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ATROCITY CRIMES RISK ASSESSMENT SERIES

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This report was prepared by Ms Gabriella Barnett and Ms Yasmin Poole, research interns at the Asia Pacific Centre for the Responsibility to Protect based at the School of Political Science and International Studies at the University of Queensland. Their internship was supported by the Centre's staff: Professor Alex Bellamy, Dr Mark Love, Ms Arna Chancellor Dr Noel Morada and Dr Sarah Teitt. We acknowledge the preliminary background research undertaken in 2015 by volunteer research intern Alex Ladd.

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Asia Pacific Centre for the Responsibility to Protect

School of Political Science and International Studies
The University of Queensland
St Lucia Brisbane QLD 4072
Australia

Email: r2pinfo@uq.edu.au

<http://www.r2pasiapacific.org/index.html>

INTRODUCTION

In 2014 the United Nations Special Advisers on the Prevention of Genocide and the Responsibility to Protect presented an updated Framework of Analysis to assist with assessing the risks of genocide, ethnic cleansing, war crimes, and crimes against humanity (henceforth referred to as ‘the Framework’). The Framework serves as a working tool to identify those countries most at risk in order to support the prevention of atrocity crimes.

This risk assessment for Sri Lanka uses the risk factors and indicators as presented in the Framework. Only risk factors deemed relevant to the current situation within Sri Lanka are analysed. The absence of some risk factors and indicators does not suggest that they are of objectively lesser importance, but rather that they are currently inapplicable to the Sri Lankan context. Moreover, the presence or absence of risk factors does not guarantee that atrocity crimes will or will not occur. Only by examining risk factors in their appropriate context is it possible to more fully identify the strengths and weaknesses of Sri Lanka’s current atrocity risk factors, and in doing so support the government’s responsibility to uphold human rights and prevent the potential for atrocity crimes to arise. This Framework, therefore, is a tool for prevention.

Summary overview of assessment

This report finds that the current risk of mass atrocity crimes occurring in Sri Lanka is **moderate**. The end of the civil war in 2009 and ensuing peace has largely contributed to reducing risk of atrocity crimes. However, Sri Lanka remains characterised by poor governance within state institutions, human rights violations, lack of accountability measures and tensions between ethnic and religious groups. **Common Risk Factors 2** (record of serious violations of international human rights or humanitarian law) and **3** (weakness of state structures) were most applicable to the situation in Sri Lanka. The treatment of the Tamil and Muslim communities also fulfilled some elements of **Special Risk Factor 9** (discrimination against protected groups). Use of torture by the police force and tensions between the Sinhalese and Tamil communities remains of particular concern. Recent clashes between extremist Buddhist groups and the minority Muslim community also illustrate the potentiality for greater tensions and violence to emerge.

The report provides a number of recommendations in addressing these issues, including establishing UN recommended mechanisms to address human rights violations, modifying legislation to reduce overreach of police power, reforms to ensure judicial impartiality, and greater reconciliation focused on united Sri Lankan identity.

Map of Sri Lanka



Map acknowledgement United Nations Geospatial Information Section (formerly Cartographic Section)

List of Abbreviations

ARF	ASEAN Regional Forum
ADB	Asian Development Bank
CSO	Civil society organisation
ICC	International Chamber of Commerce
INGO	International non-governmental organisation
JVP	Janatha Vimukthi Peramuna
LTTE	Liberation Tigers of Tamil Eelam
NGO	Non-Governmental Organisation
UNFP	United People's Freedom Alliance
WTO	World Trade Organization

FRAMEWORK OF ANALYSIS

The Framework of Analysis is comprised of 14 Risk Factors of atrocity crimes. Each Risk Factor has an accompanying set of more specific Indicators. The Framework is intended to be used "to guide the collection and assessment of information" regarding the potential for atrocity crimes.

The Risk Factors are delineated into two different groups: **Common Risk Factors**, which are the conditions that increase the probability of atrocity crimes occurring; and, **Specific Risk Factors**, which are divided into the risks associated with genocide, crimes against humanity, and war crimes (ethnic cleansing is incorporated into the other atrocity crimes). The more Risk Factors and Indicators that are present, the greater the risk that atrocity crimes may be committed. However, not all Risk Factors must be present to represent a significant risk. The Risk Factors and Indicators are not ranked by importance and should be considered in a broader context, taking account for a society's politics, history, and culture.

COMMON RISK FACTORS		
Risk Factor	1	Situations of armed conflict or other forms of instability
Risk Factor	2	Record of serious violations of international human rights and humanitarian
Risk Factor	3	Weakness of State structures
Risk Factor	4	Motives or incentives
Risk Factor	5	Capacity to commit atrocity crimes
Risk Factor	6	Absence of mitigating factors
Risk Factor	7	Enabling circumstances or preparatory action
Risk Factor	8	Triggering factors
SPECIFIC RISK FACTORS		
Genocide		
Risk Factor	9	Inter group tensions or patterns of discrimination against protected groups
Risk Factor	10	Signs of an intent to destroy in whole or in part a protected group
Crimes Against Humanity		
Risk Factor	11	Signs of a widespread or systematic attack against any civilian population
Risk Factor	12	Signs of a plan or policy to attack any civilian population
War Crimes		
Risk Factor	13	Serious threats to those protected under international humanitarian law
Risk Factor	14	Serious threats to humanitarian or peacekeeping operations

Each of these Risk Factors are accompanied by 6-18 more specific Indicators, which can be used to more precisely identify and analyse the risks of atrocity crimes. These Indicators and further information on the full UN Framework of Analysis for Atrocity Crimes can be found by clicking here or by visiting the UN website at www.un.org.

COMMON RISK FACTORS

RISK FACTOR 1: SITUATIONS OF ARMED CONFLICT OR OTHER FORMS OF INSTABILITY

The first risk factor relates to the “situations that place a State under stress and generate an environment conducive to atrocity crimes”. Sri Lanka was involved in a non-international armed conflict for nearly 30 years, before its conclusion in May 2009. Since then, the country is no longer considered to be in a state of armed conflict (Indicator 1.1) or a security crisis (Indicator 1.2)².

Insecurity from Humanitarian Crisis

Indicator 1.3 addresses ‘humanitarian crisis or emergency, including those caused by natural disasters or epidemics’. Sri Lanka is notably susceptible to natural disasters, due to its economic structures and dense population. These are predominantly droughts and floods, but also includes tsunamis and storms.³

Natural disasters regularly affect Sri Lanka. Sri Lanka experienced severe cyclone and floods over 2017, with heavy rains affecting 717,622 people and killing 212.⁴ Since late 2016, the country has been experiencing severe drought, considered to be the worst experienced in the country in 40 years.⁵ Twenty out of twenty-five districts have been affected by drought, affecting approximately 1.8 million people.⁶ Nonetheless, the government of Sri Lanka has improved its response in dealing with humanitarian issues over the years. This is boosted by the help of foreign aid, with countries such as the United States, Japan and India lending assistance over 2017.

The drought has also been linked to a sudden rise in Dengue fever, with 80,732 confirmed cases between January 2017 to July 2017.⁷ Nonetheless, the elimination of malaria and lymphatic filariasis in 2016 highlights Sri Lanka’s solid healthcare advancements. The government continues to focus on United Nations Sustainable Development Goal (SDG) 3,⁸ “to ensure healthy lives and promote well-being for all at all ages.” This commitment to maintaining health suggests continued progress in reducing outbreaks, and therefore would not generate an environment for atrocity crimes.

