Research Report

A Study of Impunity in Postcolonial Sri Lanka

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impunity watch

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About Impunity Watch

Impunity Watch (IW) is a Netherlands-based, international non-profit organisation seeking to promote accountability for atrocities in countries emerging from a violent past. IW conducts periodic and sustained research into the root causes of impunity that includes the voices of affected communities to produce research-based policy advice on processes intended to enforce their rights to truth, justice, reparations and non-recurrence. IW works closely with civil society organisations to increase their influence on the creation and implementation of related policies. IW runs 'Country Programmes' in Guatemala and Burundi and a 'Perspectives Programme' involving comparative research in multiple post-conflict countries on specific thematic aspects of impunity. The present Research Report applies IW's Research Instrument to produce an introductory study of impunity in Sri Lanka.

Cover photo by A. Davey. Source: flickr. A Votive Lamp in Sri Lanka.

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Abbreviations

AI	Amnesty International
COI	Commission of Inquiry
CRM	Civil Rights Movement
DIG	Deputy Inspector General of Police
DIU	Disappearances Investigation Unit
GoSL	Government of Sri Lanka
HRW	Human Rights Watch
ICG	International Crisis Group
ICJ	International Commission of Jurists
IGP	Inspector General of Police
IHL	International Humanitarian Law
IW	Impunity Watch
JVP	Janatha Vimukthi Peramuna
LLRC	Lessons Learnt and Reconciliation Commission
LTTE	Liberation Tigers of Tamil Eelam
MPU	Missing Persons Unit
PSO	Public Security Ordinance
PTA	Prevention of Terrorism Act
SP	Superintendent of Police
TULF	Tamil United Liberation Front
UN	United Nations
UNGA	United Nations General Assembly
UNSC	United Nations Security Council
UPR	Universal Periodic Review

Executive Summary

This paper examines the nature and extent of impunity in postcolonial Sri Lanka and identifies obstacles to accountability. The analysis focuses on three episodes of political violence – the anti-Tamil riots of 1983; the second Janatha Vimukthi Peramuna (JVP) insurrection during 1987-1989; and the final military operations conducted by the Government of Sri Lanka (GoSL) against the separatist Liberation Tigers of Tamil Eelam (LTTE) in 2009. An overview of the normative framework within which these violent episodes occurred is followed by an analysis of each episode in terms of the accountability mechanism to which it gave rise; the political will (or lack thereof) manifested by State actors to hold perpetrators accountable; and its legacy or long-term socio-political and cultural impact. The paper relies on two analytical tools throughout: the Research Instrument developed by Impunity Watch (2007) and the United Nations' Updated Set of Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity (2005).

Normative Framework: As a member State of the United Nations and a signatory to several multilateral human rights treaties, Sri Lanka has undertaken to comply with international human rights and humanitarian legal regimes. However, Sri Lanka's domestic security legislation has sometimes undermined its international obligations. Two pieces of security legislation are particularly relevant in this regard – the Public Security Ordinance of 1947 (which provides for the declaration of a state of emergency and the issuance of emergency regulations) and the Prevention of Terrorism Act of 1979. Both pieces of legislation facilitate impunity by virtue of provisions that bar judicial review of Executive action and grant State actors immunity from legal responsibility for acts committed in 'good faith'. Furthermore, the Prevention of Terrorism Act does not provide a clear definition of unlawful activity, which, together with the broad powers of arrest and detention granted to security personnel, compromises human security. If accountability is to be achieved, the GoSL must commit to repealing or amending these provisions.

Accountability Mechanisms: Commissions of Inquiry have been the preferred mechanisms of accountability in the aftermath of political violence during the postcolonial era. Some Commissions have fulfilled their truth-seeking function with relative success. In general terms, however, Commissions of Inquiry have not contributed to any meaningful reduction of impunity in Sri Lanka. The Commissions of Inquiry Act of 1948 in principle undermines the independence and impartiality of Commissions of Inquiry by granting the Executive absolute authority to determine mandates and appoint Commissioners. The work of Commissions has been frequently hampered by systemic impunity in the security and justice sectors, as well as the lack of an adequate witness protection system. Furthermore, there is a serious lack of public awareness about the findings and recommendations of Commissions of Inquiry. This is partly due to the GoSL's failure to disseminate the Commissions' final reports widely. Commissions of Inquiry cannot be effective accountability mechanisms unless the Commissions of Inquiry Act is overhauled to place Commissions beyond Executive control. The GoSL must also take measures to curb impunity in the security and justice sectors, and enact comprehensive witness protection legislation without delay.

Political Will: The lack of political will is undoubtedly the greatest obstacle to accountability in Sri Lanka. Successive governing regimes have failed to investigate and prosecute the perpetrators of violations, grant sufficient compensation to victims, and take necessary measures to prevent the recurrence of violence. The investigation and prosecution of perpetrators is obstructed by systemic impunity in the security and justice sectors as manifested by the complicity of State actors in human rights abuses and violations of humanitarian law; the unwillingness of law enforcement authorities to record evidence and conduct investigations that might implicate State actors; the failure to enact adequate witness protection legislation; and the politicization of the office of the Attorney General. The failure of several governments to implement the recommendations made by Commissions of Inquiry is further evidence of the lack of

political will to combat impunity. To reduce impunity, the GoSL must undertake comprehensive reform of the security and justice sectors and implement the recommendations made by Commissions of Inquiry with regard to accountability. It is important to note that the GoSL's lack of political will to ensure accountability has been compounded by the international community's failure to formulate a coherent plan of action to prevent violations of human rights and humanitarian law and combat impunity in Sri Lanka.

Legacy: Postcolonial governments have repeatedly failed to preserve the collective memory of past atrocities and adequately acknowledge the victims and survivors of violence. Nor have political leaders initiated or facilitated an inclusive and productive national dialogue about past violence. The unhappy legacy of political violence in Sri Lanka is the erosion of the rule of law and constitutionalism; the loss of public trust in law enforcement authorities and State institutions; the polarization of ethnic identities; and the insidious development of an exclusionary nationalist ideology.

Impunity has become entrenched in Sri Lankan politics and culture and cannot be easily dislodged. While recent events pertaining to the GoSL's ongoing attempt to impeach Sri Lanka's Chief Justice demonstrate a strong desire for accountability on the part of civil society, it is unlikely that domestic mechanisms are robust enough to ensure widespread accountability in the long-term. It is, therefore, necessary to contemplate how the international community can compel and support action on impunity in Sri Lanka.

Introduction

Situated just off the south-eastern coast of India, Sri Lanka is a multi-ethnic nation of approximately twenty-one million people.[1] Known as 'Ceylon' until 1972, the island was partially colonized by the Portuguese and the Dutch in the 16th and 17th centuries respectively. The arrival of the British in 1796 ended Dutch colonial rule, and Sri Lanka became a British Crown Colony in 1815. Universal suffrage was granted in 1931, followed by independence in 1948. Sri Lanka became a member State of the United Nations in 1955.

The postcolonial history of Sri Lanka has been overshadowed by recurrent political violence, which has squandered the promise of the country's early years as an independent, pluralistic democracy. While Sri Lanka's sovereignty has survived intact, its citizens have fared less well – the instigators and perpetrators of political violence (and consequent human rights abuses and violations of humanitarian law) are rarely investigated or held accountable; the victims and survivors are seldom acknowledged or adequately compensated; and guarantees of non-recurrence are largely absent. These features comprise the phenomenon of impunity, as conceived by the United Nations in its Updated Set of Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity (hereinafter 'UN Principles on Impunity'):

> "Impunity" means the impossibility, de jure or de facto, of bringing the perpetrators of violations to account – whether in criminal, civil, administrative or disciplinary proceedings – since they are not subject to any inquiry that might lead to their being accused, arrested, tried and, if found guilty, sentenced to appropriate penalties, and to making reparations to their victims.
>
> (2005)

I have chosen to examine the phenomenon of impunity in postcolonial Sri Lanka by analyzing three episodes of political violence – the anti-Tamil riots of 1983; the second Janatha Vimukthi Peramuna (JVP) insurrection during 1987-1989; and the final military operations conducted by the Government of Sri Lanka (GoSL) against the separatist Liberation Tigers of Tamil Eelam (LTTE) in 2009. The rationale underlying the selection of these particular episodes is threefold: firstly, each episode represents a watershed moment in Sri Lanka's history when the political choices of the governing regime had a powerful impact on the relationship between the State and its fractured citizenry; secondly, each episode was characterized by extreme violence and undermined the cohesiveness and resilience of civil society as well as public trust in State actors and institutions; finally, in each case, international censure (and to some extent, domestic pressure) prompted the creation of domestic accountability mechanisms, which provide insight as to the nature and extent of impunity in Sri Lanka. I do not claim that these are the only episodes of political violence worthy of consideration. I simply believe that their commonalities (or important differences) provide this examination of a complex socio-political phenomenon with the requisite analytical traction. I rely on the Research Instrument developed by Impunity Watch (2007) (hereinafter 'IW Research Instrument') and the UN Principles on Impunity (2005) as analytical tools throughout this paper. It is important to note at the outset that given the constraints of time and resources, I have used the IW Research Instrument as a conceptual guide rather than a blueprint for this study.[2]

[1] According to the 1981 census Sinhalese, Sri Lankan Tamils, Indian Tamils, and Sri Lankan Moors comprise 73.9%, 12.7%, 5.5%, and 7.1% of Sri Lanka's population, respectively (Central Bank of Sri Lanka 2012: 1). The 2001 census was conducted in only 18 of Sri Lanka's 25 provinces – estimates put Sinhalese, Sri Lankan Tamils, Indian Tamils, and Sri Lankan Moors at 74.5%, 11.9%, 4.6%, and 8.3% respectively (Department of Census and Statistics Sri Lanka 2011: 9).

[2] Instead of organizing my analysis around the six criteria of the IW Research Instrument (normative framework; institutional resources and capacity; institutional independence and willingness; political will; entrenched interests; and societal factors) I use the four criteria of normative framework; accountability mechanism; political will; and legacy. The 'accountability mechanism' criterion is a modification of the original criteria of 'institutional independence and willingness' and 'institutional resources and capacity'. I

The goal of this paper is to examine the phenomenon of impunity in the context of political violence in postcolonial Sri Lanka and identify obstacles to accountability. In Part I, I discuss the normative framework within which political violence occurs – I provide an overview of the international legal regime applicable to Sri Lanka and examine key pieces of domestic legislation enacted in response to communal strife and challenges to political authority. Part II contains a three-pronged analysis of each violent episode, focusing on the accountability mechanism created by the State in response to violence; the political will to ensure accountability; and the legacy, or long-term socio-political and cultural impact of violence and subsequent efforts to ensure accountability. My discussion of the legacy of the most recent episode of political violence – the final phase of the armed conflict between the GoSL and the LTTE in 2009 – focuses on the current state of impunity in Sri Lanka. I also consider whether the international community should play a role in action to combat impunity.

have chosen to examine independence, willingness, and capacity with regard to just one type of institution, which has been Sri Lanka's default accountability mechanism in the postcolonial era – the Commission of Inquiry. The criterion of 'political will' subsumes the original criterion of 'entrenched interests'. The new criterion of 'legacy' subsumes the original criterion of 'societal factors' and is intended to consider the long-term impact of political violence on Sri Lankan society. I believe these modifications preserve the spirit and purpose of Impunity Watch's Research Instrument while reducing its scale to better suit this introductory study of impunity in Sri Lanka.

Part I: Normative Framework

1. International Law

That Sri Lanka has clear obligations to adhere to international human rights and humanitarian legal standards is beyond dispute. Sri Lanka is a State party to several multilateral treaties[3] aimed at protecting human rights as well as the 1949 Geneva Conventions (though not Additional Protocols I or II), and is bound by customary international law applicable to non-international armed conflicts (ICJ 2012: 11). It is important to emphasize that Sri Lanka has *voluntarily* undertaken to safeguard human rights and comply with humanitarian law by virtue of its accession to multilateral treaties and its membership in international organizations. Therefore, it cannot reasonably be argued that the requirement to uphold these obligations at all times impinges upon Sri Lanka's sovereignty in any way.

Sri Lanka has done little to honour its international commitments with regard to protecting human rights beyond acceding to treaties – its dismal human rights record has been the subject of sustained criticism by the international community for decades.[4] Most egregious human right violations in Sri Lanka, such as arbitrary arrest and detention; enforced disappearance; and torture, have occurred in the context of states of emergency declared in response to threats to national security. A state of emergency is not, in itself, a violation of international law, which provides for governments to take 'exceptional measures' curtailing certain rights and freedoms in response to grave political crises (ICJ 2012: 21). However, these measures '… must be limited in time, proportional and necessary to the legitimate aim pursued' (ICJ 2012: 22). Furthermore, certain rights are non-derogable, even during a state of emergency:

> Where human rights obligations constitute peremptory norms of international law (*jus cogens*), including the prohibitions on torture and ill-treatment, extrajudicial or summary killings, enforced disappearances, war crimes, and crimes against humanity, Sri Lanka must guarantee such rights at all times and in all circumstances without exception.
>
> (ICJ 2012: 11).

Similarly, international humanitarian law (IHL) regulates, rather than prohibits, the conduct of armed conflict. International criticism of the GoSL's final military operations against the LTTE in 2009 does not concern Sri Lanka's right to respond militarily to a legitimate security threat, but rather, the precise manner of this response.[5] As stated by the Panel of Experts appointed by the UN Secretary General to advise him on issues of accountability in Sri Lanka:

> The State has a right under international law to ensure its national security and to defend itself against armed attacks, including those of insurgents who may engage in acts of terrorism. Those ends do not, however, justify all means to achieve them; all action for those legitimate purposes must comply with the requirements of international law.
>
> (Darusman, Ratner, and Sooka 2011: 54-55)

[3] Notable treaties to which Sri Lanka has acceded are: the International Covenant on Civil and Political Rights (ICCPR), including its first optional protocol; the Convention against Torture and other Cruel, Inhumane and Degrading Treatment or Punishment (CAT); the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD); and the International Convention on Economic, Social and Cultural Rights (ICESCR) (ICJ 2012: 10). Importantly, Sri Lanka is **not** a State party to the International Convention for the Protection of All Persons from Enforced Disappearances (ICJ 2012: 10) or the Rome Statute of the International Criminal Court.

[4] For example, the human rights situation in Sri Lanka is criticized in every Human Rights Watch annual World Report published between 1989 and 2011, save for the 1995 and 2003 reports. These reports are available at Human Rights Watch, *Previous World Reports* <http://www.hrw.org/node/79288> accessed 10 January 2013.

[5] I discuss the criticism levelled at the GoSL for violations of international humanitarian law in Part II (3) of this paper, which focuses on the final phase of the armed conflict between the GoSL and LTTE.

In its final report, the Panel of Experts outlines the specific provisions and principles of IHL allegedly violated by the GoSL, including, but not limited to: the provisions of Common Article 3 of the 1949 Geneva Conventions (which pertains to non-international armed conflicts) prohibiting violence to life and person;[6] requiring care of the wounded and sick;[7] and prohibiting outrages on personal dignity,[8] as well as the IHL principles of distinction,[9] proportionality,[10] and precaution in attack[11] (Darusman, Ratner, and Sooka 2011: 55-64).

