Panel found, this included widespread shelling of civilians and numerous other violations, such as extrajudicial killings and torture. (The LTTE was held responsible for a series of violations, including killing civilians and forced recruitment of children)



Coming 15 years after the Rwanda genocide and four years after it endorsed the '[Responsibility to Protect](#)' [9] populations from international crimes, the UN's ineffective responses in Sri Lanka raised anew the question whether the UN and other international actors are able to move beyond rhetoric when dealing with such crimes. This failure was compounded, adding insult to injury, by the UN Human Rights Council's 2009 special session. Acting as the main UN human rights body, it effectively endorsed the [sanitised version](#) [10] of the war put forward by the Government of Sri Lanka, which simply blamed the LTTE and offered basic humanitarian assistance and reconstruction for the future.

The Report provides an opportunity for the UN system to play a leading role in seeking accountability for international crimes committed during the war, offering a means to partly make good its earlier failures. The experts recommend as much when requesting the UN Secretary-General to "*immediately proceed to establish an independent international mechanism ...*" which also has the power to "*conduct investigations independently into the alleged violations.*" The Secretary-General responded saying that "*[i]n regard to the recommendation that he establish an international investigation mechanism, the Secretary-General is advised that this will require host country consent or a decision from Member States through an appropriate intergovernmental forum.*"

However, the Panel's recommendations suggest that the UN Secretary-General has the power to establish commissions of inquiry (under its UN Charter mandate). He has already established such commissions to investigate [violations in Guinea](#) [11] (2009) and the [assassination of Benazir Bhutto](#) [12] in Pakistan (2010). While both Governments consented to these inquiries, there is no reason why an inquiry cannot go ahead without such agreement and be conducted outside the country if need be.

The UN Secretary-General's position may come to haunt the UN as it raises questions about its ability to respond to violations and promote accountability. The Government of Sri Lanka has not shown any willingness to take measures, as highlighted in the Panel's Report. The UN Human Rights Council may not be willing to revisit the matter although this would be an opportunity to erase the stain on its reputation caused by the 2009 session. The UN Security Council, for its part, is also unlikely to act. The position of some of its members on Sri Lanka, its reluctance to endorse commissions of inquiry (other than against weak or isolated states) and its focus on events elsewhere would suggest little appetite to act on the Panel's recommendations any time soon.

The looming inaction following the Report threatens to turn into a stalemate, which would reinforce views about the selectiveness of international responses to international crimes. The consequences and messages inherent in such outcome for the country are painful to fathom. The victims of violations would be denied justice, yet again. The UN's wait-and-see response may be seen as indirect vindication of the Government's position. Meanwhile, human rights defenders, journalists and others may not be able to raise domestic awareness given the lack of political space. This is a recipe for cycles of violations to continue, ignoring the causes identified in the expert's Report.

Competing notions of accountability and justice

Failure to act would constitute a missed opportunity to respond to skeptics who point out the growing gulf between what they may portray as aspirational talk about accountability and contrasting realities on the ground. This would be a pity. The Report is an excellent example of work by a group of experts who have cared to listen, taking a context-sensitive approach to do justice to a complex post-conflict situation.

The Report provides an opportunity to tackle two worrying developments in the field of post-conflict justice. States find it increasingly difficult to ignore or even refuse outright to acknowledge international standards, which require them to investigate violations and provide reparation for violations. Instead, states are all too eager to embrace a notion of reconciliation that excludes accountability. These developments are basically modelled on South Africa's responses to Apartheid, which are frequently taken out of their context and stripped of their victim-centred, truth-seeking approach. In this perverted top-down version of "transitional justice" by those still in power,



reconciliation effectively means blaming former enemies or performing officially endorsed rituals. Reparation becomes a repackaging exercise of measures that authorities would have had to take in any case, such as development and reconstruction.

The Report did not mince its words to dismiss the Government of Sri Lanka's approach to a 'state-sponsored' transition, which by its very nature appears a contradiction in terms. The Panel criticised Sri Lanka's 'Lessons Learnt and Reconciliation Commission', stating that "*the suggestion that there is a choice between 'restorative' and 'retributive' justice is based upon a false dichotomy*" and that it "... *is simply not accurate [to equate criminal justice with retributive justice].*" In addition, "*[t]he Sri Lankan Government should use reparations as a demonstration of genuine acknowledgement of violations and as redress for victims, not as a cover-up for accountability.*" And, finally, "*[u]nless the Government of Sri Lanka takes significant steps to open greater political spaces, allow for free debate and permit independent efforts to document the truth of what happened during the final stages of the war, not even the best-conceived transitional justice approach will be able to make an effective contribution to accountability and respect for the rights of victims.*"

The Panel's recommendations provide a good starting point if not blueprint for what should be done to free Sri Lanka from its cycle of violence - it is very clear that a peace at the expense of accountability, coupled with what the Report identifies as "*triumphalism...on-going exclusionary politics... [and] the continuation of wartime measures*" is the very opposite of what is needed.

One of the first casualties of the war was the truth. Journalist were not allowed to enter the war zone and Sri Lankan journalists were targeted for speaking out - the killing of Lasantha Wickramatunga in January 2009 who had [predicted his own assassination](#) [13] a few days earlier, was the most poignant illustration of the nature of this assault. Truth about violations is not an abstract notion in Sri Lanka. Rather, it is a suppressed memory of harm done and pain and suffering caused. Acknowledgment and truth, including a frank discussion of the root causes of conflict and violations, are imperative not only for the victims of the final stages of the conflict: it is also vital for many other victims of violations committed over the last decades and for Sri Lankan society as a whole, if there is any hope of overcoming deeply entrenched collective trauma. Indeed, the history of shared suffering may, if acknowledged and acted upon, be a unifying force that generates the impetus for doing things differently.

Country: Sri Lanka

Topics: Civil society

Conflict

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