

Chapter 6 Sri Lanka

A Mosaic Under Stress

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This chapter examines the status of ethnic and religious minority rights in Sri Lanka. This introductory section is followed by three parts, with the first discussing the legal framework and the efficacy of its implementation. The second part provides an analysis of the current status of minorities' right to life and security, right to non-discrimination and equality, right to participation and right to culture and identity. The third part focuses on recommendations and next steps.

A nation with a rich heritage, history and the cultural inheritance of several communities, Sri Lanka has been described as an 'ethno-religious mosaic' (Perera, 2011: 11). Over time, however, instead of unity in diversity, many tensions and conflicts have arisen that have culminated in violence and war, driving deep wedges between ethno-religious groups.

Statistics from the 2012 Census demonstrate that 74.9 per cent of Sri Lanka's population was Sinhala and approximately 15.2 per cent was Tamil (including around 4 per cent Indian Tamils in the estate plantation sector). Moors constituted about 9.2 per cent of the population and Buddhists over 70 per cent while 12.6 per cent were Hindus, 9.7 per cent were Muslims and Christians constituted about 7.4 per cent of the population (Department of Census and Statistics, Sri Lanka, 2012). Due to assimilation with Sinhala and Tamil communities, the Adivasi (Veddah community) is now very small in number and is limited to only a few thousand (Stageborn, 2004).

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Given that they trace their descent to the distant past, Sri Lankan Tamils are a native minority. Indian Tamils were brought to Sri Lanka during the British colonial era to work on estate plantations in the central highlands and a majority of them are members of castes considered low in the Indian caste system. It is important to note that Tamils are largely Hindus or Christians by way of religious affiliations (Ross and Savada, 1988).

The Muslim community is divided into three main sections-- Sri Lankan Moors, Indian Moors and Malays. Sri Lankan Moors trace their ancestry to the time between the 8th and 15th centuries when Arab traders migrated to southern India and Sri Lanka. Indian Moors trace their origins to the colonial period. Malays were originally from South East Asia and came to Sri Lanka during the time of Dutch colonization. In addition, the Bohra and the Khoja migrated from north-western India after 1880 and are very few in number (Ross and Savada, 1988).

Burghers, who make up a very small percentage of the population, are permanent residents who can trace their ancestry back to Europeans. The term was initially used to refer to European nationals living in Sri Lanka during Dutch rule, but subsequently included Portuguese Burghers too (Ross and Savada, 1988).

Sinhala Buddhists are a majority in most parts of the island except for the northern and eastern provinces whereas Muslims are scattered throughout the country with a heavy presence in the east. Tamil Hindus have their largest concentration in the northern province with significant numbers in the eastern province and in Colombo. Sinhalese too are found in significant numbers in the east. Indian Tamils are mostly in the plantation sector and based in the central, Uva and Sabaragamuwa provinces with significant numbers in Colombo too. Christians are concentrated mainly in the coastal belt but are scattered throughout the country.

Sri Lanka is in fact not casteless in that approximately 20 to 30 per cent of its people are victims of caste-based discrimination. The caste-blind policies of the state and all other stakeholders, however, do not effectively deal with discrimination in this sphere. Underprivileged caste groups in minority ethnicities are generally victims of double discrimination (Silva et al., 2009).

Among the Sinhalese, drummers from Welivita, Kinnara from Henawala and Rodi from Kuragala are subject to some forms of discrimination. The Nalavar and Pallar castes of Sri Lankan Tamils in the Jaffna area and

Chakkiliyars and Parayars of the Indian Tamil community are particularly subjected to discrimination (Silva et al., 2009).

According to Jayawardena:

The history of ethnic conflict in Sri Lanka is the history of emergence of consciousness among the majority community, the Sinhala, which defined the Sri Lanka society as Sinhala-Buddhist, thus denying its multi-ethnic character. The growth of this consciousness impinged on the minorities in Sri Lanka to the extent that internal resolution of the problems became impossible... (Jayawardena, 1987).

The end of the three-decade long armed conflict between the state and the separatist Liberation Tigers of Tamil Eelam (LTTE) in 2009 should have ushered in a new era of peace. While the absence of war laid to rest many anxieties and fears that had ravaged the nation, many of the cracks and crevices in the social fabric remained and newer ones have further aggravated the situation. In fact, even after 2009, there was a brutal crackdown on free expression and/or dissent, particularly by minorities, impugning the very foundations of democracy.

Even five years after the end of the war, in 2014 there was a heavy military presence in the north. In January 2014, President Rajapakse claimed that there were 12,000 military personnel in the north, but only two days thereafter the Secretary to the President Lalith Weeratunga claimed the presence of 80,000 military personnel. Further, the then government adopted a practice of acquiring swathes of private land in the northern and eastern provinces for military use under the guise of 'public purpose'. There was also evidence that such acquired property was given out for commercial ventures (Centre for Policy Alternatives, 2015a). Under the new regime, however, a few steps have been taken in the right direction by returning land to its original owners (Centre for Policy Alternatives, 2015b). However, these steps are too few and overdue.

Post-war triumphalism has also prompted a reawakening of ethno-nationalism and identity politics (Keerawella, 2013). There has been a radical increase in anti-Muslim sentiments due to the emergence of certain fascist Sinhala-Buddhist nationalist groups such as the Bodu Bala Sena (BBS) (Gunatilleke, 2015a). The Secretariat for Muslims recorded 284 incidents of threats, attempted attacks, harassment, incitement and provocations directed at Muslims in 2013 (INFOGRAPHIC, 2014).

From about the mid-13th century, Muslims have had a recorded presence in Sri Lanka and the bond between the Muslims and Sinhalese was quite strong at the time of the Portuguese invasion (Haniffa, 2010). When the Portuguese violently expelled Muslims in the coastal areas in order to take over their trade, they were compelled to migrate inland and appeal to the Sinhala kings of the time for protection; they were given land to settle on. Subsequently, at the time of the Dutch invasion, there were well-established coastal and inland Muslim communities in Sri Lanka. Thus, even though the Muslims had been provided protection by the Sinhalese during Portuguese and Dutch rule, during the 1915 riots the entire Muslim community felt threatened by Sinhalese rioters. The foundation for the 1915 riots was primarily based on the construction of a mosque in Gampola in 1907 along the route of a much venerated Buddhist procession. The Muslims in the north and east were badly affected due to the ethnic conflict between the Sinhalese and Tamils as well, with the most affected being northern Muslims. They were ethnically cleansed from LTTE controlled areas as the terrorists ordered them out in October 1990. This resulted in 15,000 Muslims fleeing within the 48-hour deadline. These Muslims are now scattered throughout the island with a heavy concentration in Puttalam district (Haniffa, 2010).

The domestic legal framework

The Second Republican Constitution (1978) and a judicial interpretation of its provisions

The chapter on Fundamental Rights in the Sri Lanka Constitution does not explicitly confer a right to life. However, this has been implicitly recognized by the Supreme Court.¹

Article 10 of the Constitution says that ‘every person is entitled to freedom of thought, conscience and religion, including the freedom to have or to adopt a religion or belief of his choice.’ Article 12(1) provides that all persons are equal before the law and are entitled to equal protection by law. Article 12(2) specifically provides that no citizen shall be discriminated against on grounds of race, religion, language, caste, sex, political opinion, place of birth or on any such ground. Article 12(3) further states that ‘no person...on the grounds of...be subject to any disability, liability, restriction or condition

1. Sriyani Silva v. Iddamalgodā 2 Sri. L. R. 63 (Supreme Court of Sri Lanka, 2003).

with regard to access to shops, public restaurants, hotels, places of public entertainment and places of public worship of his own religion.’

Article 14(1)(e) states that ‘every citizen is entitled to the freedom, either by himself or in association with others and either in public or in private, to manifest his religion or belief in worship, observance, practice and teaching.’

Articles 10, 12 and 14 of the Constitution are justiciable. Further, Articles 10 and 12 confer absolute rights. However, Article 14(1)(e) can be restricted by Article 15(7) on the basis of ‘national security, public order and the protection of public health and morality, or for the purpose of securing due recognition and respect for the rights and freedom of others, or of meeting the just requirements of the general welfare of a democratic society.’

Article 9 of the Constitution states that ‘the Republic of Sri Lanka shall give to Buddhism the foremost place and accordingly it shall be the duty of the State to protect and foster the Buddha Sasana, while assuring to all religions the rights granted by Articles 10 and 14(1)(e).’ As such, even though parity among all religions is technically protected under Article 9, a judicial interpretation of the article has rendered such safeguards almost nugatory as far as the manifestation of minority religious beliefs is concerned.²

In ‘Provincial of the Teaching Sisters of the Holy Cross of the Third Order of Saint Francis in Menzigen of Sri Lanka Incorporation,’ the petitioners challenged a bill which sought to incorporate an order of nuns of the Roman Catholic church on the grounds that the incorporation of such a body would lead to unethical conversions or proselytism.

In this case the Supreme Court said that (interpreting Articles 10 and 14(1)(e) of the Constitution) although the Constitution allowed a person the right to manifest, observe or practice one’s religion, it did not ensure a fundamental right to propagate religion.

The determination of the Supreme Court in this case (incorporation) was based on the Preamble and Clauses 3 and 5 of the bill. The Preamble states that the organization would provide shelter to orphans, children and

2. Prohibition of Forceful Conversion, S.C. Special Determination No. 4/2004 (Supreme Court of Sri Lanka, 2004).

the aged. Spreading knowledge about Catholic religion was one of the objects set out in Clause 3, and Clause 5 sought to give authority to the incorporated body to hold and transfer property.

The Supreme Court determined that the bill was inconsistent with Article 9 of the Constitution, which gave Buddhism the foremost place and thus placed limitations on minority religions 'propagating' their faith to members outside their religious communities.