If and when violations of human rights or humanitarian law do occur, international law obliges States to investigate these violations and hold the perpetrators accountable. The UN Principles on Impunity hold that victims of violations have a right to accountability, which is conceptualized as truth, justice, reparations, and guarantees of non-recurrence:

> Impunity arises from a failure by States to meet their obligations to investigate violations; to take appropriate measures in respect of the perpetrators, particularly in the area of justice, by ensuring that those suspected of criminal responsibility are prosecuted, tried and duly punished; to provide victims with effective remedies and to ensure that they receive reparation for the injuries suffered; to ensure the inalienable right to know the truth about violations; and to take other necessary steps to prevent a recurrence of violations.
>
> (UN Principles on Impunity 2005: Principle 1)

According to Principle 20 of the UN Principles on Impunity, States are primarily responsible for ensuring accountability for serious crimes under international law (2005). However, if the independence and impartiality of the national courts are compromised or these courts are 'materially unable or unwilling' to investigate and prosecute these crimes, then '… international and internationalized tribunals may exercise concurrent jurisdiction …' (UN Principles on Impunity 2005: Principle 20). Principle 20 is particularly relevant to Sri Lanka, where successive political regimes have failed to ensure accountability in the aftermath of political violence.

Finally, States must refrain from granting individuals immunity from legal responsibility for criminal acts on the basis of their official status. This position is articulated in the UN Principles on Impunity, which state that 'the official status of the perpetrator of a crime under international law – even if acting as head of State or Government – does not exempt him or her from criminal or other responsibility and is not grounds for a reduction of sentence' (2005: Principle 27(c)). Again, this issue is of particular importance in the Sri Lankan context – numerous examples discussed in Part II of this paper illustrate how perpetrators of grave human rights abuses routinely escape justice on account of their official status.

The failure to prevent human rights and humanitarian law violations and ensure accountability in the aftermath of such violations constitutes a clear breach of Sri Lanka's international legal obligations. In the

[6] The Panel of Experts cites the alleged killing of civilians through widespread shelling and the alleged execution of unarmed enemy combatants taken into custody as violations of this provision (2011: 55-56).
[7] According to the Panel of Experts, the shelling of hospitals and humanitarian objects and the restriction of the provision of medical supplies through humanitarian aid convoys constitute violations of this provision (2011: 59-60).
[8] The Panel of Experts cites 'credible allegations' that members of the Sri Lanka Army may have committed acts of sexual violence against women and girls as a possible violation of this provision (2011: 60).
[9] IHL requires parties to a conflict to distinguish between combatants and civilians at all times (ICRC 2005: Rule 1). The Panel of Experts references 'credible allegations' that the GoSL did not respect this principle, which resulted in a large number of civilian casualties (2011: 56).
[10] IHL prohibits launching attacks 'which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated' (ICRC 2005: Rule 14). The Panel of Experts cites to preliminary evidence that attacks on No Fire Zones were ' … broadly disproportionate to the military advantage anticipated …' (2011: 58).
[11] IHL requires all parties to a conflict to take 'all feasible precautions' to avoid or minimize 'incidental loss of civilian life, injury to civilians and damage to civilian objects' (ICRC 2005: Rule 15). The Panel of Experts alleges that the Sri Lanka Army did not take sufficient precautions prior to launching specific attacks and failed to provide civilians with any or adequate warning of attacks, in violation of this principle (2011: 59).

following section, I consider the domestic legislative framework within which the violent episodes discussed in Part II occurred. My analysis will demonstrate how domestic security legislation enacted in Sri Lanka undermines the internationally recognized human rights and humanitarian legal standards discussed above, and facilitates impunity.

2. Domestic Law

Sri Lanka's political woes were created and compounded by the nationalism[12] and self-interest of its earliest leaders. Successive postcolonial governments faced socio-political challenges that were not unusual in light of Sri Lanka's multi-ethnic, multi-religious, caste and class-conscious society. Instead of responding in a spirit of accommodation, however, governments frequently exploited these challenges for political gain. The legislative enactments considered in this section created a socio-political environment conducive to violence and allowed impunity to thrive in their wake.

The first of these enactments concerned the Plantation Tamils, who are a '… community of people … brought by the British from South India to work on coffee, tea, and rubber plantations … [who are] culturally and socioeconomically different from the indigenous Tamils of the north and east of Sri Lanka' (Manoharan 2006: 13, 48). The first political administration of independent Sri Lanka rendered this community 'both stateless and voteless' by several pieces of legislation (Manoharan 2006: 13).[13] Prominent amongst these is the Ceylon Citizenship Act of 1948.

The provisions of the Citizenship Act disenfranchised a large proportion of Plantation Tamils by requiring that a person born in Ceylon and claiming citizenship by descent prove that his father was born in Ceylon or that his paternal grandfather and paternal great-grandfather were born in Ceylon (Citizenship Act 1948: Section 4(1); De Silva Wijeyeratne 1998: 44). A person born outside Ceylon would need to prove that either his father and paternal grandfather or paternal grandfather and great-grand father were born in Ceylon (Citizenship Act 1948: Section 4(2); De Silva Wijeyeratne 1998: 44). The fact that the registration of births only began in Ceylon in 1875 compounded the difficulty of obtaining the necessary proof (De Silva Wijeyeratne 1998: 45).

These legislative acts were followed in 1956 by the infamous 'Sinhala-Only Act', which made Sinhala the sole official language of Ceylon[14] and impacted the education and employment opportunities of the Tamil community (Manoharan 2006: 14). In 1957, the Prime Minister of Ceylon bowed to pressure from Sinhala Buddhist nationalist elements and unilaterally abrogated the Bandaranaike-Chelvanayagam Pact, which sought to address the growing concerns of Tamils (Manoharan 2006: 14).[15] A further attempt to address these concerns failed in 1965, when the Senanayake-Chelvanayagam Pact was not implemented (Manoharan 2006: 14).[16] The ICG calls attention to the rapidly shrinking space for inter-ethnic accommodation in Sri Lanka as the republican constitutions of 1972 and 1978 'promoted Sinhalese Buddhist hegemony, further centralized the state and failed to provide adequate protection of minority rights' (2007: 6).

[12] I refer here to both Sinhalese Buddhist and Tamil nationalism. The International Crisis Group provides a succinct description of Sinhalese nationalism and its role in Sri Lankan politics: 'Sinhala nationalism goes back to the British period, when it was part of a broader anti-colonial, anti-foreign movement, accentuated by Buddhist revivalism. It grew stronger with independence and electoral democracy … it has been a powerful unifying force, giving radical parties a platform for populist agitation and established politicians a diversion from their failure to address economic weakness, social concerns and pervasive corruption' (2007: i). Tamil nationalism – as articulated in the Vaddukoddai Resolution adopted by the Tamil United Liberation Front (TULF) in 1976 – advocated the creation of a separate State, Tamil Eelam, within Sri Lanka (TULF 1976). It justified separatism as the only viable solution to Sinhalese oppression and held that Sri Lankan Tamils were 'a nation distinct and apart from Sinhalese' by virtue of possessing a separate language, religion, culture, and 'history of independent existence as a separate State' (TULF 1976).

[13] The Indian or Plantation Tamils were granted Sri Lankan citizenship in 2003 (Minorities at Risk Project 2003).

[14] The Thirteenth Amendment to The Constitution of the Democratic Socialist Republic of Sri Lanka (1978) gives Tamil the status of an official language (PRIU 2003).

[15] According to the International Crisis Group (ICG), the Bandaranaike-Chelvanayagam Pact was a victim of political expediency as the opposition United National Party (UNP) mobilized Sinhala Buddhist opinion against the pact (2007: 6).

[16] The ICG writes that this pact 'covered familiar ground' providing for the use of the Tamil language with regard to administrative matters and legal proceedings in the Tamil-dominated Northern and Eastern provinces and proposing a framework for the devolution of power through district councils (2007: 6).

The repeated failure of moderate Tamil politicians to secure the rights of their community alienated a segment of Tamil youth who eventually turned to militarism (Manoharan 2006: 17). Correspondingly, the indifference of Sinhalese political leaders to the concerns and aspirations of the Tamil minority gave way to a hostility best exemplified by draconian legislation such as the Emergency Regulations issued under the Public Security Ordinance No. 25 of 1947 and the Prevention of Terrorism Act of 1979, which I consider in greater detail below.

A. Emergency Regulations and the Public Security Ordinance (PSO) of 1947

The Public Security Ordinance (PSO) was the final law enacted under British colonial rule to manage political dissent (ICJ 2009: ii). It was a response to a series of strikes organized by left-wing political parties, which made significant gains in the general elections of 1947 (De Silva 2005: 604). Coomaraswamy writes that from the government's perspective, '… public services such as food distribution, transportation, and communication services were essential to the nation's survival and protecting them justified overriding civil liberties through emergency legislation' (2004: 274). According to Manoharan, however, 'the situation at that time did not seem to call for stringent provisions such as detention without trial, search and seizure, immunity from prosecution for security forces, [and] absence of judicial scrutiny …' (2006: 22-23). The PSO was passed by parliament in 1947 as an 'urgent bill' in just 90 minutes; it was incorporated into the republican constitution in 1972 (Manoharan 2006: 22-23).

Under Part 1 of the PSO, the Executive has the power to issue a Proclamation of Emergency, which must be renewed by parliament every month (ICJ 2012: 29). Part II (Section 5(1)) empowers the Executive to issue emergency regulations that '… appear to him to be necessary or expedient in the interests of public security and the preservation of public order and the suppression of mutiny, riot or civil commotion, or for the maintenance of supplies and services essential to the life of the community' (PSO 1947). Since the first declaration of a state of emergency in 1958, Sri Lanka operated under emergency rule with intermittent lapses (Coomaraswamy 2004: 272-273) until August 2011, when the Sri Lankan parliament finally allowed the regulations to expire (HRW 2011a).[17] While some emergency regulations constituted a proportionate response to national security threats, others significantly endangered the protection of human rights (Coomaraswamy 2004: 273).

Several provisions of the PSO facilitate impunity. Chief amongst these are the provisions which bar the actions of the Executive from judicial review in contravention of international legal standards (ICJ 2012: 29). For example:

> Where the provisions of Part II of this Ordinance are or have been in operation during any period by virtue of a Proclamation under section 2, the fact of the existence or imminence, during that period, of a state of public emergency shall not be called in question in any court.
>
> (ICJ 2012: 29; PSO 1947: Part I, Section 3)
>
> No emergency regulation, and no order, rule or direction made or given thereunder shall be called in question in any court.
>
> (ICJ 2012: 29; PSO 1947: Part I, Section 8)

Emergency regulations issued under the PSO also contain provisions forbidding judicial scrutiny of the actions of State actors. For example, Regulation 19 of the 'Emergency (Miscellaneous Provisions and Powers) Regulations, No. 1 of 2005' (no longer in force) which allowed the Secretary of Defence to

[17] This proved to be a hollow gesture, however, since the GoSL promptly enacted new regulations under the Prevention of Terrorism Act (PTA 1979) (HRW 2011a; ICJ 2012: 40). See ICJ 2012: 37-40 for a detailed discussion of pertinent emergency regulations dating back to 2005.

arbitrarily order the detention of an individual to prevent him 'from acting in any manner prejudicial to the national security or to the maintenance of public order …' (ICJ 2012: 37), held that such an order could not '… be called in question in any court on any ground whatsoever' (ICJ 2012: 38).

The PSO also contains immunity provisions pertaining to the actions of State actors, in direct violation of Principle 27 of the UN Principles on Impunity discussed previously. The ICJ calls attention to Sections 9 and 23 of the PSO in this regard:

> No prosecution or other criminal proceeding against any person for any act purporting to be done under any provision of any emergency regulation or of any order or direction made or given thereunder shall be instituted in any court except by, or with the written sanction of, the Attorney-General; and no suit, prosecution or other proceeding, civil or criminal, shall lie against any person *for any act in good faith done* in pursuance or supposed pursuance of any such provision. (emphasis added)
>
> (ICJ 2012: 30; PSO 1947: Part II, Section 9)
>
> No prosecution or other criminal proceeding against any person for any act purporting to be done under any provision of this Part [III – Special Power of the President] or of any Order made thereunder shall be instituted in any court except by, or with the written sanction of, the Attorney-General; and no such suit, prosecution or other proceeding, civil or criminal, shall lie against any person *for any act in good faith done* in pursuance or supposed pursuance of any such provision. (emphasis added)
>
> (ICJ 2012: 30; PSO 1947: Part III, Section 23)

Emergency regulations issued under the PSO have also contained immunity clauses. For example, Regulation 19 of 'The Emergency (Prevention and Prohibition of Terrorism and Specified Terrorist Activities) Regulations No. 07 of 2006' (no longer in force) declared that 'no action or suit shall lie against any Public Servant or any other person specifically authorized by the Government of Sri Lanka to take action in terms of these regulations, provided that such person has acted in good faith and in the discharge of his official duties' (ICJ 2012: 38).

The absence of judicial review of the actions of public officials and the granting of immunity from investigation or prosecution to certain classes of individuals (e.g. State actors) are key indicators of impunity (IW Research Instrument 2007: 12, 18). Disallowing judicial scrutiny of the orders and actions of the Executive as well as the substance of emergency regulations makes it difficult to prove the misconduct of State officials or establish the facts surrounding violations that occur as a consequence of these regulations. This clearly jeopardizes a victim's right to truth and justice, which are key components of accountability (UN Principles on Impunity 2005). Immunity provisions such as the 'good faith' exemptions described above give tacit permission for State actors to commit egregious acts, secure in the knowledge that they will not be held accountable. This expectation of immunity is reflected in the comment of an Army Commander who claimed that the purpose of emergency regulations allowing the disposal of dead bodies without post-mortem was to avoid 'unnecessary legal complications to the security forces that arise if inquests were conducted by medical practitioners' (Manoharan 2006: 36).

Despite its provisions empowering public officials to act arbitrarily and without fear of legal repercussions, the PSO was deemed inadequate to deal with the security threats Sri Lanka faced in the 1970s, paving the way for the infamous Prevention of Terrorism Act. I now turn to a discussion of its key provisions.

B. Prevention of Terrorism (Temporary Provisions) Act No. 48 of 1979

The Prevention of Terrorism Act (PTA) was enacted in 1979 to '… eliminate threats to a unified Sri Lanka' (Coomaraswamy 2004: 275) and remains in force today.[18] It must be stated that the State faced credible threats on two fronts during this time – the Sinhalese-Marxist revolutionary movement was not destroyed despite the failure of the 1971 Janatha Vimukthi Peramuna (JVP) uprising;[19] and the failure to address Tamil grievances had given rise to a secessionist movement of Tamil youth (Coomaraswamy 2004: 275). The GoSL adopted an uncompromising position on the issue of terrorism with the passage of this bill. Anandatissa de Alwis, Minister of Justice at the time the PTA was enacted, stated: 'Terrorism has to be put down; discussion comes afterwards … you have to disarm him [the terrorist] before you can talk to him, and that is what this bill seeks to do'[20] (Manoharan 2006: 26-27).

Like the PSO, the PTA was passed in a single day, which did not allow parliamentarians sufficient time to debate its contents (Manoharan 2006: 28). Furthermore, Tamil parliamentarians were boycotting parliament on the day the bill was passed (Manoharan 2006: 28). The Supreme Court was given only 24 hours to review the bill, and was not permitted to rule on the constitutionality of its provisions because it was due to be approved by a two-thirds majority in parliament (ICJ 2012: 31-32).

The PTA gives State actors carte blanche to act in the (proclaimed) interest of national security. Its provisions undermine human security and encourage impunity. The broad powers of arrest and detention conferred upon State actors are particularly worrisome. For example, the PTA empowers the Minister of Defence to order the detention of an individual for up to 18 months 'in such place and subject to such conditions as may be determined by the Minister' if he merely has 'reason to believe or suspect' that the individual is 'connected with or concerned in any unlawful activity' (PTA 1979, Part III, Section 9(1)). The ICJ points out that the phrase 'connected with or concerned in any unlawful activity' is ill-defined, and emphasizes that a State can *never* arbitrarily detain a person under international law, and that '… the grounds or basis for detention must always be clear and specific enough that an ordinary person would know which actions would trigger detention' (2012: 35-36).

