EMBRACING LIMINALITY: GRAPPLING WITH THE CHALLENGES AND OPPORTUNITIES OF PRACTICING MEMORIALIZATION IN SRI LANKA

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INTRODUCTION

A Tamil mother in her late fifties sits on a plastic chair in her home. She lives in Musali, Mannar in the North of Sri Lanka. She talks about the day the Liberation Tigers of Tamil Eelam (LTTE) came for her brothers who were in a rival Tamil rebel group. "[They] arrested by father when [my brothers] couldn't be produced." Years later, when the war was raging on, she remembers how her family was harassed from all sides. From one side, LTTE rebels took all the gold jewelry, even what was on children's ears. From the other side, the Government forces treated them as culprits, blaming families as complicit in the conscription of children into the LTTE. Finally, one day, her son had the opportunity to leave the country. While the family tried to get a visa for the son in the South of the country, he and his father were kidnapped. She seeks them still. She says, "For there to be peace, the Government should be truthful. A new Government has come. But still land issues and missing persons issues persist. Building roads and houses for us means nothing to us—we are used to living in bushes. It's our relatives that we want back."[1]

A Sinhalese father of four, in his late forties, sits atop a treehouse from which he protects his home garden from elephants at night. He lives in Aranthalawe, Ampara in the East of Sri Lanka. His family lives a meagre existence. He speaks of twenty-eight people that were hacked to death in his village, where his wife lost her father, grandparents, and sister in a gruesome attack. He talks of the consequences of war for him and his family since the attack—how the memory is unbearable for his wife's mother, how they are buried in an unmarked grave, how he saw the war from multiple perspectives after joining the army. He says:

> Collecting these memories and archiving them is important. Because some day in the future if some

1. *We Have Lost A Lot*, MEMORY MAP, http://memorymap.lk/index.php/display/view_photoEssay/22 (last visited Apr. 8, 2019).

> of these same problems come up, then the answers are here in these memories. You have to see why there was a problem . . . without understanding and inquiring about the root cause of the problem, there is no point fighting or beating each other up. No solution will come of it. I am happy to tell this story—it should be given, because the future generations should know why these struggles started.[2]

In this Article, I will share lessons learned from the Sri Lankan civil society experience of "practicing" memorialization before and after the institutionalization of an official transitional justice framework.[3] This Article is not a detailed analysis of the contextual challenges of implementing a transitional justice framework in Sri Lanka, nor is it an exploration of the transitional justice mechanism, its successes and failures, or its relationship to human rights, reconciliation, peacebuilding, or governance in Sri Lanka. It is also not an exploration of the complexities and challenges of understanding the distinction between "memory initiatives" versus "memorialization" itself,[4] which has complicated and contested meanings depending on, amongst other considerations, the purposes, motives, sequencing, processes, and ownership of those processes.[5] Rather, this paper presents a practitioner's perspective, critically engaging with the experiences and lessons learned through the

2. *I Came Back For My Family*, MEMORY MAP, http://memorymap.lk/index.php/display/view_photoEssay/11 (last visited May 10, 2019).

3. "Civil society" refers to groups operating outside of government and business sectors, such as humanitarian groups, indigenous groups, and charities. *See Who and What Is 'Civil Society?,'* WORLD ECON. F. (Apr. 23, 2018), https://www.weforum.org/agenda/2018/04/what-is-civil-society/.

4. IMPUNITY WATCH, POLICY BRIEF: GUIDING PRINCIPLES OF MEMORIALISATION 3 (2013), https://www.impunitywatch.org/publications/guiding-principles-of-memorialisation (explaining that memorialization has been "practiced for centuries as an almost instinctive reaction to violence," while "memory initiatives" represent a more recent trend of organized memorialization efforts).

5. For the purpose of this paper, the term "memorialization" means deliberate processes and acts of memorialization that are designed as processes of truth-telling to preserve memory and to be used as tools for healing between and within communities.

implementation of the Herstories Project[6] and the Community Memorialisation Project,[7] to examine some of the conceptual and practical questions that I continue to grapple with in the field of memorialization in Sri Lanka.

A key question that encompasses the ideas explored in this paper is: can memorialization projects be designed to acknowledge and accommodate nuanced perceptions of justice at the grassroots level? In the context of memorialization as truth-telling, I argue that the need to provide greater and equitable opportunities for the vulnerable and marginalized cannot be overestimated, which requires a set of platforms that do not equate all suffering as one, but subtly allow for communities to hear, see, and acknowledge that their stories may be personal truths within a larger context of unequal power structures. In doing so, imagining memorialization as a process of dealing with the past to enable healing requires deeper exploration about what healing means for individuals, communities, and the country. It needs to be unpacked together with grassroots communities who have been through violent conflict. Emphasizing memorials as the primary form of symbolic reparation, as done more frequently by the state apparatus, without an overarching framework of a more holistic and organic sense of community-led memorialization, might be counter-productive. Then, within the transitional justice framework, the right to forget may be as important as the obligation to memorialize, at least for civil society actors practicing memorialization. The complexities and contradictions of how people relate to, expect, and understand justice are greatly influenced, not just by transitional justice processes which are communicated widely after their introduction to the Sri Lankan context, but by long-held beliefs and practices. These nuances of justice must be considered when designing a process of memorialization, especially at the local level, keeping

6. *'Herstories' of Resilience and Hope*, HERSTORIES, www.herstoryarchive.org/about-us/ (last visited May 9, 2019).

7. *About Memory Map*, MEMORY MAP, http://www.about.memorymap.lk/ (last visited Apr. 9, 2019).

in mind, however, that "localizing" can be a patronizing word that requires self-awareness and humility in the practitioner. Finally, considering the role and limitations of the State, where civil society invariably bears the brunt of memorialization as a "softer approach" to reparations, such memorialization projects may be forced to navigate the perceived overpromise of transitional justice, which may be delayed by insufficient political will and contextual challenges. As a result, civil society needs to engage and support the State in understanding the nuances and expectations of memorialization at the grassroots level. Amid contextual challenges, practitioners must eschew rigorous adherence to structure and standardization when practicing memorialization as deliberate processes and acts. Instead, it is perhaps necessary to embrace liminality, which, in the case of the Herstories Project and the Community Memorialisation Project, translates to a flexibility of approach, and a willingness to review theories of chance by listening and learning from the grassroots realities.

I. COUNTRY CONTEXT AND OVERVIEW

Since Sri Lanka achieved independence from the British in 1948, structural discrimination of minority communities, compounded by poor representational political systems, eventually led to the outbreak of several violent conflicts.[8] The socio-economic dimensions of inequality that gave rise to the southern insurgency of 1971,[9] together with the nascent rebellions in the North, led to the eruption of a fully realized ethno-political civil war between the LTTE and the Government of Sri Lanka (GoSL) in 1983.[10] Dissimilar in ideology, and

8. *See* Kalinga Tudor Silva, *Caste, Ethnicity and Problems of National Identity in Sri Lanka*, 48 SOC. BULL. 201, 202–06 (1999).

9. *See id.* at 206, 213; UNITED NATIONS, REPORT OF THE SECRETARY GENERAL'S PANEL OF EXPERTS ON ACCOUNTABILITY IN SRI LANKA 8–9 (2011), http://www.un.org/News/dh /infocus/Sri_Lanka /POE_Report_Full.pdf [hereinafter SRI LANKA ACCOUNTABILITY REPORT].

10. Frances Harrison, *Twenty Years On—Riots that Led to War*, BBC (July 23, 2003), http://news.bbc.co.uk/2/hi/south_asia/3090111.stm; Dinesha Samararatne, *The Quest for Transitional Justice in Sri Lanka*, HARV. HUM. RTS. ONLINE SYMP. ON TRANSITIONAL JUST. 1 (2017), https://www.academia.edu/38535651/The_Quest_for_Transitional_Justice_in_Sri_Lanka.

compounded by the Indian Army's entry into the conflict in the North which promoted a violent southern insurrection in the South in 1988–1989, the Janatha Vimukthi Peramuna, known as JVP, revolted against the GoSL.[11] It remains one of the most brutal periods in the history of Sri Lanka's South.[12]

The twenty-six-year Sri Lankan civil war ended with a military victory for the Government forces.[13] Despite attempts at a peace process, the end came on May 18, 2009 with the killing of Prabhakaran, the LTTE's ruthless leader.[14] The GoSL Army's indiscriminate shelling of a sliver of land in Mullaitivu district, where thousands of civilians were trapped or held hostage as human shields by the remnants of the LTTE, marked the last stages of the war.[15] Allegations of human rights abuses have been levelled against both sides of the conflict.[16]

After the end of the war, economic recovery was prioritized while only slow progress was made on reckoning with the past.[17] As a result, the root causes of war and the long-term effects of conflict remained unaddressed. The six years after the war (2009–2015) generally marked a period of a "defensive approach to transitional justice at an international level and the lack of political will and even a denial of the need for it at a

11. *See* M.S.M. Ayub, *The 1971 Insurrection in Retrospect*, DAILY MIRROR (Apr. 8, 2016), http://www.dailymirror.lk/108026/The-insurrection-in-retrospect.

12. *See id.*

13. Matthew Weaver & Gethin Chamberlain, *Sri Lanka Declares End to War with Tamil Tigers*, GUARDIAN (May 19, 2009), https://www.theguardian.com/world/2009/may/18/tamil-tigers-killed-sri-lanka.

14. Mark Tran, *Prahakaran's Death and Fall of LTTE Lead to Street Celebrations in Sri Lanka*, GUARDIAN (May 18, 2009), https://www.theguardian.com/world/2009/may/18/tamil-tigers-ltte-prabhakaran-death-srilanka.

15. *See Sri Lanka: Satellite Images, Witnesses Show Shelling Continues*, HUM. RTS. WATCH (May 12, 2009, 6:36 PM), https://www.hrw.org/news/2009/05/12/sri-lanka-satellite-images-witnesses-show-shelling-continues; RACHEL SEOIGHE, WAR, DENIAL AND NATION-BUILDING IN SRI LANKA 8–9 (2017).

16. *See* SRI LANKA ACCOUNTABILITY REPORT, *supra* note 9, at ii–iv.

17. *See* SEOIGHE, *supra* note 15, at 157–66. The Lessons Learnt and Reconciliation Commission is one example of the Government's limited attempts at fomenting reconciliation. *See id.* at 15; *see also* Amnesty Int'l, *Sri Lanka: When Will They Get Justice? Failures of Sri Lanka's Lessons Learnt and Reconciliation Commission*, AI Index ASA 37/008/2011, at 6 (Sept. 7, 2011) (noting that the Lessons Learnt and Reconciliation Commission's "mandate is seriously flawed and in practice it falls short of international standards on national commissions of inquiry").

domestic level."[18] During this time, memorialization served a legitimizing purpose for the victor, erasing some histories while creating others for victory and glorification of a revised narrative.[19] The unexpected change of government in 2015 ushered in a renewed interest in establishing transitional justice mechanisms and dealing with Sri Lanka's difficult past, backed by the international community.[20] The Consultation Task Force (CFT), appointed by the GoSL to consult the public on reconciliation mechanisms, produced a report that was released at end of 2016.[21] Based on submissions received, the CTF recommended, among other things, a judicial mechanism with international involvement, reparations, and a truth commission.[22] The constitutional reform process was initiated in early 2016,[23] and several new laws have been adopted with several more being developed for adoption in the near future.[24] The Right to Information Act and the Act to Establish an Office of Missing Persons are examples of such laws.[25]

However, Sri Lanka's performance of its transitional justice (TJ) commitments has been subpar. While the Government, which came into power on a "good governance" platform electorally,[26] legitimately defeating the Rajapakse Government in 2015,[27] has mastered the rhetoric of transitional justice, its

18. Samararatne, *supra* note 10, at 2.

19. *See Selective Memory: Erasure & Memorialisation in Sri Lanka's North*, CTR. FOR POL'Y ALTERNATIVES (Nov. 23, 2017), https://www.cpalanka.org/selective-memory-erasure-memorialisation-in-sri-lankas-north/.