Political Situation

Indicator 1.4 pertains to “political instability caused by abrupt or irregular regime change or transfer in power”. Sri Lanka is a democratic republic and voters elect a President as head of state and government.⁹ Current major parties are the United People's Freedom Alliance (UNFP) and the United National Party (UNP).¹⁰ Government is typically a coalition with smaller parties.

On 8 January 2015, Sri Lanka held a presidential election, in which New Democratic Front candidate Maithripala Sirisena gained office, defeating Mahinda Rajapaksa, who had ruled from 2005-2015. The election was deemed generally credible by monitors from the Commonwealth Observer Group and was considered to enhance Sri Lanka’s freedom to a large extent.¹¹ The ongoing persecution of the Tamil minority was improved during the election cycle, with less obstacles in place for residents in the North to vote and less discrimination against Tamil parties generally.¹² Sirisena was popular amongst minority groups and pledged to create Tamil reunification after the Civil War.¹³ His achievements include a significant constitutional amendment to reduce overly extensive presidential powers, and measures to increase the independence of oversight commissions for the police, judiciary, and human rights.¹⁴ Public entities were also forced to disclose information to the public under the new Right to Information Act.¹⁵ Tamil reunification measures included reducing heavy military presence in Tamil-majority areas, and negotiation with the military to return Tamil private land it had seized during the civil war.¹⁶

RISK FACTOR 1: SITUATIONS OF ARMED CONFLICT OR OTHER FORMS OF INSTABILITY

Nonetheless, in 2018, the status in respect of freedom in the country is still only recognised as being 'partly free'.¹⁷ The curtailment of the media's freedom of expression and politicisation of impartial bodies (such as lower courts and universities) remain an issue.¹⁸ Public opinion has begun to view the Sirisena government as weak or ineffective.¹⁹ Despite efforts at reconciliation, portions of the Tamil community continue to demand separatism. The corruption of Sri Lanka's Central Bank also drew much criticism. Malpractices committed under the Central Bank Governor, appointed by Sirisena, led to the country's treasury losing 35-45 billion rupees (\$233-\$300 million).²⁰ Political division in government and within the general public on these issues means the trajectory of Sri Lanka remains somewhat volatile, dependent on the President at the time.

The next national elections are not scheduled until 2020, however, local elections held in February 2018 highlight that public dissatisfaction with the ruling government is growing, with former leader Rajapaksa's opposition party, the Sri Lanka People's Front, achieving resounding victory.²¹ The local vote has been largely regarded as a referendum of the national government's performance, thus, such results bring into question the stability and direction of Sri Lanka's political future.²² Whilst the present political situation is unlikely to induce atrocity crimes, it suggests that a transfer of power may be likely in the future, which can result in **Indicator 1.4** materialising.

Competing Groups

Indicator 1.5 refers to "political instability caused by disputes over power or growing nationalist, armed or radical opposition group". Tension between Tamils and Sinhalese remain despite the end of the civil war and defeat of LTTE. However, this has not escalated into political volatility. This can be most clearly seen in the 2015 presidential elections. The two groups' divide in political preference led to politicians making efforts to appeal to one side over another.²³ Tamils hugely contributed to Sirisena's win of the popular vote. Whilst there are reports of Tamil abuse from military and police force, discussed in **Risk Factor 3**, this democratic victory highlights that core political structures are currently stable.²⁴

Nonetheless, opposition groups are capable of threatening the political system. Religious extremist groups remain an issue in Sri Lanka. This can be seen in Bodu Bala Sena, a militant Buddhist group (composed primarily of Sinhalese) that call for armed violence against Muslims. In 2014, an anti-Muslim protest rally conducted by the group resulted in the death of four Muslims.²⁵ Further Buddhist-Muslim clashes took place in Ampara and Kandy in late February and early March 2018, resulting in the death of two individuals and prompting the government to issue a state of emergency for ten days.²⁶ Whilst this has not yet driven political instability, growing tension has contributed to **Indicator 1.11**: "social instability caused by exclusion or tensions based on identity issues, their perception or extremist forms". This situation must therefore be controlled to ensure it does not escalate on a wider scale. Janatha Vimukthi Peramuna (JVP) emphasises how militant groups have the capacity to gain large following and influence. JVP is a Marxist-Leninist communist party, which staged armed uprisings in the 1970's and 1980's against respective governments and later became a political party.²⁶ In this sense, a religious militant group entering politics has strong capacity to cause political unrest and violence and lead to future atrocity crimes. Furthermore, the recent attacks against Muslims could provoke the radicalisation of Muslim youth and lead to the outbreak of further violence.²⁸ The repeated attacks by Sinhala racists against Tamils played a significant role in spawning Tamil militancy and the ensuing civil war and there is fear that "this story is being repeated with the Muslims" (**Indicator 1.5**).²⁹ Such a development should be closely monitored and prevented in order to avoid an environment arising that may be conducive to atrocity crimes.

RISK FACTOR 1: SITUATIONS OF ARMED CONFLICT OR OTHER FORMS OF INSTABILITY

Indicator 1.6 relates to “political tension caused by autocratic regimes or severe political repression”. Former Sri Lankan President Rajapaksa attempted to stage a coup against Sirisena after being defeated in the 2015 democratic election, but was unsuccessful.³⁰ Rajapaksa’s 10-year rule notoriously used autocratic measures to stifle political opposition, including silencing of press, use of torture and disappearance of human rights activists.³¹ However, the largely peaceful democratic election highlighted a shift away from this political repression. Whilst Sri Lanka continues to have human rights problems, an autocratic regime itself is not a current trigger for political tension (**Indicator 1.6**). Nevertheless, the aforementioned local elections, in which Rajapaksa regained prominence and his party secured an overwhelming victory, illustrate the possibility of an autocratic regime being re-instated in Sri Lanka should these local elections translate into similar results on the national level.

Instability of the Economy

Indicator 1.7 pertains to “economic instability caused by scarcity of resources or disputes over their use or exploitation”. The end of the civil war in 2009 heralded economic growth for Sri Lanka, and during the 2010-2016³² period the country experienced an average economic growth rate of 6.2%. The government has built on this economic stability by passing constitutional and economic reforms, advancing public financial administration, expanding public and private investments, addressing infrastructure restrictions, enhancing government effectiveness, and directing governmental service distribution.³³ Nonetheless, it is still a lower middle income-country³⁴ and Sri Lanka has mainly remained an agricultural nation.³⁵ The nation’s cultivated crops primarily include rice, tea, rubber, coconut and spices. Sri Lanka also produces fruit and vegetables, native to the region. In addition, Sri Lanka is a key exporter of precious and semi-precious stones.³⁷

However, Sri Lanka’s gradual transition from a rural-based economy to an urbanised economy (manufacturing and services) has seen the economy experience signs of slowdown in the last three years.³⁸ In 2017, growth decelerated to 3.3%, which was primarily the result of weak performance of agriculture and related sectors due to natural disasters.³⁹ Scarcity of certain resources through unsustainable economic development practices is also an issue. The country has been heavily impacted by deforestation and also struggles with lack of water.⁴⁰ The government aimed to address this in their ‘Vision 2025’ report, launched in 2017. This focuses on creating inclusive and equitable economic growth, through reconciliation measures and good governance.⁴¹

Disputes over land has also impinged upon economic development.⁴² This is primarily due to poor land administration.⁴³ The World Bank have used Sri Lankan woman Kamala Wijesekera as a common example of this challenge. When squatters claimed to own her land in 2000, Wijesekera sought legal action. Basic department administration and the legal process were especially lengthy. Court dates were separated every six months, with the squatters asking for further time in between court sittings to delay hearings further. As of late 2017, the problem remained unresolved and the land continues to be unused.⁴⁴ On a larger scale, the seizure of Tamil land by the Sri Lankan military has fuelled disputes since the civil war.⁴⁵ Failures to protect individuals, particularly Tamils, through a poor legal system could create capacity for atrocity crimes. Nonetheless, the issue with housing has not largely impacted the national economy itself nor generated widespread distress (but see further **Risk Factor 4**).

