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Visit to Sri Lanka

Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence**

Summary

In the present report, the former Special Rapporteur on the promotion of truth, justice, reparations and guarantees of non-recurrence, Pablo de Greiff, examines the progress made in implementing transitional justice measures in Sri Lanka following the 25-year conflict that ended in May 2009.

In the report, the Special Rapporteur acknowledges the capacities developed by civil society and parts of the Government in addressing transitional justice issues and notes the progress made in some areas, including the establishment of the Secretariat for Coordinating Reconciliation Mechanisms, the creation of the Office on Missing Persons and the Office for Reparations and the opening up of space for discussion about transitional justice.

Despite the opportunities for genuine change and reform, the Special Rapporteur notes the Government's failure to adopt and implement a comprehensive transitional justice policy with the four constitutive elements of truth, justice, reparation and guarantees of non-recurrence. Progress has been hindered by a lack of commitment on the part of the Government. As a result, Sri Lanka appears to have missed an historic opportunity to provide lessons to the world about how sustainable peace ought to be achieved.

The Special Rapporteur concludes with recommendations addressed to the Government concerning confidence-building measures, truth-seeking mechanisms, accountability, reparation programmes and guarantees of non-recurrence.

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** The summary of the report is being circulated in all official languages. The report itself, which is annexed to the summary, is being circulated in the language of submission only.

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Annex

Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence on his visit to Sri Lanka

I. Introduction

1. In his capacity as Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff visited Sri Lanka from 10 to 23 October 2017, at the invitation of the Government, to review the progress made by the Government in the areas of truth-seeking, justice, reparation and guarantees of non-recurrence and to advise the authorities and Sri Lankan society on efforts to provide redress for past massive gross violations and abuses.

2. The Special Rapporteur had previously conducted four other trips to Sri Lanka, at the invitation of the Government, to provide advisory services, during the course of which he was able to follow the developments since March 2015.

3. While cognizant of the ongoing human rights situation in Sri Lanka and the political and security developments since his 2017 visit (the Kandy incidents in February 2018, the dissolution of the Government coalition following the political events of October 2018, the barbaric terrorist attacks on Easter Sunday 2019 and the subsequent declaration of a state of emergency), in the present report the Special Rapporteur focuses mainly on assessing the progress made in the implementation of transitional justice measures since his first visit in March 2015.

4. The five invitations to visit the country demonstrate the willingness of the Government to engage in a constructive dialogue, for which the Special Rapporteur expresses appreciation. He also thanks the United Nations country team, its successive Resident Coordinators and the Senior Human Rights Adviser and his team for supporting the visits.

5. In Colombo, the Special Rapporteur had the honour of being received by the President, Maithripala Sirisena, and the Prime Minister, Ranil Wickremesinghe. He also met other high-level government officials, including the ministers responsible for foreign affairs, finance, the media, law and order, southern development, national coexistence, dialogue, official languages, prison reform, rehabilitation, resettlement, Hindu religious affairs, justice and education. In addition, he met the Secretary to the President, the Secretary of Defence, the Speaker of Parliament, representatives of the Sectoral Oversight Committee on Legal Affairs and the Media and of the Sectoral Oversight Committee on Reconciliation and North and East Reconstruction, the Chief Justice, the Attorney General, the Chief of Defence Staff, the Commander of the Army, the Commander of the Air Force, the Commander of the Navy, the Chief of National Intelligence, the Inspector General of Police, the Chair of the Victim and Witness Protection Authority, the Secretary-General of the Secretariat for Coordinating Reconciliation Mechanisms, the Director-General of the Office for National Unity and Reconciliation, representatives of the Human Rights Commission, the National Police Commission, the diplomatic community, academia, civil society organizations and victims' groups, members of religious communities and political parties and many others. At the local level, he exchanged views with the Governors of the Northern Province and the Eastern Province.

6. The Special Rapporteur travelled extensively throughout the country. He held discussions in Aluthgama, Jaffna, Kilinochchi, Mannar, Matara, Mullaitivu, Puttalam and Trincomalee and visited locations emblematic for being sites of violations and abuses, memorialization and land disputes. He met with numerous victims and members of their families, some of whom had travelled from afar. The Special Rapporteur expresses deep gratitude to victims from all communities who, yet again, shared recollections of very painful experiences of violations and abuse, most of which remain unredressed. Together with other members of civil society, they have kept transitional justice issues alive through

the peaks and troughs of what remains an unfinished process. Their persistence in the face of often incomprehensible difficulties and lack of attention is admirable and inspirational.

7. In November 2017, the Special Rapporteur shared his preliminary findings[1] and was encouraged, at the time, by the willingness of some government officials to cooperate and acknowledge that more concerted action was needed. Since then, despite the establishment of the Office on Missing Persons and the Office for Reparations, the Government of Sri Lanka has not moved towards a genuine comprehensive transitional justice policy, nor has it taken ownership of the aspiration to do so. It would be a serious mistake to use the tragic events of 2019 as an excuse to sidestep issues of accountability and redress, let alone to backtrack on hard-won gains. The present report was sent to the Government for comments on 28 August 2019 and was finalized on 24 January 2020.

II. Background

8. Following a conflict that lasted over more than 25 years, on 19 May 2009 the President of Sri Lanka declared an end to the civil war between the Government and the Liberation Tigers of Tamil Eelam (Tamil Tigers). While the North and East of the country were the most affected regions, the prolonged conflict had left no community untouched. The immediate post-war period brought with it the possibility of reconciliation; however, neither reconciliation nor accountability were actively pursued.

9. During the last stage of the conflict, thousands of civilians died or suffered various types of violations at the hands of both sides in the conflict. Those violations included thousands of documented cases of enforced disappearance, arbitrary detention, extrajudicial killing and sexual violence, all of which precipitated massive internal displacement.[2] The precise number of victims still remains to be established through extensive and reliable investigations.

10. The Special Rapporteur has noted the tendency to discuss transitional justice in Sri Lanka as if it concerned only victims of the conflict with the Tamil Tigers and, in turn, as if it affected only the Sinhala and Tamil communities. Doing so leaves out the Muslim and other religious communities that have been affected by the conflict. One need only recall the expulsion of Muslims from Jaffna in 1990, from land that had been theirs for generations, and the lukewarm embrace they received from the majority community.

11. Sri Lanka has a history of violence and human rights violations and abuses that long predates the beginning of the recent conflict. It would be a gross simplification – and a form of manipulation – to reduce that history to an intercommunal dimension. Indeed, it should be recalled that the 1971 insurrection, the 1987–1989 violence and the violence perpetrated by the Tamil Tigers against Tamils, are examples of intracommunal violence.

12. Sri Lanka has suffered not only from poor intercommunal relations but also from weak institutions that have either facilitated violence, violations or abuses, or that have found themselves incapable of ensuring accountability even for intracommunal manifestations of violence. Hence, in Sri Lanka all communities have victims.

13. In a context in which there should be a generalized (even if not symmetrical) interest in providing redress and in preventing violence across communities, a comprehensive transitional justice policy that seeks to satisfy, promote and protect the rights to truth, justice, reparation and guarantees of non-recurrence (as a matter of fundamental rights, that is, regardless of any consideration other than that a human right has been violated or abused) could make a significant contribution to the recognition of victims, not only in light of their suffering (as plentiful as it has been) but, crucially, by virtue of their being equal rights holders. Moreover, such a policy could help establish minimum conditions of trust,

[1] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22274&LangID=E.

