

“A Showpiece Gesture”: Strategic Legitimation and Commissions of Inquiry in Sri Lanka

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The Sri Lankan government implemented commissions of inquiry between 1977 and 2010. Though several commissions of inquiry produced comprehensive accounts of the violence in Sri Lanka’s civil war, and offered thorough recommendations, they rarely resulted in policy reforms or accountability. What motivated successive administrations in Sri Lanka to hold truth-seeking measures throughout the war? Building on theories concerning the alternative objectives of justice, this article argues that the commissions of inquiry in Sri Lanka were created by the government as strategies of legitimation. Drawing on empirical evidence from fourteen distinct commissions, the article discusses four strategies of legitimation, the impact of these strategies, and the implications of this case for future research on justice processes conducted during civil war.

Keywords truth commissions, commissions of inquiry, Sri Lanka, justice, civil war

Introduction

The Sri Lankan government convened fourteen truth-seeking processes throughout and immediately after its three decade-long civil war. Despite the impressive accounting of human rights violations, and the depth of recommendations in some of the final reports, none of the commissions resulted in transformative government action, policy reform or justice.¹ For example, the Report of the Presidential Truth Commission on Ethnic Violence, 1981-1984 (2002), which examines the early years of violent clashes and the moment when the war first escalated, opens with quotes and passages from truth commission scholars, including Robert I. Rotberg and Alex Boraine, and it references truth commission reports from around the world. It goes on to outline the root causes, the nature and the context of ethnic violence between 1981 and 1984. At the end of the report, in a chapter titled, “National Unity and Reconciliation,” the commissioners reference the findings within reports of previous truth commissions in Guatemala,

El Salvador and South Africa. It is evident that the commissioners in Sri Lanka viewed previous truth commissions around the world as beacons of hope and models of reconciliation for Sri Lankan society (*ibid.*). The 2001 All Island Commission of Inquiry report on involuntary disappearances is similarly thorough and boldly discusses the state as responsible for most of the disappearances in the 1980s and early 1990s. The final recommendations are comprehensive and address both prosecutorial measures and preventative steps necessary for reconciliation. These reports were followed up with little to no action on the part of the Sri Lankan government. What motivated various political administrations in Sri Lanka to hold so many truth-seeking measures during its civil war?

The scholarship on truth-seeking measures in Sri Lanka tends to center on the three regional commissions of inquiry (COI) enacted by President Kumaratunga in 1994 (Hayner 2011; Olsen, Payne, and Reiter 2010; Wiebelhaus-Brahm 2010). The 1994 commissions investigated thousands of enforced disappearances in the early years of the civil war. It is often overlooked that a total of fourteen commissions of inquiry were held in Sri Lanka between 1977 and 2010; thirteen COIs were held during the war, and one was held immediately afterward. The commissions investigated both state human rights violations and abuses committed by the Liberation Tigers of Tamil Eelam (LTTE). The mandates varied, ranging from single incidents to systematic patterns of violence. Many of the commissions produced detailed accounts of the violence, and recommended comprehensive policy reforms, while others never released findings to the public. Transitional justice scholarship to date has not investigated the fourteen commissions in Sri Lanka as linked in any way, or part of a larger pattern. There is also a dearth of research on what prompted the large number of commissions of inquiry, all of which were focused on incidents or periods of mass violence.

Scholarship points to some consistent patterns concerning how and why justice processes emerge when they are held *during armed conflict*. Democracies often hold more human rights prosecutions and implement more truth-seeking measures than non-democracies (Loyle and Binningsbø 2018). Countries where democracy has been consolidated are argued to be more likely to use justice mechanisms during a war, compared to anocracies and autocracies, because domestic audience costs and international commitments tend to have a stronger impact on democratic governments. For example, a high number of trials in democracies may reflect the fact that governments abiding by the rule of law will be more amenable to judicial accountability during a period of conflict (*ibid.*, 454). Does this also hold true for truth-seeking measures? Did Sri Lanka hold several commissions of inquiry during the civil war due to norms and institutions of democratic governance? Perhaps. But the pattern of COIs in Sri Lanka requires a more nuanced explanation. First, Sri Lanka's Polity Scores, which ranged between five and six throughout the war, place it in a category somewhere

between consolidated democracy and full anocracy.² Thus, the conditions argued to prompt justice processes in *consolidated* democracies are unlikely to hold full explanatory power in this case. Second, though we have a sense of why democracies are more likely to utilize prosecutions more than non-democracies during conflict, the incentives for governments to engage in *truth-seeking measures during conflict* are not fully understood. The conditions enabling truth-seeking processes are not necessarily the same as the conditions that prompt human rights prosecutions for the simple reason that the former tends to be tied to goals of restorative justice and the latter to retributive justice. Restorative justice focuses on repairing harms to victims and affected communities. Because it is concerned with the needs of victims, restorative justice usually involves reparations for victims of human rights violations, truth commissions, or customary or traditional forms of justice that are less punitive than criminal justice (McLaughlin et al. 2003). Retributive justice refers to criminal prosecutions of those who perpetrated human rights violations. If democratic governments are argued to be responsive to domestic and international pressures to uphold the rule of law amidst violent conflict, then we would expect to see both prosecutions and truth-seeking mechanisms in these cases. In Sri Lanka, however, the record of prosecutions during the war is incredibly low, and the handful that were held largely transpired under one political leader aiming to entrench her power (Lynch 2018).

Theories on democratic transition (post-authoritarian) tie the incentives for truth-seeking to the nature of the political process and the aims of restoration, reparation and repair. Specifically, truth commissions are often viewed as a political compromise when the balance of power between the outgoing and incoming administrations is relatively equal and there are attempts at power-sharing (Dancy and Poe 2006; Roper and Barria 2009). Additionally, truth commissions tend to emerge after a political transition when there is a push for accountability from transnational advocacy networks, and when truth commissions have been previously established in culturally similar neighboring countries (Kim 2019). Research on post-conflict transitions find that truth-seeking commissions tend to be created by political elites when there is a negotiated settlement, like a peace agreement (Olsen, Payne, and Reiter 2010).

