Women and Female Ex-Combatants: Challenges of Transitional Justice in Sri Lanka

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Declaration

I hereby declare that this thesis is wholly based on original work carried out solely by me during the period of my candidature. This work contains no material which has been submitted for the award of any other qualification elsewhere and contains no material previously published or written by any other, except where due reference has been made in the text.

Nirmala Indumathie Dias Paranavitana

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Abstract

Civilian Women and Female Ex-Combatants in Sri Lanka: Challenges of Transitional Justice

With the end of the three decade long conflict between the Liberation Tigers of Tamil Eelam (LTTE) and the Government Security Forces in 2009, the population of civilian women and female ex-combatants in the North and East which comprised the majority of the total Sri Lankan population were faced with post conflict issues that created obstacles to restoring their lives. The Panel of Experts appointed by the Secretary General of the United Nations for Sri Lanka asserted that the Government of Sri Lanka should implement a transitional justice program as part of post conflict peace-building. However, during the process of implementation, the idea and practice of transitional justice was challenged by the socio-cultural system in the North and East of Sri Lanka. This thesis examines the nature of tensions that arise between the main stakeholders of transitional justice, i.e. civilian women and female ex-combatants, and the socio-cultural system that exists in North and East of Sri Lanka.

In this thesis, I argue that transitional justice for Sri Lanka should look into the socio-cultural norms that pose an obstacle to the implementation process. As much as the two concepts of restorative and retributive justice are in tension with each other, during the implementation process, transitional justice was further challenged by different post conflict contexts, and socio-cultural systems within which civilian women and female ex-combatants live. Through employing selective comparison of transitional justice processes in others post conflict contexts, this thesis explores the feasibility of combining and sequencing transitional justice mechanisms in Sri Lanka to adopt a justice process which goes beyond retribution. It also assesses the possibility of combining Disarmament, Demobilisation and Reintegration Programmes (DDR) for ex-combatants with transitional justice mechanisms to ascertain the feasibility of such an approach for Sri Lanka. In order to cement my findings, data collected during fieldwork interviews with
civilian women and female ex-combatants in the North and East of Sri Lanka in early 2013 are utilised to make a clear distinction between the transitional justice policy proposed by the United Nations and the Government approach. This study contributes to the transitional justice scholarship as a critique of its application in the unique post conflict context of Sri Lanka, while also assessing the role of women within transitional justice mechanisms, while taking into account the civilian women and female ex-combatants.
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Chapter 1

Introduction

This thesis will discuss the applicability of transitional justice to the challenges ahead of women and female ex-combatants in post-conflict Sri Lanka. With the end of the three-decade long conflict between the Liberation Tigers of Tamil Eelam (LTTE) and the Government Security Forces in 2009, the population of women in the North and East which comprised the majority of the total Sri Lankan population, were faced with post-conflict issues that created obstacles to restoring their lives. Amidst these critical challenges, the United Nations Secretary General appointed a Panel of Experts to advise him and to investigate the ways in which the Government of Sri Lanka could address challenges that fall within international human rights and humanitarian law. The Panel of Experts appointed by the Secretary General of the United Nations for Sri Lanka asserted that the Government of Sri Lanka should implement a transitional justice program as part of post-conflict peace-building (Andrieu 2010).

Transitional justice is a process of peace building that is undertaken in a post-conflict phase judicially or non-judicially. Judicially, retributive justice takes place through trials, prosecutions and vetting programmes. Non-judicially, restorative justice takes place through truth commissions that lead to reintegration programmes for victims of conflict, civilian women and female ex-combatants in particular. Retributive justice that aims to address human rights violations through legal remedies focuses on repairing the crimes committed and bringing legal justice to the victims. Restorative justice promotes healing rather than hurting, moral learning, community participation
and community caring, respectful dialogue, forgiveness, responsibility, apology and making amends and, finally, citizens’ empowerment. However, tensions occur when these two aspects of justice are combined as transitional justice is implemented in different cultural contexts. The situation becomes even more perplexing when transitional justice is implemented with respect to post-conflict women’s issues.

At present the majority of the Sri Lankan population in the North and East of the country is comprised of civilian women and female ex-combatants who were reintegrated after rehabilitation. More than 23.4% of households in the North and East of Sri Lanka are now headed exclusively by women (Shadow Report WMC 2010). According to recent research carried out by Minority Rights International, the Ministry of Child Development and the Women's Affairs Ministry, there are over 89,000 war widows in the entire North and East and around 20,000 female-headed households in Jaffna. The latest statistics by the Census and Statistics Department notes that 80% of the total households in the Northern Province are households headed by widows/divorced/unmarried women (Census & Statistics 2013). These households face unemployment, lack of education, difficulty accessing clean water and security, and human rights issues together with psychiatric disorders due to the loss of family members (International Crisis Group 2011, Korf 2004, Media release ICG 2012). Research carried out in Batticaloa noted that female-headed households bear the main burden for caring for the traumatised and sometimes injured, returning female former soldiers. On occasion, these disabled civilian women and female ex-combatants find solutions to their health-related problems in the absence of social welfare services or specific medical or psychosocial care in their own neighbourhoods (Krishnan 2011). As of 7 October 2013, out of the 12,000 total number of LTTE cadres who surrendered to the security forces, 11,206 were released by the Government of Sri Lanka and reintegrated after providing them with
education and employment. The rehabilitation process was undertaken with a mixed gender population of nearly 12,000; within this number, there were 594 children and 2032 females (BCGR Sri Lanka 2013).

However, the stigma associated with the integration phase in their community remains and prevents women from restoring their lives (Bouta 2005, ILO Guidelines 2010, 27, Krishnan 2011). The post-conflict phase needs active participation of women in order to make it an inclusive peace-building process. Furthermore, given the critical nature of the challenges that stem from a three decade long conflict, there is a necessity to address the challenges in a victim-centric and needs based approach.

Scholarly contributions since the 1980s have pointed out how women are formulated within post-conflict societies and how they have actively participated in peace building. Though there was keen interest among practitioners and activists to include women in the multilateral agenda within post-conflict peace building, this objective became successful only in 2000 through the UNSCR 1325. Despite many attempts by the United Nations to highlight the need to include women in all areas of peace-building in order to bring punitive, distributive or certificatory justice for the injustices they have undergone during the conflict, in practice these attempts were thwarted by the socio-cultural systems in the respective countries (Boraine 2006). Similarly, due to the socio-cultural systems, these challenges were apparent in the Sri Lankan post-conflict context when transitional justice was implemented in the North and East of the country.

This thesis examines the nature of tensions that arise between the main stakeholders of transitional justice, i.e. civilian women and female ex-combatants, and the socio-cultural system that exists in the North and East of Sri Lanka. In this
thesis, I argue that transitional justice for Sri Lanka should look into the socio-cultural norms that pose an obstacle in the implementation process. Further this project will underscore the necessity of addressing the challenges ahead of civilian women and female ex-combatants through a victim-centric, needs-based approach.

As much as the two concepts of restorative and retributive justice are in tension with each other, during the implementation process, transitional justice was further challenged by different post-conflict contexts, and socio-cultural systems within which civilian women and female ex-combatants live. Through employing selective comparison of transitional justice processes in others contexts, this thesis explores the feasibility of combining and sequencing transitional justice mechanisms in Sri Lanka to adopt a justice process which goes beyond retribution. It also assesses the possibility of combining DDR for ex-combatants with transitional justice mechanisms to ascertain the feasibility of such an approach for Sri Lanka. In order to cement my findings, data collected during fieldwork interviews with civilian women and female ex-combatants in the North and East of Sri Lanka in early 2013 are utilised to make a clear distinction between the transitional justice policy proposed by the United Nations and the Government approach. This study contributes to the transitional justice scholarship as a critique of its application in the unique post-conflict context of Sri Lanka, while also assessing the role of women within transitional justice mechanisms.

Female-headed households in the North and East are estimated to total 59,501, out of which 42,265 of those live in the Eastern Province and 16,939 in the Northern Province. The total population in Jaffna is 583,378, out of which the total female population is 307,845, which is more than half of the total population (Census 2012). In Batticaloa the women population comprised 274,305 out of 525,142 (Census 2012). The lives of these vulnerable groups have never reached normalcy due to
the lack of skills and education which they missed out due to the involvement in the conflict as combatants or due to various haphazard that hindered them from attending school for lengthy periods of time. Presently, Sri Lanka is challenged by women as victims in need of protection and reconstruction of their identities (International Crisis Group 2001).

Though there had been a longstanding move towards women been included into the peace-building agenda, such moves finally came to reality only in 2000, with the enactment of UNSCR 1325. However, bringing gender justice through a multifaceted agenda, as such initiatives overlapped with the existing socio-cultural systems in respective countries. This overlap was visible in the Sri Lankan context as well. Hence, this research will examine closely the tensions that arise between the main stakeholders of transitional justice. I will further argue that transitional justice in Sri Lanka should look into the socio-cultural norms that pose an obstacle to the implementation process and highlights the need to look through a victim-centric lens when addressing challenges ahead of Sri Lanka. I further noted that there is a visible tension between retributive and restorative justice in the implementation process. In order to avoid these tensions, I explored the possibility and feasibility of combining and sequencing transitional justice mechanisms in the Sri Lankan post-conflict context, which could go beyond retribution to find sustainable peace.
I have further emphasised on the main stakeholders of peace dividends, that is women and female ex-combatants in North and East of Sri Lanka, as subjects that brings a clear distinction between transitional justice policy proposed by the United Nations and the transitional justice policy proposed by the government of Sri Lanka. By elaborating on this approach, this research project contributes to the transitional justice scholarship as a critique of its application in this unique post-conflict context as Sri Lanka, while assessing the role of women within transitional justice mechanisms.

This research project will further answer the following research questions;

1) What are the critical and long-term challenges ahead of civilian women and female ex-combatants in Sri Lanka?

2) What issues impact the transitional justice mechanisms in the implementation of the reconciliation process?

3) What are the most feasible goals of transitional justice mechanisms for SL women and their challenges that affect human rights?

4) What lessons can policy makers learn from international experiences to remedy the challenges and determine the prospects of implementing Disarmament Demobilisation and Reintegration (DDR) programs for female ex-combatants?

Theoretical Framework
While there is a significant connection between culture and the practice of transitional justice, this connection was further strengthened by the role that women undertook in the implementation of transitional justice in a particular context. This was well depicted in the transitional justice implementation in Sierra Leone and South Africa (Aukerman 2002, Shaw et. al. 2010). While there is a strong belief by transitional justice practitioners that the transitional justice mechanisms are seriously flawed and cannot bring justice to victims by applying such set of mechanisms to issues on women and issues impinged by socio-cultural contexts, in this project I assessed the applicability of transitional justice mechanisms in the Sri Lankan context, which is culturally heterogeneous specially focusing on civilian women and female ex-combatants.

1. **Transitional justice in Sri Lanka**

1.1 **Background**

This section will give an account of Sri Lanka, its conflict and the evolution of transitional justice. Sri Lanka is an island nation in the southeast of the Indian peninsula with a total population of approximately 20 million. The conflict between the Sri Lankan Government and the Liberation Tigers of Tamil Eelam (LTTE) lasted nearly three decades beginning in 1983 and ending in 2009. The LTTE had been fighting for a Tamil separatist state in the North and East (Tamil Eelam). There have been many different views on the Sri Lankan conflict and its stakeholders, with the LTTE being known as terrorists at times and also as a rebel group struggling for freedom. Some scholars and transitional justice practitioners noted that the conflict

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174% of the population consist of Sinhalese, 18 % are Tamil and 7 % are Muslim (Alison 2004, Kearney 1985). The island of Sri Lanka, situated in the Indian Ocean to the South East of the Indian main land possesses a land area of 65,525 Sq. Km. It’s population is about 19 million. Its inhabitants are multi-ethnic and multi-religious, comprising 74 % Sinhalese, 18 % Tamils and 7% Muslims. Majority of the Tamils are living in Northern and Eastern part of the country (Source: Official Website of the Government of Sri Lanka).
was between the Sinhalese-led majority Government with the secessionist LTTE, while others saw it as a conflict between Sinhalese and Tamils (Bandarage 2008, Orjuela 2003, De Votta 2007, Oberst 1988). However defined, the conflict affected many human lives negatively.

After gaining independence from British rule in 1948, the Tamils were underscoring the fact that minority rights were denied especially in land ownership, employment, education and development process by the governing party’s in power, which were in favour of the majority community (Tambiah 1986, 109). The Official Language Act (commonly known as Sinhala Only Act) further aggravated this problem. Successive Governments of Sri Lanka attempted to rectify injustices against the minority party by implementing the two pacts - i.e. the Bandaranaike - Chelvanayakam Pact in 1957 and the Senanayake - Chelvanayakam Pact in 1965 – which were designed to promote equality and impartiality, and to prevent divisive ethnic politics. However, amidst mounting pressure from sections of the majority community, the pacts were abrogated (Tambiah 1986). A series of ethnic riots - 1956, 1958, 1961, 1974, 1977, 1979, 1981 and 1983 - brought further deterioration to the Sinhala-Tamil substantive relationship. The outbreak of ethnic tensions as mentioned earlier in turn consolidated the perceptions and further articulated through the Vadokkodai Resolution in 1976, that restoration and reconstitution of the free, sovereign, secular, socialist state of Tamil Eelam, based on the right of self-determination inherent in every nation is the only solution (Schrijvers 1999, 310)

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2 The Official Language Act was introduced in 1956 by the Government of Sri Lanka. The Act provided prominence to the majority Sinhalese. This was viewed by the minority Tamil community as further attempt to bring oppression to the linguistic minority. Although the intention of the Sinhalese majority was to assert Sri Lanka's identity as a nation state, Tamils undertook this move as a symbol of minority oppression and a justification for them to demand a separate nation state, which became a key issue for the eruption of the civil war. Due to the much continued to demand parity of status by the Leftists parties in early Ceylon, parts of the Act was reversed in 1958, by making a balanced adjustment of including Tamil language as a second language. By 1987 as per the Chapter IV of the 1978 Constitution of Sri Lanka, the Sinhala and Tamil languages are both official and national languages of the country.
The Tamil United Liberation Front (TULF) was the largest oppositional party in parliament at the time when the first Executive President of Sri Lanka, J.R. Jayawardene of the United National Party (UNP) became the head of government in 1977. President Jayawardene changed the Sri Lankan constitution in 1978, replacing the Parliamentary Government with a Presidential system. The 1978 Constitution included substantial provisions for Tamils in an effort to secure peace, by giving Tamil the status of a national language and allowing Tamil to be used in administration and education at several levels, abrogating the Standardization Policy which had made it more difficult for Tamil students to enter university, offering top positions in government to Tamils including Minister of Justice, and calling for an All-Party Conference to resolve the country’s ethnic tensions. However, the Tamil Tigers increased their terrorist attacks on the Sinhalese civilian population in their call for a separate state, which led to Sinhalese counter attacks against Tamils, and served to put a halt to any negotiations through an All-Party Conference.

The post-colonial grievances of the Sinhalese preceded those of the Tamils. The British pre-independence support of Christianity and the English Language had led to the powerful state sector being dominated by the urban class of English-educated Christian Tamils and Burghers, as well as Christian Sinhalese in Colombo during colonial rule. Under British colonial rule, English-language medium level schools were also established in Jaffna by the British administration and were thus attended by the Tamils in Jaffna. However, 95% of the then 6.6 million, Sinhalese population lived away from Colombo and were educated in Sinhalese. Most of the Sinhalese were thus prevented from obtaining white-collar jobs in the state sector, for example, the civil service entrance examinations were conducted only in English. As a consequence of the British colonial administration’s “divide and rule” tactic, the Sri Lankan Tamils were also treated as a “majority community” and given equal (not
proportionate) political representation to the Sinhalese during the British colonial period – despite the fact that they accounted for only 12% of the country’s population while the Sinhalese accounted for 70% of the population. Being the majority and having functioned in a Sinhalese-Buddhist social context for millennia, the Sinhalese were less inclined to adopt English as their first language or Christianity as their religion. Prime Minister S.W.R.D. Bandaranaike’s post-Independence government sought to change opportunity structures and include the marginalized Sinhalese into the economy and administration of the country through the ‘Sinhala-Only’ language policy. Seeking rectificatory justice for Sinhalese became unfair to the Tamils and other minority communities.

The LTTE disinformation campaign (and the TULF’s Vodokkai Resolution in 1976) included the map of an invented “Tamil Eelam” territory inside of Sri Lanka, as the Tamil homeland in the North and East of the island (covering more than one-third of Sri Lanka’s land mass and two-thirds of its coastline). However, historically all parts of the island were known to have been multi-ethnic in composition from earliest recorded history. The Eastern Province was 58% Sinhalese and Muslim in ethnic composition in 1985, prior to the “ethnic cleansing” of Sinhalese and Muslims from the North and East by the LTTE.

Rejecting the minority’s demand for self-determination, the Sinhalese majority continued to assert the state’s willingness to guarantee their rights with a dialogue-based solution for the conflict rather than the separation of the Sri Lankan state. The demand for a separate state and minority rights were viewed by the Sinhalese majority as an attempt by not only the minority in Sri Lanka but also Tamils in the world who espoused the creation of a separate state for Tamils in the world.
This study will underscore the necessity to consider these different perspectives within the root causes of the Sri Lankan conflict when legal justice and reconciliation is sought to address the post-conflict challenges, and the necessity to look beyond the conventional claims regarding the root causes of the conflict in order to find a people centric solution for sustainable peace-building.

1.2 Emergence of the LTTE and the Conflict

The LTTE was formed in the early 1970s with Velupillai Prabhakaran as its leader. It turned into a fully operational organization in 1974. Many subsidiary Tamil political parties such as the Tamil United Liberation Front (TULF), Eelam Revolutionary Organisation of Students (EROS), Tamil Liberation Organisation (TLO) also provided their enduring support to the LTTE to develop to the level of a strong movement locally as well as internationally. While many Tamils made important contributions to the advancement of Tamil ethno-nationalistic aspirations and goals, the LTTE could not have survived as a movement without the support and encouragement of its international wings. Although the protracted war ended in a military victory for the Sri Lanka Government Security Forces in 2009 in the Northern and Eastern parts of the country, successive governments since the 1980s had made continued attempts to resolve the conflict through peace talks at several occasions with mediation or facilitation by international parties like India, Norway and Japan which ultimately became a stalemate.

Meanwhile, the LTTE enlarged its status of a national state by adopting a penal code, education system, court system and police force. Nonetheless, it was regarded as one of the most violent separatist groups of the twentieth century in South Asia by many powerful international figures. Funding for the LTTE was always directly procured from the Tamil diaspora abroad, but also obtained through illicit activities and capital investments operating overseas. The European Union and Canada joined
the United States, India, and Australia in labelling the LTTE a terrorist organization, which made it more difficult for the group to get finances from overseas (Alison 2009, Hoglund & Svensson 2011, 170).

This research project explores the international dimensions involved in the root causes and evolution of the LTTE and the conflict and underscores the need to reconcile different tiers within the Sri Lankan reconciliation process.

1.3 The History of Gender Justice in Sri Lanka

Before embarking on the process of the emergence of the LTTE Women’s Wing it is pertinent to provide an overview of the history of gender justice in Sri Lanka. Discrimination, violence and inequality toward women reflect the imbalances and the wider non-sustainability of the societal and institutional structures of a country. As a country in South Asia and as a developing country, Sri Lanka has been able to maintain a magnanimous role in achieving gender justice. Sri Lanka takes pride in having produced the world’s first woman prime minister, Sirimavo Banadarayaka, who served as prime minister for 17 years. She also became the leader of the Non-aligned Movement during 1976-1977. Her daughter CBK became Sri Lanka’s first female president and the 4th executive president in 1994 and held office for 11 years.

Many decades before the election of these women to the highest political positions in the country, from the pre-independence era, women have been active in the Sri Lankan political arena. In 1931 Sri Lanka became one of the first Asian countries to grant universal adult suffrage to both women and men. To put this in perspective, this initiative was applied to Sri Lanka only three years after the United Kingdom extended the right to vote to all women over 21 years. Since then, Sri Lankan
women have been part of conventional politics without being confined only to the role of voters.

From the pre-independence era, long before civil society was born, Sri Lankan women were engaged actively in social services. When the Ceylon National Congress was formed in 1919 for constitutional agitation, its membership was open to both men and women. A women’s organization, Mallika Kulangana Samithiya, was affiliated with the Congress. The Women’s Franchise Union was formed in 1927 and the Lanka Mahila Samithi in 1930. In 1944, the Ceylon Women’s Congress was established. There were also a number of publications such as Lakminipahana, Lakangana, Lanka Matha, Kulangana Siri, Weera Matha and Sri-Kantha during this period. Those activities, however, did not involve a large mass of ordinary people and only a few women from elite backgrounds were the main participants. These women’s movements were able to contribute to the unification of all ethnicities enabling Sri Lanka’s transition from colonialism to an independent democratic state.

The progressive leadership taken by women generated and built women’s organizations in Sri Lanka that were part of creating the background for the struggle towards independence. With the adoption of women-friendly development policies within education and health, Sri Lanka was able to further cement non-discriminatory state policies that gave rise to the improved quality of life of women. These policies further contributed to women’s participation in professional standards in public service on the basis of merit rather than by quotas. All these moves by the state further supported women to rise as leaders in the society.

Then, in 1981, with the aim to bring equal opportunity for women and their empowerment, Sri Lanka ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Subsequent to this, several legal
measures have been taken including the establishment of the Ministry of Women’s Affairs in 1982 and the adoption of the Sri Lanka Women’s Charter in 1993.

Furthermore, an amendment was brought to the Penal Code by Act No. 22 of 1995, which defined new offences pertaining to gender-based violence and enhanced punishment for offences involving violence against women and children. Therefore, these initiatives provide a clear picture of the gender friendly legal framework in place in terms of prosecuting and punishing perpetrators of gender-based violence in Sri Lanka.

The Women’s Charter approved by the Cabinet of Ministers in 1993 provides comprehensive guidelines for all persons, institutions and organizations in addressing issues related to women. The National Committee on Women (NCW) was established pursuant to the Charter and operating under the Ministry of Women’s Affairs with the objective of “ensuring and promoting rights of Sri Lankan women, stabilizing equality, assisting and guiding for formulating legal framework for their utmost development....” The Women’s Charter recognizes inter alia, political and civil rights, rights within the family, right to education and training, right to health care and nutrition, right to protection from social discrimination. As per the Citizenship Act (Amended) No. 16 of 2003, women now enjoy equal right with men with regard to nationality of their children.

Combined with these legislative reforms, Sri Lanka’s Prime Minister Ranil Wickremesinghe’s recent pledge to increase the political participation of women by 25% at the local, provincial and national levels through reforms to the electoral system, can create further space to strengthen Sri Lanka’s commitment to UNSC Resolution 1325, as well as to meet its commitments under CEDAW. Sri Lanka is also a signatory to the following rights based international instruments that provides

As such, gender equality and non-discrimination remain guiding principles of State action in Sri Lanka. The GoSL, consequent to a voluntary pledge made in the course of its participation at the Universal Periodic Review (UPR) meeting at the United Nations Human Rights Council (UNHRC) in 2008, implemented the National Human Rights Action Plan (NHRAP) approved by the Cabinet of Ministers. The thematic area of ‘Rights of Women’ in the NHRAP reiterates the commitment of the GoSL to ensure gender equality and recognizes and undertakes to implement a number of activities on enhancing and strengthening the rights of women through appropriate measures.

1.4 Emergence of the LTTE Women’s Wing

The conflicts of the 21st century have no doubt brought women into new spheres, enabling them to transform their conventional social situations, identities and destinies and opened up new vistas for liberation through participation in war either as supporters or as combatants. Women have played an integral part of the fighting forces in as many as 38 international conflicts in the past decade, playing multiple roles and changing their destinies (Denov & Maclure 2006, Kim and Myriam 2007, Denov 2008; Veale 2011). Women’s presence in the Sri Lankan ethnic conflict can be traced back to the year 1983 when the LTTE started recruiting women to fill their dwindling cadre ranks (Ponnambalam 1983, Alison 2003). The commanding
leader Vellupillai Prabhakaran announced that the establishment of the Women’s Wing of the LTTE was its greatest accomplishment as a movement (De Mel 2001). As per Human Rights Watch, women made up 3,000 out of 11,000 fighters, who constituted 1/3 of the total cadres and were later inducted into all units of the movement, including its naval force (the Sea Tigers), and its suicide squad known as the Black Tigers (Alison 2004, Bouta 2005). The belief that women do not belong on the battlefield provides an interesting and relevant context that opens up to examine female roles and participation in armed conflict, as well as to assess issues of female emancipation and empowerment during armed struggle. It is also noteworthy to explore the reasons that women enlist into the forces, whether voluntarily out of ethno-nationalistic loyalty or to support creating a separate state for Tamils. Some women were forcibly abducted to fulfil the dwindling number of cadres during heightened points of violence, while on some occasions it was to escape abusive domestic situations, poverty, sexual violence or perceived social injustices (Jordan & Denov 2013, Alison 2004).

Women’s participation in the LTTE in Sri Lanka began with the establishment of its special section called the Women’s Front of the Liberation Tigers (Vituthalai Pulikal Munani) and by 1989, this unit had established its own leadership structure (Fox, 2004). The first fleet of women cadres were sent for training in Tamil Nadu in southern India (Balasingham 1993). Departing from convention and conservative roles within the Tamil community, the LTTE leadership asserted an explicit discourse on the women’s liberation movement at large, providing opportunities and opening horizons that would never have entered the minds of Tamil women in the past (Jayamaha, 2004). Initially, female cadres in the LTTE, who were referred to as birds of freedom, performed mainly supporting roles. However, from 1985 onwards females were increasingly used for active combat and provided with extensive
training in mining, explosives and weapons technology. While undertaking an array of duties in the military, girls and women were deliberately chosen for suicide bombing missions because they may not undergo as close a body search at checkpoints as males. At the graduation ceremony after rigorous military training, the LTTE female fighters were awarded with a trademark cyanide capsule around their necks which they were trained to take upon capture (Jayamaha, 2004). As LTTE fighters, through the development of their own forces, LTTE women fighters subsequently earned international recognition as “the most fierce, extremely disciplined and courageous women combatants in the world.” With the end of ethnic strife through a military defeat of the LTTE by the Sri Lanka Government Forces in 2009, the country is now faced with many challenges within the human rights framework, and needs transitional justice to redress issues specifically pertaining to female ex-combatants (Darusman Report 2011). This study will focus on the role of female ex-combatants in the post-conflict context to analyse the best possible options within transitional justice to bring them reconciliation and legal justice.

Given the patriarchal nature of the Tamil culture prevalent in Jaffna women were oppressed. Gender inequality isolated Tamil women within prototypical roles such as mothers for reproduction, carers of the family and bearers of culture. This continued inequality was dismantled by the gender transformation fuelled through the Women’s Wing (Kaufman & Williams 2010, Manoranjan 2010, Alison 2003). However, with greater involvement of women in different roles during the war, stories of gender-based violence began to emerge and gave rise to a necessity among victims to seek justice for the numerous injustices that they underwent during the conflict.

Although the initial goal of the LTTE in creating the Women’s Wing was to bring emancipation for women who were oppressed by the caste system, customs and
culture, the leadership roles vested in women were merely contracted to a temporary period with no long-term impact or position to lead society. In this manner, they were forced to adopt traditionally masculine qualities, denying and suppressing traditionally feminine qualities such as being nurturing, having sensitivity towards emotions, and having a comforting nature, which are qualities averse to war. Similarly, they were also forced to forgo coveted female attributes of beauty as conceptualised within the Tamil traditional culture such as long hair. The end of war further demoralised women’s groups, or rather ex-combatants, and nullified their roles within their own communities. Hence the application of transitional justice for the victims in the post-conflict phase needs to frame its post-conflict response with attention to the needs of women and the impact that the socio-cultural context will make on the process. Therefore this thesis will examine the nature of the inequalities that women faced and how these women found themselves back in the situation of gender inequality after the conflict ended. Furthermore, this project will identify the nature of the challenges that differentiate female ex-combatants from civilian women and how this difference will challenge transitional justice mechanisms, especially reintegration programmes.

1.5 Evolution of Transitional Justice in Sri Lanka

At the end of the three decades of conflict in 2009, the United Nations Secretary General appointed the Panel of Experts in 2011 to advise him on the issues raised by many international groups on international humanitarian law issues (Darusman Report 2011). The Final Report submitted by this Panel of Experts underscores several key aspects that lay the foundation for this research study.

(1) Firstly, Sri Lanka needs to adopt transitional justice to establish victim’s rights, the rights of vulnerable groups in particular, to address their needs and security in the post-conflict context.
(2) Secondly, referring to the adoption of the government policy to practice restorative justice by Sri Lanka, the Panel of Experts requests to carefully consider the close connectivity between the two concepts of restorative justice and retributive justice.

In this manner, the transitional justice process began to take place in the Sri Lankan context with the establishment of the Lessons Learnt Reconciliation Commission (LLRC) in 2010, simultaneous to the submission of the Report by the Panel of Experts in 2011. However, if transitional justice is implemented in the post-conflict context on specific issues in Sri Lanka, upon the recommendation of the Darusman Report, significant practical challenges will arise that may hinder such processes. Given the nature of the women’s population that dominates the North and East of Sri Lanka, their presence in such transitional justice processes is essential in order to achieve the best results. Sri Lankan women in the North and East bring unique contributions to the process despite socio-cultural traditions prevalent within the Tamil culture which pose an obstacle to gender justice within transitional justice.

The emergence of transitional justice mechanisms in the Sri Lanka context through the LLRC process opened up a diverse range of issues that require in-depth study, such as socio-cultural issues and root causes of the conflict, to find solutions for the needs of these people in the post-conflict phase. Although the theoretical framework of transitional justice provides many debates on the necessity of the context-specific study and different dimensions, there are only few cross-cultural research undertaken within transitional justice and post-conflict societies (Minow 1999, Hayner 2000, Elster 2004). Therefore, this research intends to fill that research gap and contribute towards the transitional justice scholarship and to study how transitional justice could be incorporated into the Sri Lankan context.
Although the international community is exerting much pressure to impose legal justice for the injustices that occurred during the conflict in Sri Lanka, it is paramount to consider whether such legal processes are suitable for certain post-conflict context-specific issues and also whether an ideal timing is required for the implementation of transitional justice. Scholarly contributions to the study of transitional justice highlight the available international mechanisms such as the International Criminal Tribunal of Yugoslavia, the International Criminal Tribunal of Rwanda and the International Criminal Court, and note that they have been unable to achieve legal justice for victims in general and women in particular (Lessa & Payne 2012, Merry 2009, Bassiouni 2008). Prevalent issues such as domestic violence, the disappearance of loved ones, disabled female ex-combatants and the challenges they face in their daily life are some of the problems that have not received much attention in the literature on punitive justice for women in the Sri Lankan post-conflict context. In this manner, the use of legal remedies in the Sri Lankan context needs rethinking.

Pursuing trials have not been accepted by women as the most appropriate way to achieve legal justice in Sri Lanka, as there is a need to fulfil the social and economic needs of the victims, particularly post-conflict woman. The recent report issued after a visit by the United Nations Human Rights Commissioner for Refugees highlighted the need for psychosocial support for the victims in the North and East (Colombo Telegraph 01.02. 2013). The Sri Lankan transitional justice process, therefore, needs to look closely at the situation on the ground and listen to the different contextual problems that have been threatened by the socio-cultural system in North and East of Sri Lanka. According to Mani, the Sri Lanka transitional justice process needs to look beyond punitive justice to fulfil the needs of civilian women and female ex-combatants and to ensure their rights through distributive justice. In this manner,
distributive justice provides an avenue for members of vulnerable groups to take part in transitional justice in a robust manner rather than being marginalised within the process (Mani 2002).

2. Literature Review

This literature review is prepared to help the reader of this thesis to gain a clear picture of the theoretical framework within transitional justice and the relevance of this framework for my main argument. Through this review, I intend to bring out the definitions and debates existent within the current literature on transitional justice and its evolution. Moreover, this section will also underscore the theoretical framework for examining issues relating to gender, legal justice and reconciliation. Finally, I will bring out the connections among gender, legal justice and reconciliation with Disarmament Demobilisation and Reintegration (DDR) processes to illustrate how the theoretical framework contributes to the transitional justice mechanisms which could bring successful outcomes in Sri Lanka.

2.1 Transitional Justice

Transitional justice is a set of processes that take place in post-conflict contexts to redress victims’ grievances, to achieve accountability for human right violations, and to promote reconciliation and democracy. These processes occur either judicially as prosecutions and trials, or non-judicially through truth commissions, institutional reforms, reparation and reintegration to former combatants through Disarmament, Demobilisation and Reintegration (DDR). Judicially or non-judicially, the primary goal of transitional justice is to achieve democracy and human rights.

The concept of transitional justice as a tool to address human right violations and victims’ rights has been present in different socio-cultural contexts and periods.
According to the literature, there are three phases apparent within the evolution of transitional justice in the world. Although opinions vary among scholars who contribute to the field of transition justice, most agree that the first phase of transitional justice emerged soon after World War I (Andrieu 2010, Teitel 2000, Orentlicher 2007, Mani 2002, Thoms & Paris 2010, Nesiah 2006, Little 1999, Hayner 2011, Elster 2004, Roht-Arriaza 2006, Lutz 2006). Some claim that the origin of transitional justice can be traced back to Athenian democracy in 594 BC, when Carte Blanche was made to restore civil rights which was later used in 405 BC as a model to introduce amnesty legislation. In light of this, certain scholars further argue that transitional justice had its roots after World War I and was then brought into practice after World War II (Bell et. al. 2007, Arthur 2009). The second phase of the transitional justice processes was seen toward the end of the Cold War, and further developed with the wave of democratic transitions in 1989, building up a discourse of retributive justice throughout law and society. The third phase of transitional justice focused more on normalising the use of law to address violence (Elster 2004, Teitel 2003).

Within this framework, transitional justice took a new dimension at the end of the Cold War, and grew into a vibrant and innovative concept within different cultures and post-conflict contexts. Accordingly, the United Nations Secretary General Guidance Report in 2010 places emphasis on context-specific approaches in different socio-cultural contexts when transitional justice is implemented. Furthermore, the 2010 Guidance Report underscores the need for women to be involved in such processes as noted in United Nations Security Council Resolution 1325 (Guidance Report 2010, UN Resolution S/RES/1325). It highlights the fact that transitional justice processes led by socio-cultural norms or religious factors tend to
bring productive outcomes in post-conflict societies. Amidst these contributions, the concept of transitional justice has evolved to the present day as a very important theory moving within different contexts, facing manifold challenges, and attempting to establish human rights for different groups of people in post-conflict societies.

2.2 Transitional Justice Mechanisms

Although transitional justice mechanisms that address human rights violations are meant to provide restorative justice and retributive justice for the victims who faced injustice during conflicts, flaws in certain mechanisms have emerged when applied to different contexts. Scholars argue that transitional justice process must focus on the context-specific nature of challenges. The studies further noted, such as in the South African transitional justice process, these context-specific challenges must be made the yardstick to evaluate and develop existing laws. Another case which focused on context-specific challenges for transitional justice is northern Uganda. A sharp rise of gender-based violence posed a serious threat for Ugandan women to embark on their new roles as breadwinners of their families at the end of the conflict (Barasalou 2009, Call 2004, Fletcher & Weinstein 2009, Arbour 2008, 27, Hamber 2002, 1083, Allen 2008, Okelo & Hovil 2007, 437).

(a) Truth-telling

Truth telling as part of transitional justice mechanisms is used within legal proceedings or as statements given to truth and reconciliation commissions. This was very visible in northern Ugandan context when truth telling played a significant role in achieving restorative justice for post-conflict context-specific issues (Brounéus 2008, 409, Mandeloff 2004, 360). The mechanism of truth-telling has not always resolved in a positive way for women in post-conflict societies as certain socio-cultural systems that exist in different post-conflict societies tend to discourage
women from bringing their grievances to a public platform. This is mainly due to the structural inequalities and the socio-cultural bindings that women have to face in requesting punitive justice (De Soysa 2012).

First, if the violence faced by women is of a more private nature, be it rape, domestic violence or any other form of physical torture, women may not open up with such stories in public platforms such as truth commissions (Buzawa et. al. 2003, Blatt 1991). This was clear with the LLRC statements made by women, the leverage they maintained in exposing only the truth of violations or disappearances that occurred to their loved ones, but not to them. Hence, rather than achieving or promoting gender justice truth-telling may threaten the role of women in reconciliation processes and lead to insecurity and marginalization (LLRC Report 2011).

Furthermore, truth-telling processes confine the harm or suffering undergone by women during conflict only through the lenses of sexual violence. The other forms of harm, such as emotional harm when losing loved ones, being denied access to or opportunities for education, or being marginalized were not recognized as significant. This was not only present in the Sri Lankan context but equally visible in South Asia in general (Gobodo-Madikizela 2005, 07, Jayatunga 01.02. 2013).

Due to structural deficiencies, partial truths have been revealed in different post-conflict contexts. There is very little chance that such partial truths can render restorative justice for women in post-conflict societies (Walaza 2003, 195, Ni Aolain & Turner 2007, 249). In this manner, it is vital to analyze whether truth-telling processes would be able to address long-term reconciliation by providing psychological healing to the victims and giving them closure to the suffering they have undergone during the conflict period.
Although truth telling may be a cathartic experience that gives an immediate healing to the victims’ mind, it does not help the victims to survive psychologically and emotionally in the long run (Brounéus 2008, 61). However, this is not to conclude that truth is completely useless for reconciliation. Truth telling can have a positive impact through truth commissions or punitive justice process to build up the narratives and information to be used to develop suitable DDR programmes.

With the stigma attached to sexual violence, truth telling can trigger more risks among women than men. An empirical study conducted on 30 black South Africans revealed that majority of the respondents regarded the truth-telling process as a painful and disempowering methodology, while few believed that it brought relief to their sufferings or had a positive effect on reconciliation (Brounéus 2008, 61, McKay & Mazurana 2004). According to a survey carried out on 3,700 South Africans in 2000, truth telling is fairly widely accepted by South Africans of all races while bringing some degree of reconciliation to transitional South Africa (Gibson 2004). Quite contrary to the study of Brounéus, Agger and Jansen believe that trauma stories can be reframed and given a meaning, and the pain can be transformed into political dignity while promoting individual healing. Telling trauma stories can also help identify key thematic areas that caused the war and ways in which human rights violations during war and peacetime can be addressed (Agger & Jensen 1990). A research study noted that Cambodian women and refugees with Post-Traumatic Stress Disorder (PTSD) who were interviewed in the United States felt empowered after telling trauma stories. Similar experiences were also noted during the South African Truth and Reconciliation Commission process which gave the impetus to the therapeutic value of the truth-telling process (De La Rey & Owens, 1998, McKay & Mazurana 2004, McKay 2000).
(b) Amnesty

Forgiveness that distinctively differs from pardon has emanated from the Greek world ‘amnesia.’ In transitional justice, amnesties are sometimes granted in reciprocity for truth telling to reconciliation commissions and in tribunals and courts (Lessa & Payne 2012, 3). There are different types of amnesties, forms and scopes described in the transitional justice literature. However, the literature also underscored the lack of credibility of amnesties within international law. In this section, I will evaluate the application of amnesty in different contexts and consider whether or not amnesty might be able to be applied to the Sri Lankan contexts (Olsen et. al. 2010, 39).

