THE PATH TO PEACE

May 2016

Sri Lankan War Survivors and Human Rights Defenders in collaboration with:

SRI LANKA CAMPAIGN FOR PEACE & JUSTICE

Human Rights Defenders and war survivors, in their own words, on Sri Lanka's transitional process and what is needed to make it work.

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Introduction

After almost thirty years of war the guns are finally silent in Sri Lanka. But tens, if not hundreds of thousands, of people are dead, a significant proportion of them killed in the early months of 2009 in one of the most intense episodes of civilian slaughter to have taken place in the new millennium. Perhaps just as many people are still missing, their fates unknown and their families unable to grieve. Sri Lanka has known many cycles of violence, and if the cycle is not to restart then the legacy of this war must be dealt with.

"I am so pleased that you asked to talk to us. Why? Because all these years, nobody came and asked our views. Nobody. Nobody spoke to us like this. Until now nobody. But since speaking now, we feel ninety per cent better." (Focus group participant and mother of the disappeared)

In September 2015, the United Nations delivered the long-waited findings of its investigation into recent human rights abuses in Sri Lanka. The 259-page document – the Office of the High Commissioner for Human Rights Investigation on Sri Lanka (OISL) report – found widespread evidence of unlawful killings, disappearances, torture and sexual violence, which investigators said would likely amount to war crimes and crimes against humanity if established in a court of law. Following the publication of the report, the government of Sri Lanka, under the new leadership of President Maithripala Sirisena, co-sponsored a UN Human Rights Council Resolution committing it, on paper, to a series of measures designed to deal with the past.

There were 25 such measures and they included the creation of a number of mechanisms including an Office of Missing Persons, a Justice Mechanism, and a Truth Commission. Progress towards those commitments has been patchy, and will be the subject of a future report. The Government of Sri Lanka has announced a series of measures towards reconciliation, but there is little overlap with what was agreed in the resolution (this is discussed in detail in Annex 2). The creation of the reconciliation mechanisms is still in the consultative phase.

Six months on from the start of this UN-backed process, levels of enthusiasm for it in Sri Lanka remain decidedly mixed. Many people, predominantly from the majority Sinhalese community, believe that in attempting to take forward the UN resolution, Sri Lanka is giving up too much sovereignty. In contrast, many of those most directly affected by the war, in particular those from the Tamil and Muslim communities, are concerned that the current process is not internationalised enough. They feel that the Sri Lankan government, given too great a role in its own investigation, will be able to get away with a process that does nothing to address systematic impunity or take the bold steps necessary to heal the lasting scars of the war.

Yet others, especially diplomats, transitional justice specialists and international observers, find grounds for optimism in what they see as an extraordinary moment of opportunity – a rare example of a nation state and the international community working together to address human rights in a country where the situation seems to be improving. Such optimism is far more difficult to find amongst those who are living in the conflict-affected area.

The stakes could not be higher. For several decades, Sri Lanka has endured repeated periods of mass violence, much of it ethnic in character. The victims are usually, but not exclusively, members of the non-majority ethnic population. Unless some way can be found to break these cycles of violence and the climate of impunity that sustains them then we may be doomed to repeat history.

The international community is firmly invested in this mechanism and there is little appetite for any alternative. Any new mechanism with international support could only come about after the failure of the current one, and such a failure would be hugely damaging for levels of trust on all sides – trust without which no process can hope to succeed. Thus, for all the weaknesses and shortcomings of the current process, it is at the present time still the best, and perhaps only, chance Sri Lanka has of dealing with the past.

It is therefore vitally important that this process be given the best possible chance of success. The Sri Lanka Campaign has consistently argued that success requires that the views and needs of those most directly affected by the civil war – those who lost loved ones or endured violence, imprisonment and displacement – are placed at the heart of the process.

Yet we are gravely concerned that this does not appear to be happening. The time-limited approach to consultation is likely to result in many survivors being excluded. On various key issues, such as militarisation, witness protection and prosecutions, the actions and statements of intent by the government have been deeply discouraging.

Meanwhile the international community has remained focussed on the institutional elements of the UN-mandated process. We are concerned that a desire to wrap up Sri Lanka's processes quickly has served to exacerbate the government's tendency to shy away from taking the most politically difficult steps.

This paper is the second in our series of publications based on discussions with war survivors. It builds on last year's "How Can We Have Peace?" report, revisiting discussions that took place in 2015 alongside significant new material. In documenting the views and opinions of these individuals, we aim to place the voices of those most directly affected by the war at the heart of discussions about Sri Lanka's transitional justice process. Our accompanying analysis seeks to identify the main challenges and priorities that decision-makers considering Sri Lanka's reconciliation programme ought to be addressing.

The report is divided into two sections. In section one we outline the issues which, based on our research, we believe need to be most urgently addressed in order to right Sri Lanka's course – issues which form the basis of our "action plan" for the discussion on Sri Lanka that will take place at the June 2016 UN Human Rights Council session. In section two we consider some of the broader issues at play in Sri Lanka's transitional justice programme and ask how the views and needs of war survivors come to bear on these questions.

For many in the north and east of Sri Lanka the conflict has not ended and structural violence continues to be a part of their daily lives. This must end before reconciliation can be attempted. Trust must be rebuilt. Human rights abuses must cease. What is effectively military occupation of large swathes of areas needs to stop. For many war survivors, it is simply not possible to talk about "moving on" from something they believe they are still experiencing.

Yet the Sri Lankan government – and international community – seem determined to run before they can walk. They must stop, they must listen, they must improve the lives of those who lost the most. Only then, will they be able to work with those people to build a sustainable peace.

The Sri Lanka Campaign would like to thank a large number of Sri Lankan and international legal experts, human rights activists, and war survivors for making this report possible. Some cannot be named for security reasons, and to name others would seem unfair when those who contributed so much cannot be named. But we are very grateful to all those who contributed to this report, facilitated its creation, and commented on it in draft form. The Sri Lanka Campaign takes complete responsibility for the final product. Photographs were taken by AMJ Walker for the Sri Lanka Campaign, rights reserved. Infographics and quotes from this report may be freely used. Credit is appreciated.

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Action Plan: Recommendations for the 32nd Human Rights Council Session (June 2016)

The June 2016 session of the Human Rights Council could be the last chance the international community has to alter seriously the direction of Sri Lanka's reconciliation process. They should use their influence to:

- **Push for the creation of a conducive atmosphere for reconciliation, including by:**
    - **Ending surveillance of the civilian population and civil society by the security sector;**
    - **Ending the effective military occupation of the north and parts of the east;**
    - **Taking steps to rebuild trust; and**
    - **Ensuring effective witness protection measures are in place.**

- **Encourage the government of Sri Lanka not to see the consultation process for the transitional justice mechanism as a closed and time-limited process through which the mechanism is given a stamp of public approval, but instead as an ongoing process whereby the directly-affected communities can play a substantive role in shaping, controlling, and implementing the mechanism itself.**

- **Urge the government of Sri Lanka to re-consider its domestic political approach to dealing with the past, by encouraging it to embark on a concerted effort to persuade the majority population of the value of implementing the Human Rights Council resolution and to re-consider its defensive approach towards politically difficult issues, such as accountability.**

We expand on each of these points in section one of this report.

Methodology

This report is based on three sources of information. By far the most important are the transcripts from 26 focus groups conducted between January and September 2015, which saw the participation of around 250 people in total, all of whom were directly affected by the war, mostly through the death or disappearance of an immediate family member.

19 of these groups took place in the Northern Province and seven in the Eastern Province. 21 consisted predominantly or exclusively of Sri Lankan Tamil participants and five predominantly or exclusively of Sri Lankan Muslim participants – a separate ethnic community despite their shared language. In one location, men and women were put into separate focus groups in order to observe if and how gender dynamics were influencing the nature of their responses and whether gender-specific issues were being underrepresented. In another location, focus group members were individually interviewed afterwards to determine if and how group dynamics were influencing the nature of the responses received.

The first 19 of these focus groups were used as the basis for our previous report "How Can We Have Peace?" but produced far more material which was not used. In total, the transcripts of these 26 focus groups runs to over 75,000 words. To avoid, to the extent possible, the groups becoming self-selecting, participants were randomly selected from among the far larger group of such people known to the focus group facilitators. In one district, security concerns led to an overrepresentation of the Christian Tamil community, but across the groups as a whole, the demographic makeup of participants generally reflected the wider demographics of the Sri Lankan Tamil speaking community of the Northern and Eastern Province.

Group discussions were held in Tamil and facilitated by experienced human rights activists who need to remain anonymous for security reasons. Participants were led through a structured discussion based upon questions included as an appendix to our previous report.[i] The Sri Lanka Campaign for Peace and Justice has conducted a review of the approach and methodology used by these facilitators. Facilitators recorded what was said by the groups in English, along with notes on the makeup and nature of the groups. These notes were then processed by the Sri Lanka Campaign into this report. In so doing, a conscious effort was made to avoid sanitising or selectively quoting the statements of survivors.

The second source was 37 interviews, conducted by members of the Sri Lanka Campaign team, with individuals and organizations who work directly with survivors on issues of transitional justice. These interviews were largely unstructured. These interviews took place in November 2015 in Colombo, Negombo, Batticaloa, Trincomalee, Vavuniya, Kilinochchi, and Mannar districts.

The third source was a review of various submissions on behalf of NGOs to the UN Human Rights Council or the National Consultation process. Ten such submissions were considered (see endnotes [ii],[iii],[iv],[v],[vi],[vii],[viii],[ix],[x],[xi]).

