

# CONFRONTING THE COMPLEXITY OF LOSS

## PERSPECTIVES ON TRUTH, MEMORY AND JUSTICE IN SRI LANKA



GEHAN GUNATILLEKE



LAW & SOCIETY TRUST

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**Gehan Gunatilleke**

**Law & Society Trust**  
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## Foreword

Justice, Truth and Reconciliation are terms that have entered Sri Lanka's human rights discourse from time to time, and now more than ever. The year 2015 marks a historical shift in Sri Lankan politics, as Sri Lanka co-sponsored a resolution at the United Nations Human Rights Council in Geneva, marking a landmark recognition of the need for truth, justice, reconciliation, and reparation if Sri Lanka is to achieve lasting peace and reconciliation for its peoples.

In light of these political dynamics, this study presents important findings at a crucial time, on mapping the attitudes, perceptions and viewpoints of victims and survivors, in relation to these concepts. As Sri Lanka experiments with different mechanisms and frameworks, which are discussed in academic circles and lawmakers' chambers, the difficulty of the quest to truly meet the needs of the victims in order to achieve justice, truth and reconciliation equally, assumes monumental proportions.

Gehan Gunatilleke in this study challenges the notion of a unique 'Sri Lankan approach' to truth, memory and justice, which is suggested by many, and grapples instead with the plurality of the views of victims, where each narrative can have a different outcome and perspective. While he does not arrive at broad conclusions on the 'Sri Lankan approach', his research provides a clear argument for the need for Sri Lanka to capture the diverse voices of victims and survivors in any mechanism to achieve lasting peace and reconciliation. The Law and Society Trust hopes that this study will provide fertile ground for building true victim and survivor centric reconciliation frameworks for Sri Lanka and its peoples in the next few years.

Law and Society Trust,  
Colombo

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Above all, we thank the 45 participants who displayed incredible resolve and sincerity in coming forward to tell their stories and share their views with us. We dedicate this study to these participants and others like them, some of whom remain voiceless.

# Confronting the Complexity of Loss: Perspectives on Truth, Memory & Justice in Sri Lanka

*Gehan Gunatilleke* \*

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## **Introduction**

### ***Background to the Study***

Historical and contemporary narratives often shape the manner in which a society confronts violence and loss, and the questions of truth, memory and justice that consequentially emerge. The Eighteenth Century revolutions and subsequent anti-slavery movements in Europe and North America contributed towards the development of a liberal-democratic ideology rooted in liberty and justice. Less than two centuries later, two World Wars prompted discourses on international justice and galvanised universal human rights norms. These discourses also grappled with the contradictions of colonialism and the injustices that often lingered in its aftermath. The post-World War era accordingly witnessed a spate of independence struggles in the Global South, which shaped conceptions of rights and justice in those societies. Meanwhile, in Latin America, a recent history of gross injustices under military dictatorships led to remarkable grassroots demands for truth and justice. African experiences, including the anti-apartheid struggle in South Africa and the Rwandan Genocide, have also contributed significantly to the global discourse on transitional justice.

In Sri Lanka, we are yet to fully understand the level to which concepts such as truth, memory and justice permeate the public consciousness. This is particularly true of the discourse on transitional justice. Truth telling and justice projects have emerged sporadically, ranging from initiatives to inquire into disappearances in the 1990s to the recent call for accountability in response to wartime atrocities. Meanwhile, contemporary Sri Lankan discourse on transitional justice has produced a curious narrative on what the ‘Sri Lankan’ version of transitional justice looks like. Certain elements within the Sri Lankan state promoted this narrative, which now finds support even among a limited group of scholars. The narrative first seeks to dichotomise the idea of justice into ‘retributive’ and ‘restorative’ forms. It then proceeds to define the Sri Lankan approach to restorative justice further by

contending that ‘tolerance’, ‘forgiveness’ and ‘leniency’ form the uniquely Sri Lankan approach to dealing with violence and loss.<sup>1</sup>

In *Politics of Memory: Truth, Healing and Social Justice*,<sup>2</sup> Ifi Amadiume and Abdullahi An-Na’im ask: why are we not learning lessons from the past? The question is raised in the context of repeated conflict in Africa; but the same could be asked of Sri Lanka. Despite recurring violence, the country has been unable to learn from its history and develop an effective approach to combat impunity and prevent violence.

This study is an exploratory exercise that attempts to understand the attitudes of victims and survivors towards truth, memory and justice.<sup>3</sup> The study does not seek to reach any broad conclusions with respect to a general approach among Sri Lankans towards these concepts. Instead, it seeks to grapple with the plurality of views and experiences, and the manner in which personal narratives often shape attitudes towards truth, memory and justice. By consulting a cross-section of victims and survivors who have undergone violence and loss during Sri Lanka’s recent history, this study also seeks to challenge certain homogenising narratives on a so-called ‘Sri Lankan approach’.

Several key events in Sri Lanka’s recent history are examined in this study. The July 1983 anti-Tamil pogrom, the 1987-89 Janatha Vimukthi Peramuna (JVP) insurrection, the 1990 expulsion of Muslims from the North, the 30-year ethnic war, including its final stages in 2009, and the Aluthgama riots of 2014, each contained egregious rights violations that

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<sup>1</sup> See the concluding part of this study for an analysis of this narrative.

<sup>2</sup> Ifi Amadiume & Abdullahi An-Na’im, *Politics of Memory: Truth, Healing and Social Justice* (2000).

<sup>3</sup> The term ‘victim’ alone may be inadequate to capture the complexities inherent in how a person who has experienced violence and loss defines him or herself. The term ‘survivor’ alone may also fall short of capturing these complexities. Thus, throughout this study, the terms ‘victim’ and ‘survivor’ are used together and, at times, interchangeably.

are retained in the collective memory of living generations. This study attempts to understand the nature of that memory by engaging those who have suffered personal loss as a direct result of these events.

### ***Research Method, Limitations and Presentation***

This study undertakes a qualitative analysis of the perspectives of the following stakeholder groups:

1. Tamil persons who lost property during the July 1983 pogrom
2. Sinhalese persons who lost relatives during the government crackdown on suspected members and sympathisers of the JVP during the 1987-89 insurrection
3. Muslim persons who lost land and property during the 1990 expulsion from the North
4. Sinhalese persons who lost family members due to raids by the Liberation Tigers of Tamil Eelam (LTTE) on villages bordering the Northern Province (commonly referred to as ‘border villages’)
5. Persons who lost relatives due to LTTE attacks including bombings of civilian targets
6. Sinhalese persons whose family members served in the military and were either missing or killed in action during the war
7. Tamil persons who lost family members during the war, particularly during the final stages of the war
8. Persons who lost family members during the post-war period due to extra-judicial killings and enforced or involuntary disappearances
9. Muslim persons who lost property during the 2014 Aluthgama riots

The study undertook 32 individual interviews and two focus group discussions to ascertain the views of the identified stakeholder groups. Participants were purposively selected from among networks previously established by the Law & Society Trust.

The selection was based on three criteria. First, three or four participants from each stakeholder group were selected in order to ensure that the sample captured responses from all the stakeholder groups. Second, participants were selected according to their sex and ethnic profile. The interview sample accordingly included eighteen women and fourteen men, and included sixteen Sinhalese, ten Tamils and six Muslims. The sex or ethnicity of participants, however, was not representative of their respective sex or ethnic group; it is appreciated that the sample is too small to extrapolate conclusions based on sex or ethnicity. The aim in applying such criteria was simply to ensure that the research sample broadly captured perspectives of victims and survivors of specific events that took place in Sri Lanka during the past three decades. Third, participants were selected according to their geographical origin. The selection aimed to cover as many districts as possible and included Colombo, Gampaha, Galle, Hambantota, Anuradhapura, Kandy, Ampara, Jaffna, Kilinochchi and Mannar.

Additionally, two focus group discussions were conducted. The first involved eight Tamil women from the Eastern Province, who had lost their spouses during the war, and the other involved four Sinhalese women and a Sinhalese man based in the districts of Hambantota and Kandy, who lost family members during the JVP insurrection.

A semi-structured discussion guide was used to extract two types of data. First, participants were invited to *recollect* their experiences and personal stories of violence and loss. These stories were documented as factual accounts—or witness testimonials—and are presented in narrative form. Second, participants were invited to offer their *observations* and *opinions* on six key areas relevant to truth, memory and justice:

1. The overall context of their loss i.e. loss of family members and property

2. Their own actions and behaviour both during and after they encountered loss
3. The importance of telling others about their experience
4. The importance of memorialising
5. Their conceptions of justice and the importance of identifying and prosecuting perpetrators, and their attitudes on forgiveness and tolerance
6. Future prevention of violence in the country

This study is subject to four limitations. First, the sample size is small; the study is therefore not intended for the purpose of reaching broad conclusions about the opinions of victims and survivors with *particular* profiles. Instead, it is meant to enable the examination of specific cases for the insights they offer. Second, all except two interviews were conducted in Sinhala or Tamil. Thus certain nuances in the participants' recollections, observations and opinions could have been lost in the process of translating the original interview transcripts and analysing responses. Third, the scope of the study in terms of timeframe is limited (i.e. all events considered took place after 1983). A more comprehensive study on truth, memory and justice may need to take into account the views of a wider cross-section of Sri Lankan society and extend the period of review to include pre-1983 incidents. Finally, the study proceeds on the presumption that participants offered truthful and accurate accounts of their experiences, and that their observations and opinions were genuine. It is noted that memory is often malleable and subjective. In this context, it must be appreciated that the accuracy of recollections may vary; in fact, victims and survivors are often observed to produce different accounts of their experiences at different points of time. The analysis of responses in this study relies on such accuracy despite the fact that independent verification—particularly of anecdotal accounts—was not undertaken. It is therefore reiterated that the present study is an exploratory exercise, which could form the basis for further research on truth, memory and justice in Sri Lanka.

This study is presented in three parts. The first part grapples with the question of communal relations and sets the overall context in which individuals and families suffered loss during the past three decades. This part also presents a timeline that places violent events in Sri Lanka's history within a chronological context. The second part deals with the recollections, observations and opinions of the research participants. The data presented in this part is left largely unaltered in order to preserve—as far as possible—the original sentiments of those interviewed. Several incidents are retold briefly. The criteria for selecting these incidents from among the many recollected during the interviews and focus group discussions included: (1) the level of clarity and detail in which these incidents were recollected, and (2) the need to capture the entire gamut of events. Therefore, where participants recollected two or three similar incidents, only one incident is presented in detail. The third part of this study analyses the recollections and views of participants and attempts to draw certain lessons from their perspectives on truth, memory and justice in Sri Lanka.

## Animal Crackers

Richard de Zoysa

“Draw me a lion.”  
So I set my pen  
to work. Produce a lazy, kindly beast . . .  
Colour it yellow.

“Does it bite?”  
“Sometimes,  
but only when it’s angry—  
if you pull its tail  
or say that it is just another cat . . .”  
But for the most part, indolent, biddable,  
basking in the sun of ancient pride.

(Outside, the sunlight seems a trifle  
dulled  
and there’s a distant roaring, like a pride  
of lions, cross at being awakened  
from long, deep sleep).

Then  
“Draw me a tiger.”  
Vision of a beast  
compounded of Jim Corbett yarns  
and Blake  
stalks through my mind, blazing Nature’s  
warning,  
black bars on gold.

“DRAW!”

You turn and draw the gun  
on me, as if to show  
that three-years-old understands *force  
majeure*

and as you pull the silly plastic trigger  
all hell breaks loose; quite suddenly the  
sky  
is full of smoke and orange stripes of  
flame.

BUT HERE THERE ARE NO TIGERS  
HERE THERE ARE ONLY LIONS.

And their jackals  
run panting, rabid in the roaring’s wake,  
infecting all with madness as they pass  
while My Lord  
the Elephant sways in his shaded arbour,  
wrinkles his ancient brows, and  
wonders—  
if, did he venture out to quell this jungle-  
tide  
of rising flame, he’d burn his tender feet.

“Put down that gun. If you do, and you’re  
good,  
I’ll draw a picture of an elephant.  
A curious beast that you must  
understand . . .

“DONT LOOK OUT THE WINDOW—  
Just a party down the lane  
a bonfire, and some fireworks, and  
they’re burning—  
No, not a tiger—just some silly cat.”

*Colombo, 25 July 1983  
For Dimitri, when he is old enough to  
understand.*

## Part 1: Context and Chronology

### 1. Context of Ethnic and Religious Relations

#### 1.1 Demographic distribution

Sri Lankan society has been described as ‘an ethno-religious mosaic’ due to its ethnic and religious diversity.<sup>4</sup> Sinhalese constitute 74.9 percent of the population, while Tamils and Moors constitute 11.2 percent and 9.3 percent of the population respectively.<sup>5</sup> A separate Tamil community of Indian origin living in the estate sector constitute a further 4 percent of the population. Meanwhile, over 70 percent of the population is Buddhist, while Hindus, Muslims and Christians respectively constitute 12.6 percent, 9.7 percent and 7.6 percent of the population.<sup>6</sup> Hence a clear majority within Sri Lanka are ‘Sinhala-Buddhists’—an identity forged on both ethnic and religious lines.

The geographic distribution of the population often explains certain historical tensions and conflict. The Northern Province of the country is inhabited predominantly by Tamil-speaking peoples, i.e. Tamils and Muslims. The Eastern Province has a mixed population of Tamils, Muslims and Sinhalese, with Tamils constituting the majority. Ethnic Tamils—both Hindu and Christian Tamils—then emerge as the regional majority within the North and East. This regional dynamic is understood to be central to the Tamil claim to autonomy.<sup>7</sup> Muslims, while having a high concentration in the Eastern Province, are scattered throughout the rest of the country. Meanwhile, coastal areas, particularly in the West, have a significant Christian population, mainly

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<sup>4</sup> Sasanka Perera, ‘The Ethnic Conflict in Sri Lanka: A Historical and Socio-political Outline’, *World Bank Background Paper* (February 2001), at 4.

<sup>5</sup> Department of Census and Statistics, *Census of Population and Housing 2012* (2012).

<sup>6</sup> *Ibid.*

<sup>7</sup> Perera, *op. cit.* at 4.

as a result of over five centuries of European colonisation and the consequent ‘Christianisation’ of the local population.<sup>8</sup>

## *1.2 Historical and contemporary relations*

This section provides a brief account of the historical and contemporary relations between the various ethnic and religious groups in Sri Lanka. It is by no means an exhaustive account, and may omit dimensions of these relations expounded upon elsewhere.

Historians such as R.A.L.H. Gunawardana have argued that race consciousness, including the Sinhalese and Tamil racial identities in Sri Lanka, is a relatively recent historical development.<sup>9</sup> He contends that ‘during the last hundred years the Sinhala ideology in its contemporary form has radically refashioned our view of Sri Lanka’s past’.<sup>10</sup> Sasanka Perera offers a similar interpretation, and argues that ancient wars between regional rulers were fought for the purpose of capturing territory and economies rather than on racial or religious grounds. In his paper *The Ethnic Conflict in Sri Lanka: A Historical and Socio-political Outline*, Perera observes that the subsequent ‘retelling’ of history in the *Mahāvamsa* by Buddhist monks contributed to race consciousness by characterising these wars as ‘Sinhalese campaigns’ undertaken to ‘protect Buddhism and the Sinhalese nation’.<sup>11</sup> Gunawardana also refers

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<sup>8</sup> *Ibid.* at 5.

<sup>9</sup> R.A.L.H. Gunawardana, ‘The People of the Lion: The Sinhala Identity and Ideology in History and Historiography’ [1979] 5(1) & (2), *The Sri Lanka Journal of the Humanities* 1-36.

<sup>10</sup> *Ibid.* at 1. The author presents a compelling critique of the view held by historians including S. Paranavitana that ‘almost everyone was a Sinhalese’ even as early as pre-Christian times. See S. Paranavitana, *Inscriptions of Ceylon*, Vol. I (1970), at Ixxxix. To the contrary, Gunawardana argues that at least three distinct groups may have existed in the country during its early history and that only a particular ruling group referred to themselves as ‘Sinhala’ before others were later assimilated.

<sup>11</sup> Perera, *op. cit.* at 8.

to the Mahāvamsa’s account of the Buddha charging *Sakka*, the ‘king of gods’, with the protection of the island of Sri Lanka because it is the country in which Buddhism will be established.<sup>12</sup> Gunawardana characterises these myths contained in the Mahāvamsa as subsequent ‘validation[s] of a particular socio-political order’, and ‘embodiment[s] of a state ideology seeking to unite the dominant elements in society and to bring them under a common bond of allegiance to the ruling house’.<sup>13</sup> These subsequent narratives sought to establish the claim that the Sinhalese were the first to establish a civilisation in the country, and that Buddhism was their religion.

Contemporary educational curricula, including school textbooks, reinforce some of these narratives, which eventually became accepted as historical fact. History textbooks draw heavily and uncritically from the Mahāvamsa. Chapter 6 of the Grade 6 history textbook details an account of *Dutugemunu*, a Sinhalese ruler, defeating *Elara*, a Tamil ruler somewhere between 161 and 137 B.C.E. The text cites directly from the Mahāvamsa and begins by claiming that the Tamil ruler was ‘foreign’ and that the Sinhalese ruler aimed to ‘liberate the country from foreign rule’, ‘reunite the country’ and ‘protect Buddhism’.<sup>14</sup> By contrast, Gunawardana’s interpretation of the original text of the Mahāvamsa and alternative historical sources paint a very different picture of history. He argues that *Dutugemunu*’s campaign was unlikely

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<sup>12</sup> Gunawardana, *op. cit.* at 5. According to the Mahāvamsa, the Buddha stated: ‘In Lanka, O lord of gods, will my religion be established, therefore carefully protect him with his followers and Lanka.’ See Wilhelm Geiger, *The Mahāvamsa or the Great Chronicle of Ceylon: Translated into English* (1950), chapter VII, verse 4.

<sup>13</sup> Gunawardana, *op. cit.* at 14.

<sup>14</sup> Remarkably, the Tamil version of the history textbook carries a different formulation. For example, the concluding line of the chapter in the Sinhalese version states that *Dutugemunu* liberated the country from ‘foreign’ rule and united the country for the first time in 44 years. The corresponding line in the Tamil version states that *Dutugemunu*, for the first time in 44 years, conquered Anuradhapura where *Elara* had been ruling ‘with justice’.

to have been a ‘Sinhala-Tamil confrontation’, and was merely aimed at capturing territory—not only from *Elara*, but also from multiple other regional rulers. Yet the accounts contained in the Mahāvamsa have dominated the consciousness of the Sinhalese majority and have formed ‘an important aspect...of political socialisation in contemporary Sri Lanka’.<sup>15</sup>

Such socialisation gained momentum during the Buddhist revivalist movement, which began to emerge during the latter part of the Nineteenth Century. Hence Sinhala-Buddhist nationalism became a dominant ideological force in Sri Lankan social and political life well before independence in 1948. The new ethno-religious ideology broke away from traditional Buddhist practices and forged a new ‘protestant’ form of Buddhism, which was perhaps more amenable to the idea of a ‘Sinhala-Buddhist nation’.<sup>16</sup> In this context, the use of force for the purpose of protecting the Sinhala-Buddhist nation was not ruled out—as in the Mahāvamsa’s account of *Dutugemunu*’s triumph over *Elara*—despite doctrinal incompatibility with Buddhism.<sup>17</sup> Carefully chronicling the emergence and consolidation of this ideology during the post-independence era, authors Richard Gombrich and Gananath Obeyesekere in *Buddhism Transformed: Religious Change in Sri Lanka* (1988), were perhaps some of the first commentators to unapologetically observe that ‘violence [had] taken root at the heart of

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<sup>15</sup> Perera, *op. cit.* at 8.

<sup>16</sup> Richard Gombrich & Gananath Obeyesekere, *Buddhism Transformed: Religious Change in Sri Lanka* (1988), at 202-238.

<sup>17</sup> See Mahinda Deegalle, ‘Is Violence Justified in Theravāda Buddhism?’ [2002] 39 *Current Dialogue* 8-17. The author argues that the justification of violence in the Mahāvamsa is not doctrinally supported by earlier canonical literature. He observes: ‘This passage in the Mahāvamsa seems to suggest that certain forms of violence such as killings during war can be allowed in certain circumstances such as in the case of threats to the survival of Buddhism in Sri Lanka during the time of *Duṭṭhagāmani*. However, it is hard to justify this Mahāvamsa position either through Buddhist practice or doctrinal standpoint as found in the Pāli canon of the Theravāda Buddhists.’

the Buddhist establishment.<sup>18</sup> This observation was made in the context of the violent reaction of the Buddhist clergy to the Indo-Lanka Accord of 1987, which was perceived as a threat to the Sinhala-Buddhist nation. The observation, once contextualised, is critical to explaining the seemingly untenable cohabitation between Buddhism and ethno-nationalist violence.

Sinhala-Buddhist nationalists perceived Sri Lankan Tamils as having disproportionate access to education and public service employment under the colonial administration.<sup>19</sup> Sasanka Perera explains the possible realities that underpinned these perceptions. He argues that Tamils attended English language schools, which had better facilities as a consequence of well-funded American missionary activities. As a result, they received a relatively higher quality of pre-university education. Cultural norms and economic necessity further prompted Tamils in the North and East to seek employment through education.<sup>20</sup> Consequently, there was an over-representation of Tamils in higher education, the public sector, and certain professions.<sup>21</sup>

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<sup>18</sup> *Ibid.* at x. It is noted, however, that violence had been associated with Buddhism even earlier. The Ceylonese riots of 1915 were sparked as a result of Moors disrupting a Buddhist procession in Kandy. Yet there is little evidence to suggest that the wider economic and political impetus for the riots could be linked to Buddhist nationalism. See Kumari Jayawardena, 'Economic and Political Factors in the 1915 Riots' [1970] 29(2) *The Journal of Asian Studies* 223-233.

<sup>19</sup> Perera, *op. cit.* at 9.

<sup>20</sup> *Ibid.* at 11.

<sup>21</sup> *Ibid.* The author notes: 'By independence, Tamils accounted for over 30% of government services admissions, a share larger than their proportion in the general population—i.e., Sri Lankan and Indian Tamils have never totalled more than 25%. By 1956, it is estimated that Tamils constituted 50% of the clerical personnel of the railway, postal and customs services, 60% of all doctors, engineers and lawyers, and 40% of other labour forces.'

Post-independence governments accordingly responded to Sinhala-Buddhist nationalist agitation for reform. First, the government enacted the Official Language Act, No. 33 of 1956 to make Sinhala the official language. The implications of the Act manifested during the decades to follow. The Act resulted in the wide-scale marginalisation of non-Sinhala speaking employees in the public service, which by the 1970s, the Sinhalese dominated to the virtual exclusion of other linguistic groups. The official language policy ‘served to deepen the Sinhalese-Tamil rift...and make collective adversaries out of Sinhalese and Tamils.’<sup>22</sup> Second, the government adopted a ‘standardisation’ policy in the 1970s, which replaced the system of determining university admission solely on the basis of competitive examinations. The new system placed Sinhalese candidates at an advantage, as it made admissions proportionate to the number of students who sat for university entrance examination in a particular language.<sup>23</sup> The Republican Constitution of 1972 thereafter entrenched the dominance of Sinhala-Buddhism by constitutionally recognising Sinhala as the national language and affording the ‘foremost’ place to Buddhism.