Manoharan describes the PTA's arrest and detention provisions as 'blank checks' that vest far too much discretion in State security personnel (2006: 32-33). This is especially dangerous in light of the largely mono-ethnic character of the security forces[21] and the fostering of ethnic prejudices this may entail. The manner in which such discretionary powers can lead to human rights abuses is illustrated by a police sergeant's explanation of how to determine whether someone is engaged in unlawful activity: 'It is simple! A young person with [a] short haircut, dark in complexion and wearing 'Bata' chapels [footwear] must be a terrorist' (Manoharan 2006: 54).

The PTA follows in the footsteps of the PSO by prohibiting judicial review of the actions of the Executive. According to Section 10, the Minister's arbitrary orders pertaining to the arrest and detention of any individual '… shall be final and shall not be called in question in any court or tribunal by way of writ or otherwise' (PTA 1979: Part III; ICJ 2012: 33). Additionally, Section 11(1) of the PTA allows the Minister to 'curtail the rights of citizens with almost no accountability' (ICJ 2012: 33) allowing him or her to impose prohibitions and restrictions on an individual's movement; places of residence and employment; travel

[18] The PTA was enacted as a temporary measure, but became a permanent measure in 1982 (Coomaraswamy 2004: 276).
[19] The first JVP insurrection occurred in April 1971 and was short-lived. According to Manoharan, the modus operandi of the JVP was to 'create confusion by capturing all police stations and thus take power' (2006: 21). This attempt was thwarted by the GoSL, which imposed a state of emergency and arrested JVP leaders (Manoharan 2006: 21). Gunasekera writes that 'the rebels did not succeed in assassinating a single prominent member of the ruling coalition ... it cannot be credibly argued that they posed anywhere as serious a threat to state power as they were to do in 1987-90' (1999: 66).
[20] Statement by Anandatissa de Alwis. *Hansard* (Parliamentary Debates). 19 July 1979. Cols. 1, 506-7.
[21] See Horowitz (1980: 69, 74) for an explanation of how the 'sinhalization' of the Sri Lankan armed forces occurred. A 1996 estimate of the ethnic composition of the officer corps of the Army, Navy, and Air Force put Sinhalese at 97.3%, 97.1%, and 95.6% respectively (De Silva 2000: 154). A 2000 estimate showed that Sinhalese in the officer corps and other ranks in all the services ranged from 95%-98% (De Silva 2001: 18).

within and without Sri Lanka; and activities or membership in any organizations or associations (PTA 1979, Part III, Section 11 (1)).

The PTA contains immunity provisions similar to those found in the PSO. Section 26 shields State actors and their associates from legal responsibility for acts done in 'good faith':

> No suit, prosecution or other proceeding, civil or criminal, shall lie against any officer or person for any act or thing in good faith done or purported to be done in pursuance or supposed pursuance of any order made or direction given under this Act.
>
> (PTA 1979: Part VIII, Section 26).

As discussed with regard to the PSO, the ban on judicial review of Executive orders and actions and the granting of immunity for acts committed in an official capacity are clear indications of impunity (IW Research Instrument 2007: 12, 18). Additionally, the PTA's vague characterization of unlawful activity and the broad discretionary powers granted to security personnel render ordinary citizens vulnerable to human rights abuses. All these factors undermine the right of victims (and the general public) to know the facts pertaining to particular violations and hold the perpetrators accountable.

Finally, Section 28 of the PTA grants it supremacy over all other domestic laws, declaring that its provisions '… shall have effect notwithstanding anything contained in any other written law …' and holding that these provisions will prevail in the event of ' … any conflict or inconsistency …' with any other written law (PTA 1979: Part VIII). What was originally intended as a temporary measure has become a permanent fixture in Sri Lanka's legal landscape and fosters impunity, which is the hallmark of political violence in Sri Lanka.

In Part II of this paper, I focus on three significant episodes of political violence in the postcolonial era. I emphasize how successive governments have sacrificed opportunities to ensure accountability and unite the country's ethno-religious communities by favouring political expediency over true statesmanship and nation-building. As will be demonstrated, impunity in Sri Lanka is largely a function of this single-minded pursuit of political power and thrives because this power can no longer be adequately checked.

Part II: Three Violent Episodes in Sri Lanka's Postcolonial History

1. The 1983 Riots

The riots of 1983 were not the first episode of anti-Tamil communal violence in Sri Lanka,[22] but easily surpassed previous episodes of such violence in both scale and intensity (De Silva 2000: 142). It is estimated that between 300 and 2,000 Tamils were killed in a matter of days (Pavey 2008: 6). There are differing opinions as to how the riots of 1983 started. While the report of the Presidential Truth Commission on Ethnic Violence (hereinafter 'PTC Report') states that the proximate cause of the riots was the killing of thirteen Sinhalese soldiers in a terrorist attack in the North (2002: 15), many believe that the riots were not spontaneous and were instead orchestrated by certain political leaders. For example, a report published by the International Commission of Jurists in 1984 states:

> Clearly, this was not a spontaneous upsurge of communal hatred among the Sinhala people - nor was it, as has been suggested in some quarters, a popular response to the killing of 13 soldiers in an ambush by Tamil Tigers on the previous day, which was not even reported in the newspapers until after the riots began. It was a series of deliberate acts, executed in accordance with a concerted plan, conceived and organised well in advance.

Despite its official stance that the riots occurred in response to the killing of Sinhalese soldiers, the PTC report does contain some evidence alleging State involvement in the riots. This evidence includes a statement made in parliament and eyewitness testimony suggesting that State actors organized and facilitated the riots by providing government buses to transport rioters and creating lists containing the names of Tamil individuals and businesses to be targeted (PTC Report 2002: 36, 39). The report also paraphrases a statement by Mr. D.E.W. Gunasekera, a former Member of Parliament, as follows: 'There would not have been an outbreak of violence, on any scale, unless there had been some political leadership or sponsorship at some level' (2002: 45). The evidence presented in the PTC report is primarily anecdotal, however, and the Commissioners admit that they cannot provide a detailed or accurate record of how and why the riots occurred in the absence of conclusive evidence:

> It is necessary to emphasize the difficulties of giving a complete picture of these events, firstly because no official records of any investigations are available; secondly, almost all reports were censored at that time from publication and thirdly most of the victims are still living outside the country … we have restricted these records to those who made representations, almost all of which were verified by a competent team of Investigators appointed by the Commission and to the accounts of those who were able to give oral testimony before the Commission. We are in no position sitting as we do, nearly 19 years after these events of July 1983 to give even a reasonably complete picture of [what occurred].
>
> (PTC Report 2002: 36)

Despite the lack of official record-keeping and proper investigations, a compelling body of evidence regarding what occurred during the riots can be found online, in the testimonies of survivors and the

[22] In fact, the riots of 1958 have been identified as the first 'ethnic oriented or communal violence in Sri Lanka in which members of one ethnic group attacked members of another ethnic group, on a noticeably wide scale' (Presidential Truth Commission on Ethnic Violence 2002: 14). The 1958 riots were followed by another major incident of communal violence in 1977, when violence that broke out against the losing political party in the general election transformed into violence against Tamils in almost every part of the country (PTC Report 2002: 14-15). The third significant outbreak of communal violence occurred in 1981. Tamil insurgents had begun attacking police personnel in the North, and Tamil youth were frequently detained in connection with these and other attacks (Wickramasinghe 1998: 374-375). The killing of two policemen and wounding of several others led to retaliatory attacks by the police, who burned the Jaffna marketplace and the public library (Muttukumaru 1987: 197-198).

reports of foreign news outlets.[23] These accounts are very similar to those of witnesses who testified before the Commission, and allege that Sinhalese mobs harassed, tortured, and killed unarmed Tamil civilians and perpetrated acts of arson and looting against Tamil homes and businesses.[24] It should be noted that there are many accounts of Sinhalese acting to protect their Tamil neighbours and friends from roving mobs (PTC Report 2002: 47).

Further evidence of the complete breakdown of law and order in July 1983 is the massacre of Tamil prisoners at the Welikada prison in Colombo. According to the Commission, 35 Tamil detainees were attacked and killed by Sinhalese detainees on the 25th of July, and a further 18 Tamil detainees were killed two days later (PTC Report 2002: 58). A report written by the then Superintendent of Prisons alleges that a jailbreak occurred on the 25th of July, and a crowd of approximately 600 prisoners overpowered prison officials and succeeded in attacking Tamil detainees (PTC Report 2002: 51). According to the Superintendent, the Army contingent stationed outside the prison refused to intervene citing a lack of orders from Army Headquarters (PTC Report 2002: 51-52). The Army also allegedly prevented the medical evacuation of wounded Tamil detainees who later died (PTC Report 2002: 52, 55). The Army did use tear gas to disperse the mob attacking Tamil prisoners on the 27th of July, but failed to detain any of the attackers (PTC Report 2002: 56, 59). The Commission writes that the prison authorities (with the exception of an unnamed Assistant Superintendent) failed to take any measures to control the riots, despite having ' … reasonably adequate means and methods to control such occurrences …' (PTC Report 2002: 56, 59).

It is important to comment upon the conduct of the Sri Lankan armed forces and police during the 1983 riots. The Commission reports that the deaths of the thirteen Sinhalese soldiers in the North were followed by retaliatory killings of 51 Tamils in the North by Army personnel, and the destruction of 175 Tamil houses in the East by Navy personnel (PTC Report 2002: 36). The Commission also reports that truckloads of soldiers in areas affected by the riots in Colombo did nothing to abate the violence, and cites eyewitness reports that soldiers cheered '*jayaweva*' or 'victory' outside the Welikada prison where the massacre of Tamil prisoners was taking place (PTC Report 2002: 35, 52). Other eyewitness reports allege that the Army and police allowed looting and rioting to occur in their presence and made no attempt to intervene (Financial Times, 12 August 1983 in Remembering Black July 2012).

Disturbingly, the governing regime appeared indifferent to the suffering of Tamils. The Executive President, J.R. Jayewardene, failed to impose a precautionary curfew soon after the funeral ceremony for the thirteen soldiers in Colombo and failed to declare a curfew the following morning (25th July) even though the riots were well underway (PTC Report 2002: 35).[25] It was only on the 28th of July that the President finally addressed the nation in a televised speech, calling for a laying down of arms (PTC Report 2002: 37). According to the Commission, the speech contained '… no message to the victims and no apologies' (PTC Report 2002: 37).

It took eighteen years for the GoSL to create an accountability mechanism with respect to the 1983 riots, which is to date the worst episode of anti-Tamil communal violence Sri Lanka has experienced. This inexcusable delay in seeking accountability speaks volumes about the general attitude of governing regimes towards human rights abuses and the secondary status of minorities in Sri Lanka. In the following section, I evaluate whether the Presidential Truth Commission on Ethnic Violence (1981-1984) was an effective mechanism to combat impunity, applying IW's Research Instrument as a conceptual guide.

[23] See for example the eyewitness accounts presented on the following websites: RM Jayatunge 'The Black July 1983 That Created a Collective Trauma' (*Lankaweb*, 27 April 2010) <http://www.lankaweb.com/news/items/2010/04/27/the-black-july-1983-that-created-a-collective-trauma/> accessed 31 October 2012; -- 'Black July in Quotes' (*Remembering Black July*, 2012) <http://blackjuly.info/quotestext.html> accessed 31 October 2012.

[24] The PTC provides 939 individual accounts of crimes committed against persons or property in the section titled 'A Summary of the Nature and Extent of Damage Suffered by Victims of Violence (1981-1984)' (PTC Report 2002: 104-235). Most of these pertain to the July 1983 riots.

[25] Curfew was eventually declared on the afternoon of the 25th of July and came into operation in the late evening (PTC Report 2002: 35).

A. Accountability Mechanism

The Presidential Truth Commission on Ethnic Violence (1981-1984) was appointed by President Chandrika Kumaratunge on the 23rd of July 2001, and submitted its final report in September 2002 (ICJ 2010: 97). The Commission was tasked with the following mandate:

> … inquire into and report on the following matters:-
>
> (a) the nature, causes and extent of –
> (i) the gross violation of human rights; and
> (ii) the destruction of and damage to property,
>
> committed as part of the ethnic violence which occurred during the period commencing from the beginning of the year 1981 and ending in December 1984, **with special reference to the period of July 1983**, including the circumstances which led to such violence;
>
> (b) whether any person, group or institution was directly or indirectly responsible for such violence;
> (c) the nature and extent of the damage, both physical and mental, suffered by the victims of such ethnic violence;
> (d) what compensation or solatium should be granted to such victims or to their dependents or heirs;
> (e) the institutional, administrative and legislative measures which need to be taken in order to prevent a recurrence of such violations of human rights and destruction or damage to property in the future and to promote national unity and reconciliation among all communities and to make such recommendations with reference to any of the matters that have been inquired into under the terms of this Warrant … (emphasis added)
>
> (PTC 2002: 8)

The UN Principles on Impunity and the IW Research Instrument hold truth-seeking to be the primary function of Truth Commissions or Commissions of Inquiry (COIs), and underscore the importance of independence, impartiality, willingness, and competence in the constitution and conduct of such Commissions (UN Principles on Impunity 2005: Principles 6-13; IW Research Instrument 2007: 45).

In general (though not necessarily in this case), COIs appointed in Sri Lanka lack independence due to the provisions of the Commissions of Inquiry Act of 1948 (ICJ 2010: 111). According to Amnesty International, this Act was originally intended as a mechanism for inquiring into the misconduct of public servants and the administration of public departments or agencies (AI 2009: 9). However, the broad phrasing of the Act allows the Executive to use it when under pressure to investigate human rights violations while maintaining '… ultimate control over the proceedings and outcome of inquiries' (AI 2009: 9). Amnesty International summarizes the Executive's powers under this Act as follows:

> … the President is authorized to set the terms of reference for Commissions of Inquiry and to appoint members, add new members at his or her discretion, revoke the warrant establishing a Commission at any time, and to appoint and give directions to the Commission's secretary without consulting the Commission or its Chair … whether the inquiry (or any part of the inquiry) is to be made public is subject to presidential discretion.
>
> (AI 2009: 9)

Sri Lankan COIs invariably function at the pleasure of the Executive responsible for their appointment. Commissions investigating the failures and abuses of a previous regime are therefore likely to make greater advances than those investigating a current regime.

The Presidential Truth Commission on Ethnic Violence satisfied some, but not all, of the criteria for independence, impartiality, and competence set out in the UN Principles on Impunity. According to Principle 7(a), COIs '… shall be constituted in accordance with criteria making clear to the public the competence and impartiality of their members, including expertise within their membership in the field of human rights and, if relevant, of humanitarian law' (2005). Principle 7 (c) holds that efforts must be made to ensure the '… adequate representation of women as well as of other appropriate groups whose members have been especially vulnerable to human rights violations' (2005). The three members of the Presidential Truth Commission represented the Sinhalese, Tamil, and Muslim ethnic groups, thus ensuring ethnic representativeness. They also had substantial legal experience, though it is unclear as to whether any of the Commissioners had significant human rights experience – the ICJ correctly points out that it cannot be presumed that lawyers and retired judges possess ' … the requisite commitment to the rule of law and human rights …' (2010: 117). This Commission also lacked gender balance, as it included no women. Furthermore, the Commissioners have been criticized for failing to conduct sufficient independent investigations (ICJ 2010: 98), which may indicate a lack of willingness to uncover the truth or follow stringent investigative procedures (IW Research Instrument 2007: 46).

A more serious shortcoming of this Commission is that 'no findings of *prima facie* culpability against any individual, public official, or political representative were arrived at and no specific prosecutions were recommended …' (ICJ 2010: 106). While the UN Principles on Impunity make it clear that Commissions of Inquiry are '… not intended to act as substitutes for the civil, administrative, or criminal courts' (2005: Principle 8) a Commission cannot be said to have fulfilled its truth-seeking function if it fails to make any findings regarding culpability for crimes.