20. *See* Samararatne, *supra* note 10, at 2.

21. FINAL REPORT OF THE CONSULTATION TASK FORCE ON RECONCILIATION MECHANISMS, at vii (Nov. 17, 2016), http://war-victims-map.org/wp-content/uploads/2017/02/CTF-Final-Report-Volume-I-Nov-16.pdf.

22. *See id.* at 234–87.

23. Constance Johnson, *Sri Lanka: Constitutional Reform Planned*, LIBR. CONGRESS (Nov. 28, 2017), http://www.loc.gov/law/foreign-news/article/sri-lanka-constitutional-reform-planned/.

24. CONG. RESEARCH SERV., SRI LANKA: BACKGROUND, REFORM, RECONCILIATION, AND GEOPOLITICAL CONTEXT 7–8 (2017), https://crsreports.congress.gov/product/pdf/R/R44731/3.

25. Somararatne, *supra* note 10, at 3–4.

26. *See* Kalinga Seneviratne, *Sri Lanka Celebrating Independence in Chains of Its Own Making*, INDEPTHNEWS (Feb. 3, 2018), https://www.indepthnews.net/index.php/the-world/asia-pacific/1649-sri-lanka-celebrating-independence-in-chains-of-its-own-making.

27. Taylor Dibbert, *Sri Lanka's Surprising Election Victor*, FOREIGN POL'Y (Jan. 21, 2015, 5:35 PM), https://foreignpolicy.com/2015/01/21/sri-lankas-surprising-election-victor/.

actions and achievements have been slow-moving and at times hastily pushed-through when approaching deadlines for the review of the United Nations Human Rights Council Resolution 30/1, which was adopted by the General Assembly in 2015 and co-sponsored by the Sri Lankan Government.[28] It has failed to fully establish a truth commission or special counsel, reform the security sector, incorporate inter-national crimes, or preserve documentation on human and international law violations.[29] The Office of Missing Persons was only fully operationalized in 2018.[30] The Government has only partially implemented review of the Victim and Witness Protection Act, although the development of the National Authority for Victim and Witness Protection is in progress.[31] Efforts to reform the Prevention of Terrorism Act with the Counter Terrorism Act have been unsatisfactory.[32] A bill to establish the Office of Reparations was only passed in October 2018.[33] Return of land to civilians has moved at a "glacial pace."[34] Progress has been slow in achieving a viable political settlement or devolution of

28. G.A. Res. 30/1 (Oct. 14, 2015).

29. Amnesty Int'l, *Flickering Hope: Truth, Justice, Reparations and Guarantees of Non-Recurrence in Sri Lanka*, AI Index ASA 37/9715/2019, at 10–22 (Jan. 24, 2019) [hereinafter Amnesty Int'l, *Flickering Hope*].

30. *Id.* at 10–11.

31. *See* Anurangi Singh, *Witness Protection Authority 'Key to Integrity of Criminal Justice System,'* SUNDAY OBSERVER (Sept. 30, 2018), http://www.sundayobserver.lk/2018/09/30/news-features/witness-protection-authority-'key-integrity-criminal-justice-system'.

32. *See* Quintus Colombage, *Sri Lankan Activists Condemn Anti-Terror Legislation*, UCANEWS.COM (Mar. 1, 2019), https://www.ucanews.com/news/sri-lankan-activists-condemn-anti-terror-legislation/84628 (noting that "[r]ights activists have condemned the Sri Lankan government's Prevention of Terrorism Act (PTA) and planned Counter Terrorism Act (CTA)[,] . . . claim[ing] that all terror laws are generally used against journalists, rights activists, union leaders and opposition politicians as tools of oppression"); CTR. POL'Y ALTERNATIVES, COMPARING THE PROPOSED COUNTER TERRORISM BILL TO THE PREVENTION OF TERRORISM ACT (2018), https://www.cpalanka.org/wp-content/uploads/2018/10/CTAPTA_final-.pdf (discussing differences between the Prevention of Terrorism Act and the proposed Counter Terrorism Act).

33. *Sri Lanka: Office for Reparations Bill Narrowly Passed*, SRI LANKA BRIEF (Nov. 10, 2018), http://srilankabrief.org/2018/10/sri-lanka-office-for-reparations-bill-narrowly-passed/.

34. Amnesty Int'l, *Flickering Hope*, *supra* note 29, at 19.

power,[35] commencing prosecution of attacks on the media,[36] and addressing reports of torture and violence.[37] Numerous Presidential Commission Reports have been withheld from the public.[38] These incremental steps have widely been criticized by civil society actors as inadequate and problematic due to a lack of transparency, narrow mandates, limited time-periods, and non-compliance with international standards.[39]

II. THE HERSTORIES PROJECT AND THE COMMUNITY MEMORIALISATION PROJECT

At the end of the war, the GoSL mythology built around the liberation of "Mother Lanka"[40] from terrorism as the world's largest humanitarian rescue mission,[41] leans heavily toward a triumphalist and one-sided version of history, heavily weighted toward Sinhala-Buddhist ideology.[42] The official post-war nation-building narratives reflect the manner in which the war ended, with a military victory rather than a peace process.[43] To combat this single narrative of history, memorialization became a necessary tool,[44] especially in a context where TJ outcomes are progressing slowly.[45] As highlighted before, for the purpose of this Article, the term "memorialization" means deliberate processes and acts of memorialization that are designed to

35. Dinouk Colombage, *Sri Lanka Says No to Devolution of Powers*, AL JAZEERA (June 5, 2014), https://www.aljazeera.com/news/asia/2014/06/sri-lanka-says-no-devolution-powers-201465113226225987.html.

36. Amnesty Int'l, *Flickering Hope*, *supra* note 29, at 14–15.

37. *Id.* at 16.

38. *Id.* at 12.

39. *See id.*

40. *See* SEOIGHE, *supra* note 15, at 94 ("Personification of the country—for example, the use of the term 'Mother Lanka'—is an act of emotionalization, a process of infusing political and military issues with intimate personal sentiment." (citation omitted)).

41. *See Sri Lanka: The Largest Hostage Rescue Mission*, RELIEFWEB (Apr. 10, 2009), https://reliefweb.int/report/sri-lanka/sri-lanka-largest-hostage-rescue-mission-world-launched.

42. *See* SEOIGHE, *supra* note 15, at 94–95.

43. *See id.* at 94–98.

44. THYAGI RUWANPATHIRANA, MEMORIALISATION FOR TRANSITIONAL JUSTICE IN SRI LANKA 7–9 (2018), https://www.cpalanka.org/wp-content/uploads/2016/03/Memorialisation-for-Transitional-Justice-in-Sri-Lanka-FINAL-1.pdf.

45. SEOIGHE, *supra* note 15, at 281–82.

facilitate public opportunities for truth-telling to preserve and engage peoples' memories in the post-war context. With this purpose, the Herstories Project and the Community Memorialisation Project (CMP) serve as archives for public history and repositories for counter-memories. The Herstories Project has collected and archived 285 women's histories from all sides of the conflict and across ethno-political barriers with the objective of feminizing the war narratives.[46] It is housed at the National Archives of Sri Lanka and is archived online at www.herstoryarchive.org.[47] As a result of extreme trauma, testimonies from official public consultations contain deliberate silences, omitting recollections which a more personal narration can bring to the fore.[48] This makes the very act of voicing and controlling one's own story a democratization of the truth and an opportunity to examine our collective and unique experiences of the past, away from the official narratives.[49]

Building on the methodology of the Herstories Project, the CMP is a multi-part dialogue project which includes the Memory Map Archive, an archive of over 350 people's

46. The Herstories Project was initiated by the author and implemented together with Viluthu Centre for Human Resource Development. *'Herstories' of Resilience and Hope*, *supra* note 6.

47. *The Herstories Archive (Sri Lanka)*, INT'L COALITION SITES CONSCIENCE, https://www.sitesofconscience.org/en/membership/the-herstories-archive/ (last visited Mar. 26, 2019).

48. "Official public consultations" refers to various government inquiries involving individual testimony. *E.g.*, REPORT OF THE COMMISSION OF INQUIRY ON LESSONS LEARNT AND RECONCILIATION 6 (Nov. 2011), http://slembassyusa.org/downloads/LLRC-REPORT.pdf (the Lessons Learnt and Reconciliation Commission consultations); REPORT ON THE SECOND MANDATE OF THE PRESIDENTIAL COMMISSION OF INQUIRY INTO COMPLAINTS OF ABDUCTIONS AND DISAPPEARANCES, at xv (Aug. 2015), https://www.colombotelegraph.com/wp-content /uploads /2015/10/Paranagama-Report-.pdf (the Paranagama Commission); Biraj Patnaik, *Sri Lanka: The Government Cannot Afford to Fail the Office of Missing Persons*, AMNESTY INT'L (Oct. 21, 2018), https://www.amnesty.org/en/latest/news/2018/10/sri-lanka-the-government-cannot-afford-to-fail-the-office-on-missing-persons/ (public consultations of the Office of Missing Persons). For more on the impact of trauma in Sri Lanka, see Mujib Mashal, *After War's End, a Long Struggle to Patch Invisible Wounds in Sri Lanka*, N.Y. TIMES (Dec. 4, 2018), https://www.nytimes.com/2018/12/04/world/asia/sri-lanka-suicide-civil-war-mental-illness.html.

49. RADHIKA HETTIARACHCHI, THE COMMUNITY MEMORIALISATION PROJECT: MEMORIALISATION FOR NON-RECURRENCE OF VIOLENT CONFLICT 1 (2018), http://www.about.memorymap.lk/wp-content/uploads/2019/01/2_The-Community-Memorialisation-Project.pdf [hereinafter HETTIARACHCHI, CMP].

histories.[50] The CMP first collects and archives personal narratives of war, violence, and conflicts in Sri Lanka using life history narrative documentation formats which are expressed through non-linear, auto-ethnographic verbal and non-verbal methodologies.[51] The project then uses memory as a tool to engage in people-to-people dialogue and public discourse on non-recurrence of war and violence.[52] Through travelling exhibitions at the village level, the project uses a long-term dialogue process developed to create opportunities to share personal experiences with "the other," building on the catharsis of story-telling and the empathy of listening.[53] It focuses on inter-generational dialogue and the emotional connections developed through sharing histories.[54] It also builds on the convictions that those who lived through thirty years of war do not want to return to such personal and collective tragedy, and the belief that inculcating core Sri Lankan values that cut across ethno-political divides will strengthen people's ability to prevent violent conflict.[55] The project is archived at the National Archives of Sri Lanka and is available online at www.memorymap.lk.[56] With over 2000 individual participants in the village-level dialogues, pocket meetings, and consul-

50. *About Memory Map*, *supra* note 7.