Tamil politics up until the mid-1970s was generally framed in terms of seeking autonomy for the Tamil people. In this context, the leadership of the *Illankai Tamil Arasu Kachchi* (ITAK) or ‘Federal Party’, and initially the Tamil United Liberation Front (TULF), sought to establish a federal state with an autonomous Northeast region for Tamil-speaking people. The strategy was officially abandoned in 1976 with the adoption of the Vaddukoddai Resolution on 14 May 1976. Then leader of the TULF, S.J.V. Chelvanayakam stated in Parliament: ‘[w]e have

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<sup>22</sup> S. J. Tambiah, *Sri Lanka: Ethnic Fratricide and the Dismantling of Democracy* (1986), at 75.

<sup>23</sup> Perera, *op. cit.* at 11. The author notes: ‘The Tamil representation in the science based disciplines fell from 35.3% in 1970 to 19% in 1975. The Sinhala representation in all disciplines increased quite dramatically. In 1975, [Sinhalese] accounted for 78% of places in the science based disciplines while in the humanities and social sciences they held over 86% of the placements.’

abandoned the demand for a federal constitution. Our move will be all non-violent... We know...we will be able to establish a state separate from the rest of the island'.<sup>24</sup> The TULF went on to secure the overwhelming support of the Tamil people at the general election of 1977; A. Amirthalingam—Chelvanayakam's successor—became the Leader of the Opposition in Parliament. However, within a few years, Parliament enacted the Sixth Amendment to the Constitution of 1978, which required Members of Parliament and public officials to swear an oath unconditionally renouncing support for a separate state. The TULF thereafter resigned from Parliament and the vacuum created was filled by Tamil militants, who had no qualms about achieving the goal of a separate state through an armed struggle.<sup>25</sup> According to some commentators, the Tamil political leadership in fact capitalised on the radicalisation of the youth for the purpose of bargaining with the government.<sup>26</sup> Tamil politics was eventually subsumed by the rapidly growing militancy, and the Liberation Tigers of Tamil Eelam (LTTE) seized control over the struggle for a separate state. Following the July 1983 pogrom (discussed later in this section), their support base steadily grew.

The LTTE's *modus operandi* evolved from concentrated attacks on government offices and officials to indiscriminate attacks on civilians, earning it the description of a 'terrorist organisation'. A majority of the LTTE's targets were Sinhalese. However, it also inflicted violence on Tamils including alternative voices, detractors and non-cooperating civilians. In the mid-1980s, it systematically eliminated other Tamil militant groups including the Tamil Eelam Liberation Organisation (TELO), the People's Liberation Organisation of Tamil Eelam (PLOTE), and the Eelam People's Revolutionary Liberation Front

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<sup>24</sup> A. Jeyaratnam Wilson, *Sri Lankan Tamil Nationalism: Its Origins and Development in the Nineteenth and Twentieth Centuries* (2000), at 114.

<sup>25</sup> *Ibid.* at 115.

<sup>26</sup> Rajan Hoole 'The Tamil Secessionist Movement in Sri Lanka (Ceylon): A Case of Secession by Default?' in Metta Spencer (ed.), *Separatism: Democracy and Disintegration* (1998), at 270.

(EPRLF).<sup>27</sup> The LTTE's annihilation of TELO was particularly brutal; according to some accounts, approximately 400 TELO cadres were massacred in 1986.<sup>28</sup>

The LTTE assassinated a host of Tamil political actors including TULF leaders, A. Amirthalingam and Neelan Tiruchelvam, Foreign Minister Lakshman Kadirgamar, and Deputy Secretary-General of the Secretariat for Coordinating the Peace Process, Kethesh Loganathan. The LTTE was also responsible for the assassinations of Sri Lankan President R. Premadasa and former Indian Prime Minister, Rajiv Gandhi. Moreover, the organisation was infamous for forcibly recruiting children.<sup>29</sup> In this context, the LTTE's dominance of Tamil politics between the early 1980s up until the end of the war in 2009 shaped relations both within and between the Sinhalese and Tamil communities. The socio-political fabric of Sri Lankan society became deeply polarised, with growing support among the Sinhalese majority for a military solution to the ethnic conflict. A brief hiatus during a ceasefire agreement (CFA) signed by the government and the LTTE in 2002 was followed by the election of Mahinda Rajapaksa as President in 2005. The Rajapaksa

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<sup>27</sup> Russell R. Ross & Andrea Matles Savada, *Sri Lanka: A Country Study* (1988), at <http://countrystudies.us/sri-lanka/72.htm>.

<sup>28</sup> See M. R. Narayan Swamy, *Tigers of Lanka: from Boys to Guerrillas* (1995), at 191–198.

<sup>29</sup> See Jo Becker, 'Child Recruitment in Burma, Sri Lanka and Nepal' in Scott Gates & Simon Reich (eds.), *Child Soldiers in the Age of Fractured States* (2010). Radhika Coomaraswamy, the former UN Secretary General's Representative for Children and Armed Conflict has commented extensively on this area and has contributed to the expansion of the prohibition against child recruitment to include cases where the child may not have directly participated in hostilities but performed 'an essential support function'. See Radhika Coomaraswamy, 'Written Submission of the United Nations Special Representative of the Secretary-General on Children and Armed Conflict – submitted in Application of Rule 103 of the Rules and Procedure and Evidence', 18 February 2008, 20-21, cited in Lisa Yarwood, *Women and Transitional Justice: The Experience of Women as Participants* (2003), at 66.

government soon launched a campaign to garner support for a military solution. The campaign resonated with certain anxieties among portions of the Sinhalese community, who believed that regional and international forces were at work to undermine them.<sup>30</sup> Eventually, in 2006, the government began operations that culminated in a brutal climactic event in 2009—the final stages of the war. With the LTTE defeated in 2009 and its leadership eliminated, post-war relations between the two communities shifted. Tamil nationalists returned to non-violent agitation for autonomy and Sinhala-Buddhist nationalists began to focus on consolidating their political and economic dominance.

The Muslim community's experience of conflict and violence is multifaceted. Muslims did not accept the 'countervailing notion' of a traditional Tamil homeland in the North East region.<sup>31</sup> However, some historical accounts claim that the founder of the Sri Lanka Muslim Congress, M.H.M Ashraff actively campaigned for the TULF in 1977 before later rejecting the idea of a separate state.<sup>32</sup> Cooperation between the security forces and Muslim home guards prompted the LTTE to attack Muslim villages in the East and eventually to expel approximately 75,000 Muslims from the North in 1990.<sup>33</sup> Relations

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<sup>30</sup> Several commentators have made reference to such anxieties. See Hoole, *op. cit.* 'The Tamil Secessionist Movement in Sri Lanka', at 274. Also see Tambiah, *op. cit.* at 92-93. The latter author observes: 'The Sinhalese manifest the features of a "majority with a minority complex" that is partly the product of Sri Lanka's miniscule size, both territorially and demographically, and the nature of the exchanges with India, especially South India, that have been interpreted in certain (tendentious) ways.'

<sup>31</sup> Sasanka Perera, 'The Root Causes of the Ethnic Conflict in Sri Lanka' *World Bank Background Paper* (2001).

<sup>32</sup> D.B.S. Jeyaraj, 'M.H.M. Ashraff: The legendary Muslim Congress Leader', *dbsjeyaraj.com*, (September 2010), at <http://dbsjeyaraj.com/dbsj/archives/1694>.

<sup>33</sup> See *The Quest for Redemption: The Story of the Northern Muslims – Final Report of the Citizens' Commission on the Expulsion of Muslims from the*

between Tamils and Muslims became strained due to these circumstances. Accordingly, clashes between the two communities have occasionally erupted during the past decade, particularly in the Eastern Province.

The post-war era witnessed a radical increase in anti-Muslim sentiments in the country. By 2013, the country had witnessed an unprecedented spate of anti-Muslim attacks.<sup>34</sup> Sinhala-Buddhist nationalism, which focused on dismantling Tamil separatism for several decades, had turned its attention towards Muslims.

Anxieties have traditionally existed among the Sinhalese community with respect to the Muslim community's control over trade. These anxieties underscored the Anti-Muslim riots that took place in 1915, and have lingered throughout the century to follow.<sup>35</sup> Yet in the post-war era, new fears began to emerge due to an apparent increase in the overall population share of Sri Lankan Moors since 1981—an increase from 7% to 9.3% of the total population. This new apprehension perhaps exacerbated the perception that Muslims were controlling the economy—particularly visible parts of the economy, such as trade. Additionally, global ideological trends in Islamophobia strengthened

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*Northern Province by the LTTE in October 1990*, Law & Society Trust (November 2011).

<sup>34</sup> See Oral update of the High Commissioner for Human Rights on promoting reconciliation and accountability in Sri Lanka, A/HRC/24/CRP.3/Rev.1, 25 September 2013; Promoting reconciliation and accountability in Sri Lanka: Report of the Office of the United Nations High Commissioner for Human Rights, A/HRC/25/23, 24 February 2014. In the February 2014 report, the UN High Commissioner for Human Rights expressed concern, stating that she was disturbed by 'the significant surge in attacks against religious minorities and the incitement of violence by Sinhala Buddhist nationalist groups, led predominantly by certain extremist Buddhist monks'. She observed that reports by the Secretariat for Muslims recorded 280 incidents of threats and violence against Muslims in 2013.

<sup>35</sup> See Kumari Jayawardena, *op. cit.*

and contributed towards local Anti-Muslim sentiments during the post-war era. Ahilan Kadirgamar offers the following explanation for the precise timing of these sentiments:

While globally and in India, Islamophobia and a war on the Muslim world had been gaining ground for decades, particularly with the global ‘war on terror’, why is this anti-Muslim campaign gaining momentum in Sri Lanka only now? The answer in part lies in the fact that the war against the LTTE was the priority of the State and nationalist forces in previous years. My argument about the current anti-Muslim campaign draws on understanding the maneuver of the Rajapaksa regime, including the centre stage given to Sinhala Buddhist nationalism during the war, the projection of triumphalism after the war and the major push towards neoliberal development as a solution to the political and economic problems in Sri Lanka. Furthermore, this anti-Muslim campaign could not find reception among broader sections of the Sinhala population, until there was social disaffection with the post-war economy, which was meant to bring prosperity but is in fact causing misery. Sections of the Muslim community in trading and business enterprises have become the scapegoats, even as this project draws on global and local ideologies of Islamophobia.<sup>36</sup>

The culmination of these discourses created the space for the emergence of radical Sinhala-Buddhist nationalist groups such as the *Bodu Bala Sena* (BBS), which focused its attention almost entirely on propagating anti-Muslim sentiments. Muslims in the South were targeted in hate

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<sup>36</sup> Ahilan Kadirgamar, ‘The Political Economy of Anti-Muslim Attacks’, *The Island*, 2 March 2013, at [http://www.island.lk/index.php?page\\_cat=article-details&page=article-details&code\\_title=73829](http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=73829).

campaigns and organised acts of violence. The tensions sustained during this period culminated in an anti-Muslim riot on 15 June 2014 in Aluthgama instigated by BBS hate speech on the same date.<sup>37</sup>

Farzana Haniff *et al*, in examining the aftermath of the Aluthgama riots, explore the relationship between the Mahāvamsa and the justification of violence against the ‘other’.<sup>38</sup> They cite a narrative from the Mahāvamsa, in which a group of Buddhist monks console the Sinhalese king, *Dutugemunu*, who laments the slaughter of ‘millions’ during his military campaign against the Tamil ruler, *Elara*:

From this deed arises no hindrance in thy way to heaven.  
Only one and a half human beings have been slain here  
by thee, O lord of men. The one had come unto the  
(three) refugees, the other had taken on himself the five  
precepts.

The authors reach the following conclusion:

Not only is this historical account symbolic of the dehumanization of the ‘other’, by reducing the ‘slaughter of millions’ to insignificance, it also demonstrates that the Sinhala Buddhist nationalist rhetoric (as formulated in this case by the Mahāvamsa chronicler) has historically attempted to justify violence against those considered outsiders.<sup>39</sup>

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<sup>37</sup> For an in-depth analysis of the Aluthgama riot and its aftermath, see Farzana Haniffa, Harini Amarasuriya & Vishakha Wijenayake, *Where Have All the Neighbours Gone? Aluthgama Riots and its Aftermath: A Fact Finding Mission to Aluthgama, Dharga Town, Valipanna and Beruwela*, Law & Society Trust (2015).

<sup>38</sup> *Ibid.* at 7.

<sup>39</sup> *Ibid.*

Christian groups have also faced violence during various stages of Sri Lanka's recent history. Specific violence against Christians on a wide scale is a relatively new phenomenon and is yet to be carefully studied. The colonial roots of Christianity may underscore certain historical antagonisms between Buddhists and Christians. Many of the English-speaking elites were in fact Christians, who in turn enjoyed economic favouritism and the political patronage of the colonial administrators. Yet it is possible to argue that contemporary tensions between Sinhala-Buddhist nationalists and certain Christian groups hinge on the question of propagation. Christian evangelical aims to propagate the religion remain fundamentally at odds with Sinhala-Buddhist aims to protect and foster Buddhism. Thus any attempt to propagate religion in Sri Lanka has been perceived as a threat to the socio-cultural dominance of Buddhism and has been strongly resisted. Occasionally, the resistance has turned violent, as it did on 12 January 2014, when mobs led by Buddhist monks attacked churches in Hikkaduwa.<sup>40</sup>

The foregoing discussion reveals a complex environment that has shaped relations between ethnic and religious communities in Sri Lanka. At the centre of these relations is a struggle for space, and consequently, power. Each community has struggled to gain and maintain space to further political, social and economic agendas, which have often led to tensions, conflict and violence. The Sinhalese-Buddhist community became invested in constructing a narrative of historical entitlement, which steadily marginalised other ethnic and religious communities. The Tamil community responded in what is often described as 'defensive nationalism', which was averse to violence at first, but became fundamentally violent eventually.<sup>41</sup> These two forms of nationalism, along with youth unrest and ideological

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<sup>40</sup>Video: Buddhist Monk Led Mob Attacked Christian Church', *colombotelegraph.com*, 13 January 2014, <https://www.colombotelegraph.com/index.php/video-buddhist-monk-led-mob-attacked-christian-church>.

<sup>41</sup> Wilson, *op. cit.* at 115.

struggles (discussed in the next section), form the essential backdrop to the violent events that took place in Sri Lanka during its recent history.

## ***2. A Chronology of Key Events***

Three timeframes in Sri Lanka's history of violence are considered in this study. First, the period of the ethnic war, which was fought mainly in the North and East alongside incidents of violence in the rest of the country; second, the period in which the second JVP insurrection took place in the South; and third, the post-war era in which grave human rights violations have taken place.

### *2.1 The 30-year ethnic war*

The history of the ethnic conflict in Sri Lanka needs no retelling. It is a reasonably well-chronicled 'event', which spanned nearly three brutal decades. With the rise of Tamil militancy during the 1970s, sporadic violence and assassinations had begun to take place in the North of Sri Lanka. One of the early incidents of violence was the assassination of Alfred Duraiappah, the Mayor of Jaffna, on 27 July 1975. The incident heralded the arrival of the LTTE, an organisation that would eventually become a central party to the ethnic war and the incredible violence and loss that accompanied it. Several incidents of violence including the assassinations of Tamil police officers and Member of Parliament M. Canagaratnam in 1980 set the stage for what would later be known as 'Black July'—an event that fundamentally changed the nature of the conflict.

The July 1983 ethnic pogrom is often described as the starting point of the ethnic war in Sri Lanka.<sup>42</sup> On 23 July 1983, the LTTE conducted an ambush, which resulted in the death of thirteen Sri Lanka Army soldiers. The next day, riots broke out in the capital city and quickly

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<sup>42</sup> See Ketheshwaran Loganathan. *Sri Lanka: Lost opportunities: past attempts at resolving ethnic conflict* (1996).

spread to many parts of the country. S. J. Tambiah in his seminal work *Sri Lanka: Ethnic Fratricide and the Dismantling of Democracy*<sup>43</sup> describes the event and the loss to human life and property. According to his account, the 1983 eruption showed ‘organised mob violence at work’. He pointed to news reports of ‘mobs being armed with voters’ lists, and detailed addresses of every Tamil-owned shop, house, or factory’.<sup>44</sup> He observes that though the official death toll was 350, the figure could have been as high as 2,000.<sup>45</sup> He also refers to the incredible damage caused to property and the estimated 100,000 Tamils who were left homeless in Colombo alone.<sup>46</sup> The majority of victims were Tamil, although there were reports that persons of Indian origin were also targeted.

The state’s failure to prevent violence has been well documented, both by Tambiah and others, including K.M. de Silva. Tambiah described the involvement of the state as a ‘disconcerting feature of the 1983 riots’,<sup>47</sup> where the breakdown of law and order was ‘caused as much by the active participation or passive encouragement of the ultimate guardians of law and order—the police and the army—as by inflamed criminal excesses of the civilian marauders’.<sup>48</sup> K.M. de Silva makes a similar observation:

What distinguished the riots of July 1983 from previous disturbances was the role of the security forces. The breakdown in law enforcement in the early days of the riots had no precedent in the past; it took the government nearly a week to re-establish its authority and quell the violence. The security forces were either generally indifferent to or ignored their peacekeeping role,

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<sup>43</sup> Tambiah, *op. cit.* at 21.

<sup>44</sup> *Ibid.*

<sup>45</sup> *Ibid.* at 22.

<sup>46</sup> *Ibid.*

<sup>47</sup> *Ibid.* at 24.

<sup>48</sup> *Ibid.*

repeatedly refusing to intervene when their intervention could have saved lives and property. The machinery of law and order had almost totally collapsed.<sup>49</sup>

Several types of incidents involving violence and loss of life and property took place during the next three decades.

First, civilian massacres by security forces took place during the war. An early example of this type of violence was the incident in August 1983 when army personnel pulled twenty civilians off a bus and executed them in retaliation to the LTTE's ambush. This trend of military attacks on civilians in retaliation to LTTE attacks continued for more than a decade. One of the early massacres took place in Trincomalee, where a series of attacks from May to September 1985 allegedly perpetrated by military personnel and home guards claimed the lives of over a hundred Tamil civilians.<sup>50</sup> On 12 June 1991, a bomb in Kokkadicholai, Batticaloa resulted in the deaths of two soldiers and the serious injury of a third soldier. Shortly after the incident, Army personnel allegedly killed sixty-seven civilian inhabitants of the villages of Makiladitivu, Muthalaikuda and Munaikaidu in retaliation.<sup>51</sup> A Presidential Commission of Inquiry—the Kokkadicholai Commission—was subsequently appointed to investigate the incident, but only recommended the dismissal of the commanding officer for failing to control his subordinates. Moreover, on 9 August 1992, Army personnel attached to the Poonani Army Camp in Batticaloa allegedly killed 35 Tamil civilians in Mylanthanai. The killings were said to be in

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<sup>49</sup> K.M. de Silva, *Regional Powers and Small State Security: India and Sri Lanka, 1977-1990* (1995), at 71.

<sup>50</sup> University Teachers for Human Rights (Jaffna), 'Can the East be won through Human Culling? – An Ideological Journey Back to 1983', *Special Report No. 26* (August 2007).

<sup>51</sup> International Commission of Jurists, *Authority without Accountability: The Crisis of Impunity in Sri Lanka* (2012), at 135.

retaliation to the assassination of senior army officer Denzil Kobbekaduwa.<sup>52</sup> All of the accused were eventually acquitted.

During this time, the Indian Peace Keeping Forces deployed after the 1987 Indo-Lanka Accord were also accused of similar retaliatory attacks against civilians. Such attacks took place in October 1987 at the Jaffna Teaching Hospital and in August 1989 in Valvettiturai, Jaffna. Each incident allegedly resulted in over 50 civilian deaths.<sup>53</sup>

Two other incidents allegedly involving the Sri Lankan security forces warrant mention, although the retaliatory nature of the attacks is less evident. The first was the killing of five Tamil students in Trincomalee on 2 January 2006. The Special Task Force of the Police and other military personnel based in Trincomalee were accused of carrying out the attacks, obstructing investigations into the incident, and threatening witnesses in the magisterial inquiry. The other case involved the killing of seventeen Sri Lankan employees of a French humanitarian organisation, *Action Internationale Contre la Faim* in August 2006 in Muttur. Both cases were referred to in the 2006 Presidential Commission of Inquiry into alleged serious human rights violations<sup>54</sup> (known as the Udalagama Commission).

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<sup>52</sup> *Ibid.* at 153.

<sup>53</sup> See Rajan Hoole, & Ranjani Thiranagama, *The Broken Palmyra, the Tamil Crisis in Sri Lanka, An Inside Account*, The Sri Lanka Studies Institute (1992).

<sup>54</sup> The cases that fell within the mandate of the Commission were: The assassination of former Foreign Minister Lakshman Kadiragamar; the assassination of Member of Parliament Mr. Joseph Pararajasingham; the killing of five youths in Trincomalee on 2 January 2006; the killing of seventeen workers of *Action Contre La Faim* in early August 2006; the assassination of Deputy Director General of the Peace Secretariat Mr. Ketheesh Loganathan on 12 August 2006; the killing of 13 persons in Kayts on 13 May 2006; the disappearance of Rev. Nihal Jim Brown on 28 August 2006; the Death of 51 persons in Sencholai in August 2006; the killing of 68 persons in Kebithigollewa; the killing of 98 security forces personnel in

Second, the LTTE carried out attacks on civilians throughout the period of the war. It perpetrated several civilian massacres, beginning in November 1984 with the Kent and Dollar Farm massacres in Mullaitivu. Two of the most shocking civilian massacres to take place during this period were the Anuradhapura massacre of 14 May 1985, where 146 civilians were gunned down by the LTTE,<sup>55</sup> and the Kattankudy massacre of 3 August 1990, where the LTTE is suspected to have killed over a hundred Muslims in four mosques.<sup>56</sup> Another egregious incident took place on 11 June 1990, when the LTTE executed between 600 and 774 unarmed police officers based in the Eastern Province who had surrendered to the LTTE.<sup>57</sup> The LTTE also detonated bombs in various central and populated locations in the country, often using suicide bombers as a means of executing the planned operations. The first major attack of this nature took place on 21 April 1987, when a bomb blast at the Central Bus Station in Colombo killed over a 100 civilians.<sup>58</sup> Other major attacks include the Central Bank bombing of January 1996, which killed 91 persons,<sup>59</sup> and

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Digampathana on 16 October 2006; and the assassination of Nadaraja Raviraj MP on 10 November 2006.