The overall impact of the Commission was lessened further by the fact that none of its recommendations, save for the payment of compensation to some victims, were ever implemented (ICJ 2010: 98). This contravenes Principle 12 of the UN Principles on Impunity, which requires that '… the Government should undertake to give due consideration to the commission's recommendations' (2005).[26] Also, the final report of the Commission was not widely distributed,[27] contrary to Principle 13 of the UN Principles on Impunity, which holds that 'the commission's final report … shall be made public in full and shall be disseminated as widely as possible' (2005).

Despite the fact that it was not well publicized, the final report of the Commission does succeed in providing a detailed (if incomplete) account of the riots. It is thus a valuable source of information about an event that has not been subject to much systematic investigation or academic inquiry. The report does not shy away from criticizing the governing regime's failure to prevent or control the riots despite having ample opportunity to do so (2002: 35-38) and documents the apathy of the security forces (2002: 51, 52, 55). The report also details the failure of the GoSL to prosecute those alleged to be responsible for the riots (2002: 61) and acknowledges the long-term impact of these events on the collective consciousness of the Tamil community (2002: Chapter 5).

[26] The Commission made 12 recommendations, most of which were rather vague, i.e. 'the President and Prime Minister must give leadership to a new era of ethnic reconciliation and national unity' (PTC 2002: 93, recommendation 1). Important recommendations were that perpetrators of discrimination should lose the right to hold public office for a period of time (recommendation 6); the GoSL pay full compensation to victims or their dependents and publicly recognize their sufferings (recommendation 8); an investigation division of officers with police powers be established under the direction of the Human Rights Commission to prosecute those holding public office acting in violation of fundamental rights (recommendation 9); and that the perpetrators of ethnic violence be prosecuted regardless of their official status (recommendation 11) (PTC Report 2002: 93-94).

[27] The Commission of Inquiry Act (1948) does not require that Commission reports or recommendations be made public (AI 2009: 9).

Although the Presidential Truth Commission of 2001 does not appear to have faced explicit interference from the Executive, it did have to contend with a justice system that was frequently uncooperative and obstructionist. Furthermore, its final report and recommendations were not given due consideration by the political leadership. These factors prevented the Commission from constructing a complete picture of what occurred during the 1983 riots and sharing this truth with the general public. The work of the Commission cannot, therefore, be said to have contributed to the reduction of impunity in Sri Lanka.

In the following section, I focus on the political will,[28] or lack thereof, demonstrated by State actors during the 1983 riots and with regard to the work and findings of the Commission.

B. Political Will

The eruption of violence in 1983 was not entirely unforeseeable. The riots were a violent expression of ethno-political tension that had been simmering for decades. The inaction of President Jayewardene, who had both the power and opportunity to declare curfew, and the apathy of the security forces who did little to curtail the rioting can be explained – though never justified – in the context of a political culture of arrogance and intolerance. The comments made by the Executive President in an interview with the London Daily Telegraph just two weeks prior to the 1983 riots reveal a disregard for the welfare and concerns of Tamils, who are viewed simply as a security problem that needs to be dealt with:

> I am not worried about the opinion of the Jaffna [i.e. Tamil] people now … now we cannot think of them. Not about their lives or of their opinion about us … The more you put pressure in the North, the happier the Sinhala people will be … really, if I starve the Tamils out, the Sinhala people will be happy …
>
> (Perera 2011).

President Jayawardene never apologized for his comments and failed to express solidarity with the Tamil community in the aftermath of the riots. In fact, it was only on the 23rd of July 2004 that a Sri Lankan President, Chandrika Kumaratunge, finally expressed regret and issued an apology for the 1983 riots:

> As we know all nations have great achievements which they are proud of, they also have moments in their history which they need to be ashamed of. Only very few nations seem to have had the courage or the right leadership to accept the blame for their moments of shame … Many others like us have failed to look truth in the face … Perhaps it is the responsibility of the State and the Government to engage in that exercise first and foremost … every citizen in this country should collectively accept the blame and make that apology to all of you here who are the representatives or the direct victims of that violence, and through you to all the other tens of thousands who suffered by those incidents. I would like to assign to myself the necessary task on behalf of the State of Sri Lanka, the Government and on behalf of all of us; all the citizens of Sri Lanka to extend that apology.
>
> (SATP 2011).

The IW Research Instrument highlights how the public discourse of political leaders can be an indicator of impunity (2007: 57-58). President Jayewardene's comments prior to the riots and his failure to express solidarity with Tamils in the aftermath of the riots make his government's lack of interest in accountability clear. Conversely, President Kumaratunge's public apology on behalf of the nation indicates a willingness

[28] For the purposes of this paper, I conceptualize political will quite broadly, to include State actors ranging from the political leadership to the leaders of the security forces (e.g. the Inspector General of Police) and leading figures in the justice sector (e.g. the Attorney General). I believe that the broad constitutional powers of the Executive to appoint, promote and dismiss these individuals allows for this conflation.

to tackle impunity, which was bolstered by the appointment of the Presidential Truth Commission on Ethnic Violence discussed above.

Unfortunately, the good intentions of President Kumaratunge proved insufficient to overcome the systemic impunity that prevented proper investigation of the riots when they occurred, and later stymied the work of the Commission. The final report of the Commission leaves no doubt that the government in 1983 had no interest in uncovering what really occurred during the riots. This is particularly true with regard to the massacre of Tamil detainees in State custody at the Welikada prison. The report cites testimony that the Superintendant of Prisons, who was in charge of the Welikada prison during the massacre, was prevented from giving evidence at inquests and denied promotions and benefits for attempting to speak out about what occurred (PTC Report 2002: 52). A departmental inquiry into the incident was halted, allegedly on orders from the Ministry of Justice (PTC Report 2002: 52). The General Secretary of the Civil Rights Movement (CRM) of Sri Lanka states that no prosecutions were initiated by the State in relation to the prison massacre, while 30 separate cases filed by the CRM accusing the State of failure to take care of the detainees were settled by 'paying compensation without admitting liability' (PTC Report 2002: 55). Additionally, the jail guards present during the riots testified that they could not identify a single assailant, despite knowing the identities of the prisoners in their charge (PTC Report 2002: 55).

The Commissioners also place on record the difficulty of obtaining cooperation and evidence from the police – 'there is no evidence that investigations commenced by the Borella police had been proceeded with, beyond the stage of the inquest. The efforts of the commission to trace the police records turned futile, with the IGP [Inspector General of Police] informing that these records were not traceable' (PTC Report 2002: 61). The fact that Sri Lanka's highest-ranking police official is unable (or unwilling) to provide official documentation pertaining to one of the most famous episodes of political violence in the country's history indicates serious procedural deficiencies (and possible political interference) in law enforcement.

Principle 19 of the UN Principles on Impunity (2005) holds that the State has a clear duty to administer justice in the aftermath of violence:

> States shall undertake prompt, thorough, independent and impartial investigations of violations of human rights and international humanitarian law and take appropriate measures in respect of the perpetrators, particularly in the area of criminal justice, by ensuring that those responsible for serious crimes under international law are prosecuted, tried and duly punished.

It is clear that the Sri Lankan State wilfully abandoned this duty in respect of the 1983 riots. The failures of the Jayewardene regime both during and after the riots, together with the failure of the Kumaratunge regime to facilitate the work of the truth commission, publicize its final report, and implement its recommendations, not only contributed to the entrenchment of impunity, but also perpetuated the trauma and bitterness of the riots and poisoned inter-ethnic relations. In the following section, I consider the enduring impact of the riots on the collective memory of Sri Lankans in general and the Tamil community in particular.

C. Legacy

The UN Principles on Impunity hold that States have a special duty towards the victims and survivors of political violence, which involves taking measures '… aimed at preserving the collective memory from extinction and, in particular, at guarding against the development of revisionist and negationist arguments' (2005: Principle 3). Official acknowledgement and widespread public knowledge of past atrocities are important elements of the fight against impunity (IW Research Instrument 2007: 73).

To this day, there are no State-sponsored public memorials dedicated to the victims and survivors of the 1983 riots in Sri Lanka. No account of the riots is included in the history textbooks issued to students by the Ministry of Education. This lack of official acknowledgment is astounding in light of the impact the riots had on Sri Lankan society as a whole – a substantial number of Tamils fled the island in its aftermath[29] and many Tamil youth joined the ranks of militant groups. The Tamil diaspora – many of whom left Sri Lanka during this time – proved to be a powerful source of support for the LTTE in later years, providing the organization with both money and weapons.[30]

The International Crisis Group's description of the complex emotions and psychology of diaspora Tamils illustrates the depth of the bitterness and hostility engendered by ethnic discrimination, violence, and the failure of successive Sri Lankan governments to engage the diaspora successfully:

> As a result of their exile many Tamils justifiably feel a strong sense of victimization and injustice. They are torn between a desire to maintain a cultural identity tied to the land they left while living up to the civic responsibilities and cultural demands of their host country. A palpable sense of guilt pervades the Tamil diaspora. Privately, some express shame for leaving Sri Lanka while other Tamils fought and died for the cause or fell victim to government violence. Many blame and hate the Sinhalese and want revenge. Most have abandoned any hope that the Sri Lankan state would ever accommodate Tamils socially, economically, culturally or politically.
>
> (ICG 2010: 4-5)

The numerous commemorative events hosted by diaspora Tamils on the anniversary of the 1983 riots or 'Black July'[31] and the memorial websites dedicated to victims and survivors of the riots[32] clearly demonstrate that this dark chapter of Sri Lanka's history is alive and well in the collective memory of the Tamil diaspora community.

Many in Sri Lanka have not forgotten the events of July 1983 either. Nor are commemorative efforts confined to members of the Tamil community. Since 1997, a well-known Sinhalese artist, Chandragupta Thenuwara, has hosted an annual public exhibition of his art, sculpture, and installations to commemorate the riots of 1983 and highlight the impact of civil war in Sri Lanka.[33] A preview of Thenuwara's July 2012 exhibition titled 'The Monument and Other Works' attracted former President Kumaratunge, prominent newspaper editors, and representatives of civil society organizations (YA TV 2012). KW Janaranjana, Editor of the leading Sinhala language newspaper *Ravaya,* commented on the importance of commemorating the riots – 'as a country we need to commemorate this at least once a year to re-examine why it happened, who was responsible, and [ask] what is our responsibility?' (YA TV 2012). Thenuwara echoes this sentiment in his explanation for why he continues to host commemorative exhibitions:

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[29] A 2010 report estimated that the Tamil diaspora was one million strong, with substantial populations in India (200,000), Canada (200,000-300,000), Great Britain (180,000), Germany (60,000), Australia (40,000), Switzerland (47,000), France (40,000-50,000), the Netherlands (20,000), the U.S. (25,000), Italy (15,000), Malaysia (20,000), Norway (10,000), Denmark (7,000), New Zealand (3,000) and Sweden (2,000) (ICG 2010: 2). These estimates pertain to all diaspora Tamils, not only those who left in the aftermath of 1983.

[30] The ICG quotes an estimate by US State and Treasury Department officials that during the war the LTTE earned 100-200 million dollars annually worldwide (2010: 6).

[31] For examples of commemorative efforts by Tamil diaspora members see -- 'Black July Commemoration at Oslo City in Norway' (*LankaSri News*, 26 July 2012) available at <http://www.lankasrinews.com/view.php?222OY55c200mmBZ44e2SoOllacaaeMAAdddeoyMMW0accdlOOee4dBBmA33033n5YY42> accessed 7 November 2012; and A Moran, 'Toronto Tamils Commemorate Black July at Queen's Park' (*Digital News*, 26 July 2010) available at <http://digitaljournal.com/article/295133> accessed 7 November 2012.

[32] For example, the website 'Remembering Black July'(n 23) provides audiovisual clips and texts of survivors' testimonies, photographs, and newspaper reports about the riots. The website also documents recent examples of 'persecution against the Tamil minority' and encourages people to submit their stories of Black July or similar incidents. The website 'Remembering Silenced Voices' is an effort by the Canadian Tamil diaspora 'to present an archive of news reports, statements, pictures and testimonials while providing survivors, families of victims and expatriates from the 1980's exodus an opportunity to record their story' and is available at <http://www.blackjuly83.com/index.htm> accessed 7 November 2012.

[33] The comments pertaining to this exhibition were expressed in Sinhala. The quotes are translations provided by YA TV.

> I was a witness to what happened on July 23rd 1983 … the scenes that took place, the sadness, the weeping – I witnessed everything … there isn't even one little bit of evidence in Colombo city to say that there was a war. It has been beautified … the idea of preserving a memory from the past and commemorating it is important, as it has a connection to our future. Through that commemoration, we not only renew our memories but also have the chance to start over … if it is possible to place [as] many monuments as possible in the public domain … then I feel that I can engage with people …
>
> (YA TV 2012)

Thenuwara makes a crucial point when he stresses the importance of placing memorials in a *public* space – it is then that the general public is compelled to reflect on the tragedies of the past. All the commemorative efforts surrounding the 1983 riots, whether by diaspora Tamils or a Sinhalese artist living in Sri Lanka, currently attract those who, for the most part, already share the ideals of the initiators of these efforts. If the riots of 1983 are to receive a fair and effective reckoning, commemorative efforts must be mainstreamed, ideally with the support of the GoSL, and include all ethnic communities in Sri Lanka as well as the Sri Lankan diaspora. The lack of such broad-based and inclusive efforts over the past 30 years have resulted in the hardening of ethnic prejudices and narrowed the space for reconciliation.

The discussion of the 1983 riots and its legacy has brought the issue of ethnicity to the forefront of my analysis of Sri Lankan politics. It would be a mistake, however, to assume that ethnic tension is the sole driver of political violence in Sri Lanka. In the following section, I examine impunity in the context of the second Janatha Vimukthi Peramuna (JVP) insurrection, which saw members of the Sinhalese community persecuted by both the JVP and the GoSL.

2. The Second Janatha Vimukthi Peramuna (JVP) Insurrection

The JVP, a political organization formed in 1965, launched two insurrections against the GoSL in 1971 and 1987-1989. Here, I focus on the second insurrection, which remains one of the bloodiest episodes of political violence in modern Sri Lankan history.

In the 1980s, the JVP was a youth organization which espoused a Marxist-nationalist ideology, described thus by Manoharan:

> [It] vacillated between left and right … its leftist claim was symbolized by the color red, populist welfarism, and opposition to globalization … [its] rightist stance was shown in its appeal to Sinhala nationalism and its outlook toward minorities.
>
> (2006: 20)

JVP members and supporters were drawn primarily from the Sinhalese rural poor, who were often educated but unemployed (Manoharan 2006: 20). Several scholars argue that despite claims to the contrary, the JVP insurrections were not spontaneous uprisings of youth grappling with socioeconomic hardships, but rather attempts by the JVP leadership to seize State power by exploiting grievances about socioeconomic inequalities, and in the case of the second insurrection, popular anti-Indian sentiment (e.g. Fernando 2010; Gunasekara 1999).

The GoSL proscribed the JVP following the 1983 riots, despite an absence of evidence suggesting any involvement (PTC Report 2002: 37). This forced the organization underground and further radicalized its political approach. According to Gunasekara:

> [The] unjust proscription of the JVP was perhaps the single biggest mistake committed by the JR Jayewardene regime … the JVP was comfortably settling into the political mainstream and beginning to enjoy the fruits of high profile electoral politics. They did not willingly or voluntarily leave the mainstream; they were forced out of it by the Jayewardene regime.[34]
>
> (1999: 67)

The basis of the JVP's opposition to the ruling United National Party (UNP) regime in the late 1980s was purportedly an objection to the presence of the Indian Peacekeeping Force (IPKF) in Sri Lanka – a popular sentiment at the time.[35] Gunasekara asserts that this raison d'être was disingenuous, highlighting that the JVP continued to violently challenge the ruling regime even after President Premadasa demanded the immediate withdrawal of the IPKF on 1 June 1989; and that the targets of JVP violence were Sri Lankans, not Indians (1999: 70, 80). The JVP targeted and killed a range of persons, including UNP politicians, left-wing activists, policemen and soldiers, as well as ordinary civilians who simply disobeyed JVP orders to refrain from voting or go on strike (Gunasekara 1999: 70).