Sri Lanka also has an emerging debt problem. It is not at a “severe crisis” level (**Indicator 1.8**) but demands continual monitoring. National debt has increased by nearly 140% between 2006 and 2016, from \$10.6 billion to \$25.3 billion,⁴⁶ with 3.3% of this debt owed to China.⁴⁷ *The Diplomat* notes that this is particularly lucrative for China, who now charges Sri Lanka loans at a higher rate equivalent

RISK FACTOR 1: SITUATIONS OF ARMED CONFLICT OR OTHER FORMS OF INSTABILITY

to a middle-income country.⁴⁸ China also has large shares in strategic Sri Lankan ports, which has caused considerable public outcry and triggered protests.⁴⁹ Former President Rajapaksa warned that further Chinese land ownership could create mass public unrest, disrupting the post-civil war peace (**Indicator 1.10**).⁵⁰ Although it is unlikely this would directly generate an environment conducive for atrocity crimes, it is important that protests do not escalate and result in large-scale violence.

Poverty and Inequality

Indicator 1.9 outlines “economic instability caused by acute poverty, mass unemployment or deep horizontal inequalities”. According to the Center for Excellence in Disaster Management and Humanitarian Assistance, Sri Lanka has made significant strides in its poverty alleviation objectives. It now holds one of the lowest rates of extreme poverty in the region.⁵¹ Nonetheless, improvement is unevenly distributed, with areas of severe poverty remaining an issue in the country.⁵² Aside from lack of efficient government strategies, climate change also plays a major role, hampering poverty alleviation measures.⁵³ An increasing number of floods, droughts, and epidemics in Sri Lanka has placed severe financial hardship on poor communities, who often rely on farming and fishing for food and income.⁵⁴

Poverty is especially concentrated in rural areas in the northeast. This is predominantly where Tamil communities reside, who experience higher rates of poverty and income inequality.⁵⁵ This has been exacerbated by the fact that sections of Sri Lankan society still view Tamils with hostility. Further discussion on Tamil discrimination is discussed in Risk Factor 9. The government must ensure that poverty alleviation is achieved across all ethnic groups. This can be improved through more measures focusing on reconciliation, but also by providing greater support to farming communities in rural areas. This would advance Sri Lanka’s transition to an urbanised economy rather than exacerbate extant inequalities. Tamil discrimination could lend itself to atrocity crimes in the future, as outlined in Risk Factor 9. However, poverty itself is not currently a triggering factor.

RISK FACTOR 2: RECORD OF SERIOUS VIOLATIONS OF INTERNATIONAL HUMAN RIGHTS AND HUMANITARIAN LAW

The second risk factor concerns any “past or current serious violations of international human rights and humanitarian law, particularly if assuming an early pattern of conduct, and including those amounting to atrocity crimes, that have not been prevented, punished or adequately addressed and, as a result, create a risk of further violations”. Most relevant to the situation in Sri Lanka are human rights violations within security forces, alongside marginalising protected groups through political, civil and discriminatory methods. It has long been credibly argued that the mass killings of Tamils during the civil war amounts to war crimes, but the government have consistently stymied international investigative efforts and reneged on domestic promises to thoroughly investigate matters themselves. Aside from this, other issues discussed within this Risk Factor do not amount to atrocity crimes.

Past and Present Violations of International Human Rights and Humanitarian Law

Indicator 2.1 refers to “past and present serious restrictions to or violations of international human rights and humanitarian law, particularly if assuming an early pattern of conduct and if targeting protected groups, populations, or individuals”. Sri Lanka’s lack of transparency within its security force could potentially play an enabling role in atrocity crimes, due to a lack of accountability meas-

RISK FACTOR 2: RECORD OF SERIOUS VIOLATIONS OF INTERNATIONAL HUMAN RIGHTS AND HUMANITARIAN LAW

ures. Police abuse in Sri Lanka, for instance, is a cause for concern. In 2005, Radhika Coomaraswamy – then chairperson of the National Human Rights Commission – reported that police as a whole used “routine torture as a method of investigation”.⁵⁶ This engrained practice relates to **Indicator 2.4**, “inaction...to use all possible means to stop...ongoing serious violations of international human rights”. An investigative study by Human Rights Watch found that police still use torture to try and obtain confessions rather than gathering evidence.⁵⁷ Police also use beatings and other forms of torture to punish suspects they believe are guilty, instead of waiting for the court verdict.⁵⁸ This is common even in minor offences.

The Prevention of Terrorism Act (PTA) has been heavily criticised for permitting these police abuses, which points to aspects of **Indicator 2.3**, “Policy or practice of impunity for or tolerance of serious violations of international human rights”. Initially enacted in 1979, the PTA currently remains in effect, despite the cessation of fighting over nine years ago and the Sri Lankan government’s commitment at the Human Rights Council in October 2015 to repeal and replace the law. A proposed counterterrorism bill, the *Counter Terrorism Act*, was submitted to parliament in 2017, however it has not yet been passed and retains many of the flaws of the current legislation, such as a very broad and vague definition of terrorism and the detainment of suspects for up to 12 months without charge.⁶⁰ The arrest of many Tamil individuals suspected to be involved with the LTTE means that they have been at the forefront of these human rights abuses.⁶¹ This meets aspects of both **Indicator 2.1** and **2.6**. Ben Emmerson QC, UN special rapporteur on counter-terrorism, found that 80% of those most recently arrested reported being tortured.⁶² This included “beatings with sticks, stress positions, asphyxiation using plastic bags drenched in kerosene, the use of water torture” amongst other methods.⁶³ Detainees have also been raped or sexually abused while in custody.⁶⁴ Human Rights Watch reports that the legal system fails to stymie these abuses or bring perpetrators to justice. Victims are often unaware of remedies that they are entitled to under Sri Lankan law.⁶⁵ Furthermore, court processes are extremely slow, and police often ensure claims are dismissed through bribery or threats to the victim and their family before they reach court.⁶⁶ Consequently, public mistrust in State institutions is very high (**Indicator 2.8**).

However, there has been some encouraging progress in response to these abuses, with the Sirisena government undertaking some substantive reforms. This includes the appointment of a civilian as the head of the ministry that oversees police, restoring the independence of public service commissions, and instigating investigations into the most prominent police abuse cases.⁶⁷ The government has also pledged to cooperate with the United Nations Office of the High Commissioner for Human Rights (OHCHR) to further reduce the practice of torture within the police force.⁶⁸ Nonetheless, shifting law enforcement practices and establishing a culture of transparency and instigating effective redress mechanisms will require substantial time, effort and resources; not simply symbolic measures. This is needed to ensure police are properly scrutinised (**Indicator 2.5**).