51. HETTIARACHCHI, CMP, *supra* note 49, at 5.

52. *Id.* at 6.

53. *Id.* at 3.

54. *Id.* at 3.

55. *See* HETTIARACHCHI, CMP, *supra* note 49, at 5. "Sri Lankan values" were identified through a survey analysis of participants that was conducted across ethno-religious community groups. The top four were respect, patience, humanity, and tolerance according to unpublished survey results, used only as a baseline in project development. While these can be claimed as human or universal values, these values are described as Sri Lankan because the project "localized" the notion of "values." By situating it as a personal construct within the individual and communities as a recognizable and understandable concept, the idea was to build on "connections" and "similarities." *See* RADHIKA HETTIARACHCHI, GOING BEYOND THE ARCHIVE: FACILITATED DIALOGUE USING PUBLIC HISTORY COLLECTIONS 6–7 (2016), http://www.about.memorymap.lk/wp-content/uploads/2019/01/8_FG_Intro_GOING-BEYOND-THE-ARCHIVE-FACILITATED.pdf [hereinafter HETTIARACHCHI, GOING BEYOND THE ARCHIVE].

56. The project is jointly implemented by the Author, Search for Common Ground Sri Lanka, Prathbha Media Network, Akkraipattu Women's Development Foundation, and Viluthu Centre for Human Resource Development. More information on the project, the publications, detailed documentation, reports, tool-kits, facilitation guides, and resources that have been developed for the project can be found at http://www.about.memorymap.lk.

tations, the nature of private memory and public remembrance is a key point of discussion.[57] In framing memory and memorialization as publicly accessible life-experiences and eye-witness accounts, it is possible to see a visible struggle for memory by those who wish to own it, to forget it, and to reconfigure it for a variety of reasons as the following chapters explore.

III. MEMORIALIZATION AS TRUTH-TELLING ON AN UNEQUAL PLAYING FIELD

Development of the Herstories project and CMP was driven by a belief that opening up spaces for the personal experiences of individuals and communities would democratize the process of truth-telling as a moral right for victims of violence.[58] The Herstories and CMP sought to provide a platform for people of all ethnic groups and all sides of the conflict and periods of violence in Sri Lanka to share and archive their stories, and memorialize their experi-ences.[59] The two projects encouraged story-telling with no restrictions on time, place, or type of story, thereby allowing the narrative life-history format to facilitate as

57. *See* RADHIKA HETTIARACHCHI, DISCUSSION PAPER 2: REGIONAL CONSULTATION REPORT ON MEMORIALS IN SRI LANKA 3–5 (2017), http://www.about.memorymap.lk/wp-content/uploads/2019/01/6_DP-2-Consultations-on-Memorials.pdf [hereinafter HETTIARACHCHI, REGIONAL CONSULTATION REPORT]. Midway through the CMP, there were five regional consultations to better understand what people thought about memorials and memorialization and adjust the project's responses. With a total of 275 individual participants, the consultations took place in Jaffna (including Kilinochchi and Mullaitivu), Anuradhapura (including Polonnaruwa and Mannar), Kandy (including Badulla and Hatton), Batticaloa (including Moneragla and Ampara) and Matara (including Galle and Hambantota). *See id.* at 8–9.

58. *See* EDUARDO GONZÁLEZ & HOWARD VARNEY, TRUTH SEEKING: ELEMENTS OF CREATING AN EFFECTIVE TRUTH COMMISSION 4–5 (2013), http://ictj.org/sites/default/files/ICTJ-Book-Truth-Seeking-2013-English.pdf (explaining "the right to the truth" as a concept emerging in various sources of law internationally, including a holding from South Africa's Constitutional Court, *The Citizen 1978 (Pty) Ltd and Others v. McBride* 2011 (4) SA 191 (CC), which upheld the right of victims to tell their truths as the "moral basis of a transition from the injustices of apartheid to democracy and constitutionalism").

59. Truth-seeking, as a process that looks to ascertain an evidenced-based, corroborated set of truths, is distinct from truth-telling, which, in the case of the Herstories Project and the CMP, is meant to be an opportunity for people to share their personal experiences as subjective truths.

much detail as individuals choose to share.[60] In most cases, individuals and community groups chose to document their histories in the comfort of their own homes. However, where some have long been denied the ability to express grief or voice experiences,[61] can this "equal opportunity" platform do justice to the per-ceived sense of inequality?

Propped up by the rising tide of Sinhala-Buddhist supremacy and nationalism, a common narrative within the southern polity is that the introduction of transitional justice to Sri Lanka is an expression of Tamil nationalism.[62] Therefore, there exists a pervasive assertion that transitional justice, supported by the international community and non-governmental organizations, seeks to discredit the GoSL and its achievement of ending the war.[63] Within this discourse lies the tension and fear that with acknowledgment and accountability of atrocities and the subsequent need for justice, the hero-myth upon which much of the post-war narrative was built may flounder.[64] The impact of such a fall from grace is not just the political impact it might have in losing majority votes. It is also socio-economic, in the perceived loss of social capital, and the tangible loss of pensions and pay for families of soldiers that may be prosecuted.[65]

Many that were consulted by the CMP in the South (where the majority community is Sinhalese), felt that theirs was a unique experience of violence and pain.[66] As such, many felt that southern experiences needed to be highlighted, including

60. *See* RADHIKA HETTIARACHCHI, NARRATIVE HISTORY DOCUMENTATION: A TOOL-KIT 1 (2018), http://www.about.memorymap.lk/wp-content/uploads/2019/01/7_A-Tool-kit-Narrative-History-Documentation-new.pdf.

61. *See* PEARL, ERASING THE PAST: REPRESSION OF MEMORIALIZATION IN NORTH-EAST SRI LANKA 5 (2016), https://pearlaction.org/wp-content/uploads/2016/11/pearl-erasing-the-past-nov-1-2016-report-b-1.pdf.

62. *See* Nipunika O. Lecamwasam, *Transitional Justice in Post-War Sri Lanka: Dilemmas and Prospects*, 7 POLITY 14, 15 (2016) ("Sinhalese treat any move that is international with much skepticism especially because the popular perception is that the international community is hand in glove with the pro-Tamil Diaspora to promote pro-LTTE sentiments.").

63. *See id.*

64. *See* HETTIARACHCHI, REGIONAL CONSULTATION REPORT, *supra* note 57, at 20.

65. *Id.*

66. *Id.* at 24.

the violent suppression of JVP insurrections in the late 1980s,[67] or incidents such as the bombing of the temple of the tooth in Kandy by the LTTE.[68] They felt that such uniquely southern experiences were left out, marginalized or disregarded in the memorialization of Sri Lanka's conflict history:

> Tamil people see the need for acknowledging injustices and mourning loss as a stronger need within a reconciliation process. In comparison, in the South, the urgency and the need for significant affirmative action towards the Tamil communities specifically, was secondary to the idea of equality as evidenced by this statement by a participant: "Memorialisation could be used to validate the rights of all groups, by mourning all the people lost during the war." This however, could be questioned as a voice of privilege that has had opportunities for memorialisation throughout the war.[69]

Still, some northern viewpoints indicated that attempts at proportional representation of memory ignore the prolonged suffering, systematic discrimination, and violent suppression of the Tamil people and their ability to grieve publicly.[70] Mary, a Tamil participant from the northern Mannar district who lost her arm during the war, visited Matara where she heard stories about state violence used to suppress the southern insurrections.[71] Having lost not only her arm, but her brothers and other members of her extended family during the protracted

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67. *See Sri Lanka: The Years of Blood*, SRI LANKA BRIEF (Apr. 24, 2014), http://srilankabrief.org/2014/04/sri-lanka-the-years-of-blood/.

68. *See Eleven Die in Sri Lankan Temple Suicide Bomb*, BBC (Jan. 25, 1998), http://news.bbc.co.uk/2/hi/50366.stm.

69. HETTIARACHCHI, REGIONAL CONSULTATION REPORT, *supra* note 57, at 21.

70. *Id.* at 11.

71. NILAKSHI DE SILVA & MOHAMMED SADAATH, CMTY. MEMORIALISATION PROJECT, LISTENING AND LEARNING: CASE STUDIES FROM THE FIELD 14 (2018), http://www.aboutmemorymap.lk/wp-content/uploads/2019/04/Case-Studies-Booklet-FINAL.pdf.

conflict, she felt that her community in the North had suffered more; as she said, "[C]ompared to us the tragedies they faced [in the South] were very low intensity. . . . We have faced a lot more tragic incidents than them."[72] An ex-soldier from the South acknowledged this distinction of prolonged and unequal suffering by saying, "every mother cried . . . . But I have to tell you the truth, Tamil people suffered more."[73] While all Sri Lankans have directly or indirectly experienced war and violence, experiences of the psychological, political, and socio-economic impacts of such experiences have varied based on who and where individuals were within the conflict landscape. In turn, this has resulted in varying degrees of post-war needs. If coalesced into a narrow rubric of "dealing with our common past" without acknowledging the multiple narratives and perceptions of subjective realities, the process would lose not just the nuances of dealing with multiple experiences, but also equitable access to justice and the hegemonic struggle of collective narratives of a historically marginalized community.

For those in the North, the ability to tell one's own history and control one's own narrative allows the freeing of one's voice and affirmation of the space to grieve aloud, so the "truth" might not matter as much as freeing one's voice.[74] For example, during the regional consultations on memorials and memorialization in Jaffna, a Northern Tamil mother expressed her belief that "memorials about 'what happened in the North' should be made and located in the South by the State so that those living in the South might understand and become aware of incidents, losses and pain of the Northern people."[75] At the same consultation, other Tamil participants expressed their

72. *Id.*

73. *I Came Back For My Family*, *supra* note 2.

74. *See* Jennifer Moore, *Engendering Peace and Justice After Armed Conflict: A Call for Qualitative Research Among Women's Community Networks*, *in* GEORGETOWN INSTITUTE FOR WOMEN, PEACE AND SECURITY, OCCASIONAL PAPER SERIES: WOMEN AND TRANSITIONAL JUSTICE 32 (Rosalyn Warren & Mayesha Alam eds., 2016) ("[T]he strongest sense of relief came from sharing experiences with women in similar situations, expressly because women had been isolated, pressured not to share wartime experiences, and forced to keep a low profile.").

75. HETTIARACHCHI, REGIONAL CONSULTATION REPORT, *supra* note 57, at 17.

views likening the purpose of memorials to an expression of identity, serving "to build our nation, language and community and to express our feelings openly."[76] As a reclamation of identity, memorialization becomes an intensely political act. According to Pierre Nora, communities' motivation to memorialize indicates an "emancipatory trend," in which "rehabilitating [a community's] past is part and parcel of reaffirming [its] identity."[77] The emergence of these histories organically from ethnic minorities through community-based memorialization processes is not an imposition of memory, but rather a participatory process of the production of memory.[78] The participatory process can be understood as a democratization of memory,[79] which may be seen as a democratization of truth, insofar as it pertains to personal truths rather than evidence-based, uncontested truths.[80] Therefore, developing processes of memorialization presents an interesting dilemma: Can memorialization be offered to all equally without distorting the unique needs of systematically marginalized communities or those that perceive themselves as the most affected? Or, should memorialization consider the context, history, and impact of war and post-war nation-building narratives by intentionally prioritizing and affirming the stories of the worst affected?