Consequent to the Supreme Court's decision in *Menzingen*, there was a government-led effort to introduce an anti-conversion legislation. After the *Jathika Hela Urumaya* bill was tabled in Parliament, the constitutionality of the bill was challenged in the Supreme Court which held that the term 'allurement' in the bill needed to be narrowed in its scope to explicitly include the words 'for the purpose of converting a person from one religion to another'.

The Constitution of Sri Lanka, through the Directive Principles of State Policy in Article 27(5) provides that the 'state shall strengthen national unity by promoting co-operation and mutual confidence among all sections of the people of Sri Lanka, including racial, religious, linguistic and other groups...' Article 27(6) mandates that 'the State shall ensure equality of opportunity to citizens, so that no citizen shall suffer any disability on the ground of race, religion, language, caste, sex, political opinion or occupation.' It is noteworthy that even though Article 27 is not justiciable, the Supreme Court in *Bulankulama and Others v. Minister of Industrial Development and Others*³ held that the Directive Principles of State Policy placed an obligation on the state to ensure the progressive realization of the relevant right. As such, it can be argued that the state is duty-bound to create an environment conducive for empowering those of all faiths to effectively practice their beliefs (National Christian Evangelical Alliance of Sri Lanka 2016: 5).

Chapter 4 of the Constitution read with the 13th and 16th amendments to the Constitution recognizes Sinhala and Tamil as the official languages and English as the link language (Constitution of Sri Lanka, Article 18). Article 19 recognizes Sinhala and Tamil both as national languages. Further, Article 21 entitles a person to be educated through the medium of either of the national languages. Sinhala is the language of administration

3. *Bulankulama and Others v. Minister of Industrial Development and Others*, 3 Sri. L. R. 243 (Supreme Court of Sri Lanka, 2000).

in all provinces other than in the northern and eastern provinces in which Tamil is the language of administration (Constitution of Sri Lanka, Article 22). Similarly, Sinhala and Tamil are the languages of the courts (Constitution of Sri Lanka, Article 24). All laws and subordinate legislations, orders, proclamations, rules, by-laws, regulations and notifications (other than by a Provincial Council or local authority) are in Sinhala and Tamil (Constitution of Sri Lanka, Article 23). Article 25 states that 'the State shall provide adequate facilities for the use of the languages provided for in this Chapter.'

The Penal Code

Chapter 15 of the Penal Code (No.2 of 1883) deals with offences relating to religion and specifically provides, inter alia, in Section 290 that whoever destroys, damages or defiles any place of worship with the intent to insult the religion of any class of persons is guilty of an offence under Section 290. Section 291A provides that whoever utters any word or sound, or makes a gesture in the hearing of a person with the intention of 'wounding the religious feelings' of that person is guilty of an offence.

Recently, in an attempt to include a 'hate speech' provision in the Penal Code, a bill titled the 'Penal Code (Amendment) Bill' was placed on the Order Paper of the Parliament on 11 December 2015 (Sri Lanka Brief, 2015a).

This bill sought to insert a new Section 291C in the Penal Code. The legal effect of the section was purportedly to make provisions to convict and punish persons who caused or instigated acts of violence or hostility which led to religious, racial or communal disharmony between different racial or religious groups. The section sought to be inserted was almost identical to Section 2(1)(h) of the Prevention of Terrorism (Temporary Provisions) Act which had been invoked previously on several occasions targeting members of Tamil and Muslim communities.⁴ The Human Rights Commission of Sri Lanka too advised the government to withdraw the proposed amendment and to replace it with a relevant provision of the ICCPR Act (Sri Lanka Brief, 2015b). The editor of a Tamil language newspaper filed a petition in the Supreme Court challenging the constitutionality of the proposed amendment apprehending that it would serve to infringe freedom of speech and

4. Nallaratnam Singarasa v. Attorney General and Others, S.C. SpL (LA) No. 182/99, SCM1S.09.2006; Tissainayagam case High Court case 2009 – discussed in Kishali Pinto Jayawardena in focus on rights. Retrieved from <http://www.sundaytimes.lk/090913/Columns/focus.html>.

expression, including publication, particularly by members of minority communities (Selvanayagam, 2015). Consequent to this case being filed and the concerns raised by civil society, the government withdrew the amendment.

The International Covenant on Civil and Political Rights Act

Section 3(1) of the act provides that ‘no person shall propagate war or advocate national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.’ The trial of a person accused of committing an offence under Section 3 is to be taken up as a matter of highest priority by the relevant High Court (International Covenant on Civil and Political Rights Act, Sec. 3 [No. 56 of 2007]).

The Prevention of Terrorism Act

Section 2(1)(h) of the Prevention of Terrorism Act, Section 2(1)(h) (No.48 of 1979) provides that ‘any person by words either spoken or intended to be read or by signs or by visible representations or otherwise causes or intends to cause commission of acts of violence or religious, racial or communal disharmony or feelings of ill-will or hostility between different communities of racial or religious groups...shall be guilty of an offence.’

However, this section has been used to target those critical of government policies, particularly its treatment of minorities.⁵

Thus, the constitutional and legal framework that is in place, at least normatively, appears to foster the rights and freedoms of ethnic and religious minorities. Nevertheless, much uncertainty remains about the manifestation of this freedom.

The right to life and security

The general trajectory

The Constitution of Sri Lanka does not explicitly recognize right to life. However, in 2003 the Supreme Court inferred an implied right to life in limited circumstances as gleaned from Article 13(4) of the Constitution which provides that ‘no person shall be punished with death or imprisonment except by order of a competent court made in accordance with procedure

5. The Democratic Socialist Republic of Sri Lanka v. J.S. Tissainayagam (H.C., 2008).

established by law' (Silva et al., 2009). Such a position was subsequently affirmed by three judgments.⁶ However, construed in such a manner, right to life is limited only to the physical right to life and does not encapsulate other aspects of liberty and due process (Guneratne et al., 2014).

As mentioned earlier, the legal and constitutional framework in Sri Lanka is conducive for the protection of minorities from inter alia ethnic and religious violence. However, the trajectory has been one of increasing attacks and threats, especially after the end of the war.

In 2013, there were 241 recorded anti-Muslim attacks. *Figure 1* gives the distribution of 166 location-specific anti-Muslim attacks during 2013. *Figure 2* gives details of the 69 location-specific anti-Christian attacks recorded in 2013. The trend in violence continued with 2014 seeing at least 200 anti-Muslim attacks (*Figure 3*). Location-specific attacks on Christians increased to 88 in 2014 (*Figure 4*).

An analysis of the data from 2013 and 2014 reveals that more than 50 per cent of the attacks on Muslims were non-physical and related to hate speeches and propaganda and more than 50 per cent of the attacks were in fact perpetrated by political actors or political and social movements. More than 25 per cent of the attacks were attributed to the Bodu Bala Sena (Gunatilleke, 2015a: 29).

On the other hand, almost 50 per cent of the attacks on Christians were by unidentified individuals and groups. Buddhist clergy from the locality was thought to be behind most of the intimidation, physical violence and destruction of property. Public officials too, often directly or indirectly, perpetrated attacks against Christians (Gunatilleke, 2015a).

The attacks on Hindu places of worship have not been systematically quantified. R. Sampanthan, the leader of the Tamil National Alliance has, however, repeatedly referred to continuing violations of Hindu places of worship (See Parliamentary Debates, 2013: 325).

6. Lama Hewage Lal (deceased), Rani Fernando (wife of deceased Lal) and others v. OIC, Minor Offences, Seeduwa Police Station and others, 1 Sri. L. R. 40 (Supreme Court of Sri Lanka, 2005); Kanapathipillai Machchavallan v. OIC, Army Camp, Plantain Point, Trincomalee and others, 1 Sri. L. R. 341, (Supreme Court of Sri Lanka, 2005).

Out of the 328 Divisional Secretary's divisions (DS divisions) in the country, religious violence was recorded in 88 out of which 45 were characterized by low religious diversity and a low concentration of religious minorities (Gunatilleke, 2015a: 34). Nineteen DS divisions were typified by medium religious diversity and a low concentration of religious minorities. Therefore, 72 per cent of the DS divisions in which attacks took place typified these two demographic profiles. Further, violence was apparently less prevalent in DS divisions with a high concentration of a particular ethnic minority but low diversity. Over two-third of the recorded violence in 2013 and 2014 took place in majority Sinhala-Buddhist divisions with either a low concentration of minorities and either low or medium diversity (Gunatilleke, 2015a).

Specific incidents of violence

Grandpass Mosque incident

Background

The Masjidul Deenul Islam mosque in Colombo's Grandpass area had reached capacity, but due to a Bo tree sacred to the Buddhists having its roots in the adjoining property, it could not be expanded (Wijedasa, 2013). The Urban Development Authority had made plans to acquire the area for development and since the mosque would have to be removed eventually, the Muslims in the area began worshipping in another building that had been converted into a prayer centre.

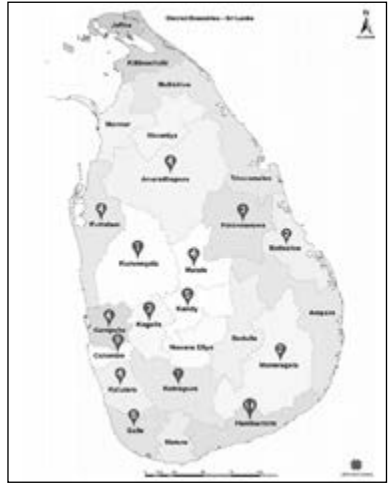
Violence

A group from the Sinhala community in the area and some of the Buddhist clergy protested the establishment of the alternative prayer site. The issue was aggravated by fascist groups such as Sinhala Ravaya. Extremist group Ravana Balaya staged two protests against the prayer centre on 9 June and 5 July 2013 (Gunatilleke, 2015a). However, the Ministry of Buddha Sasana and Religious Affairs extended the permit for use of the alternative site. The majority community in the area was mobilized into reacting to such an extension and on 11 August 2013, protestors supposedly linked to the Sinhala Ravaya attacked the prayer centre alleging that it had no authority to function as a place of worship (Farook, 2013). This resulted in communal clashes between the Muslim community and the majority Sinhala-Buddhist community.