[2] A/HRC/30/61. See also the outcome of the investigation of the Office of the United Nations High Commissioner for Human Rights (OHCHR) on Sri Lanka (available from www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session30/Pages/ListReports.aspx).

especially in State institutions, and could contribute to strengthening the rule of law, social cohesion and reconciliation.[3]

14. Given the conflict-inducing nature of unaddressed massive violations,[4] the cycles of violence and recent events in Sri Lanka, such a comprehensive redress and prevention policy is particularly important.

15. The January 2015 presidential elections offered a chance for lasting peace, justice and reconciliation. The President, a member of the Sri Lanka Freedom Party, formed a coalition with the United National Party, bringing the two largest Sinhala parties together for the first time since independence. As part of its 100-day programme, the Government committed itself to undergoing constitutional reform, strengthening oversight bodies, recognizing the right to information as a fundamental right, addressing pervasive corruption and engaging with the international community to address the past and provide accountability.

16. Also in 2015, the temporary lapse in cooperation with the international human rights architecture also came to an end. Sri Lanka supported the adoption of Human Rights Council resolution 30/1, voluntarily committing itself to providing redress for past massive violations and abuses that occurred during and after the armed conflict. These commitments included the establishment of a truth commission, an office on missing persons, a reparations programme and an independent judicial mechanism, with international participation, to investigate allegations of violations of human rights and of international humanitarian law. The resolution's adoption was seen as a major achievement for the country's journey towards peace, reconciliation and accountability. The Government committed itself to establishing transitional justice measures over a two-year period (which elapsed in 2017) and reaffirmed its commitments twice, in Council resolutions 34/1 of 2017 and 40/1 of 2019.

17. Since 2015, the country has continued to engage actively with various United Nations entities and a broad range of international actors and international civil society organizations.

18. Moreover, Sri Lanka ratified the International Convention for the Protection of all Persons from Enforced Disappearance and the Convention on the Rights of Persons with Disabilities in 2016 and acceded to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 2017.

19. The Special Rapporteur highlights the Government's open engagement with his mandate and with other special procedures, having extended a standing invitation in 2015 and having received 10 visits since then (all of which have made recommendations with which the Special Rapporteur concurs).[5] It also engages with the treaty bodies and has actively participated in the universal periodic review process. This willingness has resulted in unprecedented levels of international support.

20. At one point, the hope was that Sri Lanka could provide lessons to the world about how sustainable peace ought to be achieved, underscoring the view that a military victory does not – not by a wide margin – settle all questions about how people can best live together.

III. General considerations

21. Both civil society and parts of the Government have been on a very steep learning curve regarding transitional justice. Sri Lankan civil society, with its characteristic courage, persistence and very high capacity, continues to be present – albeit as an insufficiently tapped resource, making crucial contributions to transitional justice debates. The Government has also built its capacity on the topic, especially through the Secretariat for Coordinating Reconciliation Mechanisms and its technical working groups. All are crucial

[3] A/HRC/21/46.

[4] See *Pathways for Peace: Inclusive Approaches to Preventing Violent Conflict* (Washington, D.C., United Nations and World Bank, 2017), chap. 4 especially.

[5] A/HRC/34/54/Add.2, A/HRC/35/31/Add.1, A/HRC/39/45/Add.2 and A/HRC/40/52/Add.3.

for the design and implementation of the robust and comprehensive transitional justice policy Sri Lanka has committed itself to achieving.

22. The Consultation Task Force on Reconciliation Mechanisms was established by the Government but run entirely by deeply committed members of civil society. In an extraordinarily short period, without pre-existing structures and sometimes with only limited government support, the Task Force has established its presence broadly and deeply, including at the local level. This is the most comprehensive effort to capture the views of victims and others on transitional justice questions. The Task Force's report[6] should certainly be part of all conversations regarding the design of transitional justice measures.

23. The Special Rapporteur notes the progress achieved in the creation – albeit after a long delay and insufficient consultations – of the Office on Missing Persons and the appointment of commissioners in 2018, for a period of three years. The Office has held six consultations with stakeholders around the country, offered technical training on investigations to staff, adopted a communications campaign, issued a first interim report and opened 4 of its planned 12 regional offices.

24. He also notes the establishment of the Office for Reparations and the appointment of commissioners in April 2019. The Office for Reparations Act (Act No. 34 of 2018) clarifies some linkages with the Office on Missing Persons, which is important. In its first interim report, the Office on Missing Persons identified the provision of short-term relief to families of victims as a priority (the Government committed SL Rs 6,000, equal to $33.04, per month per family until finally requiring a 2019 budget allocation of SL Rs 500 million, equal to $2,754,062) clarifying that "interim relief in the form of welfare or other measures does not amount to reparations. Victims retain their right to reparations even if they accept interim relief from the State". This is a point that should be continuously stressed.[7]

25. The final observable change from early 2015 to late 2017 is the opening up of space for discussing transitional justice with more stakeholders, including youth groups, academic institutions, the media, the diaspora and the armed forces. However, the constitutional crises and their aftershocks have led to an abrupt shrinking of that space and a temporary near-shuttering of the Secretariat for Coordinating Reconciliation Mechanisms. Changes in the Ministry of Foreign Affairs too have led to a hardened tone on human rights, as witnessed during the fortieth session of the Human Rights Council, in March 2019.

26. It is evident that this list of achievements does not include most of the priority measures that the Special Rapporteur mentioned at the end of his first visit, in 2015,[8] which shows how painfully slow progress has been. Those priorities had been articulated by the Government in its 100-day programme and were shared with the international community in Human Rights Council resolution 30/1, co-sponsored by Sri Lanka.

27. Some of the pending confidence-building measures that would facilitate the adoption of a comprehensive transitional justice policy include: the release of land, the replacement of the Prevention of Terrorism Act with legislation that complies with human rights standards, the establishment of a mechanism to review expeditiously the cases of persons held under the Act and the cessation of overbearing and intimidating forms of surveillance, especially against women, human rights activists and persons involved in memorialization initiatives in the North and East.

28. In addition, none of the constituent elements of a transitional justice policy, namely, justice initiatives, truth-seeking mechanisms, reparations programmes and guarantees of non-recurrence are fully in place. The failure to achieve progress constitutes denial of justice for victims.

[6] The report was available from the websites of the Task Force and of the Secretariat for Coordinating Reconciliation Mechanisms, but these have been taken down by the present government. The human rights action plan that was posted on the website of the Prime Minister's Office has also been removed. The report of the Task Force can still be found at https://sitesatrisksl.wordpress.com/2016/05/11/secretariat-for-coordinating-reconciliation-mechanisms/amp/?__twitter_impression=true.

[7] See https://docs.wixstatic.com/ugd/bd81c0_3a8b43afeb334c66b2233cbeac3b3fcf.pdf.

[8] See www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=15820&LangID=E.

