



INTERNATIONAL
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Coming out of the Margins:

Justice and Reconciliation for Conflict-Affected Muslims in Sri Lanka



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2018

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Colombo, 2018

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2, Kynsey Terrace,
Colombo 8
Sri Lanka
E-mail: admin@ices.lk
URL: www.ices.lk

ISBN- 978-955-580-225-3

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Cover Photograph by Dennis McGilvray. (Bullet holes in the walls of a mosque prayer hall, after the 3rd August 1990 massacre of Muslims in Kattankudy)

Printed By: Horizon Printing (Pvt.) Ltd.
1616/6, Hatharaman Handiya,
Malabe Road, Kottawa,
Pannipitiya

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Justice and Reconciliation for Conflict-Affected Muslims in Sri Lanka

Farah Mihlar*

***Dr. Farah Mihlar** is a British/Sri Lankan Muslim academic and activist. She is currently lecturing on conflict studies at the department of politics at the University of Exeter, UK. She has previously worked for a number of international organisations including the International Crisis Group, Minority Rights Group International, and the UN Office of the High Commissioner for Human Rights. She specialises in minority rights, women and conflict and transitional justice. She has conducted field research and published from a number of countries including Israel, Kenya, Malaysia, Nepal, Pakistan, and Uganda and she lived and worked in northern Sri Lanka from 2016 to 2018, which was when she also researched and wrote this report. Farah has a PhD in the study of religion from the School of Oriental and African Studies (SOAS), London.

Acknowledgements

The author would like to thank the following people for supporting this research:

Ms. Juwairiya Mohideen and the staff of the Muslim Women's Development Trust, Puttalam; Mr. Azmin Ayoob, Jaffna; Ms. R. F. Shihana, Jaffna; Ms. Jenzila Majid, Mullaitivu; Mr. Qubais Majid, Mullaitivu; Mr. A. R. Ramees, Vavuniya; Mr. M. Buhary, Trincomalee; Mr. M. Jihad, Trincomalee; Ms. M. N. Ismiya, Trincomalee; Mr. M. B. M. Firdouse, Kattankuddy; and Mr. Nihal Ahamed, Ampara.

Special mention must be made to Mr. Mujeeb-ur-Rahman, in Mannar, and Ms. Bisliya Bhutto, in Jaffna, who made more substantive contributions to the research. Many thanks to all of the organisers and to the participants who attended the focus group discussions.

The author would also like to extend her gratitude to Ms. Shreen Saroor, for her support in helping to organise interviews and for drawing attention to important issues that have been highlighted in this report, and to Mr. Ameer Faaiz and Mr. Mirak Raheem for taking the time to read and comment on the report.

The author also wishes to thank the external reviewers for their helpful comments and guidance on strengthening the report and Ms. Sharni Jayawardena for copy-editing it.

Executive Summary

Sri Lanka's nine per cent Muslim population was affected in many different ways by the country's ethnic conflict but were never formally seen as a party to the conflict and so were often marginalised in peace-building and restitution processes. Now, nearly nine years after the war has ended, as the country reluctantly limps towards transitional justice and peace-building, conflict-affected Muslims find themselves at the margins of post-conflict reforms in a climate where they are having to battle a rising reputation as the 'new enemy' of both the Sinhalese and Tamils. The perspectives of Muslims, as presented in this report, are crucial because they simultaneously have the potential to challenge and enhance post-conflict reforms; emphasise the systemic nature of minority rights abuses and the fragility of the current security context; and affirm the importance of truth, justice, and reconciliation for long-term sustainable peace.

This report comes at a time when the prospects of post-conflict reform, transitional justice, constitutional reform, and reconciliation, are all largely trapped in a toxic combination of insufficient political will, incompetence, and majoritarian politics. The early promises and momentum for change are diminishing as the government struggles with everyday governance. The reform vacuum is giving space to nationalist and extremist groups, hardening ethnic and religious divides, and Muslims are targets of hate campaigns and religious intolerance across the country which, apart from a few headline making incidents of violence, mostly remains under the radar and undealt with.

Despite what appears to be a near crisis of progress – for this government, or a subsequent one – post-war conflict resolution, justice and peace building are inescapable. The recent violent attacks against Muslims, the worst since the war ended, is indicative of how weak the rule of law is in Sri Lanka, how impunity remains unchallenged and how vulnerable minorities are; and underscores more than ever the need for a just peace. To avoid a return to armed conflict Sri Lanka has to investigate, account for, and provide redress to victims of serious human rights violations from all communities, and resolve minority grievances that are at the heart of the conflict.

The aim of this report is to understand the positions of Sri Lanka's conflict-affected Muslims on post-war reforms. As the country's second largest minority, their positions and positioning on this issue are critical, complex, and require serious policy consideration, particularly in the current context where tensions between communities are on the rise.

This research found that large numbers of conflict-affected Muslims living in the north and east of Sri Lanka are unaware of transitional justice conceptually nor do they have sufficient information on the government's proposals and only a few are involved in existing initiatives and processes. When questioned separately on what they want, the research found there was a deep quest for truth seeking on the events that led to the forcible eviction in 1990 of Muslims from the north by the LTTE, and for specific attacks on the community in the east. If the eviction of northern Muslims is deemed as forced deportation it would constitute a crime against humanity under international law, making it one of the most serious violations perpetrated during the course of the Sri Lankan armed conflict. Some conflict-affected Muslims also wanted prosecutions but were unsure how this could be achieved in the absence of the LTTE. Financial compensation was the area which a larger number of conflict-affected Muslims had given most thought to and had a detailed sense of what they wanted.

All these needs are shrouded in scepticism and mistrust based on dual narratives of historical exclusion and being the smaller ethnic group and so left on the margins of national conflict resolution efforts. The positions of conflict-affected Muslims, especially the call for the forcible eviction of Muslims from the north to be considered as ethnic cleansing, when articulated, challenges the dominant Tamil narratives in the north and east and could problematise the proposed reform process. The report also found that in other parts of the country, Muslims are targets of hate campaigns and religious intolerance that at times has led to serious violence and has potential to give way to religious conflicts. The organised and systematic nature of this religious intolerance and violence needs to be urgently investigated and redressed.

The quest for post-conflict justice for Muslims sits at the intersection between pursuing transitional justice and conflict resolution in Sri Lanka. For conflict-affected Muslims, the perpetrators are from both communities, and seeking justice, for example, for crimes committed by the LTTE or Buddhist monks could exacerbate hate campaigns against Muslims and provoke more serious and widespread violent attacks. On the other hand, neglecting Muslims' claims for truth and justice allows impunity to reign and can build resentment and grievances amongst them, which can also lead to conflict. This report argues that the Muslim dimension, though complex, has potential to enhance, strengthen, and balance out the dividends of post-conflict reforms across all communities.

On the Muslims side, their engagement in national processes of reconciliation is greatly limited through a trifactor of damaging politics, parochial religious leaders, and less-empowered civil society. Despite their 30-year quest for justice, the fact that conflict-affected Muslims are in the margins struggling to be effectively included and engage with existing post-conflict reform processes is evidence of a significant failure of Muslim leadership, particular in the political front. Muslim civil society groups in the north and east lack the necessary institutional capacity and technical knowledge to implement awareness raising programmes on transitional justice and the few lone activists who work on these issues are not sufficiently supported by national civil society and international donors. Muslim politicians are not constructively championing transitional justice and the influential religious leadership are successful on the conflict resolution front but don't operate within a human rights framework. Muslim women are often side-lined and as the current campaign for reform of Muslim marriage laws, also a post-war reform issue, indicates, Muslim male religious and community leaders remain an obstacle to achieving women's empowerment. The gap in leadership and voice amongst Muslims on the transitional justice process is stark; there is very little debate or discussion on the subject within the community as a whole. Without an accelerated process of awareness raising, capacity building, debate and discussion amongst Muslims on post-conflict reforms, the community is unlikely to be able to effectively participate and engage in any transitional justice and reconciliation mechanisms which will result in grave injustice to the community, create additional grievances, and could lead to new or renewed conflicts.

We are very concerned Muslim issues will be neglected. The Tamil Diaspora is strong, they have fought for so long and done so much advocacy and with all that look at what they got. We are much weaker and Muslims don't get considered. We don't have capacity or strength – Muslim returnee, Mullaitivu focus group discussion, July 2016.

1. Introduction

The violations of human rights and humanitarian laws in the last stages of the armed conflict and the need for accountability and justice for conflict-affected persons is now well documented in at least two UN reports and a host of national and international policy papers.¹ After years of denying these violations and refusing to independently investigate or seek justice for wartime atrocities, the Sri Lankan government, in a significant change of policy, in October 2015 together with four other states co-sponsored the UN Human Rights Council (UNHRC) Resolution (30/1), which promised a series of transitional justice measures.² These included a truth seeking mechanism in the form of a truth commission, a judicial mechanism, offices to investigate missing persons and to pay reparations.³ While on paper the government's commitments to post-conflict reforms were landmark and progressive, in practice the process was problematic and limited.⁴

Fundamentally, the government as a whole has shown little interest and commitment to their own transitional justice project which is now barely moving forward. Since hurriedly passing through legislation to set up the Office of Missing Persons (OMP), one of the four promised mechanisms, in August 2016, the government started to push down the brakes on the process. Neither the President nor the Prime Minister were present to accept the report of their own Consultation Task Force on Reconciliation Mechanisms (CTF), which conducted nationwide consultations on

1 *Report of the UN Secretary General's Panel of Experts on Accountability in Sri Lanka*. New York: United Nations, 2011; UN Office of the High Commissioner for Human Rights (OHCHR). *Report on the OHCHR Investigation on Sri Lanka*. Geneva: 2015; *War crimes in Sri Lanka*. Asia Report No 191. Brussels: International Crisis Group, 2010.

2 See UN HRC resolution 30/1 available on page 23 of <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/239/66/PDF/G1523966.pdf?OpenElement> (last viewed on 8 December 2017).

3 The specific reference to these mechanisms in the resolution is as follows: "a commission for truth, justice, reconciliation and non-recurrence, an office of missing persons and an office for reparations;" (paragraph 4 of A/HRC/30/1) and "a judicial mechanism with a special counsel to investigate allegations of violations and abuses of human rights and violations of international humanitarian law, as applicable;" (paragraph 6 of A/HRC/30/1).

4 There is some debate on whether the current context in Sri Lanka can be referred to as 'post-conflict,' based on the argument that whilst the war, or armed conflict, has ended, the ethnic conflict has not been resolved and religious conflicts are beginning to occur. War and conflict have different interpretations in international relations and international law and the terms have to thereby be carefully used. For the purposes of this report, the author uses post-conflict in reference to any justice or reform process as the very intention of such a process is to resolve the causes of the conflict and build peace. However, post-war is used in reference to the context as in the north and east the situation can't be considered as post-conflict.

transitional justice and published their findings in early January 2017.⁵ There is no official government strategy or road map on transitional justice.⁶ In 2017 the only step the government took towards implementing this process was to operationalise the OMP in September, though this only occurred after nearly 300 days of protests by families of the disappeared across the conflict-affected areas of the north and east.⁷ The protests were met with a poor response from the government, which continues to be accused of human rights violations and has failed to meet confidence-building targets such as substantially reducing militarisation, repealing the prevention of terrorism act, and releasing prisoners held under these laws without proper trial.⁸

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- 5 The Sri Lankan government appointed a National Consultation Task Force (CTF), which constituted leading civil society activists, who were tasked with conducting public consultations across the country to ascertain people's perceptions on the proposed transitional justice mechanisms. The CTF appointed Zonal Task Forces (ZTFs) in 15 districts, comprising of community-level activists, to conduct the consultations. Burdened by financial restrictions and limited government commitments, the CTF, finally, produced a comprehensive and detailed report on the public's views on these proposed mechanisms on 5 January 2017, which provided the government with substantive content to develop and implement a transitional justice policy and process. The CTF report can be found on their website: <http://www.scrim.gov.lk/consultations>. See: Ramanan Weerasingham "Sri Lanka state leaders snub event to receive reconciliation report," Sri Lanka Mirror, 5 January 2017, available at: <http://www.srilankamirror.com/news/news-in-brief/1276-sri-lanka-state-leaders-snub-event-to-receive-reconciliation-report> (last viewed on 7 April 2017).
- 6 See Alan Keenan, "Sri Lanka transition to nowhere," The Diplomat, 30 January 2017, available at: <https://www.crisisgroup.org/asia/south-asia/sri-lanka/sri-lankas-transition-nowhere> (last accessed on 31 March 2017) and the Sri Lanka Campaign for Peace and Justice has tracked the government's meeting of commitments made in the 2015 UN HRC Resolution, available at <https://www.srilankacampaign.org/take-action/keep-the-promise/> (last accessed on 31 March 2017). For a selection of articles based on statements by Tamil politicians and civil society, including many criticising the UN HRC's failure to provide justice for victims of the conflict, see Ilankai Tamil Sangam (Association of Tamils of Sri Lanka in the USA), available at <http://sangam.org/2017/03/> (last accessed on 31 March 2017).
- 7 After much delay and deliberations, the President in January 2018, appointed Commissioners to the OMP and the institution has begun work but families of the disappeared lack faith in the Office and protests are continuing in the north and east.
- 8 In October 2017, three PTA detainees started a fast in protest of the transfer of their cases from courts in the northern town of Vavuniya to the Sinhalese majority district of Anuradhapura, which led to wide-scale protests and demonstrations, including a one-day shut down across the north and east of Sri Lanka. A number of people detained under PTA have been in prison for long periods without proper trial. See Colombo Page, "Hartal in north demanding release of Tamil prisoners," 13 October 2017, available at: http://www.colombopage.com/archive_17B/Oct13_1507880471CH.php (last accessed 8 December 2017). For details on protests by families of the missing see: Shreen Saroor and Mytili Bala, "In post-conflict Sri Lanka hope fades for families of the disappeared," *World Politics Review*, August 2017, available at: <https://www.worldpoliticsreview.com/articles/23018/in-postwar-sri-lanka-hope-fades-for-families-of-the-disappeared> (last accessed on 8 December 2017). For details on delays in meeting commitments on post-war reform see Human Rights Watch, "Sri Lanka: Adopt a timeline for action," 15 November 2017, available at: <https://www.hrw.org/news/2017/11/15/sri-lanka-adopt-timeline-action> (last viewed on 8 December 2017); Opening Statement by Zeid Ra'ad Al Hussein, United Nations High Commissioner for Human Rights at the 36th session of the UN Human Rights Council, 11 September 2017, available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22041> (last viewed on 8 December 2017); and the full statement by Pablo de Greiff, UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence on the conclusion of his visit to Sri Lanka on 23 October 2017, available at: <https://lk.one.un.org/news/full-statement-by-pablo-de-greiff-un-special-rapporteur-on-the-promotion-of-truth-justice-reparation-and-guarantees-of-non-recurrence-at-the-conclusion-of-his-official-visit/> (last accessed on 8 December 2017).