The lessons learned from implementing the CMP show that the overemphasis on neutrality or equidistance in the design and implementation of memorialization projects may be counterproductive to the peoples' perceptions of truth as a component of seeking justice. As practitioners, we must consider that in creating opportunities as a moral obligation for people to tell their version of the truth as personal experience;[81] we must not seek to "balance out the truths" in the service of

76. *Id.* at 11.

77. Pierre Nora, *Reasons for the Current Upsurge in Memory*, EUROZINE 5 (Apr. 19, 2002), https://www.eurozine.com/reasons-for-the-current-upsurge-in-memory/?pdf.

78. *See id.* at 8–9.

79. IMPUNITY WATCH, *supra* note 4, at 10.

80. HETTIARACHCHI, GOING BEYOND THE ARCHIVE, *supra* note 55, at 2.

81. *See infra* Part IV.

getting to an "absolute, corroborated truth." Feelings of victimhood, perceived degrees of suffering, and hierarchies of bereavement are intensely subjective. They can be influenced by the politics of representation, collective community narratives of identity, the role of victim groups in agenda-setting, and the political positioning of civil society organizations that might "speak on behalf" of victims.[82] The plurality of unique narratives therefore cannot be coalesced into common experiences of war, nor should they be normatively equated—perhaps by references such as "all" enforced disappearances or "all" loss of property due to conflict—in the process of memorialization as an opportunity for victims of violence to speak their truths.[83]

IV. MEMORIALIZATION AS A DIDACTIC TOOL FOR DEALING WITH THE PAST

The idea that awakening memory and facing the past might bring reconciliation and healing is a powerful driver of memorialization in the post-war context. The key question is whether and how empathetic listening to others' experience has an impact on healing. The Herstories Project and CMP share the hope that by confronting our histories, engaging in dialogue with the other through memorialization, and understanding the root causes of conflict, Sri Lankans may be able to prevent violent conflict in the near future.[84] These projects rely on the assumption that "looking at [one's] own experience and that of others creates empathy," and that "[a]wareness of shared values" leads to an "[i]ncreased feeling of connection between people."[85] The projects aim to use people's memories to

82. *See* Luke Moffett, *Victims at the ICC—Who's Representing Who?*, JUST. CONFLICT (May 5, 2015), https://justiceinconflict.org/2015/05/05/victims-at-the-icc-whos-representing-who/.

83. HETTIARACHCHI, REGIONAL CONSULTATION REPORT, *supra* note 75, at 24.

84. *See* HETTIARACHCHI, CMP, *supra* note 49, at 1–2.

85. NILAKSHI DE SILVA & MOHAMMED SADAATH, CMTY. MEMORIALISATION PROJECT, A COMPASS FOR NAVIGATING A COMPLEX WORLD: METHODOLOGY REFLECTION BASED ON THE DEVELOPMENTAL EVALUATION OF THE COMMUNITY MEMORIALISATION PROJECT 8 (May 2018), http://www.about.memorymap.lk/wp-content/uploads/2019/01/4_PN-2-A-compass-for.....DE_.pdf.

critically reflect on the causes of conflict.[86] They are based on the premise that by understanding why the war began in terms that resonate with people through their own stories, there might be an opportunity to create an awareness of early signs of conflict.[87] In doing so, it might translate to community resilience against outside threats and manipulation.[88] These stated project goals extended to the participants of the dialogue processes. They revealed that most participants wanted to prevent war in their lifetimes by sharing memories with the next generations for didactic purposes.[89] They also indicated that by inculcating core "Sri Lankan" values, such as respect, tolerance, and humanity, the erosion of which participants believed were partial causes of conflict, they might prevent community-level violence.[90] Hingert, a Sinhalese man of European descent from the southern town of Kamburupitiya, argues: "Because the young don't know history it is easier to manipulate them. They can be taught that nothing like this happened. . . . Then they will think, 'our parents lied to us about people being wrongly accused or harassed,' and be swayed toward extremism."[91]

Youth also reflected the view that an inter-generational transfer of memory might be a good use of memorialization. For example, Anusya, a young Tamil girl from the directly war-affected Eastern province, shared this reflection:

> We don't know what happened in the 1990s. I was surprised to listen to the incidents that had happened before I was born. I kept thinking have such things happened? They should not happen

86. *See* HETTIARACHCHI, CMP, *supra* note 49, at 1–2 (explaining theory of change).

87. *Id.* at 3.

88. *Id.*

89. *See* HETTIARACHCHI, REGIONAL CONSULTATION REPORT, *supra* note 75, at 23; HETTIARACHCHI, GOING BEYOND THE ARCHIVE, *supra* note 55, at 1.

90. *See* HETTIARACHCHI, GOING BEYOND THE ARCHIVE, *supra* note 55, at 6 ("About 90% of Sinhala speakers and 65% of Tamil speakers found discussing values and ethics as a basis for managing conflicts or preventing violence against the other 'useful.'").

91. *The Next Generation Needs to Know…*, MEMORY MAP, http://memorymap.lk/index.php/display/singleMemoryView/147 (last visited May 11, 2019).

> anymore. I think remembering old incidents would be difficult for those affected by the violence. But for youth, remembering the past is very vital in order to mold our mind towards non-recurrence of future violence. In my mind I am now thinking this kind of bad experience should not come back to us. There was uncountable loss that we underwent. As a youth I don't have that much of capacity to bear such kind of suffering. Everyone should learn about conflict and how it had originated. If we know this we can do something to identify such conflict at the beginning. I think if this knowledge would have given to the last generation the violence during the 1990s would have been mitigated.[92]

In the CMP dialogues, the catalyst for connecting people are the stories of "the self" and "the other."[93] Thavamani, a forty-seven-year-old Tamil woman from Sammanturai, shared her opinion on the emotive nature of sites of memory, where one may speak to the "other" about their personal experiences. She spoke of the connections she felt they made with each other while acknowledging that both sides could learn about the other through engagement:

> During the dialogue, Kamala Akka (a Sinhalese woman also from Ampara) told me that the LTTE had slaughtered more than 50 people in her village one night. I did not know that such a brutal massacre had happened to Sinhalese. Before participating in the dialogues and taking [sic] with them, I used to think that they are Sinhalese, they have the protection of the security forces, what harm would have happened to them?

92. DE SILVA & SADAATH, *supra* note 71, at 6–7.

93. *See* HETTIARACHCHI, GOING BEYOND THE ARCHIVE, *supra* note 55, at 6.

> . . . I have told them directly and openly that I thought they didn't have to experience the terrible effects from this war. In turn Kamala Akka said they thought the same. But after she participated in the dialogue she realized the difficulties faced by the Tamils.[94]

From engaging with over 1200 individuals, it is evident that such long-term processes and spaces for people-to-people engagement create empathy and emotional connection. However, one of the challenges of the CMP is to understand how such feelings of empathy, openness, and understanding may be translated into healing in the longer term, if at all. Lea David describes the complexities and challenges of centering post-conflict processes on "facing the past."[95] She argues that the psychological, political, cultural, and moral assumptions that underlie the rationale for doing so do not adequately take into account that individual reckoning with the past might not be equal to collective histories, or that the exact transference of personal pasts leading to transformative national healing or reconciliation is difficult to measure.[96] Projects and processes may be too small to challenge the larger and more dominant narratives of post-war nationalism, or have a ripple effect at a national level without broad-based and direct engagement. How can such feelings be sustained over time to have a lasting impact within the groups that participate in dialogues? In going beyond memorialization as symbolic reparations by archiving multiple narratives of war as democratization of memory, the use of memories in peacebuilding may hinge upon the belief that sharing memory may have the transformative power of healing, which in turn might foment a willingness to prevent

94. Community Memorialisation Project—Phase 1, Final Evaluation Report 26 (Nov. 30, 2018) (unpublished manuscript) (on file with the Drexel Law Review) [hereinafter Final Evaluation Report].

95. Lea David, *Against the Standardization of Memory*, 39 HUM. RTS. Q. 296, 309–10 (2017).

96. *See id.* ("This overtly psychological approach . . . makes no real distinction between the ways in which individuals reckon with their traumatic memories and the ways in which collectives engage with their painful past.").

violence. However, critical reflection indicates that while this overarching narrative is hopeful, it may also be simplistic.

V. MONUMENTALIZING MEMORIALIZATION AS INSTITUTIONALIZED, SYMBOLIC REPARATIONS

In the aftermath of the war, official State memorialization practices have centered on physical memorials, which were expected to commemorate an event, incident, action, or place that is deemed historically important in the service of legitimizing the State's post-war narratives.[97] In and of itself, such memorialization is static and frozen in time, bereft of the dynamism of meaningful memorialization.[98] Unpacking this notion of memorials as a catalyst for healing and dealing with the past reveals the fallacies of crystallizing an incident or collective community memory as a static, representative physical structure. For example, the triumphalist "victory" monuments, especially those that are placed prominently in the North where LTTE sites of memory were erased after the war,[99] incite feelings of loss, and for some, function as a daily reminder (or perhaps a warning) of being vanquished and mocked in their suffering.[100] Similarly, the memorial to thirty-one Buddhist child monks brutally murdered by the LTTE close to Arantalawe, Ampara district on June 2, 1987 (erected with State support and endorsement) is a grotesque artist's depiction of fired clay sculptures of wounded, bloody, screaming, and dying monks placed in the actual bus in which they were killed

97. *See* SEOIGHE, *supra* note 15, at 218–21; *see also* Lisa Strömbom, *Revisited Pasts: Memory and Agency in Intractable Conflicts* 8 (Dialogues on Historical Justice and Memory, Working Paper No. 13, Aug. 2017), http://historicaldialogues.org/2017/07/31/working-paper-series-no-14-revisited-pasts-memory-and-agency-in-intractable-conflicts/.

98. "Meaningful memorialization" here is understood in the context of what might be meaningful to victims as they participate in the production of memory. *See* IMPUNITY WATCH, *supra* note 4, at 10.

99. *See* SEOIGHE, *supra* note 15, at 218–19; *see also* Malathi de Alwis, *Sri Lanka Must Respect Memory of War*, GUARDIAN (May 4, 2010), https://www.theguardian.com/commentisfree/2010/may/04/sri-lanka-must-respect-war-memory.

100. *See* PEARL, *supra* note 61, at 25–28 (quoting an interviewee: "Every day I have to walk past that monstrosity I am reminded of the horrors we faced. I look away—I just can't look at it.").

surrounded by what has become a site of pilgrimage.[101] In sharp contrast, the community-led memorial to fifty-four Sinhala villagers who were hacked to death by the LTTE in Gonagolla, Ampara District on September 18, 1999 is a simple white structure with the names and ages of the victims.[102] It is clear that the first is meant as a testament to the brutality of the enemy with the intention of inciting passions, while the second is meant to honor and remember the dead. Vimala, a Sinhalese woman from Ampara, encapsulates this distinction as she says:

> I am not in [favor] of doing a monument in this village—I have seen the Aranthalawa monument. I don't like that. I think it makes people angry. Monuments do not bring peace, they bring back memories people are willing to forget. I felt scared when I saw the Tamil/LTTE monuments I don't think the children should remember these things. For us it is also difficult to forget. The monument done by the families, here [in Gonagolla] has only the names.[103]

For some, there is a danger that a memorial to a traumatic incident keeps the memory static without evolution, solidifying old hatreds, instead of allowing for forgiveness and dulling of pain over time. Kosala, an eighty-five-year-old Sinhalese man interviewed at the end of the first phase of the CMP, said:

> Many incidents have happened. They demolished Sinhala temples, and in Colombo our people killed Tamils, therefore the responsibility goes to both parties. I do not think we should remember

101. Dharma Sri Abeyratne, *Aranthawalwa Monument Could Be a Symbol of Amity*, DAILY NEWS (Mar. 26, 2013), http://archives.dailynews.lk/2013/03/26/news15.asp.

