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Inscriptions and Erasures, Grief, Hope and Rights: A Struggle for Truth and Justice for Disappearances in Postwar Sri Lanka

Chulani Tania Kodikara

Thesis submitted for the degree of Doctor of Philosophy

The University of Edinburgh
School of Social and Political Science

2022
Declaration

I declare that this thesis has been entirely composed by me and is my own original work. I acknowledge other sources, and that the work has not been submitted for any other degree or professional qualification.

Chulani Kodikara
January 2022
Abstract

Since the end of the Sri Lanka’s civil war between the state and the Liberation Tigers of Tamil Eelam (LTTE) in 2009, hundreds of Tamil women whose family members (were) disappeared during the war have been waging a struggle for truth and justice. In this thesis, I tell the story of their struggle from 2009 to 2021. Drawing on theoretical conceptualisations of sovereign violence and the space of appearance, I argue that the Rajapaksa government, in power from 2009 to 2015, deployed a complex and contradictory set of discourses and practices to erase disappearances from history and memory without holding perpetrators to account. Characterising these discourses and practices as a repertoire of Manichean, necropolitical technologies of power, I argue that they were determined by Sinhala Buddhist nationalism and local and international human rights struggles and defined by inscriptions and erasures. I contend that these technologies shaped the public sphere, the historical record, and the possibilities of pursuing justice whether through ordinary courts or political pressure. Tracing this struggle beyond the Rajapaksa regime to the tenure of the United Front from 2015 to 2019, which came to power on a promise of truth and justice for disappearances, I explore why it failed in this task. I argue that what is at stake in this struggle is not merely guilt or innocence of perpetrators but the nation, national identity, memory, masculinities, and femininities. Moreover, drawing on conceptualisations of subaltern, dissident, and gendered citizenship, I explore the modes, sites, and scales of the struggle waged by family members of the disappeared and its effects. In so doing, I trace this struggle from commissions of inquiry to the street corner and from domestic courthouses to the Human Rights Council in Geneva. I show that it was underpinned by politicised grief, mourning, and hope as much as rights and took a multiplicity of forms—spoken, written, and embodied. This thesis throws new light on the state in postwar Sri Lanka, subaltern politics of mourning and the limits of internationalised justice.
Lay Summary

Since the end of the civil war between the Sri Lankan state and the Liberation Tigers of Tamil Eelam (LTTE) in 2009, hundreds of Tamil women whose family members (were) disappeared during the war have been waging a struggle for truth and justice. In this thesis, I tell the story of their struggle from 2009 to 2021. I argue that the government of President Mahinda Rajapaksa, which was in power from 2009 to 2015 responded to this struggle in a contradictory manner. On the one hand, the government tried to erase disappearances from history and memory without holding perpetrators to account by denying disappearances and labelling those demanding justice as enemies and the armed forces accused of disappearances as heroes of the state. Yet, on the other hand, they also offered compensation to family members and created commissions of inquiry, where family members could bear witness to disappearances. In this thesis, I study these contradictory responses, arguing that they were shaped by competing forces of Sinhala Buddhist nationalism and human rights struggles. I argue that these responses shaped the legal and political space available to victim-survivors to claim truth and justice. I show that the United Front, which succeeded the Rajapaksa government in 2015 on the promise of implementing truth and justice, failed to do so because what is at stake in this struggle is not merely guilt or innocence of perpetrators but the nation, national identity, memory, masculinities, and femininities. This thesis also explores different modes, sites, and scales of the struggle waged by family members of the disappeared and its effects. Tracing their struggle from commissions of inquiry to the street corner and from domestic courthouses to the Human Rights Council in Geneva, I show that this struggle was underpinned by politicised grief, mourning and hope as much as rights and took a multiplicity of forms—spoken, written, and embodied.
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When I set out to do a PhD on gender and the transitional justice process inaugurated by the United Front government in 2015, I did not intend to study disappearances. However, during my fieldwork, I found it impossible to look beyond the struggle for truth and justice being waged by the Tamil women next of kin of the disappeared and was drawn to document their struggle. Many of the women who spoke with me, who I listened to, and observed during the last five years, must remain anonymous, except for those I have named in the pages that follow. I am deeply indebted to three women, in particular, for taking me into their confidence and for the long conversations on and off the record: Leeladevi Anandanadarajah, the Secretary of the Association of Relatives of Enforced Disappearances, North and East (ARED); Ananthy Sasitharan, a former member of the Northern Provincial Council whose husband Elilan, a political leader of the LTTE, surrendered to the army during the last days of the war and then disappeared; and Sandya Ekneligoda, the wife of journalist Prageeth Ekneligoda, who disappeared in January 2010. I dedicate this thesis to them and all the women continuing the struggle for truth and justice for disappearances, even as I finish this thesis.

I toyed with the idea of doing a PhD for a long time until I was pushed to seriously consider it, first by Kanchana Ruwanpura and then Jonathan Spencer. I am not sure I would have gone ahead and applied when I did if not for periodic emails from Jonathan inquiring about progress relating to my thesis proposal. Once I got admission, Jonathan, together with Mihaela Mihai and Christine Bell, provided extraordinary guidance and direction as my supervisors. Every page of this thesis is marked by their insights, rigorous criticism, recommendations to read, and patient reading and re-reading.

I was fortunate to receive a Chrystal Macmillan Studentship and an Edinburgh Global Research Scholarship from 2016 to 2019, which made this PhD possible. Thank you to Mick Moore and Mario Gomez for their references to the initial application. In 2020, I was also the recipient of a Harry Frank Guggenheim Emerging Scholar Award (formerly the Harry Frank Guggenheim Dissertation Fellowship), which allowed me the time to finish this thesis amidst the disruptions wrought by COVID. Thank you to Lindsay Randall for sharing the Guggenheim Fellowship information with me.
My life in Edinburgh was enriched by friends and colleagues at the anthropology writing seminar and the International Development Exchanges and Advanced Skills (IDEAS) seminar. Both seminars provided a space of community and intellectual stimulation inside and outside the university. Thank you to Josep Almadover Chanza for the introduction to the anthropology seminar, as well as shared lunches and chats that invariably followed these sessions. Thank you to all those who so painstakingly read chapters and commented. Thank you to Lotte Hoek, who convened the anthropology seminar at one point, and for her extended comments on a draft of Chapter Three.

Outside the university, I am grateful for the friendship of Bethany Jennings, Astrid Jamar, Krithika Srinivasan, Dominic Esler, Delwar Hussain, and Josep. Delwar and Josep made all the difference to my stay in Edinburgh. They are part of the memories of Edinburgh that I hold most dear—wonderful parties, delicious food, poetry, music, dancing, long conversations, plant cuttings, lots of laughter, and a memorable trip to Valencia in December 2019.

My move to Edinburgh was made so much easier by the introduction to Ruth Marsden and her lovely flat in Portobello, which I occupied from September 2016 to August 2017 and then again from February 2019 to May 2020. I will be eternally grateful to Harini Amarasuriya for that introduction. I survived the travails and traumas of doing a PhD, at such a late stage in my life, partly because I was able to live near the sea and pretend, I was on a long writing retreat. Bethany Jennings, my first flatmate, was a kind and considerate flatmate. Thank you to James Baird at the Just World shop in Portobello for letting me volunteer with them from 2019 to 2020. Working once a week for a few hours with them and sharing tea and biscuits with Jim and others there made me feel part of the Portobello community.

Between 2017-2020, I observed the February/March sessions of the UN Human Rights Council in Geneva. This fieldwork would not have been possible if not for the kind and generous hospitality of my cousin Tamara Nanayakkara, her husband Marcus, and their children Rhea and Reto. Tamara Akki was unfailingly welcoming and supportive, going out of her way to make my stay comfortable and productive. I will remain in their debt. David Whaley was the other person whose help in Geneva was invaluable to me. If not for David’s advice and assistance, getting into the UN and negotiating its corridors would have been far more challenging. I am grateful to Iben Trino Molenkamp for many conversations about the Human Rights Council and its inner workings. A big thank you
also to Robert Archer, Sophie Frezza, and Beatrice for their friendship and hospitality during these visits to Geneva.

In Sri Lanka, I want to thank Ruki Fernando for introducing me to The Association for the Relatives of the Disappeared in the North and East and Sandya Ekneligoda. Brito Fernando and Mareen Nilashini of Families of the Disappeared (FoD) invited me to numerous meetings organised by them, providing an opportunity to observe and learn. I am deeply indebted to Mr. K.S. Ratnavale, Ranitha Mayooran, and Dominic Premananth at the Centre for Human Rights and Development (CHRD) for several discussions about habeas corpus and sharing their case files. I am grateful to Radhika Coomaraswamy, Maithree Wickramasinghe, Ameena Hussein, Sharni Jayawardena, Mick Moore, Shafinaz Hassendeen and Kumi Samuel for reading and commenting on different chapters at various different stages of completion. Andi Schubert helped me grapple with several knotty parts of this thesis and always asked the most difficult questions. A big thank you to him. My sister-in-law Jineshi Samaraweera helped me with the map and went through this thesis with a fine-tooth comb checking all references. I don't know how to thank her. I also don't know how to thank Shyamala Sivagurunathan who was my research partner cum translator cum touchstone all rolled into one from the time I began work on this thesis.

I would also like to thank: Thyagi Ruwanpathirana for lifts to and from meetings and court hearings and numerous conversations; Minna Thaheer, Rhiyam and Adheeb for helping with Tamil translations; and Stephen Champion for sharing several of his photos with me, and for permission to use the one reproduced in Chapter One. I want to acknowledge interviews with Nirmal Ranjith Dewasiri, S.C.C. Elankovan, Ambika Satkunanathan, and Pon Singham that helped me better understand different aspects of this thesis. I want to also thank Lakmali Alwis, Dimuth Geethananda, and Mowsil Mohamed at International Centre for Ethnic Studies, for their assistance and support throughout. Thank you to Ananda Galappatti for an invitation to a meeting in Batticaloa on ‘Mental Health and Disappearances’, where I learnt much. A big thank you to V. Sinthhuka for being my field guide during a trip to the north in 2018.

Many others paved the way for this PhD. My work at the Muslim Women’s Research and Action Forum and the women behind MWRAF, Faizun Zackariya, Anberiya Haniffa, Jezima Ismail, Shafinaz Hassandeen and Ann Jabbar, have indelibly shaped who I am. I also want to acknowledge the two years I spent at the Secretariat for Coordinating the
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Finally, I want to thank my friends and family for always being there to share the joys and pains of PhD life and beyond. Kumi Samuel, Ameena Hussain, Mirak Raheem, Maithree Wickramasinghe, Bhavani Fonseka, Sunela Jayawardena, Shyamala Gomez, Chrishani Kotelawala, Hirantha De Silva, Lilanthi Muthukumarana, Shivanthi Jayasinghe, Shamila Jayasinghe, Suhasha Sellayah, Aruni Nanayakkara, Florentine Fokma, Sepali Kottegoda, Anberiya Haniffa, Camena Guneratne, Ifeanyi Okekearu, and M Rajshekhar. My mother, Metta, has been the embodiment of her name throughout my life. This thesis is also dedicated to her and my father, even though he is no longer here to mark this milestone with me. My sister Ruwani, her husband Shirantha, my brother Pradeep and his wife Jineshi, and my nieces Manike, Tikiri, and Singthi are the rocks in my life, even if they don’t always understand or approve of the decisions taken in my life.

Vijay Nagaraj, with whom I had shared my life from 2011 to 2017 and who remained a dear friend, died in a car accident in August 2017 just as I was getting ready to return to Sri Lanka after a year in Edinburgh. It was the love of friends and family that made it possible to deal with the shock and grief of his death and to return to PhD work. Florentine flew from Utrecht to Edinburgh to help me pack my bags on hearing of Vijay’s death. Kumi, Mirak, and Shermal Wijewardene flew with me to Bangalore for his funeral. Meera Srinivasan helped to deal with the Indian Embassy. Numerous others, impossible to name, reached out in so many different ways. Thank you to all of you.

Chulani Kodikara
August 2022
# List of Abbreviations

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
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<tbody>
<tr>
<td>AG</td>
<td>Attorney General</td>
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<tr>
<td>AI</td>
<td>Amnesty International</td>
</tr>
<tr>
<td>ARED</td>
<td>The Association for the Relatives of the Disappeared in the North and East</td>
</tr>
<tr>
<td>BBC</td>
<td>British Broadcasting Corporation</td>
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<tr>
<td>BCGR</td>
<td>Bureau of the Commissioner General of Rehabilitation</td>
</tr>
<tr>
<td>CHRD</td>
<td>Centre for Human Rights and Development</td>
</tr>
<tr>
<td>Col</td>
<td>Commission of Inquiry</td>
</tr>
<tr>
<td>Col-CNWNCU</td>
<td>The Commission of Inquiry for the Central, North Western, North Central and Uva provinces</td>
</tr>
<tr>
<td>Col-NE</td>
<td>Commission of Inquiry into Involuntary Removal or Disappearance of Persons in the Northern and Eastern Province</td>
</tr>
<tr>
<td>Col-WSS</td>
<td>Commission of Inquiry into Involuntary Removal or Disappearance of Persons in the Western, Southern and Sabaragamuwa Provinces</td>
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<tr>
<td>COVID</td>
<td>Coronavirus Disease</td>
</tr>
<tr>
<td>CTF</td>
<td>Consultation Task Force on Reconciliation Mechanisms</td>
</tr>
<tr>
<td>DJV</td>
<td>Deshapremi Janata Vyaparaya</td>
</tr>
<tr>
<td>ECOSOC</td>
<td>Economic, Social and Cultural Council</td>
</tr>
<tr>
<td>EU</td>
<td>European Union</td>
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<tr>
<td>FoD</td>
<td>Families of the Disappeared</td>
</tr>
<tr>
<td>GoSL</td>
<td>Government of Sri Lanka</td>
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<tr>
<td>GSLF</td>
<td>Global Sri Lankan Forum</td>
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<tr>
<td>HRW</td>
<td>Human Rights Watch</td>
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<tr>
<td>ICC</td>
<td>International Criminal Court</td>
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<td>ICES</td>
<td>International Centre for Ethnic Studies</td>
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<td>ICRC</td>
<td>International Committee of the Red Cross</td>
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<tr>
<td>INGO</td>
<td>International Non-Government Organisation</td>
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<tr>
<td>IPKF</td>
<td>Indian Peace Keeping Force</td>
</tr>
<tr>
<td>ISLPA</td>
<td>Indo Sri Lanka Peace Accord</td>
</tr>
<tr>
<td>ITAK</td>
<td>Ilankai Tamil Arasu Kachchi</td>
</tr>
<tr>
<td>JVP</td>
<td>Janatha Vimukthi Peramuna</td>
</tr>
<tr>
<td>LLRC</td>
<td>The Lessons Learnt and Reconciliation Commission</td>
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<tr>
<td>LTTE</td>
<td>Liberation Tigers of Tamil Eelam</td>
</tr>
<tr>
<td>MRG</td>
<td>Minority Rights Group</td>
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<tr>
<td>NGO</td>
<td>Non-Government Organisation</td>
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<tr>
<td>NPC</td>
<td>Northern Provincial Council</td>
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<tr>
<td>OhCHR</td>
<td>Office of the High Commissioner for Human Rights</td>
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<tr>
<td>OISL</td>
<td>Office of the High Commissioner for Human Rights Investigation into Sri Lanka</td>
</tr>
<tr>
<td>OMP</td>
<td>Office on Missing Persons</td>
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<tr>
<td>PA</td>
<td>People’s Alliance</td>
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<tr>
<td>Abbreviation</td>
<td>Full Form</td>
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<tr>
<td>PCICMP</td>
<td>Presidential Commission for the Investigation of Complaints into Missing Persons</td>
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<tr>
<td>PoE</td>
<td>Panel of Experts</td>
</tr>
<tr>
<td>PR</td>
<td>Proportional Representation</td>
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<tr>
<td>PRRA</td>
<td>People’s Revolutionary Red Army</td>
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<tr>
<td>PTA</td>
<td>Prevention of Terrorism Act</td>
</tr>
<tr>
<td>REPPIA</td>
<td>The Rehabilitation of Persons, Properties, and Industries Authority</td>
</tr>
<tr>
<td>RoD</td>
<td>Registration of Death Ordinance / Act</td>
</tr>
<tr>
<td>RRS</td>
<td>Ranaviru Real Star</td>
</tr>
<tr>
<td>SCRM</td>
<td>Secretariat for Coordinating Reconciliation Mechanisms</td>
</tr>
<tr>
<td>SLFP</td>
<td>Sri Lanka Freedom Party</td>
</tr>
<tr>
<td>SLPP</td>
<td>Sri Lanka Podujana Peramuna</td>
</tr>
<tr>
<td>SMS</td>
<td>Short Message Service</td>
</tr>
<tr>
<td>TID</td>
<td>Terrorist Investigation Department</td>
</tr>
<tr>
<td>TMTK</td>
<td>Tamil Makkal Thesiya Kuttani</td>
</tr>
<tr>
<td>TNA</td>
<td>Tamil National Alliance</td>
</tr>
<tr>
<td>TULF</td>
<td>Tamil United Liberation Front</td>
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<tr>
<td>TWAIL</td>
<td>Third World Approaches to International Law</td>
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<tr>
<td>UK</td>
<td>United Kingdom</td>
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<tr>
<td>UN</td>
<td>United Nations</td>
</tr>
<tr>
<td>UNFGG</td>
<td>United Front for Good Governance</td>
</tr>
<tr>
<td>UNGA</td>
<td>United Nations General Assembly</td>
</tr>
<tr>
<td>UNHCR</td>
<td>United Nations High Commissioner for Human Rights</td>
</tr>
<tr>
<td>UNHRC</td>
<td>United Nations Human Rights Council</td>
</tr>
<tr>
<td>UNP</td>
<td>United National Party</td>
</tr>
<tr>
<td>UNSC</td>
<td>United Nations Security Council</td>
</tr>
<tr>
<td>UNSG</td>
<td>Secretary General of the United Nations</td>
</tr>
<tr>
<td>UPFA</td>
<td>United People’s Freedom Alliance</td>
</tr>
<tr>
<td>US/USA</td>
<td>United States of America</td>
</tr>
<tr>
<td>WGEID</td>
<td>The United Nations Working Group on Enforced and Involuntary Disappearances</td>
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³ Lankadeepa (Sinhala newspaper). 1 July 2001, p.08.
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⁷ https://twitter.com/MangalaLK/status/980455569776504833/photo/2
⁸ Photo Credit Kanapathipillai Kumanan, https://twitter.com/kumanan93/status/1204439695016509441/photo/1
Map of Sri Lanka

Figure 1
Introduction

The tent in Kilinochchi was located in the shadow of the colourful and ornate entrance tower of the Kandasamy Hindu kovil (temple), on one side of the A9 highway connecting Sri Lanka’s south to the north. It was not far from the sprawling buildings of the District Secretariat, the headquarters of the 57th Division of the Sri Lanka Army and one of the biggest monuments to war heroes erected in the north. The monument stands in a manicured garden, often guarded by a soldier who is ceremoniously changed every hour. A paved path from the A9 leads you directly to the monument, a solid concrete wall pierced by a bullet. From the bullet hole, which is slightly above and to the right of the centre of the wall, four cracks emanate in four directions. From the crack that spreads to the top centre of the wall, a large bronze flower emerges. The epitaph at the foot of the monument reads as follows: ‘This monument symbolizes the gallantry of warriors whose unparalleled warfare skills torpedoed all terror tactics and rescued the entire district, sending shock waves across the world’ (see Figure 12).

The makeshift tent at the site of the kovil was built with tin roofing and plastic sheeting. The floor was covered with mats. The inside of the roof was lined with cardboard to keep the worst of the heat out. The tent’s sides were lined with photographs of those who were disappeared and banners from past protests. The photos were mainly of men—sons, fathers, and husbands—interrupted by the faces of a few women. During the day, surrounded by the images of these absent loved ones, women took turns to keep vigil, silently embodying a demand for truth and justice for disappearances. At night, they slept on the floor of the tent, on a raised wooden platform, under mosquito nets hung from the ceiling.

This protest was led by women members of the Association for Relatives of Enforced Disappearances in the North and East (ARED). Their family members had disappeared during the final phase of the three-decade-long civil war between the government of Sri Lanka (GoSL) and the Liberation Tigers of Tamil Eelam (LTTE), a militant group from the Tamil community, which ended in May 2009. The women were demanding to know, from the Sri Lankan state, the present whereabouts or fate of their loved ones. Between January 2017 to July 2018, similar tent protests
were simultaneously staged in four other locations across the north and east—in Marathankerni, Mullaitivu, Trincomalee, and Vavuniya. These protests were discontinued one by one in 2018, excepting the tent protest in Vavuniya, because of the physical, mental and financial toll it was taking on the women protestors.11
Following the termination of the protests in the four locations of Kilinochchi, Marathankerni, Mullaitivu, and Trincomalee, the women leaders opened small offices to continue their struggle for truth and justice into an uncertain future. As I was completing my thesis, their struggle was ongoing.

The tent protests, which began in 2017 and ended in 2018, represent only one site and one phase of their struggle for justice. Since the end of the war, women family members of the disappeared have written endless petitions, filed legal cases, staged protest after protest and appealed to the United Nations Human Rights Council in Geneva (UNHRC) and the international community in their search for truth and justice. In this thesis, I tell the story of these women’s struggle(s) as it evolved from 2009 to 2021—over more than ten years—and the response of the Sri Lankan state to their demands.

In doing so, firstly, I take account of the political shifts of power between 2009 and 2020. The United Peoples Freedom Alliance (UPFA) government, headed by President Mahinda Rajapaksa, which militarily ended the war in 2009, was in power till 2015.12 It denied disappearances. In contrast, the United Front for Good Governance (United Front), headed by President Maithripala Sirisena and Prime Minister Ranil Wickremesinghe, which came to power in 2015, acknowledged war-related atrocities and inaugurated a ‘transitional justice’ agenda before the UNHRC. It was, however, ousted from power in presidential and parliamentary elections held in 2019/2020. A government headed by Gotabaya Rajapaksa, the brother of former President Mahinda Rajapaksa and Secretary of Defence in the Mahinda Rajapaksa cabinet, succeeded the United Front. The new government reverted to denying disappearances.

Secondly, I locate my analysis within a much longer history of enforced and involuntarily disappearances deployed by the Sri Lankan state as part of a repertoire of counter-insurgency tactics and strategies featuring extrajudicial killings, arbitrary

11 The Vavuniya protest, which is continuing, is organised by a different group of family members of the disappeared, not linked to ARED.
12 I refer to this government as the Rajapaksa regime or government to distinguish it from the United Front for Good Governance which came to power in 2015. The government of his brother Gotabaya, who became President in 2019, I refer to as the Gotabaya Rajapaksa or second Rajapaksa government.
detention, and torture, enacted with almost complete impunity. In this respect, I take account of a previous struggle for truth and justice waged by Sinhala women in the south of Sri Lanka under the banner of the southern Mothers' Front. Thirdly, I pay attention to a transnational struggle for transitional justice for war-related atrocities waged by a coalition of local and international non-government organisations (NGOs) together with western governments at the UNHRC which commenced in the immediate aftermath of the war and has continued in parallel to the struggle that I study in this thesis.

Moreover, as my starting point for this study, I take two theoretical insights or claims by Banu Bargu (2014). First is her conceptualisation of disappearances as a form of sovereign violence, which can be erased once the victims are labelled as enemies of the state. The second is her observation that struggles waged by family members of the disappeared ensure that the erasure of sovereign violence in the form of disappearances is never complete.

Two broad sets of questions inspired by the abovementioned history and theory animate this thesis:

1. What is the nature, magnitude, and history of enforced disappearances in Sri Lanka? To what extent is Bargu’s theorisation of disappearance as an erasing form of sovereign violence applicable to the phenomenon of impunity for disappearances in Sri Lanka? Following Bargu, what does it mean to understand impunity as erasure?

2. What modes, sites, and scales of protest and petition comprise the struggle for truth and justice for disappearances between 2009 and 2021 in Sri Lanka? How did women survivors of the disappeared create, inhabit and/or recode legal and non-legal spaces as sites of struggle and resistance? What kind(s) of political language(s) did they speak? And to what effect?

To understand ‘impunity’ as erasure during the period under study in Sri Lanka, I argue, it is necessary to decentre our gaze from the disappeared and their construction as enemies of the state. Rather, based on an ethnography of the discourses and practices of the Rajapaksa regime, I show that understanding impunity as erasure during his postwar tenure from 2009 to 2015 requires the consideration of a far more complicated, complex, and contradictory set of discourses and associated practices than envisaged by Banu. I characterise this set
of discourses and practices as a repertoire of necropolitical and Manichean technologies of power including denial of disappearances, and the construction of family members searching for truth and justice as ‘enemies’ and armed forces accused of disappearances as ‘heroes’ of the nation. These technologies also included mechanisms such as commissions of inquiry, compensation, and issuance of death certificates for those who had disappeared. I argue that these and other discourses and practices deployed by the Rajapaksa government shaped the polis or space of appearance available for victim-survivors to appear as rights-bearing subjects and their ability to pursue truth and justice. They determined who was grievable and ungrievable; what was ‘sayable’ and ‘seeable’; and who was a reliable witness and who was not. In following this struggle beyond the Rajapaksa regime (2009-2015) to the period from 2015 to 2019, I seek to illuminate how regime change can open up the democratic space to pursue justice, but why such openings are nevertheless partial, contingent and fragile.

In tackling the second set of questions, I conceptualise family members of the disappeared fighting for justice in post-war Sri Lanka as subaltern legal and political subjects waging a struggle against the state. Drawing on a corpus of scholarship that can be traced back to the Gramscian idea of the subaltern and seeking to expand understandings of contemporary subaltern struggles, I ethnographically documented the multiplicity of forms and locations of this struggle as well as the subjectivities underpinning it. In the chapters that follow, I explore how family members challenged the erasure of their disappeared loved ones and to what effect they did so. I will elaborate on these two central themes further below once I have outlined the historical background of this study and the methods and motivations underlying it.

**Historical Context**

Before I can proceed further, some historical background is I believe, in order, even as I recognise that history is the contested terrain where the struggle for truth and justice at the heart of this thesis is taking place.

Sri Lanka, the small tear-drop-shaped island off the southernmost tip of India, is presently home to around 22 million people of different ethnicities and religious persuasions. According to the most recent census (2012), numerically, 74.9% are Sinhalese, 11.2% are Sri Lankan Tamils, 4.1% are Indian Tamils, and 9.3% are Muslims. The rest of the population comprises small numbers of Burghers,
Malays, and those classified as ‘others’. The population is further categorised according to religion as Buddhists, Hindus, Muslims, Roman Catholics, Christians, and others. Most Sinhalese are Buddhist, and most Tamils are Hindu, although both groups have significant numbers of Christians and Catholics. All Muslims are assumed to adhere to the Islamic faith.\textsuperscript{13}

The classification of the population into ethnic and religious categories was an inheritance of British colonial rule, which ended in 1948.\textsuperscript{14} Although independence was achieved without the blood bath that accompanied it in neighbouring India, elite-level political tensions and disputes were already present at independence and escalated thereafter. These related to the appropriate political representation for Sinhala and Tamil communities, the constitutional status of minorities, and the status and relationship of Buddhism (the religion of the majority Sinhala community) to the state. The Buddhist revivalist movement that emerged in response to the ‘disestablishment of Buddhism’ under colonial rule, acquired distinctly nationalist and ethnic overtones with Sinhala—the ‘race’, Sinhala—the language, and Buddhism—the religion of the majority of the Sinhalese being increasingly posited as the three defining elements of national identity following independence (Malalgoda 1976: 173). Once national identity was ethnicised, a Westminster style democracy based on winner-takes-all single-member electoral constituencies provided the institutional framework for the politicisation of identities, the domination of the state by the majority, and the marginalisation of minorities (Seneviratne 2004). By the mid-1950s, the Sinhalese and the Tamils had their own political parties: The United National Party (UNP) and the Sri Lanka Freedom Party (SLFP) led by Sinhalese and the Federal Party and Tamil Congress led by Tamils. Political competition between the UNP and SLFP became a fight for the majority Sinhala vote due to the Sinhalese forming a majority in all but two provinces (i.e., the Northern and Eastern Provinces where Tamils were a majority).

Sri Lankan Tamil demands first for equal representation and later for some form of power-sharing as well protection from discrimination were completely disregarded by successive post-independence governments dominated by the Sinhalese, despite numerous promises to this effect. Not only that, a string of laws and policies such as the Sinhala Only Act of 1956, and the policy of standardisation


\textsuperscript{14} The first census in Sri Lanka can be traced back to 1871.
of university education between 1971–1977, blatantly discriminated against Tamils, affecting access to employment in the public and private sector, as well as the armed forces and the police. Indeed, one of the first acts of the post-independent Ceylonese state was to disenfranchise a significant section of Indian Tamils as a strategy to decrease the number of Tamil voters. State-led colonisation of lands in the north and east further alienated the Tamil community. A new constitution adopted in 1972 went on to confer official status to Buddhism and declared Sri Lanka to be a unitary state while prohibiting discrimination against any person based on community or religion (Rogers, Spencer, and Uyangoda 1998: 772).

A new constitution adopted in 1978 replaced the 1972 constitution and attempted to address some minority grievances. Tamil was recognised as one of the official languages of Sri Lanka, and discrimination on the basis of differences such as ethnicity was made unconstitutional and justiciable in the highest court of the land. The 1978 Constitution also abolished the Westminster-style parliamentary system in favour of a Gaullist-style presidential and parliamentary system, with a strong executive president directly elected by the people, while replacing the first-past-the-post system of elections with elections based on proportional representation (PR). PR increased the representation of minority parties in parliament and made it far more difficult for one party to command a clear parliamentary majority. Yet Sinhala Buddhist nationalism, a reactive Tamil nationalism, and Muslim identity politics continued to structure political competition in Sri Lanka (Wilson 1998: 34 -54, Bose 2007). By the 1980s, Muslims who had until then been part of Sinhala and Tamil political parties, caught between the political rivalries of the Sinhalese and the Tamils, also established separate parties to represent Muslims in political institutions.

Following repeated failures by the Sri Lankan state to honour its agreements to share power with the Tamil polity, in 1977, the Federal Party and its rival political party, the Tamil Congress, joined to become the Tamil United Liberation Front (TULF) to call for total independence of Tamil speaking areas in the north and east of Sri Lanka through constitutional means (Wilson 1998). At the same time, a generation of young men in the north and east, disaffected by an exclusionary political system, and the language and education policies of the state, were taking up arms with the same goal of a separate state. By the early 1980s, at least six

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15 Muslims were not as affected by these policies as the Muslim leadership did not mind serving the cause of Sinhala nationalism in return for certain privileges and protection of Muslim religious identity (Zackariya and Shanmugaratnam 1997).
main groups had emerged. At the outset, they were a rag-tag band of young militants engaging in hit-and-run, sporadic attacks. However, anti-Tamil riots that swept across major cities in July 1983 marked a turning point in their fortunes (Narayan Swamy 1994). The riots led many Tamils to conclude that even basic security—let alone equitable political representation—was not possible in the ethnically defined democracy in Sri Lanka. Young Tamils joined various militant groups in droves. The LTTE would later emerge as the dominant group following an internecine war with the other groups.

The military conflict between the LTTE and the Sri Lankan state was shaped by the LTTE’s desire not merely to destabilize and pose a security threat to the state, but to gain control over as much land as possible in the north and east of the country, considered the traditional homeland of the Tamils. A series of military successes by the LTTE between 1995 – 2002 brought substantial areas of land under LTTE control. By 2002, the LTTE was in control of the entire Northern Province except for Jaffna peninsula and Mannar Island, where it ran a de facto administration including revenue collection, police, judicial and public services, and economic development initiatives. Travelling from government-controlled to LTTE-controlled areas resembled a border crossing between two nation-states, with personal identification and goods checks, as well as levying of customs fees (Stokke 2006).

The most concrete effort to solve the ethnic conflict and end the war was the Indo-Sri Lanka Peace Accord of 1987 (ISLPA), brokered by India. The agreement made provision for a ceasefire monitored by an Indian Peace Keeping Force (IPKF) and the establishment of provincial councils as a second tier of government with limited autonomy (with very small fiscal powers and without subjects such as policing and land settlements) (Bose 2007: 32-34). Even though the LTTE was not a party to the negotiations, initially, they agreed to the ISLPA’s terms as they did not want to go against India. Later, they refused to abide by its terms, and the war resumed in 1990. Various efforts to reach a negotiated political settlement with the LTTE thereafter in 1994 and 2002 failed. The last attempt to find a political solution to the conflict began with a ceasefire brokered by Norway, which collapsed in 2005 without any agreement between the two parties. Following the collapse of this ceasefire, the government headed by President Mahinda Rajapaksa went on an all-out military offensive against the LTTE, defeating them in May 2009.
The peace that dawned in Sri Lanka in 2009 was characterised by a discourse of denial of all allegations of war-related atrocities, (whether relating to indiscriminate killings of civilians, bombing and shelling of hospitals, sexual violence or disappearances); military triumphalism; majoritarianism, and impunity. While the government erected monuments celebrating soldiers across the country, such as the one I describe in the opening vignette (Seoighe 2017), Tamil militants and civilians who had died and disappeared were considered ‘ungrievable’ and ‘unmournable’ lives (Butler 2010). Similarly, those who dared to make allegations of rights abuses, including victim-survivors, were labelled as liars, traitors, or enemies of the state. Even as the government, under pressure from local human rights organisations (who had progressively internationalised the question of war-related human rights abuses) and the international community, appointed commissions of inquiry and promised to pay compensation to victim-survivors of disappearances, the discourse of denial continued apace.

This denial and triumphalism were briefly interrupted by the election in 2015 of the United Front, a coalition led by the main opposition party at the time, the United National Party (UNP), and including the Tamil National Alliance (TNA), the most significant coalition of Tamil political parties, with the largest number of seats in parliament as well as some parties representing the Muslim community in Sri Lanka. Having come to power, the United Front co-sponsored a resolution at the UNHRC promising to establish four transitional justice mechanisms to address war-related human rights abuses: a Truth and Reconciliation Commission, a Hybrid Court, an Office on Reparations, and an Office on Missing Persons (OMP). During its tenure, it established the OMP and the Office on Reparations and kick-started a few habeas corpus applications relating to disappearances, which were stalled or obstructed during the Rajapaksa period. It was, however, ousted from power in 2019 before it could substantially fulfil its promise to deliver truth and justice to victim-survivors of the war.

Following the presidential elections held in November 2019, Gotabaya Rajapaksa, the brother of former President Mahinda Rajapaksa was elected President. The parliamentary elections that followed in August 2020 delivered a landslide victory to the Sri Lanka Podujana Peramuna (SLPP), a new party formed by Mahinda Rajapaksa in 2018, returning him to power as Prime Minister under his brother. As I will argue, the internationalisation of the justice struggle was one significant contributory factor in the re-election of the Rajapaksas.
Motivations and Methods

I take a critical feminist, intersectional, interdisciplinary approach rooted in anthropology to grapple with the central concerns underlying this thesis while drawing on both political theory and law. Feminist scholarship has consistently expressed a commitment toward interdisciplinarity, on the understanding that the complexity and diversity of women’s lives and experiences are often confronted with the limits of prevailing disciplinary criteria (Allen and Kitch 1998: 7-10). I adopt interdisciplinarity to overcome these limits and make sense of the macro forces that shape the micro-level interactions typically observed in ethnographic studies. Interdisciplinarity can reveal the intersecting and unequal relations of power and social structures that determine the trajectories of women’s lives as well as their subjectivities, agency, complicity and resistance (Wickramasinghe 2010: 148-149).

Methodologically, I draw on an eclectic combination of research methods, including literature review, ethnography, interviews, archival research as well as documentary and discourse analysis. Between January 2018 and February 2019, I conducted ethnographic field work in Sri Lanka, the country where I was born, have lived and worked all my life, taking as my point of departure the women survivors—wives, mothers, daughters, and sisters—who were struggling to find the whereabouts of those who were disappeared.

To be clear, the struggle for justice for the enforced and involuntary disappeared in Sri Lanka is not one struggle but many struggles waged by heterogeneous groups of women. While more than 15,000 family members have made complaints concerning disappearances in postwar Sri Lanka, their demands and strategies vary considerably. It is also unclear how many were/are actively involved in the struggle, as such. Before the end of the war and in the wake of the war, family members of the disappeared in the north and east were represented by Colombo-based civil society organisations such as Inform, Families of the Disappeared, The Civil Monitoring Commission, Law and Society Trust, and the Committee for Investigation of Disappearances, almost all headed by men, which played a significant role documenting disappearances, mobilising women and organising meetings. Alternatively, they were represented by district-level civil society or church-based organisations such as the Mannar Citizens Committee, also headed by men.

However, as months and years passed by without an adequate response to the demand for truth and justice for disappearances from the Sri Lanka state,
several organisations and networks led by women family members of the disappeared themselves have emerged in postwar Sri Lanka. As I tell the story of the postwar struggle for truth and justice for disappearances, I selectively foreground the experience of two interlocutors, the aforementioned Association for the Relatives of the Disappeared of the North and East (ARED), and an individual, who rose to political prominence as the wife of a disappeared LTTE political leader—Ananthy Sasitharan. I chose to focus on Sasitharan, because she played a critical role in bringing disappearances to the fore in the immediate postwar period and entered politics on the promise of representing families of the disappeared. She took leadership in filing the habeas corpus cases that I discuss in Chapter Six, even though she was no longer at the forefront of the struggle as I was completing my thesis. I chose to focus on ARED because it emerged as the most vocal and visible face of the struggle for truth and justice for disappearances in the aftermath of the 2015 elections and was in the vanguard of the struggle as I was completing this thesis.

While this thesis is rooted in ethnography, this is, however, not a conventional ethnography. I didn’t live in a town or village affected by the war. You will not find extensive biographies of the women that I studied in the chapters that follow. This thesis is not about the intimate lives and private pain and trauma of women survivors of violence as documented, for instance, by Lotte Buch Segal (2016) or Nayanika Mookherjee (2015). Rather, I observed the struggle of a fluid and everchanging collective of women family members of the disappeared, in diverse sites, where only the leaders remained constant.

I had followed the struggle of the family members of the disappeared in the north and east long before I commenced this PhD. As an activist researcher at the International Centre for Ethnic Studies, I closely followed the proceedings of the Lessons Learnt and Reconciliation Commission (LLRC) and the Presidential Commission to Inquire into Complaints of Missing Persons (PCICMP) appointed by the Mahinda Rajapaksa Government in 2010 and 2013 respectively. As part of a collaborative research project with Neloufer de Mel (2012-2014), I observed several sessions of the PCICMP in Jaffna and Batticaloa and heard the testimony given by one family member of the disappeared after another over several days. We also interviewed a few family members of the disappeared from Kilinochchi for this study

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16 Following David Scott (1994: xxiii), I believe such data is not critical to the empirical and theoretical project that I am undertaking.
(see de Mel and Kodikara 2018). From April to August 2016, just before commencing my PhD, I worked as a senior researcher with the Consultation Task Force on Reconciliation Mechanisms (CTF) appointed by the United Front government to undertake consultations with victim-survivors of the war, on the design of proposed transitional justice mechanisms in Sri Lanka. Prior to commencing consultations, the CTF appointed Zonal Task Forces comprising respected individuals from the regions who were trusted and had knowledge of issues concerning their communities. Many Zonal Task Force members had personal and direct experience of violence, including the disappearance of a close family member. I met many women family members of the disappeared considered leaders in their communities through this process. Once the CTF consultations began, the overwhelming majority of those who came before the CTF were also family members of the disappeared. Thus, as a researcher with the CTF, I not only met and interacted with women family members of the disappeared across the country but was privy to both written and oral submissions made by them. I also participated in a consultation organised with close to 100 family members by the government's Secretariat for Coordinating Reconciliation Mechanism in May 2016.

When I returned to conduct fieldwork in Sri Lanka in 2018, I first renewed my relationship with human rights activists in the capital city, Colombo, and had conversations with several of them who were working on the issue of disappearances and/or involved in or supporting the mobilisation of family members on the question of truth and justice for disappearances. These conversations helped me to update my knowledge about the disappearance struggle—who was doing what and where. My first visit to the north during fieldwork was to attend a protest organised by ARED on 20th February 2018 in Kilinochchi to mark 366 days of the tent protest, with a group of activists and journalists. On that day, I briefly reconnected with Leeladevi Anandananadaraja, a former member of the Zonal Task Force in Kilinochchi who had gone on to become the Secretary of ARED. Leeladevi’s son A. Anuraj had surrendered to the army at the Omanthai checkpoint during the final days of the war in May 2009 and had thereafter disappeared. She had been a government servant and retired as an Assistant Commissioner of Labour in 2013. I didn’t conduct any interviews in Kilinochchi on that day as I was there to simply observe and express my solidarity with the protesters. However, after the protest had concluded in the afternoon, a group of us travelled further north to meet with the tent protesters at Marathankerni. It was the first time I met the
women at Marathankerni. After those of us from Colombo who had not met them before introduced ourselves, we spoke with them for about one hour. It was during this trip to Kilinochchi and Marathankerni, that I first met Sandya Ekneligoda, the wife of Prageeth Ekneligoda, a Sinhala journalist from the South who was disappeared in 2010. Sandya’s struggle for justice is not a focus of this thesis, but she is referenced in several chapters as well as in the conclusion.

I followed this trip to the north with a two-day visit to Vavuniya and Kilinochchi less than a week later. In Vavuniya, I visited the tent protest and met with the group of women protesting that day. I also conducted a lengthy interview (over two hours) with a family member of the disappeared and a short interview (45 minutes) with a staff member of the ICRC in the hotel that we were staying. Both women, I had met in 2016 during the CTF process. In Kilinochchi, I interviewed Leeladevi, the Secretary of ARED at length for the first time (again over two hours long). It is during this visit that I realized that ARED had emerged as one of the most significant forums for family members of the disappeared and learnt that they were planning to take their struggle to the UNHRC in Geneva in March. It was following this visit that I decided I would try to study the modes, sites, and scales of the struggle for truth and justice for disappearances through the lens of ARED, including their struggle at the UNHRC. Given the leadership role played by Leeladevi in ARED, I conducted two more lengthy interviews with her in October 2018 and April 2020.

Ananthy Sasitharan’s struggle for justice for the enforced disappearance of her husband was in many ways similar to hundreds of other women, including women who were part of ARED, yet it was also distinct in several significant ways. Sasitharan was the wife of LTTE’s former Trincomalee District Political Wing Leader Elilan. She rose to prominence following her testimony before the Lessons Learnt and Reconciliation Commission (LLRC) appointed by President Rajapaksa in September 2010. In her testimony to the LLRC, which caused a media sensation, she recounted in detail how she and her three daughters witnessed her husband, together with hundreds of other LTTE leaders and cadres, surrendering to the army at Vattuvahal on 18th May 2009. She was among the first to testify about the surrender and subsequent disappearance of LTTE cadres and leaders during the last days of the war. At the time, she was a government employee at the Kilinochchi District Secretariat. When the Rajapaksa government called for elections to the Northern Provincial Council in 2013, a Member of Parliament from the Ilankai Tamil
Arasu Kachchi (ITAK), a constituent member of the Tamil National Alliance (TNA), invited her to contest the elections, despite objections from the TNA leadership in Colombo. She accepted. In her election campaign, she appealed to those like her – family members of the disappeared, war widows, and former LTTE cadres – promising to address their concerns, needs, and demands. She was elected to the Council with 87,770 preference votes – the number of votes second only to the number of votes obtained by the Chief Minister. In a subsequent interview with Tamil Guardian, she stated:

I came into politics because we hardly have any political or organisational backing with regards to searching for missing people. Entering politics was out of burning necessity. Searching for my husband is something I have to do. I can’t leave it alone out of fear for my life . . . That’s what has led me to help other women searching for their loved ones, to settle our questions once and for all.17

She is the first woman to be elected to the Northern Provincial Council. Since her election, she emerged as a vocal critic of the Sri Lankan state and an advocate of both international justice and self-determination for the Tamil people.18 In 2020, she left the ITAK, to contest parliamentary elections from the Thamizh Makkal Thesiya Kootani (TMTK) led by Former Chief Minister of the Northern Province C.V. Wigneswaran. However, she lost this election.

In 2013, Sasitha ran took the leadership to file habeas corpus applications together with four other women in the High Court of Vavuniya. Few women in the north or east had done so at that point in time. I decided to include her as a second interlocutor in addition to ARED, halfway through my fieldwork to be able to analyse the writ of habeas corpus in relationship to disappearances in Sri Lanka (see Chapter Six). I had met Sasitharan for the first time at a fellow activist’s residence sometime around 2013. I had met her again at the UNHRC in Geneva in 2017 where we renewed our acquaintances and shared contact details. I formally interviewed Sasitharan twice for this thesis, once at her office when she was

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18 Since her election, she increasingly locked horns with the leadership of her own political party, often going against the party line. In February 2014, she was suspended from the ITAK on disciplinary grounds for aiding and abetting the burning of an effigy of an ITAK parliamentarian, and later reinstated. At the 2015 elections she refused to extend her support to either of the two main candidates, Rajapaksa and Sirisena, despite the decision taken by her party to support Sirisena. She left the TNA to contest the August 2020 parliamentary elections, from the Thamil Makkal Thesiya Kuttani, (TMTK) a new political party, and lost the elections.
Minister of Women’s Affairs of the Northern Provincial Council in October 2018 and at her home in Jaffna in April 2020.

During field visits to Kilinochchi and Jaffna in October 2018 and Vavuniya, Kilinochchi, and Jaffna in April 2020, I interviewed several other women family members of the disappeared including those who had attended the OMP consultations in August 2018 and three of the four women who filed habeas corpus applications together with Sasitharan. All these interviews were invariably more than two hours long and were through a translator as I do not speak Tamil. All in all, I only conducted about 20 interviews with women involved in the struggle for justice, including the repeated interviews with Sasitharan and Leeladevi. As I explain further below, I prioritized other methods of data collection over interviews.

During fieldwork, I also met with women next of kin of those who disappeared during the second southern insurrection from Kandy, Galle, Hambantota, and Colombo, through an organisation called Families of the Disappeared (FoD). FoD has been working with family members of the disappeared in the south since the 1990s. Additionally, I conducted approximately 50 interviews in Sri Lanka and Geneva with a range of interlocutors, including NGO activists, scholars, lawyers, public servants, and diplomats to understand a multiplicity of issues ranging from Sinhala Buddhist nationalism to progress relating to court cases. These interlocutors don’t all necessarily appear in the pages of this thesis, because of the choice I made to tell the story of the contemporary struggle for justice through ARED and Ananthy Sasitharan. However, these conversations were immensely helpful in contextualising this struggle within a longer history of struggles waged by family members of the disappeared in the south of Sri Lanka as well as international and local NGOs. To be clear, in the pages that follow, I privilege the struggle for justice waged by the family members of the disappeared in the north and east at the present moment in time and not the parallel broader struggle for truth and justice for war-related atrocities waged by local and international NGOs and activists since the end of the war.

During fieldwork from January 2018 to January 2019, I attended many meetings, commemorative events, protests, and discussions organised by NGOs, state institutions, and family members themselves relating to the question of disappearances, simply to observe, listen, and learn. Indeed, I often followed in the footsteps of the family members, travelling miles to attend court hearings, street protests, and civil society meetings across Sri Lanka. I also attended four sessions
of the UNHRC held in Geneva between 2017 and 2020. The most significant of such ethnographic fieldwork was the opportunity to observe the tent protests in Kilinochchi, Marathankerni, and Vavuniya (which I referred to above), visit Geneva to attend the UNHRC sessions, and attend OMP consultations in Jaffna and Kilinochchi in August 2018.

I had visited Geneva in March 2017 (from 17th to 24th) to observe what was happening at the UNHRC concerning Sri Lanka and interview a few international human rights activists and diplomats instrumental in putting Sri Lanka on the agenda of the Council following the end of the war. But in 2018, I decided to spend close to three weeks in Geneva with a focus on how members of ARED were engaging with the UNHRC. In 2018, I was in Geneva from 3rd to 24th of March.

During this visit, I spent a fair amount of time informally interacting with the delegation from ARED attending the UNHRC sessions for the first time, led by Leeladevi and comprising five other women. I also had the opportunity to attend two formal, closed-door meetings that they had with the United Nations Working Group on Disappearances and the International Committee of the Red Cross (ICRC). Sandya Ekneligoda, who was attending the UNHRC sessions that year were part of these two meetings organised by Amnesty International, and I acted as Sandya’s translator from Sinhala to English and vice versa. Between 2017 and 2020, I attended four sessions of the UNHRC in all, returning to Geneva for much shorter visits in 2019 and 2020.

Equally significant for the insights that they yielded about ARED and their demand for truth and justice were public consultations held by the newly appointed Office on Missing Persons (OMP), in August 2018, in Jaffna and Kilinochchi, which I was able to observe. A number of women whom I befriended at these consultations, I subsequently interviewed in October 2018.

In addition to ‘field work’ attending meetings and conducting interviews, I spent a considerable amount of time studying letters, appeals, posters, affidavits, and legal submissions written by or on behalf of the women, and oral and written testimonies given by them over the years. I also spent considerable amounts of time studying the reports of the LLRC, the PCICMP, and the CTF, and women’s testimonies as quoted in these reports as well as statements delivered by members of ARED before the UNHRC. I transcribed many oral statements made by family members in English, and also got the assistance of a translator to translate several statements made in or written in Tamil. For instance, while Chapter Six on habeas
corpus relies on interviews with four of the five petitioners and lawyers involved in filing these petitions, equally, it relies on a close reading of the court files which were made available to me by the Centre for Human Rights and Development, which filed the habeas applications on behalf of the petitioners. Chapter Seven also relies heavily on transcripts of statements made by Leeladevi before the UNHRC in Geneva. Following Kris Brown, I approached this vast archive of oral statements and written documents as ‘small-scale maps and guides’ (2012: 446) to help me understand the multiple paths these women were taking in pursuit of truth and justice, how they were articulating their demands, and to whom. In attending to the letters and petitions they were sending as well as what they were saying and doing in public, I have consistently privileged their public, ‘political’ speech through participant observation for this study over other forms of speech and action. The interviews I conducted with family members of the disappeared from the north and east, including the Secretary of ARED and Ananthy Sasitharan helped me to clarify questions I had about what they were saying publicly, their own histories of involvement, as well as the choices that they were making about strategy.

If I relied on interviews, ethnography, and documentary and discourse analysis to understand the struggle for justice waged by ARED and Ananthy Sasitharan, I relied almost entirely on documents and public statements to grapple with and understand how the Sri Lankan state and Sinhala Buddhist nationalists responded to demands for truth and justice for disappearances. From the outset, I anticipated that politicians, government officials as well as Sinhala Buddhist nationalist ideologues, (busy individuals in positions of power and authority), would have little time or interest in speaking with me (Ortner 2010: 222). Given the nature of the research topic and my history in rights struggles, there was a strong likelihood that those in power would not cooperate and that even if I were to obtain the opportunity to speak with them, that the interviews could trigger a hostile response from at least some individuals in government and within nationalist organisations. I did not want to become a complicit interviewer—that is, one who is overly cautious during the interview, and timid in what one writes (226). According to Perriton (2000) ‘cunning and guile’ may be what is required in studying up, i.e., researching those more powerful, rather than ethics, but I wasn’t sure I could pull it off. The dilemmas I would have faced had I decided to do interviews with nationalist ideologues was in fact brought home to me very starkly during an encounter with a woman member of the Global Sri Lanka Forum (GSLF) in Geneva. During my visit to the UNHRC in
March 2018, it was impossible to avoid members of Sinhala Buddhist nationalist groups who were also attending the Council sessions. When they learnt I was a Sinhalese, they would attempt to gauge who was I working with and where my loyalties lay. On revealing that I was a doctoral student who was sympathetic to the struggle for truth and justice being waged for war-related rights abuses, they became guarded at best and suspicious and hostile at worst. One of the few women, among the GSLF team present in Geneva during that visit, told me that I was betraying the Sinhala race and ‘will pay for this sin in my next life’.

For these reasons, in order to understand the state and the Sinhala Buddhist nationalist response to disappearances, I depended on archival research. I delved deep into the vast archive of visual, oral, and textual sources and ephemera generated by the state and nationalist organisations and individuals available in the public domain, including newspaper reports, speeches, statements, interviews, press releases, parliamentary debates and responses, interview clips on YouTube, reports of commissions of inquiry and governmental bodies, and legal petitions. I selected documents/ texts for analysis from this archive based on the position occupied by the speaker in the political /power hierarchy and references made to issues and themes that I grapple with in this thesis—disappearances, death certificates, compensation, commissions, transitional justice, Resolution 30/1, United Nations Human Rights Council, war heroes, traitors, and so on, Thus, for instance, I privileged the speech of political leaders such as the President, the Prime Minister, Cabinet Ministers, Members of Parliament, and opposition leaders. I considered their speech to be speech that matters, taking into account where they were speaking, the audiences that they were addressing, and whether they were speaking in an official or unofficial capacity. Speeches made in parliament, laws, official policy documents, and commission reports were given added importance in trying to understand the state response to the demand for truth and justice that I study in this thesis. Where I came across contradictory statements or policy, I have drawn attention to them.

Similarly, in selecting for inclusion and analysis the speech and practices of Sinhala Buddhist nationalist actors, I chose those who occupied leadership positions within nationalist organisations. I also analysed cultural texts, such as songs, films, and teledramas particularly to understand the cultural salience of tropes within Sinhala Buddhist nationalism. The speeches and texts that I analysed were both oral and written and in Sinhala and English. I transcribed several oral texts in
English and Sinhala that I considered important, for the purpose of closely reading and analysing these texts. In analysing these documents, I have drawn on concepts and analytical approaches from documentary and discourse analysis, keeping in mind that ‘(d)ocuments, whatever their kind or type, and whether written or oral, or visual, do not speak for themselves’ (Stanley 2016: 54). I therefore attended not merely to the content of documents, but also to the context, processes, and circumstances in which they came to be produced as well as their use, consumption, and effects (Prior 2008: 825). Despite the vast array of individuals and organisations that speak in the name of Sinhala Buddhist nationalism, I identified a coherent and consistent nationalist response to demands for justice for war-related human rights abuses, which aligned almost exactly with the discourses emanating from state officials from 2009 to 2015 and from 2019 onwards. Following Akhil Gupta (1995), this is as much an ethnography of the Sri Lankan state’s response to the women’s struggle as it is of the women’s struggle for justice and a genealogy of certain tropes within Sinhala Buddhist nationalist ideological discourse.

**Ethics and politics of research and representation**

Harding has pointed out that starting research from the marginalised will ‘generate less partial and distorted accounts of not only their lives but also . . . of the whole social order’ (1993: 56). Similarly, in Haraway’s view, ‘subjugated standpoints’ can provide ‘more adequate, sustained, objective, transforming accounts of the world’ (Haraway 1991: 191). However, I recognize that I am not ‘simply capturing social realities’ but generating narratives and producing new knowledge for which I need to be accountable. I am acutely conscious that ‘the politics of speaking for, about and on behalf of other women is one of the most contested areas in present-day feminist activism and research’ (Code 1995: 30); of the ethical and political dangers and dilemmas of representation; the ways in which subjects of research can be exoticised, romanticised, silenced, or disempowered; as well as how their voices can be distorted or appropriated.

I am conscious that my location and situation have implications for the knowledge produced through this research process. Even if I am from the same country, I recognize that as a member of the majority Sinhala Buddhist community in Sri Lanka, who does not even speak Tamil, my life is far removed from the women’s lives in this thesis. The ‘double vision’ that is available to the marginalised that can help produce less partial and distorted knowledge may not be available to me.
Nevertheless, following Haraway, I recognize the possibility of a reflexive and accountable knowledge-making process initiated by a researcher who learns to see ‘faithfully from another’s point of view’ (583).

I have been a feminist researcher and activist who has worked with women from Sri Lanka’s majority and minority communities for over 20 years. As I explained above, in embarking on this research, I sought to build on previous engagements with family members of the disappeared and the question of disappearances from a shared commitment to the struggle for justice between myself and my interlocutors. I have reflexively drawn on this history and the relationships and insights gained from this experience at every stage of this thesis. The methods I used, the questions I asked, the direction in which I took research conversations, and how I went about interpreting the findings of this research were inevitably coloured by this history.

Moreover, in writing this thesis, I was committed to an ethics of memory that bears witness to those witness-survivors of disappearances who have repeatedly borne witness in the public sphere while recovering long-forgotten fragments and memories of disappearances from the historical archive.

I have not anonymised the main interlocutors who appear in this thesis. While human rights activists have been and continue to be under siege in Sri Lanka, the family members whom I identify by name in this thesis have been waging their struggle in the public sphere already putting their lives at risk. Much of what I document in this thesis of their struggle is material that is available in the public sphere. To anonymise them here as is normally done in ethnographic research would have been to deny them an identity and subjectivity that they have very consciously and courageously adopted and aid the efforts of the state to erase their struggle. Nevertheless, as a precautionary measure, I do not name family members who are presently unknown or not well-known in the public sphere.

In conducting interviews with family members of the disappeared, I followed the ethical guidelines of the School of Social and Political Science of the University of Edinburgh relating to disclosure of research topic, consent, security, and confidentiality, subject to the caveat stated above. As I commenced my research, I was very conscious of the need to safeguard against retraumatising the women family members in the interview process. I was also only too aware that family members of the disappeared are exhausted from narrating their stories to researchers with no change in their lives. By privileging participant observation and foregrounding the public political acts of women, whether oral, written, or embodied,
I believe I was able to minimise the number of interviews that I conducted and limit them to a great extent to those in leadership positions.