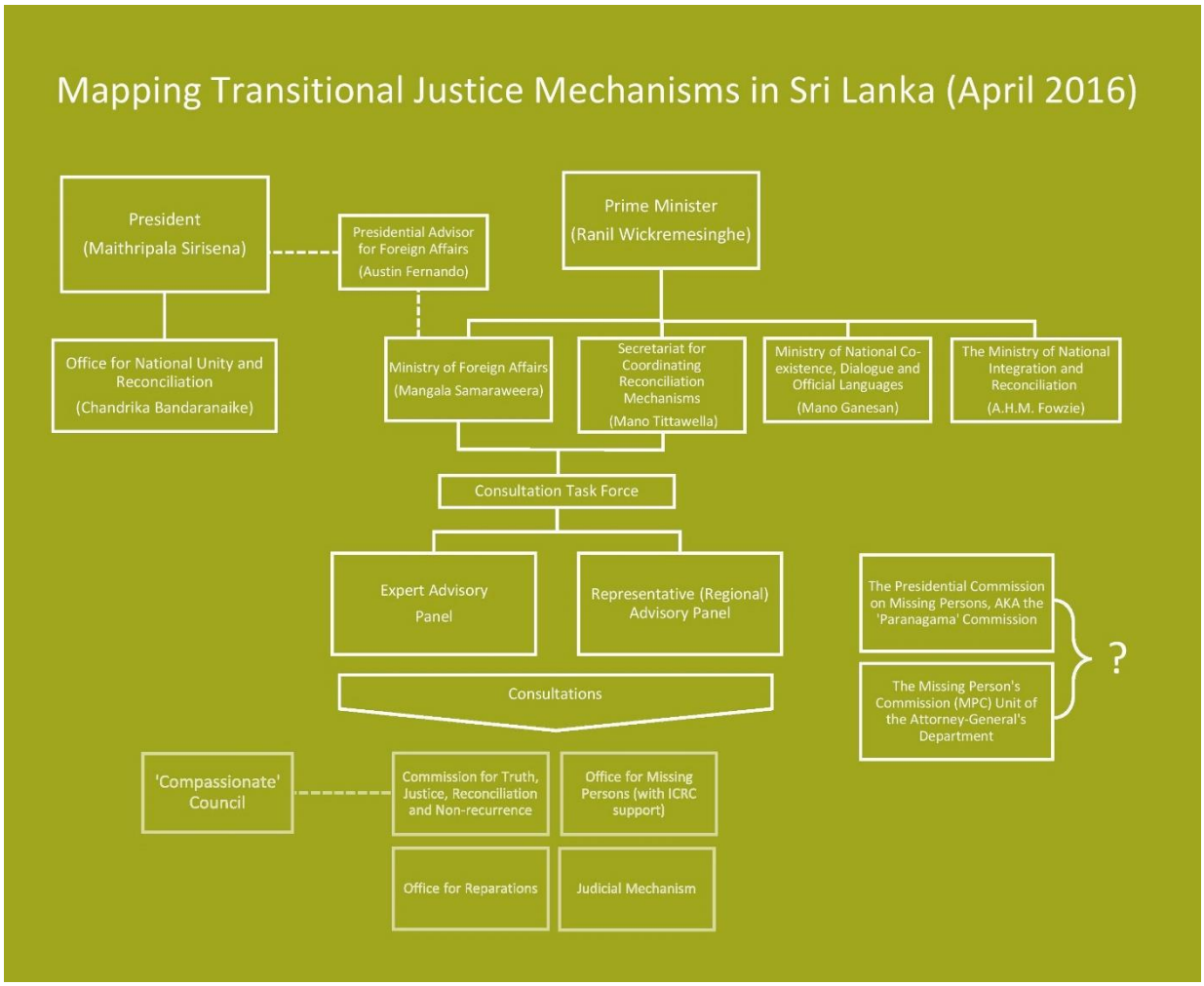
There is concern in some quarters that the views and objectives of the survivor community have been moulded and instrumentalised in order to suit various political agendas.[xii] By consciously interpreting and weighing the results of these three sources, we aim to guard against this and balance the opinions of various political groupings through which their voices are often heard.

Section One: Urgent Priorities for Transitional Justice

1. CONSULTATIONS: BEYOND THE RUBBER STAMP

The government of Sri Lanka has established series of consultation and implementation mechanisms of quite extraordinary complexity (see the Infographic 1, below). As we pointed out in a recent blog post, even discounting advisors and various other offices which will play a key role (such as the Attorney General's office), that means that Sri Lanka's reconciliation process has at least 13 distinct moving parts.[xiii] This raises concerns about how the process will work in practice, and indeed if it will work at all.

Infographic 1:



With regards to the governance of the consultation process, this role has essentially been delegated by the government of Sri Lanka to a group of respected civil society representatives[xiv]. Though serious questions remain concerning the absence of effective witness protection and the limited resources available to the Task Force, the independence and credibility of its appointees provide some grounds for optimism about its work.

Meaningful consultations

How meaningful is this work likely to be? On key questions, such as on the role of international judges within a judicial mechanism, President Sirisena and other government officials have displayed a worrying tendency to pre-judge the outcomes of the consultations and to pre-determine the sort of process that will follow.[xv] In January 2016, the President stated – contradicting the terms of the Human Rights Council resolution he had recently co-sponsored – that Sri Lanka would not tolerate international involvement in any truth and justice mechanism.

In our "How Can We Have Peace?" report, war survivors expressed enormous scepticism about the ability of any purely domestic mechanism to deliver justice. In our recent focus groups and interviews, this was a view that was once again widespread. Should the government of Sri Lanka ignore the results of the consultation by seeking to override what is likely to be the clearly stated view of survivors, the credibility of any follow on process will be seriously undermined.

A seat at the table

A second, and perhaps even greater concern, is the way in which the consultation appears to be envisaged as a closed, time-limited event. It is not enough merely to cast a transitional justice process from the mould of a single set of consultations. Rather, it must be accountable to survivors over the course of its lifetime, and that means survivors must be given the means to steer it and have influence over it until its work is done.

When discussing both consultation and implementation with focus groups, a commonly expressed sentiment among survivors was that they wanted to be decision-makers rather than just participants in any such process. A variation of this proposal, frequently put forward by civil society activists and endorsed by survivors, was

SURVIVORS AND RIGHTS DEFENDERS IN THEIR OWN WORDS: CONSULTATIONS

"We war-affected people should also be part of it. If the international community comes here and works with us then we can discuss, argue and find a good solution." - focus group participant and relative of the disappeared." (Focus group participant and relative of the disappeared)

"The government is filled with male chauvinism. Let it be a women's organization [dealing with our situation]. Only a woman knows the situation of another woman. We cannot go and tell a man about our situation. A stranger might not understand it." (Focus group participant and relative of the disappeared)

"Confidence comes from being listened to." (Interviewee, NGO based in Eastern Province)

"Diverse victims require diverse approaches to consultation, Victims have strong views on who can meaningfully consult them and how" (from the document 'Submissions to Ministry of Foreign Affairs from Community and Civil Society Groups in Summary Document Batticaloa and Ampara')

"People in the consultation should be 'snekapurvam' (full of empathy and care). They should be simply dressed. They should not speak English to each other. They should be people we can trust. They should be knowledgeable about the context. They should be concerned about the people's pain and losses. Women are needed in the consultation because women are more comfortable sharing their views with other women. Some serious problems, like sexual issues, cannot be discussed with men - only women can feel and realize the pain of those incidents." (from the civil society statement entitled 'Outcomes from Civil Society Consultation with Persons Directly affected by War about the Proposed Consultation Process')

that group representatives should be appointed to positions of authority within the implementing mechanisms.

Another suggestion from survivors was that they should be empowered to select, and have veto rights over, a proportion of the judges, commissioners and appointments of other positions of authority on the implementing mechanisms.

The Sri Lankan government is currently intending to create five implementing mechanisms (see infographic). While discussions about the makeup of these mechanisms have mostly concentrated on the judicial element, the involvement of representatives of the survivor community are equally important when it comes to the other four.

Of course, appointing representatives of the war affected community is not straightforward and views differed about the appropriate balance between direct and indirect representation. Many war survivors strongly felt that they did not want a process led by self-appointed community or political leaders, or others that would seek to speak on their behalf.

One focus group member voiced the opinion that they would trust the judgement of the Tamil National Alliance (TNA) and they would trust the TNA leadership to campaign for their best interests. However, three participants strongly voiced the opinion that community and political leadership (in general) tended to be self-serving and could not be trusted to represent survivors' views. Two participants felt that there were security concerns generated by the fact that community leaders could become targets for intimidation and reprisals.

Direct participation seemed to be an issue of particular importance for groups such as women and the Muslim community, who have historically felt side-lined in such decision making processes.

Survivor participation in transitional justice around the world

Whilst considering modes of survivor participation in Sri Lanka's transitional justice process, it is useful here to consider comparative examples from around the world. In Annex 1 of this report we list the forms of survivor engagement that have been used by other truth and justice mechanisms that have been set up within the last 15 years. It may be that among these countries there are some useful lessons that Sri Lanka can learn – as well as examples of pitfalls it should avoid. Sri Lanka also has the opportunity to be a pioneer in how best to place survivors at the heart of transitional justice processes.

The often messy and imperfect reality of transitional justice in a difficult setting such as this means that this is an opportunity that might not be taken. Nevertheless, unless there is a concerted effort to give some sort of substantive role in the process to survivors then the mechanism will not succeed.

2. SECURITY SECTOR REFORM: CREATING THE GROUND CONDITIONS FOR TRANSITIONAL JUSTICE

There has undeniably been improvement in Sri Lanka's human rights situation since its change in government, and the current political climate in Sri Lanka is far less threatening than it was. Nevertheless, improvements have been uneven and do not amount to a conducive atmosphere for reconciliation in the war affected north and east of the country, where a combination of ongoing militarization and impunity mean that a climate of intimidation and fear persists.

For many people in the north and east reconciliation simply cannot begin until this situation is addressed. On four occasions, focus group participants forcefully expressed the view that they consider talk of reconciliation to be meaningless, even insulting, given that they consider the actions which necessitate reconciliation to be ongoing.