The civil war resulted in significant human rights abuses. This included the government establishing “rehabilitation centres” for suspected LTTE members, which involved rampant torture and sexual abuse.⁶⁹ Close to 11,000 people were detained in these centres without any access to legal counsel after the civil war. In 2015, over six hundred individuals still remained in four rehabilitation centres.⁷⁰ Camps were also constructed during the civil war for individuals fleeing conflict zones. However, these fell well below international standards, and UN agencies and NGOs were prevented from delivering resources.⁷¹ Referring to **Indicator 2.2**, this and other human rights issues have not been investigated or prosecuted by the Sri Lankan government. It has been credibly argued that the mass killings of Tamils during the civil war amounts to war crimes. The UN’s Expert Panel suggests that in the final months of the war alone, 40,000 civilians may have been killed, mostly as a result of

RISK FACTOR 2: RECORD OF SERIOUS VIOLATIONS OF INTERNATIONAL HUMAN RIGHTS AND HUMANITARIAN LAW

indiscriminate shelling by the Sri Lankan military.⁷² The government have consistently stymied international investigative efforts⁷³ and reneged on domestic promises to thoroughly investigate matters themselves (see further **Indicator 3.6**).

Since 2012, the United Nations Human Rights Council have passed numerous resolutions encouraging Sri Lanka to conduct independent and credible investigations into alleged war crimes. In March 2017, Sri Lanka asked the United Nations for two more years to investigate war crimes. However, it increasingly appears that the government have no real intention of thoroughly investigating the issues or bringing perpetrators to justice. In November 2017, President Sirisena stated, “There won’t be electric chairs, international war crimes⁷⁴ tribunals or foreign judges. That book is closed. They still bring up issues that we have already brought to a close.”⁷⁵ UNHRC’s High Commissioner has called upon member states to explore other avenues to foster accountability in Sri Lanka.⁷⁶ This lack of interest in accountability by the government is of concern as impunity and unresolved human rights abuses are known to be a significant contributor to atrocity crime risk (**Indicator 2.3**).

Aside from the Tamil community, women and the LGBTI+ community are at risk. Investigative reports have found that the LGBTI+ community can suffer from arbitrary detention, mistreatment, and discrimination accessing health care, employment, and housing.⁷⁷ Whilst there are no laws that specifically discriminate against the LGBTI+ community, broadly worded acts banning “illicit or unnatural intercourse” or “carnal knowledge against the order of nature” are seen to effectively ban same sex relations.⁷⁸ UNICEF also reports that women are vulnerable through various forms of discrimination. This includes gender-based violence and sexual abuse, leading to unintended pregnancies and sexually transmitted diseases.⁷⁹ Nonetheless, Human Rights Watch notes that Sri Lanka has made some progress through policy reform (improving **Indicator 2.7**). As of 2017, the government implemented several policies preventing trafficking, sexual and other forms of violence against women.⁸⁰ It also ratified the Convention on the Elimination of All Forms of Discrimination against Women.⁸¹ It is unlikely these groups would be the direct victims of atrocity crimes. Nonetheless, Sri Lanka’s failure to address human rights violations means such groups remain at risk.

RISK FACTOR 3: WEAKNESS OF STATE STRUCTURES

The third risk factor concerns “circumstances that negatively impact on the capacity of a state to prevent or halt atrocity crimes”. Whilst weak state structures alone are not the cause of atrocity crimes, they reflect a state’s ability to protect its own population against such an occurrence. Therefore, stability of state structures remains particularly significant when determining the likelihood of atrocity crimes. Sri Lanka’s current environment particularly contributes to this Risk Factor.

Institutional Protections

Indicator 3.1 observes a “national legal framework that does not offer ample and effective protection, including through ratification and domestication of relevant international human rights and humanitarian law treaties”. Despite being a signatory to the Geneva Convention prohibiting war crimes, as well as a number of international human rights treaties including the International Covenant on Civil and Political Rights, the International Covenant on Economic Social and Cultural Rights, and the Convention against Torture and other Cruel, Inhuman or degrading Treatment or Punishment, the Sri Lankan Constitution permits violation of human rights “in the interests of national security, public order and the protection of public health or morality”⁸² or general societal welfare. Two United Nations Special Rapporteurs (for independence of legal system and for torture or other degrading punishment) stated that this permits human rights abuse to occur without proper ramifications.⁸³

RISK FACTOR 3: WEAKNESS OF STATE STRUCTURES

The International Commission of Jurists reports there have been decades of injustice for human rights violations.⁸⁴ They add that these abuses have perpetuated a culture of impunity, where perpetrators are rarely held accountable for their crimes.⁸⁵ A key reason for this is that the Sri Lankan judiciary is not properly independent and impartial. Since 2009, the government has continued to dismantle institutional limits on its power and judicial appointments are highly politicised.⁸⁶ The impeachment of Shirani Bandaranaike, Chief Justice of Sri Lanka, was widely condemned.⁸⁷ A main reason for her impeachment was her declaration of a government bill as unconstitutional.⁸⁸ This strategic removal symbolised the high level of control government held over the legal system.⁸⁹ Lawyers working on human rights cases have also been subjected to kidnapping, torture and harassment from authorities.⁹⁰ Considering this pressure, it has been found that the judicial system is particularly prejudiced in the state's favour (**Indicator 3.3**).⁹¹

The judicial system has been known to exclude the poor and disadvantaged. Vulnerable groups are often unaware of their legal rights and how to access justice mechanisms.⁹² UNDP launched an initiative in 2013 to educate officers from the Criminal Division of Sri Lanka's Attorney General Department in order to improve legal justice for minority or impoverished groups.⁹³ However, little progress has been made. In 2017, the UN Special Rapporteur on the Independence of judges and lawyers, Diego Garcia-Saya, expressed concern over lack of minority groups in prosecution services and the police force (**Indicator 3.2**).⁹⁴ Tamil defendants have often been coerced into pleading guilty, under the mistaken impression that they could receive a lighter sentence.⁹⁵ The report also criticised the lengthy amount of time between each court date, thought to restrict proper justice.⁹⁶ Lack of transparency and impartiality within Sri Lanka's legal system would be a major factor for future atrocity crimes.