102. *We Can't Solve Problems with Weapons*, MEMORY MAP, http://memorymap.lk/index.php/display/singleMemoryView/286 (last visited May 11, 2019) (memorial and description of incident at 1:59).

103. Nilakshi De Silva, Unpublished Development Evaluation Case Study Interview 1 for Community Memorialisation Project 5 (Aug. 2018) (on file with the Drexel Law Review).

> them. If we keep remembering them, the two parties will confine to their differences and will detach (distance themselves) even more. When there is a strong relationship it is easy to live. . . . First we need to find the truth. There is no space for us to find the truth. Both parties have committed offences. I think we should all forget everything and start all over again. Many problems will not appear then.[104]

At the CMP consultations on memorials, some individuals understood that while the objectives of creating memorials may differ and may be highly politicized, the reliance on memorials as the purveyor of truth is problematic. Fifty-year-old Senaka from Morawaka said:

> Some statues do not lead to peace but to anger and war: [for example, in Nandikadal] now they have removed those. Now we know that Sinhala, Tamil and Muslims have all been lost during the war, now it is time to forget all those things and move on. In such a time those statues are a hindrance to reconciliation. We have to take the incident as a lesson to not let it happen again and move on by cultivating good thoughts.[105]

While this was a common narrative in the South (not the only one), in the North, the need for physical memorials of incidents, people, and impact of war was just as pervasive. Many believed that memorials should not cause harm or hurt the feelings of other communities within the country, remind them of being vanquished, revisit old pain, or incite new hatred.[106] For many,

104. Nilakshi De Silva, Unpublished Development Evaluation Case Study Interview 2 for Community Memorialisation Project 3 (Aug. 2018) (on file with the Drexel Law Review).

105. Nilakshi De Silva, Unpublished Development Evaluation Case Study Interview 3 for Community Memorialisation Project 5 (Aug. 2018) (on file with the Drexel Law Review).

106. HETTIARACHCHI, REGIONAL CONSULTATION REPORT, *supra* note 75, at 18.

the idea of memorials and memory as moral compasses for the future was closely linked to the assumption that memorialization supported healing through empathy for the other.[107] However, crystallizing a "moment" of history in a monument, without the permanent attachment of eye-witness stories for context,[108] makes it susceptible to interpretation that could incite anger or hate or violence, which is counter-productive to its original purpose.[109] It can be argued that it is dangerous to essentially reduce the past to a set of linear events of collective history, eschewing the complexity of narratives and the place of individuals within that space.

It is also entirely possible that the political purpose of memorials is to erase all other narrative by crystallizing a dominant narrative through memorials.[110] It has been argued that the proliferation and ubiquity of memorials can be counterproductive to the preservation and impact of memory.[111] It is possible that finding an external repository for memory may cast away memories from being held within individuals, making it easier to forget them.[112] As cultural theorist Andreas Huyssen observes, "[T]he more monuments there are, the more the past becomes invisible, the easier it is to forget . . . ."[113] After the tsunami of December 26, 2004, that devastated the entire coast of Sri Lanka, many structures were erected (community-led as well as state supported), including in areas directly affected by conflict.[114] Fifteen years after the tsunami, many memorials have fallen into disrepair regardless of ethnicity,

107. *See id.* at 23–25.

108. *See generally* Edward Simpson & Malathi de Alwis, *Remembering Natural Disaster: Politics and Culture of Memorials in Gujarat and Sri Lanka*, 24 ANTHROPOLOGY TODAY 7 (2008) (discussing memorialization practices in Sri Lanka following the 2004 tsunami).

109. *See id.* at 11.

110. PEARL, *supra* note 61, at 26.

111. *See id.* at 35–36.

112. SEBASTIAN BRETT ET AL., MEMORIALIZATION AND DEMOCRACY: STATE POLICY AND CIVIC ACTION 30 (2007), https://www.sitesofconscience.org/wp-content/uploads/2012/10/Members_member-Benefits_004.pdf ("Once a memorial is built, the responsibility to remember begins to fade.").

113. Andreas Huyssen, *Monumental Seduction*, 69 NEW GERMAN CRITIQUE 181, 184 (1996).

114. *See* Simpson & de Alwis, *supra* note 108, at 9–11.

religion, politics and culture.[115] These "ghostly sentinels" stand derelict as "community coffers can no longer afford the astronomical electricity bills."[116] Bereft of guardians (once the "in-group" that can interpret these memorials are gone), who will save them from dereliction? This question also applies to the conflict memorials, though further compounded by the fact that multiple, outsider, and contested narratives struggle to be represented within them, unlike with the unifying nature of the human cost of a natural disaster. However, there is a greater chance that community-led memorials, such as the one in memory of those massacred at Veeramunai, have fared better being renovated and painted over time.[117] By its very existence, the memorial to Father Mary Bastian in Vangalai, Mannar creates an opportunity for transference of memory across generations.[118] Its purpose is to provide a physical reminder of his life and murder.[119] According to villagers, children are still named in his honor.[120] But does it promote healing over time? Kumara, of Mangalagama, Ampara, opined:

> Building monuments doesn't mean people forgive and forget. [For example,] in Gonagala the monument is small (only a board with 54 names) [but the] incident remains a living memory among the people. People still suspect the Tamil communities here. The communities still do not mingle together in the area.[121]

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115. *See id.* at 11.

116. *Id.*

117. *See* Radhika Hettiarachchi, *Memorialisation as Public History: A Practitioner's Note*, UNBOUND (2018), http://www.unboundjournal.in/memorialisation-as-public-history-a-practitioners-note/.

118. *See I Saw the Flashes When He Was Shot*, MEMORY MAP, http://memorymap.lk/index.php/display/singleMemoryView/143 (last visited May 11, 2019).

119. *See Ruki Fernando, Fr. Mary Bastian 25th Remembrance—6th January 2020, Vankalai (Mannar, Sri Lanka)* 1 (Jan. 7, 2010), https://rukiiiii.files.wordpress.com/2014/08/fr-mary-bastian-killing-25th-anivesary-ruki-07jan09-wid-photos.pdf.

120. *I Saw the Flashes When He Was Shot*, *supra* note 118.

121. Nilakshi De Silva, Unpublished Development Evaluation Case Study Interview 4 for Community Memorialisation Project 4 (Aug. 2018) (on file with the Drexel Law Review).

Should memory be fluid, with healing and forgetting as natural parts of remembrance? Ritualistic remembrances of death, or repetitive memory practices such as yearly alms-giving, religious events, donations to charitable causes or places of worship, contribute to a people's search for healing and closure, allowing the original sense of loss and pain to dull over time.[122] Some suggested that such practices might even help with cultural continuity after war, helping to re-develop societal connections and cultural identities through ritual.[123] In contrast, physical memorials may, over time, outlive their usefulness for some communities, thus interfering with the sense of fluidity of memory that non-physical processes of memorialization may offer. When considering the willful erasure of memorials, however, especially those erected by the LTTE, the potential benefit of fluidity (that can be gained by not monumentalizing memory) may not hold true. The debate about erasure of memorials is not limited to Sri Lanka, as seen recently in the public discourse on confederate statues in the United States.[124] Erasure is a politically motivated act. It differs from community-based decisions to remove physical memorials that no longer makes sense to them. The erasure of LTTE burial grounds and cemeteries,[125] (considered by some to be reminiscent of terrorism while a site of memory for others), essentially with the objective of obliterating it, is the vandalism of a memoryscape that is both physical and emotional. It is further complicated when the memoryscape is visually and historically altered by replacement. For example, the newly

122. *See generally* Kaori Hatsumi, *Beyond Methodological Agnosticism: Ritual, Healing, and Sri Lanka's Civil War*, 28 AUSTL. J. ANTHROPOLOGY 195 (2017) (considering the therapeutic healing nature of religious rites in the wake of the Sri Lankan conflict).

123. *See* HETTIARACHCHI, REGIONAL CONSULTATION REPORT, *supra* note 75, at 15.

124. *See, e.g.*, Kirk Savage, *Making Monuments What They Ought to Be*, LAPHAM'S Q. (Aug. 14, 2018), https://www.laphamsquarterly.org/roundtable/making-monuments-what-they-ought-be; Benjamin Wallace-Wells, *The Fight over Virginia's Confederate Monument*, NEW YORKER (Nov. 27, 2017), https://www.newyorker.com/magazine/2017/12/04/the-fight-over-virginias-confederate-monuments.

125. *See* Michael Roberts, *Thuyilm Illam: Positivist Readings and New Debating Grounds*, GROUNDVIEWS (May 20, 2011), https://groundviews.org/2011/05/20/tuyilam-illam-positivist-readings-and-new-debating-grounds/.

constructed Kopay Army Base on the very site of the Kopay cemetery exemplifies what Malathi De Alwis argues about the substitution of memory sites which "will always bear the trace of the original."[126] With such ill-advised strategies of erasure, the expected outcome of silence and forgetting may actually be replaced with renewed memory and strengthened significance.[127]

Memorialization as memorial-building (and erasing) should never be a hasty product but a process that is owned by the public. While much is yet uncertain about when the correct time for such a monumentalizing process might be, it can be emphatically said that understanding the power dynamics at community and national levels, and understanding the purpose of memorialization in context, are crucial to the process. Similarly, it is important to weigh the political interests of memorialization against the need to remember and grieve, for which a process of public consultation is necessary.

VI. BALANCING THE RIGHT TO FORGET AND THE OBLIGATION TO REMEMBER

The Government's focus on the rhetoric of transitional justice with limited progress in real terms is creating a sense of disillusionment on the ground.[128] For many victims, there is a sense of doubt that there ever will be the justice and accountability they seek, for example, in terms of information about their disappeared loved ones.[129] For those who are seeking socio-economic development after the end of the war, memorialization may be perceived as a barrier and a burden.[130] Or, it may be perceived as an unaffordable luxury, given deficits in resources and power that must first be overcome in

126. Malathi de Alwis, *Trauma, Memory, Forgetting*, *in* SRI LANKA: THE STRUGGLE FOR PEACE IN THE AFTERMATH OF WAR 159 (Amarnath Amarasingham & Daniel Bass eds., 2017).

127. *See id.*

128. *See generally* Amnesty Int'l, *Flickering Hope*, *supra* note 29.

