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# Contending with identity and minority rights in transitional justice: the case study of Sri Lanka

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## ABSTRACT

Transitional justice, though heavily problematised, is a burgeoning and transforming field. However, apart from when atrocity crimes such as genocide are committed, it remains negligent of the rights and positionality of non-dominant ethnic, religious and linguistic groups. Sri Lanka, which recently attempted transitional justice, offers a useful case study of the role of identity and minority positioning in conflict related crimes and victim and perpetrator status. Through empirical research in conflict affected parts of the country this article demonstrates this specific minority dimension, including the differential justice demands of ethnic and religious groups, and analyses how neglect of these factors affected the country's transitional justice process. It also challenges assumptions on the neutrality of a majoritarian ethno-nationalist state in delivering transitional justice to all communities. Though also a contested topic, the article builds on the minority rights framework and proposes an approach to ensure identity groups are actively included in transitional justice and their rights are protected. It concludes that such an approach is crucial, in line with critical transitional justice, to ensure transformative change by guaranteeing equality and non-discrimination, responding to structural violations, and striving towards non-repetition and meaningful reconciliation.

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## Introduction

The exceptional levels of violence and crimes that transitional justice deals with often have a targeted nature to them. From its early origins at the Nuremberg trials to the international tribunals where it reached prominence – Rwanda, Former Yugoslavia, crimes against, ethnic, religious, and linguistic minority groups have been of concern to transitional justice. Even when the legacies of human rights violations that transitional justice seeks to redress do not involve genocide,<sup>1</sup> identity and group dynamics have a function, sometimes even defining the nature of that legacy. This could be due to an identity-based conflict as in Sri Lanka or through state systems and policies as in South Africa. Where such groups are not the main targets, such as Roma in Germany, Twa in Rwanda or

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Muslims in Sri Lanka, they nevertheless face serious and sometimes specific violations that may be less-known. Despite this, as this article demonstrates, transitional justice as a field pays insufficient attention to the specificity of identity and minority positioning.

This article is fundamentally concerned with the rights of minority groups in transitional justice. Minority rights is a contested subject, but no more than transitional justice is. Noting critiques of the field of minority rights, including its definition, this article provides an expansive understanding of a minority rights approach which forefronts minorities or non-dominant groups, relying on the larger international human rights framework. The focus here is on national, ethnic, religious, linguistic, and racial groups and not indigenous peoples because the latter have different historical and contemporary justice trajectories for which this analytical lens is inadequate.<sup>2</sup> The category of 'identity or minority groups' in this article does not include sexual or gender identities or minorities, in line with the international minority rights framework and existing substantive scholarly work on gender justice.<sup>3</sup>

In this article, I will draw on aspects of Paige Arthur's seminal work, 2009 and 2010, on the need for transitional justice to account for identity, but I want to advance this thesis strengthening the minority rights dimension in keeping with current debates in the ever-changing field of transitional justice.<sup>4</sup> My concern here is that even as transitional justice is being forced to transform, protection of minorities and their rights remains marginalised in the field.<sup>5</sup> Therefore, this article calls for progressing from the present United Nations guidelines for 'careful consideration' of needs of minorities and ensuring their 'participation' in transitional justice to a minority rights approach that recognises minorities through a specific rights-based approach.<sup>6</sup> Importantly, such an approach is not aimed at abasing the majority, but rather extending principles of equality and non-discrimination to ensure greater inclusivity, fairer outcomes and more effective reform. Hence this article argues that such guarantees are essential for transformative change: 'that emphasizes local agency and resources, the prioritization of process rather than preconceived outcomes and the challenging of unequal and intersecting power relationships and structures of exclusion at both the local and the global level'.<sup>7</sup>

Sri Lanka, with its rich ethnic and religious landscape damaged by decades of conflicts and periods of authoritarianism, offers important insights to this article. Ethnic grievances have been at the core of the nearly three-decade civil war; its brutal ending in 2009 amidst allegations of war crimes and crimes against humanity and continuing violence in its aftermath, chiefly affected ethnic and religious groups.<sup>8</sup> The country's attempt at transitional justice 2015–2019 did not succeed,<sup>9</sup> and through empirical research, I argue that one of the contributing factors was the neglect of the ethnic/religious dimension to the conflict, including differences on victim recognition and justice needs. The Sri Lankan case also raises important questions on how a state-centric process can deliver transitional justice in contexts where states are majoritarian and/or aligned to ethno-religious nationalism.

Using the case study of Sri Lanka this article argues that a minority rights approach, which extends from recognising the right to identity and the principles of equality and non-discrimination, to guaranteeing all human rights of minorities, is important to transitional justice for the following reasons. Firstly, minorities in conflict contexts are often the targets of the crimes that transitional justice seeks to redress.<sup>10</sup> For truth seeking,



prosecutions, reparations, non-recurrence and other transitional justice measures to effectively redress these violations, understanding the specific association of identity and minority status not only with the crime but to victims and perpetrators is essential. Secondly, even if not targeted, minority groups experience conflict and authoritarian repression differently, which needs to be distinguished, understood and addressed accordingly for transitional justice to be valuable to all people without prejudice and discrimination. Thirdly, as empirical evidence from the Sri Lankan case illustrates, transitional justice needs differ based on ethnic, religious grouping and minority status. Neglecting or disregarding such differences and divisions can undermine transitional justice processes and impede meeting its goals. Additionally, such an approach can contribute to better addressing structural violence and causes of conflict, and contribute towards making democratisation, non-repetition and reconciliation goals more meaningful and far-reaching. On the contrary, the disregard for such groups and their rights in transitional justice, especially in conflict contexts, may harden grievances or create new ones and challenge conflict transformation.<sup>11</sup>

As transitional justice did not fully materialise in Sri Lanka, this article remains conceptual; in that it deals with the broader subject rather than venturing into the details of how a minority rights approach can contribute to specific mechanisms. Empirical findings are used to explore the vital connection between identity and minority status to conflict related violations, and the implications to transitional justice when this is undermined. Drawing on these empirical finding and my theoretical and legal knowledge gained through working for over 15 years on the rights of minorities, I develop a minority rights approach to address this problem and meet the aims and objectives of transitional justice.<sup>12</sup>

The article is divided into four parts. It commences with a brief review of the literature on transitional justice and minority rights, including the limitations of both. It then uses the Sri Lankan case study to explore the importance of minority rights to transitional justice, before introducing a minority rights approach and analysing the challenges and opportunities to advancing such a position within transitional justice.