The government's proposed transitional justice process never had popular support; the majority population of Sri Lanka who bought into the previous government's narrative of having fought a 'just war,' a 'humanitarian operation' with 'zero civilian casualties,' see no necessity for this process and consider it an external imposition by interfering foreign states.⁹ The government did little to gain greater public buy-in for the process and in the absence of strategic communication and outreach to the people of Sri Lanka, the discourse on the process has been hijacked by nationalists and sensationalists, the former describe it a foreign imposition and the latter repetitively ring alarm bells on select sensitive topics such as the inclusion of foreign judges in any accountability court.¹⁰ There has also been clear and open opposition to the process by the former President and his allies, and the military, which the present government, with the exception of the former Foreign Minister, Mangala Samaraweera, have not properly dealt with.¹¹ Generally, messaging from the President and Prime Minister on the proposed transitional justice process has been mixed, confused, and not indicative of firm commitment towards it.¹²

9 For an analysis of the dominant narrative at the end of the armed conflict see: Eranda Jayawickreme, Nuwan Jayawickreme and Elsie Miller, Triumphalism, fear and humiliation: The psychological legacy of Sri Lanka's civil war, *Dynamics of Asymmetric Conflict: Pathways toward terrorism and genocide*, 3:3, 208-222, 2010.

Also see Cédric Gouverneu, "An uncomfortable peace in Sri Lanka: The time of triumphalism," *Le Monde Diplomatique*, 17 August, 2010, available at: <http://mondediplo.com/2010/08/05srilanka> (last accessed 31 March 2017)

A number of media have made the case that Sri Lanka is unfairly targeted by the international community with the UN HRC resolution, see Malinda Seneviratne, "The humbuggery of the United States of America," No date, available at: <http://malindawords.blogspot.com/2014/03/the-humbuggery-of-united-states-of.html> (last accessed on 31 March, 2017) and Sunday Times, Sri Lanka, "Geneva Crisis: Look at the Bigger Picture," 27 September, 2015, Sunday Times newspaper, <http://www.sundaytimes.lk/150927/editorial/geneva-crisis-look-at-the-bigger-picture-165752.html>.

10 A Google search of "Sri Lanka foreign judges" for instance will yield a series of articles speculating on whether the government will seek judges from outside the country and includes responses by government ministers including the President. For examples of such articles see Malinda Seneviratne, "Yahapalana brain fade in Geneva," *The Island*, 11 March, 2017; Press Trust of India, "Maithripala Sirisena rules out Foreign judges in war crimes problem in Sri Lanka," 19 March, 2016, available at: <http://economictimes.indiatimes.com/news/international/world-news/maithripala-sirisena-rules-out-foreign-judges-in-sri-lanka-war-crimes-probe/articleshow/51469975.cms> (last viewed 31 March, 2017); and Yohan Perera and Ajith Siriwardane, "No foreign judges, only foreign observers – PM," *Daily Mirror*, 21 March, 2017.

11 Mahinda Rajapaksa, "The great betrayal in Geneva," *Colombo Telegraph*, 30 March 2017; Mark Salter, "Sri Lanka and the politics of Justice," first published in *Open Democracy*, 19 October 2015, available at: <http://www.hurstpublishers.com/sri-lanka-and-the-politics-of-justice/> (last accessed on 1 April 2017).

12 See: "President-UNP discuss crisis at late night meeting, Sirisena vows no one can topple government," *Sunday Times*, 16 October 2016, available at: <http://www.sundaytimes.lk/161016/columns/president-unp-discuss-crisis-at-late-night-meeting-sirisena-vows-no-one-can-topple-government-212642.html> (last accessed 1 April, 2017) "President slams some NGO media as traitorous force," *Daily Mirror*, 27 October 2016, available at: <http://www.dailymirror.lk/article/President-slams-some-NGOs-media-traitorous-forces-118241.html> (last accessed 1 April 2017).

The counter argument, though not uniformly made, by the Tamil minority is that justice is imperative for reconciliation and peace building. They want war time atrocities and violations investigated, victims to have truth, justice, accountability, reparations; and constitutional reform and other policy structural changes to ensure non-recurrence and minority rights guarantees.¹³ Most Tamil civil society activists, especially those based in the conflict-affected areas, are now fed up and angry with the government for failing to make substantive progress with transitional justice and constitutional reform.¹⁴

The Muslim position is largely unknown and it is this gap that this report attempts to fill.

Sri Lanka's Muslim population often find themselves in a vulnerable political position. As the country's second largest minority, since independence they have had to carefully mitigate between the identity politics of the two larger ethnic groups: the Sinhalese and the Tamils. Coming in third place, Muslims can also be marginalised; during the course of the country's three-decade ethnic conflict Muslims were frequently affected by the conflict but were not considered party to it and not effectively included in conflict resolution and peace-building processes.¹⁵

For more analysis on this see International Crisis Group Asia Report N°s 286, *Sri Lanka's Transition to Nowhere*, 16 May 2017; and Bhavani Fonseka, Luwie Ganeshathasan and Shalomi Daniel, *Two years in government: a review of the pledges made in 2015 through the lens of constitutional reform, governance and transitional justice*, Centre for Policy Alternatives, 2 February 2017, available at: <http://www.cpalanka.org/two-years-in-government-a-review-of-the-pledges-made-in-2015-through-the-lens-of-constitutional-reform-governance-and-transitional-justice/> (last viewed on 8 December 2017).

- 13 There is diversity in the Tamil position too. Some Tamil groups for instance have no faith in a domestic system, show little interest in engaging with the government and are pushing for stronger international action such as an UN referral of Sri Lanka to the International Criminal Court. See the campaign run by the Transnational Government of Tamil Eelam, available on <http://tgte-icc.org/english.asp> (last accessed 8 December 2017). For a broad overview of the position of Tamils affected by the armed conflict see the CTF report, op. cit.
- 14 See International Crisis Group, *Sri Lanka's conflict affected women dealing with the legacy of war*, Asia report 289, 28 July 2017, available at: <https://www.crisisgroup.org/asia/south-asia/sri-lanka/289-sri-lankas-conflict-affected-women-dealing-legacy-war> (last accessed on 8 December 2017).
- 15 For analysis on the Muslim situation vis-à-vis the armed conflict see Dennis McGilvray and Mirak Raheem, *Muslim perspectives on the Sri Lankan conflict*, Washington DC: East-West Center Washington, 2007; International Crisis Group, *Sri Lanka's Muslims: Caught in the Crossfire*, Asia Report No.134. Colombo and Brussels: International Crisis Group, 2007; B. Klem, "Islam, Politics and Violence in Eastern Sri Lanka," *The Journal of Asian Studies*, 70(3), 730-753, 2011; Mohamed Ismail, Abdulah Rameez and Mohamed Fazil Mansoor, "Muslim Perspectives from the East," in Frerks, Georg and Klem, Bart (eds.), *Dealing with Diversity: Sri Lankan Discourses on Peace and Conflict*, The Hague: Netherlands Institute of International Relations (Clingendael), 2004; Farzana Haniffa, "Three Attempts at Peace in Sri Lanka: A Critical Muslim Perspective." *Journal of Peacebuilding & Development*, 6, 49-62, 2011; Farzana Haniffa, "Competing for Victim Status: Northern Muslims and the Ironies of Sri Lanka's Post-conflict Transition," *Stability: International Journal of Security & Development*, 2015.

Their position is not helped by the fact that Muslims are not a homogeneous group, they are diverse, spread across different parts of the country, and as a result have very different political affiliations and demands.¹⁶

The primary questions this report asks are whether Muslims are engaging in the proposed transitional justice, reconciliation, and peace-building processes and what they want out of it.¹⁷ The report largely considers the position of conflict-affected Muslims who live in the north and east and were directly affected by the armed violence.¹⁸ However, in keeping with a broader interpretation of ethnic conflict beyond armed conflict, the report also considers the more recent attacks against Muslims living outside of the north and east and makes a case for these incidents to also be included in the transitional justice and reconciliation process.¹⁹

16 The reference to 'Muslims' and the 'Muslim community' in this report is with acknowledgement to the diversity of the ethnic group. As far as possible the report tries to specify if the reference is to a particular group of Muslims, such as northern Muslims or eastern Muslims. However, it is important to note that these sub groups are also diverse.

17 This report is based on field research and a review of published and unpublished literature on issues related to Muslim politics, conflict and justice. The field research for this paper was conducted intermittently between June 2016 and December 2017. Focus group discussions were conducted in Puttalam, Mannar, Mullaitivu and Trincomalee in the months of June and July 2016. The groups consisted of conflict-affected men and women, including activists, school teachers and principals, government servants, business people and farmers. In Puttalam the focus group also included men and women who experienced the forcible eviction of Muslims from the north in 1990. In addition, interviews with activists and community leaders working in the north and east of Sri Lanka were conducted throughout 2017, to seek new information and update existing details. A number of Zonal Task Force (ZTF) members from Puttalam, Mannar, Trincomalee, and Mullaitivu were also interviewed more than once for this report. The author also conducted small group interviews with Muslims affected by Buddhist nationalist hate campaigns and religious violence in the Southern Province and the North Central Province in August 2017. The author was based in Jaffna, from September 2016 to December 2017, during which period she conducted several interviews and conversations with Tamil civil society leaders and activists, from which she has also drawn upon for the report.

18 References throughout this report to 'conflict-affected Muslims' are limited to Muslims living in the north, east, and border villages who were directly affected by the war. Other mention of Muslims refers to the general Muslim population of Sri Lanka and if the reference is to a specific section of this population it will be detailed out as, for example, 'Muslims affected by religious violence in the south.'

19 In the Sri Lankan context, constitutional reform and transitional justice have run as two separate processes and this report is confined only to transitional justice. The main reason for doing so is because, unlike on constitutional reform where at least Muslim political leaders are seen to be engaging; with transitional justice there seems to be no known Muslim position and certainly the political leadership seem disengaged (interviews with senior members of the SLMC including leader Rauf Hakeem, September, 2016 and northern civil society and political leaders, 2016-17). Moreover, transitional justice is specifically to do with conflict-related abuses and Muslims' relationship to this process risks being determined by their historical reputation of not being seen as a party to the conflict. References to transitional justice in this report is generally on the government's proposed process and mechanisms.

2. Historical overview of Muslims' quest for conflict-related abuses

Muslims, like everyone else, have had their share of suffering, challenges, concerns and desires both during and post war. As a community that lives ubiquitously, the Muslims face multi-faceted, diverse and multiple challenges, whilst attempting to live in peace and harmony and have been subjected to different predicaments in the south and north and east. – Ameer Faaiz, Attorney-at-law, Submission to the Western Province Zonal Task Force (ZTF).

Sri Lankan Muslims have a long history, from at least the British colonial period, of shaping and politicising their identity based on their relations with and the positioning of the other two ethnic groups.²⁰ Tracing the history of Muslim identity politics is beyond the scope of this report; this section provides a brief historical analysis of the interlink between identity and politics amongst Muslims which is necessary in part to understand their distinct positioning with regards to ethnic politics and the conflict. This section also briefly presents the manner in which Muslims were affected by the conflict to enable a clearer understanding of their transitional justice needs.

The issue of a separate ethnic identity for Muslims arose in the late 1900s when Sir Ponnambalam Ramanadhan referred to Muslims as ethnic Tamils who converted to Islam.²¹ Muslim political leaders took over two decades to respond but eventually argued that they were a separate ethnic group, based on their Arab origin and

²⁰ Many scholarly writings have been produced on Muslim ethnic identity formation and the politics of it, these include; V. Samaraweera, "The Muslim Revivalist Movement (1880-1915)," in Roberts, M. (ed.), *Collective Identities, Nationalism and Protest in Sri Lanka*. Colombo: Marga Publication, p. 248, 1979; M.A. Nuhman. *Sri Lanka Muslims: Ethnic Identity within Cultural Diversity*. Colombo: International Centre for Ethnic Studies, 2007; Farzana Haniffa, "Piety as Politics amongst Muslim Women in Contemporary Sri Lanka," *Modern Asian Studies*, 42(2-3), 347-375, 2008; Qadri Ismail, "Unmooring Identity: The Antinomies of Elite Muslim Self-Representation in Modern Sri Lanka," in Ismail, Qadri and Jeganathan, Pradeep, *Unmaking the Nation: The Politics of identity and history in Modern Sri Lanka*. Colombo: Social Scientists' Association, 1995.

²¹ P. Ramanathan, "The Ethnology of the Moors of Ceylon," *Journal of the Royal Asiatic Society, Ceylon Branch*, X (36), 1888, 234-262; also see Samaraweera (1979) and Ismail (1995), *ibid.*, for a more detailed analysis of this speech.

religious belief.²² The British colonial rulers accepted the arguments and Muslims, or Ceylon and Indian Moors, were recognised as two separate ethnic groups.²³

The recognition of a separate Muslim ethnic identity, in a context where tension was building between the two larger ethnic groups, meant that Muslims were frequently having to divide their political patronage between the majority and the larger minority. Muslims' geographical dispersion complicated matters, with those in the south more often aligning themselves with the Sinhalese which has at times left the northern and eastern Muslims feeling abandoned and isolated, and arguably led to the formation of the Sri Lanka Muslim Congress in the 1980s.²⁴

During the early conflict period, in the early 1980s, Muslims in the north and east of Sri Lanka shared Tamil grievances and some Muslim youth joined Tamil militants.²⁵ The relationship was not always simple though, at times when the Sri Lankan military positioned themselves in Muslim communities, Muslims helped and supported the military too. The most controversial move by the Sri Lankan government was to create and arm a special Muslim home guard unit, which made these communities targets of militant attacks.²⁶ As the conflict intensified Muslims in the north and east found themselves pulled between the warring factions and having to split their patronage.

22 I L M Abdul Azeez, "A Criticism of Mr. Ramanathan's 'Ethnology of the "Moors" of Ceylon,'" Colombo Moors Union: Ceylon Independent Press, reprinted Colombo: MICH, 1957.

23 See Ismail (1995), op. cit., footnote 20.

24 While the SLMC rose to national status in the 1990s, it was conceived in eastern Sri Lanka and its popular support base always came from the east, see Dennis McGilvray and Mirak Raheem (2007) for more details.

