



PEACE

BRIEF

# **IN PURSUIT OF THE RIGHT TO PEACE**

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*“Though the Right to Peace is universally inspired, it must be nationally crafted and locally resonant. A minimum core of peace could be an attractive starting point.”*

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## **ABSTRACT**

*This Peace Brief is inspired by the fresh impetus accorded to the pursuit of peace by the declaration of The Right to Peace as the theme for the International Day of Peace in 2018. It is also an opportunity to focus on the inextricable and sometimes difficult relationship between human rights and peace-making since this theme coincides with the 70<sup>th</sup> anniversary of the Universal Declaration of Human Rights observed in 2018.*

*Declaring the Right to Peace as the theme for the International Day of Peace 2018 provides renewed vigor and stimulus for peace building efforts globally and serves as a crucial clarion call for all peace efforts to realign and recalibrate their endeavors once again upon the basic premise, that without the upholding of human rights, meaningful and sustainable peace cannot be achieved.*

*While this Peace Brief seeks to contextualize The Right to Peace in Sri Lanka, the recommendations and reflections will undoubtedly have a relevance and appeal universally, thus being a tool for advocacy and thought-leadership in all contexts where peace-making is being pursued. It is not intended to cover all aspects and issues of a complex conflict-peace context but rather to promote reflection and renewed debate on how and why peace efforts must be reframed in the context of human rights and indeed, **as** a human right.*

## **INTRODUCTION**

Close to ten years since the war ended, Sri Lanka still remains on the journey of transitioning from a post-war to a post-conflict nation. This is not surprising given the fact that peace and reconciliation is no easy task and is eternally complex, fraught with new challenges at the local, national, regional and international levels.

Sri Lanka has been recurrently faced with the Human Rights versus Peace Process dilemma, particularly during the period following the signing of the Ceasefire Agreement of February 2002 between the Government and the Liberation Tigers of Tamil Ealam (LTTE). There exists clear understanding among peace practitioners that peace and human rights are inextricably linked. Contemporary thinking postulates that the main sources of conflict are human rights violations and that consequently it is only through ensuring human rights that peace can be achieved.

The Directive Principles of State Policy enshrined in the Constitution of Sri Lanka have recognized many of the components of Peace. These include the full realization of the fundamental rights and freedoms of all persons (Article 27(2)), strengthening National Unity by promoting co-operation and mutual confidence among all sections of the people, whether racial, religious or linguistic and taking all steps necessary in the fields of teaching, education and information in order to eliminate discrimination and prejudice (Article 27 (5)), ensuring equal opportunity to all citizens so that no citizen shall suffer any disability on the ground of race, religion, language, caste, political opinion or occupation (Article 27 (6)) as well as a duty cast upon the State to take all steps to eliminate economic and social privilege and disparity and prevent exploitation of man by man or by the State Article 27 (7)).

### **URGENT BUT PATIENT**

In such complex conflict contexts, civil society can play an important role, constantly realigning and recalibrating efforts to ensure the following:

First, that the commitment to fostering peace and reconciliation remains on the national agenda. Second, that the peace and reconciliation processes are supported financially, technically, politically and legally. Third, that society at large as well as citizens are convinced of the need for democratic values and human rights to inform peace and reconciliation efforts so that they are empowered to hold elected officials to account. Fourth, to ensure that the consequences of democratization and peace are received in readiness by communities and peoples as this is the ultimate pre-requisite for sustainability of dividends of peace creating spaces for shaping the national narratives. Fifth, engage in constant reflection to provide thought-leadership and action-oriented recommendations to stakeholders working towards peace and reconciliation.

While the above are broad outlines of roles for civil society, it must be undertaken in a spirit of patience and urgency – where civil society makes efforts to retain urgency of issues, but be patient in approach having the larger objective in mind. All too often, civil society efforts globally are seen to fail due to aborted attempts and losing hope when success is nigh. Moreover, burning bridges in relationships with key actors in peace efforts will not be helpful in achieving the noble aims of peace.