## Methods

The findings presented here were generated through a cumulative analysis of data gathered from various different research projects conducted within a five-year period in Sri Lanka. Data was gathered through mixed methods, including some ethnographic work, qualitative interviews and Focus Group Discussions (FGDs).<sup>13</sup> From 2016 to 2018, I was based in the northern city of Jaffna when Sri Lanka's transitional justice process commenced. Working with civil society and community activists involved in the process whilst living in one of the most conflict affected parts of the country, I was able to gain critical insights into how the process played out among Tamil and Muslim victims and survivors. Through close association with civil society activists, I gained access to conflict victims from the three main ethnic groups and conducted almost 70 interviews.<sup>14</sup> In addition, I conducted FGDs with women, young people, and community and religious leaders from the Tamil and Muslim communities in the north and east of Sri Lanka.<sup>15</sup> I also conducted a number of interviews and FGDs with Sinhalese Buddhists living in the villages bordering the north and east, which is considered the minority

**Table 1.** Differential transitional justice needs of interviewees based on ethnicity in north and east of Sri Lanka.

Tamils	Muslims	Sinhalese (border villages)
<ul style="list-style-type: none"> <li>• Truth and justice for families of disappeared/missing.</li> <li>• Acknowledgement and validation of crimes suffered during the war, particularly in the last stages.</li> <li>• Increased security – removal of military from the north and east and reversal of militarisation.</li> <li>• Political autonomy.</li> <li>• Self-determination.</li> <li>• Income generation/livelihood needs and employment.</li> <li>• Housing and sanitation needs.</li> <li>• Return of lands.</li> <li>• Education for children.</li> <li>• Medical support for physical injury and impairment.</li> <li>• Psycho-social assistance and trauma care.</li> <li>• Some wanted prosecutions for crimes.</li> <li>• Some wanted financial compensation.</li> <li>• Non-repetition measures.</li> <li>• Memorialisation</li> <li>• Commemoration</li> <li>• Buddhisation of areas to be stopped.</li> <li>• Continuing human rights violations to end.</li> </ul>	<ul style="list-style-type: none"> <li>• Validation of crimes suffered during the war.</li> <li>• Financial Compensation.</li> <li>• Income generation/livelihood assistance.</li> <li>• Employment and educational opportunities.</li> <li>• Return of lands.</li> <li>• Recognition of victimhood.</li> <li>• Non-repetition measures.</li> <li>• Memorialisation.</li> <li>• Commemoration.</li> <li>• Reconciliation and Co-existence measures.</li> <li>• Legislative and policy action against hate crimes/speech and racism from other groups.</li> <li>• Guarantees of freedom of religion.</li> <li>• Buddhisation of areas to be stopped.</li> </ul>	<ul style="list-style-type: none"> <li>• Maintaining security (military and police presence to stay in local areas and in the north to ensure national security).</li> <li>• Non-repetition measures (mainly through ensuring security).</li> <li>• Support for income generation/livelihood (especially incentives for farmers and drought relief).</li> <li>• Employment and educational opportunities.</li> <li>• Few calls for peace building</li> <li>• Few calls for reconciliation efforts.</li> <li>• No demand for criminal justice or other accountability measures.</li> <li>• Strong desire to put the past behind and move on.</li> </ul>

homeland and where the conflict was centred.<sup>16</sup> The majority of interviewees were women, who constitute a significant percentage of survivors. All interviews were conducted with strict ethical and security considerations, and thereby names of victims and survivors were not recorded.<sup>17</sup>

The specific analysis of data on minorities and their rights was based on expertise gained through previous policy and practice work in this area. Findings were analysed through thematic coding and Table 1 is based on this coding process. As no quantitative research was conducted this table lists the main issues raised by interviewees and FGD participants from each ethnic group.

### **Critical transitional justice**

Transitional justice is premised on human rights, fundamentally the right to truth, justice, reparations and non-recurrence, ‘where “redressing the legacies” means, primarily, giving force to human rights norms that were systematically violated’.<sup>18</sup> Ruti Teitel traces the development of transitional justice through three phases. The first, following the Nuremberg trials after the second world-war, sees transitional justice become international and ‘extraordinary’. The post-cold war second phase finds transitional justice increasingly associated with democratisation and modernisation projects whilst in the

third phase with the collapse of Former Yugoslavia it becomes part of the solution for conflict resolution and peacebuilding.<sup>19</sup> De Greiff posits that its consolidation as a field, including in academia, and 'normalisation' within a brief period of some 30 years is a manifestation of its 'huge accomplishment'.<sup>20</sup>

States select from a range of different transitional justice measures including, though not limited to, truth telling, criminal justice, reparations, memorialisation, institutional reform and non-repetition, which are expected to be 'holistically' implemented to achieve what de Greiff identifies as the two mediate goals of providing victim recognition and building civic trust and the two long term goals of democratisation and reconciliation.<sup>21</sup> That these diverse measures contribute to the larger aims of justice and accountability and can redress legacies of human rights violations remains empirically unproven and the litany of failings of transitional justice has now led to what Sharp refers to as the 'critical turn' in scholarly work.<sup>22</sup> Critiques of transitional justice include concerns with issues of agency, ownership and power structures, extending to arguments that transitional justice privileges western, liberal norms and international law.<sup>23</sup> It is considered to be 'top down, hierarchical and exclusive', undermining local agency, approaches and forms of justice.<sup>24,25</sup>

Criticisms are also made around its functionality, its neglect of local contexts and its over dependence on civil and political rights over socio-economic ones.<sup>26</sup> Limited critiques exist on the field's lack of consideration for colonial injustices and, as an extension of that, the disregard to indigenous peoples' rights.<sup>27</sup> The field's concern with minority groups is predominantly on justice and accountability for genocide and ethnic cleansing.<sup>28</sup> Many identity groups seeking truth, justice and accountability in transitional settings do not, however, under international law fall within the strict international legal definition and other criteria needed to establish these crimes and thereby can be neglected in such processes.

This is partly due to the historical neglect within the international human rights framework itself of minority rights.<sup>29</sup> Protection of minority groups has a strong 'lineage' within human rights and the international human rights framework;<sup>30</sup> the Genocide Convention<sup>31</sup> and the International Convention on Elimination of Racial Discrimination (ICERD),<sup>32</sup> both fundamentally responding to minority groups, were the earliest international human rights treaties. In spite of this, the protection of minorities and their rights has unfortunately been neglected by states, partly on rationalist accounts of minorities being a 'problem' and over 'fears of fragmentation' especially among newly independent states.<sup>33</sup>

In terms of a binding commitment, the maximum states were able to agree on specifically on minority rights was in the form of Article 27 in the International Covenant on Civil and Political Rights (ICCPR) which reads:

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.<sup>34</sup>

In addition to ICERD, nearly every international human rights treaty also contains an anti-discriminatory clause which is part of the minority rights regime. In terms of a specific rights framework, all that exists is the United Nations Declaration on Rights



of Persons belonging to National, Ethnic, Religious and Linguistic Minorities (UNDM), which, even though unanimously voted on in the General Assembly, remains only normative.

Nevertheless, the UNDM offers a range of different rights based on the four pillars of the right to existence; the right to identity; the right non-discrimination and the right to participation.<sup>35</sup>

Biro and Lennox argue that historically the minority rights regime has developed to pair the empowerment of minorities with state control by 'establishing a level of political and cultural balance between dominant political elites and non-dominant cultural minorities'.<sup>36</sup> As a result, the minority rights regime remains riddled with problems; one of its main predicaments is definitional – what constitutes a minority? Definitional representations such as 'smaller', 'lesser' in number are considered demeaning and disempowering by some groups, whilst numerical population figures are un-representational of power dynamics as was the case of Sunnis in Iraq or Alawites in Syria who were ruling elites despite being minorities. Categories of 'national', 'religious', 'ethnic', and 'linguistic' are seen to be limiting and 'national' is mainly relevant to Europe where national groups were divided through the process of state formation.<sup>37</sup> In its interpretation of Article 27, the Committee on Civil and Political Rights (CCPR) has made advances on these issues, presenting, in addition to the objective, a subjective criteria for defining minorities, which has two components: the first is the principle of self-identification which gives individuals the right to identify or not with the group, and second is the desire to preserve the group identity. The CCPR has also recently removed restrictions based on citizenship<sup>38</sup> and other international actors have extended the definition of minorities to include the non-dominant position of groups over numbers.<sup>39</sup>

Beyond definitional issues, the minority rights regime, even normatively, is seen to be 'scattered, often incoherent and far from complete'.<sup>40</sup> It also faces criticism for being weak and inadequate, especially when compared to the UN Declaration on the rights of Indigenous Peoples (UNDRIP) which exceptionally recognises 'peoples', groups rights, and acknowledges their right to 'self-determination'.<sup>41</sup> On the issue of group rights, Alfredsson, 2009, contends that even though UNDM refers to 'persons belonging to .... minorities', a number of human rights bodies and mechanisms including the Committee on Elimination of Racial Discrimination (CERD) have accepted group-based rights for minorities.<sup>42</sup> Biro and Lennox suggest that the regime has evolved to offer a hybrid of group and individual rights, but they remain critical of the repeated failure by states to incorporate the right to self-determination into minority rights.<sup>43</sup> As I will argue later, this is contentious at many levels, especially in promoting minority rights in transitional justice.