Several attempts were made to convince the JVP to negotiate and return to mainstream politics, first by President Jayawardene, and later by his successor, President Premadasa (Gunaratna 1990: 314; Gunasekara 1999: 78). The JVP rebuffed these attempts and ' … went on to terrorise the country and cripple the economy with their indiscriminate killings, wild cat strikes, unofficial curfews and acts of sabotage' (Gunasekara 1999: 80). The destabilization of the country in this manner posed a significant threat to the governing regime and it was only a matter of time before it responded with the arsenal of powers provided by the Prevention of Terrorism Act of 1979 and the emergency regulations issued under the Public Security Ordinance of 1947.

If the principal mistake made by the UNP in the aftermath of the 1983 riots with regard to the JVP was banning the organization, then the principal mistake made by the JVP in its challenge to State authority was targeting members of the Sri Lankan security forces and their families. In August 1989, the JVP issued an ultimatum to all security force personnel '… to abandon their posts or be killed, along with their family members' (Manoharan 2006: 21). The response of the GoSL to such provocation was uncompromising. The military operations carried out against the JVP after July 1989 were 'sophisticated and effective' (Gunaratna 1990: 330). Manoharan writes that 'paramilitary units … operated alongside the security forces against JVP members with the utmost impunity' while security forces obtained good intelligence on JVP members in hiding thanks to adopting a 'winning hearts and minds' approach toward civilians (2006: 39-40). The destruction of the JVP was relatively quick and extremely thorough. Gunasekera writes that 'the fire of the second JVP insurgency which for two years burnt bright just fizzled out with the capture and the killing of its three top political and military leaders in November 1989' (1999: 81).[36]

The atrocities perpetrated by the JVP and government security personnel have been well documented by domestic Commissions of Inquiry and international NGOs. The 1990 Human Rights Watch World Report states:

> In late 1989 and early 1990, government-backed death squads, reportedly made up of members of the security forces and police officers, are believed to have murdered tens of thousands of students and other civilians suspected of sympathizing with the JVP. A delegation of European parliamentarians who visited Sri Lanka in October 1990 estimated the number of killed and disappeared on all sides in south and central Sri Lanka alone to be at least 60,000 in the prior two years. Other more conservative estimates place the number at around 35,000. Local human rights

[34] See also Manoharan (2006: 31) supporting this point of view.
[35] The IPKF was deployed to Sri Lanka following the signing of the 1987 Indo-Sri Lankan accord with the aim of 'disarming the LTTE in lieu of Sri Lanka devolving power to the minority Tamils' (Mehta 2012).
[36] A reformed JVP re-entered mainstream politics in 1994 after contesting the parliamentary general elections.

groups estimate that several thousand of these deaths are attributable to the JVP. The majority are thought to be the work of government-linked death squads.

The Commission of Inquiry into Involuntary Removal or Disappearance of Persons in the Western, Southern, and Sabaragamuwa Provinces (1994) supports the claim that the majority of deaths are attributable to the security forces. In its final report (hereinafter 'DC Report'), the Commission states that of the 7239 cases where disappearance was proved, the JVP was identified as the perpetrator in only 779 cases (DC Report 1997: 29).[37] According to the Commission, the killings attributed to the JVP were punishments administered for dissent (DC Report 1997: 44). Dissenting actions included violating informal curfews and work stoppages; refusing to support the JVP (i.e. provide food, shelter or information); and supporting or belonging to rival political parties (DC Report 1997: 45-46). The Commission reports that State forces and paramilitary groups, which were responsible for the vast majority of atrocities, engaged in reprisals against the families of JVP suspects and arrested, abducted, and killed young males indiscriminately (DC Report 1997: 152-153).

The massive scale of the violence experienced by civil society during the years of the second JVP insurrection resulted in considerable international pressure upon the GoSL to address the situation. In 1993, President Premadasa appointed a Commission of Inquiry to investigate the involuntary removal of persons but only authorized it to inquire into events that occurred after January 1991, thereby exempting the entire period of the second JVP insurrection (DC Report 1997: xiv). In the following section, therefore, I focus on the Commission of Inquiry appointed by President Chandrika Kumaratunge in 1994, and evaluate its performance as an accountability mechanism.

A. Accountability Mechanism

One of three zonal commissions appointed by President Kumaratunge in 1994, the Commission of Inquiry into Involuntary Removal or Disappearance of Persons in the Western, Southern, and Sabaragamuwa Provinces (hereinafter 'Disappearances Commission') was tasked with following mandate:

> … to inquire into and report on the following matters:
> (a) whether any persons have been involuntarily removed or have disappeared from their places of residence in the [Central, North Western, North Central and Uva Provinces/Northern & Eastern Provinces/ Western Province, Southern Province and the Sabaragamuwa Province] at any time after 1 January 1988;
> (b) the evidence available to establish such alleged removals or disappearances;
> (c) the present whereabouts of the persons alleged to have been so removed, or to have disappeared;
> (d) whether there is any credible material indicative of the person or persons responsible for the alleged removals or disappearances;
> (e) the legal proceedings that can be taken against the persons held to be so responsible;
> (f) the measures necessary to prevent the occurrence of such alleged activities in the future;
> (g) the relief, if any, that should be afforded to the parents, spouses and dependents of the persons alleged to have been so removed or to have disappeared; and
> (h) to make such recommendations with reference to any of the matters that have been inquired into under the terms of this Warrant.
>
> (ICJ 2010: 78-79)

A significant weakness of this mandate is that the Commissioners were not authorized to inquire into disappearances which occurred prior to 1988. The Commissioners call attention to this shortcoming in

[37] State agents and paramilitary groups were identified as perpetrators in 4858 cases, while personal enemies acting in collaboration with the State were identified as perpetrators in 59 cases and the perpetrator was unknown in 1543 cases (DC Report 1997: 29).

their final report, stating that 'the time limit given in the mandate … was insufficient as the second JVP insurrection in the South began in mid-1987 …' (DC Report 1997: xvi).

As discussed with regard to the Presidential Truth Commission on Ethnic Violence, the provisions of the Commissions of Inquiry Act of 1948 generally undermine the principles of independence, impartiality, competence, and willingness outlined in the UN Principles on Impunity (2005) and the IW Research Instrument (2007) by virtue of excessive powers granted to the Executive President. Despite allegations that a senior government Minister attempted to influence the work of some of the zonal commissions (ICJ 2010: 82), the Disappearances Commission is generally believed to have 'functioned with integrity' in the fulfilment of its mandate (ICJ 2010: 119). There has also been no criticism of the expertise or demographics of the Disappearances Commission, which included one female and two male Commissioners who collectively possessed considerable legal, human rights, and social scientific expertise. It appears, therefore, that the Disappearances Commission possessed the independence, impartiality, and competence required by Principle 7 of the UN Principles on Impunity (2005).[38]

The Disappearances Commission also demonstrated willingness or '… an intention to discover and publicise information about the crimes and violations in question' (IW Research Instrument 2007: 46). Its final report, which was submitted in 1997, contains a revealing account of the phenomenon of enforced disappearance and pays particular attention to the role of the State.[39] As discussed previously, the Commission disaggregates the data on disappearances by perpetrator, thereby establishing that the State was responsible in the majority of cases (DC Report 1997: 29). The Commission also presents data concerning the victims, categorizing them by sex, age, marital status, educational attainment, and occupation (DC Report 1997: 13-17). The statistics reveal that the majority of those disappeared were male (97.76%), between the ages of 15 and 29 (63%), and literate (62.67% had secondary education, including 129 undergraduate and 86 graduates) (DC Report 1997: 17). According to the report, the most affected in terms of occupation were cultivators, labourers, traders, and skilled workers, mostly of low income (1997: 17).

The final report also details patterns of targeting with respect to both the JVP and the GoSL, differentiating between their techniques of abduction, detention, and disappearance (1997: 28-34). For example, the report provides the following comparison of strategies of public intimidation:

> The subversive [JVP] act was a destruction of a person in as public a manner as possible. The corpse would be left identifiable bearing several ante-mortem injuries of a brutal nature and a placard be displayed, bearing a message such as 'Death to Informers'. There would usually be instructions that the body be buried without ceremony … [in the case of State perpetrators] the abduction would be done very publicly, [but] the re-emergence of a body if at all, would be in a mutilated state that made identification difficult.
>
> (DC Report 1997: 30)

The report goes on to document evidence of rampant impunity and corruption, which I consider in detail in the forthcoming section on political will. Finally, the Commission dedicates separate chapters of the final report to describing the experiences of women, clergy, trade unions, university students, and Tamils, demonstrating an awareness of how one's positioning within a social and political system affects the experience of violence. The detail and abundance of evidence presented in this report – particularly regarding State involvement in atrocities – is a credit to the Commissioners and investigators and was doubtless facilitated by the fact that the implicated regime was no longer in power (ICJ 2010: 81).

[38] See Part II, Section 1 (A) above.

[39] However, the Commission chose not to *publicly* name the alleged perpetrators, citing the fact that these individuals 'had not been given an opportunity to refute the charges made against them' (ICJ 2010: 89). This approach finds some support in Principle 9(b) of the UN Principles on Impunity, which states that individuals implicated '… shall be afforded an opportunity to provide a statement setting forth their version of the facts …' (2005).

Despite the laudable truth-seeking efforts of the Disappearances Commission, its success as an accountability mechanism was undermined by several factors. Firstly, the Commission decided to hold all its sittings in camera, thus '… depriving the press and public from participation and thereby taking away an important element of public accountability from the process' (ICJ 2010: 87). Secondly, the findings of the Commission did not lead to the apprehension and punishment of the perpetrators of atrocities. While the work of the Commission did not go beyond the stage of *ex parte* inquiries – i.e. 'perpetrators were not summoned or provided the opportunity to speak before the Commissions' (ICJ 2010: 87)[40] – the obstacle to accountability was not this circumscription of the scope of the Commission's work, but rather the State's failure to ensure effective follow-up investigations and prosecutions:[41]

> Despite … explicit acknowledgements of defective investigations and prosecutions, the 1994 Disappearances Commissions had little choice but to refer specific cases back to those very same government institutions. This referral was no doubt accompanied by the expectation that there would be some changes evidenced in investigative and prosecutorial processes and a new political will would be manifested in bringing perpetrators to justice. However, the weak process of re-referrals meant acquiescence to the same structural obstacles to truth, justice and reparations that the Commissions, in theory, were created to overcome.
>
> (ICJ 2010: 88-89)

Additionally, the insightful recommendations made by the Disappearances Commission did not result in the provision of significant relief to victims and survivors (apart from the payment of compensation in certain cases) and failed to initiate meaningful reform (ICJ 2010: 91).[42] As was the case with the Presidential Truth Commission on Ethnic Violence, the State once again failed to give these recommendations the 'due consideration' advocated by the UN Principles on Impunity (2005: Principle 12). Finally, the Commission's final report was not publicly available until several years after submission, and the families of victims and others who appeared before the Commission were not informed of its findings (ICJ 2010: 91). This outcome runs counter to Principle 13 of the UN Principles on Impunity, which requires the wide dissemination of the final report (2005), and undermines the courage of those who testified before the Commission as well as the efforts of the Commissioners themselves.

In the following section, I consider the role of State actors in facilitating impunity both during and after the second JVP insurrection, particularly in light of the evidence uncovered by the Disappearances Commission.

B. Political Will

The final report of the Disappearances Commission is replete with evidence of the State's role in committing and concealing serious human rights violations during the course of counterinsurgency operations against the JVP. The phenomenon of mass graves containing bodies of the disappeared exemplifies the culture of impunity that pervaded the security forces. The mass graves were frequently located in public areas – a highway, a village school, a government farm – and 'within sight and control of state security installations' (DC Report 1997: 117). The presence of these graves was widely known to local people, but attempts to report the matter to the police were unsuccessful (DC Report 1997: 118). The

[40] Principle 8 of the UN Principles on Impunity provides some support for this decision, emphasizing that commissions of inquiry are not substitutes for the justice system and that '… criminal courts alone have jurisdiction to establish individual criminal responsibility' (2005).
[41] I discuss this issue further in the forthcoming section on political will.
[42] The Commission specified several recommendations in its final report in respect of compensation and legal/systemic reform, such as granting relief measures for dependants of the disappeared; enacting measures designed to assist women who suffered sexual violence and/or head a family as a consequence of a disappearance; initiating legal proceedings against those who were directly or indirectly responsible for disappearances; and implementing measures to prevent future disappearances and combat impunity (DC Report 1997: 169-178).

Commission finds that a systematic effort was made by security personnel to prevent atrocities from being recorded:

> A feature that struck us most forcefully … was the utmost care that had been taken not only by individual perpetrators but also by the system itself to prevent these occurrences from being reflected in the official records of the country …
>
> (DC Report 1997: xv)

The efforts made by law enforcement officials to conceal abuses include refusing to record incidents of disappearance or take witness statements; refusing to conduct investigations or distorting investigations when compelled to conduct them; utilizing unauthorized places of detention; failing to record the detention of individuals; and frequently transferring detainees to make detection more difficult (DC Report 1997: 53-57). The Commission details several cases to illustrate this misconduct, emphasizing that these cases ' … exemplify a generalized practice …' (DC Report 1997: 55). The father of a victim of enforced disappearance describes his experience of dealing with law enforcement authorities thus – 'I went to the police 76 times, but we were driven away like dogs' (DC Report 1997: 53). The lack of willingness on the part of law enforcement officials to record and investigate allegations of human rights violations is a clear indication of impunity (IW Research Instrument 2007: 49) and seriously impedes access to truth and justice.

According to the IW Research Instrument, political interference in the work and organizational structure of law enforcement institutions is an indicator of impunity (2007: 48-49). The Disappearances Commission presents evidence that local politicians exploited counterinsurgency efforts to wage vendettas against political rivals or personal enemies. This was done by placing the names of these individuals on lists of JVP members to be taken into custody by the security forces (DC Report 1997: 34-35). Additionally, the Inspector General of Police from 1985-1988, Mr. Cyril Herath, testified that politicians manipulated police command structures in order to further their political goals:

> In the promotion of Udugampola, SP [Superintendant of Police] over 15 more senior officers, to the rank of DIG [Deputy Inspector General of Police], I saw the portents of the plan to use the Police Force in the narrow interests of politicians. It was clear to me that alternative structures of command were being put in place within the Police Force …
>
> (DC Report 1997: 35)

The highly centralized nature of Sri Lanka's political system and the wide powers vested in the Executive President by the 1978 Constitution meant that the governing regime could have ensured that the security forces conducted counterinsurgency operations against the JVP within the limits prescribed by international law had it so wished.[43] Instead, it chose to respond to what was, admittedly, a legitimate threat to national security, using illegitimate means.

Subsequent political regimes also failed to secure accountability by acting on the findings of the Disappearances Commission and investigating and prosecuting those implicated in extrajudicial killings and disappearances. Although a Disappearances Investigation Unit (DIU) was set up within the police department to investigate enforced disappearances, it quickly ' … lapsed into a state of ineffectiveness, reflecting the lack of political will in investigating offences that involved senior politicians and police officers. Those police officers who investigated their superior officers in this regard too zealously were transferred out of the DIU or penalised in some other way' (ICJ 2010: 103). Attacks and threats made

[43] The discussion of domestic law in the 'normative framework' section makes it clear that by the time of the second JVP insurrection, successive governing regimes had enacted legislation which facilitated impunity and sacrificed human rights in the name of national security.

against members of the police service who collaborate with investigation processes are another indication of impunity (IW Research Instrument 2007: 49).

