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Promoting and protecting the rights of minorities from descent-based communities:

Access to justice

Mapping out access to justice for persons from descent-based communities in 5 pilot countries Bangladesh, India, Nepal, Pakistan, and Sri-Lanka

19-21 August 2024

**Sri Lanka**

Paper prepared by Nimalka Fernando[[1]](#footnote-1)

**General Background**

Access to justice is a vital element in the democratic process and one of the basic principles of the rule of law. This research is prepared with the aim of bringing some clarity as to the situation regarding access to justice by persons from descent-based communities in Sri-Lanka. It reflects a variety of contexts analysed within the prism of the State’s obligations and commitments under international human rights law to protect, promote, and fulfil the human rights of everyone free of discrimination.

The international obligations of Sri Lanka are rooted in the principles of equality, justice, and dignity as articulated in the *Universal Declaration of Human Rights* (UDHR).[[2]](#footnote-2) The UDHR laid down the foundation for subsequent international human rights treaties, notably the *International Covenant on Civil and Political Rights* (ICCPR) and the *International Covenant on Economic, Social, and Cultural Rights* (ICESCR) of 1966, collectively known as the International Bill of Human Rights which were Ratified by Sri Lanka in 11th June 1980.[[3]](#footnote-3) These core documents explicitly guarantee the right to equality before the law, equal protection against any discrimination, and the right to an effective remedy for violations of fundamental rights.

The UDHR begins with a preamble affirming the inherent dignity and equal rights of all humans as the foundation of freedom, justice, and peace. Article 1 states all human beings are born free and equal in dignity and rights. Article 2 ensures these rights without discrimination, while Article 4 prohibits slavery and servitude.

“The right of equal access to justice for all, including members of vulnerable groups, and reaffirmed the commitment of Member States to taking all necessary steps to provide fair, transparent, effective, non-discriminatory and accountable services that promote access to justice for all”[[4]](#footnote-4) Access to justice/due process requires action in holding perpetrators accountable for violating the human rights of individuals, but also in obtaining redress and preventing aggravated grievances to escalate into conflict. The conditions necessary to guarantee access to justice involve formal and informal normative legal protection mechanisms, legal awareness, legal aid[[5]](#footnote-5) and counsel, adjudication, enforcement, and oversight by national human rights institutions and civil society organisations.[[6]](#footnote-6)

Respecting, protecting, and fulfilling the right to justice/due process with no-discrimination constitute obligations under international human rights law that States have undertaken.[[7]](#footnote-7) Article I of the International Convention on the Elimination of all forms of Racial Discrimination ratified by Pakistan in 1966 specifies that: “ … the term ‘racial discrimination’ shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.”

Related jurisprudence has made it clear that human rights treaty norms also cover descent-based discrimination and that States have therefore a legal obligation under international law to address such discrimination. This has been stated particularly forcefully by the Committee on the Elimination of Racial Discrimination (CERD) in the 2002 General Recommendation No. 29 on descent-based discrimination, in which the Committee concluded that discrimination based on descent covers caste-based discrimination and is thereby covered by the UN Convention on the Elimination of All Forms of Racial Discrimination.[[8]](#footnote-8) This interpretation has been reflected consistently in subsequent country reviews by CERD, and by other human rights treaty bodies, and by the Human Rights Council’s Universal Periodic Review and Special Procedures mechanisms.[[9]](#footnote-9)

Article 8 of the UDHR[[10]](#footnote-10) asserts that "Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted to him by the constitution or by law." This provision establishes an universal right to seek redress through national legal mechanisms when fundamental rights are infringed. Similarly, Article 14 of the ICCPR[[11]](#footnote-11) elaborates on this principle, stating, "All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against them, or of their rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent, and impartial tribunal established by law." This article underscores the importance of equality before the law and guarantees a fair and public hearing by an impartial tribunal in both criminal and civil matters. The principle of equal access to justice for all, including vulnerable groups, is central to these treaties. It obligates Member States to ensure the justice systems to be fair, transparent, effective, non-discriminatory, and accountable. Access to justice entails not only holding violators of human rights accountable but also securing redress for victims and preventing grievances from escalating into conflicts. Essential conditions for ensuring access to justice include robust legal frameworks, legal awareness, access to legal aid, effective adjudication processes, and oversight by national human rights institutions and civil society organizations.

While Sri Lanka has ratified ICERD, it is noteworthy that Article 12(2) of the[*Sri Lankan Constitution*](https://parliament.lk/files/pdf/constitution.pdf)[[12]](#footnote-12) ensures that no person shall be discriminated against on the grounds of race, caste and other grounds. However, it is concerning that the definition of racial discrimination in the Constitution does not encompass all grounds stipulated in Article 1 of ICERD, such as color, or national or ethnic origin. Additionally, the definition does not explicitly prohibit both direct and indirect forms of discrimination.

In 2016, the Committee on the Elimination of Racial Discrimination expressed concern over the absence of information, including statistical data, on complaints of racial discrimination, as well as investigations or prosecutions of perpetrators. The Committee reminded the State party that the absence of complaints does not necessarily indicate the absence of racial discrimination. Rather, it may signify impediments to invoking the rights under the Convention domestically, such as the absence of relevant legislation, lack of public awareness of these rights, and lack of access to, availability of, or confidence in methods to seek judicial recourse. Recalling its *General Recommendation No. 31 (2005)* on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee recommended that the State party adopt legislative and policy measures to ensure the domestic application of the rights outlined in the Convention.

However, the mere adoption of legislation is insufficient. Implementation however effective/ineffective it may be, is deeply analyzed in this Report. Effective implementation, supported by adequate resources and infrastructure, is essential for these laws to bring about meaningful change. Ensuring access to justice for descent-based communities in Sri Lanka requires a sustained commitment to these complementary measures to overcome the deeply entrenched discrimination and to uphold the principles of equality and justice for all.