Figure 1. Location-specific Anti-Muslim attacks in 2013



Figure 2. Location-specific anti-Christian attacks in 2013



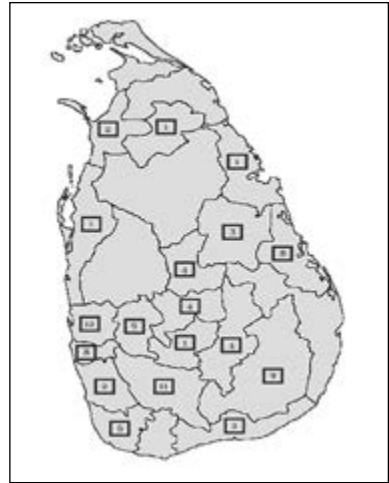
Source: Gunatilleke (2015a).

Figure 3. Location-specific anti-Muslim attacks in 2014



Source: Secretariat for Muslims (2015).

Figure 4. Location-specific anti-Christian attacks in 2014



Gunatilleke (2015a: 28).

Law enforcement

The authorities did little to prevent the violence and destruction of property. The situation was eventually settled by stopping the UDA acquisition, the Muslims returning to the original mosque and the Bo tree being uprooted to permit expansion (Farook, 2013). The permit for the new prayer centre, however, was revoked (Gunatilleke, 2015a: 30).

The Aluthgama riots

Background

Ethnic violence targeting Muslims took place on 15 June 2014 in Aluthgama, Dharga town, Valipanna and Beruwela in the south of Sri Lanka. The area has large Muslim and Sinhala communities. This was not the first time that such violence took place in the area as in 2006 also a seemingly trivial dispute over a mobile phone between a Sinhalese and a Muslim had led to violence that resulted in a number of shops in the area being destroyed (Gunatilleke, 2015b: 3; Haniffa et al., 2015).

Violence

The violence in 2014 was apparently triggered by a dispute between a Buddhist monk and three Muslims in the area. On the day after the violence, a large rally was organized condemning the alleged attack on the Buddhist monk and the General Secretary of BBS made racist remarks against Muslims (Gunatilleke, 2015b: 3; Haniffa et al., 2015). Subsequently large mobs attacked Muslim-owned businesses and homes which resulted in the killing of four persons including three Muslims and over 100 Muslim homes and businesses being destroyed. This riot was described by the Office of the High Commissioner for Human Rights (2014) as ‘one of the worst incidents of sectarian violence in Sri Lanka’s recent history.’

Law Enforcement

Law enforcement agents failed to prevent or control the violence. Some witnesses claimed that many of the attackers wore boots and helmets which is suggestive that some of the attackers had access to military equipment (Haniffa et al., 2015: 31-32).

Anti-Christian attacks in the Southern province

Twenty-seven attacks against Christians in 2013 and 2014 took place in Galle and Hambantota districts and the police or some public official was

involved either actively or tacitly in as many as 13 of them (Gunatilleke, 2015a: 31-32).

Walasmulla, Hambantota

The police ordered the Assemblies of God church to discontinue all prayer meetings on 19 March and 6 April 2013. On 10 May 2013 the Hambantota District Secretariat conducted a meeting of religious leaders at which Buddhist monks demanded that all local churches that had not obtained prior state approval be shut down.

Hikkaduwa, Galle

Five police officers and an officer from the Divisional Secretary's Department went to a building used by the Assemblies of God church and demanded that prayer meetings held at the premises be discontinued immediately. Subsequently, the pastor of the church was summoned to the police station for an inquiry and was verbally abused by two Buddhist monks in the presence of the officer-in-charge who did nothing to reprimand them.

Ratgama, Galle

Eight police officers and a Buddhist monk entered the Calvary Free church on 26 January 2014 while a prayer meeting was in progress, halted the meeting and directed all participants to report to the police station for an inquiry. Subsequently, the police filed a case against the pastor of the church for breach of peace.

Mamadalla, Hambantota

The pastor of the Assemblies of God church was requested to appear at the police station for an inquiry on 24 February 2014. At the inquiry, the officer-in-charge of the police station and two Buddhist monks demanded that all religious activities conducted by the church cease as prior approval of the Ministry of Buddha Sasana and Religious Affairs was required to conduct such activities.

Angunukolapalassa, Hambantota

On 6 June 2014 the pastor of the Assemblies of God church was verbally abused by the officer-in-charge from a nearby police station for conducting prayer meetings on private premises. The officer demanded that the pastor leave the village if he was not willing to discontinue all such religious activities.

Characteristics of violence against Christians

Thus, an analysis of violence against Christians in recent years demonstrates that it is often low-intensity and continuous to the point of being systemic (Gunatilleke, 2015a).

As such, it is evident that in Sri Lanka, even though the existing legal and policy framework is sufficient to ensure the protection of minority rights, the issue is primarily one of enforcement. Inaction by the police in some cases and the direct and indirect involvement of police and public officials in other cases have been necessary components in the creation of an era where the freedoms of the minorities are impugned. In fact, the state's tacit approval of extremist groups such as the BBS, Sinhala Ravaya and Ravana Balaya is perhaps one of the main reasons why religious attacks have continued in recent years.

Further, the courts too have adopted a rather conservative approach. The lower courts have rarely intervened to protect minorities when there is a violation of their religious freedoms. Often they also fail to acknowledge the religious motivation behind such attacks. Therefore, even though physical violence may be condemned at times, the intolerance of minorities has been tacitly condoned (National Christian Evangelical Alliance of Sri Lanka, 2016: 8).

Developments after January 2015

In January 2015, Maithripala Sirisena was elected as the President of Sri Lanka. Under his leadership, the impunity of extremist groups such as the BBS has reduced.

However, religious intolerance still persists. According to the Secretariat for Muslims, at least 37 religious attacks against the Muslim community took place from January to April 2015 (Secretariat for Muslims, 2015). On 4 April 2015 there was an attempted demolition of a mosque in Kuragala, Ratnapura, which was eventually prevented through the intervention of the police which dealt with a mob of over 100 people supposedly a part of Sinhala Ravaya (Gunatilleke, 2015a: 49).

There has been no progress in the prosecution of offenders of past religious violence, including the perpetrators of the Aluthgama attacks (Gunatilleke, 2015a). However, an arrest warrant was issued in October 2015

against Ven. Galaboda Atta Gnanasara Thera, General Secretary of the BBS for not being present in court in connection with two cases filed against him (Daily News, 2015).

The re-establishment of the Constitutional Council (which was abolished by the previous regime) too is a positive step in the right direction given that it is a mechanism for ensuring independence in key appointments. The Constitutional Council has since appointed members to the bribery, police, public service and human rights commissions (News First, 2015).

In October 2015 UNHRC adopted Resolution 30/1 titled 'Promoting reconciliation, accountability and human rights in Sri Lanka.' This resolution was co-sponsored by the Government of Sri Lanka.

The government is accordingly committed to holding nationwide public consultations on transitional justice mechanisms and for establishing an Office of Missing Persons. However, on 24 May 2016, the Cabinet without consulting the families concerned approved the new Office of Missing Persons. The international Convention for the Protection of All Persons from Enforced Disappearance was ratified on 25 May 2016 in fulfilment of another key promise.

The UN Working Group on Enforced or Involuntary Disappearances, ranks Sri Lanka as having the second highest number of disappearances.

(Sri Lanka Brief, 2016).

In October 2015 Foreign Minister Mangala Samaraweera elaborated on the government's plans to create separate institutions to address the grievances of all stakeholders: a Commission for Truth Justice Reconciliation and Non-recurrence, a judicial mechanism with a special counsel and an Office of Reparations (Tami Guardian, 2015).

Member of Parliament Dr Jayampathy Wickramaratne when addressing Parliament on a resolution for setting up a Constitutional Assembly on 23 February 2016 stated, 'we cannot go back to a situation of conflict. We need to find a solution to the national question. We must get the acceptance of all political parties and the Sinhala, Tamil, Muslim, Hill-country Tamil and other communities for a long-lasting solution' (Wickramaratne, 2016).

Accordingly, on 5 April 2016, Sri Lanka's Parliament converted into a Constitutional Assembly for the first time with the aim of enacting a new constitution (LBO, 2016).

As such, progressive measures are being taken in the right direction but they are very slow.

Right to non-discrimination and equality

Articles 12(1) and 12(2) of the Constitution of Sri Lanka explicitly recognize the right to equality and non-discrimination. Inasmuch as Article 12(1) confers equality on all persons, the right to non-discrimination is conferred only on citizens of the country as per Article 12(2).

The following section deals with some of the economic, social and cultural rights of minorities in Sri Lanka.

The right to education

Since the 1940s, the government's policy on education has sought to eliminate linguistic and socioeconomic inequalities, particularly with the introduction of free primary, secondary and tertiary education (Free Education Act 1945), scholarship programmes, establishing central schools in rural areas and initiating the use of either of the two national languages as the medium of instruction (UNICEF Sri Lanka, 2013). As such, there is relatively high participation in education countrywide and Sri Lanka boasted of a very high literacy rate of 95.6 per cent in 2012 (Central Bank of Sri Lanka, 2014).

