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HYBRID VS. DOMESTIC: MYTHS, REALITIES AND OPTIONS FOR TRANSITIONAL JUSTICE IN SRI LANKA

THE CENTRE FOR POLICY ALTERNATIVES
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1. INTRODUCTION

Sri Lanka is presently undergoing preparations to establish transitional justice processes and mechanisms. The discussions surrounding these preparations arise largely from the resolution titled 'Promoting Reconciliation, Accountability and Human Rights in Sri Lanka'¹ (hereinafter, the Resolution), adopted at the 30th Session of the United Nations Human Rights Council (UNHRC), setting out a framework for transitional justice in Sri Lanka.² The following paragraphs from the Resolution emphasise the specific commitments undertaken by the Sri Lankan Government on mechanisms relating to the four pillars of transitional justice in Sri Lanka:

OP 4: Welcomes the commitment of the Government of Sri Lanka to undertake a comprehensive approach to dealing with the past, incorporating the full range of judicial and non-judicial measures; also welcomes in this regard the proposal by the Government to establish a commission for truth, justice, reconciliation and non-recurrence, an office of missing persons and an office for reparations; further welcomes the willingness of the Government to give each mechanism the freedom to obtain financial, material and technical assistance from international partners, including the Office of the High Commissioner; and affirms that these commitments, if implemented fully and credibly, will help to advance accountability for serious crimes by all sides and to achieve reconciliation;

OP 6: Welcomes the recognition by the Government of Sri Lanka that accountability is essential to uphold the rule of law and to build confidence in the people of all communities of Sri Lanka in the justice system, notes with appreciation the proposal of the Government of Sri Lanka to establish a judicial mechanism with a special counsel to investigate allegations of violations and abuses of human rights and violations of international humanitarian law, as applicable; affirms that a credible justice process should include independent judicial and prosecutorial institutions led by individuals known for their integrity and impartiality; and also affirms in this regard 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 authorised prosecutors and investigators;

Of the several areas for reform highlighted in the Resolution worthy of note and of central relevance to this Paper is the commitment by the Government of Sri Lanka (GOSL) to include internationals in the mechanisms promised in relation to truth and justice. With this commitment, the GOSL has recognised that the participation of Commonwealth and other foreign judges, authorised prosecutors and investigators, as well as defence lawyers in a Sri Lankan judicial mechanism, including the special counsel's office, would strengthen the integrity and impartiality of the entire process.

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¹ UN Human Rights Council, Promoting reconciliation, accountability and human rights in Sri Lanka: resolution / adopted by the Human Rights Council, 1 October 2015, A/HRC/30/L.29, available at: http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/30/L.29 [last accessed on 15 January 2016]

² In a historic move, the Government of Sri Lanka (GOSL) co-sponsored the Resolution, thereby agreeing to take steps to implement it in full. The resolution also provides time frames for reporting back: June 2016 for an oral update, and March 2017 for a comprehensive report, the latter of which is relevant in terms of the progress in the design and implementation of the obligations.

The Centre for Policy Alternatives (CPA) has, over the years, monitored and engaged with several state initiatives on truth and justice.³ Considering the lack of progress with those initiatives and the continuing culture of impunity, the promises for reform by the Sirisena government must entail novel and effective ways of truth telling and accountability. CPA therefore recommends new mechanisms and processes for truth and justice via legislative and policy reforms including the incorporation of international crimes and the robust involvement of international participants.

The contribution of international participants to transitional justice mechanisms in Sri Lanka can be multifaceted. Moreover, the *combination* of both national and international actors will have its own advantages. Of course, questions of composition, especially in terms of the national-to-international ratio, the roles and responsibilities distributed among them, the practical issues of language, amongst others, will need to be factored in when designing the mechanisms. In this context, it will also be important to unpack the terms ‘involvement’ and ‘participation’, as a range of actors in Sri Lanka will attach different interpretations to them.

CPA is also cognisant of the opposition to these reforms. This Paper addresses these concerns by classifying them under three headings - the legal, political and practical. While examining these, most of which are also significantly coloured by nationalist rhetoric, CPA also raises a critical concern that appears to have been ignored by those critical of international involvement- that of gaps in domestic capacity and expertise to deal with serious violations of human rights law and international humanitarian law.