The existence of caste based communities in Sri Lanka

Sri Lanka poses a paradox in South Asia, while constitutionally the caste system has been abolished and every citizen is equal before the law and is entitled to the same rights research related to poverty and access to resources have revealed the nexus between deprivation and marginalisation/exclusion to be a crucial factor. A closer examination reveals those communities known as depressed caste communities are at the bottom layer of poverty. Studies related to caste-based communities emerged in the mid-eighties focusing on the Tea plantation community who were brought from South India as plantation labour force.[[13]](#footnote-13)

The majority of the plantation workers speak Tamil and is of Indian origin and Hindu by religion and are also identified as case oppressed people*.* They are foced to remain on the plantation enclaves with no interaction possible with the surrounding village populated by the Sinhalese in bonded labour situation. The origins could be traced to regions of South India where caste hierarchy prevailed. They were deprived of citizenship for a long time.

The political exclusion, social marginalisation and economic deprivation of plantation workers was well designed within the growing nationalist political regime of Sri Lanka. Therefore, the discussion on work and descent-based advocacy in South Asia has drawn in experiences of the tea plantation people as the core target in this study. This research therefore will focus on the tea plantation workers primarily.

The right to non-discrimination of persons from descent-based communities is also guaranteed under the minority rights legal framework At the international level, the mechanisms to protect and promote minority rights have been crucial in addressing the rights of persons from descent-based communities.[[14]](#footnote-14) In her 2016 report to the Human Rights Council, the former UN Special Rapporteur on Minority Issues, Rita Izsak, noted that while many caste-affected groups might belong to the same larger ethnic, religious or linguistic community, they often shared minority-like characteristics.[[15]](#footnote-15) The former Special Rapporteur on Minority Issues, Fernand de Varennes has stated in his 2020 report to the General Assembly that “ethnic minorities, through ancestry, descent, origin or lineage, can include individuals recognized because of shared physical characteristics, such as Afro descendants, as well as social castes and similar groups, including Dalits in India (and elsewhere) and the Burakumin of Japan.”[[16]](#footnote-16)

The guidance offered by international law standards and findings of monitoring mechanisms have not remained isolated from national level action. Instead, they have positively influenced standard setting and other work at the national level, interlinking with advocacy that civil society actors and others are pursuing in several countries in South Asia on caste-based discrimination. The CERD recommendation no 29 has undoubtedly contributed to the impact of the tireless efforts carried out at the national level by human rights advocates including the organisers of this mapping out exercise. These efforts do sometimes result in adoption of progressive specific legislation, which when implemented can usher-in remedies for victims, by improving their access to justice; strengthening protection by law enforcement officials and other authorities and by serving as a catalyst for a range of awareness and educational efforts on descent-based discrimination. Unfortunately, adoption of legislation is necessary but not enough. Any legislation is as good as its implementation and guaranteed to fail if not accompanied by complementary measures such as adequate resources and infrastructure.

**The initiative**

OHCHR, in collaboration with the International Dalit Solidarity Network and the Asia Dalit Rights Forum, will seek to map out what currently exist in terms of access to justice in five pilot countries (Bangladesh, India, Nepal, Pakistan, and Sri-Lanka), where descent-based discrimination is most prevalent in South Asia. The initiative will begin with collecting and compiling information on the paths to justice available to persons from descent-based communities in the five named countries and will research and examine (i) what exists in terms of judicial and non-judicial mechanisms and their accessibility and efficacity with respect to persons from descent-based communities (good practices); and (ii) what can be done to strengthen the existing judicial and non-judicial structures and mechanisms at the national level to facilitate access to justice pursuant to these countries’ obligations under international human rights law.

Please note that the language “persons from descent-based communities”, “scheduled castes”, “Dalits” are used interchangeably.

The population composition of Sri Lanka…..