The nation's education system is primarily supported by two policies: the Education Sector Development Framework and Programme (ESDFP) 2006-10 and Transforming School Education as the Foundation of a Knowledge Hub 2011-15. The barriers to education and the inequalities in its provision are dealt with to a large extent by these two policies and are supported by the Ministry of Education and the ministries of other related sectors (UNICEF Sri Lanka, 2013).

ESDFP specifically states that 'schools will promote gender integration and mutual respect for boys and girls and emphasize equal rights and equality in all aspects of life and mutual respect for each other.' Issues of gender are addressed through an amendment to the legislation concern-

ing early marriages and the provision of adequate sanitation facilities for girls in programmes on enhancing school infrastructure. Social protection programmes, particularly the Samurdhi Poverty Alleviation programme provides scholarships for the education of eligible children from very poor families (UNICEF Sri Lanka, 2013).

The issues created by conflict which are affecting the education system are also being addressed by the Ministry of Education by repairing infrastructure and establishing psychosocial care units and psychosocial resource centres in all provinces. In addition, assistance is also being provided by the Ministry of Social Services to victims of disasters (UNICEF Sri Lanka, 2013).

Another major ESDFP theme is 'increasing equity in the distribution of resources.' It thus seeks to modify the criteria for allocations so as to provide more resources to districts with greater need (UNICEF Sri Lanka, 2013).

The estate plantation sector, however, has been disadvantaged educationally over the years as it was provided with minimal primary education facilities. Approximately 830 plantation schools were integrated into the national education system consequent to the nationalization of estates in the 1970s. There is continuing dearth of proper infrastructure in secondary schools in the plantation areas, though the Plantation Unit of the Ministry of Education has formulated an action plan to deal with the inequities in education in the sector (UNICEF Sri Lanka, 2013). Dr Devanesan Nesiah, a former government agent of Jaffna Mannar, Batticaloa (North East of Sri Lanka) who has also served as the Head of the Policy Analysis Unit of the Sri Lanka Institute for Development Administration (SLIDA) and Chair of the Human Rights Commission, Committee of Inquiry into disappearances was of the view that as in other fields, in education too most of those who served the plantation sector were from other sectors and some of them may lack motivation to serve with dedication (personal communication). A variety of scholarships for high-school students from the plantation sector in a range of tertiary disciplines at least for a prescribed period would help remedy the lack of professional skills in the sector in due course. He was of the opinion that since this community has suffered acute discrimination ever since it entered Sri Lanka in the early British period nearly two centuries ago, sustained corrective action by way of reverse discrimination (affirmative action) over several years may be warranted.

Children belonging to the Chakkiliyar and Pallayar castes in the Mahaiyawa area in Kandy too are severely disadvantaged as more often than not they are not admitted to good schools due to prejudices by school authorities, lack of Tamil medium of instruction in most of the good schools in the area and lack of networking capacity and funds (Silva et al., 2009). It is believed that caste has had an impact on access to education in the majority ethnic group as well. The children of Kinnara caste particularly are not taken into schools in the area and in any event much emphasis is not placed on education within the caste as they believe that they will never have a chance at a good job (International Dalit Solidarity Network, 2008). Dr Nesiiah was of the view that in these cases too, affirmative action by way of a range of scholarships for a prescribed period may be needed in addition to other corrective measures.

The Veddah community is perhaps among the most disadvantaged given that its children are compelled to learn a history, language and culture that are alien to them. They may be numerically too small to warrant devising special curricula, but extending the proposed affirmative action to them will surely help at least for a limited period.

The higher education system in Sri Lanka has been ethnicized even though the Universal Declaration of Human Rights specifically provides for education based on merit (Universal Declaration of Human Rights, Article 16 [1], 1948). From 1971 a policy of standardization has been adopted ensuring that the number of students qualifying for entrance to university from each language was proportionate to the number of students who sat for the university entrance examination in that language. When it was introduced, a Tamil student had to obtain an aggregate of 250 marks to get into the medical or dental faculties while a Sinhala student would get into the same faculty with 229 marks (Chandraprema, 2012).

It is noteworthy that the proposed budget for 2016 recognizes that there are about 1,360 schools which have been neglected in the recent past without any assistance from the government. The budget seeks to allocate Rs 30,000 million to improve the facilities and quality of such neglected schools. Rs 250 million is proposed to be allocated for upgrading 25 schools in the plantation sector to secondary level (*Daily FT*, 2015).

Figure 5 gives details about the participation of ethnic minorities in the public and private sectors.

Profile of a vulnerable minority:

The Wanniyalaeto community

The concept of human rights should not only be confined to words and discussions, but it should be practiced and implemented. However, the rights of the Adivasi community in Sri Lanka have been severely eroded due to many reasons including the fact that they are not a proper 'ethnic' group. In fact, Adivasis have been excluded from the debate on human rights and ignored from the paradigm of development. This case study maps the situation of Adivasis in Sri Lanka. This profile addresses the historical background of the Wanniyalaeto community, the distinctive features of their culture and identity and how they have been discriminated against throughout history.

Historical background

The beginning of Sri Lankan history is intrinsically bound with the Wanniyalaeto (Vedda) community (forest people). They were the first dwellers of the island; they came with prince Vijaya who was expelled from India and was the first king in the island. The Veddas are said to be the descendants of Prince Vijaya and his wife Kuveni, who hailed from the indigenous Yakka group (Keerthisinghe, 2011):

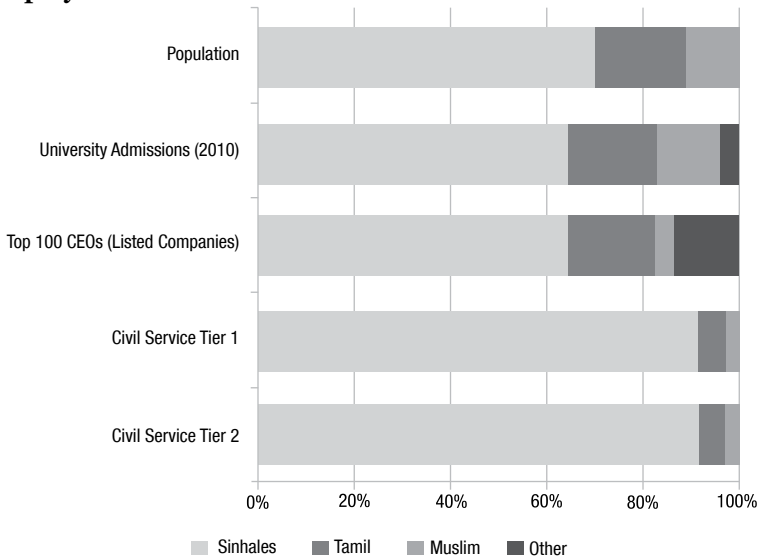
Prince Vijaya and yakkini Kuveni became friends and later they got married. They had a son and a daughter. Years later Prince Vijaya was able to subdue all the yakkas in the country with the help of Kuveni. Even though, Kuveni did not do any evil deeds, Prince Vijaya's friends never forgot what Kuveni did to them and they were ever fearful of Kuveni. They thought that non-human Kuveni could not be trusted. Due to this reason, Prince Vijaya was forced to ask Kuveni to leave. Kuveni left with her two children to Malaya country. (Central mountain part of Sri Lanka). Kuveni's children gave rise to the Vedda community in Lanka.

It is believed that the Wanniyalaeto ('forest-dwellers') can be traced back to Sri Lanka's original Neolithic community, and thus can be dated back to approximately 14,000 BC (<http://www.vedda.org/wanniyalaeto.htm>).

The identity and culture of the Wanniyalaeto Community (headline B)
The identity of this indigenous group is intrinsically linked to who they are and where they come from. They call themselves Wanniyalaetos or forest dwellers. The word 'Vedda' on the other hand, comes from

... contd. ...

Figure 5. Minorities in Sri Lanka facing the glass ceiling in employment



Source: Verite Research (2013).

Tamil representation in university admissions and in CEOs of the top 100 private firms is similar to the population (about 18 per cent). However, in Tier 2 in the public sector this falls to under 6 per cent (with a 16: 1 ratio in favour of Sinhalese over Tamils), and in Tier 1 it is 3 per cent (with an almost 32: 1 ratio in favour of Sinhalese over Tamils) (Verite Research, 2013).

As such, Tamil employees in the public sector are four times as unlikely to climb to Tier 2 and eight times as unlikely to climb to Tier 1 as their Sinhala counterparts (Verite Research, 2013).

With regard to Muslim representation, a 10:1 population ratio between Sinhalese and Muslims, reduces to a 8: 1 ratio in university admissions. However, this becomes a ratio of 16:1 against the Muslims when we look at the CEOs of the top 100 private firms. Therefore, the data poses a challenge to the standard stereotyping of the Muslim population as being more successful in business than in education, a notion which has given rise to many conflicts in recent times (Verite Research, 2013).

...Profile of a vulnerable minority continued ...

the Sinhala word *vidina* which means one who shoots and is not the identity that this community is desirous of bearing (Leonard, 2015). Whilst outsiders have portrayed the Veddas as a primitive group which is rough and uncivilized in appearance and language, living primarily in the wild, the Veddas themselves do not choose to identify themselves in this manner (<http://vedda.org/3-identity.htm>).

Modern ideas of real estate are not known to the Wanniyalaetos who believe that they and their ancestor-spirits belong to the Wanni forest which they inhabit and are called on to protect. They only recognize natural landmarks and therefore the concept of acreage is not known to them (<http://vedda.org/3-identity.htm>). The people do not own any possessions nor seek to acquire any.

In Vedda culture, the wife is considered the most valuable possession. Monogamous unions are the norm. This ensures gender equality in the community. Fidelity between the spouses is strictly upheld and infidelity could result in being sentenced to death (Leonard, 2015). Following the death of the husband, the husband's brother can marry the widow (Veddas of Sri Lanka).