In sum, research demonstrates that justice processes mainly emerge during a war when democratic norms and institutions are in place, while post-conflict and post-authoritarian justice scholarship finds that truth-seeking is often linked to the balance of power during political transition, transnational advocacy pressure and diffusion. Truth-seeking patterns in Sri Lanka do not neatly fit either set of arguments. When justice processes are enacted during a war, motivations and conditions for these justice mechanisms are likely to vary since they are not necessarily tied to the goals of a transitioning society, such as stability, democratization or accountability. The variable incentives driving different forms

of justice and the reality that justice processes may emerge because of incentives entirely divorced from accountability and reconciliation, deserves attention. This article addresses these unique incentives through a study of commissions of inquiry in Sri Lanka's civil war.

The Alternative Objectives of Justice

As the previous discussion illustrates, justice mechanisms that are implemented in democratic transitions are usually driven by key factors, including the balance of power between the old and new regimes, strategic preferences of incoming leaders, strong civil society movements, diffusion and the influence of international actors (Pion-Berlin 1994; Huysse 1995; Dancy and Poe 2006; Sikkink 2011; Kim 2019). Yet, justice processes may also emerge because of conditions that are separate from the conventional goals of a democratic transition. For example, justice policies or justice processes can reflect strategic decisions on the part of political officials who wish to tarnish or eliminate the opposition during an election cycle (Nalepa 2010). Justice processes may also serve as a means for the new administration to consolidate authoritarianism (Loyle and Davenport 2016, 132-33), or maintain authoritarianism by using truth commissions as political cover (Roper and Barria 2009). In the realm of truth-seeking, governments undergoing democratic transitions may promote the denial of past atrocities or prevent full access to information, limiting the reach and impact of a truth commission. A government may also create a highly limited mandate for the truth commission, constrain the participation of civil society, and deny public access to the final report. Finally, if the government does not prioritize security for those participating in the truth commission, the commission may be the target of intimidation and violence, resulting in the diminished effectiveness of its work (Loyle and Davenport 2016, 132; Hayner 2011).

Truth-seeking measures have also been linked to governments' efforts to establish or recover some form of political legitimacy. For example, though they are not traditional transition cases, established democracies confront challenges to their political legitimacy when they commit serious human rights abuses, and truth-seeking can be a means for the government to evolve towards a different legitimating regime (Winter 2013, 226). Truth-seeking is also a powerful tool for governments that aim to signal to foreign audiences that they are part of a legitimate liberal community of states, particularly when a truth commission addresses violence that has occurred across borders (Rowen and Rowen 2017, 95). When prosecutions have failed, have not been held, or public trust in the government has declined, governments may initiate truth-seeking measures as ad hoc mechanisms to increase public perception of an administration's legitimacy (Hegarty 2003; Rolston and Scraton 2005). Finally, some governments

that employ truth commissions to redress domestic violations have been able to successfully signal stability and political legitimacy to international investors (Appel and Loyle 2012, 686). Since truth commissions carry international reputation costs if governments fail to implement them successfully, and because truth commissions are financially burdensome, outside investors have viewed this justice process as a credible signal. For example, states that chose restorative justice measures in the post-conflict period were found to be more likely to receive Foreign Direct Investment (FDI) compared to states that did not choose these justice processes.

Scholarship on the alternative objectives of justice and the incentives driving truth-seeking measures provide a useful foundation for understanding why several commissions of inquiry were implemented throughout Sri Lanka's civil war. Truth-seeking and legitimation often go hand in hand because this form of justice is part of an effort to create a narrative about past violence and it shapes the future identity of the state. Truth-seeking efforts serve as opportunities for the state to legitimize itself in the face of domestic and/or international scrutiny. The COIs in Sri Lanka did not emerge because of balance of power dynamics, transnational advocacy pressure, or diffusion, nor were they created because of robust democratic norms and institutions promoting accountability. On the contrary, the commissions of inquiry throughout the war were tied to attempts on the part of the government to present themselves as legitimate to domestic and international audiences. The swift timing of the COIs shows that administrations responded to domestic or international pressure present at the time. This factor coupled with the outcomes of the COIs, little to no accountability, demonstrate that the COIs were strategic. Though linked in a larger pattern, the strategies of legitimation were not uniform. By examining several commissions of inquiry, this article demonstrates that administrations had various incentives to engage in truth-seeking; commissions of inquiry were created to appear legitimate to domestic audiences who demanded government action, and they were created to appear legitimate to international actors. Four key strategies of legitimation are discussed. First, governments created COIs in direct response to pressure from Sri Lankan citizens who demanded accountability. This shaped COIs only in the early years of the war. As the empirical section of the article illustrates, this strategy to maintain political legitimacy in the face of citizen protest was often accompanied by either the absence of a final report or little to no follow through on the report findings. Second, some administrations were incentivized to engage in truth-seeking to maintain strong relationships with donor governments. Foreign aid was contingent on the Sri Lankan government's ability to demonstrate an improvement in its human rights record, and the investigation of violations was sought by the government to convey the appearance of this outcome. Third, commissions of inquiry were created to consolidate and legitimate the political power of presidential incumbents, and to delegitimize previous administrations.

Fourth, the Sri Lankan government implemented COIs to avoid international monitoring and to deflect criticism, specifically from the United Nations. In effect, the government did not wish to lose face, or be denied privileges from a powerful, liberal community of states.

Sri Lanka serves as a useful case for understanding truth-seeking mechanisms held *during a war* in that in one setting it becomes evident how truth-seeking can be employed by governments not for the purpose of repair or restoration, but rather to seek domestic and international legitimacy. Additionally, given the research on the successful implementation of truth-seeking initiatives to secure FDI in *post-conflict* environments (Appel and Loyle 2012, 686), the outcomes in Sri Lanka generate some interesting insights. Truth-seeking measures were held during the civil war in Sri Lanka, and they did not serve as a credible signal to donor states or international monitoring bodies because none of the reports amounted to tangible reforms or consistent judicial accountability. The aftermath of the commissions examined in this article, little to no action on the part of the government, demonstrates that these bodies were largely smoke screens. Though the gathering of historical evidence provided an accounting of the violations, in the end, commission reports rarely led to human rights prosecutions, acknowledgment, or reparations policies. Despite these poor outcomes, foreign aid donors often did not immediately withdraw their support. In essence, in the case of some commissions of inquiry, the Sri Lankan government was able to temporarily appear legitimate to avoid losing foreign aid.