Though fledgling and in need of strengthening, the current international human rights framework offers a basic and broad standard of protection for minorities that is valuable to transitional justice.

### ***Sri Lanka: background and context of transitional justice***

While this article focuses on minorities, Sri Lanka's legacy of human rights has significantly affected the majority community as well, particularly in the quelling of two

Marxist uprisings in the early 70s and late 90s when cumulatively more than 100,000 people died or disappeared.<sup>44</sup>

Sinhalese are Sri Lanka's ethnic majority constituting some 74.9 percent, Ceylon Tamils amount to 11.2, Tamils of Indian origin 4.2 and Moors 9.2 percent.<sup>45</sup> The binary framing of the country's long-standing ethnic conflict as being between Sinhalese and Ceylon Tamils is flawed; other ethnic groups formed part of the conflict, religion permeated throughout, whilst caste and other social divisions also had implications. Such complexity is evident in the division of Tamils into two different identity groups based on origin. Malaiyaga Tamils of Indian origin brought in by the British colonialists to work in the central hill plantations are socio-economically the most deprived group in the country, facing large scale discrimination on grounds of caste and origin, and mostly living outside of the north and east they were not seen to be part of the conflict but were subjected to the same scrutiny and faced numerous violent attacks and pogroms on account of their Tamil identity.<sup>46</sup> Religion and ethnicity can also overlap in identity formations. Muslims consider themselves a separate ethnic group with Islam being their main identity marker. Christians, Sinhalese and Tamil in ethnicity, also form a sizeable religious minority and notably over 70 percent of Sinhalese are Buddhists.<sup>47</sup>

The Sri Lankan armed conflict was without doubt one which arose over ethnic grievances following successive majoritarian state policies and state enabled pogroms.<sup>48</sup> The ethnic and religious dimension to the armed conflict was inescapable as from the late 1970s Tamil militants fought mainly Sinhala Buddhist forces for a separate state in the country's north and east. Sinhala Buddhists were targeted in violent bombings, including their most important places of worship, and those living in villages bordering the conflict zone were routinely attacked by Tamil militants.<sup>49</sup> State forces were responsible for repeated civilian attacks and atrocity crimes in the minority homeland whilst Tamils were also targeted under the Prevention of Terrorism Act (PTA) leading to arbitrary arrests, detention and torture, extra-judicial killings, rape and sexual violence and enforced disappearances.<sup>50</sup>

The defeat of the Liberation Tigers of Tamil Eelam (LTTE) and the conclusion of the war in 2009 was marred by numerous accusations of atrocity crimes; including by two UN investigations, which found evidence of war crimes and crimes against humanity.<sup>51</sup> Estimates of the death toll range from 40,000 to 140,000 and in the aftermath, in the transfer of civilians to displaced camps, human rights violations such as extra-judicial killings, torture, rape, sexual violence, enforced disappearances and arbitrary arrest and detention soared.<sup>52</sup> The Sri Lankan state response was to triumphantly celebrate their war victory, branding it a 'humanitarian operation with zero-civilian casualties, refusing investigations and pursuing an 'illiberal peace', defined by a rise in majoritarian racism directed at minorities.<sup>53</sup> State sponsored Buddhisisation resulting in land grabs and proliferation of Buddhist religious sites in Tamil and Muslim areas became common practice, as well as Buddhist extremist hate campaigns against Muslims and evangelical Christians, extending to continuing and systematic religious violence.<sup>54</sup>

International pressure for accountability through a number of UN Human Rights Council (UNHRC) resolutions was repeatedly contested by the GoSL, until a change in government in 2015 led to commitments on transitional justice affirmed in a UN HRC Resolution (30/L.29). These included a truth commission, offices to investigate



missing persons for reparations, 'a judicial mechanism with a special counsel to investigate allegations of violations and abuses of human rights and violations of international humanitarian law', constitutional guarantees of non-repetition and reconciliation and peace building projects.<sup>55</sup>

Though comprehensive and ambitious on paper, the country's transitional justice project did not sustain momentum. Largely propped up by international scrutiny and pressure from the UNHRC, OHCHR and the Special Rapporteur for Transitional Justice, the process delivered little.<sup>56</sup> One of its major achievements was a national consultation conducted through a network of community representatives which generated significant community level interest over transitional justice and offered rare documentation of violations as well as justice demands.<sup>57</sup> In spite of this only the Office of Missing Persons (OMP) and the Office of Reparations (OR) were set up by the new government before the transitional justice process collapsed due to the re-election in 2019 of the same protagonists accused of war crimes, the Rajapaksa brothers, this time with Gotabaya as President and former President Mahinda as Prime Minister.

### ***Minorities in Sri Lanka's transitional justice process***

Though prompted by calls to investigate allegations of mass atrocities against Tamils in the last stages of the war, my research found that Sri Lanka's transitional justice process responded problematically and insufficiently to minorities.

At the time the transitional justice process commenced in Sri Lanka there was a clear distinction in the experiences of victimhood between each of the three main ethnic groups.

Survivors of the last stages of the war, from which the UN found evidence of war crimes, were all Tamil and those I interviewed had a firm sense of their identity being integral to their victimhood as they detailed being repeatedly attacked by the Sri Lankan military. Some referred to being held hostage by the LTTE but their accounts of the forceful attacks, where nearly every Tamil interviewed from the northern province lost at least one family member, was largely blamed on the military. As the following excerpt demonstrates many continued to mentally and physically bear the scars of this violence and viewed it through an ethnic lens.

The Army killed so many of our people. We want the them punished. They shelled and killed people, there was no food, when we took people to hospital they shelled the hospitals. So don't they need punishment?

All the suffering we Tamil people went through, they need to go through, the killing, the starvation the pain.<sup>58</sup>

In the early stages of the transitional justice process, thousands of families of disappeared were still in search of their loved ones who had been picked up in notorious 'white vans', or been arrested by security forces.<sup>59</sup> Families of disappeared, mostly mothers, embarked on months of protests sitting outside on roadsides in the scorching heat, campaigning for the return of their loved ones, including 'surrendered'. This was a term used to describe people who were handed over to the military when the war ended on account of involvement with the LTTE, which at the concluding stages was at times forced upon people or involved humanitarian work.<sup>60</sup>

We want our children, we want them to come back to us. You took our children away, you came and took them away, you must know where they are.

Eight years, why can't you tell us.

We are all becoming mentally ill. We believed our children are alive, when we started this protest we all had hope that something is going to come out of this, that we will be able to find a solution for this, but after 100 days we are so frustrated and hope is fading away.<sup>61</sup>

Though enforced disappearance is an issue that has historically affected the majority Sinhalese community as well, the public demonstration of despair among Tamil families of disappeared that was largely ignored by government authorities and at times met with military scrutiny and violence evoked extensive anger and pathos in the north and east.

