



RACISM AS A RISK FACTOR FOR ATROCITY CRIMES:

A Case Study on Sri Lanka¹

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The following case study has been written by an independent consultant on behalf of the Global Initiative for Justice, Truth and Reconciliation (GIJTR). This case study is informed by a combination of desktop research, document analysis and interviews. It therefore reflects these perspectives and findings, as compiled and written by the consulting author(s). Interviewees have been anonymized to ensure their safety and privacy but GIJTR extends its gratitude for the time and participation of all interviewees.

1 Introduction

In 2023, Sri Lanka celebrated 75 years of independence, after more than four decades of colonial rule. Unfortunately, a history of racial and ethnic tensions rooted in the country's past contributed to a decades-long ethnic war that ended less than twenty years ago. And today, ethno-nationalism and racism continue to plague Sri Lanka. The root causes of the conflict remain, with limited to no effort made to address structural factors that contribute to discrimination and violence. The failures on multiple fronts—to address the root causes of the conflict, to halt ethno-nationalism and violence, and to hold perpetrators accountable and initiate measures preventing recurrence—have contributed to a culture of impunity. This outlook exists because Sri Lanka has witnessed decades of violations from both state and non-state actors with limited action taken to hold perpetrators accountable.

This case study briefly examines key aspects of racism and atrocity crimes in Sri Lanka. It begins with a short overview of relevant historical dynamics. It then discusses the present status of racism in Sri Lanka and the marginalization of particular communities. The study goes on to examine factors that contribute to atrocity crimes, followed by an examination of the strategies and tools used by stakeholders to

address racism and violence in Sri Lanka. This is followed by an examination of the successes and setbacks of these efforts and concludes with a brief section on recommendations.

2 The Complex History of Sri Lanka: Centuries of Ethnic and Racial Tensions

Sri Lanka's last national census in 2012 indicated that the Sinhalese were 74.9% of the population, Sri Lankan Tamils were 11.2%, and Muslims were 9.3%. The remainder are comprised of Malayihaha Tamils, Burghers, Malays and those classified as "others."² The population is further categorized by religion including Buddhists, Hindus, Muslims, Roman Catholics, Christians, and others. Most Sinhalese are Buddhist, and most Tamils are Hindu, although both groups have significant numbers of Christians and Catholics. The most recent census reflects a diverse population in Sri Lanka, some of whom have existed together for hundreds of years, but due to racist policies and structural bias, has struggled to find a lasting peace and equality for all. The current challenges began long ago and a brief history is an appropriate place to begin this case study.

Sri Lanka faced colonial rule under three groups: the Portuguese (1505–1658), the Dutch (1658–1796), and lastly the British (1796–1948). Sri Lanka's ethno-nationalism and tensions emerged significantly during this colonial period, pitting the majority Sinhala community against the minority Tamil community. This history influenced policies and legislation introduced post-independence, helping to perpetuate discrimination and violence. This section briefly examines events that have contributed to Sri Lanka's ethnic and religious cleavages, including institutional discrimination and the evidence of atrocity crimes throughout the country.

Post-independence: The Pervasiveness of Racism in Sri Lanka

During British rule, the Tamil community was perceived as benefitting more from official appointments, creating tensions between the Sinhalese and Tamil groups. When Sri Lanka obtained independence from the British in 1948, the country subsequently saw a spate of developments that benefitted the Sinhalese. A key law that benefitted the majority community—and has impacted the trajectory of Sri Lanka—is the Sinhala Only Act of 1956. This law made Sinhala the only official language in Sri Lanka, which created significant obstacles for Tamil-speaking people to access public services as well as

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government jobs and promotions.³ Another key policy that highlighted discrimination toward the minority populations was standardization. The policy sought to provide educational opportunities for disadvantaged Sinhalese students while requiring Tamil students to achieve higher exam results to be admitted to university. These changes and the language policy were justified as addressing the historical lack of opportunities for the Sinhalese, as the community was perceived as marginalized during the British colonial period. The two policies resulted in Tamil students, civil servants, and the Tamil community as a whole being disadvantaged in access to services, jobs and university admissions.

Since Sri Lanka's independence multiple racial discrimination challenges have remained. The discriminatory practices and policies resulted in exacerbating ethnic tensions between the Sinhalese and Tamil communities, and riots erupted in 1958 and 1977. The 1983 pogrom that saw days of state sponsored violence targeting the Tamil community resulted in thousands of deaths and displacement as Tamil homes and properties were destroyed.⁴ These cycles of violence resulted in some of the Tamil community seeking asylum in other countries, creating a large diaspora scattered around the world.