The empirical evidence in this article is primarily drawn from an analysis of COI reports, COI laws, local human rights reports on the civil war and the commission outcomes, media coverage of the commissions, and reports from international human rights monitoring organizations. Analysis of the COIs also draws on interviews conducted in Colombo in early 2011, a momentous time in Sri Lanka. The civil war had ended only a year and a half earlier, and the 2010 commission of inquiry (The Lessons Learnt and Reconciliation Commission) was underway. The interviews were conducted during a politically sensitive time in the country, therefore, most interviewees wished to remain anonymous. The interviewees included human rights attorneys, staff from victim advocacy organizations, staff from organizations advocating on behalf of families of the disappeared, staff from human rights organizations, and members of the politics and law academic community.

The remainder of this article is organized as follows. First, the article introduces commissions of inquiry in Sri Lanka and the role of strategic legitimation in the creation of these commissions. Second, empirical evidence is presented to illustrate the pattern of legitimation strategies utilized by various political administrations. Third, the article concludes with the implications of the article's argument, and the directions for future research on truth-seeking measures implemented during war.

Strategic Legitimation and Sri Lanka's Commissions of Inquiry

The violence in Sri Lanka that transformed into civil war first emerged in 1971 when the Janatha Vimukthi Peramuna (JVP) waged an insurgency in protest of the economic marginalization of Sinhalese rural youth. After a period of relative calm, violence reignited when Tamils, a minority group and a target of discriminatory policies, organized a call for separatism. The LTTE, a politico-militant group, emerged during this time and by 1983, the violence had transformed into armed conflict between the Sri Lankan government and the LTTE. Though there were efforts to broker peace in the ensuing years, in 1987, the JVP launched a second insurgency and the LTTE continued large scale violence against government and civilian targets (Sriram 2002). The Kumaratunga administration (1994–2005) attempted negotiations with the LTTE and secured two ceasefires, but both ended in failure. The election of Mahinda Rajapaksa to the presidency in 2005 ushered in increasingly authoritarian rule, characterized by fewer checks on the executive, repressive policies, and restrictions on press freedoms. Prior to the end of the war in 2009, conflict between the government and the LTTE became centralized in the northeast of the island. In a matter of months, thousands of civilians died during the violence between these two factions. In May 2009, after close to thirty years of civil war, the government's armed forces defeated the LTTE. Though the war has not reignited in the years since, Tamils living in the north and eastern regions of the country remain disenfranchised.

Truth commissions are argued to provide recognition and acknowledgment after a period of violence or repression, particularly when governments or non-state actors have denied culpability for human rights violations (Hayner 2011, 21). COIs, which were implemented in Sri Lanka throughout the civil war, resemble truth commissions, and, in fact, as a model, largely influenced the modern truth commission, in that they are typically vested with subpoena powers, the authority to hold public or closed hearings and the power to make recommendations in a final report. Unlike truth commissions, they were not created with the sole purpose to investigate human rights violations (Freeman 2006). Commissions of inquiry and truth commissions also differ in that the latter tends to be more victim-centered, focused on many cases as opposed to one incident, and commissioners leading the process are often drawn from a range of backgrounds, as opposed to a domestic judge or panel of ministers.

The Commissions of Inquiry in Sri Lanka investigated serious acts of violence committed by state and non-state groups. They were established through the Presidential Commission of Inquiry Act No. 17 of 1948. The Commission of Inquiry model originated in the United Kingdom with the Tribunal of Inquiry (Evidence) Act of 1921, and since this time, several commonwealth states

Table 1. Commissions of Inquiry in Sri Lanka

Date	Title	Mandate	Report
November 9, 1977	Sansoni Commission (appointed by President Gopallawa)	Communal violence in August and September 1977	July 2, 1980
May 9, 1991	Palampiddi-Iranai Road Inquiry (appointed by President Premadasa)	To inquire if attack on Médecins Sans Frontières (MSF) vehicle by government helicopter was intentional or accidental	June 1991
June 18, 1991	Kokkadicholai Commission (appointed by President Premadasa)	Inquiry into whether death of soldiers by explosion in 1991 and killings of sixty seven civilians nearby were connected	March 9, 1992
January 11, 1991	Presidential Commission of Inquiry (appointed by President Premadasa)	Inquiry into allegations of involuntary removal of persons from their residence	Not published
January 13, 1992	Presidential Commission of Inquiry (appointed by President Premadasa)	Inquiry into allegations of involuntary removal of persons from their residence	Not published
January 25, 1993	Presidential Commission of Inquiry (appointed by President Premadasa)	Inquiry into allegations of involuntary removal of persons from their residence	Not published
September 13, 1993	Presidential Commission of Inquiry (appointed by President D.B. Wijetunga)	To inquire into past involuntary removal of persons during 1991 – 1993	Not published
November 30, 1994	Three Commissions of Inquiry into Disappearances (appointed by President Kumaratunga)	To inquire into disappearances in three regions of the country: Western, Southern and Sabaragamuwa Provinces; Central, North Western, North Central and Uva Provinces; Northern and Eastern Provinces	September 1997
December 15, 1995	Batalanda Commission (appointed by President Kumuratunga)	Detention and disappearance of two police investigators and the use of a detention center as a site for civilian torture	2000
April 30, 1998	All Island Disappearances Commission (appointed by President Kumaratunga)	Involuntary removal of persons (sought to take on what 1994 COIs were unable to finish)	March 2001

Table 1. (continued)