The original language spoken by these people does not exist now and only a few words have survived which are used in everyday conversations. Their dialect constitutes a combination of old and modern Sinhala as well as non-Aryan speech (Veddas of Sri Lanka).

Discrimination of the Wanniyalaeto Community

As per Census reports, the Wanniyalaeto population was about 4,510 in 1921 which dropped to 2,361 in 1946. Though a separate count has not been made since 1963, a 1978 study identified about 6,000 Wanniyalaetos in Anuradhapura district alone (<http://vedda.org/3-identity.htm>).

Even though initially the Sinhalese considered the Wanniyalaeto community as equal to the dominant Govigama caste, subsequently this perception changed due to Buddhism playing a pivotal role in the lives of a majority of the Sinhalese who censured the Veddas community for hunting animals.

For centuries this indigenous community was discriminated against due to successive immigration and colonization. Thus, the

... contd. ...

The right to employment

Protection from discrimination in employment is guaranteed in the public sector through the chapter on Fundamental Rights in the Constitution which is against executive and administrative action. There are no laws dealing with discrimination in employment and occupation in the private sector. Further, the legislative framework does not envisage equal pay for equal work across public and private sectors (LST Review, 2011).

Even though employment laws are not discriminatory, the ground reality is that given the highly politicized nature of society often the youth rely on political favours and influential contacts rather than merit alone (Ministry of Youth Affairs, 2007). Youth unrest in the north and south is primarily due to frustrations and disappointment with policies and programmes that they perceive as discriminatory (Mayer, 2004; Thangarajah, 2002). Further, obtaining jobs in the public sector is often arduous for ethnic minorities as the primary language in this sector is Sinhala. Tamils of Indian origin and Muslims too are not well-represented in the public sector even in areas in which they are concentrated (LST Review, 2011). Further exclusion and marginalization take place in estate and rural areas due to a dearth of qualified teachers, educational institutions and poor infrastructure. As such, given their need for some form of income, the youth in these areas have a tendency to take any job that they find but there is a significant gap between their aspirations and the work that they are compelled to engage in (Ministry of Youth Affairs, 2007).

The people of the Mahaiyawa caste in Kandy have had limited access to education and capital. Hence, they have had very limited success in securing proper employment or establishing businesses in towns. They have been compelled to continue working for generations in the Kandy Municipal Council as sanitary workers or have the option of carrying heavy loads (*natami*), repair shoes, drive three-wheelers and sometimes get involved in prostitution. Women in these groups are particularly vulnerable to double and treble discrimination based on ethnicity, caste and gender and are often compelled to seek employment as maids in the Middle East (Silva et al., 2009).

Influential positions in Jaffna are held by the land-owning Vellâlar caste. The lowest strata of the Jaffna caste system is referred to as 'Panchamar', consisting of Vannâr (*dhobi* or washerman), Ampattar (barber), Pallar (leather workers and landless labourers), Nalavar (toddy tappers)

...Profile of a vulnerable minority continued ...

Wanniyalaetos have been faced with the dilemma of either merging with other cultures and losing their unique identity, or returning to the forest environment. Over the years, many have integrated into Sinhala and Tamil societies in Sri Lanka's north-central, Uva and eastern areas (<http://www.vedda.org/wanniyalaeto.htm>).

The Wanniyalaeto community has been denied respect, dignity, human rights and cultural uniqueness, primarily due to the sentiments of the migrants as far back as 5th century BC; they viewed the Vedda community as untamed spirits of the wild disguised as human beings (<http://www.vedda.org/wanniyalaeto.htm>). Their collective custodianship of hunting grounds has not been recognized and neither have they been consulted on matters pertaining to their daily existence <http://www.vedda.org/wanniyalaeto.htm>)

making them perhaps the most marginalized group in Sri Lanka. The failure to recognize their own criteria for self-determination has accelerated their disappearance as a distinct culture and denied them participation in the democratic decision-making process (<http://vedda.org/3-identity.htm>).

Prior to colonial rule the Vedda community was the main supplier of honey and cotton to the nation. However, this practice was destroyed through colonization (Obeyesekere, 2002). Hunting too was restricted through mainstream laws which has kept the Veddas in a precarious situation. This discourages education of Vedda children as well. Being one of the main cultural marker of any community, a particular community has to have the ability to use its language. However, Veddas' use of their language has been discouraged due to essential interaction with the state and other surrounding Sinhala and Tamil communities. Most of the Veddas have converted to Sinhalese and Tamils by taking Sinhala and Tamil names (<http://www.vedda.org/wanniyalaeto.htm>).

Since 1931 the Adivasis have not been able to manage their own affairs in their areas of historic habitation (<https://www.hitpages.com/doc/5403041645723648/4/>). Instead they have fallen under the state administrative structure which has resulted in their rights being severely infringed upon. During the 1930s and 1940s, irrigation and farming colonies were launched in Polonnaruwa and Mahiyangana regions (<https://www.hitpages.com/doc/5403041645723648/4/>). These projects led to a large exodus of Sinhala and Tamil people to

... contd. ...

and Parayar (sanitary labourers and funeral drummers) who are accorded untouchable status in Jaffna's caste hierarchy (Silva et al., 2009).

The right to health

The right to health is not recognized explicitly by the Constitution of Sri Lanka either as a Fundamental Right or as a Directive Principle of State Policy. In the landmark case of Sanjeewa, Attorney-at-Law (on Behalf of Gerald Mervin Perera) v. Suraweera, Officer-in-Charge, Police Station, Wattala and Others the court made a reference to the right to health. However, there has been no explicit recognition of the right either as an international law obligation or as a domestic legal requirement.

As per estimates of the World Health Organization, the country's expenditure on health was approximately 3.2 per cent of GDP (US\$ 89 per head) in 2012. Despite such relatively low investments, the people's health status has improved with the mortality rate for children under-5 falling from 98 per 1,000 live births to 9.6 per 1,000 live births and life expectancy increasing from about 60 years in 1960 to 74 years in 2012. These figures are similar to the more developed countries in Asia who in fact spend more than twice as much on healthcare (*The Economist*, 2014).

The reason for such success is attributed to the free government-provided healthcare for all citizens of the country (*The Economist*, 2014). As in the case of free education, free healthcare has a long history dating back to pre-independence years. The credit for this mostly goes to left and liberal minded social and political activists in the first half of the 20th century.

As per the statistics for 2011, Sri Lanka had 7.8 physicians for 10,000 population and 33 beds for every 10,000 people (Central Bank of Sri Lanka, 2014: Table 14:12). Even though such figures are among the best in South Asia, there is ample room for improvement. The public health sector affords limited access to specialist treatment and has inadequate capacity. The more complex surgical procedures can only be done at the national hospital of Sri Lanka in Colombo, and very few other hospitals in key cities and the waiting lists for such services are usually very long. Even though there is no overt discrimination in the provision of healthcare, there is a huge disparity in the facilities available in urban and rural areas and the infrastructure in the north and east of the country is heavily affected by the extended civil war (*The Economist*, 2014).

...Profile of a vulnerable minority continued ...

the area, thus shutting out the Veddas from their ancestral land. As hunting is the most preferred means of livelihood of the Veddas, the shrinking of land has kept them in a precarious position. Hunting was not only their livelihood but was bound with their identity as well. Thus, restricting them access to their land for hunting severely damaged their identity and livelihood options (<https://www.hitpages.com/doc/5403041645723648/4/>).

Gal Oya and Mahaweli projects further restricted Veddas' access to their ancestral land. The Accelerated Mahaweli Development scheme was launched in 1977 under which vast tracts of traditional Wanniyalaeto hunting land was identified for proposed benefits for other communities. Equitable compensation was not handed out to the displaced indigenous inhabitants; in fact compensation for them was not even considered (<https://www.hitpages.com/doc/5403041645723648/4/>).

The Mahaweli Development scheme forced the Wanniyalaetos to leave their homes and forsake their lifestyle of hunting and gathering food. Those who continued to hunt were considered poachers or trespassers. The Madura Oya National Park was guarded to prevent the Wanniyalaetos from returning to their homes. Instead, they were expected to assume the role of rice-cultivators overnight (<http://www.vedda.org/wanniyalaeto.htm>).

In 2007, the Wild Life Department arrested four Veddas who had entered into the Maduraoya forest reserve to collect honey from bees. They were released on bail after being produced before the Mahiyanganaya court (Hettiarachchi, 2007).

Since the creation of this park, the overall living standards of the Wanniyalaeto community have deteriorated dramatically. The park is open to tourists but not to the indigenous population of the area. Sometimes tourists are brought to the doorstep of the Wanniyalaeto community, only to exhibit them as the last of the Veddas.

The obstructions in livelihood and lifestyle severely affected the Veda community and discouraged their identity and culture. While they have been uprooted from their ancestral land and identities, Adivasi children have been discriminated in schools, which forces them to drop out and give up their education (<https://www.hitpages.com/doc/5403041645723648/4/>).

... contd. ...

National health services in the plantation sector are very difficult to access and on-estate health services are not up to national standards. Patients often die on the way to hospital as the distance is very long. Pregnant women are at times compelled to travel in lorries used to transport tea leaves in order to get to the nearest hospital; they sometimes give birth while in the lorries, endangering their lives and those of the new-born babies. There is also a severe dearth of qualified personnel and effective drugs. The reproductive health rights of women are a matter of concern given that there are credible allegations of involuntary sterilization of women in the estate sector (LST Review, 2011).