29. Although victims pay the highest price for this lack of progress, society as a whole pays a significant price as well. The delays raise questions about the Government's commitment to undertaking a comprehensive transitional justice programme and undermine trust, which is not plentiful, as demonstrated by continued incidents of inter-ethnic violence. Moreover, the delays have additional spillover consequences. To illustrate, although some of the land occupied by the armed forces has been returned, the lack of clarity and comprehensiveness of the process – in which the armed forces are both a party and the judge – has serious consequences not only for those directly affected but also, more generally, for economic development. The underlying problem uncovers a weak regime of property rights that is also a great disincentive for foreign investors. The fact that the judicial system is so backlogged and slow (a 2017 study pointed to a 17-year delay)[9] only compounds the difficulties.

30. Furthermore, delays in the design and implementation of a comprehensive transitional justice policy make its adoption more arduous over time, for the reasons set out below.

31. Delays have caused transitional justice to become entangled in partisan politics, while it ought to be dealing solely with questions of fundamental rights.

32. In a highly polarized context, the absence of a comprehensive plan with foreseeable provisions for the rights to truth, justice, reparation and guarantees of non-recurrence has made an easy target of transitional justice, and of human rights more broadly. In the absence of a clear and transparent plan, public debates on transitional justice generate apprehension and fear, without the information to assuage them.

33. Discussions about transitional justice in Sri Lanka have increasingly suffered from various forms of distortion. For example, they have sometimes focused on the final days of the conflict, when they should be broader. In addition, the debate has been unhelpfully, gradually and purposefully narrowed to a discussion of the nationality of judges in accountability mechanisms. This politicization has also led to an increased "ethnicization" of the transitional justice project, which has been represented as a boon for only one minority group and as a threat for the majority community.

34. In light of the aforementioned risks, the lack of an informed debate proactively supported by the Government is difficult to understand.[10] The costs of delays can be measured in terms of rights violations and of human suffering (often involving victims in all communities that have been neglected for decades) past, present and future, given that failing to address the past promptly risks fuelling new cycles of violence, as history has repeatedly shown.

IV. Truth-seeking mechanisms

35. Sri Lanka is no stranger to truth-seeking mechanisms, having had far more commissions of inquiry into human rights violations, especially disappearances, than most countries. Some of those commissions have unearthed significant information, stimulated public debate and, occasionally, made useful recommendations. The view of critics that such commissions have been established to deflect international pressure and calls for judicial investigations, however, is given credence by the commissions' weak mandates, problematic membership, lack of resources, procedural opacity, poor collaboration from the Government, lack of publicity of some of their reports and the overall lack of implementation of their recommendations.

36. Previous commissions have not contributed to closing the significant confidence gap among communities, restoring the rights of victims or making State institutions more

[9] See www.parliament.lk/uploads/comreports/1510738363068517.pdf.

[10] The view that the Government could have exercised greater ownership of the project and engaged in more forward-looking planning and in much more effective communication and debate takes on board the fact that Sri Lanka has faced serious security concerns and also that, after 2015, the Government embarked simultaneously on a constitutional reform process. In any event, it is not clear that the slow and wavering pace on accountability and redress has made the security or the constitutional challenges more manageable – indeed, the Special Rapporteur argues to the contrary.

trustworthy.[11] The scarce demand for accountability in a country, like Sri Lanka, with a history of repeated violations, is perhaps the strongest indication of their lack of success.

37. The commissions have generally been criticized, to varying extents, for their lack of independence, manipulation of evidence, inadequate access or linguistic incompetence, and questionable guarantees for participants, given the absence of a witness protection programme.[12] The cumulative effect of these commissions has been to increase mistrust in the Government's determination to genuinely redress violations. At this critical juncture, the country cannot afford to simply reproduce an approach characterized by the proliferation of largely unrelated and inconsequential ad hoc initiatives.

38. A non-exhaustive list of commissions would include:

(a) The Sansoni Commission, which investigated the violence that took place in August and September 1977;

(b) The Presidential commissions inquiring into the involuntary removal of persons during 1991–1993;[13]

(c) The three "zonal" commissions of inquiry into disappearances that took place in three different areas of the country in 1994, which received 27,526 complaints and determined that, of those they had time to examine, 16,800 amounted to enforced disappearances, many victims of which involved minors and youths. The commissions reported on the victimization of women, the involvement of government officials and senior politicians in the violations and the existence of evidence indicative of the identities of several perpetrators, and advocated for prosecutions;[14]

(d) The 1998 "all-island" disappearances commission, which was tasked with completing the work that the "zonal" commissions had not been able to conclude and which recorded 10,400 more cases of disappearance;

(e) The Udalagama Commission, which was established in 2006 to investigate 16 cases;[15]

(f) The 2010 Lessons Learned and Reconciliation Commission, which was established to look into the failure of the 2002 ceasefire agreement and subsequent events until 19 May 2009, determine responsibilities and make recommendations on restitution and institutional reforms to guarantee non-recurrence;[16]

[11] This view is supported by national and international organizations. The Consultation Task Force on Reconciliation Mechanisms has reported on the widespread criticisms voiced by the victims of the Lessons Learned and Reconciliation Commission and Panaragama Commission. See also www.amnesty.org/download/Documents/48000/asa370052009eng.pdf and www.icj.org/wp-content/uploads/2013/01/ICJ-Srilanka-Report.pdf.

[12] Through the Assistance to and Protection of Victims of Crime and Witnesses Act (Act No. 4 of 2015), a national authority and a police department division for the protection of victims and witnesses were established. The design of the institution was criticized nationally and internationally. See, e.g., http://war-victims-map.org/wp-content/uploads/2017/02/CTF-Final-Report-Volume-I-Nov-16.pdf.

[13] By the time these commissions had been established, the Working Group on Enforced and Involuntary Disappearances had already received almost 15,000 Sri Lankan cases and transmitted almost 5,000 to the Government.

[14] *Interim Reports of the Commission of Inquiry into the Involuntary Removal or Disappearance of Persons in the Western, Southern and Sabaragamuwa Provinces* (Department of Government Printing, Sri Lanka, 1997).

[15] The commission was "accompanied" by a 12-member international independent group of eminent persons that resigned in protest in 2008. The commission only issued reports on 7 of the 16 cases assigned to it. See https://sitesatrisksl.wordpress.com/2016/05/11/secretariat-for-coordinating-reconciliation-mechanisms/amp/?__twitter_impression=true.

[16] Report of the Lessons Learned and Reconciliation Commission (November 2011), pp.5 ff. See https://sitesatrisksl.wordpress.com/2016/05/11/secretariat-for-coordinating-reconciliation-mechanisms/amp/?__twitter_impression=true.

(g) The 2013 Panaragama Commission, to investigate 24,000 cases of disappearances and allegations of war crimes.[17]

39. The Government of Sri Lanka has committed itself to establishing a truth commission.[18] While, in March 2017, the authorities announced that draft legislation on such a commission would soon be presented to the Cabinet of Ministers, two years later the Minister of Foreign Affairs informed the Human Rights Council that the draft legislation was still under consideration by the Cabinet.