### **THE FORGOTTEN HALF OF THE STORY**

In a discussion about the link between Human Rights and Peace it is also useful to pause for a moment and reflect on how and why human rights violations the world over are on the rise despite living in times where the human rights norm is at the highest point in its development. Perhaps the failure of human rights systems have been primarily due to two related reasons: an over-emphasized and exaggerated notion of individualism coupled with the lack of an equally robust discourse on human responsibilities.

This is why rights — especially in a multi-cultural or multi-religious society such as ours — will have to be balanced with responsibilities. Citizenship after all is about responsibilities in as much as it is about rights. It would be irresponsible of a citizen who is determined to exercise his freedom of expression on an ethnic issue to ignore how it will impact upon members of another ethnic community. Similarly, a community which seeks to enhance its own cultural or religious rights without any regard for the feelings or sensitivities of the other will only exacerbate ethnic tensions.

It is because responsibility is so crucial for the well-being of any society that Mahatma Gandhi was somewhat dismissive of the attempt to formulate a Universal Declaration of Human Rights that excluded any notion of responsibilities. In a letter to the Director of UNESCO in 1947 he observed, “I learned from my illiterate but wise mother that all rights to be deserved and preserved come from duty well done.” Similarly, the Confucian scholar, Wu Teh Yao, who was involved with the preparatory work that went into the formulation of the Universal Declaration of Human Rights had tried to convince his colleagues that it would not be wise to produce a document that only emphasized rights without giving equal attention to responsibilities.

The prophetic wisdom expressed over six decades ago has come to haunt the generations that have followed. It is significant, however, that Article 28 of the Sri Lankan Constitution has taken the proverbial other side of the coin into account and laid down a set of fundamental duties as articulated in Article 28.

It is now time that we build a national conversation so that the importance and value of human responsibilities will permeate the collective conscience of our peoples based on this constitutional ethos laid down already.

### **CREATING A SENSE OF BELONGING**

Although civil and political rights are traditionally considered to be ‘first generation rights’, it is now generally accepted that all human rights are indivisible and interdependent. However, as the civil and political rights on the one hand, and economic, social and cultural rights on the other, offer different benefits to the state and its people, it is legitimate to consider them separately.

One of the key advantages that civil and political rights offer is that they enable citizens to feel involved with the state – and that the state, in some way, belongs to them. This is important in terms of nation-building and securing lasting peace, because if citizens have no connection to the state, then they also have no motivation to avoid conflict. Assessing the advantages that specific civil and political rights offer will therefore demonstrate how they can help to rebuild nations and secure lasting peace.

### **CREATING OPPORTUNITIES**

The aim of economic, social and cultural rights is to ensure that all people are able to meet their basic human needs. The protection of socio-economic rights clearly has the potential to greatly improve a nation’s wealth – and it is evident that conflict is more likely to occur in a nation of poverty as opposed to a nation of prosperity. Whilst there may be some concerns about the cost of implementing economic, social and cultural rights, some of the strongest socio-economic rights protection exists in Africa (i.e. not in

the developed Western world). There is therefore scope to introduce protection for economic, social and cultural rights, even in post-conflict societies having limited monetary resources. Such protection must always be provided without discrimination.

### **RESTORING DIGNITY**

Possibly the most important contribution human rights can make towards reconciliation and securing lasting peace in Sri Lanka and other conflict contexts is the protection they can bring to minorities. Practitioners therefore work closely with minority groups in order to determine how their needs can be best met. It should be borne in mind, however, that an overly minority-focused approach could arouse the suspicions of the majority.

Ultimately, balance and discretion need to be used, ensuring that the social fabric leaves no place for discrimination, discontent or misgiving.