Political Efforts to Reduce Discrimination: Failures in the System

These continued discriminatory practices and policies occurred during several failed attempts to find a political settlement. Draconian laws such as the Prevention of Terrorism Act (PTA) were introduced and used to target minorities and critics.⁵ The war years witnessed the declaration of several states of emergency; emergency regulations were used to restrict fundamental rights of citizens and arrest and detain those seen as a threat to national security. The use of the PTA that was brought as a temporary law in 1979 to target minorities and critics has also seen decades of abuse. These and other laws have been used to target individuals and communities, with anti-terror and emergency laws becoming the norm rather than the exception during the war years and in some periods of post war Sri Lanka.⁶

The demand for a political settlement continued over the decades. In 1987, the governments of Sri Lanka and India signed the Indo-Sri Lanka Peace Accord which culminated in the adoption of the Thirteenth Amendment to the Constitution and the Provincial Councils Act 1987. This provided for the devolution of power to the provinces.⁷ This is the current framework in Sri Lanka but there has been limited realized power devolution as well as challenges in the implementation.

The continued discrimination faced by minorities has also resulted in formation of political parties to represent their interests.⁸ Sri Lanka's electoral system is a proportional representative system which provides smaller groups the ability to play a crucial role in politics. Several minority parties thus have become coalition partners in government and used their leverage to negotiate for their communities. Despite this, ethno-nationalism continues. The lack of progress in finding a political solution resulted in the emergence of several Tamil groups, some calling for a separate Tamil homeland or Tamil Ealam.⁹ These calls led to armed tactics being used and increased violence within the Tamil groups. One such group, the Liberation Tigers of Tamil Ealam (LTTE) resorted to violence and targeted its Tamil opponents through political assassinations and other violence until it eventually claimed to be the sole representative of the Tamil people.

Black July: The Violent Road to War

The cycles of violence culminated in the near three-decade civil war beginning in 1983 between the government of Sri Lanka (GOSL) and the LTTE.¹⁰ This was sparked by the killing of several Sinhala

soldiers in Jaffna (northern part of Sri Lanka). Their funerals were held in the heart of Colombo and violence spread to various parts of city. The Tamil community was targeted, and their properties were looted, burned, and destroyed. Over the course of several days of violence Sinhalese mobs used electoral registers to target Tamil communities, with some accusations that the activity was state sponsored violence. This period became known as “Black July”—2023 marks the 40-year anniversary. For many, Black July came to symbolize the role of the state in the violent targeting of minorities. As noted by one eyewitness, “events around Black July was a clear indicator of state policy of racism and how minorities were treated as second class citizens.”¹¹ Black July commenced the civil war and the nearly thirty years of violence that engulfed Sri Lanka. Eventually the violence ended, but only after the military defeat of the LTTE, including the killing of its leadership in May 2009. Left in the wake of the violence was tens of thousands of people dead, disappeared, and displaced as well as massive devastation more broadly.¹²

3 Current Status of Race Relations: A Fragile Peace After the War

Despite the end of the hostilities, the post war years have been marked with cycles of ethno-nationalist and ethno-religious violence, including new incitement and hate speech. The COVID-19 pandemic and the economic crisis in 2021–22 brought new challenges including restrictions on civil liberties and new uncertainties. These recent events have highlighted Sri Lanka’s complex ethnic-religious relations and tensions and contributed to concerns for its fragile peace. The challenges extend to nearly all minority groups in Sri Lanka.

Ethno-religious Violence: Risks for the Muslim Community

The Muslim community has faced discrimination and violence from both state supported initiatives and private actors.¹³ The expulsion of the Muslims from the north by the LTTE and the mosque attacks in 1990 which killed several Muslim worshippers are instances where the community faced violence at the hands of a non-state actor—with deep implications for co-existence and reconciliation.¹⁴ The Muslim community has faced discrimination, harassment, incitement, and violence at the hands of extreme nationalist groups.

Ethno-religious violence witnessed in post war years has seen increasing incitement and violence from extreme Sinhala Buddhist groups including Buddhist clergy targeting both Tamil and Muslim communities, including places of worship and properties. Incidents such as the violence in Aluthgama in 2014, Digana in 2018, and the Easter Sunday attacks in 2019, were linked to hardline Sinhalese groups with the involvement of extremist Buddhist clergy who incited violence against the Muslim community.¹⁵ For example, groups like the Bodu Bala Sena (BBS), have been accused of incitement with no known action taken.