There were numerous other issues shaping victimhood for Tamils in the north and east. The Sinhalese military, perpetrators of serious crimes in victims' eyes, occupied large areas of their land and many were unable to return to their homes.<sup>62</sup> The economic and social fabric of the north was largely destroyed and there were only a few state led post-war recovery efforts that benefitted the Tamil population.<sup>63</sup> Many Tamil women I interviewed had been cast into the role of primary income earner and carer following the loss of men in their families. They were struggling with poor income generation and employment opportunities, physical and mental health issues as a consequence of the war, and were routinely harassed by military officers who remained dominant in their areas.<sup>64</sup> Contrastingly, urban centres and Buddhist religious sites were developed, and through a military-development-Buddhism nexus, attracted busloads of Sinhalese tourists to the area for the first time in decades, which left Tamils angry, insulted and distrustful of the transitional justice process.<sup>65</sup>

Neglect, particularly socio-economic, was also noticeable among the Sinhalese Buddhists in the border villages of the north and east. This can be attributed to their minority positioning as a numerically smaller group living beside Tamils and Muslims; they had a particular experience of the armed conflict that the majority in their own community did not have.<sup>66</sup> These villages too referred to experiencing poverty, and difficulties with income generation and employment opportunities, which particularly affected women military widows.<sup>67</sup> Even though the LTTE had been eliminated, they continued to feel anxious and insecure, having been victims of mass atrocities. However, in interviews and discussions they presented their demands with confidence and a level of entitlement, which observably contrasted with the often defeated, dejected, and hopeless attitude of the northern Tamils.

Muslims, though not seen to be party to the conflict, were also affected by it.<sup>68</sup> Possibly constituting ethnic cleansing, the entire northern Muslim population was forcibly evicted from the north by the LTTE mainly because they rejected Tamil as their ethnicity by asserting a separate Muslim ethnic and religious identity.<sup>69</sup> Muslims in the east experienced several atrocities at the hands of the LTTE, including when over 150 people were killed when observing prayers at the Kattankuddy mosque. Muslims who were targeted by the LTTE because they chose to assert a distinct identity, were fearful of articulating their differential position from within the minority homeland of the north and east.<sup>70</sup>

Though there were undoubtedly nuances and exceptions to these findings, as [Table 1](#) denotes, as a consequence of the above difference in victimhood, justice demands also

varied by group identity. Nearly every conflict-affected Tamil I interviewed prioritised truth and justice for families of disappeared. There was widespread anger among Tamil interviewees that mothers and wives of disappeared persons had been protesting for months to no avail and that the government offered them no response to the whereabouts of their loved ones. Many emphasised the need for some form of accountability for the crimes they faced in the last stage of the war, but only a few wanted prosecutions and even they were doubtful of achieving them. Most women, including survivors, considered meeting their everyday socio-economic and security needs as part of justice and accountability. They wanted income generation, livelihood, employment and housing provisions as well as support to meet the health needs of themselves and their families. As the following interviews show, security was critical to both Tamils and Sinhalese but they had very different interpretations of security. As one Tamil interviewee said 'after the military came we are afraid to go anywhere alone, we always go with someone else, we are afraid of being kidnapped or abused'.<sup>71</sup> Another explained:

The army is everywhere, hospitals, shops, we have to smile and associate with them. I hate them so much, when we go to a shop I see them showing their teeth, I feel like taking something and smashing them up. They have to leave our land.<sup>72</sup>

Sinhalese interviewees had a different perspective as these comments from a FGD discussion reveal:

We can walk on the streets because the war ended, but when we watch the TV we fear there is scope for another conflict, we fear it.

We don't want demilitarisation for at least 10–15 years because we fear another war.<sup>73</sup>

The militarisation of their homeland for Tamils raised anger, trauma, distrust and was considered an infringement of justice because the military was seen as perpetrators of the violations they suffered. Contrastingly, for Sinhalese in the border villages the maintenance of the military in the north was crucial for their own security.

Muslims on the other hand emphasised different aspects of justice, desperate for what they saw as decades of abandonment to be redressed they sought acknowledgement and other forms of reparations, including compensation.<sup>74</sup>

Our history needs to come out. Where they originated from, where they were forcibly displaced to, how they lived, what happened to them. A 25-year-old boy does not know what Mannar\* is like, similarly a young Tamil boy in the north does not what happened to us. It has to be properly recorded.<sup>75</sup>

\*Muslims were forcibly evicted from Mannar in northwestern Sri Lanka to Puttalam further south on the Westcoast of the country.

There were some shared notions of justice between minority groups, such as combatting the increasing Sinhalisation and Buddhisation.<sup>76</sup> Nevertheless, priorities varied; for instance, for Tamils non-repetition was crucial but many sought this through full political autonomy and self-determination with little desire to be ruled by a majority Sinhalese government. Muslims also prioritised non-repetition but hoped to achieve it through acknowledgements, commemoration and memorialisation, and geographically sandwiched between both communities they were eager for co-existence and reconciliation.<sup>77</sup>



Even though much of this variation was captured in the landmark report of the consultation process,<sup>78</sup> beyond it there was little attention given to the particularity of identity and minority status to victimhood, crimes and justice claims. I want to explore how and why this happened and in doing so I will identify the implications it ultimately had for the country's transitional justice process.

Firstly, the new government, which signified the 'transition' that enabled the process, maintained majoritarian nationalist tendencies without properly acknowledging the crimes against minorities and the President repeatedly appeased his majority electorate by defending the military against war crimes allegations, referring to them as 'war heroes'.<sup>79</sup> Whilst accusations of corruption and authoritarianism were made against the Rajapaksas, including attacks against journalists and human rights defenders, they faced no investigation for their role in atrocity crimes against minorities. Simultaneously, towards the end of the transitional justice process, the situation for minorities worsened; Muslims were especially affected by increased hate speech and crimes by Buddhist nationalists and received inadequate protection from the state.<sup>80</sup>

Secondly, some political and civil society representatives feared that privileging minorities would overly politicise the process. However, I would argue that the absence of doing so led to that very outcome. Sinhala nationalists hijacked the process and framed it as western invention aimed at putting 'national heroes', on trial, in courts with 'foreign judges'.<sup>81</sup> Tamil nationalists on the other hand rejected the state process seeking a referral to the International Criminal Court (ICC).<sup>82</sup> Victims I interviewed from both these communities were swayed by these positions; Sinhalese in the border villages referred to the transitional justice process as being unnecessary and expressed concerns of 'foreign interference' that could result in 'war heroes being imprisoned'.<sup>83</sup> Most Tamils, particularly in the north, distrusted the state and so believed solely that international justice was necessary and either distanced or rejected the process.<sup>84</sup> The binary framing of the conflict and therefore the transitional justice process left Muslims and other smaller groups feeling ignored and unincluded.<sup>85</sup>

Thirdly, the minority dimension was also undermined by some in government and civil society on the grounds that transitional justice needed to be a national level process. For example, in the early stages the Secretariat for Coordinating Reconciliation Mechanisms (SCRM), the government body charged with implementing aspects of the process, and some civil society groups, saw enforced disappearances as a national issue that affected the majority Sinhala community in the 1970s and 1990s to acknowledge that Sinhalese were also targeted for violations such as torture and extra-judicial killings.<sup>86</sup> Arthur, 2009, suggests 'neutralising' and finding 'cross-cutting themes', such as on gender, as strategies to encourage less divisive forms of identification. In Sri Lanka, the consequence of attempting 'neutralising' was that northern and eastern Tamils became resentful that the urgency of investigating the crimes and the specificity of identity to them was unrecognised to the extent that some even doubted the OMP when it was set up.<sup>87</sup>

