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**Extended Abstract**  
**International Symposium of Sabaragamuwa University of Sri Lanka (ICSUSL) - 2017**

**<<The Significance of Economic Social and Cultural Rights in Post War Reconciliation Process  
of Sri Lanka>>**

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**1. Abstract**

The transitional justice process of Sri Lanka after its thirty year ethnic conflict has received international attention. The main objectives of the process are social reconstruction, reconciliation and prevention of recurrence of hostilities. Seeking and addressing the root cause of the conflict is the primary function of the transitional justice process. The international community is increasingly recognizing the importance of addressing the economic, social and cultural rights in transitional societies. There is an intrinsic link between the civil and political rights violations and economic, social and cultural rights violations. However, similar to many other post-war societies, Sri Lanka views the latter type of rights as aspirational goals and in a state-policy dimension. In order to attain the objectives of the transitional justice process effectively, Sri Lanka could take inspiration from other transitional societies such as Colombia, Sierra Leone, and Timor-Leste and include these rights in transitional justice mechanisms such as truth commissions, judicial processes and institutional reform.

**Keywords:** Transitional Justice, Reconciliation, Post Conflict, Human Rights, United Nations

**2. Introduction and research problem/issue**

Sri Lanka is currently going through a transitional period after the three decades long ethnic conflict. The need to address the issues such as disappearances, deaths, displacement and destruction of property is of vital importance at the moment. An effective Transitional Justice

process is significant at this point to acknowledge the past, which is rooted in the society. Sri Lanka has also received a great degree of attention from international actors, including the United Nations (UN) towards its Transitional Justice process.

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Transitional Justice is not only about punishing the perpetrators of war crimes and crimes against humanity that were committed during the final stage of the war, but also about reconciliation. It focuses on addressing the root causes to the conflict and adopting measures to prevent such occurrences in future. Therefore addressing not only the civil and political rights, but also the economic, social and cultural rights (ESCR) become significant in a post war transitional context due to their indivisible nature. However, it is evident that Sri Lanka is focussing more on human rights issues such as missing persons, disappearances and abduction, treatment of detainees and freedom of expression. It could be viewed that it is only the civil and political rights that are given legal attention in discussing the gross human rights violations that were caused during the war. Even the rights of the Internally Displaced Persons (IDP) are discussed in a civil and political rights dimension. It should even be borne in mind that the ESCR are not justiciable and are not recognized as fundamental rights under the constitution of Sri Lanka. Therefore, it is important to look at how significant is paying legal attention to the ESCR in the transitional justice process of Sri Lanka.

### 3. Research Methodology

The library research method was employed in conducting the research. International Human Rights standards on the importance of ESCR in the post conflict context, the reports of the Lessons Learnt and Reconciliation Commission (LLRC) of Sri Lanka; Public Representations Committee (PRC) on Constitutional Reforms; and the

Consultation Task Force on Reconciliation Mechanisms, and other document related to human rights and transitional justice of Sri Lanka were resorted to, in the library research. A comparative analysis was also conducted among the countries that went through and are going through a transitional justice process and the importance they have allocated to ESCR.

### 4. Results and findings

Transitional Justice (TJ) focuses on the transformation of afflicted societies through addressing the past injustices and prevents them from happening in the future. The TJ process consists of four pillars: right to know; right to justice; right to reparations; and guarantees of nonrecurrence. Addressing the root causes of a conflict is a major role that is played by TJ. One of the main causes of the ethnic conflict in Sri Lanka was the oppression and injustice that were faced by ethnic minorities, which was ultimately grown into terrorism. It was attempted through the study to view the TJ process in a 'holistic approach' and the emphasis to be added on the ESCR in addressing the root causes of the ethnic conflict to prevent such occurrences in the future. The UN

Secretary-General's Guidance Note on the United Nations Approach to Transitional Justice (2010) stated that the UN strive to ensure TJ processes and mechanisms take account of the root causes of conflict and repressive rule, and address violations of all rights, including economic, social and cultural rights. Even Louise Arbour, a former

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UN high commissioner for human rights had emphasises the importance of addressing the ESCR within post-war criminal prosecutions and truth and reconciliation processes is an important element of achieving social justice.

However, ESCR in the transitional setting of Sri Lanka are only viewed in a state policy dimension, rather than viewing them in a legal perspective, due to the traditional view that they are mere entitlements which depend in the availability of resources or as aspirational goals. It should be noted that this is the general approach to ESCR in Sri Lanka as well, because they are not even recognized as justiciable rights under the Constitution. However, recommendations were made regarding the inclusion of ESCR in the Fundamental Rights chapter of the proposed Constitution by the Public Representations Committee (PRC) on Constitutional Reforms in their report. Apart from constitutional reforms, ESCR could be addressed in transitional societies in several platforms such as truth commissions, judicial and quasi-judicial proceedings, and institutional reform.

The LLRC Report; which is commonly used as one of the tools in the

TJ process does not afford ESCR the legal significance it requires. Its Chapter 5 on human rights does not address ESCR violations at all, while they are discussed in Chapter 6 on land issues and Chapter 8 on reconciliation under sub topics such as livelihood and shelter, education and health. A similar approach was taken in the final report of the Consultation Task Force on Reconciliation Mechanisms. This is analogous to the situation worldwide where such commissions had only focussed on civil and political rights violations. However, Timor-Leste is an exception to this where the commissions have acknowledged that the violations of human rights even include ESCR and they have dedicated an entire chapter of the report to discuss it. This lack of attention in Sri Lanka on ESCR in identifying the actual heart of the conflict would be an impediment on attaining the objectives of TJ. Sri Lanka has been going through transition since nearly a decade. The wheels of the TJ process is seem to move slowly. Judicial proceedings

and institutional reform are still in the proposal stage. Even the violations during the war time of civil and political rights which are considered as justiciable under the Constitution are not yet addressed systematically in a judicial setting. The country is still going through deliberation on the type of court that should be dealing with these issues. Inspiration could be taken from the jurisdictions such as Colombia and Chile in designing the mandate of such a court and include ESCR violations as well.

##### 5. Conclusions, implications and significance

For a successful TJ process, the intrinsic link between violations of civil and political rights and ESCR should be recognized. Similar to many other countries around the world, even Sri Lanka is viewing ESCR statepolicy point of view instead of viewing

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them in a legal perspective. Internationally, transitional justice processes increasingly address ESCR issues, either as part of the root causes of conflict and repression or as violations occurring during the conflict. Further, even in addressing the ESCR in TJ, the group that are especially vulnerable should be identified because when people do not feel that they have been accorded a state in social reconstruction may not support it and are most likely to support resume hostilities. Although eight years had passed, Sri Lanka is yet to make certain essential developments such as judicial mechanisms. Therefore, it is not yet too late to address ESCR by including them in the TJ mechanisms.

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