

The Aftermath of LLRC; the Reality and Rhetoric.

Prof: Karunarathne Hangawatta, University of Las Vegas, USA

There are certain issues that have arisen since the LLRC Report has been released for public discussion, both at national and international level. My focus is on the public discussion and the public actions but not on these issues.

The frame of analysis with regard to the public discussion is based on perceptual reality as against objective reality. There are two types of reality; the perceptual reality which is what most people believe is true but then there is the objective reality which is not different from the perceptual reality. Usually people's perceptual reality can be influenced by what is published, what you read, what you hear from your parents or from your neighbors or what not but it may not be necessarily real although you believe that it to be real. Just as a very simple example, if I say a table, you already get a picture of a table, like something with a flat surface and long legs, four legs at least. But if you say a table to a Japanese, the picture in his mind is very different, something very short with short legs. So I will analyze these aspects using historical theories, social scientific theories and law all together. Everyone knows that the LTTE operated outside Sri Lanka through its operatives and their crimes included response by weapons, human smuggling and money laundering among other crimes.

Although they had an international operation, this issue was not internationalized until nine eleven. When it was internationalized it exposed the brutality of tactics adopted by the LTTE and it helped Sri Lanka to win support from some other countries; in fact Mr Kadiragamar as the foreign Minister used that for the benefit of the country at that time. Internationalization was cleverly manipulated by LTTE which reached its highest point with the Norwegian brokered peace process. With the internationalization Sri Lanka came to be viewed as a failed state that need intervention. Under the International law there will be no intervention whether by the Human Rights Council or the UN or by other states even by regional states. Unless they believe that a particular state has failed. So state had failed to be a good member of the international community, and they intervened because threatened the democracy, global security, regional security and so on. Then came international intervention in the terms of the peace process. The problem was that the government of Sri Lanka at the time embraced the peace process. Obviously that brought some repercussions on the foreign policy which until then was hardly in the fore front of the Sri Lankan domestic political scene. The internationalization helped bring together the neighboring countries who were willing to help Sri Lanka. However the western nations' involvements was based on their belief of stability, security and development. So for them it was a matter of helping a failed state to secure, stabilize and develop in accordance with their norms of democracy. Western nations have focused on the threats to global security, generally, in terms of trade, commerce and regional security. The Democratization, peace and stability really have become overtime instruments of utility for international intervention or interference. The diplomacy took center the stage and the role of the diplomacy was transformed. After the peace process ended abruptly and the humanitarian war against terrorism intensified, the internal security became the central focus. With that the defense sector became a prominent player and the Foreign ministry was relegated to its traditional role of focusing on international relations to accommodate, promote and support for the domestic policies and the political policies with the war at the top of the agenda.

Especially after the war, rule of law, good governance, equality, human rights, war crimes and accounting for the crimes have become major instrument of utility for the so-called international community. LTTE remnants, sympathisers and spoilers manipulated the relevant players through media campaigns and other means. And these elements have launched a massive campaign to labour and stereotype the majority of the Sri Lankan population, its political leaders, the military, and the Buddhist clergy as haters, murders, war criminals, human rights violators and oppressors. This campaign portrays Sri Lanka as a failed state and a dictatorship which is even worse than before the ending of the war. The appointment of the LLRC was labeled by these campaigners as a muted response of a failed state to international moves to interventions. The LLRC was influenced by the thinking on need of diplomacy perhaps due to international pressure and focused on the instrument of the utility and followed up with the recommendations to address these issues towards reconciliation. The biggest weakness of the report is that to some extent it tacitly accept the assumption that the Sri Lanka is a failed state and moved on to make recommendations. According to my view the LLRC is a golden opportunity to challenging the assumption that Sri Lanka is a failed state by showing that the foundation and pillars upon which this assumption is based perhaps empirically invalid and intellectually unreasonable. The national and international critics were happy. That's why they embraced the LLRC report because it had referred to their basic assumption. They quickly accepted the LLRC report and insisted upon the implementation of recommendations. At the same time they criticized the parts of the report that did not agree with their instrument of utility.

Post conflict violence

So it is necessary to examine the process, experiences of war and peace time. Can new patterns of violence during peace time be linked to the experiences of war? Violence must be understood in the political and the social context.

I have looked at in several countries that have had experiences of conflicts, sometimes long term conflicts running into 20/30 years as well. Generally all research done and every publication show that post conflict violence can be linked to disarmament, demobilization and reintegration. Some of them can be categorized as political spoilers who use violence strategically to undermine peace. Then violence by the state actors against pursued enemies. Then there's economic type of violence, for examples, robbery, extraction, kidnapping, prostitution, drugs and sometimes to eliminate or scare off their competitors. And then there are just ordinary criminals who commit crimes against fellow community members, power play, gangs and turf wars. So there are all these different types of violence for different reasons.