Security Forces

Indicator 3.4 refers to a "lack of effective civilian control of security forces." This has been extensively discussed in **Risk Factor 2**. As previously stated, the police force is notorious for systematic torture, beatings, rape, and similar human rights violations imposed upon detained individuals.⁹⁷ The detainment of suspects does not require a warrant and can be held for up to 12 months, and this provision is often exploited in order to silence critics of the state.⁹⁸ Amnesty International reported that individuals subjected to this abuse include journalists, grassroots activists and lawyers (especially those working on human rights cases).⁹⁹ Authorities have also been known to harass and assault critics through anonymous means.¹⁰⁰ This includes kidnapping and torturing in order to prevent further criticism of the state.¹⁰¹

Corruption

Indicator 3.5 relates to "high levels of corruption or poor governance". There is a moderately high risk of corruption in Sri Lanka,¹⁰² with the state ranked 91st out of 180 countries, according to the 2017 Corruption Perceptions Index produced by Transparency International.¹⁰³ This has dropped by 8 rankings since 2015.¹⁰⁴ The most common forms of corruption include bribe solicitation by government officials, nepotism and cronyism.¹⁰⁵ Corruption was reportedly particularly rampant under the Rajapaksa government.¹⁰⁶ Sri Lanka's 'Commission to Investigate Allegations of Bribery or Corruption' was established to investigate these allegations.¹⁰⁷ However, the commission has not made any significant findings into corruption within government.¹⁰⁸ Since President Sirisena's election in 2015, there remains no convictions for high level corruption.¹⁰⁹ Healthcare has also drawn accusations of corruption, with allegations of certain individuals bypassing lengthy hospital waiting lists.¹¹⁰

The government has introduced several policies in a bid to combat corruption, namely the *Right to Information Act* and the adoption of the Open Government Partnership National Action Plan.¹¹¹

RISK FACTOR 3: WEAKNESS OF STATE STRUCTURES

However, Executive Director of Transparency International Sri Lanka (TISL), Asoka Obeyesekere, emphasised anti-corruption legislation will not solve the entire problem.¹¹² Recent corruption controversies have affected Sri Lanka, such as the Australian corruption scandal in 2016. In this example, two major Australian companies were found to have bribed government officials, allegedly including the President, to secure large-scale projects in Sri Lanka.¹¹³ Furthermore, delays of corruption related prosecutions highlight Sri Lanka's lack of legal resources and technical expertise and brings into question the government's willingness to punish powerful political elites.¹¹⁴ The best method to addressing this is improving the impartiality of the judicial system. Unaddressed corruption is known to create an enabling environment conducive to future atrocity crimes.

Accountability

Indicator 3.6 relates to an "absence or inadequate external or internal mechanisms of oversight and accountability, including those where victims can seek recourse for their claims". The UN Human Rights Council attempted to improve the government's low accountability measures through adopting a consensus resolution in 2015.¹¹⁵ Sri Lanka agreed to resolve transitional justice demands arising out of the civil war, specifically a special court "integrating international judges, prosecutors, lawyers and investigators" with an independent investigative and prosecuting body.¹¹⁶ It also included an agreement to create an office on missing persons, alongside a mechanism designed to guarantee civil war reparations.¹¹⁷ Whilst these commitments appear encouraging, Human Rights Watch state that the government have failed to deliver in practice.¹¹⁸ The resolution itself has been criticised for being unrealistic, especially the notion that Sri Lanka will ensure accountability for Tamil abuses.¹¹⁹ This can be seen in Sri Lanka's response to the 2011 United Nations report, which determined the government must take action in regards to past war crimes.¹²⁰ Sri Lanka responded that this was "patently biased" and formed its own domestic commission in response to allegations.¹²¹ However, this body was determined to be largely prejudiced in favour of the state.¹²² Implementation of the 2015 resolution itself has been lacklustre, due to a lack of public consultation and a cohesive implementation plan.¹²³ There remains great distrust within the Tamil community in regards to these promises, especially as past commissions of inquiry have yielded little progress.¹²⁴

Awareness of human rights and capacity to reform

Sri Lanka's commitment to improving its human rights capacity in the 2015 UN resolution is a positive first step. However, actual delivery on such promises has yet to materialise. The international community has recommended a number of reforms. A notable proposal is improving human rights education within security personnel, recommended by former Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak.¹²⁵ Yet, the government has yet to implement awareness campaigns within the police force (**Indicator 3.7**).¹²⁶ Recognition of war crimes during the civil war also remains unlikely, given the government's failure to implement significant legal reform. The end of the civil war suggests Sri Lanka holds future capacity to ensure warfare complies with international humanitarian law (**Indicator 3.8**). Nonetheless, controlling human rights violations within the police force must be addressed as a first step. Sri Lanka's slow progress in this area can be partly attributed to lack of proper resources (Indicator 3.9 and 3.10). Sri Lanka received 5,614 human rights complaints within the first nine months of 2017.¹²⁷ Deepika Udagama, chairperson of the Human Rights Commission of Sri Lanka (HCRSL) underscored Sri Lanka's lack of resources to adequately deal with this continual influx.¹²⁸ Consequently, state institutions' response to human rights is unlikely to shift from domestic pressure alone. Instead, international institutions must further assist in the implementation stage of human rights reform, especially developing a practical strategy to reach targets. This can be assisted by independent commissions. Without taking significant steps towards addressing human rights violations, and preventing for future occurrences, Sri Lanka remains at risk of atrocity crimes.

RISK FACTOR 4: MOTIVES OR INCENTIVES

Risk factor 4 refers to the “Reasons, aims or drivers that justify the use of violence against protected groups, populations or individuals”. Analysing the motives behind violence against such persons points towards the likelihood of an atrocity crime occurring within a state. Nonetheless, measuring the degree to which this occurs remains difficult. However, understanding driving factors behind actors using violence reveals whether a state is likely to do this on a wider scale. Sri Lanka meets a number of indicators under this Risk Factor.

Consolidation of power or economic power

Indicator 4.1 and **4.2** discuss the “political motives, particularly those aimed at the attainment or consolidation of power” and “economic interests, including those based on the safeguard and well-being of elites or identity groups”. Whilst there does not appear to be any significant minority groups attempting to gain political power, the Sri Lankan government continues to use force to consolidate power. Former President Rajapaksa was well understood to use authoritarian rule, discussed in greater detail in **Risk Factor 3**. UN High Commissioner for Human Rights Navi Pillay also stated in 2013 that Sri Lanka was heading towards an “increasingly authoritarian direction”.¹²⁹

Whilst President Sirisena’s election was considered to be a victory for democracy, the government continues to use questionable practices to retain power.¹³⁰ A particularly concerning factor is its stronghold on the judicial system, notably the impeachment of Sri Lanka’s Chief Justice (discussed in **Risk Factor 4**). This not only highlights the government’s intent to remain uncriticised, but to prevent scrutiny of high ranking officials’ involvement in war crimes.¹³² Reports also suggest the military and police continue to question local Tamil residents in formerly war-torn areas. This level of monitoring, combined with ongoing reports of torture on Tamil individuals, emphasises the government’s propensity to use force when challenged. Therefore, the government has a strong capacity to authorise atrocity crimes to further political motivations.

Several corruption scandals have impacted the government, with individuals pursuing their own private economic interests. Greg Bearup, South Asia correspondent for *The Australian*, notes that Rajapaksa held immense control over the treasury during his presidency.¹³³ Recent economic scandals have also affected the current government. In 2017, it was found that the central bank governor oversaw a controversial sale of bonds worth close to \$1 billion, with half being invested into his son-in-law’s business.¹³⁴ Nonetheless, these issues do not point towards capacity for atrocity crimes; rather, it indicates Sri Lanka’s ongoing issue with corruption and transparency.