<sup>55</sup> See 'Timeline of the Tamil conflict', *The BBC*, 4 September 2000, [http://news.bbc.co.uk/2/hi/south\\_asia/51435.stm](http://news.bbc.co.uk/2/hi/south_asia/51435.stm)

<sup>56</sup> See University Teachers For Human Rights (Jaffna), 'The War of June 1990', *Report No. 4* (August 1990); 'Tamils Kill 110 Muslims at 2 Sri Lankan Mosques', *The New York Times*, 5 August 1990, at <http://www.nytimes.com/1990/08/05/world/tamils-kill-110-muslims-at-2-sri-lankan-mosques.html>

<sup>57</sup> University Teachers For Human Rights (Jaffna), 'The War and its Consequences in the Amparai District', *Special Report No. 3* (October 1990); 'There are 600 plus (murdered) Police officers inside the one you see today', *Daily News*, 11 June 2011, at <http://archives.dailynews.lk/2011/06/11/fea02.asp>.

<sup>58</sup> See 'Timeline of the Tamil conflict', *BBC.com*, 4 September 2000, [http://news.bbc.co.uk/2/hi/south\\_asia/51435.stm](http://news.bbc.co.uk/2/hi/south_asia/51435.stm).

<sup>59</sup> *Ibid.*

the Kebithigollewa claymore mine attack of June 2006, which killed over 60 persons.<sup>60</sup>

Third, mass civilian evictions were perpetrated or instigated as a result of the conflict. The mass exodus of Tamils from the island in the early 1980s may be attributed to the July 1983 pogrom. The exodus continued throughout the 1980s as an indirect result of the conflict and the loss of economic opportunities, and eventually resulted in the establishment of the Sri Lankan Tamil Diaspora—nearly a million in number.<sup>61</sup> The LTTE perpetrated more direct forms of expulsion. In 1990, approximately 75,000 Muslims from the Northern Province were expelled by the LTTE. The event resulted in the long-term displacement of these Muslims, who now reside in other parts of the country including Puttalam and Colombo.

Fourth, tremendous loss to life and property was suffered as a direct result of military operations during the war. The exact death toll is still unknown, although some reports claim that the United Nations Office for the Coordination of Humanitarian Affairs (UNOCHA) estimated between 80,000 and 100,000 casualties in total during the entirety of the war.<sup>62</sup> Combatants, including the armed forces and the militants, were among the dead. Additionally, a significant number of civilian lives were lost during the final stages of the war in late 2008 and early 2009. The precise death toll is heavily disputed. A UN Panel of Experts (PoE) appointed by the UN Secretary General cited a figure of 40,000 civilian deaths during these final stages.<sup>63</sup> This figure, however, was contested by the Lessons Learnt and Reconciliation Commission (LLRC), which

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<sup>60</sup> See ‘Military killed Lanka aid staff’, *The BBC*, 30 August 2006 at [http://news.bbc.co.uk/2/hi/south\\_asia/5298470.stm](http://news.bbc.co.uk/2/hi/south_asia/5298470.stm).

<sup>61</sup> Institute of Policy Studies, *Migration Profile: Sri Lanka* (2013), at 29.

<sup>62</sup> ‘Up to 100,000 killed in Sri Lanka’s civil war: UN’, *ABC news*, 20 May 2009, at <http://www.abc.net.au/news/2009-05-20/up-to-100000-killed-in-sri-lankas-civil-war-un/1689524>.

<sup>63</sup> *Report of the Secretary-General’s Panel of Experts on Accountability in Sri Lanka* (31 March 2011) [‘UN Panel Report’], at 41.

the former President appointed in April 2010.<sup>64</sup> The Commission did, however, recommend that several incidents involving civilian casualties due to military action be investigated further. These incidents include the alleged Navy attack on civilians in Chundikulam on 10 May 2009; an incident on 20 April 2009 at Mathalan where the Army allegedly forced civilians to recover the body of an army personnel and prevented them from crossing over to government controlled areas; and the government shelling of civilians in Pokkanai.<sup>65</sup>

The final stages of the war also resulted in the displacement of approximately 300,000 persons<sup>66</sup>—a figure that is not contested. A majority of the internally displaced persons (IDPs) were eventually returned or resettled. However, a significant number—officially estimated in April 2015 to be 44,973<sup>67</sup>—continue to be displaced from their places of origin and live in welfare centres or with friends and relatives.

Finally, the war produced a worrying trend in enforced or involuntary disappearances. The LLRC heard complaints detailing the disappearance of over three thousand persons during and immediately after the war.<sup>68</sup> Over a thousand of these incidents occurred after the persons surrendered to or were arrested by the security forces.<sup>69</sup> A Presidential Commission of Inquiry to Investigate Complaints Regarding Missing Persons was subsequently appointed on 15 August 2013. Over 20,000 complaints were made to the Commission by the

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<sup>64</sup> *Report of the Commission of Inquiry on Lessons Learnt and Reconciliation* (November 2011) [‘LLRC Report’].

<sup>65</sup> See LLRC Report, at paras.4.106, 4.107, 4.109, 4.110, and 4.111.

<sup>66</sup> UN Panel Report, at 22.

<sup>67</sup> See Ministry of Resettlement, Reconstruction and Hindu Religious Affairs, *IDPs to be resettled as at 30.04.2015*, at <http://resettlementmin.gov.lk>.

<sup>68</sup> Annex 5.1 of the Annexes to the LLRC Report lists 3,596 complaints with respect to the disappearance of individuals.

<sup>69</sup> *Ibid.* 1,018 of the disappearances are alleged to have taken place after surrender to or arrest by the security forces.

families of those who went missing during the period between 1 January 1983 and 19 May 2009.<sup>70</sup> However, serious doubts have been cast over the state's good faith in facilitating the work of the Commission. The state occasionally targeted witnesses who complained about disappearances during and immediately after the war. For example, a prominent activist who campaigned on the issue of missing persons, Balendran Jeyakumari, was arrested in March 2014 on suspicion of harbouring a fugitive.<sup>71</sup> At the time, Jeyakumari was campaigning for the return of her son who she claimed she handed over to security forces in compliance with orders to surrender persons with past links to the LTTE.<sup>72</sup> Her son was 15 years old when he surrendered and has been missing since. Her subsequent arrest was condemned by rights groups as an attempt to silence activists demanding the return of their missing relatives.<sup>73</sup>

A significant portion of the violence and loss suffered by Sri Lankans during the past three decades can be attributed to the ethnic war and its immediate aftermath. Personal experiences relating to the war and its aftermath underscored much of the recollections, observations and opinions of those who participated in this study.

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<sup>70</sup> 'Over 19,800 cases for Missing Persons' Commission', *adaderana.lk*, 15 December 2014, at <http://www.adaderana.lk/news/29082/over-19800-cases-for-missing-persons-commission>. As at 31 May 2015, the total number of complaints received by the Commission was 21,213. See <http://www.pcicmp.lk/>.

<sup>71</sup> Asian Human Rights Commission, *Sri Lanka: Ms. Balendran Jayakumari and Daughter Illegally Detained And Held Without Charge*, 8 April 2014, <http://www.awid.org/Library/Sri-Lanka-Ms.-Balendran-Jayakumari-and-daughter-illegally-detained-and-held-without-charge>.

<sup>72</sup> *Ibid.*

<sup>73</sup> See Amnesty International, *Urgent Action: Activists in Northern Sri Lanka at Risk (Sri Lanka)*, UA 070/14 (21 March 2014); Amnesty International, *Amnesty International Report 2014/15*, February 2015, at <https://www.amnesty.org/en/countries/asia-and-the-pacific/sri-lanka/report-sri-lanka>.

## 2.2 The JVP insurrection

Indian intervention in the ethnic war during the late 1980s triggered a string of events that resulted in a second violent conflict—on this occasion, in the South. The Indo-Lanka Accord of 1987 resulted in the enactment of the Thirteenth Amendment to the Constitution, which granted Tamil-speaking peoples a semi-autonomous regional unit in the North and East of the country. Moreover, an Indian Peace-Keeping Force was deployed to disarm the LTTE. Meanwhile, the JVP had recovered from a failed insurrection in 1971, and had grown in numbers and prominence. It began to vigorously agitate against the state, particularly in universities across the country, and from March 1987, it began to raid military facilities to collect weapons. The government thereafter banned seventeen JVP-affiliated trade unions in May 1987.<sup>74</sup>

The JVP associated Tamil nationalism and Indian imperialism as significant obstacles to establishing a socialist state in Sri Lanka. The extreme version of the former was embodied by the LTTE, while the presence of 100,000 personnel as part of the Indian Peacekeeping Force signalled the latter. These factors underscored the JVP's ideological struggle against the state, which by the end of 1987 had transformed into a military conflict. By 1988, the JVP had 10,000-15,000 fulltime cadres.<sup>75</sup> However, as explained by multiple commentators, the nature of the struggle quickly changed when more experienced and educated cadres—who perhaps demonstrated some restraint and precision in their attacks on the state—were captured or killed, and replaced by

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<sup>74</sup> Rohan Gunaratna, *Sri Lanka, a Lost Revolution?: The Inside Story of the JVP* (1990), at 55. Also see Owen Bennett, *The Patriotic Struggle of Janatha Vimukthi Peramuna: A Reappraisal* (Unpublished thesis submitted to the School of Global Studies, Social Science and Planning, RMIT University, October 2013).

<sup>75</sup> Bennett, *op. cit.* at 54.

inexperienced and ‘overzealous’ new recruits.<sup>76</sup> The new recruits began to attack civilians, and the struggle quickly lost the public support it initially enjoyed.<sup>77</sup> The Tamil Centre for Human Rights claims that the JVP killed 6,203 people during this period, including 3,210 informants, 2,222 government supporters and servants, 649 members of the government security forces and 70 politicians.<sup>78</sup> The subsequent leader of the JVP, Somawansa Amarasinghe allegedly corroborated this figure, although no verifiable source for this figure exists to date.<sup>79</sup>

In 1989, the JVP threatened that it would execute the families of the security forces if the state continued operations against it.<sup>80</sup> Several families were in fact killed, although there were later unverified claims that the government perpetrated these egregious attacks and blamed the JVP. In any event, these attacks destroyed the public image of the JVP, and motivated the security forces to annihilate it.<sup>81</sup> State-sponsored paramilitary groups were formed and deployed to carry out attacks against the JVP. The then State Minister of Defence recalled the operations as highly effective.<sup>82</sup> From mid-1989 to early-1990, government forces killed approximately 15,000 persons on suspicion of being either part of the JVP movement or being JVP sympathisers.<sup>83</sup> One particularly egregious example of these killings took place in the

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<sup>76</sup> *Ibid.* at 56. Also see C.A. Chandraprema, Sri Lanka, *The Years of Terror: The JVP Insurrection 1987-1989* (1991).

<sup>77</sup> Mick Moore, ‘Thoroughly Modern Revolutionaries: The JVP in Sri Lanka’, [July 1993] 27(3) *Modern Asian Studies* 593-642, at 614.

<sup>78</sup> Bennett, *op. cit.* at 57. Also see Tamil Centre for Human Rights, *An Appeal to the United Nations Commission on Human Rights*, 58<sup>th</sup> Session 18 March to 26 April 2002, at [http://www.tchr.net/reports\\_commission\\_2002.htm](http://www.tchr.net/reports_commission_2002.htm).

<sup>79</sup> *Ibid.*

<sup>80</sup> Moore, *op. cit.* at 638.

<sup>81</sup> *Ibid.* Bennett, *op. cit.* at 57.

<sup>82</sup> Gunaratna, *op. cit.* at 335.

<sup>83</sup> Chandraprema, *op. cit.* at 312.

Menikhinna-Kundasale area where almost an entire village of 200 people was wiped out.<sup>84</sup>

Among those killed were prominent journalists and artistes. Premakeerthi de Alwis, a prominent radio and television broadcaster and lyricist was abducted and shot by unidentified men on 31 July 1989. In 1994, a member of the JVP was convicted of committing the crime.<sup>85</sup> However, de Alwis's widow, Nirmala de Alwis, claimed—both in her autobiography *Premakeerthi* and later in public during his 25<sup>th</sup> death anniversary—that the JVP was not responsible for his death and that the killers were still at large.<sup>86</sup> Journalist, author and actor Richard de Zoysa was abducted and shot by unidentified men on 18 February 1990. The government was accused of the murder, as de Zoysa was linked to the JVP and was a vocal critic of the government at the time. In November 2005, the High Court of Colombo acquitted the three police officers accused of his murder.

The new government in 1994 established under Chandrika Kumaratunga Bandaranaike appointed several Commissions of Inquiry to inquire into the spate of disappearances that took place during the 1980s. These Commissions were appointed according to geographical area: (1) the Western, Southern and Sabaragamuwa Provinces, (2) the Central, North Western, North Central and Uva Provinces, and (3) the Northern and Eastern Provinces. An All-Island Commission of Inquiry was later appointed in 1998. The Western, Southern and Sabaragamuwa Disappearances Commission paid particular attention to incidents that took place during the JVP insurrection. Despite an estimate that approximately 27,200 persons 'disappeared' during the period between

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<sup>84</sup> *Ibid.*

<sup>85</sup> Judgment of the High Court in Case No. 5377/93 dated 18 March 1994.

<sup>86</sup> See 'Unofficial Presidential Election Battles Begin', *The Sunday Leader*, 3 August, 2014, at <http://www.thesundayleader.lk/2014/08/03/unofficial-presidential-election-battles-begin>.

1988 and 1990,<sup>87</sup> only a fraction of these cases were ever brought before a court of law.<sup>88</sup>

### 2.3 Post-war human rights violations

Following the end of the war, the human rights situation in the country began to deteriorate due to a proliferation of extrajudicial killings and enforced or involuntary disappearances. The violations were often perpetrated against individuals who were critical of the state, thereby raising suspicions of state involvement. It is important to note that such violations were commonplace during the war. Several notable killings had already taken place in 2008 and during the early part of 2009. On 1 January 2008, T. Maheswaran, a Tamil Member of Parliament and critic of the government, was assassinated.<sup>89</sup> In May 2008, 22 people were killed and 26 abducted during and after Provincial Council elections in the Eastern Province.<sup>90</sup> The editor of the Sunday Leader, Lasantha Wickramatunga—described as a ‘virulent critic of the Mahinda Rajapaksa government’—was then assassinated in January 2009.<sup>91</sup> This trend continued well into the post-war period, which also witnessed a marked increase in enforced or involuntary disappearances.

According to a U.S. State Department Report on the human rights situation in Sri Lanka, ‘estimates [on enforced disappearances]...ranged from 300 to 400 for the year 2009, with the majority occurring in the north and east’.<sup>92</sup> The crisis prompted the UN Working Group on

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<sup>87</sup> UN Human Rights Committee, Fourth Periodic Report of Sri Lanka, CCPR/C/LKA/2002/4, 18 October 2002, at para.161.

<sup>88</sup> International Commission of Jurists, *op. cit.* at 137.

<sup>89</sup> Human Rights Watch, *World Report 2009* (2009), at 309.

<sup>90</sup> *Ibid.*

<sup>91</sup> See ‘Editor of Sri Lankan daily assassinated’, *The Hindu*, 9 January 2009, at <http://www.thehindu.com/todays-paper/tp-international/editor-of-sri-lankan-daily-assassinated/article371316.ece>.

<sup>92</sup> U.S. Department of State, *2009 Human Rights Report: Sri Lanka* (2010), at <http://www.state.gov/j/drl/rls/hrrpt/2009/sca/136093.htm>.

Enforced or Involuntary Disappearances to express grave concern over the number of reported cases of disappearances in the country.<sup>93</sup> In 2010, 2011 and 2012, several more egregious human rights violations, including at least a dozen high profile killings took place.<sup>94</sup> Scores of abductions also took place, including that of journalist and government critic, Prageeth Eknaligoda on 24 January 2010. In fact, over 50 enforced disappearances were estimated to have taken place between October 2011 and August 2012 alone.<sup>95</sup>

A further dimension to post-war human rights abuses emerged in 2013 and 2014 in the context of rising tensions between Sinhala-Buddhist nationalists and the Muslim community. On 15 June 2014, ethnic riots erupted in the South of Sri Lanka, in areas including Aluthgama, Dharga Town, Valipanna and Beruwela. The ‘trigger event’ was an altercation between a Buddhist monk and three Muslims who were accused of assaulting the monk.<sup>96</sup> Following the incident, a large public meeting was held at which the General Secretary of the BBS made racist and inflammatory remarks against the Muslim community.<sup>97</sup>

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<sup>93</sup> Report of the Working Group on Enforced or Involuntary Disappearances, A/HRC/13/31, 21 December 2009, at 107.

<sup>94</sup> See International Movement Against All Forms of Discrimination and Racism (IMADR), *Enforced and involuntary disappearance in Sri Lanka*, Written statement submitted at the 19<sup>th</sup> Session of the UN Human Rights Council, 28 February 2012, A/HRC/19/NGO/123. IMADR documents several cases of persons being abducted and later found dead, including: Dinesh Buddhika Charitananda found dead on 3 January 2012; Mohamed Niyas, a Muslim astrologer, abducted in a white van on 27 October 2011 and found dead three weeks later; Hewage Chandana Rohan Lilantha Dabare who disappeared and was found dead on 1 January 2012; Mohamed Nisthar who disappeared and was found dead on 2 January 2012; and Rajgopal of Trincomalee, abducted and found dead on 3 January 2012.

<sup>95</sup> ‘A disappearance every five days in post-war Sri Lanka’, *groundviews.org*, 30 August 2012, at [http://groundviews.org/2012/08/30/a-disappearance-every-five-days-in-post-war-sri-lanka/#\\_ftn1](http://groundviews.org/2012/08/30/a-disappearance-every-five-days-in-post-war-sri-lanka/#_ftn1).

<sup>96</sup> Haniffa *et al*, *op. cit.* at 1.

<sup>97</sup> *Ibid.*

During the riots that followed, four persons including three Muslims were killed and over a hundred Muslim homes and businesses were destroyed by civilian mobs. The incident was nowhere near the scale of the July 1983 pogrom, although some of its features bore a disconcerting resemblance to the previous riots. The military and police were largely ineffective in containing the violence and the government was unapologetic in its aftermath, shifting the blame to the Muslims for provoking the violence.

These human rights abuses contributed to the notion that Sri Lanka was amidst a ‘crisis of impunity’.<sup>98</sup> Wartime abuses—including those that took place during the JVP insurrection—had set the precedent for what was taking place during the post-war period. It became increasingly clear that the absence of credible mechanisms that dealt with past abuses had given perpetrators a free licence to continue similar abuses in the post-war period. The recollections, observations and opinions of those who experienced these abuses firsthand must therefore be interpreted within this context of impunity.

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<sup>98</sup> The expression was repeatedly used by the International Commission of Jurists in its report *Authority without Accountability: The Crisis of Impunity in Sri Lanka* (October 2012). Also see Gehan Gunatilleke, ‘Overview of the State of Human Rights in 2011-2012’ in *Sri Lanka: State of Human Rights 2013* (2014).

## 1958...’71...’77...’81...83

Jean Arasanayagam

It’s been a long journey  
Still not over  
So many landmarks  
Each a tombstone  
History in each monument  
Of the slaughtered  
I can name the years,  
I travelled through them.  
Once, it was no concern of mine  
I had my own identity  
Safe from the marauders  
I watched from afar  
The burning had not reached me.

The next time the guns sounded  
Their echoes came from cities, villages  
And jungles far away  
Men slept with guns by their side  
The wounded crawled  
Blinded and maimed,  
Bodies drifted down river  
As coconuts, driftwood and decomposing  
Corpses in the flood, borne like flotsam  
In the current  
Or lay piled on streets  
And public market places  
Rotting spoiled vegetables.

It happened again and yet again  
The tedious repetition  
Of violence split blood smashed glass  
Walls crumbling like crushed origami  
Flames bursting

Smoke billowing  
Loot filched from the “enemy”  
All day the sirens screamed  
Fire engines racing through the burning  
Cities, gunfire popping over the hills.

History repeats itself  
Or so I’m told  
Is it only in deeds of violence?  
Battlefields strewn with  
The nameless dead  
Each grave a file  
Misplaced, of lost identities  
History repeats itself  
So the act has continuity.

Arson, murder, rape, looting,  
Battering clubbing hacking burning  
Count and recount the numerous ways  
On the blood splattered abacus  
Keep count although your fingers  
Touch death, reveal the  
Statistics before we all forget.

It’s all happened before and will happen  
again  
And we the onlookers  
But now I’m in it  
It’s happened to me,  
At last history has meaning  
When you’re the victim  
When you’re the defeated  
The bridges bombed  
And you can’t cross over.

## **Part 2: Narratives of Loss**

### ***1. Home and Belonging***

The information in this section is based entirely on the recollections, observations and opinions of those who participated in interviews and focus group discussions. The participants come from diverse backgrounds; geographically, they represent the Southern, Central, Western, Eastern, North-Central and Northern Provinces.

The initial focus of the interviews was on the participants' conceptions of 'home' and 'belonging'. The aim of this segment was to gather perspectives on context and identity and gauge how they affected the manner in which participants interpreted their experiences of violence and loss.

Most participants associated their current place of domicile with their sense of belonging. Many of them had lived in the place they considered 'home' for several decades, and had developed deep attachments to these places. While the research sample is too small to discover any strong correlations between geographical location and opinion, it is interesting to note that most participants maintained a sense of belonging with respect to their 'homes' despite any association with certain traumatic events.

The reasons for such deep attachments often varied. Some participants stated that their land was bought with 'hard-earned money' and that they wished to remain in or return to their land for this reason. Some valued the 'familiarity' of their surroundings, which they considered important to a shared sense of security. One participant from Ambalangoda mentioned that the people of the area respected her and treated her family well, and that she had no intention to move away despite the trauma she suffered there. Another participant from Kilinochchi speculated that she would earn a higher income if she went abroad, but preferred to remain in her 'own country'. Participants

generally maintained that they preferred to remain in their current locations for the remainder of their lives, or in the case of the displaced, to return to their places of origin.

Tamil participants who fled Colombo after the July 1983 pogrom and Muslim participants who were expelled from the North presented a more complex appreciation of belonging. They observed that they were either fundamentally deprived of a sense of belonging, as in the case of some Muslim IDPs in Puttalam, or were forced to evolve multiple accounts of belonging, as in the case of those affected by the July 1983 pogrom. A participant—whose family moved from Bandarawela to Haputale in July 1983, then to Matale a year later, to Kotahena soon after, and eventually to Wellawatte—claimed his sense of belonging is severely obscured. Similarly, younger participants who lived in the North and East during the war described their sense of belonging as fluid and transient, given the fact that they constantly moved to avoid violence. One participant recalled the tragedy of moving to Mulankavil in June 1999 due to shelling in her village, only to lose her father and sister during the final stages of the war in 2009. Another female participant based in Kilinochchi recalled her family's constant movement due to violence. She said her family moved from Ramanathapuram to Mathalan during the final stages of the war and then eventually to the Arunachalam camp. It was only during the later part of 2010 that she was able to return to Kilinochchi.

Participants had mixed reactions to the question on whether they wanted their children to remain in Sri Lanka. Some felt that Sri Lanka was now a 'peaceful' country that was conducive to meeting the aspirations of the next generation. One participant from Angunakolapelessa, Hambantota stated that, since 'the [former] President ended the war', Sri Lanka has a peaceful environment for his children to grow up in. Another participant from Mannar also felt that Sri Lanka now offered opportunities for young people to 'overcome their poverty and live comfortably'. Meanwhile, a participant from Mahawilachchiya expressed the view that Sri Lanka was 'blessed' compared to other

countries, as it did not face as many natural disasters. In this context, she felt that after the war ended, Sri Lanka became a ‘good country’ for her children to live in.