Post war societies

In post war societies crime violence is influenced by many exogenous factors. Exogenous means in this case outside the government control. There are certain effects that take place in post conflict countries which are outside the government crime policy; economic stress, political victimization, family disorganization and drugs and changing routine activities. Economics stress undermines legitimacy and weakens social bonds.

Social disorganization/Social strain

After a war development takes place at rapid rate. With the rapid development what happens is social strain that is new things, all kind of goods, nice televisions, nice cell phones. Various things come to the market and you want to have them but you do not have the ability. You have more needs but you do not have the ability. It causes violence, subcultures and conflicts, which is a mark of prospective and macro economies etc.

However there is a paradox. How do we explain rising crime rates during post war accelerated development period? Crime trends depend on specific economic stress measures. Economic stress measures fall into two categories. There are absolute measures which are poverty, medium income, unemployment etc. But there are relative measures, relative deprivation, income inequality and inflation. These also affect crime trends.

Legitimacy

Max Weber defines legitimate power or authority as the probability that certain commands or all commands from a given source will be obeyed by a given group of persons, and adds that the basic criteria of legitimate power is a minimum of voluntary submissions. Legitimizing process explains and justifies laws and social rules to new members and succeeding generations. Crime rates may be related to trends in legitimacy of political institutions. Protests, riots, breakdown of law and order, community tensions, anomies (means hopeless and strain all are positively related to social breakdown). With social breakdown, in formal social controls such as family, work, school and voluntary organizations become unable to channel individuals to comply with conventional behaviour. The results are antisocial behavior and crimes.

Resource mobilization theory

Collective action requires both access to resources and the development of a well defined organizational structure and without that it will not happen. Social disorganization causes crime and collective political unrest. Collective political unrest occurs due to lack of resources. Legitimacy depends on the attitude of the people do towards political institutions and the leaders, attitudes may be dependent upon perceptions than reality.

A family helps regulate crime rates. Individuals with no family connections, single parents with families, women in labour force, children and youth spending more time away from family, in school, in tuition classes, or at home alone, contribute to crime.

A historicism

A historicism is that when we separate theory and history, there is a tendency to the treat social processes, as if they are independent of history. That is what is going on right now when people talk about good governance, rule of law, violent crimes. Even in Sri Lanka they take it as if it is just happening now, forgetting the history completely. Has the history had anything to do with it? Nobody asks, nobody wants to find out. Treating time as a historic focusing on present without regard to history, they ignore external events and relationships. They assume that the relationship between

independent and dependent variables are consistent over a given measure of time. Post war crimes across cultures, I looked at different cultures and different countries. Criminal decisions making by individuals as a response to their social economic and political environment. This is one of the things that I found. Also external factors have to be analyzed in the historical context involved to understand post war crime even across cultures, even in other countries. Is there any relationship between crimes and the exogenous factors? Are these symmetrical or asymmetrical longitudinal studies for a long period of time show a symmetrical relationship between age and crime. There is a direct relationship between age and crime; the highest crime committing age is between 18 and 25.

Research shows an asymmetrical relationship between crime rates and collective actions. There are varying patterns and level of violence at a cross countries and cultures. Some of the countries cited are Salvador, Mozambique, Sierraleon, Liberia and even South Africa. What did we see here from research? There were countries where there was long term war fair. Violence was related to disarmament. The weapons collected by the United Nations became unaccounted for. Many of these weapons had been sold in the black market and they were smuggled into neighboring countries. Then political violence, polarization, election violence, police brutality and crimes by police and soldiers for profiteering some times, economic, money laundering etc resulted in. In Liberia there was post war crime wave. In Mosambique there was an up surge in violent crimes. Sierraleon was almost free of violence after the peace. South Africa reported a very high rate of violence crime. Today South Africa has the highest murder rate compared to most other countries. This is the report of the Centre for Study of violence and Reconciliation which was submitted to the ministerial committee about South Africa after a long study. These are the reasons they give for exceptionally high rates of violence in south Africa after peace; Brutalization and culture of violence, the impact of the apartheid on families and the education system, racism, tribalism, firearms and impunity in township areas, they still have discrimination. So factors that reinforce apartheid or post apartheid society inequality structural economic factors under or even performed in state institutions including the criminal justice system are not performing well in there regional context.

Rule of law good governance

Rule of law and good governance is principle of legality, following every law and every rule to the letter would not uphold the rule of law. People are sovereign. They have right not to obey unjust law. Laws can be unjust and arbitrary from a rational and objective standard. Every rule has an exception. The exception introduced to the law discretionary exercise of decision making authority. There has to be a structured discretion, good example is sentencing guide lines.

