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Paper Synopsis: Transitional justice and civil society prevention of violence in Myanmar and Sri Lanka

Background:

Sri Lanka and Myanmar have experienced decades of state violence and state crimes framed as essential ethnic or inter-communal conflicts by the West. It is true that there is an ethnic dimension to the conflicts but this ethnic dimension is not rooted in fixed and predisposed identities which lead to unpreventable violent conflicts. The term Rohingya, for example, has become for Arakanese Muslims in Myanmar over the years a bare existential necessity to self identify themselves and assert their national identity. This self identification process has been triggered by the contextual situation of increased state discrimination and resistance. Ethnic identity formation is the result of a combination of historically grown contingent and preventable colonially influenced constellations, institutional, religious, caste related, socio-economic, educational and language policies and developments that caused and created favorable conditions for the existence and escalation of an ethnicity based conflict.

In Sri Lanka, which has been basically governed by two powerful Sinhalese family clans since independence, state violence has been historically and recurrently directed against minority Tamil citizens and more recently Muslim citizens. The Muslims, who were depicted as the “good minority” in the past due to their opposition to Tamil secession and for siding with Sinhalese Buddhist preferences, have been turned into the new other and targeted in recent years.

A 30 year old civil war ended in 2009 with the total military defeat of the LTTE Tamil extremist guerilla. During the final weeks of armed conflict several thousands of unarmed Tamil civilians trapped between the front lines and caught in the middle had been killed by Sinhalese army units and by LTTE militia. The UN Office for Human Rights (OHCHR) and other bodies have called since for accountability mechanisms to convict and punish the perpetrators of war crimes and crimes against humanity-to no avail so far.

In Myanmar majority Bamar state violence has been directed for decades against various minority groups and communities in the borderlands and against disenfranchised so-called Muslim Rohingya non-citizens. State violence against the Tamils and Rohingya in particular has been cyclical and repetitive. In Sri Lanka for example a terrorism prevention act which allows securitry forces to
arrest and detain suspects arbitrarily has been in place since the 1970s. Myanmar security forces have harassed and driven Rohingyas across the borders to Bangladesh again and again in the past decades. In Sri Lanka the dominance of Buddhism as state religion and Sinhalese language as national language have been constitutionally engraved. The non-separation of state and religion has aggravated ethnic tensions as radical monks and other nationalists have launched lobby groups to mobilize public opinion and spread hate messages on social media. Ethnic tensions are also intensified by the fact that Muslims (and Tamils), who speak Tamil cannot understand or talk to Sinhalese who only speak Sinhala.

Compared to Sri Lanka, Buddhism is not officially a state religion in Myanmar, which besides the majority Bamar language acknowledges numerous dialects and languages in school education. Myanmar has informally listed 136 nationalities as eligible legitimate citizens. However, the Rohingya have been excluded and other minority groups that are listed have nevertheless engaged in continuous armed insurrections.

Both Sri Lanka and Myanmar are not state parties to the Rome Statute of the International Criminal Court (and therefore criminal perpetrators cannot be arrested or prosecuted except in case of UNSC referral) but have independent and internationally accredited National Human Rights Commissions that may challenge the government on human rights violations or on legal issues.

Whereas Sri Lanka considers itself a (socialist non-aligned) democracy, Myanmar has been ruled for most of the time by the military. In both countries transition to new (President Sirisena in Sri Lanka in 2015) respectively civilian governments (Aung San Suu Kyi and her NLD in Myanmar in 2015) has raised – unfulfilled - hopes for positive and enduring changes towards peace, reconciliation and accountability. Unfulfilled because the new leaders have not lived up to their moral responsibilities and international obligations. Regarding the latter, it should be noted that changes in the international power balance have made it easier for illiberal regimes to ignore calls for investigations and prosecutions. China, for example, the most important strategic partner of Sri Lanka during the civil war years, has never ever criticized the SL government over human rights violations and declared it an internal matter. It also blocked all human rights resolutions in the HRC and UNSC. Likewise, Aung San Suu Kyi has brushed away criticisms from the UN human rights special rapporteur over the situation in Rakhine and did not allow the UN to conduct a fact finding mission in Rakhine. Another key problem in both states is the role of the military that constitutes an impediment to any progress and peaceful transition: the military not only controls large parts of the economy but also parts of the
governement apparatus especially in Myanmar. In a June 2018 interview with
NHK Aung San Suu Kyi sent a clear, almost apologetic message that she was
not to blame: „I know that, and I’m sure you know that according to the
constitution, elected government cannot direct military operations. So of course,
we do not have the kind of overall control that will be exercised by a wholly
democratic government“. (Source: http://www.mizzima.com/news-opinion/doi-
Nevertheless, direct investments and foreign aid have soared to the highest
levels ever and it seems that the West and China either ignore (China) or
misjudge (West) the situation on the ground in Myanmar especially with regard
to the duality of government.

