

TRUTH AND RECONCILIATION

LESSONS LEARNED: FROM MANDELA

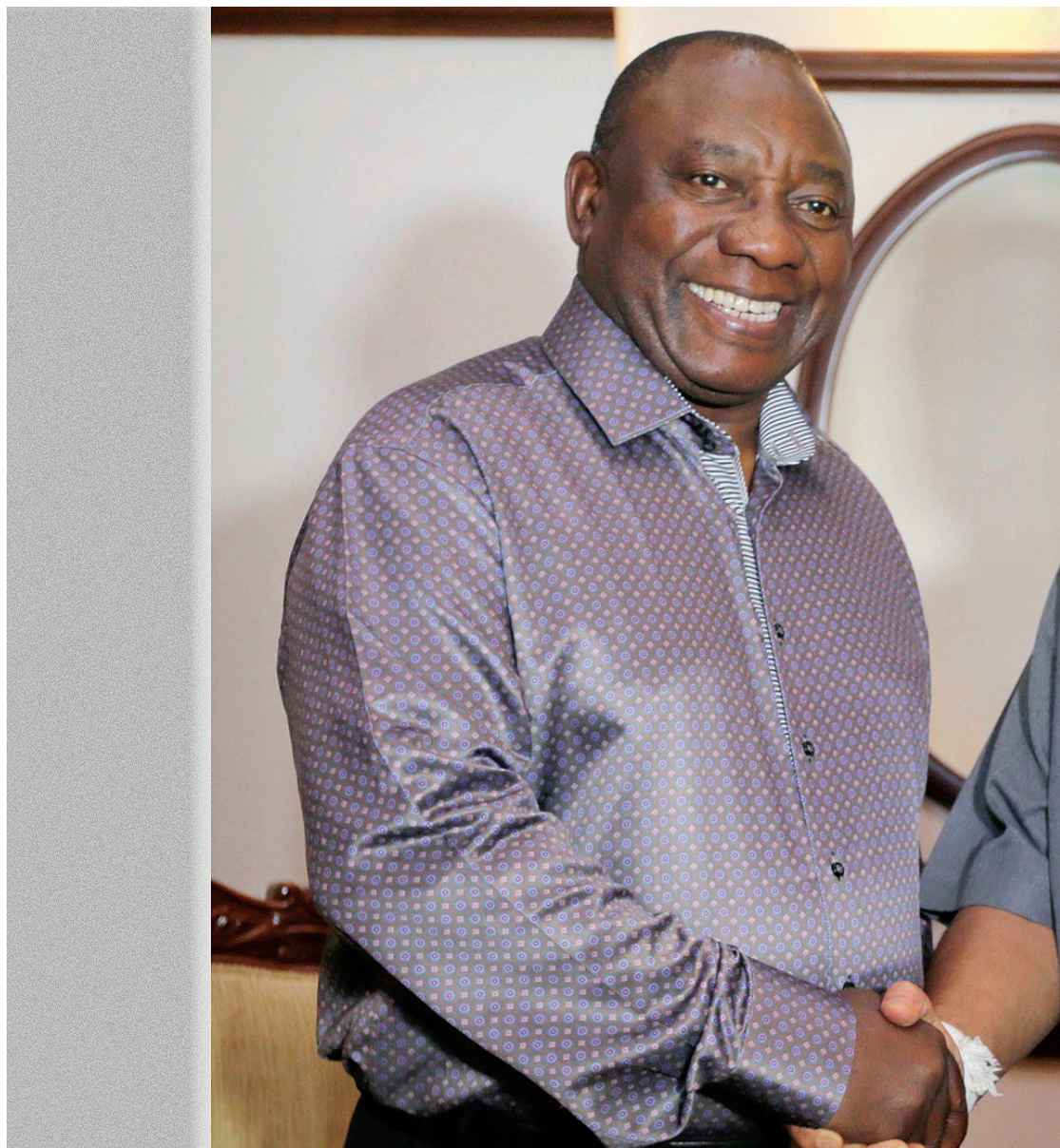
Jayantha Dhanapala wonders whether Sri Lanka's President will follow in Nelson Mandela's

A flurry of activity in July saw the Sri Lankan Government belatedly attempting to adapt lessons on reconciliation and restorative justice from Nelson Mandela's South Africa, on the one hand; while on the other, amending the mandate of the Paranagama Commission on Disappearances – and appointing a three-member advisory panel of Eminent International Experts as a parallel process to the international probe mandated by the March 2014 UN Human Rights Council (UNHRC) resolution.