The use of amnesties peaked in 1979 and again in 1992 after the collapse of Soviet Union. Despite much criticism that noted that amnesty brings illusiveness to retributive justice and promotes impunity, countries in transition tended to adopt amnesties as the first option to spearhead reconciliation efforts, due to the complexities that might arise by implementing trials and prosecutions and the economic impact of so doing in the transitional phase. The cost factor arising out of opting for prosecutions can become a major hurdle for developing countries to implement transitional justice. The examples of the cases of Augusto Pinochet and Slobodan Milosevic case illustrate how prosecutions can both fail to achieve justice and also become a significant economic burden (Collins 2010, Sikkink & Walling 2007, 942, Sikkink & Kim 2013).

The literature on transitional justice extensively discusses the application of amnesties in different countries and different post-conflict contexts, as well as the various forms of challenges that people encounter. From the blanket amnesties that were adopted in Argentina and Chile to the South African conditional amnesty, partial amnesty, and self-amnesty in other contexts, have all ultimately brought a
notion of impunity as there is no legal basis for these amnesties in international law as stated in the Rome Statute or elsewhere (Gibson & Roht-Arriaza 1998, 847).

The other type of amnesty that was used in the South American contexts was the transitional amnesty (Allen 1999). This mode of amnesty was meant to eliminate prosecutions that would threaten the transition to peace and was seen in practice in Haiti, Argentina and Uruguay. Another form of amnesty used was the conditional amnesty, in which amnesty is conditional on perpetrators disclosing their involvement and acknowledging their past human rights violations (Jeffrey 2011, 83). The transitional justice scholarship also brought out several examples in Algeria, El Salvador and Sierra Leone where former combatants were granted amnesty in exchange for peace, reconciliation and disarmament (McKay & Mazurana 2004).

The trajectory of usage of amnesties and the types that were used significantly varied from one post-conflict context to another. In South Africa, the granting of amnesty was limited only to crimes committed for a political objective and was done through its truth and reconciliation commission (Allan 2000, 193). Similarly, Chile, Guatemala, El Salvador, and Zimbabwe also combined their amnesty processes with a reconciliation commission. Rwanda used a different approach to the adoption of amnesty, dealing with large numbers of perpetrators by practicing amnesty only through trials and with the reciprocity to confess and apologise to their victims. Latin American countries like Uruguay, Argentina, Chile, El Salvador and Sierra Leone granted blanket amnesties to all military personnel who were involved in human rights violations; these amnesties were severely criticised by scholars and international lawyers as it resulted in victims remaining as victims (Gibson & Roht-Arriaza 1998, Roht-Arriaza 1998, 314). In the case of Sierra Leone, amnesty was granted to combatants while in Argentina, Chile and El Salvador it was for departing
military personnel or successive civilian governments (Roht-Arriaza 1998, 315, Maclean 1999).

Over time, practitioners and scholars realised that amnesties alone cannot realize the primary goals of post-conflict peace building, i.e. advancing democracy and human rights. But they are frequently supported by the people. In northern Uganda, though peace and justice were important aspects to the population, a survey carried out among 2585 people revealed that 65% of the interviewees supported amnesty. The same survey was again carried out after a lapse of two years in the same place. Only 3% of the total 2875 respondents considered justice to be a priority. Other aspects of human rights such as health, peace, livelihood and access to education were of more immediate concern for the people. In another survey carried out in Liberia, 70% of respondents considered peace a priority, 80% chose peace with amnesty and 76% believed trials could threaten long-term peace (Allen 2008, Thoms et. al. 2010, 79, Pham et. al. 2005, 25, Pham et. al 2011, 69). This information shows that people viewed that despite the effects of amnesty, aspects such as access to basic human rights, legal justice are also important for building long-term peace.

When compared to the post-conflict surveys such as the South African Barometer Survey in 2012, the interviews I conducted in Batticaloa (with 10 women respondents) illustrated that people were ready to leave the past behind for a better future for their children (Lefko-Everett, et. al. 2012, South African Barometer Survey 2011). The significant acceptance of amnesties in Sri Lanka was mainly due to the fact that the general public including the people in the North and East viewed the role played by a combatant in the LTTE as wrong according to national laws and moral principles. However, since amnesties were only imposed on one side, a major
hurdle remains before trust could be rebuilt and the rule of law established in the North and East of Sri Lanka.

In his study, Olsen discovers that the use of amnesties in civil war contexts is rather high: 215 out of 424 total amnesties granted in 161 countries (Olsen et. al. 2010). This number is rather high when compared to the 274 amnesties granted in political contexts for the whole period from 1970 to 2007. Most amnesties in such contexts have been granted to opponents as it was in Sri Lanka where most of the amnesties were granted to ex-combatants of the LTTE, while a few severe cases were tried in the courts (Olsen et.al. 2010, 36). This is merely due to the post-conflict context-specific approach that state had to take up as the LTTE has been identified as a terrorist group carrying out their activities against the will of the state and threatening its sovereignty. However, there are several unconditional amnesties that have been granted to former LTTE leaders such as Karuna, who defected from the main wing of the LTTE in 2006, in order to bring him to the democratic stream to build peace.

Furthermore, as mentioned in earlier sections, if the Government Forces who fought for a national cause to be prosecuted in Sri Lanka, it would be impossible to convict large number of army personnel who have been involved in the conflict. This would not only erode the DDR process and developments to be undertaken in the North and East of Sri Lanka, but would also have broader effects as a justice process would need to be allocates a large amount of funding that could otherwise be utilised for rebuilding and rehabilitation purposes. However, there is a wide criticism held by parties in the Tamil diaspora as well as UNHRC as this type of granting one-sided amnesty would lead to impunity for many crimes.

With the change of government in 2015, Sri Lanka has been investigating the allegations noted in the LLRC that have been presumed to have taken place.
Similarly, the literature noted that the paradigm of prosecution and amnesty has a close connection with DDR programmes. Looking at the Burundian context, for example, both sides see themselves as victims and the other side as aggressors; both sides claim that their actions were required for survival. In such cases combining amnesty with DR to build reparations was able to significantly contribute towards successful peace-building.

2.4 Justice

As much as the two aspects of truth-telling and amnesties had flaws when implemented in different socio-cultural contexts, achieving justice for the injustices occurred during conflict is challenging (Mendeloff 2004). I present five diverse case studies in this section. They illuminate the diverse insights that flow in from different eras, different regions and different historical contexts that implemented only legal justice. These case studies were selected in which there is the existence of a weak legal system or no legal system at all, and I examine the challenges victims faced in such contexts when only legal justice was implemented. Scholars argued as to why retributive justice process needs to follow up with a reconciliation process, to address the needs of victims through compensatory means (Daly 2000). Even if this is the general outcome, empirical evidence notes that some kind of accountability for human right violations is a prerequisite to building trust among divided communities and building deterrence to halt such actions from taking place in the future; connections between retributive and restorative justice resulted in balancing the issues that might arise of only one or the other was implemented (Ashworth 2003, Sikkink and Walling 2007, Popkins & Naomi Roht-Arriaza 1995).

The Nuremberg Trial from 1945-1946 after the World War II focused on trying the main leaders involved in the violation of human rights bringing a notion of Victor’s
justice which brought a dissatisfaction among the some post-war victims (Taylor 2012). The Tokyo War Crimes Tribunal in 1946, which also concentrated on achieving legal justice for human rights violations, could not bring satisfaction to the victims. The legal justice process further undermined in bringing justice for the bombing of Hiroshima and Nagasaki, the Dachau Massacre and other gross war crimes and breaches of military code in which the allied powers were not held to account. In sum, these processes illustrated either victim dissatisfaction or brought imbalance to the reconciliation process due to political involvement that imposed a hard line to achieve legal justice in the service of vengeance.

At the end of the Rwandan genocide the, country decided to punish the parties involved in the genocide through retribution. However, the Rwandan legal system did not have enough capacity to carry out such punitive measures. This weak legal system did not cater to the needs of victims and hence Rwandans had to seek UN assistance to hold the International Criminal Tribunal in Rwanda to punish the perpetrators. The need for a reconciliation process to address victims’ needs became apparent. These examples show how the governments in power in respective post-conflict countries decide to choose legal justice or reconciliation for their societies, and the relevance of both in every society to build long term reconciliation (Schabas & Darcy 2004).

Similar to the cases in World War II, Liberia and Cambodia mostly concentrated on prosecuting the leaders and punishing the crimes, but could not grant justice for many victims of the conflict (Jaye 2009). The Extraordinary Chambers in the Courts of Cambodia (ECCC) was established in 1999 to address the crimes that have taken place during the Khmer Rouge period 1975-1979. The hybrid model ECCC of

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3The Dachau liberation reprisals were a series of incidents in which German prisoners of war were killed at the Dachau concentration camp on April 29, 1945, during World War II. American soldiers wounded and killed German camp guards and German prisoners of war.
Cambodia, which was an independent entity, was created by the Cambodian government in conjunction with the United Nations. Though there were foreign judges involved the Government of Cambodia selected the judges from the United Nations nominated list of judges. The hybrid model of the ECCC enabled the international and local legal professionals to work together, leaving room for the local application of existing international humanitarian law and setting standards for equality before law (Bialek 2013, 07). Though the ECCC-led hybrid tribunal was partially supported internationally and a nationally-led institution, the United Nations later expressed serious reservations regarding its inability to meet international standards in bringing procedural fairness and impartiality.

However, the hybrid model of this court system could not fulfil the needs of the victims at the end of the Cambodian transitional justice process. The reason was that the process was unable to continue with judicial independence within a weak court system. A survey study undertaken to this fact noted that 76% of the people in 2008 and 83% of people involved in the same survey after two years were of the view that the ECCC funds could have been spent on productive projects that could fulfil the basic needs of the people. This led to establishment of a Victim Support section with a mandate to develop non-judicial measures for victim healing, which highlights the importance and the relevance of recognising the individual needs and repairing the wounds of the victims for long-term peace-building (Pham et. al. 2011).

When East Timor gained independence in 1999, the United Nations pushed for a transitional justice process for the violence that took place during the Indonesian occupation. In this case, East Timor implemented retributive measures to deal with the accountability issues. However, during the process of legal justice there arose a need to have a reconciliation process to address victims’ grievances through a victim-centric approach. A serious crimes unit was established in 1999 with the
responsibility of looking into the violence prior to independence and after the elections. This model was initially designed for Cambodia and Kosovo and therefore could not be fitted into the transitional justice processes in the East Timor post-conflict context, due to the weak judicial system prevalent in East Timor and its inability to carry out full-scale investigations for crimes committed during the conflict and to bring the perpetrators to justice for the crimes committed. Recognising the need for a reconciliation process, the East Timor National Council later passed a resolution to set up a reconciliation commission in 2001 (Schabas & Darcy 2004, 135). The International Criminal Tribunal for Yugoslavia (ICTY) was set up in 1993 to prosecute perpetrators who committed serious crimes violating international humanitarian law during the ethnic strife. This body was a United Nations-supported body of which the ad hoc court is based in The Hague in the Netherlands. Much criticism has been levelled against the ICTY for failing to reduce violence, restore peace or bring reconciliation in Yugoslavia in the long run. The Tribunal did bring justice to people by uncovering all facts relating to criminals and punishing the wrongdoers (Cassese 2004). However, some scholars argued that although the ICTY held court proceedings, up to now no one has been indicted for the serious crimes they committed. Even though the initial objective of setting up the ICTY was to bring reconciliation, the institution could not fulfil the need of promoting reconciliation among people of Yugoslavia (Zacklin 2004, 544). These five cases clearly demonstrate that legal remedies alone cannot bring reconciliation to post-conflict societies. Furthermore, it also paints the picture that institutions created for punitive justice cannot bring psychological repair for the people with grievances. Nonetheless the final objective of both justice and reconciliation is to achieve long-term peace.
Regarding the challenges that arise from efforts to achieve punitive justice for human right violations, scholars such as Mani have contributed a different perspective on providing space for victims to achieve justice, amidst many other challenges as discussed above. Although early philosophical thinking did not highlight this type of individual justice, as Mani points out, theoretical developments in recent years has created a broader vision of justice. Mani underscores the need to realise the interconnected dimensions of justice beyond retribution to granting justice through distributive and rectificatory justice (Mani 2002). Deviating from the general views on achieving justice in post-conflict societies, these thinkers contributed towards individual justice beyond retribution.

2.5 Reconciliation

As important as justice is for post-conflict peace-building, reconciling and repairing the harm caused to victims of war is equally important. Reconciliation as a non-judicial methodology within transitional justice comprises an important part of bringing justice for post-conflict victims. In 1992 the United Nations stressed the importance of more integrated, comprehensive understandings of the process of peace-building (United Nations Report 1992). This process involves democratic systems based on principles of equality, representation and participation in government. In this manner the participation by citizens of a post-conflict state will find solutions to the issues stemming from conflicts reconciling and building trust among the divided parties. Reconciliation hence provides spaces between people and institutions in their everyday lives and builds trust that brings positive impacts to the process of peace-building. Though there have been many contributions towards determining the meaning of reconciliation, it remains an elusive notion in different post-conflict societies. Some scholars believe that reconciliation is coexistence,
living side-by-side even without having reconciled with each other while others believe it is forgiveness and social harmony. Crocker, on the other hand, argues for non-lethal coexistence as it does not require forgiveness to live side-by-side and to respect each other as citizens of a country. In that way, people will be able to move forward from a destructive relationship to a relationship that is minimally acceptable. In order to attain active reconciliation certain aspects such as security, truth and justice must be sought in order to build trust and overcome psychological barriers (Darweish & Rank 2012, 02).

2.6 Retributive Justice and Restorative Justice

In many post-conflict contexts where legal justice-only processes were implemented, victims were dissatisfied due to the absence of a reconciliation process. Similarly, although reconciliation processes focused on building social harmony, they could not bring deterrence to human right violations. Hence, it became vital for these two concepts to be simultaneously implemented to reap the successful outcomes in the post-conflict transitional justice processes. As much as reconciliation is important, the application of retributive justice that aims to address human right violations through legal remedies often focused on repairing the crimes committed, by bringing legal justice to the victims, is also important. This form of bringing justice was much more apparent during the early years of transitional justice, especially during World War I and World War II. Due to the dissatisfaction that arose among the victims at the end of retributive justice processes, many practitioners in the recent past have tended to adopt a combination of the two concepts of restorative and retributive justice in the implementation of peace-building activities in post-conflict societies. During the South African Truth and Reconciliation Commission, the design and the process gave much impetus to restorative justice, but also reserved moral concerns for retributivism.
Restorative justice is the dominant model used by many post-conflict societies. Most importantly, in recent years, South Africa has used this form of justice through its reconciliation commission. However, restorative justice is not an entirely new concept. In their own way, every society and every culture has applied restorative justice to their conflict situations. The most recent thinker on restorative justice, Braithwaite, defines restorative justices as a form of promoting healing rather than hurting (Braithwaite 2002). Moral learning, community participation and community caring, respectful dialogue, forgiveness, responsibility, apology and making amends can bring citizens empowerment (Allais 2012, 332). Restorative justice tends to deter reprisals of any kind of violence while rehabilitating the wrongdoer as well as repairing the victim. It has also been used as an alternative form for juvenile justice (Braithwaite 1999, 04). Since most of the criminal justice processes which are apparent today have not been able to bring ultimate satisfaction to the offender, restorative justice has played a pivotal role in bringing satisfaction to both parties through its outcome (Dzur & Wertheimer 2002, Hirsch et.al. 2003).

This form of justice has been able to overcome certain limitations inherent in retributive justice through a victim-oriented repair process which involves a discourse between the perpetrator and their victims (Daly 2000, Curtis-Fawley & Daly 2005; Daly and Stubbs 2006). Since retributive justice tends to maintain equality and social control while restorative justice attempts to bring inclusiveness and satisfaction to victims, some have argued about whether or not their combination would be a practical reality (Morris 2002, 596, 600, Roche 2006, 231). Some scholars argue that restorative justice can come after retributive justice. But in such a case it is paramount to consider unsatisfactory repercussions that might occur from retributive justice which might affect the restorative justice process (Daly 2002,56, Uprimny and Saffon 2006, 6). Hence, transitional justice practitioners in recent years
have tended to combine the two concepts in order to gain positive outcomes in the implementation.

2.7 Gender

Gender in transitional justice mechanisms became a significant factor in the recent past. The involvement of women in the Sierra Leone transitional justice process in the year 2000 brought a deterrent effect to the formulation of gender security in post-conflict Sierra Leone at the end of the 10 year civil war by bringing in a very important legal remedy that would make a positive impact on post-conflict women’s security. I will discuss the legal details of this process in the forthcoming paragraphs. The Sierra Leone post-conflict context treated gender as the cornerstone for its prosecution strategy (Grewal 2010). One significant outcome of the findings promulgated by the truth and reconciliation commissions was the nature of how the social, legal, political, and cultural forces framed women’s roles as more vulnerable in post-conflict settings. The conflict in Nepal has highlighted gender inequalities as a major challenge in the peace-building process. Post-conflict Nepal demonstrates the need for changing the law and government policy, while emphasizing the importance of grassroots peace-building processes for the advancement of human rights among women. However, among national institutes, there is a significant culture of ignoring gender inequality and the challenges that women have to face at grassroots level in post-conflict contexts (Aguirre 2008, 377). Due to growing interest in women’s issues during the conflict and the overlooking of these issues during the post-conflict peace-building period, practitioners of transitional justice underscore the importance of bringing women into transitional justice mechanisms.

Scholarly contributions to transitional justice suggest that, as a transitional justice mechanism, truth commissions have inadequately dealt with gender issues either due to the lack of political will or due to economic barriers. In spite of that, Sierra
Leone did identify rape as a form of sexual violence and prosecuted the Mayor of Taba province. However, 90% of rape cases do not make it to court due to invisibility and underreporting. Though Sierra Leone Commission gave a sound focus towards identifying the root causes of the conflict, it failed to fully explore the gendered effects of political violence or adequately represent the experiences of women. Another added factor that is visible is that, similar to the Sri Lanka context, the South African Truth and Reconciliation Commission included women at all levels of the structure of the Commission. This robust involvement of women encouraged the women respondents to testify about the abuses they faced during apartheid. But the majority of the women who came before the South African Truth and Reconciliation Commission only brought the issues against their loved ones, particularly of their male family members. Hence, even within such a women-centred structure, respondents did not readily represent their suffering in front of the commission. I have come across the Guatemalan Oral History Project, which was built upon community participation and community-based recording of testimonies which in turn provided a safe space to create a balance between the structural imbalances that were apparent in the South African reconciliation process by empowering women and looking beyond single/short term transition and investing in the long-term (De la Rey 1998, Shaw et. al. 2010, 13).

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4 The civil war that raged between militant guerrilla groups, Guatemalan National Revolutionary Union (URNG) in particular with the state security forces between 1960 and 1999, brought devastation to lives of innocent people. The thirty-six-year period of war destroyed 440 villages leaving one million Guatemalans internally displaced or fled across the border and more than 100,000 people were killed or disappeared. UN assistance contributed to a comprehensive agreement on human rights. This made the steps towards the creation of a truth commission, the Comisión para el Esclarecimiento Histórico (Commission for Historical Clarification [CEH]), through the Accord of Oslo of 23 June 1994. Simultaneously the Proyecto de Recuperación de la Memoria Histórica (Recovery of Historical Memory Project, or REMHI) was established in 1995 to complement to a formal truth commission that emerged as a direct reaction to a UN-sponsored truth commission. This project was initiated under the patronage of the Catholic Church to compile vast numbers of testimonies of victims of Guatemala’s vicious war. After a three year process the REMHI produced a Report in the name of the Guatemala: Never Again describing the human rights violations perpetrated against the civilian population during the period of war as well as the patterns of violence, its effects, the socio-political context of the war, and a list of the names of the victims (Bickford 2007, Cabarera 1998)
2.8 Gender Justice and Reconciliation

As I have discussed earlier, the relevance of justice and reconciliation to post-conflict victims and addressing their needs is significant. While facing structural imbalances that challenged the reconciliation process, vulnerable people, i.e. women, are further faced with marginalisation. Within this group, another distinctive exogenous group was visible i.e. female ex-combatants, who were trained in combat skills and were prone to more violence during conflict. Gender relations in post-conflict societies are challenged by the nature in which the gender roles have been formulated within its socio-cultural setup (De Mel 2001). This cultural setup impacts the participation of civilian women and female ex-combatants in transitional justice (Askin 2002).

There has been a strong emphasis made by scholars since 1980s on the gender presence in conflict. In the 19th and early 20th centuries, women were able to achieve basic rights and access to democracy through universal franchise and women-specific challenges during conflict were sidelined (De Mel 2001, Ramirez et. al. 1997, Paxton 2006). This was seen during World War I and World War II, when retributive measures did not explicitly address women’s needs in the post-conflict phase. This is not to conclude that retributive justice alone can bring positive outcomes for women, but by and large it contributes only to the deterrence of violence and physical insecurities in the future. Certain violent acts committed against women during conflict could not be brought before a court due to the sensitive nature of such violence, such violence could not be exposed in a public setting, as a court room or the reconciliation commission, due to subsequent stigmatisation that leads to marginalisation within their socio-cultural contexts. These reasons ultimately contributed to the invisibility of certain crimes such as rape and sexual violence during wartime and further marginalized women from achieving gender justice (Blatt 1991).
2.9 Gendered Sexual Violence

By and large women have become the main stakeholders of the post-conflict challenges due to the enormous violence they experienced during conflict. Addressing these issues is of paramount importance to promote reconciliation in post-conflict societies. However, in many cases, the need to address these issues has been sidelined due to prioritised interests on domestic politics or geo-politics (Askin 2002). With the changing nature of gender role in the world since the early 1980s, the traditional role of women has undergone an important transformation to emancipate them from gendered inequalities existent within their own societies. The emergence of women as female combatants further exposed them to sexual violence during a conflict either through rape or domestic violence. The United Nations has made several exemplary steps in handling these challenges. Article 27 of the fourth Geneva Convention in 1949 attached great importance to protecting a woman’s honour from rape and sexual violence (Meron 1993). The first legal precedent for punishing rape as sexual violence was evident in ICTY and ICTR in 1993 and 1994 respectively. The initial steps by multilateral interventions to safeguard women rights were more noticeable when the foundation stone was laid through CEDAW in 1979, which was ratified in 1998. Apart from these important steps, United Nations Security Council Resolution 1325 can be hailed as the cornerstone for assuring gender justice in a post-conflict context. UNSCR 1325 was implemented by the United Nations in 2000. Since then it has been implemented in many different post-conflict contexts in the world. However, when applied to different contexts, UNSCR 1325 encountered many challenges due to the strong socio-cultural systems that were existent in these countries (Puechguirbal 2008, 115).

5Article 27 of the Fourth Geneva Convention, relating to the protection of civilian persons in time of war, states: “Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault.”
These systems allowed the societies to conceal violence faced by women which is quiet private in nature.

At the same time, the rape that has been overtly used by the conflicting parties systematically and strategically resembles the notion of power-related weapons used during war. During World War II, the Japanese used 200,000 comfort women as part of an attempt to fuel lost energies of their troops in combat (Totsuka 1999). The Nazis carried out forced prostitution and mass rape of women during the World War II. In Yugoslavia mass rape was carried out as a tool, a tactic, a policy, a plan, a strategy, as well as a practice (McKinnon 1994, Meron 1993, 425). Yugoslavia and Rwanda are a few examples where rape occurred in post-conflict contexts. Within the transitional justice framework, United Nations Security Council Resolution 1325 and Convention on the Eliminating All Forms of Discrimination Against Women have been significant in creating a logic to address these injustices during conflict, punish perpetrators who engaged in raping large number of women, and bring an end to impunity (Rooney 2007, Lyons 2010, 113, Reilly 2007, 168).

Though there is a systematic framework that has been planned by the United Nations and civil society organisations to bring gendered sexual violence to the forefront of punitive justice, certain barriers have prevented women from participating in transitional justice mechanisms. This invisibility and underreporting are mainly due to delayed court processes, aftermath stigma and the lack of witness protection and underreporting due to issues connected with their traditional set up or the social customs which discourage discussion in a public platform. Hence, where sexual violence is invisible, the victims are denied justice and continue to live in the shadow of their injustices. Furthermore, the long-term effects of marginalisation would ultimately lead to female ex-combatants returning to violence, while the civilian
women who are trapped within their traditional roles will not have the power to include themselves into reconstruction and development (Koenig 2003, 269).

2.10 Disarmament, Demobilisation and Reintegration (DDR)

DDR programmes have played an important role in putting transitional justice mechanisms into practice. DDR has proven to bring positive effect to post-conflict victims, contributing towards stability, serving justice and building trust. Historical data from 1980s illuminates DDR as confined to military reforms after a civil war. In later years such arrangements became a necessity to bring combatants who fought during war to arrive at a peace-building stream by way of offering a package of benefits. Incorporating justice, reconciliation and DDR have played an important role to the practice of transitional justice scholarship. It further contributes to the stability necessary to implement transitional justice initiatives and provides communities with the knowledge that justice has been served on a reciprocal basis to build trust (Muggah 2005, 239, Theidon 2007, 67).

The recent developments in the DDR field show the contribution made by the United Nations towards the evolution and implementation of the concept. This development in turn positively impacted, addressing post-conflict challenges ahead of victims through a victim-centric approach.

In this endeavour, the Integrated Disarmament, Demobilization and Reintegration Standards (IDDRS) of 2007 laid the basis for policy makers and practitioners to obtain flexible guidance to DDR activities in country level while addressing post-conflict context-specific issues within transitional justice and gender. Within this framework, the inclusion of women further challenged DDR in its designing and implementing of strategies (Almeida et.al 2009, De Silva 2006, Duthie 2010, Duthie

IDDRS of 2007 clearly note the tension and the complementing aspects that are visible when transitional justice is implemented (IDDRS 2007, Molloy 2011, 120). These tensions and complements for DDR were visible within the implementation of transitional justice mechanisms such as prosecutions and trials, truth-telling processes and the granting of amnesty. The perplexing nature of DDR and the impact of the socio-cultural context made the participants reluctant to be part of the prosecutions, fearing that they would be victimised by the outcome. The participants were unable to understand the positive impacts that certain justice mechanisms such as prosecutions could bring to their lives. Though some scholars made the caveat that linking prosecutions with DDR would derail the process, the empirical research proves that quite the opposite is true. It brought trust among combatants and helped them get involved in peace-building. Payne supported this fact stating that sequencing and mix-matching could bring productive outcomes to DDR processes (Waldorf 2009, 26). In certain post-conflict contexts such justice processes, when implemented at a local level, have facilitated reintegration programmes by fostering trust between ex-combatants (Duthie & Specht 2010).

As discussed above, the theoretical framework underscored the strong bonding that existed among the components within transitional justice. Transitional justice
mechanisms such as truth-telling and amnesties also brought complementarities when connected with justice and reconciliation. Amnesties linking with DDR for victims brought a notion of distributive and rectificatory justice, which built trust among conflicting parties (Boraine 2006). This shows the strong linkage that the restorative approach of reconciliation and the retributive approach of justice has in building peace. Furthermore, scholarly contributions also highlight the justice beyond retribution that could help victims of war in the post-conflict phase.

Therefore, the many challenges that occurred within the implementation of transitional justice in different post-conflict contexts brought multifarious challenges. This ultimately gives a broader picture, in which bringing each component and each stakeholder within transitional justice together is necessary for successful outcomes in post-conflict peace-building. The defects that occur within transitional justice mechanisms have brought injustice to women in particular. This is mainly due to the socio-cultural system that prevents women from achieving justice for the sexual violence that they have suffered during war. Furthermore, certain violence which they continue to face during the post-conflict phase, such as domestic violence, is not represented within any of the transitional justice mechanisms. Hence this research will underscore the importance of interconnecting the transitional justice mechanisms with DDR to bring fruitful outcomes for civilian women and female ex-combatants in post-conflict societies (Cerna 2004).

The Sri Lankan DDR programme was introduced soon after the end of the conflict, due to the large number of injured ex-combatants identified at the end of the conflict. Initially by identifying them during the rehabilitation process government underscored theirs need as a high priority. An action plan was drawn up and the Commissioner General for Rehabilitation (CGR) and the Bureau of the Commissioner General for Rehabilitation (BCGR) and the Rehabilitation of Persons, Properties and Industrial
Authority (RAPPIA) were set up based on the Sri Lankan context, while drawing on lessons learnt from international best practices and international legal principles and precedents. These institutions were expected to safeguard the human rights of victims to be rehabilitated due to terrorist action while keeping with the international obligations. Furthermore, these institutions were expected to contribute towards sustainable peace, reconciliation and social cohesion and well-being, to enhance the employability of rehabilitees, minimize their risk of socio-economic marginalization and utilize their underutilized knowledge and skills to create opportunities for economic revitalization in post-conflict development efforts.

In expediting this process, the Rehabilitation Authority ensured that an amount of Rs. 1,316.63 billion was spent to ensure and support for a better socio-economic standard of rehabilitees. The BCGR launched a programme involving a 'Family Cover' during the period of the Rehabilitation of the Bread Winner. An income-generating Micro Economic Project for NOK or financial assistance to facilitate a project, a scholarship programme for children of the rehabilitee, provision of food pack for low income families that was provided through the Ministry of Social Services was part of it. During my field work I met with several former combatants who took part in the 'Pay for Work' programme which entailed the building of roads in north.

Moreover, the post-war rehabilitation programme undertaken in Sri Lanka can be explained as follows: a coordinated and integrated effort was put in place beginning with the formulation of a national policy on rehabilitation of ex-combatants. The six key pillars for the implementation of DDR in Sri Lanka were identified as follows: education; spiritual, religious and cultural; social, community and family; livelihood and vocational; and psychosocial, sports and recreational. The goals of the rehabilitation programmes were facilitated by the reintegrated female ex-combatants.
and the programmes vice versa facilitated integration into the social fabric of the receiving communities (Yusuf 2012).

Female ex-combatants in the Sri Lankan rehabilitation process were engaged by trained psycho-therapists to inquire into whether or not they had suffered sexual violence or other violence during the conflict or post-conflict phase. This process assessed that the female combatants who entered the rehabilitation program had not suffered sexual violence by the Sri Lankan security forces, although a few have reported having being a victim of sexual violence committed by members of the LTTE.

**Methodology**

Taking a different perspective towards human rights in North and East of Sri Lanka, this study will deviate from the general perspectives taken on the human rights situation in the North and East of Sri Lanka by major international powers as United States, United Kingdom and the United Nations which only focus on the challenges of applying punitive justice for war crimes and on the issues relating to civilian women and female ex-combatants in the North and East of Sri Lanka. The methodology for this task was designed after considering the available resources and updated information on the violence that has not been studied and analysed by the United Nations and the international community. The information gathered during the field visits to Sri Lanka, which I have used throughout this thesis, will be utilised to examine the research questions outlined in the introduction.

Any research project which is bounded by empirical studies requires up-to-date detail and the reasons for the present status of a particular problem. Therefore in order to commence the methodological analysis all the necessary information were gathered during field visits to Jaffna and Batticaloa, the capital cities of North and
East of Sri Lanka respectively, from 15.02.2013 to 15.04.2013. I also interviewed civilian women and female ex-combatants to further strengthen my research analysis. This combination of different information enabled me to build the understanding of the phenomenon. Structured and semi structured interviews were carried out among 30 civilian women and 30 female ex-combatants from each area in the North and East in Sri Lanka. This civilian women included women facing domestic violence, psychological difficulties due to war, and war-affected widows. The female ex-combatants included widowed female ex-combatants, reintegrated but successfully employed women, and reintegrated but facing psychological difficulties women. Since the challenges facing women and female ex-combatants mainly stem from historical consequences, the objectives of this research could not subject itself to the kind of experimental survey techniques that are widely used in social science research.

**Qualitative approach**

In this project I used qualitative research methodologies with an analysis of the data already compiled by scholars in the field. Academic, Government and UN experts, and media personnel in Sri Lanka were interviewed during fieldwork to identify the causes, and to derive significant insight into the issues and narratives prevalent among women. Information collected through face-to-face interviews with civilian women and female ex-combatants who are already rehabilitated and reintegrated into the society in north and east of Sri Lanka provided information on effects of amnesties and the reconciliation processes on victims’ lives. Selected experts on human rights and law were also interviewed to obtain their insights to build up the arguments on justice and reconciliation. The information obtained through experts in the field was used to build up the debate on justice and reconciliation in Sri Lanka in Chapter 2 of this project.
The current status of the women population in North and East is dominated by issues that affect the domestic households and often demoralise women who are part of the development of post-conflict Sri Lanka. The qualitative approach further enabled me to bring in an analysis of each individual case of women's experiences, and juxtapose these with the international experiences of women to study the context-specific nature of each story. Similar approaches have been taken by scholars when inquiring into human rights issues as it opens up knowledge on how abuses occur and how the implementation of transitional justice processes will uplift human rights (Basil 2002).

The interviews with female ex-combatants elicited information on how they position themselves with women in general, their attitude towards transitional justice mechanisms with a special focus on DDR and reconciliation and linking tension points. In order to initiate these discussions, I used stories that I have gathered through primary sources to obtain their narratives, actions, motivations that would derive DDR and preferred alternative strategies for reintegration. Through my discussion of this material, I will finally make observations and comparatively analyse how far the transitional justice experiences would be practicable in Sri Lankan society. Furthermore, through these interviews, I intended to identify the needs and to analyse whether the transitional justice mechanisms can be used to address their issues. Although many international organisations have identified the necessity for this type of research, there is a visible gap in the research that has been rigorously undertaken in post-conflict Sri Lanka after the 2009 military defeat of the LTTE. Therefore, this first-hand information will no doubt be a contribution to the transitional justice scholarship and the Government of Sri Lanka policy makers, as well as the reconciliation process.
Selected in-depth interviews were conducted with people who are directly associated with the women in the North and East of Sri Lanka such as community leaders, social workers, NGO staff, psychologists, traditional and religious leaders, as well as with government officials, LLRC Commission members, representatives of international organizations and Gender experts in Sri Lanka. These in-depth interviews were intended to gather information on the issues and life of women and their security after war and cultural and social obstacles ahead of women and female ex-combatants to integrate into society. Selected experts on human rights and law were also interviewed while academics, government and UN experts, media personnel in Sri Lanka were interviewed to identify the causes, and to derive significant insight into the issues and narratives prevalent among civilian women.

As much as the documented evidences are important for this study, I also undertook in-depth research through the empirical studies that have been undertaken by scholars on how Sri Lankan women movements from 1990s have evolved and the impediments ahead of women achieving equality that ultimately brought these women to a vulnerable status during the war as well as in the post-conflict context. These documents were able to provide a picture of how grassroots issues made an impact on post-conflict Sri Lanka. Other types of information such as media reports, key incidents, on-going dialogues on internet websites and debates on this topic, conferences, seminars and other journal articles were also used.

**Limitations to the Study**

This research involved ex-combatants and civilian women in a post-civil-war environment, hence there was a significant prospect of the research raising issues that may cause distress to participants. There was a need to place appropriate
measures put in place to deal with this possibility - e.g. reference to support services, etc.

I mostly interviewed civilian women and female ex-combatants with the support of the Red Cross, IOM and the Ausaid in their regional offices in the North and East who are well acquainted with attending such necessities if they arise. Moreover, as there was a presence of Base Hospitals in Batticaloa and Jaffna, health-related precautions were available for the interviewees in those districts.

The information gathered during interviews were confidentially kept using a systematic mechanism, securing the actual identity of the participants by using pseudonyms, linking codes only for my reference. Written transcripts of interviews were kept at a secure office in a locked cabinet for 5 years at the Australian National University in order to maintain confidentiality.

As much as post-civil-war research is difficult, participants may reasonably fear reprisal from the government if their involvement in such research were to become known. This was a challenging factor and I was required to make it very clear that information will not be shared with the government. Within the socio-cultural sensitivities, there arose concerns to the fact that I was not familiar with the Tamil culture, and that might pose a problem with the progress of the research as there may be a lack of trust between the participants and myself. However, this was not a viable argument considering the close connectivity of Hinduism and Buddhism that both having synergies within the two societies having lived together for centuries in the same country, I was very much compatible with the living and lifestyle and winning the trust of the participants. I further used government officers and NGOs to gain connection to provide a clear picture of the ground situation in North and East of Sri Lanka.
Chapter Outline

In Chapter One, as the Introduction to this thesis, I state the significance of this research project and highlight the key research questions. The chapter provides a clear background to the Sri Lankan ethnic conflict, socio-cultural system, emergence of the LTTE and the emergence of the LTTE Women’s Wing to show how the root causes of the conflict are connected with the present day challenges among civilian women and female ex-combatants. In order to bring more clarity to the reader of this thesis, I compiled a literature review on transitional justice, gender, justice and reconciliation, illustrating how these terms have evolved within different cultural contexts as well as post-conflict contexts. The methodology that was adopted by me to carry out this project, demonstrated how qualitative approaches have been used in this thesis to justify my arguments.

In Chapter Two, I will broadly analyse the evolution of transitional justice and its application to the Sri Lankan context. I will then move on to elaborate on the Sri Lankan transitional justice process, giving special attention to the Lessons Learnt Reconciliation Commission (LLRC) process and assessing the role it has provided to the victims of Sri Lanka. In the second section of this chapter, I will discuss how certain transitional justice mechanisms have evolved in the international scene and how it has been adopted into the Sri Lankan context. In the third section of this chapter, I will assess the efficacy of implementing transitional justice mechanism within the spheres of different localised socio-cultural contexts and given different gender roles.

In Chapter Three, I will argue that transitional justice for Sri Lanka should be context-specific, and should take into account the socio-cultural norms within the North and East in order to address their challenges through a victim-centric, needs-based approach. To carry out this task, I utilise the fieldwork interviews with women and
female ex-combatants from the North and East of Sri Lanka which were carried out in early 2013. I then utilise available data and theories introduced by many researchers to make a broader analysis.