When asked about what steps could be taken to reduce the climate of fear and restore trust, the two measures that were put forward most frequently were for the security forces to put an end to their surveillance of the population and civil society groups, and for the military to withdraw from its commercial activities. Surveillance was raised an extraordinary 55 times in focus group discussions and military involvement in commercial activity came up 12 times.

SURVIVORS AND RIGHTS DEFENDERS IN THEIR OWN WORD: SECURITY SECTOR REFORM

"If we file a case they will come and irritate us at night. They will even come in the day time. Because of this we feared and did not file a court case. We only keep crying. What is the point of filing a case dear?" (Focus group participant)

"Security must be guaranteed. All the armed groups were a threat to the Muslim community when there was no security. Instead of that we need a protection force. There must be a protection force to protect the Muslims under the government." (Focus group participant)

"The people will not come forward to talk about anything because if they do they will be killed." (Focus group participant)

"They do things to make sure that nobody addresses these issues. If a person is a little bit outspoken they will be shot". (Focus group participant)

"Yes we do have trust, but things that are happening now makes us lose trust also - like the military not withdrawing, the lands not being returned" (Focus group participant)

"The only compensation we got was the continuous CID interrogation." (Focus group participant)

"They are sending CID to talk to us over and over again. They ask whether our disappeared relatives are hiding somewhere or whether we have sent them abroad. In these circumstances we cannot trust that a national mechanism will bring us any solution." (Focus group participant)

"We are under constant threat." (Interviewee, NGO based in Eastern Province)

"I won't stick my head out. I don't know that the government is willing to stand by the process, so I'm not assured that it is safe to take the risk." (Interviewee, NGO based in Eastern Province)

"But before any of this, we want the government to stop doing it. What use is an apology when it is still happening?" - interviewee, NGO based in Northern Province (Interviewee, NGO based in Eastern Province)

An end to surveillance

There is a significant amount of evidence of ongoing human rights violations in Sri Lanka, ranging from low-level repression of dissent to serious incidents of sexual violence.[xvi] It is true that this is not occurring in such an overt, widespread, or systematic manner as it was under the previous regime. However, what is occurring is continued surveillance by the security sector, particularly the CID, of the civilian population and in particular civil society activists.

Members of the CID will sit in on meetings, will call up individuals to ask them questions, or will drop by the office of an NGO to find out details about their recent activities. According to our interviews with survivors and activists, this will usually happen with greater frequency after civil society holds or attends discussions on sensitive issues such as land rights, even if these discussions are state sanctioned or part of a formal consultation process. Often the questioning is quite friendly, and there are no consequences for refusing to answer. But the emotional associations of being questioned by the CID, coupled with a fear that this surveillance might be used as part of a crackdown should the political climate change, means that even this comparatively mild form of intimidation is enough to maintain a climate of fear in the north and east of the country and to have a chilling effect on civil society.

The question of whether ongoing surveillance is part of a deliberate policy by the Sri Lankan government, or the result of a residual and recalcitrant security sector failing to adapt to new times is, to a certain extent, a moot point. What is clear is the debilitating impact that such activities have on public trust in the state – particularly among minorities. The Sri Lanka Campaign is of the opinion that the fact that this kind of harassment is occurring is currently the biggest barrier to meaningful reconciliation in Sri Lanka.

Demilitarisation

The Sri Lankan military still has a significant presence in the north and east of Sri Lanka. This presence is particularly felt in the economic activity of the province, and in the number of military-run shops. Even when run with propriety these shops undermine the local economy by outcompeting civilian owned shops on price. Furthermore, the shops are frequently cited as locations for sexual harassment and coercion. Some interviewees described the situation as being a form of economic warfare waged against the civilian population.

Moreover, in a region where a significant proportion of the civilian population is suffering from some form of war-related post-traumatic stress disorder (PTSD), regularly seeing and interacting with the individuals in uniform whom they may have once feared or suffered violence from is deeply traumatising. The military involvement in commercial activity also adds to the feeling of occupation and oppression felt by many in the north and east, and precludes a return to normal civilian life.

Trust building

Once steps have been taken towards demilitarisation and ending surveillance, other trust building measures would also be helpful. To date the government of Sri Lanka has enacted very few concrete measures to improve the lives of those affected by the war or to address the issues that are of greatest concern to them. Priority issues raised in focus groups included a release of the remaining individuals detained under the Prevention of Terrorism Act (PTA), the abolition of the PTA, economic assistance, the return of military held land, a downsizing of the military, and meaningful progress on the issue of disappearances.

Once this has taken place the climate of fear will not instantly evaporate, but it should start to dissipate. Trust will not be instantly restored, but it might start to be rebuilt. A conducive atmosphere for reconciliation will not come into being overnight, but it will start to develop.

3. THE GOVERNMENT OF SRI LANKA'S ATTITUDE TOWARDS TRANSITIONAL JUSTICE

The government of Sri Lanka's recent statements and past behaviour suggest that they will use the June 2016 session of the Human Rights Council to announce a series of eye-catching measures designed to lull the international community into accepting a minimal accountability process.

This is clearly demonstrated by closely examining the list of 67 "steps taken" which the Government of Sri Lanka compiled in March 2016 and which were published in "Sri Lanka Brief". As we explain in Annex 2, 13 of these were duplicates, five had no relevance to reconciliation four were essentially meaningless, 12 related to processes started but not finished, and three have subsequently been wholly or partly reversed. The remaining 30 steps largely concern the establishment of new bodies which have yet to begin; a few welcome (but largely symbolic) gestures, such as the singing of the national anthem in Tamil and the renaming of victory day to Remembrance Day; and agreement for minimal amounts cooperation with the UN.

Arguably only two of the steps announced in March – to end military occupation and to ensure the release of political prisoners – directly address the concerns of war survivors.

SURVIVORS AND RIGHTS DEFENDERS IN THEIR OWN WORDS: THE GOVERNMENT'S ATTITUDE TOWARDS TRANSITIONAL JUSTICE

"We do not want another President's Commission. We will never go to a President's Commission again. We do not have any trust. We are fed up." (Focus group participant and relative of the disappeared)

While the government of Sri Lanka remains under some pressure to demonstrate progress internationally, it must do much more than diplomatic window-dressing. It must take seriously its commitment to the UNHRC process and embark on a concerted effort to promote that same view among the Sri Lankan public. Correspondingly, the international community, eager to see a transitional justice process implemented swiftly in Sri Lanka, must refrain from the temptation to promote a weak but rapid process over a stronger process with a longer timeframe. Consultations must take place, surveillance must end and trust-building measures must be implemented. Only then can the more politically contentious elements of the process (such as the justice mechanism) be determined.

Public statements

The government of Sri Lanka has continued to be lukewarm about the transitional justice process it co-initiated, particularly when addressing a domestic audience. Indeed, aside from unhelpful comments from the President in which he has disowned specific commitments, the government have been largely silent on the issue. This may, in part, be due to the fact that the idea of a truth, justice and reconciliation process does not enjoy widespread support of the majority population.

In our focus groups, the perception of the government as failing to make the case publicly for a transitional justice process was cited as a major reason for a lack of confidence in it. Participants expressed a lack of trust in the government, with several linking it to the absence of statements by the President on issues directly affecting them, and the failure of the President to meet more families of the disappeared.

The government's defensive posture towards dealing with the past is perhaps most clearly illustrated by the inexplicable continuation of the Paranagama Commission, a mechanism established by the Rajapaksa regime ostensibly to investigate disappearances and international law violations, but largely used as a whitewashing device. Despite its widespread discrediting[xvii], both among relatives of the disappeared and international law experts, it continues to limp on, issuing unsolicited press releases that undermine the case for the reconciliation process the government has embarked upon.[xviii]

For many survivors, the persistence of such a body, combined with the government's lacklustre support for the UN process, is a source of enormous doubt about the depth of its commitment. What is urgently needed is for the Commission to be wound up, and for the government to undertake a concerted public campaign to explain why the latest process is so important. This must include listening to and engaging with the concerns of all communities, to create buy-in for a reconciliation process that leads to sustainable peace.

Before June, and after June

There is an ongoing debate among both war survivors and civil society activists as to the pace at which this process should be implemented. On the one hand some see the political window for change as closing, and believe urgent action is needed to take advantage of that window. Others feel that the lack of a conducive atmosphere for such a process means that to move to the institutional phase now would be premature. Most would agree that progress thus far has been insufficient.

Sri Lanka's healing process will take many years, if not decades, to complete. This is not to say that it should not start now. Indeed, there many important steps that must be taken while there is political momentum. But an effective sequence for transitional justice requires participants to have trust in the process, and trust takes time. If this means that the process significantly outruns the mandate created by the Human Rights Council (which lasts until March 2017), then the mandate must be extended.

"We cannot even start talking about setting up a justice mechanism for two years. It will take at least a year to create a safe atmosphere for consultations, and then another year after that to do the consultations properly." (Interviewee, Eastern Sri Lankan NGO)

"We have to act now while they are still under pressure" (Interviewee, Eastern Sri Lankan NGO)

For the interim report of the June Human Rights Council session the Sri Lanka Campaign is looking for substantial progress on three of the most immediately pressing issues mentioned by survivors right now: meaningful ongoing consultation, a concerted attempt to bring to an end the climate of fear in the north and east of the country, and a change in the government of Sri Lanka's public attitude towards transitional justice.

Meanwhile discussions around the final status of the implementing mechanisms for transitional justice will of course continue, and some decisions will need to be taken urgently. We therefore now turn our attention in the following section to the views of survivors on the "four pillars" of transitional justice: truth, justice, reparations and guarantees of non-recurrence.

Section Two: The 'Four Pillars' of Transitional Justice

1. TRUTH

Time and again our research has shown that the number one priority for many war survivors is a mechanism to determine the truth about the fate of Sri Lanka's many thousands of missing persons. To reiterate the finding of our earlier "How Can We Have Peace" report," this appears, for many, to be a greater priority than a justice, reparations, and even for some than an end to ongoing violations.