25 People interviewed for this report said they could recollect tacitly supporting the LTTE and other groups, providing them with food and other forms of assistance. Interviews conducted in Mannar (July 2017), Puttalam (2017) and Mullaitivu (2017).

26 International Crisis Group, *Sri Lanka's Muslims: Caught in the Crossfire*, Asia Report No.134. Colombo and Brussels: International Crisis Group, 2007.

In the early days, Tamils and Muslims were all friends. I had batchmates in the LTTE but there was an army camp near our house we were also friends with the army. Sometimes when there was an army attack Tamil women came for safety to our house. When the LTTE and army had exchanges sometimes our house was caught up in the middle.

We were always caught up between the two. When there used to be hartals, one group comes and says you can't go out, the other group comes and says you can go, we never knew what to do.

– M. Haniffa, teacher, Norochcholai, Puttalam focus group discussion, June 2016.

The reversal then of the LTTE's position on Muslims from amicable to antagonistic, leading to committing grave atrocities against them has not been sufficiently researched or explained in literature on Sri Lanka's conflict.²⁷ The first signs were in the late 80s when Muslims became targets of human rights violations, such as abductions and extortions, perpetrated by the LTTE. The most significant turn of events took place in 1990, when Muslims were targeted for a series of serious and systematic human rights abuses by the LTTE. These included the LTTE massacres of 103 Muslims who were observing prayers in a mosque in Kattankuddy and a few days later in a similar attack 130 people were killed in Eravur, in August 1990.²⁸ The targeted, repetitive nature of the attacks and the brutality with which they were conducted deeply shocked and upset Muslims in the north and east. The biggest blow to Muslims came in the October of the same year, when the LTTE forcibly evicted the entire Muslim population from the north.²⁹ In some cases Muslims were given 24 hours to leave their homes and all their possessions behind. According to Muslims who experienced the incident, their Tamil friends and neighbours were unhappy and disapproved of the eviction but were powerless to act. LTTE cadres in all five districts across the north showed little mercy and no remorse in their execution of

²⁷ There has been some documentation of violations that Muslims faced including by scholars such as Farzana Haniffa and S. H. Hasbullah and articles mentioned in the following footnotes but most of this literature considers the Muslim position and less of the LTTE perspective.

²⁸ B. Klem (2011); Ismail et al (2004); ICG (2007) and Mc Gilvray and Raheem (2007), op. cit., footnote 15.

²⁹ While there was very limited reporting or scholarly work done on this as it occurred, more recently, there has been significant attention paid to the issue, see F. Haniffa. *The quest for redemption: the story of northern Muslims*, LST, 2012; S.H. Hasbullah, "Justice for the Dispossessed: The Case of a Forgotten Minority in Sri Lanka's Ethnic Conflict," in S. H. Hasbullah and Barrie M. Morrison, (eds.) *Sri Lankan Society in an Era of Globalization: Struggling to Create a New Social Order*, New Delhi: Sage Publications, 2004; Farah Mihar, "The State of Sri Lanka's Muslims," *Economic and Political Weekly*, 44(38), 24-25, 2009.

the eviction orders, and went to the extent of publicly selling all of the possessions of Muslims that they forcibly took away.³⁰ The incident drove a wedge between Tamil - Muslim relations, which had until then held strong, and subsequently deteriorated rapidly.

As the conflict progressed many Muslims lost their lives, sometimes caught up in the fighting, but in most cases targeted by the LTTE.³¹ Muslims in the east faced cases of rights violations including enforced disappearances, abductions, and systematic extortion.³² Muslims in the north were affected by abductions and enforced disappearances during the Indian Army occupation, just prior to the mass eviction and when some families attempted to return to the north during different peace processes.³³ While most of the allegations for these violations are against the LTTE, other militant groups and state forces are also allegedly responsible for some incidents.

Muslims in the East were also frequently displaced during different military campaigns and in the return/resettlement processes lost significant amounts of land, which has gone on to impact their livelihood and income generation.³⁴ Additionally, after the armed conflict ended, Muslims in the east and in Mannar found themselves affected by a complicated linkage of Sinhalisation, Buddhist nationalism, industrial development, and resettlement, much of which were state sponsored or supported.³⁵ In Ampara,

30 Tamil eyewitnesses in Jaffna said after the Muslims left the LTTE sold their possessions in pop-up stands which were named 'Saudi bazaar'.

31 There are no confirmed statistics on the number of Muslims who were killed, but according to figures collated by the Human Elevation Organisation (HEO) in Ampara, in that district alone there were up to 270 reported killings of Muslims between 1984 and 2006. According to Mujeeb-ur-Rahman, Journalist and ZTF member, Mannar, in the north, in the year before the eviction alone, close to 30 people were killed by the LTTE. Other northern Muslim activists say the total number of Muslims killed throughout the conflict could be well over a thousand.

32 ICG, 2007, op. cit.

33 There is no proper documentation available on the figures of Muslim disappearances and abductions. Muslim civil society groups are now attempting to collate some figures.

34 These lands were initially taken over by the LTTE, and in some cases by the military. After the war, when Muslims tried to reclaim lands captured by the LTTE, they found the process to be quite complex as in some cases Tamils had been resettled in these lands. The Centre for Policy Alternatives has a number of reports that discuss some of the Muslim land issues they include: *Land Issues in the Northern Province: Post-conflict Politics, Policy and Practices* (2011) and *Land in the Eastern Province – Politics, Policy and Conflict* (2010). These and other reports can be found on their website www.cpalanka.org.

35 Minority Rights Group International, No war no peace: the denial of minority rights and justice in Sri Lanka, MRG (online), available at: <http://www.minorityrights.org/10458/reports/no-war-no-peace-the-denial-of-minority-rights-and-justice-in-sri-lanka.html> (last accessed 30 July 2017) and CPA's land report in the Eastern Province (2010), *ibid.*, which documents several land disputes, politicization, religion etc.

one of the worst affected districts, close to 2800 acres of land, has been taken over by different state entities including the military, Forest and Archaeology Departments and for Sinhalese settlements, affecting up to 1500 families.³⁶ According to Mujeeb-ur-Rahman, ZTF member in Mannar, the government claimed 100,000 acres in 2017 in Musali and 58 acres in Erukkalampitty, the former for forestry and the latter for a bird sanctuary, by gazette notifications, while the Navy has taken over 46 acres of land in Silavathurai.

Muslims who live outside of the north and east, sometimes referred to as ‘southern Muslims’ were occasionally caught up in conflict-related violence, such as LTTE attacks in the capital city Colombo and in other parts of the country; but the impact of the armed conflict on them was low. This changed dramatically in the post-war context, particularly after 2012, when Muslims outside the north and east were targeted for attacks by Buddhist nationalist extremist forces such as the Bodhu Bala Sena (BBS) and Sinhala Ravaya in a systematic way, in some cases with the support of the previous government.³⁷ The incidents drove fear into Muslims across the country and had a crippling effect, as community leaders and political and civil society, who had always stood by the southern Sinhalese polity, were left clamouring for the latter’s support and help to end the attacks. The few southern Muslim civil society leaders who have engaged with the transitional justice process have made a case for these attacks too to be included as justice and redress for those crimes have not been received (see section six).

36 Ampara district alliance for land rights, Land disputes in Ampara district in Sri Lanka, paper presented at a meeting at the Law and Society Trust, 2017.

37 There have been several scholarly and journalistic writings on this subject. They include: Farzana Haniffa, “Stories in the Aftermath of Aluthgama: Religious Conflict in Contemporary Sri Lanka,” in John Clifford Holt, *Buddhist Extremists and Muslim Minorities*, Oxford University Press, 2016, pp. 164-193; Mohamed Faslan and Nadine Vanniasinkam, *Fracturing Community: Intra-group relations among the Muslims of Sri Lanka*, International Centre for Ethnic Studies, 2015; Dhammika Herath and Harshana Rambukwella, *Self, religion, identity and politics: Buddhist and Muslim encounters in contemporary Sri Lanka*, International Centre for Ethnic Studies, November 2015; Ayesha Zuhair, *Dynamics of Sinhala Buddhist Ethno-nationalism in Post-war Sri Lanka*, Centre for Policy Alternatives, 28 March 2016; A.R.M. Imtiyaz and Amjad Mohamed-Saleem, “Muslims in post-conflict Sri Lanka: understanding Sinhala-Buddhist mobilisation against them,” *Asian Ethnicity*, vol. 16:2, pp. 186-202, 2015; Minority Rights Group International, *Confronting violence: continued violations against religious minorities in Sri Lanka*, 2016, available at: <http://minorityrights.org/2016/12/08/threats-intimidation-hate-speech-muslims-christians-continue-mar-post-conflict-transition-peace-sri-lanka-new-report/> (last accessed 8 December 2017); Gehan Gunetilleke, *The Chronic and the acute: post war religious violence in Sri Lanka*, International Centre for Ethnic Studies and Equitas, 2015, available at: <https://equitas.org/wp-content/uploads/2015/11/ICES-Equitas-Gehan-report-for-printing-2015-11-24.pdf> (Last accessed 8 December 2017).

3. A standalone case: the forcible eviction of northern Muslims

The situation of Muslims forcibly evicted from the north in 1990 requires separate and special attention because of the nature of the crime they faced, the long-term and protracted nature of their displacement, the relative neglect of their issues by successive governments and the international community, the unusual political, social and economic consequences of a faltering return process, and its implications for post-conflict reconciliation.³⁸

Northern Muslim civil society want the forcible eviction to be considered as ethnic cleansing by the proposed transitional justice mechanisms as and when they are implemented.³⁹ Under international laws ethnic cleansing is not recognised as an independent crime nor does it have a precise legal definition.⁴⁰ In 1994 a UN panel of experts investigating violations of international humanitarian laws in the former Yugoslavia defined ethnic cleansing as “... *rendering an area ethnically homogeneous by using force or intimidation to remove persons of given groups from the area.*”⁴¹

The Commission of Experts added that these practices can “... constitute crimes against humanity and can be assimilated to specific war crimes. Furthermore, such acts could also fall within the Genocide Convention.”⁴²

There are substantive grounds under which the forcible eviction of Muslims can also be considered as a crime against humanity. Article 7 1(d) of the Rome Statute of the International Criminal Court considers forcible deportation of a civilian population as

38 Most often the population shift of northern Muslims is referred to as displacement, but this report takes the more commonly held position by northern Muslim activists that it was a forced eviction. The categorisation of northern Muslims as a group is also specific and unique to their eviction as it was not a pre-existing group. See Sharika Thiranagama, *In My Mother's House: Civil War in Sri Lanka*. University of Pennsylvania Press, 2011, for details.

39 Submission to CTF by northern Muslims, see annexed in CTF final report.

40 Ethnic cleansing has on occasion been used in UN Security Council and General Assembly resolutions and acknowledged by the International Tribunal for former Yugoslavia (ICTY) but was not a count for prosecution. For more details on the definition and legal basis of ethnic cleansing see: <http://www.un.org/en/genocideprevention/ethnic-cleansing.html>.

41 See the report by the UN Commission of experts investigating violations of international laws in the former Yugoslavia, available at: UN Commission of experts appointed to look into violations of international law in former Yugoslavia, http://www.icty.org/x/file/About/OTP/un_commission_of_experts_report1994_en.pdf (last viewed on 17 December 2017).

42 Ibid.

a crime against humanity if it meets the physical criteria – it was forcible deportation; the mental criteria – that the crime was committed with knowledge or intent and was not accidental or for the safety of the population; and finally the contextual criteria – when committed as part of ‘widespread’ or ‘systematic’ programme and directed against a civilian population.⁴³ As the evictions occurred across five districts they can be argued as ‘widespread’ and based on victim testimony there is little doubt that it was planned, organised and ‘systematically’ executed by the LTTE.

The severity and exceptionalism of the crime renders it important enough to be considered by all of the four proposed mechanisms, especially for prosecutions by an accountability court that is most likely to deal with a few symbolic and important cases.⁴⁴

If the court has jurisdiction it should investigate if indeed the forced eviction constitutes ethnic cleansing and crimes against humanity and if there were any other violations of international human rights and humanitarian law faced by northern Muslims based on which its prosecution office should take appropriate action.

The other mechanisms can also investigate this crime and the array of other violations faced by northern Muslims spanning three decades; and help construct a narrative of the forcible eviction to be included into the overall conflict narrative. Through this detailed assessment of the seriousness and complexity of this specific case the mechanisms can find ways to redress the community. For example, when Muslims were leaving the north, they passed many military checkpoints and neither the military nor the government reportedly took action to stop the eviction or to support

43 See Definitions page of the UN office on the Prevention of Genocide and Responsibility to protect, available at: <http://www.un.org/en/genocideprevention/crimes-against-humanity.html> (last viewed 2 April 2017)

44 While there has been much negative reporting on the proposed special court there is little in the way of concrete information on what its mandate may be. The UNHRC resolution 30/1 refers only to a judicial mechanism 'with a special counsel to investigate allegations of violations and abuses of human rights and violations of international humanitarian law, as applicable'. The reference to a 'special court' to investigate and prosecute such violations was presented by the former Foreign Minister in July 2016 upon his return to Colombo following a UNHRC session. There has since been little elaboration of this idea, which is now increasingly being shelved by the government over controversy over its jurisdiction and proposed international involvement. The jurisdiction of such a special court is not straightforward. The international crimes that such a court would seek to adjudicate on are currently not incorporated in Sri Lankan law. Legal experts have argued that for there to be effective prosecution of war time atrocities, international crimes must be incorporated into Sri Lankan law with retroactive effect. For details of these legal arguments see: Isabelle Lassez and Eleanor Vermunt, *“Fitting the Bill”: Incorporating international crimes into Sri Lankan law*, South Asian Centre for Legal Studies, September 2016, available at: <http://sacsl.org/resources/publications/reports/fitting-the-bill-incorporating-international-crimes-in-to-sri-lankan-law> (last accessed on 8 December 2017).

them to get to safety.⁴⁵ Once they made the treacherous journey by land and sea and reached Puttalam, it was the local community that hosted them and provided them with temporary accommodation. Again, the government reportedly did not take any concerted action to help settle them or support the host communities. This was in 1990. In the 28 subsequent years, there have been some staggered piecemeal offers of support made by successive governments and international donors but a clear policy or systematic programmatic response to issues faced by northern Muslims has been missing.⁴⁶ The detail and the extent of the community's claim of neglect is important in establishing the totality of the crimes they faced, validating community narratives and contextualising them.⁴⁷

The Army saw us leave, we walked past their camps. Government administrators, politicians, the army did nothing. They all saw us and walked past us. It was only the Christian priests who gave us some bread and tried to negotiate with the LTTE for some extra time.