Identity politics

The military claimed a significant amount of Tamil land both during and after the civil war, due to purported “security reasons” (**Indicator 4.3**, further discussed **Risk Assessment 1**).¹³⁵ It is claimed that this land has often been used to build military bases, with 14 bases being stationed in the northern Tamil provinces.¹³⁶ The issue itself has not escalated violence, but emphasises the government’s continual need for dominance upon the Tamil community. Sri Lanka also faces an issue with growing extremism, but not between Tamils and Sinhalese. Instead, Buddhist-Muslim conflict has led to the emergence of extremist Buddhist groups calling for armed conflict.¹³⁷ These groups have exploited long-standing fears that the Sinhalese and Buddhist nature of the country is threatened and have presented Muslims as a “religious, cultural and economic threat” to Sri Lanka¹³⁸, providing evidence of **Indicator 4.5**, which relates to “real or perceived threats posed by protected groups... against interests or objectives of perpetrators”. Claims that Muslims are forcing people to convert to Islam and desecrating sacred Buddhist sites are among the many accusations spread by the hard-line Buddhist groups through social media platforms.¹³⁹ Whilst the extremist groups were initially small and at a grassroots level, the 2018 events illustrate that these groups now operate “organised

RISK FACTOR 4: MOTIVES OR INCENTIVES

and targeted attacks” on the national level.¹⁴⁰ In reference to **Indicator 4.7**, these groups are centred around an ideological foundation that emphasises the supremacy of the Sinhalese-Buddhist identity and seeks to maintain its authority and stem the growth of minority groups. Employing this rhetoric and consolidating a greater following could potentially lead to these extremist groups committing atrocity crimes against the Muslim minority.

Less relevant factors are **Indicator 4.4** and **Indicator 4.8**. There are no indications of the government attempting to establish a homogenous society, nor any politicians calling for violence based on ethnic tensions, however the government and military have been strongly criticised for their actions against potential LTTE supporters (Indicator 4.6). The continuation of tensions between the Sinhalese and Tamil populations has the capacity to break already fragile peaceful relations. It is therefore imperative that the government address underlying social trauma through reconciliation. If not adequately addressed, there remains potential for further atrocity crimes and violence in the future (**Indicator 4.9**).

RISK FACTOR 5: CAPACITY TO COMMIT ATROCITY CRIMES

Risk Factor 5 involves “conditions that indicate the ability of relevant actors to commit atrocity crimes”. Atrocity crimes rely on planning and resources in order to be executed. Consequently, it is important to analyse the capacity of relevant actors to commit such crimes. Whilst capacity alone does not determine if an atrocity crime will occur, there are several pertinent factors that are relevant to Sri Lanka that should be considered.

Available Resources

Sri Lanka has a relatively weak military, ranked 89th out of 136 countries.¹⁴² There are currently over 200,000 active personnel and 89,000 in the police force (**Indicator 5.2**).¹⁴³ The civil war helped advance Sri Lanka’s military capacity, increasing personnel by 80,000 and attaining new weapons such as fighter jets, artillery guns and multi-barrel rocket launchers (**Indicator 5.1**).¹⁴⁴ New military strategies and tactics were also developed.¹⁴⁵ The government’s ability to win the civil war indicates that, although the military is not particularly large, it has capacity to perpetrate atrocity crimes. Nevertheless, capacity does not imply intent.

Mobilisation and Control of Civilisation Population

The government’s history of silencing journalists, judges and human rights lawyers, indicate that the population could be very receptive to dangerous narratives. A large amount of support could easily be recruited by focusing on extant post-war tensions, particularly concerning the Tamil population (**Indicator 5.3**). This could influence the potential for atrocity crimes. Nonetheless, Sri Lanka does not have a strong culture of obedience (**Indicator 5.4**). The presidency of Rajapaksa was indeed authoritarian and led to many critics being silenced. Nonetheless, the shock election of Sirisena suggests citizens feel entitled to choose their leader democratically. The emergence of the LTTE in the civil war also indicates groups can rise against the government if they believe it necessary.

Support System

The Sri Lankan government clearly has strong links with the military and police force as state institutions. However, as both have been accused of human rights violations, this could increase the capacity for atrocity crimes (**Indicator 5.5**). There are no significant companies or individuals that could influence such crimes occurring (**Indicator 5.6** and **5.7**). Sri Lanka has close military partnerships with predominantly Pakistan, India and China, who provided the military weapons during the

RISK FACTOR 5: CAPACITY TO COMMIT ATROCITY CRIMES

civil war (**Indicator 5.8**).¹⁴⁶ Both the Pakistani and Indian army have since worked with the Sri Lankan military to enhance and upskill their forces.¹⁴⁷ Human rights crimes continue to occur within Pakistan and India, especially within its security personnel.¹⁴⁸ Despite this, it is unlikely that any of these partnerships could result in atrocity crimes. Sri Lanka's top two economic partners are the United States and United Kingdom, who are very opposed to atrocity crimes.¹⁴⁹ India also supported the 2017 UNHCR resolution against Sri Lanka to address war crimes.¹⁵⁰

RISK FACTOR 6: ABSENCE OF MITIGATING FACTORS

Risk factor 6 refers to the “absence of elements that, if present, could contribute to preventing or to lessening the impact of serious acts of violence against protected groups, populations or individuals”. It is crucial that the State and international community have the capacity to halt or prevent atrocity crimes for occurring. Therefore, evaluating the presence of indicators within this Risk Factor indicates whether atrocity crimes could potentially be successful within the state. Some factors are relevant within Sri Lanka.

Domestic and International Civil Society

Indicator 6.2 refers to a “lack of strong, organised and representative national civil society and of a free, diverse and independent national media”. Civil society plays an important role in Sri Lanka. The main categories of civil society organisations (CSOs) involve humanitarian assistance INGOs, advocacy INGOs, poverty alleviation NGOs and grassroots development NGOs.¹⁵¹ Civil society activism has attracted controversy in Sri Lanka, particularly during the civil war. In 2008, the government launched a parliamentary inquiry into their impact upon sovereignty.¹⁵² Nonetheless, tensions have since eased. CSOs have played an important role in assisting communities in wake of the civil war (including rehabilitating traumatised individuals), alongside rebuilding after natural disasters.¹⁵³ Most NGOs are political and human rights orientated, rather than focused on development.¹⁵⁴ However, the Asia Development Bank reports that civil society within Sri Lanka remains uncoordinated. This is primarily due to their reliance on overseas funding, making them appear ‘foreign’ within the community.¹⁵⁵ Nonetheless, they arguably play an important role in preventing atrocity crimes through lobbying and advocacy.¹⁵⁶

The government's relationship with the media has also been strained. The Sri Lankan constitution affords freedom of expression, which conveys that the rights of the state remain with people.¹⁵⁷ However, this is restricted by legislation. The 1979 *Prevention of Terrorism Act* bans bringing the government into contempt, and the Official Secrets Act prohibits reporting on classified information.¹⁵⁸ Contravening either of these laws attracts lengthy jail terms.¹⁵⁹ Reporters Without Borders rank Sri Lanka as 131 in terms of World press freedom; an improvement of 10 points on 2017.¹⁶⁰ Similarly, Sri Lanka's press freedom was ranked by Freedom House as 61 out of 100 countries; up 3 points on 2016.¹⁶¹ This improvement has been attributed to Sirisena's presidency, whose government have supported more freedom of press. Key developments have included the government granting access to restricted news sites, investigations into past crimes against journalists, and a constitutional amendment securing right to access information.¹⁶²

There are no formal avenues to defend and empower protected groups (**Indicator 6.1**). Whilst the judicial system is an option, as previously noted it is criticised for being biased towards the government. The Centre for Excellence in Disaster Management purports that citizens have, under the constitution, the right to access information,¹⁶³ yet limitations on the press indicate such restrictions are often not upheld – reducing protected groups' ability to stop atrocity crimes.