1. Political context

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| **INDICATORS** | **SPECIFICS** |
| Briefly describe the political system of the country and the relevant branches of power/ institutions in relation to the rights of persons from descent-based communities. | Sri Lanka operates as a democratic socialist republic under a presidential system, governed by the latest constitution amended in 2022, marking its 21st amendment since 1978. This foundational document upholds core principles of democracy, sovereignty, and human rights, underscoring the nation's dedication to inclusivity and justice for its diverse populace. [[17]](#footnote-17)  The Executive branch is headed by the President, who serves as both the head of state and the head of government. The President is directly elected by the people and holds significant executive powers. The Prime Minister, appointed by the President, assists in governmental duties and is typically the leader of the majority party or coalition in Parliament.[[18]](#footnote-18)  Sri Lanka's legislative branch is unicameral, consisting of Parliament, which is composed of 225 members elected through a Proportional Representation system. The Parliament is responsible for enacting laws, approving the budget, and overseeing the executive branch.  Chapter 3 of the Constitution specifically affirms the fundamental right to equality before the law and equal protection of all citizens of the country. Section 12(2) states, "No citizen shall be discriminated against on the grounds of race, religion, language, caste, sex, political opinion, place of birth, or any such grounds." It further guarantees that "No person shall on the above grounds be subjected to any disability, liability, restrictions or conditions with regards to access to shops, public restaurants, hotels, places of worship, and public entertainment. “These provisions empower any citizen of Sri Lanka to file a Fundamental Rights (FR) application to the Supreme Court in case of any violation based on their caste or descent. Sri Lanka has also established the Human Rights Commission of Sri Lanka (HRCSL), which plays a crucial role in monitoring human rights violations. Individuals can report violations under Section 12(2) of the Constitution to the HRCSL, which is empowered to investigate and monitor such violations effectively.  The HRCSL was established under the Human Rights Commission of Sri Lanka Act, No. 21 of 1996.[[19]](#footnote-19) It operates independently as a statutory body mandated to investigate complaints of human rights violations, inquire into systematic issues affecting human rights, and promote awareness and education on human rights matters across Sri Lanka. The commission acts as a watchdog to ensure that all individuals, including those from descent-based communities, are treated fairly and equitably under the law. |
| Describe the political positioning of the current Government | In the Sri Lankan context, it's crucial to understand the political landscape post-2019. In the 2019 Presidential Election, Mr. Gotabaya Rajapaksha was elected as the 7th Executive President of Sri Lanka. His party, the Sri Lanka Podujana Peramuna (SLPP), a social democratic party, secured a landslide victory in the 2020 Parliamentary election, thus forming the government.  However, due to rampant corruption and mismanagement of the economy in 2021 Sri Lanka experienced an unprecedented economic crisis as the country became bankrupt. With shortages of essential food items , anti-government protests erupted, with people taking to the streets to express their anger over the government's mismanagement of the economy. The protestors demanded President Gotabaya's immediate resignation to bring about political change. Eventually, Gotabaya fled to Singapore and resigned on 14th July. [[20]](#footnote-20)  During these protests, the Prime Minister and brother of President Gotabaya, Mahinda Rajapaksha, also resigned from his post. Ranil Wickramasinghe, the leader of the United National Party (UNP), a liberal party that had won only one seat in the 2020 elections, was elected as the Prime Minister. The leader of the Opposition had refused to take up the post as the PM declaring that he will not work with a President whom the country is demanding to resign Gotabaya Rajapaksha.  The Constitution provides for the election of a President in the event the incumbent President resigns or dies, from among the Members of Parliament or the Speaker to be sworn in to serve the remaining period until the next Presidential Election. With Gotabaya Rajapaksha in Singapore forwarding his resignation letter Hon,Ranil Wickramasinghe after being elected by the Parlimanet with a majority of votes was sworn in as the 8th Executive President of the country, with the support of a faction of SLPP parliament members in the Parliament.[[21]](#footnote-21) |
| Describe the electoral position – is there an upcoming election or key political events that may influence or alter the stance of key political stakeholders committed to promote the rights of persons from descent-based communities | According to the constitution, Sri Lanka is scheduled to hold its Presidential election in October 2024[[22]](#footnote-22) to elect the 9th Executive President. The leading contenders for this election are Hon Ranil Wickramasinghe, the current President; Hon Sajith Premadasa, the Opposition Leader and leader of the Samagi Jana Balawegaya; and Hon. Anura Kumara Dissanayake, the leader of the Jathika Jana Balawegaya. With no clear frontrunner at this point, the election is expected to be a closely contested battle among these three candidates. Descent-based communities, particularly those in the plantation sector, will play a role in this election, as they comprise about 4% of the population. [[23]](#footnote-23) The support of key leaders from these communities, such as Palani Digambaran, leader of the National Union of Workers, and Jeewan Thondaman, leader of the Ceylon Workers' Congress, will be crucial. Additionally, the votes from descent-based communities in the Jaffna Peninsula and the Northern Province will also be pivotal. The political allegiances of these community leaders and the mobilization of their voter base can significantly influence the election outcomes and the stance of key political stakeholders on promoting the rights of descent-based communities. |
| Describe any key evidence of counterforces that are likely to oppose or discourage adoption or implementation of measures supporting access to justice by persons from descent-based communities | In Sri Lanka, several counterforces may oppose or discourage the adoption or implementation of measures supporting access to justice for persons from descent-based communities. Following the 2019 Easter Bomb attacks, there was a surge in hate and discrimination towards Muslim and Tamil communities, which was evident during the Presidential election as voter turnout became polarized for the two main parties. This social divide, however, was significantly reduced during the Aragalaya protests in 2022. Despite this progress, gaps and inadequacies in the existing legal framework continue to pose significant challenges. The absence of comprehensive anti-discrimination laws and effective enforcement mechanisms can greatly impede efforts to support access to justice for descent-based communities. Without addressing these legal shortcomings, marginalized groups will remain vulnerable to systemic injustices. |