In Chapter Four of this thesis, I will discuss the manner in which the concept of DDR has evolved within the Sri Lankan context in comparison to other contexts to highlight the context-specific nature within Sri Lanka, and the impact of societal and cultural traditions on DDR implementation.
Chapter 2

Transitional Justice in Sri Lanka

1. Gender and Transitional Justice in Sri Lanka

With the expansion of transitional justice, gender interventions in the field of international relations challenged the application of transitional justice in different post-conflict contexts, which directly impacted post-conflict peace-building. At the end of the three-decades-long conflict in Sri Lanka in May 2009, the majority of the victims remaining in the North and East of Sri Lanka are civilian women and female ex-combatants. These vulnerable groups are faced with a different set of challenges than men that need to be addressed through a victim-centric approach. In this manner, the transitional justice process began to take place formally in the Sri Lankan context with the establishment of the Lessons Learnt Reconciliation Commission (LLRC) in 2010 as part of the Sri Lankan transitional justice process. The objective of the LLRC was to develop a way to address the challenges ahead of post-conflict Sri Lanka as a national strategy. If transitional justice is implemented in the standard form, bringing its mechanisms to the post-conflict context-specific issues in Sri Lanka will lead to significant practical challenges and hinder the achievement of productive outcomes as the issues highlighted in the LLRC and the Darusman Reports are visibly context-specific in nature. Linking them with transitional justice mechanisms has brought outcomes that are distinctly context-specific which this research elaborate in the following sections. Though there had been a visible role played by women in the transitional justice processes in other
post-conflict contexts, Sri Lankan women in the North and East bring a unique nature to the process given the impact of social and cultural traditions prevalent within the Tamil culture, which poses an obstacle to achieving gender justice within transitional justice. Hence, this chapter will discuss the challenges in applying transitional justice mechanisms for the issues of civilian women and female ex-combatants in post-conflict Sri Lanka. In this thesis as a whole and this chapter in particular, I will argue that transitional justice for Sri Lanka should be context-specific and should take into account the socio-cultural norms within the North and East to address the challenges through a victim-centric, need based approach. In carrying out this task, I have utilised fieldwork interviews with women and female ex-combatants from the North and East which were carried out in early 2013 and combined this with other available data and analysis. Furthermore, this chapter will broadly analyse the evolution of transitional justice and its application to the Sri Lankan context. The first section will elaborate on the Sri Lankan transitional justice process, giving a special focus to the LLRC process and assessing the roles it has provided to the female victims of Sri Lanka. In the second section, I will discuss the transitional justice mechanisms which have been adopted in the Sri Lankan context. In the third section, I will assess the efficacy of implementing transitional justice mechanisms within the spheres of different localised socio-cultural contexts and with respect to different gender roles in particular.
1.2 Setting the Stage: Evolution of Transitional Justice in Sri Lanka

Theoretical contributions have stressed the manner in which transitional justice has moved within different cultural contexts in order to attend to the needs of vulnerable groups (Teitel 2000, Lambourne 2009, Waldorf 2006, Franke 2006). Though the literature on transitional justice generally focuses on the implementation of its mechanisms and the tensions that arise in the phase of implementation, there is a lack of study undertaken with regard to the application of transitional justice in different cultural contexts. In order to fill that research gap, this chapter will begin with a broad account of the emergence of transitional justice mechanisms in Sri Lanka. The post-conflict context within the LLRC process created the idea that it is paramount to closely study the context-specific problems, socio-cultural issues and root causes of the conflict in order to provide solutions to the needs of affected people in order to achieve individual justice. Although the theoretical framework of transitional justice includes many debates on the necessity of context-specific study, there are only a few examples of cross-cultural comparative research undertaken on transitional justice and post-conflict societies (Minow 1999, Hayner 2000, Elster 2004). Therefore, I intend to fill that research gap and contribute towards the transitional justice scholarship by examining how transitional justice could be incorporated into the Sri Lankan post-conflict context.

The common goal of international human rights activists is to advance human rights practices in Sri Lanka in the post-conflict phase. However, it is also essential to explore whether legal processes or non-legal processes of transitional justice will be suitable for the Sri Lankan post-conflict challenges for civilian women and female ex-combatants. In general, at the end of a conflict, most post-conflict societies are
faced with a larger number of civilian women as well as female ex-combatants than men. These groups of women remain victims of violence at the end of the war. The challenges that leave them vulnerable at the end of the war, and the injustices that they faced during war, are the aspects that make them in need of transitional justice mechanisms. Waging wars and negotiations within peace has been a male affair. However, the involvement of women in peace building has proven helpful in addressing the underlying issues of discrimination and in improving physical, social and legal security for women. The latest empirical studies have proven that however much the connectivity of women has positively impacted to the peace-building processes, involving women within legal justice processes will no doubt trigger disruption to the post-conflict peace-building (Bell & O'Rourke 2007, 39). Continued pressure for a legal justice process from external factors may be regarded by the post-conflict state as a threat to the national sovereignty. This could in turn delay the states from restoring the victim’s lives, as funding that could be used for restoring individual rights will be used on delayed court processes. Pursuing trials would only add to the burden of the courts and put a tremendous strain on state expenditure that could be used for fulfilling social and economic needs of the victims. Reference can be made to the case of Cambodian transitional justice process, which was carried out through the Extraordinary Chambers in the Courts of Cambodia (ECCC) to bring justice for the injustices the victims faced during the Khmer Rouge period. In this instance, despite spending large sums of money on court hearings, the country was unable to achieve justice for injustices or fulfil the needs of the people on the ground (Pham et. al. 2011, 266). Delayed court processes and ignorance towards such legal mechanisms from the victim side prevented the people on the ground from reaching justice through ECCC. This is comparatively relevant for the Sri Lankan post-conflict phase where addressing the individual needs of civilian women
The recent report issued after the visit by the United Nations Human Rights Commissioner for Refugees highlighted the need for psychosocial support for the victims in the North and East of Sri Lanka (Colombo Telegraph 01.02. 2013). The Sri Lankan transitional justice process therefore needs to look closely at the needs on the ground and listen to the different contextual problems that have been threatened by the socio-cultural system in the North and East of Sri Lanka, while understanding the different roles and the dynamic challenges within these roles in order to establish a transitional justice process that would not hinder the delivery of its primary goals such as social repair. In some cases, trials have gone hand-in-hand with achieving legal justice in post-conflict societies (Orentlicher 2007, Scheibler 2012). Looking at the development of transitional justice in Rwanda and the former Yugoslavia, Mani has supported that it is imperative that rectificatory justice go hand-in-hand with legal justice and distributive justice addressing the economic and social inequalities that frequently lie at the root of conflict which mutually overlap with each other (Mani 2002). A better understanding of tensions that sheds light on problems and trade-offs could advance reconciliation and address trauma by expanding its context-specific goals through the transitional justice policy and formulation of a better transitional justice advocacy (Leebaw 2008).

In light of this, it is paramount that the transitional justice process for Sri Lanka should be a combination of legal justice, distributive justice and rectificatory justice leading to reparative justice through programmes that would be inclusive to all sections of society and members of the vulnerable groups in particular (Boraine 2006). At the same time, it is necessary to look beyond the standard type of violence faced by women in post-conflict societies that will not be exposed through
transitional justice mechanisms, such as domestic violence in order to bring such violence to the forefront of legal justice. This will ultimately contribute towards the transformation of gender roles, giving more prominence to bring women’s roles to a higher elevation in the process of peace building.

2. Transitional Justice Mechanisms

Amidst ongoing debate on the use of transitional justice mechanisms and the evaluation of its impact in other post-conflict contexts, transitional justice strives to achieve its key goals advancing human rights and democracy even within the unique context of Sri Lanka. The task was carried out judicially through trials and prosecutions and non-judicially through reconciliation commissions, truth telling, amnesty and granting reparations to victims.

2.1 Implementation of Mechanisms in Sri Lanka

The roots of transitional justice in Sri Lanka can be traced back to 2010 when the LLRC was established at the end of the three-decades-long war. It provided a platform for the women victims to provide a great deal of information on the sufferings that they underwent during the conflict while granting a cathartic experience to develop a therapeutic healing process. However, the LLRC was unable to highlight certain context-specific issues such as the rising domestic violence and socio-cultural issues among female ex-combatants after reintegrating into their societies. Certain issues among the disabled combatants and among the women who live in poverty-stricken communities in the North and East were also overlooked during the LLRC process.

At the end of the war on 20 May 2009, more than 280,000 people were displaced in the North and East of the country, which brought social, political and economic and cultural ramifications for the country. Child Development and Women’s Affairs
Minister M. L. A. M. Hizbullah has been quoted by the *Lanka Business Online* that 90,000 widows presently comprise the majority of the population in the North and East of Sri Lanka who are below 40 years old (*Lanka Business Online* 30.09.2010). It was also reported that the number of widows in Jaffna alone (20,000) consisted half of the total female-headed households in that area (International Crisis Group Report 2011, 106, LLRC Report 2011, 181). Female-headed households in the North and East are estimated to be 59,501, out of which 42,265 of those are in the Eastern Province and 16,939 are in the Northern Province. The total population in Jaffna is 583,378, out of which the total female population is 307,845, which is more than half of the total population (Census 2012). In Batticaloa, the female population comprises 274,305 out of 525,142 (Census 2012). The lives of these vulnerable groups never came to normalcy due to the lack of skills and education which they missed out on due to the involvement in the conflict as combatants or due to various other factors that prevented them from attending school for lengthy periods of time.

Presently, Sri Lanka is challenged by women as victims in need of protection and reconstructing their identities and reaching out to meet individual needs has become a tremendous challenge among certain groups, such as female ex-combatants or disabled combatants (International Crisis Group 2001).

On top of these tremendous challenges of living their lives in the post-conflict phase, the socio-cultural system that has existed for many years within the Tamil community in the North and East of Sri Lanka also makes it difficult for women to restore their lives in the post-conflict phase. The socio-cultural system that dominates the Tamil society in North and East of Sri Lanka still imposes a particular socio-cultural order on women. Although urban life in Colombo has provided space for gender roles to transform, Tamil women continue to be at disadvantage mainly due to the socio-cultural system that is practiced in Sri Lanka. Within this society, traditionally -
dominated norms kept them from speaking about certain issues pertaining to sexual violence in public platforms, which further deprives them from achieving gender justice. Similarly, the reintegration process and the design of Disarmament, Demobilisation and Reintegration programmes (DDR) which are focused on restoring individual rights were also hindered by the cultural traditions in bringing transformation to gender roles in the post-conflict phase due to underreporting of certain challenges facing women in the North and East. In the next section, I emphasize the necessity of closely studying the post-conflict context-specific issues among women as a culturally-sensitive perspective is needed when addressing these challenges through transitional justice.

Truth and reconciliation commissions, in general, fail to attend to the needs of female victims. The South African Truth and Reconciliation Commission commenced in 1995, at end of the apartheid era, and should be hailed for its mutually reinforcing nature with a restorative process to address victims of violence during apartheid. Furthermore, it gave the world the message that reconciliation must centre on the idea that justice must involve an effort to “restore” a lost balance of retributive justice and reconciliation. However much the South African Truth and Reconciliation Commission tried to involve women in its structures and mandate, its ultimate outcome could not satisfy the needs of women victims nor assure gender justice which is rather apparent in the present South African context (De la Rey 1998, Ross 2003, 16, Graybill 2001, 08). The absence of women at the decision-making level or as prosecutors and judges lowers participation of women in submitting their grievances and this has also added to the challenges in implementing transitional justice as it marginalises the benefit of raising awareness of gender issues throughout the life span of the Commission. It is noted that women’s presence can enforce a systematic framework and design of structures at all planning levels as
well as underscoring the relevance of transitional justice in a reconciliation process (Muddell 2007, 92; Katherine 2006, Nesiah 2006). Although the South African Truth and Reconciliation Commission was able to provide accurate information regarding what happened under apartheid while decisions of trials and tribunals were studied at the reconciliation commissions, women’s contributions made a greater impact on healing the wounds of the victims, bringing in collective memory during criminal prosecutions. However, the South African Truth and Reconciliation Commission was unable to process many statements submitted by women and human rights violations as rape and sexual violence. This ultimately became an obstacle to achieving restorative justice which finally did not serve in healing the community at the local level (Muddell 2007, Fulop 2010, Wilson 2001).

The Sierra Leone Truth and Reconciliation Commission has been hailed for inclusion of transitional justice and for its influence on women in bringing gender security in the long run. Inclusion of hybrid courts as it was in Sierra Leone provided more space for a locally-led approach, and the Truth and Reconciliation Commission proved effective in bringing long-term justice for women’s issues. A distinct feature of this is that unlike South Africa, the two components of transitional justice, judicial and non-judicial, operated simultaneously while emphasising the need to address sexual violence and crimes against women with a robust political will (Kelsall 2009, Muddell 2007,87; Davis 2010, 2, Schabas 2004). However, the Sierra Leone Truth and Reconciliation Commission found it difficult to carry out its task simultaneously with the Special Court due to a clash of interests despite its subordination to the courts and had a dominant negative impact on the ex-combatants. Furthermore, due to the lack of funding and lack of information disseminated to the participants, there was confusion about the relationship between the two institutions (Dougherty 2004, 45). The Truth and Reconciliation Commission was able to operate in an
environment in which alternative practices of reintegration, reconciliation, and social recovery were existent. The active participation of civil society and the transparent mandate with powerful tools to look into the violations with a broad lens facilitated the success and the scope of the Special Court which began in 1991. The Special Court strived to create a constructive interchange between the victims and perpetrators of human right violations and abuses to bring in a clear picture of the past to prevent re-occurrence of such violence (Dougherty 2004, Davis 2010, 11).

The extensive findings promulgated by the Truth and Reconciliation Commission in Sierra Leone in the sphere of social, legal, political, and cultural forces rendered a more vulnerable picture to the commission, which contributed towards reforms being enacted to strengthen the position of women in Sierra Leone and protecting women from future victimization (Franke 2006, Rubio-Marín 2006, Maisel2011). Through its mandate, the Sierra Leone Truth and Reconciliation Commission was able to address most of the women’s issues through transitional justice processes by introducing three new legal reforms for gender violence through the information gathered from local women advocates during the reconciliation commission sittings. This paved the way for long-term gains and securing protection against gender-related violence in the long run. In 2007, three bills were passed in Sierra Leone that covered domestic violence, customary marriages and divorce which granted greater security for women in the post-conflict phase (Abdullah 2012). Through these three bills, a basis was established for the international NGOs to initiate their future donor programme and strategies for implementation (Sesay and Suma 2009, 24).

Due to the context-specific nature existent in these post-conflict societies, almost all post-conflict societies have their own unique context-specific mandate. In contrast to the South African Truth and Reconciliation Commission, the Sierra Leone Truth and Reconciliation Commission focused on crimes of sexual violence against women
(Kelsall 2005, Maisel 2013 233). The Guatemalan Truth and Reconciliation Commission analyzed the official policy and social exclusion and tried to address the issue of genocide. The South African Truth and Reconciliation Commission focused on truth-finding and promoting national unity and reconciliation. The Chilean Truth and Reconciliation Commission focused on the most severe human right violations in order to aid the reconciliation process (Merwe et. al. 2009, 102). In this manner, though the reconciliation commissions could not address gender justice per se, it laid the basis for respective mandates to formulate the reconciliation processes to address the post-conflict context-specific problems. This gave rise to the debate within the practice of transitional justice about whether or not truth telling and amnesties could deliver gender justice to post-conflict societies as part of long-term peace building. With this debate in mind I intend to discuss whether these two concepts of justice and reconciliation are suitable for the context-specific challenges in Sri Lanka.

2.2 Truth-telling Process in Sri Lanka

Differences in culturally-determined truth-telling processes and practices have significant consequences in a reconciliation setting. For example, the degree of involvement that women would have over the truth-telling process may vary greatly from one cultural group to another (Mendeloff 2004). In some cultures where most of the focus of caretaking is placed on achieving reconciliation with encouraged support to overcome the painful memory by their community of relations and friends, transitional justice methods developed by the United Nations may not be appropriate. The reconciliation process in Jaffna and Batticaloa must consider the cultural underpinning that would threaten the truth-telling process further. The caste
system in Jaffna played a major role in framing the disempowerment of women in particular. The Vellalar caste is the dominant caste of the affluent Tamil agricultural landlords in the states of Tamil Nadu and Kerala in India. The Sri Lankan Tamil Vellalars identity arose from those who migrated from neighbouring states of Tamil Nadu and Kerala from 15th to 17th Century AD. (Pfaffenberger 1981). These societal barriers that were inherent within the system were later incorporated into the LTTE female cadre recruitment policies by the leader Velupillai Prabhakaran. Capturing higher positions in the community in support of Portuguese and Dutch, Vellalar elites maintained a greater autonomy of power within the Tamil society. The Vellalars, while maintaining dominant role with the tobacco plantation sector, used Pallar caste (lower caste in Jaffna) people as slaves. They believed that other castes lived at their sufferance and for their convenience. Today the majority of tobacco plantation workers remaining in the Jaffna peninsula consist of these lower caste people, bringing under privileged section within the Jaffna Tamil society to which most of the post-conflict women are connected. Similarly, the people I interviewed during field visits to the temporary shelter camp in Tellipallai Division in Jaffna in early 2013 noted that the majority of women in the camp are widows of men who have been LTTE activists. These men were natives of Maileddy and Taileddy area on the seashores of northernmost Jaffna. Their traditional employment is fishing and, like the leader of the LTTE, they belong to the Karaiyar caste. Since the majority of LTTE leadership were born in Velvetithurai, the LTTE was able to capture almost all the votes of fishermen in the northernmost peninsula for their separatist cause. The traditions of caste and dowry that Ceylon Tamils preserved have also contributed immensely to the post-conflict peace building by women. The truth-telling process in Sri Lanka did not consider the pride of women who sought to be empowered as cadres of the Liberation Tigers of Tamil Eelam and the issues that may be in collision
with the truth-telling process as it was held in a public platform that would in turn hinder their dignity.

If the violence faced by women is of a more private nature, be it rape, domestic violence or any other form of physical torture, there is a rare chance that women would open up with such stories in a public platform such as truth commissions (Buzawa et. Al. 2003, Blatt 1991). This was clear with the LLRC statements made by women: the leverage they maintained in exposing only the truth of violations or disappearances occurred to their loved ones, but not of them. The act of suppressing their sufferings has a strong linkage with the possibility of being stigmatized in the aftermath. Hence, rather than achieving or promoting gender justice, truth-telling will threaten the role of women in the reconciliation processes, leading to insecurity and marginalization (LLRC Report 2011).

Furthermore, truth-telling processes confine the harm or suffering undergone by women during conflict only through the lenses of sexual violence. The other harms such as emotional harms when losing loved ones, being denied access to or opportunities for education, or being marginalized were not recognized as significant by the cultural tradition to empower women in the present post-conflict context. This was not only depicted in the Sri Lankan context but was equally visible in South Asia in general (Gobodo-Madikizela 2005, 07, Jayatunga 01.02. 2013).

Due to structural deficiencies, partial truth has been revealed in different post-conflict contexts. There is very little chance that such partial truth can render restorative justice for women in post-conflict societies (Walaza 2003, 195, Ni Aolain & Turner 2007, 249). In this manner, it is vital to analyze whether truth-telling processes would be able to address long-term reconciliation by providing psychological healing
to the victims and giving them closure on the sufferings they have undergone during the conflict period.

Women in Tamil communities are believed to hold powerful roles within the family. However, their expected role within the cultural system confined them to the household duties and practice of Hindu rituals (De Soyza 2011). Many women therefore strived to achieve equality and to empower themselves by enlisting as cadre members of the LTTE. At most occasions, women members of the LTTE carried out propaganda informing how the minority Tamils have been treated and in particular the insecurity espoused ahead of women due to sexual violence experienced by certain Tamil women. On the other hand most women, seeing the way in which the Tamil women who have been enlisted enjoyed the fruits of liberty, equality and the freedom to be independent, were compelled to enlist. The present day challenges among Jaffna and Batticaloa women are mainly framed and trapped within the caste system and the customs that are prevalent within the communities which are among the untold stories in the LLRC truth-telling process. This brings a unique context-specific challenge that hinders the transformation of gender roles in the post-conflict phase.

In light of this, I wish to bring forward the following aspects that hinder a civilian woman or a female ex-combatant to empower themselves in the present post-conflict phase. In Jaffna, women play a central role in practicing the caste system.

The cast system advocates that a proper Hindu marriage for a man is possible only within the same caste. A high caste man cannot marry outside his own caste. According to Hindu law, inter-caste marriage is illegal. In this circumstance, it should be noted that women who were attached to LTTE combatants or women who were widows mostly belong to the Karaiyar caste, which is the cast that the LTTE leader
belonged to. These women were mainly residential in the areas where Karaiyar communities resided and carried out their traditional livelihood as fishing. Hence, at the end of the war these women find it difficult to have inter-caste marriages.

Secondly, marriage carries social recognition with it. In the absence of marriage, women were not highly regarded in society. In the present context, the former combatants and the civilian women who are widows face the challenge to remarry in order to gain social recognition and to support their families. On top of this, the dowry system practiced in Jaffna and the Eastern Province brings further challenges to these women.

The lower caste women are expected to conform to a certain recognized dress. The Pallar and Nalava women, as already explained, are expected to leave their shoulders bare. In Jaffna and parts of the Eastern Province, these customs regarding dress are fairly strictly-observed, unless otherwise for certain climatic conditions. In the present context, these former combatants have been used to wearing westernized dress which is suitable for fighting. At the end of the war, they have been brought back to their traditional communities, which expect them to embrace the traditional dress code (Cartman 1957). The only way in which a person can leave her caste is by leaving her country, which is why many of the civilian women and former combatants have a tendency to leave Sri Lanka by way of migrating or as refugees or otherwise in order to start a new life.

Another major challenge that the civilian women and female ex-combatants face is unemployment. In Jaffna, caste has been closely associated with a particular occupation. Although this particular occupation is not necessarily followed by all the members of the same caste, whenever another occupation or profession is taken up, Jaffna Tamils ensure that it is never one that it is associated with another caste. In
this context, in a society where women’s role was confined to the home and engaged in raising children, the present contextual challenges have further disempowered them to seek the available employment.

The standard process of truth-telling underscored by the transitional justice scholarship will not be able to facilitate issues within the private sphere of women in North and East of Sri Lanka (Ni Aolain 2009, 1068). This brings me to the conclusion that truth-telling is severely restricted when implemented in a post-conflict context where there is a culturally-dominant society posing obstacles to achieving women’s rights in the fields of education, health and employment (Cahn et. al. 2009, Ni Aolain and Turner 2007, 245)

At present, the women in the North and East are in need of being reconciled psychologically for the violence and traumatic experiences which they have faced during the conflict period. Furthermore, the members of vulnerable groups need closure so they can put all the violent incidents that took place during the war behind them and move on with their lives. Until now, no empirical studies have been carried out to evaluate the truth-telling processes and their impacts on truth commissions and on victims. However, truth telling will only be able to meet short term, rather than permanent, goals that would address interim purposes. Transitional justice processes that focused only on punitive justice, incorporating truth-telling processes, were unable to address grievances of the victims (Androf 2012). Similarly the transitional justice process in which truth commissions processes were brought forward could not therapeutically bring healing to the victims, as these processes must not only must provide short term satisfaction but must be linked with reparative justice in order to achieve long-term peace. Similarly, transitional justice mechanisms must strive to understand the inability of women to protect themselves
in public and find solutions that would not marginalise them further in the post-conflict phase.

### 2.3 The Amnesty Process in the Sri Lankan Context

According to the Terrorism Prevention Act of 1979, the Government of Sri Lanka adopted the policy of granting amnesty to all the surrendered LTTE cadres as part of its restorative policy. The Sri Lankan Government adopted amnesty in a balanced manner, granting amnesty for some groups while prosecuting others. By engaging victims through restorative justice, the Sri Lankan government was signalling to the world that as a democratic force, Sri Lanka had zero tolerance for grave human rights violations. According to a study by Olsen, the non-holding of all perpetrators to retributive or restorative justice can be a fair policy. This stance contributed towards visualizing the keenness on the part of the state to prosecute the most violent crimes by dividing the potential spoilers from threatening the transitional justice process in Sri Lanka (Olsen et. al 2010, 147).

This mode of granting amnesty was interpreted and criticised by many scholars and practitioners who noted that it would erode retributive or restorative justice on the part of the victim and led to impunity. Furthermore Kritz points out that granting amnesty cannot be justified as a mode of bringing restorative justice for most of the heinous crimes committed in the past (Mallinder 2007, Kritz 1996). With the end of several key violent incidents in Burundi the elected government was in place by 1993. However, many of the elected leaders were killed during the military coup.

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6 The Burundian case further brought an exemplary case study to this effect. Throughout the historical developments commencing from its independence Burundi faced different cycles of gross and systematic human rights violations. Among these sporadic outburst of violence five key incidents that took place in 1965, 1972, 1988, 1991 and 1993 are noteworthy. (Vanderginste 2007, 06). As a result of the parliamentary elections held in 1993 first democratic parliament was in place with the majority Hutu leadership. However by October 1993 most of the political leadership were killed during a coup attempt by a group of Tutsi military. The peace negotiations started in June 1998 with the facilitation by the former Tanzanian president Julius Nyerere. The Arusha Peace and Reconciliation Agreement for Burundi were signed on 28 August 2000, between the government, the national assembly and two coalitions of a total of seventeen political parties. With
the face of such a devastating set of events, it was clear that transitional justice must be implemented in Burundi. With the United Nations announcing a no-amnesty policy for Burundi the country began to address the grave human right violations through legal prosecutions. However, even within the limitations imposed by the United Nations on the domestic legal system, the use of temporary immunities and the delayed establishment of proposed transitional justice mechanisms circumvented the challenge of amnesty prohibition (Vandagiste 2011). The absence of legal prosecutions and impunity through amnesties will threaten the peace-building process as states might tend to find alternative paths that could contribute towards impunity for human right violations in the long-run (Quinn 2009, Dugard 1999).

Amnesties presented in other contexts have been used in different circumstances. Though international law does not provide a space for granting amnesty for crimes against humanity, South Africa was able to carry out its amnesty process according to the international law granting the same to applicants to the Truth and Reconciliation Commission who qualified as committing the act with a political motive. This was widely-criticised by many South Africans as it would seem to extending impunity to most perpetrators of the apartheid regime (Mallinder 2007, Gibson 2002, 541, Mamdani 2005). The South African Truth and Reconciliation Commission appointed several committees to look into different aspects of transitional justice. The Amnesty Committee received 7,000 applications requesting amnesty. Out of this total number of applicants, only 16% received amnesty, which sparked debate over the fairness of granting the amnesties for South Africa case (Graybill and Lanegran 2004). In Burundi, the United Nations Special Expert granted no amnesties for serious human right crimes at the national levels which brought a

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no significant impact from the Arusha Agreement, the General elections were held in 2005, resulting in a victory of the former rebel movement and the election of its chairman Pierre Nkurunziza as the new president of Burundi. On 7 September 2006, a Comprehensive Ceasefire Agreement was signed. Through overall the Burundian case is a fascinating case in which both at the national and at the international level the significance of it would be its use of formal retributive justice mechanisms which was strongly favoured by the large majority of political and other players. However, to date the Burundian transitional justice process has been a complete failure due to its inability to establish any kind of mechanism to deal with truth, accountability, reparation and/or reconciliation.
negative trajectory to the transitional justice process as finally amnesties could not be diverted to bring reparations to the perpetrators nor victims, which was the case in Haiti as well (Chapman 2001, Vandeginste 2011, 199). However, establishing an amnesty process through reconciliation was seen as an option to achieve restorative justice while giving a voice to the victims to tell their stories and legitimising the pain that they have undergone during the conflict. After weighing the gravity of the crime, applicants were finally granted amnesty under certain conditions.

There is no international legal basis for any kind of amnesties when granted by different countries in the past (Zyl 1999, 15). Though states overwhelmingly adhered to this procedure, legal scholars and human rights activists challenged its shortcomings and questioned its legality. The full blanket amnesties granted to all rebel leaders in Sierra Leone led to impunity and the state evading responsibility to prosecute crimes against humanity. If the Sri Lankan Government is also involved in granting widespread amnesties, it would be unfair for different parties involved in the three-decades-long conflict. The LTTE cadres were involved in carrying out human right violations against Sinhala, Tamil and Muslim people; women in particular suffered immensely. If the government was to bring retributive justice to the victims of the LTTE attributed killings that affected the whole population in Sri Lanka, the perpetrators would not be alive today (BBC news 2000, Factual Analysis 2006).

In this context, the Government of Sri Lanka decided to follow a balanced path which emanates from the precepts of Buddhism to walk the middle path “Madyama”

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7 (i) The Central Bus Station Bombing – A massive bombing that took place at the central bus terminal of Colombo on April 21, 1987 in Pettah, Colombo, Sri Lanka. The bombing killed 113 civilians.
(ii) The Aranfulawala Massacre was the massacre of 33 Buddhist monks, most of them young novice monks, and four civilians by cadres of the rebel Liberation Tigers of Tamil Eelam organization (the LTTE, commonly known as the Tamil Tigers) on June 2, 1987 close to the village of Aranfulawala, in the Ampara district of Eastern Sri Lanka. The massacre is considered one of the most notorious and devastating atrocities committed by the LTTE during the history of the Sri Lankan Civil War, and continues to be commemorated 20 years on.
(iii) The 2008 Fort Railway Station bombing was a suicide bombing of a commuter train while it was stopped at the Fort Railway Station, Colombo, Sri Lanka on February 3, 2008. The bomber was a suicide attacker, a man named Raju. The attack killed 12 and injured more than 100. [3] Killed in the attack were eight school children of D. S. Senanayake College's baseball team and their coach/teacher-in-charge.
(iv) The Central Bank bombing was one of the deadliest terrorist attacks carried out by the LTTE during the Separatist civil war in Sri Lanka between the government and the Tamil Tigers. The attack took place on January 31, 1996, in the Sri Lankan city of Colombo. A lorry (42-6452) containing about 440 pounds of high explosives crashed through the main gate of the Central Bank of Sri Lanka, a seaside high-rise which managed most of the financial business of the country. As gunmen traded fire with security guards, the suicide bomber in the lorry detonated the massive bomb, which tore through the bank and damaged eight other buildings nearby. The lorry that was followed by the three-wheeler, carrying two LTTE cadres armed with automatic rifles and other ammunition. The blast killed at least 91 people and injured 1,400 others. This violence made more than 100 people to lose eyesight bringing physical wounds to even foreigners from USA, Japanese, and Dutch nationals. Most of these were bystanders, civilians or tourists. It was eventually determined the bombers had come from Jaffna, in the north of the country and were LTTE members. Until 2006, the Central Bank bombing was the deadliest LTTE bombing of the civil war. (Source: LTTE Atrocities, Ministry of defence, Government of Sri Lanka)
Prathipadawa” by adopting restorative justice (Bhattacharya 2010). By embracing restorative justice the state tried to come to an amicable solution with the parties involved in violating human rights from the side of the rebels and to expand the relationships into a long-term peace in Sri Lanka. The process was further facilitated by the amnesties granted to combatants under the Prevention of Terrorism Act 1979. Approximately 12,000 ex-LTTE combatants surrendered to the government forces at the end of the conflict. By 15 May 2013, 11,551 persons, including 594 child soldiers have been rehabilitated and reintegrated into society after ex-legal proceedings have been instituted against 194 ex-combatants who are under judicially-mandated custody, remanded or released on bail by the court. Further actions are underway to expedite the cases of suspects who are in remand custody after being indicted. Therefore the amnesty process in Sri Lanka has brought an accelerated reintegration process for the victims of war and enabled them to restore their lives as a way of contributing to the economy of the county (Daily FT 2013).

Following the middle path is not only confined to the Buddhist tradition but it also reflects the Hindu attitudes of the people in the North and East of Sri Lanka. The discussions I held with former combatants and civilian women in the North and East during fieldwork supported this observation. The female ex-combatants that I met in Batticaloa were questioned on their most fearsome or painful incident that they faced during the conflict. The following cases highlight support for amnesty. All 3 female ex-combatants and 5 civilian women interviewed had lost a family member due to the war. However, when asked whether they still resent the loss the answer was that “the mind has grown to accept the loss and wants to move on.” Nivedini said the painful memories come to mind from time to time but she had no intention of taking revenge on anyone as “we live in a peaceful era” (interview held on 28 March

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8 Following the middle path to facilitate enlightenment by avoiding the extremes of self-gratification on one hand and self-mortification on the other.
Mathushaa, a female ex-combatant in Batticaloa said, “My most painful memory during the past is losing my father. He left home one day to work and didn’t come back. He had no involvement with LTTE but became a victim of violence as a passer-by. I still feel that his presence has supported us till this day. But time flies. It has been 12 years and I have learned to accept the loss of my father. Now I hate no body” (interview held on 28 March 2013 in Batticaloa). In Jaffna, Dakshini lost her husband as he was involved in the LTTE and was moving around the neighbourhood with a group of LTTE during the curfew time. He was killed during a clash with Government Forces. At present, she lives with her brother and cares for her child by assisting in a grocery shop owned by her brother. She said, “I cannot marry again as I need a large sum of money as dowry to remarry. However much I express my grief, my husband will not come back for my child.” “Seeds of hatred will not solve our problems,” Dakshini responded when asked whether she would be ready to forgive the killer of his father for an incident that took place 8 years ago (interview on 12 March 2013). All the above details illustrate the dynamism within the adoption of amnesties as an option for Sri Lanka to move ahead within transitional justice.

The stories told above by civilian widows and women who lost their loved ones due to the conflict show the sadness and suffering that they experienced in losing a loved one to a violent conflict. At the same time, it must be brought to attention that there are a large number of widows in the southern part of the country whose husbands lost their lives due to the conflict. Hence, it is important to consider the widow community in the southern part of the country whose husbands lost their lives due to the conflict. This will balance the situation to arrive at a position of being able to grant amnesty for both sides and achieve restorative justice. Secondly, the way in which the LTTE was operating was deemed illegal according to the Sri Lankan
Government laws. Therefore, as a terrorist organisation proscribed by many countries in the world, the LTTE has carried out illegal acts according to the laws and needs to be dealt with according to the established rule of law. The Government decided to grant amnesties for ex-combatants who were involved in certain serious offences with a restorative approach. However, atrocities committed by government forces during the conflict have not been dealt with adequately according to international law. Although Commissions of Inquiry were appointed by the government to investigate the Aranthalawa and Bindunuweva incidents, the outcomes of these commissions were not dealt with according to the legal justice measures. This has eroded the practice of legal justice as perpetrators received impunity for atrocities committed during the conflict. Hence, careful use of amnesty is necessary to build trust among conflicting parties, in order to find a way forward in peace-building in Sri Lanka. Therefore Sri Lanka did consider the mechanism of amnesty and used it in a balanced way by granting it to certain sections involved in the armed conflict.

2.4 The Practice of Amnesty: Buddhism and Hinduism in Sri Lanka

The Sinhala and Tamil sections in the country of Sri Lanka share an equally tolerant cultural and traditional system. Although the majority of the population consists of Buddhists, the Buddhist temples have reserved a special corner for Hindu gods to be observed by the Buddhists. National festivals such as Sinhala Tamil New Year are celebrated by the two cultures on the same day, as a way of sharing the Sri Lankan

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10 (i) The Aranthalawa Massacre is considered as one of the devastating massacres in the history of Sri Lankan conflict which took place on 02.06.1985 in a village close to Ampara district in the Eastern province of Sri Lanka where majority of the population were Sinhalese. 33 Buddhist monks, most of them young novice monks, and four civilians by cadres of the rebel were massacred by Liberation Tigers of Tamil Eelam organization (LTTE).

(ii) The Bindunuwewa Massacre - Bindunuwewa Prison Massacre took place on October 24, 2000, at a detention center of Bindunuwewa, Sri Lanka, resulting in the deaths of 26 minority Tamil political prisoners by a mob of majority people.
heritage. This tradition is the key factor that shaped the way in which the Sri Lankan people live their lives and handle daily conflicts. The general custom is that if there is an issue between two parties they will try to discuss solutions and forgive each other for what happened and try to move on as well as repairing that fractured relationship. In Buddhism it is believed that even if the amnesties are granted the perpetrator cannot deviate himself from the wrong act they have committed against the victim. According to the system of samsara bad karma will follow either in this life or in the next life and will definitely return to the perpetrator as punishment for their offences (Alldritt 2009, 13, 29). Similarly, according to Hinduism the karmas that one commits will bring suffering and bad fortune to one’s life. The strong connectivity between karma and forgiveness within Hindu philosophy stems from the belief in an unaffected state of mind even when reviled and chastised. In Hindu philosophy, this is known as tolerance or absence of agitation. The equanimity and tolerance within amnesty were regarded as virtues that can be achieved through verbal and mental attitudes and feelings when the perpetrator offers no apologies or expressions of remorse. At first, anger is suppressed and leaks out as a slow poison and then, finally, the victims learn to let go, particularly in the Hindu context, to bring about a compassionate environment for peace (McCullough et. al 2001, 48, Suchday et. al. 2006, 82). Buddhism teaches people to coexist and refrain from committing crimes by following the middle path, while Hinduism preaches coexistence and self-cultivation that also has a deterring effect. Although Buddha did not support retributivism/punitive measures while adhering to ahimsa (non-violence), he did believe in following a middle path to build an ethical society, keeping with the

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11 Samsāra originating from Sanskrit is a Buddhist term that literally means “continuous movement” or cyclic movement. Buddhism describes that samsara will be the continuation of births as a repetitive cycle of birth and death that arises from being born as an ordinary being.

12 The kamma effects (vipaka) may occur at different times; namely in the current life time (ditta dharma vedaniyakamma), effective in the next life (upapajjavedaniya), indefinitely effective (aparapariyavedaniya) or become ineffective (ahosikamma). Again, kamma may show its effects in different spheres (pakatthana) such as in unskilful in the sense sphere (akusalakamavacara) skilful in the sense sphere (kusalakamavacara), skilful in the sphere of form (kusala-rupavacara) and unskilful in formless spheres (kusala-arupavaccara).
deterring effect of his teachings. Buddhism and Hinduism espouse similar values such as forgiveness and equanimity; the main differences are Buddhism’s rejection of the caste system, Buddhism’s middle path in relation to food intake, the Buddhist concept of ‘nirvana’ and other metaphysical concepts. It is paramount that this unique dimension within the Sri Lankan context is understood when applying transitional justice in the post-conflict context.

I brought this detailed analysis to the forefront to further clarify the dynamism within the Sri Lankan context where two different religions are involved in the process of granting amnesty. Though retributivism was accepted by western countries, “an eye for an eye, and a tooth for a tooth,” as appears in the Old Testament, and that it is also being appearing in the law in the Middle East including in Palestine/Israel at the time Christianity emerged, the New Testament as well as the Old Testament oppose this sentiment. Christianity rather promotes tolerance and restorative justice.

The retributive justice practiced by Western countries have begun being transformed towards applying a practical system in the past decade. The Prime Minister of the UK has been quoted as noting that criminal justice policies are to build public confidence and it is important to rebalance the system in favour of the victim and tries to deviate from the 19th century methods to deal with atrocious crimes. In this context, the US system too provides that what is legal is not a normative conclusion. It further notes that what is legally allowable is not necessarily morally justifiable (Tonry 2011, 05).

There is a rampant move to imprison perpetrators in the West and bring them forward to the criminal justice system. Even those systems have now slowly drifting towards restorative community-led programmes to bring in a sustainable effect by looking through the perspective of people (Tonry 2011, 22). As what is legally
allowable is not always morally justifiable, in relation to the Sri Lankan context retributivism alone will not be the best practice for application. Out of the many countries that offered amnesties, the only country that can be cited as a Buddhist country is Cambodia, where the outcomes turned out to be a failure as its scope was “conceal and forget” which was highly criticised by international scholars and the United Nations. The policy emanated from a Buddhist philosophy to address the context-specific issues which were seemingly unsatisfying for the Christian scholars and transitional justice practitioners (Slye 2012). This clearly demonstrates the necessity of change for this widely-used amnesty process when implemented in different societies.