RISK FACTOR 6: ABSENCE OF MITIGATING FACTORS

Given the strong presence of mitigating factors in the Sri Lankan context, such as the presence of international actors and international media, in addition to the support of neighbouring states, the risk of atrocity crimes being successfully committed remains low.

RISK FACTOR 7: ENABLING CIRCUMSTANCES OR PREPARATORY ACTION

Risk factor 7 concerns “Events or measures, whether gradual or sudden, which provide an environment conducive to the commission of atrocity crimes, or which suggest a trajectory towards their perpetration”. Atrocity crimes typically require planning and resources to occur. Therefore, identifying circumstances where actors are undertaking such activities can reveal the likelihood of such crimes occurring.

Emergency Laws

Indicator 7.1 refers to the “imposition of emergency laws”. In March 2018, the government imposed a state of emergency which put into effect a curfew and a social media ban, as well as permitted Sri Lankan authorities to arrest and detain suspects for prolonged periods of time if deemed necessary.¹⁸⁰ Despite this state of emergency falling under **Indicator 7.1**, it was enacted not with the intent to enable the commission of atrocity crimes, but, in contrast, to quell any further violence between Buddhists and Muslims, thus this indicator is not applicable to this situation.

Strict Control of Communication Channels

Restrictions on media freedom can somewhat apply to **Indicator 7.6**; however, communication channels within Sri Lanka are not wholly silenced and the trajectory towards press freedom has markedly improved since the 2015 election of President Sirisena.¹⁸¹ During the aforementioned state of emergency, the government banned access to various social media platforms, however such was done in order to stem the spread of messages and posts inciting further violence against the Muslim minority.¹⁸² Thus, whilst **Indicator 7.6** can be evidenced in Sri Lanka, it does not suggest a trajectory towards the perpetration of atrocity crimes.

Destruction of Property

During the recent street violence which took place during February and March 2018, Muslim-owned businesses, houses and mosques were attacked by Buddhist extremists, which meets the conditions of **Indicator 7.11**: “Destruction or plundering of essential goods or installations of protected groups... or of property related to cultural and religious identity”. Whilst these attacks were not widespread in their scope, they nevertheless indicate that extremist groups have the capacity to inflict property damage, which, if conducted on a wider scale, could be perceived as preparatory action for the commission of atrocity crimes.

Hate Speech

Indicator 7.14 pertains to “increased inflammatory rhetoric...or hate speech targeting protected groups”, which has been demonstrated in Sri Lanka, particularly in relation to the 2018 Buddhist-Muslim violence. Messages inciting discrimination and violence against Muslims were spread across multiple social media platforms, such as Facebook, WhatsApp and Twitter; one Facebook post called Sri Lankans to “Kill all Muslims, don’t even let an infant of the dogs escape”¹⁸³. Given that the Sri Lankan population has high literacy rates, but poor information literacy (a tendency to immediately believe and uncritically respond to information presented on social media), there is a crucial need for the Sri Lankan government to work alongside social media platforms to remove inflammatory content which may incite the commission of atrocity crimes.

RISK FACTOR 8: TRIGGERING FACTORS

Risk factor 8 refers to “events or circumstances that, even if seemingly unrelated to atrocity crimes, may seriously exacerbate existing conditions or may spark their onset”. Unpredictable events or circumstances have the capacity to increase in the likelihood of atrocity crimes. There are no sudden destabilising events within Sri Lanka that refer to this occurrence.

Political events

The shock election of President Sirisena in 2015 after Rajapaksa’s ten year term could potentially relate to **Indicator 8.4 and 8.8**. However, Rajapaksa’s call for a military coup ultimately failed.¹⁸⁴ Therefore, this transition to the new presidency was peaceful and free of any destabilising events. Sri Lanka had several protests during 2013 by Tamil students over human rights violations of the Tamil community (**Indicator 8.12**).¹⁸⁵ Nonetheless, lack of protests since suggests this is not escalating further.¹⁸⁶

Commemoration of the Civil War

Sri Lanka has a ‘Remembrance Day’ on the 18th of May to celebrate the end of the civil war, which has been criticised for glorifying the Sinhalese military over Tamil victims (**Indicator 8.11**).¹⁸⁹ The government responded to this criticism by ending the annual military parade, and creating a cultural show to celebrate ethnic diversity and promote social inclusion.¹⁹⁰ Therefore, whilst the day draws debate over the need for more reconciliation measures, it does not exacerbate potential for atrocity crimes.

SPECIFIC RISK FACTORS GENOCIDE /CRIMES AGAINST HUMANITY

The Framework of Analysis notes that common risk factors help to identify the probability of atrocity crimes occurring, without necessarily identifying the type of crime. **Specific risk factors** refer to the fact that each crime has elements and precursors that are not common to all three atrocity crimes: Genocide, crimes against humanity, and war crimes. Only the specific risk factor of genocide is currently considered relevant to Sri Lanka, although some of the other specific risk factors were relevant to Sri Lanka during the civil war period, particularly allegations of war crimes associated with large scale attacks on the Tamil population (**Risk Factor 11**).¹⁹¹ Additionally, the government has been accused of shelling established civilian ‘safe zones’ (**Risk Factor 13**).¹⁹² Successive governments have largely failed to respond to these accusations. Nonetheless, since the end of the conflict there have been no recent events that directly meet these Risk Factors. Regardless, there does remain intergroup tensions and patterns of discrimination between ethnic and religious groups in Sri Lanka remains a cause for concern and meet elements of specific **Risk Factor 9**.

RISK FACTOR 9: INTERGROUP TENSIONS OR PATTERNS OF DISCRIMINATION AGAINST PROTECTED GROUPS

Risk Factor 9 concerns “past or present conduct that reveals serious prejudice against protected groups and that creates stress in the relationship among groups or with the State, generating an environment conducive to atrocity crimes”. Risk Factor 9 refers to the atrocity crime of genocide and discrimination against protected groups based on their identity (whether national, religious, ethnic, or racial). Tamils fall under a protected group based on Section I of the Framework, as they have been targeted based on their ethnicity. Tensions between Tamils and Sinhalese have long affected the country, leading to the decades long civil war. This conflict, and the ongoing post-war reports of discrimination against the Tamil community, suggest partial satisfaction of some indicators within this Risk Factor. However, this does not satisfy Risk Factor 10.

Discrimination

Indicator 9.1 refers to “past or present serious discriminatory, segregational, restrictive or exclusionary practices, policies or legislation against protected groups”. There does not appear to be any legislation explicitly segregating or discriminating against the Tamil community. However, according to a United Nations report from the Committee on the Elimination of Racial Discrimination, the Tamil population continues to face challenges including high levels of poverty, poor compensation for work, poor working conditions, and poor housing conditions.¹⁹⁴ This ethnic minority also faces difficulty gaining access to health services, obtaining citizenship documents, and accessing quality education opportunities.¹⁹⁵ Due to the difficulty obtaining identity and citizenship documents, Tamils face challenges in opening bank accounts or owning homes.¹⁹⁶

Whilst the Sri Lankan government does not deny the existence of Tamils, from the above reports of discrimination it is clear that the government is not properly acknowledging their identity as equal citizens (**Indicator 9.2**). The ramifications of this is evident in the formation of LTTE in 1976, whose calls for separatism was rooted in feelings of disenfranchisement.¹⁹⁷ Therefore, the issue for Tamils is not the denial of their existence but rather being unable to identify with their country due to discriminatory practices. It is therefore necessary for the government to improve its reconciliation measures and reduce discrimination, or risk a re-emergence of conflict (potentially leading to atrocity crimes). As discussed in **Risk Factor 3**, the Sri Lankan military has been accused of war crimes against the Tamil population during the civil war (**Indicator 9.3**). This is particularly because of the large scale deaths of Tamil civilians.¹⁹⁸ Despite Sri Lanka promising to take steps to ensure justice for victims, as seen in the 2015 UN Human Rights Council resolution, concrete policies have yet to be implemented.¹⁹⁹ Failing to properly address violence targeted at a particular protected group can be a sign that points towards atrocity crimes occurring in future.