The post war years have also seen the rise of misinformation and hate speech via social media platforms. In some instances, social media activity has resulted in targeting and violence against the Muslim community as seen in the aforementioned attacks in Aluthgama, Digana and Easter Sunday attacks. Although the use of social media to spread fake news and hate speech resulted in the temporary shutdown of some platforms, no known action has been taken against the parties themselves who were spreading the fake news or inciting violence. Rather than holding individuals accountable, the leader of the BBS was appointed to head a task force by then President Gotabaya Rajapaksa, indicative of protection and patronage by politicians and the government.

Amassing State Power: Demonstrating Impunity Through State-sanctioned Structures

Recent years have also witnessed the emergence of other extreme nationalist groups in all communities.¹⁶ Several claiming to protect the Sinhala Buddhist race have emerged with claims of state support to obtain land and funds. Official support for such groups was evident during the presidencies of Mahinda Rajapaksa (2005–15) and Gotabaya Rajapaksa (2019–22) as key positions in government and institutions were offered to individuals linked to such groups. Such sentiments were also evident in commercial, media and professional groups with close ties to the Rajapaksa family and the military. Ethno-nationalist undertones were seen in some of the positions and in the messages from some media and commercial entities, most prominently in the anti-Muslim campaigns in the post war period.¹⁷

The appointment of several task forces by then President Gotabaya Rajapaksa raised concerns as to implications on governance and rights. One particular entity to examine issues of archaeology significance in the eastern province of Sri Lanka was headed by the Secretary to Defense Ministry and included a member of the Buddhist clergy and a media company owner. The appointment of this particular taskforce was while there were increasing trends of the government using national heritage and archaeology to appropriate lands belonging to and used by minority communities. The Eastern Province comprises of all three communities (Muslims, Sinhalese, and Tamil) and the absence of minority representation in the initial task force raised concern.¹⁸ There were also concerns as to why a task force was given the power to look into archaeology when state institutions with the same mandate already existed. Compounding this was the involvement of the military in the identification and protection of sites, fueling the perception of a nexus between Sinhala Buddhist extremist groups and the military. These activities were all occurring during increased measures to appropriate land belonging to minorities under the guise of national security, development and national heritage, raising concerns whether these were continuing old trends of attempting to change demographics in the area to influence electoral prospects. As noted by an academic: “Increasing reliance of archaeology to justify land appropriation feeds into fears that this is the latest tactic to change demographics in the area.”¹⁹

Another task force appointed by President Gotabaya Rajapaksa was headed by the leader of the BBS with the mandate on formulating a “one country, one law” policy. Minorities, civil society and others worried whether this was another tool to undermine Sri Lanka’s cultural diversity and pluralism.

The inherent racism in state policy was evident during the COVID-19 pandemic when the government imposed a ban on burials and made cremations mandatory.²⁰ This policy particularly impacted the Muslim community which were forced to follow a policy that was contrary to their religious burial practices. Despite no evidence of health risks, and health experts urging for reconsideration, the government refused to reverse the policy. The reversal only came several months later—and just weeks prior to the

commencement of the UN Human Rights Council (UNHRC) Session where Sri Lanka's human rights track record was under scrutiny, signaling that the reversal was only due to international pressure.

Racism Risks for Other Minority Communities

Attention must also be given to the Malaiyaha Tamil community who were originally brought to Sri Lanka as bonded laborers by the British to work in the tea plantations or as traders (2023 marks the 200-year anniversary of their arrival in Sri Lanka.) They have faced discrimination over the years, including being denied citizenship and facing significant challenges to accessing basic services like housing, health care, education, addresses and other issues.²¹ The community received Sri Lankan citizenship only in 2003 under the Citizenship Act. Two decades later, the community still faces problems obtaining official documentation due to administrative delays and lack of services in the area, putting the community in a vulnerable situation and exposed to further structural violence. Some members continue not to have basic documents such as birth certificates and national identity cards, creating obstacles to obtaining government services or applying for employment.²² Many in the community still work in tea plantations and receive very low wages, despite the tea industry being a key economy in Sri Lanka. Despite 75 years since independence, the living conditions of the community has not improved. They continue to live in what is termed "line rooms", a single room built as part of a residential unit that was first seen during colonial times. As noted by an activist working with the community: "health care and education services are inadequate with children being under-weight and malnourished."²³ Social problems also persist including domestic violence, alcoholism, and other challenges. Despite efforts to lobby for better wages, living conditions and improved services, the responses from the state and the tea industry have been slow and change resisted. Some have moved to other parts of Sri Lanka in response to structural inequalities and in search of educational and job opportunities.