Disappearances

Participants are deeply concerned that the disappearances process will be a high level one which will consider these issues in a purely general manner before providing answers about trends and types of disappearances. The issue of missing persons came up 107 times in focus groups discussions and on each occasion the request was for an individual investigation into a specific case. The concern is that no actual answer to the questions surrounding individual cases will be given beyond the Prime Minister's assertion that "they are most probably dead"[xix].

It should be self-evident that this is not acceptable. At least 24,000 people disappeared during the final phases of the war. In many cases it was documented that they had been taken into custody by the government of Sri Lanka.[xx] In others there is compelling evidence that they were alive months or years later.[xxi] If the Prime Minister is right, and these people are dead, then that means that tens of thousands of individuals were killed, and that there are reasonable grounds to believe that they were murdered while in government custody. That would amount to both a war crime and domestic crime on a staggering scale – requiring a thorough investigation and a full accounting of the numbers. The lackadaisical attitude of the Prime Minister to this issue, and the total failure of the Paranagama commission to investigate the matter, speaks of an attitude towards the truth which does not fit the severity of these allegations.

Given that over 24,000 such cases were filed before the Presidential Commission on Disappearances, despite survivors'

SURVIVORS AND RIGHTS DEFENDERS IN THEIR OWN WORDS: TRUTH

"We feel restless without knowing whether our children exist or not. We need to know whether they are alive or not." (Focus group participant and relative of the disappeared)

"The most important thing is we want to know from the government is whether they [the disappeared] exist or not. That is the most important solution we expect. If we know whether they exist or not, we will be able to think about what to do next." (Focus group participant and relative of the disappeared)

"I will not trust this government. I will not accept anything they tell me." (Focus group participant and relative of the disappeared)

"We are not asking much: an investigation into the details - not just a broad investigation, to find out who did what, and an investigation by a group that can ask the questions with sensitivity" - interviewee, Northern Sri Lankan NGO

scepticism of that process, such a casework-based approach would need a considerable amount of resource, but the view of the survivors we spoke to was that such an approach was vital[xxii].

62 relatives of the missing said they did not know if their loved ones were alive or dead. They all stated that they feel they cannot continue with their lives until they have answers as to what happened to their missing loved ones. They feel trapped in a limbo, unable to grieve, or to forgive, until they have answers, which thus far the government has shown no interest in giving them. Many of them – including at least four of our participants – have clung to the hope that their loved ones might still be alive and refused to consider the possibility that they could be dead. For this reason any disappearance mechanism would need to invest heavily in trauma counselling, and psychological support, as the truth may, in many cases, carry with it a severe risk of mental health damage or suicide.

Many survivors have also expressed the view that, given their total lack of trust in the government of Sri Lanka, there needs to be an international component to the disappearances mechanism. The government of Sri Lanka have reached out to the International Committee for the Red Cross (ICRC) to provide this component. Given the ICRC's expertise and existing work on this issue it may be that they have a necessary and important role to play.

"As far as I am concerned the ICRC is a branch of the Sri Lankan government." (Interviewee, Northern Sri Lankan NGO)

"ICRC? Oh my god!" (Interviewee, Northern Sri Lankan NGO)

However, the ICRC is also an organisation in which some survivors have very little faith. This may be due to the manner in which the ICRC were seen as having a perhaps inappropriately close relationship with the government of Sri Lanka on the issue of Internally Displaced Persons. This has meant that some formerly internally displaced individuals, many of whom suffered enormously in the aftermath of the war as a result of their treatment by the government, do not regard the ICRC as being sufficiently independent.

Furthermore, many in the north and east do not appreciate the difference between the ICRC and the Sri Lankan Red Cross. And the Sri Lankan Red Cross's cosy relationship with the former regime has further eroded survivors trust in the Red Cross[xxiii].

Moreover, the ICRC's role – frequently misunderstood – is purely humanitarian, it does not have, and cannot have, any accountability objective regarding disappearances as human rights violations. This, compiled with the the fact that survivors have so little faith in either the Sri Lankan government or the ICRC means that the disappearances mechanism will need additional independent international monitoring.

Truth Commissions

Although disappearances were raised as a priority, the right to truth covers more than this issue. To consider "truth" in the round, the government is considering setting up both a Truth Commission and a Compassionate Council. How these two bodies will interact is unclear, as is the role, form or function of the latter body.

Without knowing more about what is envisaged it is difficult to comment further on these bodies, However, in discussions with war survivors and civil society about the appropriate design of a truth mechanism the following major issues emerged:

Amnesties

Nether of these bodies, nor indeed any body, should be given the power to dispense amnesties. As reported in "How Can We Have Peace?" the notion of amnesties, besides being incompatible with international law[xxiv], are rejected by almost all survivors. Furthermore, Sri Lanka's culture of impunity has been demonstrated to lead to cyclical mass violence. This cycle will not be broken if amnesties are granted.

Some observers have drawn parallels with South Africa. However, it should be noted that the South African Truth and Reconciliation Commission took place in a very different context and that a mechanism designed as an act of magnanimity on the part of an oppressed majority following a transition of power from an oppressive minority government would not be suited for a victor's peace such as in Sri Lanka.

The need for mechanisms that encompass all of Sri Lanka's minorities

Sri Lanka's Muslim community has suffered considerably from all sides during the years of conflict. Yet their issues and stories are invariably overlooked. A truth seeking mechanism must pay particular attention to the views and stories of Muslim survivors.

Furthermore, if Sri Lanka's transitional justice programme is to be truly transformational then it must look beyond the war and its final stages and into issues of prejudice and racism that have for too long characterised Sri Lankan society. This is a process in which all ethnic groups including the "Upcountry" Tamil and Veddah communities must have a right to participate.

2. JUSTICE

Sri Lanka needs a justice mechanism with a significant and meaningful international component. That was the conclusion of our previous report. It was the conclusion of the UN Office of the High Commissioner for Human Rights Investigation into Sri Lanka (OISL) report. And it was the conclusion of Human Rights Council Resolution 30/1 (co-sponsored by the government), which affirmed the "importance of participation in a Sri Lankan judicial mechanism, including the special counsel's office, of Commonwealth and other foreign judges, defence lawyers and authorized prosecutors and investigators". That conclusion has not changed.

The President of Sri Lanka has since threatened to backtrack on that commitment, arguing that an international component is not needed as Sri Lankan courts have the capacity to conduct cases themselves. The issue is not one of capacity but one of trust. Our research strongly suggests war survivors will not trust a process unless it has an international component.

The involvement of international experts is no guarantee of success. There are sadly many examples of international participants in transitional justice processes who do nothing to bestow trust in the process[xxv]. But it is a prerequisite that was insisted upon by our participants.

Participants requests were for "fearless and courageous" lawyers whose independence would cause them to "speak out against any human rights crisis." Thus, as the role of international participants is to impart trust into the process, they must be individuals chosen in such a way as to demonstrate the validity of that trust. International participants must be entirely independent and be chosen through an independent and transparent mechanism, preferably by an external and independent individual or body. The Office of the High Commissioner for Human Rights, which serves as the Secretariat to the Human Rights Council and which has a mandate to provide technical assistance, is the obvious choice. The Commonwealth Secretary-General is another option. Finally, as per the

SURVIVORS AND RIGHTS DEFENDERS IN THEIR OWN WORDS: JUSTICE

"It does not matter whether it is from the international community or people from Sri Lanka. It does not matter who it is." (Focus group participant)

"If the locals lead the inquiry we will not get any solution. Only if foreigners question us, we will be reaching the shores (getting a solution). The locals have too much denial." (Focus group participant)

"Fearless and courageous lawyers must be in the commission. Lawyers who do not fear. Lawyers who would speak out against any human rights crisis. We aren't bothered about their race. There are many such lawyers around the world. My wish is to stand in front of such personalities." (Focus group participant)

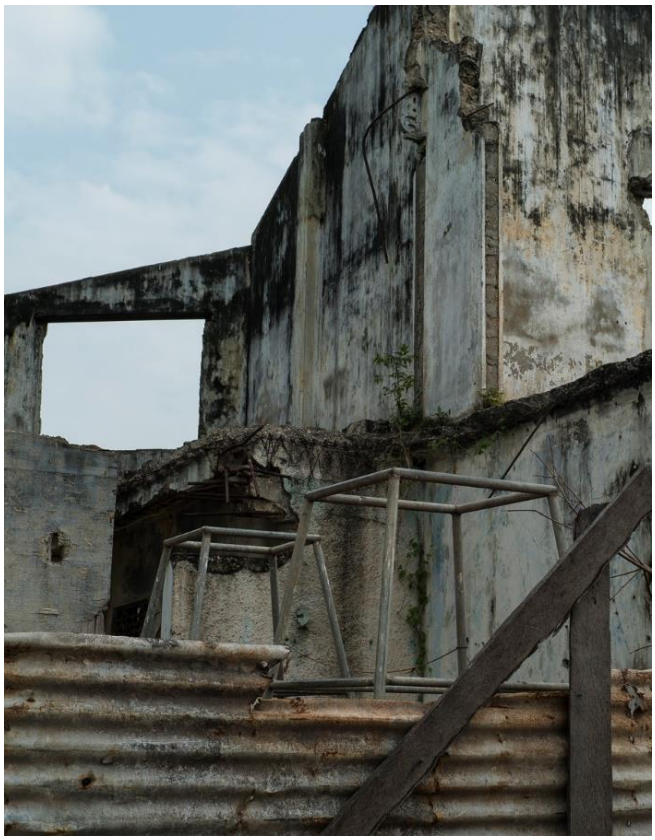
"We cannot blame the Army or the LTTE rank and file, there was a chief command at the administrative level, that is who is responsible for all this." (Focus group participant)

"My request is that they need to be punished. Today I do not have my sibling, my siblings' children are not here, my child is not here. They have to be punished, then only they will realize, if not for now then to make sure it doesn't happen again." (Focus group participant)

earlier consultation section of our report, war survivors should be allowed to approve the choices through some sort of participatory process.