The Sri Lankan conflict has been in the international discussion for the last three decades. Beginning from the 1990s, seeing the need to end this prolonged conflict, major Western powers initiated to observe the criminality within the LTTE and regarded it as one of the most ruthless organisations in the world. In the recent Report by the United Nations High Commissioner for Refugees, Ms. Navy Pillay, at the end of her visit to North and East of Sri Lanka, noted that the LTTE was a “murderous organization that committed numerous crimes and destroyed many lives” (Colombo Telegraph 2013). With such a proscribed status internationally and domestically, members of this organisation were acting within the sovereign territories of Sri Lanka against the will of the Sri Lankan law (Editorial, Sunday Observer 03-06-2007). This is the main reason for the Government of Sri Lanka to take the surrendered cadre into custody at the end of the war, which would have been the stance of any ordinary state that enjoys its sovereign rights. As part of the state’s responsibility, the Government of Sri Lanka released almost all female ex-combatants, granting amnesty after successful reintegration programmes and giving them vocational training on restarting their own employment. A number of female ex-
combatants remain in custody pending trials for particular cases. Similarly, most male ex-combatants have also been reintegrated while some are still in custody pending trial. The rehabilitated cadres have now accepted the transformation that has taken place from a LTTE leadership to a democratic change. Although the combatants have gone against the rules of the state they have now accepted to spearhead their lives within post-conflict realities as peace is more important for them (Ratnaweera 2012). However, since it is necessary to consider the sentiments of released LTTE cadres, Government policy strives to acknowledge their grievances as a minority group within Sri Lanka and to address their requests in an objective and a balanced manner through restorative justice policies which could provide a healing process and an inclusive approach to address post-conflict issues that stem from the root causes of the conflict.

This policy of granting amnesty for some sections according to the domestic legal system, and prosecuting others through trials for certain cases is commended by Leigh Payne’s recent research which describes it as a formidable way forward for democratisation (Olsen et.al.2010). In this manner, Sri Lanka managed to take legal action on certain issues where there is evidence and the rest were granted amnesty after carefully considering the gravity of the case. This is a unique feature that I have observed in the transitional justice process in Sri Lanka. This culturally-embedded way of granting amnesty has always been depicted within Buddhist and Hindu philosophies and has made an impact on the decision-making process of the Government of Sri Lanka. At the end of the Second World War, when all the countries of the world decided to seek reparations from Japan, Sri Lanka stood up at the San Francisco Peace Conference in 1951 and stated its policy against seeking reparations according to Buddhist precepts. President J.R Jayawardene made a plea

at the peace conference and declared that Sri Lanka would disclaim war reparations from Japan (Melagoda 2012, 149). Sri Lanka also supported the admission of war-torn Japan into the post-war international community, quoting the words of the Buddhist precepts in Dhammapada: “hatred ceases not by hatred, but by love.”

This statement not only paved the way for Japan’s speedy post-war recovery and reconstruction but also resulted in many countries in the world disclaiming reparations from Japan. These Buddhist precepts lead the Government of Sri Lanka to identify a path through restorative justice promoting reconciliation for its people in the long run.

2.5 Amnesty and Challenged for Women

Given the fact that the majority of the victims of the war and a large number of ex-combatants are female, there has been significant concern for women’s rights. The Darusman Report too underlined this matter while the Channel 4 video, though it has been found through credible investigation within the reconciliation commission that the video is doctored, it raised serious concerns for gender justice or the lack thereof (LLRC 2011, 148). The LLRC Report claimed that the Channel 4 video contained a lack of credible evidence to prove that sexual violence had taken place. This is not to say that sexual violence did not happen in Sri Lanka during the period of conflict, but most likely it may have been underreported due to socio-cultural reasons. Sexual violence has often been under-represented in public forums due to cultural traditions and amnesty could not be applied due to sexual violations, as the latter in most cases lack credible evidence to hold prosecutions (Niarchos 1995). Similarly, though there are many international treaties and other agreements which have been

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14 “For hatred does not cease by hatred at any time: Hatred ceases by love”. The Dhammapada which is a collection of teachings of Buddha.

15 Channel 4 is a privately owned television channel in United Kingdom which aired a documentary known as “killing fields in Sri Lanka” depicting horrific crimes. The LLRC has investigated on the validity of the video and found that it is a doctored video. The Sri Lankan government has denounced the documentary as a fake. However, despite the Channel 4 has refused to provide the original copy of the video to be examined through the LLRC it stood by the authenticity of the video and the sources.
enacted through the legal framework to punish perpetrators connected with sexual violence, and given that many cases of sexual violence are reported in connection with the military, it has been difficult to punish such a large number of perpetrators. In such circumstances, amnesty can become an independent goal within the justice framework to eradicate poverty and empower women in Sri Lanka in particular as in the way that Sri Lanka has connected its amnesty process with the Disarmament, Demobilisation and Re-integration process.

Moreover, if the alleged rape incidents have occurred and the women victims have not yet come forward as witnesses to prosecute or name the perpetrators, that may be for socio-cultural reasons. Furthermore, in the absence of a witness protection programmes, victims may fear reprisal from the perpetrator or the groups linked with the perpetrator (LLRC 2010). In Sierra Leone, around 275,000 women were victims of sexual violence but it is regretful that although the Truth and Reconciliation Commission gave much impetus for women to present their cases but the perpetrators were not properly punished due to the long-term consequences and the message it might send out (Duquet 2010, 14). Therefore, it is clear that any country could refrain from seeking retributive justice for women who were victims of sexual violence but only a few can combine amnesties with reparations for the victims through a restorative programme to rebuild the lives of victims as well as those of the perpetrator and to help them become better citizens in their own society. This would not only be a deterrence for future conflicts but it could build a better relationship within divided societies as well as people at a community-level making their linkages much stronger. Granting amnesties alone has failed to bring complete gender justice; in some cases, this policy even led to unprecedented impunity. However, if the amnesties are linked up with the reintegration programmes, it could bring reparative justice for women victims and produce positive outcomes.
However, the productive role that amnesty could play in building peace and restoring the lives of civilian women and female ex-combatants has been identified only in recent studies (Mazuranna et. al. 2004, Karam 2000). Amnesty can play a fundamental role in eliminating poverty when retributive justice is out of reach for many people, particularly women in post-conflict societies. Poor and economically-deprived people are unable to seek legal justice through the courts and pay large sums of money to lawyers. Acting as witnesses at reconciliation commissions too poses a great deal of insecurity. Overcrowded prisons with many perpetrators waiting for trials, while their family members suffer from economic inequalities, would erode the development of a country and overburden the government revenues for maintaining prisoners. In the Philippines, ex–combatants worked with local communities in rural areas to bring about a higher level of productivity and income, while in Indonesia female ex-combatants were used in training programmes to empower the female heads of household and provide them with a better understanding of government reforms on access to legal justice (Albert 2008). In Sri Lanka, the LLRC made many recommendations on uplifting the lives of the vulnerable groups and the government of Sri Lanka has approved Rs. 525 million in loans to another 4,724 rehabilitated female ex-combatants for self-employment projects. The Sri Lankan government has recently recruited 3,600 rehabilitated former LTTE combatants to the Civil Defence Force. These new recruits are expected to provide services to preschools and farm houses in the northern areas and assist the police in maintaining public security (Embassy of Sri Lanka in the Netherlands 28.08.2013, Colombo Page 05.07.2015, Wijayapala 2013). Unlike in Sri Lanka, in some countries such as Jordan and Yemen, the lack of sustained political will and popular support undermined the sustainability of similar rehabilitation (de-radicalisation) programmes. In this manner the Government of Sri Lanka has made
a greater effort to restore the economic status of vulnerable groups who are victims of the conflict living in the North and East of Sri Lanka according to its own context-specific challenges and acceptance for certain programmes within their cultural traditions. Therefore, for the Sri Lankan case, the practice of amnesty linked with distributive justice would be the most ideal option with regard to the issues among vulnerable groups such as women and female ex-combatants and would ultimately lead to the granting of reparations for the victims.

The above discussion brings amnesty within different contexts, where the one size fits all policy needs rethinking, especially in the Sri Lankan case. Each of the aforementioned cases stressed the context-specific nature of the issues at hand to urge relevant countries to adopt certain types of amnesties that are suitable for their own contexts. The transitional amnesties that were applied to the Sri Lankan post-conflict context had a legal basis. Granting amnesty to perpetrators who were against the law of the government can be seen as credible as a law of a country will supersede any decision taken by a transitional justice mechanism or a foreign tribunal. However, as it is without accountability and legal justice for the victims, Sri Lanka will not be able to justify these amnesties to the people in the long run. Without accountability measures, these amnesties lack credibility and will pose an obstacle to democratisation and the advancement of human rights. In order to prevent reprisals, the government could consider balancing the use of mechanisms, amnesties and prosecutions or linking all measures among all parties.

3. Weighing the Efficacy

The distinct nature of truth-telling processes brought a context-specific nature to different transitional justice processes linked up with amnesties to formulate DDR
processes that are more female victim-centric by its nature. In this section, I intend to analyse the findings from other empirical studies on the impact that these transitional justice mechanisms have contributed to different contexts.

Though there is a significant increase in the use of transitional justice mechanisms in post-conflict settings since 1970, across cultures, a significant gap exists within the study to assess the efficacy of the mechanisms and its impact to identify their positive and negative effects on political violence, human rights advancement, establishment of rule of law and democratization (Thoms 2008). In recent years scholars as Kathryn Sikkink, Leigh Payne and Tricia Olsen have taken leadership in formulating a dataset for this purpose. The dataset, created by this group of scholars, illustrates the distinct regional patterns of how trials and truth commissions have evolved and the impact of these mechanisms on human rights, democracy, and post-conflict development (Olsen et. al. 2010). Referring to the new global trend holding political leaders criminally accountable for past human rights violations, Kathryn Sikkink has contributed to the transitional justice scholarship with analysis of the origins of what she calls the “justice cascade.” This is a process in which victims and activists have been able to bring accountability for human right violations proceeding from a particular point to successive stages, making each step dependent on the preceding one. This precedence has often produced a cumulative effect. This expansion has affected human right practices around the world. Sikkink’s exploration of starting from one end to reach many points as a waterfall creating many smaller waterfalls provides a clear example of how accountability measures could impact the society in a larger picture (Sikkink 2011). This spread of legal enactments as a “justice cascade” contributed towards the momentum of social change. The “justice cascade” was endorsed by the maximalists who supported the legal side of transitional justice and minimalists who placed themselves in a middle
path supporting both sides of transitional justice. This type of research developments have brought new insights into the study as the context-specific application of transitional justice has revealed that certain mechanisms are ‘flawed’ and ‘not viable’ to be implemented as they provide no productive outcome to the needs of victims (Call 2004, 120). The “justice cascade” pointed out that the use of transitional justice mechanisms as trials and prosecutions reached its height of popularity in 1980, but from then on became less and less popular as the use of amnesties became more widespread. As most of the transitioning countries are developing countries, certain options such as granting amnesty prove less costly to apply in the preliminary phase of transition. Understandably, these countries would only resort to costly mechanisms only when less expensive ones fail to produce the desired outcomes. Another reason for this is that long delays of legal remedies will not be suitable for certain contexts such as Sri Lanka. The Sri Lankan conflict dragged on for three decades. The issues and needs of women victims must be attended to immediately rather than through a delayed process. In certain other contexts where the conflict took place over a shorter period, these issues could be dealt with through legal remedies while giving sufficient time to process restorative justice.

Moreover, many of the transitional justice empirical studies were confined to the Latin American context in the recent past. With the emergence of the “justice cascade” phenomenon, numerous cross national studies emerged with an empirical analysis further clarifying the role that international forces play in influencing such contexts to adopt transitional justice (Olsen et. al. 2010). These studies illustrated the nature in which ordinary people responded to transitional justice mechanisms, underscoring the aspects of culture and locality prevalent in international justice (Shaw, Waldrof and Hazan 2010). The International Tribunals held in Bosnia and
Herzegovina and surveys conducted in 2005 – 2010 were limited to the collection of data relating to the number of deaths and concluded that these mechanisms had either limited effects or no effect at all in promoting reconciliation or achieving punitive or restorative justice. The Bosnian case further illuminated that the meaning of reconciliation is not universal and often has specific cultural and political aspects and that it is imperative to learn what is to be reconciled and who are the actors in the process. However, the next decade is bound to generate diverse contributions by scholars within the study of localized forms of transitional justice for which this study intends to contribute through a context-specific study on Sri Lanka (Shaw 2010, 284). Furthermore the “justice cascade” provides that decrease of countries utilising trials but popularity of amnesties which was also visible within the Sri Lankan context. The use of amnesties for most of the contexts allowed the states to deal with issues of human rights violations that need immediate attention leaving the rest of the issues to be handled later. This trimming down of the transitional justice process could ease the overburdening of the courts, reduce dissatisfaction by victims over delayed court processes as well as conserving funds that could be utilised for bringing individual justice. The use of amnesty in Sri Lanka for the combatants and connecting each mechanism to build up DDR programmes to reintegrate the combatants have brought productive outcomes which I will discuss at length in Chapter 4.

3.1 Impact of Socio-cultural Context

In this section, while considering the nature of the context-specific problems visible in Sri Lanka, I will analyse the implementation of different transitional justice mechanisms in different contexts where aspects of culture are visible. I will also analyse how far the mechanisms have been able to address victim’s perspectives
promoting reconciliation and achieving the primary goal of transitional justice, i.e. human rights advancement.

Transitional justice has been explored by many countries across the globe spanning different cultural contexts. However, scholars tended to analyse and assess its effect after implementation. Payne notes that countries in transition that face acute financial demands have expressed their dire need to address other human rights issues such as provision of better education, clean water and health services. In this matter, Jon Elster has argued that such countries tend to deviate completely from adopting transitional justice mechanisms (Elster 2004). Contradictorily, even within the economic constraints, Sri Lanka did adopt transitional justice mechanisms. Hence, this indeed is a case in which such economic constraints were overridden by international concerns (Olsen et. al 2012, 62). Truth and reconciliation commissions have been accepted as a mode of establishing reconciliation, though studies revealed that truth and reconciliation commissions, trials and amnesties do not have a direct impact on democracy or human rights advancement. Usage of multiple mechanisms through a holistic approach, combining and sequencing mechanisms can bring a balance to the transitional justice processes (Olsen et.al 2010). This approach could balance the emotions of all parties involved in the conflict and build trust for the ruling government. This trust-building could impact the transitional justice institutions as truth commissions function while preventing reprisal of the conflict. Balancing the accountability process through a victim-centric approach and balancing the political demands could have a positive impact on human rights and democracy in a moderate approach (Olsen et. al. 2010, 989).

The socio-cultural traditions have also made an impact on the practice of transitional justice mechanisms. The women I interviewed in Jaffna and Batticaloa highlighted the vulnerability they experience due to socio-cultural social issues while others
highlighted their economic and educational needs and priorities in the post-conflict phase. The Sri Lankan northern and eastern societies can absorb many lessons from the mistakes and successes from other contexts to accomplish post-conflict reconciliation and to strike a new balance between the aims of recognition and redistribution that each platform can reasonably offer. The Gacaca offers several such lessons for transitional justice. The Gacaca system was a community-based legal justice system introduced in the Rwandan transitional justice process in 2001. The objective of the Gacaca community-based court system was to attend to familial disputes at a community level and gave autonomy to village leaders to settle disputes and bring reconciliation and retributive justice for human right violations. The introduction of local populist mechanisms, which distinguished clearly between those produced bottom up approach by communities from those imposed top down by states represents a localization of transitional justice and opens a platform for the practitioners to rethink some fundamental promises that need to be fulfilled within the localization process while addressing the survivors’ priorities (Brounéus 2008, Shaw 2010, 202). Deviating from the prototype, transitional justice approaches that include engagement in consultation and building collaborative relationships have enabled the people and communities affected by violence to express their standpoints and participate in decision-making within restorative justice and social reconstruction by introducing new paradigms for transitional justice while also creating new forms of place-based practices (Shaw 2010, 25). The Yugoslavian, Rwandan, Iraqi and Ugandan cases, in which where transitional justice processes needed to carefully look into the cultural and religious sentiments that led to the conflict, underscored the priorities for post-conflict justice which varies with identity group, type of violence and human rights abuses differing in the areas of country (Allen 2008, Shaw 2010, 47).16

16Vesnic-Alujevic provides a detailed version of the role of Balkans in the Yugoslavian context and how their cultural and ethnic identity affects the post-conflict transitional justice process (Vesnic-Alujevic 2012, 10). Sarkin provides a detailed account of the violence that took
This localisation can further contribute towards a robust democratisation within communities, addressing their grievances through community level-programming with the participation of the heads of local communities, which then allows these institutions to gain more credibility to bring legal justice and rule of law.

Among the key lessons pointed out by Zyl, he highlights that transitional justice processes must be informed and led by local conditions and the exact form and nature of the transitional justice process should not be prescribed (Zyl 2005, 223). The main impediment to applying a stereotypical form of transitional justice process is that countries that have chosen to follow such processes must foremost attention to their respective post-conflict issues. In Liberia, the Truth and Reconciliation Commission was criticized because the composition of the membership was based on political fragmentation rather than upon integrity to build up sustainable peace (Zyl 2005, 225). This criticism was similarly levelled against Sri Lanka Lessons Learnt Reconciliation Commission. However, given the population of the country and the available expertise to handle such matters of importance, Sri Lanka selected the best of its expertise to handle the LLRC process. The Truth Commission in Chile comprised members from all sides of the conflict rendering wider credibility (Weissbrodt and Fraser 1992, 603). Where there had been foreign representatives present in El Salvador, the problem was the lack of local knowledge. However, the presence of foreign representatives within the restorative justice process added to the credibility of the solution as the diversity of viewpoints provided further legitimacy to the process (Brahm 2007, 31). Amidst much criticism over the Sri Lankan LLRC, the outcomes of the recommendations were viewed with approval by international...
observers (Amnesty International, 07-09-2011). Therefore, the potential spoilers of the transitional justice process may be the maximalists, who try to impinge transitional justice in such a forcible manner that would demoralize the efforts by states to apply transitional justice to achieve human rights advancement.

3.2 Impact of the Advancement of Human Rights

As mentioned before, transitional justice scholars have claimed that truth and reconciliation commissions do not have a direct impact on the democratisation nor human rights advancement in transitional societies (Olsen et. al. 2012). In the coming section, I will analyse the impact of prosecutions, truth-telling and amnesties on transitional societies.

Though there is a strong emphasis made by international human rights activists pressuring transitioning countries to adopt legal measures for human rights violations committed during conflicts, recent studies have revealed that trials may jeopardise democracy and hinder human rights advancement, while sparking conflict in post-conflict situations (Olsen et. al. 2011). After the International Criminal Tribunal in Yugoslavia indicted Slobodan Milosevic for crimes in Bosnia, the aftermath of the trial did not see a decrease in the crime rate. Instead there was an increase in the crime rate prompting many to believe that the indictment had failed to produce a deterrent effect in post-conflict Bosnia. Though the individuals who are prosecuted for certain crimes are not incapacitated as subjects of deterrence, the punishment and probability of arrest have a more deterring effect than the severity of the punishment. However, trials have built a foundation for future deterrence. Holding prosecutions against military officials involved in war crimes will send a message to
society that even military officials are not above the law. This in turn will create a
notion of equality for people.

The international initiatives that are in force to promote transitional justice
mechanisms such as trials and prosecutions have been noted by surveyors and of
transitional justice as key to mitigate the risk of committing crimes (Simpson 2008).
However, the transitional justice literature further underscored that deterrence may
vary in different contexts, which needs further study to analyse its effect and impact
beyond the confines of the single country and beyond the use of categories with
which transitional justice is presently applied. It should focus on certain actors and
crimes that affect the well-being of the citizens deviating from the narrow
interpretation of violence within a closed timeframe (Sikkink 2010, Nagy 2008).
Payne concludes by noting that trials alone do not have a robust impact on human
rights advancement (Olsen et. al. 2010). The connection of this to Sri Lanka is that
the Commission of Inquiries that was held in the past in Sri Lanka was not able to
indict any perpetrators through legal measures. During the previous Commissions of
Inquiries the granting of amnesties brought nothing but miserable impunity. This
impunity and the absence of the rule of law largely contributed to the violence that
occurred by both parties during conflict as it fostered a lack of respect for rule of law
within the country. Parties involved in the Sri Lankan conflict used violence
rigorously, as it was believed that the state would later grant amnesty for all the
violence committed during the war. Therefore, more than any other era, bringing
legal justice to strengthen the rule of law in post-conflict Sri Lanka will ultimately
have a positive effect on human rights advancement. However, since women in
post-conflict North and East of Sri Lanka comprise the majority of the total
population, if their grievances are not properly dealt with the outcome of the
transitional justice process for Sri Lanka will be a failure. This is the main reason
why, as Olsen puts it, the use of mechanisms such as amnesties and prosecutions should be linked so that the expected outcome of each will not fade away in the implementation for civilian women and female ex-combatants.

So far the Government of Sri Lanka has only prosecuted LTTE cadres who were involved in the conflict. However, these prosecutions were linked up with rehabilitating and reintegrating the combatants into their societies by giving them the skills that would open up employment opportunities. On the Sri Lankan Government side, listing LTTE as a terrorist organisation domestically and internationally, the military fought a battle to save the lives of the people, including Tamils. Therefore, if army officers are prosecuted without credible evidence, such prosecutions will demoralise the national army, bringing discredit to the service they have made and the future security of the country. On the other hand, non-prosecution of even individual incidents committed by the military officials that are backed up by strong evidence would spark distrust and non-credibility for any reparative measures initiated for the benefit of female ex-combatants. Hence adoption of a balanced approach, sequencing each mechanism as introduced by Olsen would suit the transitional context in Sri Lanka.

While Olsen notes that transitional justice must be sequenced with restorative and retributive justice rather than simultaneous, in support of this, Kostic has noted that as in the Bosnian case the reconciliation process must go hand in hand with finding durable political solutions to existing incompatibilities while addressing grievances (Kostic 2012). LLRC members whom I interviewed in Colombo noted that reconciliation for Sri Lanka must go hand in hand with legal justice, restorative justice and governance, which will contribute towards a closure of the past to look forward to a brighter future (Interview with Dr Rohan Perera on 18.04.2013, Interview with Mr. H M G S Palihakkara on 03.03.2013). However much the necessity and the
possibilities are created, the transitional justice mechanisms as trials may bring delayed justice to the needs of post-conflict victims and therefore the particular context-specific issues, local needs and local context must be examined when applying transitional justice (Zyl 1999, 648).

The next most-used mechanism by post-conflict societies are truth-telling mechanisms that attach great importance to people’s voices to be heard in the process (Avruch 2010, Mendeloff 2009, Thoms et al. 2008, Gibson 2004, Brahm 2007). The research studies in this arena claimed that available datasets proved that while truth-telling did contribute to reconciliation in South Africa, it left some ordinary citizens disillusioned (De la Rey 1998, Gibson 2006, 96, Zyl 1999). Hence, in such cases, it is necessary to weigh the pros and cons of imposing a truth-telling process in specific contexts, such as Sri Lanka. Since there is a positive outcome that was derived through the truth-telling processes, it is necessary to explore the most inclusive form of truth-telling that can be adopted for Sri Lanka. In light of this, truth-telling processes through a community-based organisation such as community-based mediation boards that are available in Sri Lanka could be a viable form for reaching local women’s’ groups that are in need of reconciling and restoring their lives (Mendeloff 2004, Bubenzer 2009).

The issues of missing persons have been among the main concerns for restoring reconciliation in Sri Lanka. During LLRC field visits, the majority of respondents gave statements on missing persons during the conflict. It is noteworthy that some former combatants and others who are reported to be missing have sought asylum in Western countries and have assumed new identities; despite this, they continue to be considered and reported as missing in Sri Lanka. The negative relationship between enforced disappearances and reconciliation in post-conflict settings was highlighted throughout the transitional justice literature. At the same time there is a
significant connection between reconciliation and human rights advancement that is
effected by the disappearances. For example, the transformation of the Cypriot
Committee on Missing Persons (CMP) carried out in Cyprus to deal with the issues
of missing persons during the Turkish invasions in 1974 has been noted by scholars
as a negative driving force for reconciliation. The findings of this study indicate that
separating transitional justice policies from human experiences could help address
longstanding human rights problems by depoliticising the transitional justice process.
It could further facilitate the grassroots actors to work as community leaders to forge
a community-based approach in order to establish future security and build trust.
These reports on disappeared provide a powerful alarm to the perpetrators, forging
individual responsibility. Further, it creates a strong precedent, especially for
women, to achieve gender security in the future of Cyprus (Kovras 2012). Though
the research undertaken on the impact of missing person issues is very scarce, an
empirical study in Bosnia and Herzegovina demonstrated that missing persons
constitute a potentially important obstacle to post-conflict reconciliation, especially at
the grassroots level (Clark 2010). The critical nature of the impact of missing
persons on reconciliation for the case of Sri Lanka is that women, who comprise the
majority of the total population in the North and East of Sri Lanka who are either
widows, female ex-combatants or civilian women who have at least one missing
member in their family are the main stakeholders of the reconciliation and rebuilding
process in North and East of Sri Lanka. Unlike other post-conflict contexts, this very
reason brings the necessity for the country to address the issue of disappearances
to build trust among the majority population in the North and East and to bring an
inclusive reconciliation for Sri Lanka. An empirical study carried out in Nepal among
the wives of missing persons highlighted their need for economic support and social
issues which have been marginalised due to the civil society’s emphasis on a
prosecutorial agenda (Robins 2010). A victim-centred transitional justice is likely to be one that consults broadly with such victims and dispenses with the narrow legalism that dominates the discourse today.

### 3.3 Gender in Transitional Justice

Limiting the meaning of human right violations to rape and sexual violence committed against women further brought a hindrance in achieving gender justice in post-conflict settings. The Sri Lanka LLRC did give provide women with democratic access to come forward. However, the broader needs of women were not conveyed through the LLRC and the National Plan of Action. In contrast to this phenomenon, the Sierra Leonean Truth Commission recognized women's' sufferings in 2000 by protecting women’s rights by proposing a legal framework which not only encourages the marginalized to represent their experiences during the conflict but also protects their rights in the long run (Muddel 2007, 88, 92).

Furthermore, the LLRC did not place the challenges among female ex-combatants at the forefront of the commission. The main reason behind the under-representation by most of the female ex-combatants was that the majority were undergoing rehabilitation programmes which made them unable to appear before the LLRC. Secondly, they were further discouraged from taking part in the reconciliation process due to the insecurity that may arise from appearing and fear of victimisation. Thirdly, many people, the female population in particular, did not have much hope of achieving legal or restorative justice through the LLRC process. However, these speculations were overturned by the meaningful recommendations brought forward by the LLRC at the end of the process which were welcomed by many international human rights activists and organisations, which stressed the importance of implementing the recommendations to achieve restorative and
Retributive justice for the post-conflict victims in the North and East of Sri Lanka. However, the LLRC has not specifically addressed their needs in the mandate and institutional design, nor do its recommendations promote power relations based on equality within the formulation of DDR programs. However, interviewees from Jaffna and Batticaloa brought a wider picture to the vacuum that is present in the LLRC recommendations. Through the field visits, it was further revealed that a large number of female ex-combatants who are on the lookout for employment possess skills acquired during their tenure at LTTE that could be used for the development of the country in the long run. The Sri Lankan post-conflict case provides a broad picture on the strong linkage that the transitional justice has with development and how gender equality must frame the implementation of the DDR programmes. Mani notes that transitional justice must rethink how to work beyond retributive and restorative approaches to address the economic, social, and cultural inequalities that fuel conflicts with a focus on permanent rights-based development programmes that ensure the viability of women’s rights in the future (Aguirre 2008, Mani 2002). The clashes of representing victims in the reconciliation process when DDR was implemented before the reconciliation process and the strong linkage that is depicted between reconciliation and disappearances and the nature of individual justice plays an important role in bringing gender justice, which makes this case study of Sri Lanka a unique experience to both underdeveloped areas of theory and practice within transitional justice (Auxworthy 2001).

The role of civil society in Sri Lanka provides another dynamic to the transitional justice process in that country. The robust nature of the role that civil society can have in the reconciliation process has been widely depicted within the Guatemalan case, which illustrates the success of the projects led by NGOs and the international community in reaching local communities (Dharmawardhane 2013, Ballengee...
Civil society can foster a greater movement towards consolidating democratic norms within institutions and practices while ensuring that civil society make contributions in such a way such that the contributions can constructively integrate and engage with the ongoing processes in the North and East of Sri Lanka (Dharmawardhane 2013, 33). Despite the clashing viewpoints that are held between the NGOs and the Government of Sri Lanka, a clear plan to cooperate in different areas could eliminate tensions in the implementation phase. The evidence and information gathered by the NGOs will be useful in cutting down expenses in carrying out surveys, downsizing the need for funding and hiring skilled personnel (Becker 2010, 311). Such an attempt was made with the assistance of the UNDP through its “Equal Access to Justice Programme,” a project that brought diverse actors from the Government and non-governmental sectors together towards attaining a common goal through a partnership while enabling over 100,000 people of the North and East and Estate sector Tamils to apply for critical legal documentation. The project also helped to strengthen the legal justice system in former war-affected areas by assisting with the refurbishment of 36 courts. At the same time, a “Course for Youth Catalysts” was introduced with collaboration with the University of Jaffna and helped to enhance the leadership skills of over 200 youth in the formerly conflict-affected regions of Kilinochchi and Mullaitivu. Upon completion of their training, 50% of the participants found employment in humanitarian and development projects and with government institutions, while 109 youths actively participated in the Divisional Network Forum and worked closely with the Divisional Secretariat in planning and implementation activities. It also helped create and strengthen networks among the youth and duty bearers of the government institutions at divisional and district levels. There is ample evidence on how the NGOs can provide support for the people in the ground in partnership with the
government institutions. Although there are many NGOs engaged in peace-building work in the North and East, there are no NGOs involved in transitional justice processes in Sri Lanka.

The transitional justice literature is expanding in the field of weighing the efficacy and opening up broader avenues for context-specific studies to analyse its effectiveness in implementation. However, spoilers can bring demoralizing effect to any mechanism in implementation. As trials may not produce the desired outcomes, many countries in transition tended to adopt the option of amnesties as these provide more incentives to victims’ needs rather than overburdening the economies of the developing countries. In the application of these mechanisms, trials and amnesties took a different stance when corresponding with local needs and local contexts. While there is a need for research to be carried out on the impact of disappearances on post-conflict reconciliation, available literature supported that, within limits, identified disappearances did have an impact on post-conflict peace-building. While civil society can make a strong impact on uplifting retributive justice and reconciliation in partnership with the government, then it can reach its goals for human rights advancement. The empirical studies have gathered that the majority of truth and reconciliation commissions, including that in Sri Lanka, included women in their design structures but failed to focus on women-centric programmes.
1. Justice and Reconciliation for Sri Lanka

In the first chapter of this thesis I have extensively discussed the nature in which the transitional justice process has evolved within Sri Lanka to adapt to that country’s unique post-conflict context. Injustice occurs when human rights are violated. Retributive Justice is therefore the bringing to accountability for rights violated and punishing the perpetrators for the harm caused to victims. Acting to foster justice for injustices can build up the respect for rights and further promote equality among citizens of a state. This is the general definition apparent within post-conflict contexts. In the early years, Roman and Greek political theory and law highlighted various perspectives to justice but did not underscore the importance of achieving individual justice. In the Plato and Aristotle periods, political philosophies started turning to the importance of individual rights. Building on Aristotle and Plato, thinkers in later periods explained the strong connection between justice and rights. This connection is the result of promoting social welfare in later years. As John Rawls pointed out, justice is the virtue of social institutions. Paradoxically, in subsequent years, the same thinker moved towards the importance of accepting retributive or restorative justice politically (Ryan 1993, 17). The idea of universal rights came first from Indian philosophers, especially popularised through Buddhism and Jainism, including the rights of slaves, including lower castes in the Indian context, rights of women, and rights of animals are all accounted for in Indian philosophies, while for example, Aristotle did not believe in equality for women or slaves. Buddhism also centred on individual – self –realisation, but was not dependant on god or a king.
Although early philosophical thinking did not highlight individual justice, theoretical development in later years deviated from the general views and provided a broader vision to justice as a norm that highlights the importance of individual justice for the state. Similarly, any type of justice that was rendered through social institutions ultimately served as a fundamental aspect of achieving rights for people, supporting individual rights. Given the role that civic engagement and political willingness has on achieving justice for injustices levied upon victims, this was challenged by the latter mentioned two concepts when seeking retributive or restorative justice. Mani underscores the need to realise the interconnected dimensions beyond retribution and to grant justice through distributive and rectificatory justice (Boraine 2006, Mani 2002).

At the end of any politically-motivated conflict the government in power together with the stakeholders of the conflict should look into the grievances that have derived from the injustices due to the conflict. Equally, healing the wounds as a national strategy is of great importance to the victims rebuilding their lives (Sarkin 2001). In order to achieve this objective, the contributions of truth commissions are essential. The implementation of truth commissions is often fraught with many difficulties due to the different needs of groups of victims that take part in this process. To remedy this situation, scholars have suggested that the reconciliation process must focus on the relationships between truth, amnesty and criminal justice. Given the significance of punitive justice and reconciliation in terms of the implementation of the transitional justice process, each aspect had negative and positive effects on peace-building. Nonetheless, in the absence of a reconciliation process to address the psychological sufferings of victims, there is a danger of renewed violence that would threaten democracy and long-term peace (Dwyer 1999, Moellendorf 2007, Nagy 2002).
Retributive justice and reconciliation are important aspects of transitional justice, simultaneously or separately each tends to bring tensions as well as synergies to the transitional justice process. Looking beyond the standard tool kit developed for transitional justice, I will make a clear distinction between retributive justice and reconciliation and analyse how it expanded within different post-conflict contexts to address women’s needs. In this manner, I will analyse the evolution of retributive justice and reconciliation in different post-conflict contexts. Then, linking these processes to gender, I will be discussing the way in which these two concepts are applied to women-related issues in post-conflict societies such as rape, domestic violence and disappearances, while assessing the impact that socio-cultural context exerts on the process. Moving on to the Sri Lankan post-conflict context, I will analyse the problems facing civilian women and female ex-combatants at present, using fieldwork interviews that were carried out in the North and East of Sri Lanka. Although punitive justice tends to strive for legal remedies by punishing perpetrators while reconciliation aims at providing psychological support for the perpetrators as well as the victims, both share the ultimate goal of achieving justice for injustices and assuring victims’ rights. Similarly, the research carried out at the beginning of the new millennium underscored the importance of looking beyond retribution to achieve justice for injustices for post-conflict victims amidst stringent political challenges (Mani 2002). With this information, I will draw on her argument to discuss whether retributive justice or reconciliation is the most suitable approach for Sri Lanka while assessing the outcomes that have been achieved through retributive justice and reconciliation processes in other parts of the world. Throughout this analysis, I will demonstrate the need to link and sequence retributive justice and reconciliation for Sri Lanka and for its post-conflict issues that are predominantly affected by socio-cultural issues. Finally in this Chapter, I will argue that although
restorative and retributive justice have long been two competing concepts, each is equally important for the process of reconciliation and peace-building. It is paramount that retributive justice or reconciliation should consider the needs that arise from a particular socio-cultural set up during the implementation of transitional justice.

1.1 Justice and reconciliation

Among the 30 truth commissions that were held in the world during 1974-2001, only the National Truth and Reconciliation Commission in Chile, the Commission on the Truth in El Salvador, and the Commission for Reception of Truth and Reconciliation in East Timor were formed to suit their countries' specific post-conflict challenges. Nonetheless, in the implementation process truth commissions had difficulty convincing victims of the role that it was expected to play. Coupled with this dilemma, transitional justice mechanisms were in tension with the legal justice processes. In this section, I will use examples of different truth commission processes to argue for the necessity of sequencing truth commissions and legal justice processes according to the post-conflict situation and the needs of the people to frame the policy of international justice in a manner that would suit Sri Lanka.

In framing my argument, I will first present the case studies where truth commissions were first adopted to analyse their outcomes. Beginning from the 1980s, with the end of the Peruvian armed conflict, the truth commission was created to address the issues of 30,000 deaths and 6000 enforced disappearances and to promote reconciliation within the Peruvian society. The establishment of truth commission before a retributive justice process created a linkage for the legal justice process to share the collected information which can be used to interpret its future mandate for a retributive or restorative justice process. This establishment of truth commissions
initially created a space for dialogue for victims and resolved many minor issues by the time the legal justice process occur at the end of the truth commission. In this manner, the holding of truth commission before a retributive justice process enabled Peru to bring about a harmonious adjustment between truth commission and the judiciary that created a process conducive to the transitional justice process (Schabas & Darcy 2004, 57).

By late 1992, another significant reconciliation process emerged in El Salvador with the establishment of the Commission on the Truth for El Salvador. At the end of the United Nations-sponsored negotiations, the El Salvador Government and the Farabundo Marti National Liberation Front (FMNLF) signed a peace accord in 1992, which was the basis for the creation of truth commission in the same year. The mandate of the Commission on the Truth for El Salvador strived to bring rights to truth while not making it a substitute for judicial proceedings. Despite this, the truth commission was expected to spearhead the judicial responsibilities and in 2000, the Supreme Court of El Salvador refused to recognise international laws on amnesty and declared amnesty laws as unconstitutional. At the same time the court prosecuted only a few FMNLF members and ex-members of the military for human right violations. This unbalanced nature of prosecutions imposed by the judicial system of El Salvador highlighted the need for an independent judicial system that can address the large number of disappearance cases and bring retributive justice to the victims. Although the Commission on the Truth for El Salvador was unable to facilitate a legal justice process, it was able to divulge information on many incidents of human rights violations that have taken place during the two-decade long conflict. Despite these findings, after 20 years of the truth commission, the Commission for Truth in El Salvador has not prosecuted any perpetrator who was found to have committed violence. Moreover, amnesty laws came into being at the end of the truth
commission report which effectively circumvented any perpetrator being prosecuted, denying legal justice to the transitional justice process in El Salvador (Popkins 2004).

In the two reconciliation processes discussed above, the Truth and Reconciliation Commission in Peru and the Commission on the Truth for El Salvador exclusively sought the option of bringing psychological healing to the victims through reconciliation before initiating legal justice. The outcome showed that Peru cooperated with the legal justice process while El Salvador could not. This clearly illustrates that when retributive justice and reconciliation are applied to different post-conflict contexts where unique cultural systems exist, the process tended to bring varied results.

The emergence of the South African Truth and Reconciliation Commission in 1995 at the end of the apartheid regime gave much impetus to restorative justice. The objective of the commission was to address many injustices during the apartheid era 1960 - 1994 that violated the human rights of South African people. However, the way in which amnesties were granted led to the failure of the South African Truth and Reconciliation Commission. The South African Truth and Reconciliation Commission’s Amnesty Committee received a total of 7128 amnesty applications but only those applications which could prove the political motive behind the crime were considered for amnesty. Out of the total amnesty applications received, only 849 cases were successful while 5392 applicants were refused amnesty (Horrell 2004, 429; Regehr 2002, 4). This Committee later came under severe criticism for creating a division between perpetrators and survivors, and for failing to bring them together in a public platform to exchange their views. Though the South African Truth and Reconciliation Commission was designed in such a way as to resemble court hearings, it failed to achieve restorative justice. That victims felt unsatisfied with the
outcome of the amnesties was evidence that the commission could not achieve full justice for their sufferings (Bubenzer 2009).