On a related note, a significant lack of minority community representation in the public and state sector, has plagued Sri Lanka since independence. This has greatly affected the minority communities in not feeling the sense of belonging that is essential for reconciliation and national unity. It has also hampered the reflection of the minority communities' viewpoints in national policies and decision-making which is another ground for discontent and conflict between communities. Thus there must be greater lobbying for affirmative action for minority community representation in the State and government sectors.

### **TOWARDS JUDICIAL ENFORCEABILITY OF THE RIGHT TO PEACE**

The Public Trust Doctrine is a judicial innovation. It has not been expressly recognized by the Constitution of Sri Lanka, however, it has been enforced by the Supreme Court based on overarching values of the Constitution.

The Supreme Court has invoked primarily Articles 3, 4 and 12(1) to enforce the Public Trust Doctrine in Sri Lanka mainly regards abuse of discretionary powers of State institutions, exploitation of natural and national resources, and actions in violation of sovereignty of people. The Public Trust Doctrine has found expression in other national jurisdictions as well such as in India and South Africa.

Thus this is a potential intervention point to strengthen further the Right to Peace. Civil society can play a role in generating momentum to develop interest for judicial activism to enlarge the reach of such decisions to catch up with enforcing the Right to Peace by linking the above three Articles together with the Directive Principles of State Policy and Fundamental Duties enshrined in Articles 27 and Article 28 of the Constitution of Sri Lanka discussed elsewhere in this document.

Another legal tool which can be experimented with to enforce the Right to Peace is Public Interest Litigation. This tool allows individuals, groups, communities to challenge State activities and decisions in a court of law. Generally this tool is used strategically as a part of a wider campaign on behalf of disadvantaged and vulnerable groups in society.

The groundwork for this tool has been set in India by its very activist Supreme Court. In Sri Lanka too, there has been an emergence of the usage of this tool by invoking Article 126(2) of the Constitution of Sri Lanka which permits any person either by himself or through an attorney-at-law on his behalf to petition the Supreme Court for violation of a fundamental right. Thus if there can be a movement for lobbying for the constitutionalization of the Right to Peace as a Fundamental Right, it would become a natural and logical consequence to use the tool of Public interest Litigation to enforce such a Right to Peace. An important development in Sri Lanka is the ability for third parties

to bring action on the basis that it affects the rights of the public at large. This again is an area where civil society can play a larger role in the legal enforcement of The Right to Peace. Such innovative legal and judicial methods can be explored in other conflict contexts too to identify potential intervention strategies to strengthen the Right to Peace.

### **A MINIMUM CORE OF PEACE**

In discussing the Right to Peace one needs to ask the basic questions. What is Peace? What is Reconciliation? When attempting to implement and enforce the Right to Peace, it is important to remember that though the Right to Peace is universally inspired, it must be nationally crafted and locally resonant. There are those who are in favor of definitions, however, it can be argued that what peace and reconciliation varies from society to country to community, and thus it is best if their meanings or definition emerge at the end of the process of achieving the imperatives. However, what is useful for those engaging in peace efforts is to adopt a framework of issues or aspects that need to be fulfilled or engaged as a starting point to achieving a peace. The idea of a 'minimum core of peace' could be an attractive starting point.

### **THE POWER OF STORY-TELLING**

Ultimately, it is our stories that connect us to each other. In listening to the stories of others, we begin to see ourselves in others and in turn begin to feel empathy for the struggles and grievances of others. In telling and listening to stories, what is required is not only to create safe spaces but also supportive spaces where people come together and find ways to share their lived realities and perceptions. In doing so, each begins to see the common humanity emerging which can eventually be powerful in generating empathy which is the first step to healing and reconciliation and lasting peace.

What is required then is stronger and more frequent measures to build common and shared multiple narrative among the communities of the country in such a manner that would build consensus and embrace diversity on two aspects: the past, that is the causes, the prevalence and consequences of the conflict for all communities; the future, that is a shared vision based on common grievances and aspirations. This would undoubtedly augur well for building a notion of a shared Sri Lankan identity which citizens can resonate with irrespective of the community or group they belong to.