Further, the Paper examines some previous instances of international involvement in domestic investigations. In fact, Sri Lanka has had international commissioners, advisers, and investigators in several state initiatives in the past. These examples justify a shift from the present framework and practices, including structural reforms in the direction of integrating international involvement, especially if one is sincere about fulfilling the right to truth and justice for victims.

While there must be careful consideration in the design and implementation of mechanisms, the *fundamental* and *critical* issue that must be given priority is the victim’s right to truth and justice.

³ Visit www.cpalanka.org for more information on CPA policy briefs, reports and statements

2. REASONS FOR LEGISLATIVE AND POLICY REFORM

The need for a hybrid mechanism for accountability has been argued elsewhere.⁴ While noting those recommendations, CPA also notes the need for an independent mechanism of truth telling. This is because mere accountability is insufficient for reconciliation: there must also be truth, with both areas requiring considerable attention and reform in Sri Lanka. CPA also notes that the four pillars of transitional justice⁵ should not be treated *in silos*, but should complement each other. Reform should focus on all four areas.

The three areas noted as requiring attention, i.e. the legal, political and practical, are dealt with separately below. In considering them, the key arguments relied on by sections within government and others to oppose robust and integrated international involvement will be assessed.

2.1. Issues Related to the Legal Framework

President Sirisena is on record stating that he sees no need to “import foreign judges”⁶, while Prime Minister Wickremesinghe has stated that if foreign judges are to be part of any mechanism it should be done through law according to the constitution of Sri Lanka⁷. Several opposition groups in Parliament have been vehement in their statements that the existing constitutional and legal framework does not allow for the participation of foreign judges in a judicial process.⁸

A detailed comment on how a court with international participation can be structured within Sri Lanka’s legal system, specifying the framework of legislative and administrative changes required in this regard is already available.⁹ This section

⁴ UN Human Rights Council, *Report of the Office of the United Nations High Commissioner for Human Rights on Promoting Reconciliation, Accountability and Human Rights in Sri Lanka*, 16 September 2015, A/HRC/30/61, available at: <http://www.refworld.org/docid/55ffb1854.html> [last accessed on 15 January 2016]; Rhadeena de Alwis & Niran Anketell, *A Hybrid Court: Ideas for Sri Lanka*, South Asian Centre for Legal Studies, May 2015; Niran Anketell, *Building credible mechanisms for domestic accountability and transitional justice: Prosecutions and criminal justice*, Daily FT, 23 January 2015, available at: <http://www.ft.lk/2015/01/23/building-credible-mechanisms-for-domestic-accountability-and-transitional-justice-prosecutions-and-criminal-justice/#sthash.vJ8mQ0Nn.dpuf> Human Rights Watch, *Sri Lanka: UN Members Should Back Hybrid Court*, 16 September 2015; International Crisis Group, *Statement on the UN Sri Lanka Investigation Report*, 18 September 2015.

⁵ Four pillars of transitional justice includes: truth, justice, reparations and guarantees of non-recurrence

⁶ *President says no need to import judges*, The Sunday Times, 29 November 2014, available at: <http://www.sundaytimes.lk/151129/news/president-says-no-need-to-import-judges-173173.html> [last accessed on 15 January 2016]

⁷ *Foreign judges in SL should conform to SL's laws – Premier*, Hiru News, 29 September 2014, available at: <http://www.hirunews.lk/117453/foreign-judges-in-sl-should-conform-to-sls-laws-premier> [last accessed on 15 January 2016]

⁸ *Foreign judges politically unacceptable, unconstitutional – MR*, The Daily News, 6 November 2015, available at: <http://www.dailynews.lk/?q=2015/10/21/local/foreign-judges-politically-unacceptable-unconstitutional-mr> [last accessed on 15 January 2016]; Dasun Edirisinghe, *JVP rejects hybrid court proposed by UNHRC*, 22 September 2015, available at: http://island.lk/index.php?page_cat=article-details&page=article-details&code_title=132218 [last accessed on 15 January 2016]

⁹ See Rhadeena de Alwis & Niran Anketell, *A Hybrid Court: Ideas for Sri Lanka*, South Asian Centre for Legal Studies

examines the legal arguments invoking constitutional provisions to oppose the inclusion of foreign judges and lawyers in a judicial process.