However, I believe that as a feminist researcher my ethical commitment is two-fold—it is not a simple question of documenting a subaltern history of struggle or representing or giving voice to subaltern subjects. As de Alwis points out, feminism which is a product of struggle and which informs political struggles, cannot share a discipline with anthropology, which is constituted through different rules and protocols that are analytically prior to political practice (de Alwis 2007: 122 drawing on Jeganathan 2001b: 6). She refers to an inevitable awkwardness when one seeks to suture these ‘two dissonant categorical practices within the subdiscipline of “feminist anthropology”’ (122). De Alwis goes on to ask: ‘How can anthropologists who are also feminists frame research questions about political struggles in which they are actively participating and intervening?’ (123) Taking her ethnography of the southern Mothers’ Front as a case in point, de Alwis makes a plea to appreciate the importance of exploring not only the conditions of possibility of subaltern struggles and their emancipatory effects, but also complications for feminist praxis. She urges us to avoid binary readings of such struggles as either essentialising or empowering, and/or victimising or agentive (133). In short, de Alwis recognizes the ethical imperative of solidarity with subaltern struggles while retaining the possibility of critiquing the limits of such struggles from a feminist perspective and acknowledging the need for less limited formulations of political protest (1998a: 293). In the analysis that follows, I take her counsel seriously.

I should also note that in focusing on disappearances committed by the state in the context of the civil war, I exclude the question of justice and accountability for disappearances committed by the LTTE and other Tamil paramilitary groups over the years. In doing so, I am conscious that I may be charged with performing another act of erasure of disappearances committed by these groups. However, I made this choice very consciously as I was keen to delve deep into the question of state accountability for disappearances. As I discuss in Chapter One, the Sri Lankan state is one of the worst offenders of disappearances in the world, second only to Iraq; and has enacted such violence in recurring cycles for almost five decades with complete impunity. As a member of the majority Sinhala community, I was compelled by a sense of responsibility to turn my gaze towards my own community, to try to historicise the violence of the state and to illuminate the relationship between impunity and Sinhala Buddhist nationalism. A broader study that included
the LTTE and other non-state actors would not have allowed me to do these things in-depth. However, I reference disappearances committed by the LTTE in brief, in Chapter One.

**Historicising and Theorising Disappearances**

In grappling with the two sets of questions animating this thesis, I should note that I did not seek to subsume my findings under a predetermined theoretical framework. Rather, I mined theory as ‘thinking tools’ to make sense of the ‘practical problems and puzzles’ thrown up by my research (Wacquant, 1989: 50). Such an approach helped me analyse my empirical findings with the concepts that I found to be most appropriate and useful.

As I mentioned already, Banu Bargu’s conceptualisation of disappearances as an erasing form of sovereign violence, intrinsic to the very edifice of the state, and enacted against those designated as internal enemies, provides the starting point for my analysis. However, going beyond Bargu, I contend that in postwar Sri Lanka, the erasure of sovereign violence in the form of disappearances appears to be rather more complicated than Bargu’s account leads us to believe. I draw attention to a much vaster repertoire of discourses and practices than envisaged Bargu, deployed by the Rajapaksa regime to erase enforced and involuntary disappearances from history and memory. I study these multiple discourses and practices as a complex and contingent repertoire of Manichean and necropolitical technologies of power. I contend that these technologies of power were shaped by contradictory forces of Sinhala Buddhist nationalism and nationalist organisations and international norms of human rights and struggles for truth and justice. Let me first clarify what I mean by Manichean and necopolitical.

I understand Manicheanism as the construction of an absolute split between all things considered good and things considered evil. In the words of Simone de Beauvoir, Manicheanism is ‘(t)o posit the Other’. ‘(T)he essence of Manichaeism is not only to recognise two principles, one good and one evil; it is also to posit that good is attained by the abolition of evil’ (1956: 104). A Manichean ideological discourse tends to be a hallmark of authoritarian social and political projects, where political complexity is reduced to a constitutive, fundamental, and fixed dualism or binary opposition, without any space for nuance, principle, or dissent (Fanon 1963). According to Sartre, Manichaeism is based on a dualism that is ‘impervious to reason and to experience’ (Sartre 1995: 20).
By necropolitics, I refer to death-dealing discourses and practices that simultaneously seek to erase the disappeared and dishonour and punish family members of the disappeared. Necropolitics as first defined by Mbembe referred to new concatenations and re-combinations of power deployed by the state, to destroy people en masse. In Mbembe’s original formulation, necropolitics is associated with a ‘state of emergency’ and was applied to very specific spatial configurations such as the plantation, the colony, territories under occupation, and apartheid rule, in which vast populations are subjected to conditions of life conferring upon them the status of living dead (39-40). Arguing that ‘democratic sovereignty . . . has more instruments at its disposal to make life unliveable than simply the exercise of brute force,’ Bargu expands the applicability of necropolitics beyond overt forms of death-making, destruction and debilitation, as well as forms of social death. In her hands, necropolitics describes a ‘wide spectrum of violence that shows how life can be made to submit to death-logics without the manifest results of physical death and destruction’(2). In her analysis, necropolitics includes violence directed at surviving family members of the dead and disappeared searching for truth or justice or demanding mourning and burial rights. The issue, she says, is not the reduction of the living to the ‘status of living dead,’ (according to Mbembe) but ‘the dishonouring, disciplining and punishment of the living through the utilisation of the dead as postmortem objects and sites of violence’ (9). Bargu thus identifies a continuum of necropolitical violence from the dead and the disappeared, to those reduced to social death to the surviving next of kin of state violence and the ways in which they are in turn targeted by the state in the wake of violence. It is this conceptualisation of necropolitics that is central to my thesis.

In combining Manicheanism and necropolitics, I am seeking to foreground both the discursive and material elements of the strategy of erasure adopted by the Rajapaksa government following the end of the war. But I am also seeking to foreground how erasure works not merely by dishonouring or punishing one group of people but by simultaneously elevating and honouring another. To understand erasure of disappearances, I study the manner in which the Rajapaksa government categorically denied disappearances while constructing a Manichean split between ‘terrorists’, ‘traitors’ and ‘enemies’ of the nation on the one hand and ‘heroes’ and ‘patriots’ on the other hand. I argue that these discourses and associated practices are intimately connected to Sinhala Buddhist nationalist ideology and who is and is
not part of the nation. I seek to show that the stakes of this struggle are not merely guilt or innocence of perpetrators, but history, memory, and national identity itself.

I recognise that these discourses did not work in isolation. They were operationalised and materialised in myriad ways. Thus, I explore how they were operationalised at the micropolitical level of communities of the disappeared and how these discourses and practices produced knowledge that constituted a kind of power, which circulated and was exercised over those who were ‘known’ (Foucault 1980: 201, 291). Once such knowledge was produced, this knowledge became productive in turn, with real effects, enabling people to know or speak of certain things in certain ways, making alternative languages and perspectives unimaginable.

However, I will also seek to show that it is not possible to fully comprehend erasure of sovereign violence in post-colonial democracies, unless we also understand how the state attempts to appease struggles for human rights and international pressure to conform to international norms of human rights. During the Rajapaksa years, the government implemented a host of legal and quasi-legal mechanisms, namely commissions of inquiry, death certificates, and payment of compensation to family members while continuing to hear habeas corpus applications. Paradoxically, these mechanisms inscribed disappearances on to the state record, before attempting to erase them.

These discourse, practices, and legal and quasi-legal mechanisms that I study are, of course, not unique to postwar Sri Lanka. They have a history within Sri Lanka as well as other postcolonial, post-authoritarian and postwar contexts as legal remedies and as technologies of governance implemented in the wake of mass violence. I am interested in their deployment at a particular moment in time in Sri Lanka but with an eye to the genealogy of some of these mechanisms within and outside of Sri Lanka. Thus, in the chapters that follow, I ask: What kinds of citizen subjects did the Rajapaksa government seek to produce through these discourses, practices, and mechanisms? What kind of citizens were in fact produced? How did war survivors respond to these discourses, practices, and mechanisms? Did they not generate their own effects, dynamics, unintended consequences, and more labour by the state? What is their relationship to the historical record and archive? What is their relationship to truth and justice? Moreover, as I mentioned earlier, by following the struggle for truth and justice for disappearances beyond the Rajapaksa years to the tenure of the United Front, I seek to show what happened to these
mechanisms of erasure under a government that came to power on the promise of truth and justice for war-related atrocities and which inaugurated an international transitional justice project.

*Manichean necropolitical technologies of erasure, the space of appearance and the archive*

I proceed on the understanding that the Manichean, necropolitical discourses and practices that I studied shaped (and continue to shape) the public sphere or the space of appearance available for victim-survivors to bear witness to violence and to pursue justice. In thinking through the relationship between these mechanisms of erasure and the public sphere writ large, I draw from Hannah Arendt (1963) and Judith Butler’s critique of Arendt (2004; 2010). From Arendt, I understand that political action is ‘the human ability not just to act but to act in concert . . . It is never the property of an individual; rather it belongs to a group and remains in existence only so long as the group keeps together’ (1970: 44). Acting in concert requires a ‘space of appearance’ in which individuals become visible to spectators. In this space, ‘I appear to others as they appear to me’ (1963: 198), and hear and see what they hear and see. It is a material space or location, which is constituted by people acting and speaking together, wherever they may be in relation to each other. For Arendt, this space is all-important because it is linked to the right to have rights, what is considered and recognised as reality, as well as history and memory. ‘The presence of others who see what we see and hear what we hear assures us of the reality of the world and ourselves . . . To be deprived of it means to be deprived of reality, which, humanly and politically speaking, is the same as appearance’ (50).

Arendt conceptualises the space of appearance as a deliberative space where political actors can engage with one another across differences of identity and opinion without fear of violence. Arendt’s polis is premised on the idea of the right to have rights, where the speech act is privileged, and political action presupposes speaking. For Arendt, ‘(s)peech is what makes man a political being’ (1963: 3). Political action, which she distinguished ‘labour’ and ‘work’, was for her the most essential form of human activity, possible only once labour and work have been taken care of. According to her, labour is necessary to care for, nourish and sustain the human body, and work relates to the production of things that have a lasting impact, changing the way we think and live. Political action, according to her,
is different from labour and work because it is not forced upon us by biological necessity like labour, nor prompted by utility like work (1963: 7).

While I draw on Arendt’s account of the public sphere as essential for political action, I rely on Judith Butler’s critique of such a conception of political action that revolves primarily around the division of the body into a private labouring, working body, and a public political body. Indeed, Butler is repulsed by Arendt’s uncritical reliance on the Greek notion of the polis, which depends on and yet excludes the domain of labour and work, which in effect means the exclusion of those whom she refers to as barely legible or illegible human beings—the disenfranchised, unpaid labour, women, and slaves (2007: 25; 2015: 75). For Butler, if the precariousness of life is to be apprehended, certain dominant forms of representation are to be displaced, and a keener sense of the value of life is to take hold, bodies and faces traditionally excluded from the public political sphere must be admitted into this space, to be seen and heard. Moreover, in Butler’s formulation, ‘(i)if resistance is to enact the very principles of democracy for which it struggles, then resistance has to be plural, and it has to be embodied’ (2015: 18). In her view, this means that the speech act must be rethought in the light of contemporary bodily struggles—whether in Tahrir Square, Zuchotti Park, or Gezzi Square ‘in order to understand what is made and what is done in certain kinds of bodily enactments’ (2015: 18).

Following Butler, I also understand that ‘(w)e cannot easily recognize life outside the frames in which it is given, and those frames not only structure how we come to know and identify life but constitute sustaining conditions for those very lives. . . . Such frames structure modes of recognition, especially during times of war’ (2010: 23-24). Drawing on both Arendt and Butler, I will seek to elucidate how the mechanisms of erasure that I studied circumscribed or expanded the public sphere, determined the behaviour and actions of both citizens and public officials from the highest level of the political leadership to those at lower levels such as judges in local courts or police officers. Moreover, I will explore how these mechanisms of erasure shaped the ability to pursue justice whether through ordinary courts or political protests.

I propose that these mechanisms also had profound implications for the archive, i.e., what was inscribed and not in the historical record. I use the term archive here in its broader Derridean meaning as both a material repository and a metaphor for knowledge, memory, power, and the search for justice. For Derrida,
the archive is a place of ‘consignation’ and ‘commencement’. It is a place which collects, selects, classifies, and interprets. Every act of consignation is therefore imbued with and implicated in power and ‘there is no political power without control of the archive if not memory’ and ‘effective democratization can always be measured by . . . the participation in and access to the archive, its constitution, and its interpretation’ (Derrida 1996: 4). In the hands of the archons, i.e., those who have power over the archive, ‘documents in effect speak the law: they recall the law and call on or impose the law’ (2). Drawing on Derrida, Verne Harris (2011) argues that this power at work in the archives (what Derrida refers to as archontic power), is particularly apparent in circumstances of oppression and in times of democritisation. As Harris points out, authoritarian and oppressive regimes secure and legitimise their own rule by controlling access to the archive; what gets officially recorded and what is excluded. Atrocities committed by the state are excluded from the archive; so too are resistance and struggles for justice (Harris 2002).

To analyse how the mechanisms of erasure that I studied shaped and impacted the archive and the pursuit of justice, I will focus on the bureaucratic writing practices of the state. Adam Ashforth, in his study of South Africa’s Native Affairs Commission, notes that the ‘real seat of power’ in modern states is the ‘bureau, the locus of writing’ (1990: 5). Akhil Gupta, in his ethnography of bureaucrats charged with coordinating development programmes in rural Uttar Pradesh argues that writing is central to the shaping of the state. ‘Bureaucracies are machines for the production of inscriptions. Of all the activities that go into the daily routines of state officials, writing is probably the most important’ (2012: 142). In Gupta’s perception, the state is constituted through writing (2012: 143), which can take any number of different forms from circulars, reports, memos, letters, and surveys to complaints and petitions. I was particularly interested in exploring the opportunities afforded or not to surviving family members of the disappeared to complain and to bear witness to disappearances, and when and how such complaints and testimony ‘[found] their way into writing’ (Gupta 2012: 169). Isn’t writing, after all, a necessary precondition for any process of justice?

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19 Foucault’s definition of the archive as an assemblage of all discursive formations existing in a given society or ‘the system of discursivity’ that establishes the possibility of what can and cannot be said is perhaps equally relevant here. Foucault says: ‘The archive is first the law of what can be said’ (Foucault 2002: 145).
Subaltern Citizens and the Modes, Sites, and Scales of their Struggles

In ‘Sovereignty as Erasure’, Bargu (2014) concedes that even though sovereign power and its politics of erasure tend to give the impression of a self-reproducing plenitude, erasure is never complete: it leaves traces behind. She refers to the crucial role played by families of the disappeared to make the disappeared visible and to keep alive the memory of those who have been subjected to the erasing violence of the state, as crucial in this regard. It is through their agency that the disappeared insistently establish their presence and point to the profound impossibility of the absolute and total erasure of sovereign violence (2014a: 66). In this thesis, I seek to illuminate how family members of the disappeared challenged the erasure of disappearance during the period from 2009 to 2021 in Sri Lanka. In doing so, I drew on a number of theoretical concepts that I would like to clarify at this point.

Citizenship and Identity

Justice struggles, particularly after war or mass violence, tend to be recognised as fundamentally about restoring citizenship (Bashir and Kymlicka 2008; de Greiff 2010, 2012: Mihai 2016). i.e., the restoration of equal rights and duties bestowed on all those who are full members of a community as outlined in T.H. Marshall’s classic text Citizenship and Social Class (1950). Pablo de Greiff, the former UN Special Rapporteur for Transitional Justice, for instance, articulates the meaning of such struggles as follows:

Almost without fail, one of the first demands of victims is precisely to obtain recognition of the fact that they have been harmed, and intentionally so. But this is only one dimension of the sort of recognition that transitional justice measures arguably provide to victims. It is not primarily the victims’ great capacity to endure suffering that needs to be acknowledged. Ultimately what is critical for a transition and what transitional justice measures arguably aim to do is to provide to victims a sense of recognition not only as victims but as (equal) rights bearers and, ultimately, as citizens. Thus, transitional justice must engage in modes of redress that can not only assuage suffering but also restore the rights that were so brutally violated and affirm victims’ standing as full citizens. (2012: 42)

However, as I mentioned before, I contend that what is at stake in this struggle exceeds ideas of citizenship conceived in terms of a bundle of rights, or the guilt or innocence of perpetrators determined according to law. I believe this struggle raises questions around history, memory, masculinity, femininity, and national identity. Thus, I proceed on the understanding that irrespective of the possession of formal rights on paper and calls to recognise and implement those rights in the aftermath of
war, citizenship ‘practices’ of nation states all too often operate in ways that privilege some and marginalize others, thereby creating a hierarchy of citizens. Such an understanding of citizenship resonates with ideas expressed by critical citizenship scholars who see citizenship not simply as a set of legal rules governing the relationship between individuals and the state in which they live, but as a set of social relationships between individuals and the state and between individual citizens (Lister 1997:14). Histories, identities, and memories, which are more or less privileged or considered more or less virtuous, play a role in these relationships (Isin 2012, Nagy 2004: 645). Moreover, citizenship so conceived means recognizing it as practices and performances of claims-making rather than as a status, which one has or does not have (Das 2011; Sparks 1997).

Gendered, subaltern, citizen subjects, and mixed idioms of protest
Based on such an understanding of citizenship and drawing inspiration from Gayatri Spivak (1988; 1999), Alf Gunvald Nilsen and Srila Roy (2015) as well as Boaventura de Sousa Santos (2002), I conceive of the women at the heart of this thesis as gendered subaltern legal subjects who are waging a counter-hegemonic and counter-hierarchical struggle against the state. Nilsen and Roy propose a conceptual framework to study contemporary subaltern protests and resistance in India that approaches subalternity as located in a wide social field of power relations, which is at once ‘expansive, relational, intersectional’ (2015: 24) as well as messy and impure; and that traverse elite and subaltern domains; civil and political society; and the bounds of the ‘global’ and the ‘local’ (16). In so doing, they invoke a Gramscian definition of the subaltern, while critically engaging with the work of the subaltern studies collective in India. In returning to Gramsci, Nilsen and Roy recognise subalternity as being constituted by exclusion, domination, and marginality, not only based on class but race, ethnicity, culture, religion, and other markers of distinction. However, they emphasise that the subaltern is not devoid of political agency; rather, political organising is central to the condition of subalternity, even if it exists in different degrees or levels of development (12-13). Subalternity, in their conceptualisation, is thus ‘not pitted against politics’. Instead, ‘political struggle is understood, . . . as being intrinsic to subalternity’ (14). The subaltern in this conceptualisation is not the historical subaltern that appears particularly in the early work of the subaltern studies group as a pure, autonomous, implicitly male, essentialised subject. Nor is it the subaltern subject who is cut off from all lines of
social mobility, who cannot be heard, or represented without objectification or who remains unvalidated by dominant forms of knowledge and politics, in Spivak’s influential critique of the work of the subaltern studies collective, Can the Subaltern Speak? (1988). Instead, the subaltern you encounter in the chapters to come shares much in common with Spivak’s reconceptualization of the gendered subaltern in her later work as the ‘new subaltern’. The new subaltern in Spivak’s view is no longer cut off from lines of access to the centres of power. Rather as she points out, in today’s globalised world of the World Trade Organisation, NGOs, bio-research companies, UN development projects, and human rights organisations, the centre has direct lines of access to the subaltern. Moreover, there is a vast infrastructure that has been built to hear her voice. Spivak is of course, highly critical of this infrastructure, arguing that the new subaltern, caught between global capitalism/development and tradition/culturalism has been completely co-opted; her body is rendered data, and she is sought after as intellectual property (1999: 276). If this metaphor is extended to human rights, Spivak might well assert that human rights victim-survivors and their stories are also co-opted and sought after merely as data. However, as I will argue, even in the context of powerful transnational institutions of governance, subaltern subjects are not without agency; and processes of co-optation are never complete and perfect but messy and ambiguous.

In analysing this struggle, I also draw on Boaventura de Sousa Santos (2002), and his articulation of the relationship between power, law, and subaltern struggles. In de Sousa Santos’s view, subaltern subjects have an ambivalent relationship with the law, politicising their struggles for rights and justice, even before they are legalised to counter the deep power asymmetries at the core of their subordination and domination. In his view, they don’t turn their back on the law. Rather both law and rights are ’integrated’ in broader political mobilisations (467). Subaltern legality thus involves direct action, civil disobedience, strikes, demonstrations, and media-oriented performances; it is collective in nature, for it is only through collective action that subaltern subjects can muster the type of countervailing power necessary to bring about sustained change (de Sousa Santos and Rodrigues-Garavito 2005: 16). Subaltern struggles also combine different scales of legality (local, national, and global) and indeed may even subvert them in the sense of targeting the global in the local and the local in the global. It is a ‘transcalar legality’, where the forms of political mobilisation and their concrete objectives determine which scale must be privileged at which moment in time (de
Sousa Santos 2002: 468.; de Souza Santos and Rodrigues-Garavito 2005). The subaltern citizen subject in this conceptualisation is then a cosmopolitan/global subject, whose claim to rights is not bound within the nation state.

Drawing on the work of De Souse Santos, Sharma highlights the mixed idioms and multiple languages—statist and social, legal and moral—that subaltern women use to contest their subordination, to demand accountability and justice from the powerful, and to redefine and particularise legal conceptions of rights and citizenship. As she points out, this is an entangled politics where legal and non-legal narratives of rights and citizenship become impossible to pry apart and are mutually transformed through particular struggles in particular times and places (Sharma 2011: 977-978).

In the chapters that follow, I will seek to explore to what extent the struggle for justice that I studied exemplified (or not) the thesis put forward by de Sousa Santos and Sharma. What tactics and modes of protests did the women at the heart of this study mobilise to advance the spaces of appearance available to them to wage their struggle for justice and to what effect did they do so? Pushing beyond de Sousa and Santos and Sharma, I will argue that the subjectivities of the subaltern subjects at the heart of this thesis were also defined by grief, mourning, and hope, and that such emotions may become a democratic resource in such struggles. In doing so, I draw on the scholarship on the politics of mourning underlying struggles of mothers and wives of the disappeared in varied historical and political contexts, from Argentina to Turkey (Marsden 2015; Rojas-Perez 2013; Schirmer 1989; Sutton 2008; Taylor 1997, 2001; Zia 2018). I also draw on the scholarship on grief and mourning as a democratic resource (Butler 2004; Hooker (2020).

**Contribution to Scholarship**

My thesis engages with a range of themes, including nationalism, sovereignty, rule of law, transitional justice, citizenship, identity, subjectivity, performativity, grief and grievability, the public sphere, collective action, and solidarity. I seek to contribute to three bodies of scholarship in particular. Firstly, the scholarship on the anthropology of the state as seen from its margins. Secondly, gendered resistance and struggles—particularly the subfield of feminist scholarship that has analysed struggles for justice waged by family members of the disappeared. And thirdly, violence and its afterlives in Sri Lanka.
Firstly, this thesis seeks to make a contribution to the anthropology of the state from the perspective of those at the margins of the state. As Das and Poole point out, ‘an anthropology of the margins offers a unique perspective to the understanding of the state, not because it captures exotic practices, but because it suggests that such margins are a necessary entailment of the state’ (2004: 4). In particular, this study seeks to throw light on ‘the margins as a space between, bodies, law, discipline and power’, and how the state tries to manage or pacify those considered unruly or recalcitrant subjects at the margins into ‘lawful subjects’ of the state (9-10). In focusing on postwar Sri Lanka, I draw attention to state technologies of governance in the wake of mass violence and in contexts of resistance and struggles for justice and the contradictory local and global forces such as human rights norms and nationalist ideology that shape the postwar, postcolonial state.

Previous scholarship on the Sri Lankan state has explored the way tropes within Sinhala Buddhist nationalism such as the tank, the temple and the paddy field (Tennekoon 1988), the village (Brow 1988, 1990) or the rural (Woost 1990) shaped, were mobilised in and disseminated through the developmental state in Sri Lanka. Michael Woost writing in the 1990s, pointed out that ‘development in contemporary Sri Lanka appears to be much more than merely the introduction of new technologies and financial supplements to the agrarian and domestic economies. It is a complex array of scarce and unequally distributed material resources, social practices, and cultural activities that provide an ideal context for disseminating nationalist ideologies’ (1990: 164). A key feature of these practices, he argued was to link ‘development strategies with versions of a national past in which progressive rural change is framed as a project to restore village society to its former glory as in the times of the ancient Sinhala kings’ (164). However, as Harshana Rambukwella has argued, tropes such as the tank, the temple, and the paddy field may now be ‘tired signifiers’, which no longer have the same hold over the public imagination as they did in the past (2018: 23). It is in this context that I foreground the significance of the Manichean tropes of ‘hero’, ‘terrorist’, and ‘traitor’ in shaping the state in the aftermath of the war, seen from the perspective of a group of citizens who were affected by the war.

Secondly, this study seeks to contribute to the anthropology of subaltern resistance in the aftermath of mass violence. At the outset of this study, I looked to ethnographies of women’s engagements with ‘transitional justice’ processes in South Africa, East Timor, and Peru so illuminatingly analysed by Fiona Ross (2003),
Lia Kent (2012; 2014), and Kimberly Theidon (2007, 2013) to understand the postwar struggle for truth and justice in Sri Lanka. This was because the concept tended to dominate how human rights activists and the international community talked about and pursued postwar justice in Sri Lanka, particularly following the inauguration of a formal transitional justice process by the United Front government (See Chapter Four). Yet, transitional justice as a conceptual framework cannot capture the struggle that I document here. The women next of kin, who are my interlocutors, have been searching for truth and justice for over a decade now, in both formal judicial processes and so-called truth and reconciliation processes, through three different political regimes, and through one failed internationally authorised transitional justice process. To understand this struggle, we need to look elsewhere, to struggles, waged in the long durée, over decades, for instance by groups such as the Madres de la Plaza de Mayo in Argentina, The Association of Families of the Detained-Disappeared in Chile, The Association of Relatives of Detained-Disappeared in Guatemala, The National Network of Families of the Disappeared and Missing in Nepal, the National Association of Families of Kidnapped, Detained and Missing Persons of Peru, The Saturday Mothers in Turkey, or the Association for the Parents of the Disappeared in Kashmir (Arditti 2002; Bargu 2014; Bouvard 1994, Marsden 2015; Rojas-Perez 2013; Schirmer 1989; Sutton 2008; Taylor 2001; Zia 2018). The struggle that I studied had much in common with the abovementioned studies defined by the liminal status occupied by family members left behind due to the absence of a body, lack of closure, unending mourning, and oscillation between hope and despair. Thus, while this thesis is focused on a struggle which is very specific to Sri Lanka, it has, I believe, political and theoretical relevance beyond Sri Lanka to similar struggles elsewhere, where women have deployed speech, writing, and embodied forms of protest to demand truth and justice for disappearances. To the burgeoning critical scholarship on human rights and transitional justice in postwar societies (Arthur 2010a, 2010b; Hinton 2010; Kelly and Dembour 2007; Shaw 2007; Shaw and Waldorf 2010; Subotic 2009), this case study offers an implicit critique. I seek to make visible the limits of globalised justice projects, particularly in a deeply divided context such as Sri Lanka.

More specifically, this thesis seeks to contribute to the literature on the afterlives of violence in Sri Lanka covering the ethnic conflict and two previous insurrections in the south of Sri Lanka, much of it produced by anthropologists
(Spencer 2007). This body of literature includes Argenti-Pillen (2002), de Silva (2005), Halliday (1971), Hewage (2013), Hughes (2013), Jeganathan (1998, 2000, 2001a, 2004), Obeyesekere (1974), and Tambiah (1992). Of this literature, some of the most powerful have been based on empirical research with survivors of violence, conveying not merely the destructive but the productive and contingent potential of violence (Daniel 1996; De Alwis 1998a, 1998b, 2007, 2008, 2009a; Lawrence 2000; Hatsumi 2012; Perera 1999; Thiranagama 2011; Thiruchandran 1999; Walker 2013). As Sharika Thiranagama (2011) has pointed out war is a site of making and unmaking subjects. This is, of course, a profoundly gendered process, for war makes and unmakes men and women in different ways. In particular, the imperative to break the silencing and to bear witness to the violence of the war has been overwhelmingly borne by women. As the powerful ethnographies of Patricia Lawrence (2000) and Rebecca Walker (2013) demonstrate, even in the absence of a space of appearance in the Arendtian sense, women found ways to share their sorrows, to grieve and mourn, and to support each other throughout the war years, whether by invoking amman goddesses or through the creation of support groups. Walker writes eloquently about the lack of space: physical and emotional space; a space to talk, act, and relax; and a space to do what one wants to do without premeditation, planning, and the expectation of disruption during the years of war in Batticaloa (2013: 29). My work shifts the attention from the relatively private, secluded, safe spaces analysed by Lawrence and Walker to a struggle waged squarely in the public sphere, so far unexamined in academic scholarship.

In documenting and analysing this struggle, I am deeply indebted to Malathi de Alwis’s work on the southern Mothers’ Front, which emerged from the ruins of the second southern insurrection. Her study of the Front, from a feminist perspective, located within an analysis of what she refers to as injured yet productive and constitutive patriarchal Sinhala Buddhist nationalism, was enormously influential in my own analysis. In her conclusion, de Alwis reads the Front as engendering a fraught maternalism that is simultaneously unrespectable and domesticated, demonic and threatening but also sentimental and pathetic, poor and marginalised while racially dominant and exclusionary. While she recognises the effectiveness of the Front at a time when other more familiar voices of dissent had been silenced, she also calls attention to the limitations of maternalistic politics made possible within cultural categories of respectability, domesticity, and suffering, and intelligible within nationalism (1998a: 292). My study picks up this thread relating to the limits of
the southern Mothers’ Front and its tragic implications for Tamil families in the north and east.

The Chapters

The rest of the chapters in this thesis will unfold as follows. In Chapter One, I analyse the Rajapaksa regime’s categorical denial of disappearances together with its construction of those pursuing truth and justice for disappearances as enemies of the nation. Moreover, I appraise how this discourse was operationalised at the micropolitical level of the lives of those searching for disappeared loved ones, and how it undermined the space of appearance available for family members to appear as rights-bearing subjects to claim legal rights. This chapter begins with a brief history of the deployment of disappearances as a counter-insurgency strategy by the state during the first southern insurrection (1971), the second southern insurrection (1988-1991), and the ethnic civil war (1983-2009), and how those involved in these armed struggles were labelled as ‘terrorists’, ‘traitors’, and ‘enemies’.

In Chapter Two, taking the literature on war, soldiers, and national identity as a point of departure, I trace the genealogy of the trope of the ‘heroic soldier’ as a symbol of national identity, exemplary masculinity, and a sign and synecdoche of the state in postwar Sri Lanka. I argue that this trope was and is a particularly powerful Manichean mechanism of erasure that was deployed by the Mahinda Rajapaksa regime to foreclose efforts to hold the state accountable for war-related atrocities. While this is not a discourse unique to Sri Lanka and while it draws on an archive of ideas, images, themes, and narratives which enjoy almost universal appeal, I argue that in Sri Lanka it derives its power and authority from three sources: firstly, by its participation in Sinhala Buddhist nationalism’s foundational myth relating to rata (country), jathiya (race) and agama (religion), which resonates deeply and widely with the Sinhala Buddhist population; secondly, as a highly gendered and sexualised discourse, which interpolates women into the narrative of the nation, through the parallel and complementary construction of a docile, nurturing, sacrificial and patriotic femininity; and thirdly, from the emergence and ubiquitous presence of the soldier as a highly visible, cultural figure.

In Chapter Three, I analyse the so-called reconciliation efforts implemented by the Rajapaksa government in response to local and international pressure to account for war-related atrocities. I explore a trio of mechanisms – commissions,
compensation, and death certificates deployed by the regime to appease these demands. I show that these mechanisms have a long history in Sri Lanka that can be traced back to Sinhala women’s demands for justice for disappearances during the second southern insurrection. I argue that while they fulfilled the meaning of justice in the wake of the southern insurrection, Tamil family members of the disappeared interpreted these exact mechanisms as an extension of the postwar necropolitics of erasure of the Rajapaksa government. I show how they engaged with these mechanisms both as ‘threat and guarantee’, re-signifying the commissions as a ‘space of appearance’ to bear witness to disappearances and resisting death certificates and compensation. In so doing, I contend that they refused their record to an archive of death and created an official archive of disappearances. I also claim that their engagement with these processes was formative for the emergence of new dissident political subjectivities after the war and set the stage for the struggles that I analyse in the chapters that follow.

In Chapter Four, I focus on the period after the 2015 elections and the inauguration of a transitional justice programme by the United Front government and its co-sponsoring of a resolution, which promised to establish several transitional justice mechanisms to address war-related atrocities. In this chapter I explore the way in which the defeat of Rajapaksa, the UN resolution, and the establishment of the Office on Missing Persons (OMP) were brought together in nationalist narratives, not merely as an attempt to send war heroes to international gallows but as an assault on the sovereignty of the nation taken to mean both autonomy and masculinity of the nation-state and its male subjects. Moreover, I examine the way these events acted as a lightning rod for nationalist organisations to coalesce around the leadership of Mahinda Rajapaksa and remobilise on the ground of defending heroic soldiers. I analyse the words and deeds of nationalist actors as a ‘performance’ of an anti-western, anti-colonial sovereignty premised on patriotic masculinity and the UNHRC in Geneva as the primary site of this performance. I also argue that nationalist conceptions and performances of sovereignty and patriotic masculinity must be seen as an extension of the Manichean, necropolitical mechanism of erasure of sovereign violence deployed in this instance not by the state but by the opposition in collusion with nationalist organisations. Moreover, I reflect on the perils of internationalised justice in a postwar, postcolonial, ethno-nationalist context such as Sri Lanka.
In the next three chapters, I examine three modalities of protest and petition, deployed by family members of the disappeared as part of the struggle for truth and justice for the disappeared from around 2013 to 2020. In each of these three chapters, I seek to advance my argument about how law and politics, rights and emotions, the local and the global are entangled in subaltern struggles. In Chapter Five, I foreground the law as a modality and the courthouse as a site of subaltern protest of family members of the disappeared. I explore five habeas corpus applications filed by five women family members of the disappeared in the High Court of Vavuniya during the Rajapaksa years. I assess how the discourses of denial, ‘heroes’ and ‘enemies’ were operationalised at the micropolitical level of the courthouse during this time. I go on to analyse the court’s decision in these cases, which was delivered after the United Front assumed power in 2015. I seek to demonstrate that the election of the United Front did not ensure a fundamental change in the way this case was prosecuted.

In Chapter Six, foregrounding the street and public mourning as another modality of subaltern protest, I analyse the continuous roadside protests staged by women family members of the disappeared from 2017 to 2019 that begins this introduction. I consider these protests as an embodied performance of mourning and longing and yet another expression of subaltern citizenship to elicit an ethical-political response from the Sri Lankan political leadership and its polity. Moving beyond the speech acts of Arendt’s space of appearance, I explore the distinctive characteristics of these protests. I argue that these protests represented the most concerted and insistent form of political action undertaken by family members of the disappeared following the war’s end. I go on to explore the response of the Sri Lankan state to these protests via Butler’s ideas around the normative frameworks that govern our ability to see and hear those whose lives have been rendered ungrievable. In doing so, I seek to also explore mourning as a democratic resource as well as its limits.

Furthermore, in Chapters Five and Six, I argue that the transition from Rajapaksa rule to the United Front opened up the democratic space to pursue truth and justice for disappearances, yet this space was limited, contingent, and fragile. I argue that despite the change in government, the ideological frame of the heroic soldier continued to shape attitudes and responses to the demand for justice. I seek to show that even the United Front, which came to power on the promises of justice, ultimately replicated some of the same mechanisms of erasure deployed by the
Rajapaksa government, making it impossible to hold perpetrators of disappearance to account, even as it also inscribed testimonies of family members of the disappeared on to the state record.

In Chapter Seven, I explore the emergence of ARED as transnational citizen subjects and the UNHRC in Geneva as yet another site of their struggle. In doing so, I trace how their demand for international involvement in a local truth or justice mechanism on disappearances, gradually transformed into a claim for a purely international mechanism, i.e., a call for global justice outside the bounds of the sovereign state. I show that the OMP as envisaged by family members, and particularly by ARED, was one with substantial international involvement. In the absence of provisions guaranteeing international participation in the OMP, they began to appeal to the UNHRC to intervene on their behalf by establishing a purely international mechanism or by referring Sri Lanka to the International Criminal Court. In making this demand in person at the UNHRC, I argue that they expanded the space of appearance available for their struggle to the international arena, while unsettling the politics of representation underlying the UNHRC. Yet, I also contend that in the context of the international community’s inability to accede to this demand, they are increasingly finding common cause with Tamil nationalist organisations inside and outside the country. I conclude that only time will reveal the full implications of these new alliances and networks of support.

In the final chapter, I revisit the major themes underlying this thesis and draw out and make explicit the different threads that tie the various chapters of this thesis together. In a context where the struggle for justice that I am studying is still ongoing, in place of a conclusion, I invoke the possibility of an alternative imaginary to the question of justice than offered by Sinhala Buddhist nationalism or internationalised justice.
Figure 2: Protestors demanding the release of Jeyakumary, detained by the Rajapaksa government in March 2014. Jeyakumary was in the frontline of the struggle for truth and justice for disappearances during the Rajapaksa years.
1.

Constructing Enemies of the Nation:
Sovereign Violence and its Erasures

Banu Bargu notes that to say that someone has been disappeared is to speak of a complex crime comprising multiple elements, which simultaneously and serially violates several different rights: An illegal abduction; detention in a secret detention centre; torture, most likely followed by murder; a secret burial or disposal of the body, and denial and deception. This crime violates the victim’s right to security and dignity of person; the right not to be subjected to torture or other cruel, inhuman, or degrading treatment or punishment; the right to humane conditions of detention; the right to legal personality; the right to a fair trial; the right to family life; and when the disappeared person is killed, the right to life. Moreover, this is a concentric and a continuing human rights violation, which targets not only the disappeared person who is placed outside the protection of the law but also others, beginning with the immediate family members of the disappeared and pervading the public at large in concentric circles (Bargu 2014: 43).

Drawing on Thomas Hobbes, Bargu goes on to argue that there is a politics of erasure at work in the discursive foundations of modern sovereignty and that enforced disappearances are an extension of this politics, enacted against those designated as enemies of the state. In invoking Hobbes, Bargu recognises that Hobbes is the ‘author who occasions the juridical interpretation of sovereignty that achieves dominance among competing forms’ (2014: 51). He is the one for whom punishment must follow judgment by a public authority once the criminality of the subject is established, provided the punishment is commensurate with the crime and fulfils a disciplining function (51-52). However, Bargu contends that Hobbes conceives of a two-tier power regime, which makes a distinction between war and crime, enemy and citizen/subject, and punishment according to prior law and unrestrained violence. The citizen is entitled to the rule of law and legal punishment within the purview of law; the enemy is not. The enemy in Hobbes’ commonwealth is removed from the protection and certitude of law. Indeed, the harm inflicted upon the enemy is done by right of war and not by way of punishment. But the enemy in
Hobbes commonwealth refers to both the external and the internal enemy. Thus, specific segments of the citizenry may be marked as enemy others—rebels, traitors, insurgents and the like—and cast outside of the boundaries of the political community, and made targets of unbounded sovereign hostility (51-52, 60). Hobbesian enemies are punished ‘by natural right, i.e., not as bad citizens, but as enemies of the commonwealth’ (Jaede 2016 citing Hobbes 1997: 166). In Hobbes’s conceptualisation, all these forms of punishment are lawful. For Bargu, insofar as the violence against the internal enemy is concerned, it is more appropriate to call it ‘extralegal’. In Bargu’s view Hobbes thus teaches us that ‘extralegal violence, far from being an aberration, is a constitutive feature of modern state sovereignty, inscribed into its conceptual edifice’ (2014: 56). On the same logic, it would be meaningless to talk of ‘impunity’ for such violence. Rather, in Bargu’s conceptualisation this is violence that can be simply erased. She states:

To the violability, torture, and destruction of this body, we must now add its erasability from existence, as the ultimate practical proof (and fantasy) of power. As it constructs the category of the rebel as a subject without rights and worthy to be destroyed as an enemy, Hobbesian sovereignty arrogates to itself the power not just to torture and kill in the form of a terrifying public spectacle but also to abduct and arbitrarily detain bodies, to torture and kill them in secrecy, and to hide or get rid of the remains, thus practically erasing them out of existence. The specifically erasing form of violence involved in the practice of enforced disappearances can thus be better understood as an extension of the sovereign politics of erasure. (63)

Banu is right to direct our attention to talk of terrorists, traitors, insurgents, enemies, and so on as mechanisms of erasure in contexts of mass violence. Drawing on Hobbes and Bargu, I recognise that understanding impunity as erasure provides a particularly productive and generative frame to explore the impossibility of pursuing justice for disappearances within the socio-political and legal context in Sri Lanka. However, as I proposed in the introduction, I contend that it is necessary to go beyond the Hobbes /Bargu conceptualisation of sovereign violence to reveal a more complex Manichean necropolitics of erasure in postwar Sri Lanka. I contend that this politics of erasure comprised multiple discourses and practices, where the emphasis was no longer on the disappeared and their production as terrorists or traitors. In this chapter, I will explore one aspect of these multiple discourses and practices—the discourse of categorical denial of disappearances by the postwar Rajapaksa government and the construction of those pursuing truth and justice for disappearances as enemies or traitors of the nation. I will also explore how this discourse was operationalised at the micropolitical level of the lives of those...
pursuing truth and justice and how this discourse and its associated practices undermined the space of appearance available for victim-survivors to appear as right bearing subjects to claim legal rights. However, first I begin with a brief history of the deployment of disappearances as a counter-insurgency strategy by the state during the first southern insurrection (1971), the second southern insurrection (1988-1991), and the ethnic civil war (1983-2009) and the way in which those involved in these armed struggles were labelled as terrorists, traitors, enemies, etc. I locate this history in the development of international human rights standards relating to the disappeared. I believe this history is necessary to understand the shift to denial as a central mechanism of erasure deployed by the postwar Rajapaksa government.

A History of Disappearances

Disappearances were first deployed by the armed forces in Sri Lanka as part of a repertoire of counter-insurgency strategies featuring extrajudicial killings, arbitrary detention, and torture in 1971. The occasion was the first southern insurrection, when the Janatha Vimukthi Peramuna (JVP or the Peoples Liberation Front), made up mainly of unemployed young boys educated in the vernacular Sinhala language from politically, socially and economically marginalised, rural backgrounds, attempted to capture state power. It was a poorly planned, executed, and coordinated effort, which was crushed within a matter of weeks with ‘ruthless efficiency’ (Sivanandan 1990: 225). At the time, the government did not deny the excesses of its law, order, and security apparatus. In fact, the violence of the counter offensive went almost unremarked except in a few journalistic accounts and scholarly articles that refer to deaths and detainees. With a few exceptions, disappearances are barely mentioned in these accounts. However, a close reading of the literature as well as several of my interlocutors confirmed that at least some of the deaths would today be defined as disappearances.

If disappearances went unacknowledged and unremarked in 1971, they were extensively documented, not just by a plethora of local and international Non-Government Organisations (NGOs), but by the Sri Lankan state itself, in reports bearing its seal, in the context of the second southern JVP insurrection and the civil war. Of particular significance to this research are the report/s of the four zonal

\[\text{20 I begin with 1971, because there is no documentation on use of disappearances prior to 1971 by the colonial or post-colonial state.}\]
Presidential Commissions of Inquiry into Involuntary and Enforced Disappearances of 1997; the Lessons Learnt and Reconciliation Commission (LLRC) (LLRC 2011); The Presidential Commission for the Investigation of Complaints of Missing Persons (PCICMP) (PCICMP 2015a and PCICMP 2015b); and the Consultation Task Force on Reconciliation Mechanisms (CTF) (CTF 2016a and CTF 2016b). Therefore, disappearances are not only part of the stories and memories of the second southern insurrection and the ethnic conflict; they are part of the historical archive—a matter I take up more fully in the chapters that follow.

The aforementioned four Zonal Commission Reports of 1997 in particular bear powerful testimony to the nature and magnitude of disappearances during the second southern insurrection in stark and horrific detail. I discuss the circumstances, which led to the second southern insurrection in the section that follows. Here I want to note that hundreds and thousands of young men were disappeared in the state’s counter-offensive to quell this insurrection. Many of the disappearances during the second southern insurrection were following an arrest or abduction conducted in public. In the course of its hearings, the Zonal Commission for the Western, Southern and Sabaragamuwa Provinces (Col-WSS) heard allegations of participation of local politicians in disappearances; of informants who functioned as channels of (mis)information between politicians and the security forces; and of lists of names of political enemies being supplied to the security forces for elimination. Indeed, the Commission was unequivocal that most of the disappearances during this time constituted an ‘orchestrated phenomenon and not a series of isolated instances explicable in terms of “excesses” by individual transgressors’ (Col-WSS 1997: 34, 32), and that it was not possible to understand disappearances without reference to the ‘political dimension’ and the complicity of the political leadership (Col-WSS 1997: 34, 49).


22 Not all belonged to the JVP, for under cover of the counter insurgency, political leaders of the United National Party (UNP) also branded organizers, activists and supporters of the main opposition party, the Sri Lanka Freedom Party (SLFP), as JVPers to be disappeared by the armed forces (Col-CNWNCU 1997: 5). Personal differences, jealousies and animosities, family disputes over property, love affairs and caste rivalries were at the bottom of other disappearances (Col WSS 1997: 154).
Disappearances linked to the ethnic conflict

Tamil men suspected of militancy began to disappear in the late 1970s, even before the conflict became militarised in 1983 (Amnesty International 1990: 3). They continued to disappear until the end of war in 2009. These disappearances have been documented by numerous organisations. However, reports and briefings produced by the University Teachers for Human Rights, Jaffna (UTHR[J]) from its inception in 1988 up to 2002 read together, perhaps, give the most comprehensive overview of disappearances related to the ethnic conflict. UTHR (J), which was a group of university teachers based in Jaffna was often the first to bear witness to disappearances as they occurred, in meticulous detail based on first-hand accounts from witnesses or people living in the north and east.23 The individual and collective incidents of disappearances documented in their reports make it possible to map the magnitude of disappearances in the north and east at different times and different places. They allow determining how disappearances waxed and waned according to the vicissitudes and vagaries of the war, depending on whether it was a period marked by military operations and intense bouts of fighting, a period of relative calm, for instance, brought about by a ceasefire, or land was being lost or gained by one or other of the parties to the conflict. Their reports give a sense of which army commanders facilitated and which units were responsible for disappearances. They repeatedly draw attention to the fact that to be Tamil was often sufficient to be suspected of being a ‘terrorist’ and that it was civilians who had nothing to do with the LTTE who were often disappeared (See UTHR[J] 1991a, 1991b, 1999). The vast majority of those so disappeared were Tamil men. Nevertheless, Tamil women and children, and Sinhalese and Muslims considered sympathizers of the Liberation Tigers of Tamil Eelam (LTTE) or who were critical of the government also form a minority of those who disappeared in connection with the ethnic conflict.

The word ‘disappearance’ conjures up images of secretive and clandestine acts conducted in the dead of night by hooded men, travelling in unmarked vehicles, secure in the knowledge that these acts could never be traced back to them. It

23 Reports of the UTHR(J) are archived on their website at the following link: https://uthr.org/index.html. One of their founder members, Rajani Thiranagama, was killed by the LTTE on 21st September 1989. Thereafter, all the members were forced to leave Jaffna, but continued to work ‘to challenge the external and internal terror engulfing the Tamil community as a whole through making the perpetrators accountable, and to create space for humanising the social & political spheres relating to the life of our community’ (See Mission and Statement of Purpose https://uthr.org/history.htm, accessed 1 November 2021.
suggests a crime without witnesses or clues. Yet, enforced and involuntary disappearances in the context of the civil war followed a very broad playbook, from the deeply secretive and invisible to the spectacularly visible. People were abducted from their homes and public places, in the dead of night or the harsh light of day, by masked men or those who made no attempt to hide their identities. Many Tamils disappeared at check points dotted across the country during the years of the war, while travelling from one place to another. The PCICMP provides the following list of locations from which people were abducted and then disappeared from 1983 to 2009:

1. From their homes.
2. From places of work or on the way to work.
3. While at the market.
4. While working in agriculture fields.
5. On the way or returning from school.
6. By entering schools and forcibly taking away children from their classrooms who were under the custody of school teachers.
7. While travelling in public transport.
8. While taking cattle for grazing.
9. While going for collection of firewood.
10. While on the way to visiting relations and friends.
11. While going for bathing to tanks.
12. From hospitals.
13. From refugee camps. (PCICMP 2015a: 10)

It is a chilling list; evidence of how the spectre of disappearances haunted the body politic and Tamil lives, and the private and the public sphere, with little respite during the war years. The countless stories told by family members of the disappeared over the years, read together, in fact suggest a relentless apparatus that abducted teachers, university lecturers, students, lawyers, farmers, activists, fishers, priests, traders, journalists, and many others, without distinction. It was ruthless and random, cunning but clumsy. If you were marked to be disappeared, no one or no place, it appears, was safe. But precision was not the goal. Those who just happened to be in the wrong place at the wrong time were equally vulnerable.

Some disappearances were theatres, if not spectacles of violence conducted in plain sight, amidst scores of witnesses, resonant of the pure, naked, and
unadulterated form of sovereign power, which Foucault describes in the opening pages of *Discipline and Punish* (1977). Take, for instance, the incidents of mass disappearances of groups of men and boys or whole villages or communities who were rounded up, piled into army trucks (with their license and insignia visible to all), and taken into army camps never to be seen again. Many such incidents occurred in the early 1990s, in the aftermath of the southern insurrection and the breakdown of the Indo Sri Lanka Peace Accord (ISLPA), when the armed forces returned to their posts in the north and east. These include the disappearance of 158 displaced persons, on 5th September 1990, including men, women, and children, sheltering in the Eastern University (UTHR [J] 1991a) and the disappearance of more than 180 persons from three villages near an army camp in Sathurukondan on 9th September 1990 (UTHR[J] 1991b). Similarly, in the mid 1990s, when the armed forces recaptured the whole Jaffna peninsula from the LTTE following the military operation codenamed *Riviresa*, truckloads of young men disappeared in cordon-and-search operations conducted by the army. Following the election of Mahinda Rajapaksa as President in 2005 and the return to full-scale war with the LTTE, local and international human rights organisations began to document the return of the ‘nightmare’ of disappearances (Human Rights Watch 2008).

Following the end of the war, hundreds of women gave testimony about disappearances that occurred during the final phase of the war from around 2006 to 2009. This includes the disappearance of hundreds of persons who surrendered to the army during the final days of the war—on the 16th, 17th, and 18th of May 2009—who have not been seen since.

While this thesis is concerned with disappearances enacted by the state, it is relevant to note that the LTTE was also responsible for many disappearances. The LTTE disappeared ordinary people not having any group, political or institutional affiliation, whose crime was spontaneous village level opposition to the LTTE (UTHR 1997); Muslim and Sinhala civilians; forcibly conscripted children; and armed forces and police personnel taken into LTTE custody amongst others (UTHR [J] 2001; CTF 2016b: 180; Col-NE 1997). The report of the Col-NE refers to several incidents of disappearance during the period between 1988 and 1996, including 21 Muslims who disappeared in the village of Kurukkalmadam at the border of Ampara and Batticaloa in May 1992; the disappearance of 21 Muslim, Sinhala, and Tamil police personnel from Akkaraipattu and Pottuvil police stations; and the disappearance of 51 soldiers from the Jaffna district. The report further notes that
the Commissioners contacted the ICRC to locate the whereabouts of the 21 policemen but did not receive a ‘helpful response,’ even though the ICRC was in regular contact with the LTTE (CoI-NE 1997: 48). Family members of the disappeared who testified before the CTF referred to a wave of LTTE abductions in the Vanni for recruitment purposes at various points during the war, some of whom never returned to their families (CTF 2016b: 180). Muslim family members also reminded the CTF that many Muslims disappeared in LTTE-controlled areas in the months leading up to and during the eviction of Muslims from the Northern Province in 1990 (CTF 2016b).

The LTTE often assassinated those considered traitors or enemies to their cause while taking credit for such killings. However, the LTTE neither acknowledged nor denied disappearances. Family members of those who disappeared in the hands of the LTTE are less likely to have reported disappearances to a state mechanism. It is therefore difficult to ascertain how many people may have disappeared in the hands of the LTTE. These family members are also not part of the movement for truth and justice that I study here and are more likely to have taken compensation from the state.

Understanding Impunity as Erasure
It is impossible to say with any accuracy how many people have disappeared in Sri Lanka in the last 40 years. The UN Working Group on Disappearances (WGEID) has consistently noted that Sri Lanka has the second-highest rate of disappearances in the world, next to Iraq.24 While no statistics relating to those who disappeared during the first southern insurrection exist, estimates of those who died and disappeared during the second southern insurrection vary from 40,000 to 100,000. The four commissions of inquiry that the government subsequently appointed documented approximately 33,000 complaints of disappearances and extrajudicial killings undertaken by state officials, police officers, security forces, as well as other armed groups, both allied with and fighting against the government. 23,087 of these complaints were ascertained (Thomson-Senanayake 2014: 14). This may still amount to the highest number of disappearances within the briefest span of years documented in Sri Lanka (de Alwis 2009a: 382). The PCICMP

appointed in 2013 recorded over 17,000 complaints of disappearances connected to the ethnic conflict from 1983 to May 2009 (PCICMP 2015a: 10).

The word ‘disappearance’ was first used to describe violations that occurred in Guatemala after the military repression of 1966, followed by similar violations occurring in Argentina after 1977 and Chile after 1983. These violations were epitomised by bangs on the door at night, heavily armed men, unidentified vehicles, and impenetrable walls of silence and impunity faced by families left bereft at the sudden and unexplained loss of their loved ones (Frey 2009: 52-53). It was these stories emerging from Latin America that pushed the international community and the UN to address enforced and involuntary disappearances as a very specific kind of human rights violation. In December 1978, the UN General Assembly passed the first of a number of UN resolutions on disappearances. On 29th February 1980, the Commission on Human Rights set up the UN WGEID to examine questions relevant to enforced or involuntary disappearances of persons. The Working Group—comprising five persons from five different geographic locations—was tasked with the mandate to consider information about cases from any country in the world.\textsuperscript{25} In December 1992, it adopted the Declaration on the Protection of All Persons from Enforced Disappearances.\textsuperscript{26} On 20th December 2006, the UN adopted the International Convention for the Protection of All Persons from Enforced Disappearances. Art. 1 of the Convention proclaims that ‘no one shall be subjected to enforced disappearance’. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification for enforced disappearance. Art. 2 defines enforced disappearance as the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorisation, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.\textsuperscript{27} In 2010, the UN declared 30th August as the International Day of the Victims of Enforced Disappearances to be observed from 2011.

\textsuperscript{25} The UN Working Group was allowed access to the country in 1991 for 10 days, (7-17 October), followed by visits in 1992 and 1999, although they were thereafter not granted access to the country again until 2015.
\textsuperscript{26} Declaration on the Protection of All Persons from Enforced Disappearance, A/RES/47/133, 18 December 1992.
Despite this impressive international normative framework, the long history of disappearances in Sri Lanka is a history of ‘impunity’. Attempts to pursue justice for disappearances through the courts during the second southern insurrection and the civil war were exercises in futility. Within a liberal legal approach and according to the principle of separation of powers, the law and its institutional apparatus (courts, judges, lawyers) are supposed to be independent of the executive and legislative branches of government. The judiciary is supposed to secure us from the abuse of sovereign power. But in the vast majority of disappearances cases, separation of powers and judicial independence have been fictions without any grounding in reality. The judiciary functioned in these cases not as a separate organ of government but as an extension of sovereign power.

In the 50 years of disappearances deployed as a counter insurgency strategy in Sri Lanka, the legal record contains two successful prosecutions of junior level armed forces personnel and a few ongoing cases. The two cases—the Embilipitiya school-boys case and the Krishanthy Kumaraswamy case were made possible in the democratic space that opened up after the election of the People’s Alliance (PA) and Chandrika Kumaratunga as President in 1994.²⁸ I read these two cases as ruptures in the erasing practices of the state and the fabric of ‘impunity’. They lend credence to the view that the transition from a violent and authoritarian regime to a more democratic regime can open up the space to pursue justice for violence perpetrated by the state. Yet as I will show in more depth in Chapter Five, these openings are partial and fragile. Governments that come to power on promises of truth and justice for disappearances, such as the PA in 1994 and the United Front in 2015, can and do end up replicating the discourses and practices that uphold and entrench impunity, making it impossible to hold those responsible for disappearances to account. A full account of sovereignty thus requires an understanding of the ‘structures, relationships and ideas that make up everyday life in all their political, economic and socio-cultural complexity’ and the ways in which a ‘permissive space’ is created for the deployment of extra-judicial violence by the state (Cooper-Knock 2018: 28).

Sri Lanka was under a state of emergency for much of its postcolonial history. Following the first declaration of emergency in 1958, the country was intermittently under emergency until 1983. The state of emergency announced in

1983 on the heels of the militarisation of the ethnic conflict lasted for almost 30 years until August 2011, with a short period of respite in 1989 and a more extended period from 2001-2004 (Coomaraswamy and de los Reyes 2004: 272-273; Hewage 2013; Néshia 2010; Satkunananthan 2015; Udagama 1998: 271; Welikala 2008). Emergency (ERs) supplemented by the Prevention of Terrorism Act No. 48 of 1979 allowed the police and armed forces to derogate from ordinary laws of search, arrest, and detention in the interest of public security; preserve public order; suppress mutiny, riots, or civil commotions; and maintain essential services.

Under ordinary Sri Lankan criminal law, a limited number of persons have the power to make an arrest. Moreover, the authority making the arrest has to bring the arrested person before a judicial officer within 48 hours of the arrest. Thereafter, a judicial authority must authorise the further detention of the arrested person in an official place of detention (Udagama 1998: 275-276). However, under ERs and the PTA, the persons empowered to make arrests are broadened to include armed forces personnel, who can detain an arrested person for a period of 18 months without judicial supervision. These laws also allow security forces to shoot suspects on sight and dispose of bodies without an inquest.