Sierra Leone was another case where the truth commission was an outcome of the Lome Accord in 1999 between the Kabbah Government and the RUF. Commencing its work in the year 2000, the truth commission did not meet with any major obstacle. A resurgence of the conflict, however, compelled the President of Sierra Leone to seek United Nations assistance to establish an international Criminal Tribunal in 2005. For two years the two institutions carried out their work alongside each other and much care was taken by the designers of the special court to ensure the cohabitation of these two organs. However, in 2003, a dilemma occurred between the special court and the truth commission that greatly affected the reconciliation process. A prisoner who was indicted by the court was summoned by the truth commission to testify in a public hearing. The prosecutor, however, refused to release the criminal for the purpose. Later the matter was taken up by a panel of judges and the prisoner was allowed to give testimony but not in public sessions. Despite this one incident, on the whole the Sierra Leone process illustrated the exemplary nature in which tensions could be eliminated by finding alternative solutions and that simultaneous functioning of truth commission and special court was possible (Schabas and Darcy 2004, 06).

From the beginning the Kambah Government in Sierra Leone had adopted a hard-line policy towards granting amnesty, rejecting applicants who in any manner violated human rights and committed crimes against humanity (Macaluso 2002, 348). Scholars in the field and the United Nations Secretary General Report also vehemently rejected the practice of amnesties for genocide, war crimes, and crimes against humanity or sexually based international crimes (UN Report 2004). Despite this strong objection, numerous requests were made by the United Nations to grant
amnesty for certain crimes, a move which the Sierra Leone Government viewed as a dangerous precedence for the future of security in their country. This became an obstacle from the victims' point of view as amnesties serve as a useful mechanism for the purpose of making peace.

Looking back at how different post-conflict societies used retributive justice and reconciliation, several key points are readily apparent. The post-conflict contexts which adopted legal justice as the only mechanism often left the victims dissatisfied because, in the absence of a healing process, it was difficult for them to restore and acknowledge the sufferings they have undergone during the conflict. On the other hand, the reconciliation only, or most importantly restorative, models tended to deny legal justice to victims, which led most of the reconciliation processes to seek a legal justice mechanism. Not only does this show the distinctive importance of these two mechanisms in implementing transitional justice, it also illustrates the tensions that might occur when bringing transitional justice to victims. Even on the occasions when there is harmonious functioning between legal justice and reconciliation, the victims still could not achieve retributive justice in the absence of non-legal mechanisms such as amnesties which could give victims the compensation and services they need to restore their lives. Secondly, in reference to the case of the Truth and Reconciliation Commission in Peru and the Commission on the Truth for El Salvador, it is clear that truth commission prior to legal justice processes gave more prominence to the post-conflict context-specific tensions which largely impact on the truth commission process. Hence, it should be noted that as much as the two aspects of legal justice and reconciliation are important, the post-conflict context-specific nature of challenges does tend to impact the implementation outcomes to frame the two processes of legal justice and reconciliation more productive for both victims and perpetrator.
1.2 Gender Justice and Reconciliation

Within the framework that was apparent in the international development of transitional justice, women as members of vulnerable groups have come into sharp focus. In many of the post-conflict contexts in the world, women in particular tend to face violence or sexual violence. In connection to this the United Nations strived to bring gender justice either through punitive justice or restorative justice for sexual violence committed against women during the conflict. The International Criminal Tribunal in Yugoslavia (ICTY) explicitly recognised the gravity of rape and other gender-based violence committed during the conflict in former Yugoslavia, through the Tadic and Foca case in which the trial chamber declared rape to be a sexual crime punishable as violation of women’s human rights. Many cases of rape went unreported as victims were greatly reluctant to come forward to talk about their experiences due to the stigma attached to rape in their traditional societies, as in Yugoslavia, or out of fear of retaliation from their families, communities or from the perpetrator. Despite the fact that the ICTY did prosecute 3 soldiers for raping 14 women, the lack of reparation through reconciliation left victims dissatisfied and disillusioned in the post-conflict phase. In hindsight, many scholars argued that the ICTY retributive model could have succeeded if various other mechanisms had been associated with the process of reconciliation (Askin 2002; Humphrey 2010, 504; Bjelakovic 2002).

The International Criminal Tribunal in Rwanda in 1994 is another milestone in ensuring gender justice for sexual violence during conflict. The Akayesu trial was

17 Tadic was a Bosnian Serb, a war criminal and the former leader of paramilitary forces in Yugoslavian conflict. He was later convicted of crimes against humanity under the Geneva Conventions, and violations of the customs of war by the International Criminal Tribunal for the Former Yugoslavia (ICTY) for his actions. Although he appealed on a number of grounds he was sentenced to 20 years. Tadic case was the trial that was taken up by the International Criminal Tribunal in Yugoslavia.
18 The Foca case refers to the Foca trial in the International Criminal Tribunal in Yugoslavia in which many rape cases were taken up. Most of the Serb policemen repeatedly raped Muslim girls and women. These were committed in rape camps where hundreds of women were raped. Bosniak women were kept in different detention centres without basic facilities and in unhygienic conditions.
the very first case that underscored rape as sexual violence. In 1994 Jean Paul Akayesu, who was Mayor of Taba and a Hutu, gave the orders for a large number of Tutsi women to be sexually abused. Through this case, ICTR contributed to international law by providing a definition for rape as a physical invasion of a sexual nature committed on a woman. Akayesu was sentenced to life imprisonment. This particular case brought the world’s attention to the many cases of sexual violence that occurred in Rwanda. The outcome of the trial also brought about a certain degree of national reconciliation. The prosecution of the Akayesu case as a one single case highlighting the sexual violence against women clearly showed that identification of the crimes committed by a perpetrator publicly helped in bringing legal justice to women in the case of Rwanda (Schabas and Darcy 2004).

Even though the ICTR reached a new milestone in ensuring gender justice through the Akayesu trial, research study carried out after 10 years of ICTR noted that 90% of the trials of ICTR did not contain any rape cases per se. In this manner, ICTR was only able to bring a modicum of remedy to the sexual violence and rape within war. Nonetheless, rape survivors of Rwanda highly commended the actions taken by the ICTR which provided some justice for them, and could even bring a strong deterrent effect on rapes and other forms of sexual abuse against women in the future. Hence, even within the stringent social cultural system inherent in a post-conflict society, transitional justice has been able to achieve its goals to advance human rights issues among women (Chinkin 1994, Nsanzuwera 2005, Nowrojee 2005).

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19 The Akayesu Trial was the name of the court case in ICTR, in which Jean Paul Akayesu was the Mayor of Taba Province was sentenced to life imprisonment. He was indicted for nine counts of genocide, crimes against humanity, and violations of the Geneva Convention. The Trial Chamber held within this case that the rape as “a physical invasion of a sexual nature committed on a person under circumstances which are coercive”, and sexual assault constitute acts of genocide insofar as they were committed with the intent to destroy, in whole or in part, a targeted group, as such. It found that sexual assault formed an integral part of the process of destroying the Tutsi ethnic group and that the rape was systematic and had been perpetrated against Tutsi women only, manifesting the specific intent required for those acts to constitute genocide.
Gender-based violence has been a universal issue in every country and every society with different cultural background. It was only until recently that international organisations have started to focus attention on this violation of women's human rights and taken steps to eliminate such violence in the future through various mechanisms. The Global Women’s Campaign in 1985, for instance, was one of the first efforts to highlight the issue of gender-based violence within the human rights discourse not only as a national but also a regional initiative. Domestic violence has been adversely affecting women in many post-conflict societies such as Liberia, Yugoslavia and Rwanda (Watts et. al. 2002, Copelan 1993, Maguire 1998, Koenig et. al. 2003). More often than not, the needs of these households are high while their male as well as female members are equally unemployed. Faced with long-term unemployment with very little prospect of earning a decent income men turn to alcohol forcing women to take up the role of sole breadwinner. However, women are generally not accepted as the decision-maker in the family, especially when it comes to the issue of money. Their new role as sole breadwinner can lead to many disagreements and finally conflict within the home.

Research carried out in Sierra Leone noted that two-thirds of the women who were surveyed reported that violence led to sexual intercourse against their will (Coker and Richter 1998). In South Africa, out of the 1036 women who were selected for interview in a study to understand the severity of domestic violence, 2% reported that they were raped or victims of attempted rape. Similarly, a study in Zimbabwe reported that 33% of women 18 years or older were physically assaulted by a family member or a partner (Jewkes et al. 2001, Watts et al. 1998). Also, a large number of incidents of domestic violence were reported in the South Asian region for reasons mainly connected with gender inequality and economic dependence of women on
men. In certain cases domestic violence was an accepted part of their cultures and an institutionalized practice in the continent (Koenig 2003, Abirafeh 2006).

2. Gender Justice and Reconciliation for women in Sri Lanka

In the first chapter I have discussed the evolution of transitional justice process in Sri Lanka while highlighting the checks and balances of transitional justice mechanisms for its post-conflict contexts specific issues. When transitional justice is implemented through its mechanisms, legal justice and reconciliation have experienced tensions in different post-conflict contexts. With a conflict spanning 3 decades the challenges facing the majority of the population in North and East of Sri Lanka, especially civilian women and female ex-combatants, are now more critical than ever and need to be addressed rapidly. There are two key aspects that must be considered when designing a suitable model to approach these challenges. First, the socio-cultural context in which civilian women and female ex-combatants live must be assessed to implement suitable programmes that they would be willing to adopt. Secondly, assessing the root causes of the conflict, each concept must take into account the need based issues that are in tension with societal and cultural obstacles in framing the legal justice or reconciliation process for Sri Lanka. In this manner, I will argue that though legal justice and reconciliation are two important concepts in peace-building, in practice, each must consider the historical underpinning of the conflict and the socio-cultural contexts that impact the gendered issues in order to bring sustainable peace and promote reconciliation.

2.1 Retributive Justice and Reconciliation in Sri Lanka

The Sri Lanka conflict and the issues in the post-conflict phase bring a unique picture to transitional justice. Transitional justice in the form of legal justice or reconciliation was initiated according to the challenges in the post-conflict context-specific nature,
specially focusing on the heterogeneous community of women in North and East within the government policy of restorative justice. In this section, I will discuss the evolution of legal justice and reconciliation process in Sri Lanka while giving emphasis to the challenges facing women in Sri Lanka. In discussing the women’s need for legal justice measures, I will analyse the way in which restorative and retributive justice can contribute towards addressing the challenges facing women in Sri Lanka.

At the end of the three decade long conflict in 2009 the Government of Sri Lanka initiated the Lessons Learnt Reconciliation Commission which is the commencement of the reconciliation process in Sri Lanka; a process which I have discussed at length in Chapter 1 of this project.\textsuperscript{20} From the beginning the intention of the LLRC was to address the issues facing Sri Lanka in the post-conflict phase, through a collective approach and as a national strategy (LLRC Report 2011; Raymond 2012). The LLRC that sat from 11th August 2010 to January 2011 held more than 57 public sessions and undertook 12 field visits at over 40 locations talking to the general population in the North and East and other affected areas of the country,\textsuperscript{21} while trying to establish the central aspects of transitional justice, as well as the right to know and the right to seek justice for injustices (De Mel 2013).

From the beginning of the LLRC process, the Government of Sri Lanka has adopted the restorative justice policy.\textsuperscript{22} I have extensively discussed in the first chapter the reasons for the government to adopt the policy of restorative justice for its post-conflict context-specific nature of challenges which is closely connected to the social

\textsuperscript{20}Please refer to Chapter 1 for more details
\textsuperscript{21}The hearings were commenced by the commission in 2010 and were held in Colombo and in former conflict affected areas such as Batticaloa, Jaffna, Kilinochchi, Mannar and Vavuniya. 57 field visits were conducted in the former war zones and detention centres where surrendered Tamil Tiger combatants were held. After analysing over 1,000 oral and 5,000 written submissions it had received, the commission presented its 388-page final report to the President on 15 November 2011 which was made public in December 2011.
\textsuperscript{22}I have discussed this at length in the first chapter highlighting the reasons behind the adoption of this position.
cultural order. However, the Report by United Nation Secretary General appointed Panel of Experts to investigate issues relating to human rights violations also known as the Darusman Report, underscored that Sri Lanka could adopt transitional justice while looking at the close linkages between the two concepts of restorative and retributive justice (Darusman Report 2011, iv).

At the end of the LLRC process a set of productive recommendations were put forward to the Government highlighting the areas that required attention in the post-conflict phase. Despite the fact that the recommendations are in the implementation phase, there is a necessity to look closely at the references made within the Darusman Report with regard to the close linkage of retributive justice and restorative justice in order to incorporate the latter to the implementation phase of transitional justice in Sri Lanka. In support of this, the author intends to use evidence from her fieldwork experiences to explain the necessity for adopting such a stance. Furthermore, when observing the set of challenges in the North and East in the post-conflict phase, the majority of post war victims being civilian women (109,000) and female ex-combatants (2038 reintegrated as of 07.10.2013 BCGR data), there is a need to focus its transitional justice process through a gendered lens.

2.2 Gender justice

Unlike many other post-conflict contexts which I have discussed earlier, the Sri Lankan post-conflict context has a unique set of problems that largely effects the women population. As per the statistics shows 60% of the total population in Sri Lanka consist of women. Even within the total population in north and eastern provinces the women population is 51%. This female population, comprise of mainly conflict effected population and a distinct group of women with a special set of skills
i.e. female ex-combatants. As the LTTE started to recruit women into its dwindling number of cadres, many young women were enlisted either voluntarily or forcibly to emancipate them from their oppressive social system (Alison 2004). The female combatants who comprised of 1/3 of the total LTTE cadres surrendered to the Government Security Forces soon after the end of the conflict in 2009 (Bouta 2005, 07). They were later attached to the Rehabilitation Centres established to provide rehabilitation programmes to ex-combatants. The National Framework Proposal for Reintegration of Ex-combatants into Civilian Life represented an inclusive as well as responsive approach by identifying the actual needs of the beneficiaries. The aim of this national framework is to address the specific emotional, social, and economic needs of this vulnerable group of people (National Framework for Reintegration 2009). The National Action Plan for reintegration underscored the necessity to establish disarmament and demobilisation, rehabilitation, reinsertion, social reintegration and economic reintegration (De Mel 2001, National Action Plan for Reintegration 2009). Despite these efforts, civilian women and female ex-combatants still face many difficulties in restoring their lives in the post-conflict phase. In this section, I intend to highlight the salient features of the challenges in the post-conflict phase in North and East of Sri Lanka. I will argue that, given this set of challenges, there is a close linkage between retributive and restorative justice that sparks the necessity of applying legal justice and reconciliation for the Sri Lankan context.

2.3 Sexual Violence

As mentioned in Chapter 2 of this project, women in most of the post-conflict contexts are faced with sexual violence. Female combatants are more susceptible to sexual violence when they surrender to the victorious party. Sexual violence may be committed against the female combatants for their participation in the conflict or
as a form of retribution for the violence against non-combatants. From the inception of the conflict, there has been lack of documented evidence to support claims that Government Security Forces committed sexual violence during the conflict on the same scale as that found in Sierra Leone and Rwanda (Wood 2004). Many of the rape cases reported in the Sri Lankan conflict period are between 1987 and 1990 during the deployment of Indian Peace Keeping Forces in the battlefield (Alison 2003). However, the most recent incidents of sexual violence reported on Channel 4 are the main issues at stake at present (LLRC report 2011). A television station of United Kingdom, Channel 4 aired a controversial investigatory documentary entitled ‘Sri Lanka's Killing Fields’ which was based on the final weeks of the Sri Lankan Civil War. This amateur video recorded from the conflict zone depicted horrific war crimes, intense shelling of civilian targets, including hospitals, by the Sri Lankan military. Furthermore, this documentary showcased some disturbing scenes of blindfolded victims being executed and naked bodies of female ex-combatants being dragged onto trucks by soldiers. The Section 153 of the Darusman Report on the specific human rights violation faced by women explains in detail the sexual violence that has taken place during the Sri Lankan conflict. The Report further highlights the sexual violence that may have occurred during the last stages of war referring to the video broadcast by Channel 4 and some other undisclosed evidence (refer to chapter 2 which discusses this matter at length) (Channel 4 Video 2009, Darusman Report 2011, iii, 10, 44, 47, 50, 60, 63, 67, 70).

The main issue that is being clamoured by the United Nations Human Rights Commissioner for Refugees is that the Channel 4 programme depicting grave human rights violations and sexual violence lacks credible evidence to support legal

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23 Channel 4 is a British public-service television broadcast which was established in England in 1982. The television company was initially subsidiary body of the Independent Broadcasting Authority (IBA) at present it is largely commercially self-funded, in 2010, Channel 4 became an entirely UK-wide TV channel for the first time.
proceedings. The general belief of the Human Rights Activists and Civil Society members is that much of the sexual violence during the war in Sri Lanka has been underreported due to cultural sensitivities and fear of stigmatization (Darusman Report 2011, 44). Overall there is a lack of legal justice measures being enacted by the Government of Sri Lanka to safeguard gender justice in the post-conflict phase. The women population has been denied access to legal justice and their sufferings ignored.

The Channel four programme depicts horrendous picture of women’s dignity being threatened and violated during the last stages of war and draws attention to the post-conflict militarisation in North and East Sri Lanka. Many human right activists and the United Nations have levelled strong criticism against this militarisation which may lead to further insecurity for female ex-combatants who are reintegrated in the villages in North and East. As these disturbing issues increasingly threaten the post-conflict security among women, the LLRC called for inquiries into this matter in order to redress victims’ grievances and build trust on the reconciliation process as well as on the Government (LLRC 2011). However, a technical note prepared by Mr. Philip Alston, the Special Rapporteur on Extrajudicial, Summary on Arbitrary Executions, in relation to the authenticity of the “Channel 4 videotape” confirmed that the video tape is authentic. Following a series of communications with the Government of Sri Lanka requesting to hold an independent investigation on the Channel 4 video, the Government of Sri Lanka later commissioned four investigations to look into the authenticity of the video footage. The four separate investigations commissioned by the government ultimately reached the conclusion that the video was faked. Mr. Philip Alston, however, questioned the objectivity of the investigation results, claiming that the reports were mainly based on observations rather than scientific in
nature. He also questioned why the full version of the reports was not made available for him to further clarify matters.

The Independent investigation carried out by the Special Rapporteur on extrajudicial, summary or arbitrary executions further noted that there were some characteristics of the video which the experts who undertook the investigations were unable to explain. First, the movement of certain victims in the video; secondly, the 17 frames at the end of the video; and thirdly, date of 17 July 2009 encoded in the video. The special Rapporteur further reiterated that although these unexplained characteristics required further investigation, the evidence was consistent with the conclusion that the videotape appeared to be authentic.

Contradictorily the LLRC Commission noted that the Government and certain technical experts have taken the view that the video footage has extensive technical and forensic ambiguities suggesting that the alleged incidents and the video tape are faked. Given the dissatisfaction by all parties over the LLRC Commission’s findings on the Channel 4 video, the LLRC Commission further recommended that the Government of Sri Lanka commission an independent investigation into the truth on the allegations arising out of the Channel 4 video footage according to the laws of the land.

The LLRC maintained that if the video footages, in which the rape victims were killed while in captivity, were real then there is a grave violation of law and offenders must be prosecuted as these are clearly illegal acts. Furthermore, it states that justice must be done to the soldiers who have carried out their solemn duties to protect the territorial integrity of the nation, that the good name of these soldiers must be cleared to protect the honour and professional reputation of those who perished carrying out their combat duties against a widely condemned terrorist group
as the LTTE (LLRC Report 2011, 151). In his study, Wood noted that despite occasional reporting of security forces personnel subjecting Tamil women to various forms of sexual assault, either after their arrest or detention at checkpoints on the grounds, or during investigations of family members are suspects of the Tamil insurgency, such violence has not been widespread or systematic (Wood 2009). However, cases of Tamil women joining the LTTE due to the sexual violence committed against them by the Security Forces personnel are hardly reported (Wood 2006, 313). Therefore, the LLRC further recommended suitable solutions for the matter of sexual violence should be attained through legal justice and reconciliation that would be fair for both sides (LLRC Report 2011, 147, 336).

The reasons for the invisibility of such sexual violence is due to the prevalent social cultural system in which women’s purity is observed at a very high level in order to earn respect within the society. As I have mentioned in the earlier section, gender roles are mainly framed by their traditional societies, and the Sri Lankan case is no exception to the rule. The North and East of Sri Lankan Tamil communities emanating from the South Indian origin mainly practice their customs and rituals according to the Hindu traditional system. Customs relating to females, premarital chastity, chaperoning, initiation of rituals by a woman at home and maintenance of a girl’s honour are all essential to the status of the family and the caste. A girl’s purity before marriage is regarded as a sign of good fortune or good luck that would bring prosperity to the newlyweds and the family that she will be married into. Though the woman in Tamil community holds a powerful role within the family they were confined to certain roles in the home and not given the opportunity to work outside of the domestic realm. This cultural system brought about gender inequality which needs to be addressed for women to achieve gender justice (De Soyza 2010).
Within the stringent social cultural framework of marriage and customs female combatants and the civilian women are further marginalised. Sexual violence issues that may have occurred during conflict period produce feelings of injustice among civilian women and female ex-combatants. Similarly, the social and cultural system that may be restricting these women from bringing forward the issues they have faced to a public platform like the LLRC, further marginalised them from achieving gender justice. In such cases transitional justice process in Sri Lanka for civilian women and female ex-combatants needs to work towards achieving cultural and societal equality. If legal justice is balanced within the reconciliation process and the violence experienced by civilian women and female ex-combatants is acknowledged through a retributive or restorative justice process, as it was in Rwanda, women could have arrived in a place where they can reconcile and move on with their lives. As was the case of Sierra Leone, such transitional justice processes will not only bring transitional justice and peace to women but also set precedence and a deterrent effect on such violence taking place in the future. Such actions would enable the transitional justice process to make a gender transformation to liberate women in North and East of Sri Lanka from the patriarchal system that oppresses (Pfaffenberger 1981). In the following section, I intend to discuss matters that are connected with this inequality stemming from their social and cultural setup.

2.4 Retributive Justice for Gender-based violence

Domestic violence which has been visible in many post-conflict contexts have not been reported to the LLRC. Although the LLRC report highlighted many gender-based violence linked with the conflict, it did not specifically call attention to ongoing violence against women such as domestic violence as an issue in the present post-conflict context in Sri Lanka. However, this systematic violence against women has
been visible in many other post-conflict contexts due to the economic hardships that befell many families soon after the war (Jeweks 2002, Coker 1998, Koenig 2003, Buzawa 2003). This untold truth in many post-conflict societies came to be visible in the Sri Lanka post-conflict context. There has been a drastic increase of domestic violence in the North and East of Sri Lanka since 2009. A Domestic Violence intervention Services Mapping project carried out from 2005-2011 noted that the total number of domestic violence cases reported in Batticaloa was higher than that of Jaffna (Kodikara et. al. 2012). Although Jaffna district has two organisations handling domestic violence the reporting of cases were seemingly higher, compared to the organisations present in Batticaloa (Kodikara 2013). The meeting with Women NGO representatives noted that gender-based violence reporting has increased dramatically within the post-conflict phase. The most important feature of the majority of the cases reported was that violence often resulted from alcohol abuse by men. These cases are being dealt with on a daily basis by field workers who mediate solutions in domestic violence cases and support the victims as well as providing legal assistance where necessary (interview with NGO representatives on 05th April 2013). These cases of domestic violence are very difficult to prosecute due to the existing socio-cultural barriers within the Tamil society.

One of the main hurdles ahead of gender transformation for the women in North and East of Sri Lanka is the socio-cultural order that is practiced by the traditional Tamil community preventing women from becoming breadwinners in their families. This non acceptance of women as breadwinners either by their partners or by their extended families, places woman in a highly gender centric, patrilineal, male dominant society. The cultural norms within these societies restrict women from undertaking income earning activities. In the post-conflict context the Tamil women
who are expected to carry out their culturally inhibited customs, are now being compelled to take up the leadership role of earning a living for the whole family. At occasions some women face this situation as the husbands may have died due to the violence in conflict or the husband is disabled or either unemployed due to addiction to alcohol or other reasons. This transfer of roles within the traditional society causes much tension in the home and is one of the underlying reasons for domestic violence. Transforming males who are prone to violence, into upright citizens of society can help address the root causes of domestic violence. Culturally embedded inequalities can only be dealt with through restorative justice.

Certain scholars who condemn legal justice for domestic violence cases support restorative justice as an alternative approach (Stubbs 2008, 04). Many empirical findings have supported that restorative justice is the dominant model attending to post-conflict women victims in a compensatory manner (Markel 1999,412; Mani 2002,153; Wenzel, Okimoto et al. 2008,378, Marshall 1999,20; Braithwaite 2001,5; Uprimny and Saffon 2006,4; Parsons and Bergin 2010,186). The risks associated with custodial sentence and insecurity related to victim protection posed a threat to the offender and decreased the levels of convictions on rape and domestic violence in many countries in the world.

Generally these post-conflict women who suffer domestic violence in North and East of Sri Lanka have not sought legal representation. Author’s field visits to Jaffna and Batticaloa, as well as meetings with the NGOs working on women revealed that most of the domestic violence issues have been reported to the NGO Desks rather than to the Police desks that are situated in National Hospitals in respective areas. This is mainly due to women’s preference for localised informal restorative options rather
than publicising their issues. Wimala, a woman I met in Jaffna, struggles to live her life with two children:

I and my two children have been in this temporary shelter for many years. He (husband) is a day labour but used to be a fisherman. Now he doesn’t have any work or do fishing and he drinks every day. I have to struggle to breed chickens and sell eggs, taking them to market. When I tell him to stop drinking, he hits me. I don’t go to the police because it might create unnecessary problems and people will laugh at us. Also I don’t want to break up my family, as I have two daughters to be married and they need a father to get a good man. How can I do everything alone? So I heard about this NGO and they provide mediation so I come to get their help.

Her husband beats her almost every day after he gets drunk. Though he brings meagre income home seldom Wimala has been entrusted to earn the bigger portion of the income and bear the burden of the family. The fishing livelihood is disrupted as the areas they lived have been taken over by the forces due to the conflict. In such cases, the traditional women do not wish to expose their private domestic problems to the public, their neighbours in particular. If these cases are addressed only through punitive justice in Sri Lanka the cases will mostly go invisible from achieving legal justice. Invisibility will remain a major problem as an issue unspoken in public continues to happen in the realm of the domestic system. Similarly, the sufferings of women in post-conflict society will continue if domestic violence is not dealt with in an appropriate manner. This is where the close connectivity of restorative and retributive justice comes into play. Meting out punishment through legal justice can
put an end to such violence. Then by connecting the perpetrator with the victim to rehabilitate within a community level programme could further enhance the process of building peace in the long-term. This the way in which retributive and restorative justice can connect with each other to bring about a lasting solution to family conflicts. As mentioned in the introduction giving a responsible role to the perpetrator as well as the victim could be brought to peaceful terms in the long run. Especially in the Sri Lankan case the restorative justice programmes could be initiated through the existing Community Mediation Boards system. This system is expedited under the Ministry of Justice in Sri Lanka and is widely accepted and used by people of North and East to settle minor disputes (Mediation Board Act 1988).

Through this information, it is apparent that there is an unambiguous obstacle preventing Sri Lankan civilian women and female ex-combatants from achieving punitive justice for the violence they have faced within their socio-cultural system. Within such a situation achieving individual justice could only support victims of vulnerable groups to overcome the injustices they have faced. In light of this I bring out Mani’s point of view demonstrating distributive justice and rectificatory justice that could look beyond a punitive justice process (Auxworthy 2001, Mani 2002). As Olsen points out, combining and sequencing such issues with amnesties and prosecutions could have positive outcomes in the long run.

2.5 Amnesties

Being an important aspect within transitional justice, the granting of amnesty is expected to bring about healing and social harmony among affected parties, to help them come to terms with the past and move on with their lives. The Government of

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24With the enactment of the Mediation Boards Act No. 72 of 1988 the system of Mediation Boards in a local level was implemented. These local institutions mediate all disputes referred to it by disputing parties as well as in certain instances, by courts.
Sri Lanka granted amnesty for all the former combatants who surrendered to the Government Security Forces in the last stages of the war in 2009. Subsequently, these surrendered combatants were rehabilitated and reintegrated into their own communities. The local communities not having a clear idea of the transitional justice process and the intended goal of its mechanisms tend to challenge the transitional justice process in Sri Lanka. In spite of the Government has granted amnesty to the majority of female ex-combatants who were forcibly recruited. Some of them have not been fully satisfied of the way in which the amnesties were granted, however. At the same time, from the view of the female ex-combatants, their efforts and contribution towards achieving a state for Tamils have gone unrecognised. Furthermore, the amnesties have not provided enough opportunities for civilian women and female ex-combatants to emancipate themselves from their oppressive cultural setup. Leela, an ex-commander of Women Tigers of the North was humiliated by some figures in her village who did not want to grant amnesty for the wrongdoings committed by female ex-combatants. They were ostracised for having fought against the Government (Peace for Women 2012, Research Paper 20-10-2012). Some combatants believe that amnesty is not a requirement as they fought for a collective cause while others tend to accept the amnesties that have been granted by the Government as there are no other alternatives.

In certain cases granting amnesty through punitive justice processes tend to produce unbalanced outcomes leading to dissatisfaction by parties involved. In the Sri Lankan case some female ex-combatants were granted amnesties, others were not. These female combatants were under the impression that those who were involved in grave human right violations, violence and disappearances were not brought to punitive justice leaving victims dissatisfied. Naturally, prosecuting large numbers of
army personnel in the absence of credible evidence is a challenging task. Granting amnesties in an unequal and imbalanced manner was also a major problem during post-conflict El Salvador which led to distinct demoralisation of victims taking part in the development process in order to achieve individual justice. In such cases granting amnesties through a punitive justice process would be unfair for all parties who have become victims of the Sri Lankan conflict. However, it is also essential on the part of the Government of Sri Lanka to see that justice is granted for the injustices, to the former Leaders of the LTTE who have once been perpetrators and have now entered the democratic process. However, it is recommended that even within such milieu in order to maintain and build peace for the future, it is essential that such perpetrators are also brought to legal justice. This could not bring an end to violence but could make a strong precedence for non-occurrence of the same in the future (Schabas & Darcy 2004).

3. Women insecurity due to social cultural reasons

Many women in the North and East of Sri Lanka have either lost their husbands in battle or have suffered the disappearance of loved ones during the past 3 decades. Widowed women who comprise a large number of the civilian population in the North and East of Sri Lanka are seen through their cultural perspective as symbols of bad luck because they have lost their husbands. Ramani, a widow whom I met and interviewed at the Psychiatric Support Centre at the Point Pedro Hospital, lost her husband during the war (Meeting with Ramani at the Point Pedro Hospital on 10th March 2013). Having had a child from that marriage she decided to marry again for the sake of security of herself. This marriage was only regarded as a Kovil marriage
The man who married Ramani took all her wealth, i.e. gold jewellery, by force and left her when she was 5 month pregnant. Gold jewellery is considered the most valuable possession that a Tamil woman inherits from her parents and will take it with her when she gets married as part of her dowry. When she asks for the jewellery back her husband and in-laws use violence to chase her away saying she brings bad luck. Multiple marriages and Kovil marriages are common in post-conflict Jaffna as a means of generating money for men. Similarly, during author's field visit to Jaffna the capital of the northern province of Sri Lanka, she visited the temporary shelter camp in Tellipallai division. During this visit the majority of women whom I met were widows. Their husbands, most of whom came from the Mailetty and Taileddy area on the sea shores of Northern most Jaffna, joined the LTTE and were killed in the war. These families were fisher folk who were displaced due to the rigorous LTTE activities taking place in the said areas. It is a challenging task to change the traditional thinking patterns among the people of these areas and mobilise the societal culture to support transitional justice mechanisms as reconciliation, DDR and justice (Meeting held on 10th March 2013 at the Point Pedro Hospital in Jaffna). Hence, even need based reconciliation requires identifying grass-root causes of the conflict to design reintegration programmes that combines restorative and retributive justice and provides women with psychosocial support while assisting them to adhere to legal procedures when marriages and other monetary matters are involved.

3.1 Caste and Customs

Another barrier to justice for victims is the prevalent practice of caste system. The existing caste system in North and East of Sri Lanka by and large contributed to the gender inequalities. From the beginning of the conflict in 1983 this problem of caste

\[26\text{In general marriages are registered legally in Sri Lanka under the Sri Lankan law. However the past practice of tradition was the marriage to take place in a Kovil in front of the relations and neighbouring communities.}]}$
system has been a fundamental root cause that contributed to the uprising of the LTTE and the LTTE women wing in particular. Certain numbers of women in LTTE were women who were oppressed by the inequalities within the social system and chose to liberate themselves from these gendered inequalities. Being the dominant caste of the affluent Tamil agricultural landlords in the states of Tamilnadu and Kerala in India, the Velalar occupy high positions in the community with the support of Portuguese and Dutch colonial rulers while maintaining a greater autonomy of power within the Tamil society. They were concerned that any political attempt for social reforms within the class and caste system could deprive them of their leadership in Jaffna. Caught in this politics of caste system the women in North and East of Sri Lanka were further marginalised and unable to achieve gender equality. This largely contributed to the societal inequality which was shrewdly exploited by the LTTE to create female cadre recruitment policies. At the end of the war, civilian women and female ex-combatants were left with broken promises of empowerment through political leadership and found themselves back to these societal inequalities (Pfaffenberger 1981). If these deep-rooted inequalities persist it would be an injustice to women. In order to bring individual justice to the women community in North and East, policies relating to women should be framed to support gender transformation. Such issues within the social system are difficult to bring forward to a legal justice process, therefore will remain dormant in the process of reconciliation and peace-building, which might negatively impact the peace-building process in the long run. In such cases restorative justice would be the ideal process that could bring positive results through a community based programme to transform their ideas in the post-conflict phase.

Among the culturally rooted obstacles facing women in the post-conflict phase, many women continue to be victims of the monopoly of dowry which is a practice deriving
from the Hindu cultural system and emanated from the South Indian customs in Tamilnadu and Kerala. The dowry system in Tamil society is the way of transferring money from bride to groom. This is often done in larger sums of money, land and other resources of considerable monetary value. The monopoly of dowry system, the customs and traditions attached to it, are still prevalent in Jaffna. This provision of dowry bestows a huge value on the woman but at the same time reduce her actual worth to the large cash transactions. This system is largely supported by men because it brings value added source for them to start their lives after the marriage. This again laid a male ethos behind the value set by the customs prevalent in North and East of Sri Lanka. Shivani’s story provides broader details of the dowry system.

My two brothers migrated to Europe during the conflict. One brother who was LTTE cadre died in the conflict. Now I cannot ask money every day from my brothers who are abroad. I studied up to Grade 12 but my parents say I should not work until I am married. She says girls should not earn money and it will be a negative factor in finding a man. I like to work as a Pre –School Teacher.

This prevalent system of caste and dowry, the customary practices of chastity and rituals system have generated a great deal of burden on the post-conflict women, female ex-combatants in particular, in restoring their lives and finding employment in their communities. Such dowry systems made for the needs of men demand exorbitant amount of monetary commitments from the families of the brides. According to the findings of a research undertaken in 2012, on average SLRS 5.49 (USD 41,000) million are being transferred through a single matrimony in Jaffna. Dowry generally comes in the form of real estates, property, cash and jewellery. This dowry system is more prevalent in urban than rural areas (De Alwis 1994,
If a woman is condemned for being a widow or a female ex-combatant, the dowry increases in double as the man want to be compensated for accepting marriage with a woman who has violated the customs and traditions of the Tamil society in North and East of Sri Lanka. In these cases, I would assume that ending the dowry system and the caste system could be a legal mechanism that would bring a deterrent effect on the practice of such customs in the future. While transitional justice can provide deterrence restorative approaches as community based learning programmes would be helpful for people in these areas to overcome such out-dated customs. Therefore, transformation of ways of thinking and beliefs needs the retributive justice as well as restorative justice.

Different dynamics can challenge the role of women in specific post-conflict contexts which will frame the transitional justice policies for effective implementation. Shivani from Point Pedro is a female ex-combatant who comes from a family of four people and who has three children of her own. She was forced to join the LTTE at the age of 10 upon a promise that her family would be given the opportunity to migrate to Germany or France. She served the LTTE for 19 years in Vanni and married a cadre member and has three children. She lost touch with her husband who was another LTTE cadre, when he was taken into custody by the Government Security Forces during the last stages of war. Upon returning to her family who did not get the opportunity to migrate as promised by LTTE, this victim of war lives in the uncertainty of her husband’s immense economic difficulties and with the memory of their horrific experiences during the conflict, still waiting for her story to be told and heard (Meeting held on 10th March 2013 at the Point Pedro Hospital in Jaffna).

Furthermore, in his recent study carried out in Batticaloa, Krishnan notes that many female ex-combatants suffer disabilities caused by war injuries and are insurgent need of psychological as well as financial support (Krishnan 2011). Female victims
face further stigmatization upon returning from reintegration programmes. Sutha, a female ex-combatant, finds herself vulnerable in her own society upon returning from their integration programme in Boossa.

Sutha joined the Liberation Tigers of Tamil Eelam in 1995 as a child soldier. After training she was attached to the sea tiger battalion. She lost her left arm in a battle in 1997. After surrendering she was sent to Boosa Prison and was released in 2011 after completing the rehabilitation programmes. However, even after undergoing rehabilitation, Sutha still finds it very difficult to restore her life due to the social challenges facing her. Even with financial support from IOM to restart her life, continuation of harassment by local people who accuse her of being either a traitor or a government agent greatly demoralises women like Sutha and prevent them from engaging with economic development (Peace for Women 2012, Krishnan 2011, Research Paper 2012). These stories illustrate how individual needs are underscored by either reconciliation or legal justice, or sometimes by both. For Shivani as much as she needs to come to a closure about her husband, she needs to restore her life.

Similarly, Leela who is a former Commander collects water from the communal well only before dawn and after dark merely to avoid villagers’ taunts and verbal abuse. She refrains from sending her children to the community gatherings. She is highly depressed that though her cause was for the betterment of all Tamil people, r she has received neither respect nor recognition for her dedication and sacrifices in order to achieve that goal. There is a need to grant compensatory justice to all women in North and East who are continuously struggling to improve their livelihood within their communities (Peace for Women 2012 Research Paper 2012).
Retributive justice helps trace people who disappeared and to punish those involved in or responsible for these disappearances, while restorative justice can reconcile as well as design suitable DDR for women. Sutha’s case clearly shows that in the absence of linkages between retributive justice and restorative justice DDR has left her highly dissatisfied. Hence it is paramount that legal justice and reconciliation put more focus on individual needs when implementing restorative justice and retributive justice. Given the multifaceted dynamics of the Sri Lankan conflict that is emanating from social, cultural and historical factors, will frame the transitional justice process and its policies in Sri Lanka. It is necessary, therefore, to understand the nature in which the post-conflict context-specific approach of transitional justice should be formulated (Kanagasabapathipillai 2013).