As regards the claims of non-eligibility of foreign judges, two observations must be made. Firstly, in most cases, the claims are limited to bare assertions, unsupported by specific legal arguments. Secondly, in the few cases where legal arguments have been proffered, it is important to differentiate between them based on whether they invoke constitutional provisions, ordinary legislation, or subordinate legislation (such as rules, circulars and procedures). Attempts at amending the Constitution¹⁰ to implement parts of the Resolution would conflict with the limited timeframe, as well as risk disruptive political manoeuvres generally associated with constitutional reform.¹¹ By contrast, amending ordinary and subordinate legislation involves far simpler processes. Moreover, extensive legislative reform is required if the GOSL is sincere in establishing the mechanisms promised.

2.1.1. The Court System

Article 105 of the Constitution provides that institutions for the administration of justice are for the purpose of protecting, vindicating and enforcing the rights of “the People”.¹²

This Article specifies the Supreme Court, Court of Appeal, the High Court, and other Courts of First Instance of Sri Lanka, as such institutions for the administration of justice. The Constitution also confers on Parliament the power to “ordain and establish” any additional Courts of First Instance and/or institutions as it deems fit in accordance with the provisions of the Constitution.¹³

While the Constitution provides for the jurisdiction and powers and composition of the Supreme Court and the Court of Appeal¹⁴, the High Courts are unique. The Constitution allows Parliament to provide, by ordinary legislation, for the powers and jurisdiction of the High Court.¹⁵ The only exception in this regard are the specific powers allocated to High Courts under Article 154P (of the Thirteenth Amendment). The Constitution also expressly provides that the appointment, removal and disciplinary control of High Court

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¹⁰ Following the provisions of Article 82 and 83 of the Constitution.

¹¹ Its important to note though that Sri Lanka is presently undergoing a process to draft a new Constitution

¹² Article 105(1) of the Constitution

¹³ Article 105(1) (c): “Subject to the provisions of the Constitution, the institutions for the administration of justice which protect, vindicate and enforce the rights of the People shall be [*inter alia*] ... such institutions as Parliament may from time to time ordain and establish.”

¹⁴ For provisions on Supreme Court see Article 118 – 136; for provisions on Court of Appeal see Article 137 – 147; However there is nothing to suggest that Parliament, through ordinary legislation cannot add or enhance the power and jurisdiction of the Supreme Court and Court of Appeal at least in relation to areas and subjects not already covered in the constitution. See section 10, High Court of the Provinces (Special Provisions) No 19 of 1990 (as amended)

¹⁵ See Article 111 as amended by the 11th amendment to the Constitution, which removes the limitation of a high court as “a court of first instance and exercising criminal jurisdiction”.

judges by the President are subject to the recommendations of the Judicial Service Commission (JSC).¹⁶

2.1.2. Appointment of Judges

No provision in the Constitution requires Sri Lankan citizenship as a criterion of eligibility in appointing judges.

Though the Constitution provides, as regards judges of the Supreme Court and the Court of Appeal, the appointment procedure to be followed¹⁷, the number of judges¹⁸ and the ages of retirement¹⁹, no other criteria impacting their appointment are specified. In fact, a Supreme Court judgment, which specifically considered the issue of qualifications and disqualifications of superior court judges, held that no such criteria can be read into the Constitution; the Court held that the natural, logical and plain language interpretation of the Constitution would not permit such an interpolation.²⁰ This was despite a prior decision of the same court that had hinted, *obiter*²¹, at the possibility of such disqualifications.²²

In relation to judges of the High Court, the Constitution only provides that the President should make such appointments on the recommendation of the JSC, where the JSC in turn makes its recommendations in consultation with the Attorney General.²³ The same is true as regards the President's power to appoint Commissioners of the High Court, with the exception that, here, the JSC is not required to consult the Attorney-General in making its recommendations to the President.²⁴

The appointment of other judges and judicial officers of Courts of First Instance²⁵ is not directly provided for in the Constitution. It should however be noted that the Constitution vests in the JSC the power to appoint, promote, transfer and exercise disciplinary control over a judge, presiding officer, or member of any Court of First Instance, tribunal or

¹⁶ Article 111

¹⁷ Article 107 (1) "The Chief Justice, the President of the Court of Appeal and every other judge of the Supreme Court and Court of Appeal shall, **subject to the approval of the Constitutional Council** be appointed by the President by a warrant under his hand."