The ICJ notes that several factors impede the successful prosecution of the perpetrators of enforced disappearances – witnesses are often afraid to identify State agents when making complaints to the police; the police frequently refuse to record complaints against State agents; and there exists a fundamental conflict of interest with regard to the Attorney General, who, though the representative of the State, is charged with prosecuting cases alleging State responsibility for disappearances (ICJ 2010: 104; ICJ 2012: 111). A Missing Persons Unit (MPU) established in the Attorney General's department and tasked with initiating prosecutions on the basis of information received from the DIU, has not been effective (ICJ 2012: 109). According to the ICJ, 'the prosecutorial record following from the report of the 1994/1998 Disappearances Commissions is unsatisfactory' with indictments issued only in respect of 30 percent of the cases investigated (ICJ 2012: 110). Furthermore, the recommendation of the Disappearances Commission to establish an Office of an Independent Prosecutor (DC Report 1997: 175) has not been implemented thus far.

The ICJ observes that on the rare occasions where political will is present, the military establishment has stood in the way of accountability, such as when the Army Commander refused to comply with a Presidential directive ordering that 200 service personnel be placed on compulsory leave following the findings of the three zonal Commissions of Inquiry (2010: 126). Furthermore, the majority of armed forces personnel and police officers 'repeatedly implicated in some of the most serious human rights violations' during the late 1980s continue to serve in the military and police and progress in their careers (ICJ 2010: 95, 140).[44]

The example of the 1994 Disappearances Commission underscores the fact that the efforts of truth-seeking mechanisms, however diligent and sincere, are futile in the absence of adequate political will and independent (and cooperative) security and justice sectors. It also highlights how political interference with law enforcement and prosecutorial entities can result in the institutionalization of impunity.

In the following section, I consider the long-term socio-political impact of the second JVP insurrection and the GoSL's failure to provide its people with effective redress.

C. Legacy

It is difficult to understand the nature and dynamics of political violence in Sri Lanka without reference to the cataclysmic events of the late 1980s. The State response to the second JVP insurrection did irreparable harm to its relationship with civil society by compromising human security in an overzealous attempt to safeguard national security and the power of the governing regime. The tens of thousands of enforced disappearances and extrajudicial killings perpetrated by the GoSL and the JVP normalized the abnormal and abhorrent. The Disappearances Commission quotes several witnesses in order to illustrate how the exposure to horrific violence undermined even the most deeply ingrained social mores:

> We who would move aside the body of a dog found dead on the roadside … were rendered passive spectators to the sight of young mutilated bodies burning at the crossroads.

[44] Sri Lankan scholars Uyangoda and Bastian describe the civil-military relationship in Sri Lanka as follows: 'The political leadership has successfully managed to maintain its political authority over the security apparatus. Despite the considerable expansion of the role and size of the armed forces during the past three decades in a context of internal armed rebellions, political control of the security apparatus continues' (2008: 65). The Sri Lankan security forces function within a highly centralized political structure headed by a powerful Executive President. However, near constant exposure to serious national security threats has created a mutual dependency that causes political leaders to turn a blind eye to any excesses committed by security personnel in the line of duty. This is a good example of what the IW Research Instrument describes as an 'entrenched interest' that obstructs accountability (2007: 69).

> In a case where a woman was [held] hostage instead of her husband, the neighbours refused to open their doors to her twelve-year-old son.
>
> (DC Report 1997: 157)

It was not uncommon for individuals to denounce members of their community as JVP sympathizers on account of personal disputes or for personal gain, while those with connections to the police or armed forces sometimes attempted to profit from the families of the disappeared by offering to help secure the release of loved ones (DC Report 1997: 154). Perhaps the most telling manifestation of the social upheaval experienced during this period is the killing and enforced disappearance of Buddhist monks (DC Report 1997: 133-137) who are revered in what was and still is a predominantly and fiercely Buddhist country.

As with the 1983 riots, the State has neglected its duty to preserve the collective memory of the JVP insurrections from extinction (UN Principles 2005: Principle 3). The victims and survivors are not officially commemorated and the violence is not discussed in school history books. The lack of public knowledge about past atrocities is one of the factors that allow impunity to thrive (IW Research Instrument 2007: 73). The failure to critically examine political violence in general, and the events of the late 1980s in particular, partly accounts for the widespread tolerance in Sri Lankan society for the State's use of violence as a response to political challenges. This tolerance, which has been reinforced by decades of armed conflict, is perhaps best reflected by the popular support enjoyed by oppressive political regimes like that of the current President, Mahinda Rajapakse.

The JVP insurrections have also had a lasting impact on the relationship between the security forces and the general public. Ordinary citizens were the principal casualties of the battle between the government and the JVP and were often left without recourse to justice. A woman who lost three sons on three separate occasions describes the situation thus:

> There was no one to complain to. The government was deaf; the opposition absent; the police drove us away like dogs. The JVP killed. The Army killed.
>
> (DC Report 1997: 160)

While the armed forces have regained the approval of the Sinhalese community with their military successes against the LTTE, public confidence in the police remains low across ethnic groups. A 2011 survey conducted by the Center for Policy Alternatives (CPA) found that 59.7% of Sinhalese had a 'great deal of trust' in the Army, while just 6.3% of Sri Lankan Tamils, 18.2% of Indian Tamils, and 15.8% of Muslims concurred with this statement. There is far less ethnic disparity with regard to approval ratings of the police – only 19.7% of Sinhalese, 6.8% of Sri Lankan Tamils, 11.8% of Indian Tamils, and 9.5% of Muslims had a 'great deal of trust' in the police (CPA 2011: 42). The police was also generally perceived to be the most corrupt public institution (CPA 2011: 47). The low approval ratings of the police are unsurprising given its gross misconduct both during the second JVP insurrection, as discussed previously, and in the decades since. To date, there have been no serious attempts by the GoSL to reform the security sector by implementing measures to enhance accountability or improve relations between police personnel and ordinary citizens.[45]

A low level of public trust in State institutions such as the police is an important indicator of impunity (IW Research Instrument 2007: 71). The victims and survivors of the second JVP insurrection have been failed repeatedly by the State and have lost faith in their political leaders, law enforcement officials, and legal institutions. Basil Fernando of the Asian Human Rights Commission poignantly describes the plight of these individuals:

[45] The non-profit organization, The Asia Foundation, recently launched a police reform initiative in Sri Lanka (The Asia Foundation, 2010). Effective long-term reform, however, cannot be achieved without the requisite political will.

> Immediately following the disappearances, most relatives of the victims did all they were asked by the system: they made complaints; they gave all the information they had to those who asked for it; they went from house to house, seeking the assistance of politicians who had appeared to want to help them. Finally they also went before the disappearances commissions. In addition, many of them took an active part in elections to support those who promised them justice. None of these actions brought them any tangible result. In fact, all these actions taught them a stern lesson: that 'nothing is in fact working.'
>
> (ICJ 2010: 91)

The State-sanctioned political violence of the 1980s abated in the South with the suppression of the second JVP insurrection. However, this did not put an end to impunity. Instead, the public institutions and officials involved in the violence of the 1980s have grown more powerful and less accountable to the public over time.

In the final section of this paper, I turn to the final months of the armed conflict between the GoSL and the LTTE to examine the phenomenon of impunity in light of more than three decades of political violence.

3. The End of Armed Conflict (2009)

It is beyond the scope of this paper to provide an overview of the armed conflict between the GoSL and the LTTE, which spanned approximately 30 years and several political regimes. Instead, I focus on the tail end of this convoluted and protracted episode of political violence. I believe this is a useful starting point for an examination of the phenomenon of impunity in present day Sri Lanka.

The GoSL declared a military victory over the LTTE on 19 May 2009.[46] The final military campaigns were conducted under a media blackout (Darusman, Ratner, and Sooka 2011: 17). However, evidence of what occurred during the last few months of fighting has surfaced over the past three years. Some of this evidence has been released by official government sources, including the Lessons Learnt and Reconciliation Commission (LLRC). Journalists and human rights activists garnered the rest from civilians and combatants present during the fighting. The emergence of this evidence has sharply divided the international community, pitting the GoSL and its supporters against those countries and international organizations critical of the government's conduct both during and after the final phase of the war.

The Panel of Experts appointed by the UN Secretary General to advise him on issues of accountability in Sri Lanka found 'credible allegations' that the following acts were committed by government forces – killing civilians through widespread shelling; shelling hospitals and humanitarian objects; denying humanitarian assistance; and inflicting human rights violations upon conflict victims and survivors, including IDPs and suspected LTTE cadre (Darusman, Ratner, and Sooka 2011: iii). A documentary produced by British television broadcaster, Channel 4 (2011) makes similar allegations, stating that government forces intentionally corralled and killed Tamil civilians. It also provides video footage allegedly created by government soldiers as 'war trophies,' which depict the torture and summary execution of prisoners (Channel 4 2011). International organizations such as Human Rights Watch and Amnesty International have compiled evidence concerning violations of international humanitarian and human rights law during the final months of the conflict and have subsequently highlighted the plight of

[46] For a detailed analysis of the GoSL's successful counterinsurgency operations see the report of analyst Sergei De Silva- Ranasinghe entitled 'Strategic Analysis of Sri Lankan Military's Counter-Insurgency Operations' (2010) available at <http://www.futuredirections.org.au/files/1266992558-FDIStrategicAnalysisPaper-12February2010.pdf> accessed 12 November 2012.

persons held in detention camps created by the GoSL after the end of the war.[47] Segments of the international community have called for investigations into these allegations (BBC 2010a).

The GoSL has consistently maintained that its forces did not violate international humanitarian law. In May-June 2011, the Sri Lanka Army (SLA) hosted a three-day international conference to share information about its counterterrorism strategies, operations, tactics, and training with the international community (SLA 2011). Human Rights Watch urged countries to boycott the conference, with a representative stating: 'Sri Lanka's self-proclaimed "model" of counterinsurgency included repeatedly shelling civilians, targeting hospitals, and trying to prevent the world from finding out about it' (HRW 2011b). The SLA reports that more than 92 delegates from 41 foreign countries – including India, Pakistan, China, and Russia – participated in the conference nonetheless (SLA 2011; AFP 2011; BBC 2011a).[48]

In its National Report, which was presented to the UN General Assembly at the 2012 Universal Periodic Review (UPR), the GoSL provided the following response to the allegations outlined above:

> The GoSL acted with restraint to protect civilians throughout the Humanitarian Operation. A "zero civilian casualty" policy was adopted, and every precaution taken to minimise collateral damage during the fighting … an increasingly isolated and desperate LTTE leadership surrounded itself with a human shield comprising many thousands of civilians ... After the liberation of Kilinochchi in January 2009, the GoSL made every effort to encourage the movement of civilians to government-controlled areas including conveying messages through the UN and the ICRC. However, the LTTE forcibly prevented most attempts by the civilians to escape.
>
> The GoSL did not, at any stage, corral the civilian population in the Wanni …
>
> For the purpose of protecting civilians held by the LTTE, the GoSL identified areas of large civilian concentrations and instructed Security Forces to avoid firing into such areas. This was how the "No Fire Zone" (NFZ) came into being. The assertion that Security Forces declared areas NFZs and forced people into them is a gross distortion. A NFZ was identified to provide a reference point for Security Forces to take precautions in planning operations. These zones were readjusted having regard to the movement of civilians under LTTE compulsion. Announcements on radio and through loudspeakers, airdropped leaflets, and requests conveyed through international agencies were used to inform civilians of safe locations and encourage them to escape from the conflict area. Through an abundance of caution, Unmanned Aerial Vehicles (UAVs) were deployed over these areas to make an accurate assessment of the ground in which civilians were held. Nearly 300,000 civilians were successfully rescued from LTTE captivity during the operation.
>
> (UNGA 2012: paragraphs 13-15)

The National Report details progress made by the GoSL in the aftermath of the conflict with regard to de-mining efforts and the resettlement of approximately 300,000 internally displaced persons,[49] as well as the rehabilitation and reintegration of ex-combatants (UNGA 2012: paragraphs 19-24). The report also outlines steps taken by the GoSL to implement the recommendations made by the Lessons Learnt and Reconciliation Commission (LLRC), which include: the appointment of a Task Force to monitor the

[47] See for example submissions made by Human Rights Watch and Amnesty International at the United Nation's 2012 Universal Period Review (HRW 2012; AI 2012).
[48] The United States, Britain, France, Australia, Japan and Switzerland were amongst those countries that declined to attend (AFP 2011; BBC 2011a).
[49] There have been reports contradicting the GoSL's claim at the UPR that the resettlement process was voluntary, 'involving informed choice of the displaced family/person through facilitation of "go and see visits" prior to resettlement' (UNGA 2012, paragraph 21). See for example the statement of an IDP relocated from Menik Farm, once the world's largest IDP camp, available at IRIN Asia <http://www.irinnews.org/Report/96416/SRI-LANKA-Final-batch-of-Menik-Farm-IDPs-relocated> accessed 12 November 2012.

implementation of the LLRC recommendations in accordance with the National Plan of Action; the reduction of the military presence in the North and the withdrawal of the military from civil administration; the recruitment of Tamil police officers and the provision of Tamil language training to police personnel; and importantly, the appointment of a Board of Inquiry by the Sri Lanka Army to study the LLRC report and formulate a plan to implement recommendations relevant to the Army, as well as the appointment of a Court of Inquiry to investigate allegations of civilian casualties (UNGA 2012: paragraphs 25-36).[50]

The end of the armed conflict, however controversial, created a unique opportunity for the GoSL to arrest the decline of the rule of law and address the country's abysmal human rights situation. The absence of a serious threat to national security for the first time in decades created a space in which meaningful ethnic reconciliation and the pursuit of accountability could finally take place. Sadly, the GoSL has not seized this opportunity. I now turn to a discussion of impunity in present day Sri Lanka, beginning with an examination in the following section of the Lessons Learnt and Reconciliation Commission, which was created in 2010 in response to pressure from the international community urging the GoSL to address allegations of war crimes.

A. Accountability Mechanism

The Lessons Learnt and Reconciliation Commission (LLRC) was appointed by President Mahinda Rajapakse in May 2010 and tasked with the following mandate:

> … to inquire and report on the following matters that may have taken place during the period between 21st February 2002 and 19th May 2009, namely;
>
> (i) The facts and circumstances which led to the failure of the ceasefire agreement operationalized on 21st February 2002 and the sequence of events that followed thereafter up to the 19th of May 2009;
> (ii) Whether any person, group or institution directly or indirectly bear responsibility in this regard;
> (iii) The lessons we would learn from those events and their attendant concerns, in order to ensure that there will be no recurrence;
> (iv) The methodology whereby restitution to any person affected by those events or their dependants or their heirs, can be effected;
> (v) The institutional, administrative and legislative measures which need to be taken in order or prevent any recurrence of such concerns in the future, and to promote further national unity and the reconciliation among all communities, and to make any such other recommendations with reference to any of the matters that have been inquired into under the terms of the Warrant.
>
> (LLRC 2012)

This mandate does not contain an explicit directive to investigate violations of international human rights and humanitarian law or require that recommendations be made with regard to the perpetrators of atrocities (AI 2011: 10) – a glaring omission in light of the controversy surrounding the end of the war. In the absence of such a directive, the LLRC primarily conducted '… a survey of public and official perceptions about the root causes of ethnic conflict in Sri Lanka; the reasons for the breakdown of the 2002 ceasefire and persons responsible for that breakdown …' (AI 2011: 12).[51] While the mandate does

[50] The submissions made by Human Rights Watch and Amnesty International with reference to Sri Lanka's UPR emphasize the insufficiency and insincerity of attempts made by the GoSL to end impunity. I consider these submissions in greater detail in the section on political will.
[51] As will be discussed, while the LLRC considered allegations of violations of international humanitarian and human rights law and made several related recommendations, it did not investigate these allegations in an impartial, thorough, and systematic manner.

order the Commission to determine *responsibility* for the events under consideration, the Panel of Experts highlights that the task of assigning responsibility is distinct from that of ensuring accountability, which '… goes further by attaching consequences to individuals or institutions deemed responsible for a particular violation' (Darusman, Ratner, and Sooka 2011: 83). Additionally, the end-date of the mandate excludes from consideration abuses alleged to have occurred after the official end of the conflict (Darusman, Ratner, and Sooka 2011: 85).