Date	Title	Mandate	Report
July 23, 2000	Presidential Truth Commission on Ethnic Violence in 1981-1984 (appointed by President Kumaratunga)	Gross human rights violations and damage to property during ethnic violence, 1981 – 1984	September 2002
March 8, 2001	Bindunuwewa Commission (appointed by President Kumaratunga)	Detention practices at Bindunuwewa Center and attack on detainees causing serious injury and death	November 2001 (not published)
November 2, 2006	The Commission of Inquiry Appointed to Investigate and Inquire into Serious Violations of Human Rights Which Are Alleged to Have Arisen in Sri Lanka Since August 1 2005 (appointed by President Rajapaksa)	Sixteen cases of human rights violations allegedly committed by both state actors and the LTTE	Not published
August 2010	Lessons Learnt and Reconciliation Commission (appointed by President Rajapaksa)	To inquire into matters occurring between February 21, 2002 and May 19, 2009	December 2011

Source: The information in this table is based on several sources, including Amnesty International 2009, Final Report 1992, Pinto-Jayawardena et al. 2010, Report of the Commission of Inquiry 1980, Report of the Presidential Truth Commission on Ethnic Violence 2002, Sri Lanka 1997a, Sri Lanka 1997b, Sri Lanka 1997c, Sri Lanka 2000, and Sri Lanka 2001.

and former British colonies, including Canada and India, have utilized this mechanism (Freeman 2006; Donohue 2001). As is evident in Table 1, the COIs in Sri Lanka have addressed a range of incidents in terms of the form and scope of violence. For example, the 1994 and 1998 commissions on disappearances investigated thousands of cases, whereas the Palampiddi-Iranai Road Inquiry and the Kokkadicholai Commission examined singular incidents.

The varying mandates across these commissions reflects the fact that the 1948 Commission of Inquiry Act was not specifically aimed at human rights

investigations. Rather, the 1948 act was created to provide the president with a mechanism for establishing inquiries into the administration of public offices or allegations of misconduct against a member of the public sector (Commissions of Inquiry Act No. 17 of 1948 in Sri Lanka). The Act stipulates that the president in office sets the term of reference for COIs, appoint members, add or remove members at their discretion, and cease the operation of the COI at any point. It does not require commission reports to be made public or that the inquiry itself be held in a public sphere (Amnesty International 2009; Pinto-Jayawardena 2010). In 2008, an amendment was added to the Commissions of Inquiry Act (1948), which gave power to the Attorney General to begin criminal proceedings in a court of law based on evidence gathered during a COI. This amendment was long overdue given that thirteen COIs preceded it, and many of the commissions recommended prosecutions in their final reports. Though a handful of prosecutions followed the 1994 COIs, no other prosecutions resulted directly from commission reports, even after the 2008 amendment (Lynch 2018).

The following provides evidence of how governments employed strategic legitimation in the creation of COIs between 1977 and 2010. Each COI illustrates one or a combination of four legitimation strategies employed by the Sri Lankan government: 1) early on in the civil war, in response to public demands for government action, administrations employed strategies to appear legitimate to *domestic* audiences; later administrations created COIs; 2) to appear legitimate to international donors and maintain foreign aid funding; 3) to consolidate incumbent power through the delegitimization of other political leaders; and 4) to uphold international legitimacy by deflecting scrutiny and interference from the United Nations.

The Sansoni Commission (1977)

The COIs created early in Sri Lanka's civil war do not reflect arguments about post-conflict balance of power considerations, nor do they wholly align with during conflict justice theories that suggest consolidated democracies will create justice mechanisms because human rights norms and institutions are in place. The Sansoni Commission was created in response to local demands for accountability, but the commission was conducted in an illegitimate fashion from the start, with no resulting government accountability. In essence, it marks the beginning of a linked pattern throughout the civil war where various administrations implement truth-seeking as part of a political strategy, not a vehicle for justice.

The 1977 Sansoni Commission was the first COI in Sri Lanka to address human rights violations. The commission examined widespread violence that had largely targeted members of the Tamil community. The violence under investigation had followed an election in which the United National Party (UNP) won the majority, and the Tamil United Liberation Front (TULF) became the major opposition party, ousting the predominantly Sinhalese Sri Lanka

Freedom Party (SLFP) (Pinto-Jayawardena 2010). TULF had campaigned with a secessionist platform, and through the election, the party had secured massive support from constituents in the North. President Gopallawa created the Sansoni Commission only a few months after the violence had occurred. Several episodes of ethnic violence and police brutality preceded its creation and a citizen-led effort, the de Kretzer Commission, published a report faulting police actions in the deaths of civilians at a conference in Jaffna (ibid., 68). The Sansoni Commission was created in reaction to the growing violence as well as the strengthening narrative within the public conscience that the government and security sectors were culpable in the deaths of civilians. Once the Sansoni Commission commenced, it was subjected to tremendous political pressure, evidenced by threats to the commissioners, the leading of police witnesses by state counsel, and the questionable admittance of confessions in the proceedings. While perpetrators of the violence were identified in the 1980 report, none were prosecuted, and a short time later, the government introduced the 1982 Indemnity Act (Indemnity Act of 1982). This Act provided protection to officials’ actions during the very time period under investigation. The following passage from the Indemnity Act serves as a key illustration of the stance governments would take regarding accountability going forward:

No action or other legal proceeding whatsoever, whether civil or criminal, shall be instituted in any court of law for or on account of or in respect of any act, matter or thing, whether legal or otherwise, done or purported to be done with a view to restoring law and order during the period August 1, 1977, to August 31, 1977, if done in good faith, by a Minister, Deputy Minister or person holding office under or employed in the service of the Government of Sri Lanka in any capacity whether, naval, military, air force, police or civil, or by any person acting in good faith under the authority of a direction of a Minister, Deputy Minister or a person holding office or so employed and done or purported to be done in the execution of his duty or for the enforcement of law and order or for the public safety or otherwise in the public interest and if any such action or legal proceeding has been instituted in any court of law whether before or after the date of commencement of this Act every such action or legal proceeding shall be deemed to be discharged and made null and void.

Though the Sansoni Commission led to intense scrutiny of security personnel and their actions during the violence of 1977, in the end, those responsible were never held to account in a criminal trial. This COI was an attempt by the administration in power to establish political legitimacy amidst increasing violence and diminishing rule of law (Report of the Commission of Inquiry 1980).