Given that the role of the international component is to impart trust in the process, their role in practice is both that of whistle-blower and "canary". Our analysis is that who they are, and their credibility, is to a certain extent more important than what role in the process they perform. That said, for survivors to have trust in the process, international actors must have a substantive role.

They cannot be mere observers, or they will suffer the same fate as the International Independent Group of Eminent Persons (IIGEP), whose participation in a domestic process in 2006-08 was thwarted by the government at the time, leaving them compromised and leading to their resignation.[xxvi]



"The resolution in itself was a compromise, much to the disappointment of many victims and activists. The government now appears to be backtracking from even these compromised commitments." (Statement from 144 Civil Society members and organisations)

"Gotabaya is the most important person when it comes to kidnappings and abduction. He is the main person. If he can be caught and given two beatings we will get to know all the truth" (Focus group participant)

"What I am saying is more than punishing them to give our children back to us. Our intention is not to punish the enemy but to get our children back. After that we can see what needs to be done for the other things." (Focus group participant)

"At the very outset we would like to state that women have very little faith in justice through the existing legal process, and even if it is possible it takes a very long time. Therefore, a Transitional Justice process should have an independent process to look at sexual and gender-based violence against women and girls." (Statement from the Women's Coalition for Disaster Management Batticaloa and Women's Action Network)

3. REPARATIONS

There was little consensus among participants on the role of reparations and further research is needed on the issue. On the one hand, many of the survivors we spoke to were adamant that they cannot be bought and remain deeply suspicious of the concept of reparations being used, as the Rajapaska regime attempted to used them, as an alternative to investigations and justice. There is also little support for the idea of economic development as an alternative to reconciliation, as was tried by the Rajapaksa regime and as is advocated (either explicitly or implicitly) by some commentators today. Sceptical comments about the role of reparations were made on 12 occasions.

On the other hand, for many war survivors living in poverty, particularly those living in households where the primary wage earner is missing or dead, or in households where members need significant care, the need for reparations is more acute. They need financial assistance, and rightly feel they are entitled to it. Citing these reasons, favourable views towards the prospect of reparations were voiced on 11 occasions among focus group participants. Several expressed the view that reparations are an issue which community leaders, when speaking on their behalf, do not give enough attention to.

SURVIVORS AND RIGHTS DEFENDERS IN THEIR OWN WORDS: REPARATIONS

"It will be good to give us jobs, money, and houses. We cannot leave our growing children and go elsewhere. The situation is not so safe in the country. So it will be good if we get help. We know the lives lost are not going to come back again." (Focus group participant and relative of the disappeared)

Person A: "I do not know who shot my father. When it is like this, we do not know what to do. Even if the perpetrator is brought in front of our eyes and accepted their crime, we will not give them the same punishment. I will forgive. I do not have anybody to support my education. That is my worry. I expect that help. Nothing else. They don't need any punishments. Forgiving will be the biggest punishment for them. That's what I feel". Person B [walks out of room in anger]: "Whatever."" (Focus group participant and relatives of the disappeared)

"The government is reducing the prices for the food items and all - but we are suffering from losing our children. There is no response from the government regarding this so far. The government is doing a lot but they have not done this, why have they not spoken about the disappeared?" (Focus group participant and relative of the disappeared)

4. GUARANTEES OF NON-RECURRENCE

Guarantees of non-recurrence is a broad area of transitional justice incorporating measures such as memorialisation, acknowledgement, apology, addressing the root causes of conflict, and changing the structures of the state to preclude a return to violence.

Discussions of non-recurrence with survivors often resulted in the demonstration of deep frustration. Many survivors think it is premature to talk about non-recurrence when it comes to activities they do not consider to have stopped – a point that was made on four occasions. This demonstrates how far Sri Lanka's transitional justice process still has to go and how vital security sector reform and other trust building measures are. For this reason focus group participants often cut short discussions on non-recurrence. Nevertheless, some very important points were made in discussion. The government of Sri Lanka must make some attempt to consider these longer-term issues now or they will persist.

Memorialisation

Participants still do not feel able to mourn freely. While memorialisation is not subject to the same degree of suppression[xxvii] that it was under the Rajapaska regime, it is still something that causes security concerns among participants. Furthermore, the triumphalism of the government of Sri Lanka continues to manifest in tasteless and triumphalist victory celebrations. As we discussed in a recent blog post this is deeply harmful to reconciliation.[xxviii] Triumphalism must be bought to an end and people must be allowed to mourn as they see fit.

During discussions activists pointed out that in the south there still seems to be a significant amount of denial surrounding discussions of the war. Many thousands if not tens of thousands of soldiers died in the rush to conclude

SURVIVORS AND RIGHTS DEFENDERS IN THEIR OWN WORDS: NON-RECURRANCE

"What can we say? What more is there to say? If we talk we get very depressed." (Focus group participant and relative of the disappeared)

"They join the LTTE because they were given enormous amount of money. They were people who were very poor, uneducated and marginalized by the society. These people were brain washed. They were given hope saying "If we get Eelam, you will get a life of a king. We will give you a representative. They were brain washed and made use of to act against the Muslims." (Focus group participant and relative of the disappeared)

"Our problems will not come to an end if they are hung. The mentality of rewarding those responsible for committing atrocities must be destroyed. Instead it must be obvious that if a person is involved in such atrocities they must face consequences." (Focus group participant and relative of the disappeared)

"Remembrance? We keep the photos at home and do lamps - that is it." (Focus group participant and relative of the disappeared)

"The things that happened before should not happen again." (Focus group participant and relative of the disappeared)

"We cannot be stubborn also. We want to see everyone living peacefully. So the Sinhalese should come to our area and we should be able to go to their areas similarly." (Focus group participant and relative of the disappeared)

"A president should meet the people. Even Prabhakaran was a thief - he was inside a bunker and did all this to us. Mahinda never met us. At least now Maithri should meet with us." (Focus group participant and relative of the disappeared)

"Sarath Fonseka killed a lot of people. Now they are all joined together. We do not know what is going to happen." (Focus group participant and relative of the disappeared)

"What is non-recurrence when it is still going on?" - interviewee, Northern Sri Lankan NGO

the civil war in the early months of 2009; we do not know for certain how many. The recent opening up of public space in the south of Sri Lanka has not bought with it an increased willingness to talk about this, or a willingness for those who lost family members in the war to talk publicly about their loss and to question if these deaths were necessary. All parties must encourage further introspection and the emergence of counter-narratives regarding the Sri Lankan military experience during the final stages of the war.

Acknowledgement and apology

As discussed previously, the government of Sri Lanka's defensiveness and denial when it comes to the final stages of the war is doing considerable damage to the credibility of the process, to the trust of participants, and to chances of reconciliation. A shift of tone is needed, in which the government of Sri Lanka starts to acknowledge that atrocities took place, champions the need for a process to study those atrocities, and moves in the direction of giving an apology.

A significant portion of anger expressed in focus groups was either targeted at, or on behalf of, particular ethnic groups. Tamil-Muslim relations were highlighted by participants as being especially poor – largely a result of historical violations on both sides but also as a by-product of perceived demographic changes and land rights issues in certain localities. Nevertheless a number of individuals from both ethnic groups were willing to listen and engage in discussions about contemporary and historical grievances. In such discussions, several Tamil participants appeared to distance themselves from the actions of the LTTE. A number of Muslim participants exchanged views on why the LTTE had been such an appealing force among young Tamils.

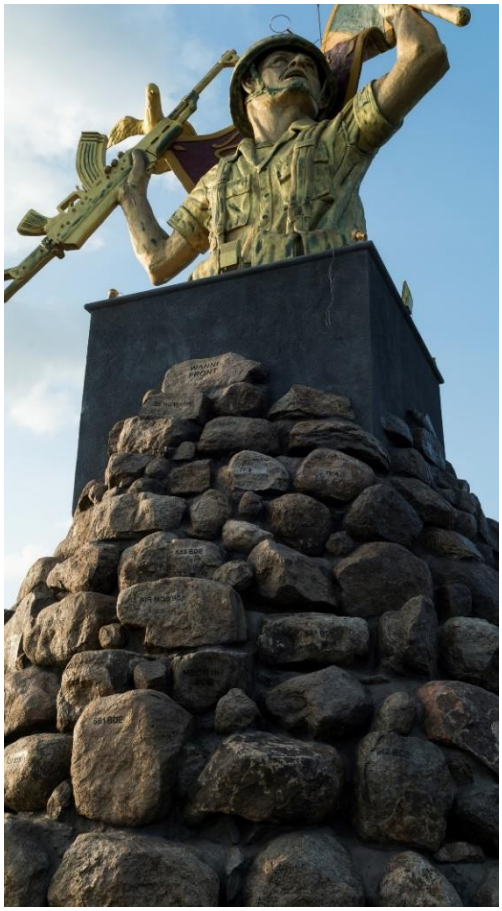
Acknowledgement and apology is clearly needed on all sides. But this is particularly important in those areas, such as Jaffna, Mannar and the East, where the messier nature of the conflict – resulting from the multiple factions among those involved in it – mean there are even more categories of people who owe, and are owed, an apology. Many Muslim participants in particular expressed that there needs to be a greater acknowledgement of their suffering. Some steps have been taken. The leadership of the TNA has attempted to apologise[xxix] both for crimes committed by the LTTE, and for the more general treatment of the Muslim community. The negative backlash from some in the Tamil community in response to these developments demonstrates that more work is needed to allow all sides to come to terms with the past.