Though at the international level specific minority claims were raised, the transitional justice model promoted in Sri Lanka was secular and unable to contend with the specific ethno-religious positionality. Additionally, the model is premised on a state led process with insufficient consideration of what constitutes the state and nation in the eyes of minorities. The northern and eastern Tamils fought decades for self-determination and

separation because the Sri Lankan state and ideas of nationhood were based on Sinhala Buddhist majoritarian hegemony. Similar to how feminist scholars and activists have questioned what composes a transition and whether a patriarchal state can deliver gender justice, minorities in Sri Lanka were left asking whether an ethnocentric, religious-nationalist state can offer any justice to minorities.<sup>88</sup> As part of the process consultations and trainings on transitional justice were conducted among religious leaders, but the state's alignment to one ethnicity and religion and the consequences of that for other groups in a state centred transitional justice process was not unpacked, neither were the interconnections between Buddhism, authoritarianism and the military which are well documented in Sri Lanka.<sup>89</sup>

### ***Minority rights approach – a possible solution?***

There is no broadly accepted description of a minority rights approach.<sup>90</sup> I define it as one that seeks to disrupt existing power hierarchies by putting the rights of non-dominant identity groups at the forefront. This has two dimensions: firstly, to assess the specific minority dimension by analysing the problem/situation/violation through a minority lens, i.e. how was the individual/group affected specifically/differently because of its identity or minority positioning. The second dimension involves foregrounding the rights of minorities, which does not rely only on minority rights per se but utilises the entire international human rights framework. At the core, of course, are the main principles of minority rights itself; the right to existence, identity, non-discrimination and participation all of which are critical to offering justice to groups whose identity and non-dominant status is the targeted reason for the violation. However, the framing of rights of minorities rather than minority rights calls for the recognition that because of their very non-dominant status members of particular groups may not have their other civil, political, economic, social and cultural rights protected in the same way as the majority. For example, if members of a minority group constitute a disproportionately high number of those facing arbitrary arrest and detention then respecting the minority rights regime is important to advance principles of non-discrimination and equal access to justice, as well as in understanding the link of identity to the crime. In addition the right to liberty and security of persons and the freedoms attached to it, also need recognition.

The above approach goes further than ensuring non-discrimination as it recognises the link between identity and non-dominant positioning to the violation itself, and in offering a rights-based approach supersedes simply recognising minority needs and positions.

With regards to transitional justice this would require that the factors determining the 'transition' include progressive positioning on minorities. In Sri Lanka the electoral defeat of the Rajapaksas was facilitated by minorities. The newly elected President, Maithripala Sirisena, initially presented a reconciliatory tone in his public messaging and arguably the government's commitments made to the UN HRC process signified some level of acknowledgement of serious crimes against the Tamil population during the end of the war.<sup>91</sup> A more substantive statement which outlined the need to investigate historical harm done to minorities, even if not acknowledging the nature and extent of

the crimes that took place, could have put minorities at the forefront of the transitional justice agenda.

In addition, transitional justice implementors must at the very foundational stage: recognise and map all of the identity groups affected by the violations and crimes for which truth, justice and accountability are being sought, acknowledging diversity and difference including contestations of victim groups within a minority group; seek out connections between identity/minority positioning with the nature and extent of the crimes; and commit to guaranteeing basic principles of the right to identity, non-discrimination and participation in addition to other rights of all groups throughout the process.

Arthur offers an analytical framework for this, which responds to the identity dimension,<sup>92</sup> but does not sufficiently acknowledge the particularity of the minority positioning. Contending with identity is important in relation to both the majority and minority community, however, the Sri Lankan case illustrates how the non-dominant position of a group is critically linked to the nature and extent of violations and more so to the denial of accountability.

Following this analysis, the second step is to integrate the protection of minorities and their rights, above and beyond the minority rights framework, into all aspects of transitional justice. Guaranteeing the rights to participation and non-discrimination is particularly important to safeguard minority interests and positions on justice throughout a process.

Noteworthy is that a minority rights approach does not give any group superiority. Rather it elevates all non-dominant groups to the level of the dominant ones, but goes beyond equality, non-discrimination and special protection/measures as it based on a specific rights guarantees.

This same framework can extend to each of the mechanisms as they are designed and implemented. Hence, a truth commission will assess the identity landscape and ensure full participation of all groups. It will seek to understand, collect information and analyse the association between identity and minority positioning to the execution of crimes and/or violations, and thereby record the full range of rights violations experienced by the individuals within a specific group, discover which of these were targeted against them and not; and apply a minority rights framework all throughout, including ensuring non-discrimination and full emancipatory participation of all. In the case of reparations this approach would mean that the individual and group harm is assessed including based on identity and minority status, the nature and extent of crimes are analysed through a minority lens, and reparation is offered in keeping with the principles of minority rights.

### ***The contribution of a minority rights approach to transitional justice***

The contribution of such an approach to transformative transitional justice, I argue, are fourfold. Firstly, it clarifies and expands on definitions and understanding of victims and perpetrators. De Greiff, 2014, refers to victim recognition as a mediate goal of transitional justice where not only the extent of the harm done to victims, including their dehumanisation, is accounted for but in doing so they are recognised as '(equal) rights bearers and, ultimately, as citizens'.<sup>93</sup> To do so, addressing what



impedes the realisation of 'equal' rights, including understanding the association of identity and minority positioning to the harm and dehumanisation process, is necessary. As the Sri Lankan case illustrates, victim identity was closely connected to the nature and extent of harm. Recognising this in a transitional justice process can enable a deeper, more validating understanding of victimhood and ensure the category of victim is inclusive, with non-dominant groups also being represented. Arthur, proposes two methods to achieve this; 'mainstream an intercultural approach all throughout', or 'introduce a few culturally specific actions'.<sup>94</sup> Both are limited because they reduce identity to culture and do not sufficiently foreground identity within transitional justice as a minority rights approach can.

Similarly, a minority rights approach can help to demystify and accurately categorise perpetrators, including in progressing from the victim-perpetrator binary. In the Sri Lankan case, viewing the conflict related violations through a minority lens at the very inception may have provided an opportunity to raise conversations around the ethno-religious positioning of the state as a perpetrator of crimes and violations against minorities, whilst questioning assumptions of the state's ability to guarantee rights for all groups. Such an approach could also have helped the northern Tamil population realise the atrocities committed by the LTTE against other communities, such as Muslims, whilst moderating the anger of the majority population towards the rebels by framing their struggle through ethnic grievances. Moreover, doing this through the analytical frame of the right to identity or the right to non-discrimination asserts a sense of substantive entitlement rather than perhaps a grievance-based claim.

Secondly, a minority rights approach counters polarisation between the main parties to the conflict and ensures that through principles of equality, non-discrimination and inclusivity no group is left behind. This is particularly important where there are a number of small ethnic, religious groups, such as Muslims, Christians and Malaiyaga Tamils in Sri Lanka, who suffer specific crimes but could be side lined in a process.