We were allowed only one bag and Rs. 5000, we couldn't hide anything. Certificates and documents were allowed to be taken.

As we got to Puttalam we were in schools and mosques. At that time the government did nothing. It was only the people of Puttalam who helped. The government, Red Cross, NGOs, Muslim politicians came, looked, and went.⁴⁸

Government officers all knew, this was an eviction in thousands, not a small number of people leaving. They did nothing. Women were giving birth on the way as they were leaving – no one helped them. Tamil people were not happy, they cried, but didn't have the strength to oppose the LTTE.

We never thought of the north as the Tamil homeland. It is our homeland. It was meant to be temporary. It was meant to be just for a few months.

45 Interviews for this report conducted in Puttalam.

46 See Haniffa (2015), op. cit., footnote 15 and (2012), op. cit., footnote 29.

47 See Haniffa (2015), op. cit., footnote 15, for arguments on victimhood amongst northern Muslims. This report engages with some of the arguments made in her article at the end of this chapter.

48 Focus group interview, Puttalam.

– comments made by participants at the Mullaitivu focus group discussion, 29 June 2016.

When the armed conflict ended in 2009 and some northern Muslims sought to return to their homelands, once again they were not part of a systematic return and resettlement policy or process.⁴⁹ Families went on their own account to their original areas only to find they were completely destroyed and overgrown by forest. In some cases, there were other displaced Tamils living in their homes. Northern Muslims were not part of a government policy or programme of monetary or other support as they cleared their lands, built makeshift homes and began to resettle. As their displacement had occurred over 20 years before, families had grown in size, children were married and had their own children and the original family home was far from sufficient to accommodate the numbers which had multiplied by at least five. They had few income generation, livelihood, or employment opportunities and Muslim schools were unheard of as the community had been absent from the north for decades.

When we came back there was nothing here, everything was flattened. There is not enough land for us. In the last 20 years, the population has grown six times. Our children are now married with their children and they can't all fit into our one house.

- Mannar focus group discussion, June 2016.

International donor agencies added to the problems, the UN High Commission For Refugees (UNHCR) in particular compounded the lack of support by classifying IDPs as 'old IDPs' and 'new IDPs' the latter gaining priority in recourse to aid and resettlement projects.⁵⁰ Many of those interviewed for this report expressed disdain especially at the treatment they received from international donors, which they

49 See northern Muslims submission to CTF, 2016, op. cit., and Minority Rights Group International, *No war no peace: the denial of minority rights and justice in Sri Lanka*, MRG (online), available at: <http://www.minorityrights.org/10458/reports/no-war-no-peace-the-denial-of-minority-rights-and-justice-in-sri-lanka.html> (last accessed 30 July 2017) and Mirak Raheem, *Protracted displacement, urgent solutions: prospects for durable solutions for protracted IDPs in Sri Lanka*, Centre for Policy Alternatives, 2013.

50 Farzana Haniffa provides a good academic analysis of this issue in Haniffa, F., "Competing for Victim Status: Northern Muslims and the Ironies of Sri Lanka's Post-conflict Transition," *Stability: International Journal of Security and Development*, 4(1), 2015, p. Art. 21. DOI: <http://doi.org/10.5334/sta.fj>

argue was not only neglectful but discriminatory when compared to the treatment meted out to conflict-affected Tamils.

Community activists say that large numbers of displaced northern Muslims want to return to their hometowns, but are not able to do so because they are not sufficiently supported by the government and have very little to go back to.⁵¹ The few who have returned (see box for estimated figures) are struggling economically and in many cases families have been divided as one or two members of the family return to their homes attempting to build a new life while the rest of the family stays in their area of displacement.⁵²

District	Families	Individuals
Mannar	16,650	69,690
Jaffna	2,252	10,347
Kilinochchi	400	1,178
Mullaitivu	1,009	4,289
Vavuniya	4,088	16,357

The protracted long-term displacement combined with the lack of return and resettlement policy has contributed to a range of new political, economic and social rights violations. A few returning northern Muslims have lost their vote because their registration both in the displaced community or returning community get questioned and they are not given the opportunity to vote in the area of their preference.⁵³ Their small numbers in the north make them politically powerless and there are increasing cases of discrimination by Tamil bureaucrats.⁵⁴ They have acute economic difficulties with little opportunity for income generation and employment. Because the numbers are so small, Muslim schools are not well equipped with facilities or qualified teachers and Muslims children have less opportunity to enter Tamil schools.⁵⁵

51 Focus group interviews and Submission by Northern Muslims Forum to CTF, op. cit., footnote 39.

52 Focus group interviews.

53 Interviews with northern Muslims in Mannar and Mullaitivu, 2016 and with activists in 2017.

54 Ibid and focus group discussions in Jaffna in 2017.

55 Ibid

There are also a host of social problems unique to northern Muslims. A number of men have remarried in their return area and keep two families but do not maintain either properly. There is a high proportion of female-headed households who are not sufficiently supported, face economic and social problems and stigma from others in the community.⁵⁶

Our education really suffered. In the north, my school was near the house so it was easy to go, but in Puttalam the camp was not close to the house so my education got disrupted. Many young girls were given in marriage because they couldn't continue their education and their safety was compromised in the camps.

Women really suffered because of the eviction. Earlier, in the north, we were free and independent, we could go out easily. All this changed.

– Jenzila Majid, ZTF member and women's rights activist, Mullaitivu, June 2017.

No one wanted to settle in Puttalam. We thought we will just be there temporarily and we can go back to our homes, but years and decades went by with us waiting like that. None of us thought we will be here so long.

We lost our self-respect. A school principal who was earning well in the north took months to prove his qualifications and get another job in Puttalam. We didn't like the label refugees. We never liked living in 'welfare centres' - Juwairiya Mohideen, ZTF member and women's rights activist, Puttalam, June 2016.

How the unique position of northern Muslims can be properly captured in the transitional justice process and adequately redressed will be a challenge. Northern Muslims are demanding a separate mechanism to investigate their issues and mete out justice; however, this was not taken on board by the CTF in their own recommendations and considering the hesitation by the government to implement existing commitments, it is unrealistic to expect anything special for northern Muslims. It is critical that the northern Muslim case is mainstreamed, receives a high-profile, and is dealt with by the proposed national-level mechanisms in order

⁵⁶ Focus group interview with Muslim women in Jaffna, May 2017, and interviews with northern Muslim activists from Mullaitivu and Puttalam, 2017.

for there to be recognition of how Muslims were specifically affected by the armed conflict and justice meted out to them. The fear amongst northern Muslims that their issues may be minimalised or side-lined in a national process can be addressed through ensuring that strong, effective, national mechanisms are created and there is powerful lobbying for this specific case to get the level of attention it deserves. The recognition of the uniqueness of the northern Muslim case, which community representatives want, can be best achieved through the main mechanisms rather than a separate one as it will place the northern Muslim issues in the national context and possibly receive stronger validation for the atrocities they suffered and their claim for justice.

Haniffa (2015), in one of the few scholarly works analysing victimhood amongst conflict-affected Muslims, argues that northern Muslims ‘remain trapped within a discourse of claiming victimhood,’ contributed to by problematic donor and government policy, with very little room to speak of different experiences.⁵⁷ Nearly all northern Muslims interviewed here, with the exception of a few of the community activists, spent a majority of their time describing their experience in 1990 and in the immediate aftermath, framing all of their problems through the lens of the eviction and holding onto a dominant narrative of neglect by everyone concerned. However, this research found that since Haniffa’s 2015 article, there has clearly been a change, with at least some civil society leaders and activists, including a few who have themselves realised and critiqued this ‘discourse of claiming victimhood.’⁵⁸ There is also now some level of discussion and discourse on transitional justice since Haniffa’s claim that the community’s articulation of issues through a TJ process is insufficient and the scope of this research enabled a broader understanding and analysis of why this is the case.

Her point about northern Muslims seeking exclusivity of victimhood, partly as a consequence of the treatment meted out by previous governments and international

⁵⁷ Farzana Haniffa, “Competing for Victim Status: Northern Muslims and the Ironies of Sri Lanka’s Post-conflict Transition,” *Stability: International Journal of Security & Development*, 2015.

⁵⁸ At least two civil society leaders from the north discussed this as a problem affecting the community. The author was also present at a training programme on transitional justice conducted amongst Muslim youth, in December 2017, where the trainer specifically challenged this position with participants.

donors, is not unusual in post-war contexts where there is competition for resources and access to justice. Similar claims of exclusivity of victimhood can also be found amongst Tamils survivors of the last stages of the armed conflict.⁵⁹

This research found that the community has marginally moved on from the positions she outlines in her article but narratives are stuck in the past and there continues to be limitations in being able to acknowledge resilience and opportunity the eviction offered. However, this cannot be seen as purely a consequence of competitive claim for victimhood; it is clearly also a consequence of justice denied. Therein lies the value of the northern Muslim case to the entire Sri Lankan transitional justice (TJ) process as it provides a template of how victims of atrocity crimes cannot be expected to simply get on with life and require truth seeking, justice and accountability.

As a case study of justice denied, through their experiences of co-existence across the country, and as Haniffa (2015) identifies, in their stories of resilience, northern Muslims have a significant contribution to make towards the transitional justice and reconciliation process and should be given adequate support to be able to do this (see section 5.2 for more analysis on this).

59 The author in other research 2016-2017 found that survivors of the last stages of the armed conflict also competed for exclusivity of victimhood explaining that what they suffered during that period was exceptional and broadly while some northern Tamils civil society activists in interviews admitted that Muslims were affected by the conflict they downplayed the impact when compared to their own suffering.

4. What do conflict-affected Muslims want from the government's proposed transitional justice process?⁶⁰

4.1 Procedural aspects of the mechanisms

- Conflict-affected Muslims welcome the opportunity for their grievances to be addressed through the four mechanisms proposed by the government. They want them all to be set up as per the commitments made in the UNHRC resolution and in keeping with international laws and norms.
- Northern Muslims are sceptical about the level of international involvement and are not vehemently demanding the presence of foreign judges in an accountability court, but they are willing to support a hybrid system.⁶¹
- They also want all mechanisms set up with the involvement of international and national experts. They want sufficient Muslim representatives in all of the mechanisms and in the supporting bodies and units, preferably of those from the conflict-affected areas. They ask for offices of the mechanisms to be set up in the north and east to enable conflict-affected persons to better engage with them.
- Other essential requirements include that all mechanisms and supporting units should operate in all three languages and public sittings of the larger mechanisms, such as the truth commission and special court should be sensitive to Islamic religious and cultural practices such as dress code for

⁶⁰ All of the information for section four was obtained through field research and phone interviews with conflict-affected Muslims in the north and east. The research findings have been supported by individual and group submissions made to CTF and ZTF. Only submissions and individual quotes will be referenced separately in this section. As most of those interviewed were unaware of transitional justice conceptually and as proposed in Sri Lanka, the author explained the mechanisms as proposed by the government in the UN resolution and immediately after as the framework of discussion that led to these findings.

⁶¹ In the focus group interviews in the north Muslims showed no interest in having foreign judges in a special court. However, there appears to be some change in policy at least amongst Muslim civil society leaders, since then, who now speak of the need for some international presence. This position appears to have been informed through increased awareness raising on the subject and influenced by the government's lethargy in delivering on its transitional justice commitments. References to a hybrid court are based on suggestions made by the UN High Commissioner for Human Rights in a report in September 2015, outlined in brief in the following article on the website of the High Commissioner's Office: <http://www.ohchr.org/EN/NewsEvents/Pages/SriLanka.aspx> (last accessed 8 December 2017). Interviewees were not aware of such technical details as hybrid systems etc., however as most of the early focus groups were done with the support of ZTF members, these concepts were introduced and discussed in groups and the responses reported here were based on these discussions.

women and Islamic prayer times.⁶² Muslim women's groups would require the space and sensitivity to be able to articulate their positions outside the influence of Muslim male religious leaders.

4.2 Office of Missing Persons (OMP)

- Conflict-affected Muslims see the OMP as having a critical role in investigating and establishing that large numbers of Muslims also went missing and disappeared during the conflict.
- According to activists working on this issue there may be as many as 300 cases of Muslim disappearances in the north and close to 1000 in the east.⁶³
- As there has been no systematic documentation of cases; those interviewed here suggested that in the case of the Muslims, the OMP would have to play a more primary role through their offices and through supporting CBOs to start by collating the number of missing from across the country (as some were abducted while travelling on business to other parts of the country). These cases would then have to be investigated and a course of action recommended.⁶⁴
- A Muslim member of the ZTF in Batticaloa, M.B.M. Firdous, interviewed for this report, however cautioned on the psycho-social impacts of these investigations on the families of missing persons as the majority of cases are over two decades old and families have accepted them as dead and were conducting mourning rituals for them.⁶⁵ Such nuances would need to be sensitively dealt with by the OMP and other bodies dealing with the issue.

62 For example, if sessions ran for long hours through the day where they overlapped one of the compulsory prayer times then participating Muslims should be excused to attend to their prayers and return to proceedings. The mechanisms should also be aware of other religious practices such as fasting at Ramadan and if proceedings occur during those times Muslims should be allowed to observe their prayer and break their fast at the correct time.

63 Interviews with community-based activists working on documentation of Muslim disappearances in Puttalam and Trincomalee, October and November 2017. Both figures were an estimate as there is no proper documentation on the issue.

64 As the OMP has no prosecuting powers, the cases will have to be passed on either to a special judicial mechanism or local courts for justice.

65 According to Firdouse, these families were, for instance, conducting *kathams*, a form of almsgiving and religious commemoration of the dead, conducted amongst some Muslims in Sri Lanka. This he said is quite different from the cases of Tamil families, for whom many disappearances were more recent and families have refused death certificates.