40. Until such time as the draft has become publicly available for consultation, important questions remain, including about the commission's structure, its temporal and substantive scope, its investigatory powers and its authority to refer cases for criminal prosecution and grant amnesties.[19] In addition, the Government has not given a timeline for setting up the commission, nor has it provided information about the mechanism for selecting commissioners and other pertinent issues.[20]

41. The Special Rapporteur stresses the significant potential contribution of truth commissions to providing redress for massive violations and abuses when implemented as part of a comprehensive transitional justice policy.

42. Since a truth commission will strive to gain credibility against the background of defeated expectations and the aforementioned ad hoc mechanisms, it would be strategic to emphasize its institutional coordination role, including in terms of following up on implementation.[21] The mandate of the truth commission must clarify the differences and complementarities with the Office on Missing Persons.[22] It should work together with that Office to identify patterns of violations and abuses and must cooperate with the Office for Reparations to identify patterns of victimhood and the needs of victims.

43. Considerable work remains to be done on the issue of disappearances. Despite ratification of the International Convention for the Protection of All Persons from Enforced Disappearance, the criminalization of enforced disappearances under domestic law remains inadequate. No observable progress has been made on pending cases, including habeas corpus applications into the disappearance of Tamil Tigers and members of their families who surrendered during the final days of the war.[23] Most worryingly, the recurrence of disappearances following the change in Government has raised serious questions about the ability and willingness to end the practice all together.[24] The Special Rapporteur urges the Government to implement the recommendations made by the Working Group on Enforced or Involuntary Disappearances and to continue implementing those of the Office on Missing Persons.

V. Accountability and criminal justice

44. During his visit, the Special Rapporteur heard from victims, lawyers, judges and other legal practitioners, among others, about the multiple challenges to achieving

[17] The two reports of this heavily criticized commission are available at https://sitesatrisksl.wordpress.com/2016/05/11/secretariat-for-coordinating-reconciliation-mechanisms/amp/?__twitter_impression=true.

[18] This commitment is reflected in Human Rights Council resolution 30/1.

[19] The United Nations considers the granting of amnesties for international crimes such as violations of international human rights law and international humanitarian law to contravene international legal obligations.

[20] A/HRC/24/42. The Special Rapporteur encourages the Government to consult with the national Human Rights Commission in this regard.

[21] Information does not guarantee transformation, as evidenced by the lack of implementation of the recommendations made by OHCHR on the basis of its investigation on Sri Lanka (available from www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session30/Pages/ListReports.aspx).

[22] A/HRC/24/42.

[23] The demonstrations that have now lasted two years, held in the North, most prominently in Kilinochi, have remained without a response from the Government.

[24] According to the Working Group on Enforced Disappearances, during and after the conflict, enforced disappearances were still carried out for purely economic purposes such as extortion by some State officials and affiliated paramilitaries (A/HRC/33/51/Add.2). New cases have come to light since.

accountability through the criminal justice system. Other special procedure mandate holders, including those mentioned above, have received this information. The Special Rapporteur, on the basis of the dismal record of accountability in the country, is strongly of the view that, in its current state, the criminal justice system in Sri Lanka is inadequate and flawed.[25]

45. Regrettably, the zeal showed in combating crimes against the State is often absent when State agents are the presumed perpetrators. The Office of the United Nations High Commissioner for Human Rights (OHCHR) has tracked more than 20 emblematic cases, including the killing of 5 youth in Trincomalee in 2006, the disappearance of 11 youth in 2008 and 2009, the killing of 17 humanitarian workers in Muttur in 2006, the assassination of Members of Parliament Joseph Pararajasingham and Nadarajah Raviraj in 2005 and 2006 and the killing of journalist Lashanta Wickremantunge in 2009. No progress has been made in the investigations of these cases.

46. The Attorney General informed the Special Rapporteur of efforts to investigate some of these cases and problems encountered in obtaining evidence, witnesses and military records. While some of these challenges are certainly serious, it is hard to accept that they alone can explain the decade-long lack of progress.

47. The factors underlying the poor performance of the criminal justice system are manifold. They include inadequate administrative procedures, such as the non-consecutive nature of trial hearings; inadequate personnel management, with frequent transfers of judges, which increases delays; insufficient human and material resources; and unresolved challenges relating to the political sensitivity of these cases.

48. There is a combination of insufficient investigative capacity in the police force, which leads investigations at the level of non-summary inquiries; dispersed forensic expertise; a lack of accountability among judicial medical officers, who work as independent consultants without access to centralized records or document management support; and a limited role played by the Office of the Attorney General in the early stages of an investigation, which thwarts progress. Even basic elements such as the preservation of information is often inadequate, with evidence and documentation on key cases reportedly being lost during natural disasters, something that could be prevented through the digitization and protected custody of those materials. It is unusual for middle-income countries like Sri Lanka to have such problems.

49. Sri Lanka urgently needs to improve its scant expertise on the investigation and prosecution of “system crimes”, in other words crimes that involve the systematic and coordinated use of State organs and that result in large-scale violations and abuses of international human rights or international humanitarian law. This would include specialized expertise on investigations, forensics and the design of prosecutorial strategies. Improving judicial capacities regarding system crimes is as necessary as it is urgent.

50. The Special Rapporteur strongly encourages the Government of Sri Lanka to consider restructuring the Office of the Attorney General, which currently acts both as public prosecutor and as attorney for the State. This dual role risks creating conflicts of interest when addressing crimes committed by State officials. The authority of the Attorney General to continue or suspend investigations, and to assign venues for criminal procedures – which, in a linguistically and ethnically diverse and fractious society, plays an almost

[25] The Special Rapporteur cannot endorse the recommendations of each special procedure individually but does so globally. He fully endorses the call for the urgent repeal of the Prevention of Terrorism Act, which is seen to have enabled serious human rights violations (including long-term administrative detention, lack of access to a defence and admissibility of confessions) and its replacement by counter-terrorism legislation fully compliant with international standards. The Act continues to be implemented in respect of people who have already been or are currently being taken into custody under the Act (in some cases without indictment and for as long as 14 years). See, e.g., the October 2016 submission of the Human Rights Commission of Sri Lanka to the Committee against Torture (www.hrcsl.lk/wp-content/uploads/2020/01/Report-to-CAT-Committee-.pdf) and the letter dated 26 October 2018 from the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism addressed to the Permanent Representative of Sri Lanka to the United Nations Office and other international organizations in Geneva (https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=24155).

determining role in whether progress is made in a case – is largely unaccountable and compounds the difficulties. Moreover, the Office plays a role in litigation as well as in the drafting of legislation and the examination of its constitutionality, which gives it strong influence in the elaboration and application of laws. Over time, an institutional culture seems to have developed that sees the Office as the judicial arm of the State, rather than as the protector of the individual rights of citizens.

51. Many countries with similar criminal justice systems have opted to separate these two functions of the Office of the Attorney General. One plausible strategy would be to create an independent public prosecution service. In a criminal justice system faced with several problems (long-lasting impunity, massive violations, ethnic divisions, security threats, inadequate protection for victims and witnesses and protracted procedures), the current design of the Office is one of the greatest challenges. Without a radical structural transformation of the Office, it is unlikely that the criminal justice system will achieve significant progress.[26]

52. These structural and legal challenges make sensitive cases extremely vulnerable to political interference in the form of procrastination, which is often enough to ensure that cases remain unsolved. Historically weak divisions of power and, more generally, weak institutions with powers and responsibilities that are not carried out ex officio but only upon specific request of or clearance by a higher authority make the Office of the Attorney General, as it is currently structured, particularly unsuited to the country's needs.