In expanding victim and perpetrator categories and ensuring greater inclusivity, a minority rights approach can challenge power hierarchies and levels of privilege that transitional justice is currently criticised for enabling. An approach that is embedded in defying dominance through principles of equality and non-discrimination is well suited to work towards transformative change. Additionally, the emphasis on right to participation without discrimination focuses on process rather than outcome which is also a goal of transformative justice.<sup>95</sup>

Thirdly, a minority rights approach can enable identity-based differential justice needs, patterns and cycles of violations, historic marginalisation, structural violence and discrimination to be recognised and addressed. These complexities and nuances can only really be ascertained through a thorough minority and identity analysis and be responded to through a rights-based approach. In Sri Lanka the atrocities suffered by Tamils and Muslims at the end of the war and after, were part of a continuum of rights violations and discrimination against minorities that was endorsed by majoritarian nationalism. Attempting to deliver justice without recognising and dealing with this would have been futile.

All of these factors are also integrally linked to the long-term goals of transitional justice, democratisation, reconciliation and peace-building.

The Sri Lankan case illustrates closely how authoritarianism and ethnic religious majoritarianism are entwined, and this has to be contended with for genuine democratic reform.<sup>96</sup> A minority rights approach has the potential to develop this link between a country's authoritarian past and conflict context, not through neutralising or ethnising violations, but through exposing the full extent of the systemic and structural machinery within a state that enables gross crimes to take place. This is important for richer democratisation that does not rely only on freedoms for the majority.

Similarly, an accurate understanding of the factors that caused, enabled and led to the commission of crimes and violations is essential for non-recurrence, which is a pillar of transitional justice. Downplaying the specific link between victims' identity and the crimes, such as how Tamils were more prone to arbitrary arrest and detention under PTA or Muslims were ethnically cleansed from their homeland, is a serious omission and can affect reconciliation and peace building.

Reconciliation is complex and multi-dimensional; it involves victims having to reconcile with the fact that serious violations or atrocity crimes were committed by the state, their own or another community as well as reconcile with each other.<sup>97</sup> The complexity of the presence of multiple perpetrators in conflict contexts, where grievances and ideas of victimhood are complex and harden over time, makes this process ever more difficult. In my research, I found many Sinhalese in the border villages, ignorant of the extent of harm done to Tamils, did not see the need for reconciliation. They believed that socio-economic development was a higher priority and would resolve grievances. Trauma, economic-social difficulties, continuing violations and the denial of truth and justice left most Tamils I interviewed disinterested in reconciliation with others. As a consequence of their situation there was nostalgia for the past and they struggled to see Tamil militants as perpetrators. In combining the right to identity and non-discrimination a minority rights approach provides an opportunity to raise these issues openly in order for communities to attempt to deal with and respond to the specific ethnic, religious dimensions to conflict, justice and redress.

### ***Challenges of a minority rights approach***

Such a minority rights approach to transitional justice is, of course, not without drawbacks. One of the primary issues is the definitional and inclusion criteria, for instance where groups may identify as a nation, as Ceylon Tamils do, rather than as a minority. The historical distancing of self-determination as a minority right further problematises the approach. Constructing a minority rights approach within the existing normative critiques and acknowledging its full potential in the larger human rights framework is essential for it to be taken seriously by transitional justice. The right to identity is the essence of minority rights, as is non-discrimination; an approach to transitional justice that privileges these will not affect the groups' positioning whether as nation, 'homeland minority' or 'smaller minority' all of which can articulate their specific positions, including self-determination, through the right to participation. In doing so, it will also ensure that other groups, including numerically smaller ones such as minorities within minorities, are not marginalised. Moreover, ethnic and religious identities are not fixed categories, they can be socially constructed and change due to conflict and mass atrocities among other factors. There are implications to transitional justice of these identity

formations and categorisations, including on who is included and not. Such dynamics and variables do not render the approach weak, they merely require attenuation.

The second possible area of contention is group versus individual rights claims. My proposal demands the recognition of violations done to individuals on the basis of their group identity. This falls in a grey area in both transitional justice and minority rights as both have been critiqued for undermining group identity. However, the thesis here is not significantly beyond the broad framing of both as it urges the application of a minority/identity lens in making individual civil, political, economic, and social rights claims. In any case the minority rights framework itself rests on the idea of 'persons belonging' to a particular group and, as explained previously, treaty bodies have already acknowledged notions of group rights.

The final issue is the danger of the specific focus on identity in relation to reconciliation and transformation. For example, can the focus on identity to victimhood or crime subvert reconciliation by causing further divides in a post-conflict context, especially if a transitional justice process provides opportunities for politicising identity? Another concern is whether such an approach can deviate from understanding and acknowledging the state's capacity to commit structural violence irrespective of the identity dimension, thereby affecting genuine transformation. In the case of the latter, in Sri Lanka, the question that would arise is whether a minority rights approach would ignore the structural violence perpetrated by the state against the majority community including in the two Marxist uprisings.

On the former, as my research and other academics<sup>98</sup> have demonstrated, transitional justice is inherently political. Undermining identity issues and grievances, as Sri Lanka aptly illustrated, only fuels politicisation further impeding transitional justice. With regards to the latter, it is important to assert that this article does not suggest a minority rights approach exclusively, rather the call here is for greater inclusivity to ensure that identity and the rights of minorities are not undermined, marginalised or neglected. This does not mean denying or reducing violations suffered by the majority, rather a balancing of scales by challenging the dominant narrative and bringing the minority perspective into the mainstream without letting it remain peripheral and in danger of being framed as 'nationalists', 'extremists', or of 'terrorist sympathisers'. Finally, a minority rights approach must co-exist with other approaches including gender, especially to ensure holistic transitional justice if religious or cultural identity is used to deny justice for women.

## Conclusion

This article's proposition of a minority rights approach to transitional justice does not avoid the complexities that surround it. Mainly due to the limitations of minority rights as a field, this is not a problem free approach. Nevertheless, through a broader interpretation of minority rights this article seeks to resolve a serious shortfall within the field of transitional justice.

Transitional justice presently neglects non-dominant identity groups, particularly in post-conflict contexts. Notably it largely disregards the possible hegemonic relationship of ethnicity/religion to the state and it undermines the role of identity to violations and victimhood, when the crimes committed do not constitute genocide. The consequences



of this are many, including that it alienates and is disowned by different groups, discriminates and excludes and affects reconciliation and transformation. Arguably, some of these factors can be resolved by privileging minorities during the transitional justice process, but as the Sri Lankan case shows, the failure to do so at the very inception is already quite damaging. Moving beyond a critique of these factors, this article provides a minority rights approach to transitional justice which involves: assessing the situation of all minorities, analysing crimes, violations and victimhood through a minority lens and applying a broadly interpreted minority rights framework. It argues that in doing so transitional justice can be inclusive, effective, better meet its goals and have the potential to produce transformative change.

## Notes

1. United Nations Secretary-General, *Guidance Note on United Nations Approach to Transitional Justice* (2010) [https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/TJ\\_Guidance\\_Note\\_March\\_2010FINAL.pdf](https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/TJ_Guidance_Note_March_2010FINAL.pdf) (accessed on 11 March, 2024) for a definition of transitional justice. The reference here to genocide is in the cases where the UN has declared one, such as in Srebrenica (1994), Rwanda (1994) and Darfur (2004).
2. Some indigenous groups may identify as minorities, but indigeneity and link to ancestral lands are among a number of factors that differentiate them from minority groups, based on which they enjoy a different set of rights under the international human rights framework.
3. Francesco Capotorti, *Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities* (New York: UN Publications U.N. Doc, 1979, E/CN.4/Sub.2/384/Rev.1) for a working definition on minorities. Kelly D. Askin, 'The Quest for Post-conflict Gender Justice', *Columbia Journal of Transnational Law* 41 (2003): 509; Fiona Ni' Aolain, 'Advancing Feminist Positioning in the Field of Transitional Justice', *International Journal of Transitional Justice* 6, no.2 (2012): 205–28 have argued for gender justice in transitional justice.
4. Paige Arthur, *Identities in Transition: Developing Better Transitional Justice Initiatives in Divided Societies* (New York: International Centre for Transitional Justice, 2009); Paige Arthur, ed., *Identities in Transition: Challenges for Transitional Justice in Divided Societies* (Cambridge: Cambridge University Press, 2010).
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6. UN Secretary General, *Guidance note*.
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10. Fernand de Varennes, *Report of the Special Rapporteur on Minority Issues, conflict prevention through the protection of the rights of minorities*, A/HRC/49/46, 202, <https://www.ohchr.org/en/special-procedures/sr-minority-issues/annual-reports> (accessed 30 January, 2023).
11. Arthur, *Identities in Transition*.