It is moot as to whether either of the steps will eventually be accepted as credible domestic processes and not politically expedient tactics to slip out of a tightening international legal noose.

Cyril Ramaphosa was Nelson Mandela's protégé, whom he called "one of the ablest of the new generation of leadership," and "probably the most accomplished negotiator in the ranks of the African National Congress (ANC)."

The week before 18 July – the UN-declared Mandela Day – he visited Sri Lanka as the Deputy President of his country and the South African Government's Special Envoy. Despite confusing media reports, a statement in Parliament by the Deputy Minister of External Affairs said that the visit was a sequel to President Mahinda Rajapaksa's expressed interest



(presumably, at last year's CHOGM), in learning from the South African experience of its Truth and Reconciliation Commission (TRC).

Thus, the visit was – we are told – for a "mutual sharing of views, with the possibilities of adopting a similar mechanism taking into account social,

cultural and other particularities of the country." The lame attempt in the official statement, to compare the TRC with the Parliamentary Select Committee (PSC) process is, of course, disingenuous. So was the effort to politicise the process by using Ramaphosa to pressure the Tamil National

Alliance (TNA) to participate in the PSC.

Dissonant voices alleging foreign interference have arisen from within the United People's Freedom Alliance (UPFA), protesting over the Ramaphosa visit. Isolated at a time when the UNHRC resolution is being implemented

The writer is a former Ambassador of Sri Lanka and UN Under-Secretary-General. He is currently President of the Pugwash Conferences on Science & World Affairs.

OR GENEVA?

footsteps to reconciliation



HIGH LEVEL MEETING South Africa's Deputy President Cyril Ramaphosa, with President Mahinda Rajapaksa, during a visit to Sri Lanka in mid July.

against its wishes, the UPFA Government has invited advice and assistance from a fellow Non-Aligned country which abstained on the Geneva resolution. It also suffered white racist dominance and imperialist exploitation. Ramaphosa has been discreet during and after his visit, having reportedly taken the precaution of consulting with India.

South Africa's unique TRC is undoubtedly a major contribution towards conflict resolution. It was, in fact, an integral part of a comprehensive political process towards restorative justice, in a unique effort at healing and nation building. Established by an act of Parliament, the TRC was headed by the respected Archbishop Desmond Tutu. At its conclusion, while the

TRC was hailed as a success, there were also criticisms – such as from the family of Stephen Biko.

Obviously, each country must choose its own way of meting out justice after an internal conflict that involves mass killings, injuries, destruction of property, human rights violations and displacement of people. The Lessons Learnt and Reconciliation

Commission (LLRC) was appointed by President Rajapaksa in May 2010, one year after the war ended. The report was made public on 16 December 2011, after it was tabled in Parliament.

It is debatable whether the LLRC has served its purpose as Sri Lanka's Truth and Reconciliation Commission, especially since the vital issue of accountability for alleged human rights violations was inadequately addressed – perhaps due to structural shortcomings, such as not having its own independent investigative arm and witness protection programme.

Is it then too late to have our own TRC now, or should we confine ourselves to doing what successive UNHRC resolutions have called for – the implementation of LLRC recommendations? A credible domestic inquiry into alleged human rights violations during the conflict – within our laws, and with our judges and lawyers – was suggested by some, immediately after the May 2009 military defeat of the LTTE, and thereafter.

The door remained open for such an inquiry right through the discussion of Sri Lanka's human rights from 2009 to 2014, in Geneva and elsewhere.

Indeed, the last resolution adopted this year had in its operative Paragraph, called upon the Government of Sri Lanka “to conduct an independent and credible investigation into allegations of violations of international human rights law and international humanitarian law, as applicable; to hold accountable those responsible for such violations; to end continuing incidents of human rights violations and abuses in Sri Lanka; and to implement the recommendations made in the reports of the Office of the High Commissioner.”