3.2 Retributive Justice vs. Reconciliation

In every post-conflict society there are calls from victims to convey the different viewpoints for its post-conflict context-specific legal justice or reconciliation. Similarly, the post-conflict context needs are wider in certain significant issues that tend to call for either legal justice or reconciliation. In connection to this, I will bring out different perspectives laid down by transitional justice practitioners, stakeholders and experts in Sri Lanka to build an argument on legal justice versus reconciliation in Sri Lanka.

Ms. Visakha Dhramadasa, who is the Chairperson of the Association of the War Effected Women, noted during author’s interview in 2013 that “platforms should be created to discuss issues pertaining to women lives which could in turn facilitate women’s involvement in post-war reconstruction efforts to ensure that their societies
are founded on legal justice and inclusion. A social dialogue between women’s groups from North and East and other districts are highlighted to build reconciliation among societies. In this manner, “reconciliation is only possible if each and every one of us is ready to accept the other for whom and what he or she is, not for what we want he or she to be. One must remember that unless the root causes for the conflict is adequately addressed, and transitional justice based on truth is applied and made real for all, there will be no room in the hearts and minds of our people for reconciliation. It is important for us to learn from the past, and understand the conflict in all its complexities, and more so to understand that dignity and equality has to be the overarching principles in our journey of finding lasting solutions, which will enable all the peoples of this country to feel and enjoy the full citizen’s rights, so that their contributions in all forms will set the stage for Sri Lanka to move forward and achieve reconciliation in its true sense as one feels that he or she is ready to forgive and forget, for that there are prerequisites that should be met. Reconciliation will not happen until legal justice is meted to all. Yes, to see “if restorative justice or transitional justice” is very good, but more than anything, human dignity has to be upheld and until such time reconciliation will be a myth in this land. I am sending you my LLRC submissions to have some idea.” (Dharmadasa 2011) There are several key points arising out of her statement. According to her whatever strategy that brings transitional justice to Sri Lankan women, human rights should be envisaged in any action. In the current post-conflict phase women need to have either restorative or retributive justice for certain critical issues. Therefore, moving ahead without any kind of justice would degrade the human dignity and human rights. Her statement clearly brings out the need to have a transitional justice process which is based on respect and inclusiveness.
An Australian based independent journalist noted in this regard that primary question ahead of post-conflict Sri Lanka would be applying legal justice. Justice is not synonymous with equality or the rule of law – but people who respect each other and treat others as equals. Living in a society that is governed by good laws will ultimately serve the interests of transitional justice. He further notes that it may be the Tamils who suffered in the recent conspicuous history but justice for injustices were denied even to the Sinhalese people by colonial powers for centuries, a memory which is very much alive within the Sri Lankan social conscience. Hence, it is necessary to collectively resist the actions and beliefs that come into conflict with the interests of transitional justice. A country that does not afford to bring justice to one individual is structurally incapable of affording justice to any other individual or a group. But we live in a flawed world and therefore the pursuit of justice will always remain a struggle.

The majority of women victims encountered in Sri Lanka are in need of closure of the events that they experienced during the 30 years of armed conflict. A retributive action for the injustices they faced is not their need of the hour in this post-conflict phase. A more humane resolution to their unclosed narratives must be sought. Whether it was domestic violence, disappearances or any other issues, people of North and East did not come to the public hearings held during the field visits of Lessons Learnt Reconciliation of Sri Lanka (LLRC) to represent their grievances as much as to represent women’s need to be heard as well as their need for empathy, sympathy and acknowledgement rather than legal justice (Alwis 2013).

A former communist party politician of Sri Lanka noted that transitional justice for Sri Lanka needs to examine the conditions under which it can contribute towards
improving human rights and the rule of law, and how far it could be sequenced with legal justice and reconciliation to build democracy. In the absence of genuine reconciliation, society will be left with hatred and fears that could lead to further conflict, while any form of justice must also be a positive presence of justice for injustices. “Reconciliation is a two way process. It is a process involving confession and apology on the one hand, and commitment and absolution on the other. For the reconciliation process to work, the willingness of the conflicted parties to voluntarily admit to one another their responsibility for and guilt in inflicting death, injury and destruction on other parties, is essential” (Bopage 2011).

Sarala Emmanuel, Executive Director of the Suriya Development Centre in Batticaloa which handles many of the domestic violence cases, notes that transitional justice/peace and transformation all needs to take place within the same process if we are going to repair and rebuild relationships and communities in the post-conflict context. In our perspective - violence in the home and community and country are all part of a continuum. Therefore the transformation of social relationships should be an inherent part of achieving justice. This could include intimate partner relationships, community relationships, inter-ethnic relationships. We have always worked to support women who have experienced domestic violence as part of our broader peace work. Real peace must include a process of justice that includes censure of violence against women as well (Emmanuel 2013).

The debates on legal justice or reconciliation have been a struggle for the transitional justice experts and practitioners in every post-conflict context. Among these debates the use of amnesties has been discussed widely in different angles as it tends to bring impunity for victims. Similarly though there are many international treaties and other agreements achieved through a legal framework to punish perpetrators, it has
been difficult to punish large numbers of perpetrators or to deliver punitive justice to victims due to the challenges occurring at the implementation phase. Hence amnesty can become an independent goal within the transitional justice framework to eradicate poverty and empowering women in Sri Lanka by connecting them with the DDR programmes in order to eliminate impunity. When applying transitional justice, the practice of amnesty in conjunction with DDR would be the most ideal option for addressing issues among vulnerable groups.

Conclusion
Retributive or restorative justice as important components within transitional justice was initiated as a prerequisite for peace-building during early years. At the end of each transitional justice process, the necessity of reconciliation emerged. In order to rectify the situation in which reconciliation dominated restorative justice was introduced to many post-conflict societies in various forms. Each case demonstrated the need for a legal justice process at the end to build trust and bring about a deterrent effect. The transitional justice processes that undertook punitive justice as their key goal often left the victims dissatisfied at the end of the process. Victims’ dissatisfaction highlights the need for close connectivity between the two justices, punitive justice dominated by retributivism while reconciliation which dominated restorative justice. This close connectivity between the two was emphasised in every post-conflict context where transitional justice has been apparent.

In regard to the role that women played in post-conflict societies certain challenges could not be addressed through transitional justice measures. Similarly, without the deterrent effect from retributive justice long-term security could not be achieved. This close connectivity between retributive justice and reconciliation was highly visible among the issues faced by women in the Sri Lankan post-conflict phase,
highlighting certain unique issues that stem from the social and cultural system. These include caste, dowry system and the customs and traditions that cause much of gender inequality in Sri Lanka. In search for legal justice and reconciliation there is a strong need to listen to individual needs. Legal justice and reconciliation for Sri Lanka are not two entities but rather should be built upon consensus among its stakeholders. This discourse and dialogue will frame the legal justice and reconciliation process in Sri Lanka which will highlight the needs of the people in the ground.
Chapter 4

Disarmament Demobilisation and Reintegration (DDR): a way forward for Sri Lanka

Introduction

In Chapter 1 of this thesis, I have analysed the origin and the evolution of the Transitional Justice in general and transitional justice in Sri Lanka in particular. This analysis gives a clear picture of how the concept of transitional justice has evolved in different cultural contexts and how it is further strengthened by the challenges that arise from each context. In this Chapter author argues that the Disarmament Demobilisation and Reintegration (DDR) programmes which emanates from transitional justice mechanisms. DDR is the internationally recognised instrument for dealing with and preventing post-conflict violence and insecurity. The main objective of the DDR programmes is to secure the peace, through interventions such as well-designed programmes that addresses the critical challenges among post-conflict victims which are regularly advanced at the national level and targeted at potential spoilers as former combatants who are more prone to violence, to return them to the non-violent path to sustainable peace (Muggah & Keith Krause 2009, 137). Due to the structural flaws within transitional justice mechanisms, which I have elaborated in Chapter 2 and Chapter 3 of this thesis, on most occasions it leads to the granting of amnesty to perpetrators who have involved human rights violations during conflicts. Despite reservations from scholars and practitioners who believe that granting amnesty could lead to impunity, many countries have widely used the mechanism of amnesty in various forms to connect with DDR, as a remedy for grievances and psychological damages arising out of the imbalances within legal justice and
reconciliation processes (Freeman 2010, Sharpe 2012, Sri Ram and Herman 2009). When DDR is implemented in certain post-conflict contexts another set of challenges arise due to the cultural dynamism in these post-conflict contexts (Sri Ram et. al. 2012). In this Chapter, I intend to discuss broadly on the ways in which the concept of DDR has evolved within the Sri Lankan post-conflict context while making comparisons with other post-conflict contexts to highlight the context-specific nature of the challenges facing Sri Lanka as well as the impact of societal and cultural traditions on DDR implementation.

DDR programmes have taken a prominent place in the way post-conflict states repair damages caused from the human rights violations during war, on people and bring reparative justice to people who might have suffered injustices during the conflict. It further contributes to the stability necessary to implement transitional justice initiatives and provides communities with the knowledge that justice has been served for injustices on a reciprocal basis (Muggah 2005, 239, Theidon 2007, 67). Though this is the definition for DDR in transitional justice today, the historical data appearing from early 1980s confined its definition of DDR to military reforms after a civil war. This idea of dealing with female ex-combatants through DDR was essential, as many rebel groups were reluctant to cooperate in the post-conflict phase, without an agreement to provide them with a package of benefits (Muggah 2005). The recent development in the international fora contributed immensely through the United Nations system to the concept of DDR, putting the responsibility on the state to remedy any harm caused by war, while focusing its post-conflict phase through a victim-centric approach for long-term peace-building (Almeida 2009, IDDRS 2007, 09, Magarrell 2007, Sesay and Suma 2009, Sri Ram and Herman 2009). Developed by the United Nations, the Integrated Disarmament

Furthermore, since neither DDR nor transitional justice was created with either one in mind, DDR in different socio-cultural contexts further challenged the implementation process. However, due to a fair amount of complementarities that were visible during the implementation of DDR and transitional justice, it was believed that DDR is an unproductive process in the absence of transitional justice (IDDRS 2007, Magarrelle 2009, Patel 2010, Sri Ram & Herman 2009, Van Zyl 2005, Waldrof 2009).

1. DDR and Transitional Justice in Sri Lanka

In this Section, I will discuss the connection between DDR and transitional justice and its impact on the Sri Lankan post-conflict process, while highlighting the gender related challenges faced by the ongoing DDR programmes in Sri Lanka. Furthermore, this Chapter will contribute to a comparative study of DDR processes and transitional justice in the Latin American and African countries, highlighting the unique aspects that are visible within the Sri Lankan DDR process.
As I have made a broader discussion in Chapter 1 on the emergence of the transitional justice process in Sri Lanka, this Chapter will focus on a discussion on the emergence of the DDR process in Sri Lanka to bring out the points of tension and connectivity that become visible in the operation of transitional justice mechanisms.

With the end of the conflict in May 2009, 12,000 ex-combatants surrendered to the Security Forces of Sri Lanka, two-thirds of whom were female combatants. Even before the Darusman Report or the Lessons Learnt Reconciliation Commission was implemented, the Government of Sri Lanka initiated its DDR programme for former combatants who surrendered at the end of the war in 2009. Since the majority of ex-combatants were forcibly recruited by the LTTE, they were granted with general amnesty while some were to face terrorism charges according to the Terrorism Prevention Act of 1979 (TPA Act 1979). Through a state legislation, rescued victims who were earlier kept as human shields by the LTTE have been given accommodation in a temporary shelter. Within this legal framework the government in the aftermath of the war, assisted displaced people by resettling them and providing them with shelter. Under the Ministry of Disaster Management and Human Rights and in coordination with the International Organisation for Migration and the United Nations Development Programme, the National Framework for Reintegration of Ex-Combatants was in place by July 2009 (National Framework Report 2009). This framework was created for the purpose of addressing the emotional, social and economic needs of vulnerable groups of the population (National Framework Report 2009, 2 & 30). In this manner the rehabilitation process commenced with the
establishment of its centres in Ambepussa, Welikanda and Tellipalai under the supervision of the Bureau of the Commissioner General for Rehabilitation (BCGR).

However, certain international developments such as the Darusman Report, the United Nations Human Rights Council Resolutions, the video evidence released by Channel 4, and the recommendations by the LLRC have brought different observations to be incorporated into the ongoing DDR process, that began soon after the end of the conflict in 2009.

1.1 Prosecutions

The Sri Lankan DDR process and its use of the Integrated Disarmament Demobilisation and Reintegration Standards (IDDRS) of 2007, which clearly notes the tension and the complementing aspects that become visible when transitional justice is implemented (IDDRS 2007, Molloy 2011, 120). The IDDRS notes that it is important to punish ex-combatants who violated human rights; however, harsh punishments might lead to tensions not only between the combatants but also across society. Again, when the reintegrated combatants start to engage in socio-economic activities, tensions may arise within the society. This type of tensions was visible in different post-conflict contexts when a lack of support for female ex-combatants to participate in DDR led to their re-victimisation. In Bosnia and Herzegovina female ex-combatants realised that their registration for prosecutions would have provided them with some reparation, as their fellow male and female combatants had received reparation from the International Organisation for Migration by registering themselves (El-Rayess & Moratti 2009, 26, Sri Ram & Herman 2009). A reason for this was that on some occasions prosecutions have been viewed by
combatants as further harassment and could exacerbate anger within them (Muggah 2005, 27). In Liberia the Truth and Reconciliation Commission made recommendations to prosecute the parties that are responsible for gross human rights violations and grant reparations for victims, nonetheless the country did not pursue transitional justice measures with DDR to address past human rights crimes fearing that it would derail the peace process and that the country being a failed state did not possess the ability to continue with such an arrangement (Auckerman 2009, 85, Jaye 2009, 03). The literature further notes that the prosecutions have been able to build trust among former combatants when it was linked with the DDR programmes. In Rwanda, DDR has proceeded more quickly and successfully than criminal prosecutions. If the Rwandan Government linked DDR and legal justice measures, it would have hampered the DDR process (Waldorf 2009, 26). However, in certain post-conflict contexts when such legal justice measures were implemented at a local level they have proven to facilitate reintegration programmes by fostering trust between ex-combatants (Duthie & Specht 2010). Similarly, in different socio-cultural contexts accepting returning combatants as non-criminals brought a question as to whether there is a necessity to prosecute them at all? (Derluyn et. al. 2012, 215). The post-conflict context-specific nature in which prosecutions are implemented in conjunction with DDR, brought a new dimension to the practice of prosecutions with DDR.

Looking at the above perspectives, the application of prosecutions to the Sri Lankan context could exacerbate tensions between the two communities. Such a bitter pill as prosecutions could provoke anger among a group that felt much pride on the actions they were undertaking under the LTTE leadership. As a group of female combatants, the LTTE Women Wing strived to liberate and to create a separate state
for the Tamils and ultimately rise as heroes. Simultaneously, the Government Security Forces were also defending their homeland. However, looking through the post-conflict context-specific lenses, Sri Lanka did divide the surrendered LTTE cadres into three categories for prosecutions. Those who were forcefully recruited (mostly children), non-combatant members, and hard-core combatants. These groups were detained separately in different Rehabilitation Centres. The two main categories which have been identified as the hard-core are presently in custody, pending prosecutions. Several are still in prison and awaiting prosecution. Amongst them are leading figures such as the former spokesperson of the LTTE, the LTTE Head of Paris Branch and the Head of Tamil Rehabilitation Organisation (TRO), which is the main funding organ of the LTTE, and several other key members, except for Thamilinie who was reintegrated after clearing her prosecutions. This paved the way for the government to negotiate with the LTTE members who may object to post-conflict peace-building measures and to abolish the LTTE terrorist network that threatens the long-term peace in Sri Lanka (Manoharan 2011). Furthermore, as a Government, Sri Lanka followed the regulations stipulated by the Terrorism Prevention Act No. 48 of 1979 which noted in it Article 7 of the detention of persons involved in terrorist activities (TPA Act 1979). The growing strength of the linkage between prosecutions and DDR have positively contributed to the Sri Lankan context as the female ex-combatants whom I have encountered during her

27 7. (1) Any person arrested under subsection (1) of section 6 may be kept in custody for a period not exceeding seventy-two hours and shall, unless a detention order under section 9 has been made in respect of such person, be produced before a Magistrate before the expiry of such period and the Magistrate shall, on an application made in writing in that behalf by a police officer not below the rank of Superintendent, make order that such person be remanded until the conclusion of the trial of such person: Provided that, where the Attorney-General consents to the release of such person before custody before the conclusion of the trial, the Magistrate shall release such person from custody. (2) Where any person connected with or concerned in or reasonably suspected to be connected with or concerned in the commission of any offence under this Act appears or is produced before any court other than in the manner referred to in subsection (1), such court shall order the remand of such person until the conclusion of the trial: Provided that, if an application is made under the hand of a police officer not below the rank of Superintendent to keep such person in police custody for a period not exceeding seventy-two hours, the Magistrate shall authorise such custody and thereupon the order of remand made by the Magistrate shall remain suspended for the period during which such person is in police custody. (3) A police officer conducting an investigation under this Act in respect of any person arrested under subsection (1) of section 6 or remanded under subsection (1) or subsection (2) of this section - (a) shall have the right of access to such person and the right to take such person during reasonable hours to any place for the purpose of interrogation and from place to place for the purposes of investigation; and (b) may obtain a specimen of the handwriting of such person and do all such acts as may reasonably be necessary for fingerprinting or otherwise identifying such person.
fieldwork did admit that they went against the law of the country, although they believed they were fighting for a good cause. Combatants like Thamilinie\textsuperscript{28} and Daya Master\textsuperscript{29} have gained much from prosecutions being linked with the DDR programmes. Upon returning from the Detention centre where the rehabilitation programmes were provided, Thamilinie was given political incentives to run for office in the recent elections in Jaffna and to work for her community as an active politician under the central Government of Sri Lanka. The case of Thamilinie could be cited as an example of successful reintegration of female ex-combatants into the democratic process in Sri Lanka. The Sri Lankan Government engaged in one-on-one rehabilitation with Daya Master, former LTTE Spokesman. Daya Master was reintegrated fully as a result of his cooperation made with the Government. This sequencing of prosecution process and the DDR, in conjunction with restorative justice provided a positive development to the transitional justice process in Sri Lanka. V. Manoharan, Head of LTTE in Paris branch is presently in France, however he is listed as a ‘foreign terrorist’ by the Sri Lanka Government and has recognised as the same by the UNSCR 1373. Head of Tamil Rehabilitation Organisation and few other key members are still in prison and awaiting prosecution. This elimination of certain spoilers from the Sri Lankan DDR process has succeeded in avoiding threatening the peace building process, within the first phase of the DDR process by reintegrating the first batch of combatants with a nuanced treatment, while granting generous benefits in exchange for participating in DDR. I will elaborate more extensively on this in the section on Amnesties. Meanwhile, the Government of Sri Lanka has provided a total of Rs. 500 million worth of loans to

\textsuperscript{28}Subramaiyam Sivagami alias Thamilini is resident of Kilinochchi area joined the LTTE organisation in 1991. Within the LTTE Organisation, she was the Chief of the LTTE women wing. On 27.05.2009 she was arrested and was taken to Colombo for investigations and was released on 26th June 2013 after necessary legal proceedings.

\textsuperscript{29}Velayutham Dayanidhi grew close to LTTE in 1994 and became a leading member and the media spokesman for the Liberation Tigers of Tamil Eelam (LTTE). Daya Master was detained under the Prevention of Terrorism Act (PTA) but was not charged. They were released on bail by Colombo Chief Magistrate on September 2009 due to the lack of evidence to prosecute him under the PTA.
107 former combatants, 6 of whom are female ex-combatants, to start business of their own. Additionally, the Government of Sri Lanka has introduced a scheme through a State Bank to provide up to Rs. 250,000 in loans to the 10,735 rehabilitated cadres to start self-employment with the skills and training which they have received during the rehabilitation programmes. The areas of vocational training include agriculture, carpentry, masonry, outboard motor repair and other entrepreneur-oriented fields such as hair and beauty services and garment making (Bureau of the Commissioner General of Rehabilitation 2011, Presidents’ Media 2013, Nathaniel 2013, Dharmawardhane 2013, 36).

However, the delays in trial proceedings did affect families of former combatants psychologically as well as economically. Shalinie’s husband, who is also a former combatant, is still in custody. Upon returning to her family, Shalinie has been able to use the skills that she learnt during the reintegration programme to start a new self-employment. Nonetheless, the absence of her husband creates a huge vacuum in her domestic as well as emotional life (Meeting held with Shalinie on 09th March 2013 in Valikamam, Jaffna). Manuja, a female ex-combatant who has recently returned to her village in Vanni, finds social stigma as an obstacle to restoring her life. The whole community treats her as a criminal who has been released from prison (Meeting with Manuja on 10-03-2013 in Jaffna). Such ostracism by their societies and court delays have brought tensions to apply DDR as part of the transitional justice process for women in Sri Lanka, as they attempt to reintegrate smoothly into society. Scholarly literature has noted that these tensions do not always have a negative impact on the DDR processes (Magarrelle 2009). In the case of Manuja despite the negative feedback from the community she lives in, she
has been able to utilise her skills gained and presently working as a Computer Assistant for a company in Jaffna.

The common practices of prosecutions following DDR have brought positive outcomes to the advancement of human rights and democracy in other post-conflict contexts (Olsen et. al 2010, 108). Similarly, such time sequencing can bring a delicate balance between DDR and the punishments that the former cadres receive in exchange for reinsertion packages to start a new life, within the framework of DDR strategy (Sri Ram et.al. 2009, 69). Such processes can mitigate the punishments by sequencing DDR programmes and prosecutions that could be further facilitated by incorporating with restorative justice and a community focus (Witte 2009).

The recent two resolutions proposed by the United States and supported by western countries at the United Nations Human Rights Council, have threatened to bring leaders and officials of the military to punitive justice (The Hindu 23.03.2012). The first resolution that was tabled on 21st March 2013, called upon Sri Lanka to conduct an independent investigation into allegations of violations of international human rights law and international humanitarian law and to extend the mandates of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms, while countering terrorism and of the right to food (UN Resolution 21.03.2013). The US-sponsored resolution against Sri Lanka was adopted during the 25th session of the United Nations Human Rights Council on 27th March 2014, with majority of 11 votes. This resolution is expected to seek an international inquiry into alleged war crimes and human rights violations committed by Sri Lanka in May 2009. This focus by the United States and the United Kingdom will only give voice to Tamil interests and sentiments both in South India and Sri
Lanka, which would be counterproductive, as it will further promote sectarianism and separatism in the sub-continent. Tamil separatist groups led by the diaspora are raising the issues that occurred during the last stages of conflict to be brought forward to the forefront of legal justice and push for a resolution to be passed in the UNHRC. It demands for an international probe against war crimes in Sri Lanka. The separatist elements underlines that oral submission at the LLRC are not sufficient. However this move will only portray one-sided story as the background for this process has been impacted by Navi Pillai, a South African Tamil as the High Commissioner for Human Rights in Geneva, leading the UNHRC. The Report which UNHRC produced was not balanced and some of the elements including the recommendations to establish international inquiry mechanisms exceeding her mandate granted by the Human Rights Council Resolution 22/1 to the High Commissioner. Similarly, the Resolution will not act as a facilitator for peace and stability and be part of the solution rather, it will become part of the problem. The resolution is only backed up by the countries that depend on the Tamil diaspora vote bases. They have not been able to acknowledge other minorities who died in the war, at places like Elephant Pass where three battles were fought and thousands of the majority Sinhalese were killed by the minority Tamil Tigers (Weerasinghe 2014).

However, so far Sri Lanka’s official reaction to the move shows no major change in its stand on the issue. Sri Lanka’s Minister for External Affairs Prof GL Peiris and Principal Secretary to the President Lalith Weeratunga have spoken strongly against the efforts of the U.S. to move for the third time a resolution on Sri Lanka’s accountability for alleged human rights violations during the Eelam War in 2009. Both have emphasized the efforts of the U.S. at the UNHRC would lead to the polarization of the two communities in the country and would negatively impact on
“the delicate process of reconciliation”. Further such move will further bring in an unfair ruling towards all communities in Sri Lanka by demarcating the human rights violations that took place only from 2009.

At present the Sri Lankan Military is involved in expediting certain DDR programmes. A move to indict any officials of the military would no doubt bring tensions to the ongoing DDR programmes. However, it should also be noted that prosecutions against military officers could also be connected with the DDR programmes to rebuild their lives as law-abiding citizens and to build trust among parties who have already undergone DDR processes without leaving a zero-sum achievement that could bring resentment.

This continued pressure that comes from international powers for a punitive justice process could bring setbacks to the DDR process in Sri Lanka. Mainly due to the demoralisation of the Leaders who are expediting the programmes are not in concurrence with such legal process to take place in the post-conflict phase. And also due to the fact that presidential amnesty was issued in support of restorative justice for LTTE members at the end of the conflict, an act which directly promotes reconciliation, despite the vast destruction made socially, politically and economically and suffered immensely as a nation to spearhead with its economic development. Hence, when pressurising the government to impose legal measures to a restricted period of the conflict undermines the suffering that Sri Lanka as a nation has suffered, brings limitations to achieve reconciliation in an inclusive manner (Dharmawardhane 2013, 34). These Sri Lankan Government leaders who are against a legal justice process underlines that such a process could threaten the existing peaceful status in the North and East and will not be able to achieve
individual justice which is the panacea for most critical issues ahead of the population in North and East of Sri Lanka. As Patrick Burgess pointed out at a Seminar on Re-thinking Transitional Justice- Lessons from Asia and the Pacific held at the ANU on 15th July 2013, "cooperation of states is vital to carry out transitional justice processes either judicially or non-judicially to address the issues on the ground with a victim-centric-approach". There is still a strong need to identify the ways in which transitional justice could operate within post-conflict societies. This situation creates further tensions in the implementation of the LLRC recommendations. However, it is noteworthy that the National Plan of Action in Sri Lanka that was prepared according to the IDDRS standards could have led to meaningful and productive programmes to promote and protect victims’ rights. The nuanced alignment of the programmes with the IDDR Standards do suggest the extent to which the Sri Lankan bureaucracy has been able to place the international standards of human rights in the planning and implementation of its post-conflict context-specific issues (Molloy 2011). A research study by a scholar noted that Sri Lanka’s DDR programme is world’s one of the most developed rehabilitation programmes for radicalised combatants, each beneficiary was provided with reparative justice, distributive justice through psycho-social and socio-economic profiling by categorising and assessing through a need based approach (Dharmawardhane 2013, 34). Hence, the identification of challenges and grouping each challenge into categories and placing them in the available mechanisms within the administration of the country can reach out to the conflict effected population to achieve individual justice.

The tensions between DDR and transitional justice have been dealt with by practitioners in Sri Lanka according the post-conflict context-specific nature. These
practitioners have looked closely at the socio-cultural issues in order to prevent
tensions while adhering to international standards. Therefore, it is paramount that
the international community and the United Nations look closely at the post-conflict
context-specific nature of the issues facing the Government of Sri Lanka. As long
as women will not take part in the legal mechanisms due to socio-cultural issues,
stigmatisation, overprescribing legal mechanisms could threaten the needs of the
people on the ground as the actual needs will not be represented. As Olsen points
out, most of the states in the world have used amnesties in conjunction with DDR in
order counter balance legal justice processes. Furthermore, this connection would
enable the legal justice processes to deal with matters that could not be handled
through the non–legal mechanisms. However, while theoretically the linkages
between prosecutions and DDR were apparent, the practice of prosecutions and
DDR as it was in Yugoslavia did not contribute to the establishment of the rule of law
nor deter violence. Additionally, as mentioned by scholars, it was also unable to
establish and sustain public trust on legal systems or practices of rule of law (De
Greiff 2010, Klarin 2009). In certain cases, the reinsertion packages provided by DDR
programmes may lead to tension between female ex-combatants and their local
community. This was commonly visible in the Sri Lankan context in which the Tamil
community itself accused certain female ex-combatants of their connectivity with the
Government Security Forces and sharing intelligence with the latter mentioned
institution, who initiated their own businesses with the money from the reinsertion
packages.

IOM (International Organization for Migration) gave me 63,000/= (Sri Lanka Rupees)
worth of materials to put up a small shop to earn an income. But, I'm unable to do so because my relatives
and society treat me very badly and destroy my reputation daily.
People around me badmouth me and treat me like an alien. It's yet another tragedy in my life. This is how society treats me now. I tried to go to Middle East as a house maid. Since I'm disabled the job agent said he cannot find a job for me in the Middle East. My parents are elderly and sick. I don't want to be a burden for them. I want to commit suicide, because I cannot listen to these bad words and gossip anymore. I told my younger sister to sell the materials given by the IOM (International Organization for Migration), and make use of the money for my funeral!"(Peace for Women 20.10.2012).

Scholars have emphasised that discrimination against female ex-combatants can be eliminated by including representatives from their own communities in the design and implementation of the DDR programmes. The purpose of the reinsertion packages should be clearly explained to build trust between community members and the female ex-combatants (De Greiff 2010, Bryden 2012, 213).

At times information sharing between DDR and prosecutions can threaten the simultaneous functioning of the two institutions. In Bosnia and Herzegovina some female ex-combatants did not register with the International Organisation for Migration, fearing that they might be prosecuted (Witte 2009, 93). But, later, when they realised the benefits their friends have enjoyed by going through the process of prosecutions they regretted it. In Liberia, most combatants refused to participate in the first phase of the DDR process in 1990, out of fear of indictment, as at the time the trial of Charles Taylor who led the Liberian conflict was still unfolding (Witte 2009, 93, Jaye 2009,14). Colombian case prosecutions also did benefit from the
information sharing through prosecutions. It framed the demobilisation of the armed group that was an obstacle to the peace by gaining detailed information of all the whereabouts of the disappeared and the spoilers who would threaten the peace-building process in the post-conflict phase (Tabak 2006, Jaramillo et. al. 2009 27, Waldorf 2009, 57). This feature is present in the Sri Lankan DDR phase where the government has been able to acquire much information from the detained combatants to demolish the LTTE Terrorist Network which is submerged around the world (Manoharan 2011). Furthermore, the information collected has helped to identify the needs and aspirations of the leaders of the LTTE, such as their desire to be absorbed into the political system and to lead their communities. Such information helped Thamilinie, who is the former Leader of the Women Wing, to contest in the recent elections in Northern Province of Sri Lanka. Information sharing plays an important role in bringing the demands of vulnerable groups in Sri Lanka to the limelight while advancing the democratic practices of the country which is one key goal of transitional justice.

However, internationally driven transitional justice processes have brought no complementarities than those which are locally driven (Sri Ram et. al. 2012, 15). In Yugoslavia, the International Criminal Tribunal in Yugoslavia, being the first of its kind and lacking public confidence, was unable to bring fairness to all parties involved. In Liberia, when the United Nations led DDR process was applied as a one size fits all’ process or as a ‘cut-and- paste approach’ without the understanding of the local realities, the process became a failure (Jaye 2009). Making a clear distinction of former combatants and perpetrators can provide the basis for a better DDR process. This was very clearly depicted in the Sri Lanka process by the fact that large numbers of combatants who were released comprised forcibly recruited
combatants and did not pose a direct threat to the national security of the country. However, the combatants who are pending criminal procedures are those who were involved in committing crimes as part of the suicide squad. This clear demarcation of threatened levels and illustrating distinction between the minimally threatened groups to the increased levels within high ranking cadres of LTTE brought better outcomes in the Sri Lankan DDR process. By dealing with different sections of combatants within the same organisation, bringing in the opportunity to identify the group’s individual needs further contributed to the success of the DDR programmes in Sri Lanka.

1.2 Truth-telling

I have extensively discussed the truth-telling process within transitional justice in Sri Lanka in Chapter 1. The issues that are stemming from the truth-telling process of the Sri Lankan reconciliation commissions or the need for prosecutions are largely confined to the disappearances cases and the war crimes. However, certain challenges facing women, such as domestic violence, that are visible in North and East need close attention. These issues have not been brought to the forefront by civilian women and female ex-combatants, nor by the International Human Rights Organisations, the Government of Sri Lanka and its transitional justice mechanisms such as the LLRC. These untold violence and the socio-cultural inequalities such as the caste system, dowry system and firmly entrenched customs and traditions that hinder women from achieving gender transformation, which the I have mentioned in Chapter 2 of this project, can be utilised as tools to frame better DDR programmes in conjunction with restorative justice for Sri Lanka.
These types of linking the social inequalities with the DDR strategies were visible in the South Africa truth-telling processes of the truth commissions. The South African Truth and Reconciliation Commission collected statements from over 22,000 victims. Later these statements were investigated and diverted as cases to frame amnesty applications which supported building DDR programmes (Merwe & Lamb 2009, 18).

In contrast to South Africa, information sharing through truth-telling for DDR in the Sri Lankan context was initiated when amnesties were granted to former combatants soon after the end of the war and the amnesties were utilised to strengthen the DDR process. The National Action Plan, which is a product of LLRC recommendations have set the foundation to launch a full scale investigation into allegations of disappearances, that were reported at the LLRC statement taking process (NAP 2013). The information on disappearances deriving from the truth-telling is presently in the early stage of investigation and to conclude on how it will be used in the DDR process is too premature. The meetings I had with the UNDP Officer in Jaffna and the Secretary of the Ministry of National Languages and Social Integration in Sri Lanka explained how the truth-telling has contributed to the DDR process by supporting North and East communities through the Equal Access to Justice Programme. The last phase of this was completed in March 2013. The programme was able to assist many of the cases relating to disappeared persons and people killed in the war by providing critical legal documentations such as birth, death and marriage certificates and national identity cards through mobile clinics.

In connection with the Ministry of Justice the United Nations Development Programme refurbished 36 courts in the former war affected areas to establish the rule of law. To further strengthen DDR design, a network of paralegal officers was appointed at the grassroots level to attend to all kinds of criminal matters, and to
initiate community awareness programmes (Meeting with Secretary/Ministry of National Languages and Integration on 03.04.13, and UNDP on 05.03.13).

In light of this, it is clear how truth-telling information can be used in conjunction with DDR in a context-specific manner to address the needs of the women who are striving to bring closure to their pain and suffering. This post-conflict context-specific approach can be linked with amnesties to formulate first short term goals, then moving towards permanent goals to empower women to come forward and represent their cases by way of truth telling. The untold issues within the reconciliation commission faced by women, such as domestic violence, can be linked with a community based assistance programmes to restore the stagnated relationships with their family members. Furthermore, such community based programmes can generate employment opportunities that would be acceptable by their communities to uplift their lives.

1.3 Amnesty
The main feature that has derived from implementing transitional justice in other post-conflict contexts of the world through prosecutions and truth-telling is the granting of amnesty. Amidst aspects that complement and pose tensions the transitional justice processes have tended to continue with their amnesty processes according to the post-conflict context-specific issues. This has further facilitated members of vulnerable groups in post-conflict societies. In this section, I will discuss the main features that have arisen in linking DDR with amnesties while making a special reference to the Sri Lankan DDR process and how the Government of Sri Lanka has used amnesties to suit the Sri Lankan context-specific issues.
As mentioned in the first chapter amnesty has been a controversial component of transitional justice due to its tendency to encourage an atmosphere of impunity. Scholars in recent years have contributed a different perspective to this concept i.e. the usage of amnesties to derive better DDR programmes to provide incentives to victims, female ex-combatants in particular (Patel et. al. 2009, 37, 56). As much as there are no ideally perfect DDR programmes, there are no identical amnesties that are “good” and would be compatible to any post-conflict context. Different contexts and different number of people involved in DDR programmes in the aftermath of a conflict brought the necessity of implementing divergent amnesties. When compared with Sierra Leone, Liberia and South Africa, the Sri Lankan context has a rather smaller number of people involved in a DDR process, which itself makes the unique post-conflict context-specific nature in which Sri Lanka managed its programme. At the same time, whether the amnesties were granted with the DDR programmes in mind is not a prerequisite for a successful DDR programmes. Whichever way amnesty is implemented, it has contributed to the DDR process in different post-conflict contexts in many different ways (Patel et. al. 2009). Although there seems to be an encouraging role that the civil society is taking at present, attending to post-conflict victims, these organisations can further underscore the role of socio-cultural issues when formulating victim friendly DDR strategies that would suit Sri Lankan Tamil women. While international donors played a median role the powerful countries have provided a negative contribution by making baseless criticism against the DDR process in Sri Lanka (Backer 2003).

In the initial phase, for the amnesties that were granted the international community did make a contribution to reintegrate the female ex-combatants back to communities. The following DDR programmes, that I have encountered during her
fieldwork are the International Organisation for Migration funded project in Batticaloa, USAID Project in Kiran and Kalladi, United Nations Development Project providing equal access to justice in two phases in Batticaloa and Jaffna and the Government initiative with the private Sector led Vocational Training leading to absorbing of trainees to the private sector companies by providing employment (Meeting with the USAID Officials in Batticaloa on 10.04.2013).

The International Organisation for Migration project was initiated at the request of the Government of Sri Lanka to help former combatants to return to civilian life. This pilot project in the Eastern district of Batticaloa provided information, counselling and referral services (ICRS) to reintegrate up to 1,000 former members of the Tamil Makkal Viduthalai Pulikel (TMVP), an armed Tamil group led by Col. Karuna Amman, which split from the LTTE in 2007 from Eastern Sri Lanka (IOM 2009). The USAID has been actively involved in the reintegration process in North and East. In March 2013 its project provided livelihood equipment for paddy cultivation and fishing to help the returning combatants to start a self-employment. Furthermore, this USAID project focused on providing information counselling to more than 1000 former LTTE combatants to reintegrate into their societies. Another successful USAID project the I encountered during her fieldwork was the “Madagi Bakery”, Kiran in Batticaloa which provided more than 25 former female combatants with employment. They were given training on making bakery products for their own communities, as part of linking restorative and retributive justice which is a unique feature that I encountered as linking DDR with female combatants who have received amnesties. This group of female ex-combatants supports the society through their services in a restorative manner to repay their communities for the wrong deeds that they have committed in the past. The other public and private
partnership programme provided training on Information Technology/Business Process Outsourcing. At the end of this programme the former youth combatants were absorbed into the newly opened outsourcing centres in Jaffna by a leading private company, John Keels Holdings in Sri Lanka. This is also a part of the project by the Presidential Task Force on English and Information Technology expansion in rural areas. This company hopes to open more centres in North and East in the near future. At the end of the rehabilitation, combatants were provided with a loan scheme to start self-employment which, in a way, is a linking of restorative justice with retributive justice as explained in the Darusman Report. Ultimately the combatants will pay back to the state while they rebuild themselves as law-abiding citizens.

The strong connectivity between the amnesty, DDR and restorative justice within aforementioned projects, and especially linking DDR and amnesties, brought a sense of closure to all the injustices that women had to undergo during and after the conflict. Despite the critical nature of the problems facing women at the end of the war, this locally led transitional justice process was able to address most of the issues through distributive justice, utilising the monetary funding allocated for DDR to bring individual justice (Boraine 2006). This unique feature derived from connecting DDR and amnesties to the post-conflict context-specific issues and catering to their needs. This linkage can provide a creative solution to the vexing challenges faced by female ex-combatants through the transitional justice process and coordinate better funding plans from overseas funding agencies to bring in individual justice.