Structural non-recurrence

Reforming Sri Lanka's governance, military, and legal structures to ensure that mass atrocities cannot happen again is a daunting task, and is a subject worthy of its own paper. Participants expressed that the three priorities to this end are: demilitarisation, to end the unsustainable and dangerous military nature of the state; security sector reform, to turn the Sri Lankan Army into a force which does not pose a threat to its own population; and prosecutions, to bring to an end Sri Lanka's culture of impunity.

Another vital aspect of reform is lustration: the process whereby individuals associated with the leadership of a state or group complicit in mass atrocities are retired (voluntarily or forcibly) from service in order to allow a new, less tainted, generation of leaders to emerge.

Participants expressed the view that it was very hard for them to have confidence in a reconciliation process while it is being led by a government that has given senior leadership roles to many of the people implicated in war crimes. It is therefore highly regrettable that subsequently, two of the people who were most deeply involved in the atrocities associated with the final stages of the civil war were given positions of authority. Former Army Commander Sarath Fonseka was made an MP, a Field Marshal, and a minister, while former commander of the 57th Division Jagath Dias has been made Army Chief of Staff.[xxx] An effective lustration policy for Sri Lanka would see the immediate removal of Fonseka and Dias from their posts, and the adoption of a policy whereby the surviving senior leadership of the LTTE and those responsible for the conduct of the Sri Lankan civil war were debarred from positions of authority.



Root causes

No participants expressed any enthusiasm for a return to war, and while opinions about the LTTE were mixed, they were predominantly negative. Nevertheless there was a deal of anger and frustration expressed which, when combined with the failure to address the root causes of the war, does not bode well for Sri Lanka's future. While the return of armed separatism remains a remote and unlikely prospect in the medium term, the failure to address the same grievances through which this emerged in the past, and continuation of policies that foster mistrust and resentment, leave the north and east of Sri Lanka as a fertile ground for further conflict.

If the next generation is not to repeat the hatred and violence of the last, the government of Sri Lanka needs to get this reconciliation process right. First and foremost that means listening to war survivors.

Annex 1: Case Studies of Survivor Participation in Transitional Justice Mechanisms

The recipe for an effective process of transitional justice will vary country to country. What works in one circumstance may not work in another. Sri Lanka needs to determine what mechanism Sri Lankan war survivors request and need, with particular regard for Sri Lanka's own institutions, history of impunity, ethnic mistrust, and the experience of past failed domestic mechanisms.[xxxi]

The fact that tens of thousands of Sri Lankans continue to give evidence to domestic processes is a strong indication of their ongoing desire to deal with the past. However, as is indicated in the body of our report, the repeated failure of these bodies to meet survivors' expectations means that levels of enthusiasm for a process are currently at low ebb, and Sri Lanka's truth and justice mechanisms will have to work hard to earn and retain the trust of the survivor community.

It is a sad reality that most truth commissions and justice mechanisms that have been tried around the world have featured limited direct public participation. Nevertheless, these mechanisms have enjoyed considerably more success when the contours of the commission were developed through a consultative approach that includes open discussions between government, civil society, survivor groups, and others who may be impacted by the work of the commission. Facilitating public participation not only demonstrates a commitment to legitimacy, it also helps lawmakers to understand the needs of victims.

Above all, consultation with victims' groups should be a priority during the establishment of a truth commission.[xxxii] Without their involvement and trust, a truth commission cannot credibly address their specific needs. International best practice[xxxiii] suggests consultation should continue during all phases of a truth commission's work, even when the commission was established quickly.[xxxiv] Communication and dialogue with civil society, especially victims' groups, should be maintained throughout operations to allow for ongoing public feedback and assessment.

Commissioners should be selected through a transparent and preferably consultative appointment process, with input from different sectors of society, especially from victims and other marginalized groups. In some commissions, the selection process starts with nominations from the public and the formation of a panel to review nominations, interview finalists, undergo public scrutiny, and recommend a shortlist of candidates to an appointing authority.

Engaging survivors is not sufficient to ensure the success of a mechanism. The Truth Commissions in both Paraguay and South Korea had exemplary mechanisms for survivor engagement yet struggled for support due to a lack of resources and political support. Nevertheless, there is a mounting body of evidence to suggest that without survivor involvement mechanisms will struggle for legitimacy and relevance[xxxv]. The relative success of mechanisms in Sierra Leone and East Timor suggest that a model where survivors individually and collectively, civil society, opposition groups, the Government and the international community all participate in the design, appointment, and implementation of a mechanism, will contribute to its success.

Below we list the truth and justice mechanisms that have been established in the last 15 years, and the extent to which survivors have played a role in their work.

Country / Mechanism / Years active	**Commissioners [xxxvi] selection process**	**Survivor involvement [xxxvii]**
International International Criminal Court 2002-	18 judges elected by secret ballot at a meeting of the State Parties.	Victims are allowed to participate in proceedings in a number of ways.[xxxviii] There is considerable academic debate about the effectiveness of these mechanisms.[xxxix]
Serbia The Truth and Reconciliation Commission of Serbia & Montenegro 2002-2003	15-19 members selected by the President. Some, limited, attempts to increase the ethnic diversity of members.	Very little survivor involvement in terms of either the design of the process or control over the process's work. This was seen as a contributing reason for the process being widely seen as a failure.[xl]
Sierra Leone The Truth and Reconciliation Commission of Sierra Leone 2002-2004	Seven commissioners, four selected by the President and three by the UN High Commissioner for Human Rights. Nominations were sought from the public, a UN special representative drew up the short list and there was a civil society led interview process.	Survivors were able to nominate commissioners and participate in the interview process. The full participation, including as commissioners, of former members of armed groups from all sides was seen as crucial to the body's success.[xli]
Sierra Leone Special Court for Sierra Leone 2005-	Three judges. Two appointed by the UN Secretary General and one by the President of Sierra Leone.	
East Timor The Truth and Reconciliation Commission of East Timor 2002-2005	Seven members and 29 regional commissioners. Appointed by UN Transitional Administration in East Timor (UNTAET) on the advice of a selection panel made up of victims and civil society groups and representatives of all political parties (Each political party selected two representatives, the NGO forum, Youth Forum and Womens' Forum, the Catholic Church and the UN Human Rights Unit selected one, and two victims' collectives selected two)[xlii]. This was followed by a public nomination and consultation process.	Dozens of community meetings held before, during, and after process to provide a mandate for proceedings, to give consultation and feedback, and to incorporate customary indigenous law into proceedings. This generated procedures which survivors were comfortable with as they found them in keeping with cultural practices.[xliii]

Special Panels for Serious Crimes – East Timor 2005-	Two international and one East Timorese judge appointed by UNTAET	
Chile The Chile Commission of Inquiry. 2003-2005	Eight commissioners appointed by the president	The work of the commission was to investigate tens of thousands of cases submitted by victims and their families. In that sense it was a process led by inputs from the survivor community. However it is less clear that survivors were able to shape either the design or the work of the process other than by submitting their cases to it.
Republic of Congo Democratic Republic of Congo Truth Commission 2003-2007	21 commissioners chosen by parliament. One from each of the eight armed factions represented in peace talks, the remainder from religious groups and civil society.	Very little survivor involvement in terms of either the design of the process or control over the process's work. This was seen as a contributing reason for the process being widely seen as a failure.[xliv]
Morocco The Truth and Reconciliation Commission of Morocco 2004-2005	16 commissioners appointed by the King.	5 commissioners were former political prisoners including the chair. 2 were recalled from exile to serve on the commission. Having commissioners from a victim background will certainly have given other survivors confidence in the process, but it is unclear if there was any additional survivor involvement in terms of either the design of the process or control over the process's work.
Paraguay The Truth and Reconciliation Commission of Paraguay[xlv] 2004-2008	Nine Commissioners: one appointed by the president, one appointed by Parliament, four nominated by the Commission of Victims of the Dictatorship (and then appointed by the president) and three nominated by civil society (and then appointed by the president)	The Commission of Victims of the Dictatorship was an earlier process which came out of survivor and civil society activism, therefore these commissioners can be reasonably be expected to have represented the views of survivors. In addition, the 3 representatives nominated by civil society were required to be selected from those who had participated in the "museum of memory" – an attempt to preserve the stories of survivors. Thus survivors were able to have a high level of confidence that their views would be represented.
Bosnia-Herzegovina War Crimes Chamber in	The High Judicial and Prosecutorial Council (a senior section of Bosnia's judiciary) appoints judges. Initially the ratio of international to	Very little survivor involvement in terms of either the design of the process or control over the process's work[xlvi]. An ICTJ study puts this down to a sense of "war crimes fatigue" in Bosnia, and suggests that on the one hand this apathy limits the

Bosnia-Herzegovina 2005-	national judges was 2:1 but international judges were phased out over time.	negative consequences of this lack of buy in for the process, but that on the other it increases the distrust of the court felt by many ethnic Serbs.[xlvii]
Algeria The Algeria Commission of Inquiry. 2005-2005	Six commissioners appointed by the President from among the membership of the National Consultative Commission on the Promotion and Protection of Human Rights – Algeria's Human Rights Committee.	Lack of survivor involvement - in terms of either the design of the process or control over the process's work - led to the formation of a Coalition of Victims' Associations and their demand for a new Commission of Inquiry.[xlviii]
South Korea The Truth and Reconciliation Commission of South Korea[xlix] 2005-2010	15 members. Eight members were appointed by the Parliament, four by the President, and three by the Chief Justice of the Supreme Court.	Each incident investigated is based on a citizen's petition. Additionally, the commission held conferences and ongoing consultations with more than 50 bereaved family unions, and collaborated with outside research teams to identify further victims.
Cambodia The Criminal Court for Cambodia. 2006-	Five judges (three Cambodian, two foreign) in the trial chamber, seven in the Supreme Court Chamber (four Cambodian, three foreign). Foreign judges were shortlisted by the United Nations Secretary-General and then judges were selected by the Supreme Council of Magistracy (a council, chaired by the king, consisting of supreme and appeals court representatives, and elected judges)	Victims and their rights are defined in law and victims can actively participate in judicial proceedings, giving statements to the court and judges and being a civil party to the case with equal standing to the prosecution and defence. There is however very little survivor involvement in terms of either the design of the process or control over the process's work.[l]
Liberia The Truth and Reconciliation Commission of Liberia 2006-2009	Nine commissioners appointed by the President of Liberia and three international advisors appointed by the Economic Community of West African States (ECOWAS) and the UN High Commissioner for Human Rights	Survivors can participate through public hearings and witness testimony. The TRC was widely criticized although much of the criticism focused on the Government's failure to implement recommendations rather than the work of the TRC itself. [li]
Lebanon Special court for Lebanon 2007-	A mixture of Lebanese and international judges appointed by the UN Secretary General	Victim participation is encouraged and supported by a Victims' Participation Unit. It seems unclear and unlikely that this participation amounts to much more than attending court and giving testimony.
Ecuador Ecuador Truth Commission	Four commissioners chosen by the president	One of the commissioners was a parent of a disappeared individual, and two were human rights activists. Thus survivors were at the centre of the court's structure. Information on if this led to