5.3 Truth Seeking

- Truth seeking was of critical importance to conflict-affected Muslims in the north and east and those interviewed strongly support the idea of forming an independent, strong and well-resourced truth commission.
- The investigative role of a truth commission was important but less pressing as the violations suffered by a larger majority of conflict-affected Muslims are now over 20 years old.⁶⁶ Northern Muslims said they have questions they want answers to, such as: why the LTTE forcibly evicted them, why the government did not offer them protection, why the subsequently offered support while living in their temporary shelters was limited, and why the international community failed to respond adequately to their plight. Eastern Muslims also want the massacres in Eravur and Kattankuddy investigated and perpetrators held to account. Muslims in the north and east want to know what happened to their family members who were abducted and disappeared and why they were taken.
- The truth commission for Muslims, however, serves a more critical role which is to ensure that the violations they suffered are publicised and woven into the historical narrative of the conflict. There remains significant anger amongst Muslims that the atrocities and violations they suffered are not well known nationally and internationally and the ethnic conflict is nearly always discussed in binary terms; consequently they have not been properly considered as one of the main conflict-affected groups or a party to the conflict.⁶⁷ Muslims also want their complex position of being positioned between the Sinhalese military and Tamil militants during the course of the ethnic conflict to be recognised. Returning Muslims felt it crucial that Tamils in the north, especially of the younger generation, knew the plight of their eviction, which they felt could help improve co-existence.
- The gender dimension of the impact of the conflict on Muslims is also something a truth commission is well suited to consider. The forcible eviction

66 This contrasts with the northern Tamil position where truth seeking is primarily associated with investigating crimes, especially disappearances. See International Crisis Group report, *Sri Lanka conflict-affected women dealing with the legacy of war*, July 2017, available at: <https://www.crisisgroup.org/asia/south-asia/sri-lanka> (last accessed 20 December 2017).

67 Interviews with northern Muslims in Mannar and Mullaitivu, 2016 and with activists in 2017.

of northern Muslims impacted women in multiple ways, such as through early marriage, strict imposition of dress code and cultural norms which were imposed on them by the host community and their own community because they were considered vulnerable in a new area. Women also said that in the north they had more freedom but once displaced they were forced to follow stricter religious practices, including adhering to full hijab, which was a dress code they were largely unfamiliar with in the north.

There were also specific health and safety issues women faced; there are reports that some women went into labour while walking the distance to Puttalam and Vavuniya and had no proper medical support. Women had very limited special facilities in the camps in Puttalam. There is currently very little information on conflict-related gender and sexual violence amongst Muslims, which is also an important issue that requires attention.

- Co-related to this, the second major objective of such a commission for conflict-affected Muslims is some level of accountability. Northern Muslims want a public apology or at the least an acknowledgement by the government for failing to protect them from and during the course of the eviction and for not supporting and helping them in the immediate aftermath and subsequent years.⁶⁸ Northern Muslims feel that they were not considered equal citizens of Sri Lanka in the way they were treated during the eviction and after. In the absence of a formal LTTE leadership, they want current Tamil political groups and bodies such as the Northern Provincial Council (NPC), to acknowledge the ‘ethnic cleansing’ and make a strong statement welcoming them to return to the north with guarantees of administrative support for their return and resettlement.⁶⁹

5.4 Prosecutions.

- Not all, though most interviewed want prosecutions for the eviction of northern Muslims and for the large-scale targeted attacks against Eastern Muslims, such as the mosque massacres of the 1990s.
- There was some general concern that with most of the LTTE annihilated, crimes committed against Muslims in the north and east may not be properly

⁶⁸ Submission by northern Muslims to CTF.

⁶⁹ Ibid.

investigated. A number of people interviewed here, however, argued that there are a number of senior LTTE leaders either now associated with the government or in the Diaspora who could be held accountable for the serious crimes that were perpetrated by the LTTE. Eastern Muslims said that many of the violations they faced were under the leadership of Vinayagamorthy Muralitharan, or Colonel Karuna, who is alive and must be held accountable for these. Northern Muslims said there were also former cadres who were involved in the eviction who would have been rehabilitated and remain in the north.

- The purpose of prosecutions for those who advocated for the evictions is mainly to establish the crimes they faced rather than for the perpetrators to have to face any punishments. Many who were interviewed are willing to consider a form of amnesty for the violations.

There were 12,000 LTTE cadres who were rehabilitated and are still around. There are LTTE leaders who are with the government and then there is the Diaspora.

Our lives were damaged, everything was damaged, our culture, customs, lives. What is the justice we can get? What is the compensation?

As Muslims we don't want punishment, we can forgive but they have to ask for our forgiveness and they have to give a guarantee that this will never happen again.

– Comments made by participants at the Puttalam focus group discussion.

5.5 Reparations

- Reparations, largely in terms of compensation, is the most clearly thought of aspect of transitional justice for conflict-affected Muslims and their biggest demand.
- Conflict-affected Muslims want compensation to be defined as broadly as possible; they want a one-off payment for the loss of a family member in the war (including for those disappeared and missing) and they also want compensation calculated and based on the loss of income to the family due

to the loss of the individual. In terms of land rights, they want a clear policy dealing with land rights and ensuring the return and resettlement of all displaced persons, including Muslims in the north and the east.

- Northern Muslims said they want at the basic level their right to return to their original homes guaranteed. As families had grown many-fold since the eviction they want extra land and housing provided for those returning to the north. Muslims who wanted to continue staying in Puttalam also want permanent housing solutions. A number of villages in the north, such as Silavathurai town and Sannar village, in the Mannar district, remain under navy occupation preventing Muslims returning to their homes. In the East too, Muslim lands are under military occupation and as already explained several hundred acres have been repossessed by the government. Muslims in the north and east want their lands and houses returned to them, they want to be able to farm and continue their livelihoods on their own lands, which they want factored into the government's reparations policies.
- Muslims returning to the north want income generation, livelihoods, and employment provided to them. They want reparations to include the loss of income and livelihoods since their eviction in 1990. Some argued that they want financial compensation to reflect the entirety of the loss they suffered and thereby consider what state their lives would be at if they had continued to live in the north earning at the levels they were.⁷⁰

Northern Muslims underwent substantial changes to the quality of their life, status and human capital. For instance, the level of education, the high standard of schooling they enjoyed in some parts of the north, their employment status, especially in the government service, all took a colossal toll with the eviction. These factors have to be considered by any reparations mechanisms and activists are calling for policies of affirmative action, where necessary, to be implemented to bridge the existing gaps.

⁷⁰ Many northern Muslims were economically successful in business and agriculture and a number of them were educated professionals, working as teachers and in government service. With the eviction, they were unable to get back into these professions and lost their forms of livelihood. Traditional forms of livelihood such as selling scrap metal are largely lost and the younger generation did not acquire skills needed to continue with these professions. With the militarisation in the north the opportunities to engage in this sort of work is limited.

- The effect of the conflict on Muslim women, especially female-headed households (FHHs) and the difficulties women face in the post-conflict context must also be looked into and compensated for.

They can't give us back 25 years of our lives but they can at least give us land and housing to resettle.

Muslim school facilities are very poor, no library, no quarters, no classrooms, no labs. When funding comes or facilities come they go to Tamil areas.

– Comments made by participants at the Mannar focus group discussion.

- As a part of restitution, all civil services, facilities and public places, including places of religious worship, must be restored and made functional in the north and east. Additionally, recommendations have also been made for a comprehensive support package to be given to the original Muslims of Puttalam, who shared their resources and facilities with the displaced population and, partly as a result, faced many socio-economic difficulties.⁷¹
- The second component of reparations for conflict-affected Muslims was commemoration and memorialisation. Northern Muslims already informally mark 25th October as a day to remember the forcible eviction; they want this officialised at least in the north and North-western Province. They also want monuments built at the beach in Puttalam where most of them first converged and in areas in the north from where they were evicted. There was also a proposal to build a museum to explain the eviction to the general public of Sri Lanka. They want images, with symbols and narrations of their lives before the eviction, the manner in which the eviction occurred, and their lives after it, to be documented and displayed to the general public. East Muslims have asked for similar commemorative events and monuments for the mosque massacres in 1990.

⁷¹ Submission to CTF by the Northern Muslim Forum.

5.6 Non-recurrence

- Finally, this research found that non-recurrence was very important to conflict-affected Muslims who want legal and policy changes made to ensure that the type of serious violations and atrocity crimes they suffered will not take place again.

“This should not happen to anyone else, so we want justice. We want an assurance that it won’t happen again.”

Comment made at the Mullaitivu focus group discussion.

- There were a number of suggestions activists made to ensure non-recurrence. They include creating an early warning system to track minority rights violations and assess the threat levels communities face. Human and minority rights monitoring and reporting was also considered a priority.
- Recommendations were made on including the atrocities suffered by Muslims into educational texts, especially history books, to make sure that all Sri Lankans were aware of what occurred and to avoid these crimes occurring again.
- There were also specific recommendations to ensure non-discrimination and equal rights of all communities through constitutional and legal reforms.
- Both northern and eastern Muslims suggested implementing community-level projects to improve inter-ethnic relationships and reduce distrust and tension amongst communities.

Our history needs to come out. Tamils need to know Muslims were originally from here, where they lived, how they lived, what happened to them. If you take a 25-year-old Muslim boy he has no idea what Mannar, or Jaffna or Mullaitivu looks like. Similarly, when we go back Tamil children have no idea about us.

- Comment made at the Puttalam focus group discussion.

6. Religious violence against ‘southern Muslims’ and transitional justice

Since the end of the armed conflict Muslims outside of the north have become victims of targeted attacks by Buddhist nationalist groups such as the Sinhala Ravaya and the Bodu Bala Sena (BBS).⁷² These attacks target Muslim places of worship, religious sites, communal and business establishments.⁷³ What at the early stages appeared to be sporadic unplanned attacks in response to specific cases of communal tensions, soon became established as a systematic and organised campaign by Buddhist nationalists against Muslims.⁷⁴ The increasing and widespread cases of violence were also backed by well-planned and structured hate campaigns implemented through social media targeting Muslims.⁷⁵ The involvement and support of the previous government, particularly the former Defence Minister Gotabaya Rajapaksa, in the anti-Muslim violence and campaigns became evident through their at times public support and patronage of some of these groups and the widespread impunity enjoyed

72 See references in previous footnotes and Tim Hume, “Fascists’ in saffron robes: The rise of Sri Lanka’s ultra-Buddhist nationalists,” CNN, 18 July 2014, available at: <http://edition.cnn.com/2014/07/17/world/asia/sri-lanka-bodu-bala-sena-profile/index.html> (last accessed 9 December 2017) and Rohini Mohan, “Sri Lanka’s violent Buddhists,” *New York Times*, 2 January 2015, available at: <https://www.nytimes.com/2015/01/03/opinion/sri-lankas-violent-buddhists.html> (last accessed 9 December 2017).

73 The Secretariat for Muslims (SFM) provides some level of documentation on the earlier incidents. Their lists of incidents and analysis of them in reports can be found on <http://sfmsl.org/>.

74 See Tim Hume, “Fascists’ in saffron robes: The rise of Sri Lanka’s ultra-Buddhist nationalists,” CNN, 18 July 2014, available at: <http://edition.cnn.com/2014/07/17/world/asia/sri-lanka-bodu-bala-sena-profile/index.html> (last accessed 9 December 2017) and Rohini Mohan, “Sri Lanka’s violent Buddhists,” *New York Times*, 2 January 2015, available at: <https://www.nytimes.com/2015/01/03/opinion/sri-lankas-violent-buddhists.html> (last accessed 9 December 2017).

75 The Secretariat for Muslims (SFM) website provides documentation and analysis on this. See “Sri Lanka must do more to rein in hate speech, hate based violence – UN rights experts,” 2 July 2014, available on the UN news centre website: <http://www.un.org/apps/news/story.asp?NewsID=48188#.WitmryOgflU> (last accessed 9 December 2017); see also “Online hate speech stokes fear of religious violence,” reported on *Groundviews* on 26 September, 2014, available at: <http://groundviews.org/2014/09/26/online-hate-speech-stokes-fear-of-religious-violence-in-sri-lanka/> (last accessed on 8 December 2017); Colombo Telegraph, “Hate incidents report: What is to come for Muslims in Sri Lanka are ominous – Muslim Secretariat,” 28 August, 2014, available at: <https://www.colombotelegraph.com/index.php/hate-incidents-report-what-is-to-come-for-muslims-in-sri-lanka-are-ominous-muslim-secretariat/> (last accessed on 8 December 2017); Jehan Perera, “The government needs to close the space for hate speech,” Colombo Telegraph, 20 November, 2017, available at: <https://www.colombotelegraph.com/index.php/government-needs-to-close-the-space-for-hate-speech/> (last accessed on 8 December 2017).

by perpetrators.⁷⁶ During the Rajapaksa era, one of the most serious outbreaks of violence occurred in June 2014 when three people were killed, 78 people injured and scores of Muslim homes and business establishments were destroyed in three-days of ethnic violence in the southern town of Aluthgama.⁷⁷ There was a lull in incidents of major violence after the government changed in 2015. However, the attacks returned in 2017 and in February 2018, in the Central Province, a curfew had to be imposed after one person was killed and hundreds of Muslim properties set ablaze in what is believed to be one of the worst cases of ethnic violence the country has witnessed since 1983.⁷⁸ According to witness testimonies in both cases, the large numbers of police and Special Task Forces brought into ‘protect’ Muslims did not appear to be doing their job and in some instances even supported the violence, blocked Muslims from retaliating and turned a blind eye to crimes committed by Sinhalese mobs.⁷⁹ The police has also come under criticism for their hesitance to arrest Buddhist leaders.⁸⁰ Besides these headline making incidents very serious and

- 76 Ameen Izzadeen, “Is Muslim identity a liability in Sri Lanka,” Al Jazeera, 21 June 2014, available at: <http://www.aljazeera.com/indepth/opinion/2014/06/muslim-identity-liability-sri-l-201462075937574567.html> last accessed on 9 December 2017; Statement delivered by Sunanda Deshapriya on behalf of INFORM Human Rights Documentation Centre at the Sixth session of the UN Forum on Minority Issues on “Beyond freedom of religion or belief: Guaranteeing the rights of religious minorities,” on 26 November 2013, available at: <https://mfcoexist.wordpress.com/2013/11/27/attacks-on-religious-minorities-and-impunity-in-sri-lanka/> (last accessed on 9 December 2017); Farzana Haniffa, “Conflict legacies and plural histories: What are the possibilities for Sri Lanka’s future,” in Bhavani Fonseka, *Transitional Justice in Sri Lanka: lessons so far and the long road ahead*, CPA: Colombo, 2017, makes the case that positioning and practice of groups such as BBS are strengthened by national historical and cultural narratives that give Buddhism primacy and have no space for minorities. See also Farah Mihlar, “Sri Lanka’s extremists find a new enemy,” 10 March 2018, Indepth news, available at: <https://www.indepthnews.net/index.php/the-world/asia-pacific/1730-sri-lanka-s-extremists-find-a-new-enemy> (last accessed on 20 April 2018), which links Buddhist nationalism to the ethnic conflict.
- 77 Law and Society Trust, *Where have all our neighbours gone? Aluthgama riots and its aftermath*, LST, 16 December 2014, available at: http://lawandsocietytrust.org/content_images/publications/documents/aluthgama%20report%20ofinal.pdf (last accessed on 9 December 2017); Dharisha Bastians and Gardiner Harris, “Buddhist Muslim unrest boils over in Sri Lanka,” New York Times, 17 June, 2014, available at: <https://www.nytimes.com/2014/06/17/world/asia/deadly-religious-violence-erupts-in-sri-lanka.html> (last accessed on 9 December 2017).
- 78 “Sri Lanka struggles to halt days of Buddhist riots,” BBC, 7 March, 2018, available at: <http://www.bbc.co.uk/news/world-asia-43305453> (last accessed on 20 April, 2018) and “Sri Lanka declares state of emergency after communal violence,” The Guardian, 6 March, 2018, available at: <https://www.theguardian.com/world/2018/mar/06/sri-lanka-declares-state-of-emergency-after-communal-violence> (last accessed on 20 April 2018). While the media reported the incidents as ‘communal violence’ and ‘riots’ there was minimal response from the Muslim side, see: Farah Mihlar, “Sri Lanka’s extremists find a new enemy,” Indepth news, 10 March 2018, available at: <https://www.indepthnews.net/index.php/the-world/asia-pacific/1730-sri-lanka-s-extremists-find-a-new-enemy> (last accessed on 20 April 2018).
- 79 Bastians and Harris (2014) op. cit., and interviews for this report with affected groups in Aluthgama, August 2017.
- 80 There were no arrests made of senior leaders of these organisations during the rule of the previous government. In November 2016, Suresh Priyasad, or Dan Priyasad, a self-proclaimed ‘saviour of the Sinhalese’ was arrested over his threats to ‘bomb Muslims.’ Soon after his arrest, the head of the BBS Gnanasara thero, threatened ‘a blood bath’ against Muslims and demanded the arrest of the Secretary General of the Sri Lanka Thowheed Jama’at (SLTJ), Abdul Razik, who has also been accused of religious intolerance and hate speech against non-Muslims. Police subsequently arrested Razik but not the BBS leader

organised hate campaigns against Muslims continue to take place publicly and in social media with little done to counter them.⁸¹

There has been substantial policy and academic review and analysis of these incidents which do not require repetition here.⁸² This section will purely consider if and how these violations can be included in a transitional justice process.