1. State’s Legal framework

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| **Indicator** | **Details** |
| Has the State adopted legislative or policy measures benefiting persons from descent-based communities as regards access to justice?  If yes, please specify the legislation and provide information on its implementation and if no, please mention if the Government has made a general commitment to improve legislative protection for persons from descent-based communities in terms of justice mechanisms. | Yes, Sri Lanka has adopted legislative measures benefiting persons from descent-based communities, specifically addressing access to justice.  One of the primary legislation in this regard is the **Prevention of Social Disabilities Act, No. 21 of 1957.** This Act aims to prevent the imposition of social disabilities on individuals based on their caste and provides a legal framework to penalize such discriminatory practices.  According to the section 02 of this act “Any person who imposes any social disability on any other person by reason of such other person's caste shall be guilty of an offence and shall, on conviction after summary trial before a Magistrate, be liable to imprisonment of either description for a term not exceeding three years with or without a fine not exceeding three thousand rupees” [[24]](#footnote-24)  Section 3 defines various actions that constitute imposing social disabilities, including but not limited to: [[25]](#footnote-25)   * Preventing admission or employment in educational institutions. * Obstructing access to shops, markets, hotels, rest houses, and other public places. * Denying access to public wells, springs, water sources, hairdressing saloons, and laundries. * Discriminating in public transportation and lodging. * Preventing participation in religious worship and ceremonies. * Public officers failing to perform their duties for the benefit of the discriminated individual. * Proprietors or employees of public places subjecting individuals to discrimination.   **The National Human Rights Commission Act, No. 21 of 1996**  The National Human Rights Commission Act, No. 21 of 1996, significantly benefits persons from descent-based communities by establishing the Human Rights Commission of Sri Lanka with a mandate to investigate and address human rights violations, including those arising from caste discrimination. Article 12(1) and (2) of the National Human Rights Commission Act, No. 21 of 1996, empower the Human Rights Commission of Sri Lanka (HRCSL) with significant responsibilities regarding inquiries referred by the Supreme Court. Under Article 12(1), the Supreme Court has the authority to refer any matter arising from the hearing of applications made under Article 126 of the Constitution to the HRCSL for investigation and report. Article 126 deals with fundamental rights applications concerning violations of constitutional rights. Upon receiving such a referral, as stipulated in Article 12(2), the HRCSL is mandated to conduct a thorough inquiry into the matter and subsequently prepare a comprehensive report. This report must be submitted to the Supreme Court within the specified period mentioned in the referral. These provisions underscore the HRCSL's pivotal role in upholding human rights and ensuring judicial oversight and accountability in Sri Lanka's legal framework, thereby contributing to the protection of fundamental freedoms and justice for all individuals.[[26]](#footnote-26)  Furthermore, Sri Lanka has historically adopted two laws related to descent-based communities, specifically the Thesawalame Law for Jaffna Tamils and the Muslim Inhabitant Law.  **Thesawalame Law [[27]](#footnote-27)**  The Tesawalamai Regulation, enacted to give legal effect to the customs of the Malabar inhabitants (Jaffna Tamils) in Sri Lanka's Jaffna province. It is a significant legal framework governing personal, property, and caste-related matters within the community. It mandates that all disputes involving Malabar inhabitants or where a Malabar inhabitant is a party be resolved according to these customs. The regulation specifically addresses the rights and privileges among different castes, emphasizing adherence to ancient usages and traditional practices documented in the Tesawalamai. While acknowledging the regulation's historical importance, it also recognizes that some provisions have been superseded by subsequent legislation, reflecting efforts to integrate traditional customs with modern legal frameworks in Sri Lanka. This regulatory framework thus remains pivotal in understanding and adjudicating legal issues within the Jaffna Tamil community, preserving cultural heritage while adapting to contemporary legal standards.  Key aspects of the Thesawalame Law include:  Property Rights: It governs inheritance, ownership, and transfer of property among Jaffna Tamils. The law provides rules and guidelines on how property is inherited within families.  Personal Rights: It regulates personal matters such as marriage, divorce, and succession based on customary practices observed by the Jaffna Tamil community.  Legal Status: While the Thesawalame Law has been largely recognized and applied in the Northern Province, its application has evolved over time, sometimes in conjunction with Sri Lankan civil law.  **Marriage and Divorce (Muslim) Act No. 13 of 1951**  The Muslim Marriage and Divorce Act (MMDA) of Sri Lanka, enacted in 1951, specifically governs marriage, divorce, and related matters for the Muslim community in the country. It ensures the protection of Muslim religious values in matrimonial affairs as guaranteed by the constitution. Central to the MMDA is the establishment of Quazi courts, overseen by a Board of Quazis and an Advisory Board, which provide legal recourse and adjudication on family matters for Muslims across Sri Lanka. Despite its role in upholding religious traditions, the MMDA has faced significant scrutiny and calls for reform. Critics argue that certain provisions, such as those related to divorce and female guardianship, may be discriminatory and not aligned with constitutional principles of equality. Reform movements advocate for changes that would enhance the efficiency, sensitivity, and fairness of the legal framework, potentially moving towards the establishment of dedicated family courts. This ongoing debate reflects broader efforts to reconcile religious autonomy with constitutional rights and to ensure equitable access to justice for all Sri Lankan citizens, including those within the Muslim community.[[28]](#footnote-28)  **Legal Aid Commission Sri Lanka [[29]](#footnote-29)**  In addition to legislative measures such as the Legal Aid Law and specific Acts governing various aspects of legal aid and rights protection, Sri Lanka has established statutory bodies like the Legal Aid Commission (LAC) to enhance access to justice and legal representation for its citizens. Statutory bodies are entities created by law with defined functions and powers, operating independently or semi-autonomously to fulfill specific public service mandates. These bodies often play a crucial role in complementing legislative frameworks by implementing policies, providing services, and administering resources allocated for their designated purposes.  The Legal Aid Commission of Sri Lanka, established under Legal Aid Law No. 27 of 1978, exemplifies this approach by focusing on delivering legal aid services to deserving individuals, particularly those from low-income backgrounds who may otherwise struggle to afford legal representation. |
| Quote the principal provisions in the national Constitution on discrimination based on descent and access to justice based on equality. | According to the Preamble (SVASTI) of the Constitution of Sri Lanka, which establishes the Democratic Socialist Republic, the nation commits to upholding immutable republican principles such as representative democracy. It guarantees to all its people freedom, equality, justice, fundamental human rights, and the independence of the judiciary. These principles are regarded as an intangible heritage that ensures the dignity and well-being of future generations of Sri Lankans and all people who contribute to building a just and free society. The preamble emphasizes the collective effort towards creating and preserving a society where justice and freedom prevail, reflecting Sri Lanka's commitment to democratic values and human rights on a global scale.  Article 12(1) of the Constitution  All persons are equal before the law and are entitled to the equal protection of the law.  Article 12(2) of the Constitution  No citizen shall be discriminated against on the grounds of race, religion, language, caste, sex, political opinion, place of birth or any one of such grounds:  Provided that it shall be lawful to require a person to acquire within a reasonable time sufficient knowledge of any language as a qualification for any employment or office in the Public, Judicial or Local Government Service or in the service of any Public Corporation, where such knowledge is reasonably necessary for the discharge of the duties of such employment or office:  Provided further that it shall be lawful to require a person to have a sufficient knowledge of any language as a qualification for any such employment or office where no function of that employment or office can be discharged otherwise than with a knowledge of that language.  Article 12(3) of the Constitution  No person shall, on the grounds of race, religion, language, caste, sex or any one of such grounds, be subject to any disability, liability, restriction, or condition with regard to access to shops, public restaurants, hotels, places of public entertainment and places of public worship of his own religion. |