Discriminatory practices continue targeting other groups, including Sri Lanka's Indigenous groups known as the Wanniyatto or the Veddha community. They reside in parts of the Uva and Eastern provinces in the country and have faced challenges in accessing basic services such as education, health, housing as well as limits to exercising their cultural rights. For decades they were viewed as being antiquated and unsophisticated though urban migration in recent years has resulted in changes as the younger generation has left the community in search of jobs and better living conditions.²⁴

Additionally, language rights have been a persistent problem in Sri Lanka due to the legacy of the Sinhala Only Act. The Thirteenth Amendment to the Constitution recognized Tamil as an official language but practical challenges are still faced by the Tamil speaking communities as government documents, notices and even official sign boards continue to be in Sinhala.

"Sinhalization": Ethno-nationalism Through Land Appropriation

Land has been a highly contested issue in Sri Lanka. There have been several conflicts linked to ethno-nationalism and lands appropriated under the guise of national security, tourism, development, national heritage, and archaeology.²⁵ Over the decades, state sponsored colonization schemes have witnessed the majority community relocated to areas that were predominately occupied by Tamil-speaking people. In addition, lands were taken for High Security Zones and military cantonments, displacing people from their homes and agriculture lands. The continued occupation by the military of large tracts of private lands even more than 14 years after the end of the war, raises questions as to why the government is unable to find durable solutions.

Further, all of this has occurred within a context of rampant fears that land appropriated for national security is working toward a goal of changing demographics and entrenching the Sinhala Buddhist and military nexus. What has become known as “Sinhalization” has resulted in the emergence of Sinhalese name boards and village names, as well as Buddhist places of worship, all becoming more common in predominantly Tamil areas.²⁶ The surge in Buddhist temples constructed in the area has led to new Sinhala settlements.²⁷ The increasing numbers of the Sinhala community in the two provinces fuels fears that state sponsored “Sinhalization” will change demographics and consequently impact election results. This has also contributed to new ethnic conflicts in the area and fears of land appropriation and militarization in addition to the changing demographics. The most recent attempts by the authorities and Buddhist clergy are to use national heritage and archaeology to appropriate lands belonging to minorities and religious worship sites. This has also led to the revival of hardline Buddhist clergy and Sinhala Buddhist groups.

Legislation and the Impact on Structural Racism

Over the years, Sri Lanka has seen the use of counter terror and emergency laws to target minorities through arrests and detention.²⁸ The PTA is one example of using a draconian law to detain individuals for years and sometimes decades based on unsubstantiated evidence, including political prisoners detained for years under the PTA and then released without charge. It has also been used to coerce confessions— independent local investigations and judicial pronouncements confirm that torture is often used against minorities to gain these confessions. In addition to the PTA, authorities have resorted to the International Covenant on Civil and Political Rights (ICCPR) Act. Section 3(1) of the ICCPR Act makes it an “offence for a person to propagate war or to advocate national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.” This provision has been used in recent years to arrest and detain comedians, bloggers, and authors on the basis of being critical of Buddhism. In contrast, no action has been taken to hold accountable those who have incited violence against minority communities.

As noted by an educator and activist based in Eastern Province in Sri Lanka, “intolerance and marginalization are evidenced at different levels of government and has seeped into society and media.”²⁹ The inability and unwillingness to address ongoing discrimination and violence incited by extreme Sinhala Buddhist nationalists perpetuates the perception that some are beyond the reach of the law and reinforces a sense of impunity. The appointment of hardline clergy and others to key institutions also sends a message that some are protected by the current government. Such practices have legitimized racist ideologies and practices among state institutions, the media, and society. As mentioned previously, recent years have also seen social media used to spread fake news, misinformation, and disinformation, resulting in the exacerbation of ethno-religious tensions, and in some instances violence. Developments in post war Sri Lanka demonstrate how social media in a society prone to incitement and violence can trigger further violence that may lead to atrocity crimes.

4 How Racism Contributes to Atrocity Risks

Sri Lanka faces several challenges that contribute to atrocity risks. This section expands on some issues raised previously and how discriminatory practices and policies can contribute to atrocity crime risks.

Despite the Constitution guaranteeing equality to all citizens and Article 12 (2) prohibiting discrimination

on the grounds of “race, religion, language, caste, sex, political opinion, place of birth or any one of such grounds”, there are practical challenges faced by individuals and communities. While there are laws against discrimination, there is no legislation which provides and promotes equal opportunities similar to laws found in other commonwealths. This leaves minority groups with no legal recourse. Further, discriminatory practices persist within the private sector and other entities outside the public service.