The complexity in including these incidents in a post-conflict justice process, lies in the interpretation and timing of the incidents, i.e., are they conflict related and did they occur during the period of conflict? However, there are also strong grounds on which these incidents can make it into a post-conflict justice process. Firstly, while these violations occurred after the armed conflict ended, they were intrinsically linked to the end of the war and were conducted as part of the previous government's triumphalist majoritarian policy.⁸³

There is also a strong critique in the scholarly work on transitional justice on its lack of focus on continuing violations during the period of 'transition' and on its failure to deal with structural causes of large-scale human rights violations, which are especially important in conflict-related justice.⁸⁴ Including the recent incidents

for his role in inciting and perpetrating violence. See civil society joint letter to the Inspector General of Police on the role of the police with regards to these incidents, available at: <https://www.srilankamirror.com/news/555-law-inactive-against-violent-monks-admits-siri> (last accessed 20 April 2018). On 26 May 2015 and on 21 June 2017 Gnanasara thereo was arrested and on both occasions, he was released on bail. On June 2018, the leader of the BBS was sentenced to six months rigorous imprisonment for threatening disappearance activist, Sandya Eknaligoda, and was asked to pay 50,000 rupees in compensation to her. Just over a week later, he was again released on bail.

81 See paragraph 20 of the joint civil society submission to the Universal Periodic Review of the UN Human Rights Council, November 2017, available at: http://imadr.org/wordpress/wp-content/uploads/2017/04/UPR28_Sri-Lanka_Joint-Civil-Society-Submission_2017.pdf (last accessed 9 December 2017) and see Jehan Perera, "Anti-Muslim violence: the puzzle of continuing impunity," Sunday Leader, 11 June 2017, available at: <http://www.thesundayleader.lk/2017/06/11/anti-muslim-violence-the-puzzle-of-continuing-impunity/> (last accessed on 9 December 2017). In 2018, in response to the Kandy violence the government temporarily limited social media claiming that it was being used to incite racial violence. Apart from this, which was seen as counter-productive in the circumstances as it also restricted reportage of the violence, the government has not taken any substantive action to deal with the hate campaigns.

82 See footnote 35. See also Farzana Haniffa in "Conflict legacies and plural histories: What are the possibilities for Sri Lanka's future?" in Bhavani Fonseka, *Transitional Justice in Sri Lanka: lessons so far and the long road ahead*, CPA: Colombo; and Haniffa, Farzana. (2018).

83 See D. B. S. Jeyaraj, "Defence Secretary Gotabhaya Rajapaksa Openly Supportive of 'Ethno Religious Fascist' Organization Bodhu Bala Sena," 10 March 2013, available at: <http://dbsjeyaraj.com/dbsj/archives/17939> (last accessed 20 April 2018).

84 See for example: B. A. Leebaw, "The Irreconcilable Goals of Transitional Justice," *Human Rights Quarterly* 30(1): 95–118, 2008; D. Sharp, Beyond the Post-Conflict Checklist: Linking Peacebuilding and Transitional Justice through the Lens of Critique, *Chicago Journal of International Law*, 14(1), 165-196, 2013; and R. Mani, Balancing Peace with Justice in the Aftermath of Violent Conflict, *Development*, 48(3), 25-34, 2005.

of violence against Muslims in the proposed transitional justice process gives Sri Lanka an opportunity to successfully overcome some of these criticisms. Broadening the definition of conflict, beyond the war, is also important to ensure justice and more sustainable peace as it will enable dealing with the structural causes of conflict, such as discrimination and marginalisation of minorities.⁸⁵

Increased indication that this religious violence could turn into religious conflict is another reason why these incidents need to be included in such a process as it will help policies and practice on peace building and reconciliation to be sustainable and effective. The scale of the events and their organised and systematic nature, enabled through impunity and weak rule of law are all factors that make a compelling case for their inclusion in the transitional justice process.

Muslim lawyers have filed a number of cases in local courts to seek justice for attacks on places of religious worship and while this indicates that the national judicial system can be used to prosecute perpetrators, according to one of the lawyers interviewed for this report, these cases are dragging on with justice being delayed.

“The current judicial system is not helping because there are delays in the laws being implemented and day in day out there are issues with the judges. When the clergy men are in the doc the treatment they get is different to others. There is also quite a strong fear factor with police who are afraid to arrest religious leaders, and judges are scared to remand them. Police don’t take complaints seriously, they don’t entertain them even where they have established a special division and they penalise the complainant,” said a Muslim lawyer working on cases of religious violence, who did not wish to be named.

All of the proposed transitional justice mechanisms can play a role in investigating and meting out justice to Muslim victims of religious violence. A Truth Commission can investigate these incidents of religious violence, establish their connection to

⁸⁵ This frequently differentiates between the absence of war and peace by referring to the latter as a long-term or sustainable peace. This analysis draws from Johan Galtung’s classification of negative and positive peace, see: J. Galtung, Towards a Grand Theory of Negative and Positive Peace: Peace, Security and Conviviality, in: Murakami, Yoichiro; Schoenbaum, Thomas J. (Eds.): *A Grand Design for Peace and Reconciliation: Achieving Kyosei in East Asia* (Cheltenham, UK, and North Hampton, Massachusetts, USA: Edward Elgar, 2008, 90–106.

the armed conflict and their role in the post-war context. It can also assess the state-military-monk nexus in Sri Lanka and its historical association with the conflict, minority rights violations, and atrocity crimes.

According to those affected by the Aluthgama violence, State compensation to victims was limited and houses and businesses were mostly reconstructed with support from NGOs and independent donors.⁸⁶ Compensation for incidents of religious violence is critical and reparations for these incidents must also be considered by an office of reparations.

While the continuing violence begs the case for expediting the implementation of these mechanisms, particularly stressing the need to end impunity and establish the rule of law, the current levels of threat, the vulnerability of Muslims, and the failure of law enforcement and judicial systems to ensure justice, demands a more urgent solution.

An immediate, impartial and independent inquiry is needed into these incidents, particularly investigating the following:

- the patterns of violence and the interlinkage of hate campaigns on social media;
- the role of organisations such as the BBS and individual Buddhist monks in inciting and perpetrating the violence and the impunity they enjoy;
- the role of the Sri Lankan military forces and police in enabling, supporting and/or perpetrating the violence;
- the handling of these cases by the judiciary and instances if and where there has been interference with the judiciary;
- the role of elected government leaders and MPs in their inaction and in situations if and where they have enabled and supported the violence;
- evidence of institutional racism on the part of law enforcement and judicial bodies;
- the role of social media and the mainstream media in enabling and supporting religious intolerance, hate campaigns and incitement of violence.

⁸⁶ Interviews with affected groups in Aluthgama, August 2017.

In the immediate aftermath of the recent violence the President announced the appointment of a Commission of Inquiry (CoI) though there has been no follow up on it. Bhavani Fonseka (2018) warns of the perils of another CoI as they can compromise victim security while increasing their expectations without delivering justice, which she argues has been the trend in Sri Lanka.⁸⁷ While this report agrees with Fonseka on the ineffectiveness of CoIs and the need to combat impunity through prosecutions, an independent and impartial investigation is nevertheless essential to establish facts and build a broader picture of the relationship between religious violence and intolerance and the state.⁸⁸ This does not have to be done through a CoI; it can be done by an individual, who may be able to less publicly gather evidence without compromising security of victims. The important point is that such an investigation, in order to make it credible, is conducted independently, impartially, and in line with international laws and norms, its report is made public and that it provides recommendations that can lead to any future transitional justice process and help to strengthen law enforcement and judicial institutions.⁸⁹ The inquiry will also need to fully study the role of social media in hate campaigns and recommend how this issue can be dealt with, without compromising media freedom and freedom of expression. It is vital that the inquiry feeds into the transitional justice mechanisms and that these cases of religious intolerance, hate campaigns, and violence are also dealt with by that process.

87 See Bhavani Fonseka, "Sri Lanka's problematic past with Commissions of Inquiry: Are we repeating mistakes?" Groundviews, 21 March 2018, available at: <http://groundviews.org/2018/03/19/sri-lankas-problematic-past-with-commissions-of-inquiry-are-we-repeating-mistakes/> (last accessed on 20 April 2018).

88 Challenging impunity is clearly one of the most important aims of such a commission and effective prosecutions under existing laws can no doubt contribute to this as Fonseka argues. However, a broader picture needs to be established on other factors, for example, the status of the rule of law in Sri Lanka or the state link to this violence, for which an investigation is necessary. Such an investigation does not need to be exclusive. It can take place whilst, based on existing evidence, prosecutions are also pursued.

89 It is important to note that some Christian groups have also been victims of these Buddhist extremist violence and the investigation should focus on this aspect as well.

7. Challenges and ways forward

7.1 Muslims relations with other groups

7.1.1. Contrasting positions

The inclusion of Muslims, though essential to the success of transitional justice in Sri Lanka, is likely to bring a number of challenges to the process and to the positions of each of the different ethnic and religious groups. The following section identifies and analyses some of these challenges in order to help prepare and influence policy on transitional justice and reconciliation. However, doing so does not suggest in any way that including Muslims in such a process is problematic, it simply draws attention to the complexity and strength the Muslim position can bring about and how best that needs to be dealt with in policy and practice.

One of the main issues is that the Muslim position is quite different to that of the Tamils and complicates the case for a common minority position. While such a joint minority position in a post-war context is rare and impractical, there are benefits in taking one particularly when faced with a majoritarian, nationalist state that denies minority rights violations. For conflict-affected Muslims, in a majority of the cases the perpetrator of the violations is the LTTE, and Muslims would need to seek justice and redress from surviving representatives of the LTTE. This is antithetical to most conflict-affected Tamils, who see the Sri Lankan government and the military as the perpetrators of serious violations and atrocity and, for some amongst them, LTTE cadres are heroes and martyrs.⁹⁰ Moreover, not all Tamils are fully aware of the violations Muslims suffered and accepting their version in many ways threatens the dominant Tamil discourse on justice.

Northern Muslims are also lukewarm, if not in opposition, to too much foreign involvement, based on their previous experiences with organisations such as UNHCR. Muslims do, however, acknowledge the importance of international scrutiny through the UN Human Rights Commission and other mechanisms and particularly after the

⁹⁰ Interviews with Tamil conflict-affected groups and individuals, north and east of Sri Lanka, throughout 2017.

targeted attacks in the South, they see a greater need for international involvement for justice to be met.

Both the positions identified above complicate the mainstream Tamil stance on transitional justice; their demands for greater accountability of the military and government officials, their lack of trust in local processes and thus the need for strong foreign intervention; which can be testing in the present context where the government is faltering on their commitments towards transitional justice and where high levels of civil society pressure and advocacy are required to get the process moving.

7.1.2. Increasing distrust and Muslims as the new enemy

Mistrust of Muslims and hate campaigns against them are increasing across the country. Since 1990, the north has largely been homogeneous and Tamils in the province have little recent experience living with other ethnic and religious groups. Some Tamils are uncomfortable with the numbers of Muslims who have returned to their homes and other Muslims who come to do trade and business in the north.⁹¹ They view Muslims with suspicion and are not very welcoming of them.⁹² Some Tamil civil society leaders are cynical about Muslim politics and say their political leaders cannot be relied on or trusted to take a common minority position.⁹³ Tamil youth in the north who grew up in a largely homogenous environment since 1990 are unfamiliar with Muslim religious and cultural practices, including the call for prayer from mosques and the sale of halal meat etc.

Outside of the north, Muslims interviewed for this report from the Eastern Province and the Southern Province said they felt targeted by campaigns on social media calling for the boycott of Muslim products and shops and insulting Muslim cultural and social practices, which made them feel vulnerable.⁹⁴ In the east, in particular, Muslims interviewed said they felt they were being targeted and oppressed by both communities and they believed that Sinhalese and Tamils would unite to

91 Interviews and conversations with Tamil civil society activists in Jaffna and Mannar in 2017.

92 Ibid.

93 Ibid.

94 Interviews with Muslim groups and activists working in the Southern Province and the Eastern Province on issues of religious intolerance, August and October 2017.

discriminate and marginalise Muslims.⁹⁵ As already explained, these campaigns have led to crimes and incidents of violence across the country, which stoke fear and vulnerability amongst the community, but even in situations where no specific threat of violence exists, the targeted campaigns are contributing to serious levels of mistrust between Sinhalese and Muslims – as with Tamils.