The Palampiddi-Iranai Road Inquiry (1991) and the Kakkadicholai Commission (1991)

The civil war in Sri Lanka escalated dramatically from 1983 to 1991, marked by

increased anti-Tamil violence and the strengthening presence of the LTTE. The Sansoni Commission's decision to name perpetrators likely scared off successive administrations from responding to domestic pressure to investigate human rights violations in the immediate aftermath, because it was not until 1991 that the Sri Lankan government initiated two COIs. The first COI, the Palampiddi-Iranai Road Inquiry, involved government violence toward humanitarian aid workers. As a result, the Premadasa administration faced tremendous international pressure to investigate. On May 3, 1991, a government helicopter attacked a Médecins Sans Frontières (MSF) vehicle traveling down the Palampiddi-Iranai Road. Sustained fire caused serious injury to the vehicle occupants. In an effort to quell serious criticism from the international community, President Premadasa quickly created a COI to investigate the government's actions (Human Rights Watch World Report 1992, 461). The Commission eventually found that MSF staff had not acquired the necessary permission to travel on this particular road, and, citing past incidents in which the LTTE had used vehicles with humanitarian aid agency symbols, it concluded that the government was not culpable for the harms suffered by the aid workers (Pinto-Jayawardena 2010, 72-73). Thus, the desire to appease international pressure led the Sri Lankan government to create a truth-seeking body as a strategy of legitimation. Similar to the Sansoni Commission, all pathways to accountability were closed off via the final report's findings.

A few months later, President Premadasa responded immediately to an episode of mass violence against civilians. In June 1991, in a highly typical example of the type of violence that unfolded throughout Sri Lanka's conflict, sixty-seven civilians were killed by soldiers who were acting out of retaliation for the bombing death of two army personnel just hours before. Six days after the incident, President Premadasa appointed the Kokkadicholai Commission of Inquiry. Premadasa initiated the COI largely in response to local pressure to identify the perpetrators as well as critiques from the international community (Final Report 1992, 74 and 110). The commission mandate recommended that criminal proceedings be issued against responsible members of the Armed Forces (*ibid.*). Soldiers were prosecuted in a military court, and all the accused were acquitted on the basis that there was no evidence directly linking soldiers to the crime. Though a final report was issued, and prosecutions were held, the use of military courts, a body arguably lacking independence in the investigation of security personnel during an ongoing civil war, was later criticized as a violation of international law (Pinto-Jayawardena 2010).

The 1991-1993 Commissions of Inquiry

Between 1991 and 1993, President Premadasa and President Wijetunga initiated commissions of inquiry to investigate allegations concerning a widespread pattern of "involuntary removals" of citizens from their homes. This was the first such action on a growing number of disappearances in the country. Both

administrations were under intense pressure from external actors to clean up their human rights records. Specifically, in 1990, donors increasingly threatened to withdraw support at the Sri Lanka Aid Consortium Meeting in France. Additionally, the pressure for government action was palpable after the UN Working Group on Enforced or Involuntary Disappearances received almost 15,000 cases from Sri Lankan monitors and transmitted 4932 cases to the government of Sri Lanka for investigation (Amnesty International 2009, 10). Though it was laudable that both presidents created commissions to scrutinize crimes committed during their own administrations, in the end, their efforts were fruitless. Final reports were never published for the four commissions, and there were no follow up actions. Despite this, the Sri Lankan government would continue to attempt to preserve legitimacy in the eyes of foreign donors through the creation of COIs.³

Commissions of Inquiry under President Kumaratunga (1994–2001)

President Chandrika Kumaratunga initiated more commissions of inquiry than any other president, but the high number of truth-seeking measures did not reflect a sincere commitment to government accountability. Rather, Kumaratunga employed various strategies of legitimation in her creation of five commissions between 1994 and 2001. In line with literature on the alternative objectives of justice (Nalepa 2010), Kumaratunga created commissions that investigated crimes of prior administrations to delegitimize opposition leaders and consolidate her own political power. In order to appear legitimate to her constituents, she also convened commissions to investigate human rights violations that were committed while she was president. The outcomes of the latter commissions were almost identical to the former. Prosecutions were rarely held, recommendations from the final reports were not carried forward, and reports were often partial or completely shielded from public view. The first three commissions created by Kumaratunga, however, produced some of the most extensive documentation of abuses compared to the other COIs.

In 1994, three COIs were proposed by the administration of Kumaratunga's predecessor, President Wijetunga, to examine widespread disappearances. President Wijetunga was resistant to extend the mandate back to 1988, but when President Kumaratunga won the presidential election in November 1994, she immediately convened three regional commissions to carry out the task (Sri Lanka 1997a, xiv). Kumaratunga ran her presidential campaign on a platform of peace and government accountability and her rapid steps towards this goal appeared, at first, to indicate a shift away from an entrenched culture of impunity in Sri Lanka. The three commissions detailed documentation of 16,800 cases of enforced disappearance. The mandate examined disappearances from January 1, 1988, in three distinct regions of the country: the Western, Southern and Sabaragamuwa Provinces, the Central, North Western, North

Central and Uva Provinces, and the Northern and Eastern Provinces (Sri Lanka 1997a; 1997b; 1997c). Individuals working in the human rights community in Sri Lanka (interviewed in January 2011 in Colombo, Sri Lanka) acknowledged the achievements resulting from these commissions, but many simultaneously questioned whether it was only possible because the 1994 COIs examined abuses committed by *previous* administrations. Vigorous calls for prosecution were evident in each of the three regional COI reports. However, only a few prosecutions were held compared to the vast number of disappearances (Lynch 2018).