Empowered by these laws, the Sri Lankan state legally arrested and detained, on suspicion of terrorist activity, hundreds and thousands of men from all ethnicities over the years. In 1971, between 10,000 and 18,000 insurgents were captured or surrendered to the state and subsequently categorized according to their degree of involvement and exposure to the pedagogy of the *Janata Vimukthi Peramuna* (JVP). 3000 or so were tried by the extraordinary institution of a Criminal Justice Commission appointed in 1975, while others were released over a period of years after ‘rehabilitation’ (Hewage 2013: 245). It is, however, in the context of the ethnic conflict that these laws enabled the state to wage what Chandrasekaram refers to as a ‘parallel legal war’ (Chandrasekaram 2017: 9). By this, he means the mass incarceration of young Tamil men on suspicion of terrorist activity, most of whom were detained without charges for prolonged periods. Where prosecutions took place, they were based on the use of confessions recorded by police officers as sole evidence and the transfer of the burden of proof onto the accused to disprove the voluntariness of their admissions. The ‘terrorist’s

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29 Between 2001 and 2005, the state of emergency lapsed when President Kumaratunga’s government lost its parliamentary majority (Welikala 2016: 13).
30 Obeyesekere gives the specific figure of 10,192 comprising 4492 people who were captured and 5700 persons who surrendered (1974: 368).
confession’ thus became a powerful weapon in the hands of the Sri Lankan state, whereby Tamil men were detained, tortured, and forced to sign statements written in Sinhala, which they never gave and could not read nor understand. These young men could then be convicted for a range of fabricated charges such as conspiracy, receiving training under the LTTE, planning, or taking part in military attacks against government forces or institutions, etc., based on their confessions (9-14). However, a majority of those convicted by lower courts were able to successfully overturn these decisions on appeal. Yet, it was not before scores of young Tamil men and also women were locked away, punished, humiliated, and broken by incarceration for 3-6 years without bail, pending the conclusion of their court cases (158-159; 181; 193-194).

These same laws were invoked by the Rajapaksa government to detain over 12,000 LTTE combatants who surrendered to the armed forces during the final days of the war. Ex-combatants who were considered to have a ‘high involvement in terrorist activities’ were investigated and prosecuted according to the law of the land. The rest were subjected to a mandatory and prolonged rehabilitation programme that sought to ‘guide them on the correct path and transform them to be peace-loving and useful citizens of the country’ (BCGR 2010: 13; Human Rights Watch 2010; International Commission of Jurists 2010). The government claimed that the rehabilitation programme was an exemplary act of reconciliation. It, of course, vehemently denied the allegation that some LTTE cadres and leaders who surrendered were disappeared.

In a context of prolonged emergency rule, disappearances committed by the postcolonial Sri Lankan state and its history of impunity have tended to be analysed as excesses committed within a ‘state of exception’ created by emergency rule where normal legal and constitutional rights did not apply. I recognise that recent theoretical debates on and historical and empirical investigations of state violence have been profoundly influenced by the work of Agamben—his concept of the state of exception and the figure of Homo Sacer. Agamben’s account of life that can be killed with impunity, i.e., bare life, is produced through sovereign law and sovereign decision. In his view, modern democracies in which human rights and humanitarian concerns are usually conceived as normative setbacks to sovereign power does not abolish bare life, but rather ‘shatters it and disseminates it into every individual body’ (Agamben 1998: 90, 106, 120, 125; Gündoğdu 2012: 8). Yet, I want to emphasise that emergency rule in Sri Lanka did not authorise disappearances. Undoubtedly,
emergency supplemented by the Prevention of Terrorism Act No. 48 of 1979 (PTA),
together produced ‘a regime of legally sanctioned violence’ (Udagama 1998: 275),
that allowed the police and armed forces to derogate from ordinary laws of search,
arrest, and detention, which facilitated disappearances. It did not however sanction
disappearances. Not even by implication, for the writ of habeas corpus, which is
often suspended in times of emergency was never suspended in Sri Lanka.

Rather, enforced disappearances must be understood as part of an illegal
or—following Bargu—an extralegal war where large numbers of persons, (whether
LTTE or not) were arrested or abducted and detained outside even the framework of
the ERs and PTA and without any official acknowledgment. Such persons included
those arrested during cordon and search operations or in mass rounds ups
conducted in villages and checkpoints and those abducted or snatched away from
their homes. In the words of the University Teachers for Human Rights (J), these
were people ‘not in anybody’s list, anybody’s prison, movement or camp.’ They were
those ‘taken away in the stillness of the night, in the light of the dawn amidst the
birdsong, from the streets as they walked, from the houses they built with love,
wrenched from their mother’s screams and sisters’ tears’ (UTHR[J]) 1989: n.p.).
Such persons were taken to and kept in army camps, secret detention centres, or
sections of official detention centres kept secret from the public.

Typically, such persons were taken away in unmarked vehicles— often white
vans. The use of white vans for extrajudicial abductions was first documented by the
UTHR(J) in the east in 1990/1991 and Jaffna in 1996 after the PA government had
come to power. The unlicensed white van re-emerged as a modality to implement
disappearances during the postwar Rajapaksa regime from 2009 to 2015. Allegedly
masterminded by Gotabaya Rajapaksa as Secretary of Defence, this is the reason
that ‘white vans’ are now part of the lexicon of terror in Sri Lanka and a shorthand
for disappearances. Once abducted or arrested, such persons, in all probability,
were tortured, (extrajudicially) killed and buried in unmarked mass graves or
disposed of using other means.

The final report of the Col-WSS states that the phenomenon of mass graves
is a macabre pointer to the clandestine nature of the counter-insurgency operations
carried by the Sri Lankan state (Col-WSS 1997: 117). While at least 25 mass graves
have been discovered in Sri Lanka, consecutive governments have failed to conduct
credible inquiries into these graves or have halted inquiries midway. The
overwhelming failure to investigate mass graves leads us back to the nature of the
criminal justice system that exists in Sri Lanka. As Basil Fernando has pointed out, the
‘probing into a mass grave is in fact, scrutiny into the very nature of criminal
justice, which in the first place made the possibility of the creation of mass graves
followed by a prolonged resistance to uncovering the truth which lies behind such
mass graves.’ In July 1997, in the face of mounting evidence of arbitrary and
unacknowledged arrests and criticism from the international community, President
Kumaratunga directed the armed forces to issue ‘arrest receipts’ and report arrests
to the Human Rights Commission within 48 hours. These were, however, directions
without legal backing, which did not carry any penalties for non-compliance and
therefore followed in the breach (Manoharan 2006: 33).

In getting to grips with the architecture of disappearances, I would also like
to draw attention to the relationship between emergency and habeas corpus in Sri
Lanka. Nasser Hussein has argued that emergency and habeas corpus are often
closely implicated, and suspension of habeas corpus is a ‘marker of emergency’
(Hussein 2003: 70). Yet, consecutive post-independence governments did not
suspend the writ of habeas corpus throughout emergency rule in Sri Lanka,
estensibly recognising the right to freedom from arbitrary arrest and the legal
subjecthood of victims and survivors to invoke the writ as a remedy in case of
arbitrary arrests, detention, and disappearances. The availability of the writ during
emergency rule resulted in elaborate performances of judicial inquiries relating to
habeas corpus petitions. Nevertheless, as I discuss in more depth in Chapter Six,
the writ has been repeatedly rendered completely ineffective without formal
suspension of its applicability.

It is also important to note that the International Committee of the Red Cross
(ICRC) has been present in Sri Lanka since September 1989 (i.e., the tail end of the
second southern insurrection) on the invitation of the GoSL. Technically, the ICRC
can and has contributed to preventing disappearances under its mandate to visit
and monitor detention centres, register those detained, and conduct follow-up
activities relating to restoring and maintaining contact with family members. Yet, the
ICRC has not been able to prevent all extralegal arrests, abductions, and detentions
which culminate in disappearances because it has access only to known detention

31 Basil Fernando, ‘Why investigations into mass graves failed so far, Colombo Telegraph,’ Colombo
Telegraph, 8 April 2016, https://www.colombotelegraph.com/index.php/why-investigations-into-mass-
graves-failed-so-far/, accessed on 13 December 2021.
centres and prisons and not secret detention centres. The organisation was also
denied access to the war front during the final days of the war and therefore, not in a
position to verify the number of LTTE cadres and suspected cadres taken into
custody by the government during that period. The government also denied ICRC
access to rehabilitation centres where ex-combatants were being detained from
June 2009 until 2013 (Satkunanathan 2018).

It is in this context that I find Hobbes’ notion of sovereignty and Bargu’s
move to analyse impunity as erasure particularly productive. From Hobbes’
perspective, the enemy of the state, whether ‘rebel’, ‘insurgent’ or ‘traitor’ can be
killed without due process. It is by way of this discourse that citizen subjects are
divided in terms of who is deserving of the rule of law and who is subject to the
Hobbesian rule of war. In Banu’s elaboration of Hobbes, it is the discursive
construction of the ‘rebel’, ‘enemy’, ‘traitor’ that magically transforms the citizen into
a subject without rights, who can also be disappeared. Bargu’s analysis of
disappearances as an erasing form of violence allows me to decenter law from the
state of exception and recognition as full citizens to probe how impunity is produced
and entrenched. It allows me to pay attention to the socio-cultural, political and
discursive context in which these violations took place and in which the law had do
its work of adjudicating between victims and perpetrators. It allows me to explore
how the construction of those involved in the two southern insurrections and the civil
war as ‘traitors’, ‘terrorists’ etc., functioned to erase disappearances. But as you will
see, it also allows me to go beyond Bargu to argue that in postwar Sri Lanka, we
need to understand how the emphasis shifted to categorical denial of
disappearances and the construction of family members pursuing justice as ‘traitors’
and ‘terrorists’. Let me however first trace the ways in which those involved in anti-
state violence were historically constructed as enemies of the state.

First southern insurrection

In the wake of the first southern insurgency, the political leadership of the time and
sections of the media labelled the JVP as a terrorist movement hatched in secret, a
tool of big money and diabolical minds, and criminal organizers supported by North
Korea. The youth involved were labelled as ‘insurgents’ and ‘che guevaras’ (a term
they never applied to themselves), ‘terrorists’, and CIA [Central Intelligence Agency
of the USA] agents threatening the postcolonial state (Halliday 1971: 76). Once the insurgents were labelled as such, the state’s right to quell the insurrection was taken for granted. Neither the deaths nor the disappearances were, in fact, considered state crimes. In the Manamperi case—the only case to be filed against the security forces, Alles J, the presiding judge recognised that this was ‘actual war(fare)’ and that the armed forces were justified in meeting ‘with force of arms an effective challenge by a group of insurgents, whose main object was to overthrow the established government of the country’ (Wijesuriya v The State 1973: 28). This narrative of a war against ‘terrorists’, deeply resonant of Hobbes’s account of sovereign violence against internal enemies, was one which was widely shared within the entire spectrum of political opinions and affiliations. This included the mainstream or parliamentary left (Communist Party and the Lanka Sama Samaja Party) which was part of the coalition government that had come into power following a landslide victory at the parliamentary elections held only one year earlier. Indeed, according to Obeyesekere, the most vociferous condemnation of the insurgency came from the left, and the threat posed by the insurgents made ‘political divisions within the elite ranks fuzzier and their social links stronger’ (Obeyesekere 1974: 384).

Moreover, international assistance from a remarkably diverse group of actors was critical to the success of the counterattack by the state. As Halliday put it: ‘the government repression . . . received powerful support from an unprecedented block of international allies’ (1971: 85). Recently declassified archival documents also reveal that the United Kingdom (UK) government was fully aware that the government of Ceylon was ‘determined to completely destroy the movement and are prepared to use brutal and violent methods’. Not only that but small arms, ammunition, armed vehicles, and other material provided by the British government had a decisive effect on the government’s response. Even Amnesty International recognised that the government ‘faced a grave emergency’ and issued no

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32 In 1971 disappearances were unnamed and unknown as a crime. All those who were disappeared were considered dead. These was never any acknowledgement of the additional trauma borne by families who were denied the bodies of their loved ones.


34 The countries that responded to the Prime Minister’s request for support was UK, United States of America, India, Pakistan, the Soviet Union, Australia, Yugoslavia, and China (See Halliday 1971: 85-87).


36 Ibid.
statements for six months (Amnesty International 1976). When Amnesty did decide to intervene six months after the insurrection, its demands related to the rights of detainees (Amnesty International 1971), as I discuss further below.

Thushara Hewage writes that after the insurrection, there was a sense among some (arguably elite sections of the polity) that this was a ‘threshold event’ in the country’s history of political violence. Little more than a month after the insurrection, Somasundaram Nadesan in a speech given in the Senate stated that this was ‘a moment that warrant(ed) the elevation of a police officer of whatever rank to be the sole judge, sole prosecutor, sole executioner, and to be the man to decide what he is to do in respect of the persons whom he suspects’ (Fonseka and Wickramasinghe (1988) cited in Hewage 2013: 246). Nadesan was, in fact, saying that the police officer was now sovereign. As Hewage points out, the event gave rise to the Civil Rights Movement, the first ‘human rights organisation’ in the country, which documented the violations, represented those who were charged and tried, and went on to challenge the need for emergency long after the insurrection. No police officers or army personnel were charged in respect of the killings, disappearances, or for acting as ‘sole judge, sole prosecutor, and sole executioner,’ except for one case—the rape and murder of Premawathie Manamperi. Manamperi, who was taken into custody on the charge of being the leader of the JVP women’s wing in Hambantota, was raped, stripped naked, paraded on the streets before being shot several times in public and then buried in a shallow grave. Hewage (2020) has further argued that in the aftermath of 1971, the insurrection came to be depoliticised and recuperated as the result of a breakdown of Sinhala moral values and authority, within a nationalist script that made a distinction between the leaders and the rank and file youth members who were misled by the leaders. This distinction allowed the rank and file (as opposed to those killed, disappeared or prosecuted by the criminal justice commission) to be rehabilitated and folded back into the nation.

The second southern insurrection

By the time of the second southern insurrection launched by the JVP in 1988, both the state and the JVP deployed the language of traitors to kill and disappear the other. To make sense of this discourse, it is necessary to understand the events leading up to the launch of the second southern insurrection. Following the 1971

37 A. Wijesuriya and another, Appellants and the State, 77 NLR 25.
insurrection, the JVP attempted to enter electoral politics, but its efforts were frustrated when the United National Party (UNP) extended the life of parliament by six years, by means of a referendum, without holding a general election, to retain the massive majority that it received at the 1977 elections. A few years later, the government also proscribed the JVP on the charge of instigating the riots of 1983. The JVP responded by creating a front organisation called the Deshepremi Janata Vyaparaya (DJV), or the Patriotic People’s Movement, to carry out violent acts to capture state power. It was, however, the signing of the ISLPA between the government of Sri Lanka (GoSL) and the government of India in 1987 that catalysed the second insurrection by the JVP, who believed that the government had betrayed Sri Lanka to the Indians (Rogers, Spencer, and Uyangoda 1998: 773).

The terms of the ISLPA entailed the establishment of provincial councils—a second tier of government—as part of a package to devolve political power to the provinces, the deployment of an Indian Peace Keeping Force (IPKF) to monitor its implementation, and the holding of elections to provincial councils in a staggered manner (Hughes 2013; Perera 1999). As preparations for the first provincial council elections got underway, fusing Sinhala Buddhist nationalism, anti-imperialism (anti-Indian), and Marxist rhetoric, the JVP appropriated the language of traitors (deshadrohi) and patriots (deshepremi) to attack the government and target those who violated its diktats. All political parties who came forward to contest elections were named ‘traitors’ and listed to be killed by the DJV.

In turn, the state and paramilitaries linked to the state deployed the same language in its counterattack against the JVP. The poster that dominates Figure Three was produced by the People’s Revolutionary Red Army (PRRA), a paramilitary group linked to the armed forces. In it the PRRA threaten to kill those planning to boycott the Provincial Council elections. The naming and the labelling on both sides went hand in hand with the violence. Thus, the category of the traitor and the patriot was not at that moment fixed but being claimed both by the JVP and the

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38 The ISLPA was negotiated between the GoSL and the government of India, without participation of the LTTE, but which was initially accepted by the LTTE. Initially the LTTE agreed to the ISLPA’s terms as they did not want to go against India. However, the LTTE demand for monopolistic control over the transitional administration pending elections to the Northern and Eastern Provincial Councils, and Indian insistence on the inclusion of members from the Tamil United Liberation Front and other militant groups led to military hostilities breaking out between the LTTE and the IPKF. The ISLPA was based on the assumption that India would have sufficient control over the militant groups which had received India’s support. The other groups accepted the ISLPA, but the LTTE which by then had become less dependent on India, proved to be particularly intransigent. By 1990, it was clear that the IPKF could not suppress the LTTE. There was also mounting pressure from the south that the IPKF should leave. In March 1990, the IPKF was withdrawn from Sri Lanka without having implemented the ISLPA.
state, and at the heart of a life and death contest over their meaning. It is, therefore, important to recognise that the state is not the sole author of such necropolitical discourses, nor does it have a monopoly over the definition of who is an enemy of the state. Such discourses may originate from within the state and maybe authorised or challenged by actors outside the state. Or they may originate outside the state and be taken up or rejected by the state. A similar dynamic was at play during the period that concerns this thesis. Moreover, as I will seek to argue in Chapter Three, once a particular definition of terms such as ‘traitor’, terrorist’, etc., achieves dominance within a discourse, such meanings are not easily dislodged even by the state.

Figure 3: ‘Those who refrain from voting will be punished with death: PRRA’ [People’s Revolutionary Red Army]

The civil war
When Tamil militancy emerged in the north, members of the LTTE were also constructed as terrorists. As Nadarajah and Sriskandarajah point out, Tamil militancy from the very outset in the 1970s was described in the language of ‘terrorism’ (2005: 89). The PTA of 1979 formalised this language, conflating terrorism with the Tamil political project in Sri Lankan political discourse. By the time of the 1983 riots, the most violent anti-Tamil pogrom in the history of Sri Lanka, this language was well entrenched. In June that year, President Jayawardene had called
for Sinhalese to ‘do their bit’ to fight terrorism: ‘We are in the throes of increasing terrorist activity in the north. . . . The Tigers are getting bolder and bolder. Hence I appeal to the nation not to allow terrorism to take root in other parts of the country’ (89- 90). In the years after, this language would only get more and more strident, with the potential to be indiscriminately attached to Tamils, whether they belonged to the LTTE or not.39

During the Rajapaksa years, the LTTE was constructed as the most ‘brutal’, ‘savage’, ‘barbaric’, and ‘evil’ terrorists (Seioghe 2017: 95). Seioghe argues that following the end of the war, the idea of the terrorist threat was kept alive to build a post war national security state (110). However, it must be noted that even before the war ended, the Rajapaksa regime had begun to deny disappearances in a bold and blank discourse of denial. I believe international normative developments relating to human rights necessitated this shift. If in 1971, the discourse of traitors was sufficient to wipe off the atrocities committed by the state, by 2009, it did not work. Unlike in 1971, disappearances now had a name. Under international human rights law that I outlined above, ‘no one shall be disappeared’. The world was now watching, not to aid, but with a view to condemn. So, the state was forced to deny disappearances, even of its enemies and terrorists. It is to this discourse of denial that I now turn.

**Denial and its Operationalisation**

In *States of Denial*, Stanley Cohen refers to the ‘vast discourse of official denial [of state atrocities] available to the modern state’ (1993; 2001), from ‘literal to interpretive’ to ‘implicatory denial’. Cohen explains literal denial as a simple refutation of a crime when accused of it. Interpretive denial is where raw facts are not denied, but their meaning apparent to others are denied. Implicatory denial is where there is no intention to deny either the facts or conventional understandings of the facts; what is denied is the psychological, political, and ethical implications of the facts (2001: 7-9). Cohen also acknowledges that literal denial often works in tandem with ‘ideological’ or ‘messianic' discourses. Thus, for instance, in Argentina, the junta not only denied disappearances but constructed the dirty war as a defence of western and Christian civilization and as a battle between the forces of life against the forces of death (81- 82). For Cohen, denial is a ‘speech act’ (105). It is

39 The LTTE had its own discourse about the internal and external enemy, martyrs and traitors and claims to sovereign power (Thiranagama 2010, 2011: 213-215).
intended to ‘do’ things in the world. It is intended to convince or silence detractors, prohibit the making and pursuit of claims, undermine and delegitimise the claimants, authorise a particular version of events, and forget and consign state crimes to the past. So too in the case of Sri Lanka.

In fact, President Mahinda Rajapaksa began denying disappearances in earnest two years before the end of the war during a visit to California. During this visit, a Sri Lankan journalist asked Rajapaksa why Sri Lanka’s battle to protect the nation’s territorial integrity, sovereignty, and democracy from one of the ‘most ruthless terrorist organizations’, the LTTE, was not seen by the international community, especially the United States, as a battle against terrorism but rather as an ethnic struggle. President Rajapaksa, in his response, put it down to adverse media propaganda, including from the international network of the LTTE and the US State Department getting its briefings from locals and officials based on ‘rumour’ and ‘myth’. And without any prompting, he trailed off to link this issue to the ‘missing’ (a euphemism for the disappeared):

For instance, take the missing list. Some who have gone on their honeymoon without the knowledge of their household is considered missing. Parents have lodged complaints that their children have disappeared but in fact, we have found, they have gone abroad. When they return police are not informed. When a child is missing from the home the first thing that happens is to lodge an entry in the police. These disappearance lists are all figures. One needs to deeply probe into each and every disappearance. I do not say we have no incidents of disappearances and human rights violations, but I must categorically state that the government is not involved at all (italics mine).40

This reference to the disappeared in the President’s response, two years before the end of the war, has to be attributed to concerns expressed by local and international human rights organisations about the return of enforced disappearances as a tactic of war during its final phase. Following the end of the war, amidst increasing calls to account for the disappeared, the ‘missing’ in fact became the subject of a prolific governmental discourse, supported by the defence establishment, and explained away by an ever-expanding list of reasons: by blaming the LTTE, by claiming that the disappeared are those who had died during the ‘conventional’ war; or by claiming that the LTTE classified deaths whether of civilians or its cadres, irrespective of how they died, as well as those who have left the country to live.

abroad, as missing persons in order to invoke international sympathy.\textsuperscript{41} The state-owned press reiterated these views. During the height of the UN Human Rights Council sessions of 2013, the Daily News in its editorial proclaimed that Sri Lanka’s dead and disappeared were those that died during conventional war and during the last phase of the fighting in which Prabhakaran, the leader of the LTTE, amassed his human shields.\textsuperscript{42}

Moreover, this discourse of denial was rigorously and meticulously operationalised at the local level by police officers who refused to record complaints relating to disappearances foreclosing any possibility of investigation or adjudication, as well as truth or justice. The complaint, as Akhil Gupta points out is the first step in a chain of bureaucratic activity necessary to redress wrongs committed whether by private individuals or state officials. The complaint asserts the complainants’ right to due process, their rights as a citizen, and their expectation of state agencies and functionaries. For Gupta any traces of an ideal-typical Weberian bureaucracy in the context that he was studying (rural Uttar Pradesh) is to be found in the presence of the complaint, making visible more than any other genre both subaltern resistance and bureaucratic corruption (Gupta 2012: 167-168).

During the Mahinda Rajapaksa tenure following the end of the war, hundreds of women who tried to record a police complaint relating to a disappearance were turned away. Or even if a complaint was taken down, no investigation followed. Faced with this experience, family members petitioned whoever else they thought might be able to help—politicians, administrative officials, civil servants, ambassadors, wives of politicians, international NGOs, and UN agencies—while physically searching for their disappeared family members in army camps, police stations, hospitals, and jails across the country.\textsuperscript{43} In order to search for disappeared family members, they put their own lives on hold and at risk, entering a fraught militarised public sphere, marked not merely as ‘Tamils’ and as ‘women’ but as family members of the disappeared—subjects at once precarious, dangerous, and traitorous and—as I show below—also sexually vulnerable.

\textsuperscript{43} See for instance the letter written by the Association for the Surrendered and Disappeared to Navi Pillai, United Nations High Commissioner for Human Rights dated 6 March 2013. Copy in my possession.
In the postwar north and east, Tamil civilians tried to negotiate the militarisation of their villages by anticipating and devising tactics and strategies to avoid the military and the police as far as possible. Women next of kin of the disappeared, however, were forced to confront the masculine military complex of power and authority, and the very men that they wanted to avoid, as they went from army camp to army camp and from detention centre to detention centre in search of loved ones.\(^{44}\) They continued to search for family members even though it meant inviting scrutiny, surveillance, sexual harassment, and telephone threats, propositions or promises or even worse, visits to their homes without any prior notice, at any time of day or night, from an array of military men and public officials. Additionally, many women were subject to extortion by some officers who promised information or the return of their loved ones in exchange of ransom money or sexual favours. The sums that were demanded ranged from relatively small to exorbitant sums, which few could afford or gather. Yet many found the money by taking a loan, pawning family jewellery, or selling a piece of land (Consultation Task Force 2016b: 188-192). A common modality to extract money was the phone top-up, where family members were given telephone numbers to which they were asked to deposit money. These payments almost never yielded any results.

Thus, each woman’s experience of searching for the disappeared during this period was a variation on the themes of risk, violence, harassment, exploitation, and unimaginable indignity. I contend that the refusal to register complaints and acts of harassment, intimidation and extortion delimited the space of appearance that was available for surviving next of kin of the disappeared to appear as rights bearing subjects. In Arendt’s (1963) space of appearance, which I have expanded to include the legal sphere, it is violence of this nature, which makes legal and political action impossible. Such violence destroys the space for plurality of identity and opinion, as well as for speech, for it makes it impossible for individuals to appear to each other to disclose rights violations without fear. It is only much later, when family members were more organised that some of them would attempt to bypass these obstacles by filing habeas corpus applications directly in magistrate courthouses, which did not require filing police complaints. I explore the implementation of the writ in more depth in Chapter Five.

\(^{44}\) Ibid. See also Walker’s (2013) account of Tamil women tramping to both army and LTTE camps in the East in search of family members.
Constructing Family Members as Traitors and Terrorists

In 2011, under pressure from the international community to address war related human rights abuses, the Rajapaksa government appointed the Lesson Learnt and Reconciliation Commission (which I discuss in Chapter Three). The LLRC, I contend opened an opportunity for family members to mobilise as a collective around the issue of disappearances and organise collective action in the pursuit of truth and justice. It is in this context that the government and nationalist organisations started labelling family members as traitors and enemies of the state, and even as terrorists. The intimidation and harassment they had experienced when trying to make a complaint were stepped up. Bringing attention to this fact in 2013, Ruki Fernando, a human rights activist, told Amnesty that: ‘Many have been labelled “traitors” or “terrorist sympathisers”’. Indeed, searching for the disappeared was considered a worse crime than the disappearance or abduction—an anti-state, terrorist activity (Minority Rights Group 2014). Consider the following incident: In August 2014, a private sharing meeting organised with family members of the disappeared, civil society organisations and some members of the diplomatic community was disrupted by a Sinhala Buddhist nationalist mob, including Buddhist priests.\(^45\) The group, which entered the meeting premises by force, shouted obscenities, took pictures of those present, and intimidated the organisers and the participants. In a video that captures this incident, one of the monks tells a journalist:

> All the family members gathered here are mothers and fathers of members of the LTTE. What are they trying to do by convening these families? This is against the armed forces and the territorial integrity of this country. They are trying to destroy us, to split us into two, make us like Israel and Palestine. That is what these people are trying to do here, in this robber’s den (hora guhawa). We are taking the people here to the police station. This is a meeting that contravenes the law. They may say that they have paid for this venue, we are entitled, etc. But we are not interested in these arguments. Even in your own house, can you convene terrorists against the country? Yes, this is a gathering of terrorists. We are citizens, and all citizens, in their locality, if terrorists are having meetings, must beat them and throw them out without any fear. They must take terrorists to the police without fear.\(^46\) (My translation from Sinhala)

The mob surrounding the monk broke into spontaneous applause at this point while he continued to speak: ‘Beat them and finish them off. Traitors should not be allowed to live amongst us. . . . The proper punishment for traitors is death by hanging. I call on the government to implement death by hanging against these


\(^{46}\) Ibid.
traitors. That is all I have to say’. The police who arrived at the venue failed to disperse the mob for 90 minutes or make any arrests. Instead, they ordered the meeting to be discontinued on grounds of ‘the peace being disturbed’ and their own inability to guarantee the security of the participants. The mob later identified themselves as the Dead and Missing Person’s Parents’ Front. In a subsequent press conference organised by this group, they admitted to disrupting the meeting. They claimed that they disrupted an effort to give online evidence about war crimes in Sri Lanka to the UN.

By 2014, family members were liable to be arrested for merely participating in protests. In March that year, the Terrorist Investigation Department (TID) arrested Balendran Jeyakumary, (featured in Figure Two) and her 13-year-old daughter Vibooshika under the provisions of the PTA. She was accused of harbouring and supporting a person involved in reviving the LTTE, even though no formal charges were filed against her. She was sent to the Boosa Detention Centre, and her daughter was sent to a children’s home under the supervision of the Child Probation Department. Jeyakumary’s eldest son was shot and killed by an unknown gunman in Trincomalee during the war. A second son died of a shell attack in Mullivaikal during the last days of the war. Her third son was forcibly recruited by the LTTE during the final days of the war and then surrendered to the army when the war ended in the presence of Jeyakumary. He was only 15 years old. Since his disappearance, both she and her daughter had been in the frontline of the struggle for truth and justice for disappearances in Mannar.

In the months before her arrest, Jeyakumary had attended one protest after another. She was among those who led a demonstration when David Cameron, the UK Prime Minister visited Jaffna before attending the Commonwealth Heads of Government Meeting in the southern town of Hikkaduwa in 2013. Unable to obtain an appointment to speak with Cameron, Jeyakumary met with Channel Four’s Jon

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47 This organisation represents soldiers who have disappeared during the war.
Snow, who had accompanied the Prime Minister on his visit, to hand over to him a document about her disappeared son.¹¹ Before her arrest, she had also sent a video to Channel Four’s Callum Macrae, telling him that she was being followed and harassed due to her activism. ‘Unknown faces follow me and track me whenever I return home after protest rallies. This is a serious threat and at times I am scared to live here. I go for all these protests, shouting from the streets for my son’s release. Lots of people are taking photographs of us, I do not know all of them.’¹²

Rights activists accused the government of arresting Jeyakumary as a way to intimidate all families of the disappeared from continuing their search for truth and justice for disappearances. Ruki Fernando and Fr. Praveen, two rights activists who visited Mannar to inquire about the circumstances surrounding Jeyakumary’s arrest, were also arrested and detained. While they were released within two days, it was not before obtaining a court order prohibiting Fernando from speaking about the arrest after his release.⁵³ Jeyakumary was only released after the 2015 elections following a sustained campaign conducted by human rights activists. She was acquitted in April 2019.⁵⁴

Thus, during the Rajapaksa years, family members of the disappeared were constructed as objects of derision, harassment, and hate; ‘terrorists’; ‘unruly’, ‘disobedient’, and ‘traitorous’ subjects; and ‘those who (have) no love for the land’. These kinds of tactics deployed by both state and non-state actors were expected to have a chilling effect on family members and their search for truth and justice. The highly charged images, labels, and narratives associated with this discourse were repeated like a mantra after the end of the war until it became naturalised. It is now part of the common sense, taken for granted way of making meaning of the war. The same words and phrases, used and reused, produced, and reproduced, are now not merely part of political rhetoric but everyday conversations.

Conclusion
The liberal legal scholarship has tended to analyse state atrocities and impunity in Sri Lanka as paradigmatic of a breakdown or failure of the rule of law, or as occurring within the regime of emergency and prevention of terrorism laws that have prevailed in Sri Lanka for the better part of its postcolonial history. This scholarship assumes that better constitutions, laws, and institutions can address the abuse of sovereign power (Nesiah 2010: 122). Indeed, based on such an assumption, NGOs and Commissions of Inquiry have generated reams of recommendations for constitutional, legal, and institutional reform to ensure justice and prevent disappearances.

In contradistinction to such an approach, I began this chapter with Banu Bargu’s (2014) assertion that disappearances are a form of sovereign violence that can be erased once the victims are labelled as enemies of the state. I showed how those involved in the three different theatres of conflict in Sri Lanka were labelled as traitors, terrorists, foreign agents, and so on, appearing to corroborate Bargu’s claim. While recognising that this is a productive frame of analysis to understand the impossibility of pursuing justice for disappearances in postwar Sri Lanka, I argued that it is necessary to go beyond Bargu to explore a broader repertoire of discourses and practices. Tackling one aspect of this repertoire, in this chapter, I explored how the postwar government of Mahinda Rajapaksa denied all disappearances while, constructing family members of the disappeared as enemies of the state and nation.

I contend that this was one of the primary instruments deployed by the Rajapaksa regime in collaboration with Sinhala Buddhist nationalist ideologues and organisations such as the Dead and Missing Person’s Parents Front to erase disappearances committed during the last phase of the war, from both history and memory. These tactics were intended to undermine the space of appearance available to survivors to legitimately claim their rights through the legal system; foreclose without debate or inquiry any possibility of truth or justice for these atrocities; shield the armed forces from scrutiny, whether local or international; resist calls for accountability, and entrench ‘impunity’ for disappearances in Sri Lanka.

More specifically, these necropolitical Manichean discourses were intended to produce family members as silenced, forgetful and fearful subjects of the nation. These discourses and accompanying practices reframed and narrated citizenship in terms of a set of virtues and proper behaviour defined and judged by nationalists themselves as a way to maintain the social and political dominance of the majority.
community and subjugate and oppress the minorities. Yet, as it will become clear, the sovereign power of the modern state is not absolute. Denial should alert us to the limits of sovereign power in the age of universal human rights norms. In one of the most remarkable struggles to be waged in the history of the postcolonial Sri Lankan state, Tamil women refused to be intimidated and cowed down by the state to emerge as a group of subaltern dissident subjects waging a counter-hegemonic struggle that has lasted more than ten years. In doing so, I contend that they have mounted one of the most concerted challenges to the sovereign power of the state to disappear its citizens at will and to the Manichean, necropolitical discourses and practices that I document in this thesis. It is this struggle that I document from Chapters Four to Seven. But before that in Chapters Two and Three, I will document and analyse some of the other mechanisms of erasure deployed by the Rajapaksa government and Sinhala Buddhist nationalist organisations.
Figure 4: 'Lions Cubs in Paradise', recruitment advertisement for the Sri Lanka Army,
2.

The Figure of the Heroic Soldier

The nation, it has been said longs for form (Ramaswamy 2003: 151). Moreover, the nation is an 'inherently fragile social achievement' and remains ephemeral unless hard and regular work is undertaken to produce and maintain its materiality (Appadurai 1996: 179, 180-181 cited in Ramaswamy). In Stuart Hall’s formulation, what gives meaning to the nation and helps build a shared national identity is a ‘narrative of nation’; that is a set of stories, images, landscapes, scenarios, historical events, national symbols, and rituals which stand for or represent her shared experiences, sorrows, triumphs, and disasters (1992: 293). War memories, as Ernest Renan in his oft quoted lecture *Qu’est Qu’une Nation?* argued tend to occupy a prominent position among such stories and recollections of the past available to nations and are generally central to the creation of national identity and to nationalism. In Renan’s words, the ‘constitution of a nation is based on the possession in common of a rich legacy of memories’, particularly remembrances of past glories and past suffering (Renan 2018: 261). In a similar vein, Anderson in *Imagined Communities* draws our attention to war commemorations and nationalist preoccupations with those who die for the nation (Anderson 1991: 9-10). In Ashplant, Dawson, and Roper’s reading of Anderson, ‘the nation secures its symbolic continuity through time and mobilises the willingness of current generations to die in its defence, by interpellating them as members of an imagined community which transcends death. War commemoration is a vital moment in that process of interpellation’ (2000: 22).

As these writers remind us, war, heightens the collective identity of people and incites whole populations to define themselves against enemy others. War simultaneously inspires sacrifice and suffering for, as well pride and glory in the nation. Thus, whether wars are won or lost, they are marked and remembered in a myriad of ways: politically and culturally, officially, and unofficially, by the state and by citizens, through myths, monuments, museums, parades, dedicated days, stamps, coins, poems, songs, and films. Through these sites of memory and repetitive performances of commemoration, war is made into a meaningful or even
sacred event in the nation’s narrative—what George Mosse referred to as the ‘Myth of the War Experience’ (1990: 7). This is the kind of social capital upon which Renan tells us, one bases a national idea (2018: 261).

Yet wars are rarely remembered in their minute or horrifying detail. They are more often than not commemorated through the abstract figure of the soldier. Mosse (1975; 1990) was perhaps the first to draw attention to the centrality of the soldier in war commemorations and to nationalism in his study of the German wars of liberation and the interwar years. Although Germany lost World War I, Mosse concludes that festivals commemorating the soldiers who had died (the noble dead) became one of the most successful tools for the ‘nationalization of the masses’ (1975). The heroism and the sacrifice of ‘fallen soldiers’ came to symbolize the defence of the German nation from the enemy. In Mosse’s analysis, through myths and metaphors surrounding the soldier, the horrors and the violence of war was transformed ‘into a sacred experience which provide(d) the nation with a new depth of religious feeling, putting at its disposal ever-present saints and martyrs, places of worship, and a heritage to emulate’ (1990: 7). Indeed, Mosse compares the cult of the fallen soldier to the passion and resurrection of Christ, where ‘suffering purifies and death transforms soldiers into saints of the nation’ (76).

By the end of World War II, however, the fallen soldier, who had come to embody national identity in virtually every country following WW I (with the exception of the Soviet Union, where the war was seen as a wasted imperialist venture) was replaced by a new emphasis on veterans (Gills 1994: 11-12). In fact, Gills states that ‘(m)emory took a different form. . . . This time around the promise of a land fit for veterans would not go unfulfilled. Returning soldiers actually could find a place in the present,’ and ‘(p)arades replaced pilgrimages’ (Gills 1994: 12). However, taking the case of East Germany, Andrew Bickford, goes even further than Mosse or Gills to make the ‘bold proposition’ that the soldier became a sign and symbol of the state in postwar East Germany:

The soldier is the personification, the sign, the representation of the state; its arm, its agent of violence, the tip of the spear, the means by which the state comes into being, is maintained, and continue to be. Soldiers represent the imagined community of the state in living, active form; they are homogenized into a single identity of the state, and represent this imagined ideal of homogenization. States write the mythology of soldiers, turning soldiers into mythic creatures. This kind of myth works to elevates soldiers above mere civilians, removing them from the quotidian and placing them into the unquestionable. According to the state, the soldier is the ideal citizen, the best kind of person the state can produce. Soldiers in uniform are living memorials to the state and its history, talking monuments to memory. . . Soldiers are
monuments to previous wars and the performed memories of as yet unfought wars to come. (Bickford 2011: 3)

I want to make a similar argument in this chapter that the soldier is a synecdoche of the state. But I also take account of feminist scholarship that reminds us that the bodies of soldiers on which national identity is inscribed are gendered bodies. When the heroism and sacrifice of soldiers become integral to nationalism, national identity and the nation-state, what is being celebrated is a militarised form of masculinity, where armed combat becomes the ultimate test of masculinity, valued and reified over all other masculinities and femininities (Duncanson 2015; Eichler 2014; Enloe 1983: 12, 2000, 2004). Militarised masculinity is a hegemonic form of masculinity, with implications for the whole gender order. Kimberly Hutchings further characterizes this hegemonic militarised masculinity as a form of disciplinary power through which subjects and subjectivities are produced (2007: 391).

Taking this literature on war, soldiers, and national identity as a point of departure, in this chapter, I will argue that the trope of the ‘heroic soldier’ in Sinhala Buddhist nationalism emerged as a powerful Manichean mechanism of erasure of sovereign violence during the postwar Rajapaksa years. I will examine the discourses and practices that were part of this trope and trace its trajectory from a recruitment tool during the early years of the war to its evolution as a synecdoche of national identity, exemplary masculinity, and the postwar state in Sri Lanka. I go on to foreground the concrete ways in which this trope derives its power and authority in Sri Lanka—by virtue of its participation in one of Sinhala Buddhist nationalism’s foundational myths or ‘narratives of the nation’; as a highly gendered and sexualised discourse; and, as a potent, visible cultural figure. I conclude by showing that regime change cannot ensure the displacement of such ideologically inflected mechanisms of erasure.

**Deploying the Trope of the Heroic Soldier as a Mechanism of Erasure**

I want to begin this discussion on the day that the government of Sri Lanka (GoSL) defeated the LTTE in May 2009 and President Rajapaksa’s ceremonial address to parliament. In his parliamentary address that day, he began by stating that terrorism was defeated, that the writ of the state now ran across every inch of the country, going on to reassure the Tamil people in their language that: ‘We should live in this country as children of one mother; no differences of race, caste and religion should
The war against the LTTE is not a war against Tamil people. He then went on to add:

(W)e have removed the word minorities from our vocabulary three years ago. No longer are there Tamils, Muslims, Burghers, Malays. And any other minorities. There are only two peoples in this country. One is the peoples who love this country. The other comprises the small groups that have no love for the land of their birth. Those who do not love the country are now a lesser group.

The war in this discourse was characterised as a humanitarian operation, where the troops 'carried a gun in one hand, the Human Rights Charter in the other, hostages on their shoulders, and the love of their children in their hearts'. According to the President, it was launched to save Tamil civilians from the most brutal terrorists the world has seen. It was implemented with ‘zero civilian casualties’, although he later amended this claim to acknowledge ‘some civilian casualties’, which had been impossible to avoid in a ‘battle against a ruthless opponent actively endangering civilians but not mass (casualties)’.

As Nira Wickramasinghe later pointed out, in this one paragraph, the President summed up his new politics of patriotism for postcolonial Sri Lanka (Wickramasinghe 2009: 1046) and, I would add, for postwar Sri Lanka. Indeed, in subsequent months and years, it became increasingly clear that the Sri Lankan identity that the President and his government sought to forge was a hegemonic Sinhala Buddhist identity based on the liberated and unified territory of Sri Lanka, the glorification of the final victory over the LTTE and the militarisation of former war zones. In this narrative of the war, all state violence was just and lawful. All LTTE violence was brutal, unlawful, and inhumane. All allegations of atrocities attributed to the army were refuted and dismissed as an ‘insult to the heroic troops’ and a conspiracy planned by the west, hand in glove with the Tamil diaspora and NGOs, to undermine the peace that was won, divide the country, and send soldiers to

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57 Ibid, p. 23.
‘international gallows’. In this narrative, the soldier was made sovereign. And as I discussed in the previous chapter, activists and survivors demanding justice for war-related atrocities were made enemies or ‘traitors’, and in this way, all victims of the war were placed outside the rule of law and within the Hobbesian rule of war.

Thus, right from the very first day after the end of the war, the violence of the war was defined and framed within a powerful ideological frame of Sinhala Buddhist nationalist discourse relating to the *rata* (country), *jathiya* (nation), *agama* (religion). It set the framework for understanding and making meaning of the war, what is thinkable and unthinkable, and what is defensible and indefensible. It marked the boundaries of community and nation in postwar Sri Lanka (Seoighe 2017).

Moreover, following the end of the war, the month of May was declared ‘Victory Month’ and 19th May was declared ‘Victory Day’. In President Rajapaksa’s victory day speeches from 2009-2015, the military victory came to be constructed as an event which defies description: ‘an incomparable chapter in the history of war’ (2009); ‘truly a miracle’ (2009); ‘an act comparable to the ability of a Vishvakarma’ (the divine architect or engineer of the universe in Hindu mythology) (2009); ‘a glorious victory’ (2010); a victory that astonished the world (2010); and a great humanitarian victory (2013). While soldiers who had sacrificed their lives (‘their tomorrow for our today’) were mourned, the soldier in flesh and blood were valorised and elevated to the status of exemplary citizens or hyper-citizens and a symbol of the nation itself.

Between 2010 and 2014, victory days became increasingly elaborate and spectacular affairs, drawing ever-larger crowds. In 2013, over 9000 soldiers participated in the parade. The event generally commenced or concluded with a speech by the President and the grant of the *Parama Weera Vibooshana* award—the highest award for bravery given by the state to the families of a few selected soldiers or officers who had died in action. These memory days were progressively complemented by the construction of monuments that have now become sites of pilgrimage for the Sinhala Buddhist community and given rise to a phenomenon

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59 ‘Speech delivered by the President on fourth Victory Day celebrations held on 18th May 2013,’ https://www.youtube.com/watch?v=UApR-8gx2tg, accessed 1 June 2021.
called war zone tourism (Hyndman and Amarasingham 2014, de Alwis 2016, Perera 2016).

In contradistinction to these commemorative activities, Tamil lives lost in the war were designated as unmournable, ungrievable lives. Attempts to publicly remember and mourn those who had lost their lives during the last phase of the war were banned by the state. Those who tried to defy the ban were harassed and intimidated. Graves built by the LTTE for their combatants in areas they controlled were razed to the ground. Cricket grounds and army camps were built atop these bodies.\textsuperscript{61} Even as the soldier was inscribed into the history and memory of the nation, every attempt was made to erase the victims of the war from both. As Butler would say, ‘a hierarchy of grief’ and mourning was instituted and institutionalised (Butler 2004: 32), about what will be recognised as reality, and ‘whose lives can be marked as lives and whose death will count as death’ (Butler 2004: xx). In Precarious Life, Butler draws our attention to such differential allocation of grief, and the ways in which norms around ‘permissible and celebrated public grieving’, and prohibitions on the public grieving of other lives, serves the aims of military violence. Moreover, she states that such permissions and prohibitions constitute the public sphere ensuring that:

\begin{quote}
certain images do not appear in the media, certain names of the dead are not utterable, (and) certain losses are not avowed as losses. \ldots Such prohibitions not only shore up nationalism based on its military aims and practices, but they also suppress any internal dissent that would expose the concrete, human effects of its violence, (37-38)
\end{quote}

Beyond these memory acts and symbolic gestures of honour and gratitude, the Rajapaksa government also reimagined the welfare state to bestow an unlimited number of rewards and material benefits to the soldier as the citizen par excellence.\textsuperscript{62} To do so, the government maintained defence spending at a high level and progressively expanded classic welfare state services such as housing, education, pensions, health care, and recreation for the military (Ratnayake and de Mel 2012).

Welfare provisions were available for all forces, the army, navy, and air force. It was, however, the army—which supplied frontline soldiers to the war


effort—that was bestowed with the most privileges. These benefits, channelled through an elaborate institutional structure, included: Loan facilities, land and building material at special concessionary prices, insurance schemes, medical support, legal aid, priority to obtain electricity and water supplies, death donations, household goods on easy payment schemes, concessionary rates in government-owned holiday homes, provision of liquor permits to authorised messes, and a super luxury bus service between Jaffna and Colombo. Army families were also eligible for preferential treatment in the admission of children to government schools and defence services colleges and scholarships for school-going children. To top all this, in 2008, the government launched the Api Wenuwen Api housing programme to build 50,000 houses for disabled and serving army, navy, and air force personnel. The goal was to build 10,000 houses per year over five years on land provided by the state. For a house costing around Rs 2.4 million, the government charged the recipients Rs. 1 million, and that too on an easy repayment loan scheme. The promotional material for the project stated that ‘(t)he gift of housing is one of the best and most tangible ways to demonstrate our gratitude and appreciation to the forces’. This material also called on ‘(a)ll Sri Lankans to support our brothers and sisters who committed to bringing peace to our motherland’.

In 2011, two years after the end of the war, responding to why the defence budget remained so high, President Rajapaksa stated:

The opposition keeps asking why such a large amount of budgetary allocations has been proposed for the defence ministry. They must realize that while taking measures to face local and global anti-national elements the government has to pay salaries and allowances to the armed forces, provide welfare to Ranaviru families and parents of war heroes who paid the supreme sacrifice for the territorial integrity and peace of the mother-land.

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63 The institutional structure to ensure the welfare of the army comprise the Directorate of Welfare, the Directorate of Army Benevolent Fund and the Ranaviru Seva Authority.
64 The project was a collaborative effort of the Ministry of Defence and the Central Bank.
In the introduction to this thesis, I referred to the manner in which ‘development’ became the site for an ‘array of scarce and unequally distributed material resources, social practices, and cultural activities’ to disseminate nationalist ideology in the 1980s (Woost 1990). Following the end of the war, the military very similarly became a site for the distribution of scarce social and economic capital and dissemination of nationalism. Indeed, the bodies of soldiers, and even their families, came to be inscribed on the social welfare state as the most privileged citizen of all. However, I must note that that the soldier did not magically appear as a hero in postwar Sri Lanka. This figure was long years in the making, going back to the beginning of the war and Sinhala Buddhist nationalist commitments to a military solution to the ethnic conflict. I trace this history next.

The Soldier and the Civil War in Sri Lanka
In Sri Lanka, the figure of the heroic soldier emerged as a trope within Sinhala Buddhist nationalist ideology following the militarisation of the ethnic conflict in 1983. It is not my intention to provide a history of nationalism or Sinhala Buddhist identity formation in Sri Lanka, whereby Sinhala—the people or nation, Sinhala—the language, and Buddhism—the religion of the majority of Sinhalese became the defining elements of national identity of the new post-independent Ceylonese state to the exclusion of identities of its minority communities—the Tamils and Muslims in particular. This history has been amply rehearsed elsewhere (Jeganathan and Ismail 1995; SSA 1984; Spencer 1990a; Tambiah 1992). I am here interested in a subset of that literature which has studied Sinhala Buddhist nationalism as a discourse or discursive field comprising statements, narratives, concepts, images, practices, rituals, and performances (Abeysekara 2002; Berkewitz 2008; Brow 1990; Rambukwella 2018; Scott 1994; Tennekoon 1988, 1990; Woost 1990). Following that work, I am interested in tracing the genealogy of the figure of the soldier as a hero within nationalist ideology: i.e., how he came to be ‘constructed, mobilised and put to use’ (Scott 1994: xxvii), as part of a Manichean, necropolitical technology of power that authorised the extrajudicial violence of the armed forces. In doing so, I recognise that Sinhala Buddhist nationalism is not a single, fixed, and bounded discourse and tradition. Rather it is a polemical yet fluid, shifting, ever-evolving, and flexible discourse that posits which kinds of subjects, desires, and practices belong to the nation and which are characterised as different or other (Abeysekara 2002; Berkwitz 2008). As Abeysekara has argued, it is a discourse in which the meanings
and significance of historical concepts and categories—whether religion, violence or nation—shift, and where ‘specific persons and practices are authorised, enabled, and indeed obliged to come into central view and fade from view . . . in fleeting domains of opposing debates’ (2002: 203-4). Yet, at the same time, it is vital to keep in mind that contemporary manifestations of Sinhalese Buddhist nationalism stitch together a multitude of seemingly heterogeneous elements—‘popular sovereignty and kingship, Buddhist precepts and economic development into a relatively unified ideological discourse’ (Brow 1988: 316). These different elements form an inter-related semantic field (Scott 1994: 204) or ‘family of concepts’, or narrative(s) of the nation, which are then reproduced and disseminated by the apparatuses of the state as well as through channels that are more or less independent of the state (Brow 1988: 316).

Keeping in mind this inter-relatedness of different concepts in nationalist ideology, I trace the genesis of the trope of the heroic soldier in nationalism to the early years of the war with the LTTE and the call to arms to young Sinhala Buddhist men to lay down their lives in the name of a patriotic duty to defend the nation. This was a call first made by the Buddhist clergy, even before it was made by the Sri Lankan state. A few years after the start of the war in 1983, the government briefly considered and abandoned the idea of making military service compulsory for all men above the age of 18. Thus, for the duration of the war from 1983 to 2009, the armed forced remained a purely voluntary force. For Sinhala Buddhist nationalists, however, this was not a matter to be left to individual choice or conscience; Sinhala men would have to sacrifice their lives to protect the nation from the threat posed by the LTTE. Thus, several leading Buddhist monks, who from the outset favoured a military rather than a politically negotiated settlement of the conflict, would take the lead in articulating that military service was a patriotic national duty. They did so while visiting the frontlines of the war to bestow their blessings on soldiers and holding pith (Buddhist chanting) ceremonies to transfer merit to those killed in battle (Abeysekara 2001: 13; Frydenlund 2012: 106–7; Kent 2010). As part of these efforts, Elle Gunawansa of the National Patriotic Movement (Desha Hithaishi Jathika Vyaparaya), among the most radical and militant monks to support the war effort, penned the first rana gee (militant songs) in the 1980s, creating a new genre of popular Sinhala music, which called on young men to join the army to save the
motherland and become heroes. Emblematic of such efforts was a cassette containing 12 rana gee titled ‘Sath Samudara Se’ produced in the early 1980s by the National Youth Services Council, with profits going to the Veera Sebala (Heroic Soldier) Foundation. The feminist collective called Cat’s Eye, in an article written in 1986, described the songs in this collection as glorifying war and violence in the name of patriotism and the motherland. Cat’s Eye described the poster advertising the cassette as depicting ‘boys in camouflage fatigues hurling grenades and shooting at an unseen enemy while a soldier victoriously brandishes a bayonet in one hand and the Sri Lanka flag in the other’ (Cat’s Eye 1986).

The Sri Lankan state subsequently adopted similar strategies to bolster military recruitment by marketizing and commodifying a militarised form of masculinity among the general public. Neloufer de Mel traces the first such effort to the production of a docudrama titled Nohakkak Nomatha (Nothing Impossible) in the late 1980’s. This documentary narrated the story of a young man who joins the army, despite parental disapproval after watching an LTTE attack on a Sinhala village. However, he makes his parents proud when he is awarded the best commando trainee award. The drama ends with the young man at the scene of a successful commando raid (de Mel 2007: 63-65). De Mel draws attention to ‘important ideological markers embedded in the visual and aesthetic semiotics’ that taps into male viewers’ sense of civic duty, notions of manliness, courage, and fantasies of war as bravery, fun, and adventure (65-66). Unfortunately for the state, the completion of this docudrama coincided with the southern insurrection and the JVP’s denunciation of the armed forces as traitors (see Chapter One). The Director of Nohakkak Nomatha came under attack and was forced to issue a public apology. Ultimately, this teledrama did not get much airplay (69-71). As I noted in Chapter One, even though the insurrection was also underpinned by ideas of patriotism and national duty, the symbolic repositories of these ideals were still a matter of contestation at that time.

Following the failure of Nohakkak Nomatha, in 2000, the Sri Lankan state renewed its efforts to construct the soldier as an exemplar of masculinity and

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67 ‘Hamuduruwanta ninda karanne rata dekada kadanna, Pujya Elle Gunawansa Himi’, Rivira, 18 September 2017, http://www.rivira.lk/online/2017/09/18/126890, accessed 24 September 2017. 68 Cat’s Eye was a column written by an anonymous group of feminist activists and academics to provide a feminist analysis of current issues and debates in the true spirit of feminist cooperation. It was first published in the mid 1980s in the Lanka Guardian and since then has had many lives in the Sri Lankan print media. See Cat’s Eye archive here: https://catsyesrilanka.wordpress.com. This particular article is now attributed to late anthropologist Serena Tennekoon.
national honour. This effort followed in the wake of what is now referred to as the Elephant Pass debacle. In April that year, the military suffered one of its worst defeats when its base at Elephant Pass—the strategic entry point to Jaffna—was attacked and taken over by the LTTE. More than 2000 soldiers died, and many more were injured. By mid-2000, in the absence of a policy of mandatory conscription, the Sri Lanka army faced a severe shortage of men and could not even hold onto those already recruited. Desertion was high, and morale was low. Recruitment drives did not elicit much of a response. De Mel cites one instance where five army officers on a recruitment board had only two applicants (2007: 74).

In October of that year, the government commissioned Leo Burnett, a multinational advertising agency, to run a recruitment campaign for the army, both in print and electronic media. The campaign, which ran from November 2000 to January 2001, had a catchy tagline—‘Lion Cubs in Paradise’, sophisticated photography, and slick editing. It celebrated camaraderie, preparedness for unexpected challenges, strength, civic duty and patriotism within the army, packaged in a ‘seductive aesthetic’ of heterosexual militarised masculinity. De Mel states that the advertisement promised ‘both individual and collective transformation as complementary subjectivities’ (69). She also foregrounds how it targeted and co-opted women into a narrative of militarised masculinity. There were no images of the war itself nor the effects of war in these advertisements. Instead, young and virile soldiers were constructed as the objects of female adulation and desire. According to de Mel, the message was unambiguous: ‘For the male viewer desiring to be gazed and admired by women in this way, the advertisements announce that he can achieve this form of adulation and belonging by joining the army. Gender as it functions in these advertisements, unites desire and value’ (75).

Since then, there have been several such campaigns. Api Venuwen Api (We for Us/All) was the last such campaign launched to increase recruitment into the army before the end of the war. I contend that Api Venuwen Api, which was implemented as part of the government’s final military thrust to defeat the LTTE, sought to construct the soldier both as a hero and as a model of humanity. This time the government commissioned Triad Advertising Company (a Sri Lankan, as opposed to a multinational company) to design the campaign. In Triad’s view, a thorough shake up of public attitudes and perceptions was necessary before

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embarking on this goal: ‘A stronger, more positive image of the soldier had to be
crafted first, in order to create respect for this key profession. It was through this
change that we planned to improve the status quo with regards to recruitment within
the Security Forces’.

In a report made public subsequently, Triad noted that there were 4.1 million
households in Sri Lanka and 650,000 men and women had been recruited into the
armed forces over 25 years. It further noted that ‘(a)cross the island, every village
and every household was related in some way to someone in the armed forces –
from children, parents, siblings and other relatives, to neighbours and friends’.
Taking these statistics into account, the campaign set out to portray the soldier as
‘one of us’ and their everyday interactions with people from all communities, set to
moving lyrics and images. Triad further described the campaign concept as follows:

The key to the entire campaign would be the depiction of the soldier not as a
Rambo-style hero in a battle-ravaged environment, but as someone very familiar to
every citizen . . . ‘one of us’.

The positive imagery captured touching, intimate moments where the protagonist
would interact with select characters who represented the various ethnic, religious
and age groups of our society. The simple but meaningful lyrics tugged at the
heartstrings, with the message of the soldier’s commitment to do his or her job for
our benefit. The hauntingly beautiful melody was developed to be particularly
memorable and instantly identifiable. Together, the images, lyrics and music were an
emotionally charged combination that was immediately ingrained in the hearts and
minds of the public.