In a study undertaken by the Ministry of Healthcare in 2007 in three national hospitals -- Anuradhapura, Nuwara Eliya and Hambantota -- it was found that no significant discrimination had been reported in terms of ethnicity, religion, social class, age, political beliefs etc., each demonstrating a satisfactory ratio above 95 per cent. Yet 7.4 per cent and 12.9 per cent of those studied reported that the discrimination was on the basis of a language barrier and lack of a relationship with the health staff respectively (Ministry of Healthcare and Nutrition, 2008).

Discrimination on grounds of language was primarily seen in the Nuwara Eliya district where 19.7 per cent of the patients shared the same experience. Most of the complaints of this nature were made by the Tamil speaking estate plantation community; 2.7 per cent of those who got treated in Hambantota too shared the same experiences and most complaints were made by the Tamil speaking Muslim community. Among the factors complained of, the rudeness of nurses and minor staff and passing of hints due to ethnicity, took precedence (Ministry of Healthcare and Nutrition, 2008).

It is noteworthy that there is a clear shift in policy with the new government proposing a spend of Rs 210 billion on education and health, primarily towards capital expenditure, which is an increase of over 120 per cent over the expenditure in the previous year (Verite Research, 2015) (*also see Figure 6*).

The right to secure land tenure

Most Sinhalese are governed by the general law except those who come under the Kandyan law. The minorities in the country too come under the general law but they are also governed by their personal laws, that is, The-sawalamai law for Tamils living in the northern province and Muslim law

...Profile of a vulnerable minority continued ...

While ethnic assimilation exists with regard to every minority group in the country, the Veddas are the most vulnerable as their capacity to survive in the modern world is very low as compared to the other minority ethnic groups.

Their inferior social positioning has led the Veddas to a position which prevents them from participating in representative democracy. Since this community does not have any representatives in the Sri Lankan Parliament, which is basically built on an ethno-religious vote base, the Veddas do not have any voice in decision making. Thus, these people have been completely excluded from the decision making process in Sri Lanka. When competing interests arose between the Wanniyalaetos and mainstream farming and trading communities in the area, the Wanniyalaetos were left voiceless in the decision of the mainstream communities (<http://vedda.org/2-causes.htm>).

The International Labour Organization concluded a study in 1992, which stated that a large number of those belonging to the resettled Wanniyalaeto community were economically, socially and politically underprivileged. Further, this community lacked the requisite skills to assimilate themselves with the other settlers and to take up other means of earning a livelihood. Thus, the other settlers monopolized political and economic decision making and opportunities while the Wanniyalaeto community was discriminated against (<http://www.vedda.org/wanniyalaeto.htm>).

In fact, since 1974 successive governments have pledged to allocate a sanctuary of 1,800 acres to them to pursue their traditional way of life but this has not been implemented. This area is only about 1 per cent of the area of the park (<http://www.vedda.org/wanniyalaeto.htm>).

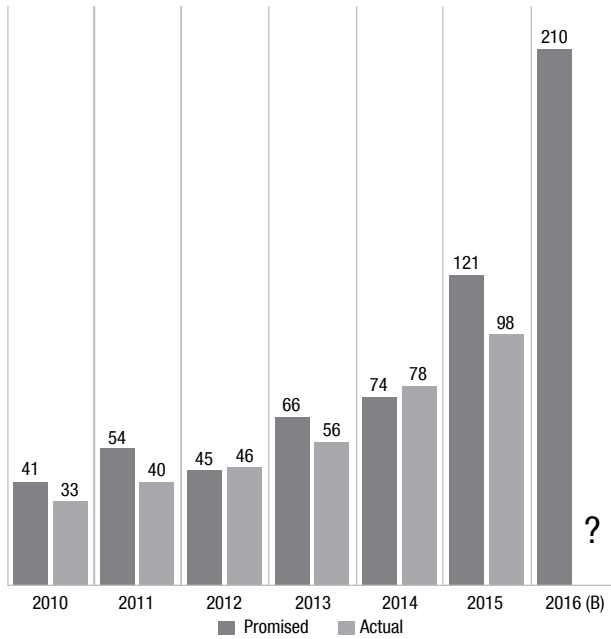
It is important to note that there is no dialogue between Wanniyalaeto leaders and government officials. Furthermore, Sri Lanka has not ratified conventions such as the ILO Convention No.169 on Indigenous and Tribal Peoples. This minimizes the possibility of intervention in recognizing the Wanniyalaeto community as a distinct group of people to be protected.

Conclusion

The Wanniyalaeto community has been alienated from its language, land, culture and livelihood options. Hence, it has been indirectly forced to assimilate into the mainstream by adopting a culture, lan-

... contd. ...

Figure 6. Promised and actual spend on education and health in Sri Lanka



Source: Budget speeches - various years (P-provisional, B-budgeted).

for Muslims. However, during the years of conflict, neither the general nor the personal laws were sufficient to safeguard the property rights of the minorities. Both the state and the LTTE forcibly acquired private land for their purposes while some in the minority groups lost their land through abandonment as they were compelled to flee to safety.

The patriarchal Thesawalamai law recognizes the need for women's ownership of land (mostly inherited via dowry) for the security of their future. This law was initially considered advantageous for women as women were not gainfully employed at the time when it was codified. However, this law prevents women from having free control over their own property. While a married woman can sell or mortgage movable property, immovable property can only be mortgaged or sold with the consent of her husband, even though the husband need not consult his wife when selling or mortgaging his inheritance or acquired property. As such, regardless of how educated and qualified a woman may be and no matter how many investments she deals with at a professional level, she is unable to do so with her personal

...Profile of a vulnerable minority continued ...

guage, law and education which is alien to them. By preventing access to their ancestral land thanks to development projects which do not consider culture and people, the Wanniyalaetos have been left in a vulnerable situation where they do not have livelihood options. For a particular community land is not only material existence but also a subjective link to their lives and lifestyles. The Wanniyalaetos have thus not only lost their land but they have also lost their culture and identity.

There is a need for an Island-wide Census of Wanniyalaetos. They also need to be helped to convene a national gathering and to form a socio-political organization that can be consulted on matters pertaining to their current and future welfare. They should collectively decide for themselves if they wish to sustain a distinctive identity or whether they wish to progressively merge with Sinhalese and Tamil communities. Whatever their decision, they should be consulted in formulating an affirmative action programme to stop their further isolation and descent into becoming a depressed underclass of the Sri Lankan population.

investments in immovable property without the written consent of her husband (Thambiah, 2009).

In the case of Muslim law, in general circumstances (though not all) women are allotted half the share of inheritance available to men who have the same relationship to the deceased (Hussain).

Discrimination is also suffered by the Kinnara caste, even though they belong to the majority Sinhala ethnicity as their rights and access to land are limited (UNICEF Sri Lanka, 2013).

One of the primary issues with land rights of minorities in Sri Lanka has been the seizure of land in the north and east of the country designated high security zones, the existence of which has continued despite heavy criticism even after the conclusion of the war. The acquisition of this land has resulted in the army engaging in several business ventures such as restaurants, hotels, airline services, power plants, agriculture and selling produce, negatively affecting the economy of several Tamils who have lost their properties. A UN survey demonstrates that out of 138,651 families that were

resettled in the north, only 9 per cent had found permanent employment. Further, it is also reported that land seizures have been affected in fishing areas by removing the names of residents from government records such as voters' registries and using other such coercive measures against residents who are not able to provide titles to the land occupied by them. Such land grab has particularly disadvantaged women who lack documentation to prove the title of property in the names of their dead or missing male relatives (Williams, 2014). As per the North East Secretariat for Human Rights, about 70,000 people have been displaced as approximately one-third of the total area of the Jaffna district has been taken over for high security zones. In Trincomalee, 102 sq. km of land was taken over for a high security zone in 2006 displacing around 15,000 people (Minority Rights Group International, 2011).

During the tenure of the previous government, 818 acres of land in Sampur was sought to be vested with the Board of Investments by using a special gazette notification, but this land has now been taken back by the government and returned to the original owners (*Lankasri News*, 2015). President Maithripala Sirisena also recently distributed ownership deeds for 613 acres of land in Kilinochchi and Mullaitivu districts to their original owners and to the relevant institutions; this land was previously utilized by the military (Wimalaweera, 2015). A further 1,013 acres of land in Jaffna in the northern province has also been released (Sri Lanka Brief, 2015c).

The new government's approach to the resettlement of communities with low incomes in Colombo too is noteworthy as communities will be relocated only if acquiring the land that they are living on is absolutely essential and the practice of issuing an agreement which is only in Sinhala is rescinded. The Urban Development Authority is now also taking steps to address the concerns of those relocated to high-rise apartments under the previous regime (CPA Lanka, 2015).

Right to participation

Minority parties have played a key role in Sri Lankan politics, particularly in the last two decades with the doing away of the first-past-the-post system and the introduction of the proportional representation electoral system. The Ceylon Workers Congress, which is a representative of the Indian Tamil community and the Sri Lanka Muslim Congress have, to an extent, been in a position to make and break governments in the recent past by enabling the formation of coalition governments. The leaderships of the parties have

been in a position to negotiate with the ruling party on policies of concern to them and also secure key ministerial portfolios (Minority Rights Group, 2011). But this does not mean that the minority communities enjoy more protection.

The first-past-the-post system was disadvantageous to non-territorial minorities because there was no way they could secure a seat by winning a particular electorate. Therefore, the proportional representation system along with preferential voting enabled voters from dispersed minorities to maximize the chances of a few candidates from minority political parties winning (Uyangoda, 2015).

Even though Sri Lanka was the first country in Asia to afford women the right to franchise in 1931 and then elected the first female Prime Minister in the world in 1960, several decades later she is still struggling to garner an equal or even numerically significant representation for women in politics. The percentage of women in Parliament has not gone above 6.5 per cent since independence in 1948 and is currently only 5.8 per cent (Daily FT, 2015; Jayasinghe, 2015). This is largely on account of the patriarchal nature of Sri Lankan politics.