129. *Id.*

130. *See* HETTIARACHCHI, REGIONAL CONSULTATION REPORT, *supra* note 75, at 22.

order to move on with life.[131] Practitioners may get caught up in the importance of preserving memory and memorialization as a public good. However, as writer David Rieff suggests, remembrance may be "an ally of justice" but it is no reliable "friend to peace," whereas forgetting can be, and that "in the fullness of time, eventually everything will be forgotten."[132] For some of the participants of the public consultations of the CMP, the ritualistic patterns of religious rites that memorialize the dead, missing, or notable instances were preferred ways of healing rather than formalized processes.[133] It can be argued that such practices are "living" processes of preserving memory, enabling a slow erosion of pain rather than forgetting it completely. But for those that practice it, as in the case of the residents of Gonagolla,[134] it may dull the anger that first accompanied their pain.[135]

For some of those consulted, bridging the gap between development and memorialization made sense where the funding available for memorialization could focus on tangible benefits. They suggested that dams, irrigation systems, roads, public libraries, clock-towers, and schools could be built as utilitarian memorials with the names of victims or incidents prominently displayed on them, serving many purposes according to the hierarchy of their current needs.[136] This is a reflection of a complicated context where, as a middle-income country, development funding has reduced for Sri Lanka, whereas funding for TJ programming has increased.[137]

131. *See* David, *supra* note 95, at 304–05.

132. David Rieff, *Remembrance: An Ally of Justice, but No Friend to Peace*, ICTJ (May 3, 2016), https://www.ictj.org/debate/article/remembrance-ally-justice-no-peace.

133. *See* HETTIARACHCHI, REGIONAL CONSULTATION REPORT, *supra* note 75, at 8.

134. *See infra* Section VII (discussing the religious rites and rituals practiced by residents of Gonagolla).

135. RADHIKA HETTIARACHCHI, DISCUSSION PAPER 1: CHALLENGES AND OPPORTUNITIES FOR MEMORIALISATION IN SRI LANKA: GRASSROOTS REFLECTIONS 10–11 (2016), http://www.about.memorymap.lk/wp-content/uploads/2019/01/5_DP-1-Challenges-and-Opportunities-for-Memorialisation.pdf [hereinafter HETTIARACHCHI, GRASSROOTS REFLECTIONS].

136. HETTIARACHCHI, REGIONAL CONSULTATION REPORT, *supra* note 75, at 30.

137. *See For Sri Lanka, More and Better Jobs Are Critical to Reach Upper-Middle Income Status*, WORLD BANK (June 27, 2018), https://www.worldbank.org/en/news/feature/2018/06/26/For-sri-lanka-more-and-better-jobs-are-critical-to-reach-upper-middle-income-status.

Unconsciously or deliberately, by attempting to marry their developmental and socio-economic needs with the availability of memorialization and justice options in the TJ process, the public consultations showed that for some, justice was the ability to return to a sense of normalcy.[138] This may or may not equate with the right to forget, but it is certainly antithetical to the right to remember that practitioners have argued is necessary for reconciliation and sustainable peace. While there is no definition within the rights discourse, or any international convention, of remembrance as a right, many other international standards lay out the right to truth, and the obligation to support victims and communities seeking the truth and redress.[139] The moral imperative to remember as a component of justice, and the psychological argument that facing the past is necessary for healing, somehow imagines the "nation" as a collective person or body, that will collectively heal after dealing with the past.[140] However, this is problematic and needs to be reconsidered in the context of culturally embedded differences in how communities and individuals experience pain and perceive normalcy, especially in multi-ethnic, multi-religious contexts with many different histories or violence, such as Sri Lanka.[141] Lea David makes a case for the culturally embedded differences of how socio-cultural systems allow for interpretation and framing which cannot be universalized as a moral obligation.[142] The persistent technicality of memorialization as a requisite feature of transitional justice and the "right to truth" as a binding obligation may not always be reflective of the primary needs in the context of post-war peacebuilding.[143] The "memory boom," which hinges on a moral duty for

138. HETTIARACHCHI, REGIONAL CONSULTATION REPORT, *supra* note 75, at 22.

139. GONZÁLEZ & VARNEY, *supra* note 58, at 4–5.

140. *See* David, *supra* note 95, at 309–12.

141. *Id.*

142. *Id*.

143. Priscilla B. Hayner, *International Guidelines for the Creation and Operation of Truth Commissions: A Preliminary Proposal*, 59 LAW & CONTEMP. PROBS. 173, 176 (1997) ("[I]f those persons most directly affected by the knowledge, the victims themselves, are not interested or not yet prepared to re-enter into these horrors, should they be obliged to do so?").

remembrance in post-war contexts,[144] may not be the only way, as CMP consultations on memorialization have indicated.[145] The consultations demonstrate the problematic nature of the assumption that memorialization leads to healing and justice.[146]

However, delaying the process of memorialization, at least as an act of symbolic reparations, may also be a disservice to non-recurrence of violent conflict, due to the fragility of memory in the highly politicized and dynamic context of countries in transition such as Sri Lanka.[147] There many reasons why victims refuse to participate in memorializing their painful past, whether as a willful desire to forget, or as a response to the economic and political context. While the "absence of voice" can be interpreted negatively, as mirroring problematic "psychopathologized processes of avoidance and repression" on the individual level,[148] the insisting on expression for the sake of memory could also be a form of imposition.[149] Opening up old traumas through a prescriptive approach to memorialization may represent a violent disregard for individual needs, which may "lead to adverse consequences, or a process of memorialisation that is responsive to international discourse rather than local context."[150] In essence, such tensions between the choice to remember, to not remember or remember only parts,[151] or completely forget, needs careful consideration within the deliberate processes of memorialization.[152]

144. David, *supra* note 95, at 303.

145. *See* HETTIARACHCHI, REGIONAL CONSULTATION REPORT, *supra* note 75, at 12–13.

146. *Id.*

147. *See* Ereshnee Naidu, *Symbolic Reparations and Reconciliation: Lessons from South Africa*, 19 BUFF. HUM. RTS. L. REV. 251, 260 (2012) (describing the damaging results of delayed implementation of TJ measures in South Africa, including memorialization).

148. *See* David, *supra* note 95, at 312.

149. *See id.* at 314–16; IMPUNITY WATCH, *supra* note 4, at 6.

150. IMPUNITY WATCH, *supra* note 4, at 6.

151. The public consultations showed that some people wanted to remember and physically memorialize the people that died, but not the incidents, or vice versa, for various reasons. *See* HETTIARACHCHI, REGIONAL CONSULTATION REPORT, *supra* note 75, at 18–19.

152. *See* IMPUNITY WATCH, *supra* note 4, at 6 ("All actors . . . should critically reflect on a continual basis on whether their involvement is contributing to social transformation most appropriate for the specific context.").

VII. CONTRADICTIONS, COMPLEXITIES, AND NUANCES OF "JUSTICE"

Critically engaging with the assumptions made during the CMP on the ways that memorialization links to healing, remembrance, non-recurrence of violence, and reconciliation, it is impossible not to also consider its relationship to perceptions of justice. In its policy brief, *Guiding Principles for Memorialisation*, Netherlands-based accountability organization Impunity Watch notes:

> But as with the wider practice of transitional justice, memorialisation has often been highly prescriptive and imposed, rather than genuinely bottom-up. This may lead to the use of particular language that has a different meaning in the context where it is being spoken or the disruption of a delicate balance between public memory initiatives and the informal, private initiatives at the grassroots. . . . The state must be viewed as legitimate by the population *inter alia* by ensuring meaningful participation, and justice must be understood beyond the courtroom. Criminal justice remains an essential goal after violence, but it should not be the only goal. Single, *ad hoc* mechanisms or processes will also rarely be sufficient for transformation and for guaranteeing the rights of victims to truth, justice, reparations and non-recurrence.[153]

Understanding what a universally prescribed justice outcome might look like could be in contrast to what victims, the State, and the international community might perceive as success. First, the people may not trust the State to deliver on their promises of justice, which is in essence a question of legitimacy, political will, and decades of disappointment. For example,

153. IMPUNITY WATCH, *supra* note 4, at 6–8.

public consultations on memorials conducted by the CMP showed that, for a majority of the Tamil polity, the perception of the state as both protector and perpetrator was problematic. As a Tamil participant in the North said,

> The people don't trust the Government. The Government has destroyed all the memorials in fear because they believe people might remember the war if they see memorials. In the Eastern and Northern provinces, what the Tamil people see as memorials, are what the army has erected. Particularly, the one which is erected at the entrance of Mullivaikal.[154]

A participant from Matara in the South described how he believed the war has changed people's perspectives on the army, and the difficulty of seeing the state apparatus in black and white terms. Such dichotomies of good versus bad and right versus wrong are blurred by experience with each subsequent conflict. "In the 1970s and 1980s, the army had traumatized and murdered Sinhala youth, and young people then hated the army. But overtime [sic], the same army that killed Sinhalese were revered by the Sinhalese for defeating terrorism."[155]

Second, for some people, justice may not remain high on the hierarchy of needs as time progresses after war. In the immediate aftermath of the war, stabilization and economic development were emphasized over dealing with the past in any meaningful way for victims of violence.[156] During this time, civil society-led movements called for memorialization,

154. HETTIARACHCHI, REGIONAL CONSULTATION REPORT, *supra* note 75, at 19. The referenced memorial at Mullivaikal depicts a Sri Lankan soldier carrying a gun while raising a national flag. For photos, see *Victory Monument: Puthukudiyiruppu, Northern Province, Sri Lanka : 02*, UNIV. B.C. (May 31, 2014), https://open.library.ubc.ca/cIRcle/collections/facultyresearchandpublications/52383/items/1.0215942.

155. HETTIARACHCHI, REGIONAL CONSULTATION REPORT, *supra* note 75, at 20.

156. *See* SEOIGHE, *supra* note 15, at 157–66.

accountability, and justice, as urgent and persistent needs.[157] After the change of government in 2015, despite the early promises of accountability and justice, these priorities still remain as prerequisites for trust building: culture of violence and impunity,[158] information about the disappeared,[159] complete demilitarization of the North,[160] and return of land in the North.[161] These can be barriers to memorialization and justice. The contextual challenges to memorialization are sometimes not overtly visible, yet they influence the process and the outcomes. For example, in the Mannar district, there are many stories about the effect of militarization on people's lives.[162] In Pesalai, the navy camp still remains where the navy led a retaliatory attack for a LTTE Sea Tiger attack on the Navy, by opening fire indiscriminately on huddled villagers as they took refuge in a church.[163] Others also speak of the heavy presence of the military (even after a reduction of forces and camps in the area), that causes uneasiness and a fear psychosis among the

157. *See, e.g.*, *Sri Lanka: Human Rights Council Should Demand Immediate Access and Accountability*, AMNESTY INT'L (May 22, 2009), https://www.amnesty.org/en/press-releases/2009/05/sri-lanka-human-rights-council-should-demand-immediate-access-and-accou-0/; Annie Callaway, *NGOs Call for Accountability for Abuses of Sri Lankan Civilians*, ENOUGH (Feb. 24, 2012), https://enoughproject.org/blog/ngos-call-accountability-abuses-sri-lankan-civilians.

158. *See Why Has Sri Lanka's Transitional Justice Process Failed to Deliver?*, SRI LANKA BRIEF (July 2, 2019), http://srilankabrief.org/2019/02/why-has-sri-lankas-transitional-justice-process-failed-to-deliver/.

159. Many still wait for information on the disappeared and want these crimes to be investigated. *See "Don't Give Additional Time to Sri Lanka," Mothers of Disappeared Persons Tell the UN*, PEOPLES DISPATCH (Feb. 26, 2019), https://peoplesdispatch.org/2019/02/26/dont-give-additional-time-to-sri-lanka-mothers-of-disappeared-persons-tell-the-un/.

160. *See "Why Can't We Go Home?": Military Occupation of Land in Sri Lanka*, HUM. RTS. WATCH (Oct. 9, 2018), https://www.hrw.org/report/2018/10/09/why-cant-we-go-home/military-occupation-land-sri-lanka.