Rule of law good governance; the rhetoric

Rhetoric is generally based on the perceptive reality. There is lot for rhetoric that is without objective assessment or evaluation. That is why even individual decision making is blamed on the state. Exogenous factors are ignored .

Rehabilitation and reintegration...

Rehabilitation is focused on the individuals rather than reintegration. Reintegration must address

exogenous factors and not just individual factors, and otherwise the effect based on the experience of other countries has been a failure including in south Africa and other places.

Reconciliation

With regard to reconciliation the biggest issue is the internationalization of domestic issues which fails to examine issues objectively based on empirical observations and yield into rhetoric. There is also power play within and among government and among other actors as well.

It is very important to understand that unity can not be established to attain reconciliation between just two communities by addressing grievances of only one community. That seems to be happening here. Some people seem to think that by addressing perceived grievances of only one community we can bring about reconciliation between two communities. There is a need to address grievances of all communities and find some common ground by focusing on one community. Otherwise we may exacerbate the problem and further divide the nation .

As regards the future we must examine the domestic issues adequately using empirical science.

If we really look at the facts, various movements were tried. There was modification in government, parliamentary democracy to dual republican parliamentary democracy. A new electoral system was introduced, first past post to district based provincial system. Now administrative system and mechanisms were introduced. Politically appointed regional governors and elected Provincial councils excising control over the civil administration, law and law enforcement methods and a processes were introduced. Emergency regulations, Police assuming defence role and defence forces taken police in duties in order to prevent terrorism.

In contrast, there was hardly any tangible actions taken by the international community to stop ramifications until the incident of 9/11. Since 9/11 the threat posed by the LTTE received the attention from them due to the ramifications resulting from LTTE support network abroad including the Diaspora because they were committing crimes and threatening security. That is the reason from a global security point of view for which they became interested.

Both the governmental and nongovernmental NGOs shifted their focus to examine the measure adopted by SL and foreign governments and UN agencies, to counter terrorist activities that became the focus after the 9/11. After the Tsunami, many NGOS and INGO became increasingly involved in SL only for good purposes.

But the majority and the minority in SL specially can not be identified quantitatively, by simply counting; it is fallacious. When you look at the history, the demographic, social and political conditions of SL you'll see that we cannot do that. There had been disparities based on allocation of resources among and between rural and urban communities. Rural communities have been minorities for a long time, urban communities also in some places are also some minorities in that sense and there are other demographic groups.

These disparities could have created feelings of discontent, suspicions, even discriminative attitudes and perceptions. These disparities must be addressed for there to be truly reconciliation and

unity .

After the independence when we see looking in history an upper class of minority comprised of different ethnicities rule in this country. That is why the left is led by intellectuals, for example, Colvin R De.Silva, NM Perera etc. Then SWRD Bandaranayaka entered the picture. He provided as alternative to the left, promised of rural upliftment and majority of underclass then joined him which led to a major electoral victory. Mrs. Bandaranayaka's government focused on urban labor and then of course the rural and other under class revolted. That is what happened in 1971.

That led to the adoption by the government of various policies for rural youth and some of the policies marginalized other minority groups, especially ethnic minorities .

Since the independence various governments attempted to address those grievances, and we have to look at all these factors, industrialization, commercialization, exclusion of rural areas, official languages etc. Affected ethnic minorities brought in to their political leaders such as Mr. Chelvanayagam, Wadukkodi resolution 1976, milestone in the history of communal politics in SL.

In SL such leadership did not involve among the Tamil political leaders. They abandoned the Tamil people. They either ran away for safety or they are abandoned.

So thus the useful republican revolts and insurgency later transformed into brutal terrorisms; this is violence. So under the present constitution, of course, we have a problem, some political and constitutional blockades. We claim this is one of the major problems that we have to think in realizing any constitutional reform.

Some political exercise of the power has led to corruption and lack of people participation for decision making. That is why I say addressing ethnic harmony on law will not solve the problems in SL society. We have to be very careful when we talk about the reconciliation between whom, what that type of etc.

There is no national question with an ethnic bias to be resolved. With every reconciliation there has been appropriate political process that involve public consultation. When the government appointed all party conference to make a constitution, I criticized that it will end up with failure because we are seeing problem with how the politicians are running the country and we are asking the same politicians to come up with a Constitution to solve the problem.

How can we leave even or better how can we rule these people. Whom should have processes that involve public consultation? In fact on the point, the United Nations Human Rights Council has put out a document on rule of law. How rule of law can be created through public consultation.

In a democracy inequalities need not be resolved for reason of fairness or distributive justice but simply because such inequalities undermine democratic legitimacy. That is why we have to resolve them. If we start resolving them just for fairness or distributive justice that will not make democracy prevail.