Shortly afterward, in 1995, Kumaratunga established the Batalanda Commission of Inquiry. This commission investigated the disappearances of two members of the police force and the creation of an illegal detention center, which was allegedly used as a site for torture between 1988 and 1990 (Sri Lanka 2000). The commission examined the links between politicians, the police force and vigilante groups used by the state to combat the JVP's resurgent violence. During the time of the alleged violations, Ranil Wickremesinghe⁴ held the Minister of Industries position in government. He was identified in the report as abusing his authority by instructing a corporation located at the Batalanda Housing site to release buildings to police officers for purposes contrary to police regulations, namely illegal detainment, and torture (*ibid.*, 119-120). Wickremesinghe was also found responsible for chairing meetings with police officers at this site in which instructions were delivered concerning illegal detention. Several high-rank and low-rank police officers were also named in the final report. Douglas Peiris and four other police officers were eventually convicted in 2009 with light sentences (Pinto-Jayawardena 2010, 106). Though there was significant evidence implicating the named officers and politicians, including Wickremesinghe, the commission was largely viewed as a tactic employed by Kumaratunga to tarnish Wickremesinghe, who was the Leader of the Opposition at the time of the commission's creation. The credibility of the commission was also diminished when police officers, disciplined because of the commission's findings, successfully argued in court that they had been subject to an unfair detention prior to the trial (*ibid.*, 96).

This pattern of creating commissions to discredit political enemies became even more apparent when, a few years later in 1996, President Kumaratunga was pressured to initiate a COI concerning disappearances in Jaffna. In contrast to her zeal to investigate Batalanda, Kumaratunga resisted this call and instead appointed a weaker body, the Board of Investigation into Complaints of Disappearances in Jaffna. Though this Board found that fourteen civilian deaths had been caused by members of the armed forces, no legal action followed, and a formal report was never issued (*ibid.*, 102, 360).

The creation of the 1998 All Island Disappearances Commission suggested strong political will to improve government accountability at first, but this was

followed by weak judicial action against the accused. The 1998 commission's sole purpose was to tackle the disappearance cases, including 10,316 files that the 1994 COIs failed to consider due to time constraints. Its mandate was expanded to the entire island, considered to be a great improvement from the previous commissions. The commission sought to recommend legal proceedings against persons identified as responsible for enforced disappearances (Sri Lanka 2001). The commission's final report implicated agents of the state and paramilitaries acting in collaboration with the government in 4,473 cases. The final report also included some of the most thorough and responsive recommendations to date, including tasking the Sri Lankan Human Rights Commission with identified torture cases; the creation of an independent human rights prosecutor to handle disappearance cases; the creation of a crime of enforced disappearance; and inclusion of the concept of command responsibility in the Penal Code (*ibid.*). None of these recommendations were implemented and only a handful of prosecutions resulted.

A few years later in 2001, Kumaratunga initiated the Presidential Truth Commission on Ethnic Violence (1981-1984). The commission examined gross human rights violations and damage to property during periods of rioting and targeted violence. The report, issued in 2002, was viewed as weak by the human rights community in that evidence was largely gathered from only a handful of sources and there was no attempt to prosecute those responsible (Pinto-Jayawardena 2010, 97-98). The last COI initiated by Kumaratunga concerned extra-judicial killings that transpired under her leadership. The Bindunuwewa Commission, created in 2001, inquired into the deaths of twenty-eight Tamil youth at a rehabilitation center for child soldiers. The commission report identified two senior police officers as responsible for not preventing the killings and it identified junior officers responsible for the deaths. Two officers were convicted on the charge of murder by the High Court in 2003, however, the Supreme Court overturned the convictions in 2005 (Law and Society Trust 2004). The Commission had gathered extensive detail on the crimes, but this was not used as evidence in the trial proceedings and the commission's report was never made available to the public.

Research on the incentives for justice during a democratic transition indicate that truth-seeking often stems from an attempt to create compromise between outgoing and incoming regimes, pressure from transnational advocacy organizations or the diffusion of human rights norms. During conflict justice scholarship points to democratic norms and institutions as key factors prompting justice processes when violence is still underway. As the previous discussion illustrates, the COIs created by Kumaratunga's administration did not reflect either set of arguments. The COIs were implemented as strategies to appear legitimate to her constituents as a newly elected president, and to tarnish the reputation of her predecessor. Truth-seeking initiatives during the Kumaratunga

administration are noteworthy in that some of the COI reports provide detailed historical accounts of human rights violations. The documentation of atrocities during her administration, and made available to the public in most cases, is unparalleled. Yet, recommendations for legal reforms, reparations to victims, and judicial accountability in the commission reports went unheeded by her administration. These commissions were largely smokescreens, no different than the commissions that preceded them.

The 2006 Commission of Inquiry under President Rajapaksa

Pressure from the international community played a more explicit role in the creation of COIs after the Kumaratunga regime. President Mahinda Rajapaksa enacted two commissions, one in 2006 and the Lessons Learnt and Reconciliation Commission after the end of the war in 2010. In 2005, UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Philip Alston, paid a visit to Sri Lanka. He highlighted increased violence in the region, the problem of impunity, and he declared the urgent need for an international monitoring presence (Amnesty International 2009). In conjunction, international donors, including the Swedish government, began to question their provision of funds to Sri Lanka for peace initiatives and human rights training for the armed forces and police since no meaningful change had resulted (*ibid.*, 44). In response to growing international pressure to develop an international monitoring mechanism, President Rajapaksa declared in September 2006 that he would invite an international and independent commission to examine the growing number of disappearances and extrajudicial killings throughout the country. Amidst an enormously positive response to this proclamation from local and international human rights groups, the president changed his tune only a few days later, deciding to appoint the International Independent Group of Eminent Persons (IIGEP) to act as observers to a domestic-led commission of inquiry. Rajapaksa's hasty decision reflected the fact that he was attempting to both appease donor pressure and address concerns from members of his administration about outside intervention from the UN (*ibid.*).

During this time, the European Union (EU) also weighed in on Sri Lanka's human rights record. The EU announced that they would introduce a resolution on Sri Lanka before the UN Human Rights Council concerning the intense escalation of conflict. The Sri Lankan government reacted swiftly by sending a delegation to lobby the EU and member nations to drop the resolution, citing improvements in the human rights situation. Eventually, the resolution was defeated (*The Morning Leader* 2007).