| List and, to the extent possible, describe any known gaps or other problems in the existing policy or legislation affecting effective implementation which could result in securing access to justice. | Although Sri Lanka's Constitution guarantees equality before the law and prohibits discrimination on various grounds, including race, religion, and caste, there is no specific legislation explicitly addressing caste-based discrimination. This legislative gap leaves descent-based communities without robust legal protection against caste-based injustices. According to the Committee on the Elimination of Racial Discrimination, one of the biggest gaps affecting the implementation of access to justice for descent-based communities is the Constitution itself. The current definition of racial discrimination does not encompass all grounds stipulated in Article 1 of the Convention, such as color or national or ethnic origin. Additionally, the definition does not specify the prohibition of both direct and indirect forms of discrimination.  Another significant gap is the National Human Rights Commission in Sri Lanka's vulnerability in addressing human rights violations based on caste and related factors. These issues manifest in various contexts, including discriminatory practices in school admissions, unequal access to resources such as land and drinking water, restrictions on access to places of worship, and denial of political rights.  *Pavithra Tharangi Illeperuma vs Principal, Visaka Vidyalaya Colombo (SC/FR/204/2022) [[30]](#footnote-30)*  *In this case, the Supreme Court determined that the Principal and the Appeals Board of Visaka Vidyalaya violated a young girl’s fundamental rights by refusing her admission to the school. Judge Mahinda Samayawardena announced the decision, with the concurrence of Supreme Court Judges Priyantha Jayawardena and Preethi Padman Surasena. Pavithra Tarangani Ileperuma, the petitioner, filed a fundamental rights petition after her daughter’s application for admission to Grade One in 2022 was rejected without an interview, citing the exhaustion of the religious quota.*  *Authorities assumed the child was Hindu due to her father's religion, although the mother declared she was Buddhist. Despite the petitioner’s appeal, the Appeals Board did not conduct a fair and independent investigation. The child had scored 59 points, surpassing the 53-point cut-off mark for admission. The petitioner argued that her daughter met all the qualifications outlined in the Education Ministry’s circular for Grade One admission.*  *The Supreme Court ordered the Principal to immediately enrol the child in Grade Two or a suitable grade within two weeks. Additionally, the Supreme Court Registrar was directed to forward a copy of the judgment to the Principal immediately*.  *Even though justice prevailed in this case, many similar instances of discrimination in the school admission system in Sri Lanka go unnoticed and unaddressed by the legal system. Numerous families facing such discrimination do not receive justice due to barriers like lack of awareness about legal rights, limited access to legal resources, and fear of retribution. Therefore, it is crucial for the National Human Rights Commission and other relevant bodies to enhance their focus on these issues, ensuring that all children, regardless of their caste or religious background, have equal access to educational opportunities.*  The Prevention of Social Disabilities Act, enacted in 1957 and subsequently amended in 1971, aims to address caste-based discrimination in Sri Lanka.  However, despite these legislative efforts, the implementation of the Act remains ineffective due to several factors. One significant issue is the inadequacy of penalties prescribed under the Act. As of the 1971 amendment, the maximum fine was increased to three thousand rupees, which in today's context is very low (less than 10 USD). This nominal fine does not serve as a sufficient deterrent against caste-based discrimination.  Moreover, the Act's enforcement is hindered by a lack of political will, inadequate resources allocated for implementation, and a general lack of awareness among law enforcement agencies and the judiciary regarding the provisions and importance of combating caste-based discrimination. As a result, complaints filed under the Act often do not lead to meaningful legal action or justice for victims, perpetuating a cycle of impunity and injustice for affected communities.  To effectively address these issues, there is a pressing need for legislative reform. This includes revisiting the Prevention of Social Disabilities Act to increase fines substantially and potentially revising imprisonment terms to ensure they serve as effective deterrents against caste-based discrimination. Additionally, efforts should focus on enhancing awareness and training among law enforcement officials and judicial officers to ensure they are equipped to enforce these laws effectively and fairly. By strengthening both the legal framework and its enforcement mechanisms, Sri Lanka can take meaningful steps towards combating caste-based discrimination and ensuring access to justice for all its citizens.  Securing access to justice for descent-based communities in Sri Lanka remains a significant challenge, exacerbated by gaps and shortcomings in existing policies and legislation. The *case of Mohamed Imaam Mohamed Imran* [[31]](#footnote-31), detained under Sri Lanka's Prevention of Terrorism Act (PTA) without charge for over two years, exemplifies the severe human rights violations faced by individuals from minority and descent-based communities.  *The case of Mohamed Imaam Mohamed Imran*  *The case of Mohamed Imaam Mohamed Imran illustrates the severe human rights issues arising from Sri Lanka's Prevention of Terrorism Act (PTA), which allows prolonged detention without charge and often violates due process guarantees. Imran, a 23-year-old student and breadwinner for his family, has been detained for over two years and eight months without being charged with any internationally recognizable crime or provided with evidence.*  *Imran was initially detained in May 2019 under the pretext of an inquiry promised to be brief. Despite assurances of release, he remains in custody. His family's attempts to provide him food during Ramadan were restricted, and he was denied timely access to basic necessities. Despite legal representation working pro-bono due to financial constraints, Imran has not been formally charged or provided with a detention order, which contravenes his rights to a fair trial and due process under international human rights law and Sri Lanka's constitution.*  Poor implementation of language policy in Sri Lanka exacerbates existing gaps and problems in legislation, severely impacting access to justice for descent-based communities.  Article 12 (2) of the Constitution states that “no citizen shall be discriminated against on the grounds of race, religion, language, caste, sex, political opinion, place of birth or any such grounds”. The Article also provides that it shall be lawful to require language competency as a qualification for employment related to public service. The Article further provides that it is lawful to require a person to have sufficient knowledge of any language as a qualification for any employment where no function of that employment can be discharged without a knowledge of that language. Chapter IV of the Constitution initially recognised the Sinhala language as the official language and, subsequently, the 13th Amendment to the Constitution recognised Tamil as an official language. The 16th Amendment further introduced the languages of administration, maintenance of public records, and transactions of all other business of public institutions.[[32]](#footnote-32)  As such, the Official Language Policy (OLP) reflects the culmination of all these constitutional provisions, i.e., Sinhala and Tamil are both official national languages.[[33]](#footnote-33) It also recognises that public institutions are required to function in both languages. Article 22(1), as amended by the 16th Amendment to the Constitution, recognised Sinhala and Tamil as administrative languages that can be used to maintain public records and transactions of all business by public institutions of all provinces other than the Northern and Eastern Provinces.  In areas such as the Hill Country Tamil (HCT) regions, access to public services is severely hampered because many public servants, particularly in Grama Niladhari Divisions (GNDs), are not proficient in Tamil. This linguistic barrier disproportionately affects plantation workers, where a large proportion of the population belongs to descent-based communities. A study conducted in 2014 in areas such as Ambagamuwa, Panvila and Haliela, where a majority of the population consisted of the HCT community, reports a serious dearth of public officers conversant in the Tamil language.[[34]](#footnote-34) For example, 88.6% of all offices in the Ambagamuwa DSD office were reported as Sinhalese, with only 6.6% being Tamil staff and 3.3% Muslim staff Therefore, plantation workers experience serious difficulties in accessing public services, such as DSDs, GN services, post offices, police stations and public bank services due to the inability to converse effectively with the officials.[[35]](#footnote-35) |