12. During this time I conducted research, wrote and published policy reports and advocated at the international level for the rights of minorities living in conflict affected countries, building a strong conceptual understanding of minority rights
13. From 2016 to 2018, I conducted field work as part of independent consultancies for various different organisations including the United Nations Development Programme (UNDP), International Crisis Group (ICG), International Centre for Ethnic Studies (ICES) and the Neelan Thiruchilvam Trust (NTT). Between 2019-2022, I conducted a number of brief research trips to the north and east of Sri Lanka and continue to update my research through staying in close contact with civil society and community activists from these areas.
14. These were mainly semi-structured Key Informant Interviews (KII) with local and national civil society activists, academics and journalists, victim group representatives and religious leaders. The selection criteria depended on the specific project I worked on and was often based on those who were involved in transitional justice, victim movements or peace building initiatives.
15. These include: (a) Youth from minority groups in north western Mannar; (b) Muslim women returnees in Jaffna; (c) Women victim representatives in Killinochchi; (d) Muslim and Tamil youth activists in Batticaloa. All groups had between 8 and 12 participants and were selected by leading civil society organisations in the area.
16. Marisa de Silve, Nilshan Fonseka and Farah Mihar, *The Forgotten Victims of War: A Border Villages Study*. Neelan Thiruchilvam Trust (13 October, 2019). Last accessed on 22 April, 2022. <https://srilankabrief.org/wp-content/uploads/2019/10/The-Forgotten-Victims-of-War-A-Border-Village-Study-FINAL.pdf>; for further details on this research.
17. Though the research was primarily for non-academic purposes I followed general guidance on ethics provided by UK universities. Between 2016 and 2018 I was a Research Associate at the University of Sussex and from 2018 to 2022 I was employed at the University of Exeter. As these interviews pertained to issues of justice for conflict related atrocities and included the identifying of perpetrators there was a high level of risk to interviewees and thereby most of the content was anonymised.
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21. De Greiff, 'Theorising Transitional Justice'.
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23. Patricia Lundy and Mark McGovern, 'Whose Justice: Rethinking Transitional Justice from Bottom Up', *Journal of Law and Society* 35, no. 2 (June 1, 2008): 265–92; Paul Gready and Simon Robins, *From Transitional to Transformative Justice* (Cambridge: Cambridge University Press, 2019); Stephanie Vieille, 'Transitional Justice a colonizing field?' *Amsterdam Law Forum* 4, no.3 (2012): 58–68.
24. Vasuki Nesiah, 'Saviours, Victims and Savages' on the Post Conflict Circuit: The Field of Transitional Justice' in *Transitional Justice in Sri Lanka: lessons so far and the long road ahead*, ed. Bhavani Fonseka (CPA: Colombo, 2017); Lundy, 'Whose Justice;' and Gready and Robins, 'From transitional to.'
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26. De Greiff, 'The Future'.
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28. The work of Paige Arthur remains an exception and see Chris Chapman, 'Transitional Justice and the Rights of Minorities and Indigenous Peoples' in Paige Arthur, Ed, 2010.
29. UN, 'Secretary-General's remarks at the High-Level Meeting on the 30th Anniversary of the Adoption of the Declaration on Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities' (21 September, 2022) <https://www.un.org/sg/en/content/sg/statement/2022-09-21/secretary-generals-remarks-the-high-level-meeting-the-30th-anniversary-of-the-adoption-of-the-declaration-rights-of-persons-belonging-national-or-ethnic-religious-and> (accessed January 30, 2023).
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50. The University Teachers for Human Rights website: [www.uthr.org](http://www.uthr.org) (accessed August 19, 2022) provides the best available documentation of violations committed by all parties to the armed conflict during the course of the armed conflict. Amnesty International, *Locked Away: Sri Lanka's Security Detainees* (London: Amnesty International, 2012); Human Rights Watch, "In a legal blackhole." *Sri Lanka's Failure to Reform the Prevention of Terrorism Act*, 2022, [https://www.hrw.org/sites/default/files/media\\_2022/02/srilanka0222\\_web.pdf](https://www.hrw.org/sites/default/files/media_2022/02/srilanka0222_web.pdf) (accessed February 2, 2023) for reports on the human rights violations under PTA.
51. United Nations, *UN Secretary General's Panel*; Office of the High Commissioner for Human Rights (OHCHR), *Report of the OHCHR investigation on Sri Lanka (OISL)* (2015) <https://www.ohchr.org/en/hr-bodies/hrc/oisl> (accessed August 8, 2022); International Crisis Group, *War crimes in Sri Lanka*, 2010. <http://www.crisisgroup.org/en/regions/asia/south-asia/sri-lanka/191-war-crimes-in-sri-lanka.aspx> (accessed July 30, 2022) all provide the best available documentation of violations of international laws in the last stages of the armed conflict and the manner in which the Sri Lankan military and LTTE conducted warfare.
52. United Nations, *UN Secretary General's Panel* estimated 40,000 people were killed in the last stages of fighting. In 2010, in a submission to the Lessons Learnt and Reconciliation Commission (LLRC) of Sri Lanka, the Bishop of Mannar, Joseph Rayaippu, presented census statistics showing the population of Vanni at 429,000, whilst less than 300,000 people were accounted from the same areas after the war ended. For a good analysis of this see International Crisis Group, *Sri Lanka the Dead and Missing a Need Accounting*, 2012. <https://www.crisisgroup.org/asia/south-asia/sri-lanka/sri-lankas-dead-and-missing-need-accounting> (accessed July 8, 2022). United Nations, *UN Secretary General's panel*; OHCHR, *Report of the OHCHR investigation* and Minority Rights Group International. *No war no peace: the denial of minority rights and justice in Sri Lanka* (2011) <http://www.minorityrights.org/10458/reports/no-war-no-peace-the-denial-of-minority-rights-and-justice-in-sri-lanka.html> (accessed July 30, 2022) for an overview of post-war human rights violations.
53. United Nations, *UN Secretary General's Panel* ; OHCHR, *Report of the OHCHR and International Crisis Group, Sri Lanka's Authoritarian Turn: The Need for International Action*, Asia Report No. 243, (ICG: Brussels, 20 February, 2013) provide details of the Sri Lankan government's response. David Lewis, 'The Failure of a Liberal Peace: Sri Lanka's Counter-Insurgency in Global Perspective,' *Conflict, Security & Development* 10, no. 5 (2010): 647–71.
54. Bart Klem, 'The Problem of Peace and the Meaning of 'Post-War,' *Conflict, Security & Development* 18, no.3 (2018): 233–55. A.R.M. Imtiyaz and Amjad Mohamed-Saleem, 'Muslims in Post-War Sri Lanka: Understanding Sinhala-Buddhist Mobilization Against Them,' *Asian Ethnicity* 16, no.2 (2015):186–202; Gehan Gunatilleke, *The Chronic and the Acute: Post-War Religious Violence in Sri Lanka* (ICES, Colombo, 2015) for details of religious violence.
55. UN Human Rights Council Resolution, 'Promoting reconciliation, accountability and human rights in Sri Lanka,' A/HRC/30/L.29, September 2015 [hereinafter UN Resolution 30/L.29] <https://digitallibrary.un.org/record/812286?ln=en> (accessed June 9, 2023); Bhavani Fonseka, *Transitional Justice in Sri Lanka: lessons so far and the long road ahead*,