By presenting the soldier as a son, a daughter, a fiancé, a neighbour and a friend,
the communication went beyond the traditional boundaries of this kind of advertising,
creating a sense of belonging between the soldiers and the general public. The
campaign became a rallying call for people to sit up and take note of the crucial role
that the soldier plays in our society, . . . 70

The campaign was an unprecedented success commercially, artistically, and
practically. One billion worth of advertising was negotiated free of charge, with all
local media companies contributing. Both recruitment figures and troop morale
skyrocketed. Desertion rates reduced. Mobile operators included the theme jingle of
the campaign as a ‘ring tone’ due to its popularity. The campaign also won a
number of media awards, including the Neilson’s People’s Award for best ‘TV
Commercial of the Year’ awarded by the Sri Lanka Institute of Marketing in 2007
and 2008; the ‘Best Radio Commercial of the Year’ at the Mass Communication

70 ‘“We for Us” or Api Wenuwen Api, mobilising enlistment for war 2007.’ Thuppahi’s Blog, 14 August
2014, https://thuppahi.wordpress.com/2014/08/14/we-for-us-or-api-wenuwen-api-2007/, accessed 24
May 2021.
Awards in 2008; and a bronze medal at the first Effie Awards held in Sri Lanka in 2008.\textsuperscript{71}

Figure 5: \textit{Api Wenuwen Api} Poster Campaign.

In my view, this campaign artfully extended the metaphor of militarised heterosexual masculinity to present the soldier as a model of militarised humanity. The posters depicted the soldier in a few different settings (See Figure Five). In one, he is at his own wedding ceremony surrounded by family. In another, he is taking children to school in a tractor. In yet another, he is sharing a meal with a group of Muslim men. The television advertisement similarly shows him not on the battlefield but in day-to-day interactions with different communities—playing with children and on vacation at home with his family. The \textit{Api Wenuwen Api} Trust Fund to build 50,000 homes for soldiers (mentioned above), was subsequently launched by the Ministry of Defence to ‘harness and extend’ the success of the brand name.

Campaigns such as these, which depended on large advertising budgets, show that even though soldiering is portrayed as a naturally manly activity, in reality men have to be persuaded and socialised to do so.

\textbf{Memorializing Heroism and Institutionalizing the Citizen Par Excellence}

As men have to be made into soldiers willing to sacrifice their lives for the nation, so too soldiers have to be made into heroes. Memorialization is at the heart of this work. As Gills observes, the notion of identity depends on memory, and vice versa, and the relationship between the two can be traced through commemorative activity (Gills 1994: 3, 5). If 2000 marks the year when the government consciously

\textsuperscript{71} Ibid.
marketed the war, it is also the year when the trope of the war hero began to be officially memorialised in Sri Lanka. That year, President Kumaratunga declared 7th June as Ranaviru (war heroes) Remembrance Day. In her speech, at the official ceremony marking the day, she stated that soldiers have made the supreme sacrifices in order to allow people in the south (my emphasis) to lead a normal life and that people in the south have a responsibility to attend to the needs of those valiant soldiers and their dependents. She went on to say that ‘all the flowers in bloom throughout the country will not be sufficient to pay tribute to them or repay the nations’ debt to them’ and that:

Even at this moment soldiers are facing the enemy’s brutal gun fire. They are fathers, sons or other beloved ones of brave families protecting the humanity, democracy and freedom of all of us. People who hail such supreme rights of the men, women and children of all communities should foster the welfare of the war heroes in return.\(^\text{72}\)

The government instructed the public to light a lamp to remember soldiers. The government also established the Ranaviru Seva Authority (RSA) to look after the welfare of the members and the families of armed forces personnel. Up until 2008, Ranaviru Day was commemorated annually, led by the President with the participation of family members of fallen soldiers and those missing in action. From 2003 until 2008, the venue for these celebrations was the Ranaviru Park inaugurated in October 2002. Situated in Mailapitiya Kandy, it comprises 35 acres of landscaped gardens granted to the Ranaviru Seva Authority. It is a complex comprising rows of granite slabs with the names of military and police personnel killed and missing in action engraved on them. A stainless-steel sculpture symbolizing worshipping hands, an information centre, four small stores run by disabled soldiers, and a small museum—housing an ill maintained, haphazardly displayed collection of photos—comprise the rest of the complex. According to park officials, the sculpture depicts the gratitude of the entire nation for those missing or killed in action (de Mel 2007: 19; Perera 2007: 109). De Mel documented granite slabs dedicated to 21,375 soldiers before the war ended (2007: 19).

While the commemoration of soldiers had a ritualised predictability even before the war ended in 2009, novel elements were often added from one year to the next. For instance, in 2005, a ‘historical volume’ (Ranaviru Wamsaya) containing

\(^{72}\) Lionel Yodhasinghe, ‘Two-pronged war will be fought to a successful end’, Daily News, 8 June 2000, reporting on speech delivered by President Kumaratunga (p.18).
details of 21,500 of ‘the nation’s heroes’ were placed at the national archives to ‘keep alive’ the memory of war heroes. That year the government also released a new Rs. 50 stamp to mark the day, depicting the ranaviru logo, comprising a family under an army helmet (de Mel 2007: 19) and a compact disc containing songs dedicated to fallen heroes by popular artists. In 2008, the government unveiled the National War Memorial, erected in front of Sri Lanka’s parliament, dedicated to all military personal killed since World War I and police personnel killed due to terrorist activities. Additionally, it made an earnest request from ‘all patriots’ living around the world to light a lamp either individually in their own homes or collectively in places of worship or public parks to remember and show gratitude to servicemen.

The Rajapaksa government built its postwar celebrations and venerations of the soldier that I discussed in the first part of this chapter upon this history. But I as I mentioned in the introduction it is necessary to understand that the power of the trope of the heroic soldier does not merely depend on its long history but on a number of other factors which I discuss below.

**The Hegemonic Power of the Figure of the Heroic Soldier**

In a discussion on Sinhala Buddhist nationalism, James Brow invokes Raymond Williams (1977: 112), to note that hegemony ‘does not just passively exist as a form of dominance. It has continually to be renewed, recreated, defended and modified’ (1988: 312). I hope that by now I will have conveyed the energy and passion, the repetitions and overstatements, and the continuous ideological vigilance devoted by successive governments to very consciously create and nurture the figure of the heroic soldier, both discursively and materially, and centre it in the imagination of the Sinhala Buddhist public. The hegemonic power of the trope of the heroic soldier in Sri Lanka then has to be attributed to this patriotic labour from the most powerful and authoritative state figures over a sustained period of time. But beyond state-sponsored efforts, the figure of the soldier derives its force as a cultural, as much as a political figure because of how a multitude of patriotic labourers have dialectically engaged culture and politics in the construction of this figure (Tennekoon 1990). I want to make three points in this regard.

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A discourse that participates in a glorious past

Firstly, I contend that part of the power of the trope of the heroic soldier figure is derived from the way in which nationalist ideologues have connected this figure to an idealised past (Tennekoon 1990: 221; Kemper 1992). Following Woost, the soldier stands ‘on ground in which emotionally charged notions and images of the nation and the national past have previously taken root’ (Woost 1990: 297). Indeed, the soldier is part of the much broader discourse about rata, jathiya, and agama linked to one of the most popular myths of Sinhala Buddhist nationalism — Dutugemunu’s reconquest of the island from the Tamil king Elara around 2nd Century BC.

Dutugemunu (161-137 BC) is considered one of the most outstanding figures of the island’s golden history and his story is told in the Mahavamsa, the 6th-century chronicle, written by Buddhist monks. Two myths from the Mahavamsa, considered by Sinhala Buddhist nationalists as chronicling the authentic history of the island, have captivated Sinhala Buddhist imagination, shaped nationalist narratives, and provided justification for their claims. First is the Vijaya myth, according to which the Sinhala people descended from Prince Vijaya, who arrived on the Island around 543 BC from Northern India, more than 1000 years before the Mahavamsa was first written and conquered the island from its aboriginal inhabitants (Yakkas). According to the Mahavamsa, thereafter, the Buddha entrusted the care of pure Buddhism to the Aryan Sinhalese. From then on, whenever the island was invaded, it was to be re-conquered in the name of Buddhism. The second is the story of Dutugemunu, the young warrior who fought and defeated the Tamil king Elara, who had been ruling the northern part of the island from the city of Anuradhapura for more than 40 years, uniting the whole island under his leadership. Dutugemunu went to battle accompanied by 500 Buddhist monks, a monk-general, and a relic of the Buddha mounted on his spear. His battle cry was ‘not for the kingdom, but for Buddhism’ (Trainor 1997: 110-111; Leach 1973:34; Liyanage 1998). Yet, after the slaughter of thousands of people, the victorious Dutugemunu was stricken with guilt and dread of the karmic (good or bad luck resulting from one’s actions) consequences of his acts. But monks in attendance consoled him that he need not worry as there had been only one and a half ‘human’ victims amongst the slain. i.e., one man who had taken Buddhist precepts and another who had taken refuge in the Three Jewels (Buddha, dhamma, and sangha). The other thousands killed in the war were non-believers and
therefore considered non-human. According to the monks, killing them caused no retribution to the king (Bartholomeusz 2002: 136-144, Obeysekera 1993: 136). For the author of the Mahavamsa, the war of Dutugemunu against the Tamil invaders was by no means a problem of religion and morality but a justified act of national politics (Seneviratne 1999).

Sinhala Buddhist nationalists are now challenging the origin myth that Sinhala people descended from Prince Vijaya by a new narrative, which traces Sinhala origins further back into the past, to the Yakka king Ravana (Witharana 2019). However, Dutugemunu remains an immensely popular figure in Sinhala culture. Once confined to nationalist elites, the Dutugemunu saga has trickled down to the population, facilitated by its reproduction in school textbooks, teaching in schools, retellings by artists and poets, overt political propaganda, commentary in the press, and arguments of Buddhist priests as well as lay scholars as if it was a factual account of history (Seneviratne 2004; Spencer 1990b: 3; Liyanage 1998; Tennekoon 1990).

In nationalist discourse, the military defeat of the LTTE in 2009 is a repetition of this history. It is a comparable myth with the same ingredients: a spectacular victory, heroic soldiers who annihilated the enemy and the uniting of a fractured land. It is an event that slots all too neatly into the nationalist narrative of the nation. Moreover, it is a moment where history is simultaneously progressing forward to a brighter future and looping back, collapsing time between the past and the present, then and now, creating a sense of immortality and trans-historical kinship which is exceptionally powerful.

Val Daniel distinguishes myth from history in terms of the ‘aboutness’ of history and the ‘participatoriness’ of myth. Put differently, he states that history provides us a way of ‘seeing’ the world, while myth offers a way of ‘being’ in the world, where participation is fundamental. According to Daniel, ‘Myth is ontic' (1996: 51). I contend that the end of the war in 2009 was a mythic moment in the sense described by Daniel, i.e., it was an event that was not merely heard or seen but lived and celebrated. Following the end of the war, Mahinda Rajapaksa, as Supreme Commander of the Armed Forces, became the very embodiment of Dutugemunu himself (See Subramanian 2014).74 The symbolism and eventfulness of the victory were certainly not lost on President Rajapaksa. In his ceremonial address to

parliament announcing the defeat of the LTTE, he stated that throughout the years of war, nationalist narratives were forced to hark back to past glories, but here was an event the nation could be proud of in the present.

Hon. Speaker, all this time what we had to tell the world was about our great, heroic and glorious history. But today we have brought about such greatness and heroism to present day Sri Lanka. Till now we gained strength to rise as a nation from the past built by our heroic ancestors. Today, as much as we have added a new pride and honour to that past, we have created an era of new strength for the future of our nation. In the future when our nation has to engage in a glorious and invincible struggle the achievements of this era will be recalled.

Hon. Speaker, having defeated the most ruthless terrorists who made the world helpless, we rise today as citizens; as a nation with great and imposing personality. . . . What we through so far was that we could not achieve success in many things. After our fall in 1815, we were unable to revive that lost nation pride and dignity. But, today, we have achieved victory in a challenge that no other country has been able to overcome. It is both your duty and mine to safeguard the dignity, it is the responsibility of us all.75

A highly gendered and sexualised discourse
Secondly, a discussion on the hegemonic power of the discourse around heroic soldiers would, I believe, be incomplete without a consideration of it as a highly gendered and sexualised discourse that recognises and interpellates Sinhala Buddhist women into the nation’s narratives. As the discussion on the media campaigns launched by various governments in the preceding paragraphs reveals, the hero soldier is not only the embodiment of masculinity, courage, valour, strength, and camaraderie; he is also a symbol of humanity, generosity, and kindness. This is a hegemonic form of masculinity that seeks to subordinate and marginalise other masculinities. Men considered traitors are devalued, stripped of their masculinity, labelled as ‘eunuchs’ and ‘faggots’, and their sexuality questioned or pathologised in this discourse—a theme I take up more fully in the chapter that follows.

Moreover, this ideal of masculinity is accomplished by the construction of an ideal femininity that is supportive and complimentary, i.e. women are simultaneously constructed and celebrated as mothers of soldiering sons or wives of soldiering husbands (Cockburn 2003; Enloe 1983, 1989, 2000, 2004; McClintock 1995; Peterson 2010). The Cats Eye column titled ‘Macho Sons’ that I discussed above, written only three years after the militarization of the conflict in Sri Lanka, was in fact before its time in drawing attention to how the macho male in the collection of songs

titled *Sath Samudara Se*, were constantly counterposed to a nurturing woman or mother figure under the care and protection of a male figure. Macho Sons thus presage the feminist explorations and analysis of the gendered politics of nationalism that was yet to come.\(^{76}\)

*In Sath Samudura Se*, heroic soldiers and patriotic mothers and wives co-constitute each other. The songs celebrate mothers and the breast milk of mothers as nourishing male soldiers. Consider the following verse cited in the article:

Defending the motherland my son,
Is like protecting the mother who bore and nourished you . . .
. . . With my blood turned-milk, I nourished you
to defend the country and the nation . . .
. . . You are fearless, our country’s hero
This my son, makes me so happy
A son who defends the country . . .

(From *Sath Samudura Se*, translated from Sinhala and cited in Cat’s Eye 1986: 13)

Breast milk and blood turned to breast milk as nurturing soldiers for the war would become a recurring theme in cultural productions and propaganda material during the war. De Alwis refers to a propaganda poster published in the 1980s by the Ministry on Women’s Affairs, which depicts a woman (bearing the obvious cultural markers of a Sinhalese) breastfeeding her baby while dreaming of a man dressed in army fatigues. The caption in the poster in Sinhala was as follows: ‘Give your lifeblood in breast milk to nourish our future soldiers’ (de Alwis 1998b: 254).

This iconography recurs again in one of the most popular rana gee of 1999-2000 identified by Hewamanne, which proclaims, ‘soldiers are like a golden gate that protects the country from enemies and that all Sri Lankan mothers’ breasts are wet with milk for them’ (Hewamanne 2009: 160).

Sumathi Ramaswamy (1998) conceptualises the use of bodily parts such as the womb and bodily fluids such as milk, blood, and tears in nationalist discourse as ‘somatic building blocks’ used to construct ties of attachment between the language and its speaker, and thereby a national body politic. In her view, once the nation is somatically constituted, nationalists could deploy symbols (in her case ‘Mother India’) with great effect to persuade and incite the nation’s subjects to take up arms.

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\(^{76}\) As Mrinalini Sinha (2013) points out if studies on nationalism had demonstrated a certain indifference to gender as a category of analysis (for instance Anderson (1991), Gellner (1983), Smith (1979), feminist scholarship was equally guilty of neglecting the study of the nation and nationalism until the 1980s. In particular, the way in which the nation state is shaped by and shapes gender relations and identities. However, since the 1990s, there has been a veritable explosion in feminist scholarship on gender and nationalism, beginning with the pioneering work of Chatterjee (1989), McClintock (1995), Jayawardena (1986), Yuval Davis (1997), and Yural-Davis and Anthias (1989).
in its defence. There is a similar logic at play in deploying tropes such as breast milk and blood in the discourse of the heroic soldier.

I want to note that the discourse of normative femininity in Sri Lanka is also in conversation with the past—with the historical figure of Vihara Maha Devi, the mother of Dutugemunu. Analysing the figure of Vihara Maha Devi, Malathi de Alwis describes how nationalist ideology and rhetoric has constructed her as a woman without blemish. She was a woman who never forgot her place as a woman. Yet, skilled in military tactics and governance, she nurtured her young son to be a true patriot and nationalist and encouraged him to wage war against the Tamil king Elara, even when his father had forbidden him to do so. De Alwis shows how nationalist ideology frames Vihara Maha Devi as being ‘moral’ and ‘right’ even when she called for violence and supported and encouraged the call to arms to protection the Sinhala race, the Buddhist religion, and the motherland. Indeed, she is considered as having placed the needs of her country above her own, knowing her rightful place, and content to take pride in her son’s achievements. She is considered to encapsulate the vulnerability of the Sinhala nation and its people’s determination to retain what was perceived to be rightly theirs (a unified country dominated by the Sinhalese). She is the model of feminine heroism that we are all expected to emulate. The appropriation of Vihara Maha Devi by Sinhala nationalists, de Alwis argues, enabled (and continues to enable) the production of a particular kind of Sinhala womanhood—nurturing, sacrificial and patriotic—that is always already imbricated in Sinhala ‘history,’ ‘culture’ and ‘tradition’ (de Alwis 1998b: 256)

During the war, mothers and wives of war heroes were recognised as following in the tradition of Vihara Maha Devi and granted a privileged position within the national imaginary. In his 2008 address to the nation on National War Heroes Day, President Rajapaksa paid tribute to mothers and wives of war heroes as follows:

> We look at these mothers who have given their children to the armed forces; the wives who have sent their husbands to the forces and give them all strength and

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77 More generally women’s roles as mothers and wives were privileged within a familial ideology elevated to government policy. Rajapaksa’s first presidential election manifesto, Mahinda Chinthana I, in a chapter titled ‘An Affectionate Family,’ refers to the family as the foundation of our society in which the mother takes the prime place (Mahinda Chinthana Sri Lanka, Manifesto of Mahinda Rajapaksa for Presidential Elections 2005: 13). Following Rajapaksa’s re-election as President in 2010, many of these provisions on women and the family were repeated in Mahinda Chinthana II, with far reaching implications for women’s rights in several areas such as domestic violence, right to migrate abroad for work, family planning and rape (see Chulani Kodikara, ‘Good women and bad women of the postwar nation’, *Groundviews*, 22 May 2014, https://groundviews.org/2014/05/22/good-women-and-bad-women-of-the-postwar-nation/).
encouragement, the children of our war heroes, and we know that they have
sacrificed their lives for the freedom of this country, to safeguard democracy in the
country. These mothers deserve not only honour from the entire country for the great
sacrifice they made when they gave their children to save the country. . . . As much
as we have built this monument in granite for our Heroes of War, we must all have a
monument to them in our own hearts, which will also be a monument to the mothers
of these heroes of war.  

The woman who is valued and recognised in this discourse is, therefore, a particular
type of woman. She is a docile, nurturing, and sacrificial woman. She is
recognised and valued primarily for her maternal or conjugal sacrifices for the nation
based on notions of feminine respectability, attractiveness, passivity, domesticity,
and loyalty (Enloe 2004: 106-107; Cockburn 2003). Alternatively, she is reduced to
a ‘victim’, the feminised other who must be protected by heroic warriors—for the
good of self, family, and country. Women who defy or transgress the boundaries of
this nationalist script, like the women who I document in this thesis, were, of course,
liable to be vilified as traitors and terrorists.

A cultural figure: The aesthetics of patriotism and nationalism

Thirdly, as the discussion above already reveals, from the very outset of the war, the
soldier emerged as a highly visual, cultural figure in songs and posters whether on
his own or in the company of the nurturing and patriotic mother figure. As de Mel
(2007) has argued, this was a necessary part of the marketisation of the war to
persuade and incite young Sinhala men to kill and die for the nation. However, it is
not wrong to say that after the end of the war, a new aesthetic of patriotism and
nationalism emerged, where he was omnipresent—on television and in the cinema
(Kahandagama 2014/2015; Karunanayake and Waradas 2013), in posters and
billboards, in blog posts, poems, and songs on the radio. Following Graham Dawson
(1884) and Michael Paris (2000), the war and the heroic soldier became a popular
theme in mass entertainment and part of Sri Lankan ‘pleasure culture’ as the result
of the patriotic labour of a plethora of known and unknown artists, politicians,
writers, filmmakers and so on.

78 ‘Do not betray victory of nation’, Asian Tribune, 9 June 2008,
http://www.asiantribune.com/node/11670, accessed 18 November 2016. This website no longer exists.
79 Sinhala Buddhist nationalist ideology, which emerged in opposition to colonial rule in the 19th and
20th centuries from the outset had a clearly articulated gender ideology (de Alwis, 1994; Jayawardena,
1986, 1993). A number of feminist scholars writing on Sri Lanka such as de Alwis (2002a, 2002b,
(2000) and Ruwanpura (2006) among others provide a rich documentation and analysis of how these
norms regulate and policewomen’s everyday lives in different arenas including in formal politics, in free
trade zones and as migrant workers, while also analysing the ways in which women resist and subvert
these norms.
In these postwar visual and cultural productions, the heroic soldier is no longer merely a soldier. He is also a father, brother, son, singer, songwriter, or lover. Through its stirring visuals, music, and lyrics, the *Api Wenuwen Api* recruitment campaign that I referenced above already anticipated for the hero soldier a role beyond the battlefield, imagining him as ‘one of us’. Consider the following excerpt from the *Api Wenuwen Api* chorus:

He is one who can
divide the seas, bring heaven and earth together
offers his love for the country, made of flesh and blood
a real father with ten thousand children
a blood relative to the whole country
one of us
with ten thousand mothers
this friend of youth
this one of us, this man . . .

A TV programme titled *Ranaviru Real Star* (RRS) I contend, represented the culmination of the transformation of the soldier from a model of militarised masculinity to a cultural icon. Conceived by Gotabaya Rajapaksa, as Secretary of Defence, and dubbed as a ‘military reality show’, it was launched in October 2010. It sought to provide a platform for the musical talents of military personnel, based on a format similar to *American Idol* and the copycat programmes that it has spawned around the world. Armed forces personnel of any rank were eligible to apply for a spot on the show. Their singing capabilities were assessed by a group of veterans from the Sri Lankan entertainment industry. The shortlisted finalists were then progressively voted out by a panel of judges and by the public via SMS (short message service) voting. According to one newspaper article, Gotabaya Rajapaksa wanted to show the world that soldiers could do more than just fight wars. Singer Champa Kalhari, a member of the panel of judges during its first season, stated:

We are honored to have been selected to judge this contest, which I would like to call 'sacred'. Now, the whole world will notice our heroes for a second time and this time everyone will realize that sensitive and creative human beings live inside these military combatants and that they possess not only a rich taste in art and music but also a proper discipline that is admirable.

The show is reported to have had an estimated audience of 450,000 to 500,000 families when it was aired. During seasons 1 to 4, it received the highest number

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of SMSs for a reality show final held in Sri Lanka. In 2014, it received over 10 million SMS’s (approximately half the population of Sri Lanka) at the grand finale, beating the 8.3 million SMSs received at the finals of RRS in season III.\textsuperscript{82}

\textbf{The United Front and the Heroic Soldier}

It is in this context that the United Front came to power in 2015, on the promise of holding to account members of the armed forces, alleged to have been involved in atrocities against civilians during the last phase of the war. In the following chapter, I explore the United Front’s transitional justice programme and the counter-response launched by nationalist forces to defend soldiers. Here it is sufficient to say that, in the immediate aftermath of the elections, the government took a few steps to temper the unabashed triumphalism of the Rajapaksa era and recognise the suffering caused to the civilian population during the last phase of the war. Yet the government failed to challenge or disrupt the trope of the heroic soldier in any serious way.

In 2015, the government pledged that 19\textsuperscript{th} May marked as ‘Victory Day’ in the past, will be marked as ‘Remembrance Day’ to commemorate all who died in the war and not just the soldiers. Yet, the President continued to celebrate ‘Victory Day’ even while acknowledging that the Rajapaksa government’s focus on developing physical infrastructure in the war-ravaged north and east failed to consider the need for reconciliation, and the need to rebuild ‘broken hearts and minds’.\textsuperscript{83} During his tenure in power from 2015 -2019, the military parade remained central to Remembrance/ Victory Day. The government also continued many of the mnemonic practices, the welfare benefits, and the cultural programmes started by the Rajapaksa regime, such as \textit{Api Wenuwen Api}. In October 2016, the President unveiled the largest cenotaph in South Asia built to commemorate fallen war heroes of the Sri Lanka Light Infantry Regiment adjacent to their Headquarters in Panagoda.\textsuperscript{84} It also commenced its own social and economic welfare schemes

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\textsuperscript{82} Ibid. \\
\textsuperscript{84} The symbolic cenotaph, considered to be the biggest in the South Asian region is 80 feet in height and contains three parallel skyward planks which symbolize the celestial interaction between those war heroes laid to rest and those believed to have joined the heavens, based on a flat bronze footing, out of which the replica of a brave soldier who is all the time prepared to emit his energy for the greater benefit stands. ‘South Asia’s largest cenotaph unveiled in Panagoda’, \textit{News.lk}, 27 October 2015, https://www.news.lk/news/politics/item/10498-sli-war-heroes-memories-immortalized-in-south-asia-s-largest-monument-at-panagoda, accessed 20 May 2021.
\end{flushright}
called the ‘Virusara Privilege Card’. The beneficiaries of this programme were family members of armed forces personnel who had died, officers and soldiers wounded due to the war, and forces personnel who had completed 22 years of work between 1983 to 2009. This card extended the wide assortment of benefits available to armed forces to more than 45 popular island-wide commercial and public ventures.85

In December 2017, the United Front announced that it would exempt all military personnel who had taken a housing loan under the Api Wenuwen Api housing scheme launched by the previous government from repaying the loans. The government stated that the Api Venuwen Api fund would take on these loan repayments to the respective banks. According to Defence sources, around 100,000 soldiers had taken this loan, and the total cost of the cancellation of loans amounted to Rs. 100 billion.86 According to the Ravaya newspaper, this was a promise made in anticipation of local government elections to be held on 10th February 2018 and an all-too-blatant attempt to woo the military vote in a context where former President Mahinda Rajapaksa announced that he was leaving the Sri Lanka Freedom Party to form his own party, called the Sri Lanka Podu Peramuna (SLPP), to contest the local government elections. Ravaya estimated that the soldiers who had taken this loan formed a significant vote bank. According to it, the Api Venuwen Api Fund did not have Rs. 100 billion and this was a promise comparable only to an earlier promise made by former President J.R. Jayewardene to bring rice from the moon!87 In 2018, the United Front government did discontinue the cash grant of Rs.100,000 given to soldiers who had a third child introduced at the November 2010 budget.

Conclusion
In Chapter One, I argued that following the end of the civil war in Sri Lanka, the Rajapaksa government and Sinhala Buddhist nationalist ideologues denied all allegations of disappearances. Not only that, I argued that this discourse of denial worked hand in glove with another discourse and practices, which constructed family members of the disappeared as ‘enemies’, ‘traitors’ and ‘terrorists’.

87 “රාවය කලටා මෙය මෙය මෙය මෙය මෙය මෙය මෙය ඔබට මෙය ඔබට මෙය,” Ravaya, 9 January 2018, p.3.
Continuing that discussion, in this chapter, I explored the trope of the hero soldier as yet another element of the Manichean discourses and material practices of erasure of the Rajapaksa regime. I traced the trajectory of this figure from a model of heroic militarised masculinity to a model of humanity during the years of the war, to his institutionalisation as the citizen par excellence, cultural icon and sign and symbol of the nation itself, after the end of the war. I argued that the figure of the heroic soldier that emerged in postwar discourses of resistance to truth and justice for disappearances is not a natural or automatic by-product of war. Rather, he was crafted and consolidated over time, both discursively and materially 'through specific decisions by specific people' (Enloe 1989: 3), constantly shaped and monitored in order that he remain 'persuasive and legitimate' (Enloe 2004: 107). In effect this discourse reframes, normalizes, legitimises, and actualises impunity as 'honour of the nation' (Chatterjee 2014: 14).

Based on the ethnography of the heroic soldier presented in this chapter, I contend that mechanisms of erasure of sovereign violence does not work simply by vilifying and dishonouring the victims or their surviving kin. They also work by valorising the perpetrators and inscribing them into history and memory as heroes and citizens par excellence. Moreover, it was not only the government that was invested in such activity. ‘Civil’ society—artists, teachers, film-makers—played a role in nurturing and perpetuating these mechanisms of erasure. I hope that it is by now clear that the manner in which the identity of the heroic soldier intersects with national identity, memory and an ‘emotionally charged historiography’ (Welikala 2012: 5) poses a challenge and a dilemma for any government in Sri Lanka seeking to deliver truth and justice for survivors of the war. Following the elections of 2015, the United Front attempted to face this challenge by trying to pay homage to the figure of the heroic soldier, even as it promised to pursue truth and justice for war-related human rights atrocities. However, as it will become clearer in the chapters that follow, it was impossible to do both. Their attempts to hold the soldier accountable for crimes the Sinhala Buddhist nationalists insist he did not commit struck a deep psychological and emotional nerve, catalysing an unprecedented mobilisation of Sinhala Buddhist ideologues in defence of soldiers, both nationally and internationally. In Chapter Four, I explore the visceral, emotional reaction and counter mobilisation to the heavily internationalised transitional justice programme that the United Front inaugurated. But before that, in the next chapter, I remain with the Rajapaksa government to explore its response to the increasing local and
international pressure that was brought upon it to address accountability for war-related atrocities.
A Timeline of UN Resolutions and Action relating to Sri Lanka
2009 – 2014


22 June 2010: Secretary-General names Panel of Experts to advise on accountability for possible rights violations during Sri Lanka Conflict.


7 March 2012: Resolution on ‘Promoting Reconciliation and Accountability in Sri Lanka,’ (A/HRC/19/L.2) adopted by the UNHRC.

21 March 2013: Resolution on ‘Promoting Reconciliation and Accountability in Sri Lanka,’ (A/HRC/22/L.1/Rev.1) adopted by UNHRC.


26 March 2014: Resolution on ‘Promoting Reconciliation, Accountability and Human Rights in Sri Lanka,’ (A/HRC/25/L.1/Rev.1) adopted by UNHRC. This resolution requests the Office of the High Commissioner for Human Rights (OHCHR) to ‘undertake a comprehensive investigation into alleged serious violations and abuses of human rights and related crimes during the final phase of the war in Sri Lanka’.

Commissions of Inquiry Appointed by the GoSL 2009-2015

May 2010: The Lessons Learnt and Reconciliation Commission (LLRC) appointed.

In the three preceding chapters, my objective was to offer a historical background and a conceptual framework for understanding and analysing the struggle for truth and justice being waged by Tamil women family members of the disappeared in postwar Sri Lanka. In particular, I argued that under the Presidency of Mahinda Rajapaksa, the state denied disappearances, while constructing soldiers as ‘heroes’ and family members demanding for justice as ‘traitors’. In this chapter, I contend that even as it did so, it came under enormous pressure from local and international human rights organisations and the international community, to address the question of truth and justice for war-related atrocities. The United Nations Human Rights Council (UNHRC) in Geneva emerged as the centre of much of this activism. I analyse the history of this activism at the UNHRC, the ways in which the Rajapaksa regime tried to carry the discourse of denial to the international arena to deflect the pressures brought upon it, and ultimately how it tried to appease this pressure by establishing a number of legal and quasi-legal mechanisms in the name of reconciliation. I have in mind the Lessons Learnt and Reconciliation Commission (LLRC), the Presidential Commission for the Investigation of Complaints into Missing Persons (PCICMP), and the offer of compensation for family members of the disappeared provided the disappeared were registered as dead under the Registration of Deaths (Special Provisions) Act No.19 of 2010 (RoD).

I show that this was not the first time that the Sri Lankan state deployed these mechanisms. The People’s Alliance (PA) government successfully implemented very similar mechanisms in the aftermath of the second southern insurrection (1988 – 1991) in response to demands for truth and justice made by Sinhala family members of the disappeared in the south. However, I show that Tamil family members of the disappeared interpreted these mechanisms as an extension of the postwar necropolitics of erasure of the Rajapaksa government. They engaged with these mechanisms both as ‘threat and guarantee’, re-signifying the
commissions as a ‘space of appearance’ to bear witness to disappearances and resisting death certificates and compensation, based on their imaginaries of and strategies towards the goal of truth and justice. In so doing, I contend that they refused their record to an archive of death and created an official archive of disappearances. I argue that the material experience of the state via these mechanisms was formative for the emergence of postwar dissident political subjectivities and a new community of survivors who have sustained the struggle for truth and justice for disappearances for more than ten years.

Drawing from the anthropology of mechanisms such as commissions and compensation, this chapter also compares and contrasts the radically different responses to these mechanisms by family members of the disappeared in the south and those in the north. My intention is to foreground how the meaning of justice for victim-survivors is contextual and context-specific and shaped by factors such as ethnicity, temporality, and political affiliation. I begin with a brief overview of the role and function of the UNHRC in the global governance of human rights, locating this discussion within larger debates and critiques of internationalised justice. I go on to discuss the pressure brought on the Sri Lankan state through the international justice process at the UNHRC just before the end of the war before I discuss the response of the Rajapaksa government.

The Global Governance of Human Rights
As the civil war between the government of Sri Lanka (GoSL) and the (Liberation Tigers of Tamil Eelam (LTTE) recommenced in 2006 and intensified, local and international human rights organisations began to work together to mobilise the international community—foreign governments, foreign media, and United Nations (UN) mechanisms—to put pressure on the Sri Lankan state to respect international human rights and humanitarian law in the conduct of the war. Here, it will suffice to say that the UNHRC in Geneva became the favoured site of much of this activism.

The UNHRC is the principal UN intergovernmental body responsible for human rights, with a mandate to address human rights abuses across the globe, including gross and systematic violations; promote respect for human rights for all, and coordinate and mainstream human rights within the UN system.88 It does so

88 The UN Human Rights Council was created by Resolution 60/251 of the UN General Assembly in April 2006 and replaced the Human Rights Commission as the principal United Nations intergovernmental body responsible for human rights. It is composed of 47 member states elected from
through ‘traditional and innovative ways’ that include public scrutiny of every country’s human rights performance; special sessions devoted to addressing gross and systematic violations; fact-finding investigations; and commissions of inquiries to examine human rights abuses in what are considered urgent situations; country visits by independent experts charged with monitoring issues ranging from violence against women to freedom of expression and technical assistance and capacity building.  

In theory, the UNHRC seeks to achieve state compliance with human rights employing what Mathew Davies refers to as compliance pressures (Davies 2010). These pressures may be generated, firstly, by power asymmetries between states, and the ability of some states to strategically manipulate rewards and punishment to induce others to act in certain ways; secondly, by persuading member states as to the rightness of changing their behaviour independent of any material or social sanctions motivated by internalised identities, values and norms; and thirdly, by mobilization of shame and public opinion in favour of compliance (Davies 2010: 455 -259; Niezen and Sapignoli 2017). This process is expected to be an intensely discursive and dialogical process that is ‘transparent, non-selective, constructive, non-confrontational and non-politicised’. The assumption here is that these institutional structures will create an ‘ideal speech situation’ in the Habermasian sense, that would push states towards a progressive realisation of human rights and a ‘common life world’ based on shared meanings and norms (Risse 2000).

The spiral model of human rights change developed by Risse, Ropp and Sikkink (1999) attempts to capture this process in terms of three distinct types of socialisation (instrumental adaptation, argumentation, and habitualisation), and five different phases: repression; denial, tactical concessions, prescriptive status, and rule-consistent behaviour. However, enforcing international human rights standards at the national level is a very messy business. As this case study of Sri Lanka at the UNHRC demonstrates, there is no guarantee that countries charged
with human rights violations at the UNHRC will progress seamlessly from repression and denial to compliance. Moreover, even if progress is achieved, such progress is all too often interrupted, reversed, and/or marked by backlash (Risse, Ropp, and Sikkink 1999; Risse and Roppe 2013). Indeed, the assumptions underlying the global governance of human rights are far removed and disconnected from how states actually deal with human rights pressures. Sri Lanka is a prime example of a case of denial, followed by acknowledgement and the return to denial at the UNHRC.

Far from creating an ideal speech situation, the UNHRC more often than not becomes a battlefield, where countries individually and collectively engage in intense contests over questions relating to human rights and sovereignty, in particular. In Richard Jolly’s account of the UN, the ‘second and third UN’, i.e., UN bureaucrats and human rights NGOs, have long resolved the tension between state sovereignty (interpreted as non-interference in internal domestic matters of UN member states) and accountability for gross violations of human rights, in favour of the principle that sovereignty cannot act as a cover for human rights abuses (Jolly, Emmerij, and Weiss 2009: 32). Yet, member states (characterised by Jolly as the ‘first UN’) continue to jealously guard their sovereignty and insist on non-interference in what are seen as purely domestic matters.92

As I write about Sri Lanka at the UNHRC, I am also conscious of the very substantial critique of international human rights norms and institutions from feminist, postcolonial, and Third World Approaches to International Law (TWAIL) (Kapur 2014). From TWAIL, I have learnt how the colonial project and the essential structure of its civilizing mission have endured over time and been preserved in certain versions of contemporary UN interventions such as human rights and transitional justice, positing ‘a third world that is lacking and deficient and in need of international intervention for its salvation’ (Anghie and Chimni 2003: 86). In the words of Gustavo Esteva and Madhu Prakash, universal human rights discourse may be the ‘trojan horse of recolonization’ (2014: 110). Others point to the politics underlying such interventions, which forecloses other emancipatory and creative possibilities, as well as ownership at the national and local levels (Kennedy 2004; Kapur 2014). For Spivak, international human rights is a ‘theatre’, which might

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92 See for instance Freedman and Houghton (2017) and Cowan and Billaud (2015, 2017) on the Universal Periodic Review at the HRC.
generate short-term euphoria devoid of long-term consequences (Spivak 1996; Sharpe and Spivak 2003).

However, following scholars such as Bouventura de Sousa Santos (2002) and Tobias Kelly (2018), I understand that international law and international institutions can provide a strategic space of resistance for subaltern legal subjects. International norms and institutions can help expand the space for struggle at the local level, even if it bolsters the hegemony of international law. As Nilsen and Roy citing Gramsci, has pointed out, the political struggles of subaltern groups do not occur in some autonomous domain but in and through the very institutions and relations through which hegemony is constituted (2015: 1415). They cite Gramsci to the effect that ‘(s)ubaltern groups are always subject to the activity of ruling groups, even when they rebel and rise up’ (Gramsci 1971: 182). Thus, subaltern agency—ranging from everyday negotiations of the workings of power from above to collective action challenging adverse incorporation into a social formation, will tend to proceed by engaging existing institutional ensembles, framing claims through discourses, and mobilising through political forms which reproduce unequal power structures (Gramsci 1971: 182). When I return to this theme in Chapter Seven, I will attempt to illuminate how international law and transitional justice have allowed the mothers, wives, and sisters at the heart of this thesis—minoritised women at the margins of the state—to engage with and contest the state and to address the asymmetries of power at the national level.

Sri Lanka at the UNHRC
Sri Lankan civil society activists have a long history of engagement with the UN Human Rights Commission, the predecessor to the UNHRC, which has continued after it was restructured as the Council in 2006. Indeed, the transformation of the Commission into the Council in 2006 coincided with the commencement of the last phase of the war in Sri Lanka. As the war progressed, both local and international activists attempted to place Sri Lanka on the agenda of the UNHRC to obtain a resolution drawing attention to rights abuses by both the GoSL and the LTTE. In response, the European Union (EU) and the United Kingdom (UK), with support from the United States (US), called for a special session of the Council to discuss this matter and negotiate a resolution. According to Wikileaks cables from the US

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93 A special session at the HRC requires the endorsement of 1/3rd of the members of the Council. See Note Verbale on special session prepared by the OHCHR,
embassy quoted by Sri Lanka’s Permanent Representative to the UN in Geneva at the time, a resolution against Sri Lanka was considered critical by the US as ‘a special session that [did] not result in a resolution [would be] hailed as a victory by the government of Sri Lanka’. By the time this session was placed on the agenda of the UNHRC, however, the war had ended. In what is now considered a diplomatic coup, GoSL turned the tables, to pass a counter resolution—Res.S-11/1—which gave credit to the government for liberating ‘tens of thousands of its citizens that were kept by the Liberation Tigers of Tamil Eelam against their will as hostages, as well as the efforts by the government to ensure the safety and security of all Sri Lankans and to bring permanent peace to the country’. This resolution did not refer to human rights concerns or the fact that over 300,000 civilians were at the time being held in displacement camps until their villages and towns were ‘cleared’ by the army. To make matters worse, a few days earlier, Ban Ki-Moon, the Secretary-General of the UN (UNSG) at the time, following a visit to Sri Lanka, had congratulated the country on its humanitarian work. Res.S-11/1 was described to me by one staff member of the Office of the High Commissioner for Human Rights (OHCHR), as the ‘lowest point’ in the history of the UNHRC. This victory for Sri Lanka at the Council was, however, short-lived.

Following the end of the war, advocacy efforts to put international pressure on the Sri Lankan state continued in the vocabulary of ‘transitional justice’ (See Chapter Four). In June 2010, the UNSG revised his earlier stand and appointed a Panel of Experts (PoE) to advise him on the issue of accountability regarding any alleged violations of international human rights and humanitarian law during the final stages of the conflict in Sri Lanka. The panel found credible evidence of abuse of a wide range of human rights and humanitarian laws by both the GoSL and the LTTE, some of which—it concluded—amounted to war crimes and crimes against humanity. The panel report provided the grounds on which rights activists and

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NGOs would make another attempt to put Sri Lanka on the UNHRC agenda, this time successfully, with the support of the US.

Between 2012 and 2014, the UNHRC passed three resolutions against Sri Lanka titled ‘Promoting Reconciliation and Accountability in Sri Lanka’. The first called on the GoSL to implement the LLRC report, (which I analyse below), develop an action plan to do so, and accept technical assistance and advice from the OHCHR. The second called upon the Government to conduct an independent and credible investigation into allegations of the abuse of international human rights and humanitarian law. The third requested the OHCHR to ‘undertake a comprehensive investigation into alleged serious violations and abuses of human rights and related crimes by both parties in Sri Lanka’. The report that resulted from this investigation was released following 2015 presidential and parliamentary elections held in Sri Lanka and the United Front assuming power. I will pick up what happened at the UNHRC following the release of this report in the next chapter. Here I want to focus on how the Rajapaksa government responded to the pressure from the UN.

The Rajapaksa regime rejected the Panel of Experts appointed by the UNSG mentioned above, its report, and the Council resolutions as unacceptable, illegitimate, and illegal processes. The PoE Report was deemed to be full of contradictions, obfuscations, lies, hearsay, gossip, and prepared without verification of evidence and testimonies, in violation of the norms of the UN Charter. The 4,000 submissions by over 2,300 persons referenced in the PoE Report (point 17 / page 5) were dismissed as ‘nameless and faceless persons living in Europe, some under assumed names’. However, even as the regime vehemently denied these allegations, it also made some tactical concessions to the UN.

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102 Cronin-Furman (2020) has conceptualised such domestic commissions of inquiry appointed under pressure from the international community as ‘human rights half measures’. She goes on to argue that their intended purpose is not to garner the support of western governments or NGOs that promote human rights. Rather they are intended for swing states—less informed and less engaged in human rights—that can either support or block multilateral action on human rights in spaces like the UNHRC.
Notwithstanding the mounting critiques of international human rights law, we live in times when transnational human rights NGOs are as active as ever, and UN fact-finding missions are proliferating around the globe. In such a context, sustaining a discourse of denial was no easy task for a small country such as Sri Lanka. It is in this context, that the Rajapaksa government appointed the LLRC and later the PCICMP while offering compensation to family members of the disappeared, provided the disappeared persons were registered as dead. However, before I explore these mechanisms, I want to take a step back to explore the relationship between such mechanisms and questions that go right to the very heart of this thesis, such as the space of appearance, subjectivity, meanings of justice, the archive, and the history of such mechanisms in Sri Lanka.

**Commissions, Compensation, and Certificates of Death**
The anthropology of commissions of inquiry (Cols) (Blom Hansen 2000; Das 2007b; Das and Kleinman 2001; Thiranagama 2013) recognises the contingent possibilities of such mechanisms. In anthropological scholarship, Cols are technologies of power that are neither inherently good nor bad. Domination, suppression, obfuscation, and whitewashing are not all that can be said of them. Das refers to the fact that commissions can and occasionally do expose patterns of abuse and make public records of incidents and events that have otherwise tended to be officially obscured, erased and/or manipulated. They may, in some instances, even produce enough evidence to prosecute individuals for specific crimes even if prosecutions are never pursued (Das 2007b). This scholarship suggests that any anthropological inquiry of such mechanisms must take account of the political context in which they are deployed, the manner of their implementation by state officials responsible to do so, their reception by those interpellated by them, their effects on the archive, and what they come to mean to survivors.

Hansen’s study of the Srikrishna Commission, appointed by the Maharashtra government in India, following the demolition of the Ayodhya mosque in December 1992, is instructive here. Drawing on Ernst Kantorowicz’s theory of the king’s two bodies – the sublime, infallible eternal body of the king as the law, and the profane, human and fallible body of the king as the giver of the law, Hansen argues that the Srikrishna Commission, even if conceived of as a spectacle, became a symbol of the sublime dimension of the state – fair, reasonable, tolerant, and a producer of impartial justice. The Commission heard from a cross-section of the community,
revealed numerous examples of the ‘profane’ sides of state power—the corruption and brutality within the police, governmental attempts to obstruct proceedings and prevent prosecutions, the links between the police and politicians—and in its recommendations defended the idea of the state as impartial, above society and committed to universal justice. Muslims came to view the Commission as a ‘symbol of the resilience of a higher and more benevolent form of justice’ (Hansen 2001: 49).

The same can be said of compensation. In theories of transitional justice, for instance, financial compensation for victim-survivors of gross violations of human rights is considered a form of reparations. De Greiff states that for some survivors, material reparations may be the most tangible manifestation of the efforts of the state to remedy the harm they have suffered. Criminal justice, he says, even if it were completely successful in terms of the number of perpetrators punished, may not be seen as an effort on behalf of victim-survivors. Similarly, survivors may obtain significant benefits from truth-telling, including a sense of closure derived from knowing the fate of loved ones, and a sense of satisfaction from official acknowledgement. But in the absence of other positive and tangible manifestations, truth, by itself, can easily be considered as an empty gesture or as cheap and inconsequential talk (De Greiff 2006: 2). In Kutz’s (2004) view, while neither money nor punishment of perpetrators can heal wounds or unwind the clock, the very fungibility of money can re-orient individuals in moral space, creating a kind of coerced respect—and the possibility of genuine respect. Yet, whether compensation will be seen as reparations is context-specific and contingent. In Argentina, the willingness of some members of the Madres de la Plaza de Mayo to accept economic remuneration from the government, which was not willing to go all the way to prosecute the military following the return to civilian rule in 1983 became a contentious issue, which ultimately led to a split in the organisation. One half of the group refused to be ‘bought off with “money”’ (Humphrey and Valverde 2008: 93).

Thus, these processes and the mechanisms they entail call attention to the production of subjects and subjectivity (Ismail 2013: 1) and the ways in which they might or might not fulfil the meaning of justice for citizen subjects wronged by the violence of the state at a particular moment in time. In Das’s words, ‘justice is neither everything or nothing’ and the ‘very setting into process of public acknowledgment of hurt can allow new opportunities to be created for the resumption of everyday life’ (2007c: 217; See also Das and Kleinman 2001: 19).
Indeed, CoIs, compensation, and death certificates may be seen as technologies of power or ‘influential rituals’ through which ‘subjects are called into social being’ and ‘formed and reformulated’ (Butler 1997: 160). Whilst they rely on ‘reiteration of norms which precede, constrain, and exceed the performer’ (Butler 1993: 24), those who are interpellated may not respond in the way that they are expected to respond. Thus, one must leave room for the fact that they may unravel in unexpected ways, giving rise to unintended consequences, contingencies, and unanticipated outcomes (Das 2007b: 182). In Das and Poole’s view, victim-survivors are not simply passive and inert subjects but active agents who might engage with such mechanisms as both ‘threat and guarantee’ (Das and Poole 2004). Elaborating on this idea, they state:

Populations . . . may exist only as entities to be administered in the state imaginary, but the inhabitants of these margins are not inert objects: forms of governance, social relationships around different zones of experience, and the cultural genres within which language acquires life generate ways of engaging the biopolitical state that cannot be arrived at through metaphysical speculation . . . the ways ‘managed’ populations work with strategies of control to claim citizenship are deeply informed by specific experiences of the state. (2004: 27)

With these insights in mind, I want to move on to discuss the history of commissions, compensation, and death certificates in Sri Lanka.

**Commissions, Certificates of Death, and Compensation in Sri Lanka**

Commissions, certificates of death, and compensation have a long genealogy as technologies of state power in post-independent Sri Lanka. They were first deployed in combination in 1994 by the PA government to address disappearances in the wake of the second southern insurrection. This was in response to the demands made by Sinhala women family members of the disappeared in the south of Sri Lanka who had mobilised under the banner of the southern Mother’s Front in the dying days of the insurrection.

The southern Mothers’ Front, described as the ‘single largest women’s protest movement of its time and arguably one of the most effective in the history of modern Sri Lanka’ (de Alwis 2007: 123), was formally inaugurated in the southern town of Matara in June 1990. At its height, it had a membership of over 25,000 women from low-income, peasant, trading, and working-class families with no prior history of participation in village-level societies or experience in the political domain.
The Front was from the outset intimately associated with the Sri Lanka Freedom Party (SLFP), which was in the opposition at the time, and was mobilised by two aspiring young leaders in the SLFP: Mangala Samaraweera (who you will meet in the next chapter) and none other than Mahinda Rajapaksa himself. It was the SLFP who found the funding, set the agenda for rallies, handled the advertising, sent out invitations, and hired buses to transport women for collective action from various regions of the county. It was Samaraweera’s office that drafted petitions and articulated demands, including the appointment of independent commissions, issuance of death certificates, and compensation for the families (Thompson Senanayake 2014; de Alwis 1998a; de Alwis 2007: 132-132).

I discuss the Front’s tactics in Chapter Six. Here I want to note that the mobilisation of the Front contributed in no small measure to the defeat of the United National Party (UNP) government, which had presided over disappearances during the 1988-91 period, in successive elections held between 1993 and 1994. The PA – a coalition of parties that came to power in these elections, was headed by the Sri Lanka Freedom Party (SLFP), which until then had been out of power for 17 years. Chandrika Kumaratunga from the SLFP was elected as President. Once in power, President Kumaratunga appointed four commissions of inquiry – each responsible for a geographical area, which created a space to bear witness to enforced disappearances committed during the second southern insurrection.

The four CoIs generated four reports that contain perhaps the most graphic, meticulous, unflinching, and damning account of the violence of 1988-1991. The report of the CoI for the Western, Southern, and Sabaragamuwa Provinces, the most detailed of all the reports, describes the violence of 1988-1991 as a systemic and orchestrated phenomenon, in which those in political power and the law were deeply complicit. It was also unequivocal in concluding that these were not individual aberrations or transgressions, nor isolated incidents caused by the breakdown of relations between particular perpetrators and victims. What is even more remarkable is the manner in which it documents attempts by the state not simply to cover up but to completely erase this history from what it refers to as the official annals or records (Col-WSS 1997: 30-34).

The reports also made a number of recommendations under three major categories, reflecting the demands made by family members: prosecution and
punishment; measures for rehabilitation and reconciliation; and prevention. (Nesiah and Keenan 2004, Pinto Jayawardena 2010). One commission even went so far as to identify suspected perpetrators in more than 2,000 cases (Human Rights Watch 2008: 9). Their names were, however, handed over under sealed cover and never revealed to the public. It was in response to these recommendations that the government first simplified the bureaucratic procedure to register as dead those who had disappeared, by the enactment of The Registration of Deaths (Temporary Provision) Act No. 2 of 1995 (RoD). Those who made use of this procedure were made eligible to receive compensation from the state. Many family members availed themselves of this law. By September 1999, a total of Rs. 410 million were paid as compensation to 12,242 families of disappeared, with compensation payments ranging from Rs.15,000 for those under the age of 18, Rs. 50,000 for an adult and to Rs.150,000 for a public servant.103 By 2002, compensation had been paid to 16,324 families (Human Rights Watch 2008: 54).

On the question of prosecutions, the government initially expressed its commitment to prosecute those identified as responsible for the disappearances, and a special unit was set up within the Attorney General’s Department to do so.104 However, when peace talks between the GoSL and the LTTE collapsed, and both parties returned to war, the government abandoned most of these cases. Yet, in many instances, family members knew exactly which military units had detained their relatives, which camps they were taken to, and sometimes even had the license plate numbers of the military vehicles in which they were taken away (Human Rights Watch 2008: 5). The Front itself didn’t pursue prosecutions. In the aftermath of the elections and the commission process, it was demobilised, and the women went back to their homes, to pick up their lives shattered by the insurrection.

Manouri Muttetuwegama, Chairperson of the Col-WSS, whom I interviewed during fieldwork, told me that women members of the Front, ‘were given a way to grieve for their loved ones, to accept that they were no more, and to reach out towards life again’. Kusal Perera, a journalist who was involved with Front took the view that family members and the state reconciled with each other. I think they are

both right—particularly if we understand reconciliation as defined by Arendt as reducible to neither forgiveness nor punishment, but a judgement and willingness to build a common world together with those who have wronged us (Berkowitz 2011 drawing on Arendt 2006).

As de Alwis points out, this was, however, a settlement of justice that was individualised and Sinhalised. It excluded Tamil families who had suffered and were continuing to suffer a fate uncannily similar to Sinhala families at the hands of the state (2007: 130). De Alwis suggests that ‘under the fists’ of the SLFP, the Front could not imagine a more radical vision of justice that included the wounded Tamil ‘others’, or to acknowledge a shared experience of motherhood as well as vulnerability, injury, and grief (de Alwis 2009a: 387). Indeed, under the influence of the SLFP, the defeat of the UNP at successive elections between 1993 and 1995 and bringing in ‘their government’ (ape aanduwa) into power represented the most significant vindication of their struggle. I will return to this question of solidarity across the ethnic divide in Chapter Six and in the conclusion to this thesis. Suffice to say here that in postwar Sri Lanka, Tamil women family members of the disappeared also engaged with this trio of commissions, certificates of death, and compensation, but in a radically different way. It is to their engagement with these mechanisms that I now turn.

The LLRC and the PCICMP: Redeploying Cols after the end of the war
President Rajapaksa appointed the LLRC in May 2010, one year after the end of the war. It was intended to deflect intense pressure from local human rights organisations and the international community to address war-related atrocities and counter an inquiry at the UN. The presidential mandate given to the LLRC was a carefully worded one—to investigate the facts and circumstances under which the 2002 ceasefire entered between the GoSL and LTTE collapsed and later resulted in a full-scale war and the lessons to be learnt from this failure. Restitution is referred to in the mandate in terms of reparation for harms that occurred as a failure of the ceasefire. Reconciliation appears in the mandate in terms of the need to promote further national unity and reconciliation among all communities, almost as an afterthought; neither the word ‘truth’ nor ‘accountability’ figure anywhere in the mandate (LLRC 2011: ii-iv). This mandate, thus, eschewed any pretensions of being an authentic truth and reconciliation commission. Consequently, many local and international human rights organisations refused to engage with the LLRC,
expressing concerns relating to its independence, its limited mandate, its lack of witness protection mechanisms, and the failures of past commissions of this nature.\textsuperscript{105}

Despite the NGO boycott, the Commission’s visits to the north and east galvanised hundreds of those who had survived the war to testify before it. As Thiranagama points out, survivor testimonies before the LLRC rarely touched on questions of reconciliation between communities. Rather, the Tamils who came to the LLRC were using it as a space where they could: Communicate with the state; ‘restage the state as “supreme listener”’, express their expectations, hopes, and desires; ask for a state that cares for them and the meaningful resumption of state functions; and demand the acknowledgment of Tamil lives as being of equal value to Sinhala lives (Thiranagama 2013: 101).

A vast majority of the testimonies before the LLRC, in fact, related to the disappearance of a family member (de Mel 2013). With the support of local women’s groups who acted as mediators providing information about the dates and locations of the sittings and the procedure for making representations before it, mothers, wives, and daughters travelled miles to bear witness before the Commission and plead for information about the whereabouts of their disappeared loved ones.\textsuperscript{106} As women began to come before the LLRC in numbers, it was criticised for its lack of attention to gender and women’s concerns. Baker faulted the Commission for its failure to draw from the lessons learnt from similar commissions elsewhere and the ‘desultory’, ‘curt and dismissive’ staff, who chastised women for crying and requesting written submissions instead of oral testimonies.\textsuperscript{107} Nonetheless, the LLRC uncannily provided Tamil women from the north and east with the first ‘official’ and public mechanism for narrating the truth about past atrocities in the aftermath of Sri Lanka’s civil war. As Felman points out:

to testify, . . . before an audience of readers or spectators—is more than simply to report a fact or an event or to relate what has been lived, recorded and remembered. Memory is conjured here essentially in order to address another, to impress upon a listener, to appeal to a community. To testify is always, metaphorically, to take the

\textsuperscript{105} See for instance letters from Amnesty International, Human Rights Watch and International Crisis Group addressed to the Secretary, LLRC, dated 14 October 2010, reproduced in the annexes to the LLRC report (LLRC 2011).

\textsuperscript{106} In total, the Commission received and analysed over 5100 written submissions. Additionally, over a thousand persons made representations before the Commission at 57 public sessions held across the country. This included sessions held outside of the capital city during 12 field visits, many of which were in locations in the war affected North and East.

witness’ stand, or to take the position of the witness in so far as the narrative account of the witness is at one engaged in an appeal and bound by an oath. To testify is thus not merely to narrate but commit oneself, and to commit the narrative to others; to take responsibility—in speech—for history or for the truth of an occurrence, for something which, by definition, goes beyond the personal, in having general (non-personal) validity and consequences (1991: 39-40).