2007-2009		survivor-centred methodology or orientation is less readily available.
Kenya The Truth, Justice and Reconciliation Commission of Kenya 2008-	Seven commissioners: four Kenyan and three foreign, appointed by a panel established by the African Union	The Kenyan TRC boasted ongoing consultation with survivors throughout process. It is not clear what mechanism was used for this or what impact it had.
Canada Truth and Reconciliation Commission of Canada 2008 -2015	Three commissioners appointed by a selection panel consisting of 13 people: four first nations representatives (the lead counsel and chief negotiator for the First Nations and Inuit communities respectively), five religious representatives (one each from Canada's five largest churches), two representatives of the Canadian Government, the lead counsel for the victims, and the Government appointed facilitator.[liii]	The Truth and Reconciliation Commission came about as a consequence of court cases brought by survivors of the Residential Schools system. In this sense they were survivor designed but the legal processes themselves played a greater role in their creation.[liii] Survivors testimony was seen as the most powerful element of the proceedings' work and the process received credit for its survivor centred approach. However due to the limited powers of the Commission, hearing and recording survivor testimony was broadly the limit of what the Commission could accomplish, and this caused some survivors to feel that the process lacked deeper purpose.[liv]
Mauritius The Mauritius Truth and Justice Commission 2009-2011	Five commissioners selected by the president: four Mauritians and one international.	Very little survivor involvement (the commission attempted to cover 370 years of history)
Honduras The Truth and Reconciliation Commission of Honduras[lv] 2010-2011	Five commissioners selected by the president: two Hondurans and three international.	Lack of survivor involvement, among a host of other issues, led to six civil society groups setting up their own civil society truth commission to produce an alternative report.[lvi] This alternative report had the title "The Voice of Greatest Authority is that of the Victims".
Solomon Islands The Truth and Reconciliation Commission of	Five members, three from the Solomon Islands appointed by the Prime Minister on the recommendation of a National Selection Panel made up of Government, Opposition, Civil Society, women's' groups, and traditional leaders. Two	There has been little academic scholarship on the Solomon Islands TRC. It appears there was some civil society involvement in the process, and that given the small population of the islands involved this was considered a suitable replacement for direct survivor involvement.

the Solomon Islands 2010-2011	international commissioners appointed by the UN High Commissioner for Human Rights.	
Brazil The Truth and Reconciliation Commission of Brazil 2012-	The TRC grew from a civil society process. It was a core demand of the 2008 National Conference on Human Rights. In response to this the Government established a working group with civil society representation to establish the commission. This work is ongoing	An ICTJ study suggests a broadly positive view of Brazil's TRC process in large part due to the fact that civil society and survivors were consulted on the design and the work of the mechanism both before and during its operation.[lvii]
Chad Extraordinary African Chambers for Chad 2015-	The Trial Chamber and the Appeals Chamber each have two Senegalese judges and a president from another African Union member state. Other chambers have Senegalese judges. Judges were nominated by Senegal's justice minister and appointed by the chairperson of the African Union.	Victims can participate in proceedings by registering as civil parties to the case. This gives them standing in court equal to that of the prosecution and defence. 4000 have done so.
Nepal Nepal's Truth and Reconciliation Commission 2015-	Five commissioners were appointed by the Nepali Government on the recommendation of a Recommendations Committee. This committee consisted of the Chair of the Nepalese Constituent Assembly, one member of the National Human Rights Commission selected by that chairperson, and a Government appointed representative selected from among "human rights activists, psychologists, women rights activists, legal experts, forensic experts, experts on conflict issues, sociologists or any other persons involved in the peace process".[lviii]	The Recommendation Committee held discussions with victims' groups, political leaders, human rights activists, and civil society members. The ICJ, Amnesty International, Human Rights Watch and five local human rights and conflict-era victims groups sent an open letter to Prime Minister Sushil Koirala.in which they state that while they "appreciate the Recommendation Committee's efforts to seek diverse and strong candidates and to provide a window for submitting grievances against short-listed candidates" they "consider that more is needed to create a transparent, consultative process that incorporates the specific concerns of women survivors, including survivors of sexual violence".[lix] A lack of transparency around the process was highlighted as a particular problem and it was felt that in many cases victims' engagements were rendered superficial by a lack of political will to accede to the wishes of marginalised voices, and a tendency for other actors to speak for and about Nepal's victims.[lx] Survivors had limited access to policy formation. This was particularly evident when it came to the drafting of bills, a process that was entirely controlled by political parties with no consultation with survivor groups.[lxi]

Annex 2: A Review of the Government of Sri Lanka's March 2016 Progress Report

In March 2016 the Government of Sri Lanka prepared a list of 67 "steps taken since the change in Government[lxii]. This list was published by "Sri Lanka Brief". We go through the list below with particular regard to its relevance for Sri Lanka's reconciliation process. We demonstrate how in actual fact the Government of Sri Lanka's progress has been a lot less substantial than it might first appear.

This list is very different to the list of steps agreed by the Government of Sri Lanka with the UN Human Rights Council as part of resolution 30/1. The Sri Lanka Campaign has documented these commitments as part of its 'Keep the Promise' monitoring campaign (which will launch shortly at https://www.srilankacampaign.org/keep-the-promise).[lxiii] There is some overlap, but this appears to be more coincidental than by design. There does not appear to have been a concerted effort to address the steps raised in resolution 30/1.

No.	Issue	Our verdict
1	Accede to the convention on the prohibition of anti-personnel mines.	Real progress.
2	Sang the national anthem in both languages.	Real progress, albeit symbolic.
3	Agreed to visits by UN special mandate holders.	Progress pending. This references future commitments, not progress made.
4	Received a visit from the UN High Commissioner for Human Rights.	Real progress, however this is the bare minimum level of cooperation with the UN that should be expected from all countries.
5	Invited Yasmin Sooka to Sri Lanka to discuss sexual violence cases.	Meaningless. The issuing of an invitation hardly constitutes substantive progress. Furthermore to suggest that this is the manner in which sexual violence in Sri Lanka can be brought to an end is to significantly misunderstand both the issue and the level of witness protection that would be needed to make real progress.
6	Launched public consultation process.	Real progress.
7	Ratified convention of rights of persons with disabilities.	Real progress, albeit with only marginal relevance to reconciliation.
8	Acceded to the protocol on the illicit trade in tobacco products.	Irrelevant to the issue of reconciliation.
9	A new strategic plan to combat human trafficking.	Irrelevant to the issue of reconciliation.
10	Appointed a Consultation Task Force.	Duplicate. Repeats 6.
11	Received special rapporteur.	Real progress, however this is the bare minimum level of cooperation with the UN that should be expected from all countries.
12	Started work on new constitution.	Progress pending. This references future commitments, not progress made.
13	Returned 3136 acres of land.	Real progress, and one of only two steps here that directly address the concerns of war survivors. However it should be noted that this represents less than a fifth of the total land

		believed to be under military control,[lxiv] and that we have been unable to independently corroborate the figure.
14	Drafted a bill to replace Prevention of Terrorism Act (PTA).	Progress pending. This references future commitments, not progress made.
15	Endorsed commitment to end Sexual Violence in Conflict	Real progress, albeit a commitment not an action.
16	Informed the UN Human Rights Committee that in future it will respond to requests for information.	Real progress, however this is the bare minimum level of cooperation with the UN that should be expected from all countries.
17	National Authority for Witness Protection set up.	Real progress, however witness protection cannot be solved exclusively in this way, it requires substantial security sector reform and the support of external experts.
18	Attorney General commits to making a decision about prosecuting those in custody.	Progress pending. This references future commitments, not progress made.
19	Ratified convention on employment policy.	Irrelevant to the issue of reconciliation.
20	Cabinet approved amendment to criminal code to criminalise disappearances.	Progress pending. This references future commitments, not progress made.
21	Issued instructions to police officers regarding detention and prohibiting torture.	Real progress, albeit the bare minimum that should be expected.
22	Destroyed illegal ivory	Irrelevant to the issue of reconciliation.
23	Started a dialogue with the EU via a working group.	Progress pending. This references discussions not actions.
24	Pardon to LTTE cadre who attempted to assassinate Sirisena.	Real progress, albeit symbolic.
25	Signed the convention on Disappearances.	Progress pending. The Convention has been signed but not ratified.
26	Issued standing invitations to UN Special procedures.	Duplicate. Repeats 3.
27	Obtained Cabinet approval for Secretariat for Reconciliation Mechanisms.	Duplicate. Repeats 6.
28	Obtained approval for Right to Information (RTI) bill.	Reversed, in part. A case of one step forwards, two steps backwards, and then a final step forwards. After approval was obtained the RTI bill was shelved[lxv] but a version has now been presented in Parliament.[lxvi]
29	Approved consultations road map.	Duplicate. Repeats 6.
30	Released 39 individuals detained under PTA.	Real progress, and one of only two steps here that directly address the concerns of war survivors. However it should be noted that around 160 individuals remain in detention.[lxvii]
31	Appointed action group to oversee implementation of UN resolution.	Duplicate. Repeats 6.
32	De proscribed 8 organisations and 269 individuals.	Real progress. However, eight organisations and 155 individuals remain proscribed and there has been no clarity on the process or criteria used in proscription.
33	Hosted the Working Group on Disappearances.	Duplicate. Repeats 11.
34	Approved ratification of Disabilities convention.	Duplicate. Repeats 7.
35	Tabled the Udalagama and Paranagama reports.	Real progress, however the Udalagama report is not available online.
36	Commissions appointed by independent constitutional council.	Real progress.
37	Four soldiers convicted for sexual violence.	Real progress.
38	Continuation of moratorium on death penalty.	Real progress, however as Sri Lanka has not executed anyone since 1976 this is not surprising..