The LLRC was not constituted in accordance with the principles of independence, impartiality, and competence articulated in the UN Principles on Impunity (2005).[52] The UN Panel of Experts contends that several Commissioners could not be considered independent or impartial because of prior associations with the governing regime – one Commissioner was Sri Lanka's Permanent Representative to the United Nations during the final stages of the war, while another was an advisor to the Ministry of Foreign Affairs during the period under consideration by the LLRC (Darusman, Ratner, and Sooka 2011: 7, 85). Furthermore, the Chair of the Commission, a former Attorney General, had been accused of '…obstructing investigation and prosecution of critically important human rights cases from the period of his tenure …' (AI 2011: 10). The Commission also suffered from a lack of human rights expertise, as highlighted by the fact that only one Commissioner had substantial human rights experience (AI 2011: 17). Finally, the Commission lacked gender balance and ethnic representativeness – five of the eight Commissioners were Sinhalese males, while two Commissioners were Tamil (including the sole female Commissioner) and one was Muslim (Darusman, Ratner, and Sooka 2011: 86; Amnesty International 2011: 16-17). Three prominent international NGOs – Human Right Watch, Amnesty International, and the International Crisis Group – declined to testify before the LLRC, citing the Commission's inadequate mandate and lack of independence as key reasons (ICG 2010a).

Flawed mandate and composition notwithstanding, several positive features of the LLRC should be placed on record. Firstly, the Commissioners travelled to locations far outside Colombo, which were severely affected by the armed conflict, giving many witnesses an opportunity to testify directly about their experiences (Darusman, Ratner, and Sooka 2011: 88). Secondly, the LLRC made several important acknowledgments and recommendations in its final report, which was submitted on 15 November 2011. For example, the Commission acknowledges specific instances of death or injury to civilians that warrant further investigation, and urges prosecution of those responsible if culpability is established (LLRC 2011: 329, 335). Importantly, the Commission recommends an independent investigation into the Channel 4 video to establish whether there is any truth to allegations that soldiers committed human rights abuses (LLRC 2011: 337). It should be noted that where the LLRC recommends further investigation and prosecution, it underscores that the perpetrators are in the minority and should be dealt with in the interest of preserving the good name of the armed forces (LLRC 2011: 337).

The LLRC also calls attention to witness testimony alleging State responsibility for the arrests of individuals who subsequently disappeared:

> … it is the clear duty of the State to cause necessary investigations into such specific allegations and where such investigations produce evidence of any unlawful act on the part of individual members of the Army, to prosecute and punish the wrongdoers. The Commission must also stress in this regard that if a case is established of a disappearance after surrender to official custody, this would constitute an offence entailing penal consequences.
>
> (2011: 332)

The LLRC considers the issues of enforced disappearance and arbitrary arrest and detention in some detail, noting the large number of such allegations; public mistrust of the criminal justice system; the failure to implement recommendations made by previous Commissions of Inquiry in this regard; the

[52] See the discussion of Principles 7(a) and 7(c) of the UN Principles on Impunity (2005) in Part II, Section 1 (A).

importance of adherence to international norms concerning arrest and detention (which are outlined); the need to amend the domestic legislative framework to criminalize the specific crime of enforced disappearance; and the importance of expanding cooperation with humanitarian organizations such as the ICRC to ensure appropriate treatment of detainees (LLRC 2011: 338-344). The Commission also makes several recommendations regarding the provision of compensation to survivors and relatives of the dead or disappeared (LLRC 2011: 363-365).

While the LLRC's final report is not '… quite the whitewash that it was expected to be' (Pinto-Jayawardene 2012) its findings and recommendations are undermined by the Commission's lack of independence, impartiality, and expertise, as well as serious procedural flaws. The Panel of Experts expresses concern about the Commissioners' failure to treat vulnerable witnesses with respect and sensitivity or allow them adequate opportunity to give a full account of their experiences (Darusman, Ratner, and Sooka 2011: 96). Amnesty International contends that the Commissioners deliberately avoided making inquiries into allegations of misconduct by armed forces personnel even when witnesses identified the perpetrators (2011: 19); forcefully challenged the testimony of experts and witnesses who were critical of the State, while being 'deferential' towards those testifying in support of the State (AI 2011: 25, 47); and '…spent significant time arguing in defence of the Sri Lankan military …' when confronted with evidence of illegal shelling by the armed forces (AI 2011: 25).[53] Furthermore, both Amnesty International and the Panel of Experts have expressed alarm at the LLRC's failure to adopt witness protection measures, despite evidence of intimidation and credible threats to the safety of witnesses (AI 2011: 53; Darusman, Ratner, and Sooka 2011: 96). Accountability cannot be achieved if a Commission of Inquiry is unwilling to uncover the truth about violations and culpability (IW Research Instrument 2007: 46) or is unable to guarantee the '… security, physical and psychological well-being, and, where requested, the privacy of victims and witnesses who provide information to the commission' (UN Principles on Impunity 2005: Principle 10).

Finally, the lack of widespread public knowledge about the LLRC and its purpose casts serious doubt upon its effectiveness as a mechanism of accountability and redress. According to a survey conducted by the Center for Policy Alternatives (CPA) in Sri Lanka, only 19.1% of Sinhalese and 32.5% of Sri Lankan Tamils had even heard of the LLRC (2011: 40). Of those who had heard of the LLRC, the vast majority did not know its functions (CPA 2011: 40). How can the LLRC facilitate truth, justice and reparations, as well as provide guarantees of non-recurrence, if the majority of Sri Lankan citizens are unaware of its existence, let alone its findings?

While anticipating the final report of the LLRC, the Panel of Experts noted that the Commission '… offers a potentially useful opportunity for the beginning of a national dialogue regarding the final stages of the war, as well as on other issues related to the conflict' (2011: 95). More than a year has passed since the submission of the LLRC's final report, and still, accountability remains elusive. In the following section, I examine the continuing absence of political will, which has all but ended hope for a home-grown solution to impunity in Sri Lanka.

B. Political Will

> The vast majority of human rights violations [in Sri Lanka] are never investigated, let alone heard in court. Those that make it to trial rarely lead to a conviction, defendants are acquitted for want of evidence, witnesses refuse to testify, hearings are subject to repeated delays, and even the prosecution has failed to appear in court in key human rights cases. This is not simply a problem of inadequate resources or institutional capacity (although these too are often obstacles), but due to a lack of political will by the authorities…
>
> (AI 2012: 6)

[53] Amnesty International cites to publicly available transcripts of LLRC proceedings in support of its claims.

As mentioned previously, a government's public discourse on human rights and accountability provides an indication of whether it possesses the requisite political will to combat impunity (IW Research Instrument 2007: 57). The Sri Lankan delegation at the UN Universal Periodic Review (UPR) held in November 2012 engaged in a spirited defence of the governing regime and its questionable post-war efforts to promote reconciliation and accountability. Sri Lankan lawyer Kishali Pinto-Jayawardene (2012) and Human Rights Watch Asia Director, Brad Adams call attention to the GoSL's strategy of countering international criticism of its human rights record by claiming that it is in the process of addressing these concerns, with Adams stating that '[the government's] default response to criticism of its rights record – that its efforts are "ongoing" – is neither truthful nor adequate' (HRW 2012).

The submissions made by international human rights NGOs with respect to Sri Lanka at the UPR highlight the GoSL's continued failure to safeguard human rights and provide guarantees of the non-recurrence of violations as set forth in the UN Principles on Impunity:

> … States must undertake institutional reforms and other measures necessary to ensure respect for the rule of law, foster and sustain a culture of respect for human rights, and restore or establish public trust in government instructions …
>
> (2005: Principle 35)
>
> In particular, emergency legislation and courts of any kind must be repealed or abolished insofar as they infringe the fundamental rights and freedoms guaranteed in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.
>
> (2005: Principle 38)

Amnesty International calls attention to the GoSL's continued reliance on counterterrorism legislation that allows for the arbitrary arrest and prolonged detention of suspects; failure to implement the National Plan of Action on Human Rights; enactment of the 18th amendment to the constitution, which compromises the independence of the National Human Rights Commission and removes the Presidential term limit; and failure to enact a Victim and Witness Protection bill (2012: 4-5). Amnesty further states that it continues to receive reports of enforced disappearances, torture, and extrajudicial executions (AI 2012: 6).

The UPR submission made by Human Rights Watch in respect of Sri Lanka echoes many of the concerns expressed by Amnesty International and warns that the right to free expression is increasingly under threat. This claim is supported by reference to several prominent cases, such as the assassination of newspaper editor Lasantha Wickrematunge in 2009, the enforced disappearance of political satirist Prageeth Eknaligoda in 2010, and the blocking of websites critical of the GoSL in 2011 (HRW 2012). HRW also notes the continuing intimidation of human rights defenders working in Sri Lanka (2012).

With respect to claims made by the GoSL regarding the implementation of the LLRC recommendations, HRW states that it is unaware of any actions taken by the military courts of inquiry supposedly set up by the Sri Lankan Army to investigate alleged human rights abuses (2012). Local legal practitioner and ICJ consultant, Kishali Pinto-Jayawardene states that the GoSL has not even implemented those recommendations which can be acted upon immediately, such as disarming those carrying weapons illegally; providing the relatives of detainees with improved access to their loved ones; observing safeguards with respect to arrests and detentions; and ceasing enforced disappearances (2012). Pinto-Jayawardene notes that '… on all fronts, the situation has either remained static or has worsened' while ' [the GoSL's] obvious prevarication in respect of the implementation of [the LLRC's] recommendations … only reflects its almost childlike belief that these games can continue without inevitable repercussions' (2012).

Unfortunately, it appears that the GoSL's belief that it can maintain the status quo with regard to impunity is not entirely ill conceived. The international community failed to agree upon and formulate an effective response to the human rights abuses and violations of humanitarian law allegedly perpetrated by the LTTE and the GoSL both during and after the armed conflict. The lack of consensus on how to proceed was aggravated by the unstinted diplomatic support of the governing regime by powerful nations such as UN Security Council members Russia and China. A recently released report by the Secretary General's Internal Review Panel on United Nations Action in Sri Lanka (hereinafter 'UN Internal Review Report') states ' … the single most significant factor that limits the UN's ability to adequately address such situations is the difficulty Member States have, especially at the Security Council, in reaching an early and qualitatively adequate political consensus on a situation' (2011: 30-31). The report also finds that the UN's political engagement with the GoSL was hampered by the government's 'stratagem of UN intimidation' which included '… control of visas to sanction staff critical of the State' and surveillance of the UN's computer systems, e-mails, and phones (2011: 7-8) as well as the reluctance of UN officials to provoke the GoSL by highlighting government responsibility for human rights and humanitarian law violations in official correspondence (2011: 20). The report concludes that in future, '… the UN must be able to meet a much higher standard in fulfilling its protection and humanitarian responsibilities' (2011: 35).

It would be unfair, however, to place the entire blame for the manner in which Sri Lanka's civil war ended at the doorstep of the UN and the international community. Despite its abysmal human rights record and failure to pursue accountability, President Mahinda Rajapakse's regime enjoys a significant measure of public support in Sri Lanka, as evidenced by his comprehensive victory in the 2010 Presidential election (Polgreen 2010). Many Sri Lankans offer at least passive support for the regime as it counters international criticism. Worryingly, the lack of effective resistance encountered by the GoSL at both international and domestic fora and the government's increasing sophistication in countering what resistance there is, has allowed the political leadership to settle into an illiberal mode of governance, the implications of which I consider in greater detail below.

C. Legacy

In a May 2008 speech at an international conference in Berlin, UNP leader Ranil Wickremesinghe aptly described Sri Lanka as an 'illiberal democracy' (Wickremesinghe 2008). He was referring to Fareed Zakaria's description of democratically elected regimes, which routinely ignore constitutional limits on power and deprive citizens of basic rights and freedoms (Zakaria 1997: 22).[54] While the current regime can be considered democratically elected, constitutional liberalism is on the decline in Sri Lanka.

The ruling regime has shown scant respect for constitutional limits on power and the independent and impartial conduct of public affairs. In 2010, the 18th amendment to the constitution removed the term limit on the Executive Presidency, which allows the current President to contest elections indefinitely. Nepotism is rife in the Rajapakse administration,[55] which makes no secret of its dynastic ambitions – in an interview with the Sydney Morning Herald, the President's brother (and Minister of Economic Development) Basil Rajapakse admitted 'it is a dynasty, but by people's choice, a people's dynasty' (SMH 2012).

The Rajapakse regime does not take kindly to political opposition, which is a necessary component of a healthy democracy. This was clearly evidenced by its response when former Sri Lankan General, Sarath Fonseka contested the Presidential elections held shortly after the end of the conflict in 2009. Fonseka lost

[54] Zakaria's theory of illiberal democracy posits that democracy and liberalism are distinct phenomena. Democratically elected regimes that enjoy significant popular support can be illiberal (Zakaria 1997: 23). Zakaria's conceptualization of a liberal democracy requires not only free and fair elections, but also 'constitutional liberalism' or respect for individual liberty and the rule of law (1997: 26).

[55] The President is 'directly responsible for 78 institutions', holding ministerial portfolios for defence, finance and planning, ports and aviation, and highways (The Economist 2010). His three brothers hold key government positions as Secretary of Defence; Minister of Economic Development, and Speaker of Parliament (The Economist 2010). A total of 94 government departments are said to be under the control of the Rajapakse family (Wijewardene 2010 in DeVotta 2010: 335).

the election and subsequently faced two courts-martial on charges of engaging in politics while on active service and arms procurement offences. He was convicted on both charges (BBC 2010b; BBC 2011b). Fonseka was also convicted in civilian court of 'spreading disaffection' by making public comments that lent credence to war crimes allegations (BBC 2011c). Fonseka received a Presidential pardon in 2012 on condition that he does not vote in or contest an election for seven years (Radhakrishnan 2012).[56] The governing regime has also sought to weaken the opposition in parliament by '… enticing opposition candidates to [the President's] side … by providing them cabinet portfolios …' (De Votta 2010: 338). Human Rights Watch reports that the GoSL has targeted media outlets supporting the opposition and perpetrated human rights abuses against journalists critical of the governing regime (2012).

The current regime has also sought to interfere with the judiciary, adopting what the ICJ describes as a 'systematic approach' to weaken the judiciary and other accountability mechanisms (2012: 7). The most pertinent example of such interference is the GoSL's ongoing attempt to impeach Sri Lanka's Chief Justice, Shirani Bandaranayake, on charges of 'professional and financial impropriety' (Macan-Markar 2012). The GoSL initiated impeachment proceedings in apparent retaliation for the Supreme Court's decision to strike down the *Divi Neguma* bill, which would allow the President's brother, Basil Rajapakse control of 80 billion Sri Lankan rupees in his capacity as Minister for Economic Development (ICJ 2012a). The ICJ has expressed concern over the legality of the impeachment proceedings in light of reports that the Chief Justice '… has been denied the right to cross-examine potential witnesses and has not been provided full disclosure of the allegations against her' (ICJ 2012a). Additionally, the Parliamentary Select Committee, which has found the Chief Justice guilty of three charges, denied her request for a public hearing (ICJ 2012a).