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| **Indicator** | **Assessment Details** |
| Has the State accepted Universal Periodic Review recommendations on descent-based communities as regards access to justice.  Please provide details of UPR recommendations from each cycle as regards equality and access to justice, position of the State, if possible, elaborate the actions taken by the State to implement those recommendations as connected to equality and access to justice. | Sri Lanka concluded its 4th Cycle of the Universal Periodic Review (UPR) during the 42nd Session of the UPR Working Group on Wednesday, February 1st, in Geneva 2023. The National Report of Sri Lanka was prepared by the Ministry of Foreign Affairs with input from various government ministries and agencies. This process was inclusive and broad-based, involving consultations with civil society organizations and the National Human Rights Commission of Sri Lanka. During this session, the Member States put forward 294 recommendations to the Government of Sri Lanka. Among these, three recommendations from Cuba, Georgia, and Turkmenistan addressed issues of discrimination.[[36]](#footnote-36)  All three proposals have supported by Government of Sri Lanka. However, there were no recommendations concerning work and descent-based communities.  During the third cycle of the Universal Periodic Review (UPR), Sri Lanka received 230 recommendations. Many countries, including Norway, addressed the elimination of all forms of discrimination against children and women.[[37]](#footnote-37) However, once again, there were no recommendations concerning work and descent-based communities. |
| Has the State demonstrated interest in implementing the recommendations on equality and access to justice in response to recommendations by UN Treaty Bodies  Please provide details of recommendations from concluding observation of relevant Treaty Committees as regards equality and access to justice and if possible, elaborate the actions taken by the State to implement those recommendations | United Nations treaty bodies have been discussing the repeal of the Prevention of Terrorism Act (PTA) in Sri Lanka for a long time, aiming to ensure equality and access to justice. The 2023 report on the human rights situation in Sri Lanka by the United Nations High Commissioner for Human Rights also highlighted this issue. Sri Lanka has taken steps to repeal the draconian PTA and proposed a new anti-terrorism bill. However, the newly proposed bill has also been deemed unlawful. On March 22, 2023, the government gazetted an Anti-Terrorism Bill designed to replace the Prevention of Terrorism Act No. 48 of 1979. The Office of the High Commissioner for Human Rights (OHCHR) provided a preliminary analysis of the draft law on May 3, 2023, noting that the bill included some positive reforms, such as improving access to bail, removing the admissibility of confessions made to a police officer while in custody, and introducing torture prevention measures, such as regular and unannounced visits to places of detention by the judiciary.  However, the bill raised numerous concerns, including: [[38]](#footnote-38)   1. An overly broad definition of 'terrorism' that could lead to arbitrary interpretations and the criminalization of behaviour protected under the rights to freedom of peaceful assembly and association. 2. The introduction of other terrorism-related offenses, such as the encouragement of terrorism and disseminating terrorist publications, which do not appear to meet the requirements of legality, necessity, proportionality, and non-discrimination. 3. (c) The expansion of military and police powers to arrest and issue detention orders. |
| Has the State indicated its intention to protect, promote and fulfil the rights of access to justice by persons from descent-based communities in its reports to one or more UN human rights reporting procedures.  Has the State made any commitments at any UN forum (for example – in its voluntary national review of SDGs), reports including during the visits of special procedures mechanisms | Not related. |

1. Review of efforts by the State to protect, promote and fulfil the rights of persons from descent-based communities as regards access to justice