Women's representation in provincial councils too has not exceeded 6 per cent, with it being even worse in local authorities (in the range of about 1-2 per cent) (Daily FT, 2015 ; Jayasinghe, 2015). The approval of cabinet ministers, however, has been obtained to amend the Local Authorities (Special Provisions) Act No. 21 of 2012 to allocate 25 per cent representation to women in provincial councils and local governments (Colombo Page, 2015).

However, this would potentially yield feasible results only in the event that both the first-past-the-post and proportional representation systems are adopted, the specific modalities of which would have to be carefully worked out.

Currently, Sri Lanka is in the process of introducing further electoral reforms after considering the interests of all stakeholders.

The 13th Amendment

The 13th amendment to the Constitution was made in 1987 with a view to devolving some powers vested in the centre among the nine provinces, thus purporting to increase the avenues for participation.

During the peak of the ethnic conflict, India and Sri Lanka came to an agreement under which the Government of Sri Lanka agreed to devolve a certain degree of political power to the provinces in the country. This was done to undermine the movement for secession while providing an avenue of power sharing taking into account the needs of minority communities.

The members of the Council and the Chief Minister are elected by the people of the province and the Council can legislate over matters set out in the provincial list. Each province has a Governor appointed by the President, holding office in accordance with Article 4(b) during the pleasure of the President.

Under Article 154G, the Provincial Council can make statutes according to the special procedure laid out with respect to matters on the Provincial Council list. Parliament has exclusive powers to legislate over matters in the reserved list. The subject matter in the concurrent list can be legislated upon by both Parliament and provincial councils, but in practice it is the will of the Parliament that prevails.

It is important to note that a Provincial Council can make a statute which applies only within its provincial limits. Moreover, the power to make statutes is subject to other provisions in the Constitution. When making a statute on a matter in the concurrent list, the Provincial Council is expected to carry out such consultations with Parliament as it may consider necessary in the circumstances of each case. However, with regard to the Parliament legislating on matters in the concurrent list, there is no express requirement that these should be subject to the other provisions of the Constitution. But it is provided that the Parliament may carry out such consultations with all provincial councils as it may consider appropriate in the circumstances of each case.

Further, as per Article 154G(6), a statute made by a Provincial Council may be void if it is inconsistent with a law passed by Parliament which was enacted following the provisions of paragraphs (2), (3), (4) and (5) of Article 154G.

A Provincial Council is also entitled to legislate on a matter on the Provincial Council list even though there may be a law enacted by Parliament prior to the commencement of the 13th amendment. In such a situation, the statute in its long title must describe that it is inconsistent with that law. If

Good practice case study:

Civil society activism for the minority rights of the estate plantation community

During the early part of the 19th century, the British brought upcountry Tamil estate workers from South India to Sri Lanka to work on British tea plantations. They make up 4.2 per cent of the current Sri Lankan population (CPA, 2015). Even though the community has been living in the country for about 200 years it has been neglected in policies. Though the estate workers play a pivotal role in contributing towards the national economy, their living conditions are deplorable and they have a very low standard of living. According to Oldenziel, 'in Sri Lanka, the vast majority of tea estate workers are "Tea Tamils" who are isolated even within their own community as the indigenous Sri Lankan Tamils consider them to be second class citizens' (SOMO, ProFound, Indian Committee of the Netherlands, 2006). Initially when this community was brought to Sri Lanka its members were not granted citizenship and the subsequent nationalist movement prevented the governments that were in power from changing the situation. A clear example of this is the Ceylon Citizenship Act of 1948, which did not recognize upcountry Tamil estate workers as Sri Lankan citizens despite the fact that they had lived in the country for so long (CPA, 2015). On the introduction of the first Citizenship Act in 1948, a person could claim citizenship if he/she had two out of three immediate ancestors in the immediate paternal line born in the country or in case of birth after a fixed date such a person would be eligible if the father was a citizen at the time of the applicant's birth. Such criteria almost automatically excluded the eligibility of this community from applying for citizenship (Jayawardena, 2015).

The issue of citizenship was shelved for years, which led to rising restlessness among the youth in the plantation community. In response a three-month prayer campaign was organized by the Ceylon Workers Congress on 12 January 1986 where workers prayed from 7.00 am to 12 noon and then returned to work with the hope that their workload would be reduced. It was not a strike and neither was it to be viewed as such, but rather a non-violent intervention to seek spiritual guidance for facing their hardships. Consequent to this campaign, the government passed the Grant of Citizenship to Stateless Persons Act 1986 (Jayawardena, 2015).

... contd. ...

such a statute is passed by the Provincial Council and receives the assent of the Governor, the statute will be in force in the province and the parliamentary law which was passed before the commencement of the 13th amendment will be suspended in that province. However, the situation is different when it comes to laws passed by Parliament after the commencement of the 13th amendment.

Therefore, the 13th amendment to the Constitution at least notionally confers some degree of participation to the minorities in matters which concern them but is far from ideal given the degree of power retained by the centre.

Right to culture and identity

Article 14(1)(f) of the Constitution confers on every citizen the freedom by himself or in association with others to enjoy and promote his own culture and to use his own language. Article 27(10) further provides that the 'State shall assist the development of the cultures and the languages of the people.'

A recognition of the language and culture of a particular group is a first step in validating its identity.

Consequent to the growing support for the *swabasha* movement in the 1940s, the Sri Lanka Freedom Party manifesto claimed '...it is most essential that Sinhalese and Tamil be adopted as Official Languages immediately so that the people of this country may cease to be aliens in their own land...'

However, in 1956 with the passage of the Official Languages Act No. 33 of 1956, Sinhala was established as the official language island-wide, replacing English and giving no status of parity to Tamil. Consequently, with an increase in political pressure, the Tamil Language (Special Provisions) Act No. 28 of 1958 was passed and in or around 1966, the act was implemented when Tamil came to be used as the language of administration in the northern and eastern provinces.

Thereafter, in 1987, with the passing of the 13th amendment to the Constitution, a legal basis for parity between Sinhala and Tamil was established at least notionally as Tamil was also declared an official language. English was declared to be the link language.

... Good practice case study continued ...

This community lived for decades without state provision of social services, until this issue was addressed to a very limited extent under the government of J.R. Jayawardana. Nevertheless, large inequalities exist in their access to and utilization of basic human needs such as health services, as these workers are largely dependent on the estate's management for their basic needs – housing, health, and education (Jayawardana, 2013). They also receive poor pay as compared to labourers in other sectors and the labour laws prevalent in the country are not helpful in enhancing their living conditions. This has led to dilapidated housing with limited access to utilities, alcoholism, high incidence of illnesses, low spending on education and high levels of indebtedness. Further, though it is evident that the housing, health and transportation facilities have significantly improved over the past decade these estate worker communities have not been able to benefit from these developments.

Further, these estate workers are not the owners of the small, dilapidated houses built in rows in uncomfortably close quarters on the estates that they work in as housing is under the control of the management. These line-rooms, which were supposed to be temporary shelters, have now become their permanent abode. The estate management has not taken measures to rectify this situation (CPA, 2015).

Individual houses do not have their own addresses. As a result, important correspondence is not delivered to those who ought to receive it. The mail is sent to the estate head office and the management distributes it at its own convenience. This land does not come under the purview of the Pradeshiya Sabha Act, as the estates are private land. Further, as an estate also owns the roads, addresses cannot be provided by the local authorities (CPA, 2015).

Funded by the Australian High Commission, the Centre for Policy Alternatives (CPA) in partnership with the Uva Shakthi Foundation ventured to address some of the pressing issues that these communities face. According to Lionel Guruge, Senior Researcher attached to CPA, CPA had been 100 per cent successful in obtaining valid postal addresses for most of the estate workers residing within the Passara region in Uva province (about 3,500 families) and for about 1,500 families in Maskeliya (personal communication). A unique feature of this programme in Mocawatte is the support and collaboration of the estate management, which enabled CPA to complete the work within just 3 months whereas in other areas it took around at least 6 or 7 months.

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Article 22 of the Constitution, through the 16th amendment, introduced provisions relating to the language of administration being available in both Sinhala and Tamil.

As such, recognizing previous discriminatory language policies, Chapter 4 of the Constitution and the 13th and 16th amendments provide for extensive solutions.

As per Articles 18 and 19 of the Constitution, both Sinhala and Tamil are the official and national languages of Sri Lanka. Further, Article 22 specifically stipulates that in the northern and eastern provinces Tamil shall be the language of administration.

The Constitution of Sri Lanka of 1978 provides that all laws and subordinate legislation shall be enacted or made and published in Sinhala and Tamil, together with a translation thereof in English and the Parliament is to determine at the stage of enactment as to which text shall prevail in the event of any inconsistency between the texts (Constitution of Sri Lanka, Article 23[1]).

In practice, it is usually the Sinhala version that prevails. Even though such a provision has been complied with in respect of the laws enacted after 1978 the status remains the same as far as the legislations prior to that are concerned.

Even though provided for by both the Republican constitutions, such provisions have not been practically implemented with the entire gamut of more than 250 laws passed before the 1972 Constitution including the Penal Code, Civil Procedure Code, Evidence Ordinance, Motor Traffic Act and Industrial Disputes Act not having been published as stipulated by law, even more than 30 years after being provided for.

Even though some of the legislations enacted before 1972 have been translated into Sinhala and/or Tamil, since the translations have not been published in the gazette, they remain unofficial and without any force or effect in law.

... Good practice case study continued ...