Some participants from Mannar, Kilinochchi and Ampara appeared to hold a slightly different view. Most of these participants already had relatives living abroad. Their vision for their children was to obtain an education and travel overseas for work. Even in the absence of educational prospects, there appeared to be a general view that the next generation should migrate overseas. This view ought to be contrasted with the participant’s personal attachments to their ‘homes’. It was clear that, despite their personal wish to remain in Sri Lanka, they felt that their children had better prospects abroad. One male participant from Jaffna claimed that his brother had attempted to travel to Australia illegally on a boat following the war. His attempt was unsuccessful and he was eventually repatriated to Sri Lanka. However, the participant claimed that his brother was making preparations to try again, ‘as this was the best opportunity to make a good living and send money back to his family’. This participant added that many young Tamils felt that they had very limited prospects of employment in the North.

Despite disagreement on how the next generation ought to view future prospects in Sri Lanka, most participants observed that leaving their ‘homes’ would not benefit them in terms of the ability to cope with their loss. Participants observed that coping with loss—if at all—could only be achieved through a process that takes place in ‘local’ environments. These sentiments concerning ‘home’ and ‘belonging’ are important, as they underscore the personal narratives presented in the next section of this study.

## ***2. Personal Narratives***

The narratives presented in this section are entirely based on the recollections of participants. The author did not independently verify all of the claims made by the participants. Several emblematic stories are

recounted in this section. They are presented with virtually no editorial input in order to retain the participants' original voice. Certain portions of the recollections of other participants are presented in subsequent sections of this study. Due to ethical considerations and security constraints at the time, the author and the Law & Society Trust decided to keep the identities of all participants strictly confidential.

### *2.1 The 1983 Pogrom*

A participant now based in Colombo presented the following narrative, which is part of his family's shared recollections of the pogrom.

My grandfather was a Fiscal Marshal in Bandarawela at that time. We were doing quite well—we owned some property in Bandarawela, Haputale and some other parts including Matale. We also had a money lending business. At that time, my father worked in Colombo in a shipping company. He was not with us when the incident took place.

The incident took place on the afternoon of 26 July. We were expecting something like this to happen because the LTTE had started its campaign and there was a lot of tension in the country. But we never expected it to spread to Bandarawela. That day, mobs started to attack houses in Bandarawela and the top Tamil businessmen were targeted. News travelled that the mobs wanted the 'three heads' of the top businessmen including my grandfather. My grandfather had gone out when two people came to the house and wanted to speak to my uncle. The two men then threw two petrol bombs into the premises, which destroyed the cars that were parked outside the house. When the attack was taking place, my grandmother bundled up her jewellery and hid it in a well located in the garden. My grandfather returned while the attack was taking place, and we began to make preparations to leave.

My grandfather owned a gun and initially wanted to shoot the two men. But my uncle convinced him not to, because he had heard that a family in Colombo who had tried to fight back was

killed by the mob there. According to my uncle, the daughter in that family was forced to set the rest of her family on fire.

The two men left and later returned with a larger mob. We had three dogs—two Pomeranians and one Labrador. They killed the dogs and cut their heads off. They then threw the bodies into the burning vehicles. Then they began to douse kerosene on the house and garden. We left through the back door and hid in a house owned by a Sinhalese doctor in the area. We could see our home from this doctor's house. The mob eventually burnt the house to the ground.

The mob later tried to enter the doctor's house, but he refused to let them in. They decided to move on, as he was a respected and reputed doctor in the area. But he didn't want us to stay for long—he was afraid that the mob would return and attack his house as well. So he organised for us to be transported in an ambulance to a nearby camp. We were dropped off at a camp where Tamil families were taking refuge. The others in the camp began to say that if my grandfather—with all his political connections—was in the camp hiding, those without any connections had no hope at all.

Then there was a rumour that the camp would be attacked on the 27<sup>th</sup> night. At around midnight, something large fell on the roof of the building and made a loud sound. Everyone thought the attack had begun and screamed for help. But it turned out to be a large fruit from a tree that hung over the roof of the building. Everyone was terrified. But there was no attack. My grandfather arranged for a vehicle that night, so we could escape to Haputale, where he owned an estate. My uncle decided to go back to the house and recover the jewellery that was hidden in the well. We managed to travel in a tractor and hid underneath some hay.

A few days after we moved to Haputale, the local villagers attacked the estate. We later found out that they had got information from one of the domestic-workers that we had come to Haputale with gold jewellery. When the villagers came

to the estate with torches and poles, my grandfather went out to confront them. He fired shots into the air and managed to drive them back. The next day he had met with the villagers and tried to make peace with them. He promised to help develop the area, and he eventually managed to improve relations with the villagers. But we didn't stay in Haputale for long. My father joined us a few days later. He had also faced harassment from mobs near Borella in Colombo, but had escaped without serious injury. We moved to Matale for a while; then eventually came to Kotahena.

## *2.2 Abductions during the JVP insurrection*

The following account was presented by a participant based in Angunakolapelessa, Hambantota. The account is based on his family's shared recollections of the incident.

It all happened here (points at a building) on 22 August 1988. I was about 18 or 19. At that time I was not here; I was in Colombo working on a bus. *Aiya* (elder brother) was working at the Department of Agriculture as a security guard. Around 12 noon he had gone home for lunch. Only our mother, father and brother-in-law had been there. So I am relating what they witnessed. *Aiya* had brought a loaf of bread. After sharing it with our father and mother, he had been lying on a chair resting. Suddenly, military personnel had come into the house, had thrown a book at *Aiya* and had asked him to pick it up. After he had picked up the book, he had been pushed out of the house. My mother had started shouting 'don't take my son away'. They then shut her and my father in the house where they helplessly watched on. The book was related to the JVP. The military personnel themselves had brought the book. Two personnel assaulted *Aiya* outside the house. Then three more personnel had joined and all five had assaulted him. He had knelt down before them pleading with them not to assault him. Later they had searched the house, where my brother-in-law had been hiding in fear. They didn't find anyone else so they left with *Aiya*.

I got some news from a man from this area who had come to Colombo. He told me that *Aiya* had been taken away. I got the news three days after the incident had taken place. I returned home immediately with two friends who were from the military. We went in search of *Aiya* together with another military officer from the area. We visited about 18 camps in Mamadale, Ranna, Middeniya, and Angunakolapelessa.

During our search, we came across places where large holes had been dug. Corpses had been put into these holes. We saw that the fingernails had been removed...and rashes had developed on the skin [of the corpses]. We visited several such places, but we couldn't find *Aiya*.

Had I been there at that moment, the military would have taken me away as well. It was *Aiya* who sent me to Colombo because of the disturbances here.

A participant now based in Alawathugoda, Kandy, presented this next account.

It happened on 5 December 1989; around 5 or 6 o'clock in the evening. A group of people came to my home saying that they were Army personnel, but they wore civilian clothes. They called out to my husband, but he was not here, as he had not returned from work. Then they had gone to his workplace. He worked at the Electricity Board. On previous occasions, the police had called him for certain electrical repairs. So at first I assumed that these people had come to call my husband for a repair. I later learnt that when they went to his office, he had voluntarily gone with them. But he never returned.

I went to the police station to lodge a complaint, but they refused to record the complaint. Later a police inspector whom I knew spotted me, and it was only after talking to him that the police took down my complaint. I very well knew that my husband was not involved in JVP activities, so I stated so in the

complaint. Yet I never found out what had happened to my husband.

I was forced to look after my three children alone. For a long time, I expected that my husband would return some day. That wish has now passed.

### *2.3 Expulsion from the North*

A participant living in Mannar related the following story.

Our village, called 'Sornapuri' in the Northern Province, was in an LTTE controlled area. At that time, I was working on the Mediation Board. On 28 October 1990, I learnt that the LTTE had decided to expel all the Muslims from that area including those in our village. They issued a deadline of three days in which we were supposed to leave our villages. They also instructed us not to take our motorcycles or jewellery. They did not even allow us to take a grain of paddy. At that time, I was well acquainted with LTTE Commander Lakshmanan, Political Head, Suresh and Organiser, Bharathi. They also told us to leave. They claimed that they did not have any other option, as the orders had come from 'higher up'.

We then gathered in our village mosque in haste and decided that we would go beyond Vavuniya. There were around 60 Muslim families in our village. We boarded tractors which took us to Madhu and from there we crossed Thambana Lake and went to Pandiviritchaan. The LTTE searched us to check if we had taken any jewellery or money with us. The female 'Tigers' searched the females and male 'Tigers' searched the males. We were allowed to then leave. We soon reached Vavuniya and eventually reached Anuradhapura having faced considerable difficulties with constant rain and illness. We then travelled towards the area along the Mahaweli River. We thereafter stayed at the Nelliagama camp in a Muslim village in Kekkirawa. People from the Kattaikaddu village in Villaankuli also stayed with us at the camp.

The primary occupation of our village was agriculture. There was a small water source that allowed for us to farm, and we remained there for a long time before coming to Adampan after the war.

I was saddened by the constant cries of my wife and children. My mind was never at peace, as we were left without anything. The mental trauma was tremendous.

#### *2.4 LTTE raids on border villages*

A participant based in Anuradhapura recollected the following incident, which took place in her village.

It was 26 November 2007. My husband was not here at that time; he was working abroad.

I heard that it was Prabhakaran's birthday. My father and mother had gone to work in our paddy field that morning. They had gone there early in the morning; I think at about 8 o'clock. Our paddy field lies in an area called 'Mannaran Handiya' (Mannar Junction), close to the area called 'Track 6'.

On a previous occasion, the LTTE had taken two of our uncles away and had shot them dead. That morning the LTTE took my father and mother while they were working in the field. They had taken my father and mother towards the *oya* (stream) that lies beyond our paddy field. It is this *oya* that separates the colonies where my parents lived and where my husband and I live. When they reached the *oya*, they shot my father and fired several shots on my mother's chest.

People living in this colony had heard the gunshots. Then they had gone to the area to find out what had happened and had found bullets in the paddy field. We often experienced disturbances from 'Tigers'. They were living close to the boundary of the forest.

When the incident took place, my mother was 47 and my father was about 53. My sister was married and lived separately. She telephoned me when she got the news. We went to the place to see our father and mother; it was difficult to recognise them.

I felt extremely sad. I always feel sad when I think about how to cope without my father and mother. My wish is that such a thing may never happen to any other person.

### *2.5 LTTE bombings of civilian targets*

The following recollections were shared by two participants who lost family members during the Kebithigollewa bus bombing.

My husband was working in the Civil Defence Force. He was 39 years old when he died while travelling on a bus on his way to work on 15 June 2006. At that time he was working in Kebithigollewa. I remember, those whose lives were saved had got off the bus and came running back to the village. It was those people who brought the news that a bomb had blasted on the bus. Then the entire village rushed to the scene. I ran there screaming loudly, but when I arrived at the scene, my husband had already been taken to Colombo. He had still been alive by the time he reached Colombo. Some casualties had been taken to Kebithigollewa hospital, some others to Anuradhapura and a few to Colombo. My family members did not permit me to travel to Colombo. So I was forced to return home without any further information about my husband.

Later I learnt that my husband had been transferred to Anuradhapura. But I was not permitted by my family to visit him. He died two days later on 17 June 2006. My brother then went to Anuradhapura and brought his body home. We had a funeral at my brother's home. I was 24 then.

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The bus was bombed on 15 June 2006. My parents and the others from my family including my brother, my two sisters and my nephew were travelling in that bus to attend a funeral. It was the funeral of a cousin who had been shot dead by the LTTE the day before. Many people from our village were travelling on that bus to attend that funeral.

I was travelling on another bus, which was transporting the employees of a garment factory. Our bus was travelling about two kilometres behind the bus that my parents were travelling on. Although that bus was beyond our sight, our bus was travelling close behind it. When we had travelled a little distance, suddenly the Army stopped us. They didn't allow us to go further. When we asked why, they said that the bus that had been travelling ahead of us had been bombed. Then we got off the bus and rushed towards it.

When we arrived at the scene, the injured had been taken away. My parents were not there. There were dead bodies everywhere. We couldn't recognise most of them, but I saw my nephew lying dead. The injured were being taken to hospital. But my mother was already dead by the time she was taken to hospital. I didn't see my father either. People say he had spoken after being injured. But he had also died on the way to hospital.

My two sisters survived. My *Akka* (older sister) was seriously wounded and *Nangi* (younger sister) says that she only heard a big sound and she doesn't remember anything else. *Aiya* (older brother) had spoken to *Akka* while they were being taken to hospital. Many people died because there are no proper facilities in these areas. Tractors were used to take people to hospital. We were told that *Aiya* had died due to internal bleeding in the brain.

A participant living in Ambalangoda related the following story.

It was a Full Moon *Poya* day—10 March 2009. I usually visit my parents in Weligama on *Poya* days; I take some food that I

prepare for them. My husband asked me to take the children with me. He said that he would wash the vehicle, keep it in the garage and go out. When I asked him where he was going, he said that he had been invited to some function at the mosque and that he was attending that function together with our neighbour, who was a lawyer. My husband was an Ayurvedic doctor and a registrar of marriages. He also worked as a coroner. When a member of a Muslim family of this area died, hospitals should hand over the corpse to the family members soon. My husband worked hard to ensure that. So the Muslim people in this area liked him very much; that is why they had invited him to their function.

That day, our youngest child had a tuition class, and only the other two daughters remained at home. I was expecting to leave to visit my parents along with my daughters once the youngest returned. Meanwhile, my husband had left home without informing anybody—which was unusual.

When my youngest daughter came home from her class, she said that she had seen a train of vehicles rushing through the town tooting their horns, making a lot of noise. When she was coming home, one of the neighbour's sons had been crying loudly and had been throwing chairs on the floor. Another son had seen his father's vehicle, which had been rushing towards the local hospital. We immediately went to the hospital and discovered that my husband was dead. I do not recall anything that happened on that day thereafter. I cannot remember anything—how I came back home, or what I did during the next few days. I now know that a bomb had been blasted at a procession near the Godapitiya mosque.

I now feel I have been left alone with three daughters.

## *2.6 Military personnel killed or missing in action*

The following accounts were presented by two participants from Gampaha and Anuradhapura respectively, both of whose sons were killed in action during the war.

My son died on 21 September 1998. He was a lieutenant at that time and was serving in Paranthan. ‘Tigers’ had launched a surprise attack on the camp. We heard the news on television. However, until considerable time had passed, nobody told us what had happened. In fact, we still do not know precisely what happened there that day.

We lost the only son we had. He did not join the Army for employment; actually he did so to protect the country.

Before he joined the Army, he wrote poems about his motherland. Recently, when I was cleaning the house I found some old poems that he had written. He was a very clever boy. At school, he took part in various types of sports. We are not very rich, but we are not poor either. There was absolutely no need at all for my son to join the Army for employment; he did so solely for the sake of the country.

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My son was at the Mullaitivu camp when it was attacked in July 1996. It had not been a long time since my son had joined the military. After three months of training, his first appointment was to the Mullaitivu camp. When he reached the camp, he sent a letter saying that he had reached there safely.

We got the news that the camp was attacked the following day. My son was just 19 when he joined the Army. He was my eldest son. When he joined the Army, I was serving in the Civil Defence Force.

After a few months, I received a letter stating that my son was missing. At the time, my wife was working in the Middle East. At first, I didn't even tell her that our son had gone missing. I thought it would be too much for her. But about two years later, a death certificate was sent to us. So she came to know about our son's death only when she returned home that year. Now my wife is suffering from depression. She has not worked since our son's death and never left the country again.

### *2.7 The final stages of the war*

A participant from Kilinochchi shared her personal experience during the final stages of the war.

My husband, children and I lived very peacefully before 2008. My husband was involved in agriculture in Vattakachchi. 'The movement' [the LTTE] asked my husband to join their ranks, but because our children were young and since we did not have any other source of income, they did not force him to join. However, we donated a small amount of money to them monthly. We lived in Ramanathapuram till 2008, and then fled to Mathalan when the fighting became worse.

In Mathalan, we stayed in a small hut along the open shoreline. We made sacks using the clothes we brought with us, filled them with sand, laid them out and placed planks on them. I stayed in this temporary bunker with my husband and children.

Our relatives were also in this same place. When the fighting became very intense in March [2009], shells would fall on us and explode near us. Most of the time, we wouldn't know where the shells were coming from. They kept falling. At times, we wouldn't even hear the shell coming in—just the explosion. Bullets would come from both sides, and we were in the middle of it all. One day, a shell landed near our bunker and four people died right next to us. Another shell attack injured my mother and I. We were then moved to the Pulmottai Hospital

and then placed in the Pathaviya Hospital. My husband remained at the bunker.

I later learnt that my husband had died on 21 March 2009. I don't know what happened to him. My husband's brother and other relatives buried my husband's body.

I felt that my entire family should have died along with him. I struggled a lot, having to drag my three young children along. When we were in the Vavuniya [displacement] camp, it came to a stage where we had to beg the government for a change of clothes. After we were released, we came to Kilinochchi, where we have been struggling to survive since.

## *2.8 Disappearances and displacement in the aftermath of war*

The following account was presented by a participant now based in Mannar.

My husband and I fell in love and married. Before he married me, he was a member of the LTTE. In 2006, after the mandatory 'one family, one cadre' rule was introduced, he rejoined the LTTE. His alias was *Kamban*. He was a driver for the movement, and was put in charge of cultivation in Parapukadanthan. He used to go to and from Adampan, Manthai and Mulankavil. Rs. 10,000 would be deposited in his bank account monthly as his salary. We lived in Periyamaddhu during this time. The house we lived in belonged to a Muslim family; we had land in Periyamaddhu, but did not own a house. We were later blessed with a son in November 2006.

My husband's job was to drive them [the LTTE] to where ever they wanted. A few people were under the impression that my husband was the person who forced people to join the movement because he was often seen driving LTTE members around. However, he has saved many people. He warned people to run away before they were about to be recruited. So he was a popular person among the people he had saved.

In 2009, we became displaced because of the war and had to move to Mullivaikal. I asked my husband to come with me, but he was afraid that the Army would kill him because he was a member of the LTTE. He would have also worried that if he came, they would shoot my son and I. He told us to go and that he would come with us to the bunkers. Many shells fell on us while we hid in the bunkers. The bunkers were by the sea. The place was open and there was constant fighting. We were unable to escape from this area; the only way out was through the *Nandi Kaddal* (Nandi lagoon). My child and I, along with my brother-in-law, later moved from LTTE-held territory towards the Army-controlled areas. My husband did not come with us. Hundreds of thousands of people came with us. There was no food and we could not sleep. The next morning, the military picked us all up at Iranamadu and took us to the Vavuniya Ramanathan camp. We didn't have any documents or any clothing. My husband told me to not take any pictures of him. However, through some god's grace he is in one of the pictures that I kept of my child.

We left Mullivaikal on the 16 May 2009. On 17 May, I received news that my husband was with friends. They entered Army-controlled territory on 18 May. The Army asked the people who came alone to separate from those who came with their families. My husband stayed with those who had come alone. Some eyewitnesses claimed that the Army took the ones who had come alone in trucks. I asked about my husband from some of the people at the Ramanathan camp. Some told me that he was initially held at the Omanthai Tamil Vidyalayam [a school], and that the Army had later come and taken him away.

I was expecting my husband to return to me. I was scared, but my mind didn't waver; so I waited for his return. It has now been more than 5 years. I still do not have any news of him.

While we were in the camp, we were enclosed like cattle. They would throw food and water bottles at the crowd. There would be pieces of strings and fibres in the rice and curries. There

would be worms in the brinjal curry. Later, we started cooking with the items they gave us. Our relatives would come to see us. Everybody would have to shout and yell to communicate. There would be a fence between our relatives and us. In the beginning, our relatives could not give us money or food items. They would have to line up in order to meet us. Later the military permitted our relatives to aid us. We were finally released and I returned to Viddathal Theevu on 2 December 2009.

Another participant from Mannar related the following story.

I had a daughter. She had an appearance that made her look older than she was. When she 'attained age' at the age of just 10 years, she looked as old as 15 years. When she was actually 15 years old and in the 10<sup>th</sup> Grade, she joined 'the movement' due to the compulsory recruitment rule. During the last stages of the war, she decided to surrender to the Army. However, the movement took her away and prevented her from surrendering. Later, on 7 April 2009, when the Army surrounded Puthumathalan, Mullivaikal, they captured her and took her away to an unknown place.

After my daughter was captured, she went missing. I then fell very ill. I was affected in body and mind due to stress. I'm still alive today only due to the support of my husband and four other children. We became very depressed because we were being repeatedly displaced. At the end of May 2009, we were placed in a camp in Vavuniya, and we remained there in the hope that our daughter would come back to us. During that time, nobody came forward to guide us or aid us in finding our daughter.

We would have been at peace if we all died as a family. We felt the pain of not knowing our daughter's whereabouts. People often say, if the Army takes a son, there is hope that he will come home one day. But if they take a daughter, people say very different things. They speak of how she might be raped

and would come back home with her child. Whatever happens, she is still my daughter. My mind told me that it was enough if she just came home. But she never came home.

## *2.9 Riot in Aluthgama*

A participant based in Darga Town, Aluthgama, presented the following account of the Aluthgama riots, which took place on 15 June 2014.

It all started with a rumour that there was a personal dispute between a monk and some Muslims in the area. The dispute went on for about two days. Later Gnanasara Thero [General Secretary of the BBS] had attended a propaganda meeting at Aluthgama; the riots started immediately after that. They were well-planned riots. During the meeting, he provoked the crowd to attack Muslims. The plan was executed perfectly. There were about 2,000 rioters, and among them, there were people from other areas who mixed with the local rioters who came. Mobs from other areas were transported in buses. It started at around 6 o'clock in the evening. Some of them first broke into a motor shop and stole helmets, which had been stored in that shop.

At around 7.30pm, a mob came to my house and set it on fire. My house was completely burnt down. It wouldn't have burnt like that with just petrol. I think they might have used some kind of chemicals. I was not at home when this happened. But when I came back everything was burning. I would have attacked them, but they had already left. We then began to pour water to extinguish the fire. My house was built only six months previously. They had broken the windows, and set fire to the bed and furniture.

They also set fire to my electrical repair shop. All the documents that I had there were burnt. I had eleven refrigerators, seven or eight air conditioners and seven washing machines for repairs; and my tool sets were destroyed. I couldn't even save a single screw.

There was a garment factory close to my house that was badly damaged. The owner of the factory, who was a Muslim, must have suffered a loss of 25-30 million rupees. Another Muslim neighbour had a hardware store. That was also burnt down. Likewise they have burnt down many shops and houses.

Their aim was to destroy our economical wealth. They also attacked those who went to stop them. One of my cousins was shot dead by them. All the houses and shops at the border of Darga town were burnt down by 9 o'clock that night.

### ***3. Reflections on Truth, Memory and Justice***

The recollections, observations and opinions of participants were examined through a process of transcribing and translating the original interview records, and analysing responses pertaining to six key areas of discussion. These interview responses were thereafter compared with the responses of participants at the two focus group discussions. Similar to the interviews, the focus group discussions were also divided into two segments: the first focused on the recollections of participants, and the second focused on their observations and opinions with respect to the six areas of discussion.