Over the years, local and international human rights groups and the United Nations have documented discriminatory laws, policies, and practices in Sri Lanka, including how ethnic and religious minorities have been targeted and marginalized by state and non-state actors.³⁰ In her report to the UN Human Rights Council (UNHRC) in 2021, the High Commissioner for Human Rights spoke of early warning signs of a deteriorating human rights situation and heightened risks of future violations, urging member states for a strong prevention agenda.³¹ The High Commissioner highlighted increased militarization of civilian government functions, reversal of constitutional safeguards, accountability challenges, exclusionary rhetoric, intimidation of civil society, and the use of anti-terror laws. The report was debated at the UNHRC and a resolution adopted in 2021 that called for continued monitoring of Sri Lanka’s human rights and reconciliation work, among other measures.

The fact that Sri Lanka has been before the UNHRC for over a decade (the first resolution was adopted in 2012) indicates continuing challenges pertaining to accountability, human rights, and reconciliation. The reports by the High Commissioner, reports by local and international groups, documentation by UN special procedures, and even findings of domestic mechanisms speak to multiple challenges in these broad areas. Some of these issues indicate how ethno-religious conflicts have the potential to trigger further violence.

Ethno-nationalism has informed discriminatory policies and practices over the decades that target minority communities.³² Laws such as the PTA and the ICCPR Act continue to be in place despite evidence that the PTA has been largely used against both Tamil and Muslim minorities,³³ and the ICCPR Act has been weaponized against those critical of Buddhism. Meanwhile, those inciting violence against minorities remain untouched. In 2021, the then government attempted to implement regulations issued under the PTA to address what was termed “de-radicalization” by sending individuals to “rehabilitation” without due process safeguards. This was seen as the latest attempt by the government to use anti-terror laws to target minorities and sustain the narrative of radicalized Islamic groups. It was challenged in the Supreme Court resulting in a stay order which is currently in place. In recent years other problematic proposals have followed such as the draft Anti-Terror Act which had alarming provisions and limited due process safeguards. Public criticism and court challenges have delayed the introduction of such laws and regulations but the fact that successive governments attempt to introduce such draconian laws in post war Sri Lanka speaks to a mindset where protecting civil liberties is not a priority.

This section highlighted some examples of repressive laws, policies, and practices that are informed by ethno-nationalism and target ethnic and religious minorities. The discriminatory policies, laws, and practices have perpetuated incitement and violence with fears of triggers for new conflicts. And as mentioned previously, some social media platforms provided fake news, misinformation, and disinformation that triggered ethno-religious violence including incidents in Aluthgama (2014), Digana (2018) and the post Easter Sunday attacks (2019) targeting the Muslim population. This led to the temporary shutdown of some social media platforms, but no action was taken to hold individual perpetrators accountable. As noted by a former commissioner of a state initiative “Sri Lanka’s inability to address the root causes of conflict and take action against perpetrators of violence continue to fuel racism with the potential for new conflicts to erupt.”³⁴

5 Community Resistance: A Response to Racism

Sri Lanka has a vibrant citizen led resistance that over the decades has used a variety of methods to challenge discriminatory laws, policies, and practices.³⁵ Protests, vigils, peaceful sit-ins, public debates, and public petitions, among other citizen mobilization tactics, have been used to oppose state initiatives. This has included diverse actors—from victim groups and civil society to trade unions, political parties, and professional groups. Most recently an unprecedented economic crisis resulted in thousands of people protesting for several months which ultimately resulted in the resignation of the president and his government.

The citizen mobilization in 2022 (discussed below) was built on Sri Lanka's rich history of political activism. This includes the formation of the Mothers Front in Sri Lanka which raised awareness of enforced disappearances and pushed for accountability.³⁶ Post war protests by the families of the disappeared continued for over 2000 days. Other issues that have seen different forms of mobilization include farming and fishing communities whose livelihoods were affected by disastrous state policies, communities opposing land grabs, and teachers and trade unions who opposed militarization of higher education, as well as those remembering lost loved ones throughout Sri Lanka. The impeachment of the then chief justice and atrocities committed during the war were common grounds that brought together diverse groups to oppose the Mahinda Rajapaksa presidency.³⁷