The women’s resolve to commit their narratives of loss before the LLRC was vindicated when its final report explicitly recognised the magnitude of the problem of disappearances, expressed alarm at the extent of the testimonies made before it relating to abductions, involuntary disappearances and detentions, and the lack of action in the face of formal complaints. It asserted that relatives of ‘missing’ persons have the right to know the whereabouts and the ‘truth about what happened’ to their loved ones to ensure ‘closure’ and to enable them to seek appropriate legal remedies. Even though it concluded that enforced disappearances were isolated incidents perpetrated by a few errant soldiers and not part of a systematic government policy (despite the evidence before it already suggesting otherwise), it recognised that the GoSL was ‘duty-bound’ to investigate all complaints. It further stipulated the need to prosecute and punish military personnel found to have been involved in the disappearance of persons who surrendered to the custody of armed forces (LLRC 2011: 163-166). However, as the International Crisis Group later noted, even as the report exonerated the government of violating principles of international humanitarian law in the conduct of the final phase of the war, it could not completely overlook the testimonies relating to disappearances before it, which comprised almost 90% of all testimonies. Therefore, the Commission was among the few government agencies that rejected the discourse of denial that characterised postwar Sri Lanka.

In other words, the LLRC opened up a space of appearance for the next of kin of the disappeared to bear witness to their grief and allowed them entry into the historical archive. To appreciate the significance of this moment, it is necessary to recall the discussion in Chapter One about way in which political denial of disappearances was experienced first-hand by family members of the disappeared. The findings of the LLRC and the UN Panel of Experts (2011), combined with the


increasing mobilisation of women survivors of disappearances following the LLRC process, made it increasingly difficult for the government to ignore the issue of disappearances. Eventually, mounting local and international pressure forced them to appoint the PCICMP—a body dedicated to the question of disappearances. The PCICMP was tasked with investigating cases of abducted or disappeared persons from the Northern and Eastern Provinces between 10th June 1990 and 19th May 2009. The government later extended the time period further back to 10th January 1983. On 15th July 2014, the scope of the mandate was expanded to cover ‘the principal facts and circumstances that led to the loss of civilian’s life during the internal armed conflict that ended on 19th May 2009’. A legal Advisory Council was appointed to assist the Commission on ‘International Law’ and ‘Technicalities’. Two additional members were appointed to the Commission in June 2015 making it a five-member commission.

As in the case of the LLRC, from the outset, the PCICMP drew criticism from civil society organisations concerning the appointment of its members, financing, and follow-up actions, which depended on executive decisions. The subsequent expansion of its mandate to investigate violations of international law during the last stages of the war also drew heavy criticism as a move to undermine the Commission’s primary responsibility to assist families of the disappeared (Centre for Policy Alternatives 2014). The hearings of the PCICMP were also mired in allegations of witness intimidation, evidence tampering, outrageous mistranslations of testimony, and procedural partiality. My observations of PCICMP sittings in Jaffna and Batticaloa revealed that Commissioners were preoccupied with the livelihoods and the economic status of those who came before it, rather than establishing evidence relating to disappearances. Each family member was given very little time to speak—less than 10 minutes. Much of this time involved repeating basic information about the identity of the disappeared person, the relationship between the disappeared and the person making the complaint, and the date and circumstances under which the person disappeared, all of which was already recorded and on file with the Commissioners. The tone and pace of each testimony was set by the Commissioners, who followed a rigid question-and-answer routine in every case. Even where witnesses wanted to say more, time was only grudgingly conceded after the Commissioners had gone through their own routine.

Much was also lost in the process of translation. Since only one of the three commissioners spoke Tamil, the language spoken by almost all those who came
before the Commission in the north and east, every question and response had to be translated. Only two translators, who took turns, were available for the Commission to carry the burden of translating sittings that lasted from two to four days. The quality of translation lacked consistency, and neither the translators nor the Commissioners had sufficient knowledge of the local histories or geographies of the conflict to contextualize the acts of disappearances referred to by persons making presentations before it. However, in the 13 public sittings held in the north and east, the PCICMP heard oral evidence from 2808 persons and documented more than 24,000 complaints of ‘missing’ persons, over 18,000 of which related to civilians (PCICMP 2015a).

Following these sittings, the PCICMP released two reports. The first is unremarkable and fails to engage with the magnitude of the evidence placed before it. Yet, as I will argue further below, it expanded the archive of the disappeared commenced by the LLRC and began a process of classification and categorisation of all complaints received by it. It contains eight annexures marked ‘A’ to ‘H’ that categorise complaints according to the district, year, responsible groups, ethnicity, gender, and the number of persons who acknowledged that they had ‘voluntarily’ obtained or requested death certificates (PCICMP 2015a: 25). Its second report is more analytical and has some startling observations relating to disappearances. In a section titled ‘The Principal Allegations Against the Government of Sri Lanka and the Sri Lankan Army’ (PCICMP 2015b, Chapter 7), it referred to first-hand testimony that it heard relating to the surrender of around 100 LTTE combatants and leaders during the last days of the war and their subsequent disappearance. With respect to this incident, it went on to state that ‘We have made a finding that there is a reasonable basis to believe that these individuals may have been executed’ and that these allegations ‘may involve international crimes’. The Commission further stated that a judge-led investigation into this incident is necessary. It also detailed ‘a few instances of disappearances where there is clear evidence of individuals passing into the hands of the Sri Lanka Army, who were likely to have re-established contact with their families, if and when they were released’ (105).

Thus, the LLRC and the PCICMP didn’t perform the complete whitewash of the past that they were expected to, supporting my thesis that it is impossible to conceive of the state as a single, unitary actor or that such mechanisms can be simplistically reduced to instruments of cooption. Indeed, CoIs and other
mechanisms deployed by the state can unravel in unexpected ways. They can even provide spaces of appearance and open up the archive for subaltern legal subjects.

Certificates of Death and Compensation

Six months after the establishment of the LLRC and even before its report and recommendations were released, the state announced its decision to grant compensation for families of the disappeared, as part of the government policy of five-Rs: reconciliation, reconstruction, rehabilitation and reintegration of ex-combatants, and resettlement of all internally displaced persons. In terms of this policy, family members were entitled to receive Rs. 100,000 (approx. $500 in 2021) provided that the disappeared person was registered as dead. To facilitate and provide a procedure to register the disappeared as dead, the government re-enacted the Registration of Deaths (Temporary Special Provisions) Act, which the PA first enacted in 1998. The preamble to this Act is as follows:

Whereas several persons have died in the course of civil disturbances that took place due to terrorist and subversive activities in Sri Lanka; and whereas there are certain practical difficulties impeding the registration of such deaths under the provisions of the Birth and Death Registration Act; it has now become necessary to make provision enabling the registration of deaths.

Section two states:

Where any person is reported missing and presumed to be dead as he has not been heard of for a period exceeding one year by those who would naturally have heard of him had he been alive, a next of kin of such person if he verily believes such person to be dead, may, apply in the manner hereinafter provided, to register the death of such persons under the Births and Deaths Registration Act (Chapter 110) and to have issued to him, a Certificate of Death in respect of such person.

In the governmental discourse, registration of deaths and financial compensation for the families of the disappeared would serve to facilitate ‘closure’. Sri Lanka’s Attorney General, making submissions before the Committee against Torture in November 2011, claimed that the issuance of the death certificate for missing persons was the primary method used by the state to deal with the issue of disappearances, and that this would serve to immediately bring the whole episode to a close and provide families with certainty about what had happened. The

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111 Ambika Satkunanathan ““What Sri Lanka is . . .”': Acknowledging the ethnic conflict in post-war reconciliation', Open Democracy, 9 March 2012,
Rehabilitation of Persons, Properties and Industries Authority (REPPIA) was again put in charge of implementing the compensation programme. There are indications that REPPIA sought to fulfil this mandate proactively. The LLRC report, for instance, recognises that REPPIA distributed 15,000 application forms for death and injury and 6000 forms for house and property damage to the District Secretaries of the Northern Province following the end of the war.

Initially (re)enacted for a period of three years from December 2010, the RoD was later extended for a further two years in August 2013. The procedure laid down in the RoD involved several steps, beginning with an application to the local Registrar of Births and Deaths, providing the name, age, sex and ethnicity of the disappeared person; the last known address; permanent residence; rank or profession; and the applicant's relationship to the disappeared person. Every application had to be supported by an affidavit affirming that the person about whom the application was being made had been missing for over one year, specifying the grounds for the applicants' belief that such person was presumed to be dead and supplying supporting evidence. The application had to be accompanied by a report from the Grama Niladari of the area, confirming that the person about whom the application was being made had not been seen alive or heard of for one year (sec. 3 and 4, RoD 2010).

Once an application was received, the district registrar was obliged to display a copy of the application for two weeks on the notice board in his office and the office of the Grama Niladari (sec. 5, RoD 1995). Objections to an application from any person were admitted up to one month from the date on which the application was displayed on the notice boards (sec. 6, RoD 1995). On the completion of one month, the District Registrar was authorised to conduct an inquiry 'as he thought fit' about the application. If no objections were filed by any member of the general public and once satisfied about the 'truth' of the assertion, the District Registrar was authorised to register the disappeared person as dead (Sec. 7(1), RoD 2010).

For the purpose of registering a disappearance as a death, the RoD was only concerned with whether a person was ‘missing’. Where, how, and why the person went missing was of no matter. However, following Michele Dean, I contend that these decisions ‘involve[d] not merely a matter of letting die but a form of killing without the commission of homicide’ (2002: 124). In short, it involved the sovereign

power of death. Who else but the state could declare that a ‘missing’ person was
dead, without knowledge of what happened to such person, without an investigation
or inquiry, and without seeing the dead body? However, the RoD sought to write into
existence deaths instead of disappearances by delegating this power to family
members themselves in exchange for financial compensation.\footnote{112}

The overwhelming majority of women survivors refused the authority and
address of the RoD, and the subject position of the ‘grateful’ victim that it offered in
favour of continuing the search for their loved ones. Despite the manner in which the
policy of compensation was discursively wrapped, and irrespective of its actual legal
implications, family members read it through a prism of their own experience and
understanding; not as a benign, benevolent, and neutral set of procedures designed
to facilitate closure, but rather as a cunning piece of legislation, the real intent of
which was to strip them of their rights—the right of complaint and the right to an
investigation. In short, their right to truth (unmai) and justice (neethi). In their view, it
was an attempt to instantiate the culture of disavowal that characterised postwar Sri
Lanka and perpetuate the silence and erasure around disappearances. In place of
reconciliation, they saw a process of legal engineering, part of the rituals of the
postwar majoritarian state, designed to draw a thick line between the past and the
present and fold them, the ethnicized women of the north and east, into the nation-
state, as obedient, forgetful, docile, and disciplined subjects of the law.

I first heard of women’s resistance to the RoD and compensation in a
clandestine documentary film made in 2011 about disappearances in Sri Lanka. In
the film, women’s faces are blocked out or blurred due to security concerns, yet the
force of their objection to both death certificates and compensation was
unmistakable. One woman stated:

We don’t want compensation. All the women are asking the government to
return the people that they handed over. They tell me: ‘we don’t want
compensation, but we want the person back’. One girl told me, ‘sister, if they
are giving Rs. 50,000 as compensation, I will give them the same Rs.50,000
and ask the government to give back my man. . . . The government has taken

\footnote{112} Prior to the enactment of the RoD, there were no specific laws dealing with the disappeared or
missing persons. The practice was to rely on provisions of the Evidence Ordinance read together with
the Civil Procedure Code. The Evidence Ordinance, a colonial inheritance, recognised a rebuttable
presumption of death of a person missing for more than 7 years. i.e., if a person was missing for over 7
years, those who would have heard of him could establish that the fate of such person was unknown
and claim that such person was dead (Section 108 of the Evidence Ordinance No. 14 of 1895 as
amended). In 1988, the waiting period before such a claim could be made was reduced from seven
years to one year. The RoD in effect established a parallel procedure quite apart from the procedure
under the Evidence Ordinance for the registration of persons who were missing and presumed to be
dead in the context of subversive and terrorist activities.
a life and destroyed it and is now trying to make amends with Rs. 50,000. If we give Rs.50,000 to the government, can they give us back the same life?  

Another stated:

The District Secretariat asked me to come and meet with them, saying that there was a form for me. When I went there, they asked me to change the police complaint which I filed earlier. I didn’t know what this was all about. I went to the police, changed the complaint and took it back to the DS [District Secretariat] office. Then they said that they had arranged for me to receive a death certificate for Rs.100,000 rupees. I immediately took [back] the police complaint and told them that I was confident that my husband was alive. And I didn’t want a death certificate.

The refusal to register the dead and take compensation first emerged among family members of the disappeared, tentatively, intuitively, and individually, without a plan, outside any conscious strategy of resistance or protest. Only later did it become a deliberate part of their struggle for truth and justice. By 2013, women’s rejection of compensation and the RoD was bold, unequivocal, and articulated collectively before countless publics and counter-publics. Registering a disappeared family member as dead and taking compensation would have made their lives more tolerable in economic terms and in terms of their safety and security. Many of them had not only lost the sole breadwinner in the family, but they had also lost their homes, their home gardens, and their assets, from bicycles and furniture to livestock and poultry. Return or resettlement meant remaking their lives from scratch (Kodikara 2018). In these households, the death certificate would have facilitated the continuation of their lives with a semblance of normality, despite the disappearance. It would have allowed family members to access pensions, funds, and bank accounts that belonged to the disappeared person. It would have allowed young wives to remarry (de Mel and Kodikara 2018). Moreover, when they returned to their villages, after more than a year of being interned in a displacement camp, the death certificate would have shielded them (to some extent) from the regime of surveillance and control implemented by an ubiquitous military, where searching for the disappeared was considered a crime worse than the disappearance or abduction: an anti-state, terrorist activity (MRG 2014).

In this context of contestation, the RoD and compensation became a site of administrative and military coercion, surveillance, and rumour within the community. Many family members who went before the PCICMP complained about receiving

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113 S, Tamil woman in anonymous advocacy film about disappearances in Sri Lanka in my possession.

114 T, Tamil woman in anonymous advocacy film about disappearances in Sri Lanka in my possession.
telephone calls from persons claiming to be from the Terrorist Investigation Department (TID) or military intelligence, requesting them to give up their search and take compensation offered by the state. Let me relate one incident that brings these issues to the fore and gives a sense of how family members experienced the state during this time.

During a field trip to Kilinochchi in February 2014, Neloufer de Mel and I learnt from two women interlocutors that seven women were ‘forced’ to take compensation at a ceremony presided over by Namal Rajapaksa—the Member of Parliament for Hambantota and son of former President Mahinda Rajapaksa. This event was also attended by other public officials including the Governor of the Northern Province and several military commanders. The presence of the President’s son seemed to signal support from the highest level of the executive for the event. During the next few days that we spent in Kilinochchi, it became clear that the story had become the stuff of rumour and taken on a life of its own. Each person we interviewed thereafter told us a slightly different version of it. However, public officials, who had first-hand knowledge of the event, were reluctant to talk about it. When we asked one whether family members were taking compensation, she refused to comment, saying it was a sensitive matter. We learnt from another public official that the seven applicants were, in fact, three men and four women and that five of the applicants had either a daughter or son missing. Two of the applicants had a husband missing. We also heard that the local administration had not followed standard procedures for granting compensation and that the orders came from Colombo. The whole process, we were told, was fast-tracked, although the money came from the local budget allocated for such grants. Some officials from the District Secretariat had also not attended the event. Although it was not directly articulated, it was suggested that there had been some element of coercion involved and that all the applicants had capitulated, given their dire economic situation. The women from whom we first heard about this event were quite definite that the seven recipients were deceived and led to believe that the event was merely to distribute relief for war-affected communities (de Mel and Kodikara 2018: 53-64).

From subsequent newspaper reportage of this event, we learned that the TID had indeed organised a ceremony on 20th January 2014, with the participation of several ministries, departments, the police, and medical officers, attended by hundreds of beneficiaries from the district, identified by security forces earlier in the month. They were given dry rations, textbooks, and spectacles (among other
things), as well as the opportunity to share grievances with the government officials present. One news article reported that state officials claimed that the event was an ‘aid and relief camp’ or a mobile camp to assist the relatives of disappeared to address basic needs, including medical and counselling needs, lack of documentation, particularly loss of national identity cards, as well as employment, livelihood, and educational requirements. The Police Spokesperson told one journalist that they were trying to help ‘these people’ and that ‘there was no hidden agenda in conducting a relief programme to help the affected families’. The same article, however, quotes some family members to the effect that they were at the Kilinochchi District Secretariat to give evidence before the PCICMP, but were diverted to another venue, about 100 metres away, by police officers in civil clothing. The police officers allegedly told them that if they said that their missing kith and kin were abducted by the LTTE, they could arrange to issue death certificates in addition to dry rations and compensation.

Several rights organisations subsequently interpreted these actions of state and military personnel as an attempt to divert family members of the disappeared from testifying before the PCICMP, which was sitting not far away on that same day in Kilinochchi. For instance, the Centre for Policy Alternatives (CPA), a human rights advocacy NGO, expressed the view that ‘that such activities are a perverse attempt to exploit the economic and psychological vulnerabilities of the victims to thwart their quest for truth and justice’ (2014: 8). The report goes on to state that ‘There is a risk that if such activities are permitted to continue in the future, it would further diminish the extremely limited faith victims have in mechanisms initiated by the Government’ (2014: 8-9). Apart from diminishing faith, however, the coercive tactics of the state and stories of coercion that travelled like wildfire across the north during this time connected family members and materialised the common enemy that they were resisting and fighting. Rumours here were not divorced from reality but derived force and authenticity from the everyday ecology of fear, mistrust, and anxiety in which life was lived in these areas and the extent to which they resonated with collective interests and collective anxieties (Amarasuriya and Spencer 2012: 115; Das and Kleinman 2000: 6). It is on the back of these coercive tactics that the RoD came to be a powerful symbolic and collective site of struggle and resistance for disappeared


116 Ibid.
family members. Obtaining a death certificate came to represent a betrayal of the collective struggle, whether of husbands by wives or sons by mothers, and a site of community policing and surveillance (de Mel and Kodikara 2018: 57).

The Legacies of the LLRC, PCICMP and the RoD
Given the context in which the LLRC, PCICMP, and the ROD came into being, I surmise that they were intended to ‘perform’ reconciliation for all the world to see, but without advancing truth or justice or collecting testimony for the purpose of investigation and inquiry. Yet, as Veena Das, based on her masterly ethnography of Sultanpuri during and after the Delhi riots of 1990, argues, once the state institutes forms of governance through technologies of writing, it enters the everyday lives of communities opening the possibility for forgery, imitation, and mimicry. Das is interested in the infelicity, illegibility, and unreadability of the rules and regulations that are observable at the margins of the state (Das. 2007b: 166-167). I contend that writing also opens the possibility of subversion or refusal, allowing those who are marginalised, oppressed, and suppressed to enter the state record, despite the best efforts to keep them out. This, in turn, can become a resource and a basis for further struggle.

Thus, the legacies left behind by the LLRC, PCICMP, and the RoD are more complex and ambivalent than appears at first glance, and these mechanisms defy simple categorisation. The powers at work through these mechanisms were contradictory, pushing and pulling victim-survivors in different directions.

In the decision to go before the LLRC and the PCICMP, women survivors of the disappeared subverted the state’s ‘performative logic’ (Gowing 2013: 18), perhaps even without intending to do so and re-signified the sittings of these commissions to create a space of appearance in the Arendtian sense. Moreover, women’s collective testimony before these commissions transformed them from complainants into witnesses and from abject victims into survivor citizen subjects of the state. Through their testimonial labour, they provided a counter-narrative to the version of events presented by the state shifting the ‘social location of the facts of terror’ from the private to the public sphere (Rojas Perez 2013: 158, citing Taussig 1992).

Moreover, by bearing witness before the LLRC and the PCICMP, family members insistently inscribed their disappeared family members into the state record. Thus, even as a plethora of state institutions, including police stations,
turned away complainants relating to disappearances or took complaints down and buried them in some bureaucratic recess, never to be seen again, both the LLRC and the PCICMP copiously inscribed the disappeared into their forms. The PCICMP also created an archive of files for each complainant who came before it, including documents and photos. At the same time, in refusing to register the disappeared as dead, family members defied the attempt to once and for all efface the disappeared from the state record, and ex-post facto produce them as ‘bare life’, stripped of all juridical rights (Agamben 1998). From a Derridean perspective, the coming into being of an archive of disappearances in the context of the triumphalism, denial, intimidation, and harassment that characterised the Rajapaksa years is remarkable, even if the struggle over this archive continues.

However, commissions, compensation, and certificates of death inaugurated by the Rajapaksa government did not fulfil the meaning of justice for the Tamil women family members of the disappeared. Indeed, this trio of mechanisms represented the beginning of their struggle, not the end. Both the act of giving testimony before the LLRC and the PCICMP and refusing the RoD were formative experiences for women family members. It helped them forge a new relationship with the state and played a critical role in their emergence as dissenting subaltern political subjects. Veena Das has argued that the experience of becoming a subject is linked in significant ways to the experience of subjugation. Still, we need to understand not only how women are made into victims of violence but how women ‘take these noxious signs of violations and reoccupy them’ in the aftermath of violence (2007a: 59).

The LLRC, PCICMP, and RoD summoned those who had survived the war as docile, grateful, forgetful, and traumatised victims who could be appeased by the state’s offers of reconciliation. Yet reconciliation is not a one-way process, and women family members of the disappeared rejected this interpellation. They redefined themselves as dissident citizens. I contend that this new sense of themselves as dissenting subaltern citizens has been vital in mobilising and organising family members and in sustaining their struggle for more than ten years—whether in the street, in local courts, or at the UNHRC in Geneva.

In 2010, when the LLRC was appointed, the next of kin of the disappeared were isolated from each other, scattered across the north and east without connections to organisations, whether local or international. The testimonial space created by the LLRC brought together individual family members of the disappeared
scattered across the north and east, allowing them to see each other and hear each other’s stories for the first time while also making them visible to the wider world. It enabled the formation of a community of survivors, which grew in strength and numbers over the next few years. The period following the LLRC is marked by reiterative processes of bearing witness in safe, closed spaces, public protests, and campaigns. It is during this time that several organisations such as the Mannar Citizen’s Committee were formed, devising repertoires of collective strategies and tactics for a group of women who had hitherto never been involved in social or political activism or social movements.

In the wake of the LLRC, women collectively took to the streets calling for truth and accountability, putting their bodies on the line in marches, protests, and vigils, defying the state of emergency and denial and defying police barricades, retaliatory mob violence, intimidation, and other repressive tactics. It is clear that the space of appearance created by these protests made the Rajapaksa government, as well nationalist elements, increasingly apprehensive. Protests were clamped down on or attacked by mobs. In March 2013, the government blocked over 600 women family members from the north from travelling to Colombo to participate in a protest. Yet in August 2013, when Navi Pillay, the UN High Commissioner for Human Rights, visited Sri Lanka, family members had closed-door meetings with her, in which nine family members shared their stories. Following the meeting, they marched in procession to Independence Square amidst a large contingent of policemen deployed in the name of ‘security’. Although Pillay had no meeting with family members in Jaffna, she was confronted by two demonstrations. In one, around 300 women protested outside the town’s main library while Pillay had a meeting with government officials inside.

When David Cameron, the Prime Minister of the UK, visited Jaffna a few months later, around 300 women holding photographs and letters describing the disappearance of lost loved ones confronted him in a further expression of their dissident citizenship. They hung on to journalists covering the protest, begging them to deliver their letters to Cameron. Then, as Cameron was leaving the venue, the women broke through the police cordon to surround his convoy of vehicles, weeping, shouting, and waving photographs of their loved ones. Several women...
tried to hurl themselves in front of Cameron's motorcade, screaming, 'We Want Justice!' before the Prime Minister's vehicle sped away.\footnote{117}

These kinds of protests continued through the Rajapaksa years until the 2015 presidential and parliamentary elections. Tamils, including family members of the disappeared across the north and east, turned out in large numbers for these elections. At the presidential elections held in January 2015, they helped elect Maithripala Sirisena, the presidential candidate from the United Front for Good Governance, and defeat Mahinda Rajapaksa. In August of the same year, at the parliamentary elections, they helped to elect the United Front for Good Governance and make Ranil Wickremesinghe, the Prime Minister of the newly elected Parliament.

Conclusion
In this chapter, I analysed the increasing pressure brought to bear on the Rajapaksa regime, by local and international human rights actors following the end of the war in 2009, to address allegations relating to atrocities committed by the state during the war. I showed that the UNHRC in Geneva became the centre of much of this activism. I argued that even as the Rajapaksa government denied disappearances and hounded and harassed family members as ‘traitors’ and ‘terrorists’, they nevertheless tried to appease human rights pressures by appointing three legal and quasi-legal mechanisms. I also argued that these mechanisms, the LLRC, the PCICMP, and the RoD, interpellated victim-survivors of the war—to bear witness to disappearances and to accept compensation and death certificates—in the name of reconciliation. However, unlike in the aftermath of the 88-91 insurrection, when family members of the disappeared in the south accepted commissions, death certificates, and compensation, in postwar Sri Lanka, Tamil family members perceived these same mechanisms as top-down, hollow responses designed to erase the disappeared from memory and history.

I showed how family members engaged with these mechanisms on their own terms, subverting and re-signifying them, resisting erasure, and inscribing the disappeared onto the state record. I argued that in the process, they emerged as subaltern dissident subjects who refused to participate in an archive of death and,  

against all odds, contributed to the creation of a counter archive of disappearances, which has now been inherited by the Office on Missing Persons (See Chapter Seven). This analysis illustrates that the postcolonial state combines power in different and fundamentally contradictory registers to paper over its sovereign violence. However, the response of survivors of violence to these technologies of power is contingent and context-specific. Indeed, the very meaning of justice for survivors of sovereign violence is contingent and context specific.

In Chapters Five to Seven, I trace the struggle of the Tamil women next of kin of the disappeared beyond the Rajapaksa years to the period of the United Front from 2015 to 2019. I seek to illuminate that even though the United Front came to power promising truth and justice for disappearances, it failed to deliver on this promise and reproduced some of the mechanisms of erasure deployed by the Rajapaksa regime. But first, in the next chapter, I focus on the defeat of the Rajapaksa regime at elections held in 2015, the inauguration of an internationalised transitional justice initiative by the United Front, and the Sinhala Buddhist nationalist response to this initiative. I argue that ‘sovereignty’ of the nation emerged as a new catchword and mechanism of erasure during this period, not from the state, but from Sinhala Buddhist nationalist organisations and opposition parties in parliament.
A Timeline of UN Resolutions and Actions on Sri Lanka
2015 - 2021


1 October 2015: Resolution on ‘Promoting Reconciliation, Accountability and Human Rights in Sri Lanka (A/HRC/30/1) co-sponsored by United Front government of Sri Lanka unanimously adopted by UNHRC.

In terms of this resolution, GoSL commits to establish four transitional justice mechanism:

- Judicial Mechanism
- Office on Missing Persons
- Office on Reparations
- Truth and Reconciliation Commission


OHCHR to collect, consolidate, analyse and preserve information and evidence relating to war crimes in Sri Lanka.
None of those architects of 30/1 is in politics today. They are all wiped out by the people. That is why Res. 30/1 of 2015 was considered the greatest betrayal of the sovereignty of this country in modern times.

Jayanath Colombage

In the previous chapter, I explored the advocacy efforts of local and international human rights NGOs at the United Nations Human Rights Council (UNHRC) in Geneva, launched in the wake of the war, to bring attention to war-related atrocities. I also explored how the Rajapaksa government and Sinhala Buddhist nationalists, unsurprisingly, decried these efforts and attempted to carry the discourse of denial to the international arena. In this chapter, I pick up from where I left in the previous chapter to analyse the period following the defeat of the Rajapaksa regime at presidential and parliamentary elections held in 2015. As I will discuss, the United Front for Good Governance (United Front), which replaced the Rajapaksa regime, promised to address truth and justice for war-related atrocities during the election campaign and appealed for Tamil votes in conflict-affected communities. Following the elections, in a dramatic turn of events, it embraced internationalisation. It inaugurated a ‘transitional justice’ process at the UNHRC, going to the extent of co-sponsoring a Council resolution (Res. 30/1), which promised to address truth, justice, and reparations for war-related human rights abuses through concrete measures, including the establishment of an Office on Missing Persons (OMP). This chapter explores the nationalist response to Res. 30/1 and the OMP, as well as the perils of internationalised justice in a postwar, postcolonial, ethno-nationalist context such as Sri Lanka.

I argue that the defeat of Mahinda Rajapaksa at the 2015 elections, the adoption of Res. 30/1, and the establishment of the OMP were brought together in


119 It should be noted that the period I cover in this chapter relates to a period prior to the mobilization of family members that is the focus of chapters 5-8.
nationalist narratives, not merely as an attempt to send war heroes to international
gallows but as an assault on the sovereignty of the nation. This narrative of a global
conspiracy to undermine sovereignty became a central theme of nationalist
organising practices and anti-government mobilisations in ‘defence’ of war heroes,
in the context of what was presented as the treachery of the United Front. I go on to
analyse the words and deeds of nationalist actors not merely as a defence of
soldiers, but as a ‘performance’ (Taylor 2003: 2-3; Weber 1998; Wedeen 2008: 16)
of anti-western, anti-colonial sovereignty premised on patriotic masculinity and the
UNHRC in Geneva as the primary site of this performance.

Drawing from David Campbell (1998), I intend to illustrate how the ‘foreign’
versus the domestic was mobilised as yet another dichotomy for the production of
the boundary between the inside and outside of the nation, to (re)enact a nationalist
version of national identity and bring into being nationalist subjects and nationalist
publics. I will argue that these performances of sovereignty and patriotic masculinity
have to be seen as an extension of the Manichean, necropolitical mechanisms of
erasure of sovereign violence that I have discussed so far. Indeed, six years after
the end of the war, the notion of sovereignty and patriotic masculinity co-joined
categorical denial and the figures of heroic soldiers and traitors/terrorists to erase
sovereign violence. They were deployed in the wake of UNHRC’s Res.30/1 to again
silence and cow down activists and victim-survivors and, in this instance, undermine
their access to the global public sphere. As I did in Chapter One, I also seek to draw
attention to the role civil society organisations played in Sri Lanka’s postwar politics
of erasure. In my analysis, this performative politics played a critical contributary role
in the defeat of the United Front and the election victories of Gotabaya Rajapaksa,
the brother of Mahinda Rajapaksa, as President in 2019 and the Sri Lanka
Podujana Pakshaya (SLPP) in parliamentary elections held in 2020. I conclude by
asking whether critiques of international law, particularly critiques from postcolonial
and Third World Approaches to International Law (TWAIL) grapple sufficiently with
the mechanisms and politics of erasure that I foreground in this thesis. I begin with a
brief introduction to Res. 30/1 and the concept of transitional justice.

Resolution 30/1 and Transitional Justice
The election of the United Front in 2015 coincided with the completion of the
investigation of the Office of the High Commissioner for Human Rights (OHCHR)
into war crimes in Sri Lanka that I referred to in Chapter Three. This investigation
generated a nearly 300-page report titled, *The Report of the Office of High Commissioner for Human Rights Investigation on Sri Lanka* (OISL), which was released in September 2015. The report found that ‘serious war crimes’ and ‘human rights violations’ were committed by the Sri Lankan military and the LTTE during the period under consideration, i.e., between 2006-2009. In particular, the report documented: Unlawful killings; violations related to the deprivation of liberty; enforced disappearances; torture and other forms of cruel, inhuman, and degrading treatment; sexual and gender-based violence; abduction of adults and forced recruitment; recruitment and use of children; hostilities on civilians and civilian objects; control on movement; denial of humanitarian assistance, and screening and deprivation of liberty of internally displaced persons in closed camps. Recall that I mentioned that the Rajapaksa government rejected this fact-finding process in no uncertain terms. In contrast, the United Front recognised the legitimacy of the process as well as the report’s findings. Indeed, one of the first actions of the new government was to inaugurate a transitional justice process at the UNHRC. Addressing the international community in Geneva, Mangala Samaraweera, Sri Lanka’s Minister of Foreign Affairs, denounced the ‘short-sighted policies’ and ‘triumphalist approach’ of the previous regime and promised to approach ‘reconciliation afresh as a matter of urgent priority’. He referred to the victory of the United Front as the defeat of extremists on both sides of the ethnic divide, the return of centrists to power, and an opportunity for the President and Prime Minister to take the country forward ‘breaking the barriers of ignorance, fear, prejudice, and hate’. He further asserted:

Accountability is essential to uphold the rule of law and build confidence in the people of all communities of our country, in the justice system. We also recognise fully the importance of judicial and administrative reform in this process. These are essential factors that must be addressed for the culture of accountability and the rule of law which have eroded through years of violence to once again be ingrained in our society. We recognise how important this is to prevent impunity not only for violations of human rights but corruption and other crimes; and how vital these processes are for the long-term development of our country and for the peace dividend to be felt by all our citizens including generations to come. These are lessons we have not only learnt from the experiences of other countries, but also from our own history and recent past.

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121 Statement made by Mangala Samaraweera, Minister for Foreign Affairs at the UN Human Rights Council, 14 September 2015.
122 Ibid.
The government of Sri Lanka (GoSL) subsequently co-sponsored a consensus resolution at the Council, which was initiated by the US. The resolution reiterated the state’s commitment to a comprehensive package of judicial and non-judicial measures necessary to advance accountability and reconciliation, as well as to strengthen protection of human rights, democracy, and the rule of law. In Resolution 30/1, as it came to be known, the government committed to a transitional justice architecture that would comprise (i) a Commission for Truth, Justice, Reconciliation and Non-recurrence (ii) an Office on Missing Persons based on the principle of the right to know; (iii) a judicial mechanism to address the problem of impunity for human rights violations suffered by all communities and (iv) an Office for Reparations. It also committed to undertake ‘broad national consultations’ to ensure that victim-survivors and those traditionally excluded from decision-making have a central role to play in the design and implementation of these mechanisms and processes. The mechanisms included in Res. 30/1 were derived from the UN’s transitional justice toolkit. Let me take a moment to elucidate this concept before discussing the response to Res. 30/1 within Sri Lanka.

The concept of transitional justice is variously defined in the scholarship. At its simplest, it is recognised as a set of measures implemented to deal with legacies of massive human rights abuses in countries that have experienced either repressive politics or violent conflict (Teitel 2003). As a field of study, it has grown exponentially, comprising theoretical debates, the comparative assessment of various mechanisms coming under its purview, and ethical-legal debates concerning the efficacy and morality of compromising on accountability for gross and systematic violations of human rights (Bell, Campbell and Ni Aoláin 2007: 8).

Following Teitel’s (2003) genealogy, most transitional justice scholars recognise three historical phases, which correspond to some extent with three different conceptions of justice (Bell, Campbell, and Ni Aoláin 2007; Sharp 2013). Phase one begins and ends with the Nuremberg trials, set up to prosecute high-ranking Nazi officials following World War II. Phase two is linked to the end of military rule in South America (1980s), fall of the Berlin Wall (1989), the collapse of the Soviet Union (1991), and the end of apartheid South Africa (1994). The form of transitional justice that emerges in this phase is a restorative model of justice, which is contextual, limited, provisional, and associated with nation-building rather

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123 HRC Resolution on ‘Promoting reconciliation and accountability in Sri Lanka,’ (A/HRC/30/1) of 1 October 2015.
than the pursuit of accountability of a small number of leaders. It heralds the emergence of a new institutional mechanism—The Truth Commission—as a modality to construct as far as possible a factually correct account of the history of past abuses and ensure peace and reconciliation between communities. However, some scholars believe that the emergence of truth seeking gave rise to a dichotomy between truth and justice and peace and justice (Teitel 2003).

Phase three, which Teitel terms as ‘steady-state transitional justice’ is characterised by the expansion, normalization, and institutionalisation of transitional justice within international law and the UN system, with an emphasis on both truth and accountability. Within this new dispensation, the UN recommended ‘toolkit’ on transitional justice—to be implemented in postconflict contexts—comprise both judicial and non-judicial mechanisms, including individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or a combination thereof, with differing levels of international involvement (or none at all) (United Nations 2004: 4). By this time, the questions preoccupying transitional justice scholars and activists relate to the scope, modalities, and sequencing of transitional justice mechanisms rather than whether to conduct some form of transitional justice or not. Furthermore, peace and justice and truth and justice are now supposed to go hand in hand (Sharp 2013: 156; Teitel 2003). Within international law, landmark developments relating to this phase include the establishment of the International Criminal Court as a permanent international criminal tribunal to prosecute war crimes, genocide, and crimes against humanity in 1998, preceded by the ad hoc criminal tribunals for Yugoslavia and Rwanda in 1993 and 1994.

The critique of human rights that I outlined in Chapter Three is equally applicable in the case of transitional justice. Moreover, critics of transitional justice have drawn attention to the fact that this is a technocratic and de-contextualised ‘one-size-fits all’ or ‘cookie cutter’ solution and conception of justice, which suffers from the same limitations of the liberal peacebuilding paradigm that attempts to remake postwar societies in the image of western liberal democracies (Nagy 2008: 275; Shaw and Waldorf 2010, Sriram 2007; Nesiah 2014a: 289). For Turner, in a similar vein to Spivak, who I cited in Chapter Three, the effect of institutionalisation has been to create a ‘theatrical space’ where efforts at post-conflict peace-making must play out according to a pre-defined model, which is unable to accommodate divergent perspectives (Turner 2016: 2). Paige Arthur has further pointed out that the success of transitional justice measures in contexts where people were
systematically persecuted on the basis of their political identity (as in Argentina) does not necessarily provide much guidance for how to act in the wake of ethnic conflict (2010b: 273). Rather, in these contexts, transitional justice can refuel old antagonisms and ratchet up the stakes and tensions (Brown and Ni Aoláin 2015: 145, Kent 2012; Subotić 2009; Wilson 2007: 355-356).

Going beyond critiques based on contextual differences, Shaw conceptualises these institutional practices in terms of Foucauldian governmentality: ‘Powerful forms of knowledge embedded in institutional and everyday practices [that] reconfigure the field of action, subjugating alternatives and creating new forms of power and inequality’ (2007: 186). Feminist engagements with transitional justice have further critiqued its legal theoretical assumptions and biases, its mechanisms of operation, and societal outcomes, while calling for reform, revision, and expansion of the field in a bid to ‘engender’ it (Bell 2009; Bell and O’Rourke 2007; Buckley Zistel and Stanley 2012; Nesiah 2006, 2007, 2014b; Ni Aolán and Turner 2007; O’Rourke 2013).

For those Sri Lankan activists who had waged their struggle for truth and justice within the UNHRC since 2009, however, Res. 30/1 represented a vindication of their work. In the previous chapter, I mentioned that Res. S.11/1 (UNHRC resolution which praised the government of Sri Lanka for ending the war), was considered one of the lowest points in the history of the UNHRC. Res. 30/1 on the other hand was considered one of its highest points. There is no precedent in the UNHRC, where a country accused of violating human rights acknowledges such violations and co-sponsors a resolution committing to pursue truth, justice, and reconciliation. However, this dramatic policy shift and the concessions to human rights recall and echo to some extent the ‘contrite’ state that emerged in the wake of the 1994 elections.

In the spiral model of human rights that I discussed in Chapter Three, Res. 30/1, the OMP, and the associated discourse of transitional justice would fall within the phase of ‘prescriptive status’, when the state moves from denial and tactical concessions to well-defined commitments to further transitional justice and human rights. Yet, the United Front’s transitional justice strategy did not go down at all well with nationalist groups and resulted in backlash. Res 30/1 and the OMP came to be interpreted by nationalist organisations and individuals as a betrayal of war heroes. The phrase entered the Sinhala Buddhist nationalist discourse, practices, and anti-
government mobilisations, conjuring an existential threat to the nation.\textsuperscript{124} Those considered responsible for Res. 30/1 were labelled as ‘enemies,’ ‘traitors’ and ‘terrorists’. Indeed, both the adoption of Res. 30/1 and the establishment of the OMP served as lightning rods to remobilise an agglomeration of nationalist individuals and organisations to denounce the election defeat, and passionately defend the sovereignty of the nation and ‘beloved’ hero soldiers. Jayantha Samaraweera, a Member of Parliament from the opposition expressed the view that:

> Heroes are born only in countries that protect heroes. We are in this position in this country today because of war heroes. Protecting the victory and protecting war heroes are our responsibility. Yet, today we are in a lowly, ignoble situation. If (anybody) attempts to touch war heroes in 2016, it will be the beginning of the end of this government. We will mobilise the country to do so. (My translation from Sinhala)\textsuperscript{125}

Such mobilisations are consistent with Cynthia Webers’s observation that performances of sovereignty and insistence on sovereign subjectivity proliferate at the very moments when states traumatically confront the impossibility of ‘being’ sovereign (Weber 1998: 92). The figures of former President Mahinda Rajapaksa—as an iconic, charismatic, powerful, and unparalleled patriot, as well as his brother, Gotabaya Rajapaksa, former Secretary of Defence—as the person who masterminded the defeat of the LTTE—emerged as informal leaders of the nationalist lobby to defend war heroes.

**The Formation of a Sinhala Buddhist Nationalist Lobby to Defend the Sovereignty of the State**

Following Mahinda Rajapaksa’s defeat at the presidential elections of January 2015, he contested parliamentary elections held in August of the same year from the Kurunegala District and won the elections. Back in parliament, he provided the critical cues for nationalist organisations and individuals through public statements on developments relating to Res. 30/1. Gotabaya Rajapaksa established *Viyathmaga* in early 2016, as a civil society movement ‘to provide a common forum for Sri Lankan scholars, professionals and academics with patriotism and a sense of purpose, living here [in Sri Lanka] and abroad, to network for the noble cause of


influencing those policy makers and legislators to steer the country in the correct path’.\footnote{Viyathmaga, http://www.viyathmaga.org/about/, accessed 24 May 2021.}

On the one hand, the institutions and individuals that gathered around the Rajapaksa brothers to defend war heroes were those with long histories of involvement and activism in previous nationalist campaigns and mobilisations. They included academic ideologues such as Gunadasa Amarasekara and Nalin de Silva and activist monks such as Elle Gunawansa and Bengamuwe Nalaka. The organisations included the *Deshahathaishi Jathika Vyaparaya* (Patriotic National Movement), *Mawbima Surakime Jathika Vyaparaya* (The National Movement to Protect the Motherland), and *Deshapremi Bhikshu Peramuna* (Patriotic Monk’s Front). These names are no doubt familiar to scholars of Sinhala Buddhist nationalism in Sri Lanka. Many of these individuals and organisations came to the fore in the mid-1980s when the conflict became militarised or during the mid-1990s and early 2000 when the PA government was attempting to find a political solution to the conflict. They were all at one time or other staunch opponents of a negotiated settlement of the conflict and staunch supporters of militarily defeating the LTTE.

However, the adoption of Res. 30/1 also gave rise to a host of new organisations and configurations of nationalist forces. The new organisations included *Jathika Himikam Sanvidanaya* (National Rights Organisation), Organisation for the Protection of War Heroes, Lawyers for Justice, and *Mawbima Venuwen Ranaviruwo* (War Heroes for the Motherland). New actors that entered the fray included retired military personnel such as Rear Admiral Sarath Weerasekera, Major General Kamal Gunaratna, and Major Ajith Prasanna; professionals such as Nalaka Godahewa; lawyers such as Nuwan Ballanthudawa and academics such as Channa Jayasumana. Many of these individuals had links to *Viyathmaga*.

These organisations and individuals expended considerable labour—‘patriotic labour’—filing court cases, organising signature campaigns, street protests, funds-raising campaigns for legal aid for war heroes, and so on. These took place in different sites: In Buddhist temples, in parliament, in courthouses, and the street corner. They mobilised individually and collectively, discursively and materially, online and offline. These old and new nationalist actors moved freely between organisations, forming new platforms and networks as and when the need arose, with the specific goal of addressing what was seen as the Resolutions’ deleterious implications for the military, territorial integrity, and sovereignty of the
country.

In 2017, not content with challenging the United Front, the international community, Res. 30/1, and the OMP within Sri Lanka, nationalist leaders within the country and in the Sinhala diaspora formed the Global Sri Lanka Forum (GSLF) with the ‘intention of representing the country in the international arena’. The GSLF’s international brief included combatting ‘chauvinist Tamil diaspora’ groups that emerged following the end of the war ‘to keep the project of Eelam alive’; countering their false propaganda; protecting the sovereignty of Sri Lanka, and restoring the lost reputation of the country in the international arena. In March 2017, GSLF, decided to take its battle against Res. 30/1, the OMP, and defense of soldiers, to the heart of the UNHRC, labelled a ‘den of corruption’ (dhooshana guhavak,) and a ‘den of tigers’ (koti guhawak) on the payroll of the LTTE, dancing to its tune and ‘turning a blind eye’ to rights violations by the LTTE.

It seems to me that the first task of the nationalist lobby that came into being in the aftermath of the 2015 elections was to weave the election defeat of the Rajapaksa government and Res. 30/1 into the Sinhala Buddhist narrative of the nation. In this new narrative of the nation, the defeat of Mahinda Rajapaksa, the adoption of Res. 30/1, and the establishment of the OMP were represented as the culmination of a western conspiracy, aided and abetted by powerful political forces inside and outside the country, as well as within Rajapaksa’s own political party, to undermine Sri Lanka’s sovereignty.

As Amarasuriya and Spencer point out, the word sovereignty is one which is routinely invoked by the nationalist lobby in Sri Lanka to contest all manner of things (2012: 131). However, as Wendy Brown reminds us, ‘sovereignty is an unusually amorphous, elusive and polysemic term of political life’ (2010: 48); it is a ‘peculiar border concept’ which is at once a form of power and a boundary marker (52). This polysemy of meaning inherent in sovereignty referenced by Brown was very much in

evidence in the way Sinhala Buddhist nationalist groups deployed this term to defend soldiers both in the wake of Res. 30/1 and the establishment of the OMP. Sovereignty in their discourse referred to territorial integrity, patriotism, national security, and the right to autonomy from interference and meddling from the ‘west’ or ‘foreigners’.

Despite the polysemy of meaning of the word sovereignty evident in this discourse, I contend that a particular meaning of the term tended to predominate in the way it was deployed in nationalist discourse in the wake of Res. 30/1. i.e., sovereignty as identity, and sovereignty as patriotic masculinity. David Campbell (1998) points out that in nationalist narratives, the figure of the foreigner is enormously significant for writing identities. Indeed, sovereignty in Sinhala Buddhist nationalist narratives is invariably a code word for a trenchant critique of the west as a biased, corrupt, hypocritical enemy who works hand in glove with Tamil ‘terrorists’ (particularly in the diaspora) to deliver eelam (i.e., a separate state) to the Tamil people via international law. Human rights, in this discourse, is considered to be nothing more than a corrupt, western tool to dominate or tear the country apart.\(^{130}\) Moreover, I understand its deployment during that period after Res. 30/1 as part of a continuing politics of erasure practised by the Sinhala Buddhist nationalist lobby in alliance with the Rajapaksas. This was meant not merely to delimit the public sphere within Sri Lanka but also undermine and delimit the global public sphere to human rights activists and survivors from Sri Lanka.

**Performing Anti-Western, Anti-Colonial, Patriotic, Masculine Subjectivity**

In Sinhala Buddhist nationalist discourses following the end of the war, the defeat of the LTTE under Mahinda Rajapaksa’s leadership in 2009 was seen as one of the greatest achievements of the postcolonial state, second only to the end of colonial rule.\(^{131}\) In contradistinction to the war victory, the 2015 elections were constructed in nationalist discourse as a moment of recolonisation by the west. It was compared to the ceding of the Kandyan Kingdom to Great Britain by the Kandyan Convention of 1815 when the sovereignty of the whole island of Sri Lanka came under British

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colonial rule. In popular understandings of this event, the British entered the Kandyan Kingdom on the pretext of protecting the human rights of Madduma Bandara and Ehelepola Kumarihami in 1815, but then undermined the human rights of all. At other times, the 2015 defeat was compared to recent events where the west has used human rights to enter and turn once stable states into unstable ones. According to Bengamwee Nalaka:

Western countries don’t dominate other countries directly. Instead, they do it indirectly through groups that they can control within the country. This is what they did in Libya. Gaddafi is a leader who developed Libya in an extraordinary manner. This became a problem for western leaders. Therefore, they conspired to assassinate Gaddafi. [In Sri Lanka], the American CIA and the Indian RAW together ensured the defeat of Mahinda Rajapaksa. Those criminals who are responsible for this crime, even if they do not pay for this crime in this life, it is certain that they will pay for this in hell.

In this discourse, Ranil Wickremesinghe, the leader of the UNP who became Prime Minister of the United Front following the 2015 elections, was constructed as an agent of western imperialism, Indian hegemony, and the Tamil diaspora. He was constructed as the ‘complete westerner,’ made clear by his talk, his dress, and his colour and a ‘pickpocket Prime Minister’, i.e., one who could never have been elected as Prime Minister or President through the people’s vote.

While Sinhala Buddhist nationalism has always had a strong anti-western, anti-colonial element (Ismail 2005; Rambukwella 2018), what was perhaps new about it during the period leading up to the end of the war and after, was the force, intensity, and confidence of its manifestation. Mahinda Rajapaksa, as President had set the tone in reframing human rights as a neo-colonial project, when he told David Milliband and Bernard Kushner, the respective former Foreign Ministers of Britain and France, that ‘we are no longer a colony of yours. That ended in 1948’. The occasion for this reminder was their visit to Sri Lanka in April 2009 to deliver a message from the international community, demanding a halt to the fighting

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133 They were the wife and son of a Kandyan chieftain who had rebelled against the king, who was later executed by the king.

136 (සකිලා නෝදනිකයේ කාම්පක්කේ විස්තර සඳහා ආසන්තමයේ කාර්යභාව. පැරිසේ, නාට්ඩ්ස්, ආසන්තමයේ කාර්යභාව, 28 අප්‍රේල 2015.)
between the GoSL and the LTTE in order to allow civilians a safe passage from the battle zone.\textsuperscript{137} Following the adoption of Res. 30/1, the nationalist lobby intensified its criticism of western interference in domestic politics both explicitly and implicitly. Rajapaksa fired the first salvo against Res. 30/1 in a speech given in October 2015, titled ‘The threat facing the country due to Geneva resolution’. In it, he described the moment of its adoption as ‘the most perilous moment since independence in 1948’. The word sovereignty was used once in the speech— ‘this is a matter that goes beyond politics and is about our country, our nation, our sovereignty, and our self-respect’. But the whole speech is saturated with the concept. President Rajapaksa urged parliament, and the people to be vigilant about ‘powerful forces … trying to break the back of the nation’. He stated that there is ‘no need for a government if we are going to agree to everything said by other countries’.\textsuperscript{138} Udaya Gammanpila, Member of Parliament and the leader of the \textit{Pivithura Hela Urumaya}, a constituent party of the UPFA in a subsequent speech delivered in parliament added:

\begin{quote}
No nation in this world has co-sponsored a resolution against that very country. Therefore, this is unprecedented, unusual and the results are devastating. Sir, why do we call it a ‘treacherous act’? It has clearly undermined our sovereignty; it has clearly damaged the reputation of our war heroes and they have been labelled as ‘criminals’ because of this Resolution.
\end{quote}

He went on to state:

\begin{quote}
Our soldiers are being charged with human rights violations committed in the course of protecting our motherland. British soldiers are faced with human rights charges following the invasion of Afghanistan and Iraq. Yet the British PM speaking on behalf of all Britain has stated that, ‘we are with you. We will not allow such baseless war crime allegations to me made to destroy you’. Yet our Foreign Minister has informed that world that ‘our war heroes did commit [such crimes] and we are with you in relation to punishing them’. (My translation from Sinhala)\textsuperscript{139}
\end{quote}

The OMP was similarly considered an assault on the sovereignty of the nation by nationalists. In framing its opposition to Res. 30/1 and the OMP in this way, the nationalist lobby was engaged not merely in defending soldiers and the sovereignty of the nation. I contend, it was engaged in performing an anti-western


\textsuperscript{139} Udaya Gammanpila \textit{Hansard}, 6 June 2016, p. 1090-1091.
sovereignty and subjectivity, as well as a patriotic form of masculinity. In understanding the words and deeds of nationalist actors as such, I recognise the close bond between the concept of sovereignty as autonomy and as masculinity that several scholars have observed. In their analysis, anxious masculinities are at the heart of many right-wing and postcolonial nationalisms (Anand 2007; Brown 2010; Hansen 1996; Mbembe 2005). In the discourses and practices of such nationalisms, things perceived as challenges or threats to sovereignty are also perceived as emasculating not just the state, but by identification, its male population, with all its gendered and sexual connotations (Brown 2010; Mbembe 2005).

Figure 9: Posters put up by nationalist organisations after the OMP Bill was tabled in parliament in August 2016 stating, ‘Do not betray the sovereignty of the Nation: Remove the OMP Bill’ and ‘Do not betray war heroes: Remove the OMP Bill’.

As Lisa Wedeen has pointed out, to see the discourses and practices of nationalist actors as performative is to recognise their goal(s) (in this case, erasure of past violence) and how they bring forth nationalist persons and nationalist publics. In Wedeen’s words, ‘the category of the nationalist . . . is actualised through the performance of norms associated with nationalism. Nationalist actions, in this light, maybe understood as performatives because they enact that which they name, a national self or “subject”’ (2008: 16). In the aftermath of the 2015 elections and Res. 30/1, this subject was a patriotic, anti-west, masculine subject, who took to stage, spoke to the press, wrote strident opinion pieces, filed cases in court, and flew
across the world, all in the name of the ‘nation’. Thus, I recognise that sovereignty and masculinity are embodied behaviours, at once ‘real’ and constructed. These sojourns to Geneva enacted that which it named and was bound up with other discourses and practices of Sinhala Buddhist nationalists, intelligible from within those discourses and practices (Taylor 2003: 3).

In the wake of the elections of 2015, anxieties about masculinity became evident in a parallel discourse that labelled those responsible for adopting Res. 30/1—the United Front, the Prime Minister, the Foreign Minister, and state officials—not merely as traitors, but as effeminate men or ‘faggots’ (ponnayas). In a host of memes circulating within social media during 2015-2019, the United National Party was renamed the United Napunsaka Ponnayo. The General Secretary of the Bodu Bala Sena, Ven. Galabodaaththe Gnanasara is on record stating that ‘we respect both men and women, but there are some in this country who don’t fall into either category. They are neither men nor women, and they are dragging this country down (anaatha). We have only contempt (pilikul) for them’. In this discourse, the effeminate and emasculated men of the United Front were contrasted with Rajapaksa (with his lush moustache and swept-back hair), considered the epitome of patriotism and Sinhala Buddhist masculinity. The members of the United Front were also contrasted with the patriotic, strong men of organisations such as GSLF, working to defend the country and recuperate, restore, or reassert the masculinity of both the nation and its male subjects (Brown 2010: 108).

This discourse of the traitor as ‘fag’ or ‘ponnaya’ has resonances with right-wing nationalist discourse in the United States, mapped by Jasbir Puar in the aftermath of 9/11. According to Puar, the reification of heteronormativity and the white American heteronormative family is, and always has been, indispensable to the promotion of an aggressive militarist, masculinist, race and class-specific nationalism (2006: 69). Simultaneously, contemporary forms of US nationalism and patriotism, she argues, depend on the production of gay, lesbian and queer bodies.

140 See also Schubert (2016) for a discussion of the significance of masculinity at the 2010 presidential elections, the first elections held after the end of the war.
142 ‘ Rigidbody buggering his mother?’, Divaina, 1 July 2018, p. 10.
143 ‘A fault in his stars?’ The Economist, 27 November 2014. The traitor as an emasculated figure brings to mind a similar construction from an earlier time: graffiti which appeared during the signing of the Indo Lanka Peace Accord, depicting former President J.R. Jayawardene (JR) in the kitchen, while Rajiv Gandhi is buggering JR’s mother in another room. As de Alwis analysing this image points out, the mother here is the Sri Lankan nation while JR is unmanned and domesticated by putting him in the kitchen (1994: 103).
However, in Puar’s analysis, it is the terrorist body that is emasculated and othered even while some gays and queers are selectively included in the nation (68). In a very different context, Das documents a Sikh militant discourse in the early 1980s, which identified Hindus with a dangerous effeminacy that threatened the Sikh male (1995). It appears that in Sinhala Buddhist nationalist discourse, even as family and familial ideology are reified and privileged as in the US, emasculation is reserved for the internal male enemy, marked off as non-normative and non-conforming.144

Performing Patriotic Masculinity and Sovereignty in Geneva

The performative aspect of sovereignty and masculinity of the nationalist lobby was most in display in the words and deeds of the members of the GSLF attending the UNHRC sessions in Geneva between 2017 and 2020. In fact, in the wake of Res. 30/1, Geneva, both symbolically and materially, became the primary site of the battle between nationalist forces defending soldiers, on the one hand, and rights activists and the international community demanding accountability on the other. It became the place to reclaim the sovereignty and masculinity of the nation with hyperbolic performances defending war heroes and the nation.

Civil society organisations are recognised as playing a critical role in the work of the UNHRC.145 Their participation at the Council has been referred to as “having a window to the “reality on the ground” and a “means of receiving knowledge from a unique source of information about the local implementation of our international commitments””. Yet as you will see civil society organisations that come before the UN may not always act to promote and protects human rights. Certainly, the Sinhala Buddhist nationalist lobby that arrived at the UNHRC in the wake of Res. 30/1 was not interested in constructively engaging with human rights and transitional justice.

For the GSLF, in the wake of Res. 30/1, the eelam struggle had moved from the battlefields of the vanni to Geneva.146 In attending Council sessions, it was using the UNHRC as a theatre to perform sovereignty and masculinity as central to the nation’s identity on behalf of its nationalist constituency in Sri Lanka. In doing so, it

145 “Opening remarks of Ambassador Filloreta Kodra (Albania), Vice President of the Human Rights Council ‘Strengthening NGO participation and the right to freedom of association at the UN: current challenges and opportunities for reform,’” OHCHR.Org, 22 April 2015.
sought to delegitimise rights activists and the UNHRC as part of an imperial conspiracy to deliver *eelam* through other means, attack the US and UK for their ‘double standards and hypocrisy’, and erase the state’s sovereign violence.