#### *3.1 The context of loss*

The participants were presented with a series of questions prompting further reflection on their loss. It is understood that the idea of 'loss' is often subjective and deeply personal. It could range from the abstract—for example, the loss of dignity—to the tangible—for example, the loss of life or property. This study focuses mostly on the latter conception of loss, wherein participants encountered the loss of a family member or property as a direct result of the events they experienced. The loss of dignity, however, undergirds much of the personal recollections offered by the participants.

The first set of questions dealt with the contextual backdrop to the participants' experiences. Sinhala-Tamil ethnic tensions and the rise of Tamil militancy provided the contextual backdrop to the July 1983 pogrom. The context surrounding disappearances during the second JVP insurrection was the government's use of military and paramilitary groups to eliminate the insurgents and their sympathisers. The LTTE's antipathy towards the Muslim community along with its campaign to homogenise the North undergirded the mass expulsion of Muslims in 1990. A similar context applied to the LTTE's attacks on Sinhalese border villages. Its struggle for a separate state also provided the contextual backdrop for its indiscriminate attacks on civilians throughout the war. Moreover, the war between the government security forces and the LTTE provided the general context of the casualties suffered on both sides and the disappearances of persons during the military occupation of the North and East. The government's subsequent crackdown of dissenting voices after the war underscored the occurrence of post-war human rights violations including extra-judicial killings and enforced or involuntary disappearances. Finally, increased tensions between the Sinhalese and Muslim community and the political mainstreaming of Sinhala-Buddhist nationalism formed the contextual backdrop to the Aluthgama riots of 2014.

Those who suffered loss during the JVP insurrection and the post-war era were unanimous in their condemnation of the overall context of their loss. In the case of the JVP insurrection, no participant viewed the government's crackdown on alleged JVP members and sympathisers as 'necessary' or 'inevitable'. These participants held the view that their loss was not in any way or form justifiable within the prevailing political context of the time. Similarly, participants whose family members disappeared soon after the war also felt that such violations could not be understood within any justifiable context. These sentiments underscored their attitudes towards both their loss and those responsible for that loss.

The responses of participants who lost family members due to the war were radically divergent. Three types of sentiments emerged.

First, some participants stated that the war was necessary to bring about peace. One such participant observed: ‘Earlier, we couldn’t go anywhere freely; we lived in fear, but now it is not so.’ Another participant—a former member of the Civil Defence Force—stated:

In those days, when we went to cultivate our lands, we carried T56 guns. We always kept watch—we looked this side and that side and worked in fear, for we didn’t know when [the LTTE] would appear. At night, we couldn’t come out of our houses even for an urgent matter. Now we don’t have any such problem.

Some participants whose sons were killed in action stated that they constantly reminded themselves and those around them that their sons were brave soldiers. One participant from Gampaha, whose son was killed in action, stated: ‘I always tell [my] grandson about the bravery of his uncle, for I consider it to be very important.’

Second, certain participants remained ambivalent about the actual necessity of the war, but were grateful to the previous government for defeating the LTTE and ending the war. One participant from Mahavilachchiya stated: ‘Actually, I’m very happy that the war has ended because both my parents were killed because of the war. When I think of that, I feel very happy that the war is over.’ Another from Pemaduwa remarked:

We have been able to live in peace because the war has ended. Now we can spend time in the yard chatting like this because the war is no more. When the war was there we often used to bundle some clothes and run into the forest to hide.

Third, some participants felt that the war was completely unnecessary. In their view, the war caused suffering that they did not experience

before it began. Interestingly, these sentiments focused mainly on the stage of the war that began in 2006 and ended in 2009. Hence the participants' interpretation of the word 'war' varied, with some treating it as a 30-year phenomenon and others as essentially taking place during the period between 2006 and 2009. One participant from Mannar expressed extreme bitterness about the manner in which the final stages of the war were waged. From her perspective, 'the army killed as many people as they possibly could'. She commented that she and her family were 'merely the ones who escaped'. Another participant from Kilinochchi expressed disenchantment with both the government and the LTTE for their actions during the final stages of the war in 2008 and 2009. She stated:

When we were under the movement's [LTTE's] control, we lived well without any problems. People started to hate them during the end stages of the war when they tried to forcibly drag our children into the war. Now, it is only because of the war that we are oppressed by the government. The final stage of the war is the cause for everything.

The polarisation of opinion on the war, however, did not neatly fit into ethnic stereotypes. Some Sinhalese participants did not hold the same view as others with respect to the 'necessity' or 'inevitability' of the war to defeat the LTTE. A male participant from Medawachchiya, whose son was killed in action during the LTTE attack on the Mullaitivu Army camp in 1996, observed:

War is not something that the poor need. War is something that is waged by oppressing the poor in order to establish political power. Other than that, there are no differences among the Sinhalese, Tamils and Muslims of this country. All these are false things created by the politicians in the name of racialism...in order to safeguard their names and their political parties. It is good that the war has come to an end, but it is politicians that are responsible for the eruption of such a war.

The participant was a former member of the Civil Defence Force. The same participant made the following poignant observation:

It is one thing to talk about some heroic deeds done for the sake of the country. Even in our history we have such stories of heroic acts. But, in present Sri Lanka, there are many ethnic groups—not only one. I think we should talk more about how to live in harmony with them and how to prevent such fighting in future.

Not all participants who had lost family members serving in the military held the opinion that soldiers fought for a ‘just cause’. In fact, both participants who had a background in the military held the contrary view—that the war was a politically manufactured event, which imposed the greatest cost on the poor. These participants—both of whose sons were killed in action—refused to accept the rhetoric of ‘valour’ and ‘patriotism’. According to these participants, the combination of their personal understanding of the military and their parental experience of loss produced a somewhat distinctive contempt toward war and the glorification of military death. This contempt evokes Wilfred Owen’s famous words:

My friend, you would not tell with such high zest  
To children ardent for some desperate glory,  
The old Lie; *Dulce et Decorum est*  
*Pro patria mori*<sup>99</sup>

### 3.2 Self reflection

The second set of questions dealt with how participants viewed their own actions and behaviour both during and after their loss. At least two types of responses emerged in this regard.

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<sup>99</sup> Wilfred Owen, *Dulce et Decorum Est* (1920). The Latin phrase means ‘it is sweet and right to die for your country’.

Some participants had no significant regrets concerning their actions and behaviour both during and after the traumatic event they experienced. Such participants offered various reasons for their lack of regret. Certain participants had no regrets because they either rationalised their loss as ‘fate’ or *karma*, or associated it with a positive notion. For instance, a participant who lost her husband in an LTTE bombing stated: ‘What happened has happened. We can’t help it; even my husband couldn’t help it.’ Another whose son—an Army officer—was killed in action during military operations, stated that she had no regrets because ‘he was engaged in an act of bravery’. Others had no regrets due to the efforts they personally undertook to seek the truth about their loss. For example, one participant who lost her husband during the JVP insurrection stated that she went everywhere possible in search of him and often cooperated with others who were also looking for their spouses. She recalled:

I...went there together with the members of the association we later formed. I went to every *devala* (temple) and soothsayer in this country together with four others living in this area who suffered the same problem as I did. We searched for our husbands as far as possible. So, we don’t have any regrets about that.

By contrast, certain participants displayed varying degrees of regret concerning their actions or behaviour during the traumatic event concerned. These participants often associated their regret with a perceived failure to prevent the violence or loss they encountered. For instance, one participant who lost her parents during an LTTE raid on a border village felt a deep sense of responsibility for her loss. She recalled that she had left her parents’ home after getting married, and insisted that their lives might have been spared had she remained with them. Another participant whose son had been killed in action lamented that her biggest regret was not objecting to her son joining the Army. Echoing similar sentiments, another participant recalled the

circumstances in which her 20-year-old brother joined the Police before he went missing in 1996:

*Malli* [younger brother] did cadetting in school. That is why he wanted to join the Police. One day he told me that he wanted to go for the selection interview. So we took him for the interview. Had we not taken him there that day, he would still be living with us. Later [after he was selected], he wore his full uniform and asked me: ‘*Akke* [older sister], do I look smart?’ He was sitting in this same chair [points to chair] when he said: ‘*Akke*, I feel rather reluctant to go [to join the police]’. That was the last day we saw him.

Another participant’s regrets were more difficult to define, as they related to her failure to act on a premonition she had on the day of her husband’s death. She said: ‘I had a strong feeling that my husband should have stayed at home without going to work that day.’ She mentioned that she regretted that she could not convince him to stay back. The participant’s husband was among those who were killed in the LTTE attack on a civilian bus in Kebithigollewa.

These sentiments of regret reflected a tendency among some participants to apportion on themselves part of the blame for their loss. This tendency ranged from the failure to prevent family members from joining the military or anti-state movements, to the failure to act on premonitions of tragic events. This apportionment of blame affected the participants’ coping mechanisms in two ways. First, those apportioning such blame saw themselves as struggling to move on from their loss. One participant who lost her husband during the JVP insurrection observed that she was unable to move on because she had to live with her failure to act on her conscience. She strongly felt that her husband should not be involved in the JVP but had kept silent at the time. Second, these participants appeared to have only a limited interest in discovering who was responsible for their loss. Most participants who believed that they were partly to blame for their loss, later expressed

ambivalence over the need to investigate and prosecute perpetrators. This ambivalence will be discussed later in this study.

### 3.3 Telling others

The next series of questions related to telling others about loss. Two types of ‘truth telling’ were captured in the responses of participants: first, the sharing of narratives and experiences in private, among trusted individuals including family members; and second, the sharing of such narratives and experiences in public formal or semi-formal fora including courts of law, commissions of inquiry and public gatherings. It is noted that the terminology of ‘truth telling’ is used mostly in the context of truth commissions, where victims and perpetrators testify about a particular atrocity. This section uses the terminology more loosely—perhaps in its broadest sense—to mean the act of telling the truth about an event or experience.

Prior to delving into the views of participants, it is perhaps useful to briefly discuss the perceived benefit of truth telling, which has been the subject of debate among scholars and practitioners. Studies on telling others about traumatic events have not reached consensus on whether the process helps victims. Psychoanalyst Sophia Richman—a child survivor of the Holocaust—argues that dissociation, which is a possible coping mechanism, leads to discontinuity and fragmentation of one’s sense of identity.<sup>100</sup> She contends that telling others is ‘an empowering experience that potentially restores a sense of continuity and wholeness’. However, other studies have disputed the value of telling others. In *The Trauma of Truth Telling: Effects of Witnessing in the Rwandan Gacaca Courts on Psychological Health*,<sup>101</sup> Karen Brounéus counters the conventional view that truth telling is beneficial to the

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<sup>100</sup> Sophia Richman, ‘Finding One’s Voice: Transforming Trauma into Autobiographical Narrative’ [2006] 42(4) Contemporary Psychoanalysis 639-650. Also see James W. Pennebaker, ‘Telling Stories: The Health Benefits of Narrative’ [Spring 2000] 19(1) Literature and Medicine 3-18.

<sup>101</sup> [June 2010] 54(3) Journal of Conflict Resolution 408-437.

victims and leads to reconciliation. Brounéus examines whether witnessing in the *Gacaca* (the Rwandan village tribunals for truth and reconciliation after the 1994 genocide) was beneficial for psychological health and presents an interesting finding. Her survey of 1,200 Rwandans demonstrated that *Gacaca* witnesses suffered from higher levels of depression and posttraumatic stress disorder (PTSD) than other survivors. Her study in fact challenges the claim that truth telling is beneficial and appears to expose the deep complexities inherent in truth telling processes, particularly in post-conflict contexts. Brounéus's study, however, dealt with the process of truth telling in formal or semi-formal public settings. The study does not appear to challenge the possible benefits of telling others in private.

In any event, Brounéus's quantitative analysis is disputed in a later qualitative analysis carried out by Ulrika Funkeson *et al.*<sup>102</sup> This analysis was based on interviews with eight women who were witnesses at the *Gacaca* Courts. The study led to three findings. The first reaffirms Brounéus's hypothesis that witnessing can have a negative impact on psychological health. However, the remaining two findings appear to add a layer of nuance. Funkeson *et al* found that revealing the truth through the *Gacaca* can be perceived as emotionally distressing, but *also* relieving, and that witnessing can *either* create increased hostility *or* reconciliation in the relationship between the witness and the perpetrator. The principal finding in this study was that there was no uniformity in the effects of truth telling on witnesses. These varied results shed light on the complex experiences of those who witnessed in the *Gacaca* Courts, and suggest that different factors within a particular truth telling process 'contribute to both positive and negative perceptions of the witnessing experience'.<sup>103</sup> The findings of Funkeson

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<sup>102</sup> Ulrika Funkeson, Emelie Schröder, Jacques Nzabonimpa & Rolf Holmqvist, 'Witnesses to Genocide: Experiences of Witnessing in the Rwandan *Gacaca* Courts' [2011] 17 *Peace and Conflict Journal of Peace Psychology* 367-388.

<sup>103</sup> *Ibid.*

*et al* in terms of the divergent effects of truth telling are reinforced by the views of the participants in the present study.

The first question put to the participants in this regard was open-ended, and did not specify any particular form of telling others. Participants were simply asked whether they have spoken to others about their loss. The responses covered both private and public forms of truth telling.

Several participants stated that they refrained from telling others—both in private and public settings. One participant who had lost his brother during the JVP insurrection stated that he did not make an effort to speak to others about his loss. He recalled, however, that the matter came up in conversations at social gatherings such as weddings and funerals, and such recollections often saddened him. Another participant who lost her husband to an LTTE bomb attack stated emphatically that she did not speak about it. In fact, the interview held with her for the purpose of this study was the *first occasion* on which she had recollected her story in detail. Another participant who lost several relatives during the final stages of the war also stated that she preferred not to talk about her loss: ‘I usually don’t tell anybody anything’. This hesitance in telling others is most poignantly captured in the following remarks by a participant who lost her husband in an LTTE bombing:

I didn’t like to speak about it at all; neither did my children. We don’t like even the mention of it by anybody at least by chance, for we feel very sad. My second daughter later sent a letter to her aunt in Sweden saying that their father was the best father in the world and the one whose love for his children was the greatest in the world. When our daughters were going to school, my husband accompanied them up to the bus stop. The neighbours once told him not to worry because they [neighbours] would look after them; but he continued to accompany them. He loved the children so much. So we don’t like to recollect the fact that he is no more.

Two participants offered unique rationales for their preference not to tell others about their loss. One participant, who lost her relatives during the final stages of the war, said: ‘everyone from the Vanni know people were lost and are missing, so there is no need to tell them about this problem’. She also argued that telling others was counterproductive because there was some resentment in the community that ‘only widows get all the benefits’. Hence she argued that refraining from telling others about her loss was more prudent. Another participant related a harrowing account of how an official attempted to take advantage of her as a result of the information she had provided. She recalled:

Telling my story to some people has caused a nuisance. Once, a CID official held an inquiry. He then called my number at 3.30am; there is no need for an official to call me at that time. He spoke to me very vulgarly. He told me to come to Vavuniya to meet him and ‘stay with him’. I became angry and scolded him. He might have thought that I would go, as he said, ‘since you didn’t have your husband around...’. I harshly told him not to try to seduce us while it is they who are holding our husbands captive, and then I disconnected the call. Some officials take advantage of our situation. If our husbands were around, then they will not have the courage to try this. There is fear in sharing my experiences with people. Some sympathise; many try to abuse us.

By contrast, several participants said they spoke about their loss at every given opportunity. The present study revealed two possible aims behind a participant’s decision to tell others. While participants did not always draw a clear distinction between private and public forms of truth telling, the two aims discussed below loosely fit into these two forms.

First, participants told others about their loss for the purpose of discovering the truth about the circumstances of their loss. These participants often preferred public, formal or semi-formal settings to tell others about their experiences. It is noted that such processes of truth

telling are meant to incorporate opportunities for victims and survivors to hear others including perpetrators speak about the events and circumstances concerned. Many of the participants, whose central purpose was to discover the truth, also expressed a strong desire to hear others speak the truth.

Three participants, whose children or spouses went missing during the final stages of the war and during the post-war period, claimed that they spoke about their loss to anyone who inquired. All three of these participants made representations before the Commission of Inquiry (CoI) to Investigate Complaints Regarding Missing Persons.<sup>104</sup> One participant claimed that, in addition to making representations before the Commission, she told her story to the media. She also lobbied several Army officials in the hope of securing more information about her husband, who ran a transportation service for the LTTE and was captured by the Navy on 4 June 2008. Another participant, whose daughter went missing during the final stages of the war, stated that her husband constantly reprimanded her for telling others about her missing daughter, and often questioned the benefit of telling others. For this reason, she participated in inquiries and consultations without disclosing it to her husband. These participants considered telling others important to the process of discovering the truth about their missing family members. One participant captured this sentiment in the following words:

I speak about my experience in the hope that I will be reunited with my daughter. That is why whenever anybody holds an inquiry, I go and tell them about the tragedy that I have faced.

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<sup>104</sup> The Commission was appointed on 15 August 2013 and was mandated to investigate complaints regarding missing persons who were resident in the North and East between 10 June 1990 and 19 May 2009. This period was revised thereafter to include incidents which took place between 1 January 1983 and 19 May 2009. See Gazette Extraordinary No. 1823/42 on 15 August 2013 and Gazette Extraordinary No. 1855/19 on 25 March 2014.

The experiences of these participants in telling others about their loss at public fora were not always positive. One of the participants, whose husband went missing after he surrendered to the Army, recalled a disconcerting experience before the CoI to Investigate Complaints Regarding Missing Persons. The Commission had asked her if she knew where they had taken her husband, to which she retorted: ‘Then what have I come here for?’ She also claimed that the Commission did not permit her to speak freely and only ‘interrogated’ her. She stated that she was deeply disappointed in the process and left the forum feeling discouraged rather than hopeful. She mentioned that she received no answer to *her* questions about the whereabouts of her husband. It is therefore important to note that repeated negative experiences of this nature may eventually dissuade victims from using such public processes to discover the truth about their missing relatives.

Second, telling others was cathartic for some participants. This aim applied mostly to telling others in confidence and, on occasion, telling others in semi-formal public settings. Participants who lost their relatives to LTTE raids on border villagers stated that almsgiving ceremonies were held each year commemorating their loss. These participants claimed that the process of remembering their relatives and telling others about the event aided their recovery. However, they added that they told only relatives, friends and those who inquired about the past. Participants whose sons were killed in action held the same view. One such participant stated:

We talk about it even today. We attend certain functions at camps. We have almsgivings and do other meritorious deeds. We always remember him. Every year, we have an almsgiving on the day he died.

When asked if telling others helps in the process of coping with loss, one participant remarked that speaking about her loss ‘calms her mind’. Another participant stated that she feels relieved when she relates her story to others. Additionally, some participants claimed that they shared their experiences with people because they wanted to tell the world that

there were many others like them. These participants revealed that they often met with others who faced similar trauma. Participants whose children and spouses disappeared during and after the war consistently stated that meeting with and organising and lobbying alongside other victims and survivors gave them strength to face their trauma. One recalled: ‘talking to them gives me peace of mind’. Similarly, those who lost relatives during the JVP insurrection claimed that the formation of associations was somewhat helpful to the coping process. Moreover, families of soldiers killed or missing in action had a tendency to draw solace from each other. One participant whose son went missing in action stated:

In this village, there are about three families who lost children while serving in the military. We talk to them about these incidents. But we could not even see the corpses—not only of our son, but also of the sons of the other three families. We were told that they had gone missing.

Another participant stated that each year, members of the Ranaviru Seva Authority—an organisation established to promote the welfare of military veterans and their families—met, which provided him with important opportunities to relate his story and listen to the stories of others.

Meanwhile, some participants held the belief that truth should be told for its intrinsic societal value. A participant who lost his home during the July 1983 pogrom stated that neither he nor his family often told others. But they frequently discussed the events among themselves and ‘chose’ to tell some specific individuals because ‘the truth about what happened must be told and never forgotten’. He said: ‘these recollections are not meant to gain us pity, but are only told to those who can understand.’ Expressing a similar sentiment, one Muslim participant who was expelled from the North in 1990 stated:

I do not expect to earn pity by recounting my experiences. But the truth must be known. I do not wish to sow seeds of revenge

and conflict in the minds of our children. But the younger generation should know their history. They should know about their predecessors. Only when they are told about injustices will further injustice not happen.

The foregoing discussion reveals that the attitudes of victims and survivors with respect to the purpose and the practice of telling others vary significantly. Many participants in the present study had specific objectives that they pursued in telling others, and they tended to select their fora accordingly. Participants who wished to learn more about the fate of their relatives tended to speak out more frequently and often preferred public fora. Where cathartic aims were being pursued, they often preferred to tell their stories to trusted individuals in safe and private environments.

Participants were also asked about the general response of others and the manner in which others treated them upon learning about their loss. The participants' responses were once again somewhat divergent. One female participant from Mannar whose son disappeared during the final stages of the war stated that 'very few people have listened to her stories with concern and care'. Another from Kilinochchi whose husband disappeared after being captured by the security forces stated:

Wealthy people won't listen to our stories. Even when we go to relatives, they look at us as if we have come for another round of charity. As a result, we are better off not visiting our relatives. We used to live prosperously, but now we are in a helpless situation. Therefore, I try to live in a way that does not require the charity of others.

By contrast, some participants noted the significant support and care offered to them by their relatives and others within their respective communities. One participant observed that many within their community who had lost relatives during the JVP insurrection became much closer as a result of their mutual sharing of experiences. Another

participant from Mannar noted that others began to treat them and speak to them ‘kindly’ when they became aware of their loss.

The experiences of participants with respect to telling others therefore varied. Some participants found the practice greatly beneficial both from a personal and societal point of view, while others found the practice at best unhelpful, and at worst harmful. Thus the participants presented divergent views on the practice and experience of telling others and the benefits of that practice. The question of how these differing views and attitudes ought to be accommodated is discussed in the concluding part of this study.

### *3.4 Memorialising*

Participants were invited to reflect on the importance of memorialising past events. Such memorialising could take various forms including public monuments, special dates set aside for the purpose of remembrance, and private acts of memorialising, such as almsgiving. The participants were generally divided on the issue. Some were of the view that memorialising was important—even indispensable, while others stated that closure depended on forgetting their loss. This dichotomy is captured vividly in the words of Richard Holmes:

There is a goddess of Memory, Mnemosyne; but none of Forgetting. Yet there should be, as they are twin sisters, twin powers, and walk on either side of us, disputing for sovereignty over us and who we are, all the way until death.<sup>105</sup>

Three attitudes to memorialising were evident from the participants’ responses. First, certain participants were hesitant to acknowledge a need for or any benefit in memorialising their loss. One participant who lost a brother during the JVP insurrection stated that remembering his brother was too painful and that he saw no point in memorialising.

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<sup>105</sup> Richard Holmes, ‘A Meander through Memory and Forgetting’, in Harriet Harvey Wood & A. S. Byatt (eds.), *Memory: An Anthology* (2008).

Similarly, other participants found the act of memorialising pointless, as their lost family members ‘would not be returned to them’.