It is also noteworthy, as per the studies carried out by scholars underscored that lack of after care system and by ensuring employability through catch-up programmes in
educational and vocational training, brought obstacles to start a new life after reintegration. Furthermore, there seem to be a need of initiating continued monitoring and mentoring system for the rehabilitated combatants to evaluate the progress which the programmes have made (Dharmawardhane 2013, 37).

2. Gender, DDR & Reconciliation

In the previous section, it was discussed the evolution of transitional justice mechanisms in different post-conflict contexts, tensions and linkages. These linkages visible in different post-conflict context started to impact different sections within societies as most post-conflict victims were vulnerable groups such as women. Within this group of women there emerged another group of women: female ex-combatants who have been part of the conflict and whose military training could pose a threat to long term peace-building.

In Sri Lanka this distinct group of victims were visible in post-conflict North and East of Sri Lanka. At the end of the Sri Lankan conflict as many as 12,000 combatants surrendered to the Sri Lankan Security Forces (Selvakumar19.05.2013). Two third of this total number were female combatants who have been rehabilitated and reintegrated into society. However the meetings with female-ex combatants in Jaffna and Batticaloa revealed that even though they have undergone rehabilitation these former combatants tend to experience disempowerment and marginalization due to many post-conflict context-specific, traditional and cultural reasons or reasons stemming from the conflict. A recent empirical study carried out in Batticaloa noted that most of the households in Batticaloa are headed by women and bear the brunt of caring for traumatized former girl child soldiers and injured Tamil Tiger female ex-
combatants. Disabled female ex-combatants are the most difficult to reintegrate. Krishnan stresses that organized schooling can be helpful for female ex-combatants to overcome their experiences and develop an identity separate from that of a combatant and suggests trust building projects could be useful within DDR projects for Sri Lanka to forge community and central government relations (Krishnan 2011). The recently held LLRC did not highlight these issues, but confined to the disappeared cases in particular, which limited the issues and point of views of many women within the reconciliation process (Uprimny & Saffon 2007, 07). The three main reconciliation commissions that emphasised gender in its processes are noteworthy. The Peruvian Truth Commission brought a picture of sexual violence committed against women. In South African Truth and Reconciliation Commission, women were reluctant to talk about the violence they faced and did not underlined the sexual violence in its report which may have been due to the unresponsive nature of the commission (World Bank 2006, 27). The large number of women in the South African Truth and Reconciliation Commission system or the large number of statements received did not contribute to bringing restorative justice for women. In Sierra Leone the process made an important landmark for achieving gender justice by introducing three important legal enactments that would assist gender role transformation in the post-conflict phase.

Despite the importance of women presence endorsed by the scholars in the field, the positive impact of gender mainstreaming in DDR and truth commissions has been overlooked by the practitioners (Ortega and Maria 2009, Moratti & Sabic-El-Rayess 2009). In general transitional justice had limited engagement with female ex-combatants, a gap that was seen in most transitional justice processes in the world (Ortega 2010). Similar to the truth commissions in South Africa and Sierra Leone,
the Sri Lankan LLRC depicts the suffering that women have undergone, their multiple and contradictory roles during the armed conflict and experiences that can contribute to a reconsideration of post-conflict gender relations (Ortega 2009). Despite the fact that there was a woman Commissioner present in the LLRC, it did not have any representatives who were female ex-combatants. In spite of important advances in the relationship between female ex-combatants, disarmament, demobilization, and reintegration, transitional justice measures have overlooked the role that female ex-combatants can play within reconciliation commissions to bring about successful DDR programmes.

There is a significant benefit that the female victims of war can obtain from prosecutions and truth-telling processes that leads to amnesties. As apparent in other post-conflict contexts such as South Africa, Sierra Leone and Peru, civilian women and female ex-combatants in the Sri Lankan context did not realise the positive aspect of prosecutions. This aversion to legal proceedings among women is further cemented with cultural and societal reasons to not opt for prosecutions as it might lead to being further stigmatised within their traditional communities. On the other hand, the undue delays and financial commitments often render prosecutions an unlikely option for these victims. In such post-conflict contexts, transitional justice scholars have highlighted the suitability of reconciliation commissions in addressing their grievances. In the Sri Lankan context in particular, the nature of the statements received from women mainly highlighted the disappearances cases which have to be dealt in a restorative manner once the disappeared is not found. Hence, to bring restorative solutions for the Sri Lanka context, application of reconciliation commission as part of the non-judicial mechanisms within transitional justice seems to provide a satisfactory role in combining these mechanisms with DDR.
In light of this, it is also noteworthy that though many scholars believed that reconciliation commissions can bring restorative justice for women, none of the commissions that have taken place in other countries have been able to render a satisfactory emphasis to bring gender justice (Mc Kay 2000). Although South Africa, Sierra Leone and Peru included women in different levels to enhance the role of women in reconciliation none of these commissions were able to bring a focused attention to women’s sufferings. Another significant outcome of the reconciliation commission is that the female combatants were not represented and the sexual violence cases were not brought forward to the reconciliation commissions, the LLRC in particular. Fear of re-victimisation due to cultural and social pressure may have been the reasons for the female combatants not coming forward to the reconciliation commission.

In this post-conflict context, transitional justice practitioners face the challenge of finding ways to satisfy these marginalised groups of women. In other contexts, amnesties and truth-telling processes can provide a great deal of information to policy makers to design better DDR programmes and avoid the culture of gender blindness that can lead to the failure of such programmes. Gender blind programmes implemented in Sierra Leone in connection with the TRC, for instance, failed to recognise the cultural aspects that limited women from participating in DDR programmes as they were designed with a “one-size-fits all process” which negatively affected the female ex-combatants in particular (Ebbinghause 2007, 60). In Liberia and Democratic Republic of Congo low number of women reported to be enrolled in the DDR as the design of the programmes brought cultural stigma in the specific cultural context. This was mainly due to the inhibited cultural issues that
would dismay them from achieving these rights. This brought a notion that any DDR programme lead by the foreign institutions requires time for them to be introduced to a particular different socio-cultural context and designing must be led by the institution and needs to consider the socio-cultural context in a particular post-conflict society, prior to implementation (Mertus 2003, 546, Cahn 2006, 11, Kingma 2004, 165). Context-specific design and implementation of DDR programmes could help identify the needs of women and enhance their capacities (Ortega 2009, Farr 2005).

The Sri Lankan DDR process linked the amnesties with the DDR process, vesting a better restorative process for the female ex-combatants. In general, when transitional justice measures are initiated in the post-conflict societies, female ex-combatants have gone through several stages of empowerment through DDR. While female ex-combatant participation in truth commissions is reported to be low, including gender roles in the commissions can perpetuate, gender stereotypes, prioritizing certain categories of women over others, which makes it imperative to include the two categories of women i.e. civilian women and female ex-combatants in the development of its mandate and institutional design and in the final reports of truth commissions particularly in Sri Lanka (Graybill 1998).

In Chapter one it has been extensively emphasised the tensions and the complementarities that may arise in the practice of transitional justice mechanisms. However, by and large, information such as sex-disaggregated data, analytical data on the needs of the civilian women and female ex-combatants seemed to be useful for truth commissions to put in place a legal framework to ensure the security of women who provided the information during reconciliation commissions, particularly in Sierra Leone. This information exchange facilitated the DDR process as well as
establishing gender security in the long run (Sesay and Suma 2009; Ortega 2010, 4). Similarly, truth commissions have also brought forward restorative justice by linking amnesty and DDR, and also by handling wrongdoers in a non-coercive manner and thus ensuring a long-lasting success to the DDR process. In Sri Lanka the provision of loan systems to help former combatants to start a new business with the skills they have acquired during the rehabilitation period is an example of linking restorative justice and retributive justice within the transitional justice process. Similarly, the disappearances cases which were reported and brought forward by women have facilitated the National Plan of Action to be incorporated in advancing human rights and democracy.

Similar to other post-conflict contexts, the LLRC was able to bring about a cathartic experience and a therapeutic healing for women by allowing them to tell their own narratives through statements to the commission giving a broader picture of the sufferings those women have undergone during conflict. The stories that were brought to the commission revolved around the disappearance of their loved ones and how it has directly affected their own lives (Graybill 2004). Although Commissioners of the LLRC could not exert a direct impact on the lives of the victims when the stories were told, the acknowledgement of their suffering encouraged the victim to respond positively at the commission, ensuring them that their grievances will be brought forward to necessary institutions. Later, the inclusion of their grievances in the recommendations can be cited as a long-term achievement that the commission has made on behalf of the victims (Rotberg & Thompson 2010, 245).

Truth-telling in the Sri Lankan context can give a partial justice. As mentioned in Chapter 2 many other post-conflict contexts could only achieve partial truth on
women issues. Due to the sensitive nature of these issues, many women victims were unwilling to speak in public of their sufferings and the wrongs done to them. This is further challenged by the socio-cultural context that pushes women backwards rather than moving forward to achieve gender justice or rather individual justice (Auxworthy 2001). Similarly, achieving partial justice through a transitional justice mechanism will not support the connectivity of the retributive and restorative justice, which further marginalising women. The information through LLRC statements were used by the National Plan of Action to formulate better DDR programmes and to bring gender justice in Sri Lanka. Granting a loan scheme for female ex-combatants to start self-employment can be cited as an example of how Sri Lanka has incorporated restorative justice for DDR programmes. The significant connectivity between transitional justice and DDR brought intriguing perspectives for post-conflict societies to develop their DDR programmes to include female ex-combatants and civilian women. Such transitional justice measures adopted in Sierra Leone received a greater support from the state parties for DDR as the security threats from combatants was significantly reduced by highlighting women’s concerns and focusing on truth-telling, prosecutions and reparations (Barasalou 2009, De Silva 2006; Ortega 2010).

Combining restorative justice with retributive justice in order to address certain issues, the inclusion of women that needs healing must be part of the DDR programming for Sri Lanka. Therefore, it is essential that women’s sufferings are not confined to human rights abuses such as sexual violations (Sesay & Suma 2009, 32). One of the greatest challenge facing women that is not underlined through LLRC is domestic violence, which is on the rise in Batticaloa in particular. At present the NGO activists and field workers who are engaged in mitigating domestic violence in Batticaloa have designed their programmes in a restorative approach as these
traditional women usually do not seek legal assistance to remedy these situations. Though the Government has widely established domestic violence intervention services through the National Hospital Network and the Police Department few cases are being reported at these centres. In most cases the domestic violence results from the woman becoming the breadwinner and the man feeling threatened by his wife’s breadwinner status (Kodikara 2011). Hence it is clear that a community based approach, working in partnership with the government and the NGOs is necessary to achieve justice for injustices these women have faced and to prevent such violence.

The next category of women is disabled female combatants. Among the many female ex-combatants surrendered to the Security Forces there are a number of disabled female ex-combatants in Batticaloa and Jaffna. Contrary to Krishnan’s empirical study the National Plan of Action provides a comprehensive Inter-Agency Task Force to address the needs of women who have been disabled or affected by conflict, under the category of human rights for the physically disabled, and to support these disabled women by providing medical services and equipment to help them recover from injury (Krishnan 2011, 18, NPOA 2013, 06 & 04).

Rehabilitation

The Rehabilitation of Persons, Properties and Industries Authority (REPPIA) was established by Parliamentary Act.29 of 1987. Following the July 1983 ethnic riots or civil commotion, the Government of Sri Lanka created this special organization with a view to provide financial assistance for the Rehabilitation of Persons, Properties and Industries. This Institution facilitated any affected person in all 25 districts of Sri Lanka is entitled to receive rehabilitation assistance in the form of compensation / grant and loans.
In the aftermath of the Sri Lanka conflict in 2009, REPPIA became more active as rehabilitation organization and served the critical need of the era. Hence, with a humanitarian approach REPPIA, developed a socio-economic environment through rehabilitation and reconstruction for the citizens affected by the ethnic violence or terrorist activities in order to facilitate and ensure the resumption of normal life. The methodology adopted by REPPIA provided compensation on submission of a medical report issued by a government medical officer. All rehabilitees with permanent disabilities are calculated as 1619, are entitled to receive a monthly allowance of Rs. 3000. Moreover, disabled ex-combatants are also granted a loan of Rs 25,000/- to start livelihood projects.

Of the 3,431 victims with disabilities/minor injuries who have been reintegrated since 2009. As of July 2015, further 13 disabled rehabilitees remain in rehabilitation Centres and 120 reintegrated rehabilitees were provided with artificial limbs.

662 Counselling programmes have been held for rehabilitees since 2009. Counselling is extended to family members as well. Community based reintegration programmes and other relevant programmes such as Leadership programmes and Educational trips are also held, and 25 such programmes were introduced in July 2015.

Special health clinics and screening programmes are carried out for the benefit of ex-combatants by Government medical teams. At least 48 ex-combatants have been facilitated to undergo surgeries at Government Hospitals in Colombo and Vavuniya. (Action taken by the Ministry of Youth Affairs of Sri Lanka as a response to the Recommendation 9.68, 69 of the LLRC)

Sri Lanka government received support from various International Organisations to assist war affected persons. The World Bank collaboration with Ministry of Social
Services, carries out “Diri Saviya Assisting Persons with Disabilities through Cash Transfer and Vocational Training Project”, to provide financial assistance to the disabled. Similarly, the UNICEF assistance to implement Social Care Centres concept in the Northern and the Eastern provinces; GTZ assistance to Ministry of Education to create awareness on psycho-social care for Education Directors, Principals and Teachers in Northern and Eastern Provinces. German Government assistance to set up vocational training centres in Northern province; INGO and NGO collaboration with M/Health to promote awareness on mental health and nutrition among women and children in conflict affected areas; Canadian Government assistance to the National Languages Project; World University Services of Canada support to set up 03 Vocational Centres and 03 “Recognition of Prior Learning Centres” for re-settled people in Northern province; UNICEF assistance for vocational training in Mannar and Mullaitivu Training Centres; GoSL, UN agencies, INGOs, NGOs collaboration in constructing and renovating houses for returnees etc. (Action as per LLRC Recommendation 9.88)

M/Social Services provides Rs 3000/- monthly livelihood assistance to families with disabled members in Northern and Eastern provinces. By January 2015, the total number of families with disabled members who benefitted stood at 5,820. Currently, a total of 7,635 such families in north and east are receiving the allowance.

Also, 304 persons in the Eastern Province and 609 persons in the Northern Province have been assisted to set up self-employment ventures under the “Self Employment Assistance Programme for persons with disabilities”.

The participation of disabled persons in vocational training is promoted at the ORHAN Vocational Training Centre, Vavuniya, one of 08 feeder training centres of the Sri Lanka-German Vocational Training Institute established in the Northern Province. ORHAN Centre has a current enrolment of 70% disabled students. The
main two types of courses that were conducted at the ORHAN Training Centre in Vavuniya were ICT, Radio, TV allied equipment repairing. These vocational training projects are supporting ORHAN to start training courses in the fields of ICT and Electronics. Considering the needs of people who are blind, this project initiated the development of a modified curriculum to match the competencies of the visually impaired. By way of using pedagogical methods the trainers enabled the learners to gain NVQ Level 4 qualifications in their respective fields at the ORHAN training center. (ORHAN Home page, Lankapage 27.04.2014). Ministry of Youth Affairs & Skills Development is receiving assistance from the German Government and ORHAN has carried out this project and have encouraged the participation of a greater number of disabled persons with the objective of empowering them.( As per LLRC Recommendation 9.98, 9.99)

50 disabled youth from Kilinochchi have been selected through formal interview for training in job-oriented vocational disciplines by the Social Services Department. Persons with disabilities in conflict affected areas receive benefits from government schemes providing housing support. 170 families in the North and 543 families in the East have been provided Rs 250,000 as a cash grant to rebuild their houses within the “Housing Assistance Programme for persons with disabilities”. These houses will be built to construct houses with accessibility facilities.

42,857 disabled persons in the North and East provinces have been provided with assistive devices such as spectacles, wheel chairs, crutches, Commode-wheel Chairs and Tricycles based on individual requirements. Financial assistance for urgent medical needs is provided by the government on priority basis.

Measures have been taken to give effect to regulations made by the Urban Development Authority on the construction of houses and buildings for protecting the
rights of persons with disabilities, and for provisions under Act No 28 of 1996 for the Protection of the Rights of Persons with Disabilities. Explicit instructions for the execution of these state policies have been given by the Ministry of Housing in executing development programmes in war-affected North and East and top priority has been accorded for this purpose.

Other measures implemented for the benefit of disabled persons in these areas include conduct of awareness programmes in Jaffna, Mullaitivu and Killinochchi for 150 government officers involved with providing assistance to vulnerable people to apprise them of the services provided by the Ministry of Social Services in this regard; training of 500 community leaders and volunteers to create conducive disabled-friendly environments in affected areas; Awareness programmes on “Providing Accessibility facilities to Public Buildings” conducted in Jaffna, Vavuniya, Kilinochchi, Mullaitivu and Mannar districts in the Northern Province and Trincomalee, Ampara and Batticaloa districts in the Eastern Province.

A National Policy on Disability was introduced in 2003 to facilitate a disabled-friendly environment. Implementation of the National Action Plan on Disability approved by the Cabinet of Ministers is currently in progress.

Promotion of reconciliation through sports is continued under the “Kreeda Shakthi” Programme introduced in the Northern and Eastern provinces to train 15 boys and girls each month by skilled coaches; introduction and supervision of sitting volleyball (for disabled persons) in Kilinochchi District; inclusion of 04 players from Northern and Eastern provinces in the “Under 21 National Football pool” and their participation at the Lusiphonia Games where the team won 3rd place; conduct of Beach Volleyball contest of the 39th National Sports Festival in August, 2013 at Mullaitivu.
beach; and provision of hockey equipment and training to Mahadeva Ashramaya at Thirunagar, Kilinochchi.

Two such examples of reintegrated disabled combatants can be cited as Marry Anita and Malarvili Paramalingam, former female combatants who are now active members of the Sri Lanka’s Disabled Volleyball Team. Represented Sri Lanka at the Asian Sitting Volleyball Open Championship in Beijing in 2011 was three former Tamil Tiger rebel women combatants (Peace Watch 2011, Daily Mirror 2011). In this manner the Government of Sri Lanka did strive to bring disabled female ex-combatants into the limelight by recognising them as a group of respectable citizens in the post-conflict phase making their social integration easier in the long-term.

Former rehabilitated combatants who are part of the National disabled Volleyball team of Sri Lanka

Transitional justice measures in Sierra Leone received a greater support from state parties for DDR as the security threats from combatants were reduced and gave a greater attention to women concerns focussing on truth-telling, prosecutions and policies relating to reparations. In contrast, in Sri Lanka, practitioners should be cautious when prosecutions are introduced to a context where such a move will not expose certain vexing issues faced by female ex-combatants and civilian women
such as domestic violence, unemployment due to disabilities, psychological disabilities, and problems such as looking after injured family members of female headed households. Therefore, even within the implementation of prosecutions, connecting these mechanisms to achieve individual justice through a victim-centric approach further promotes reconciliation. Unlike other post-conflict contexts, most of the Sri Lankan female combatants I have met have either completed formal education or at least up to Grade 10 and possessed some set of skills from their experiences in the LTTE or training through rehabilitation programmes. Hence, the post-conflict context-specific nature within Sri Lanka will not adapt to the way that the Sierra Leone or South African women have adapted to DDR through reconciliation, but needs a closer attention to the lesser number of female victims within a heterogeneous community whose needs on the ground overlaps with the socio-cultural system, to achieve transitional justice.

Another important factor is that, as the needs may vary from female combatants to civilian women from unemployment to psychosocial support and other specific needs, it is vital for Sri Lanka and DDR formulation to bring overall reconciliation to the country as the women’s capacity to develop themselves may be limited due to homelessness, isolation and at times exclusion from their communities.

Several programmes are underway by the Ministry of Education through the schools system to assist children affected by the conflict. These include; Training of 128 Trainers at zonal level on psychosocial support to impart training to teachers. A total of 1,620 teachers have received training to date. These skills are transferred to students via school level activities and guidance and counselling sessions.

School based “Guidance & Counseling Cells” introduced in 736 schools in Northern and Eastern provinces. Psycho-social care awareness seminar carried out for all
Education Directors, Principals and Teachers in Northern and Eastern Provinces under GIZ Assistance. Ministry is also undertaking an assessment study on psychosocial factors influencing teaching and learning in the Northern and Eastern provinces.

Ministry and UNICEF are collaborating on implementing “Be Safe” awareness programme to protect children from abuse, in 572 schools in the Northern Province. Ministry of Health, UNICEF and other organizations reported in the Journal of American Medical Association. They found PTSD (13%), anxiety (49%) and depression (42%) in the recent Vanni IDP’s. Muslim communities that were displaced forcefully continue to suffer with a variety of psychosocial problems. A study among the displaced Muslim community in Puttalam by Siriwardhana, Adikari, Sumathipala and others described a prevalence of Common Mental Disorders (CMD) of 18.8%, with somatoform disorder 14.0%, anxiety disorder 1.3%, major depression 5.1%, other depressive syndromes 7.3%, and PTSD 2.4%. Another study in the Sri Lanka military who had been in active combat by Fernando and Jayatunge found that 6.7% had PTSD, 15.7% with Depressive Disorder, 9.5% with psychosis like Schizophrenia, Bipolar Affective Disorder and Acute Transient Psychotic Disorder, 7.9% with Somatoform Disorder, 10.8% with Dissociative Disorder, 3.3% with Traumatic Brain Injury and 3.5% with Alcohol Abuse and Dependence and Substance Abuse Disorder in addition to complex PTSD, suicide and attempted suicide and other psychosocial problems like Domestic Violence. Exposure to combat was significantly greater among those who were deployed in the North and East of Sri Lanka who showed significantly higher mental health and psychosocial problems. All these members of different communities affected by the war are in need of psychosocial rehabilitation. Studies among military and militants who are demobilized have highlighted the psychosocial problems families and society will
face such as strained relationships, domestic violence, alcohol and drug abuse, antisocial activities, and suicide if the returning veterans do not go through proper psychosocial rehabilitation processes.

Families too have been affected with pathological family dynamics due to displacement; separations; death, disappearance or injury to bread winner with female headed households. Whole communities have been uprooted from familiar and traditional ecological contexts such as ways of life, villages, relationships, connectedness, social capital, structures and institutions. The results are termed collective trauma which has resulted in tearing of the social fabric, lack of social cohesion, disconnection, mistrust, hopelessness, dependency, lack of motivation, powerlessness and despondency.

Training of grass root community level workers in basic mental health knowledge and skills is the easiest way of reaching a large population. They in turn would increase general awareness and disseminate the knowledge as well as do preventive and promotional work. The majority of minor mental health problems could be managed by community level workers and others needing more specialized care referred to appropriate professionals. It is important that primary level or community level workers adopt a holistic approach, incorporating the different aspects of physical, mental, family, culture, community, societal health in a horizontal integration rather than as vertical programmes as practiced in Sri Lanka today. Primary Health Workers including doctors, medical assistants, nurses, Family Health Workers; health volunteers and other grass-root resources like teachers, Gramma Sevakas, elders, traditional healers, priests, monks and nuns; government servants, particularly Divisional (AGA) level officers like Social Workers, Samurdhi Officers, Child Probation and Rights Officers, Women Development Officers, Rural Development Officers, Cultural Officers, Youth officers, and Sports Officers; Non-
Governmental Organization (NGO) staff, volunteer relief and refugee camp workers are ideal community level workers for training. Trauma and mental health should become part of the normal curricula of all health staff and teachers. Because of the strong stigma associated with ‘mental’ conditions, it may be prudent to deal with psychosocial problems and minor mental health issues themselves outside a psychiatric facility by frontline workers (Sunday Times 2015).

In the Northern Province, “Children’s and Women’s Development Units” are in operation and Care International supports the units in Kilinochchi and Mullaitivu. Women Development Officers, Counselling Assistants, and Psychosocial and Child Protection Assistants have been fully trained and provided resources to ensure that they effectively reach out to target groups, including those in remote areas. Counseling services for 100 non institutionalized children were provided in November 2014.

The National Counseling Center of the Ministry of Social Services conducted an “Awareness and Coordination Workshops” for social service officers, counselling assistants, officers under the Ministry of Child Development and Women's Affairs, and other relevant officers attached to the District Secretariats of Jaffna, Kilinochchi and Mullaitivu. The training session in Jaffna took place on 9th May 2014.

The Ministry of Social Services is engaged in conducting numerous programs including counselling and livelihood support programs for the war-affected and vulnerable sectors in the North and East under the recommendations of the Lessons Learnt and Reconciliation Commission (LLRC) (Relief Web 09.05.2015).

Though there is a significant vacuum within transitional justice for the women involvement in DDR and reconciliation, studies have found the positive impact on DDR when women are included. Having a larger female ex-combatant community
that played different roles during the Sri Lankan conflict, the DDR processes need to
deviate from the stereotype to a more need based approach to the post-conflict
context-specific process to promote reconciliation among female ex-combatants in
particular. In this manner the tensions between the DDR and reconciliation
commission can be overcome to a certain extent while leaving more work to be done
in the years to come.

3. Challenges for designing, policy making and evaluating DDR in Sri Lanka

In the above section it was extensively discussed the post-conflict context-specific
nature of gender involvement in the process of Sri Lankan reconciliation. This
process drew a picture of needs that require to be incorporated through a victim-
centric approach. The involvement of many former combatants in the reconciliation
phase highlights the necessity of the Sri Lankan reconciliation process to be linked
with the ongoing DDR process and the National Action Plan which was mainly based
on the LLRC recommendations.

The scholarly literature in the area of DDR is calling for a re-examination and
justification of the traditional approaches when implemented in certain culturally
specific environments (Shaw et. al. 2010). The qualitative surveys carried out in
Monrovia and Liberia further highlights the impact that socio-economic conditions
and local institutional capacity can make on the implementation of DDR
programmes. Furthermore, scholars emphasised that if the DDR programmes are
not post-conflict context-specific, they may only focus on employment generation for
the purpose of reconciliation and reintegration (Sri Ram & Herman 2009, Jennings
2007). The negative stigma associated with participating in DDR may further
victimise the vulnerable victims. In Eritrea, the DDR programmes only focused on
the traditional livelihood programmes for which the local market had very little demand, depriving the female victims from obtaining employment opportunities. Their experience in leadership and commanding positions in medical, mechanical and other fields was not fully recognised within the DDR designing (O’Neil and Vary 2011, 80). Unlike Liberia, gender is a key issue in the post-conflict phase in Sri Lankan. Female victims with higher level of education seem to be able to contribute positively to the post-conflict DDR which has been carefully designed to suit their skills and education (Pugel 2007).

Empirical research has noted that most domestic violence related conflicts are reportedly resolved at the local levels, and the usage of legal services such as the police seems to be very low, especially by women (Abel 1987, 526). In a post-conflict context such as that in Sri Lanka, specific challenges like domestic violence which is on rise in North and East needs more community based approach to be resolved, given the traditional mindset of women when resolving such matters that impact the DDR processes. Schulhofer-Wohl & Sambanis argue that incorporating enhanced participation through DDR process brought responsiveness to local concerns while bringing a sense of local ownership in the implementation. Another scholar noted that setting goals through the designing of the DDR can lead to myriad, sustained, and long-term interventions in a variety of areas (Patel, De Greiff et al. 2009, 141; Schulhofer-Wohl and Sambanis 2011,17).

However, certain designing malpractices lead to negative effects, at times risking the positive outcomes of the DDR processes. DDR programmes may threaten macro level instability due to disarmament and the abandoning of existing military social network. Further tensions between the civilian and ex-combatants may arise as stigmatisation over female ex-combatants. In some cases unsatisfied DDR
recipients may resort to violence resulting in instability, lack of economic progress and relapses into conflict (Schulhofer-Wohl & Sambanis 2011, 23). Theoretically, Sierra Leonean DDR designers were mindful of the fact that significant portion of the rebel armed forces consisted of women when designing the DDR programmes, though they were underserved in the implementation which lead to a certain dissatisfaction among the recipients (Mazurana, Carlson et al. 2004,2).

In light of the above context, policy practitioners must be cautious of the key questions relating to targeted recipient individuals/communities, the extent to which the vulnerable groups must be involved etc. Furthermore, the newly emerged theories such as randomised interventions must be assessed and evaluated for their practicality in implementation. Through the evaluations that have been already undertaken in lessons that emerge from dialogues among policy experts, cross-country comparisons of program design, and outside evaluation of specific DDR programs, dialogues among policymakers and practitioners have produced a number of lessons drawn from retrospective evaluation of the successes and failures of individual DDR programs. Evaluation of early integrated planning, prioritizing and linking reintegration with disarmament and demobilization, reaching to employ a regional approach could bring effective ways to satisfy expectations of the combatants in DDR programmes.

There is a noticeable absence of cross country comparison in the scholarly literature on the implementation, success and failure of DDR programmes (Humphreys and Weinstein 2005, 8). The relevance of impact analysis will not be confined to the level of policy makers, but evaluating policies in different post-conflict contexts would be useful for DDR programme in manifold ways. In this regard, the examples from South Africa would be ideal as the DDR policies transformed from another context did not match up with the delivery problems and the political context in South Africa
(Simpson, Hamber et al. 2001, 8). Therefore, augmenting from the latter study, this
Section will make an in-depth study on the understanding of the conflicts, nature of
issues among civilian women and female ex-combatants and how these issues in
turn impact the programme designing and implementation. For this purpose, the
international comparative analysis will no doubt be an insight to the policy makers to
develop a sophisticated tool for evaluating the impact of DDR implementation and for
filling gaps in the studies that have already been undertaken (Simpson, Hamber et
al. 2001; Schulhofer-Wohl and Sambanis 2011, 3).

Moreover, the empirical research by scholars further highlighted the tendency of
people, especially in Monrovia, to seek help from their local leaders while accepting
local cultures that made an impact on the DDR processes (Pugel 2007, 21).
Similarly, Krishnan’s study notes of the local help that former combatants have
tended to seek rather than representing them in the government or international
organisations (Krishnan 2011). The traditional communities in North and East are
used to being part of their neighbouring communities as the houses are generally
located within residential compounds. The neighbours are either relations or have
been known to them for years. This makes the most important reason why the DDR
designing must focus on a community level approach to obtain the best results for
the DDR programmes in the long-run.

It is also important learning from the Sri Lankan context that when assessing the
effectiveness of the rehabilitation programme; it became evident that radicalisation
levels of members of a controlled group not exposed to the rehabilitation programme
shifted only minimally. The study concluded that time alone was not sufficient, but
psychological counselling, mindfulness training were important as these components
could not be deviated from the latter. However, Sri Lankan rehabilitation programme
was assessed by scholars as one of the most successful approach to deradicalise the ethno-nationalist ideology among the combatants (Dharmawardhane 2013, 38).

3.1 Economic Integration

It is estimated that there are around 3000 female combatants among the 12,000 LTTE combatants who surrendered during the last stages of war. The DDR process that began at the end of the conflict in 2009 in Sri Lanka, has managed to rehabilitate and socially integrate ex-combatants by providing necessary skills for nearly 10,000 ex-LTTE cadres within a period of 20 months. In contrast to traditional DDR training programmes, this vocational training programme covered skills in masonry, handicraft and painting, language and communication training with funds of Rs. 750 million provided by the Government (Dharmawardhane 2013, 36, Sriyananda 2012). The Government also provided educational programmes to a total of 168 ex-combatants who did not have the opportunity to complete formal education. Special educational programme is also available to prepare ex-combatants for G C E Ordinary Level and Advanced Level examinations, with the assistance of the Vavuniya Zonal Educational Office, and a special focus on the women combatants (48). Eight out of the total 16 female ex-combatant in this programme have decided to continue their studies in the bio-science stream; 2 in the math's stream; 13 females in the commerce stream; 75 females are preparing to sit the A/L exam in the arts and humanities stream. K Sangeetha was abducted while she was studying at the Wallipuram Primary School Hostel and later joined the LTTE's medical corps. Upon completion of studies she hopes to be attached to the Health Sector as a nurse (Ministry of Defence 2011). Respondents of a survey study carried out by Mazuranna noted that attending school and gaining numeracy skills
were essential to their successful reintegration and enabling them to positively impact economic development (Mazuranna et. al. 2004, 22).

In contrast to other post-conflict contexts in the world, the main challenge faced by female combatants in Sri Lanka is the lack of employment opportunities to suit their skills and level of education (Ground Views, Brzoska 2006, 100, Person & Utas 2008, 33, Patel et. al. 2009, 20). In view of the track record of the LTTE, some reputable organisations based in Jaffna are reluctant to employ ex-combatants. To extricate themselves from this predicament the Government and John Keels holding initiated project to recruit number of former combatants as Computer Data Entry Assistants to an IT Company in Jaffna. Unlike in Afghanistan or any other African women communities, the literacy rate of the women in North and Eastern provinces is very high (Chrobok 2009, 10). This was mainly due to the fact the Government of Sri Lanka continuously provided education services for the people of the whole island, North and East in particular, even during the conflict period. Though the LTTE organisation pretended that the schools were funded by their organisation it was the Government who kept the education system alive for the people. This made the majority living in these areas being literate and eligible for some kind of employment.
at the post-conflict phase. Though this has been a post-conflict context-specific challenge in general in other countries, the Sri Lankan case differs as the majority of the former combatants were educated and skilled at the end of the rehabilitation programme, and were regarded as a section of society that could contribute as a partner of the development process in Sri Lanka (Jayasekara 2011).

The initiation of income generation projects for former combatants in post-conflict Sri Lanka remains imperative. Scholars have noted that certain post-conflict contexts did not focus much on the importance of long-term livelihood strategies that needs to be identified through the lenses of the needs of receiving communities and generating employment at the end of the vocational training during DDR. Failure to identify the needs of receiving communities means the projects are less likely to be sustainable (Özerdem 2012, 06). In light of this situation, the government has stepped in and provided 400 female combatants with training in garment making. Upon completion each was given a *juki* machine and a job with a garment manufacturing and exporting company. Another 30 rehabilitated LTTE cadres were provided with employment opportunities in the public transportation system run by the government-owned depots of the Sri Lanka Transport Board offices in Kondavil in Jaffna, Vauniya, Kilinochchi and Mullaitivu (Defence Ministry 02.06.2010). This paved the way for rehabilitated cadres to reintegrate into society without hindrances. As mentioned earlier many other job opportunities were created in partnership with the John Keels Holdings to train Information technology personnel in their Business Outsource Centre in Jaffna. Many more sizable investments are yet to appear in North and East which are expected to boost employment opportunities for ex-combatants in the years to come (Defence 2011). Furthermore, over 1800 ex-LTTE cadres in Kilinochchi, the former LTTE capital, have made applications to join the ranks of the Civil Security Department.
In other post-conflict contexts, programmes that replaced traditional vocational training with non-traditional trades such as welding, carpentry, and house building have contributed positively to empower women as well as generating better civilian life (Mazurrana & Carlson 2004, 04).

In general, the skills generated by the former combatants do contribute to the labour market of the country (Pugel 2007, 07). Notably if, at occasions, re-integrated combatants are not accepted by their communities, it may tend to erode the sustainability of their earned skills and education.

“I am unable to get married, because I need money to give as dowry to the bridegroom. Nobody gives me work, because I am an ex woman combatant”.

“INTERNATIONAL ORGANISATION FOR MIGRATION (International Organization for Migration) gave me 63,000/= (Sri Lanka Rupees) worth of materials to open a small shop to earn an income. But, I’m unable to do so because my relatives and society treat me very badly and denigrate me daily. People around me talk badly about me and treat me like an alien. It’s yet another tragedy in my life. This is how the society treats me now.” (Peace Women 2012)

This kind of ostracism can be disadvantageous for peace-building, as it creates passive victims whose self-worth and dignity are being eroded daily due to social deprivation (Mazurana et. al 2004, 05). In such cases, it is essential to carry out programmes to educate the communities and societies of the relevance of women committing themselves for the peace-building process and of the consequences, if peace fails and violence returns. The necessity of supporting such female combatants and their efforts to reintegrate back into society must be conveyed to the
communities, either through their respected community leaders or the Mediation Boards System in Sri Lanka. The Mediation Boards System in Sri Lanka could be an important conceptual and practical step towards providing access to transitional justice for community based healing and promoting reconciliation (Dharmawardhane 2013, 36, Mazuranna Carlson 2004, 04). Furthermore, if the ex-combatants are reintegrated as army personnel, it would give them further recognition as they become part of the institutions of the Government and that they have been officially accepted to the society. This would bring in a divergence to the colliding thoughts of civilians on whether to accept to withdraw the returning combatants as they have been involved in an illegal stream against the government.

To ensure the success of DDR, right at the beginning, programme designers must consider the available expertise among the female ex-combatants. If the available skills are not well recognised there is a risk of female ex-combatants being marginalised in the post-conflict phase, because of their unemployment status. This could lead to severe social consequences as well as losing a valuable social capital for the government (Person & Utas 2008, 32, Rolston 2007, Bruchause & Mehreteab 2000). Sadana, another female combatant whom I met in Batticaloa, cannot join the nursing services in Batticaloa, despite her skills and experience as a nurse in the LTTE, because she lacks the educational qualifications. At present she works as a baker at the Madagi Bakery. The Bakery was initiated in Kiran by USAID and employs 20 former female combatants who are presently supporting their families with their income from the bakery employment. Therefore, designing gender sensitive programmes would enable women to register separately and creating separate access to an employment venue which would be welcomed by a society as traditional as Jaffna and Batticaloa. Presently, the Point Pedro Hospital,
which I visited in Jaffna has undertaken such a programme under the patronage of the Psychiatric Clinic. This programme was initiated by the hospital for needy women to earn money by using their sewing skills. Community women register themselves in this one room facility and are called to complete the task that they are allotted. Around 25 women benefit from this programme by making sari jacket for the employees of the hospital. Additionally, this centre provides the space for women to make handicraft and they are sold to the handicraft authority. This kind of programmes can be further strengthened in the long run.

It is also paramount that when DDR programmes are designed in different post-conflict contexts, careful considerations must be given to the cultural and traditional working environments in which the female ex-combatants in particular needs to carry out their tasks. In Sierra Leone, former combatants chose to drive local taxis as their post-conflict employment. Similar programme was initiated in Jaffna by the Women Education and Research Centre (WERC) to introduce female three-wheeler drivers in the North. The Jaffna Divisional Secretariat announced that this project was a success. Most of these three wheelers are driven by women, whose spouses have become disabled due to either involvement in the war or because of being an innocent bystander (Sunday Times 2012). Many people engage the services of these middle aged three wheeler drivers as they feel comfortable than travelling with a male driver, given the cultural background. Therefore, by considering the traditional and cultural background, this programme has become a reality in Jaffna.

In light of this, it should be noted that studying the socially accepted norms for a woman and what is deemed to be acceptable as employment for her age, will put the former female combatants in an advantageous position. Although there is no rigid category of suitable employment for women and men, given the cultural

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context in Sri Lanka, significant attention must be given to the traditionally accepted norms existing within Sri Lanka.