In the end, the 2006 commission of inquiry was tasked with investigating sixteen cases that involved allegations against the LTTE and the security forces. Despite the government's decision to introduce a domestic mechanism in place of an international body, a move that flew in the face of UN and donor country

demands, some sections of civil society held out hope that the commission’s focus on egregious cases would bring about improvements in accountability. Yet, progress on the cases examined by the 2006 COI was remarkably slow. Witnesses were threatened, leading some to flee the country. After months of frustration, several civil society groups that had participated in the COI proceedings, including the Centre for Policy Alternatives, INFORM, the Law and Society Trust, and Mothers and Daughters of Lanka, withdrew from the process (Amnesty International 2009). The IIGEP, which was monitoring the commission, repeatedly expressed concerns that they were unable to conduct their work due to political interference, obstruction, and a lack of access to necessary documents (Centre for Policy Alternatives 2007). Then, in April 2008, the IIGEP withdrew entirely from the COI in protest.

The 2006 COI did not publish a report and by the final months of the war in 2009, only four of the total sixteen cases had received public hearings. In a shocking turn, the 2006 COI determined that Action Contra la Faim was responsible for the deaths of seventeen aid workers because the organization had allowed their employees to work in an area of intense violence (U.S. Department of State 2009). Security forces were exonerated, and blame was placed on the LTTE, despite significant evidence to the contrary.

President Rajapaksa’s creation of an inquiry immediately after UN and donor pressure, and the hurried appointment of a domestic inquiry, instead of the UN-supported international inquiry, signaled from the start that accountability was never the aim. Some members of the Sri Lankan human rights community (interviewed in January 2011 in Colombo, Sri Lanka) viewed the entire process as simply an effort to “placate international opinion”. Thus, while scholarship predicts truth-seeking measures will emerge when there are political transition dynamics, diffusion or strong democratic norms propelling such a process, the conditions prompting the 2006 COI under President Rajapaksa are distinct. Truth-seeking was utilized by the Rajapaksa administration as a tool to deflect international interference and provide a temporary illusion of legitimacy.

The Lessons Learnt and Reconciliation Commission (LLRC)

The Lessons Learnt and Reconciliation Commission (LLRC) was created after the Sri Lankan civil war ended in 2009. It is therefore a post-conflict truth-seeking mechanism, distinct from the other COIs discussed in this article. Research on post-conflict justice mechanisms find that a truth commission is most likely when there is some sort of negotiated settlement like a peace agreement (Olsen, Payne, and Reiter 2010). Yet, the Sri Lankan civil war did not end with a negotiated peace. In May 2009, the Sri Lankan government defeated the LTTE after incredibly high levels of violence concentrated in the northeast region of the country. The creation of the LLRC in 2010, like the other COIs analyzed in this article, does not align with what current scholarship would expect for justice

mechanisms after a civil war. The following demonstrates that while the LLRC is unique from earlier cases in terms of when it was created by political elites, the conditions prompting it continue the pattern of strategic legitimization.

The final months of the civil war in Sri Lanka involved the highest number of civilian casualties. Estimates range between 30,000 and 40,000 deaths, while hundreds of thousands of civilians were displaced and deprived of adequate food, water, and medical care (International Crisis Group 2009). The LLRC was established in August 2010 to inquire into matters occurring between February 21, 2002, and May 19, 2009, to recommend measures to prevent the recurrence of conflict, and to report whether any person, group or institution bore responsibility for the incidents (Ministry of Defense 2010). Local human rights activists and attorneys (interviewed in January 2011 in Colombo, Sri Lanka) argued that the LLRC was established to keep international calls for a war crimes tribunal at bay. Citing similar concerns, Amnesty International, Human Rights Watch and International Crisis Group refused to participate in the commission's proceedings. The LLRC's lack of independence and failure to adequately protect witnesses testifying at the hearings were also cited as evidence of its illegitimacy (Arbour 2010).

In the first months of the commission's proceedings, thousands of people testified in the north and east. One human rights activist (interviewed in January 2011 in Colombo, Sri Lanka) was hopeful that the high number of participants would demonstrate to the government and the commissioners the devastating toll the conflict had inflicted on Sri Lankans. He speculated that if NGOs were presenting all the evidence to the LLRC, it would likely not have the same effect. A Sri Lankan human rights attorney (interviewed in January 2011 in Colombo, Sri Lanka) took a more cynical view, commenting that she did not understand why her fellow citizens "walk blindly" when it comes to commissions of inquiry. She then acknowledged that this is all many people have in terms of an acknowledgment from the government concerning their loss and their suffering. In the end, as she predicted, the LLRC never held perpetrators accountable for the horrific violence committed by the government and the LTTE in the final years of the war.

On November 15, 2011, the LLRC's final report was submitted to the government, and it was released to the public in mid-December. Despite broad evidence of government culpability in civilian deaths, the report's recommendations concerning prosecutions were minimal. The commission concluded that no systematic targeting of civilians transpired on the part of security forces. Where evidence existed of state responsibility for civilian casualties in a few cases, the commission recommended further investigation and prosecution. However, it suggested that the security forces and the Attorney General, who was under scrutiny himself, and who had been critiqued for ignoring past government abuses, lead these investigations.

A few months prior to the report release, in April 2011, a UN panel issued a report on the final months of the Sri Lankan civil war. The report investigated allegations that the government of Sri Lanka was responsible for most of the civilian deaths at the end of the war, and the UN found these allegations to be credible (United Nations 2011). The report recommended the UN Secretary-General promptly establish an independent international mechanism to monitor domestic accountability processes and independently investigate alleged violations. The report also imparted serious criticism of the LLRC, arguing it failed to fulfill international standards of impartiality and independence. The Rajapaksa administration responded to the UN report with disdain, calling it “misleading” and “baseless,” and it announced the Attorney General would prepare a report to counter the allegations (The Sunday Times 2011).

After the Sri Lankan government failed to act on the recommendations of the UN report, in March 2012, the UN Human Rights Council passed a resolution, strongly supported by the U.S., which urged the Sri Lankan government to investigate the deaths of thousands of civilians at the end of the war in May 2009 and to implement all the recommendations set forth in the LLRC final report. The resolution required that the UN High Commissioner for Human Rights report back to the Council in 2013 on whether the government had implemented the recommendations stated in the UN resolution (Cumming-Bruce 2012). The resolution appeared to have emerged out of concern that the government had largely failed to enact commission report recommendations in the past. The Sri Lankan government vehemently opposed the March 2012 resolution and organized a large protest effort before the UN vote, claiming that it had started to implement the LLRC’s recommendations.⁵ Local critics of the LLRC countered that the government was slow to initiate judicial processes and organize reparations to families.