It may not surprise that the Myanmar government has rejected the need for and
blocked every attempt of an independent and impartial investigation in Rakhine.
The latest March 2018 oral update report of the UN fact finding mission visiting
IDP camps in Bangladesh gives evidence of this unwillingness.
(Source:https://reliefweb.int/report/myanmar/statement-mr-marzuki-darusman-
chairperson-independent-international-fact-finding-0

Transitional justice:

In Sri Lanka and Myanmar transitional justice can be framed in roughly similar
terms: First, the fate and whereabouts of those who are missing must be found
and known to their families without further delay. Second, those who seriously
suffered must be adequately redressed so that they can regain their dignity and
hope and start a new life. Third, those who were responsible for these serious
sufferings must be punished according to law and subject to the availability of
credible evidence. Fourth, all the communities across the country must reunite to
rebuild a peaceful and prosperous country and to prevent the recurrence of
violence. To achieve these objectives the mechanisms need to be composed of
four pillars: truth, justice, reparations, and non-recurrence. Among the four
pillars, justice (accountability mechanism or criminal prosecution) is seen as the
most politically sensitive issue. Kathryn Sikkink has shown in her empirical
study „The Justice Cascade“ for Latin America that –local-accountability
mechanisms can be detrimental in achieving lasting peace and reconciliation.
Normative change in global politics can be centrally traced back to the activities
of so-called norm entrepreneurs that are composed of civil society members.
Sikkink has argued that it needs a lot of civil society campaigning and
mobilisation to make norms come eventually true. Even in democracies these
norms cannot be taken for granted as the non-prohibition of torture of suspected
terrorists under the Bush administration shows.

Snapshot civil society in Sri Lanka:
Civil society encompasses several strands of organizations and movements: international NGOs, local NGOs and those supported by or cooperating with the government (so called GONGOs) and traditional informal, non-registered local community based movements (CBOs). CBOs have a long history of non-institutionalized activism and welfare which has been associated with religious deeds, charity and donations. Another strand, INNGOs have been very active in supporting the victims of human rights violations during the Universal Periodic Review in the UN Human Rights Council in Geneva in November 2017. These INNGOs are advocacy based and politicized. Their work has been dangerous at times: For example, on August 4, 2006, gunmen in northern SL murdered 17 local staff members from the Paris-based Action Contre La Faim (Action Against Hunger, ACF).

So what has Sri Lanka achieved so far since the end of the civil war? In the last two years, Sri Lanka self-sponsored UN HRC resolution 30/1, which committed to: review and repeal the Prevention of Terrorism Act; establish a Truth, Justice and Reconciliation Commission; and set up an Office for Mission Persons and an Office for Reparations (OMP). So far only the OMP has been institutionalized and still remains to be operationalized. The Sri Lankan Government has shown no sign of progress on setting up the Truth and Reconciliation Commission and Reparation Programme. Furthermore, the Prevention of Terrorism Act is still in operation and used by the law enforcement agencies. In January 2017, the Committee against Torture noted that the Act is misused to curb the dissent of individuals and politicians and also restricted access to lawyers to facilitate enforced disappearances. Torture continues to be a common practice and is routinely used by police during investigations. The culture of impunity remains deeply entrenched in the system. When ratifying the Convention on Enforced Disappearances, Sri Lanka had accepted the competence of the Committee on Enforced Disappearance (the Committee), but rendered the ratification ineffective by not accepting the individual complaint procedure; this would have allowed individual victims to file complaints to the Committee. Further, the domestic penal code is yet to criminalize enforced disappearance.

The report suggests that key preconditions for transitional justice remain unfulfilled. Assaults, death threats, surveillance and harassment of human rights defenders and victims of violations have continued. Even the chairwoman of the NHRC, a Sinhalese, has most recently received threats and been intimidated.

**Snapshot civil society in Myanmar:**

Civil society in Myanmar presents similar developments to those in Sri Lanka. Traditionally, we find that in government-controlled areas it is the Budhist
monks (Sangha) that have traditionally provided much of the welfare that the state neglects to provide. The Sangha operate Buddhist monastic schools and private education centres, providing free education for the poor, basic literacy skills, and some that teach the government curriculum are registered with the Ministry of Education. Monastic education centres also serve as orphanages which are run by the Sangha and which played a major relief role following Cyclone Nargis in 2008.