The democratic regression and ethno-nationalism evident during the Gotabaya Rajapaksa presidency and his mishandling of the economy led to an unprecedented level of mobilization. People from all walks of life were unified: different professional groups and ethnicities, religions and age groups. The first movement to unify Tamil and Muslim groups under the Gotabaya Rajapaksa regime was the Pottuvil to Polikandy march held in February 2021. Thousands united to demand equality and justice for minority communities. The protestors faced surveillance and intimidation and defied court orders to continue the march and make their demands. As protests evolved, so did government efforts to quell dissent through violence, intimidation, and other tactics including arbitrary restrictions.³⁸

The Power of PIL: Public Interest Litigation to Raise Awareness

Protests in Sri Lanka have evolved in recent years beyond traditional street protests to include public interest litigation (PIL), the use of social media, and the arts. Social media in Sri Lanka has injected new levels of energy and creativity into protests and increased engagement among all age groups and regions. This was evident in 2022 when many used social media platforms to raise awareness and to resist repressive tactics.

The use of PIL increased in recent years, with more citizens filing cases to challenge proposed amendments to Sri Lanka's constitutional and legislative framework, and unjust and arbitrary practices. PIL has also informed broader debates among policymakers and the public, raising awareness on important contemporary issues. Social media has helped inform the public of developments in the court room and its implications. PIL also has been used to challenge proposed laws and regulations that provide broad powers to the executive to arrest and detain—arbitrary practices that attempt land appropriation and silence media and critics, among others. In recent years different actors uniting through PIL and other measures have pushed back on such arbitrary action. For example, the 2018 Constitutional Crisis united political parties, civil society, trade unions, and academics to challenge the blatant power grab by Mahinda Rajapaksa which saw the arbitrary ouster of the sitting prime

minister and chaos in governance. In a rare moment of unity, many took to the streets to challenge this in the Supreme Court and Court of Appeal in Sri Lanka. Fifty-two days of activism resulted in a historic judgement that brought an end to the crisis with the resignation of Mahinda Rajapaksa and the reinstallation of Ranil Wickremesinghe as prime minister.

Similarly, the introduction of the 20th Amendment Bill to the Constitution in 2020 which consolidated further power within the executive presidency and weakened independent institutions led diverse actors to unite. Activists acted against the bill by filing legal challenges with the Supreme Court, and used protests, media campaigns, and political debates to express their dissent, forcing the government to introduce several amendments to the bill. Despite having a majority in Parliament, the government was forced to incorporate several of these amendments, a triumph for a confederation of underrepresented groups.

Aragalaya: The Power of the Protests

In 2022, unprecedented crisis reawakened citizen mobilization. Rallies protested shortages of essential items (and long queues to obtain them), the sky rocketing cost of living, and long power outages. These protests continued for several months including the formation of occupation sites such as the one at Galle Face Green (known as “GotaGoGama”) that existed for more than 100 days.³⁹ Remarkably, despite the government imposing emergency measures and using intimidation to deter protests, the peaceful protests continued, ultimately resulting in the resignation of the president and his government.

One year since the Aragalaya, the citizen mobilization continues but at a smaller scale. The space that was created during the Aragalaya raised awareness on other issues including ethno-nationalism, reconciliation, and other issues. For example, the first public remembrance event in the south for the end of the war was held at GotaGoGama in May 2022 and followed by one in another area in Colombo in May 2023.

The Aragalaya was also remarkable as it connected communities from different regions, with several from the north and east joining in the protest. However, there continues to be ambivalence among some in the north and east toward protesters in the south. This is largely due to the lack of support and solidarity toward the victims and affected communities during the war and post war years. The community mobilizations have also raised issues such as continuing poverty and discrimination faced by the Malayaha Tamil community. It has highlighted the low wages received by the community, the lack of services, and discrepancies with language rights. As noted by an activist working with the community “the recent mobilization and activism resulted in attention that has been paid toward the community with some effort to address shortcomings but much is yet to be done to address inequalities.”⁴⁰ The persistent mobilization of victims and communities also has kept the space open to memorialize loved ones lost during the war and post war period despite varied tactics by the state to threaten, intimidate, and restrict memorial spaces.

6 Confronting Racism: Understanding Successes and Challenges

The discrimination and violence over the decades led to the massive mobilization discussed in the previous section. Activism by victims, communities, and others have kept attention on Sri Lanka's multiple challenges and the need for change. This mobilization also pressured several administrations to initiate investigations into specific violence and incidents, and institute structural and legislative reforms. For example, mobilization by victims and others on enforced disappearances led to the appointment of several commissions of inquiry.⁴¹ The pressure for accountability also saw the appointment of other commissions of inquiry such as the Udalagama Commission of Inquiry.⁴² And the push for reforms and steps at reconciliation resulted in the Lessons Learnt and Reconciliation Commission. While there is no definitive answer as to the impact of such state initiatives on victims' search for justice, one must recognize that these initiatives produced findings that recognized violations that occurred during the war and the need for steps to be taken by the authorities.