161. *See* Jehan Perera, *Returning Land to Civilians Is a Promise That Needs Follow Up*, COLOMBO TELEGRAPH (Oct. 8, 2018), https://www.colombotelegraph.com/index.php/returning-land-to-civilians-is-a-promise-that-needs-follow-up/.

162. *See "Why Can't We Go Home?": Military Occupation of Land in Sri Lanka*, *supra* note 160.

163. *See* Ctr. Pol'y Alternatives, *Sri Lanka: Fact Finding Mission to Pesalai—28th June 2006*, RELIEFWEB (June 28, 2006), https://reliefweb.int/report/sri-lanka/sri-lanka-fact-finding-mission-pesalai-28th-june-2006; *We Are All One Race*, MEMORY MAP, http://memorymap.lk/index.php/display/singleMemoryView/291 (last visited May 13, 2019) (portraying witness accounts of the church attack).

community.[164] This case highlights the need for demilitarization as a prerequisite for dealing with the past meaningfully.[165]

In the South, if memorialization processes are to begin in earnest to deal with the scars of war, the rising threat of anti-Muslim nationalist discourse must be addressed. For example, in the southern district of Matara, a Muslim elder named Nazzar was interviewed for the CMP project evaluation case study, and described a minor, recent conflict in his Muslim-majority village.[166] An argument escalated to physical violence between a group of Sinhalese and Muslim youth, which resulted in the arrest of the Sinhalese youth who instigated it.[167] However, the Muslim elders, including Nazzar, spoke to the victims and their families, as well as the community, and secured the release of the boys prior to any formal charging.[168] When questioned about the motivation for their actions, the elders spoke of de-escalation of tensions.[169] Nazzer was concerned that the local incident could lead to national repercussions and revenge attacks on Muslims in majority Sinhala villages around the country, especially as nationalist groups had begun politically motivated sporadic acts of violence elsewhere in the country.[170] It can be inferred from the incident that it was fear of reprisal, rather than a meaningful and collaborative effort toward resolving the conflict, that led to the de-escalation of the incident. It indicates a growing trend of insecurity in being Muslim minority within a majority

164. S*ee Peace Needs to Start from the Schools*, MEMORY MAP, http://memorymap.lk/index.php/display/singleMemoryView/295 (last visited May 13, 2019) (comments on Navy occupation at 4:11); *No Changes Yet..*, MEMORY MAP, http://memorymap.lk/index.php/display/singleMemoryView/293 (last visited May 13, 2019) (comments on Navy occupation at 1:42).

165. *See* PEARL, *supra* note 61, at 29.

166. Final Evaluation Report, *supra* note 94, at 16.

167. *Id.*

168. *Id.*

169. *Id.*

170. *See, e.g.*, Amalini de Sayrah, *Digana: One Year On*, GROUNDVIEWS (Mar. 5, 2019), https://groundviews.org/2019/03/05/digana-one-year-on/; Hily Ahamed, *Escalating Violence: Renewed Assaults On the Muslim Community*, GROUNDVIEWS (May 22, 2017), https://groundviews.org/2017/05/22/escalating-violence-renewed-assaults-on-the-muslim-community/; Amantha Perera, *Anti-Muslim Violence Reaches New Heights in Sri Lanka*, INTER PRESS SERV. (June 29, 2014), http://www.ipsnews.net/2014/06/anti-muslim-violence-reaches-new-heights-in-sri-lanka/.

community and the lack of trust in law and order amongst the Muslim communities. Practitioners must remember that memorialization—the process of awakening and dealing with our memories—happens in the present. As such, the present context, including security concerns, socio-economic stability, and politics, will affect *what* is chosen to be remembered, and *how* it is voiced.

Third, localized beliefs, customs, and traditions may have much to do with reshaping people's perceptions of "justice." For example, the village of Gonagolla in the Ampara district is a Sinhalese village across the paddy lands from a Tamil village. During the war, it was one of the border villages that was attacked by the LTTE.[171] The attack occurred as the whole village slept following an almsgiving on the anniversary of a villager's death.[172] The resident chief monk of the temple who had lived with the people since 1981 brought the survivors together for religious rites regularly, helping to memorialize the dead, and was instrumental in developing a localized narrative of justice that was rooted in Buddhism.[173] Some of the people interviewed in the village, where most of the families have remained in the very same houses they lived in when the attack happened, found offers of traditional justice processes irrelevant for them.[174] Over the years, they had come to believe that those who did them harm will be born as lower order animals in their next birth while those innocents that were killed will find solace in being born as higher human beings, thus disassociating justice from this lifetime to one that can only be attained in an afterlife.[175] In other ways, survivors use small,

171. V.S. Sambandan, *Carnage in Eastern Sri Lanka*, FRONTLINE (Sept. 20, 1999), https://web.archive.org/web/20090624012051/http://hinduonnet.com/fline/fl1620/16201340.htm.

172. Chris Kamalendra, *Pre-Dawn Horror in Ampara*, SUNDAY TIMES (Sept. 19, 1999), http://www.sundaytimes.lk/990919/frontm.html.

173. *See We Can't Solve Problems with Weapons*, *supra* note 102 (describing the massacre and religious rites at 1:58).

174. HETTIARACHCHI, GRASSROOTS REFLECTIONS, *supra* note 135, at 10–11; *see also We Lost So Many*, MEMORY MAP, http://memorymap.lk/index.php/display/singleMemoryView/287 (last visited May 13, 2019).

175. HETTIARACHCHI, GRASSROOTS REFLECTIONS, *supra* note 135, at 10–11 ("[T]hey did not feel that there is a 'special' need to memorialise the incident (as part of the transitional justice

personal acts of remembrance to keep memories of victims alive, which they claimed as necessary for their own survival.[176] Karma as justice and remembrance as a daily occurrence then become part of assuaging survivor guilt to facilitate the slow erosion of pain over the years. The living perform regular "righteous" acts and religious rituals that memorialize the dead, believing that these actions will accumulate "merit" toward a better reincarnation for the deceased.[177] In doing so, a nuanced process of justice ensues: the living find a way to self-heal while contributing indefinitely to the betterment and nurturing of those killed in the afterlife.[178]

Lia Kent alludes to similar localized narratives of justice when she discusses memorialization practices in East Timor.[179] The living renegotiate what justice means to them, through local memory practices that are tenuous and improvised.[180] By doing so, they open up opportunities for dealing with the past, effectively "remaking [their] world" through new narratives of justice that may emerge from the process.[181] Similarly, within

processes currently happening), or that 'justice' was relevant to them anymore, as justice would be served in the next birth of those that committed the act of atrocity."); SWARMA WICKREMERATNE, BUDDHA IN SRI LANKA: REMEMBERING YESTERDAYS 135 (2006) (describing prevailing Sri Lankan Buddhist beliefs regarding justice for good or bad actions in subsequent lives).

176. Reflecting on the brutal murder of her siblings at the hands of the LTTE, a woman from Gonagolla described the ways her family keeps the memory alive. "That memory is necessary for us to survive. Even if they are not here, I feel that they are with me. . . . My father requested that we never alter this part of the house [where the killing occurred]. As we enter the house, we see this area and my father needs that memory." *Worst Day of My Life*, MEMORY MAP, http://memorymap.lk/index.php/display/singleMemoryView/297 (last visited May 14, 2019) (quoted language at 4:06).

177. Reflecting on the death of her son while serving in the GoSL Army, a mother from Aturaliya, Matara District, said, "We made a Buddha Statute in his honour in Wilpita temple, in a grand way. There's no point in the living holding on, when he needs to be in nirvana. So [with his money], we do good deeds in his honour." *No One Wins in a War*, MEMORY MAP, http://memorymap.lk/index.php/display/singleMemoryView/146 (last visited May 14, 2019) (quoted language at 1:34). *See generally* RITA LANGER, BUDDHIST RITUALS OF DEATH AND REBIRTH: CONTEMPORARY SRI LANKAN PRACTICE AND ITS ORIGINS 163–76 (2007) (exploring the history and practice of merit-giving in contemporary Sri Lankan Buddhist culture).

178. *See id.*

179. Lia Kent, *Local Memory in East Timor: Disrupting Transitional Justice Narratives*, 5 INT'L J. TRANSITIONAL JUST. 434, 441–45 (2011) [hereinafter Kent, *Local Memory*].

180. *See id.* at 441.

181. *Id.* at 444, 454.

the Sri Lankan experience, understanding the meaning of justice requires a critical reimagining of the dominance of legal and political resolution as an outcome of TJ frameworks. This is especially so when those standard frameworks of memorialization rely heavily on official, institutionalized processes, which, even at the local levels, may resemble law-like ideas of justice. But in this, "what tends to be left out of the analysis is the range of seemingly mundane ongoing everyday practices, negotiations and activities that may seem, at first blush, to have little to do with dispute resolution."[182] Opportunities to deal with the past, speak the truth, and bring justice and reconciliation to affected communities is part of the rhetoric of national-level memory initiatives and international TJ frameworks.[183] However, as seen repeatedly in cases across the world, these goals may be at odds with a perceived sense of justice at grassroots levels.[184] In this, it is important to understand the complex relationship between memorialization and justice. Transformation of the social, political, legal, and institutional landscape of a country in the wake of war requires a focus on re-establishing order, stability, and redress, and guaranteeing the rights of victims for truth, justice, reparations, and non-recurrence. In this, it is crucial to recognize memorialization as a constituent and complimentary approach to dealing with the past in a way that makes sense to those who have experienced violent conflict.[185]

VII. ROMANTICIZING THE "LOCAL"

International memory cultures and TJ practices need to be examined in the context of localizing memory, especially elite-

182. Lia Kent, *Engaging with 'The Everyday': Towards a More Dynamic Conception of Hybrid Transitional Justice*, *in* HYBRIDITY: ON THE GROUND IN PEACEBUILDING AND DEVELOPMENT: CRITICAL CONVERSATIONS 145, 152 (Joanne Wallis ed., 2018) [hereinafter Kent, *Engaging with 'The Everyday'*].

183. *See, e.g.*, *What Is Transitional Justice?*, ICTJ, https://www.ictj.org/about/transitional-justice (last visited May 14, 2019).

184. HETTIARACHCHI, GRASSROOTS REFLECTIONS, *supra* note 135, at 6.

185. *See* IMPUNITY WATCH, *supra* note 4, at 8.

driven processes that aim to transplant best practices from other contexts. The expectations of healing or justice through memorialization need to be managed when developing or practicing memory projects. At the organic, grassroots level, these include religious rituals of memory such as alms-giving in memory of a loved one, collective community actions such as Shramadana (community clean-ups and projects), or bus stop shelters built in memory of the dead.[186] Such culturally embedded processes of memory are meaningful to local communities, but may not be universally accepted as complete or legitimate TJ mechanisms by outside actors. However, when outside actors import memory practices and technical knowledge from other contexts, those practices may threaten to derail grassroots-level processes, and may be looked at suspiciously by local communities through a nationalist, anti-international lens.[187]

However, it must also be noted that over-emphasizing the "local" and promoting only nuanced perspectives of justice may have negative consequences in the long-term for countries emerging from protracted conflict, as was the case in Rwanda.[188] While it is entirely possible that local practices and nuances of justice may be apt for those suffering from deep trauma, they may not always be adequate for the generations that follow.[189] There is thus a danger in over-romanticizing the "local," especially in imagining that direct experiences of trauma and loss somehow guarantee the authenticity of the cultural sentiment associated with such processes or memorials.[190] Without the requisite skills and the space for managing democratic discourse,[191] the "local" may be fraught with

186. HETTIARACHCHI, GRASSROOTS REFLECTIONS, *supra* note 135, at 5–6.

187. IMPUNITY WATCH, *supra* note 4, at 6.

188. *Rwanda: Mixed Legacy for Community-Based Genocide Courts*, HUM. RTS. WATCH (May 31, 2011), https://www.hrw.org/news/2011/05/31/rwanda-mixed-legacy-community-based-genocide-courts (explaining the shortcomings of informal, community-based "Gacaca" courts that adjudicated war crimes in Rwanda).