Indeed, the GSLF took delight in transgressing the politics of diplomacy and civility that marks these UN processes, documented in detail by Tobias Kelly (2018). It took pains to convey its disrespect and even contempt for the UN system at every opportunity it got while exploiting the UN’s own rules and rituals of engagement to do so. On several occasions, in public spaces and at side events, it even got into open confrontations with diaspora activists.

To convey the flavour of the GSLF’s engagement in the formal sessions of the Council, let me cite one statement delivered in 2019:

Look at the double standard. On one hand, UK pressurised to persecute our war heroes, and on the other protect Adele Balasingham who trained the LTTE women suicide cadre. America wants our war heroes taken to ICC, but they punish the members of the ICC investigating the alleged war crimes of US troops. I say UK has no moral right to talk about human rights violations. They invaded us and mercilessly killed our ancestors who fought for freedom. In 1818, Robert Brownrigg killed all young Sinhalese men including suckling infants, raped all Sinhalese women, destroyed their livelihood. Dr. John Davey confirms that 7% of the entire Sinhalese population was killed by the British. Lieutenant Mclaine was infamously known for having breakfast while watching Sinhalese men being hung. Col. Rourke ordered Sinhalese to be hanged without trial. We demand UK to tender a public apology for their atrocities against Sinhalese and return all our precious *ola* leaf books [palm leaf] and treasures looted from us before trying to teach us accountability. Winston Churchill starved millions of Germans to death after World War II and it is hilarious to find Germany joining hands with UK to charge us with war crimes. This is nothing but hypocrisy. Our leaders may be cowards to co-sponsor this but certainly not the Sri Lankan public.147

The GLSF also organised protests at the UN Square, waving Sri Lankan flags, carrying banners, and shouting slogans critical of the UN and the west. The slogans at these protests were often directed at the High Commissioner for Human Rights.

At a GSLF organised protest in Geneva in March 2017, the protesters were given little slips of paper with the following written on it in Sinhala to chant in unison:

Listen, Al Hussein
Trying cases with foreign judges
Selling yourself to the LTTE
We will not allow prosecutions.
The war heroes in our country
Fought for the motherland,
The murderers are your friends . . .
Al Hussein, phlegmy prince

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147 Statement delivered by Sarath Weerasekera at General Debate, Item 10 on Technical Assistance and Capacity Building, 51st meeting, 40th Regular Session of the HRC, 21 March 2019.
You are not great to us
Just go as you came! (My translation from Sinhala)

These personal accusations against Al Hussein echoed criticism of his predecessor, Navi Pillay, on the same grounds. Pillay (who was UN High Commissioner for Human Rights from 2008 to 2015), during a visit to Sri Lanka in 2013, was accused by one Minister in the Rajapaksa regime of supporting Tamil separatists because of her Tamil background and having secret talks with activist groups outside of her official programme.148 Another dismissed her as a terrorist sympathiser who saw ‘her husband in every terrorist’, (Pillay’s husband is a lawyer and anti-Apartheid activist in South Africa).149 Yet another offered to teach Pillay about Sri Lanka’s glorious history and civilisation, claiming that Lankans ‘wore garments prior to the white man’, ‘conducted trade with the world during the era before Christ’, and ‘built a flying machine before Wilbur and Orville Wright’. He then invited her to join him on a trip around the country and offered to marry her, forcing President Rajapaksa to make an apology to the High Commissioner.150

In the GSLF’s conceptualisation of its visits to Geneva, it was performing the ‘nation’ and the ‘state’ in the context of the Sri Lankan state’s failure to do the correct thing and stand by heroic soldiers following the 2015 presidential and parliamentary elections. Sarath Weerasekera (President of the National War Heroes Front), who led the GSLF’s three-member delegation to Geneva in 2017, explained his reasons for travelling to the Swiss capital as follows:

The former government didn’t remand war heroes and release hardcore terrorists from prisons. It stood in the international arena, protecting our dignity. Hence, there was no need to raise our voices. This government accepted the UN Investigative Report on Sri Lanka [OISL Report], which is full of contradictions and treacherously cosponsored the Geneva Resolution 30/1 proposed by the USA against Sri Lanka. They are making way for the war heroes to be taken to the International Criminal Court.151

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In another press statement, he stated: ‘In reality, what our military did was to free innocent Tamils from the inhuman clutches of the Tigers. No one says this clearly. However, I have a duty and responsibility to say so. This is why I went to Geneva’.\textsuperscript{152}

These visits to Geneva were constructed by the GSLF as both ‘historic’ and ‘heroic’ efforts, often in hyperbolic terms. They were considered historic because ‘previously not a single person has challenged the UN High Commissioner within the HRC’.\textsuperscript{153} They were considered heroic because the delegates were single-handedly taking on the international community, the Tamil diaspora, local and international NGOs, and the Sri Lankan state. The nationalist subjects who defended soldiers in this manner, therefore, came to be themselves constructed as exemplary citizens, role models, and heroes, to be emulated. The sojourns to Geneva were relayed to the public in Sri Lanka through ritualistic and routine engagements with the electronic and print media, becoming part of the myth-making of Sinhala Buddhist nationalism.\textsuperscript{154} Indeed, GSLF leaders returning to the island from Geneva were often welcomed back in a manner generally reserved for politicians and war heroes, with garlands, flags, and slogans such as ‘ape senpathiyata, jayawewa’ (long life to our soldier!), and ‘ape ranaviruwata, jayawewa’ (long life to our hero). Post Geneva media coverage was also characterised by expressions of gratitude from other nationalist groups as well as the general public.


Following the June 2017 session of the UNHRC, Bengamuwe Nalaka, the Chairperson of the Jathika Himikam Sanvidanaya and a leading nationalist ideologue wrote an open letter titled ‘Honouring those who protected Sri Lanka’s honour at the UNHRC in Geneva’. In one passage he calls on all patriots to support the GSLF’s mission in Geneva:

The then Minister of Foreign Affairs Mangala Samaraweera, representing the Sri Lankan state, co-sponsored Res. 30/1 prepared by the United States of America. This was an attack against our dignity. The so-called good governance government did not do anything about it. It is in this context that the Global Sri Lanka Forum and Admiral Sarath Weerasekera made representations at the UN Human Rights Council to some extent restoring the dignity of Sri Lanka. All patriotic Sri Lankans who are scattered around the world should support the Global Sri Lanka Forum to continue this work successfully.

In the face of this nationalist assault on Res. 30/1, the United Front was only able to establish the Office on Missing Persons and the Office of Reparations. The government abandoned the promise to set up a truth and reconciliation mechanism and a hybrid court. But not only that, in Chapters Six to Eight, I show that the

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156 When the United Front tabled the Office on Missing Persons bill in parliament, in mid-July 2016, Rajapaksa responded with a statement issued under his signature boldly declaring that, ‘Every member who votes for it (OMP Bill) will be held responsible by the people for betraying the country and
United Front itself replicated some of the Manichean necropolitical mechanisms of erasure deployed by the previous regime, thereby delimiting the public sphere available for victim-survivors to pursue rights. Here it will suffice to say that five months after the resolution, on 21\textsuperscript{st} January 2016, President Sirisena told the BBC that he would ‘never agree to international involvement in this matter’ and that there were ‘more than enough specialists, experts and knowledgeable people in our country to solve our internal issues’ (italics mine).\textsuperscript{157} In a subsequent interview given to The Hindu newspaper, he added that:

> Before I came to power there was a fear that those who had given commands during the war could be taken to international courts of justice, that they may even face execution, and that they may have to sit on the electric chair. The international community is so satisfied with my performance that they have completely changed their impression of the country. Now there is no threat of international courts, now we don’t have to talk about electric chairs, there is no problem [of foreign judges investigating alleged violation of human rights]; I have told the international community that I cannot accept any proposal that allows foreign judges to probe our domestic matters. This is another great victory I was able to achieve in this time.\textsuperscript{158}

By the time of the 2019 presidential election, the protection of war heroes and the sovereignty of the nation became central pillars of the election campaign of Gotabaya Rajapaksa, the presidential candidate of the SLPP. If elected, Rajapaksa promised to immediately release all war heroes imprisoned over ‘false’ charges. The ubiquitous presence of the figure of the hero in his campaign prompted Chandragupta Thenuwara, an artist, academic and political activist to coin the term \textit{ranaviru gaaya} (ache / craze for the soldier), as an affliction in need of a cure. A host of memes and Facebook posts followed from those claiming to have \textit{ranaviru gaaya} as a badge of honour and condemning Thenuwara as a traitor. A new rana gee called \textit{ranaviru gaaya} was uploaded on YouTube on 26\textsuperscript{th} October 2019.\textsuperscript{159}


In presidential elections held in November 2020, Gotabaya Rajapaksa was elected as President. In February 2020, a delegation sent by President Rajapaksa to the UNHRC headed by Minister of Foreign Relations, Dinesh Gunawardena, announced that the GoSL will no longer abide by commitments made in Res. 30/1 and would be implementing its own home grown peace and reconciliation process. Standing on the same podium on which Mangala Samaraweera stood in September 2015, Gunawardena declared that Res. 30/1 undermined national security and intelligence, was unconstitutional, impractical, illegal, and a ‘blot on the sovereignty and dignity of the people of Sri Lanka’. Notice the reappearance of sovereignty and dignity here. Moreover, he asserted that:

In terms of reputational damage, it eroded Sri Lankans’ trust in the international system and the credibility of Sri Lanka as a whole in the eyes of the international community. This irresponsible action also damaged long nurtured regional relationships and Non-Aligned as well as South Asian solidarity. The deliberate polarization it sought to cause through trade-offs that resulted in Sri Lanka’s foreign policy being reduced to a ‘zero-sum game’, made my country a ‘pawn’ on the chess board of global politics, and unnecessarily drew Sri Lanka away from its traditional neutrality.

The defeat of the Rajapaksa regime in 2015, then, did not mean the defeat of Sinhala Buddhist nationalism. In fact, Sinhala Buddhist nationalists mobilised the very tropes of erasure that I discuss in this thesis to bring the Rajapaksas back to power. I should note that nationalist activists widely welcomed the US withdrawal from the UNHRC in 2018 and its characterisation of the latter as a ‘cesspool of political bias’. In fact, US actions further emboldened them to reject what was perceived as UNHRC interference in matters sovereign to Sri Lanka.

I believe these attacks speak to the power of international human rights norms in local contexts. Critics of international law need to take account of such aggressive tactics deployed by some countries in the global south (aligned with China and India in a new world order) to challenge and subvert what are considered hegemonic practices of international law. This case study of Sri Lanka at the UNHRC presents a compelling case to reconsider the entangled ways in which

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political parties in alliance with civil society organisations might be deploying national sovereignty to undermine the rights of postcolonial citizens who rely on internationalised justice as a last resort.

**Conclusion**

In this chapter, I focused on the election of the United Front in 2015 and its co-sponsorship of UNHRC Resolution 30/1, which promised to establish a number of transitional justice mechanisms to address war-related atrocities. I briefly explored the elements of Res. 30/1 as inspired by the UN transitional justice tool kit now dispensed in postwar and post authoritarian societies. I went on to analyse the manner in which Sinhala Buddhist nationalist organisations and activists coalesced around the leadership of former President Mahinda Rajapaksa and mobilised ideas about sovereignty as national identity and patriotic masculinity to undermine Res. 30/1. I argued that this trope must be recognised as part of the mechanisms and politics of erasure practised in postwar Sri Lanka. Thus, in the wake of Res. 30/1, the rhetoric of sovereignty joined that of ‘heroes’, ‘patriots’, and ‘traitors’ to delimit and delegitimize the international public sphere, which human rights activists and victim-survivors were accessing to pursue justice following the end of the war.

The experience of Sri Lanka in the wake of the adoption of Res. 30/1 alerts us to the perils of internationalised justice in a postcolonial, ethno-nationalist, deeply divided context such as Sri Lanka. I believe this experience confirms that international human rights norms and the pressures that go with them do not enter a domestic vacuum. Instead, international norms enter a field riven with conflict and cleavages, with its own demands and pressures, populated by agentive subjects who may appropriate, adapt, or even reject these norms (Kelly and Dembour 2007; Shaw 2007; Shaw and Waldorf 2010; Subotic 2009). In this process, international norms are likely to get ‘exposed, challenged, disassembled and reconfigured in its local engagements’ (Shaw and Waldorf 2010: 4). They can ‘dissolve, unmake and remake what “transitional justice” actually is and how it works’ (Shaw 2007: 187) and become yet another site for political antagonisms rather than for reconciliation. Moreover, this account of Sri Lanka’s internationalised justice process, speaks to the way in which the concept of sovereignty as well as anti-colonial nationalism in the post-colony, can be used as an alibi to erase sovereign violence, to cover up techniques of power very resonant of imperialism and colonialism, and to construct hierarchies of bodies and citizens as more and less deserving of rights (Osuri 2017).
Citing Mbembe, Osuri points out that ‘colonial rationality’ is now part of postcolonial rationality or knowledge and ‘postcolonial state forms have inherited . . . the regime of impunity’ that were part of colonial sovereignty. Mahinda Rajapaksa’s refusal to engage with the UNHRC during 2009-2015 and Gotabaya Rajapaksa’s refusal to abide by Res. 30/1 represents an instance of anti-empire blowback from a former colony, but one which simply repeats the violence of the empire. Moreover, in this chapter I draw attention to the role civil society played in a politics of erasure of sovereign violence following the defeat of a perpetrator state to undermine justice efforts undertaken by a successor state.

The anti-imperial discourse of Sinhala Buddhist nationalism is highly reminiscent of the Asian perspective on human rights put forward by countries such as China, Singapore, Malaysia, and Indonesia in the 1990s. According to this perspective, human rights are encapsulated within state sovereignty, and the national treatment of human rights is no concern of other countries (Ghai 1993). It ironically also echoes critiques of international law by postcolonial and Third World Approaches to International Law scholars, which I cited above. Undoubtedly, the toolkit approach and UNHRC’s country-specific resolutions, which picked out Sri Lanka for naming and shaming, carried resonances of the civilizing project of the empire. But not only that, these resolutions reflected larger geopolitical antagonisms that had nothing to do with human rights. It is no secret that US interest in supporting resolutions against Sri Lanka was an effort to counter China’s influence in Sri Lanka under the Rajapaksa regime.

Kumaravadivel Guruparan has argued that Res. 30/1 was primarily ‘a foreign policy management tool,’ to address the problem of Geneva, rather than pursued from a belief in the intrinsic necessity and good of truth and justice in its own right, or as a way to re-found Sri Lanka.163 Such an analysis is supported by the optics of the launch of the United Front’s transitional justice process (discussed above) and the manner of its implementation, which I discuss in more depth in Chapter Seven.

However, even if the United Front had not embarked on its transitional justice process as a foreign policy management tool, could it have challenged the Manichean necropolitical mechanisms of erasure that I document in these pages?

Would it have been able to deliver justice if it had unveiled a purely domestic justice mechanism? Would it have had more success if it had not co-sponsored a resolution at the UNHRC or if it had held the UNHRC process in abeyance to build a constituency for justice within Sri Lanka? Would it have made a difference if it had followed a different path to deliver truth and justice for survivors of the war, for instance, by seeking to implement the recommendations of the Lessons Learnt and Reconciliation Commission (LLRC) or the Presidential Commission to Inquire into Complaints of Missing Persons (PCICMP) appointed by Mahinda Rajapaksa, as a way to undercut the predictable critique of an internationalised justice process? It is not possible to answer these questions with certainty. However, as I show in Chapter Seven, family members of the disappeared—who are my main interlocutors in this thesis—are continuing to invoke universal norms and appeal to institutions of global governance. What other choices do they have?
5.

Affidavits of Fact or Fiction?

Habeas Corpus: the Great Writ in the Postwar, Postcolony

On 14th March 2013, the Centre for Human Rights and Development (CHRD), a human rights and legal aid NGO based in Colombo filed five habeas corpus applications on behalf of five different petitioners, all women, in the High Court of Vavuniya.164 Except for the personal details of the petitioners, the five petitions were almost identical and united by a common thread. In each application, the petitioner narrated the story of a family member who had surrendered to the Sri Lanka army, on or around 18th May 2009, as the civil war was coming to an end, and who had thereafter disappeared. A summary of the incident(s) of surrender that relates to these applications in a CHRD report reads as follows:

Families were displaced from one place to another as the fighting between the LTTE and Sri Lankan government forces intensified. Around mid-May, each family . . . made the decision to cross over to government-held territory. On May 18, 2009, Sri Lankan security forces made public announcements calling all LTTE cadres to surrender, with a promise to grant general amnesty to those who did. The announcements stated that those who served for even one day should surrender into Army custody. Thereafter, each of the missing persons in the cases listed above surrendered into custody of the 58th Division of the Sri Lankan Army. In several cases, family members gave the individual a small parcel containing clothing, money, and personal effects. Father Francis Joseph and three other priests facilitated the surrender, as they spoke fluent English and could communicate with the Army. Army officers separated those who surrendered into a separate line, while their families were asked to join a civilian queue.

The Army then took the missing persons into an enclosure fortified by barbed wire. Their families could see them from a short distance away. Their families and acquaintances witnessed the missing persons board CTB (Ceylon Transport Board) buses, as directed by the Army. Army personnel told the families that the missing persons would be taken for questioning and would reunite in an IDP (internally displaced persons) camp. However, in each case, this was the last the families saw of the missing persons (CHRD 2015: 29).

As is the practice in these applications, the High Court referred all five applications to a court of first instance for judicial inquiry—in this case, the Mullaitivu

164 Case Numbers HCV/Writ/507/2013 to HCV/Writ/ 511/2013.
Magistrate’s Court. In December 2017, the Court delivered its decision in relation to the five applications. In each case, it found that the evidence of the petitioners and witnesses for the petitioners held ‘many contradictions and deficits’, that ‘it cannot be answered whether the missing persons died in the war, went missing or were arrested or surrendered during the war’ and that the respondents—the army—cannot be held responsible for them.165

In Chapter Three, I traced the emergence of women family members of the disappeared in postwar Sri Lanka as dissident, resistant, legal, and political subjects. In this chapter, I consider the courthouse as one site of these women’s struggle(s). I study the five habeas applications as part of a continuous /iterative labour to expand the space of appearance available to them to appear as rights-bearing subjects to pursue truth and justice for disappearances. Through a thick description of the trajectory of these cases in the Magistrate’s Court, I analyse these women’s experience of invoking the writ jurisdiction of the Court. I take into account that the women filed these cases during the Rajapaksa regime and that the Court gave its decisions during the tenure of the United Front. I show how during the Rajapaksa government, the discourses of denial, ‘heroes’ and ‘enemies’ were operationalised at the micropolitical level of the courthouse through control of law enforcement agencies—the Attorney General’s (AG) Department and the judiciary—and through intimidation of the petitioners.

Moreover, I demonstrate that following the election of the United Front in 2015, the AG’s department did not fundamentally change the way this case was prosecuted. While the transition from Rajapaksa rule to the United Front undoubtedly opened the democratic space to pursue justice through domestic courts, I argue that this space was limited, contingent, and fragile. It did not extend to all cases of disappearances without distinction. Drawing on Judith Butler (2004; 2010) and Shoshana Felman (1997), I argue that in the adjudication of these five petitions, the ideological frame of the heroic soldier continued to determine what was ‘sayable’ and ‘seeable’ in the courthouse and who was a reliable witness and who was not. Moreover, in dismissing these five petitions, I suggest that the court (yet again) reinforced the Manichean, necropolitical mechanisms of erasure that I analyse in this thesis, even as it inscribed these women’s testimonies on to the state record. Here again, as I did in Chapters One and Three, I want to draw attention to the documentary practices of the state and writing as constitutive of state power.

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165 Orders of the Magistrate Court of Mullaitivu dated 15 December 2017.
The legal petition, just like the complaint and the commission of inquiry process, is an intensely documentary one which commits memories to paper and into the legal archive. I ask whether women’s re-iterative labour as subaltern dissident subjects can ensure that this incident does not become like so many before it—yet another fragment in the archive.

I begin by locating this analysis within a broader discussion of the colonial and postcolonial history of the writ of habeas corpus. Moreover, I return to and build on the argument I made in Chapter One, that despite Sri Lanka being in a state of emergency for much of its postcolonial history, the legal remedy of habeas corpus remained available to family members of the disappeared. Yet, in case upon case, the writ could be rendered ineffective without the need to suspend it.

**The History of a Writ**

*Habeas*, in medieval Latin, is the second person singular present subjunctive active of *habere*, meaning ‘to have’ or ‘to hold’. *Corpus* means ‘person’ or ‘body’. The phrase means ‘you have the body,’ ‘you will have to have a body to show’ (Agamben 1998: 124), or ‘produce the body’. The writ of habeas corpus comes in different forms. The form of the writ that I discuss here, *Habeas Corpus ad Subjiciendum* is a recourse in law, through which a person can report an unlawful detention or imprisonment to a court and request that the court commands the person, usually a prison official, to produce before the court the body of the prisoner so that it may inquire into the cause of imprisonment or detention (Carpenter 1902: 18-19; Robertson 2008: 1066). The power and significance of the writ lie in the fact that it allows a petitioner to directly approach the courts without first making a police complaint. In English legal parlance, it is the ‘great writ,’ central to English notions of liberty and the rule of law. Blackstone considered it to be a second *Magna Carta* (1922: 126). For Dicey, it was more significant than even the ‘celebrated thirty-ninth article of the Magna Carta’ (2013: 122). The writ is thus recognised as imposing a limit on the exercise of sovereign power, and its inauguration is hailed as the moment when the subject became a citizen (Dicey 2013: 111-112). Prior to habeas corpus, European monarchs claimed and were primarily understood to derive their authority and sovereignty from divine dispensation (Cohen 2008). Of course, the

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166 The 39th Article of Magna Carta states ‘no free man shall be seized or imprisoned, or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any other way, nor will we [the royal we] proceed with force against him, or send others to do so, except by the lawful judgment of his equals or by the law of the land’. 

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state retained the right to suspend the writ in times of necessity (Halliday 2010; Hussain 2003).

Both Fred Halliday and Nasser Hussain analysing the disjuncture between the promise and possibilities of the writ of habeas corpus elsewhere, direct our attention to the right of suspension of the writ, available from the first suspension Act passed in England in 1689. This law recognised that the writ could be suspended on the grounds of ‘necessity’ and ‘security of the public,’ and very specifically in the context of rebellion at home and invasion from abroad (Halliday 2010: 309-310; Halliday and White 2008: 578, 624, 644-648; Hussain 2003: 75). According to Halliday, even as the writ travelled to Asia, Africa, and America with the expansion of the British empire, ‘suspension followed like a shadow’. In the colonies from India to New Zealand to Kenya, suspension of the writ was based on a ‘classificatory logic’ (Halliday 2010: 310). According to this logic, colonial governors were empowered to define and classify groups whether as ‘criminal tribes’ or ‘thuggees,’ and imprison, deport, or exile individuals from these groups without judicial review or trial. In effect, colonial subjects were in this way, put beyond the bounds of British subjecthood (Halliday and White 2008: 649, 665). Halliday goes on to state that the suspension logic since 1689 has been the same: ‘to define classes of people—alleged traitors, those taken in North America, Maori squatting at Parihaka, thuggees, Mau Mau—as those who could be treated as dangerous simply by their apparent membership in a group’ (2010: 312). We are here back in the territory of Hobbes’ enemies of the state, who can be arrested, detained, exiled by the sovereign with no legal checks whatsoever and no judicial inquiry.

The writ was imported, sometimes wholesale, sometimes piecemeal, into the law of all British colonies (Clarke and McCoy 2000; Halliday 2010; Hussain 2003). In Sri Lanka, the writ was explicitly recognised in the Charter of Justice of 1833 (Sec. 49) and the Courts Ordinance of 1889 (Sec.45). When the Courts Ordinance was replaced by the Administration of Justice Law No. 44 of 1973 under the first Republican Constitution of 1972, the power to hear habeas applications was vested in the High Court in Colombo. The second Republican Constitution of 1978 elevated the writ to a constitutional remedy, with jurisdiction relating to the writ transferred to

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168 For a brief history of the writ in Ceylon see Halliday (2010: 291-293).
the Court of Appeal, also situated in Colombo.\textsuperscript{169} However, the thirteenth amendment to the Constitution (1989) granted concurrent jurisdiction in relation to the writ to Provincial High Courts, which were established under the amendment.\textsuperscript{170} It is important to note that despite Sri Lanka being under emergency rule for much of its postcolonial history, the writ was never suspended.

The Workings of a Writ

The earliest reported use of the writ against the state in Sri Lanka dates back to 1915.\textsuperscript{171} Until the 1980s, however, the cases against the state were most often based on the powers vested in the Commissioner of Immigration and Emigration.\textsuperscript{172} Additionally, an overwhelming number of reported cases were between private parties where the writ was used in custody battles over minor children. It is during the second southern insurrection that the writ first came to be used in cases of arbitrary detentions and to locate the disappeared (Col-WSS 1997: 98).

In its final report, the Commission of Inquiry for the Western, Southern, and Sabaragamuwa Provinces (Col-WSS) appointed by the People’s Alliance government in 1994 noted the increasing resort to habeas corpus during the southern insurrection. The writ was invoked during this time in the context of the refusal of law enforcement agencies to record complaints and follow ordinary legal procedures in relation to those complaints. The Commission documented 2755 habeas applications received by the Court of Appeal between 1988 and 1996, although the Court was a strange, unfamiliar, and geographically remote place. Many petitioners could barely muster the bus fare to get to its location in the capital. The Col-WSS recognised that these cases constituted a poignant aspect of the efforts of relatives to trace disappeared loved ones, understood by them to have been taken away by state security forces, based on the generational experience of the law prior to the era of state-sponsored terror (Col-WSS 1997: 99-100). It goes on to state that

\begin{footnotesize}
\begin{enumerate}
\item Article 141 of the 1978 Constitution states: ‘The Court of Appeal may grant and issue orders in the nature of writs of habeas corpus to bring up before such court a) the body of any person to be dealt with according to law, or b) the body of any person illegally or improperly detained in public or private custody.’
\item Articles 154 P(3) and 154 P(4) of the Constitution states that ‘Every such High Court shall have jurisdiction to issue, according to law – a) Orders in the nature of habeas corpus, in respect of persons illegally detained within the Province.’
\item Application for a writ of habeas corpus for the production of the body of W. A. De Silva 1915, 18 NLR 277.
\item Even in the celebrated Re Bracegirdle, the courts examination of the use of emergency powers occurred in the context of an arrest made in consequence of an order for deportation Re Mark Antony Lyster Bracegirdle 39 NLR 193.
\end{enumerate}
\end{footnotesize}
In the face of this denial of the right of access to the system of administration of justice, the fact that so many petitioners sought the assistance of courts via its habeas corpus jurisdiction bears witness to their faith, that if they could only access the judge of the land, they would have their attention, which would in turn get them the required attention from all official quarters. (Col-WSS 1997: 99)

However, in most cases, neither the judges nor other public officials paid the required attention to address their pleas. There were no investigations and no prosecutions. According to the Commission, these cases exemplified ‘a generalised practice, . . . NOT to investigate such incidents’ (Col-WSS 1997: 55). Indeed, it is clear that habeas applications were subject to intense political interference and manipulation. The history of the writ as documented by human rights organisations from the time of the southern insurrection is, in fact, a litany of failures. Many habeas corpus applications were arbitrarily dismissed (Pinto Jayawardena and de Almeida Gunaratne 2011: xx). Others were marked by long court delays; non-cooperation of detaining agencies with the courts; harassment and intimidation of witnesses, family members, and lawyers; hardship and heavy expenditure imposed on the petitioners; transfer of judges acting independently; transfer of cases to distant courts at the request of those who were suspected of committing violations; misplaced and disappeared files; and failure to prosecute even when there was an obvious chain of evidence (Amnesty International 2014: 9; Col-WSS 1997).

In most cases, a flat denial by the security forces generally terminated these applications without further inquiry (WGEID 1992: 40; Leeda Violet and Others v OIC, Dickwella Police Station 1994). Many lawyers who took up these cases were themselves disappeared or killed; or forced to abandon these cases (Col-WSS 1997: 106). Take the case of Kanchana Abhayapala. He was shot in the chest and killed on 29th August 1989 by unidentified gunmen on the doorstep of his home. In killing him that day, the killers were making good on a promise they had made a few weeks earlier that he would be killed if he filed one more habeas corpus petition.173 One did not need to look too far to understand the rationale behind this generalized practice. As I documented in Chapter One, most of the disappearances during this time occurred with the complicity of the political leadership (Col-WSS 1997: 34, 49). In making sure these cases were not investigated, those in political power were protecting their own backs.174

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174 In a few cases, the Supreme Court on appeal, has provided relief by way of compensation to petitioners, while emphasizing the significance of the writ in safeguarding the liberty of citizens. In
It is unclear to what extent family members of the disappeared resorted to habeas corpus applications in the early years of the war in the north and east. Even though disappearances markedly increased in the north and east in the aftermath of the southern insurrection, it appears that the writ was only resorted to around 2002 (Pinto Jayawardena and de Almeida Guneratne 2011: 194-195). Many cases filed in the Jaffna High Court during this time, it seems, were never concluded (198).

Fifteen habeas corpus applications filed in the Jaffna High Court relating to the disappearance of more than 20 people following a cordon, search and arrest operation conducted by the army in Navatkuli in July 1996 is still ongoing. These applications were filed in the Jaffna High Court in 2003 and referred to the Chavakachcheri Magistrate’s Court. In 2007, the Chavakachcheri Magistrate’s Court found in favour of the petitioners. The court held that there was substantial evidence to prove that the security forces had disappeared the persons who were arrested. However, after this finding, the army moved the Court to transfer this case from Jaffna to the Anuradhapura High Court in the south. They reasoned that the prevailing security situation was not conducive to the case being heard in Jaffna. In 2009, the case was stealthily dismissed on the ground that none of the petitioners were present when the case was called. This was, however, during the height of the war, and it would have been impossible for the petitioners to travel from Jaffna to Anuradhapura at the time. A different group of petitioners refiled habeas applications with reference to this case in 2017, and the Magisterial inquiry is still ongoing.

Following the end of the war, a spate of habeas corpus cases was filed by family members of the disappeared both in the north and south. I contend that the intimate relationship between different branches of government and the extent of

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1988, the Court held that despite the respondent’s denial of having taken a person into custody or detention, the Court can still direct a habeas corpus application to a magistrate court for inquiry in terms of the proviso to Article 141. (Juwanis v. Lathiff, Police Inspector, Special Task Force, and others [1988] 2 Sri Lanka Law Reports 185). In 1994, the court reiterated this principle, holding that a person in authority cannot diminish the writ of habeas corpus ‘to a cipher’ by a mere denial of the arrest and detention of a person where there was evidence to the contrary (Leeda Violet and others v Officer in Charge, Dickwella Police Station, [1994] 3 Sri Lanka Law Reports 377). In 2003, the Court held that the burden of proof required to establish the fact of arrest or detention is less than proof beyond reasonable doubt and that arrest /detention may be established, even if the identity of the officers is not established. In terms of the powers and jurisdiction vested in the court, it could only refer these cases to the Inspector General of Police and the Attorney General for consideration as information of a serious offense and the conduct of a proper investigation according to law (Machchavallavan v Officer in Charge, Army Camp, Plantain Point, Trincomalee [2005] 1 Sri Lanka Law Reports 341) However, in these cases, where the petitioners were granted costs and compensation, punitive and disciplinary action rarely followed. Neither is there any indication that inquiries recommended by the court were ever conducted.
political interference in these cases were completely unmasked during the Rajapaksa years. During these years, habeas corpus cases were conducted as a farce for all the world to see, stripped of all veneer of objectivity, impartiality, and legal nicety, while the discourse of heroes and traitors was liberally deployed to vilify the petitioners. It is not possible to go into the details of cases for lack of space. However, the Prageeth Ekneligoda case (see below), which I followed closely, was staged as a Kafkaesque drama to reveal the power of the state to undermine, compromise, and weaken the authority of law and as a spectacle of impunity. It was staged in a way to convince, persuade, or enthrall the audience, not of the power of the rule of law, but of the impossibility, the futility, and the pointlessness of pursuing justice through the courts and reinforce the supremacy of the soldier as a figure above the law.

In Chapter One, drawing on Thomas Hobbes and Banu Bargu, I suggested that the law cannot fully account for how sovereign power works in practice in these cases. Instead, it is necessary to look beyond the law, to what is not merely ‘concealed, excluded and diminished’ by law (Priyaei 2018: 1025) or what the law masks (Dayan 2001: 28) but to what is also often plainly there to see. To understand the relationship between mass disappearances in Sri Lanka and the remedy of habeas corpus, it is necessary to know how the discourses of denial and the Manichean categories of ‘heroic soldier’ and ‘treacherous petitioner’ were operationalised at the micropolitical level of the courthouse structuring the legal process and the space of appearance that was created when the petitioners invoked the jurisdiction of the court. In the section that follows, I seek to illuminate how the independence of the judicial process was compromised and undermined in these cases and how judicial power was wielded in complicity with executive power. Following Foucault (1980), Butler (2004; 2010), and Felman (1997, 2002), I am interested in showing how the mechanisms of erasure that I documented in previous chapters determined what was ‘sayable’ and ‘seeable’ and who counted and who did not count as a reliable witness inside the courthouse, superseding rules of evidence.

Habeas corpus hearings during the Rajapaksa years share parallels with how Hindu nationalism shaped lower court trials of those charged with violence against Muslims during the communal riots in Gujarat in 2002, analysed by Moyukh Chatterjee (2014, 2016, 2017). For Chatterjee, these cases exemplified the way in which the Indian state enacted sectarian politics through its legal procedures and its
ability to reconcile public acts of sectarian violence as non-criminal even though Muslims often knew the identity of the perpetrators and, in some cases, even identified them in the courtroom. Contra Philip Abrams (1988), Chatterjee argues that these cases challenge the idea that the domination of some over others, at the heart of modern theories of state formation must always be masked. For Chatterjee these cases recast Hindu supremacy as a legal form of political rule (2016: 17) while reproducing the subordinate status of the minority and dominance of the majority (2016: 6). A similar dynamic was at play in habeas corpus applications, including the five applications that I analyse here. I believe that the Manichean, necropolitical technologies deployed by the Rajapaksa government created a non-legal ‘always already state of exception’, within the legal state of exception, rendering the need to repeatedly and publicly suspend habeas corpus superfluous (Piryaei 2018: 1025). Rather, habeas corpus functioned in a non-legal state of exception that ran like rivers through the polity from the centre to the margins (Das and Poole 2004: 13). But how did the change of government in 2015 affect the way these cases were prosecuted?

The ouster of the Rajapaksa regime and the election of the United Front opened up the democratic space to enable the pursuit of justice for disappearances through the judicial process including through the writ of habeas corpus. Consider the fact that several habeas corpus applications filed during the Rajapaksa regime made considerable progress during the tenure of the United Front.¹⁷⁵ Two cases worth mentioning in this regard are the navy ransom case and the Prageeth Ekneligoda case. The first relates to the abduction between May 2008 and February 2009 and the subsequent disappearance of 11 men and boys (six Tamil, three Muslim, and two Sinhala) by officers of the Sri Lanka Navy. According to evidence gathered by the Criminal Investigation Department (CID), these men and boys were abducted purely to extort money from them their families by a rogue unit within the Navy. One parent was in fact, in telephone contact with her abducted son till May

Following a lengthy Magistrate Court inquiry, the AGs Department indicted 13 naval officers before a special trial at bar in January 2020. The second case relates to the disappearance of Prageeth Ekneligoda, journalist, cartoonist, and political activist, who was critical of the Rajapaksa government, who disappeared on the night of 24th January 2010. Again, after a lengthy trial at the Magistrate’s Court level, nine military intelligence officers were indicted before a special trial-at-bar in November 2019. However, the political will that the government displayed in these two cases didn’t extend to the case of surrender that I discuss here.

With these observations relating to the history of habeas corpus and the differential progress of habeas corpus during the United Front’s tenure, let me now consider in more detail the five habeas corpus applications at the centre of this chapter.

**Invoking Habeas Corpus after the End of the War**

The five habeas corpus applications that I study here were initiated by Ananthy Sasitharan (see Introduction). Sasitharan first approached the CHRD expressing her desire to file a habeas corpus application regarding the surrender and subsequent disappearance of her husband during the last days of the war, in 2011, before her election to the Northern Provincial Council. She had read about the remedy in a legal document. She was not unaware that, historically, the remedy had failed those who had relied on it. Yet, she wanted to test its efficacy for herself. She told me that in the event it failed yet again, at least she would have exhausted all local remedies. In her mind, Tamil women’s call for international justice would be strengthened by all efforts to pursue justice locally. When she first approached the CHRD, they advised her to find a few more petitioners who could work together in solidarity and provide safety in numbers for each other, as family members of the disappeared were coming under increasing surveillance under the Rajapaksa regime. She found four other petitioners willing to join her, following inquiries through her contacts in the District Secretariat. After two years of preparatory work which involved numerous trips to the capital to meet with CHRD lawyers without drawing attention to themselves, the petitions were ultimately filed in 2013.

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Each of the five habeas corpus petitions followed a format and grammar that is identical. In each, the petitioners attested to the surrender of one or more family members to the army during the final days of the war and the subsequent disappearance of these persons. Each petition prayed that ‘your Honour’s court may be pleased to: 1) issue notice on respondents; 2) bring the corpus to court in the first instance; 3) issue a mandate in the nature of writ of habeas corpus for the release of the corpus; 4) enlarge the corpus on bail and 5) give such other further relief that your lordships court shall seem meet’. The petitions named the Army Commander and the General Officer in Command of the 58th Division of the army as respondents. Annexed to the petitions are several other documents. One set of attached documents such as birth certificates, marriage certificates, and letters from the Grama Sevaka sought to establish a relationship between the petitioner and the disappeared person. Another set of documents were about the history of complaints made to numerous police posts and stations and other institutions such as the International Committee of the Red Cross, the Human Rights Commission of Sri Lanka, and the LLRC. A personal affidavit written in Tamil by each petitioner attested to the surrender and disappearance of the person named in the petition, while also mentioning other LTTE leaders who surrendered together with the person in respect of whom the writ was being filed. Sasitharan’s petition for instance, mentioned that her husband Elilan surrendered with: Thangan, the deputy leader of the LTTE’s political wing; Poovannan Iniyavan, the administrative head; Illamparithi, the political leader for Jaffna, and Lawrence Thilakar, former head of the LTTE’s International Secretariat. Another affidavit from an eyewitness supported the petitioner’s affidavit. A family photo completed these petitions.

Even if all the petitions prepared by the five women followed a standard form, each petition provided a glimpse into the individual lives of these five women and their memory of the day of surrender. According to petition no. 210, filed by Sasitharan, she married Sinnathamby Sasitharan (alias Elilan) on 6 June 1998 and thereafter had three daughters, aged twelve, ten, and eight at the time of the surrender. She gave her husband a small parcel containing his national identity card, a sarong, a case of soap, and a thousand rupee note before they army told her that, as a civilian, she could not surrender with him. The other four petitions provided similar information. Vibushi (not real name), the youngest of the petitioners was 33 at the time of the surrender. She states that when her husband surrendered, he was using crutches, as his right foot was amputated following an injury sustained...
in a landmine explosion. Ponamma, the oldest of the petitioners, was 61 years old at the time of the application. Her petition related to not one but four persons—her daughter, son-in-law, and their two children aged two and four at the time of the surrender. She is originally from Kandavali in Kilinochchi. As the war advanced, she went from Kandavali to Pulliampokkanai, to Suthathirapuram to Iranipalai, and finally from Rattaiwaikan to Wattuwahal. In Wattuwahal, her daughter and her family surrendered and were taken away by the Sri Lankan army. She goes on to state that her husband, who is 65 years old, is feeble and that they and their remaining children are agonizing over the arbitrary manner of the disappearance of their daughter and her family. She also states that their agony is all-the-more grievous given that the two grandchildren were so young at the time. In an interview given to the BBC, she refers to her grandchildren as ‘flowering buds’ and that she has to believe that they were still alive. ‘That is what keeps me going. Otherwise, I would kill myself’. 177

The Judicial Inquiry as a Space of Appearance
I contend that in filing the five habeas applications at the centre of this chapter, the five women petitioners opened up a space of appearance within the Magistrate’s Court in Mullaitivu. In doing so they claimed the right to testify (again) to the circumstances in which they had witnessed one or more of their family members surrender to the army during the last days of the war. In doing so, they defied the norms of the sayable and the seeable in postwar Sri Lanka and forced the state to apprehend their version of what transpired during the last days of the war. Unlike testifying before a commission of inquiry, to testify before a court of law is to activate legal procedures and rules to evaluate the veracity of one’s evidence. It means compelling a response to one’s petition from the state and compelling the Court to assess both the petition, the response of the respondents, and other evidence placed before the Court and come to a decision.

Following the filing of these applications, the Vavuniya High Court issued notice to the army, obliging the Army Commander and the Commander of the 58th Division of the Army to file objections to the five petitions in August 2013. In objections filed, the army admitted that many civilians who had been kept as human shields by the LTTE escaped to areas ‘liberated by the army’ during the last days of

the war. However, they insisted that ‘at all times the Sri Lanka army acted lawfully and ensured the safety and welfare of the civilians’ who came to such areas. In relation to some petitions, the army went so far as to state that ‘at all times Sri Lankan Armed Forces followed the applicable international norms governing warfare’. It also denied ‘all and singular averments’ made by the petitioners, asserting that the bodies in question never surrendered and were never incarcerated or detained under law. Moreover, it argued that the applications were misconceived, and that the ‘petitioners be placed with the strict burden of proving the contents thereof’. Finally, it called for the application to be dismissed because 1) the petitioners had not named the correct parties; 2) there was no basis or justification for naming the respondent as a party in this habeas corpus application, and 3) the application was bad in law. The army thus echoed the discourse of denial of the Rajapaksa government.

Following the receipt of objections and counter objections filed by CHRD in September 2013, the High Court instructed the Mullaitivu Magistrate Court to commence preliminary investigations into the whereabouts of the disappeared family members mentioned in the petitions. The judicial inquiry only began in early 2014, displaying the many shortcomings of the legal process outlined above. When the case was first referred to the Magistrate, the sitting judge was reluctant to take it up, and the inquiry proper only commenced following a change of judge. Then the State Counsel (a Tamil) assigned to the case refused to appear on behalf of the respondents for ‘personal reasons’, stating that whatever way he acted, one or other party would construe him as biased. The inquiry only commenced after another State Counsel replaced him, and proceeded according to the ceremony and rules of the courthouse, albeit with considerable delays, common to all criminal proceedings in Sri Lanka.

Following a request made by lawyers for the petitioners that the Court should hear the evidence of all five petitioners consecutively, the court led their evidence between January 2014 and June 2016. During this period, each woman testified to her account of the surrender, as well as her own harrowing experience of surviving the war amidst death and destruction. Following their testimony, the State Counsel assigned to these cases by the AG’s Department (representing the respondent) cross-examined each petitioner, while challenging their testimony at every turn.

In case number 507, the defence challenged the authenticity of the birth certificate of the disappeared person as it was in Sinhala and tried to argue that it
was a fake document. Moreover, they also challenged the claim of the petitioner that she was married to the disappeared as she could not tell them in which hospital he was born. In case number 509, the State Counsel accused the petitioner of lying and making up stories. In case number 510, the State Counsel asked the petitioner: ‘who is teaching or coaching you to tell such a story in court?’ This petitioner was also told that if she was found to be lying in court, she could be punished with death. The State Counsel repeatedly asked about the delay—the temporal gap—between the incident and the filing of the petition from more than one petitioner. In response, the petitioners explained their circumstances in the immediate aftermath of the war: the fact that they were interred in displacement camps for more than a year without access to the outside world, and that when they returned to their villages sometime between 2010 or 2011, they had to rebuild their lives from scratch. They also explained that family members of the disappeared were under constant surveillance and threat, and they were afraid to pursue legal measures but had found strength in numbers.

Criminal proceedings are always instituted, in effect, not in the victim’s name but in the name of the community whose law is broken and prosecuted by the state (Felman 1997: 759). But in habeas corpus inquiries, where the purpose of the investigation is to ascertain whether a crime has been committed by the state or not, as a practice it is the State Counsel from the AGs Department who appear on behalf of the respondents. One of the lawyers for the petitioners told me that the State Counsel would come to court with the army personnel in military vehicles and have a private meeting with the judge before the case commenced, giving the impression that the judge was receiving instructions from the latter.

The hostility inside the courthouse was compounded by the surveillance and intimidation of petitioners outside the courthouse, in keeping with the construction of these women as traitors and enemies of the nation. As the case progressed, the petitioners were followed, photographed, and interrogated by men in plain clothes. Sasitharan was the one who was at the receiving end of most of the harassment.178

Following Sasitharan’s involvement in party politics and her election to the Northern Provincial Council in 2013, she came under scrutiny also for her political views. However, her political position also afforded her more protection. In January 2014, the government announced that it was seriously considering admitting her to a...

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rehabilitation centre to prevent her from propagating separatist ideas. A senior Defence Ministry official in a press interview opined that Sasitharan had avoided rehabilitation after May 2009, and that maybe she would not have adopted ‘such a hostile stance towards the government, if she had gone through the rehabilitation system of the Sri Lankan military’. The official recognised that her detention could cause strong condemnation from the international community. Yet it was the government’s view that the only way to stop Ms. Sasitharan undermining postwar reconciliation was to make her undergo rehabilitation. While this surveillance considerably reduced following the 2015 elections, it did not entirely disappear. Nor did these elections make a big difference to the way in which these cases were prosecuted after that.

The military gave evidence in court between December 2015 and April 2017. On 17th February 2016, Major General Chanakya Gunawardena, the Commander of the 58th Division, was cross-examined at length by the lawyer for the petitioners on the documentary practices of the army. Did the army keep records of all transactions, arrests, detentions, and movements? Did the army have a list of persons who surrendered to the army during the last days of the war? Have you seen such a list of surrendees? Where are these records kept? These questions were answered in the affirmative by the Commander. The Commander also conveyed to court that a list of all surrendered people is available at the Mullaitivu Camp. Based on this admission, the Magistrate ordered him to submit to court, before 19th April 2016, a list of LTTE cadres and others who surrendered to the security forces during the final stages of the war. The army, however, failed to appear at the next hearing and only submitted the list on 14th July 2016, almost three months after the specified date. On this date, a list of 11,952 persons entitled ‘Reintegrated Beneficiaries Rehabilitated by the BCGR’, i.e., the Bureau of the Commissioner General of Rehabilitation was submitted to court comprising persons who surrendered, were arrested, or detained by the army during the last day of the war and who were thereafter rehabilitated over 3-years and released to their families and communities. This was not the list from the Mullaitivu camp that the court had requested and none of the persons mentioned in the five petitions were on this list.

180 Ibid.
181 The mandatory rehabilitation programme sought to ‘guide (the ex-combatants) on the correct path and transform them to be peace loving and useful citizens of the country’ (BCGR 2010: 13).
Whether the persons who the petitioners mentioned as having surrendered themselves to the army were on the army’s list occupied court hearings until 19th September 2017. During these hearings, Major General Gunawardena repeatedly informed the court that the persons named in the petitions were not in military custody. The Sri Lanka military had arrived at this conclusion after examining the list of Tamils released from detention following state rehabilitation. For instance, responding to Sasitharan’s petition in court on 19th September 2017, he stated that her husband was ‘neither arrested, made to disappear or rehabilitated’. While being cross-examined, he confirmed that the military did not carry out any further investigations to determine what may have happened to the senior LTTE leader. Sasitharan’s request that the court summon Major General Shavendra Silva, who was head of the 58th Division of the army, which was handling the checkpoints at the end of the war, was rejected by the court. In doing so, I contend that the court upheld the status of the Major General as a citizen par excellence, and a figure above and beyond the law. In fact, the State Counsel determined that the evidence of one army personnel was more than adequate to counter the evidence of five women witnesses. Moreover, this case was not referred for investigation to the police or the CID as the United Front had done in the case of other habeas applications pending from the Rajapaksa regime.

The Decision and What the Court Could and Could Not See
The Mullaitivu Magistrate Court delivered its decision in relation to the five petitions on 15th December 2017. The judge concluded:

According to the evidence, it can be learnt that there was a severe war between the Sri Lankan army and the LTTE in Mullaitivu District in Sri Lanka on 17, 18, 19, May 2009.

. . . The court can view that thousands of people were refugees during the war situation and that Sri Lankan army took the responsibility of those refugees and that they were taken from the battle zone to peace zone. Therefore, it is very difficult to recognize whether any persons were intentionally kidnapped or were arrested by Sri Lanka army or surrendered during this severe war period. At this circumstance, it is an important necessity to submit evidence being acceptable by the court in order to identify that those who surrendered to the army were taken by them. However, when an accusation is proved in the court, the basic elements of that accusation should be established.

Moreover, the court can consider that witnesses merely stated that the missing persons were loaded to the bus but gave evidence without mentioning the type of

bus and the number of the bus. According to the evidence, it cannot be answered whether the missing persons died in the war or missed or were arrested or surrendered during the war time.

Hence, many contradictions and deficits can be observed in the evidence given by the Petitioner and the witness. Based on that, the court dismisses this petition of the petitioner and draws the conclusion making order that the Respondents are not responsible for the missing persons.  

Following this decision given by the Mullaitivu Magistrate Court, the Vavuniya High Court dismissed these petitions on 25th April 2018. The court decided that no concrete evidence was available to prove that the persons alleged to have been disappeared were handed over to the military by their families. The Magistrate’s Court, in arriving at its decision in favour of the army, rejected the eye-witness evidence of the five applicants, who corroborated each other and ignored the paper trail of documents attesting to the years they had spent searching for the disappeared. It chose to privilege the army’s evidence without any investigation or inquiry into the allegations made in the petition.

Therefore, the transition to a more democratic regime, with an expressed commitment to justice for war-related human rights abuses, did not necessarily represent a restoration of the complete independence of the judiciary and the reestablishment of boundaries of separation between different organs of government. The democratic openings following the 2015 elections were, I contend, partial, selective, contingent, and fragile. The United Front could not muster sufficient political will to facilitate a fair hearing in these cases, despite all its promises about transitional justice. I believe this was because unlike in the Navy abduction and Prageeth Ekneligoda cases, which were not directly linked to the war, this case went to the heart of Sinhala Buddhist nationalist narratives of the war as a humanitarian operation that saved the Tamil people from the clutches of the LTTE.

The decision thus effectively reinforced the ideological frame that had made it near

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183 Order of the Magistrate Court of Mullaitivu dated 15 December 2017, (HCV/ Writ/ 508/13).
184 The LLRC and PCICMP based on very similar evidence heard from family members about this same incident called for an investigation or inquiry into the matter. The LLRC stated: it is the clear duty of the State to cause necessary investigations into such specific allegations and where such investigations produce evidence of any unlawful act on the part of individual members of the army, to prosecute and punish the wrongdoers (LLRC 2011: 332). The PCICMP which heard first-hand testimony about this event from approximately 100 persons, acknowledged the disappearance of busloads of persons who surrendered in the last days of conflict (PCICMP 2015b: xxvi). It stated: ‘There are credible allegations, which if proved to the required standard, may show that some members of the armed forces committed acts during the final phase of the war that amounted to war crimes’ (2015b: xxv). The Commission further states that ‘there is a reasonable basis to believe, . . . that these individuals may have been executed’ (2015b: 105 para 437).
impossible to hold to account state agents responsible for disappearances during the Rajapaksa regime and reproduced the soldier as a figure above the law.

Felman points out that every trial is related to an injury, a trauma for which it compensates and attempts to remedy and overcome (Felman 1997: 743). To do so, the court must weigh and assess the evidence presented by each party. ‘The strongest proof admitted by the court is proof corroborated by the eye: the most authoritative testimony in the courtroom is that of an eye-witness. Therefore, every trial, by its very nature as a trial, is contingent on the act of seeing’ (762). What the eye has seen, must of course, be communicated or transmitted orally (Haldar 1996).

However, following Butler, I contend that the legal sphere, as much as the public sphere is in part constituted by what cannot be said and what cannot be shown. ‘The limits of the sayable, the limits of what can appear, circumscribe the domain on which political speech operate and certain subjects appear as viable actors’ (2004: xvii). In a very similar move to Butler, Felman also recognises that in cases such as these—situated at the juncture of both the legal and the political where issues pertaining to for instance race and gender are being adjudicated; cases in which something other than law or larger than law is submitted to the narrowness of legal definitions (1997: 748)—the court ‘is often inflicted with a particular judicial blindness’ (2002: 5). This blindness Felman argues, is inherently and unwittingly political and contingent on the limits (the ideological exclusions) of a frame of reference (1997: 764).

The Mullaitivu Magistrate’s Court decision, which privileged the army’s denial and accepted their testimony at face value, is therefore intelligible only within a Sinhala Buddhist nationalist ideological frame. In coming to its decision, the Court argued that ‘many contradictions and deficits can be observed in the evidence’, of the applicants, but not in the case of the army. According to the wording of the judgment, the judge proceeds as if he is unaware that even a war took place, but yet he is certain that the army took responsibility for those who were displaced by the war and took them to safety. The court is implicitly claiming to know what the army was doing during the last days of the war but is unable to apprehend the anguish and trauma of the women standing before it. The court makes no mention of the demeanour of the applicants. The Mullaitivu tent protest, which I explore in the chapter that follows, had started on 8th March 2017, and was located less than a mile from the courthouse. It was still ongoing when these decisions were delivered, but the court appears to be completely unaware of these protests. In the final
analysis, in the absence of evidence such as vehicle license plate numbers to support the eye-witness testimony of the applicants, this case pivoted on a he said/she said binary. And the court’s response was to transform the petitioners into tainted, unreliable witnesses and reproduce the army as heroes who took ‘those refugees’ from the battle zone to the peace zone.

Evidence of the surrender of LTTE leaders and cadres to the army during the last days of the war, and their subsequent disappearance emerged slowly but surely from hundreds of written and oral testimonies given by family members of the disappeared before multiple judicial and quasi-judicial forums such as the LLRC and the Presidential Commission for the Investigation of Complaints into Missing Persons (PCICMP) established by the Rajapaksa government itself. It should have amounted to a scandal in ordinary circumstances. Instead, within the hegemony enjoyed by the ideological frame of the heroic soldier, the surrender and disappearance of hundreds of LTTEers remain insistently, infinitely, and perpetually deniable both inside and outside the courthouse—as an exaggeration, a conspiracy, a confusion, or a fantasy dreamed up by Tamil women. In an Al Jazeera documentary on the subject of those who surrendered and disappeared during the war’s final days, rights activist Ruki Fernando, points out that this is a mass disappearance involving several hundred people. He states: ‘They have simply vanished in the custody of the army. Not just vanished but vanished in the custody of the army. It’s an absurd situation for an army of a country to take away its citizens in buses in front of their family members and then claim that it never happened’. 185

The same documentary, a few minutes later, cuts to Sarath Fonseka, the Commander of the Army at the time of surrender and a Cabinet Minister in the United Front government at the time of the interview. ‘Where have they gone?, the interviewer asks him. Fonseka responds:

I don’t know. I can’t visualize how it could have been taking place. During the war and the last two weeks of the war, we had a very good system. We had a beautiful arrangement with everybody coming and surrendering to the army. I went there in person. I am 100% sure. Incidents of this nature never took place—that people are being taken in buses and they never returned. That is definitely an exaggerated story.

He goes on to say, ‘our consciences are clear. Just because some 10 or 15 family members say that our children were taken, they have gone missing, you can’t take it as gospel truth or something. The interviewer interjects: ‘its not 10 or 15 but hundreds’. Fonseka continues: ‘that is why I am ruling it out. When thousands and thousands are watching, it is practically not possible’. 186 However, contrary to Fonseka’s assertion, the mass surrender and disappearance at the end of the war is hardly exceptional or unprecedented in the history of disappearances in Sri Lanka.

The historical record is now scattered with the traces of innumerable such incidents, piling one on top of each other, each equally or more shocking, than the last, but now all but forgotten in popular consciousness. Consider the following incidents recorded by the Commission of Inquiry for the North and East, (Col-NE) appointed by the PA government in 1994.

11th July 1990, Trincomalee. The army arrests around 52 people from the Mc-Heyzer Stadium (1997: 16-20). This incident is described by a Colonel who appeared before the Col-NE as follows:

Police informed the people in the town through Loud Hailer to report at Mc-Heyzer Stadium leaving behind the Chief Occupants in the house. . . . The announcement was made about 5.30 to 6.30 am. At the stadium, people were requested to stand in rows, male and female in separate rows. They had to pass through some screen and there were observers behind the screen. Some people were pulled out from the rows and were asked to get into a bus. They were blindfolded with their own shirts and were put into SLTB buses and were taken away. The search operation was completed at 3.00 pm. (Col-NE 1997: 16).

9th September 1990. Batticaloa. The army enters the village of Saturukondan and other villages surrounding it and orders the villagers to come to the army camp for an inquiry. Many men hide leaving women and children behind thinking that the army will leave them alone. However, the army orders all those who are in their houses irrespective of whether they are women or children, young or old to come out of their houses. They are then marched along the road to the army camp. 184 persons were taken into the camp that day. Evidence given by one person who escaped from the camp and persons living close to the camp suggest that all person arrested were killed and burned. This is the largest group arrest and disappearance until the incident of surrender reported from the last days of the war. (Col-NE 1997: 33-35)

Considering the evidence of these and other disappearances that the Col-NE heard, it found that there was no question that many of these arrests took place. They were conducted in full public view and witnessed by many people (Col-1997: 4). Yet despite this large-scale corroborative evidence, the investigations in case after case faced a blank wall. The army’s response to the CoI’s request to inquire into one such incident and report back was to simply deny all charges and claim that

186 Ibid.
the incident could not be investigated due to the absence of records. In another, the court was told that the officers in charge were no longer alive or had been discharged from the army (14; 19). The Commission concluded that the army’s response in one of these cases was ‘unbelievable’. It was convinced that army officers were closing ranks to hide what really happened (16). Faced with contradictory evidence in most cases, the commission chose to believe the complainants who came before it. They stated that they saw ‘no reason for the people to come forward and allege that the army from X camp or Major X from some other camp arrested their sons or husbands 6 years earlier’. They were ‘impressed by the sincerity and feeling behind the evidence, and general demeanour of the complainants’ The Commission could not say the same of the army personnel who appeared before it and gave evidence (4). For instance, in relation to the Trincomalee base hospital incident, the Col-NE wryly wondered whether the army authorities expected it to believe that Brig. Wijeratne, who was said to be in charge of Trincomalee at the time of the incident, but who had died in a landmine explosion by the time of the inquiry, took all the documentation regarding the arrests in his jeep when he drove over the landmine (14).