7.1.3. Tamil-Muslim politics

Muslim and Tamil political leaders have not helped to improve ethnic tensions. Rishad Bathiudeen, a northern Muslim MP from the Vanni and cabinet minister has been at the forefront of a number of confrontations with Tamil political and civil society leaders and Christian clergy over the return of Muslims to the north.⁹⁶ People interviewed for this report said Bathiudeen is a popular figure amongst northern Muslims and his popularity is increasing amongst Muslims in the east. He is seen as the lone political voice of northern Muslims and despite allegations of corruption he is considered the only Muslim political leader capable of supporting Muslims in the return and resettlement process. Civil society activists explain that Minister Bathiudeen's politics undermines state institutions and officials as he usurps them in providing aid to people and disempowers civil society who are seen as ineffective and unable to deliver in the same way.⁹⁷ His politics has reportedly also antagonised and angered Tamils, which consequentially has affected their relations with Muslims.⁹⁸

In the SLMC, apart from some individuals in the party who have advocated for the rights of conflict-affected Muslims, the party has not played a substantive role on this issue.

95 Interviews in Trincomalee and Batticaloa, August and October 2017. These issues require further research and analysis, which was beyond the remit of this report. Some Tamils have been resettled by the LTTE and the government on Muslim lands and there are cases where the reverse has also occurred. Muslim's returning to the north feel unwelcomed and treated differently by Tamils and as this report explains there are growing cases of discrimination faced by Muslims from Tamil administrators.

96 Interviews and conversations with Muslim and Tamil civil society leaders during the period of field research for this report.

97 According to northern Muslim activists Minister Bathiudeen has reportedly got funds from a number of Muslim charities to support resettlement projects in the north, though this could not be independently verified.

98 Interviews and conversations with Muslim and Tamil civil society activists in the north throughout field research. A number of Tamil activists and victims told the author that Muslims faced no problems in the north and were in a favourable position as they had the support of Bathiudeen.

SLMC leader Rauf Hakeem said in an interview for this report that “Transitional Justice is very much part of our agenda, since the Geneva resolution we have been speaking and thinking about it.” Despite this though, the party did not engage with the CTF; nor do they have a policy on Transitional Justice. SLMC sources say there is generally no interest or knowledge on transitional justice within the party circles, where constitutional and electoral reform are considered more important issues.⁹⁹

On the Tamil side, the Northern Provincial Council (NPC), including the former Chief Minister, have not taken substantive measures to support the return and resettlement of Muslims and welcome them back.¹⁰⁰ While the NPC during its previous tenure passed some 500 or so resolutions, a number of them on issues of post-conflict justice, there was not a single one which specifically referred to the forcible eviction or welcomed the return of Muslims and attempts by the only Muslim provincial councillor to pass such a resolution was not welcomed.¹⁰¹ In the East, Tamil nationalists feel they lost out through their attempts at power sharing with Muslims in the Eastern provincial council.¹⁰² Some Tamil National Alliance (TNA) leaders have acknowledged LTTE atrocities committed against Muslims but some MPs and Tamil civil society leaders in the north and east continue to defend the LTTE’s actions, which jars with Muslims, just as statements by Sinhalese political leaders in support of the military offends and angers Tamil war survivors.¹⁰³ The weak relationship is exacerbated by the lack of a clear policy by the government on resource allocation and anti-discrimination, both of which have left Muslim and Tamil political leaders competing for the little that is available. A latest example of this was the 2017 budget allocation of 2.7 billion rupees for northern Muslims; a welcomed recognition by the state of their needs and an attempt to redress them. The funds, however, were allocated solely to Bathiudeen’s ministry of industry and

99 Interview with SLMC party seniors, July 2016.

100 Interviews with Muslim civil society leaders in the Northern Province, 2017.

101 Interview with Azmin Ayoob, Muslim NPC member. Ayoob said he attempted to introduce a resolution condemning the eviction and welcoming the return but it was blocked at a later stage.

102 Discussions with Tamil political activists in the east, August and October 2017. They said that the move to give a Muslim the Chief Minister post backfired against them and resulted in discrimination and neglect of Tamils by the Council.

103 Interviews with Muslim civil society leaders in the Northern Province, 2017, and observations by the author based on conversations with Tamil political and civil society leaders during the same period. Tamil National Alliance MP M. Sumanthiran in 2013 referred to the eviction as ethnic cleansing and berated Tamils for not acknowledging their mistakes. In 2011 a collective statement by Tamil civil and political activists was made on similar lines; however, there is still very little acknowledgement of the forcible eviction by Tamil politicians in the north.

commerce, which apart from the minister's individual role has no relevance to the return and resettlement of northern Muslims. Ironically, this allocation was made in the reconciliation chapter of the budget, which shows a lack of astuteness and consideration on the part of the government to the complexity of Tamil-Muslim relations over Bathiudeen's position.

The government and policy makers need to be fully aware of these problems and work through them in the transitional justice and reconciliation process. In taking a minority rights approach to transitional justice the government can ensure that all minorities including Muslims will effectively be included in the process at no expense to the rights of Tamils and other minorities. The transitional justice process is meant to bring justice and redress to all communities affected by the conflict, if this does not effectively occur then the grievances of the neglected or excluded communities could lead to renewed conflict.

Muslim and Tamil political leaders, particularly those based in the conflict-affected areas, through their respective parties such as the Tamil National Alliance (TNA), Sri Lank Muslim Congress (SLMC), and All Ceylon Makkal Congress (ACMC) need to acknowledge and where necessary apologise for serious violations committed to both communities during and after the conflict.

There is also a critical and urgent need to commence inter-community reconciliation work between Muslims and Tamils in the north and east. This has to be led by Muslim and Tamil civil society groups with support from national and international donors. The projects have to be non-political and run at the grassroots of conflict-affected societies.

7.1.4. Muslims and the peace vs. justice tensions

In some areas in the south, Muslim youth who are rearing to respond to these hate campaigns, in few cases threatening violence, have been kept under wraps by community and religious leaders.¹⁰⁴ In other situations Muslims have taken on an extremely submissive role, self-censoring and limiting the expression of their own

¹⁰⁴ Interviews with Muslim groups and activists working in the Southern Province and Eastern Province on issues of religious intolerance, August and October 2017.

freedom of religion and expression.¹⁰⁵ The implications of these situations are far reaching and can have a wide-ranging impact on Muslim identity, minority rights, and peace building, which is a subject that needs further research and analysis. This is not rare in a post-war context; in Sri Lanka this trend offers some opportunities, but it is also a major challenge in many fronts.¹⁰⁶

The quest for post-conflict justice for Muslims is one of the issues that sits at the intersection of pursuing a transitional justice process and preventing renewed ethnic/religious tensions.¹⁰⁷ For conflict-affected Muslims the perpetrators are from both communities, and seeking justice, for example, for crimes committed by the LTTE or Buddhist monks could strengthen hate campaigns against Muslims and lead to more targeted violent attacks. It could also make Muslims further vulnerable and threaten their security in their localities and at the national level which may act as a deterrent to their pursuit of justice. The implications to peace of minorities pursuing justice provides a readymade excuse to some politicians to continue delaying implementing the government's transitional justice commitments. In the current climate of such mistrust and mounting religious/ethnic majoritarianism; creating a process to challenge it and raise minority rights violations and atrocity crimes will require tremendous political will, public appetite for justice, and some levels of community resilience which is currently wanting.

On the other hand the Muslim dimension, especially on issues of freedom of religion, can broaden the proposed process and make it more holistic. Because they have faced violations from both communities their cases will help balance out the process and could enrich efforts at reconciliation. The Muslim position then can not only strengthen the type and extent of justice and accountability that can be achieved but more so ensure that peace in Sri Lanka is longer term and more stable.

105 Interviews with Muslim civil society leaders, Colombo, July 2017. They gave examples of where some mosques were not amplifying the call for prayer if it was based close to a Sinhalese village or where Muslims were not objecting to Buddhist chanting amplified into their villages.

106 Since Muslims have come under threat some sections of the community have become more open, for example; opening mosques to non-Muslims and are also participating in Buddhist religious and cultural events. These efforts can work in favour of reconciliation.

107 Post-conflict contexts often have a problematic dilemma of peace versus justice, where the pursuit of justice, particularly if it is for minority communities, is seen to damage peace. This is theoretically considered a false dilemma as peace at the expense of justice can't be genuine and long lasting. See for example: M. Bassiouni, "Searching for Peace and Achieving Justice: The Need for Accountability," *Law and Contemporary Problems*, 59(4), 9-28, 1996.

7.2 Internal issues

7.2.1. Low awareness and capacity

Conflict-affected Muslims have been searching for justice for over three decades yet their participation in the ZTF consultations was poor in all the districts in the north and east and awareness on transitional justice conceptually and as proposed by the government remains low.¹⁰⁸ While a similar trend was seen amongst other ethnic groups, amongst Muslims awareness levels and engagement with the existing processes was found to be much lower.¹⁰⁹

Muslim civil society in the north and east is also struggling with low institutional and technical capacity to engage on issues of human rights and transitional justice and, apart from a few individuals who have been involved in the ZTF process, most of the community-level activists and organisations have not shown high levels of interest in the subject. With the exception of a few, Muslim civil society organisations in the conflict-affected areas, have traditionally been more involved in development and humanitarian work rather than human rights and rarely articulate their problems through a human rights framework. In the north for instance, civil society leaders have only in the past few years, properly organised themselves to form umbrella representational bodies such as the Northern Muslim Civil Society (NMCS) and Northern Muslim Forum (NMF), which are only now concerted trying to empower and organise conflict-affected Muslims to engage with the transitional justice process. Conflict-affected Muslims, especially in the east, have no strong victim support groups or networks. As many of the crimes and serious violations Muslims suffered are now decades old, victims have tried to move on with their lives and are not involved in campaigns to seek justice.

108 Interviews with Muslim ZTF members from the north and east, November 2016 and March 2017.

109 Based on a comparative analysis of research conducted by the author amongst Tamil victim groups and Muslim victim groups it was clear that even though Tamils were also unaware of transitional justice mechanisms and processes they were better able to articulate their problems and needs through a justice and human rights framework compared to Muslims. At the time this research started there was virtually no awareness raising on the government's proposed transitional justice mechanisms taking place among Muslims, apart from a few informal discussions conducted by ZTF members prior to the consultations. A R M Ramees, a ZTF member from Vavuniya, said he was seriously concerned about the lack of capacity of Muslims and had alerted the Consultation Task Force (CTF) to this gap but little was done to respond to the problem. Since the CTF process, with the increase in knowledge and awareness amongst civil society activists through the ZTF process, there has been some small trickle-down effect to the community. There are now also at least two international donor funded programmes on awareness raising amongst conflict-affected Muslims taking place in the north of Sri Lanka.

To be able to effectively engage in any of the proposed transitional justice mechanisms, conflict-affected Muslims, including those affected through religious violence, need substantial support. Community level discussions, debates, and forums must be encouraged in villages and towns, not through token representations at national NGO events in the capital Colombo.

Strengthening and developing the institutional and technical capacity of Muslim civil society has been a long-term need but now in the post-war context has renewed urgency. These organisations particularly need support to be able to work with conflict-affected Muslims to articulate their problems and find solutions through a rights-based approach, rather than the existing development or humanitarian models which are largely associated with building houses, wells and delivering handouts. The base support level for conflict-affected Muslims is at an embryonic level, involves finding victims, collating information, documentation, supporting the formation of victim groups etc., which started to happen amongst other communities even before the war ended. Support will also be needed to: simplify proposed transitional justice mechanisms and communicate them to conflict-affected Muslims, and host and engage in conversations with other communities.

Muslim groups working on religious intolerance and violence in the south appear to have more technical capacity, with the support of leading lawyers and activists. These organisations and individuals are involved in some level of documentation and reporting and articulate the problems through a human rights framework.¹¹⁰ There are also formal and informal networks in place and the Sri Lanka Muslim Council has taken up a leadership and prominent role in national and international advocacy work on this issue. Organisations and individuals working on these issues in the south are nonetheless in need of capacity building support, including project development, monitoring and reporting and on technical subjects like transitional justice and international human rights law.¹¹¹

¹¹⁰ This was limited though to the leaders and in places like Mawanella and Aluthgama there was certainly the need for human rights and minority rights trainings for wider groups of Muslim community activists.

¹¹¹ During interviews with some activists working on these issues they expressed interesting ideas for inter-communal reconciliation work, but they had no awareness of how to develop a project or fundraise for it.

International donors have not prioritised working with Muslim NGOs and CBOs on issues of human rights and transitional justice and the latter lack the technical capacity to meet sophisticated donor monitoring and reporting requirements in this area of work. International donors must ensure that their funding reaches Muslim civil society groups and consider more flexible eligibility criteria to be able to include these organisations.¹¹²

Part of the awareness raising work will have to be within the Muslim community to highlight the vastly different positions and find ways for them to be advanced without any particular group feeling compromised. The intricacy of both the inter and intra Muslim positions, and the delicacy with which they will need to be handled, requires special attention from the government, international actors, and larger human rights NGOs working on transitional justice.

“Transitional Justice is not being spoken about by anyone in the Muslim community, not by NGOs, activists or politicians. There is no voice on transitional justice amongst Muslims.”

– M.B.M. Firdous, ZTF member from Batticaloa.

7.2.2. Parochial religious leaders and Muslim women’s rights

Muslim religious leaders and theologians, known as Mowlavis and Ulema, form powerful groupings and influence in nearly every sphere of individual and communal life through issuing ‘fatwas,’ or religious rulings but their limited human rights knowledge and approach impacts the progress of the community at the national level. The All Ceylon Jamiathul Ulema (ACJU), which is the apex body of Islamic theologians, has taken on a leading role in dealing with inter-religious tension and have been partly responsible for preventing Muslim youth from retaliating in situations of religious conflict through non-violent campaigns successfully implemented by mosque networks. However, Muslim religious clergy don’t articulate their positions through a rights framework and they are notorious in their publicly

¹¹² With the current levels of capacity, Muslim CBOs will not be able to fill in forms and fundraise as per requirements of international donors. Some exceptions will need to be made, either by encouraging larger Colombo NGOs to partner with Muslim CBOs and through that developing capacity, or by providing small funding support directly to CBOs to help strengthen their institutional capacity.

regressive positions on women's rights.¹¹³ While some religious leaders participated in consultations and continue to be involved in human rights work, there is a dearth of knowledge on secular human rights laws, norms, and practices, and insufficient initiative on the part of Muslim religious leaders to pursue all aspects of post-conflict justice.¹¹⁴

Gender exclusion is a serious problem affecting Muslim civil society and post-conflict activism. Muslim civil society groups have not succeeded in adequately and effectively including women in their work and the nationally respected women civil society leaders are not given sufficient recognition and space in the community leadership ranks.¹¹⁵ Unless organised by a woman activist, women's inclusion in community-level meetings and discussions is minimal and at times tokenistic.¹¹⁶ Affected Muslim women have also not participated in the protests of families of the disappeared in the north and east of Sri Lanka citing disapproval and stigma from religious leaders as one of the reasons.¹¹⁷ Specific effects of the conflict and religious violence on Muslim women, if not taken up by women's rights groups, rarely makes it into submissions and statements on rights and justice by male community leaders. Generally, raising women's issues through a human rights framework is met with resistance by male religious and community leaders as the current debate on the reform of the Muslim Marriage and Divorce Act (MMDA) shows.¹¹⁸ Despite being

113 See reference to ACJU battle with women's groups on the reform of the Muslim Marriage and Divorce Act (MMDA) discussed in the next paragraph.