Second, certain participants acknowledged the ‘inevitability’ of commemoration. These participants claimed that they possessed an emotional desire to memorialise their loss even though they saw no rational basis for it. One participant who lost her husband during an LTTE raid on a border village stated: ‘I want to forget my experiences, but forgetting is hard. I can only forget those bitter experiences if my husband comes back.’ Another participant whose husband disappeared after surrendering to the Army in 2009 observed: ‘how could I forget? Even if someone claims that they are trying to forget, it is a lie. If my husband comes back, then I may be able to forget it. If more and more sorrow keeps piling up, then it is hard to forget.’

Finally, certain participants took up the position that memorialising was necessary both for their personal benefit and for the benefit of others who have endured similar loss. Many of these participants in fact related memorialisation to the act of telling others, which was discussed in the previous section. Additionally, they spoke of events and memorials that might facilitate collective remembrance. One participant from Mahawilachchiya stated: ‘I do not think that we can forget such things because of the pain we suffered. I think that it is not good to forget them.’ Another participant whose son went missing during the JVP insurrection argued that memorialising was essential because ‘we must tell our children and the future generations about the damage that was done.’ For these participants, remembering past atrocities had both personal and public value. On the one hand, it helped in some way to maintain the memory of lost family members. On the other, it prompted a society to reflect on its past and prevent the recurrence of atrocities in the future. In this context, these participants emphasised the need for a society to collectively remember its past, and for the state to facilitate such remembrance.

It is perhaps an appropriate juncture in this study to briefly comment on the public practice of memorialising in Sri Lanka. There are very few public monuments or memorials in Sri Lanka that commemorate the loss of life due to human action. One such memorial is located in Raddoluwa, Seeduwa, and is dedicated to the disappeared. This memorial is a sculpture of a human figure and is visited by families of the disappeared from all parts of the country. An annual event is held at the site every year on 27 October. It is attended by families who lost family members during the JVP insurrection and by families from the North and East to show solidarity. The date is significant in the area, as the bodies of abducted labour activists Ranjith Herath and M. Lionel were found on 27 October 1989 at the Raddoluwa junction in Seeduwa. Another memorial of this nature was located close to the Diyawanna Oya in Battaramulla. However, the Urban Development Authority demolished the site in 2012 to make room for a market centre.<sup>106</sup> Meanwhile, at least three war memorials commemorating military casualties of war have been erected in Colombo. One is a British War Memorial located in Victoria Park—a site that now features an annual parade by the Sri Lanka Ex-Servicemen’s Association, which has no perceivable link to the commemorated British soldiers lost during World War I. Another is a war memorial at Sri Jayawardanapura Kotte for the Indian Peace Keeping Forces. Finally, a larger memorial for Sri Lankan servicemen lost during the ethnic war is located at the parliament grounds. In this context, it is evident that Sri Lanka is yet to adopt a culture of memorialising atrocities against civilians. The only memorial now standing is the one at Seeduwa.

The views of participants on the importance of public forms of memorialising must be received in light of the gross lack of public spaces that commemorate tragic events in Sri Lanka’s recent history.

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<sup>106</sup> There are very few public sources for this incident. See for example, Subha Wijesiriwardena, ‘Keep Off the Grass’, *groundviews.org*, 5 August 2014, at <http://groundviews.org/2014/05/08/keep-off-the-grass>. Information on this incident was further corroborated during a conversation the author had with members of the Frontline Socialist Party.

For instance, no such site can be found anywhere in Colombo despite the fact that the city is one of the central locations of the July 1983 pogrom, the crackdown on the JVP, and a number of LTTE bombings. Moreover, no national day of remembrance has been set aside thus far to commemorate the loss of civilian life in Sri Lanka. Incidentally, the LLRC recommended that an annual event be held to express solidarity with the victims of the ethnic war.<sup>107</sup> However, the state has neither implemented this recommendation nor has it taken steps to officially remember the loss of life due to other egregious experiences such as the July 1983 pogrom or the JVP insurrection.<sup>108</sup> The sentiments expressed by many of the participants in this study therefore reinforce the need to build public spaces and to set aside dates for memorialising past events.

### *3.5 Justice and the perpetrator*

One of the objectives of this study was to better understand how victims interpret and apply the idea of justice to their experiences. The participants were encouraged to elaborate on whether they saw any relationship between: first, their process of recovery and the notion of

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<sup>107</sup> The LLRC Report, at para.8.303. At the time of writing, the newly established Office of National Unity and Reconciliation, chaired by former President Chandrika Kumaratunga Bandaranaike, was in the process of considering an annual event dedicated to remembering victims of the war.

<sup>108</sup> It is noted that the new government under President Maithripala Sirisena continued the practice of celebrating 19 May as ‘War Heroes Day’ rather than a day of remembrance or mourning. See Official website of the President of Sri Lanka, *Full Text of President’s Ranaviru Day Speech*, 19 May 2015, at <http://www.president.gov.lk/news/full-text-of-presidents-ranaviru-day-speech>. However, the government appeared to have shifted its policy on tolerating dissenting voices. This shift in policy has afforded space to civil society organisations including *Aluth Parapura*, which succeeded in organising a ‘remembrance day’ vigil on 19 May 2015 with no interference from the government. See ‘Sri Lanka’s Slow Shift on War Attitude’, *The Diplomat*, 9 June 2015, at <http://thediplomat.com/2015/06/sri-lankas-slow-shift-on-war-attitude>.

justice; and second, the notion of justice and the accountability of perpetrators.

The first series of questions under this theme related to the participants' views on justice. Prior to delving into the responses of participants, it is perhaps appropriate to briefly comment on the religious and philosophical influences that may shape their views.

Scholars have pointed to certain complexities within Buddhist conceptions of justice. One suggestion that emerges from the literature is that belief in *karma*—the principle of causality in Buddhist teachings—might weaken 'the sense of the necessity for human intervention' in terms of advancing the notion of 'justice' as defined in Western philosophical thought.<sup>109</sup> *Karma* dictates that a deed done deliberately through body, speech or mind leads to future consequences, which are presumably realised regardless of human intervention.<sup>110</sup> Hence it is suggested that those of Buddhist convictions may be less inclined to intervene to seek justice, given the inevitability of *karma*. However, there are compelling counter-narratives that seek to displace the idea that Buddhist societies are passive or non-interventionists. For instance, in *Engaged Buddhism: Buddhist Liberation Movements in Asia*, authors Christopher Queen and Sallie King discuss contemporary manifestations of Asian Buddhism 'as a vehicle for social and political activism'.<sup>111</sup> Thus there appears to be no real consensus on the actual extent to which *karmic* determinism influences the thinking of practicing Buddhists. Moreover, there is nothing to suggest that Buddhist practices in Sri Lanka necessarily proceed on a single, consistent philosophical trajectory. Even if there was academic consensus on what a Buddhist version of justice might look like, it is

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<sup>109</sup> Winston King, 'Judeo-Christian and Buddhist Justice' [1995] 2 *Journal of Buddhist Ethics* 67-82, at 79.

<sup>110</sup> See Richard Gombrich, *How Buddhism Began. The Conditioned Genesis of the Early Teachings* (1997), at 55.

<sup>111</sup> Christopher S. Queen & Sallie B. King, *Engaged Buddhism: Buddhist Liberation Movements in Asia* (1996), at ix.

difficult to maintain that such a version of justice is reflected in Sri Lanka's legal system. The Sri Lankan criminal justice system for instance is based on a British colonial model of justice, and unambiguously contemplates the punishment of offenders. Furthermore, the current system of punishment has strong punitive leanings. In fact, a recent study on the prisons system in Sri Lanka concludes that 'the rehabilitation model [in Sri Lanka] was overshadowed by judicial as well as executive inclination towards a punitive model' and that the 'current crisis of prison overcrowding may be a direct result of this inclination'.<sup>112</sup> Thus, despite Sri Lanka being a majority Buddhist country, there appears to be no real traces of an overarching Buddhist influence on the criminal justice system. The influence Buddhism may have on the views and attitudes of victims and survivors, however, remains hitherto untested, and should not be ruled out.

Meanwhile, a variety of other religious convictions may shape the views of victims and survivors in Sri Lanka—particularly those from non-Buddhist backgrounds. Therefore, it is perhaps useful to briefly discuss alternative religious sources that might support the idea of justice. Justice in Islam encompasses important ideas including equality, moderation, trust and solidarity, and is said to cover 'all aspects of life'—particularly socio-political life.<sup>113</sup> Tufail Ahmad Qureshi concludes: 'with the advent of Islam, the Qur'an insistently calls upon Muslims and others alike that, as rulers, judges and as members of society; they should never deviate from the path of Justice...'<sup>114</sup> He

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<sup>112</sup> Centre for the Study of Human Rights (University of Colombo), *A Study on Streamlining Rehabilitation Programmes in Prisons* (2013). According to the study, the extent of overcrowding is a cause for serious concern, given the fact that nearly 26,000 inmates are serving sentences in prisons equipped to accommodate only 11,700 persons. Additionally, a staggering number (some estimates suggest a figure of 100,000) of persons flow through the prisons system annually as 'remandees'.

<sup>113</sup> See Tufail Ahmad Qureshi, 'Justice in Islam' [Summer 1982] 21(2) *Islamic Studies* 35-51, at 40.

<sup>114</sup> *Ibid.* at 50.

cites a crucial verse in the Qur'an, which enunciates the following principle: 'Do not wrong others, *nor allow yourselves to be wronged*' (emphasis added).<sup>115</sup> Certain notions of justice also feature in Hindu teachings. In addition to the idea of *karma*, concepts such as *rita*, a cosmological principle that governs human ethical conduct, and *dharma*, a principle which contemplates political and social order, suggest that Hindu doctrines accommodate notions of justice.<sup>116</sup> Christians may also draw from Biblical and canonical teachings to arrive at their own understanding of justice. Justice or 'justness' is articulated in numerous Biblical passages as being part of the essential nature of God.<sup>117</sup> The role of humans in the administration of such divine justice is also evident—first in Old Testament accounts of the responsibility of the political ruler, and later in New Testament and early-Church teachings on the semi-divine nature of civil government.<sup>118</sup>

These religious and philosophical traditions potentially influence the observations and opinions of participants who are exposed to these traditions and hold corresponding convictions. However, such influences do not necessarily explain the diversity of views held by participants, and must be cautiously applied to the present discussion.

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<sup>115</sup> *Ibid.* See Al-Qur'an, 57:25.

<sup>116</sup> See Berkeley Centre for Religion, Peace & World Affairs, Georgetown University, 'Hinduism on Justice and Injustice', at <http://berkeleycenter.georgetown.edu/essays/hinduism-on-justice-and-injustice>. It is noted that *dharma* has 'no direct semantic equivalents in western languages' and may be translated as 'duty', 'religion', 'justice', 'law', 'ethics', 'religious merit', 'principle' and 'right'. See Gavin D. Flood, *An Introduction to Hinduism* (1996), at 52.

<sup>117</sup> See Alexander Cruden, *A Complete Concordance to the Holy Scriptures of the Old and New Testaments* (1824). Also see James Wood, *A Dictionary of the Holy Bible* (1813), at 68, entry on 'Justice': 'That essential perfection in God, whereby he is infinitely righteous and just, both in his nature and in all his proceedings with his creatures.'

<sup>118</sup> King, *op. cit.* at 72.

For instance, a participant with a particular religious profile may define justice in a manner that does not necessarily flow from her religious background. This study therefore does not seek to establish a nexus between a religious background and a particular opinion. The responses of participants ought to be interpreted bearing this overarching context in mind.

Some participants were cynical about the idea of justice. One participant who lost a family member during the JVP insurrection stated: ‘Things like “justice” and “law” exists only in books.’ Another who lost a son during the final stages of the war claimed: ‘There is no such thing. Everything is injustice. Justice is something that must be offered by the government to the people who have been affected.’ A participant from Kilinochchi, who had lost *both her thumbs* due to a shell attack in Mullivaikal, quipped:

I am uneducated. I only know to place my signature [meaning thumbprint]. I have no understanding of the justice you are referring to.

Another participant whose son was killed in action pointed to the inherent inconsistencies in the application of justice. He observed: ‘what is called justice prevails only in certain places, and not in other places.’ Meanwhile, a participant who lost her husband to the Kebithigollewa attack claimed that the idea of justice had no real relevance to her life. She presented the following observations:

If there was something called justice, why wouldn’t anybody look into our problems? My husband joined the Civil Defence Force in 1996, even before he got married. However, we only received Rs.75,000 after he died. We haven’t received anything else even from the government. Nobody notices that I have been left alone together with these children. I go out to work...either to make clay bricks...or to work in neighbouring houses. That is how I earn a living and earn to spend on my children’s education. I receive my husband’s salary. It is

difficult to manage with that. I had to buy this land and I built this house with difficulty. I obtained loans to build it. Today, we need money for everything. I do not know anything called ‘justice’.

These sentiments were echoed by another participant, who lost her husband to an LTTE bombing in Akuressa. She claimed she did not need any form of justice, as she had ‘lost the person she needed’. For many of these participants, justice was an empty idea that they had no personal experience of. They also doubted the relevance of justice due to its perceived inability to offer solace from their current grief. The factors that may govern these particular sentiments are discussed in the concluding chapter of this study.

By contrast, some participants adopted a more positive, aspirational attitude towards justice. One participant from Jaffna described justice as a ‘right’ and claimed that ‘justice is something that must be given to those who need it’. She placed the burden of dispensing justice on the state by claiming that ‘[t]he Tamil people must be *given* their right to justice’ (emphasis added). Another stated that justice did not exist in the past, but hoped that it would ‘prevail at least in the future’.

These participants often associated the idea of justice with their coping process and the ultimate closure they sought. However, they differed on what they felt the outcome of justice should be for them personally. Some associated justice with compensation and restoration of livelihood means, and interpreted their present economic circumstances when defining the relevance and application of justice. These participants felt receiving adequate compensation would serve the interests of justice, and argued that the lack of adequate compensation was a form of ‘injustice’. A participant who lost her husband during the JVP insurrection recalled:

We complained to the Human Rights Commission but nothing yielded. After some time, we were given some compensation by the government. As my husband had been working at the

Electricity Board, I received about Rs.100,000, but the others received only about Rs.15,000 each. Is a human being worth only that much? A man's status has been brought down to that of an animal. Actually...even animals are sold at prices higher than that.

Other participants associated justice with the accountability of those responsible, and contended that the interests of justice would be served once perpetrators are identified and punished. Interestingly, some participants who associated justice with accountability interpreted the idea of justice as 'inevitable' i.e. regardless of human intervention, perpetrators would be held accountable in life—an idea similar to *karma*. A participant whose son disappeared after surrendering to the security forces in May 2009 stated:

Justice...there is no such thing as justice now. There was justice before. The movement [the LTTE] ruled excellently. But during the last stages of war, they carried out an injustice by forcibly recruiting our children and our husbands. The movement suffered their fate because they attempted to carry out injustice. At present, this government [the Rajapaksa government] also acts in a manner that does not uphold justice. They will also face suitable punishment soon.

Another participant who lost her husband during the JVP insurrection echoed similar sentiments:

As far as I know, my husband had never been involved with activities of the JVP. If he had done so, he would have told me. At that time, there was a small [JVP] meeting, which I attended. When my husband returned home he severely scolded me for attending it...He advised me not to create problems by attending those meetings, and asked me not to go thereafter. So I clearly know that he was not involved in JVP activities. It was such innocent people with no connections to the JVP that were taken away...I know of politicians from this area who were involved in such activities and are now in Parliament. They

have become members and ministers. If there is *ditta dhamma vedaya* (actions of which the consequences come in this life itself), consequences will come upon them some day.

The identity of perpetrators was explored next. At the outset, it was important to understand whether the precise identity of perpetrators mattered to the participants. Participants were divided on this issue; some stated that the identity mattered to them, while others remained disinterested or ambivalent.

Certain participants maintained a strong interest in knowing the identity of perpetrators. This interest cut across participant profiles. For instance, several focus group discussants from Kandy and Hambantota stated that they wanted to know who precisely abducted and killed their family members during the JVP insurrection. One participant from Panwila, who lost her brother during the JVP insurrection, stated that she wished to know the identity of ‘those who committed these crimes.’ Similarly, a number of focus group discussants from the Eastern Province, whose spouses went missing during and after the war, maintained that they wished to know the parties responsible—mostly to discover the whereabouts of their missing spouses.

By contrast, certain participants did not display an interest in knowing the identity of perpetrators. Some participants who lost relatives during the JVP insurrection maintained that the precise identity of those responsible did not matter to them. They observed that knowing the identities of the perpetrators would not return their family members; therefore, such knowledge was not important. Similarly, participants whose sons were killed in action stated that the identity of the individual who killed their son was not important in the context of a war.

Certain participants, while maintaining that perpetrators must be brought to justice, remained ambivalent with regard to the precise identities of individual perpetrators. This contradiction of sorts, once unravelled, revealed that a number of participants in fact wished to see

institutional responsibility—accountability at the ‘decision-making’ level. Two female participants who lost their children during the final stages of the war stated that they believed that the government was responsible, and that the identities of individuals who carried out any orders was of no consequence to them. One claimed that the Army was responsible since ‘everybody knows’ it was the Army that arrested her daughter who subsequently disappeared. According to these participants, the blame for their losses should be placed on high-ranking officials, including the President at the time. One of the participants then made the following remarks:

As important as a father is in a family, a country’s President is also important. He must treat everybody in the family equally. We were not respected as citizens of this country; instead we were oppressed. He controls the government. Therefore, he is the one responsible. The people who took my husband were from the Navy. Is not the Navy a part of the government?

Similarly, a number of participants blamed the LTTE for their loss. Two categories of participants emerged in this regard. One group blamed the LTTE for the forced recruitment of their family members, which eventually led to their death or disappearance. One participant recalled the circumstances in which her husband disappeared and the implicit responsibility of the LTTE:

During the conflict, we told [the LTTE] to allow us to go to the Army to surrender, but they did not allow us. My daughter vomited blood because she had dysentery. Even when we told the movement this, they did not allow us to go to the Army side. Had they allowed us, we would have escaped with my husband still alive. The Army also moved forward to capture positions. [The LTTE] could have allowed the people to escape. We were depending on the movement. In the end, I managed to leave the areas controlled by the movement. But [my husband] paid with his life.

This participant felt that her husband would have stood a greater chance of surviving had they crossed voluntarily to Army-controlled areas at an earlier stage. Instead, only she and her children crossed over, leaving her husband behind. She explained that it was at that stage that the security forces captured her husband, who later disappeared.

The other group blamed the LTTE more directly for the loss they had suffered. In these cases, the LTTE had been responsible for either expelling the participants from their homes, or causing the deaths of their family members due to bombings or raids. Yet some of these participants appeared to be disinterested in learning the precise identities of the LTTE members who had perpetrated the expulsion or killings. One Muslim participant stated that the organisation as a whole betrayed the Muslim people and were directly to blame for their predicament today:

We were of great help to the LTTE while they fought for our rights. Some of our people then betrayed the LTTE. But [the LTTE] did not realise that all Muslims are not like them. We have even offered food to the LTTE. Even though they carried out some injustices, their cause was just. Therefore, the LTTE is [ultimately] responsible for expelling us from our own village, while we were living together.

The accountability of individual personnel or cadres carrying out orders appeared to be less important to many participants. In fact, some participants speculated that the actual individuals who perpetrated the killings might no longer be living. One participant who lost family members during an LTTE raid observed that the particular cadres had been hiding in the Wilpattu forest during the time. She speculated that these cadres must have been killed or captured, as none of them were in the area now. Similarly, a number of participants who suffered at the hands of security forces during the final stages of the war stated that holding inquiries to investigate the actions of low ranking individuals was inadequate. One such participant claimed:

The government is neglecting those responsibilities. You can understand this because of their current actions. You can also understand this because of the fake investigations they are holding to please the international community.

Two approaches to the accountability of perpetrators emerged from the views of participants. First, a clear desire for perpetrators to be identified and punished was evident among many participants. This view was held by a variety of participants and was not limited to the circumstances of their loss. For instance, one participant who lost her husband during the JVP insurrection was keen to see those who planned the abductions ultimately punished. She added: ‘even if the state did not punish those responsible, such punishment would be encountered eventually’—reinforcing the aforementioned notion of *karma*. These sentiments were echoed during the focus group discussion held with five participants whose family members were abducted or killed during the JVP insurrection. One participant from Aladeniya, Kandy stated: ‘those who killed my husband on 26 August 1989 must account for everything they have done. They must receive an appropriate punishment.’

Several participants whose family members disappeared immediately after the war stated that their main priority was to learn the whereabouts of their missing family members. They added, however, that those responsible for the disappearances of their family members should be punished for those crimes. ‘Those responsible’, however, was not necessarily a reference to the persons who abducted their family members. Responsibility was also—and often specifically—cast on the persons who *planned* or *ordered* the abductions. This view was somewhat consistent with the public discourse in the Eastern Province with respect to allegations against one Iniya Bharathi, a former member of the *Tamil Makkal Viduthalai Pulikal* (TMVP), a group that broke away from the LTTE and supported the government. Several witnesses who made representations before the LLRC claimed that this individual

was directly responsible for abducting their family members.<sup>119</sup> Public protests were later organised in Thirukkovil, Ampara in February 2015 pointing to Bharathi's involvement in abductions and calling for such perpetrators to be brought to justice.<sup>120</sup> This view was not in any way limited to Tamil participants. A participant from Alawathugoda, Kandy who participated in the focus group discussion expressed the following sentiments in relation to the abduction of her husband on 5 December 1989:

I want to know the identity of the perpetrator. I want to find out what happened to my husband. Also, the person who gave the order to abduct my husband must know more about what happened to him than the persons who abducted him. So I truly want to know who gave the order.

Second, certain participants presented the view that individual perpetrators should be rehabilitated rather than punished. This view was further clarified to mean that individuals carrying out orders should not necessarily face punishment but should undergo some form of rehabilitation. The view was prevalent among a number of participants whose children or spouses were killed or missing in action in the war against the LTTE. They felt that the rehabilitation of former LTTE cadres was 'a good thing'. One such participant did, however, point out that there was a double standard that was 'dangerous', as some former LTTE leaders were permitted to engage in politics. He observed:

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<sup>119</sup> See Verité Research, *Sri Lanka: LLRC Implementation Monitor – Statistical and Analytical Review No.3* (December 2014) for an analysis of 563 original complaints before the LLRC. Many of these complainants directly referred to the role of Iniya Bharathi in abduction, extortion, assault and sexual abuse of civilians in the Eastern Province.

<sup>120</sup> 'Tamils call for Sri Lanka's paramilitary leader Iniya Bharathi to face justice', *Tamil Guardian*, 19 February 2015, at <http://www.tamilguardian.com/article.asp?articleid=13842>.

Today some of them are engaged in politics. As I see it, rehabilitating [cadres] doesn't matter. But they cannot be allowed to do politics. What a lot of damage they caused! They killed a large number of our children...It is really dangerous that they are doing politics.