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| **Indicator** | **Assessment Details** |
| Has the State made a specific commitment to protect, promote and fulfil the rights of persons from descent-based communities as regards access to justice. | Sri Lanka has made specific commitments to protect and promote the rights of descent-based communities regarding access to justice. One notable commitment is outlined in the 2030 Sustainable Development Agenda, where Sri Lanka pledges to ensure equal access to justice for all, including marginalized and vulnerable groups such as descent-based communities. This commitment underscores efforts to address historical inequalities and ensure equitable access to legal remedies and justice mechanisms for all segments of society in Sri Lanka. |
| Has the State made sufficient resources available to protect, promote and fulfil the rights of persons from descent-based communities and their access to justice.  Please describe policies adopted by the Government, budget allocations, and programmes to benefit persons from descent-based communities and their access to justice. | As of the available information, Sri Lanka has not made sufficient resources available to adequately protect, promote, and fulfil the rights of persons from descent-based communities and their access to justice. There are no specific budget allocations in the national budget dedicated solely to the protection and promotion of the rights of descent-based communities. Funding for human rights initiatives is generally spread across various programs and ministries without a clear focus on these communities. |
| Has the State made a general commitment to improve human rights protection and access to justice | Sri Lanka has made commitments to improve human rights protection and access to justice, although the progress has varied over time and has been subject to international scrutiny. Sri Lanka, as a dualist legal system, has ratified several key international human rights conventions. These include the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the Convention on the Rights of the Child (CRC), the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW), the Convention for the Protection of All Persons from Enforced Disappearance (CED), and the Convention on the Rights of Persons with Disabilities (CRPD). These commitments underpin Sri Lanka's obligations to uphold human rights standards on the international stage. |
| Has the State made a general and/or specific commitment to tackle inequality | One of the primary issues facing descent-based communities in Sri Lanka, particularly those residing in the plantation sector, is the inadequacy of their daily wage. In 2021, under the directive of President Gotabaya Rajapaksa, a gazette issued [[39]](#footnote-39) by Labour Ministry Secretary M.P.D. Mapa established a daily wage of 1,000 rupees for workers in Sri Lanka's plantation sector. This change followed approval from the Wages Board on March 1st, stipulating a basic wage increase to 900 rupees with an additional 100 rupees as a budgetary allowance, effective from March 5th. At that time, 1,000 rupees was equivalent to approximately three US dollars per day. However, the severe economic crisis the country subsequently faced rendered this amount insufficient. In response to the ongoing financial challenges, President Ranil Wickremesinghe announced on May 1st, 2024, an increase in the daily wage of plantation workers to 1,700 rupees[[40]](#footnote-40) . He emphasized his steadfast commitment to addressing the difficulties faced by the plantation community and reiterated his dedication to upholding their rights throughout his presidency.  Despite its commitments, Sri Lanka has struggled to allocate sufficient resources to protect, promote, and fulfil the rights of descent-based communities. For instance, the Human Rights Commission of Sri Lanka, which plays a crucial role in addressing human rights violations, including those affecting descent-based communities, has often faced funding shortages. This underfunding restricts its capacity to conduct thorough investigations, provide necessary training, and implement its recommendations effectively. Reports indicate that the Legal Aid Commission of Sri Lanka, which aims to provide free legal services to marginalized communities, also suffers from inadequate funding, limiting its ability to reach individuals in remote and underserved areas. |

1. Engagement of civil society organizations and NHRIs as regards access to justice by persons from descent-based communities

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| **Indicator** | **Assessment Details** |
| How descent-based community led civil society organizations are working? Have civil society organisations established a coalition advocating for rights of descent-based communities. | In Sri Lanka, there are no descent-based community-led civil society organizations (CSOs) specifically dedicated to advocating for the rights of these communities. However, prominent CSOs like the International Movement against All forms of Discrimination and Racism Asia Committee (IMADR AC) have undertaken significant grassroots work to elevate this issue to a national level. Collaborating with international bodies such as the International Dalit Solidarity Network and the Asia Dalit Forum, as well as local organizations like the Human Development Organization in Kandy, they have conducted extensive research to identify and address caste-based discrimination.  These efforts have focused on raising awareness, providing legal aid, conducting advocacy campaigns, and engaging with policymakers to highlight the challenges faced by descent-based communities. While there is no formal coalition solely dedicated to descent-based community rights, these collaborative efforts underscore ongoing initiatives to promote equality and access to justice for marginalized communities in Sri Lanka. |
| How have/are National Human Rights Institutions contributed/contributing to protecting, promoting and fulfilling the rights of persons from descent-based communities to access justice? | On June 26, 2024, during a meeting with Mr. Gehan Gunathilaka, Commissioner of the Human Rights Commission of Sri Lanka (HRCSL), the discussion highlighted the role of national human rights institutions in protecting, promoting, and fulfilling the rights of persons from descent-based communities to access justice. Mr. Gunathilaka emphasized two key points:  1. Focus on UN Treaty Body Recommendations: Rather than solely relying on Universal Periodic Review (UPR) recommendations, the HRCSL prioritizes and pressures the Government of Sri Lanka to implement recommendations from United Nations treaty bodies. These recommendations are seen as crucial for addressing systemic issues and ensuring compliance with international human rights standards.  2. Establishment of Sub-Committees: The HRCSL has established sub-committees in the Hill Country of Sri Lanka and in the Ratnapura district specifically to address discrimination against work and descent communities. These sub-committees are likely dedicated to conducting investigations, monitoring violations, providing advocacy, and proposing policy recommendations to mitigate discrimination and improve access to justice for these communities.  These initiatives underscore the HRCSL's proactive approach in tackling caste-based discrimination and advancing the rights of descent-based communities in Sri Lanka. By leveraging international human rights mechanisms and establishing local sub-committees, the HRCSL aims to have a direct impact on improving the human rights situation for marginalized groups within the country. |
| Is there a specific equality body established for promoting and protecting the rights of persons from descent-based communities including by securing their access to justice? If yes, please describe them and explain how they are functioning? Has the Government provided sufficient resources? | No. |