In the past, the military junta created its own social organizations or Government Organized NGOs (GONGOs) to counter the independent formation of social movements for workers, peasants, youth, veterans, literary workers, and artistic performers. In 1993, following their electoral loss in 1990, the military (SLORC) created the Union Solidarity and Development Association (USDA)—a mass civil movement designed to foster patriotism and loyalty to the government.

Since the new NLD led government took power, relations with civil society have been tense. It speaks for itself that the ruling NLD expelled an estimated 8,000 Rohingya party members in early 2015 after former President Sinn Thein had disenfranchised them. Another case in point is the arrest of two Reuters journalists charged with violating the colonial Official Secrets Act created by the British in 1923. This outdated law criminalizes any leakage and sharing of government information to third parties and violates freedom of information rights. Aung San Suu Kyi has defended the judicial proceedings undertaken to indict and prosecute the two journalists, whereas civil society groups have requested their immediate release from detention and the dropping of criminal charges.

The possibilities for transitional justice in Myanmar revolve around six major options: criminal prosecutions, a truth commission, a lustration programme, a reparations programme, a memory project and symbolic measures.

What is civil society doing in relation to transitional justice? Civil society has continued to hold events that contribute to or call for transitional justice measures. Below are listed some of the activities.

**Truth:**

Truth-telling and human rights documentation initiatives are being carried out by victims and families, together with influential local religious groups on cases such as the murder of Ko Par Gyi, a freelance journalist allegedly killed by Myanmar’s army, and two Kachin teachers who were brutally raped and killed by soldiers.
To mark the International Day for the Elimination of Sexual Violence in Conflict, a number of local groups advocating for women’s rights held an event on 16 June 2017 that highlighted the fact that rape by security forces continues unpunished in Burma. A few days later, on 21 June, the Vimutti Women’s Organisation, a member of the ND-Burma Reparations Working Group, held an event bringing together former women political prisoners who called for recognition of the sacrifices they have made in the struggle for democracy.

**Memorialisation:**

The 8888 Uprising Museum is being developed by the 88 Generation Peace and Open Society, a group of former student activists, to learn from the events of widespread pro-democracy demonstrations in 1988 and help national reconciliation. Former political prisoners are also trying to build memorials in other parts of Myanmar, such as a monument to commemorate the 8888 uprising that was dedicated in Taunggyi, the capital of Shan State, on 31 December 2016. Other civil society initiatives include commemorations of the war in Kachin State, and the rape and murder in 2015 of two Kachin teachers.

**Reparations:**

Financial support for victims and their families are partially and temporarily provided by groups such as the Association of Political Prisoners (AAPP), U Win Tin Foundation, and Mitta Oway Foundation. Other groups, such as ND-Burma, are currently advocating for the government to take a more active role in upholding the rights of victims, including assistance for services to improve their lives. In July 2017, FHI360 (a US-based donor organisation) and USAID initiated a joint programme to provide fellowships for former political prisoners to serve as interns in Myanmar media and civil society organisations for six months.

**Non-recurrence:**

August 2017 saw the launch of a human rights programme for 73 high schools in Bago region. Between 100–700 students will join the initiative that will conclude at the end of September. The curriculum was put together by ND-Burma member, the Assistance Association for Political Prisoners (AAPP), that is a long-time advocate of prison reform and that has been lobbying for human rights education to be permanently included in the school syllabus.

**Civil society and future conflict prevention/reconciliation**

Transitional justice is a combined effort that involves many stakeholders at different levels of society, the outcome being slow, uncertain and unsatisfactory to some. A quick look at Cambodia shows that it is possible -to a certain degree-
for civil society to alleviate the sufferings of victims and give relief. Civil society groups in Cambodia have been instrumental in giving support to victims before, during and after the trials against former Khmer Rouge war criminals. They also mediated reconciliation between victims and perpetrators which is a timeless process. This was made possible thanks to a framework agreement between the Cambodian government and the UN which negotiated a unique hybrid accountability mechanism that led to the conviction and sentencing of former Khmer Rouge cadres such as Brother Duch. Justice was at least partially done and this helped to restore the truth. A painful grassroots or face to face reconciliation process has been underway, but no financial reparations were given to the victims.

Despite all the activities undertaken and efforts the current government is still as corrupt and illiberal as it was before and it can be said that the overall impact of transitional justice in terms of „transition“ towards a political culture of non-violence, participation, empowerment and peaceful co-existence has been minimal. The position that military strength, stability, national interest and economic development should be the overriding priorities has been and is still predominant in Asia.

Likewise, in Myanmar it has been observed that violence and intolerance have continued with the stepwise transition towards a less illiberal regime. The same is true for Sri Lanka where anti-Muslim riots have reoccurred after the new government took over in 2015.