Access of Protected Groups

Indicator 9.4 relates to “past or present serious tensions or conflicts between protected groups or with the State, with regards to access to rights and resources, socioeconomic disparities, participation in decision making processes, security, expression of group identity or to perceptions about the targeted groups”. The civil war between the Sinhalese and Tamils is the most pertinent example of this indicator. There continues to be tensions affecting the two groups, ranging from socioeconomic disparities, abusive treatment by the Sinhalese police and military, lack of consultation in regards to human rights violations, and general discrimination as a whole.²⁰⁰

Tamil security is a particular source of tension. Many Tamils have been arrested over suspected terrorist links since the end of the civil war.²⁰¹ However, police ability to detain without a warrant has called many of these arrests into question. It has also led to the perception that police unfairly target

RISK FACTOR 9: INTERGROUP TENSIONS OR PATTERNS OF DISCRIMINATION AGAINST PROTECTED GROUPS

Tamils. The fact that the majority of the military's bases are stationed in the northern Tamil provinces, highlight state-Tamil tensions.²⁰² Some reports of Tamil-Sinhalese clashes have emerged over recent years, such as when Tamil students were reportedly beaten after celebrating deceased Tamil fighters in the civil war.²⁰³ Nonetheless, tensions have not escalated to armed violence and clashes are infrequent. Therefore, extant tensions should not be regarded as 'serious'. Nevertheless, the capacity to escalate to this level exists and is dependent on future events.

Emerging tension between Buddhist and Muslim groups has been fuelled as a result of negative group perception, and also pertains to this indicator. Over the course of 2017 and 2018, Buddhist nationalists have made claims that Muslims forced individuals to convert to Islam, vandalised Buddhist archaeological sites, and protested the arrival of Rohingya refugees.²⁰⁴ This has led to a series of attacks on mosques and Muslim-owned businesses, and a minor street clash in November 27, 2017.²⁰⁵ However, the government has taken steps to reduce this conflict, issuing a warrant for a Buddhist extremist leader's arrest.²⁰⁶ Tensions between the two groups is growing, but should not yet be classified as 'serious' as it has not escalated into armed conflict. The actions and capacity of the police force will largely determine if these tensions exacerbate or lessen, and should be monitored over the coming decade.

Ability to Address Conflict

Indicator 9.6 relates to a “lack of national mechanisms or initiatives to deal with identity-based tensions or conflicts”. The government has not established national mechanisms to deal with Tamil human rights violations.²⁰⁷ As discussed in **Risk Factor 3**, Sri Lanka agreed to the UN Human Rights Council calling for a special court to deal with human rights violations, an office on missing persons, and a mechanism designed to guarantee civil war reparations.²⁰⁸ However, despite being agreed to, the government has not taken any significant steps to establish them. Combined with discrimination within the judiciary and police force, there remains little options for Tamils to report identity based crimes. Lack of legal avenues contributes to Tamil-Sinhalese tensions. Concomitant with a whilst a lack of accountability mechanisms, these factors increase the likelihood of atrocity crimes occurring in the future.

CONCLUSION AND RECOMMENDATIONS

Sri Lanka remains characterised by poor state governance – marred by corruption and a lack of accountability measures – as well as ongoing human rights violations and both open and latent tensions between ethnic and religious groups. Common Risk Factors 2 (record of serious violations of international human rights or humanitarian law) and 3 (weakness of state structures) are the most serious risk factors currently evident in Sri Lanka. The treatment of the Tamil community also fulfilled some elements of Special Risk Factor 9 (discrimination against protected groups). The rise of extremist Buddhist groups perpetrating violence against the minority Muslim community is also concerning and requires continual monitoring. The use of torture by the police force and tensions between the Sinhalese and Tamil communities remains of particular concern, as does the trenchant unwillingness displayed by the government to seriously investigate past war crimes. Peace and reconciliation are not simply achieved when a conflict ends; they are a process that take considerable effort, resources, and time. Whilst economic and wider human development gains (including greater press freedom) are encouraging and welcome developments, until the government properly addresses the past injustices incurred during the bloody civil war, the risk of further violence – including atrocities – will remain a potential threat and Sri Lanka's risk weighting will remain at **moderate**.

	RECOMMENDATIONS FOR THE GOVERNMENT OF SRI LANKA
1	Modify legislation that permits overreach of police power, particularly The Prevention of Terrorism Act of 1979. This includes introducing a more specific definition of ‘terrorist’ rather than ‘unlawful activities’. This should also include arrests requiring a warrant. The detention period must be significantly reduced from 12 months, with the exact time determined in consultation with the United Nations or local NGOs. The government should conduct independent investigations into allegations of police abuse
2	Incorporate human rights training within its security forces
3	The military should continue to return land seized from the Tamil community. This should be conducted through an independent board or inquiry. This could be conducted in conjunction to establishing UN recommendations for establishing human rights accountability measures
4	Take steps to address press freedom. It is recommended that the Official Secrets Act of 1955 repeals the ban on reporting on classified information to ensure freedom of speech. The government should also enact legislation criminalising certain press intimidation, which frequently occurs within security forces and government
5	Take further steps for reconciliation. This is particularly within Tamils and Sinhalese, but also includes Muslims and Buddhists. Sri Lanka must establish an independent mechanism where protected groups can report discrimination or hate crimes. This should be established in consultation with the United Nations and the Tamil community. The government must also focus on creating a unified Sri Lankan identity, done through celebrating various cultures within the country. Finally, the government must be vocal in criticism for extremist Buddhist groups, and ensure that they do not advocate for or commit violence
6	Repeal restrictions on domestic media
7	Launch independent investigations, in consultation with the United Nations, into allegations of war crimes. Provided this is found, the government must acknowledge this to the domestic and international community. This should also include outlining concrete policy reforms targeted at preventing future atrocity crimes
8	Implement in full the recommendations put forward by the UN Human Rights Council. Specifically, it should: <ul style="list-style-type: none"> • Establish a special court integrating international judges, prosecutors, lawyers and investigators, with an independent investigative and prosecuting body, to investigate and prosecute atrocity crimes. • Establish an office on missing and disappeared persons. • Establish a truth-telling mechanism, and a mechanism designed to guarantee non-recurrence and reparations.
9	Work in coordination with online platforms, such as Facebook, to address hate speech and incitement to violence
	RECOMMENDATIONS FOR THE INTERNATIONAL COMMUNITY
1	Continue to encourage Sri Lanka to fully and impartially investigate allegations of atrocity crimes and provide technical assistance to support such measures.
2	Support security sector reform and training on human rights.
3	Adopt measures to support the reintegration of Tamils into the national economy minority.

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