**Conclusions**

* Sri Lanka faces significant challenges in ensuring equal access to justice and protecting the rights of descent-based communities.
* While legislative frameworks such as the Prevention of Social Disabilities Act aim to address caste-based discrimination, gaps in implementation and enforcement persist, hindering effective protection.
* The National Human Rights Commission of Sri Lanka plays a crucial role in advocating for these communities, utilizing international human rights mechanisms and establishing local sub-committees to monitor and address discrimination. Despite these efforts, the absence of specific civil society organizations led by descent-based communities themselves underscores a gap in grassroots advocacy and representation.

International organizations and broader civil society groups have collaborated to raise awareness and advocate for policy changes, but a dedicated coalition focused solely on descent-based community rights remains lacking.

* Sri Lanka's commitments under international human rights frameworks, including the Sustainable Development Goals and various UN treaties, highlight a broader intent to improve human rights protections. However, resource constraints and uneven implementation challenge the realization of these commitments, particularly in marginalized communities.
* In conclusion, while there are legislative and institutional frameworks in place to protect descent-based communities' rights in Sri Lanka, concerted efforts are needed to bridge gaps in implementation, strengthen civil society engagement, allocate sufficient resources, and ensure effective enforcement of existing laws. Addressing these challenges is essential to advancing equality, justice, and human rights for all Sri Lankans, irrespective of their descent or community background.

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1. Nimalka Fernando is a Lawyer and Member of the Women’s Rights Network on Women, Peace and Security in South Asia

   This paper is a contribution to the workshop as posted and shared by OHCHR and does not imply its endorsement by OHCHR. [↑](#footnote-ref-1)
2. United Nations General Assembly. (1948). Universal Declaration of Human Rights. General Assembly resolution 217 A, 10 December, Paris. [↑](#footnote-ref-2)
3. Ministry of Foreign Affairs. (n.d.). Ratification of International Human Rights Treaties - Sri Lanka. Available at: https://mfa.gov.lk/overview/ [↑](#footnote-ref-3)
4. https://www.un.org/ruleoflaw/thematic-areas/access-to-justice-and-rule-of-law-institutions/access-to-justice/ [↑](#footnote-ref-4)
5. See United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, https://www.unodc.org/documents/justice-and-prison-reform/UN\_principles\_and\_guidlines\_on\_access\_to\_legal\_aid.pdf [↑](#footnote-ref-5)
6. <https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-basic-principles-justice-victims-crime-and-abuse>; https://www.undp.org/sites/g/files/zskgke326/files/publications/Justice\_PN\_En.pdf [↑](#footnote-ref-6)
7. See Article 14 of the International Covenant on Civil and Political Rights

   The ICJ Declaration on Access to Justice and Right to a Remedy in International Human Rights Systems at https://www.icj.org/wp-content/uploads/2013/02/Congress-Declaration-adoptedFINAL.pdf [↑](#footnote-ref-7)
8. https://tbinternet.ohchr.org/\_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCERD%2FGEC%2F7501&Lang=en [↑](#footnote-ref-8)
9. See, https://idsn.org/wp-content/uploads/2022/01/UNcompilation-Jan-2022-Web.pdf [↑](#footnote-ref-9)
10. United Nations General Assembly. (1948). Universal Declaration of Human Rights, Article 8. [↑](#footnote-ref-10)
11. United Nations General Assembly. (1966). International Covenant on Civil and Political Rights, Article 14. [↑](#footnote-ref-11)
12. Sri Lanka. (1978). The Constitution of the Democratic Socialist Republic of Sri Lanka, Article 12(2). [↑](#footnote-ref-12)
13. *Chandrabose A.S. Sivapragasam P.P (2015) , Red Colour of Tea, Central Issues that Impact the Plnatation Community in Sri Lanka, HDO Pub, Sri Lanka)* [↑](#footnote-ref-13)
14. See, Guidance Tool on Descent-Based Discrimination: Key Challenges and Strategic Approaches to Combat Caste-Based and Analogous Forms of Discrimination” Available at https://www.ohchr.org/Documents/Issues/Minorities/GuidanceToolDiscrimination.pdf. The Tool adds to the draft United Nations Principles and Guidelines for the Effective Elimination of Discrimination Based on Work and Descent by bringing concrete suggestions for actions to address this type of discrimination. [↑](#footnote-ref-14)
15. A/HRC/31/56, para. 21 [↑](#footnote-ref-15)
16. (A/75/211, para. 70 (d)). [↑](#footnote-ref-16)
17. [↑](#footnote-ref-17)
18. [↑](#footnote-ref-18)
19. The Human Rights Commission of Sri Lanka (HRCSL) is an independent Commission established in 1997 pursuant to the enactment of the Human Rights Commission Act No. 21 of 1996 (The Act). The Act No. 21 of 1996 sets out the legal basis and operational principles of the HRCSL. The HRCSL is referred to in the Constitution of Sri Lanka, but it is not formally established by the Constitution. The Chairperson and Members of the Commission are appointed as per the Constitutional provisions. [↑](#footnote-ref-19)
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26. [↑](#footnote-ref-26)
27. The Thesawalame. (9th December, 1806) [↑](#footnote-ref-27)
28. [↑](#footnote-ref-28)
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37. UN Human Rights Council. (2017). UPR of Sri Lanka (3rd Cycle – 28th Session): Thematic List of Recommendations. [↑](#footnote-ref-37)
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