Civil society can play an important role in such efforts. While there are numerous exchange programs being undertaken by government, civil society and organizations working with community groups, youth and women, what is required is better coordination of such efforts to ensure that there is complementarity of initiatives and an overarching strategy for such guided interactions.

In the final analysis, as a country Sri Lanka is not short of research, analysis and recommendations. Public consultations have been at the forefront of all recent initiatives. That said, what remains is to ensure that such public views and aspirations are fed into the national initiatives and are taken seriously to prevent disillusionment and fatigue. What is more, utilizing such consultation material helps to build better ownership for implementation activities and sustainability of outcomes. In this context, previous reports of the numerous commissions, task forces and committees that have been invested in with leading luminaries in the country need to be revisited and implemented. The thinking is done, the solutions identified, willingness to act is what is required.

### **WHOLE-OF-SOCIETY EFFORT**

It is time that peace making is seen as a whole-of-society effort. This in itself is a means of empowerment as the more blame is passed on others for not achieving peace, the more powerless one becomes. It is necessary therefore, that every citizen of Sri Lanka begins to understand their role in peace making and reclaim their power as citizens.

This must be understood in the context of governments taking the lead in peace making initiatives as the ultimate duty bearers in a country. However, this must not preclude citizens playing their part. Coming together of all sections and communities will in itself be an impetus for peace making and building collaborative resilience.

Further, Sri Lanka as in many other conflict contexts, the difference in the roles of stakeholders has not always been fully appreciated and it is time that these are understood and in turn used to hold each stakeholder account for their respective identified roles.

### **TRANSITIONAL JUSTICE – AN APPROACH, NOT A MECHANISM**

The current discourse in the country on rights is largely dominated by the concept of transitional justice, itself a relatively new expression in Sri Lanka. Transitional justice as an approach largely deals with the fallouts of the war and less on the root causes of the conflict itself. Hence, there is a danger of slipping into the tempting symptomatic relief of issues as opposed to the curative approach that is more meaningful and long-lasting. It loses sights of the longer-term sustainable solutions to the ethnic conflict including societal and structural reforms. Developing shared understandings of reconciliation and broader notions of rights and democratization will help tilt the emphasis in the desired direction. Hence, the recommendation must be that in Sri Lanka the transitional justice process needs to be applied to issues outside of the narrow confines of war, and to governance issues more generally.

There is a general acceptance and understanding in the country that victims need to be central to all reconciliation and transitional justice processes. However, there is a lack of clarity as to what constitutes a victim to be addressed in the current reconciliation and transitional justice processes. The main categorizations are 'victims of gross human rights violations,' 'victims of armed conflict,' and 'victims of violence.' However, the current governance processes, especially the transitional justice and reconciliation processes, speaks of victims in general and will benefit from clarification. The process of determination varies depending on the definition and categorization of victims, which will in turn determine the required responses.

The return of lands to rightful owners has been substantial. However, there are considerable numbers of lands which have not yet been returned. The process seems to be taking longer than desirable and must be speeded up and concluded without delay.

The fate and whereabouts of the disappeared continues to figure in all conversations on individual and national reconciliation in the country. The establishment of the Office for Missing Persons and its operationalization is to be welcomed. There needs however to be speedy implementation of the interim relief proposals made in its interim report, which include Financial Aid Program, Debt Relief Program, Housing Development Program, Educational Support Program, Vocational and livelihood development programs and introduction of an employment quota within the state sector to facilitate family members of the missing and disappeared who have requisite skills and when relevant vacancies are being filled.

The distinction between Relief and Reparations must be emphasized, as has rightly been done in the interim report of the Office for Missing Persons. Relief initiatives suggested are for immediate respite, reparations cover a much broader view of measures which the State is bound to redress based upon the underlying rights that have been violated. There needs to be greater investment of time and efforts for a better coordinated national program of psycho-social relief. While initiatives have commenced, there remain obstacles in terms of administrative will and understanding to speedily implement such programs. This then raises the important need to sensitize the administrative structures of the state to reconciliation and peace activities and their essence.