53. Considering the past record of the criminal justice system, its abiding serious challenges and the absence of determined action on the part of the Government to break the long history of impunity, it is difficult for the Special Rapporteur to understand the Government's opposition to any form of internationalized judicial mechanism.

VI. Reparations

54. In the Office for Reparations Act, it is recognized that "a comprehensive reparations scheme anchored in the rights of all Sri Lankans to an effective remedy will contribute to the promotion of reconciliation for the wellbeing, and security of all Sri Lankans including future generations". The Office's objectives are to recommend to the Cabinet of Ministers policies on reparations to grant individual and collective reparations to "aggrieved persons" and to facilitate and implement such policies, including special measures on public education, on memorialization and on children, youth, women, victims of sexual violence and persons with disabilities. The Act sets out the need to ensure the compatibility of the Office with other mechanisms aimed at reconciliation and to monitor and evaluate the progress of delivery of reparations to eligible "aggrieved persons".

55. The Special Rapporteur considers the establishment of the Office for Reparations to be an important initiative and welcomes the fact that the Ministry of Finance has made budgetary provisions for it.[27] He wishes to offer the following reminders, for Sri Lanka is not a stranger to reparations programmes:

(a) Like the other elements of a comprehensive transitional justice policy, reparations work best in tandem with the rest. For a measure to be reparative, it must be accompanied by truth, acknowledgment, justice and guarantees of non-recurrence. The previous claim that victims prefer development to reparations has turned out to be false. Victims have an interest in, a need for and a right to reparations;

(b) Reparation schemes can fail to satisfy that right if other justice-related measures are absent and/or if there are inequities in the selection of beneficiaries and benefits or in the order in which claims are satisfied, and/or if procedures are not victim-friendly. The Government of Sri Lanka has invested in reparations mainly through compensation initiatives carried out by the Rehabilitation of Persons, Properties and

[26] In this comparative argument, the Special Rapporteur does not criticize the performance of individual attorney generals but underscores, rather, the structural problem.

[27] In July 2019, the Office provided compensation (SL Rs 265 million) to victims of the Easter Sunday attacks and their families.

Industries Authority, established by Act No. 29 of 1987, from which many lessons can be learned. Through the Payment of Compensation to Most Affected Persons, a government scheme established in 1988, compensation was paid for death or injury resulting from ethnic violence, terrorist activities and security operations carried out after July 1983.[28] The scheme granted surviving spouses and children SL Rs 50,000 ($800), or SL Rs 600,000 ($9,600) if the victim was a minister, governor, member of Parliament or chief minister.[29] There were also other inequalities in the criteria used for accessing compensation. The families of alleged terrorists did not receive compensation and, since it was the police force that determined who were the terrorists, if the State security forces were responsible for the killing, it was assumed that the person had terrorist links. As the Southern Commission has noted, most of those who suffered from terrorism in 1988 and 1989 received no compensation;[30]

(c) There are lessons to be learned from earlier experiences about the relationship between reparations claims and criminal proceedings. For instance, the provision of reparations was used to shield perpetrators from prosecution: to apply for compensation from the Rehabilitation of Persons, Properties and Industries Authority, relatives of persons disappeared or killed needed to provide copies of complaints filed to the police. If victims made reference to a perpetrator by name, the compensation process would come to a halt and the case would have to move to a court. By signing the Authority's form, victims would recognize lack of knowledge of the perpetrators. Years later, when cases were filed and victims testified about the identity of the perpetrators, the defence counsel used their earlier statement on the compensation form to impugn their credibility;

(d) Previous experiences with reparations were arguably affected by political considerations, including patronage.

56. The Special Rapporteur reiterates that the socially integrative potential of reparations could be undermined, as of all transitional justice measures could, if these measures are used as instruments of "turn-taking". The only relevant consideration in determining access to reparations should be the violation of a right; all other considerations, including ethnicity and religious or political affiliation, should be irrelevant.[31]

57. In granting reparations, attention needs to be paid to the restitution of property. The Government has made substantial progress on the restitution of land confiscated by the military. However, the information it has communicated about the exact amount released has been confusing. For example, in March 2019 the Government objected to figures contained in a report of the United Nations High Commissioner for Human Rights, figures that had been provided by the Government itself. The Special Rapporteur wishes to avoid discussing specific figures but reiterates that the Government has yet to present a clear mapping of the private and public land occupied by the military and to address the problem of that land's restitution. There is no mechanism in place to adjudicate land claims. Until now, the armed forces alone seem to have been the ones to determine which areas of land are to be returned and when. Local courts seem unable to function independently and impartially on this crucial issue, and their decisions often appear driven by considerations related to ethnic, political or religious objectives, which has further exacerbated mistrust and tensions among the affected communities.

58. The continued occupation of land and the Government's inability to settle this issue comprehensively has prompted victims' groups to stage protests, mostly in the North of the country. The Special Rapporteur had the opportunity to meet such protesters during his visit. He was informed that the occupation of land continued to have a significant impact on the thousands of persons who had been internally displaced at various stages of the conflict,

[28] *Interim Reports of the Commission of Inquiry into the Involuntary Removal or Disappearance of Persons in the Western, Southern and Sabaragamuwa Provinces* (Department of Government Printing, Sri Lanka, 1997), p. 37.

[29] Ibid., p. 38.

[30] Ibid. The government elected in 1994 instructed officials to process all applications for compensation.

[31] The recent Supreme Court decision on the constitutionality of the Office for Reparations Act requested the replacement of references to "human rights violations" in the Act, with 'aggrieved person', which is not a promising signal of a shared understanding of reparations.

many of them multiple times. Although progress had been made on resettlement, over 40,000 persons were yet to be resettled. Internally displaced persons have expressed a strong desire to return to their places of origin. The occupation of land by the military, sometimes for economic activities, coupled with the presence of landmines, the lack of titles and other documentation, and the deliberate resettlement of southern Sinhalese people in the North are preventing the return of displaced people, whose access to education, livelihoods and voting rights are consequently compromised. They are also exposed to harassment by host communities and face inadequate access to employment and even sanitation. The failure to address land disputes has also posed serious challenges for the implementation of the National Policy on Durable Solutions for Conflict-Affected Displacement, approved by the Cabinet in August 2016.[32]

59. The Special Rapporteur was further informed that there had been little or no consultation with internally displaced persons during the relocation process and that, in many cases, the land provided for their resettlement was not suitable for livelihood activities. Additionally, the newly constructed houses lacked access to basic services and infrastructure, including roads, schools and hospitals. In some cases, government compensation to repair destroyed houses had proved insufficient to meet costs, fuelling a debt crisis.

60. Taking into consideration the huge impact that the conflict and violations have had on women, the Special Rapporteur urges the Office for Reparations, in developing its policies and guidelines, to conduct specific consultations throughout the country, seeking the views of victims, families of victims, communities and others, especially the tens of thousands of widows and other female victims in the country, so that reparations provide concrete remedies to victims, promote reconciliation and assist in restoring public trust in the State.