It is the continuing demands and activism by victims and civil society that has kept international pressure on the government. Failures to deliver on truth, justice, and reconciliation promises in Sri Lanka resulted in several resolutions on Sri Lanka adopted at the UNHRC. Resolution 30/1 is key as it was the first instance where the GOSL acknowledged the need to take measures to recognize and remedy past violations and ensure non-recurrence.⁴³ The result was an ambitious set of proposals including measures to address enforced disappearances, truth and justice, reparations, land releases, security sector reforms, and other confidence building measures. While two mechanisms were established—the Office on Missing Persons and Office for Reparations—questions remain regarding the effectiveness of such mechanisms. In addition, the other two mechanisms are yet to be established.

These promises were possible at a time when people were looking for a change. The peaceful regime change that occurred in 2015 led to much anticipation that the "Yahapalanaya Government" would initiate structural and legislative reforms. There were some encouraging signs including the introduction of the Nineteenth Amendment to the Constitution, some land releases in northern Sri Lanka, singing the national anthem in Tamil at the Independence Day event, and the criminalization of enforced disappearances. Yet many of the promises made are yet to be realized. This is characterized as human rights "half measures."⁴⁴ The failure to fully implement reforms is blamed on a lack of political will and leadership to see through complex issues, as well as internal governance challenges that came to a head in 2018 with the constitutional coup that paralyzed governance for 52 days.

The constitutional coup in 2018 and the Easter Sunday attacks in 2019 exposed the breakdown in communication within the Yahapalanaya Government and internal fissures. It also exacerbated uncertainties and apprehension among many who felt national security and the economy needed to be prioritized. The rhetoric pushed by the Rajapaksa camp and their public relations machinery was able to meet the public appetite for a strong leader, feeding into ethno-nationalism and particular ideologies.⁴⁵ The space for work on co-existence and reconciliation diminished, replaced by a narrative from hardline extremists fueled by fear and ethno-nationalism.

Truth and Justice: The Efforts for Reform and Reconciliation

Recent attempts at truth and justice in Sri Lanka have also exposed the challenges confronted by victims and others. Apart from structural and legal shortcomings, there is a lack of expertise and capacity to deal with complex issues like atrocity crimes. The presence of ethno-nationalism in different spheres is a constant reminder of the need for sustained work to address the root causes of conflict that require long term energy and attention. There is much work necessary to build trust within and across communities. Due to the Aragalaya in 2022, there is greater political awareness among citizens that is now being used by many to hold political actors accountable. This space must be used to mobilize and keep pressure.

Sri Lanka is now confronted with the prospect of establishing a truth and reconciliation commission (TRC). While it is early days, victims and civil society have questioned the need for a TRC when Sri Lanka has had several past commissions resulting in limited implementations of their recommendations. Others also critique the prioritization of a TRC when Sri Lanka is plagued with impunity regarding attention and resources needed to tackle accountability.

In some instances, the courts have played an important role in upholding pluralism and fundamental rights and pushing back on attempts by the state to restrict rights and undermine the rule of law.⁴⁶ The Supreme Court determination on the Thirteenth Amendment to the Constitution was an important moment in jurisprudence that recognized the need for devolution of power within a unified country and acknowledged the demands of minority parties for a power sharing model. Since then, several other determinations and orders from the Supreme Court have recognized the role of provincial councils and the devolved powers. The courts have also heard cases of land appropriation and in some instances urged the state to desist from arbitrary practices that deprive people of their lands (or that they provide compensation when they do so).

Yet in cases where the PTA and the ICCPR Act have been used, the courts have been somewhat hesitant to challenge the state, amplifying a perception that the state is all powerful in determining what falls within national security and religious and racial harmony. That said, recently the Supreme Court has diverged from this position in cases where regulations issued under the PTA (in 2021) and emergency regulations (in 2019 and 2022). Instead it has led to the Supreme Court staying some regulations and granting leave to proceed others, recognizing there is a matter to review. Despite some good news with the judiciary, there are also instances where courts have issued orders to prevent memorialization events in the north and preventing the Tamil people's right to remember their lost loved ones. In other instances, the Supreme Court refused leave to proceed in several fundamental rights applications that challenged the forced cremation policy. This raised concerns as to the Court's position on minority rights.⁴⁷

There are also concerns regarding the selective implementation of laws by the executive arm that targets some communities and protects others. For example, the use of the ICCPR Act in 2023 to target individuals like comedians and bloggers must be contrasted with other recent instances where Buddhist clergy inciting violence on minorities were never held accountable. In addition, authorities have not taken action against Buddhist clergy and others who are accused of land appropriation in the north and east but have threatened action against minorities.