In March 2014, the UN Human Rights Council voted to open investigations into the violence during the years 2002-2011, and a report of findings was issued in September 2015. This report strongly recommended the creation of a hybrid special court that would integrate domestic and international judges, prosecutors and investigators in order to address what it documents as several instances of war crimes committed by both the government and the LTTE. A new administration under President Sirisena commenced in 2015, and though many placed hopes in the regime change, efforts on matters of justice and reconciliation was slow. Nearly three years into the Sirisena administration, the government committed itself to “promoting reconciliation, accountability and human rights in Sri Lanka” via two co-sponsored UNHRC resolutions, Resolutions 30/1 (September 2015) and 34/1 (March 2017) (United Nations 2017). This commitment involved initial steps on four transitional justice mechanisms, including an Office on Missing Persons (OMP), a truth-seeking commission, an Office on Reparations, and a special court with independent counsel. Very little progress was made on the

four justice mechanisms and the initial momentum in 2015 about a formal truth commission evaporated.

The LLRC was created by the Sri Lankan government shortly after the civil war ended in 2009. Though existing transitional justice scholarship would predict the truth-seeking mechanism was linked to a negotiated peace, such a settlement was absent in Sri Lanka. Instead, the LLRC was created by the same conditions prompting a series of COIs throughout the war: an attempt by the government to appease international pressure, primarily from the UN, to deflect scrutiny and avoid international interference on matters of accountability.

Conclusion

Much of the transitional justice literature on truth-seeking in Sri Lanka centers on one set of commissions, the 1994 COIs issued under President Kumaratunga. This article demonstrates the significance of taking a step back to understand the pattern in which this commission and others are embedded. The pattern reveals every administration from the start to the immediate aftermath of the war utilized these commissions as part of a strategy, a calculation to increase the country's legitimacy in the eyes of domestic and international audiences. The swift timing of the COIs shows that administrations responded to domestic or international pressure present at the time. This factor coupled with the outcomes of the COIs, little to no accountability, demonstrate that the COIs were strategic. These strategies of legitimation were hollow in that, while some of the commission reports, including the 1994, 2001 and 2002 commissions, provide comprehensive accounts of the context, nature, and scale of the violence, none of the fourteen commissions led to major policy reforms or sustained accountability. Theories on post-conflict justice tie the incentives for truth-seeking to balance of power considerations, transnational advocacy and diffusion. During conflict justice theories argue that truth-seeking emerges in consolidated democracies when democratic norms and institutions are in place and governments are motivated to respond to demands from their own citizens and the international community. This article provides a more nuanced analysis of how and why political administrations in Sri Lanka were strategically motivated to *appear* legitimate to the scrutinizing eyes within and outside of the country. Since all the commissions of inquiry in Sri Lanka were smokescreens, producing little to no substantive results, the government failed to attain the status of a legitimate actor in the eyes of many in the domestic and international human rights communities. There was little to no follow through on commission report recommendations, and some members of the international community gradually came to see Sri Lanka as a pariah state.

The empirical evidence from this article additionally offers insight on

the need for transitional justice scholarship to investigate the variable factors driving justice processes. For example, post-conflict and during conflict contexts can differ considerably in that the traditional factors surrounding democratic transitions in the former are often not at play in the latter. Scholarship on the alternative objectives of justice demonstrates how often prosecutions, truth-seeking, or other measures, are used as a political tool, or are used to tarnish a political opponent. The repeated installation of commissions of inquiry throughout the war in Sri Lanka indicates an important finding. Given its authoritarian leanings throughout and after the war, the government certainly did not need to convene so many truth-seeking bodies; thus, the commissions served a purpose, a temporary cloak of legitimacy.

An examination of all fourteen COIs also demonstrates a tragic paradox. Some of the reports are incredibly detailed, historically significant, and either directly or indirectly name individual perpetrators or responsible parties. These documents have been in the hands of the public for years, and in some cases, decades. Has strategic legitimation on the part of the government inadvertently left a path open for a reckoning down the line? This is not yet clear. Though the Sirisena administration, ushered in at the 2015 presidential election, initially signaled a shift towards government accountability, it too avoided initiating any concrete examinations of past human rights violations. Gotabaya Rajapaksa was elected president in 2019 and he appointed his brother, the former president Mahinda Rajapaksa, as prime minister. After the country suffered a serious economic downturn in 2021 and 2022, protesters took over the presidential palace in Colombo and President Rajapaksa fled the country. Though the future of democratic governance in Sri Lanka is uncertain, the mountain of evidence concerning perpetrators of war crimes could be utilized to pursue criminal investigations and possibly bring long-awaited accountability.

Future research on justice processes held during a war must include investigations of the alternative objectives of justice, including strategies of legitimation. Demands for accountability do not just occur after a successful democratic transition; the ways in which prosecutions, truth-seeking or other measures manifest during a war can provide tremendous insight on the role and strength of civil society movements, legal norms and institutions, political contexts, foreign policy, and the relationship governments have to the international community.

Notes

1. The commissions of inquiry in Sri Lanka were described by one Sri Lankan human rights activist (interviewed in January 2011 in Colombo, Sri Lanka) as a “showpiece gesture”, created to demonstrate to domestic and international audiences that the

government was doing something in the face of mass violence.

2. See the Polity Project, <http://www.systemicpeace.org/polityproject.html>.
3. In 2010, for example, the year that the Lessons Learned and Reconciliation Commission was formed, the European Union withdrew one of its biggest aid packages to Sri Lanka, the Generalized System of Preferences Plus (GSP+). It was reinstated in 2017.
4. Ranil Wickremesinghe was appointed Interim President in July 2022 after protestors took over the presidential palace in Colombo and President Gotabaya Rajapaksa fled the country (Schmall and Mashal 2022).
5. See also Cronin-Furman's research (2020) on the creation of the LLRC and its links to a coalition-blocking strategy at the UN Human Rights Council.

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