¹⁸ Article 119 and Article 137

¹⁹ Article 107 (5)

²⁰ See **VICTOR IVAN V. SARATH SILVA (2001) 1 S.L.R 309** Wadugodapitiya, J. (4 other judges agreeing) At. P. 317 "It is worthy of note that unlike in the case of the Indian and Pakistani Constitutions, our Article 107(1) does not contain any guidelines qualifying or restricting or circumscribing the acts of appointment thereunder.....", see further pp 317-318.

²¹ i.e. legally non-binding.

²² See **SILVA V. BANDARANAYAKE (1997) 1 S.L.R 92** at P. 95

²³ Article 111 (2) (a)

²⁴ Article 111A (1), Although it is implicit in the provision that such an appointment is made to temporarily increase the number of High Court Judges.

²⁵ Which already exist or which are to be established by Parliaments

institution created and established for the administration of justice.²⁶ The JSC *may* make rules regarding the schemes of recruitment and training, appointment promotion and transfer of judicial officers.²⁷ However as the Constitution authorises Parliament to “ordain and establish” Courts of First Instance as it deems fit, there appears to be no bar for Parliament to provide the criteria for the appointment of judges and judicial officers of Courts of First Instance. In fact Parliament has on several occasions in the past provided criteria through statute.²⁸

2.1.3. Oath in Terms of the 4th Schedule to the Constitution

The Constitution makes it mandatory²⁹ for any Judge of the Supreme Court, Court of Appeal, the High Court or any judge, presiding officer or member of any other Court of First Instance, tribunal or institution created and established for the administration of justice or for the adjudication of any labour or other dispute, to take the oath set out in the Fourth Schedule to the Constitution. As regards Commissioners of the High Court, it is arguably the case that Article 165(1), read with Article 170, dispenses with the need to swear the oath provided in the Fourth Schedule.³⁰

The oath states³¹ that the person swearing it will

1. Faithfully perform the duties and function of their office in accordance with the Constitution and laws of Sri Lanka,
2. Be faithful to the Republic of Sri Lanka, and
3. To the best of their ability uphold and defend the Constitution of Sri Lanka.³²

There is no express bar for non-citizens of Sri Lanka to subscribe to this oath. Nor does the oath require the person taking it to renounce fidelity or allegiance to any other country or sovereign.³³

²⁶ Article 111H (1)(b) read with Article 111M

²⁷ Article 111H (2)(a), see article 111M for definition of judicial officer.

²⁸ See section 4(a) of Judicature Act as amended by Judicature (Amendment) Act, No. 31 of 2007 and Judicature (Amendment) Act, No 10 of 2010

²⁹ See Article 107 of the Constitution and 165 (1) read with Article 170

³⁰ Although the Constitution provides that a reference to a “judge of the High Court” in the Constitution or other written law be deemed to include a reference to a “commissioner of the High Court”, this is limited to vest in such commissioners’ the rights, powers, privileges and immunities of a Judge of the High Court. See Article 111A (3)

³¹ The text of the oath is as follows: “I do solemnly declare and affirm / swear that I will faithfully perform the duties and discharge the functions of the office of in accordance with the Constitution of the Democratic Socialist Republic of Sri Lanka and the law, and that I will be faithful to the Republic of Sri Lanka and that I will to the best of my ability uphold and defend the Constitution of the Democratic Socialist Republic of Sri Lanka.”

³² A Person who subscribes to the above oath is required by Article 157A (7)(b) of the Constitution to also subscribe to the oath set out in the 7th schedule to the Constitution. The text of this oath is as follows “I do solemnly declare and affirm / swear that I will uphold and defend the Constitution of the Democratic Socialist Republic of Sri Lanka and that I will not, directly or indirectly, in or outside Sri Lanka, support, espouse, promote, finance, encourage or advocate the establishment of a separate State within the territory of Sri Lanka.”