Thus the right to safely receive one's correspondence, a basic living condition taken for granted by most in the rest of the country, has now been ensured to estate workers. Secure mail collection boxes have also been set up in 20 localities. Further, working with the Passara Pradeshiya Sabhawa, the road names were chosen and bi-lingual signage provided for 40 of the estate by-roads. Mobile clinics were also set up to facilitate the application process for about 300 national identity cards; most of the applicants were students who were due to sit for government exams (Citizens Lanka, 2014). Language societies too have been established in several estates and about 30 villages in the DS Divisions of Lunugala and Passara.

The success of this project has inspired the Uva Shakthi Foundation to commence another project in order to serve approximately 15,000 families and other civil society organizations such as the World Vision Sri Lanka (which extended support to CPA) have expressed an interest in launching a much broader project targeting 35,000 families of the plantation community.

Lionel Guruge elaborated on some of the strategies adopted by CPA in this effort:

- A detailed analysis of the hardships faced by the estate plantation community was obtained at the grassroots level by speaking to individuals, families and representatives of the community.
- Having identified some of the key issues as not having street names, house addresses and national identity cards, the community was educated on the importance of having these for their empowerment and were made to understand that it was a basic right that they were entitled to and that these would also help in upholding their dignity.
- Necessary information including details of the area and families was collated.
- All necessary stakeholders including the estate management, village heads, post office, police and local authorities were consulted.
- They understood that communication was key as it was imperative that none of the stakeholders erroneously feel they that would lose out.

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In 1991, the Official Languages Commission was set up to advise the government on matters of language policy, to monitor compliance particularly of public authorities, to educate state officials and to investigate complaints arising from alleged violations of the law.

The Ministry of National Languages and Social Integration was established in 2010 to address matters relating to the formation and implementation of the national languages policy and to promote social integration and ethnic affairs. In 2014, the ministry undertook several activities including conversational workshops to educate police officers and members of the local and provincial administration on the importance of implementing the official language policy, investigation programmes regarding the implementation of the official language policy in bilingual divisional secretariats and other divisional secretariats, establishing bilingual facilitation cells in district secretariats and divisional secretariats, the bilingualization of the public service and the establishment of provincial centres (Ministry of National Languages and Social Integration, 2014).

The ministry has also engaged in the provision of mobile services for civic documentation to provide equal opportunities for vulnerable groups as citizens of the country by fulfilling its requirements of civic documentation. A wide range of free services were provided at a one stop shop and at ease (for example, stamps which are needed to obtain national identity cards and the fees for birth, marriage and death certificates are provided free of charge). These mobile services were mainly available in the northern, eastern and estate plantation sectors (Ministry of National Languages and Social Integration, 2014). However, a lot more needs to be done by way of creating parity in terms of language rights.

Identity: Examples of severely marginalized groups

The Wanniyalaeto Community

The identity of this indigenous people's group is intrinsically linked with who they are and where they come from.

Due to assimilation into Sinhala and Tamil communities for the sake of survival, the Wanniyalaeto have not been able to preserve their original language except for only a few words (Veddas of Sri Lanka).

As per Census reports, Wanniyalaeto population was about 4,510 in 1921 which dropped to 2,361 in 1946. Though a separate count has not

... Good practice case study continued ...

- The community was then involved in formulating names for the streets in order to facilitate a sense of ownership.
- Thereafter, particular addresses for each family were formulated and taken to the Grama Niladhari for the necessary stamp of approval. This was undertaken together with the post office. Further, CBOs and CSOs in the area were also involved in the process.
- Once all approvals had been obtained, the information was published in the gazette and all relevant stakeholders informed.

Some of the challenges faced in the implementation of the project:

- Resistance from estate management – It preferred the old system as this was a way in which it exercised more control over the workers. The estate management was also fearful that with time the line room families would claim legal ownership to the houses. However, the CPA team managed to explain the ground reality and persuade the management that it was in the interests of all concerned.
- As new names of roads/villages were formulated in Tamil, the adjoining Sinhala villagers were uneasy as the villagers feared the word ‘puram’ (which is a Tamil word for place or area). The CPA team allayed such fears by convincing them that the word merely meant ‘area or place’ and nothing more. The team also visited the nearby temples and explained the real purpose of the project, that is, it was not for creating a type of Tamil dominance over the area.
- Ignorance and lack of knowledge among the estate community regarding the basic right of having a permanent, separate address for each family. The CPA team educated and motivated them on the value of having such an address. This was vital as without their active participation and interest in the project it could not have become a reality.

been made since 1963, a 1978 study identified about 6,000 Wanniyalaetos in the Anuradhapura district alone (For details see <http://www.vedda.org/3-identity.htm>).

Their collective custodianship over hunting and gathering ranges have not been taken cognizance of and this community is usually not consulted

in matters pertaining to decisions that affect their day-to-day existence (For details see <http://www.vedda.org/3-identity.htm>), making them perhaps the most marginalized group in Sri Lanka.

The perceived inferior social status of the Wanniyalaeto and the failure to recognize their own criteria of self-determination has caused their extinction as a distinct culture and denied them participation in the democratic decision-making process.

Since this community is numerically insignificant in every parliamentary electorate, it does not have any representatives in Parliament and does not have any voice in decision making.

The Estate Plantation Community

Hill-country Tamils were brought by the British at the beginning of the 20th century from south India to work on British plantations; they now form about 4.2 per cent of Sri Lanka's population (www.mysrilanka.com).

These people have suffered discrimination by the Sinhala majority as well as Sri Lankan Tamils. The Census identifies them as a different ethnic group termed Indian Tamil, even though most of them were not born in India nor have they ever been to India. Due to their origin as indentured labour, long period of statelessness and continued depressed socioeconomic status, the term Indian Tamil has acquired a derogatory connotation and by and large the community prefers to be referred to as Hill-country Tamils. Moreover, many former estate workers and their descendants who have moved out of the plantation areas have classified themselves as Sri Lankan Tamils in their Census classifications.

As a majority of them descended from indentured labour brought from India in the early 1900s and they were not granted citizenship status, for decades they lived without state provision of social services. On the introduction of the first Citizenship Act in 1948, a person could claim citizenship if he had two out of three immediate ancestors in the immediate paternal line born in the country or in case of a birth after the fixed date such a person would be eligible if the father was a citizen at the time of the applicant's birth. Such criteria almost automatically excluded the eligibility of this community from applying for citizenship. Eventually as a result of a campaign by the community, particularly the April 1984 strike action and the January 1986 prayer campaign, the Grant of Citizenship to Stateless Persons Act 1986 was passed

and Sri Lankan citizenship was granted to 469,000 persons and any other persons of Indian origin who were stateless but legally resident in the country (Jayawardena and Kurian, 2015). However, P.P. Deveraj argues that even though *de jure* citizenship was granted, several in the community continued not to enjoy *de facto* citizenship, with difficulty in even obtaining national identity cards, resulting in being excluded from voters' lists.

Dr Devanesan Nesiah (personal communication) was of the opinion that an affirmative action programme sustained over several years was needed including improved education, health, housing and other facilities in the plantation areas, as well as a guaranteed minimum quota in at least public sector employment, public sector training institutions and admissions to state universities. Unlike the Wanniyalaeto, the Indian/Hill-country Tamils are already politically organized and their leaders could further engage in designing appropriate affirmative action programmes.

Conclusion

Among the key findings that emerge from this discussion is the notion that even though there are no major impediments in the legal and constitutional frameworks for the protection of ethnic and religious minority rights in Sri Lanka, there appears to be a fundamental issue in the practical implementation of the laws, which are already in place.

On the conclusion of the three-decade long ethnic conflict and the resulting triumphalism, there has been a resurgence of ethno-nationalism and identity politics giving rise to the empowerment of fascist movements, which have attacked both the Muslim and Christian communities. Sri Lanka has demonstrated an increase in hostility towards some minorities, though in 2015 there appeared to have been some improvements.

Recommendations for State actors

In as much as it is evident that the primary concern is one of implementation, it is of essence that proper mechanisms are in place in order to monitor the progress of the various international treaties that have been ratified by Sri Lanka. Law enforcement agencies too must be empowered to act in accordance with the law and to bring offenders to task without exception. It is essential that the government formulates an objective plan to reform the incapacity and apathy of the police and other state officials. Further, devel-

opment initiatives must create and empower grassroots level employment, particularly in the north and the east.

Formulating programmes to deal with judicial sensitization towards issues that concern minorities must be made after discussions with the Judicial Service Commission and the Judges Training Institute (Gunatilleke, 2015a: 56). Steps must also be taken to take positive affirmative action for the empowerment of ethnic and religious minorities who have been marginalized in terms of access to their rights.

Speedy action in terms of Constitution making and accountability, in accordance with international obligations, particularly the latest UN resolution which Sri Lanka co-sponsored is also recommended.

The government must also take steps to repeal the draconian Prevention of Terrorism Act and introduce an act bearing in mind its international treaty obligations. Steps must be taken immediately to release political prisoners and detainees. Transparent principles, processes and time tables need to be formulated for the return of military-occupied land or payment of compensation.

It is imperative that the government adopts a policy of affirmative action, particularly in the areas of university admissions, political representation and public and private sector employment with a view to empowering the minorities. The specific modalities may vary but ought to be considered and implemented.

Local authorities must be encouraged to improve the living and working conditions of labourers and sanitary workers by adopting improved technologies, safety measures and developing career paths which go beyond caste and ethnic factors.

Recommendations for Civil Society

Given the almost alarming increase in the social hostility index, it is imperative that civil society works towards an attitudinal shift in society, particularly in areas with low ethnic and religious diversity and low concentrations of minorities, which are perhaps more prone to violence. Working with government institutions and monitoring the provisions and progress of the rights of minorities too must be a key focus.

It is also important that awareness is created about the importance of power sharing and the link between accountability and true reconciliation.

Civil society organizations working with 'lower caste' communities should share their experiences across the ethnic divide. It may also be useful to share experiences with Dalit activists in the rest of South Asia.

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