And yet one must acknowledge positive shifts to recognize violence, discrimination, and other practices that target ethnic and religious minorities and push back on racist policies and practices. The role played by community and religious actors in mitigating or preventing violence also must be noted. After the Easter Sunday attacks in 2019, inter-religious groups and community leaders played a key

role in containing some violence and ensuring early warning systems were in place. Local actors have also played a role in the north and east to address inter-religious issues and land conflicts. They have maintained a dialogue within and among communities. More recently, local actors were able to prevent violence from erupting in Trincomalee town and other areas in the east, places that have witnessed violence over the decades. These are examples where local entities were able to play an effective role in preventing conflict, and perhaps can be viewed with some optimism for the future.

7 Conclusion and Recommendations

This case study speaks to continuing challenges pertaining to racism that can contribute to atrocity risks. Sri Lanka's cycles of violence and discriminatory policies and practices make it a fertile ground for potential violence in the future. Several measures can be taken in the short, medium and long-term regarding legal and policy reform, structural measures, and awareness raising. The following recommendations are made to the government of Sri Lanka, international actors (including donors, the UN, and international agencies), and finally to local actors including civil society, community groups, academics, and media.

Recommendations for the Government of Sri Lanka

- Demonstrate political leadership in tackling racism and root causes of conflict. This can be in different ways from making public statements and initiating policy and legal reforms, to demonstrating zero tolerance toward racism, incitement, and violence.
- Take steps to hold perpetrators accountable by initiating independent domestic accountability processes.
- Review and reform institutional frameworks including structural reforms required to address root causes of conflict and lack of accountability.
- Review existing laws and policies that fuel racism and provide reforms to prevent the occurrence of atrocity crimes.
- Ensure full implementation of laws and policies to tackle racism, discrimination, and impunity.
- Support initiatives that focus on awareness raising and citizen engagement and education activities that support and exacerbate racism including fake news, misinformation, disinformation, hate speech, discrimination, and forms of violence.
- Introduce and implement structural and legal reforms to independently monitor traditional media and social media and the distribution of fake news, misinformation, disinformation and hate speech. Include in the reforms powers for content moderation and, if needed, ability to suspend and/or cancel licenses.
- Initiate individual and collective reparations including memorialization for past cycles of violence.

Recommendations for International Actors Including Donors, the UN, and International Agencies

- Support the state's efforts to address racism and have in place effective prevention measures and mechanisms.
- Provide necessary resources and training for local actors including civil society, citizen committees, mosque committees, and media actors in order to combat racism and maintain effective early warning systems.
- Support documentation and other initiatives that capture trends and practices that can inform policy interventions and practical prevention measures.
- Monitor trends of racism and atrocity crimes and explore international measures that can hold governments and individuals accountable including prosecutions, travel bans, and financial sanctions.
- The UN Human Rights Council, European Union, and others to continue to monitor the human rights situation and initiate necessary action to prevent atrocity crimes.
- Provide financial and technical support for early warning systems, awareness raising and education work.

Recommendations for Civil Society, Community Groups, Academics and Media

- Map existing mechanisms at the local/community level, and identify strengths, gaps, and limitations.
- Engage in dialogue with community and religious groups and provide resources for an effective early warning system.
- Develop educational material on Sri Lanka's experiences with violence, root causes of the conflict, and related issues with a focus on engaging youth and the broader public.
- Conduct awareness raising initiatives and citizen education programs on racism, atrocity crimes, and related issues.
- Conduct trainings for media, civil society, academics, and others on identifying triggers/risk factors and ways of mitigating and preventing incitement and violence.

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Endnotes

- 1 The following case study has been written by an independent consultant on behalf of the Global Initiative for Justice, Truth and Reconciliation (GIJTR). This case study is informed by a combination of desktop research, document analysis and interviews. It therefore reflects these perspectives and findings, as compiled and written by the consulting author(s). Interviewees have been anonymized to ensure their safety and privacy but GIJTR extends its gratitude for the time and participation of all interviewees.
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