There has been little understanding and perspective on the significance of establishing defined expectations for transitional justice and reconciliation processes and mechanisms. There needs to be a distinction between agreeing on concrete goals and benchmarks to the extent possible for the reconciliation process - language framing being a critical issue in this regard - and the desirable final purposes of the whole endeavor. It

remains important to provide the public with a vision of how and where the process maybe going and what benefits it offers to all stakeholders.

While there have been attempts and initiatives for effective national campaign and communication with the population this must be coupled with effective strategies to manage expectations of the public.

Creating unrealistic expectations can be costly as it results in disenchantment down the line, a phenomenon already beginning to emerge among activists and sections of the public. The public, and especially the victims should not receive promises impossible to fulfil in a reasonable time-span. Again, not seeing palpable signs of progress may frustrate the stakeholders and have an effect that is opposite from the one intended.

Realistic expectations as to timeline and goals are a more prudent strategy; so being that the nature of the said expectations must also be effectively communicated. Such communication must be bolstered with leaders from all communities and political parties coming together in an island-wide campaign. This will ensure that there is a narrative counter to the existing that will be built in the grassroots which are skeptical of such seemingly alien notions.

Transitional justice initiatives must be coupled with associated campaigns at the national level for a culture that upholds zero-tolerance for violence, impunity and authoritarianism. This should entail measures to encourage recourse to legitimate channels for grievances in the event of injustices. This would also be greatly helpful in guaranteeing non-recurrence to conflict.

As a part of the transitional justice approach in any country, Sri Lanka included, there is a need to explore to what extent there exist local level justice and redress mechanisms – such as mediation and arbitration – in societies and communities, strengthen those which lack efficiency and replicate where adaptable.

A transitional justice approach must also entail the empowerment of local level political leaders on the subjects of reconciliation and national unity so that they may speak the language of harmony and acceptance and diversity in their political and social activities. This must include political leaders at the local level raising awareness within their respective constituencies on the need for a durable political solution for national reconciliation. Local level leaders should in turn be used to lobby with national leaders on the need to address issues of reconciliation, healing and unity as a prerequisite to a political solution to the national question.

## **CONCLUDING REFLECTIONS**

There is an attractive tendency to discuss peace-making and The Right to Peace using a largely purist approach, championing ideals while according scant attention to social, cultural and political realities prevalent in those deeply polarized States in transition.

Thus the call must be for a pragmatic approach – albeit within a purist framework for the establishment of The Right to Peace.

In the Sri Lankan context, a key challenge to such an endeavor would potentially be the lack of strategic alignment between key stakeholders, which include the political forces as well as the policy-makers of the peace-making process, the State's administrative structures as the implementers of such accountability measures, and the ideological skepticism of the general public. Civil society can play a critical role in mediating a desired alignment.

Perhaps one way could be for a clear due diligence framework to align all current peace and reconciliation efforts with a greater focus on outreach, and visibility of not only activities undertaken but also progress achieved both at the quantitative and qualitative levels. The measurement of progress at qualitative levels is not easy but must be undertaken as it will also help in more efficient reporting and monitoring of progress towards building peace.

The process of balancing competing interests and building strategic alignment is arguably in itself a multicultural exercise that promotes restoration of human dignity, builds collaborative capacities and social resilience in communities that can withstand traditional or future conflicts. Further, in addition to addressing past and present conflict, building strategic alignment generates forward-looking shared visions and common foundations for dignity restoration, peace and stability for States in transition. Sri Lanka is a case in point.

For pursuing these objectives, innovative solutions to build strategic alignment and improve coordination and complementarity to enhance efficiency and effectiveness of reconciliation and peace efforts remains critical for strengthening **The Right to Peace** in Sri Lanka.

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## **ABOUT THE AUTHOR**

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