These views on punishment and rehabilitation appear to be complementary, as they distinguish between decision-makers and subordinates. Hence the participants who valued some form of accountability generally fell into two categories. Many who preferred the punishment of perpetrators, opted for the punishment of decision-makers rather than subordinates. Those who preferred rehabilitation recommended the rehabilitation of subordinates, while suggesting that former leaders ought not to be permitted to engage in politics. In both cases, there appears to be a strong association of accountability with decision-making power.

### *3.6 Future prevention*

The final set of questions put to the participants related to the prevention of similar atrocities in the future. Participants were asked to comment on what they suggest a society should do to prevent the recurrence of violence and conflict. Two types of responses emerged. One type of response associated conflict with the absence of mutual understanding between communities and the denial of rights. The second type of response identified conflict as a political construct that displaces law and order and the general ability of communities to live in harmony. The distinction, though subtle, was clearly evident in the responses of participants.

Some participants contended that conflict emerged from a combination of rights denial and a lack of mutual understanding. Hence the war was seen very much as symptomatic of deeper problems. One participant from Jaffna observed that 'hatred' was the root of conflict and recommended that greater efforts be undertaken to reduce hatred in society. Another participant added that two specific measures needed to

be adopted in this regard. First, there should be greater awareness among people about other ethnic groups and religions. Second, basic rights should be provided to all people regardless of ethnicity or religion. The participant, who had lost a son during the final stages of the war, explained that the failure to provide basic rights often led to a lack of awareness. She observed:

When their only worry is their daily life, where do they have time to think about other people? Their worries must be answered first and their rights must be properly provided for them. If not, there will always be conflict among the people.

Another participant who lost her family due to shelling during the final stages of the war made a similar remark. She stated:

There should be mutual understanding among the people. They will have to have a state of mind that allows them to help another person. Every individual must understand the effect of racial violence. They have to understand that others have the same rights as they do.

Some participants who were expelled from the North adopted a nuanced view on non-recurrence. These participants contended that conflict stemmed from the lack of sound values within society. One such participant presented the following views on future prevention:

Everyone should follow the ways of their religion. The people should develop their sense of humanity, mutual understanding and humility. Rivalry should not be promoted among the people or their children. A basic sense of humanity in children must be cultivated. When a religious character is developed, the animal instinct will be restrained. There should also be a change in the minds of the people of the majority. We should move from a sense of 'I' to a sense of 'we'. There should be a sense of belonging to the family, home, village, district, province and the nation. We can only reduce problems if we start thinking of it as our country.

Not all participants felt that ensuring rights and mutual understanding was vital to the ‘maintenance of peace’. This distinction is evident in the following views expressed by a participant from Mannar who had lost her husband following his surrender to security forces in May 2009:

We are now under the government. If we monitor our children’s goings and comings, and as long as we make sure they do not start another war, it is fine. If a war is started, it is our responsibility to ensure that our children do not participate in it...There is no need for more wars...what we faced was more than enough.

This participant held the view that compliance with the law and submission to the state were sufficient conditions for peace. Meanwhile, a number of participants considered the LTTE to have been the main barrier to peace, and claimed that its defeat had given the country a genuine opportunity to avoid conflict in the future. One participant from Ambalangoda, who had lost her husband to an LTTE bombing, argued that the defeat of the LTTE created the space for people to ‘live in harmony’ and prevent violence in the future. These views were echoed by certain other participants, including those who had not been personally affected by LTTE attacks. One participant from Alawathugoda stated: ‘such problems would not be created if law was implemented properly and...people are controlled well.’

Thus the question of how to prevent the recurrence of violence and conflict was approached from two perspectives. According to the first perspective, conflict emerged from the breakdown of law and order and was a political construct of those vying for power. Participants who analysed conflict from this perspective often used the language of ‘terrorism’ to describe a ‘cause’ rather than an ‘effect’. Hence LTTE bombings were described as ‘terrorism’, which was the *cause* of violence, as opposed to an *effect* of some other grievance. This basic understanding of conflict shaped the manner in which these participants viewed the issue of future prevention. According to the second

perspective, conflict was seen as a symptom of a grievance. Participants who analysed conflict from this perspective tended to be aware of the historical and contemporary grievances of minority communities in Sri Lanka and often self-identified with those grievances. They reflected on how minority communities have been deprived of rights such as land rights, employment opportunities and education. They claimed that the deprivation of these basic rights—which led to those historical and contemporary grievances—was at the root of conflict. These participants emphasised the need for raising awareness and mutual understanding between communities, and cultivating values among the next generation in order to guarantee basic rights and ensure non-recurrence of violence and conflict.

When we search deeply enough into the struggle for truth, justice and hope for any human community, moving with disciplined compassion and vision, we emerge from the exploration with lessons that were meant for us all.

– Vincent Harding  
*Hope and History: Why We Must Share the Story of the  
Movement* (1990)

### **Part 3: Conclusion**

This study attempts to capture the views of individuals who have suffered personal loss during the past three decades in Sri Lanka. The events recollected by these participants are documented in various journalistic and academic accounts of Sri Lanka's recent history. Yet this study is perhaps the first—albeit modest—attempt to present a collection of perspectives and experiences across these events. The study therefore attempts to uncover the convergences and divergences in the views held by victims and survivors of violence and conflict in Sri Lanka. It also presents a unique juxtaposition of these experiences: from the despair of not knowing the whereabouts of a relative abducted during the 1987-89 JVP insurrection to similar despair faced during the post-war period in 2009; from the indignity of losing one's home during the July 1983 pogrom to similar indignities endured during the 1990 Muslim expulsion and the 2014 Aluthgama riots.

Three important findings emerge from the participants' recollections, observations and opinions. The first relates to the extraordinary heterogeneity detectable in the views of participants. The second points to certain factors that appear to shape the views of participants. The third finding relates to the question of remedies. It confronts the question of how international standards on truth, justice and reparations might find meaning within the plethora of preferences and priorities found among victims and survivors in Sri Lanka.

#### ***1. Heterogeneity and the Reductive Narrative***

Following the conclusion of the war, certain quarters within the Sri Lankan government attempted to construct a 'Sri Lankan approach' to justice.<sup>121</sup> State officials including then Minister of External Affairs,

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<sup>121</sup> At the time of writing (April 2015), the Foreign Affairs Minister, Mangala Samaraweera deviated from the state's original position and pledged to develop 'a credible local mechanism to investigate...alleged crimes'. This

G.L. Peiris articulated the position that the ‘Sri Lankan approach’ was not to emphasise on retribution or punishment, but rather on restorative justice.<sup>122</sup> This line of reasoning sought to define the concept of restorative justice as closely related to notions of ‘forgiveness’, ‘tolerance’ and ‘leniency’. Former Attorney-General and advisor to the Cabinet, Mohan Peiris reiterated this position in a speech titled ‘Sri Lanka’s Approach: Restorative Justice vs. Retributive Justice’ delivered at the Inaugural National Conference on Reconciliation in November 2011.<sup>123</sup> Peiris in fact claimed that the philosophy of transitional justice ‘[f]avours restorative justice rather than retributive justice’. He also claimed that the restorative justice approach resonates with Sri Lanka’s own religious tradition, thereby suggesting the ‘Sri Lankan approach’ was not to seek punitive measures. Peiris observed:

On a close analysis of this concept on philosophy it appears that it [restorative justice] finds a comfortable place in our own philosophy as laid down by the greatest teachers, Gautama, the Buddha, who preached the doctrine of ‘Tolerance’, of ‘Maithri’ which gives life to the concept of restorative justice. It would therefore appear that restorative justice is a concept that finds its roots in our own religious teachings and cultural values long before the West discovered this concept.

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deviation, however, may be insufficient to indicate a long-term policy shift, given the interim nature of the present government. See ‘New Sri Lankan Foreign Minister: Our Tilt Towards China needs a Course Correction’, *swarajyamag.com*, at <http://swarajyamag.com/world/new-sri-lankan-foreign-minister-our-tilt-towards-china-needs-a-course-correction>.

<sup>122</sup> See speech by Prof. G.L. Peiris, then Minister of External Affairs at the 9<sup>th</sup> IISS Asia Security Summit, The Shangri-La Dialogue, Singapore on 6 June 2010, at <http://www.mea.gov.lk/index.php/en/media/ministers-speeches?start=15>.

<sup>123</sup> See Mohan Peiris, *Sri Lanka’s Approach: Restorative Justice vs. Retributive Justice*, 24 November 2011, at <http://www.kadigamarinstitute.lk/events/video.htm>.

This narrative on Sri Lanka's so-called approach to transitional justice soon became the official policy position of the previous administration under Mahinda Rajapaksa. Former High Commissioner to the United Kingdom, Chris Nonis stated in an interview with CNN that the approach of the LLRC (which he called Sri Lanka's home-grown solution) was not to focus on 'punitive justice where you punish people' but on restorative justice.<sup>124</sup>

Some scholars have presented similar views, claiming that restorative justice in Sri Lanka 'is very much a part of the Sri Lankan spiritual heritage of forgiveness'.<sup>125</sup> These repeated statements have sought to construct a particular narrative about what Sri Lankan justice looks like—fundamentally focused on 'tolerance', 'forgiveness' and 'leniency'. It is noteworthy that, despite the position of the previous administration, the LLRC did not specifically endorse this narrative in its final report. Yet it remains the only narrative that presents itself as 'Sri Lankan'. It is couched in historical, indigenous and cultural terms to reinforce its legitimacy, thereby proclaiming dominance and authenticity over alternative conceptions and approaches. Yet this self-proclaimed 'Sri Lankan approach' is unconvincing for two reasons. First, it is normatively problematic. Second, as discovered during the course of this study, it is empirically questionable.

The so-called Sri Lankan approach is normatively problematic because it promotes a limited understanding of restorative justice. At least three normative concerns might be raised in this regard.

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<sup>124</sup> See 'CNN interview with H.E. Dr. Chris Nonis, Sri Lankan High Commissioner to the United Kingdom', *Official Website of the Sri Lankan High Commission to the United Kingdom* (November 2013), at [http://www.srilankahighcommission.co.uk/index.php?option=com\\_content&view=article&id=409:cnn-interview-with-he-dr-chris-nonis-sri-lankan-high-commissioner-to-the-united-kingdom-&catid=1:news&Itemid=95](http://www.srilankahighcommission.co.uk/index.php?option=com_content&view=article&id=409:cnn-interview-with-he-dr-chris-nonis-sri-lankan-high-commissioner-to-the-united-kingdom-&catid=1:news&Itemid=95).

<sup>125</sup> Iromi Dharmawardhane, 'Sri Lanka's Post-Conflict Strategy: Restorative Justice for Rebels and Rebuilding of Conflict-affected Communities' [2013] 7(6) *Perspectives on Terrorism*.

The first relates to the defined objective of restorative justice. In defining restorative justice, Burt Galaway and Joe Hudson offer three fundamental elements:

First, crime is viewed primarily as a conflict between individuals that results in injuries to victims, communities, and the offenders themselves, and only secondarily as a violation against the state. Second, the aim of the criminal justice process should be to create peace in communities by reconciling the parties and repairing the injuries caused by the dispute. Third, the criminal justice process should facilitate active participation by victims, offenders, and their communities in order to find solutions to the conflict.<sup>126</sup>

These elements are clearly found in the preamble to the UN's Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters, which states:

This approach provides an opportunity for victims to obtain reparation, feel safer and seek closure; allows offenders to gain insight into the causes and effects of their behaviour and to take responsibility in a meaningful way; and enables communities to understand the underlying causes of crime, to promote community well-being and to prevent crime.<sup>127</sup>

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<sup>126</sup> B. Galaway & J. Hudson (eds.), *Restorative Justice: International Perspectives* (1996), at 2.

<sup>127</sup> The United Nations Economic and Social Council, *Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters*, ECOSOC Resolution 2002/12. Also see T. Marshall, *Restorative Justice: An Overview*, Home Office (United Kingdom) – Research, Development & Statistics Directorate (1999). The author defines restorative justice as ‘a process whereby all the parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future.’

Howard Zebr and Harry Mika attempt to provide a working definition of the concept by highlighting three sequential elements: (1) crime is fundamentally a violation of interpersonal relationships; (2) violations create obligations and liabilities; and (3) restorative justice seeks to heal and put right the wrongs.<sup>128</sup> The *victim* is therefore at the heart of restorative justice, making the approach fundamentally ‘victim centred’. The victim’s restoration is presumed to be a multifaceted process, which could entail the need to understand the causes of the crime, and the perpetrator’s motives. Restorative justice projects accordingly prioritise restoring victims above other objectives, including demonstrating leniency towards perpetrators. Tolerance, forgiveness and leniency towards perpetrators—though possible components of a restorative process—remain secondary to and contingent on the restoration of victims. In fact, there is no normative inconsistency between restorative justice and the accountability of perpetrators. The accountability of the perpetrators is often critical to a victim’s restoration. However, the narrative on the so-called ‘Sri Lankan approach’ to restorative justice appears to prioritise the facilitation of tolerance, forgiveness and leniency towards perpetrators rather than victim restoration. It seeks to place secondary objectives at the helm of the process. The narrative therefore appears to distort the fundamental objective of restorative justice.

The second normative concern relates to the inability of the so-called ‘Sri Lankan approach’ to appreciate the interplay between so-called ‘restorative’ and ‘retributive’ elements of justice. The narrative appears to rule out prosecutions on the basis that they fall outside the ambit of restorative justice. No consensus has been reached on whether restorative justice programming ought to explicitly include the prosecution of offenders. Yet scholars such as Kathleen Daly have produced empirical research that reveals strong connections between

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<sup>128</sup> Howard Zebr & Harry Mika, ‘Fundamental Concepts of Restorative Justice’ in Eugene McLaughlin & Gordon Hughes (eds.), *Restorative Justice: Critical Issues* (2003), at 40.

retribution and restoration.<sup>129</sup> Detailed studies on restorative justice programmes have also explained the interrelationship between restoration of victims and the accountability of perpetrators.<sup>130</sup> Meanwhile, the UN's Basic Principles do not explicitly rule out such interplay. They only suggest that restorative justice programmes include the voluntary participation of victims and offenders, and that restorative justice processes take the form of mediation, conciliation, conferencing or sentencing circles.<sup>131</sup> The latter form—used by First Nations people in Canada—in fact reflects the potential for the integration of retributive elements such as sentencing into restorative justice programmes and *vice versa*.<sup>132</sup> Accordingly, any attempt to automatically dichotomise justice into 'restorative' and 'retributive' forms is normatively problematic.

The third concern relates to the claim that restorative justice is a uniquely indigenous form of justice. Notwithstanding the precise definition of restorative justice, scholars including Kathleen Daly have sought to challenge its claim to indigenous authenticity. She effectively dispels what she terms the 'myth' that 'restorative justice uses indigenous justice practices and was the dominant form of pre-modern justice'.<sup>133</sup> Such an observation is entirely relevant to Sri Lanka. A glimpse into the historical penal practices of Sri Lanka during pre-colonial times reveals a distinct punitive focus.<sup>134</sup> The idea that

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<sup>129</sup> Kathleen Daly, 'Restorative justice: The real story', [January 2002] 4(1) *Punishment & Society* 55-79.

<sup>130</sup> See Lawrence W. Sherman & Heather Strang, *Restorative Justice: The Evidence* (2007).

<sup>131</sup> UN Basic Principles, *op. cit.* at Operative Clause 2.

<sup>132</sup> Sherman & Strang, *op. cit.* at 32.

<sup>133</sup> Daly, *op. cit.*

<sup>134</sup> For example, see Robert Knox, *An Historical Relation of the Island Ceylon in the East-Indies* (1681), Chapters V and IX. The author discusses crime, punishment and the legal system in Sri Lanka particularly in the Kandyan Kingdom, which was not colonised at the time.

restorative justice resonates with pre-modern justice practices in Sri Lanka is therefore unconvincing.

The narrative on the so-called ‘Sri Lankan approach’ is accordingly based on a limited—perhaps overly simplistic—understanding of restorative justice. The narrative prioritises the leniency of punishment, downplays the preferences of victims and survivors, and exaggerates the indigenous authenticity of its claims. Therefore, at the very outset, the narrative appears to be normatively incompatible with a contemporary understanding of restorative justice.

Scholars have already called into question the empirical validity of this narrative. Niran Anketell argues that there is a ‘wide consensus among Sri Lankan Tamils that full accountability ought to be pursued.’<sup>135</sup> He opines that recent election results in the Northern Province consistently demonstrate the desire among Tamils for an independent accountability mechanism to investigate international crimes.<sup>136</sup> Thus the fact that not all Sri Lankans share the former government’s views on restorative justice is repeatedly demonstrated in certain election results. For instance, the election statement of the Tamil National Alliance prior to the 2013 Northern Provincial Council elections called for an independent investigation into violations of international law;<sup>137</sup> and the party received nearly 80 percent of the votes in the Northern Province.<sup>138</sup> These results alone suffice to cast serious doubts over the narrative on the ‘Sri Lankan approach’.

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<sup>135</sup> Niran Anketell, ‘Sri Lanka and the Urgent Need for Accountability’ [April 2012] Oxford Transitional Justice Research Working Paper Series.

<sup>136</sup> *Ibid.*

<sup>137</sup> See Tamil National Alliance, *Northern Provincial Council Election Statement* (2013), at [http://tnapolitics.org/?page\\_id=1845&lang=en](http://tnapolitics.org/?page_id=1845&lang=en).

<sup>138</sup> See Department of Elections, *Provincial Council Elections 2013: Northern Province* (2013) – votes for the Ilankai Tamil Arasu Kadchi, at <http://www.slections.gov.lk/2013PPC/Northern%20Province.html>.

The present study demonstrates the wider empirical uncertainty of the narrative. Each account presented by each participant was unique. The responses varied significantly on questions of truth telling, memorialising and the dispensation of justice. The participants differed on whether they preferred to tell others about their loss, whether memorialising their lost family members was desirable, whether justice was important to their recovery process, whether the identity of perpetrators was important, and finally whether perpetrators ought to be prosecuted and punished. In each case, participants presented views that reflected their personal experiences and value preferences. The most significant finding of this study is perhaps that the enormity of human loss is simply not reducible to a singular approach. The narrative on the so-called ‘Sri Lankan approach’ is hence best described as ‘reductive’.

The heterogeneity of participant views may be deconstructed to some extent. In the case of telling others, participants were generally divided on several questions, including whether telling others was important and personally beneficial. Participants were also divided on whether memorialising a traumatic event and lost family members was important to them. Many preferred not to revisit their trauma, while others felt memorialising was an important part of their coping process.

Participants differed on how they defined the concept of justice and applied it to their experiences. Many presented views that were somewhat cynical, while others aspired to receive justice in the future. The participants also differed on the importance of identifying and prosecuting perpetrators. A number of participants did not specifically wish for perpetrators to be held accountable; some in fact saw no real purpose in conducting investigations or prosecutions. Yet many of these participants held such views not on the basis of ‘tolerance’ or ‘forgiveness’, as suggested by the reductive narrative, but on the basis of their ‘acceptance’ of the fact that their lost family members would not return in any event. Moreover, the lapse of time played a greater part in denting their demand for justice than any particular approach to justice. This is not to say, however, that no participant subscribed to a

lenient approach towards perpetrators. There were some participants who did hold such views, and suggested that the most appropriate approach to dealing with perpetrators was rehabilitation. Yet, as discussed in the next section, these participants had a distinct view on the legitimacy of the context in which they had encountered loss. This distinct view fundamentally shaped their demand for accountability, and perhaps explains why they preferred ‘leniency’ towards perpetrators. It is nonetheless clear that this preference ought not to be mistaken for a homogeneous narrative on restorative justice.

Meanwhile, a number of participants expressed a strong desire to know the identities of perpetrators, and for perpetrators to be held responsible for their actions. It is in this context that a rare convergence in participant views became evident. A majority of those who wished to see accountability appeared to prefer a particular type of accountability. Participants who lost family members during the war (either due to the actions of the security forces or the LTTE), whose family members were killed in action while serving the military, who lost family members during the JVP insurrection, who lost homes during the July 1983 pogrom, and who were expelled from the North in 1990 presented convergent views on ‘high-level accountability’. Thus, participants who did in fact wish to see perpetrators prosecuted preferred to see *decision-makers*, including those in government and previously in the LTTE, held accountable. This preference was evident across participant profiles. Hence it is important to further examine the ostensible preference among victims and survivors in Sri Lanka to see decision-makers held accountable for past atrocities.

## ***2. Factors that Shape the Views of Victims***

Amidst the remarkable heterogeneity of participant views, certain hypotheses may be presented to define the factors that may have shaped those views. Three such hypotheses warrant brief discussion.

## *2.1 Legitimacy of context*

The perceived legitimacy of the context in which a participant suffered loss often influenced that participant's views. This factor applied most significantly to a participant's views on justice and reparations. For instance, some participants who suffered loss during the JVP insurrection or during the post-war period unequivocally rejected the legitimacy of the overall context of their loss. They believed that the government's crackdown on the JVP in the late 1980s or on dissenters in the post-war period was unjustified. Subject to the application of other factors, a positive correlation appears to exist between the denial of contextual legitimacy and the general demand for perpetrators to be held accountable. The identical attitude was evident among some participants who rejected the legitimacy of the government's military operations between 2006 and 2009. These same participants tended to demand that perpetrators who caused the death of their relatives during the military operations be held accountable. Interestingly, some participants whose children were killed in action believed that the war was a politically manufactured event. Their demand for reparations was also distinct in that they believed that those who waged the war should be held to account for the destruction caused to life and property.

By contrast, the few participants who accepted the legitimacy of the overall context of their loss appeared to be less interested in the identification and prosecution of perpetrators. This perceived legitimacy also shaped the manner in which these participants coped with their loss. For instance, certain participants who believed that military operations against the LTTE were justified, treated the loss of their relatives—killed in action—as an unfortunate, but somehow inevitable consequence of war. These participants rationalised the deaths of their relatives as acts of bravery, and appeared to be disinterested in the prosecution of those responsible for the death of their relatives.

The views of participants point to a correlation between the perceived legitimacy of the context of loss and the expectations of justice. Given

the small size of the sample used in the present study, this hypothesis ought to be explored further. Bearing this limitation in mind, the responses of the participants appear to suggest that those who considered the context of their loss as ‘unjustified’ were more likely to demand some form of justice. The possible correlation, though unsurprising, is important to acknowledge, as the converse helps us understand the reductive narrative discussed in the preceding section.

This hypothesis contains two corresponding limbs. First, those who deny the contextual legitimacy of their loss tend to demand accountability. Second, those who accept the context as legitimate tend not to show a strong interest in accountability. Thus there appears to be a tendency for individuals who accept the legitimacy of a particular context to be *less interested* in identifying and prosecuting perpetrators. If the tendency is widespread, it is possible to mistake it for evidence of a ‘Sri Lankan approach’ to justice i.e. an approach that features leniency of punishment. Therefore, a high concentration of Sri Lankans accepting the legitimacy of military operations against the LTTE may ostensibly translate into a narrative on how Sri Lankans wish to deal with wartime atrocities. Their views on contextual legitimacy could shape their expectations of justice in terms of their own loss—particularly with respect to relatives killed or missing in action. A lack of interest in the accountability of those responsible for such loss could be mistaken for a dominant trend in ‘tolerance’, ‘forgiveness’ and ‘leniency’.