In implementing certain DDR programmes by the international NGOs, its staff faced a challenge of acquiring awareness of the local context and an extensive post-conflict analysis to initiate a project that would actually benefit the victims on the ground (Barbolet et. al. 2005, 09). This is the reason for involving government bureaucratic officers at the planning and designing level. After a three decade long conflict both the female ex-combatants and the available local staff lack formal education while the donors may not have the expertise and knowledge of the local context. The Government of Sri Lanka has a procedure in which many qualified Tamil nationals are recruited into the government sector and have undergone international training programmes on project designing and implementation. Even at present many such highly trained Tamil officers are working in various government offices in Jaffna and Batticaloa. Rather than involving locally based staff the government expert knowledge can lead to a better designing and implementation of programmes, especially with the involvement of women officers to identify the problems among female combatants in the ground and to identify the employment opportunities that would suit the traditional and societal status of the communities in which they live.

Since DDR is a conflict prevention mechanism, it is advisable that a conflict analysis is made before implementing DDR programmes to achieve optimal results (Gilhooly 2010, 07). At the end of the Barbolet’s project the clear cut linkages between conflict analysis and needs assessment was identified. Al Quraishi Social Development Society, an NGO based in Akaraipattu, uses a method of dismantling
of traditional problems to obtain a systematic understanding of the problems and their causes before connecting with DDR programmes.

Post-conflict Jaffna and Batticaloa are undergoing a rapid development which is intended to build up more linkages with the central economic hub of the country. This rapid development is evident in the opening of new branches of the Ceylon Chamber of Commerce in Jaffna, Batticaloa and Trincomalee; of the Federation of Chamber of Commerce in Jaffna, Batticaloa, Mullaitivu, Kilinochchi, Vauniya and Mannar, and the special Chambers for Women Entrepreneurs in Jaffna which opened up better opportunities for enterprising ex-combatants. A new era of business development has begun with the opening of local branches of the above institutions. The international exhibition and trade fair which was held in July 2013 opened up greater opportunities for women and youth in Kilinochchi. As many as 130 exhibition stalls representing agriculture, machinery, material, technology and business development services provided a greater exposure to the fast growing new markets in these areas. Furthermore, the Indian government has made efforts to provide 1230 beneficiaries with financial assistance to repair damaged businesses in Kilinochchi and Mullaitivu (Meeting with FFCISL Officer on 10.04.2013 and the details from the FCCISL website). In conjunction with Tamilnadu Chamber, Jaffna Chamber of Commerce will make investments to create employment opportunities in the garments, plastic rubber and food processing Units in Jaffna (Times of India 2012). Moreover, as reported with the support of the Indian Government, major business conglomerates such as Mahindra Tech, Ashok Leyland, Maruti Suzuki, TaTa products of India will soon commence business in Jaffna. In general many other post-conflict contexts invited the donors and the external economic actors to invest in job creation (Brozka 2006, 100). Given the traditional nature of Sri Lankan society and the lack of English speaking female ex-combatants, generating such
opportunities through Tamil investments, from Tamilnadu in particular, has been a wise step taken by GoSL to address the problem of unemployment. This would no doubt bring acceptance by the traditional societies in Jaffna and Batticaloa to see their sons and daughters employed by companies that respect their cultures.

Furthermore, the involvement of the military in supporting employment generation is a wise option (Borozka 2006, 100). The inclusion of former combatants in the security forces can lead to more trust building and establishing rule of law. Since the people of Jaffna and Batticaloa are accustomed to seeing female ex-combatants in leadership roles, they are well-disposed towards the kind of job that would give female ex-combatants an opportunity to maintain the rule of law and to work with the military staff of Sri Lanka. An attempt has been made by the Civil Defence Forces department to recruit a batch of cadets from the Tamil areas as North and East. When the announcement was made around 2000 Tamil nationals, including women, turned up in Kilinochchi to register as security personnel under the Civil Defence Forces. In November 2012, 100 young Tamil women between the ages of 18 and 22 years from the Northeast (Kilinochchi and Mullaithivu areas) were recruited as Sri Lankan army soldiers (Dharmawardhane 2013,42). The new recruits were enlisted into the Civil Affairs with a view to break the division and to fill communication gap between the generally Sinhala speaking army officers and the communities in which they serve. The recruits have received a unique reconciliation oriented military training in a friendly environment which included field excursions to Colombo with opportunities to establish new friendships with university students in Colombo.
3.2 Social Integration

Providing psychosocial support for civilian women and female ex-combatants has become a sensitive area. The provision of psycho-social care was part of the Sri Lanka’s “6+1 Model” (Dharmawardhane 2013, 35). It has been well established by the empirical research that past participation in military faction is the most difficult barrier to achieving social integration. He further notes that former combatants with higher education levels are the most difficult to be reintegrated (Humphrey & Weinstein 2007). During the interview that the research held with the Chief Medical Officer of the Psychiatric Clinic in Point Pedro Hospital noted that female ex-combatants in Point Pedro area have the support of their families to reintegrate back into society, but combatants’ attitude has been the main hindrance to the process of restoring their lives. The Medical Officer noted that the female ex-combatants have a very adamant attitude and a violent behaviour when dealing with minor daily conflicts with their own family members. Despite the fact that their families support them, lack of enthusiasm among female ex-combatants to support their families economically has been a subject of frequent contention with their families. Secondly, though they have gained skills during the rehabilitation period, their lack of enthusiasm in starting their own businesses has also added to this predicament. Undoubtedly, the mental turmoil these female ex-combatants experience after the war does require external support. Hence the reinsertion packages must look into the post-conflict context-specific nature of the connection between female combatants and their families and how they could contribute to DDR programmes with their family support (Özerdem 2012).
The societies in Jaffna and Batticaloa mainly depend on agriculture and the farming of their lands. One of the main sources of incomes for Jaffna people is tobacco cultivation; for the Batticaloa, it has been betel leaves farming which has a strong market in Bangladesh and Pakistan. One NGO Programme Director from the USAID told me during the fieldwork that when they initiated a programme for farming betel leaves, the women in Batticaloa experienced problems with the local communities who believed that such crop should not be cultivated by women. The reason was that betel leaves plantations needed constant watering and men generally wear less clothing to carry out this task as the plants are located close to each other. Therefore, when selecting certain type of crop for farming, donors and civil society organisations must consider whether such plantations have any female related socio-cultural restrictions (Dharmawardhane 2013, Meeting with USAID Officer, Shakti Thangavelu on 04.04.2013).

The LLRC divulged much information on disappearances cases. Through the Equal Access to justice programme carried out in conjunction with the Ministry of National Languages and Integration and the UNDP has extended support to register deaths and births for women who have either lost or disappeared their loved ones during the conflict, the prevailing agony all too evident during the visit to Navy Pillay that such programmes have failed to bring momentum to address the sufferings of women and to assist them to come to a closure. The scholars in the field of transitional justice noted in regard to this that disappearances cases have contributed to reconciliation as whole and further advancing human rights in a state. It is necessary for the state to put in place a mechanism that will address these matters relating to female ex-combatants in particular, and bring them to the mainstream of society as deterrence to future conflict (Kovras 2012, Clerk 2012). Sarja has been a female ex-combatant
and was married to another combatant of LTTE during the war in Vanni. After the end of the war she has not heard from him; she is afraid to go to the prison authorities and ask them to look into her husband’s whereabouts. Such cases were addressed recently through the National Plan of Action by opening a special centre at the Police Head Quarters in Colombo to receive complaints.

Psychosocial Trauma is a commonly apparent result in a post-conflict context. An empirical research carried out in Kosovo on the psychiatric status of the country found that 17% of the population was suffering from the symptoms of Post-Traumatic Stress Disorder (Herath 2011, Cardozo et. al. 2000). This common dilemma was also visible in the Sri Lankan post-conflict context, especially among the women in Batticaloa and Jaffna due to the violent experiences that they faced during the conflict period (Mels et. al. 2010, 1087, Husain 2011, 522, Erikson et. al. 2013). This deeply rooted effect had a distinct context-specific nature. These issues brought existence of large number of female combatants’ or women as victims. Majority of these two categories of victims, being displaced and losing their loved ones causing further problems for women in restoring their lives in the post-conflict phase. The culture prevalent in the post-conflict states added to this burden. Women who lost their husbands were insecure in their own communities while the returning combatants had little marriage prospects due to the existing dowry system and the practice of purity among women in Jaffna and Batticaloa (Herath 2011, 131).

A series of counselling programmes were conducted for the reintegrated female ex-combatants. Perumala whom I met in Jaffna (reference to the meeting with Perumala at Point Pedro on 10th March 2013) suffers from Post-Traumatic Stress Disorder (PTSD) and receives health support from the Psychiatric Clinic in the Point
Pedro Hospital, contributing to the very notion of restorative justice. Her mother noted in her story that;

"My daughter was forcibly taken from school by LTTE while she was on her way back home after school. Now see she is alone and the events she had to face during war made her into a sick person. She has never dealt with hard events as we took care of her as a butterfly at home. No one wants to marry her because she is a former combatant."

Perumala is now 17 and released after undergoing reintegration programmes by the government. Being cautious of her future she believes battlefield is not a place for her anymore; it has left her with misery and the sorrow of seeing many of her friends killed in the ruthless war. Perumala believes that her aspirations could be achieved by serving her own people for their betterment. This conversation shows that the reintegration programmes have been able to restore their hearts and minds. The two-week project carried out by the government under the supervision of a professionally qualified panel of instructors provided the ex-combatants with skills in masonry, carpentry, welding works and electrical works. The sponsorship of the Federation of Chambers of Commerce and Industries of Sri Lanka (FCCISL) were provided with a training programme, paving the way for them to find opportunities in the industrial sector. This type of restorative option for the reintegration of combatants hopefully would succeed in bringing them back to a peaceful and productive life.
Due to a variety of reasons, returning combatants in other societies often have problem remarrying. In Africa the main cause is forced marriage or the stigma of being a bush wife to a former rebel. In the Sri Lankan context there is quite an opposite reason why returning combatants are unable to marry in their communities (Guichaoua 2010, 113). The dowry system in Jaffna and Batticaloa is the main reason for men to marry female ex-combatants. The Tamil tradition supports this dowry system as it places the man in an economically higher status after the marriage. Added to the dowry there are other prerequisites that men place on the table before they marry a woman. Traditionally, men seek a woman who is dressed in traditional attire and performs the duties in the domestic sphere according to the cultural tradition, which is mainly looking after the children. Moreover, women are not allowed to work before their marriage as employment outside the home exposes her to society at large and thus renders her unmarriageable. Given the fact that female ex-combatants have behaved in a masculine way and been exposed to the world before marriage, men tend to not select such women for marry and demand a larger sum of dowry.

This dowry system further accentuated the problem of the decline in marriageable partners due to high casualties among the male population during the three decade long conflict. Unmarried women are often regarded as bad luck for the communities they live in which results in their stigmatisation. Additionally, in the cases where their husbands disappeared or died, the women suffer further insecurity as Tamil traditions do not accept remarriage and the communities would look down upon such practices (Herath & Silva 2010, 51). This major challenge was somewhat overcome by attempts on the part of the Government of Sri Lanka to marry 53 couples of
As the I mentioned in Chapter 1, rising unemployment in Batticaloa in the post-conflict phase seems to have contributed to the increase in domestic violence. This well documented sexual violence against women, which is not unique to Sri Lankan post-conflict context, does contribute immensely to the breakdown of gendered norms, both physically and psychologically. This damage in turn affects physical and psychological health of women, disrupt lives, and result in the loss of self-confidence and self-esteem (El Jack 2000, 16). Rehabilitation agencies therefore consider this prevalent situation in the North and Eastern regions that also affects the economic, social, and psychological needs and opportunities of all female soldiers. Programme designing and implementation must focus on the broader community based recovery programmes with a special focus psychological tensions that these women communities face along with other broad range of issues in general in this post-conflict phase (Bouta et. al. 2005, 10).
In 2011 the United States Institute for Peace (USIP) conducted a research programme in Vauniya and Mannar on ‘Social networking and psychosocial reconstruction in North’. This qualitative action research was able to reveal the socio-cultural impact of the divisions of Nedunkerni and Manthai West in Vavuniya and Mannar. In this programme 40 youths who had been victims of violence went through a process of transformation while assisting other victims in their own communities. This project was intended to bring into focus the mental stress and possible emotional disturbances experienced by victims, as well as the inadequate facilities available for such purposes in Sri Lanka except for the Institute of Professional Counsellor. However, despite limited resources, the government has strived to provide psychological support for the war victims through the National hospital system which I have visited in Point Pedro in Jaffna.

As DDR programmes have tended to re-victimise the victims and that certain post-conflict context-specific issues were not represented, Sri Lanka has to carefully consider its DDR process, taking into account the problems and difficulties faced by female combatants upon returning to their communities. Since Jaffna and Batticaloa are mainly agricultural and fishing communities, Sri Lanka has adopted employment generation strategies that focus on these sectors while placing available resources such as skills and education within the designing parameters of the DDR. Further considering the psychological issues that may be encountered by the female ex-combatants in the social integration phase, many strategies were designed to bring psychological reconciliation for female victims. The Sri Lankan psychological DDR component was assessed by two internationally experienced Sri Lankan psychologists, Malkanthi Hettiarachchi and Peshali Fernando. This psycho-social rehabilitation programme that was developed according to a model developed by the
Singapore’s International Centre for Political Violence (ICPVTR) was assisted by the staff of the latter to develop and implement the same. Despite that IOM assisted through technical assistance for the vocational rehabilitation and facilitated through provision of training for the Sri Lankan governmental officials to further undertake study on rehabilitation. A scholar has pointed out that the Sri Lankan rehabilitation programme was “in-designed” to suit the Sri Lankan culture (Dharmawardhane 2013, 35). Considering the culture and traditions prevalent in Jaffna and Batticaloa, though this approach may be suited for Sri Lanka to look forward to incorporate a post-conflict context-specific issues, there still remain certain challenges that pose obstacle to livelihood upliftment and empowerment of the rehabilitated cadres. Hence, it is recommendable to promote reconciliation through a victim-centric community based approach even while incorporating a DDR programming that suites the socio-cultural context of a particular country.
Chapter 5

Conclusion

The three decade long conflict in Sri Lanka between the LTTE rebels and the Government Security Forces ended in 2009. The conflict that was fought by the LTTE claiming for a separate state adjoining North and East of Sri Lanka caused tremendous loss of lives and left the majority of women in North and East of Sri Lanka as post-conflict victims. At the end of the conflict, with such a large number of post-conflict victims, the United Nations suggested that Sri Lanka could adopt transitional justice in order to address the victims’ grievances. However, transitional justice processes that have been developed in another cultural context tend to cause tensions due to the unique nature of issues arising in each post-conflict context. Though the transitional justice mechanisms are important in bringing justice for human rights violations that have been committed during conflicts, the impact of these mechanisms have made on bringing justice for women in particular, has been minimal (Anderlini et al. 2004).

The majority of the population in North and East of Sri Lanka comprised civilian women and female ex-combatants. Their problems must be viewed through a post-conflict context-specific perspective, as most of these problems are influenced by the socio-cultural system in the Tamil society in North and East of Sri Lanka. Similar to other post-conflict contexts these issues need to be dealt with expeditiously in order to build trust among the people and bring in an inclusive effect to achieve individual justice for long-term reconciliation and peace building in Sri Lanka.
In light of this, with the initiation of the transitional justice process in Sri Lanka from 2009, through its DDR programme and the reconciliation process that followed through the Lessons Learnt Reconciliation Commission in 2010, a wider picture of problems here revealed. Among the many issues revealed through the LLRC, the most pressing is that of disappearances. Since disappearances have a close linkage with reconciliation it is necessary to address these disappearances in a restorative approach as well as through DDR.

In this connection, the civil society can play a pivotal role in partnership with the government, utilizing the experts’ knowledge to build better DDR programmes for the local communities by way of opening up access to justice in North and East of Sri Lanka (Backer 2003). Such programmes can assist family members of the disappeared to either trace the whereabouts of their lost loved ones – they could be in prison - or to obtain death certificates to help them to a closure. The LLRC as a non-legal mechanism could not divulge certain issues faced by the women community. Given the sensitive nature of the issues and the many socio-cultural barriers that threatens the dignity of women and prevent them from bringing certain issues to public platforms, the truth revealed through LLRC is only a partial truth, giving only details of the grievances relating to their lost loved ones but did not bring up the issues that directly affected women, such as sexual violence.

Through this thesis, I argued that transitional justice for Sri Lanka should look at the post-conflict context-specific issues among civilian women and female ex-combatants. By and large most of the challenges faced by women and female ex-combatants are connected with the socio-cultural system in which they live. Applying transitional justice to such a context has become a challenging task in the present post-conflict phase. Throughout the project I cemented my argument with the available theories, field work interviews and information gathered to show the
impact of socio-cultural issues on the transitional justice process that can only be overcome by linking each transitional justice mechanism with DDR. In this manner, members of the vulnerable groups can benefit from the process by achieving individual justice and further promoting restorative justice.

**Transitional Justice Mechanisms**

Using fieldwork interviews and information gathered in early 2013, this thesis has clearly identified how amnesties have been linked with the DDR programmes. According to the research outcomes by Leigh Payne, Tricia Olsen and Andrew Reiter, sequencing the application of amnesties and prosecutions which is visible in the Sri Lankan post-conflict context, can be cited as a positive step towards achieving democracy, which is a key goal of transitional justice.

The flaws apparent in truth-telling and amnesties could not address certain violence that are ongoing in post-conflict contexts, such as domestic violence and deep-rooted inequalities as uniquely apparent in the North and East of post-conflict Sri Lanka. The caste and dowry systems that stem from age-old traditions and customs were not brought forward through LLRC as inequalities that further marginalise women and prevent them from achieving equality through gender role transformation. These social and cultural barriers have posed an obstacle for women to seek retributive justice for certain sexual violence that they have faced.

**Justice**

In Chapter three I underscored the importance of legal justice as well as reconciliation for civilian women and female ex-combatants in particular in post-conflict Sri Lanka. The five cases discussed in Chapter One (World War II, International Criminal Tribunal in Rwanda, International Criminal Tribunal in
Yugoslavia, the Extraordinary Chambers in the Courts of Cambodia and the East Timor) illustrate that punitive justice alone could not bring psychological repair for the grievances of the people. Furthermore, theoretical developments highlighted the importance of achieving individual rights, the strong connectivity of justice and rights, in order to promote social welfare in later years after war (Mani 2002).

**Legal Justice Processes**

Although legal justice and reconciliation have been two competing concepts within the debates on transitional justice, this study emphasises that legal justice is as important as achieving individual justice. In order to overcome the obstacles posed by the socio-cultural system, it is vital sequence reconciliation and legal justice to achieve the best possible outcomes for the victims of vulnerable groups. The Peruvian and the El Salvador cases illustrate how different post-conflict contexts framed the legal justice processes. Although South Africa gave importance to restorative justice, it again tended to bring dissatisfaction among victims. The outcome of the amnesties granted by the South African Truth and Reconciliation Commission, failed to achieve full justice for the victims’ sufferings. Making important contributions to future gender security, the Sierra Leone process illustrates the exemplary nature in which tensions could be eliminated by finding alternative solutions and simultaneous functioning of legal justice processes and Reconciliation processes. However, reluctance to impose amnesties by Sierra Leone could not bring restorative or legal justice by linking the same with DDR to serve as a useful mechanism for long-term peace-building.

The post-conflict contexts which adopted legal justice only eliminated the option of reconciliation process, leaving the victims dissatisfied because there was no healing process to restore and acknowledge the sufferings they have undergone during the
conflict. The transitional justice processes that focused on reconciliation through restorative models again tended to leave victims dissatisfied due to the absence of legal justice which led most of the reconciliation processes to seek for a legal justice mechanism. Despite the fact that notable tensions may arise when legal justice processes and reconciliation take place, it is noteworthy that each concept legal justice or reconciliation entails equal importance when implementing transitional justice mechanisms. Even when the harmonious functioning of the legal justice and reconciliation has been present, the failure to link information arising from truth-telling and amnesties with DDR has left victims dissatisfied. This concludes that combining reconciliation and DDR can overcome the flaws within transitional justice mechanism and the challenges of the socio-cultural system to achieve individual justice for civilian women and female ex-combatants.

Reconciliation

As Sri Lanka adopts a restorative stance for its transitional justice process, Sri Lanka can learn immensely from the South African and Sierra Leone transitional justice processes which had two different significant outcomes. The South African Truth and Reconciliation Commission have been hailed for adopting restorative justice in its path towards reconciliation. However, the South African Truth and Reconciliation Commission could not achieve gender justice due to the large number of amnesties granted to the human rights violators, most cases directly affecting women (South Africa TRC Report 1999). Although South Africa involved large number of women in the reconciliation process, within the institutional system as well as respondents in the reconciliation commission, the country could not achieve gender security at the end of the reconciliation process. In contrast, the active participation of the civil society, the transparent mandate with powerful tools to look into the violations with a broader lens, facilitated and led to the success of the Special Court of Sierra Leone.
The three legal enactments that were introduced at the end of the transitional justice process in Sierra Leone covering areas of Domestic Violence, Customary Marriages and Divorces, provided a greater security for women in the post-conflict phase. Looking at the South African and the Sierra Leone case, it is evident that every post-conflict society adopted reconciliation or legal justice process that is adaptable to its post-conflict context-specific issues. By linking its transitional justice process with DDR Sierra Leone gave a long-term effect to peace-building while South Africa could not.

**Gender**

In many of the post-conflict contexts in the world, women tend to be more vulnerable to violence or sexual violence in particular. The two main internationally led Criminal Tribunals i. e. International Criminal Tribunal in Rwanda and International Criminal Tribunal in Yugoslavia can be cited as two most important legal justice measures that are landmarks in achieving gender justice for sexual violence. Despite the fact the International Criminal Tribunal in Yugoslavia stressed the importance of recognising rape as sexual violence, the Tribunal could have benefitted more if a wide range of transitional justice mechanisms were adopted together with reconciliation. Rwanda was able to set a strong precedent in recognizing sexual violence cases as a human right violation, bringing punitive justice to women in a macro approach. These two cases represent two transitional justice processes that were able to achieve gender justice and advancing human rights within a strong cultural system similar to that in North and East of Sri Lanka.

Domestic violence is another central issue in question in post-conflict societies preventing post-conflict women from achieving transformation to their post-conflict roles. In light of this, it is essential that the socio-cultural contexts in which they live
must be assessed before implementing programmes in these societies. Most women in North and East who face domestic violence have difficulty in bringing forward their grievances to a court process due to the existing socio-cultural barriers in the Tamil society. These socio-cultural barriers further challenged gender role transformation in the post-conflict phase.

Restorative justice has been the dominant model adopted by many post-conflict contexts to address the vexing challenges facing its victims, women in particular. Transforming patriarchal mindsets to eliminate domestic violence, addressing the root causes and the culturally embedded inequalities can only be done through restorative justice. Especially in the Sri Lankan case, the restorative justice programmes could be further strengthened through the existing Community Mediation Boards system which is expedited under the Ministry of Justice in Sri Lanka, the type that is widely accepted and used by the people of North and East to settle minor disputes.

During the past three decades many women in the North and East of Sri Lanka have lost their husbands to the civil war or to enforced disappearances. Hence, even need-based reconciliation requires identifying grassroots causes of the conflict to design reintegration programmes in combination of restorative and retributive justice so as to provide psychosocial support to women victims and transform the traditional mindsets of people. Furthermore, it is also necessary to provide women with legal advice on marriage procedures and other monetary dealings with regard to marriage.

Another barrier that hinders transitional justice for victims is the prevalent practice of caste system. The caste system that has been practiced for thousand years places the Jaffna women at a different level in the society. If the lower cast woman has acted in detrimental to the customs of Hindu traditions, they will be unaccepted by
the community. Taking up arms and fighting and killing through violence is totally against the role entrusted to a woman within the Hindu culture. In such scenario the prevalent social system in Jaffna will further deprive the womanhood in the post-conflict era (De Soyza 2011, 54, 33,156,85, Rajasingham-Senanayake 2004, 147, 150). These issues of inequality inherent in the social system were difficult to bring forward in a legal justice process. They will remain dormant and may negatively impact the peace-building process in the long run. In such cases, restorative justice would be the ideal process for bringing positive results through a community-based programme to transform the societal beliefs in the post-conflict phase. Such restorative approaches will be the only way to transform the traditional mindsets by raising public awareness and understanding of the value of mutual respect and peaceful co-existence.

Among the culturally-rooted obstacles facing women in the post-conflict phase, the monopoly of dowry has been the most persistent. While legal justice can provide deterrence, restorative approaches such as community-based learning programmes would help people in these areas to realise that the value of a human being is not confined to monetary values, and that the ability to live together harmoniously is more important than any material possession. Therefore, transformation of mindsets needs to be applied to retributive justice as well as restorative justice.

Another significant problem experienced by women in North and East of Sri Lanka is the ongoing domestic violence. The field work visits to Batticaloa reveal the extent to which women have been subjected to domestic violence due to the problem of alcoholism in the male population. Except for the Domestic Violence Act introduced in 1996, there have been no other legal justice measures that were enacted by the Government of Sri Lanka to safeguard gender justice in the post-conflict phase. This creates problems of inequality for the women population in North and East of Sri
Lanka, as they attempt to restore their lives in the absence of punitive justice measures.

The Channel 4 video that was aired by the Independent Television Network in United Kingdom became a key issue that was taken up at the LLRC sessions for further investigations. Due to the dissatisfaction expressed by the Special Rapporteur on Extra Judicial killings on the findings made by the Government of Sri Lanka, the LLRC Commission further recommended that the Government of Sri Lanka initiate an independent investigation into this issue according to the laws of the land. This impartial recommendation by the LLRC laid the basis for the Government of Sri Lanka to work towards bringing stringent measures for establishing gender justice. However, looking at the findings by the Special Rapporteur and the GoSL, the evidence given by experts remains ambiguous. This ambiguity will become another barrier to bring sexual violence during conflict to the forefront, as various parties will have different opinions which would ultimately lead to more dispute and further exacerbate tensions. At the same time, the critical issues on the ground are not being represented to bring transitional justice through practical outcomes. Secondly, the socio-cultural system that attaches great importance to women’s purity will threaten the dignity of female ex-combatants and prevent them from entering into marriages. This socio-cultural barrier would further marginalise women from achieving gender justice.

The study underscored that there is a necessity to consider the different perspectives within the root causes of the Sri Lankan conflict when legal justice and reconciliation is sought for the post-conflict challenges. It is also necessary to look beyond the conventional claims and legal justice as there is a hidden socio-cultural context that blocks the sustainable peace-building. Looking at these dynamics it is essential to find a people centric solution for sustainable peace-building.
Looking at the South African transitional justice process Sri Lanka can look closely at the context-specific challenges and that must be made the yard stick to evaluate and develop existing laws. The northern Ugandan post-conflict context supported the fact that the sharp rise in domestic violence does pose a serious threat to the peace-building initiatives and gender role transformation to fit into the post-conflict roles that the women has to be embarked upon. The LLRC statements made by women prove that the extent to which the women were kept in leverage by confining their grievances to violations and disappearances of their loved ones but not them. Hence it is noteworthy that if the violence faced by women are more private in nature and if the cultural context does not provide the space to bring them to public platforms, it is pertinent that such contexts like Sri Lankan post-conflict context use these highlighted challenges to be envisaged when developing existing laws (Buzawa et. al. 2003, Blatt 1991, LLRC Report 2011).

**DDR**

Combining the concepts legal justice reconciliation and DDR has proven to be an ideal strategy for post-conflict victims in Sri Lanka and it was clearly visible in the Sri Lankan DDR process. This was the case in other contexts where complementing factors visible in the DDR implementation process facilitated in building trust among the stakeholders, especially former combatants and governments.

Granting amnesty too have shown a positive effect when connected with DDR as it did remedy the grievances of victims and was able to offset the psychological impact arising out of imbalances within legal justice. This combination =factor was visible in the Sri Lankan context where prosecutions were sequenced with DDR which gave a positive notion removing potential spoilers who would threaten the peace-building process.
Combining legal justice and reconciliation with DDR has been proven to be an ideal strategy for producing the best possible outcomes for the post-conflict women victims in Sri Lanka. Sri Lanka rehabilitation programme for former combatants is considered as one of the most developed in the world. Deradicalisation levels were measured as successful (Dharmawardhane 2013).

In Sri Lanka, neither DDR nor transitional justice was created with either one in mind, which lead to tensions at times, complementing aspects that were visible in the implementation phase gave the impression that a DDR process would be unproductive in the absence of transitional justice, and vice versa.

Furthermore, inclusion of local experts seems to facilitate the post-conflict peace-building process. These local experts were able to clearly see through the existing socio-cultural contexts to implement DDR and facilitated in bringing sustainable peace while keeping with international standards. This research project was further able to see that for the Sri Lankan context, reaching short term goals than long-term goals were more effective to empower women.

The critical nature of challenges ahead of the post-conflict north and east women require urgent attention. Overprescribing legal justice to a context that is not in need of such measure would only bring obstacles to the ongoing state led peace-building process. It could also be the reason why DDR measures have been in designed, looking through the lenses of the state. The benefit of this approach was the state was able to realise the critical needs of the people in the post-conflict areas.

The state perspective incorporated the linking of amnesties and prosecutions that could contribute to the society and build trust among female ex combatants and the communities. This mechanism was able to reintegrate female ex-combatants more effectively with their communities while giving them leadership roles.
Inclusion of spoilers of peace-building into the democratic stream, at given intervals also illustrated as a positive development in the transitional justice process in Sri Lanka. The close connectivity of retributive and restorative justice seen in the reintegration process by granting generous benefits for the participation of female ex-combatants and loan system provided space to build trust with communities and the government.

The delays in legal justice processes and disappearances did effect the reconciliation and coming to a closure of the bitter past. The practice of prosecutions, DDR and delicate balance of the same paved the way for the female ex-combatants to reintegrate smoothly.

The resolutions brought forward by the UNHRC have threatened to bring leaders and officials of the military to punitive justice measures. These resolutions can only safeguard the grievances of a certain groups of people, who exert pressure to apply legal justice measures from outside Sri Lanka, whereas the critical challenges are being faced by the people on the ground.

Secondly, it is also important to closely look at the issues that connect with the violation of international humanitarian and human rights law as they are important pointers to establish rule of law in a society and as the basis for non-recurrence or relapse into conflict. At the same time, it is also important to balance when they are dealt. Balancing with the critical needs that are basic rights of people and addressing them in a sequencing manner, while prioritising the short term than long-term needs are also important aspects derived through this research project.

When alleged war crimes are dealt through legal justice measures, it is also important that any legal measure does not confine to a certain section of people and a certain period of the conflict. This approach will not only bring non-inclusiveness
but will fail to bring rectification to all incidents. This would only marginalise certain groups. Hence the legal justice process needs to include all sections of ethnicities to bring rectificatory justice. In this process coming to a closure, promoting reconciliation would be effective, if religions are connected simultaneously with legal outcomes to hold memorialisation of incidents, in order to come to a closure.

It is also notable that Sri Lanka DDR process not only addresses reparative, distributive, certificatory justice it also considered the psychological and socio-economic aspects of the society. In this manner the transitional justice application in Sri Lanka was able to achieve individual justice through a victim-centric approach which is also important as achieving legal justice.

Sri Lanka could also consider the fact that all other cross-cultural contexts that this study covered gave a notion that context-specific nature of issues among the post-conflict women further marginalised them in their post-conflict communities due to the deep rooted socio-cultural context. Other cross-cultural contexts were able to combine amnesties with DDR to counter-balance DDR processes. This way matters that could not be dealt with legal mechanisms were able to satisfy victims through these non-legal mechanisms.

The Yugoslavian context underlined that the prosecutions did not have any effect on establishing rule of law or deterring violence to gain public trust or legal system. Information sharing between DDR and prosecutions can threaten and benefit a DDR process. This was well seen in the Bosnian Herzegovina context and in Liberia. Sri Lanka too benefitted by combining DDR and prosecutions and was able to ascertain information on the LTTE terrorist network through its DDR first phase.
Furthermore, prosecutions helped to empower female ex-combatant leaders to be part of the democratic process. Hence information sharing did bring a positive effect to post-conflict vulnerable groups in Sri Lanka. It is also important to note that this study was able to conclude that locally driven transitional justice processes are more effective than internationally driven ICTY, Liberia. These processes could not bring fairness to all parties involved in conflict.

In bringing truth-telling to be a productive source of action the GoSL initiated project of Equal Access to Justice Programme together with the UNDP, helped bringing many of the disappearances cases to a closure by way of issuing death certificates to a certain disappearances cases.

The Sri Lankan DDR process deserved the need to build trust within DDR implementation especially on disabled and injured female ex-combatants. This aspect was not brought to the forefront of the LLRC. Peru and South Africa could not address women sexual violence. However, Sierra Leone was able to important landmark in achieving gender justice.

Study of cross-cultural contexts by me, noticed gender mainstreaming has been minimal in most transitional justice processes and truth commissions. However including Sri Lankan, South African and Sierra Leone process have been able to bring forward a picture of the suffering that the women have undergone during the conflict, which intern became a useful source to formulate post-conflict gender relations.
Many of the UN Agencies and Civil Societies have rendered a sizable contribution towards assisting post-conflict victims in the areas of psychological care. However, due to strong stigma associated, it is viable that a community based approach is applied to assist these victims in the long run.

Moreover the cross-cultural context study revealed that the DDR processes that will not focus on the post-conflict context-specific nature will only associate employment generation for reintegration. Challenges such as stigma, traditional livelihood programmes that has no local market income generation were some key issues that needs to be considered in DDR designing.

**Contribution**

This thesis contributed to the field of transitional justice as a case study on Sri Lanka by closely studying the context-specific issues among women that need to be examined through a culturally sensitive perspective when addressing the challenges of transitional justice. Furthermore, this study sheds light on the tensions, problems and trade-offs that could advance reconciliation and address trauma by expanding its context-specific goals through the transitional justice policy to formulate a better transitional justice advocacy. The transitional justice process for Sri Lanka should be a combination of legal justice, distributive and rectificatory leading to reparative justice through programmes that would be inclusive to all sections of the post-conflict victims, vulnerable groups in particular (Boraine 2006).

Although the common goal of the international human rights activists is to advance human rights practices in Sri Lanka in the post-conflict phase, it is also essential to explore whether legal processes or non-legal processes of transitional justice will be suitable for the Sri Lankan post-conflict challenges facing women and female ex-
combatants in particular. In this manner, through this research, I intend to fill that gap and contribute towards the transitional justice scholarship and to study how transitional justice could be incorporated into the Sri Lankan context.

In connection to this, I have brought out different perspectives laid by transitional justice practitioners, stakeholders and experts in Sri Lanka to build on the debate on justice versus reconciliation in Sri Lanka.

The majority of the population in North and East of Sri Lanka caring for most of their loved ones who are victims of war paint a critical picture of the post-conflict challenges that needs to be addressed expeditiously. These problems need to be examined closely in order to bring justice for injustices and to ensure human dignity and human rights. At the same time, these challenges are overlapped with the socio-cultural system in which female ex-combatants live. Hence any transitional justice process led by inclusiveness needs careful consideration of the critical nature of the problems and the socio-cultural system that impacts the transitional justice processes in North and East of Sri Lanka. Transitional justice for Sri Lanka needs to examine the conditions under which it can contribute towards improving human rights and the rule of law systems, and how far it could be sequenced with legal justice and reconciliation to build democracy. Hence this transformation of relationships between victims can only be built upon the basis of understanding of the institutions within the transitional justice process and its mechanisms in particular. This understanding of the transitional justice mechanism will enable restorative justice to render positive impact on achieving individual justice.

Suggestions for future research
The main objective of this research project is to provide a broader picture of the challenges facing civilian women and female ex-combatants in North and East of Sri Lanka and to analyse the viability of applying transitional justice in a society where culture places women at a higher level of expectation to abide by customs and traditions in this post-conflict phase in Sri Lanka. Bringing a new dimension to the application of transitional justice in Sri Lanka, this thesis contributes to the transitional justice scholarship as a unique case study focusing especially on the women community in the post-conflict North and East of Sri Lanka.

The transitional justice process in Sri Lanka opened avenues for future research to be carried out in the areas transitional justice mechanisms as truth-telling and amnesties, domestic violence, impact evaluation in all areas within transitional justice namely restorative and retributive justice, prosecutions, amnesties, truth-telling. By and large these assessments will make a broader assessment of impact of transitional justice in achieve key goals democracy and human rights.

The first area that needs further research is the impact evaluation of past Commissions of Inquiry on Truth Commissions in the world, Sri Lanka in particular, in order to assess an evaluate amnesties and truth-telling process on victims. This study can further bring in new insights to the transitional justice scholarship by opening avenues to evaluate previous Commissions of Inquiries that were held in Sri Lanka and the impact of amnesties on the victims of the 1992 Commission of Inquiry in particular. Based on detailed information gathered during fieldwork in North and East of Sri Lanka, this study gives a clear picture of the challenges ahead of female victims and the enables future research to assess the transitional justice impact on
democratisation and human rights. This information further supports a study of impact assessment of LLRC on the society in this unique context of Sri Lanka.

Secondly, until now, there have been little or no empirical studies to evaluate the truth-telling processes and their impact on truth commissions and on victims. It further opens up opportunities to research on the amnesty policies adopted in Sri Lanka from ancient times in order to analyse how they have evolved. Therefore, this study opens up a wide range of original information for future research projects.

Thirdly, linkages that already have taken place between amnesties and prosecutions can be further enriched to evaluate the impact of such approaches on the long-term peace-building among women. The identified issues among female ex-combatants vary from one combatant to another. These multifarious issues bring different insights for a better understanding of the necessity of achieving individual justice. Furthermore, the amnesties granted to these female ex-combatants are viewed by them in different ways which opens up different avenues to examine the role of amnesties and their impact on female ex-combatants in this unique post-conflict context. Such research in a new post-conflict context as Sri Lanka could bring in versatile knowledge to the field of study.

Many of the female ex-combatants that I met during field work have different narratives on their present situation. The fourth area that requires further research is the categorical studies on female ex-combatants, widows and their disappeared family members in North and East of Sri Lanka to assess the impact of prosecutions, amnesties on reconciliation in North and East of Sri Lanka. Future research can identify the reasons for women in North and East not seeking available government assistance in national hospitals or looking into the avenues that could bring legal justice for ongoing violence through a community based programme.
This research also opened avenues for future research in close study of the DDR programmes and impact and evaluation of the implemented programmes. This could provide a greater insight for the future DDR programmes to evolve. It will also give clear picture of the challenges ahead of designing in the present context.

This research also paved the way for close study of impact of disappearances on reconciliation. The ongoing measures by the government to address many of the disappearances cases can be further studied to analyse how far it has been effective towards bring reconciliation and whether measures such as memorialisation to come to a closure or application of legal justice would be the ides strategy for the Sri Lankan contexts could be derived from a such a study.

Finally, there is an important role that the civil society has towards achieving individual justice, particularly restorative justice for the post-conflict women in North and East of Sri Lanka. Moreover, this research study opens up avenues to conduct impact evaluation of DDR programmes that have taken place in the field of social integration, economic and psychological integration, and to analyse the nature in which future studies can be directed to bring benefit to individuals for long-term peace-building.
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