61. Reparations also include rehabilitation measures. The Special Rapporteur met victims from different ethnic and religious communities across the country and persons victimized during different periods of violence, who had experienced prolonged suffering, an agonizing absence of information and dismissive, unresponsive or "transaction-focused" bureaucrats, as well as negative and unsuccessful experiences with ad hoc mechanisms. These mechanisms were cited by many victims as sources of retraumatization. Psychosocial support is a critical foundation on which communities can build their recovery and is essential not only for mobilizing participation in transitional justice mechanisms but, more broadly, for enabling people to engage with others on a secure footing. Nowhere is the claim of the transformational potential of reparations more justified than with regard to the type of psychosocial support that may help victims overcome trauma. Transitional justice measures are meant to strengthen the idea that people are rights holders.

62. Psychosocial support is needed throughout Sri Lanka but particularly in the North and East, where trauma and tensions have been exacerbated by official denials of the suffering experienced by Tamil civilians during the civil war, the presence of uniformed personnel and other forms of surveillance, the proliferation of victory monuments and the obstacles to local forms of memorialization. Civil society representatives have pointed out that existing psychosocial support is unevenly distributed, citing a lack of support for the Muslim community and for victims of sexual and gender-based violence, and a reluctance of former Tamil Tigers to seek such support for fear of scrutiny from security personnel. They have also cited a dearth of Tamil-speaking counsellors.

63. Since the need for psychological support is mentioned in both the Office for Reparations Act and the August 2018 interim report of the Office on Missing Persons,[33] the Special Rapporteur will not belabour the point in the present report, except to reiterate that psychosocial support will ring hollow unless changes are made to other factors affecting the levels of stress and suffering of the victims. In addition, given the slow pace of the operationalization of the Office on Missing Persons and the Office for Reparations, means of establishing victims' assistance programmes, including psychosocial support, before full-fledged reparations are made, should be considered.

[32] A/HRC/34/20, para. 49. See also http://nirmin.gov.lk/web/images/pdf/national-policy-on-durable-solutions.pdf.

[33] See https://docs.wixstatic.com/ugd/bd81c0_3a8b43afeb334c66b2233cbeac3b3fcf.pdf.

64. Preventing people from accessing or building memorials or from carrying out memorialization activities, or occupying their space with memorials they do not identify with, can be unhelpful, even harmful. Although there is no obligation on Governments to support or even tolerate activities that, for instance, incite violence or hatred and that in the use of shared space there is no hard and fast distinction between the private and the public, the local and the non-local, it is still possible to make a distinction between policies that are prudently supportive and inclusive and those that are not.

65. The Government in Colombo seems to be aware of these distinctions and has partly relaxed restrictions on memorialization in the North and East. In 2018 and 2019, on 30 August, the Office on Missing Persons commemorated the International Day of the Victims of Enforced Disappearances with the participation of the family members of the disappeared. At the local level, however, surveillance, intimidation and arrests continue to hamper memorialization activities; family members of victims do not have access to memorials and monuments, some of which have been deliberately destroyed; and the prohibition on the memorialization of fallen Tamil Tigers persists. Grieving families have expressed the need to bury or destroy photographs of their deceased loved ones in uniform for fear of harassment by the security forces. The contrast with several sizable, ostentatious displays of military victory could not be starker. Predictably, victims find this dynamic retraumatizing and alienating.

66. The Office for Reparations Act includes a reference to memorials under "collective reparations" and the Office on Missing Persons, in its interim report, argues explicitly that Sri Lanka needs to recognize victims of disappearance belonging to all communities. The Special Rapporteur highlights that, in its work on memorialization, the Office for Reparations should engage in close consultation with victims and place greater emphasis on policies that enable local memorialization rather than exercising a centrally run, top-down memorialization policy.

VII. Guarantees of non-recurrence

67. A framework approach to the prevention of human rights violations seeks to systematize and establish links between efforts.[34] In the case of Sri Lanka, taking such an approach would be an important antidote to the prevailing forms of "ad hoc-ism".

68. Many transitioning societies have embarked on ambitious projects of constitutional reform or writing. A central part of the above-mentioned 100-day programme of the President was constitutional reform, which officially started in January 2016 with a public consultation process. Many measures that have great prevention potential and relevance for transitional justice – including the incorporation of a fundamental rights chapter, along with the establishment of a constitutional court; the strengthening of judicial independence; and reforms of the security sector for a post-conflict era – could have been considered as part of these reforms.

69. In practice, the constitutional reform process has mainly focused on three areas: the abolition of the executive presidency, the adoption of a new electoral system and the strengthening of provincial devolution. These are certainly important issues. Focusing predominantly on these three issues, however, has made the constitutional reform project less ambitious and less compelling for the entire population. Failure to establish the linkages between the constitutional and the transitional justice agendas has worsened the prospects for both. Despite invaluable contributions by experts, civil society representatives and some government officials, progress on constitutional reform has not been much more notable than the progress on transitional justice.

70. The Special Rapporteur has already argued that the future of justice initiatives in Sri Lanka depends on the reform of the Office of the Attorney General and, in particular, on the separation of investigatory and prosecutorial functions from State advocacy. Guaranteeing non-recurrence in the Sri Lankan context will similarly involve strengthening judicial independence.

[34] A/HRC/30/42.

71. No discussion about judicial independence in Sri Lanka can omit a reference to the Supreme Court decision of 13 December 2018 ruling that the President's attempted dissolution of Parliament in November 2018, which followed the attempted dismissal of the Prime Minister in October 2018, was unconstitutional. This decision shows the progress that the judiciary has made in upholding the rule of law, the principle of the separation of powers and constitutional and fundamental rights.

72. Judicial independence, however, needs to be institutionalized. In general, good governance cannot rely solely, or even mainly, on individuals of great virtue and extraordinary courage. Constitutional recognition of the judiciary as an independent power (enshrined in article 4 of the Constitution, especially subparagraph (c)) can be strengthened and, while progress has been made in terms of the appointments to the High Courts (through the adoption of the nineteenth amendment to the Constitution in 2015), a lot of work remains to be done regarding security of tenure,[35] conditions of service,[36] personnel administration and disciplinary matters in the judiciary, including promotions and dismissals,[37] as well as training on international crimes.[38]

73. Like many countries that have experienced protracted conflict, Sri Lanka has ended up with a large, unwieldy and expensive security sector, in which the typical functional distinctions between internal policing and public order roles and external defence roles are blurred and where intelligence functions, under constitutional provisions, reporting to civilian authorities and with judicial oversight, have become unconstrained.[39] A situation of internal conflict in which the armed forces are given extensive powers to regulate civilian lives leads to the weakening of civilian institutions, including the police, oversight bodies and even the civilian dimensions of the Ministry of Defence. Such a situation usually results in the forces becoming autonomous from the State's other branches of power and to the intelligence services becoming bloated. This is a recipe for unaccountability, violations of human rights and applicable international humanitarian law and untold expenses.