As Haldar astutely observes, oral testimony, despite its predominance in court, is never purely verbal. In evaluating oral evidence, a court must in turn discern, through sight, something of the physical demeanour of the speaking witness. ‘Put differently, auditory perception of oral evidence seems to be located into a visual mode of estimating and examining testimony . . . what gives oral testimony its theoretical weight is the idea that the tribunal can see and judge the demeanour of a witness whose very corporeality becomes a site for inspection and signification’ (1997: 124).

The army response to the five habeas corpus applications filed in the Mullaitivu Magistrate Court was uncannily resonant of their reactions to the Col-NE in 1997. Unlike the finding of the Col-NE, the Mullaitivu Magistrates Court reinforced and validated the Manichean necropolitics of denial, even as they inscribed the women’s testimony onto the legal record. But can the women’s iterative efforts, not just in the courthouse but in multiple other sites, that I document in this thesis ensure that they their loved don’t suffer the same fate of inscription and erasure of those that have disappeared before them?
Conclusion
The story of the surrender and disappearance of LTTE cadres, leaders, a few of their family members, and three Catholic priests at the end of the war is one of the most spectacular deployments of sovereign power and one of the most blatant acts of enforced disappearances to be documented in Sri Lanka. In this chapter, I traced the trajectory of five habeas corpus applications filed in the Magistrate Court of Mullaitivu with respect to this incident.

On filing these applications, I showed that at no point did the state deny the status of the petitioners as citizens with legal standing to file a habeas application. Their ‘right to have rights’ was not suspended. The court provided the women the opportunity to narrate their testimonies relating to the disappearance of family members. The court inscribed their narratives on the legal archive. For all intents and purposes, the court performatively enacted the rule of law, although not as a spectacle of legality but as a travesty, repeating the trauma of the disappearances, rather than resolving it.

In the courthouse, the petitioners could not communicate, nor establish the truth of the historical event that they had witnessed with their own eyes, even after the election of the United Front government, which had promised truth and justice for disappearances. Indeed, the Court decisions in the cases considered in this chapter, foreground how a regime that was ostensibly committed to justice repeated the Manichean, necropolitical technologies of power that has protected perpetrators of disappearances from judicial accountability. These cases illustrate how the United Front repeated the hegemony of the soldier as the citizen par excellence within the nation-state and reproduced petitioners as unreliable/tainted witnesses, even as it promised transitional justice in Geneva. This case, just like the lower court trials in Gujarat analysed by Moyukh Chatterjee, exemplify the ways in which the criminal justice system in modern states can easily absorb violence against specific communities without delivering justice, giving pause to those who want to use the law to fight impunity (Chatterjee 2017: 128).

I contend that the few cases in which justice was pursued by the United Front between 2015-2019 work as propaganda for the sovereign (Boorstin 1971: 96); or as ‘official performative sacrifices at the hands of law’ (Quadara 2006: 147). They serve as a tool to gain legitimacy with certain constituencies when the postcolonial state is under pressure to prove its democratic credentials. If we understand sovereign power as offering blanket protection to perpetrators of
disappearances in Sri Lanka, these cases represent a moment when that ‘provision of protection’ is lifted or withdrawn, but without in fact disrupting or disturbing the established order of things. They serve to perpetuate the myth of the promise of the rule of law and democratic accountability in the postcolony, but without fulfilling that promise.

The mixed record of the United Front (2015-2019) concerning cases such as these, underscores that sovereign commitments to pursue justice in moments of transition are contingent, inconsistent, selective, partial, and often superficial. Justice is still based on the intimate relationship between the sovereign and the law and the power of the sovereign to exclude and include at will, the citizen subject from the law.

However, after this decision was delivered, several other family members of the disappeared filed more habeas corpus applications in the Vavuniya High Court in relation to this very same incident. As one habeas corpus application is dismissed, another is filed as a way to keep this struggle alive. These cases are now pending in Magistrate Courts in the north. Every time a new writ petition is filed, the women challenge the state’s technologies of erasure of sovereign violence. Even as these women petitioners recognise only too well that they cannot rely on the law, they continue to create spaces of appearance to keep alive their struggle for truth and justice. Through such labour they maintain the promise of justice yet to come and the possibility of a history that is different from those other traces in the archive. In the two chapters that follow, I trace their subaltern dissident labour in several other sites—from embodied protests on the streets across the north and east, all the way to their invocation of international law before the UN Human Rights Council in Geneva.
Figure 11: Kilinochchi Tent Protest

Figure 12: Monument to war heroes, Kilinochchi.
6.

The Tent Protests: From Speech Acts to Embodied Grief and Hope

In previous chapters, I referred to how family members of the disappeared sought to occupy the public sphere in postwar Sri Lanka through forms of speech and writing to politically and legally contest the state’s sovereign violence. In this chapter, I return to the tent protests that I began this thesis with as an embodied articulation of the same dissident, subaltern struggle. Drawing on Butler’s rereading and reworking of Arendt’s idea of political action (2004, 2010, 2015, Butler and Athanasiou 2013; Butler and Spivak 2007) and Veena Das’ (2007a) concept of showing rather than saying, I argue that the tent protests represented the most concerted and insistent form of political action undertaken by family members of the disappeared following the end of the war, to expand the space of appearance available to them. In setting up these tents, the family members of the disappeared were continuing to push at the limits set by sovereign power, contest the erasure of the disappeared, trouble the boundaries of what could be said and seen, and continuing to reinscribe the disappeared back into public memory and history. They were doing so in a militarised landscape stamped with monuments to the war and victorious soldiers, where the destruction and ravages of the war had been almost completely erased.

In this chapter, I foreground the ‘embodiedness’ of the tent protests. In particular, I want to draw attention to the distinctive temporal and spatial characteristics of these protests, the persistence of the mourning and protesting body in the public sphere for more than 18 months; the gendered bodily and affective labours and investments entailed in the work of mourning and protesting at the same time; and grief and hope as the primary grammar of these protests. Put differently, I analyse the tent protests as a subaltern bodily performance of grief and hope to elicit an ethical-political response from the Sri Lankan political leadership and its polity. I go on to explore the response of the Sri Lankan state to these protests via Butler’s ideas around the normative frameworks that govern our ability to see and hear those whose lives have been rendered ungrievable. In conclusion, I reflect on the limits and possibilities of the political mobilization of grief and
mourning in the democratic context of Sri Lanka. I begin with the circumstances in which the protests began.

The Beginning of the Tent Protests
The tent protests began in the interregnum between the enactment of the Office on Missing Persons (OMP) Act in August 2016 and its official publication in July 2017 (discussed in the next chapter), amidst a sense of utter disillusionment amongst family members of the disappeared with the United Front. As I discussed in Chapter Three, an overwhelming majority of Tamil voters in the north and east, including family members of the disappeared, voted for Maithripala Sirisena at the presidential elections and the United Front at the parliamentary elections held in 2015. Yet by the end of 2016, they had a sense that the government was no longer hearing or representing them, despite the flurry of promises around transitional justice. The first of the tent protests commenced in Vavuniya on 23rd January 2017. It was started as a fast unto death by a group of women family members demanding information about the disappeared, particularly, those who had surrendered to the Sri Lankan army at the end of the war and then disappeared. In an open letter written to the President on the day they began their fast, they asked: ‘Are our relatives alive or not? If they are alive, in which secret torture camps are they being held? If they are not alive, what happened to them? Who killed them? How? Where were they buried after being murdered?’187 By the third day, doctors who were called to the scene of the protest by civil society activists supporting the women urged political action, as some older women hunger strikers suffering from physical ailments were rapidly deteriorating in health.188 By the fourth day, the women suspended the fast following a visit by the State Minister for Defence, who gave an assurance in writing that the government will look into their issues and find out what happened to their loved ones. According to one newspaper, the State Minister stated, ‘we should look at their issues with sensitivity,’ while promising that he would facilitate a meeting with the Minister of Justice and Minister for Law and Order.189 The promised meeting was organised on 9th February 2017 at the Prime Minister’s office at Temple Trees

and attended by the said two ministers, several other ministers, and the Inspector General of Police. Family members who were present forced M. A. Sumanthiran and Selvam Adaikalanathan, two Members of Parliament from the Tamil National Alliance (TNA) who came for the meeting to leave after a heated verbal exchange which lasted for about half an hour. The TNA as I have mentioned before is the most significant Tamil political alliance, with the largest number of seats in parliament. Following the end of the war, it has, for the most part, prioritized constitutional reform and the need to devolve more political power to the north and east, rather than the question of truth and justice for disappearances.

At the meeting, the Ministers tried to placate the families by saying that the OMP will address their problems. But the affected families pointed out that the government was yet to establish the OMP, and at any rate, it did not have the powers that they expected it to have. Since the OMP was taking time, they asked, ‘why cannot the government release the Tamil political prisoners and militant suspects since it is eight years since the end of the war? To this, the Ministers said that only the Prime Minister can take a decision on this issue and that he will be apprised of the families’ demand when he comes back from his Australian tour.

Two weeks after this meeting, on 24\textsuperscript{th} February, families in Vavuniya recommenced their protest, saying that nothing productive had come out of the meeting at Temple Trees and vowed not to move unless the Sri Lankan President or Prime Minister addressed them directly with a concrete solution. In the days before and after the recommencement of the Vavuniya protest, women in four other districts—organised under the banner of the Association for Relatives of Enforced Disappearances in the North and East (ARED)—commenced their own tent protests: In Kilinochchi on 20\textsuperscript{th} February; in Trincomalee on 5\textsuperscript{th} March; in Mullaitivu on 8\textsuperscript{th} March (International Women’s Day), and in Marathankerny on 15\textsuperscript{th} March. All five of the protests, whether by design or coincidence, were located not far from a government office such as the office of the Government Agent or the Assistant Government Agent or a

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military regiment. Except for the Marathankerny tent, the other four tents were also located on busy main roads, criss-crossed by vehicles and pedestrians.\footnote{It should be noted that the Vavuniya tent protest was begun by a group which was not connected to ARED. ARED which was formed as a membership-based organisation to represent family members of the disappeared have branches in the five districts of the North (Jaffna, Mullaitivu, Vavuniya, Mannar and Kilinochchi) and three districts of the East (Ampara, Batticaloa and Trincomalee).}

Between 2017 and 2018, these protests mobilised hundreds of women in the five locations, even though it is difficult to speak of exact numbers. For the duration of the protests, depending on the location of the tent and the time of day, from two or three to 15 or more women took turns to keep vigil in the tent in a sort of unbroken relay. Each passing day at the tent was marked on a piece of cardboard hung at the entrance. That was part of the daily ritual at the tent.

**Reading the Tent Protests via Butler’s Elaboration of Arendt**

In the introduction, I outlined Butler’s call to rethink the Arendtian space of appearance taking account of contemporary bodily protests whether in Tahrir Square, Zuchotti Park, or Gezzi Square. Butler believes that even if linguistic performances and certain forms of bodily performances overlap in contemporary struggles, they are not identical (9). For Butler, ‘(s)o bodies act when they speak, to be sure, but speaking is not the only way that bodies act—and certainly not the only way they act politically’ (207). Butler is here drawing attention to the expressive quality of the presence of the human body in alliance with other bodies in the public square or the street corner, and how these collective bodies form something of a body politic that enacts an embodied demand with a particular performative and indexical force. In Butler’s words, such protesters are saying, whether they are using these words or not: “We are still here”, meaning “we are not yet disposed of. We have not slipped quietly into the shadows of public life: we have not become glaring absences that structure your public life” (Butler and Athanasiou 2013: 196). Such protests are a way of asserting, in bodily form, one of the most basic presuppositions of democracy, namely that political and public institutions are bound to represent the people and to do so in a way that establishes equality (196; See also Butler 2015: 25). Moreover, in Butler’s understanding, the embodied plural protest is centred not so much on a conception of rights (as is Arendt’s), but on a notion of unwilled and unchosen proximity and cohabitation as well as precarity, vulnerability, and grief.
A number of scholars before and after Butler have drawn attention to the power and force of the grieving feminine body in alliance and on the line as a staple of the repertoire of protests deployed by family members of the disappeared, whether in Argentina, Chile, Guatemala, Kashmir, Nepal or Peru (Marsden 2015; Rojas-Perez 2013; Schirmer 1989; Sutton 2008; Taylor 2001; Zia 2018). In recognising the political power of bodily protests as part of a broader practice of gendered, dissenting, and subaltern citizenship, I am particularly interested in drawing attention to how embodied protests subvert dominant constructions of citizenship premised on discursive—and historically masculinist—conceptions of action. The Madre de Plaza de Mayo of Argentina, a group of women in white headscarves, who enacted their weekly protest in the Presidential Square in Buenos Aires for more than 30 years without fail, remains one of the most iconic of such expressions (Taylor 2001). In Guatemala, members of the Mutual Support Group formed in 1984 played flutes, whistles, and drums every Friday in front of a Ministry to bring attention to the disappeared (Schirmer 1989). The oldest of such groups—the Group of Relatives of the Detained-Disappeared, formed in Chile in 1974, staged hunger strikes (including one inside the United Nations Headquarters in Santiago) and chained themselves to the railings of the National Congress and to the Cathedral (Franco 2013: 200, Schirmer 1989). Analysing a photograph of two Chilean women who had chained themselves to the railings of the Congress taken on 18th April 1979, Michael Taussig argued that ‘the constellation of women, memory, and the eternalization of the present in the past (was) radically broken apart and reconstellated through a courageous and inventive ritualisation of monumentalised public space’—in this case, a space heavily charged with Chilean constitutional history (1990: 222).

The grieving body, it must be noted, has added significance in these protests, for it is through their own bodies that family members make visible and present the absent bodies of the disappeared (Franco 2013: 196, Rojas-Perez 2013; de Alwis 2009a, Taylor 2001). It should be mentioned here that, in the context of disappearances, grief has often been analysed in terms of melancholic grief, following Freud’s (1917) distinction between mourning and melancholia. This is because of a general belief that the lack of a body and lack of proof of death leads to the grieving process being interrupted for family members of the disappeared, and locating the person becomes a feverish driving impulse. Pauline Boss (2009) refers to the loss caused by disappearances as ‘ambiguous loss’. Avery Gordon
(2008) describes the disappeared as ghosts and the families as haunted. Yet it is this very ambiguity and haunting experienced by those left behind that seems to provide the electric charge distinctive to these struggles for justice. As Butler and a host of scholars have pointed out, melancholic grief is not pathological grief, hysteria, inertia, stagnation, or self-absorption, which is negative, passive, counterproductive, and powerless (Eng and Kazanjian 2003; Butler 2004: 30; Munoz 1999; Nesiah 2015; Zarzycka 2016: 7). In Zarzycka’s words, the grief underlying protests such as these is a productive, affective force that resists consolation and allows for an activist, political engagement with loss and a politically assertive response to the disempowering normative imperative to forget and move on (2016: 7). For Munoz, it is a ‘mechanism that helps us (re)construct identity and take our dead to the various battles we must wage in their names’ (Munoz 1999: 74). Following these scholars, I contend that the tent protests were rooted in a political form of mourning. They have to be located within such a local and global tradition and genre of embodied protests to create a space of appearance for those whose lives have been rendered invisible, unviable, ungrievable and precarious.

The Tent as Embodied Political Action

Within the modality of the embodied protest, the ‘tent’ has its own long history. Consider the Aboriginal tent embassy set up in 1972 in the lawns of the Australian parliament; the women’s protest against nuclear weapons in Greenham common in the early 1980s; the tents of the Occupy Movement; and the tent protest at Shaheen Bagh, New Delhi led by women in response to the Citizenship Amendment Act passed in India in 2019.

The tent protests that I discuss in this chapter, no doubt, capitalised on the opening up of the democratic space in the aftermath of the 2015 elections and the greater freedom that was available for speech, expression, assembly, and mobility under the United Front. As I discussed in Chapter One, searching for the disappeared and protesting were considered far greater crimes than abduction or enforced disappearances during the Rajapaksa years.193

Yet, in setting up their tents on the roadside, two years after the 2015 elections, the women family members were drawing attention to the absence of a

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public sphere or a space of appearance, in which they could legitimately claim their rights as rights-bearing subjects even under an ostensibly friendly regime. The location of the tents in a landscape marked by army camps and monuments to heroic soldiers, where the ravages of the war were almost completely erased, was an act of resistance in itself, an attempt to inscribe the violence of the war back into memory, history and their landscape. As in Argentina or Chile, where the historical associations between the sites of protest, their architecture, and repressive power imbued those protests with added meaning and import, so too in the case of the tent protests.

Following Veena Das, in bringing their bodies and the faces of their loved ones to these tents, in a contested landscape, the tent protesters were attempting to show the world their pain and grief and their need to know the fate of their loved ones, rather than tell (2007a: 10, 59). Das makes this distinction between showing and telling in Life and Words, recounting how Sikh women whose husbands and children were killed in the Delhi riots of 1984 sat in silence outside their homes ‘refusing to bring mourning to an end’ (194). She states that the women were too scared to speak to civil rights groups and journalists who came to the area to collect stories, yet their gestures of moaning, went on and on, more powerful than any words. Sitting in silence outside their homes, refusing to wash, braid their hair or clean their blood-spattered houses, they took it upon themselves to make the violence visible. In Das’s analysis, they were mourning and protesting at the same time (194).

I believe a similar dynamic is at work in the tent protests—an attempt to show rather than tell and mourn and protest at the same time. However, in the case of the tent protests it was not a case of being too scared to speak. Instead, the tent protests followed an excess of speech and writing. In the years and months preceding these protests (as I have discussed in previous chapters), the tent protestors had told the world, in testimony after testimony and letter after letter about the disappearance of their family members. In deciding to erect these tents on the roadside, they seemed to be indicating that they had reached the limits of their power to bear witness through words and speech. This was yet again an effort to go beyond the boundaries of the sayable and seeable by deploying their bodies, to force the Sri Lankan polity to apprehend the fate of their family members who were no longer with them and their own grief.
In deploying their bodies, and the images of their loved ones in protest, I believe they were deploying one of the few resources they had left and taking on additional emotional, physical, and economic burdens in order to do so. The bodies that they brought to the tents were weary and war-scarred. When the war resumed in 2006, and the Sri Lankan army began advancing into territory held by the LTTE, the latter progressively abandoned these areas, taking the population living in those areas with them. Many of the tent protesters were those who had lived in LTTE-controlled areas, who were forced to abandon their homes and villages during the final phase of the war, and who had experienced it in all its intensity and brutality. Following the end of the war, the women were displaced to different camps in Vavuniya and allowed to return to their homes in the north and east only in 2010, 2011, or 2012. On their return, their houses and household goods were destroyed. Their livestock, poultry, and home gardens were dead. For many of them, return and resettlement meant starting life all over again, rebuilding homes, lost assets, and livelihoods (Kodikara 2018; Sivamohan 2016).

The labours of memory and mourning invested in the tent protests were all the more remarkable given the dire economic status of many of the protestors. Women often forfeited much-needed waged labour or left behind children or elders who needed their care and attention to participate in the protests. However, in doing so, they strengthened bonds of solidarity between strangers across neighbourhoods, villages, towns and across class and caste differences. In doing so, they supported each other to work together, to build a movement for justice that could persist over time. For the duration of the tent protests, the tent became a home away from home to gather together, exchange stories, discuss strategies, and speculate on the future. In these tents, they shared food, made endless cups of tea, chopped wood, and read the daily newspapers together. At other times, they just waited and watched as the world passed by in front of them (often without a glance). At night they spread out mats, unfurled mosquito nets hung from the ceiling, and slept under the cardboard-lined tin roof. It was the only way they could sustain this protest for over 500 days.

In making a home in the polis and continuing to perform the daily labour associated with the private, domestic sphere in public, day in and day out, the women who were part of the tent protests turned the idea of protest on its head, troubling the distinction between the public and private that is central to Arendt’s conception of political action. Yet, these protests also defy any easy distinction
between the mundane and the spectacular. The monotony of the ‘quiet days’ at the tents was broken by occasional visitors—activists, diplomats, journalists, or researchers like me—and ‘protest days’. On protest days, the tent protestors organised a large sit-in, a demonstration, or a march. On these days hundreds of women gathered at the site of the tent, to mark a key anniversary or other occasion as part of a repertoire of bodily protests deployed to make visible their disappeared family members and the lack of a response from the state. I discuss in more depth one of the first such protests organised to mark 100 days at the Kilinochchi tent and its effects further below. Here I want to share my experience of the protest that marked 366 days at the Kilinochchi tent.

I visited the tent in Kilinochchi on the day they were marking 366 days of the protest in February 2018, with a silent sit-in. Over a hundred women and some men sat in silence in front of the tent facing the A9 highway holding hand-written posters. For the family members, these were also moments to reconnect with other family members from other districts, activists from across the country, and political allies visiting the protest site to express their solidarity and support. Long after the protest, some of the visitors would linger on at the tent site, chatting, eating, sharing information, debating the politics of the day, or assessing and reassessing their strategies. Thus, the protests, both in their day to day and spectacular registers, produced a shared affective economy of motivation, endurance, and friendship as well as moments of laughter and conviviality to persist in their struggle (Butler and Athanasiou 2013: 177). These protests were also driven by a sense of hope that their disappeared loved ones were alive in a secret detention camp deep in the heart of the militarised state and that someday, somehow, they will be delivered back if only they kept their memory and this struggle alive. Referring to hope amongst families of the disappeared, Rajani Thiranagama wrote in 1988 that ‘hope is the only basis around which life itself is constructed for the affected women—sometimes very nebulous hope’ (1992: 308). Thirty years later, the tent protestors were also driven by a nebulous sense of hope. It is these entanglements of hope and grief that I wish to explore next.

194 I borrow the conceptualisation of the tent protests in terms of ‘quiet days’ and ‘protest days’ from Kannan Arunasalam’s film installation titled The Tent (Arunasalam 2019). In this 20-minute, dual screen installation, Arunasalam places side by side footage from a quiet day and a protest day at the tent protest in Mullaitivu, drawing attention to the everyday form of the protest and the spectacular form it took on the anniversary marking 500 days of the protest.
Entanglements of Grief and Hope

I contend that the women erected these tents, both as rights-bearing citizens and as grieving mothers and wives, while mobilising grief as the primary grammar or register of these protests. I also contend that their melancholia was inextricably entangled with a sense of hope; hope that their loved ones are alive. In testimonies and interviews, family members have repeatedly said that death was familiar to them; death was their friend. They have mourned for those who have died. But those who have been disappeared (kāṇāmal ākkappaṭṭavaikaḷ, or valinthu kāṇāmal ākkappaṭṭavaikaḷ), taken away in front of their eyes—as opposed to those simply missing (kāṇāmal ponavarhal)—how can they consider dead? These entanglements of grief and hope became clear to me most poignantly, during a visit to the tent in Marathankerni, with a group of human rights activists, journalists, and Sandya Ekneligoda, the wife of disappeared Sinhala journalist Prageeth Ekneligoda in February 2018.

The day we visited the tent in Marathankerni, the cardboard hanging in front of the tent announced that it was the 348th day of their protest. A torn banner hanging in front of the tent declared: ‘Sri Lankan State . . . Give an answer to the relatives of the disappeared’. This was the most remote of all the tent protests, located several kilometres inwards from the A9 highway along a gravel road under the shade of a huge neem tree. The tent was much smaller than the tent in Kilinochchi and was lined with dried coconut leaf thatch and old boards. The sandy floor was covered with mats only along the edges of the tent. Four large banners that lined two sides of the tent contained 39 photographs of family members who had disappeared. Nine women who were keeping vigil that day welcomed us stoically, stating that visitors were few and far between by then. During the first three months or so, they said they had many visitors, including the Assistant Government Agent whose office was located almost opposite the tent and the Gramasevaka of the area. The latter had visited them thrice at the outset, but these visits had stopped by the time of our visit.

In the close to two hours that we spent at the tent that day, the conversation veered from their lack of faith in the law to their expectation that the international community and the United Nations would pressure the Sri Lankan state to find their children. However, much of the conversation was dominated by how old their children were when they were taken away and how old they would be on that day. They wondered whether their sons would recognise them when they found them.
and vice versa. ‘They would have grown and we have aged so much’, one mother said. Yet they agreed that, even if their children were unable to recognise them, they would somehow know their own children; that scar on the foot of one child from a broken bottle sustained when he was still a child; the eyes of another, one ever so slightly smaller than the other—bodily signs only a mother would notice. Another mother stated that her son was mentally ill and that he couldn’t read or write except his name and her name. He was on medication at the time he was taken away. She wondered whether he was still getting his medicine. They said many people, including the Assistant Government Agent and the Gramasevaka, thought they were mad to continue this way. They agreed it was madness, but it was not just any madness. It was madness born out of grief and hope. They could not simply rest until they knew the whereabouts of their children.

The hope that those who have disappeared will someday return was sustained by stories of a few people who returned years after they had disappeared and by shards of evidence that they may still be held in secret detention centres—a phone call a few weeks or few months after the disappearance, a chance photo of the disappeared person that appeared in public, a story from a released detainee that he met such-and-such a person in such-and-such a detention centre. In the case of Jeyakumary, who was arrested by the Terrorist Investigation Department (TID) in March 2014 (see Chapter One), it was a photograph of her youngest son, Mahinthan, who went missing during the final days of the war. Jeyakumary spotted her son amidst a group of other men in a photograph published in a government report. The caption depicted former LTTE cadres in a government-run rehabilitation centre. In the case of Jeyavanitha, one of the leaders of the Vavuniya tent protest, it was a photo used by former President Maithripala Sirisena in a propaganda leaflet published in the run-up to the 2015 presidential elections. Jeyavanitha believes that one of the girls in the photo is her daughter, who went missing during the final days of the war. In the case of Easwary, she was told by the International Committee of the Red Cross that her husband had been seen in a navy camp. As discussed in Chapter One, some police and military officers themselves gave hope to some families, saying that their family members were alive and demanding ransom for their release.\(^{195}\) Emotions of grief and hope thus played a critical catalytic role in the

\(^{195}\) In 2019, Ratnajeewan Hoole wrote of several ‘disappeared’ persons about whom families had received news of, or who have returned to their families. The first is of a former LTTE cadre, by the name of Thurasingham Jeeva, who went missing in July 1995, but news of whom reached his wife 23 years later through an ex-detainee who claimed that he met Jeeva in the Anuradhapura Jail. The
initiation of the tent protests. The protests, in turn, laid bare the feelings of these women for the Sri Lankan polity and all world to see, in the hope of an ethical, political response.

**Apprehending the Grief of Others**

Following Arendt (1963), Butler suggests that in the space of appearance, brought into being through political action, visibility allows those who are invisible to be seen and heard. In her view, it also enables us to apprehend the precarity and vulnerability of others while recognising and perceiving our own vulnerability and interdependency as human beings. For Butler, the apprehension of another’s precarity is implicitly an apprehension of our own’ (2004: xvi). And once the precarity of the other is apprehended, an ethical response based on what she refers to as ‘ecstatic relationality’ is made possible (2015: 149).

Moreover, in Butler’s conception of the space of appearance, ‘access to any public square presupposes access to some media’ that can communicate the event beyond the time and space of the event, to a much larger global audience (2015: 166). Thus, the media is vital to Butler’s space of appearance. The lack of media representation would rob the space of its representative claim (2015: 167).

The street scenes become politically potent only when and if we have a visual and audible version of the scene communicated in live or proximate time, so that the media does not merely report the scene, but is part of the scene and the action; indeed, the media is the scene of the space in its extended and replicable visual and audible dimensions. (2015: 92)

The tent protests received support from a few Tamil nationalist political parties within Sri Lanka, particularly the All Ceylon Tamil Congress and several Tamil diaspora groups. It also received a fair share of attention from the global, Tamil, and alternative media as well as the English language government press (at least until

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second is of a former Intelligence Wing Commander of the LTTE, who vanished during the last days of the war, who was dropped at his wife’s parents house by the military in 2016. The third story is of a disappeared person who was released following an anonymous request for money and the payment of the sum that was requested. See S. Ratnajeewan H. Hoole, ‘OMP, celebrating a new office in Jaffna’, *Sunday Observer*, 25 August 2019. See also ‘Sri Lanka: Tamil Mother Identifies Son Alive in Army Custody’, *Sri Lanka Brief*, 2 March 2016,” https://srilankabrief.org/sri-lanka-tamil-mother-identifies-son-alive-in-army-custody/, accessed 20 May 2021.  

196 Elaine Scarry is also of the view that the ability to injure others whether individually or collectively, comes from the inability to know and to see them: ‘Our injuring of others results from our failure to know them; and conversely, our injuring of persons, even persons within arm’s reach, itself demonstrates their unknowability’ (1999: 282). Scarry suggests that the first step toward eradicating injurious policy and practices is knowing the people in question as we know our family and friends. For Scarry, hearing people’s painful stories and imagining ourselves in their lives is the first step toward this kind of specific and intimate knowing.
the residential elections of 2019), even if the Sinhala language government press ignored them.\footnote{By global media, I mean international newspapers like \textit{The Guardian}, \textit{The New York Times} and \textit{The Hindu} and Television stations like Al Jazeera, and BBC. By alternative media I mean citizen journalism websites such as \textit{Groundviews} in Sri Lanka.} On ‘protest days,’ (see above) the media, mainly the Tamil media would visit the tents to capture the protesting bodies, whether sitting silently, weeping, shouting, or marching.\footnote{By Tamil media I mean local newspapers such \textit{Veerakesari} and \textit{Thinakural} as well as diaspora-based media sites such as \textit{Tamil Guardian} and \textit{IBC Tamil}.} Moreover, in counterpoint to those years of the highly regulated public space when protesting about disappearance was liable to get you arrested, the early days of the tent protests created considerable visibility as well as political empathy and traction for the women protestors. To mark 100 days of the tent protest in Kilinochchi, which fell on 30\textsuperscript{th} May 2017, the leaders of the Kilinochchi tent protest decided to demand a meeting with the President. They mobilised over 1000 survivors as well as civil society activists, clergy, and university students from across the north and east, as well as the south, to attend the protest in solidarity. They delivered a petition requesting a Presidential meeting to the District Secretary in Kilinochchi on the morning of the protest and later blocked the A9 highway for over 5 hours until they received an appropriate response. After hours of protesting in the heat, the District Secretary came back with an offer for some protestors to meet with the Prime Minister. The women rejected this offer and insisted on a meeting with the President.\footnote{By Tamil media I mean local newspapers such \textit{Veerakesari} and \textit{Thinakural} as well as diaspora-based media sites such as \textit{Tamil Guardian} and \textit{IBC Tamil}.} Leeladevi, one of the leaders of the Kilinochchi tent protest, told the press that day: ‘The government has not paid attention to us at all . . . We started this protest with a multi-religious prayer, and now we are blocking a major highway. Prime Minister Ranil Wickremesinghe visited us months ago and said that most of the disappeared are dead. We do not wish to speak to the Prime Minister and demand a meeting with President Maithripala Sirisena’.\footnote{‘Day 100 of Kilinochchi families of the disappeared protest’, \textit{Tamil Guardian}, 30 May 2017, \url{https://www.tamilguardian.com/content/day-100-kilinochchi-families-disappeared-protest}, accessed 14 July 2021.}

The 100\textsuperscript{th}-day protest in Kilinochchi did lead to securing not one but several meetings with the President. The first of these meetings was held in Jaffna in June. Eight women leaders representing different districts in the north and east attended. They delivered a letter to the President reiterating their key demands—the release of lists of all who surrendered to the armed forces, during and after the war, \footnote{Sri Lanka: 100 Days and Counting – Families of Missing Seek Answers, \url{https://paxchristi.org.au/sri-lanka-100-days-and-counting-families-of-missing-seek-answers/}, accessed 14 July 2021.
particularly during the last phase; a list of all secret detention centres, their status and a list of detainees held in these centres; and a list of all political prisoners held under the Prevention of Terrorism Act (PTA). Following 40 minutes of discussion, the President promised to release a list of those who had surrendered to the army during the final phase of the war. The June meeting was followed by a meeting held in Colombo with another group of protestors in September. On that day, the President again made several promises but failed to follow up. In October, on a visit to Kilinochchi to open a newly built economic centre, a group of women lead by Leeladevi decided to confront the President after the opening ceremony. She spoke to him in her faltering Sinhala. Below I reproduce an excerpt of the conversation that transpired between her and the President:

Leela: Our children are alive. We have evidence, sir. Release our children. We won’t ask about anybody else. . . We are not against Sinhala people. . . We are not against you sir. We just want our children. We are not asking for any punishment. We just want our children. We won’t ask for anything else.

President: Shall I give you a time to meet me in Colombo?

Leela: Yes, Sir. We need to talk to you. Without anybody else. . . We worked to make you president.

President: How do I let you know? What is your address? I will inform you quickly and I will also give you a bus to come to Colombo.

Leela: We want to meet you alone. We trust you. We believe that you can give us a solution.

As a result of this exchange, another meeting ensued on the 18th of November in Colombo. Again, however, there was no response from the President. Yet, at an election rally held in Jaffna in February 2018, the President asserted that none of the disappeared were in the custody of his forces anywhere on the Island. ‘They have told me that the missing people are being held by the government in secret detention camps. I made inquiries and I tell them on behalf of the government that there are no such camps run by the government’. In April 2019, Mangala Samaraweera, Minister of Finance and Media, visited the tent in Mullaitivu and informed the protestors that the OMP will be sent to meet them soon (see Figure


Yet, faith in the OMP had progressively declined among family members of the disappeared, particularly among tent protestors. In fact, some of the most spectacular protests organised by the tent protestors were to express their lack of faith in the OMP, which I discuss more fully in Chapter Seven.

![Mangala Samaraweera, Minister for Finance and Media (formerly Foreign Minister) visiting the tent protest in Mullaitivu in April 2019. Photo shared by Mangala Samaraweera on Twitter.](image)

**Figure 13:**

The Limits and Possibilities of Mourning as a Democratic Resource

How do we understand the inability of the United Front to respond to the demands made by the tent protestors, despite its express commitments relating to transitional justice? As I already noted in the previous chapter, Butler recognises that some bodies remain persistently invisible, unintelligible, and un grievable because of the normative frameworks within which they appear. In her words, ‘[w]e cannot easily recognize life outside the frames in which it is given, and those frames not only structure how we come to know and identify life but constitute sustaining conditions for those very lives. . . . Such frames structure modes of recognition, especially during times of war’ (2010: 23-24). But, as Moya Lloyd points out, Butler’s theorisation of the ethical response to mobilization of vulnerability and precarity remain in the abstract. Butler does not address how in *determinate conditions* it is

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possible, if at all, to overcome the normative constrictions that prevent certain bodies from receiving the recognition that they demand and deserve (2015: 186). Yet, it is this very question that the tent protests raise: How can normative frameworks that make some lives more human, more grievable, and more liveable than others be made equal? What would it take for the grief of the mothers and wives of the disappeared to become intelligible to the Sri Lankan polity?

In the introduction to this thesis, I stated that grief and mourning could be a resource for democratic politics. Indeed, Butler (2004) proposes that experiences of grief and vulnerability may become the landscape for imagining a new political community beyond kinship. In a similar vein, Juliet Hooker (2020) also recognises that mourning is a resource for democratic politics and the basis on which an ethic of human solidarity or equal citizenship might emerge. Taking these observations as a point of departure, I want to pause here for a moment to return to the southern Mothers’ Front that I discussed in Chapter Three. In doing so, I want to illuminate the relationship between a politics of mourning and democratic change to think through the inability of the United Front to provide an appropriate response to ARED’s demands in the aftermath of the 2015 elections.

The southern Mothers’ Front, which was born at a time when critical voices had been silenced by both an autocratic government and a militant nationalist movement (see Chapters One and Three), relied heavily on lamentation and religious rituals of cursing and beseeching the gods (deva kannalawwas) as modes of protest to demand justice for the disappeared. As de Alwis points out, the authenticity of their grief marked out a crucial space of resistance—both conceptually and materially—in the political landscape of the time (1998a: 289). Moreover, the sympathetic media coverage of the public performances of their suffering called attention to the atrocities that had been perpetrated and played a key role in steering public opinion against the government, contributing to its downfall at General Elections held in 1994. De Alwis states that the media bombarded the Sri Lankan population with images of weeping and wailing members of the Front, producing them as the very embodiment of maternal suffering. The tears, she states ‘performed a double function of protest as well as inciting protest’ (233-252, 270-272). A particularly striking image of two grieving women, one with furrowed face and graying hair, the other more foregrounded and more youthful, clad in white and wearing the Mothers’ Front badge, with tears cascading down her face was republished in several newspapers and magazines. This image with the older
woman cropped out, was used by Chandrika Kumaratunga, during her 1994 election campaign (264-265, 267), (see Figure 14).

![Image of advertisement](image.png)

Figure 14: Full page advertisement by the People’s Alliance which appeared in the Sunday Times and Sunday Observer of 30th October 1994 just prior to the presidential election held in November 1994.

In tracing some aspects of the history of the Front in Chapter Three, I already mentioned that the Front played a role in the defeat of the United National Party (UNP) at the presidential and parliamentary elections held in 1994 and the election of the People’s Alliance headed by Chandrika Kumaratunga. Once in power, President Chandrika Kumaratunga appointed four commissions of inquiry, facilitated death certificates, and paid compensation to the next of kin. I also noted that the defeat of the UNP coupled with commissions, certificates of death, and compensation to a great extent assuaged the demand for justice that the women had articulated. The Front thus exemplified how subaltern politics of mourning may become politically salient, part of electoral agendas, and even help determine electoral outcomes.

In *Law in Times of Crisis*, Gross and Ni Aoláin posit that if democracy is to preserve ‘its innermost self’ (2006: 4) as such, it must act within limits, even in acute
crises. Failure to do so they feel will invariably incur political or legal costs (10-11). The case of the second southern insurrection seems to corroborate this view. Yet, I contend that this cannot be taken as a universally applicable rule. Tamil women cannot mobilise political mourning to the same effect as Sinhala victim-survivors of disappearances in Sri Lanka’s ethno-nationalist majoritarian democracy. Their minority/minoritised status will always blunt the edge of their struggles and their transformative potential unless they are waged in solidarity with the ethnic majority. I acknowledge that at the 2015 presidential and parliamentary elections, the United Front appealed to the votes of Tamil family members of the disappeared on the promise of truth and justice. Yet, in the current conjuncture of ethnic polarisation and ethnic mobilisation, ultimately, there is little democratic, electoral incentive to keep such promises.

Recall the way in which the opposition in parliament and nationalist organisations mobilised on the terrain of patriotism, sovereignty, and masculinity to challenge the transitional justice programme of the United Front and defend heroic soldiers who were posited as its hapless victims. Recall how nationalist activists constructed the United Front and its leaders as ‘traitors’ and ‘faggots’ colluding with the international community to send war heroes to international gallows (see Chapter Four). In the context of these developments, I believe the United Front could no longer muster the political will to keep their promises relating to truth and justice for war-related atrocities. As a result, wittingly or unwittingly, it ended up replicating the mechanisms of erasure of the previous regime and upholding the hegemonic power of the heroic soldier.

In the 1990s, the Mothers’ Front exposed the limits of a politics of mourning based on ‘blood’. In postwar Sri Lanka, nationalism continues to demand the resolute and unambiguous loyalty of its gendered subjects, perhaps in an even more forceful way. Thus, more than ten years after the end of the war, continuing ethnic polarisation forecloses the possibility of an alliance of Tamil, Muslim, and Sinhala next of kin of the disappeared that can challenge the Manichean, necropolitical technologies of power deployed by the Sri Lanka state. I recognize that gender or victimisation cannot automatically provide a common ground for women to come together in a context such as Sri Lanka, marked by heightened ethno-nationalism. In ‘May Day after the July Holocaust,’ Newton Gunasinghe (1996) wrote of the impossibility of raising ‘safe’ economic and class slogans in the
wake of the 1983 riots. He argued that ‘(i)n both [Sinhala and Tamil] ethnic formations, class contradictions are overdetermined in the Althusserian sense, by the ethnic conflict,’ going on to state that, “(o)ver determination” refers to a structure of dominance over the contradictions of a particular formation at a particular point of time’ (197). In his view, ‘it logically follows that class struggle does not occur in a pure vacuum, but in an “ether” constituted precisely of this conflict’ (197-198).

By the same logic, it is perhaps unrealistic, even ‘silly’ (in Gunasinghe’s terms), to expect the formation of a women’s movement for justice across the ethnic and geographic divide. Many years after the southern insurrection, de Alwis wrote that the formation of alliances under the mark of grief would require the re-conceptualisation of not only the ‘political’ but also injury and grief. ‘Political communities of the sorrowing, de Alwis suggested do not and cannot spring forth spontaneously and ‘naturally’ they must be made’ (2009b: 91). Even though she believed that this might be too Utopian a proposition, she was also of the view that for those who have tried all else and failed, it is such Utopian re-conceptualisations and re-formulations which sustain an optimism of the will (2009a: 91). Ten years after the end of the war, and 30 years after the southern insurrection, I contend that we need her vision of Utopia and optimism of the will more than ever. We need solidarities across the ethnic divide to challenge the ‘national order of things’ (Malkki 1992) and to sustain the possibility of justice yet to come. I will return to this question in the conclusion to this thesis.

Conclusion
In this chapter, drawing on Butler’s critical engagement with Arendt, I sought to analyse the space of appearance gathered and constituted by the tent protests staged by the gendered and ethnicised subaltern legal subjects at the centre of this thesis. In particular, I explored the tent protests as a concerted form of political mourning where women’s bodies and the images of disappeared loved ones took centre stage. I hope my analysis illuminates that subaltern dissident subjects do not choose embodied forms of protest and struggle over speech or writing. Rather they can deploy speech, writing, and embodied protest all at once. Moreover, they can also mobilise grief, hope, and rights in order to obtain an ethical response from a specific polity and its political leaders.

205 I am grateful to Andi Schubert for pointing out the relevance of Newton Gunasinghe’s argument in this article, to my discussion in this chapter.
In setting up tents by the roadside, I believe that the tent protesters hoped that their silent, labouring and grieving bodies inserted so incongruously but so persistently into the polis would make visible the ghosts and the absent bodies that haunt their lives and convey to the world the impossibility of continuing to live life as they had hitherto known it. They thought that if they could challenge the regime of invisibility around disappearances and make visible their own grief and the faces of the disappeared, they would receive an appropriate response. However, the considerable visibility and attention engendered by these protests were insufficient to challenge the hegemonic power of the trope of the heroic soldier in postwar Sri Lanka. The failure of these protests signals the limits of a politics of mourning for minority Tamil women in Sri Lanka and the impossible task that they face mobilising political mourning in the ethno-nationalist majoritarian democracy in Sri Lanka.

A few months after Minister Samaraweera’s visit to the Mullaitivu tent, four of the five tent protests were discontinued one by one because of the physical, mental, and financial toll it was taking on the women protestors. Moreover, even though the United Front was supposedly on their side, the local level surveillance and intimidation of family members and their supporters did not wholly disappear. Leeladevi, the President of the ARED, told me that both men in plainclothes and men in uniforms closely monitored them. Sometimes they were discreet, and at other times they boldly walked around with their cameras and video cameras held aloft. On some occasions, these men followed them to their homes to ask questions even if in a friendlier and less threatening mode than before. Several leaders of the tent protests also came under attack by ‘unknown’ persons. In Mullaitivu, a woman leader was assaulted and threatened not to engage in these protests. In another incident, a person wielding a knife entered the Mullaitivu tent, shouting death threats at the protestors and going on to slash placards, marking the day count and smashing some of the furniture and kitchen items in the tent. However, the women who led the tent protests were clear that even though the battlefront has changed, the battle is not over. Following the termination of the protests, the women

leaders opened small offices in each of these locations to continue their struggle for truth and justice into an uncertain future.

They still count the days. The pieces of cardboard that marked each passing day in the tents now hang in front of these offices. That daily ritual continues. As I was completing my thesis, more than 1500 days had passed since the commencement of the tent protests. Arguably, it is one of the longest continuous protests in the history of postcolonial Sri Lanka and the most significant protests for truth and justice for disappearances staged since the days of the southern Mothers’ Front. As they have continued their struggle, they have also kept a count of those who are passing away from their midst. By June 2021, 92 family members had died. These women are acutely conscious of their own mortality in the face of the inexorable and unforgiving march of time. The death of a fellow family member was felt like a body blow for the struggle, for who will continue the struggle when they are no more? It is in this context that ARED decided to take their struggle to the UN Human Rights Council in Geneva. It is their engagement with the Council, that I explore in the next chapter.

Figure 15: Women family members of the disappeared protesting and calling for Sri Lanka to be referred to the International Criminal Court.

Figure 16: Women family members of the disappeared of ARED protesting in front of the United Nations Square, Geneva, 8 March 2018.
From the OMP to the UNHRC:
Invoking the ‘International’ as a Site of Dissident Struggle and Justice

The Square in front of the main United Nations (UN) building in Geneva, dominated by Daniel Berset’s 12-metre-tall three-legged chair is a site of protest. It is a place where the oppressed, the marginalised and the disaffected from all corners of the world gather to express dreams of other futures, hoping that the world will hear them from there. Few weeks pass by in Geneva without a protest in this square, particularly during the UN Human Rights Council (UNHRC) sessions. When I got off at the tram stop near the square, on my very first visit to observe the UNHRC sessions in March 2017, I was greeted by the rhythmic and perfectly synchronised chanting of a group of Tibetans gathered behind the chair. The small crowd of no more than 50 people, some carrying Tibetan flags, were chanting: ‘Have a UN Inquiry into Tibet! Let the Dalai Lama Go back to Tibet’. On another evening, Syrian revolutionary songs penned during the early days of the revolution filled the square. The small group of Syrian protestors was calling for peace, justice, and accountability in Syria and a Syrian transition without Assad.

This square, particularly from around 2008, has been the site of numerous protests by the Sri Lankan Tamil diaspora, hoping to bring attention to the human rights situation in Sri Lanka. In February 2009, at the height of the war, 26-year-old Murugathasan Varnakulasingham, a computing graduate and part-time shelf stacker at a Sainsbury in London, set light to his body in this square. A letter typed in Tamil and English found by his side explained why he chose to die this way: ‘We Tamils, displaced and all over the world, loudly raised our problems and asked for help before [the] international community in your own language for three decades. But nothing happened . . . So I decided to sacrifice my life . . . The flames over my body will be a torch to guide you through the liberation path’. In March 2012, 2000 Tamils gathered in the square demanding the creation of an international war crimes tribunal, calling for Tamil self-determination and denouncing genocidal acts of the

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Sri Lankan state. One placard among the many that day read ‘We have proof of war crimes. We demand justice’. In 2014, close to 4000 Tamils from across Europe marched to the square in Geneva to protest against Sri Lanka’s rejection of a war crimes tribunal. Close to 4000 Tamils again gathered there in 2015. That day the square became a sea of red flags with the LTTE insignia. Again, the demand was for an ‘international investigations on Tamil genocide’ and a ‘UN-monitored plebiscite on Tamil Eelam’. Tamilnet reporting on the event stated that the ‘protest also witnessed active participation of (Eelam) Tamils recently exiled from their homeland and a new group of second-generation activists from Switzerland’. A torch relay conducted by young Tamil activists that had commenced on the 4th February in London named Viduthalaich Chudar (the flame of liberation), travelled through Europe over 40 days and was concluded on the day of the protest.

On 8th March 2018, in the shadow of Berset’s Chair, four Tamil women belonging to the Association for Relatives of Enforced Disappearances – North and East Provinces (ARED) held a silent vigil. They stood there to bring attention to fellow family members marking 365 days of the continuous tent protest in the district of Mullaitivu (which I discussed in the previous chapter), holding handmade posters depicting milestones in their struggle for justice for disappearances in Sri Lanka. These included the 100th day of the tent protest in Kilinochchi; the rally organised on Tamil New Year Day in April 2017; their meeting with President Sirisena on 12th June 2017; and their march to the UN office in Jaffna to mark International Human Rights Day in December 2017. They had arrived in Geneva only a few days prior, from different locations in the north and east of Sri Lanka, to attend the 34th sessions of the UNHRC.

However, the subject of this chapter is not these protests as such. In the previous chapter, I explored the emergence of ARED following the 2015 elections and how personal grief and political lamentation combined as an embodied modality of protest in the space of the tents erected on the roadside. I argued that through these protests, they sought to create a space of appearance to elicit an ethical, political response from the Sri Lankan polity and advance their struggle for justice. This chapter explores their emergence as transnational citizen subjects and the

UNHRC in Geneva as yet another site of their struggle. In doing so, I trace how their demand for international involvement in a local truth or justice mechanism about disappearances gradually transformed into a demand for a purely international mechanism, i.e., a call for global justice, outside the bounds of the sovereign state.

To be clear, in the first part of the chapter, I consider women’s engagement with the Office on Missing Persons (OMP), which was established by the United Front government as a truth-seeking mechanism, in 2018 in keeping with its commitments under UNHRC’s Res. 30/1 adopted in 2015. I show that the OMP as envisaged by family members, and particularly by ARED, was one with substantial international involvement. In the absence of provisions guaranteeing international participation in the OMP and in the context of the inability of the OMP to show some tangible progress concerning their demands for truth and justice, family members became increasingly disenchanted with the OMP. They began to appeal to the UNHRC to intervene on their behalf by establishing a purely international mechanism or by referring Sri Lanka to the International Criminal Court. I argue that in making this demand in person at the UNHRC, they expanded the space of appearance available for their struggle to the international arena while unsettling the politics of representation underlying the UNHRC. Yet, I also contend that in the context of the international community’s inability to accede to this demand, they are increasingly finding common cause with Tamil nationalist organisations both inside and outside the country. I conclude that only time will reveal the full implications of these new alliances and networks of support.

Res. 30/1 and the Office on Missing Persons

In Chapters Three and Four, I outlined the circumstance in which Sri Lanka came to be placed on the agenda of the UNHRC based in Geneva following the end of the war and the events leading to the adoption of Resolution 30/1 in September 2015. I explained that in an unprecedented development Res. 30/1 was unanimously adopted by the UNHRC and co-sponsored by the United Front as part of its commitment to address demands for justice for war-related atrocities. In op. para. 4 of Res. 30/1, the United Front government committed to establishing an Office on Missing Persons as an independent truth-seeking mechanism in perpetuity, with an exclusive mandate regarding ‘missing persons’, with broad powers of inquiry and investigation. The OMP, which was one of four transitional justice mechanisms promised, was formally inaugurated in January 2018 amidst stiff opposition from
Sinhala Buddhist nationalist groups and the Rajapaksa camp in parliament. I contend that, in the historical context of denial and erasure that I document in this thesis, the OMP can be analysed as a redeployment of the sovereign power of the state in a manner that re-figures the relationship between the state and family members of the disappeared, as well as the archive. If during the Rajapaksa years the state had deployed law to induce family members to convert disappearances into deaths for the reward of financial compensation under the Registration of Deaths Act (RoD) (see Chapter Three), the United Front government redeployed law to recognize victim-survivors as citizens entitled to truth and reparations. On the enactment of the OMP law, the International Committee of the Red Cross (ICRC), in a meeting I was present at, hailed it as among the best laws in the common law tradition on tracing missing persons. Indeed, the significance of the OMP in postwar Sri Lanka was not lost on several independent commentators. One noted, ‘it ought to be extraordinary when a country’s parliament that passed the Public Security Ordinance in 1947 and more draconian pieces in later years would now pass legislation that would enable the investigation of all state and non-state actions involving enforced disappearances and missing persons over the last 45 years’. Another called the moment when the OMP became operational ‘a magical moment’, for a nation long denied positive gains on the human rights front and providing ‘audacity of hope’ for all Sri Lankans. The first slate of seven commissioners appointed to the OMP by the President even included one family member of the disappeared from Batticaloa, Puniyamoorthy Jeyatheepa.

Initially, family members of the disappeared almost universally welcomed the OMP. Given the magnitude of the problem of disappearances, of all the mechanisms promised by Res 30/1, the OMP resonated the most with survivors of the war in the north and east, but subject to a caveat, i.e., that it should not be a purely local mechanism. Family members unequivocally articulated this demand for international involvement in the OMP during the public consultation process conducted by the 11-member Consultation Task Force on Reconciliation Mechanisms (CTF) appointed by the President in late January 2016. These consultations were in accordance with para. 3 of Res. 30/1.

Based on both oral and written submissions received from war-affected communities, the CTF, in its final report, observed that ‘(d)isappearances constituted the most recurrent and pressing issue brought before the CTF’ (CTF 2016b: 176). It also noted that ‘(s)trikingly, a higher number of persons affected by disappearances came before the CTF than persons affected by other violations. Several Zonal Task Force members, who assisted the CTF’s work, additionally observed that ‘even participants who had suffered other violations chose to foreground their experiences of disappearances’ (CTF 2016b: 177). In submission after submission made to the CTF, family members outlined the range of ways in which disappearances took place, but also made suggestions and recommendations relating to the OMP, informed by their own experiences with state officials in the past, which they did not want to be repeated. While these recommendations ranged from its name and powers to its location(s) and composition, there was one theme that came up again and again in these submissions — i.e., the need for international involvement at all levels of the OMP, including in specific functions such as investigations and victim and witness protection.

Thus, even as Sinhala Buddhist nationalists condemned the UN and any international involvement in a local mechanism (see Chapter Four), family members of the disappeared emerged as transnational, cosmopolitan legal subjects invoking a universal concept of rights in their engagement with the OMP. Similar to the moment of their engagement with the Lessons Learnt and Reconciliation Commission (LLRC) and the Registration of Deaths Ordinance (RoD) that I chart in Chapter Three, this is another formative moment in the trajectory of their subjecthood and their struggle, where they asserted their autonomy and refused to follow the Sinhala Buddhist nationalist script of the obedient, patriotic, docile subject of the nation. More specifically, this was a call for a guarantee against erasure, based on their own experiences and deep understanding of local mechanisms. Following Amina Jamal, it is possible to read this demand as a radical, defiant gesture that displaces signifiers such as ‘nation’, ‘sovereignty’, and ‘patriotism’, and

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216 Indeed, the submissions contained references to different types and modes of disappearances, including ‘white van’ abductions, disappearances following arrest by the security forces, disappearances following ‘village round ups’ carried out by the military, disappearances of former LTTE cadres who had been surrendered to the army, and the disappearances of those who had joined the LTTE but not returned.
destabilizes the power/knowledge nexus underlying nationalist ideology (Jamal 2005: 76-77).

Submissions made to the CTF were unequivocal that international involvement was critical to the legitimacy and credibility of the OMP. Still the nature and form of this involvement were not always spelt out, beyond some references to the UN. However, the women who made submissions to the CTF were blunt and far-sighted: One mother from Mullaitivu told the CTF: ‘We can’t believe (in) local mechanisms’. Another stated, ‘We see the OMP, not as a remedy for the issue of the families of the disappeared. Instead, we see it as drama staged for the international community, and this is why we are requesting international oversight’ (Mother from Vavuniya, Meeting with the Secretariat for Coordinating Reconciliation Mechanisms (SCRM), 20th May 2016). Yet another stated:

. . . there have been various commissions and bodies, e.g., LLRC was not implemented. If the UN is not in some way involved, these bodies will also not be sustainable and neither will their recommendations be implemented. They (the UN) therefore need to be an active partner. . . Whatever mechanism, it won’t be sustainable when the government changes, or in 10 years.

Yet this demand fell on deaf ears. From the commencement of consultations to the enactment of the OMP Act and afterward, the government continually undermined the trust and faith that family members placed on it. Having promised to consult family members on the design of the OMP, the United Front government acted with scant regard for the consultation process. It finalised and enacted legislation relating to the OMP before the consultations were concluded, in a rush to demonstrate its commitment to the international community and the UNHRC (I will return to this point further below). However, despite the haste with which the Act was passed, it took another 11 months for the President to place his signature on the OMP Act and a further eight months to appoint commissioners to the OMP.

Response to the OMP

When the OMP Act was enacted, family members were deeply divided on how to respond to it. Just over two weeks after its enactment, on 30th August 2016, the International Day of the Disappeared, over 600 family members of the disappeared from the south, east and west gathered in Colombo to welcome it, in one of the largest gatherings of its kind in postwar Sri Lanka. The series of events that day, which I attended, was organised by a group called the Families of the Disappeared (FoD), an NGO based in the south of Sri Lanka, which had worked on bringing
attention to disappearances during the 1988-91 period, and which had provided support to organise women family members in the north between the repressive years of 2011 and 2015. Given the opposition from nationalist elements that had received substantial media coverage in the days before and after the enactment of the OMP (see Chapter Four), Brito Fernando, the President of the FoD, felt it was important to demonstrate strong support for the OMP from a group of Sinhalese, Tamils and Muslims family members of the disappeared from across the country. Thus, the events that day were primarily organised as a counter to the anti-OMP mobilisations, communicating one key message ‘We welcome the OMP!’ In his welcome address, Fernando recognised that the promise of the OMP remained to be fulfilled. He reminded the audience that Mahinda Rajapaksa, who had championed the rights of the family members of the disappeared in the past, was now leading the opposition to the OMP, going on to state: ‘We are watching the government, as throughout history, all governments have deceived us’.

However, in a separate room, at the same venue, three women from the north, east, and south, including Ananthi Sasitharan and Sandya Ekneligoda gave a press conference under a banner titled ‘Collective Strength for Permanent Answers and Dignity: National Delegates Conference of Affected Families due to Enforced / Involuntary Disappearances’. They were more critical of the OMP and more sceptical of its promise. Sasitharan pointed out that merely passing legislation was insufficient. Sandya Ekneligoda from the south referred to the lack of importance given to the consultations with family members. This issue, which had deeply troubled both civil society and family members long before the Act was enacted, was glossed over in the FoD celebration of the OMP.