39	Invited civil society to submit ideas regarding the consultation process.	Duplicate. Repeats 6.
40	Joined the Open Government Partnership.	Progress pending. The Partnership is a mechanism for discussing reforms, membership is not in itself a reform.
41	Cosponsored the Human Rights Council resolution on Sri Lanka.	Real progress, however this is the bare minimum level of cooperation on the reconciliation mechanism.
42	Appointed the leader of the TNA as leader of the opposition.	Meaningless. This is a matter of basic mathematics. The TNA were the largest political party not represented in Government.
43	Approved the introduction of certificates of absence.	Progress pending. This references future commitments, not progress made.
44	Endorsed the Kigali principles on protection of civilians.	Real progress, albeit a commitment not an action.
45	Appointed constitutional council.	Duplicate. Repeats 36.
46	Closed Omanthai checkpoint.	Real progress.
47	Made arrests relating to the Prageeth Eknaligoda case.	Progress pending. Given the history of this and similar cases progress should be measured in convictions not arrests.
48	Supreme court grants leave to proceed with fundamental rights cases.	Progress pending, cases still ongoing.
49	Ratified Palermo Protocol.	Duplicate. Repeats 9.
50	Soldier convicted for murder.	Real progress, albeit token.
51	Victory day renamed remembrance day.	Real progress, albeit symbolic.
52	Passed the 19th amendment to the Constitution.	Real progress, the 19th amendment limits executive powers.
53	Received special rapporteur.	Duplicate. Repeats 11.
54	Passed the Witness Protection Act.	Real progress, however witness protection cannot be solved exclusively in this way, it requires substantial security sector reform and the support of external experts.
55	Released Jeyakumary Balendaran and 8 others detained under PTA.	Duplicate. Repeats 30.
56	Sent circular to ministries advising it is not prohibited to sing national anthem in Tamil.	Duplicate. Repeats 2.
57	Arrested 3 sailors in connection with the murder of a TNA MP.	Progress pending. Given the history of this and similar cases progress should be measured in convictions not arrests.
58	President and Foreign Minister met people of Tamil origin in London.	Meaningless. A meeting with unnamed individuals cannot in itself be described as a substantial reform.
59	Declaration of peace made on independence day.	Real progress, albeit token.
60	Did not call a state of emergency.	Meaningless. Not calling a state of emergency should not be considered extraordinary or commendable.
61	Removed military governors from the north and east.	Real progress.
62	Ended censorship of websites.	Reversed subsequently. Websites once again have to register with a Government ministry that can assess their content.[lxviii]
63	Tamil appointed as Chief Justice.	Real progress, albeit token.
64	NGO secretariat moved from Ministry of Defence to Ministry of National Dialogue.	Real progress.
65	Lifted ban on foreigners visiting north and east.	Real progress, although it should be noted there was no such ban on visiting the east.
66	Attorney General's office moved from Presidential Secretariat to Ministry of Justice.	Irrelevant to the issue of reconciliation.
67	Invited all Sri Lankan refugees to return to Sri Lanka.	Reversed, if not in principle then in practice. Sri Lankan refugees have been arrested on return.[lxix]

Endnotes

[i] https://www.srilankacampaign.org/wp-content/uploads/2015/03/How-Can-We-Have-Peace-Sri-Lanka-Campaign-March-2015-3-1.pdf

[ii] 'Statement on Accountability Reconciliation and Human Rights on behalf of 47 civil society activists, 8th January 2016

[iii] 'Statement from 144 Civil Society members and organisations calling on the government of Sri Lanka to stand by its international commitments', 28th January 2015

[iv] 'Submissions to Ministry of Foreign Affairs from Community and Civil Society Groups in Batticaloa and Ampara', 16th November 2015

[v] 'Submission by the Batticaloa Peace Committee to the Ministry of Foreign Affairs, Sri Lanka on the Planned Consultation Process for the Design of Mechanisms for Transitional Justice in Sri Lanka', 16th November 2015

[vi] Note on a process of consultation with respect to transitional justice processes that can address and sexual and gender-based Violence against women in war and post war context', submitted by Women's Coalition for Disaster Management Batticaloa and Women's Action Network, 21st October 2015

[vii] 'Note on a process of consultation with respect to transitional justice processes that can address histories and grievances of inter-ethnic violence', submitted by Tamil Muslim and Sinhala Sisters Group Batticaloa and Ampara, 10th November 2015

[viii] 'Report of Pre Consultation on the National Consultation of the Ministry of Foreign Affair, Sri Lanka', 11th November 2015

[ix] 'Outcomes from Civil Society Consultation with Persons Directly affected by War about the Proposed Consultation Process', November 2015

[x] 'Promoting reconciliation, accountability and human rights in Sri Lanka. The position of the people of the North and East concerning the resolution tabled by the US government at the 30th Session of the UN Human Rights Council', submitted by the North-East Coordinating Committee, September 2015

[xi] 'Joint Statement of Tamil Political Parties, Civil Society Organisations s and Trade Unions on Proposed US Resolution', 29 September 2015

[xii] For example see: http://groundviews.org/2016/04/25/the-saviour/

[xiii] https://www.srilankacampaign.org/mixed-messages-what-now-for-justice-in-sri-lanka/

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[xv] ttps://www.srilankacampaign.org/mixed-messages-what-now-for-justice-in-sri-lanka/

[xvi] For example see: http://www.freedomfromtorture.org/category/keywords/sri_lanka, http://www.itjpsl.com/, https://ihrdc.wordpress.com/, and https://www.srilankacampaign.org/return-white-van/

[xvii] https://www.srilankacampaign.org/paranagama-a-dangerous-whitewash-for-sri-lanka-and-the-world/

[xviii] http://www.pcicmp.lk/schedule/9-uncategorised/116-news-published-by-the-media-and-comments-made-by-the-public.html

[xix] https://www.youtube.com/watch?v=ljNxC4H4jP0

[xx] http://www.ohchr.org/Documents/HRBodies/HRCouncil/OISL/Violations.doc

[xxi] http://groundviews.org/2015/03/01/whose-democracy-is-it-anyway/

[xxii] https://twitter.com/ThyagiR/status/712131892397518849

[xxiii] http://www.bbc.co.uk/news/world-asia-33850551

[xxiv] www.ohchr.org/Documents/Publications/Amnesties_en.pdf

[xxv] http://www.sundaytimes.lk/151004/columns/sri-lankas-justice-system-166536.html "To believe that the importation of the United Nations' favourite answer to transitional justice dilemmas will automatically provide solutions is also unforgivably simplistic. It is infinitely amusing if it is not so tragic for example, that the 'special courts' of Rwanda and Cambodia had as members, Sri Lankan judges who were themselves complicit in lesser or greater measure in the decline of judicial integrity during 1999-2014 in this country."

[xxvi] https://www.hrw.org/sites/default/files/related_material/IIGEP%20public%20statement.pdf

[xxvii] https://www.srilankacampaign.org/memory-and-mullivaikal-survivors-views-on-peace-and-change-in-sri-lanka/

[xxviii] https://www.srilankacampaign.org/lighting-the-lamps/

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[xxx] http://www.dailymirror.lk/72497/jagath-dias-new-army-chief-of-staff

[xxxi] http://www.amnestyusa.org/pdf/srilanka2009.pdf

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[xxxiii] A/HRC/12/18 - Analytical study on human rights and transitional justice

[xxxiv] ibid

[xxxv] ibid

[xxxvi] Unless otherwise stated: http://www.usip.org/publications/truth-commission-digital-collection for transitional justice mechanisms and http://www.trial-ch.org/en/resources/tribunals.html for judicial mechanisms.

[xxxvii] Unless otherwise stated https://www.ictj.org/publication/truth-seeking-elements-creating-effective-truth-commission

[xxxviii] https://www.wcl.american.edu/hrbrief/15/3mckay.pdf

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[xlv] http://www.usip.org/sites/default/files/file/resources/collections/commissions/Paraguay-Charter.pdf

[xlvi] http://uir.ulster.ac.uk/24701/1/War_Crimes_Chamber_of_the_Court_of_Bosnia-Herzegovina.pdf

[xlvii] http://wcjp.unicri.it/proceedings/docs/ICTJ_BiH%20WCC_2008_eng.PDF

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[l] http://tpocambodia.org/wp-content/uploads/2014/06/TPO_GBV-under-the-Khmer-Rouge_Report_20151.pdf

[li] http://www.kaiptc.org/Publications/Occasional-Papers/Documents/Occasional-Paper-33-Jaye-and-Aning.aspx

[lii] http://www.trc.ca/websites/trcinstitution/File/pdfs/Selection_Committee_e.pdf

[liii] http://ir.lib.uwo.ca/cgi/viewcontent.cgi?article=1034&context=iipj

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[lvi] ibid

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[lviii] https://www.ictj.org/sites/default/files/ICTJ-Nepal-Selecting-Commissioners-2011-English.pdf

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