74. In the current post-conflict era, Sri Lanka urgently needs to strengthen its civilian capacities for defence planning and to rationalize the structure of its armed forces accordingly. It is unlikely that the new threats faced by the Government can be effectively met with the same forces that were used to face an internal insurgency. Moreover, it is unlikely that intelligence services that have gotten used to practicing a heavy-handed form of surveillance of the civilian population, that a security sector that remains virtually mono-ethnic and that a police force in which the pervasiveness of torture and abuse[40] goes hand in hand with its demonstrable dearth of investigatory capacities can best serve the country, as the tragic events of 21 April 2019 indicate.

75. From a prevention standpoint, the establishment of dispersed, multilevel and effectively coordinated civilian oversight mechanisms under a clear constitutional mandate and with operative judicial supervision is indispensable. These oversight mechanisms should incorporate, among other things, real vetting procedures that prevent the promotion of people with questionable human rights records, something that still eludes the current forces.

76. During his visit, the Special Rapporteur had the opportunity to meet representatives of the upper ranks of the security forces on several occasions and was left with the impression that there was more willingness among the forces to participate in credible accountability processes than the political discourse often suggested. It is imperative to follow this path in order to achieve a professional, apolitical security sector capable of providing the security guarantees the country needs, in a manner compatible both with the democratic principle of the rule of law and with the Government's international legal obligations.

[35] On arbitrary removals of judges, see CCPR/C/LKA/CO/5, para. 5.

[36] The salary and the working conditions presently make judicial appointments less attractive than other legal professions.

[37] A/HRC/35/31/Add.1, paras. 39 ff.

[38] The strengthening of judicial independence should be accompanied by a corresponding strengthening of judicial accountability through the adoption of a code of conduct (A/HRC/35/31/Add.1, para. 50).

[39] A/70/438.

[40] A/HRC/34/54/Add.2.

VIII. Conclusions and recommendations

77. Despite having been presented with important opportunities for genuine change and reform starting in early 2015, the Sri Lankan authorities have failed to adopt and implement a comprehensive transitional justice policy with the four constitutive elements of truth, justice, reparation and guarantees of non-recurrence. Such a policy, if designed and implemented in an inclusive and participatory way, has the potential to provide recognition to victims, strengthen the rule of law, foster civic trust and promote social integration and reconciliation. The Government, entangled in internecine disputes, has squandered these opportunities for redress and prevention, thus depriving not only victims but all of Sri Lankan society.

78. In the aftermath of large-scale violations and abuses, when trust among citizens and between citizens and State institutions has been shattered, it would have been opportune to adopt policies meant to identify the conditions that led to the violations, reliably attribute responsibility, offer diverse forms of reparation to victims so as to enable them to resume their lives with an increased sense of well-being, reform institutions to prevent future violations and help to lay the foundations for increased trust. Not only has this not been achieved but, with the presidential elections looming, the openings for doing so are fast closing.

79. While understanding of transitional justice has increased in society and parts of the Government, such understanding has not been internalized sufficiently. Transitional justice can achieve its potential only if it is not used as an instrument of "turn-taking", to benefit one community over others or to further partisan political interests.

80. The promotion and enforcement of human rights is at the core of transitional justice. That means that the rights of all, independently of all other considerations, including ethnicity, religion, politics and gender, must be strengthened. Having misunderstood these foundational principles, Sri Lanka, which could have been an example for the world about how sustainable peace ought to be achieved, appears to have missed a historic opportunity.

81. While the events that took place towards the end of the conflict merit special attention, the history of violations in Sri Lanka is longer and more "inclusive": this is a country in which every community has victims. In addition to the Tamil who suffered violations during the conflict, among the victims who are still awaiting redress are those who suffered during the insurrections mentioned above, the many victims of terrorist attacks, the family members of the over 600 police officers gruesomely murdered in 1990 and the Muslim population forced out of Jaffna in 1990.

82. The debate continues in the newspapers concerning the number of victims at the end of the conflict, in other words whether there were 40,000 or "merely" 8,000. Transitional justice processes can help in settling these interminable debates, which are precisely of the sort that manifest and produce low levels of trust and that lend themselves easily to political manipulation.

83. Transitional justice processes are nothing like witch hunts, they do not involve massive purges and do not trade on charges of collective responsibility or guilt by association. The Special Rapporteur notes with concern the use of rhetoric such as "war heroes will never be brought to trial". This misrepresents the target of transitional justice accountability measures by suggesting that it has a generally anti-security agenda, and overlooks the fact that no one who has committed violations of human rights law or of the laws of war deserves to be called a hero. Sifting through cases in which force has been used legitimately and lawfully and cases in which it has not, under conditions in which all relevant due process guarantees are meticulously adhered to and in which not only the rights of victims but also the rights of suspects and the accused are protected, is at the heart of transitional justice accountability measures.

84. The Special Rapporteur adds that the promise made not to try "war heroes" is a legally unenforceable political statement and therefore cannot offer any real security. Implementing such a promise would ultimately require, domestically, a violation of the principle of the separation of powers, among other things, and, internationally, offers absolutely no warranty. As experiences in other countries have shown, accountability will be sought either at home or abroad. This is an additional reason for the Government of Sri

Lanka, together with the full support of the armed forces, which stand to gain from this process, to establish a robust, credible and comprehensive transitional justice policy.

A. General recommendations

85. **Nothing has hindered the transitional justice programme in Sri Lanka more than lack of commitment on the part of the Government, which was not only slow in terms of design and implementation, but which wavered in its messaging and ultimately has failed up to this point to take full ownership of the process. Sri Lanka has a long history of partial compliance with its human rights obligations, which is not actually a form of compliance but, ultimately, one of non-compliance. Breaking out of this pattern means making unambiguous commitments, expressed both in words and in deeds, starting with the President and the Prime Minister, and making the case for a comprehensive human rights-based and gender-sensitive redress and prevention policy that integrates measures to satisfy victims' rights to truth, justice, reparation and guarantees of non-recurrence.**

86. **On this basis, the Special Rapporteur recommends that the Government:**

(a) **Develop a comprehensive transitional justice strategy that includes a clear timeline for the establishment of the different transitional justice mechanisms, identifies needs regarding budget, staff and required expertise and outlines the links between the different elements of the strategy. Moreover, the Government should allow the public to engage in consultations in the development of the strategy and seek, in particular, the views of women, given the differential impact that violations and the conflict have had on them and children;**

(b) **Take greater advantage of the report of the Consultation Task Force on Reconciliation Mechanisms. In its report, the Task Force identifies expectations, needs, challenges and priorities as expressed by key stakeholders and provides information that could be invaluable to the Government's efforts to align its intentions with the needs of victims. The network that the Task Force put in place in 2016 could prove very useful for continuing the dialogue and holding consultations on the design and implementation of reconciliation mechanisms;**

(c) **Tap more into the expertise that could be provided by OHCHR. So far, Sri Lanka has regrettably underutilized the support offered by the United Nations;**

(d) **Take greater advantage of its Human Rights Commission during the entire process of drafting legislation. The Government must commit itself to providing the Commission with sufficient resources to carry out its crucial functions and to takings its views and recommendations seriously.**

B. Recommendations for building trust in the Government's commitment and capacity to move forward with reforms

87. **Since one of the aims of transitional justice is to foster trust, the Government should consider other confidence-building measures. For example, the Government should:**

(a) **Repeal the Prevention of Terrorism Act and promptly replace it with new counter-terrorism legislation that adheres to international best practices. It should also promptly deal with long-standing cases pending under the Act and put in place a procedure to review convictions handed down under the Act that were based solely on the confession of the accused;**