MEDIA SERVICES PHOTOFILE (PRESIDENTIAL SECRETARIAT)

Have events now overtaken us, and the train carrying the international investigation team – to be advised by Martti Ahtisaari, Asma Jahangir and Dame Silvia Cartwright – left the station? Is it possible that our friends in the international community have advised the President of the folly of embarking on a collision course with the West over the international probe, and the need for compromises? And finally, has the penny dropped?

It is, of course, never too late to seek truth and strive for reconciliation. The debate goes on as to whether we are a genuinely pluralist democracy with a multi-ethnic and multi-religious character, and a collective history and culture we can all be proud of. Many other countries are rainbow nations, like South Africa – multi-ethnic and multi-religious, as a result of a history of international conflict, migration flows and enforced transfers of population.

That debate – exclusivity versus inclusivity – is at the heart of our national identity crisis. And until we resolve that in a satisfactory manner, we are not going to treat each other as fellow citizens with the equality, dignity and respect we all deserve, irrespective of our ethnic, language, religious and other differences.

Black June (in Aluthgama) was the latest in a series of ugly blots in our nation's history, of

“

There must be greater proof of sincerity of intent, if the Ramaphosa mission and the reinvented Paranagama Commission are to be taken seriously...

which Black July 1983 has been the most tragic.

To the surprise of many, on 14 July a Gazette was issued which stated that the President had accomplished a number of initiatives implementing LLRC recommendations, and claimed “outstanding progress” by the institutional mechanisms and government departments.

It claimed success in reconciliation, rehabilitation, resettlement and reintegration of former combatants and child soldiers, and several LTTE leaders; in further implementation of the LLRC report, the scope of the Udalagama Commission will be extended to investigate and report on specific issues, such as whether the Sri Lankan armed forces and the LTTE were responsible for the loss of civilian life, and violations of international humanitarian law or international human rights law during the internal armed conflict that ended on 19 May 2009.

And finally, it appointed

the following to serve on an Advisory Council to the Commission of Inquiry to which other experts may be required from time to time, to advise the Chairman and Members of the Commission of Inquiry, at their request – Sir Desmond de Silva, QC (Chairman), Sir Geoffrey Nice, QC and Prof. David Crane. On 10 August, The Hindu carried news of the appointment of an Indian – Avdash Kaushal, from a Dehradun-based human rights NGO – to be added to the panel. There are rumours of a Japanese and perhaps others to be appointed as well.

The announcement was not made in Parliament. Nor was it the subject of an official press conference. Reports indicate the absence of total support of the ruling coalition. The distinguished experts certainly rival the eminence of the panel advising the UN probe, but this is not a beauty contest. This is a serious inquiry into human rights violations that have caused the deaths and disappearances of our fellow citizens; and until there is closure, to the satisfaction of all, we will remain a deeply wounded nation.

Addressing the vagueness of the advisory panel's mandate, many recall the unhappy experience with the International Independent Group of Eminent Persons (IIGEP), which was appointed in 2007 to advise the Udalagama Commission of Inquiry into Serious Human

Rights Violations. The IIGEP was headed by former Indian Chief Justice P. N. Bhagwati, who a year later decided to withdraw, saying: “The IIGEP is of the opinion that there has not been the minimum level of trust necessary for the success of the work of the commission and the IIGEP.”

The eventual Udalagama Commission report – like Minister Prof. Tissa Vitarana's APRC report – has not been seen by the public. Combining the long overdue investigation of disappearances with other human rights violations, in a Commission that lacks an investigative mechanism and witness protection laws, is also regarded by human rights experts as overambitious.

Therefore, there must be greater proof of sincerity of intent, if the Ramaphosa mission and the reinvented Paranagama Commission are to be taken seriously by the citizens of Sri Lanka and the international community.

How, for example, are the two processes to be coordinated?

Great leaders like Mandela were able to take courageous decisions. He said: “There are times when a leader must move out ahead of the flock, go off in a new direction, confident that he is leading his people the right way.”

Will President Rajapaksa do the same, and lead our nation into a permanent peace and stable reconciliation?



ARE YOU BOLD ENOUGH TO TRY?

THINGS ARE SURELY BAD ENOUGH TO MAKE YOU WANT TO!

POST A COMMENT ON www.LMD.lk AND TELL US WHAT YOU FEEL CAN BE DONE