- (CPA, Colombo, 2017) for an explanation on the significance of the proposed project, especially in consideration of previous failures on accountability.
56. The resolution was renewed in 2017 and through the nearly five years of the process the High Commissioner for human rights routinely reported to the council on the progress of implementation. In addition, the Special Rapporteur visited a number of times, was actively involved in advising the government all through the process and reported to UN HRC on Sri Lanka's progress. Statements by them can be found on the Office of the High Commissioner for Human Rights country page on Sri Lanka: <https://www.ohchr.org/en/countries/sri-lanka> (accessed February 2, 2023)
  57. Pablo de Greiff, 'Observations by the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees Of Non-Recurrence, Mr. Pablo de Greiff, on the conclusion of his recent visit to Sri Lanka' (23 October, 2017) <https://www.ohchr.org/en/statements/2017/10/observations-special-rapporteur-promotion-truth-justice-reparation-and> (accessed June 15, 2023).
  58. Interview with mother of three, widowed in the shelling in the last stages of the war, Periya Madu, May, 2017.
  59. International Crisis Group (ICG), *Sri Lanka's Conflict Affected Women Dealing with the Legacy Of War*, Asia Report No: 289 (2017) <https://www.crisisgroup.org/asia/south-asia/sri-lanka/289-sri-lankas-conflict-affected-women-dealing-legacy-war> (accessed August 8, 2022) provides details of this including quotations from interviewees.
  60. International Committee of the Red Cross (ICRC), *Living with uncertainty: Needs of the families of missing persons in Sri Lanka*, (ICRC, Colombo, 2016), [https://www.icrc.org/sites/default/files/wysiwyg/Worldwide/asia/sri-lanka/families\\_of\\_missing\\_persons\\_in\\_sri\\_lanka\\_-\\_living\\_with\\_uncertainty.pdf](https://www.icrc.org/sites/default/files/wysiwyg/Worldwide/asia/sri-lanka/families_of_missing_persons_in_sri_lanka_-_living_with_uncertainty.pdf) (accessed 20 August 2022) suggests that 70 percent of families believe their loved ones may be alive. Details on the nature of enforced disappearances including on the surrender of family members can be found in the United Nations, *UN Secretary General's*, OHCHR, OISL and ICG, *Sri Lanka's conflict affected*.
  61. Excerpts from interview with a mother participating in the protest by families of disappeared, Kilinochchi, June 2017.
  62. See the Sri Lanka Campaign, map of the 'Occupation and appropriation of land by Sri Lankan military', <https://srilankacampaign.org/militarisation-in-sri-lanka-part-1-the-military-and-the-economy/> (accessed January 15, 2024) for details of civilian lands under military control.
  63. For a detailed review of the situation in the conflict affected areas see *ibid* and on continuing human rights violations in the north of Sri Lanka see the Adayalam Centre for Policy Research, situation briefings, <http://adayaalam.org/category/briefs/> (accessed August 20, 2022). Large scale development projects, including building roads and highways, were taking place in the north and east but government attention to improving the lives and livelihood of war affected people was minimal.
  64. ICG, *Sri Lanka's conflict affected*.
  65. See Rachel Seoighe, 'Inscribing the Victor's Land: Nationalistic Authorship in Sri Lanka's Post-war Northeast,' *Conflict, Security and Development* 16, no. 5 (2016): 443–71 for details of this nexus.
  66. Marisa De Silva, Nilshan Fonseka and Farah Mihlar, *The Forgotten Victims of War: A Border Villages Study*, Neelan Thiruchilvam Trust, <https://srilankabrief.org/wp-content/uploads/2019/10/The-Forgotten-Victims-of-War-A-Border-Village-Study-FINAL.pdf> (accessed April 22, 2022).
  67. *Ibid*.
  68. Farah Mihlar, 'Religious Change in a Minority Context: Transforming Islam in Sri Lanka', *Third World Quarterly* 40, no. 12 (2019): 2153–69.
  69. Farah Mihlar, *Coming out of the Margins: Justice and Reconciliation for Conflict-Affected Muslims in Sri Lanka* (Colombo: International Centre for Ethnic Studies, 2018).
  70. *Ibid*.
  71. Interview with Tamil woman primary school teacher, Jaffna, June 2016.

72. Interview with Tamil woman activist, Killinochchi, June 2016.
73. Excerpt from FGD with Sinhalese military widows, Anuradhapura, November 2017.
74. Ibid
75. Interview with Muslim civil society activist who was forcibly evicted from the north in 1990, Puttalam, June 2016.
76. See MRG, *No war, no peace*, ICG, *Sri Lanka's Conflict affected* 2017, Seoighe, 'Inscribing the victors' and International Crisis Group, *Sri Lanka's North I: The denial of minority rights*, Asia Report No: 219 (2012) <https://www.refworld.org/docid/4f6452cb2.html> (accessed August 8, 2022).
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81. Paikiasothy Saravanamuttu, 'Politics of Reconciliation,' in *Transitional Justice in Sri Lanka: Lessons so far and the Long Road Ahead*, ed. Bhavani Fonseka (CPA: Colombo, 2017).
82. Ibid.
83. Excerpts from Focus Group interviews in Anuradhapura,
84. Many Tamil interviewees said they distrusted a Sinhalese government to offer them a solution and therefore demanded international intervention though they were unable to explain what form such an intervention could take.
85. Mihlar, *Coming out of*.
86. CTF, Final report of.
87. When I started my research in 2016 the OMP was hurriedly set up through a parliamentary bill whilst many victims had not been properly informed about the transitional justice process. Victims highlighted their distrust and disinterest in cooperating with the office though subsequently many did participate in OMP hearings in the north. See Amnesty International, 'Sri Lanka: The government cannot afford to fail the Office on Missing Persons' (21 October 2018), <https://www.amnesty.org/en/latest/news/2018/10/sri-lanka-the-government-cannot-afford-to-fail-the-office-on-missing-persons/> (accessed January 16, 2024).
88. See references on gender justice supra n 2.
89. Farah Mihlar, 'Autocratisation, Buddhist Nationalist Extremism and the Muslim Minority in Sri Lanka,' in *Routledge handbook on Autocratization in South Asia*, ed Sten Widmalm (Routledge, 2022).
90. Chapman, 'Transitional Justice and rights of', discusses the importance of minority rights in transitional justice but does not develop a comprehensive approach, nor does his work speak to the current literature on transitional justice.
91. International Crisis Group, *Sri Lanka's Transition to Nowhere* (2017 b) Asia Report 286, <https://www.crisisgroup.org/asia/south-asia/sri-lanka/286-sri-lanka-s-transition-nowhere> (accessed August 11, 2022).
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94. Arthur, *Identities in Transition*.
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No potential conflict of interest was reported by the author(s).

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