114 They have been involved in campaigns and advocacy on justice for victims of religious violence and some from the conflict-affected areas have previously taken a role in advocating on specific conflict-related issues; however as individuals, religious movements and bodies they have very little involvement in the current transitional justice processes and mechanisms.

115 Interviews with Muslim women activists in Colombo, north and east. National-level Muslim women activists with international acclaim are at times shun by male community and religious leaders for not conforming to mainstream religious/cultural norms such as adhering to an Islamic dress code and those who meet parts of these criteria are still not given recognition within the community as they get at the national level.

116 The author had to make a specific effort to ensure that women were included in the focus group discussions and there were still a few of them where there were no women present. The author has participated in other meetings with northern and eastern conflict-affected Muslims which have either had only male participation or have been male dominated.

117 There are a number of reasons for this including that in the case of Muslims the perpetrators were the LTTE and the incidents occurred decades ago, however their lack of empowerment and fears that they would be criticised for participating publicly in street protests was also presented as reasons by affected women interviewed here.

118 Muslim women activists have used the constitutional reform process to campaign for the reform of the Muslim Marriage and Divorce Act, which allows polygamy and child marriage, and is broadly unfavourable to women. Despite the very effective and forceful campaigns by Muslim women's rights activists reform is being resisted by the ACJU. See Muslim Personal Law Reforms in Sri Lanka website for more details, available at: <https://mplreforms.com/aboutmmda/> (last viewed on 10 January 2018).

called upon by the fundamental international body monitoring women's rights to bring national laws in line with international commitments on women's rights the government has struggled to reform, let alone repeal, the discriminatory act because key Muslim political and religious leaders oppose it.¹¹⁹ This continuing attempted suppression of Muslim women by male community and religious leaders could have major repercussions for the pursuit of post-conflict justice for Muslims, especially considering that women generally are at the forefront of these campaigns in the conflict-affected areas and because even in the Muslim community women have suffered significantly and differently by the conflict.¹²⁰ Through Muslim women activists and CBOs substantial effort must be made to strengthen the capacity of Muslim women victims of rights violations and empower them to champion post-conflict justice and reconciliation. The government must also ensure that Muslim women are treated equally to Muslim men and women from other religious groups by taking into account and responding positively to their demands on post-conflict justice, such as on the MMDA reforms.¹²¹

7.2.3 Continuing problems

Conflict-affected Muslims face a host of ongoing problems which are also holding them back from properly engaging with the transitional justice process. Primary amongst them is their low socio-economic level as income generation and employment opportunities in the north are poor and due to limited access to lands in other parts, they have less opportunity to farm. The education levels amongst most of the returnees is also very low and this affects their employability.

119 Ibid. The UN Commission on the Elimination of Discrimination against Women in their 2017 review of Sri Lanka specifically took up the issue of MMDA reform and urged the government to ensure national laws are brought in line with international legal commitments.

120 See Crisis Group report on conflict-affected women (2017), *op. cit.*, footnote 66, which gives details of the role of women in the TJ process. While Tamil women too are facing new challenges by their male community leaders, many women are still at the forefront of campaigns, protests, victim groups etc., which is not seen amongst Muslims.

121

“Mannar has five divisions, this is the Muslim majority division, but for any project, even a water tank, they don’t prioritise what we need. During the floods Musali got the least support. There are 37 NGOs working here in Mannar only seven work in Muslim areas. NGOs contact the DS office where the needs are identified and they get told to go to the Tamil areas.”

– Mannar focus group discussion.

Though under-researched there are increasing reports of cases of discrimination faced by Muslims in the north and east. This discrimination is direct and indirect and in most cases reportedly institutional, led by Tamil government sector workers. There have been instances when government authorities such as divisional secretariats have allegedly publicly stated that they will not include returning Muslims in specific projects.¹²² The Musali Divisional Secretariat for instance is dominated by Tamils and according to returning Muslims they on occasion face discrimination in access to aid in this area.¹²³ Those interviewed for this report also referred to incidents of discrimination in government sector jobs. In Mannar in particular, there were reports where returning Muslims had been demoted in government sector positions compared to what they held in Puttalam.

“People are still suffering psychologically from what happened so many years ago. We have always been second class citizens, Tamils will always get priority.”

– Muslim journalist, Mannar focus group discussion.

As a first step, the government and civil society, with international donor support must engage in a mapping exercise to determine the needs of conflict-affected Muslims in the north and east. As the impact of the conflict on Muslims was different to Tamils, the timeframes of the violations do not necessarily match, and as the Muslim dimension to the conflict has on occasion been neglected, there is plenty of justification for conducting such a mapping exercise. In the interim, the government needs to take immediate steps to impartially assist Muslims with their

¹²² Interviews in Mannar, June 2016 and Jaffna November 2016. It was beyond the remit of this report to fully investigate these claims of discrimination, but as per the recommendations of the report is something the local authorities and government need to look into.

¹²³ Mannar focus group discussion, June 2016.

return and resettlement in both the north and east, including on income generation and livelihoods.

The government, in consultation with communities in both provinces, should provide effective solutions to land problems by releasing where possible state-held lands or resettling families in suitable lands, where livelihoods can be pursued and with adequate compensation. The government must also take immediate steps to resolve the problems of northern Muslims on registration and voting rights.

There are a number of issues that Muslims in the north and east are facing, as identified in this report that will be beyond the scope of the transitional justice mechanism. The full extent of the land problem, the registration and voting rights issues of northern Muslims and issues of discrimination, are likely to come up but unlikely to be resolved. This is a very serious concern for policy makers working on transitional justice who don't want the process overburdened but recognise that many conflict-related problems, affecting all ethnic groups, will probably be unresolved through the proposed four mechanisms. The Office of National Unity and Reconciliation (ONUR) is tasked with working on some of these issues and they need to ensure that their projects on women's empowerment, psycho-social work and inter-community reconciliation reaches out to Muslims in the north and east and is done in consultation with the local communities rather than being top-down. The government will also need to, in its policy statement on transitional justice, explain what other state mechanisms can deal with the multitude of problems that the proposed four mechanisms can't take on. Paramount to this is an anti-discrimination policy, which has to be effectively promoted and practised across the country.

8. Conclusion

Conflict-affected Muslims have long felt their grievances have not been recognised and they have been side-lined in peace building efforts in Sri Lanka – this is a historic opportunity to rectify this. Muslims have faced violations during and after the conflict including grave crimes and atrocities. They too want truth, justice, accountability, and reparations. The proposed transitional justice process can offer Muslims an opportunity for justice, redress, and most importantly recognition of the effects and impacts of the conflict on them. It will help them to feel treated as equal citizens of Sri Lanka and is a necessary step to prevent any further rise in ethnic tensions or conflict.

The positions held by Muslims undoubtedly complicate the search for transitional justice and reconciliation in Sri Lanka but can also tremendously strengthen it. Principally, the different situations faced by Muslims vehemently assert the need for transitional justice and reconciliation. As the northern Muslim case shows, the need for truth, justice and accountability is something that cannot be undermined or ignored and the religious violence against southern Muslims stresses the urgency with which impunity for rights violations needs to be countered, rule of law strengthened, and minority rights violations addressed. Both cases emphasise the essential need for inter-ethnic/religious reconciliation and positive peace-building.

It is fundamental that conflict affected Muslims are empowered to engage at all levels with the proposed processes and mechanisms. Muslims civil and political groups must demand this and raise their voice against attempts by the government to falter or delay this process.

Sri Lanka's second minority are well placed through their own example to pressure the government to pursue transitional justice and reconciliation and ensure that they get their rightful place in building a lasting peace for all Sri Lankans.

Recommendations

To the government of Sri Lanka

- i. Implement in full commitments made in UNHRC resolution 30/1 and with immediate effect develop a comprehensive strategy and policy paper on transitional justice in line with these commitments, in keeping with international standards and based on recommendations made by the CTF.
 - a. Ensure that this strategy and policy paper has a roadmap and specific deadlines for implementation.
 - b. Champion this strategy and policy at the highest levels including by the President, Prime Minister and cabinet ministers and ensure continuous high-level commitment to its implementation.
 - c. Make clear that the process will include all ethnic and religious groups and set out how this can be done.
 - d. Impartially make specific mention of grave violations suffered by ethnic minorities, without prejudice to any group.
 - e. Guarantee minority rights protection in the process.
- ii. Develop and implement an effective communication and outreach policy to promote the transitional justice process amongst all ethnic and religious groups.
 - a. Such a policy should aim at ensuring the process is owned by all people in Sri Lanka.
 - b. That all communities understand and support the need for justice for all.
- iii. Immediately launch a comprehensive, independent and impartial investigation into the incidents of religious violence against Muslims as outlined in section six of this report. Make public the report of this investigation and link findings and recommendations to other transitional justice mechanisms.
- iv. Based on existing evidence, immediately arrest and prosecute perpetrators of religious violence and hate crimes.

- v. With support of international donors and expertise from UN Office of the High Commissioner for Human Rights (OHCHR) begin awareness raising and capacity building programme on transitional justice targeting all ethnic groups. Ensure these programmes are conducted at the village level in all provinces and are designed and implemented by community-based organisations in these areas.
- vi. Conduct a needs analysis of conflict-affected Muslims and take concrete and effective steps to address the immediate needs, especially those impeding their participation in the transitional justice process.
- vii. Appoint a civil society-led steering committee to ensure that funds allocated in the 2017 budget to the Ministry of Industry and Commerce is spent based on an independent needs analysis and without prejudice to political affiliations of the target group – northern Muslims.
- viii. With support from international technical experts, develop a strong and comprehensive national anti-discrimination policy, which must include a zero-tolerance policy on religious and racially motivated crimes. This must be championed at the highest levels of government, publicised and implemented across all state bodies including the security forces.
- ix. Identify conflict related political, social, and economic issues that will/cannot be addresses by the proposed four mechanisms and put into place alternative structures to deal with these, including as per the recommendations of the CTF (2017), the creation of a Minority Rights Commission.
- x. Ensure that Secretariat for Coordinating Reconciliation Mechanisms (SCRM), Office of National Unity and Reconciliation (ONUR) and all proposed transitional justice mechanisms have sufficient gender and ethnic representation, they function in all three languages and have representation or offices in the north and east.
- xi. Take immediate steps to reform the Muslim Marriage and Divorce Act and bring it inline with national and international human rights laws.

To international donors

- i. Ensure that policy statements on transitional justice include Muslims and specify grave violations suffered by them.
- ii. Account in policy and public statements for previous neglect of conflict-affected Muslims.
- iii. Provide technical assistance for initiatives recommended in this report, support capacity building programmes of northern and eastern Muslim civil society organisations, and encourage work on transitional justice.

To Muslim political and civil society leaders:

- i. Following consultations with conflict-affected Muslims, develop position papers, including strong recommendations on transitional justice and reconciliation and take action to implement them.
- ii. Engage in effective national and international advocacy to ensure that the government meets its commitments on transitional justice.
- iii. Appoint lead persons to engage and work with the government and international donors on transitional justice and ensure that Muslims are not excluded from policy and practice.
- iv. Work together with Tamil and Sinhalese civil society on a comprehensive long-term plan to improve inter-ethnic relations, support co-existence, and work towards reconciliation.
- v. Ensure that Muslim women are included and effectively participate in all projects and processes and support their campaigns for justice, including on MMDA reform.

To national civil society and other ethnic/religious group leaders:

- i. Through increased partnerships support, help, and strengthen Muslim civil society groups in conflict-affected areas.
- ii. Include issues faced by conflict-affected and other Muslims in national-level policy work and campaigns for reform and justice.

- iii. Enable Tamil and Sinhalese community-level groups to work with Muslim civil society to develop projects, especially focusing on women and youth, to strengthen co-existence and reconciliation.
- iv. Tamil political and civil society groups in public and policy statements acknowledge the atrocities suffered by northern Muslims and support their claim for justice, accountability and redress.

Coming out of the Margins:

Justice and Reconciliation for Conflict-Affected Muslims in Sri Lanka

By Farah Mihlar

Now, nearly nine years after its civil war has ended, as Sri Lanka reluctantly limps towards transitional justice and peace-building, conflict-affected Muslims find themselves at the margins of post-conflict reforms in a climate where they are having to battle a rising reputation as the 'new enemy' of both the Sinhalese and Tamils. During the course of the country's three-decade ethnic conflict Muslims were frequently affected by the conflict but were not considered party to it and not effectively included in conflict resolution and peace-building processes. When the prospects of post-conflict reform, transitional justice, constitutional reform, and reconciliation, are all largely trapped in a toxic combination of insufficient political will, incompetence, and majoritarian politics, this report aims to understand the positions of Sri Lanka's conflict-affected Muslims on post-war reforms.

The report explores the wants and needs of Muslims from the government's proposed transitional justice process and the internal issues impeding the community from fully accessing these mechanisms. The report finds that the engagement of Muslims in the national processes of reconciliation is greatly limited through a trifactor of damaging politics, parochial religious leaders, and less-empowered civil society. While largely considering Muslims living in the North and East who were directly affected by armed violence, the report also considers the more recent attacks against Muslims living outside of the North and East and makes a case for these incidents to also be included in the transitional justice and reconciliation process. The perspectives of Muslims, as presented in this report, are crucial because they simultaneously have the potential to challenge and enhance post-conflict reforms; emphasise the systemic nature of minority rights abuses and the fragility of the current security context; and affirm the importance of truth, justice, and reconciliation for long-term sustainable peace.

Dr. Farah Mihlar, a British/Sri Lankan Muslim academic and activist, is a lecturer on conflict studies in the Department of Politics at the University of Exeter, UK. She specialises in minority rights, women and conflict and transitional justice.



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ISBN 978-955-580-225-3



Printed by **Horizon Printing (Pvt) Ltd.**