189. *See* IMPUNITY WATCH, *supra* note 4, at 8.

190. *See* Simpson & de Alwis, *supra* note 108, at 6–7.

191. *See* IMPUNITY WATCH, *supra* note 4, at 8.

asymmetrical power dynamics.[192] This, in turn, may shape the narratives and set parameters for lowered expectations of acceptable levels of justice.[193] When individuals and collectives make painful concessions and compromises about what can be accepted as "good enough" in order to move on with life under the present circumstances, cracks may appear much later in the veneer of sustainable peace and development.[194] Through memorialization within local spaces, victims can take control and exercise their agency to protect against the loss of narrative, while addressing their unfulfilled need for State justice. Local agency and creativity in how justice is practiced could also allow victims that have suffered directly to revise and reshape their communities' histories, roles, and self-image.[195] The danger of such a nuanced sense of justice or ad hoc practices of memorialization, without the support of larger, more structured processes, is that lawmakers and policymakers, as well as former persecutors and decision-makers (roles which may be fluid and dynamic in post-conflict situations) may use them as an excuse when abdicating their responsibilities for transitional justice.[196] While it is unrealistic to expect local processes to fit perfectly within timelines and TJ goals, the murky and unstructured area of "localized processes" of memorialization may be exploited by those in positions of power for cultural or historical revisionism.[197] It may also further marginalize subaltern narratives, while stamping the authority of the State on new narratives that validate its rhetoric.[198] It is unclear whether local processes can fully realize

192. *See* Kent, *Engaging with 'The Everyday,' supra* note 182, at 160–61.

193. *See id.*

194. For many, practical needs and a desire to return to normalcy may overshadow concerns about memorialization. *See* HETTIARACHCHI, REGIONAL CONSULTATION REPORT, *supra* note 75, at 22; *see also* Simpson & de Alwis, *supra* note 108, at 12 (recognizing the role of compromise in whether, where, and how memorials are constructed).

195. IMPUNITY WATCH, *supra* note 4, at 9–11.

196. *See id.* at 8 ("[M]emory initiatives could easily become substitutes or proxies for other mechanisms.").

197. *Id.*

198. *See id.* (noting that "local norms may affect the willingness of people to fully engage in a participatory memory process, including those contexts where citizens may not openly

justice as perceived by the victims, but it can be said that while local practices are encouraged and supported, there should be a concerted effort for genuine participation of local voices in the planning, design, and implementation of more official processes of memorialization, which should happen concurrently.[199]

IX. THE STATE, CIVIL SOCIETY, AND THE OVERPROMISE OF MEMORIALIZATION AS JUSTICE

Memorialization can be a tool for a variety of purposes, as highlighted by the CMP consultations on memorials.[200] For many, memorialization is a deliberate and crucial process of seeking accountability.[201] In doing so, they demand a reframing of their stories, not as "alternative memories," but as acknowledged and protected historical truths.[202] For these solutions, the onus is on the Government to deliver.[203] This dynamic is fraught with the politics of appeasing the voting public, managing the expectations of the international community and its influence on Sri Lanka's political economy, and the drive to retain power.[204] We cannot but acknowledge that memorialization after conflict is thus a politicized process for marginalized communities that seeks to legitimize their narratives through official acknowledgment and recognition. Pragmatically however, this may never happen. For the Tamil polity in particular, one of the expressed purposes of memorialization is to reclaim memory by remembering those

express themselves in the presence of government officials, women not in the presence of men, youths in the company of their elders").

199. *Id.* at 7 ("Without genuine participation, memory initiatives will typically fail to generate local ownership, let alone acceptance. . . . [P]rocesses that are elite-driven will miss the components necessary for addressing local needs.").

200. HETTIARACHCHI, REGIONAL CONSULTATION REPORT, *supra* note 75.

201. *Id.* at 27–28.

202. *Id.* at 15–17 (emphasizing that the desire for State acknowledgment "indicates the insecurity [Tamil people] may feel within the larger, post-war context that promotes single narratives, which often gloss over the specific experiences of the North").

203. *Id.*

204. *Why Has Sri Lanka's Transitional Justice Process Failed to Deliver?*, *supra* note 158.

whose graveyards were erased, or whose experiences were lost in the one-sided post-war narrative.[205] In reclaiming narrative, they wish to break away from the master narrative as part of a larger hegemonic struggle for not only their memories, but as a demand for state acknowledgment as accountability and symbolic reparations. But memorialization as a process for dealing with the past requires acknowledging that multiple narratives exist, competing with each other for recognition and equality. They thus become part of a broader political struggle for justice. Kent's work on East Timor deeply resonates with the Sri Lankan experience:

> While all local memory practices involve political contestation at some level and bring to the fore competing viewpoints about which events should be remembered and how, some practices are political in a more overt sense in that they seek to engage with, and demand a response from, the state to the ongoing effects of past suffering. They can be understood as part of a broader struggle for official recognition and reparation by certain individuals and groups who perceive themselves to be excluded from the nation-building process, and who derive their authority to speak from their collective experiences of suffering.[206]

In the interim, while we wait for such unequivocal Government acknowledgment, the past must be dealt with constructively and with care. Civil society actors, such as artists and NGOs, must then take on the brunt of this responsibility in the interim while continually advocating for the Government to move towards meaningful memorialization that goes beyond physical memorials as symbolic reparations to participatory

205. *See* HETTIARACHCHI, REGIONAL CONSULTATION REPORT, *supra* note 75, at 7; *see also, e.g.*, *I Faced Unbearable Hardships*, MEMORY MAP, http://memorymap.lk/index.php/display/view_photoEssay/14 (last visited May 17, 2019).

206. Kent, *Local Memory*, *supra* note 179, at 444.

processes of producing, understanding and maintaining memories.[207] Accountability and advocacy then are parallel processes of memorialization in the Sri Lankan context. However, as many look to the Government for the acknowledgment and accountability, there is a danger that civil society projects may be perceived as promises of justice. In some cases, as in the case of enforced disappearances, when expectations are not delivered upon, it can lead to frustration and a breakdown of trust in the process, and undermine hope in sustainable peace.[208]

Organized civil society depends on project funding, creating a risk that memorialization may be "projectized."[209] If the timing and sequencing of memorialization and the needs of those affected do not synchronize, memorialization can become an imposition for the affected and a source of frustration in the TJ process.[210] It can be challenging to convince the victims, who have waited nearly a decade for answers, that meaningful memorialization can be a long and slow process. Yet, with the frustrations and the breakdown in trust, delaying transitional justice until all of the proverbial ducks are in a row (donor priorities, political will, and project opportunities) could also be counter-productive as some histories may change with the passage of time.[211]

It might also do practitioners well to remember that when they speak on behalf of the "voiceless," that very speech may

207. Community and civil society-led memorialization has been practiced throughout the conflict in Sri Lanka. *See* HETTIARACHCHI, GRASSROOTS REFLECTIONS, *supra* note 135, at 5–6.

208. *See Find Our Missing Children*, MEMORY MAP, http://memorymap.lk/index.php/display/view_photoEssay/16 (last visited May 17, 2019).

209. "Projectization" refers to the process whereby donor priorities drive the policies of civil society efforts in post-conflict contexts. *See* Denisa Kostovicova & Vesna Bojicic-Dzelilovic, *External Statebuilding and Transnational Networks: The Limits of the Civil Society Approach*, *in* BOTTOM-UP POLITICS: AN AGENCY-CENTRED APPROACH TO GLOBALIZATION 93, 97 (Denisa Kostovicova & Marlies Glasius eds., 2011).

210. *See* IMPUNITY WATCH, *supra* note 4, at 10–11.

211. *Id.* ("Memorialisation must . . . be recognized as a long-term process that changes with time and that is also subject to the way that memories themselves evolve over time.").

disrupt the organic processes of voice and power.[212] Within the echo chambers of civil society jargon and TJ buzzwords, the technical may overpower the need for those affected to control their own narratives and needs, thus inadvertently doing more harm than good. Similarly, the rise of ever powerful "memory agents" within the civil society space, as well as within the Government sector (those mandated to deliver transitional justice, and by extension, memorialization) can become "gate-keepers" for memorialization.[213] As they affect, negotiate, and influence public institutions and processes of memorialization, civil society advocacy and the role of the state may become removed from the original and multi-faceted needs of the ethno-politically and socio-economically diverse communities in Sri Lanka.

CONCLUSION

Can memory be a burden and a barrier to reconciliation or non-recurrence of violence if the process is not organic? Memorialization as a deliberate process of dealing with the past—as in the case of memorialization as truth-telling—should be accessible for everyone. But as practitioners, the unequal power dynamics that already exist in post-war contexts, especially after a military end to conflict, need to be considered responsibly. Unequal power and opportunity might require affirmative action, at least in the immediate aftermath of war. Memorialization can support a didactic purpose, where ritualistic or recurrent memorialization might offer spaces for healing. Keeping memory fluid through such localized practices may give families the peace they need in the short-term. However, this does not override the need for answers and justice. Justice, however, is a nuanced concept, and may mean different things to different people according to their experiences and their present political and economic contexts.

212. *See* Strömbom, *supra* note 97, at 8 ("Commemorative narratives require and always reflect the memory agent's perspective; it is never voiceless.").

213. *See id.* at 7–8.

Frustration surrounding delivery and accountability within a TJ framework may derail the process of memorialization. It is possible that entrenched pain, old fears, and broken promises might be buried deep within communities, only to resurface after communities have satisfied practical needs in the wake of conflict. In this, the role of the State in sequencing memorialization and providing space without dictating terms is key. Concurrently, it is important that civil society advocates for the space for memorialization as a process, while creating space for community-led memorialization.

What does this mean for civil society actors and practitioners of memorialization for transitional contexts? It means we must constantly review and contextualize our work. It means that memorialization and, by extension, transitional justice should not be a dogmatic set of technical tools, but a practice based on the inter-disciplinary nature of what it means to work with people: people are emotional, people are "many," and people have many interests and needs. As minority narratives compete for legitimacy and acknowledgment, building a consensus on a common narrative can further marginalize, polarize, and solidify divisions between people. All of this exists in a political space. It means that practitioners of transitional justice and memorialization need to be far more patient about achieving objectives and outputs, and understand that it is a process that takes much longer to show its impact than a traditional project framework might dictate. As practitioners, we need to be far more cautious about projectizing and implementing memory work without understanding the nuances, needs, and on-the-ground realities. Finally, as a key priority, we need to think, act, and plan for how we deal with the past responsibly. Memory—the right to it, the fight for it, and the forgetting of it—will contribute to determining the choices and actions of future generations.