Recent rulings by Sri Lanka's Supreme Court and Court of Appeal on this issue are heartening indications of the judiciary's willingness to act in the interests of constitutionalism – the Supreme Court ruled that the Parliamentary Select Committee appointed by the President did not have the authority to investigate the Chief Justice; consequently, the Court of Appeal determined the Committee's hearings to be unlawful, rendering its verdict null and void (WSJ 2013). Importantly, Sri Lanka's legal community has shown strong opposition to the GoSL's conduct in this matter. The Bar Association recently adopted a resolution urging that the President either reconsider the impeachment or '… formulate and enact procedural laws in relation to removal of the judges of the superior courts while ensuring a fair trial by adhering to principals [sic] of natural justice …' (Sri Lanka Guardian 2012). The Bar Association also stated that it would not welcome a new Chief Justice if Mrs. Bandaranayake does not receive a fair trial (Sri Lanka Guardian 2012). Despite the findings of the Supreme Court and the Court of Appeal, as well as the protests of the legal community, the GoSL has nonetheless decided to discuss the impeachment in parliament on 10th and 11th January 2013 (Radhakrishnan 2013). It remains to be seen how this latest attempt to subvert constitutionalism will end.

The examples discussed thus far provide insight as to how the Rajapakse regime's attempts to consolidate political power by undermining the rule of law and abusing human rights have allowed impunity to flourish. What is less evident is how this regime, like others before it, garners sufficient public support to retain political power despite its blatant misconduct. I believe that the cornerstone of public support for these regimes is ideology, specifically, a nationalist ideology which privileges the position of Sinhalese Buddhists in Sri Lanka:

> … Sri Lanka is the Dharmadvipa (island of the faith) consecrated by the Buddha himself as the land in which his teachings would flourish … *Mahavamsa* [a historical chronicle] states that on the

[56] The GoSL has been accused of politically motivated transfers of military officers loyal to Fonseka. AFP reports that Army spokesman Udaya Nanayakkara confirmed the transfers of several senior military officers in the aftermath of the 2010 presidential election, while a confidential military source revealed that these individuals were supporters of General Fonseka (AFP 2010). The Sunday Times published a list of these transfers, naming the individuals affected, and providing details of their previous and current positions in the military establishment – several individuals have been transferred from important command positions to administrative positions (The Sunday Times 2010). Fonseka also claims that officers suspected of being loyal to him were discharged from the military (The Sunday Times 2010).

> very day of the Buddha's death, Vijaya, the founder of the Sinhala race, landed in Sri Lanka as if to bear witness to the Buddha's prediction.
>
> (Geiger 1950 in Wickramasinghe 1998: 387)

This ideology is evident in the public discourse of Sri Lankan political and military leaders. For example, President J.R. Jayewardene effectively stated that the good opinion of Sinhalese people was of greater concern to him than the welfare of Tamil people in an interview with a London newspaper shortly before the 1983 riots.[57] In a September 2008 interview with the *National Post* a few months prior to the military defeat of the LTTE, the then Commander of the Sri Lanka Army, General Sarath Fonseka, expressed the view that Sinhalese occupy a privileged position in Sri Lanka and that Tamils should accept their secondary status:

> I strongly believe that this country belongs to the Sinhalese, but there are minority communities and we treat them like our people … they can live in this country with us. But they must not try to, under the pretext of being a minority, demand undue things.
>
> (Bell 2008)

The comments of President Jayewardene and General Fonseka exemplify what the UN Principles on Impunity describe as 'revisionist and negationist arguments', which develop as a result of the failure to preserve the collective memory of the injustices suffered by ethno-religious minorities (2005: Principle 3). President Rajapakse took this refusal to acknowledge the political marginalization of minorities even further, when he claimed during a parliamentary address following the military victory of 2009 that non-patriots were the only minority in Sri Lanka:

> No longer are there Tamils, Muslims, Burghers, Malays and any others [sic] minorities. There are only two peoples in this country. One is the people that love this country. The other comprises the small groups that have no love for the land of their birth. Those who do not love the country are now a lesser group.
>
> (SLA 2009)

This statement is a good representation of what the Sri Lanka Campaign for Peace and Justice refers to as 'a culture … where any calls for accountability are denounced as anti-patriotic and akin to treason, sabotage, or aiding and abetting terrorism' (2010: 10). DeVotta writes that the GoSL perpetuates the idea that it is '… engaged in a battle against foreign and domestic forces determined to undermine Sinhalese Buddhists' in order to justify flouting human rights and the rule of law even in the absence of threats to national security (DeVotta 2010: 342).

The combination of a misguided sense of patriotism and a persistent strain of nationalism does not bode well for ethnic reconciliation and communal harmony in Sri Lanka. Reports of a military headquarters being built on a flattened LTTE graveyard (Haviland 2011) and interference by the Army in memorial events held in the North for those killed in the war (Groundviews 2012) contrast starkly with the lavish and celebratory annual events hosted by the GoSL to commemorate the military's 2009 victory (Haviland 2011). It is unfortunate that the GoSL does not engage in more inclusive and less triumphant efforts at memorialization, which are sensitive to the conflicting emotions of many Sri Lankans regarding the end of the war. As stated by a local blogger:

[57] Refer Part II, 1 (C) for the full quote.

> I'm happy the war had [sic] ended. But I'm not at all happy about the way it was fought, especially the last phase. And celebrating while many others are mourning and grieving – and actively trying to prevent mourning and grieving – doesn't seem to be the way towards a genuine reconciliation.
>
> (Groundviews 2012)

While the recent efforts of Sri Lanka's judiciary and legal community to safeguard constitutionalism are laudable, in general terms, civil society has little capacity to effectively resist the Rajapakse regime's onslaught on the rule of law and human rights. Decades of violence and impunity have whittled down people's ability and willingness to advocate for reform or accountability, especially on behalf of those who have been branded by political rhetoric as second-class citizens, or worse, traitors. This reality underscores the urgent need for the international community's diplomatic and material assistance to promote accountability and unequivocal support for domestic efforts to resist impunity. In the concluding section of this paper, I review the major obstacles to accountability in Sri Lanka and propose a way forward.

Conclusion

The goal of this paper has been to examine the phenomenon of impunity in the context of political violence in postcolonial Sri Lanka and identify obstacles to accountability. My main findings in this regard are summarized below. It is important to note that these findings pertain primarily to the three episodes of political violence considered in this paper and are not, therefore, exhaustive.

Normative Framework

Sri Lanka has a clear (and voluntarily undertaken) obligation to uphold the standards set forth in international human rights and humanitarian legal regimes. International law recognizes a State's right to defend itself and safeguard its people, whether by declaring a state of emergency or engaging in armed conflict. However, this right is not absolute – States may not, under any circumstances, commit human rights abuses such as torture, extrajudicial killings, or enforced disappearances, or deviate from the principles of international humanitarian law. If and when violations do occur, States have a responsibility to seek accountability. In particular, States must refrain from granting special classes of people (such as State officials) immunity from legal responsibility for violations, and ensure that victims of violations receive truth, justice, reparations, and guarantees of non-recurrence.

Sri Lanka's domestic security legislation undermines international legal standards and presents a significant challenge to accountability. The Public Security Ordinance of 1947 (which provides for the declaration of a state of emergency and the issuance of emergency regulations) and the Prevention of Terrorism Act of 1979 contain particularly egregious provisions, which bar judicial review of Executive actions and grant State actors immunity from legal responsibility for actions committed in an official capacity. Additionally, the Prevention of Terrorism Act vests far too much discretion in security personnel by granting them broad powers of arrest and detention and failing to provide a clear definition of unlawful activity. These provisions must be repealed or amended if accountability is to be achieved.

Accountability Mechanisms

Commissions of Inquiry (COIs) have been the GoSL's accountability mechanism of choice in the aftermath of political violence. However, COIs have failed to make a dent in impunity for several reasons.

The Commissions of Inquiry Act of 1948, which provides the legal basis for the creation of COIs, grants the Executive complete authority to determine a COI's mandate and appoint its Commissioners. Therefore, a COI is more likely to be independent and impartial if it is investigating political violence that occurred under a regime other than that responsible for its appointment. This was certainly the case with the Presidential Truth Commission on Ethnic Violence (1981-1984) and 1994 Disappearances Commission. The Disappearances Commission in particular made important findings regarding State complicity in human rights violations. Conversely, the LLRC, which was tasked with investigating violence that occurred under the regime responsible for its appointment, demonstrated a clear bias towards the government in its proceedings and findings.

The Commissions of Inquiry Act of 1948 does not require that the findings and recommendations of COIs be made public. Successive governments have failed to adequately publicize and distribute COI reports and there is consequently little public awareness of COIs or their findings and recommendations in Sri Lanka. If COIs are to function effectively as accountability mechanisms, it is crucial that the Commissions of Inquiry Act of 1948 be overhauled to prevent Executive control of COIs and make their findings and recommendations more accessible to the general public.

A serious problem with regard to COIs in Sri Lanka is the country's lack of an adequate witness protection system. There has been evidence of witness intimidation and credible threats to the safety of witnesses testifying before COIs. A witness protection bill has been languishing in parliament for some years but is yet to be enacted. Accountability cannot be achieved unless the security of witnesses is guaranteed. It is essential that a comprehensive witness protection bill that complies with international guidelines for the safety and well-being of witnesses be enacted promptly in Sri Lanka.

Political Will

The lack of political will is inarguably the greatest obstacle to accountability in Sri Lanka. State actors have been complicit in committing and concealing human rights abuses for decades and there is credible evidence that the GoSL violated international humanitarian law during its final military operations against the LTTE in 2009. International NGOs and domestic COIs have documented these violations and made numerous recommendations with regard to accountability. The 1994 Disappearances Commission even identified the alleged perpetrators of serious human rights abuses during the late 1980s under confidential cover. The State's obligation to uncover the truth about past atrocities has been somewhat fulfilled by COIs. However, the other components of accountability, namely justice, reparations, and guarantees of non-recurrence, have not been forthcoming. This is due to the fact that successive regimes have failed to investigate and prosecute the perpetrators of violations, grant adequate compensation to victims, or take necessary measures to prevent the recurrence of violence.

The investigation and prosecution of alleged perpetrators of violations is hampered by systemic impunity in the security and justice sectors. The final reports of the Presidential Commission on Ethnic Violence (1981-1984) and the 1994 Disappearances Commission provide detailed evidence of how law enforcement authorities resist accountability by refusing to record witness statements and initiate investigations, particularly when State actors are involved. Officers attempting to investigate State actors have been transferred or otherwise penalized. There has been little progress in attempts to prosecute alleged perpetrators of violations. This is partly due to the politicization of the office of the Attorney General, who is responsible for these prosecutions. The investigation and prosecution of perpetrators is also hampered by the lack of an adequate witness protection system, which would allow victims and witnesses to testify against State actors safely. The GoSL must undertake comprehensive reform of the security and justice sectors if accountability is to be achieved. It should implement recommendations made by the local and international human rights community in this regard, such as establishing an office of an independent prosecutor and enacting comprehensive witness protection legislation.

The GoSL should also implement recommendations regarding the provision of reparations and guarantees of non-recurrence to victims and survivors of violations, including (but not limited to) making compensatory payments to victims and survivors; repealing or amending legislation such as the Prevention of Terrorism Act (1979), which compromise human security; and preventing perpetrators of violations from holding public office or serving in the security forces.

Finally, impunity in Sri Lanka is compounded by the lack of consensus within the international community as to how to respond to the GoSL's continuing disregard for human rights and accountability. The final stages of the GoSL-LTTE conflict underscored the importance of establishing a consensus amongst UN member States, particularly those in the Security Council, as to how to respect State sovereignty without compromising the responsibility to protect vulnerable populations.

Legacy

Decades of violence have left an indelible mark on Sri Lankan society. The anti-Tamil communal violence of 1983 and the protracted armed conflict between the GoSL and the LTTE have created a gulf between the Tamil and Sinhalese communities. In general, efforts made by the Tamil diaspora to memorialize Tamil victims of political violence, and the GoSL to celebrate its military victory in 2009, are polarizing and do

not promote ethnic reconciliation. Thoughtful private efforts at commemorating violence are not sufficiently broad-based to have a real impact. True accountability and meaningful reconciliation will require that the GoSL engage with all stakeholders to remember past violence in a sensitive and inclusive manner.

The recurrence of political violence has significantly eroded public trust in the security forces and State institutions. The armed forces are well regarded by most in the Sinhalese community, but the same cannot be said of minority communities. Most Sri Lankans, regardless of ethnicity, distrust the police. The victims of political violence have been failed repeatedly by law enforcement authorities and the justice system in their quest for accountability. Public confidence in State institutions cannot be restored without comprehensive reform of the justice and security sectors, which includes the investigation, prosecution, and if convicted, removal, of those involved in human rights abuses and violations of humanitarian law.

Sri Lanka today can be considered an 'illiberal democracy'. Despite its blatant efforts to undermine constitutional limits on power, stifle political opposition, and compromise the independence of the judiciary, the current regime enjoys significant public support, primarily within the majority Sinhalese community. Like many previous regimes, the Rajapakse regime espouses a nationalist ideology, which privileges the position of Sinhalese Buddhists in Sri Lanka and equates political dissent with being unpatriotic, to retain this support.

The Way Forward

Impunity has become entrenched in Sri Lanka as a consequence of decades of political violence, during which ruling elites favoured power and expediency over human security and the rule of law, particularly in the face of threats to national security. This paper has demonstrated that there is, at present, little likelihood of ensuring accountability for violations solely through domestic mechanisms. As Amnesty International correctly points out, 'Sri Lanka simply cannot go it alone' when it comes to effectively combating systemic impunity (AI 2009: 6).

It is unlikely that the GoSL will voluntarily accept international assistance aimed at comprehensive reform of the justice and security sectors or allow for the establishment of an international accountability mechanism for Sri Lanka. Nor will the majority of Sri Lankans support an international accountability mechanism (Welikala 2011). It would be wrong, however, to assume that there is no support for international action in Sri Lanka. As discussed previously, Sri Lanka has a small but vibrant community of human rights activists, academics, and legal practitioners, many of whom realize that Sri Lanka cannot combat impunity on its own. Additionally, there is widespread support for international action to secure accountability amongst Sri Lankan Tamils in the North and East of the country and the Tamil National Alliance (TNA) – a leading Tamil political party (Anketell 2012). There is a possibility that the GoSL may be compelled to accept international assistance in the pursuit of accountability if the international community is prepared to act unitedly and decisively in this regard.

It is beyond the scope of this paper to evaluate the likelihood of international action or delineate the contours of an international accountability mechanism for Sri Lanka. It is clear, however, that such action is necessary. The history of impunity in Sri Lanka, as recounted in this paper, suggests that to leave accountability entirely in the hands of the GoSL would be to condemn Sri Lankans to further violence and insecurity.

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Impunity Watch (IW) is a Netherlands-based, international non-profit organisation seeking to promote accountability for atrocities in countries emerging from a violent past. IW conducts systematic research into the root causes of impunity that includes the voices of affected communities to produce research-based policy advice on processes intended to enforce their rights to truth, justice, reparations and non-recurrence. IW works closely with civil society organisations to increase their influence on the creation and implementation of related policies. IW runs 'Country Programmes' in Guatemala and Burundi and a 'Perspectives Programme' involving comparative research in multiple post-conflict countries on specific thematic aspects of impunity. The present Research Report applies IW's Research Instrument to produce an introductory study of impunity in Sri Lanka.

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