In the months following the enactment of the OMP, and because of the delays in its operationalisation, even those who had welcomed the Act came to increasingly share the views of the latter group. It is in this interregnum that women family members of the disappeared from the eight districts in the Northern and Eastern Provinces organised under the banner of ARED and began a series of continuous roadside tent protests, which I explored in the previous chapter. In a letter addressed to the Federal Councillor and Head of Justice and Police of the government of Switzerland, dated 7th August 2018, ARED complained that the OMP was likely to be an ‘exercise in futility’ and that its ‘composition is riddled with contradictions’. They went on to state:
The OMP in substance and process very much resembles initiatives of the past. We urge the government to listen to our concerns and take immediate remedial measures so that we are not deceived again. We will continue to constructively engage where there is political will and honestly but vehemently refuse to be deceived again and again.

In a letter handed over to the Chairperson of the OMP in Kilinochchi in July 2018, they reiterated their concerns relating to the lack of international involvement and monitoring as follows:

Repeated requests to have some OMP Commissioners from the UN and other international experts were rejected. How do you expect us to have confidence in OMP given the long and failed history of Sri Lankan government appointed commissions to deal with abuses against Tamils?

Yet, in both these letters, they suggest that they are willing to engage with the OMP, despite their disappointments, provided they ‘see action, not words, not more offices’. By action, family members meant investigations into disappearances that occurred during the last phase of the war and the compilation of a list of surrendees, detainees, political prisoners, and secret detention centres, and the release of all reports of previous commissions of inquiry on disappearances. Their refusal to engage with the OMP unless these demands were met manifested most dramatically during the OMP’s initial visits to the north and east when the latter sought to raise awareness about their mandate and obtain feedback from family members relating to its activities.

The OMP’s first two consultations, held in Mannar and Matara in May 2018, progressed uneventfully. However, when they visited Mullaitivu, Trincomalee, Jaffna, and Kilinochchi, increasing numbers of women boycotted these meetings while staging protests outside the meeting venues, holding posters and banners including one large banner in Tamil and English which read ‘We do not accept the OMP’. In Jaffna, a group of ARED members tried to disrupt the meeting twice by walking into Veerasingham Hall, where the meeting was being held, weeping, wailing, and shouting while waving their arms in the air or beating their chests. As they advanced through the aisle in the middle of the hall towards the stage occupied by OMP members, they shouted: ‘We don’t want the OMP’; ‘We don’t trust the OMP’; ‘Our loved ones are lost, give back our children’; ‘We want the military arrested’; ‘All come out, and we will fight from outside’; ‘Get up and come out’. Some women in the audience did get up and join the protestors. One woman fainted and was carried out of the hall. It took about 20 minutes for the government officers
present to shepherd the protesting women out. When the OMP visited Kilinochchi, ARED enforced a total and collective boycott of the meeting by all family members, sitting silently outside until the meeting was concluded. That day the meeting was primarily attended by public servants from the district and a few women whose family members had disappeared at the hands of the LTTE, who participated in defiance of the boycott.

In all these locations, the Chairperson of the OMP, speaking through an interpreter, tried to persuade ARED members to listen to what they had to say, but to no avail. In Mullaitivu, an ARED member asked him, ‘if the President cannot give us an answer, how can the OMP do what the President cannot do?’ In Kilinochchi, where I was present, efforts by the Chairperson and the two Tamil speaking OMP members to persuade the leaders to allow those who wished to participate to do so also failed.

In these protests, ARED appropriated the space created by the OMP consultations, not only to publicly mourn their disappeared family members deemed unmournable by Sinhala Buddhist nationalists. They also made a spectacle of themselves, breaching the bounds of proper femininity and docility and upstaging the OMP, whose visits to the north and east were intended to bring visibility to itself. Indeed, the women next of kin used the space created by the OMP meetings to make visible their own bodies as dissident, unruly, and wrathful citizens. If grief was the primary emotion underlying the tent protests that I discussed in the previous chapter, the boycott of the OMP appeared to be driven by deep distrust, disillusionment, and rage. Subsequently, ARED refused to accept Certificates of Absence, which the OMP began implementing as an alternative to death certificates. It also refused to accept interim relief of Rs. 6000 per month offered to family members of the disappeared who had obtained a Certificate of Absence based on a recommendation made by the OMP.

It is in the context of this impassioned rejection of the OMP that ARED began to call for a purely international mechanism. In March 2018, they decided to make this demand in person to the UNHRC in Geneva. As already noted in Chapter Three, human rights activists in Sri Lanka, as well as Tamil diaspora groups, have a long history of engaging with the international community and UN human rights mechanisms, including the Human Rights Commission, (the predecessor to the UNHRC), as well as the UN Working Group on Disappearances. Yet family
members’ engagement with and expectations relating to these mechanisms were historically mediated through NGOs, INGOs, and diaspora organisations, (with a few exceptions). Locally, some family members considered leaders in their communities had met with Louise Arbour and Navaneethan Pillay when they visited Sri Lanka in their capacity as UN High Commissioner for Human Rights in 2007 and 2013, respectively. Pillay’s visit, in particular, had a profound impact on the family members she met and vice versa. In her statement to the press following that visit, Pillay referred to the trauma that she witnessed among relatives of the disappeared and quoted one woman she met, who had told her: ‘Even when we eat, we keep a portion for him’. For family members, their meeting with Pillay, as well as her press statement—in a context of denial, surveillance, and searching in vain for loved ones—kindled a sense of hope that they were no longer alone in their struggle. After this meeting, many family members—including those who were part of ARED—engaged with the UN investigation into war crimes in Sri Lanka and provided witness testimony through written and oral submissions made through local human rights organisations. But ARED’s visit to the UNHRC in Geneva in March 2018 was their first.

In Chapter Three, I analysed the spiral model of human rights change, according to which domestic human rights organisations link up with international rights activists to form what is referred to as ‘transnational advocacy networks’ (Risse, Roppe and Sikkink 1999; Risse and Roppe 2013). According to this model, these networks bypass the state to directly enlist the power and authority of transnational institutions to put pressure on the state from ‘above and below’. In this way, these networks seek to address asymmetries of power at the local level, particularly in minority communities. This is, of course, a very specific path to justice (Kelly and Dembour 2007: 8) and as I argued in Chapter Three, the political conjuncture following the elections of 2015 made the Sri Lankan state ripe for such pressure, resulting in Res. 30/1 and the OMP. In March 2018, however, family members were no longer seeking to put pressure on the state. They were appealing to bypass the state altogether.

Arriving at the Human Rights Council

In March 2018, with the support of a local human rights organisation, six women from ARED travelled to Geneva to attend the UNHRC sessions. The temperatures in Geneva had plummeted that week, and they were greeted by two inches of snow.\textsuperscript{219} Despite the cold and the inadequacy of the warm clothes that they had brought from Sri Lanka, they brought a sense of heightened anticipation and hope. They had not imagined that they would one day be inside the hallowed halls of the UN. Before they arrived in Geneva in 2018, only two other Tamil women family members of the disappeared had made representations before the UNHRC, one of whom was Ananthy Sasitharan.

As discussed in Chapter Three, in theory, the UNHRC may be considered an exemplar of Arendt’s (1963) space of appearance where antagonistic political actors can exchange claims and counterclaims about human rights with a view to engaging in a meaningful dialogue. The very architecture of the buildings where the UNHRC sessions take place fosters a perception of the triumph of civility and dialogue over antagonism. The formal sessions of the Council take place in the Human Rights and Alliance of Civilisations Room (also numbered Salle XX) located on the third floor of Batiment E, (even if the real action takes place long before the sessions begin in embassies across Geneva). This building is a nine-story grey concrete and glass block built in the 1970s. It is part of the series of sprawling interconnected buildings that form the main UN complex located in a spacious landscaped garden overlooking Lake Geneva. Salle XX is one of its largest and most impressive conference rooms. The main feature of the domed circular room, refurbished in 2008, is a sculpture covering the entire ceiling by Spanish artist Miquel Barceló, created to look like stalactites made up of many layers of coloured paints composed of pigments from across the globe. This work is supposed to represent the themes of multiculturalism, mutual tolerance, and understanding between cultures that underpin the work of the UNHRC. This beautiful room can accommodate representatives from all UN member states and civil society organisations from across the world. Additionally, a series of rooms of varying sizes on the ground floor allow both state parties and civil society actors to organise ‘side events’ related to the agenda items of the UNHRC. The Serpentine Bar, which runs the length of the ground floor of the Council, facilitates informal networking, lobbying, and a lot of

\textsuperscript{219} 16 of them from the north and east were originally expected to visit, however only six of them got visas from the Swiss embassy.
hobnobbing. The floor-to-ceiling windows of the Serpentine frame stunning views of the Jura mountains, glimpses of Lake Geneve, the two peacocks that roam these gardens, and the sculptures that dot the gardens. During council sessions, the space is abuzz with diplomats, UN bureaucrats, and NGO Representatives huddled together over coffee and sandwiches, having intense discussions.

This is still, however, not a space that welcomes victim-survivors. The presence of the victim subject at the UNHRC is the exception rather than the rule, even though the first victim-survivors to come before the UNHRC—the members of the Madres de la Plaza de Mayo from Argentina—preceded members of ARED by more than 30 years. Guest states that when the Madres first entered the public gallery of the Human Rights Commission in the 1980s and donned their symbolic white scarves, the effect was shocking. ‘Scarves like emotions were out of place here’ (Guest 1990: 90). The mothers were, however, gratified, because they had come to shock. In fact, disappearances in Latin America and apartheid South Africa forced the commission to move from mere standard-setting to monitoring, reporting, and action (Coomaraswamy 2014). Nevertheless, today’s Council does not seem so different from the Commission that Guest observed in the 1980s. Victims are still out of place here. Tobias Kelly makes a similar point relating to the UN Committee on Torture (CAT). Kelly found that victim-survivors brought before CAT by NGOs, who spoke with quivering voices about their experiences, were usually met with a slightly embarrassed silence and a gentle reminder that ‘this is not the right space for survivors to talk’ (Kelly 2018: 96).

Indeed, the UNHRC makes no special provisions for the victim, particularly those whom Ratna Kapur calls the ‘real’ or ‘authentic’ victim subject, the ‘Third World’ victim subject (2002: 2). Rather, in this globalised politics of representation, there is a vast infrastructure for victim-survivors to be represented by international or local NGOs having UN consultative status and their stories to be solicited and circulated through the mechanism of the ‘human rights report’. However, as Madlingozi points out, NGO professionals get to represent victims in these institutional spaces, not because the latter gave them a mandate, but because they have far greater access to these institutions in terms of language, resources, contacts, and knowledge of how they work (Madlingozi 2010: 211). To participate in this institution of global governance, one has to master the bureaucratic procedures and the jargon: the ‘UN speak’ of agenda items, resolutions, votes, interactive dialogues, side events, and so on, and be well versed in at least one of the
languages in which it conducts its work (English, French, Spanish, Russian, Arabic or Chinese). And you have to do all this while navigating between the formal sessions and the informal lobbying and advocacy.

In deciding to attend the HRC sessions in person, members of ARED were creating, or as Butler would say, ‘gathering’ a space of appearance, (not simply occupying one which pre-existed their arrival), while unsettling the politics and protocols of representation at the UN. Following their arrival in Geneva, the six members of ARED had to navigate this space with the help of two NGO activists who also acted as their translators. During the one week ARED members were in Geneva in March 2018, they met with the UN Working Group on Disappearances (WGEID), the staff of the United Nations High Commissioner for Human Rights, staff of several western missions, the ICRC, and so on. Additionally, they participated in several side events, including one organised jointly by the Office of the High Commissioner for Human Rights (OHCHR), Human Rights Watch, Amnesty International, and Franciscans International, titled ‘Transitional Justice in Sri Lanka: Will it deliver for the victims of enforced disappearances?’

The Secretary of ARED also made a number of oral submissions at the formal sessions of the UNHRC. In each of the public meetings and two closed-door meetings with the WGEID and ICRC, which I had the opportunity to attend, the women related their own stories, while stressing that they were in Geneva to speak on behalf of all women family members of the disappeared in the north and east and not only for themselves. At least one member of this group returned to participate in Council sessions that I observed in 2019 and 2020 to reiterate this demand.

In 2021, they could not travel to Geneva due to the Coronavirus pandemic and global travel restrictions. However, in the run-up to the 46th session of the UNHRC in March 2021, members of ARED devoted considerable time and energy to try and amplify their demand for an international justice mechanism from within Sri Lanka. They wrote letter after letter to ambassadors, UN officials, and foreign ministers and organised protest after protest in the north and east. This was despite the local restrictions imposed on their mobility because of the pandemic and courts across the north and east issuing orders banning protests. They defied several court orders that expressly prohibited ‘any activities that will draw attention to the upcoming [UNHRC] session in Geneva’, some of which had identified family members by name. The leaders of ARED also worked in alliance with all the major Tamil political parties (Tamil National Alliance, National People’s Front, and Tamil
Makkal Tesiya Kootani), religious leaders, and civil society organisations to lobby the Council in one voice. In a joint letter addressed to the Council in January, the alliance stated that ‘(i)It) is now time for Member States to acknowledge that there is no scope for a domestic process that can genuinely deal with accountability in Sri Lanka’. But what possibility of such a mechanism for Sri Lanka?

A Purely International Justice Mechanism and the Geopolitics of Human Rights

The demand for a purely international justice mechanism from the UNHCHR is a tall order. The Council itself cannot establish such a mechanism. The matter has to be first referred to the UN Security Council (UNSC) or the UN General Assembly (UNGA). Any human rights intervention pertaining to Sri Lanka at the UNSC is likely to be vetoed by China or Russia or both. A resolution to establish an international mechanism through the UNGA will have to be passed by a majority of UN member states, which is also unlikely. Sri Lanka cannot be referred to the International Criminal Court (ICC), as it has not ratified the Rome Statute and the ICC has no jurisdiction over Sri Lanka. The only avenue for prosecution by the ICC is through a UNSC referral, and for reasons stated above, chances of that happening are again almost non-existent.

In March 2021, almost six years after Res. 30/1, the UNHRC adopted Resolution 46/1 to keep Sri Lanka on its agenda. Moreover, in a significant development, the Council resolved to strengthen the capacity of the OHCHR ‘to collect, consolidate, analyse, and preserve information and evidence, to develop possible strategies for future accountability processes, . . . and to support relevant judicial and other proceedings, including in Member States, with competent jurisdiction’ (Op Para 6). The Council also allocated 2.8 million dollars to implement this commitment. In doing so, the resolution noted the persistent lack of accountability at the domestic level, the importance of preserving and analysing evidence to advance accountability, and emerging trends within the country.

following the 2019 elections, which it stated represented ‘a clear early warning sign of a deteriorating situation of human rights in Sri Lanka’ (op para 8).222

Resolution 46/1 was sponsored by Britain on behalf of a group of countries and was adopted by a vote of 22 for, 11 against, and 14 abstentions. Apart from the family members of the disappeared, those putting considerable pressure on the HRC to adopt a new resolution included: Tamil political parties in Sri Lanka; a coalition of international and local human rights NGOs; The Elders223; previous high commissioners for human rights; civil society organisations in Argentina, Brazil, and Colombia including the Grandmothers of the Plaza de Mayo; and Tamil diaspora groups. In London, Ambihai Selvakumar, a British Tamil woman, and a Director of the International Centre for the Prevention of Genocide, went on a 17-day hunger strike calling on the international community ‘to save our kith and kin back home in Tamil Eelam’224.

The Resolution followed in the wake of a damning report released by the UN High Commissioner for Human Rights in January 2021, which expressed concerns about trends emerging since the election of President Gotabaya Rajapaksa while arguing that his election had ‘fundamentally changed the environment for advancing reconciliation, accountability and human rights in Sri Lanka’.225 The report expressed the view that it was vital for the UNHRC to take further action on Sri Lanka to address the failure to act on behalf of tens of thousands of survivors; to prevent similar atrocities in the future, and to prevent a precedent that would undermine its efforts to prevent and achieve accountability for grave violations in other contexts.

Therefore, at stake in the Resolution, was not merely concerns about the need to address impunity and extend support to those struggling for truth and justice in Sri Lanka. Rather, as Stephen Rapp has pointed out, the credibility of the whole international system was at stake.

We have other places in the world where horrible things continue to occur. In Syria, Myanmar, South Sudan, and elsewhere, the UNHRC has become the go-to place . . . to get commissions established, to find the facts, and to begin to lay the ground for

223 The Elders are an independent group of global leaders working together for peace and justice around the world. See https://theelders.org/who-we-are
accountability. If the message out of Sri Lanka is well, you can wait it out and after 10 years . . . close it and let them get on with business, what does that say to victims in these other situations? What is the prospect in the future for the credibility in terms of the enforcement of human rights? It won't just be an epidemic of impunity, it will be a pandemic of impunity, and that is what the world risks if we don’t grasp the obligation and make sure we continue this fight for truth and justice for the people of Sri Lanka.226

I met members of ARED from Kilinochchi, Jaffna, and Vavuniya and Ananthya Sasitharan, a month after Res. 46/1 was adopted. They were deeply ambivalent about it. All of them stated that they were happy that the UNHRC remained engaged in Sri Lanka, but they were disappointed and disillusioned with the substance of the Resolution. Almost all the family members that I spoke to had questions about the collection of evidence by the OHCHR. They had all submitted evidence to the UN at one time or other, so they wondered why it was necessary to collect more evidence. Did not the UN already have enough evidence to take more decisive action? What had become of the evidence that they had submitted? And how would this new evidence be used in the future? Was this not giving more time to the government? Will the evidence be submitted to an international justice inquiry?

Moreover, in their view, the Resolution did not go far enough. Ananthya Sasitharan wondered whether this was another tactic by the international community to employ the problems of the Tamil people to engage in regime change in Sri Lanka. She felt that they were being used like ‘curry leaves’ (kaṟivēppilai) to flavour the curry but to be discarded later. She also wondered whether the international community fully realised what family members were going through, especially those like her, who handed family members to the army, and that justice delayed was justice denied. Leeladevi Anandanadaraja, Secretary of ARED told me that even though the government of Sri Lanka went about giving the impression that they (i.e., victim-survivors) had been ‘crowned’ (creedam) by the Resolution, in her view, there was nothing in it. She said that they had hoped that, at least this time, Sri Lanka would be referred to the ICC or that some other direct action would be taken against the government. For them, the UN had ignored their expectations and was again trying to put pressure on the Sri Lankan state.

Despite their disappointment, Leeladevi stated that ARED would continue to engage with the UNHRC and reiterate their demand for an international mechanism.

However, in the absence of a purely international justice mechanism, I contend that ARED is increasingly aligning with Tamil nationalist groups both within and outside the country, demanding for a permanent political solution to the longstanding Tamil national question in Sri Lanka, while framing the last phase of the war as genocide.

The Struggle for Justice and Tamil Nationalism

In the previous chapter, I argued that the tent protests brought considerable visibility for ARED and recognition and support from a wide array of political parties and civil society organisations, including Tamil nationalist organisations. These protests paved the way for ARED’s visit to Geneva in 2018 and thereafter. In this engagement with the UNHRC, I contend that ARED found new allies, new sources of support, and new networks of solidarity, particularly from amongst Tamil nationalist diaspora groups, which have been crowding the UNHRC since 2015. I contend that these new relationships with nationalist parties and organisations both inside and outside the country are increasingly influencing ARED’s struggle. These relationships are shaping how ARED is framing its own demand for truth and justice within nationalist narratives of genocide and the need to find a permanent political solution to the longstanding Tamil national question in Sri Lanka. Consider the following statement made by the Secretary of ARED to the UNHRC via zoom in March 2021:

I deliver this statement in partnership with the Association for the Relatives of Enforced Disappearances and also a victims’ mother. It is shocking and heart-rending that you have in your report praised the functions of the OMP, which we relatives of the enforced disappearances reject already. We have revealed our reasons at these sessions of the Human Rights Council, on many occasions why we reject the OMP. In order to expose the hypocrisy of the OMP to the international community, we handed over to the OMP details of the five disappeared persons having strong evidences [sic] and requested the OMP commissioners to give us a solution at least for one case. It is now one and a half years since we handed over the five cases, but nothing heard from the OMP so far. More than this what else we need to prove that this OMP is incapable. Hence, we humbly request the UN to refrain from abetting Sri Lankan government to thrust the OMP on us. Highlighting the failure of Sri Lanka to investigate crimes of genocide, war crimes and the growing calls by Tamil families, civil society groups, and Tamil national political parties, . . . we would like the UN and the international community to refer Sri Lanka to the International Criminal Court.227

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Sasitharan, who has been attending UNHRC sessions since 2011, has long used the vocabulary of genocide and the right to self-determination of the Tamil people to frame her oral submissions to the UNHRC. ARED, on the other hand, as I mentioned above, initially advocated for a local mechanism with international participation. Even when this was later amended as a demand for a purely international justice and accountability mechanism, they did not first elaborate on the form of such a mechanism. It is only since around March 2020, that ARED has been demanding for the matter of enforced and involuntary disappearances to be referred to the ICC or a specially created International Criminal Tribunal for Sri Lanka while framing mass atrocities committed by the Sri Lankan state against Tamil people as genocide. I argue that this shift in language must be attributed to increasing alliances with Tamil nationalist groups. But what political work is the word ‘genocide’ performing in the women’s testimonies and narratives, particularly in its relationship with the demand for justice? To better understand this shift, I contend that it is necessary to read the women’s demands in the context of Tamil political demands more broadly, both within and outside Sri Lanka, and the wider debates and contestations around the invocation of genocide.

Under international law, the claim to genocide, defined as the intent to destroy in whole or part a national, ethnic, racial, or religious group, is essentially a claim to international intervention under the terms of the Genocide Convention. As Brian Grodsky (2012) points out, genocide charges may be made during a conflict or long after by politically marginalised groups to emphasize the impossibility of peaceful coexistence, the untenability of the status quo, and as justification for separation. However, as genocide scholars and political theorists have shown, this is an essentially contested, legally indeterminate concept (Straus 2005; Thaler 2018). There is no agreement among lawyers and political leaders as to what amounts to genocide. And even when an act or acts of violence has been named as such, as in the case of Darfur in 2004, intervention may not necessarily follow. In reality, this is a matter of high geo-politics.

Nadarajah and Sentas have insightfully argued that, while ‘Tamil demands for accountability, overlap with those of the international community . . . these two projects have very different contents and rationalities. . . . For the international actors, the victims are primarily human beings, or . . . citizens of Sri Lanka. However, for the Tamils, the victims are first and foremost members of the Tamil nation’ (2012: 75). Walton points out that these two rationalities imply different
solutions—reconciliation for the international community and self-determination for the Tamil nationalists (Walton 2015). One way in which Tamil political parties within Sri Lanka and diaspora groups have sought to challenge and reject the prevailing international framings of the question of accountability in Sri Lanka is through the deployment of the term genocide to describe the Sri Lankan state’s war against the LTTE.

Tamil political and diaspora organisations began to use the word genocide to describe the final phase of the war as it was occurring to draw the international community's attention to what was happening in Sri Lanka (Nadarajah and Sentas 2012; Walton 2015. See also the ethnographic vignette that opens this chapter). But in the immediate aftermath of the war, Tamil rights and political activists adopted an approach that emphasised the pursuit of accountability for war crimes and crimes against humanity without reference to genocide, due to fears that it might undermine access to the UN and other international fora. As one international diplomat who I interviewed in Geneva told me: ‘The UNHRC is made up of state parties. Self-determination does not go down well with them. Referral to the UNSC (and the ICC) or the UNGA (based on genocide) are reserved for serious and ongoing human rights violations. If historical violations could be put on the agenda of these institutions, where do you draw the line? Sri Lanka is not North Korea or Myanmar or Syria’. However, in the diaspora, the discourse changed again following the release of the UN Panel of Experts Report in 2011 and after the broadcasting of the Channel Four documentary called No-Fire Zone in 2013 (Walton 2015).

Following the end of the war, while the main Tamil political alliance, the TNA, prioritised constitutional reform and a political solution over war crimes, a few politicians within the party, including the Chief Minister of the Northern Provincial Council (NPC) and a few smaller parties have not been averse to deploying the genocide frame. For instance, the NPC going against the TNA party line, adopted a series of resolutions between 2011 and 2018, which claimed that Tamils have been subject to gross and systematic human rights violations at the hands of the Sri Lankan state since gaining independence, culminating in the mass atrocities committed in 2009. Many of these resolutions further allege that these atrocities have been perpetrated to destroy the Tamil people, and therefore they constitute

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228 See for instance Urgent Press Release of the Tamil National Alliance titled ‘Tamils Subject to Genocide’ of 12 April 2009.
Since 2015, the NPC has also led commemorations of ‘Tamil People Genocide Remembrance Week’ from 13 to 19 May, in opposition to Victory Day in the South.

In increasingly adopting similar language to Tamil nationalists, to frame their demand for truth and justice for disappearances, I believe ARED is signalling that they are yoking their struggle for justice to the broader Tamil nationalist struggle. In doing so, they are also foregrounding their own identities and subjectivities as Tamil people and speaking not simply as citizens of Sri Lanka but as subjects of the Tamil nation. While this is a significant development in terms of the sustainability of ARED’s struggle over the long term, nevertheless, their uncritical embrace of Tamil nationalism must give us pause.

There is a robust feminist critique of Tamil nationalism as a gendered ideology that has produced women as subordinate to men while constructing insiders and outsiders, and traitors and patriots, in very similar ways to Sinhala nationalism (Coomaraswamy 1997; Coomaraswamy and Perera-Rajasingham 2009; Maunaguru 1995; Satkunanathan 2012; Sivamohan 2004; Thiranagama 1992; Thiranagama 2010). I don’t intend to rehearse this critique in whole here, except to make a few brief points. Feminist scholars have noted that early articulations of Tamil nationalism, like Sinhala nationalism, privileged the roles of women as ‘wife’ and ‘mother’ above all else. However, following the militarisation of the conflict and the recruitment of women as LTTE cadre ‘the lines were redrawn’ (Coomaraswamy and Perera-Rajasingham 2009: 127). The ‘woman warrior’ then emerged as a new figure alongside the ‘wife’ and ‘mother’ (Maunaguru 1995). Yet, in one of the earliest analyses of the construction of the woman combatant, Thiranagama noted that ‘while women carrying guns and travelling at night was itself an impressive sight to behold,’ there was a lot of confusion about the ‘woman question’ amongst women cadres, who ultimately expected the leader to solve all problems (1990: 328). Sumathy Sivamohan has characterised women LTTE cadres as ‘militarised’ but not ‘militant’ and that militant, Tamil nationalism reproduced notions of chastity and purity of women characteristic of earlier iterations of nationalism (2004: 134).

Satkunanathan recognises that the Tamil nationalist struggle did bring women into the public sphere while blurring the boundaries between the public

and private spheres and politicising the private sphere.\textsuperscript{230} However, she also states:

\begin{quote}
they were not always successful in exercising agency and capturing power to create space for their voices to be heard. This is because, generally, the space given to women seems to have been determined by the strategic needs of the organisation rather than a commitment to women's empowerment.\textsuperscript{231}
\end{quote}

Elsewhere, she makes this point more bluntly, stating that ‘the current standard-bearers of Tamil nationalism, the TNA, and the radical Tamil diaspora, at best ignore women, their rights and concerns, and at worst use them as propaganda tools in their campaigns’ (Satkunanathan 2012: 619).

In other wars, where women are raped as a weapon of war, rape is constructed as a crime against the nation itself, and women survivors are made into ‘vessels of nationalism,’ or powerful tools for political mobilisation. In postwar Sri Lanka, Tamil women have refused to speak of rape and sexual violence during the war in the public sphere. However, it is necessary to ask whether the figure of the weeping and wailing Tamil woman survivor of the disappeared is being appropriated by Tamil nationalist ideologues as a ‘vessel’ for nationalist allegories of loss and violation. And to what extent will ARED allow nationalists to use them in this way? And what are the implications of this relationship for the future trajectory of this struggle?

\textbf{Conclusion}

In this chapter, I traced how ARED invoked the category of the ‘international’ in their struggle for truth and justice and the circumstances in which their demand for international participation in a domestic mechanism for truth or justice evolved to become a demand for a purely international justice mechanism. In doing so, I argued that they took their struggle all the way to the UNHRC expanding the space of appearance available to wage their struggle to the international arena while unsettling the protocols and politics of representation underlying the UNHRC. However, in doing so they are also giving expression to a conception of justice that is radically different from what is being offered by the Sri Lankan state, or the liberal international order. It is a call, which exemplifies how the postcolonial, subaltern


\textsuperscript{231}Ibid.
gendered subject, marginalised and discriminated in her own state, may come to rely on international law as a last resort, and as a means through which to inscribe herself back into a juridical order. However, in the impasse created by the inability of the international community to fulfil this demand, ARED is increasingly aligning its struggle with Tamil nationalist organisations and identifying as subjects of the Tamil nation. This is how one nationalism fuels another and mobilises new recruits for its cause. What this means for the future trajectory of the struggle for truth and justice that I have studied in this thesis, only time will tell.
Figure 17: Sandya Ekneligoda (in a white saree) wading into the sea off the coast of Trincomalee, with Tamil women demanding truth and justice for disappearances.

Figure 18: Sandya Ekneligoda marking 500 days of the tent protest in Kilinochchi, February 2018.
As I was completing this thesis, the struggle that I set out to depict and document continued. When I met Leeladevi Anandanadarajah, the Secretary of the Association of Relatives of Enforced Disappearances, North and East (ARED), in April 2021, I asked her about the gains made and challenges facing ARED and the struggle for truth and justice for disappearances more broadly. Leeladevi acknowledged that the next of kin of the disappeared had emerged from the side lines to the forefront of the struggle. They were now more organised and mobile. They had created multiple spaces to meet, share, discuss, and strategise. They were recognised and supported by a wide range of allies in the diaspora and within the country. Yet, she also talked of a sense of fear and exhaustion among members and uncertainty about sustaining the struggle in the long term. They were again being intimidated, threatened, and put under constant surveillance by the government of Gotabaya Rajapaksa. And they were deeply disappointed and frustrated with the international community.

Rajapaksa, who was elected as President in November 2021, came to power repeating the same mantra of denial regarding disappearances as his brother. In February 2021, for the first time since the inception of ARED, Leeladevi was summoned for an inquiry by the Terrorist Investigation Department. She was questioned about the funding sources of ARED and her bank accounts. She told me that members of ARED were under increasing pressure from their family members not to participate in protests and marches for fear of what might happen to them. The women themselves were afraid that their sons, who were no longer children, might be abducted, detained, or disappeared as punishment for their activism. Leeladevi also talked about a creeping loss of hope that their disappeared family members were alive. She spoke of the need for others to take up at least part of the burden of the struggle borne by them. Hope (as much as grief) that family members are alive in secret detention centres run by the state I suggested has been a driving force of the struggle so far.

I also evidenced disagreements relating to strategy among the membership of ARED. I met several younger women leaders within ARED, who expressed the
need to rethink the modes and sites of their struggle in the face of the advancing age of many of the women involved, their deteriorating health, the unbearable lack of closure, and the economic hardships faced by them. They also expressed concerns relating to diaspora funding and the control they might be wielding over ARED decisions. I met a group of women from Mannar, who had applied for Certificates of Absence from the Office on Missing Persons (OMP), to obtain interim relief of Rs.6000 per month when the United Front government was still in power. These applications had been made in defiance of ARED’s stand, even though the women also vowed to continue their struggle for truth and justice ‘until they had no breath left in their bodies’. In Jaffna, around 73 persons whose family members had disappeared during earlier phases of the war had applied for and received interim relief in 2019. However, the new Gotabaya Rajapaksa government seemed to have discontinued these payments.

Thus, as I am writing this conclusion, the struggle for justice appeared to be at once at an uneasy impasse or stalemate and entering a new phase. The narratives I recounted above hint at several possible trajectories or paths that the struggle may take in the future. One relates to the increasing fracturing and weakening of ARED with some women resigning themselves to accept compensation. A second path relates to ARED being completely appropriated by diaspora Tamil nationalist organisations. And a third possible path relates to the emergence of a younger, autonomous women’s leadership from within ARED wanting to forge a path independent of diaspora influence and financial support. It is, however, impossible to predict any of these scenarios with any certainty.

In this final chapter, in place of a definitive conclusion, I return to the two key themes that I grappled with in this thesis: firstly, disappearances as an enactment of sovereign violence that can be erased by the state and the technologies of erasure deployed by the postwar government of Mahinda Rajapaksa in Sri Lanka; and secondly, the modes, sites, and scales of the gendered subaltern, dissident struggle waged by a group of women next of kin of the disappeared to challenge erasure of disappearances from history and memory. Finally, I explore a future for this struggle, based on solidarity across the ethnic divide, even if this is an aspiration, not within the present possibilities hinted by the narratives of the women leaders that I spoke to. Yet, I want to argue that it is not beyond our imaginary of a Utopian future yet to come.
You will recall that as I traced the long history of disappearances in Sri Lanka, culminating in the mass disappearances that occurred during the last phase of the war, I invoked Banu Bargu’s conceptualisation of disappearances. In this conceptualisation, disappearances are a form of ‘extralegal’ sovereign violence enacted by the state, that can be erased once the citizen-victims are labelled as rebels or enemies of the state (2014: 63). Taking this conceptualisation as a point of departure and the postwar regime of President Mahinda Rajapaksa in Sri Lanka (2009-2015) as a case study, I claim that the state must now labour to erase disappearances beyond the mere labelling of the disappeared as enemies of the state. I argue that in the age of human rights and transnational struggle for rights, erasure of disappearances is a more complicated, messy, schizophrenic, and interminable business than Bargu’s account suggests. During the Rajapaksa years, erasure involved a host of contingent and contradictory discourses and practices, which I characterise as a repertoire of Manichean, necropolitical technologies of power or mechanisms of erasure, shaped by competing internal and external pressures.

In Chapter One, I explore several aspects of these mechanisms. I begin with how the Sri Lankan state has historically constructed those involved in anti-state violence from the 1970s onwards as enemies, terrorists, foreign agents, etc, of the state. However, decentering the disappeared from my analysis, I go on to argue that to understand erasure during the Rajapaksa regime, it is necessary to focus on its denial of disappearances and construction of victim-survivors demanding for justice as enemies of the state. In Chapter Two, I explore the figure of the heroic soldier constructed as the citizen par excellence, synecdoche of the state, and considered to be above both atrocity and the law as yet another powerful mechanism of erasure.

In Chapters Two and Four, I go on to show that the figures of terrorists, enemies, and heroes of the nation do not exist in isolation. They live alongside a host of other binary constructions categorised and differentiated according to a hierarchy of value; good women and bad women; patriots and ‘ponnayas’/‘faggots’; and nationals and foreigners. Thus, the women who sacrificed their sons and husbands to the war effort are good, patriotic women of the nation. They are the epitome of Sinhala Buddhist femininity. Those who defended soldiers against the lies and false allegations of atrocities made up by ‘enemies’ of the state are ‘patriots’
or ‘heroes’ themselves. They are the epitome of Sinhala Buddhist masculinity. The foreigner in this discourse—western governments, international human rights organisations and the United Nations—are ‘busy bodies’ and tiger (LTTE) sympathisers, intent on undermining the sovereignty and territorial integrity of the Sri Lankan state. Therefore, a central claim of this thesis is that the mechanisms of erasure deployed by the Rajapaksa government worked not merely by vilifying and demonising a section of the population as terrorists or traitors as Hobbes and Bargu envisage. Instead, they worked through the simultaneous valorisation and celebration of others as heroes, patriots, and so on.

In Chapters One, Two, and Four, I analysed the tropes of the enemy, traitor, hero, patriot, etc as gendered Manichean categories central to postwar Sinhala Buddhist nationalist ideological narratives and imaginaries of the nation. They are part of the stories, symbols, and rituals of the nation and its shared experiences, sorrows, and disasters. The power of these discourses derive from the way they have been seamlessly inserted into older narratives of the nation and its past glories, forming a meta/super narrative that connects the past, the present, and the future of the nation. What is at stake here is not guilt or innocence of perpetrators, but who is and is not part of the nation, national identity, memory, sovereignty, masculinity, and femininity.

The tropes that I study in the preceding chapters are powerful categories through which multivalent, diffuse, and complex forms of power circulate both at an institutional and individual level. Those who produce and circulate these discourses also attempt to make them true—i.e., to enforce their validity and truth on reality (Hall 1992: 291, 295). As I discuss in Chapters One, Two, and Four, these discourses were operationalised and materialised through a wide array of practices by the government and civil society actors. Soldiers are honoured with monuments and memorials, celebrated in parades, songs, and films, and bestowed social and economic welfare benefits not available to any other citizen. Family members searching for truth and justice were turned away from police stations, and harassed, intimidated, and surveilled for trying to pursue justice. As I discussed in Chapter Four, during 2015–2019, the UN Human Rights Council (UNHRC) and Res. 30/1 adopted by the Council provided a fertile ground for several nationalists to perform a certain kind of anti-western, anti-colonial, patriotic sovereignty, and masculinity of the nation, and to mobilise against what was labelled as a government of ‘faggots’. I
argued that this mobilisation played a crucial role in the defeat of the United Front in elections held in 2019 and 2020.

I also argued that these discourses and practices produce subjects and subjectivities and create relationships of domination and subordination, majority and minority, as well as moral economies of legitimacy and illegitimacy, legibility and illegibility, worth and unworth. They are intended to mould a national community, connect people’s sense of self to the myths of the nation, command love and loyalty, merge individual bodies with the body of the nation and the state in the process of self-realisation, and produce patriotic subjects with deep affective and emotional ties to the nation. Each act of naming the soldier as a ‘hero’, building monuments or laying wreaths in his name, and each act of naming of the LTTE as ‘terrorists’, or citizens claiming rights as ‘enemies’, and denouncing and repudiating them, represents affirmations of individual and collective identification with and belonging to the nation. This is, as Elgin Isin points out, not a question of inclusion or exclusion, but the mutual and dialogical constitution of different classes of citizens in hierarchical relationships, forcing us to conceptualise citizenship not simply in terms of a bundle of rights and duties but in terms of identity, as narrated by dominant groups in opposition to others considered outsiders (Isin 2012: ix, 2-4).

Yet, for all the power of the mechanisms of erasure that I discuss and analyse in Chapters One, Two, and Four, my intention is to also illuminate how the postcolonial, postwar state cannot completely disregard calls for justice for war-related atrocities. To that end, in Chapter Three, I foregrounded the role played by international norms and institutions of human rights and transitional justice in shaping the government’s response to demands for truth and justice for such violence. In the face of mounting pressure from the international community, the Rajapaksa government was forced to deploy tactics of appeasement, recompense, and reward to placate and manage those demanding truth and justice. These tactics of appeasement included commissions of inquiry, payment of compensation, and ritual performances of the rule of law in habeas corpus hearings.

The Foucauldian idea of a ‘demonic combination of power’ (2000: 311) perhaps best describes the state I studied in the preceding chapters. Indeed, the contradictory moves of the Rajapaksa regime during the period 2009 to 2015 illuminate how the modern state combines power in different registers to paper over its sovereign violence, even if in fundamentally contradictory ways. As Michelle Dean observes, this is not merely the succession or addition of the modern power
over life to the ancient right of death but their very combination that is of significance (2004: 20).

I argue that these technologies of power constituted the public sphere, or the space of appearance as defined by Arendt that was available for victim-survivors to appear as rights-bearing subjects who could claim justice for disappearances, whether politically or legally. They determined what was sayable and seeable, which lives were grievable and not, which lives could be memorialised and not, and which lives counted as a life or not. More specifically, they determined whether it was possible to bear witness to disappearances or not and who counted as a reliable witness and not. They decided the limits of political action, the behaviour and actions of public officials from the highest level of the political leadership to those at lower levels, including law enforcement actors, whether police officers, state counsel, or judges.

However, I show that these technologies of erasure shaped the space of appearance in contradictory ways. On the one hand, one set of discourses and practices delimited the public sphere available to victim-survivors to pursue justice. At the same time, other technologies of power interpellated victim-survivors to bear witness to the very crimes that the state was denying. Paradoxically, even as one set of bureaucrats worked to keep disappearances out of the historical record, another set ritually and repeatedly inscribed the disappeared onto the historical record. I will return to these traces in the archive further below. Suffice to say here that the Manichean, necropolitics of erasure involved a double movement between inscription and erasure.

The election of the United Front in 2015, I argue expanded the space of appearance available for victim survivor to pursue truth and justice. Indeed, it is necessary to recognise the political purchase of Tamil tears for the United National Party (UNP) at the 2015 elections, and the fact that the Front inaugurated an internationalised transitional justice process. However, this project served to reanimate Sinhala Buddhist forces in opposition to these measures to save war heroes and (re)mobilised the historical antipathy towards international institutions. The matter of global justice brought together two significant tropes for the writing of identities in Sinhala Buddhist nationalist ideology—the tropes of the foreigner and heroic soldier—in an especially potent way. It allowed nationalist forces to reframe the whole effort as an international conspiracy hatched by foreigners in collusion with traitors within the country to send beloved soldiers to international gallows.
This thesis thus illustrates that the promise of internationalised justice for minorities in a majoritarian ethno-nationalist context such as Sri Lanka exists alongside its potential to be constructed as a threat and danger to the sovereignty of the state, integrity of the nation, and as a betrayal of war heroes in nationalist ideology. The United Front’s transitional justice project brought Sinhala Buddhist nationalist identities and subjectivities into crisis, catalysing an unprecedented backlash that made it impossible for it to sustain its efforts. Ultimately the Front ended up replicating some of the mechanisms of erasure of the Rajapaksa regime. Not only that it contributed to bringing the Rajapaksa’s back to power.

My thesis thus demonstrates the limits of international intervention in local justice struggles. In fact, the failed international transitional justice experiment in Sri Lanka challenges one of the most common-sense assumptions underlying the international tool kit of transitional justice—that is that implementing truth is somehow easier than pursuing criminal justice; and that truth can lead to reconciliation in a divided society. For instance, according to Wilson truth-seeking as counterposed to retributive justice can transcend the limitations of law and legal discourse, to construct a different kind of public space for emotional and psychological healing and reconciliation (Wilson 2003: 367). Yet postwar Sri Lanka’s justice project gone awry makes it abundantly clear that even truth was rejected by Sinhala Buddhist nationalist elements and opposition parties during the tenure of the United Front. It seems to me that in the ethno-nationalist context of Sri Lanka, truth is an equally and radically destabilising and unsettling commodity as justice. Thus, even though the United Front went to great lengths to present the OMP as merely a truth-seeking mechanism with no power to prosecute perpetrators, the opposition still constructed it as a traitorous institution designed to hang war heroes, which violated Sri Lanka’s sovereignty. In the context of this opposition, I argue that the Front could not sustain and see through its transitional justice project. But not only that, in the context of this opposition, I argue that the Front redeployed the some of the same mechanisms of erasure implemented by the Rajapaksa regime. I conclude that the democratic opening following the 2015 elections was partial, selective, contingent, and fragile.

The Trajectory and Effects of a Subaltern Dissident Struggle
The Manichean, necropolitical technologies of erasure that I analysed in this thesis were intended to undermine the public sphere available to victim-survivors to pursue
truth and justice; produce them as fearful, forgetful, silenced, docile, or defeated subjects of the state; and foreclose the possibility of truth and justice for disappearances. By constructing family members of the disappeared who were searching for justice as enemies of the nation, the Rajapaksa regime and Sinhala Buddhist nationalists were trying to place them outside of the nation, politics, and humanity tout court (Bargu 2019: 7). Yet, I hope that this study confirms that it is impossible to guarantee the kind of citizen subject that is produced by these technologies of state power. This study confirms that victim-survivors are not ‘passive and inert subjects’, but agents. Once the state deploys technologies of power there is always a response in the form of a reaction, transgression, reversal, or counterforce (Bargu 2014: 54; Das and Poole 2004:27). Tamil women family members of the disappeared in postwar Sri Lanka engaged with the state’s mechanisms of erasure and inscription that I studied in the preceding chapters on their own terms. They rejected, re-signified, or subverted these mechanisms as they saw fit in their search for truth and justice, emerging as dissident subjects waging a counter-hegemonic and counter hierarchical struggle against the state. My study confirms the insight of Bargu that the erasure of sovereign violence is never complete. Such violence leaves traces behind, and the struggles of family members of the disappeared to establish the ‘presence’ of disappearances point to the impossibility of the absolute and total erasure of such violence (2014: 66). Not only that, technologies of state power can and do unravel in unexpected ways giving rise to unintended consequences, contingencies, and unanticipated outcomes. Domination, suppression, obfuscation, and whitewashing are not all that can be said of them (Das 2007b 181-183; 2007c 216-217). Indeed, the same mechanisms deployed by the state can elicit very different kinds of subjectivities and widely divergent responses from family members separated by time, space, and ethnicity. Consider the fact that commissions of inquiry, death certificates, and compensation inaugurated by the People Alliance government served as a settlement of justice for women who were part of the southern Mothers’ Front. But not so for Tamil women in postwar Sri Lanka.

This thesis aims to show the myriad ways in which Tamil women family members of the disappeared in postwar Sri Lanka—subaltern dissident subjects, pushed to the margins of the state and excluded from structures of citizenship—kept alive the memories of their loved ones and challenged the erasure of enforced and involuntary disappearances enacted by the state during the period 2009 - 2021.
Drawing on Arendt’s conception of political action and the space of appearance and Judith Butler’s reworking of Arendt, I argue that these women occupied, re-signified, subverted, and unsettled the existing public sphere available to them; and created new and alternative spaces of appearances, as well as sites of contestation to advance their struggle. Drawing on Butler’s theorisation of subjectivity, grief and grievability (2004; 2012; 2015), I argue that in so doing, they mobilized grief, mourning, and hope as much as rights and deployed spoken, written, and embodied forms of political/legal action. As I elaborated in Chapter Six, in the struggle that I studied grief and hope was not merely displaced or relocated from the private to the public sphere. Grief and hope, in fact, constituted a space of resistance and appearance. As Taylor asserts, it afforded ‘visibility in a representational system that rend(ers) most women invisible’ (Taylor 1997: 195).

I also suggested that when courts and judicial processes fail in the task of delivering justice, a politics of grief and mourning offers the possibility of challenging technologies of erasure through the democratic process. Indeed, grief, mourning, and hope can be mobilized as an ethical, political resource for democratic regime change and justice. Recall the experience of the southern Mothers’ Front that I analysed in Chapter Three and the manner in which the Sri Lanka Freedom Party mobilised the tears and curses of Sinhala women in the south to overthrow the United National Party (UNP). However, my thesis also marks the limits of a politics of mourning in a majoritarian ethno-nationalist context such as Sri Lanka. Based on the trajectory of the transitional justice process inaugurated by the United Front, which succeeded the Rajapaksa regime in 2015, I argue that Tamil women victim-survivors in Sri Lanka cannot mobilize political mourning to the same effect as Sinhala Buddhist women because of their minority/minoritized status. In the context of the failure of the Sri Lanka state to provide an appropriate response to their demand, I also show how they (re)fashioned themselves as transnational citizens subjects in a bid to address the asymmetries of power at the national level. In the process, they claimed belonging to a wider legal and ethical community beyond the borders of the nation-state, and ‘imagined that things could be otherwise’ (Kelly 2018: 94). In speaking in their name and not through NGOs, they also unsettled the protocols and the politics of representation at the UN Human Rights Council.

I contend that in their persistent demand for justice, women family members of the disappeared were not only battling the power of the state to disappear and kill with impunity, or the right to know and the right to justice. They were making visible
the concealed violence of the state, keeping the memories of the disappeared alive, disrupting the boundaries between the public and private, turning conventional ideas of political struggle on its head, and posing a radical challenge to the nationalist ideological project itself. Indeed, these women from the margins of the state were posing the most sustained and most radical challenge to the nationalist project in its present articulation and the ‘dialogical constitution of different classes of citizens’ within Sinhala Buddhist nationalist ideology. By refusing to submit to the binary logic of domination and subordination, majority and minority, worth and abjection underlying the figures of the soldier-hero-patriot and the traitor-terrorist-enemy, they were rejecting that some citizens can be reified and heroized, and others placed outside of the nation as unintelligible, ungrieveable and unmournable lives. They were refusing to reconcile with the state according to the terms laid out by the state and retreat quietly back into their homes. In their refusal to be silenced or disciplined by the Manichean logic of nationalist ideology and/or terrorised by surveillance and intimidation, they were also reimagining the very contours of the nation-state, and their status within it.

Contrary to received wisdom and common sense, through this persistent struggle, they have inscribed the disappeared onto the state record. Thus, contrary to the scholarship, which tends to view the disappeared as deprived of ‘all social and political identity’ and ‘bureaucratic records’ (Gordon 2008: 80; see also Bargu 2014), the postwar Sri Lankan state copiously inscribed the disappeared on to the state record. Not only that, consider the fact that the postwar state established by law an Office on Missing Persons, as a permanent office in perpetuity, with power over this archive. Theoretically, the OMP as the official keeper of the disappearance record has the authority to investigate and interpret this record. It has the legal power to shed considerable light on the phenomenon of disappearances; on the people who were forcibly disappeared; on perpetrators, practices, places, and patterns; and the extent to which disappearances were systematic and deliberate government policy or exploits of individual soldiers. Potentially, it can rewrite the history of disappearances in Sri Lanka, uncover uncomfortable truths, remember what was meant to be forgotten, even if it cannot punish the perpetrators or provide law’s closure. Potentially, it is an archive of /for truth. This is no mean achievement in the context of denial that I document in this thesis. In thinking of the OMP as such, I am borrowing from Verne Harris’ (2011) conceptualisation of the South African archive as always being subject to the call ‘of’ and ‘for’ justice, and as a
material place and metaphor. According to Brent Harris, the archive, at moments of political transition from authoritarianism to democracy, may even represent ‘the end of epistemological instability’ (2002: 161).

Yet, as I have argued, the evidentiary promise of the OMP as an archive is contingent, contested, and unstable. The OMP as an archive of /for truth remains yet to come. The performative inscription of the disappeared onto the state record, driven by global and local human rights pressures that I foreground in this thesis, are striking displays of state power involving substantial amounts of time and energy and human and material resources. Their relationship to justice is, however, tenuous at best. In postwar Sri Lanka, the establishment of commissions of inquiry and the OMP proved to be empty rituals with no co-relationship to either truth or justice. Looking back at the struggle waged by the next of kin of the disappeared over more than ten years and the state response, whether it is one of denial or acknowledgement, what appears consistent over time and space, is ‘impunity’ and the impossibility of displacing the hegemonic power of the soldier.

It is in this context that ARED is increasingly yoking their struggle with Tamil nationalist elements both within and outside the country. And it is in this impasse that I want to imagine an alternative path—not currently within the realm of possibilities of this struggle—of an alliance for justice across the ethnic divide; an alliance that shifts the burden of this struggle from the minority to the majority and unsettles the ‘national order of things’ (Akhil Gupta 1992: 64 citing Malkki 1992) from the inside, i.e. by those inhabiting that hegemonic order.

Many years after the southern insurrection, de Alwis wrote that the formation of alliances under the mark of grief requires the re-conceptualisation of not only the ‘political’ but also injury and grief. She, however, recognised that political communities of the sorrowing do not and cannot spring forth spontaneously and ‘naturally’; they must be made (2009b: 91). As I discussed in Chapter Six, even though she believed that this might be too Utopian a proposition, she was also of the view that for those who have tried all else and failed, it is such Utopian re-conceptualisations and re-formulations which sustain an optimism of the will. But what would the making of such a community entail, and who can make such a community? To allow us a glimpse into how a hegemonic and oppressive national order might be transgressed from the inside, in solidarity with those who have been ‘othered’, I want to end with the story of Sandya Ekneligoda, the wife of disappeared journalist Prageeth Ekneligoda.
Seeing a Possible Future in the Present

Prageeth Ekneligoda, journalist, cartoonist and political activist, disappeared on 24th January 2010, somewhere between 8.30 and 9.30 pm, on his way to a meeting with an acquaintance unknown to his friends or family. On the day of his disappearance, Prageeth had left home in the morning and had not returned home by 9.30 at night. That night, his wife Sandya called both his mobile numbers, every half an hour throughout the night only to keep hearing the pre-recorded message that his phone was switched off. The following morning, she went to the local police station in Homagama. The Homagama Police took down her statement but then told her that she ought to have gone to the police station in Koswatte in the first place, as the incident appeared to have occurred there. Sandya then went to the Koswatte Police. Yet neither police station conducted an inquiry in the days and weeks following her complaint. On 19th February, she and her two sons filed a habeas corpus application in the Court of Appeal, citing the Deputy Inspector General of the Criminal Investigation Department, the Officer in Charge of the Homagama Police, the Inspector General of the Police, the Attorney General and Prageeth Ekneligoda as respondents. The Court of Appeal referred the matter for investigation to the Magistrate’s Court of Homagama. Since then, she has dedicated her life to finding out what happened to her husband on the 24th of January, who was responsible for her husband’s disappearance and holding them to account.

She has attended hundreds of judicial sittings related to this case and other cases related to it. She hasn’t missed a single sitting, unless for good reason. However, her appeal for truth and justice has never been confined to the courthouse and has followed an itinerary now familiar to the hundreds and thousands of family members of the disappeared in Sri Lanka. Like other mothers and wives of the disappeared whether, in the north, east or south, she has appealed to every institution and individual who, she thought might be able to assist or intervene in her search for Prageeth. These include the National Human Rights Commission, the Attorney General, the Speaker of the Parlament, the Leader of the Opposition, all Cabinet Ministers, and the President of the nation. One letter was invariably followed by a second, and in some cases, a third. She received few responses. In 2011, she even wrote to the first lady at the time, Shiranthi Rajapaksa, believing that as a woman, mother, and wife like her, she would surely empathize with her predicament. There was no response. Earlier that year, in a desperate attempt to bring attention to the disappearance of Prageeth, she with her two sons travelled...
from Colombo to Galle to attend the now well-known literary festival held there to petition the writers and those attending the festival. They took a bundle of A4 size sheets with them, which began with the following words: I welcome you, to a country where thousands of women and children weep silent tears for a nation of innocent civilians who have been killed or disappeared on account of their ethnicity. Welcome to Sri Lanka.  

Like hundreds of other mothers and wives of those who have been disappeared, she has also written to various organs of the UN—the United Nations Working Group on Enforced and Involuntary Disappearances, the UN Secretary General, the Office of the High Commissioner for Human Rights, the UN Human Rights Council—as well as numerous other international organisations. In March 2011, she travelled to Geneva, Switzerland, for the first time to attend the 19th Session of the UNHRC to press her husband’s case. Since then, she has attended several sessions of the HRC, speaking at side events and meeting diplomats and UN officials on the side-lines. Despite her lawyer’s advice not to engage with the media, she has consciously cultivated a relationship with the press. Through periodic media conferences, she has sought to raise public awareness about Prageeth’s disappearance and the legal case, which tends to be ignored by the mainstream media or to respond to distortions of facts related to the case.

From the very outset, Sandya has tried to represent not merely her own struggle for justice, but the struggle of all family members of the disappeared in postwar Sri Lanka. In a country where disappearances have affected all ethnic communities, yet solidarity amongst family members of the disappeared across the ethnic divide has been elusive, Sandya finds ways of repeatedly crossing ethnic boundaries to stand in solidarity with Tamil and Muslim family members of the disappeared. Facilitated by an activist who works closely with survivors of the war in the north and east, Sandya first visited Mannar and later the Vanni in 2012. In fact, inspired by her visit, family members, church leaders and civil society organisations in Mannar organised a public event highlighting disappearances for the first time after several years, on International Human Rights Day, braving intimidation from the military. Sandya went back to Mannar for the event, which also exhibited

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232 The Galle Literary Festival is an international literary festival held in Galle Sri Lanka since 2007. According to the organisers, it is ‘one of the most anticipated literary events in Southeast Asia for both authors and literary enthusiasts around the world’. See https://galleliteraryfestival.com/, accessed 20 May 2021.
cartoons drawn by Prageeth.\textsuperscript{233} Since then, Sandya has continued to visit the north and east whenever possible to stand in solidarity with the Tamil family members of the disappeared. On 15\textsuperscript{th} June 2017, she walked into the sea off the coast of Trincomalee with protesting Tamil women, depicted in Figure 17 at the beginning of this chapter.\textsuperscript{234} In February 2018, she sat with Tamil mothers in Kilinochchi to mark 366 days of their tent protest depicted in Figure 18. Later the same day, she visited the tent protest in Marathletekerni to meet with mothers protesting there.

Her actions have a cost. On Prageeth’s disappearance, Sandya entered the public sphere as a model of femininity, a ‘good wife and mother’, a diminutive woman, clad in a white Kandyan saree, her hair tied back at her nape, and her two sons beside her. Yet, she is now considered a traitor to the nation—an object of derision, harassment, and hate, an unruly and disobedient subject—the normative other of the good woman in nationalist ideology. In the nine years since Prageeth’s disappearance, this harassment has taken many different forms, from phone calls threatening her with all manner of violence from death to rape to a poster campaign, vilifying her as a traitor. She, however, remains undeterred. The hate that is directed at her seems only to strengthen her resolve to continue her struggle.

In standing in solidarity with Tamil and Muslim Family members of the disappeared, Sandya enacts a deliberate displacement of herself from the nation as conceived by Sinhala Buddhist nationalists as well as masculine imaginings of appropriate femininity, memory, mourning, and sovereignty. Not only that, she reimagines the nation in more inclusive ways and acknowledges ‘the inconvenient plurality’ (Athanasiou 2017: 10), of the nation. She calls into radical question the Manichean categories through which the nation has been constructed and allows us to see how it might be imagined otherwise. This is a prefigurative form of protest politics, the direct ‘actualization of a social and political alternative . . . as an inherent part of activist practice itself’ (van de Sande 2015: 188). In lending her hand and her body to Tamil and Muslim family members of the disappeared, she acts ‘as if’ (Graeber 2009: 233) a community of sorrowing Sinhala, Muslim and Tamil family members already exits. Given the current impasse that family members of the disappeared in Sri Lanka find themselves in, where both truth and justice seem

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utterly impossible, whether locally or internationally, Sandya allows us to imagine a future in which Sinhala, Tamil, and Muslim women can come together in solidarity across the ethnic divide. In so doing, she allows us to see a future where justice is possible in the present.
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