(b) **Cease the continued harassment and surveillance by security and intelligence personnel of human rights defenders and other social actors, especially women;**

(c) **Carry out a comprehensive mapping of land occupied by the military and land recently released; produce a strategy with deadlines for restitution and plans for compensating former landowners whose land will not be returned; consider**

establishing a procedure that does not make the armed forces the sole voice in deciding this question;

(d) **Move to terminate military involvement in commercial activities and reduce military presence in those areas, such as the North and East;**

(e) **Given continued apprehensions about surveillance and security, ensure that the transitional justice process incorporates witness and victim protection instruments and strengthen the existing (but incipient) witness and victim protection scheme.**

C. Recommendations on truth-seeking mechanisms

88. **Concerning truth-seeking, the Government should publish all reports of previous commissions and make their records and archives available to any future transitional justice mechanism.**

89. **Concerning the Office on Missing Persons, the Government should:**

(a) **Ensure that the Office can establish its presence at the provincial and district levels, to facilitate access by victims and their families, as planned;**

(b) **Require all State institutions to collaborate with the Office;**

(c) **Enable the Office to strengthen its capacity on crucial skills, including forensic investigations, through training provided by national, regional and international experts;**

(d) **Support the Office's plan to incorporate psychosocial support for victims to avoid retraumatization.**

90. **Concerning the establishment of a truth commission, the Government should:**

(a) **Ensure that such a truth commission can act as a crucial tool to establish patterns of violations and abuses over many cycles of violence, demonstrating that all communities have victims, and to uncover the root causes of discriminatory practices leading to conflict. This calls for giving the commission a broad temporal scope. Legislation establishing a truth commission should be adopted promptly but with adequate consultation with civil society;**

(b) **Ensure the independence of its commissioners and that victims are adequately represented among the commissioners and the commission's staff;**

(c) **Ensure support to victims in terms of security and psychosocial services;**

(d) **Make sure that gender considerations are adequately institutionalized at all levels.**

D. Recommendations on justice-related measures

91. **Concerning criminal justice, the Government should:**

(a) **Address the lack of tangible progress on emblematic cases, which points to the serious limitations of the current justice system in addressing human rights violations. Decisive action on these cases could contribute to establishing the justice system's bona fides regarding human issues;**

(b) **Strengthen both the current accountability system, which is weak, and any future system of this kind. Many countries have developed such capacities, including in respect of police investigations, forensics and the articulation of prosecutorial strategies. Efforts to reach South-South cooperation agreements to strengthen or develop the relevant capacities should be made immediately;**

(c) **Ensure that the investigative and prosecutorial functions of the Office of the Attorney General are kept institutionally separate. Consideration should be given to the establishment of an independent prosecutorial authority;**

(d) **Focus the discussions about accountability on the means and preconditions for the establishment of credible procedures that guarantee the rights of victims and the accused. The truth is that, while the debate about the nationality of judges, which has led to the politicization of the discussions on transitional justice, can generate lots of sparks, the actual record of the criminal justice system in dealing with emblematic cases or cases relating to system crimes continues to be dismal, making the argument that there is no need for international assistance in these hard-to-sustain processes;**

(e) **Preserve records, information documenting violations and the results of mapping out the existing archives of previous relevant mechanisms.**

E. Recommendations on reparations programmes

92. **Concerning the Office for Reparations, the Government should:**

(a) **Support the work of the Office for Reparations, technically, financially and politically. Establishing an office of this kind, given the long history of ad hoc measures, does not guarantee that reparations will actually be made. Making reparations is a mid-to-long-term process that requires a firm, stable and continuous commitment;**

(b) **In the short run, support the Office's plan to provide different forms of immediate relief to victims, including psychosocial support;**

(c) **Learn from previous experiences with reparations in Sri Lanka and ensure that there are no inequities in the design or the implementation of its reparations programme. The sole relevant criterion for gaining access to benefits should be the fact of having suffered a violation, not one's ethnicity, religion, regional origin or any other factor;**

(d) **Make sure that there is nothing in the process of accessing reparations that undermines other victims' rights, including the right to justice;**

(e) **In making reparations, acknowledge responsibility. Making a link with the work of the truth commission would be useful in this respect;**

(f) **Make sure that all aspects of the design of such a programme are gender-sensitive and respond to the special needs of women, in particular those who are heads of households, who should be consulted at each step of the process.**

93. **Concerning land restitution, the Government should:**

(a) **Carry out a comprehensive mapping of occupied land and, on the basis of its findings, define a strategy with deadlines for the release of land;**

(b) **Ensure that the Armed Forces retain only land that is strictly necessary for security purposes (narrowly and objectively interpreted);**

(c) **Ensure that decisions to retain land should not be within the sole purview of the military. A body or procedure should be set up in order to broaden the scope of stakeholders and decision-makers on this issue;**

(d) **Consider establishing a land commission as a specialized entity able to address the issue of military-occupied private and public land and the multiple conflicting claims over land by communities displaced at different times;**

(e) **Strengthen its resettlement policy, as there continue to be camps where internally displaced persons have lived for almost 30 years and in conditions that do not befit a middle-income country;**

(f) **Consult beneficiaries on issues regarding new housing programmes to avoid future problems, including questions about suitability and indebtedness, in particular among vulnerable communities.**

94. **Concerning memorialization measures, the Government should support memorialization efforts, as these can have a reparative effect provided that they are even-handed and not used by anybody as part of a zero-sum game in which the basic**

aim is to reaffirm a single-sided narrative. Throughout the country, communities need spaces to mourn and remember those they have lost, especially civilian casualties.

F. Recommendations on guarantees of non-recurrence

95. **Concerning guarantees of non-recurrence, the Government should:**

(a) **Ratify the International Convention for the Protection of All Persons from Enforced Disappearances and enact legislation to incorporate the Convention into the domestic legal system;**

(b) **The constitutional reform project has been undertaken in part to provide guarantees of non-recurrence and has tremendous preventive and reconciliatory potential. That project should be expanded to achieve the following:**

(i) **The separation of the investigatory and prosecutorial roles from the State advocacy roles of the Office of the Attorney General and the establishment, for example, of an independent prosecutorial authority;**

(ii) **Strengthened provisions on the independence of the judiciary;**

(iii) **The articulation of a bill of rights for all Sri Lankans and the establishment of a constitutional court to adjudicate cases concerning fundamental rights;**

(iv) **The delimitation of functions of the different parts of the security system (armed forces, police and intelligence services) and the establishment of multilayered civilian oversight systems**;

(c) **Mindful of the constitutional definition of the functions of the security sector's different components and to contribute to preventing the recurrence of violations: strengthen civilian capacities for defence planning, redistribute functions so that public order and safety is mainly the responsibility of a well-trained and professional police force and external defence is essentially the responsibility of the armed forces, and ensure that the intelligence services report to civilian authorities and are subject to constitutional and judicial oversight;**

(d) **Rationalize the forces, their structure and composition, including on criteria of ethnic and gender diversity, and provide training in order to improve the forces' efficacy, strengthen the rule of law and avoid risks of recurrence.**