The dilemma of transitional justice seems to be that it is not „transitional“ because it focusses on victims of past violations and is not perceived as a larger future oriented project of non-violence, empowerment, participation and transformation. TJ is treated as a separate issue which does not concern the silent majority.

What are the prospects for civilian conflict prevention in both Sri Lanka and Myanmar under the current conditions of illiberalism and overmilitarization?

In Sri Lanka various groups and organizations have been trying to foster the dialogue between communities across religious, language and ethnic divisions to mitigate violence. One example is the National Peace Council (NPC) who works in partnership with USAID and Generations for Peace. In cooperation with international partners the NPC proposes TJ oriented workshops and activities. NPC conducts training programs that range from non-violent communication, mediation, and conflict sensitivity to gender equality. The operational logic of these interventions is that if Sinhalese, Tamil and Muslim religious and civil
society leaders interact collaboratively and problem solve around common interests, then inter-ethnic relations at the community level will improve.

Many other civil society activists have addressed the problems of recurrent and structural violence in Sri Lanka. One example is the International Coalition of Sites of Conscience. Mothers from different sides of the civil war have been sharing their stories in community workshops that employ holistic, integrated, and multidisciplinary approaches to address issues of truth, justice and reconciliation. Another local example is a new Sri Lankan film „Thundenk“ (English title ‘Her. Him. The Other’) which targets the Sinhalese public and promotes reconciliation with the Tamils. The film funded and produced by the governmental „Office of Unity and Reconciliation“ (ONUR) was released in February 2018. Renowned film directors Asoka Handagama, Vimukthi Jayasundara and Prasanna Vithanage maintain that the film does not advance a personal political agenda and is a genuine effort to promote reconciliation. The film is a tribute to what Vithanage, a Sinhalese, has said earlier: „Many people now talk about reconciliation and say that after the war, there should be peace and unity between Sinhala and Tamil people. But for peace to be attained you have to look at things from the point of view of the other“. Vithanage describes his call for introspection as follows: “All three characters in the three separate short films of „Thundenk“ are looking for someone else, ‘The Other’; they end up finding themselves in the other”. It remains to be seen if movies and art can challenge the cycle of violence, distrust and hate in the divided country.

In Myanmar Walton et al have identified the following traits of local community peace brokers and mediators that helped to prevent the outbreak of violence against Muslims in four villages:

„(Instead), the common trait of the individuals involved was that they had built up trust and credibility in communities and with local authorities through previous activities that enabled them to counsel against violence and mediate disputes. They were land activists, advocates for disadvantaged populations, or community elders who could act as trusted interlocutors in situations where communities either were not directly communicating with one another, or when they would not have been inclined to believe statements from the other community“ (Source: https://teacircleoxford.com/2017/01/13/failed-riots-and-conflict-prevention-in-myanmar/ ). Walton et al. stress that the generation of positive narratives of past shared experiences and interests ensured the mitigation of violence: „Many people drew on past experiences of solidarity, inter-dependence, or peaceful coexistence with neighbors of other religions. These included times of crisis when members of different religious communities had supported one another as well as local, town and region-based, identities
that could help people to rise above momentary tensions or misunderstandings. Finally, an effective argument seemed to be that the tense situation and apparent potential for conflict was the effect of political machinations, orchestrated by people in power (“https://teacircleoxford.com/2017/01/13/failed-riots-and-conflict-prevention-in-myanmar/). Walton et al. caution that these activities were solely aiming at preventing the outbreak of relentless violence (negative peace).

The findings of Walton resonate with the scholarship of Varshney (2002) who examined Hindu-Muslim violence in India. He has argued that inter-communal ties between Hindus and Muslims, not intra-communal ties among Hindus or among Muslims, were a strong bulwark of communal peace in India. What has prevented the violence is, following Putnam “bridging capital”— the strength of local intercommunal ties between Hindus and Muslims. He also argues that the effectiveness of the state response is in part a function of how integrated relations are in society.

**Conclusion**

It is at this stage and with the limited availability of compelling case studies too premature to draw any conclusions or conceive a model of conflict prevention rooted in civil society activism. The real or imagined possibility of *non-violent communal co-existence* (negative peace) amidst a climate of religious and ethnic hatred, impunity, nepotism, xenophobia, nationalism, overmilitarization and huge economic disparities and poverty warrants further field studies in the rural areas and remote borderlands of Myanmar and Sri Lanka.

**Further readings:**

Akihiro Ogawa (ed) Routledge Handbook of Civil Society in Asia, Routledge 2018


Ashutosh Varshney, Ethnic Conflict and Civic Life: Hindus and Muslims in India, Yale University Press 2002