At the root of this hypothesis is the idea that the demand for justice stems from an acknowledgement or recognition of injustice. Participants who preferred to see those who caused the deaths of their relatives rehabilitated rather than prosecuted also accepted the overall legitimacy of the war; they saw their own loss as part of that legitimate context. They perceived no ‘injustice’ that could prompt a corresponding demand for ‘justice’. This rationalisation of personal loss should not be interpreted as a dominant attitude to justice. Instead, questions of justice must be asked of victims and survivors who

genuinely believe that the circumstances of their loss were ‘unjust’. Participants who recognised the unjust nature of the circumstances surrounding their loss were the only ones who were actually grappling with questions of justice. The so-called ‘Sri Lankan approach’ to justice must therefore be located among these participants; and as explained in the preceding section, a singular attitude to justice simply does not exist among such victims and survivors.

## *2.2 Self reflection*

In some cases, a participant’s tendency to apportion blame on herself appeared to influence her views—particularly with respect to truth telling and justice. Participants who apportioned part of the blame for their loss on themselves often took up the position that they must accept their loss, as they had in some way contributed to it. This sense of responsibility often shaped the extent to which these participants told others about their loss or demanded remedies from the state.

It is important to note that this factor applied only where the participant’s relative was no longer living or thought to be dead. For instance, participants who felt that they should have done more to prevent their relatives from joining the security forces or a particular separatist or insurrectionist movement were generally disinclined to demand accountability for the loss of their relatives. Therefore, the hypothesis that such apportionment of blame could shape the views of victims and survivors and limit their interest in the discovery and prosecution of perpetrators ought to be explored further.

This hypothesis had less bearing on those whose family members were still missing. When participants believed that their family members were still among the living, they tended to associate truth telling and the search for perpetrators with the discovery of their family member’s whereabouts. Hence any apportionment of blame on themselves did not necessarily mitigate their efforts to tell others and seek out perpetrators.

### 2.3 Timeframe

Timeframe shaped the desire among some participants to tell others about their experiences. This factor was particularly evident in cases of disappearances. Participants whose family members went missing during the final stages of the war, or during the post-war period, were more inclined to tell others their stories than those whose family members went missing during the JVP insurrection.

A further relationship was apparent between the time that had lapsed since a participant's loss and her desire to seek prosecutions. Most participants whose family members were lost in the late 1980s during the JVP insurrection were disinterested in prosecutions. By contrast, those whose losses were more recent appeared to be keener to hold perpetrators accountable through prosecutions.

Timeframe however, cannot be considered to be a determinative factor. In some cases, even a lapse of 28 years had not neutralised the demand among the participants for truth telling and the identification and prosecution of perpetrators. It is worth noting that in some well-known cases, such as the killing of Premakeerthi de Alwis, family members have remained keen to tell their stories and seek prosecutions, despite a significant lapse of time.

The manner in which time shapes the views of participants may be deconstructed further. It is possible to hypothesise that, rather than the time factor alone, the 'stage' of a particular participant's grief shaped her views. The work of Elisabeth Kübler-Ross may be of some relevance in this regard.<sup>139</sup> She postulates that a person who has suffered loss usually undergoes five stages of grief: denial, anger, bargaining, depression and acceptance—not necessarily in that order. It is then possible to speculate that a particular participant's stage of

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<sup>139</sup> Elisabeth Kübler-Ross, *On Death and Dying: What the Dying Have to Teach Doctors, Nurses, Clergy and Their Own Families* (1969).

grief—as opposed to the lapse of time alone—plays a discernable role in shaping her views on truth, memory and justice. This hypothesis is perhaps worth exploring further.

### ***3. Truth, Justice and Reparations***

Scholars have argued that victims ought to be at the centre of all approaches to justice.<sup>140</sup> Even where there has been some disagreement over the victim's role in determining punishment,<sup>141</sup> scholarly consensus on the victim-centred approach to transitional justice has grown considerably.<sup>142</sup> In this context, a victim-centred approach appears to be fundamental to genuine restorative justice. Hence it is important to prioritise the preferences of victims and survivors in devising appropriate remedies.

Additionally, the heterogeneity of views presented by participants in this study is perhaps best accommodated through an approach that prioritises victim and survivor preferences. If the victim is at the centre of a mechanism meant to deliver transitional justice, then her preference

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<sup>140</sup> George P. Fletcher, 'The Place of the Victim in the Theory of Retributive Punishment' [1999] 3(1) *Buffalo Criminal Law Review* 51; Jo-Anne Wemmer, 'Restorative Justice for Victims of Crime: A Victim-Oriented Approach to Restorative Justice' [2002] 9(1) *International Review of Victimology* 43-59.

<sup>141</sup> See for example, Michael Moore, 'Victims and Retribution: A Reply to Professor Fletcher' [1999] 3(1) *Buffalo Criminal Law Review* 65-89.

<sup>142</sup> See Simon Robins, 'Towards Victim-Centred Transitional Justice: Understanding the Needs of Families of the Disappeared in Post-conflict Nepal' [2011] 5(1) *International Journal of Transitional Justice* 75-98; Jonathan Doak, 'The Therapeutic Dimension of Transitional Justice: Emotional Repair and Victim Satisfaction in International Trials and Truth Commissions' [2011] 11(2) *International Criminal Law Review* 263-298; Stéphane Leman-Langlois, 'Mobilizing Victimization: The Construction of a Victim-Centred Approach in the South African Truth and Reconciliation Commission' [2000] 33(1) *La Victimologie: Quelques Enjeux* 145-165.

in terms of truth, justice and reparations must give substance to that mechanism. Thus the mechanism ought to accommodate the widest possible spectrum of preferences.

It is perhaps appropriate that this study ends with a brief discussion on how the fundamental precepts of truth, justice and reparations ought to form the basis of a victim-centred approach to combating impunity and preventing the recurrence of violence and conflict in Sri Lanka. These fundamental precepts may be juxtaposed against the findings and recommendations of the LLRC, which is considered by some to be a reasonably constructive local exposition on reconciliation and transitional justice.

### *3.1 Truth*

Principle 2 of the Updated Set of Principles on the Promotion and Protection of Human Rights through Action to Combat Impunity states:

Every people has the inalienable right to know the truth about past events concerning the perpetration of heinous crimes and about the circumstances and reasons that led, through massive or systematic violations, to the perpetration of those crimes.<sup>143</sup>

A genuine commitment to truth telling therefore entails a victim-centred approach. A 2006 United Nations study on the right to truth<sup>144</sup> concludes that the right implies:

Knowing the full and complete truth as to the events that transpired, their specific circumstances, and who participated in

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<sup>143</sup> Updated Set of principles for the protection and promotion of human rights through action to combat impunity, 8 February 2005, E/CN.4/2005/102/Add.1.

<sup>144</sup> UN Commission on Human Rights, *Study on the Right to the Truth: Report of the Office of the United Nations High Commissioner for Human Rights*, 8 February 2006, E/CN.4/2006/91, at: <http://www.unhcr.org/refworld/docid/46822b6c2.html>.

them, including knowing the circumstances in which the violations took place, as well as the reasons for them.<sup>145</sup>

The present study recorded the views of multiple participants from diverse backgrounds on their desire both to know and tell the truth. The study presents empirical evidence of a genuine demand among victims and survivors for truth telling—though such a demand was not observed in all cases. Hence a victim-centred approach must feature the option of truth telling, which includes telling others about one’s loss, and receiving opportunities to hear others tell the truth about one’s loss. This necessary feature is endorsed by the LLRC, which recognised the right to truth, particularly in its observations on missing persons. It observed:

[T]he relatives of missing persons shall have the right to know the whereabouts of their loved ones. They also have the right to know the truth about what happened to such persons, and to bring the matter to closure. Reconciliation is a process. Closure is the first difficult emotive step in that long and complex journey irrespective of whether they are victims of conflict or victims of LTTE terrorism.<sup>146</sup>

The present study undertook a focus group discussion with participants based in the Eastern Province whose spouses had disappeared during the war. It is pertinent to note the broad consensus (among the eight women who participated in the discussion) with respect to their right to know the truth about the whereabouts of their missing spouses. This consensus further reinforces the idea that a victim-centred approach must include the right to the truth. The LLRC also recognises in particular the rights of women to know the truth by emphasising the fact that ‘disappearances have a direct bearing on women, as the victims are most often their husbands, sons, fathers and brothers...who play a vital role in a traditional household as breadwinners as well as providers of

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<sup>145</sup> *Ibid.* at 4.

<sup>146</sup> See the LLRC Report, at para.5.37.

security.<sup>147</sup> The Commission therefore explicitly recognises the rights of these women to know the whereabouts of their family members, and to the truth.<sup>148</sup>

### 3.2 Justice

Principle 1 of the Updated Set of Principles on the Promotion and Protection of Human Rights through Action to Combat Impunity lists certain state obligations with respect to ensuring justice. These obligations include the obligation to investigate violations, and to take appropriate measures in respect of perpetrators by ensuring that those suspected of criminal responsibility are prosecuted, tried and duly punished.

Several participants clearly indicated that they wished to see those responsible for their loss held accountable. These participants did not confront the nature of punishment. However, they demonstrated a clear preference for holding decision-makers accountable in some way. For many participants, the acknowledgment of that responsibility was the first and most fundamental step in the process of accountability. Hence a victim-centred approach simply cannot rule out the option of investigating and prosecuting perpetrators—particularly those who made decisions that led to atrocities.

The LLRC's recommendations pertaining to civilian casualties,<sup>149</sup> and grave human rights violations perpetrated both by state<sup>150</sup> and non-state actors<sup>151</sup> entail an approach to justice that includes investigations and, if necessary, prosecution of perpetrators. These recommendations do not reflect the reductive narrative of 'tolerance', 'forgiveness' and 'leniency', but appear to include retributive elements of justice. The

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<sup>147</sup> *Ibid.* at para.5.117.

<sup>148</sup> *Ibid.*

<sup>149</sup> *Ibid.* at paras.9.9, 9.14, 9.22, 9.23 and 9.37.

<sup>150</sup> *Ibid.* at para.9.46.

<sup>151</sup> *Ibid.* at para.9.73.

development of an approach that includes investigation and prosecution of perpetrators is therefore crucial to genuinely meeting victim and survivor preferences.

### 3.3 Reparations

The importance of reparations is recognised in Principle 1 of the Updated Set of Principles on the Promotion and Protection of Human Rights through Action to Combat Impunity. Reparations may take either tangible or symbolic form. Tangible forms may include monetary compensation, medical and psychological services, health care, educational support, or restoration of lost or damaged property. Reparations may also take on symbolic forms, such as official public apologies, museums, memorials and official days of commemoration.

A number of participants in this study clearly articulated their desire for certain forms of reparation including compensation, educational support, restoration of property and the establishment of memorials. Meanwhile, the LLRC also advanced the idea of victim reparation. It specifically recommended the restitution of land rights,<sup>152</sup> the payment of compensation<sup>153</sup> and the provision of educational and health care services.<sup>154</sup> Moreover, in the context of the 30-year ethnic war, the Commission made the following recommendation:

Leaders on all sides should reach out to each other in humility and make a joint declaration, extending an apology to innocent citizens who fell victims to this conflict, as a result of the collective failure of the political leadership on all sides to prevent such a conflict from emerging.<sup>155</sup>

The LLRC also recommended a separate event on Sri Lanka's National

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<sup>152</sup> *Ibid.* at paras.9.104, 9.108 and 9.142.

<sup>153</sup> *Ibid.* at paras.9.153, 9.157, 9.161 and 9.164.

<sup>154</sup> *Ibid.* at paras.9.89, 9.93 and 9.96.

<sup>155</sup> *Ibid.* at para.8.303.

Day to ‘express solidarity and empathy with all victims of the tragic conflict and pledge our collective commitment to ensure that there should never be such blood-letting in the country again’. Such recommendations clearly reinforce the value of certain symbolic forms of reparation.<sup>156</sup>

In this context, it is clear that a victim-centred approach must offer the full gamut of options in terms of both tangible and symbolic reparations. These options ultimately flow from a genuine desire among victims and survivors to receive reparations.

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In conclusion, it may be appropriate to reiterate that this study is only a modest exploration of perspectives on truth, memory and justice in Sri Lanka. Barring certain convergences in participant views, the study does not present clear and precise trends on how Sri Lankans approach these subjects. By displaying and analysing the remarkable heterogeneity among participant views, it does, however, contribute towards displacing any reductive narrative that seeks to construct a particular ‘Sri Lankan approach’. The principal finding of this study is simply that no singular or reductive narrative on truth, memory and justice exists in Sri Lanka.

The diversity of views and experiences among victims and survivors ought to be considered carefully when designing a transitional justice mechanism in the future. Such a mechanism must be victim-centred and must cast its net as wide as possible to accommodate a broad spectrum of victim and survivor preferences. Moreover, the mechanism must respond to the diversity of needs and priorities among victims and survivors including their socioeconomic and psychosocial wellbeing,

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<sup>156</sup> For a detailed discussion on reparations policy, see Bhavani Fonseka, *The Need for a Comprehensive Reparations Policy and Package*, Centre for Policy Alternatives (March 2015).

the discovery and telling of the truth, the memorialisation of events and lost relatives, and the accountability of perpetrators. The institutional framework established to deliver such a mechanism must enable contributions by institutions across the thematic spectrum, including those dealing with social integration, health, criminal justice and development. A truly victim-centred approach must therefore seek to accommodate *all* victims and survivors. For they are unique, complex and often hold views independent of one another.

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## Annexes

### Interview Participants

No.	Date	Victim Profile	Location
01	04.11.2014	Male, Tamil Lost property in Kandy during July 1983 riots	Kandy Town, Kandy
02	01.10.2014	Male, Tamil Lost property in Bandarawela during July 1983 riots	Wellawatte, Colombo
03	01.10.2014	Female, Tamil Lost property in Colombo during July 1983 riots	Wellawatte, Colombo
04	26.09.2014	Male, Sinhalese Brother abducted during JVP insurrection by military personnel in uniform on 22 August 1988	Angunakolapelessa, Hambantota
05	03.10.2014	Female, Sinhalese Husband abducted during JVP insurrection by persons claiming to be military personnel in plain clothes on 27 November 1989	Alawathugoda, Kandy
06	03.10.2014	Female, Sinhalese Husband abducted during JVP insurrection by persons claiming to be military personnel in plain clothes on 5 December 1989	Alawathugoda, Kandy
07	11.10.2014	Female, Sinhalese Husband abducted during JVP insurrection by military personnel in uniform and unidentified persons in civilian clothing on 14 December 1989	Kandekumbura, Panwila, Kandy
08	10.10.2014	Male, Muslim Expelled by the LTTE from Sornapuri, Mannar on 28 October 1990	Adampan, Mannar

09	10.10.2014	Male, Muslim Expelled by the LTTE from Maankulam in October 1990	Maankulam, (Northern Province)
10	10.10.2014	Male, Muslim Expelled by the LTTE from Musali, Mannar in October 1990	Musali, Mannar
11	13.10.2014	Female, Sinhalese Brother (member of the Police Force) missing in action in Mullaitivu on 18 July 1996	Moragoda, Gampaha
12	06.10.2014	Male, Sinhalese Son (member of the Sri Lanka Army) killed in action in Mullaitivu in July 1996	Medawachchiya, Anuradhapura
13	28.09.2014	Female, Sinhalese Brother (member of the Sri Lanka Army) killed in action in Maankulam in September 1998	Batapola (Southern Province)
14	13.10.2014	Female, Sinhalese Son (member of the Sri Lanka Army) killed in action in Paranthan on 21 September 1998	Yakkala, Gampaha
15	06.10.2014	Male, Sinhalese Son (member of the Sri Lanka Army) killed in action in Vavuniya on 3 June 2007	Medawachchiya, Anuradhapura
16	09.10.2014	Female, Sinhalese, Husband died from injuries sustained in the LTTE attack on a passenger bus in Kebithigollewa on 15 June 2006 (died on 17 June 2006)	Kebithigollewa, Anuradhapura
17	09.10.2014	Female, Sinhalese, Parents and nephew died in the LTTE attack on a passenger bus in Kebithigollewa on 15 June 2006	Kebithigollewa, Anuradhapura
18	04.10.2014	Female, Sinhalese	Mahawilachchiya,

		Parents killed by LTTE during a raid on a border village in Mahawilachchiya on 26 November 2007	Anuradhapura
19	05.10.2014	Male, Sinhalese Father killed by LTTE during a raid on a border village in Mahawilachchiya on 26 November 2007	Pemaduwa, Anuradhapura
20	05.10.2014	Male, Sinhalese Father killed by LTTE during a raid on a border village in Mahawilachchiya on 26 November 2007	Pemaduwa, Anuradhapura
21	28.09.2014	Female, Sinhalese Husband died in LTTE bombing in Akuressa on 10 March 2009	Akuressa, Ambalangoda
22	15.10.2014	Male, Sinhalese Father died in LTTE bombing in Akuressa on 10 March 2009	Akuressa, Ambalangoda
23	22.08.2014	Female, Tamil Husband (member of the LTTE) went missing after being ambushed by the Navy on 4 June 2008 (somewhere in between Viddathal Theevu and Mannar town)	Viddathal Theevu, Mannar
24	22.08.2014	Female, Tamil Husband went missing in May 2009 (possibly near Omanthai)	Viddathal Theevu, Mannar
25	22.08.2014	Female, Tamil Daughter (forcibly recruited by the LTTE) went missing after being captured by the Army in Puthumathalan on 7 April 2009	Viddathal Theevu, Mannar
26	09.10.2014	Male, Tamil Brother went missing after surrendering to the Army on 18	Jaffna town, Jaffna

		May 2009	
27	09.10.2014	Female, Tamil Parents and brother died due to shelling in Vattuvaikal on 24 April 2009.	Udayanagar West, Kilinochchi
28	09.10.2014	Female, Tamil Son died due to shelling in Mullivaikal in 2009 (possibly in March)	Udayanagar West, Kilinochchi
29	09.10.2014	Female, Tamil Husband died due to shelling in Mathalan on 21 March 2009	Arugamai Veethi Kilinochchi
30	18.10.2014	Male, Muslim Lost property due to riots in Aluthgama on 15 June 2014	Darga Town, Aluthgama
31	18.10.2014	Female, Muslim Lost property due to riots in Aluthgama on 15 June 2014	Darga Town, Aluthgama
32	18.10.2014	Male, Muslim Lost property due to riots in Aluthgama on 15 June 2014	Darga Town, Aluthgama

### Focus Groups

No. of participants	Date	Victim Profile	Location
08	17 January 2015	Female heads of households, Tamil Husbands died during war in early 1990s.	Akkaraipattu, Ampara
05	30 January 2015	Four females and one male, Sinhalese Family member (husband, son or brother) abducted by unidentified persons in Kandy district during JVP insurrection	Kandy town, Kandy

## **Discussion Guide**

### **1. Purpose of Interview**

- a. Introduce yourself as a researcher commissioned by the Law & Society Trust.
- b. *Explanation:* The Law & Society Trust is a research and advocacy organisation that is currently interested in learning more about how different communities in Sri Lanka view the country's future.
- c. *Statement:* Sri Lanka has had a violent past. We are attempting to understand how this history of violence shapes our attitude towards the future. So the main purpose of this interview is to listen to and learn from your personal experience.
- d. *Statement:* We would like to compare your experience with the experiences of others who have also experienced loss during various points in Sri Lanka's history.
- e. Q: Are you comfortable with this interview being recorded?

### **2. Identity and Belonging**

- a. Q: How long have you lived in (place of interview)?
- b. Q: Does your family come from this area (if not, where is your place of origin)?
- c. Q: (If the interviewee moved to current location from somewhere else) What prompted you / your family to move to this place?
- d. Q: Where do you consider 'home'?

- e. Q: (Depending on answers to the above) Do you see yourself living here for long / the rest of your life?
- f. Q: What about your current area of residence / place of origin, is it special to you? Do you enjoy living there? Why?
- g. Q: Do you live alone or with others? Who?  
  
\*Note: Ascertain details about children/spouse if interviewee is forthcoming.
- h. Q: (If relevant) How many children do you have? What are they occupied in at the moment?  
  
\*Note: **Do not** directly ask interviewee if he/she has children or a spouse.
- i. (If relevant) Would you want your children / grandchildren to grow up in Sri Lanka? Why?
- j. Q: What does the end of the war mean for you? Why?

### 3. *Personal Narratives*

- a. Q: Are you comfortable speaking about your personal experience?
- b. Q: Could you relate your story in the sequence it took place (in chronological order)?

\*Notes:

- During this phase of the interview, allow the interviewee to speak as much as possible. Only prompt for more details in

terms of place, date and sentiments during the specific incident(s).

- Do not interrupt the interviewee unless he/she is veering off track significantly. Maintain interest in obtaining details.
  - If you observe that the interviewee is experiencing distress, offer to stop the interview / offer a drink of water. You could also offer to return to the question (which is distressing the interviewee) at a later point of time.
- c. Generic Q: (Re: date/place) how old were you at the time (how old are you now)? Can you remember the date? Where did this take place?
- d. Generic Q: (Re: sentiments) how did you feel at the time?
- e. Q: (After the interviewee relates his/her experience) How did you manage to cope with your experience at the time? Who helped you?
- f. Q: Do you have any regrets about how you handled your situation? If so, could you elaborate on those regrets / what would you do differently?

#### ***4. Views on Truth, Memory and Justice***

- a. Q: Do you tell others about your experience? If so, how often? Do you prefer to do so in private or public? What is the reason for your preference?

\*Note: If participant has engaged in truth telling either in private or at a public forum (e.g. truth commission, evidence in court) ask for details about his/her experience

- b. Q: Why do you / don't you speak about your experience to others?
- c. Q: (If relevant) Has speaking about your experience helped you in any way?
- d. Q: Do you know others who went through a similar experience? If so, have you spoken about your experience with them?
- e. Q: (If relevant) Do you think it is important to tell others about your experience and hear similar stories?
- f. Q: Some victims would prefer to forget about their experience. Do you think that is true? If so, why do you think that is?
- g. Q: Do you think it is important to remember tragedies in our past? (If yes) How should these events be remembered?
- h. Do you engage in acts of remembrance? (If yes) Elaborate.
- i. Q: Do others ever refer to your experience when speaking to you?
- j. Q: Has the manner in which others treat you changed after your experience? If so, how?
- k. (If relevant) Why do you think others treat you differently now?
- l. Q: Has anyone attempted to offer an explanation as to why this might have happened to you? If so, what is that explanation? Do you agree with it? If not, do you have your own views on?

\*Note: This question is sensitive and should not be asked if the interviewer anticipates any kind of distress.

- m. What does the word 'Justice' mean to you?
- n. Q: (If not already ascertained) Are you aware of who is responsible for the violence / loss you experienced?
- o. Q: Does the identity of the people responsible matter to you? Why?
- p. What do you think has happened to those responsible? How do you know?
- q. What do you think should happen to those responsible? Why?  
  
\*Note: Allow interviewee to elaborate **without prompting**. Ascertain the nature of justice that the interviewee would like to pursue / has pursued in relation to those responsible.
- r. Q: What should our society do to prevent violence in the future?





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