³³ For an example see the Oath of allegiance in the United States of America states that “I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate,

2.1.4. Violation of Sovereignty of the People

The concept of sovereignty has both legal and political dimensions, of which, only those related to the legal domain will be considered in this section.

Article 3 of the Constitution holds that, “In the Republic of Sri Lanka sovereignty is in the People and is inalienable. Sovereignty includes the powers of government, fundamental rights and the franchise”. Article 4 of the Constitution provides for the manner in which the sovereignty of the People is to be exercised.

While the relationship between Article 3 and 4 has been the focus of much judicial discussion³⁴, there is no indication in the case law as to the meaning of the term sovereignty *per se*. Thus, our understanding of the sovereignty of the People, as a legal concept of the Constitution, is limited to the provision that sovereignty includes the powers of government, fundamental rights and the franchise, and that this is to be realised in the manner set out in Article 4.

Under Article 4, the judicial power of the People is to be exercised by Parliament through courts, tribunals and institutions created, established, or recognised by the Constitution, or created and established by law.

As was seen in the previous sections, nothing in the Constitution prohibits the establishment of new courts, within the hierarchy of Courts as recognized by the Constitution. Nor does it preclude the appointment of non-citizen judges to courts already extant in Sri Lanka. As such, the appointment of foreign judges *per se* would not violate the sovereignty of the People of Sri Lanka.

2.1.5. Foreign Lawyers

Although the participation of foreign judges seems to be the most contentious issue, objections have also been raised regarding the participation of foreign lawyers, including in the special counsel's office. The Constitution recognises that every person charged with an offence has a right to be represented by an Attorney-at-Law, at a fair trial, by a competent court.³⁵ Furthermore, ordinary legislation recognises the right of persons enrolled as Attorneys-at-Law to assist and advise clients and to be heard by Courts.³⁶

state, or sovereignty of whom or which I have heretofore been a subject or citizen;” <http://www.uscis.gov/us-citizenship/naturalization-test/naturalization-oath-allegiance-united-states-america>

³⁴ See *In Re the Thirteenth Amendment to the Constitution and the Provincial Councils Bill* (1987) 2 S. L.R. 312, *In re the 18th Amendment to the Constitution* (2002) 3 S.L.R 71, *In re the 19th Amendment to the Constitution* (2002) 3 S.L.R 85

³⁵ Article 13(3) of the Constitution; See also Article 134 (2) “Any party to any proceedings in the Supreme Court in the exercise of its jurisdiction shall have the right to be heard in such proceedings either in person or by representation by an attorney-at-law.”

³⁶ See Section 40 and 41 of the Judicature Act; Section 24 and 27 of Civil Procedure Code; See Section 260 of Code Of Criminal Procedure

The criteria and procedure for enrolling an individual as an Attorney-at-Law are provided in the Rules of the Supreme Court.³⁷ Article 136(1)(g) of the Constitution authorises the Chief Justice with any three Judges of the Supreme Court to make rules regulating generally the practice and procedure of the Court, including “the admission, enrolment, suspension and removal of attorneys-at-law and the appointment of senior attorneys-at-law and the rules of conduct and etiquette for such attorneys-at-law.” Furthermore as with the case of judges, a person who is enrolled as an Attorney-at-Law is expected to subscribe to the oaths set out in the Fourth and Seventh Schedules to the Constitution.³⁸

Therefore as was seen in the case of judges, there is no bar in the Constitution that prohibits Parliament in consultation with the relevant stakeholders to provide for foreign nationals to assist and advise clients and to be heard by any Court set up as part of the proposed judicial mechanism.

This section only examines the role of foreign judges and lawyers in an accountability mechanism. As discussed, there is no Constitutional bar for either of them to serve in Sri Lanka. This section does not raise any legal issues pertaining to commissioners or investigators since past initiatives demonstrate their ability to work in Sri Lanka (see below).

2.2. Opposition on Political Grounds

In addition to legal issues, opposition to international participation is also political. Both during the war and the post-war period, the opposition by Sinhala nationalist elements to any form of international investigation was aggressive, on the basis that any such involvement would undermine Sri Lanka’s sovereignty. Though not new, the argument was at its most virulent during the Rajapaksa government, with key actors within government using it as one of the main justifications for a *purely* domestic process. This was evident, firstly, in the resistance towards any international monitoring or investigations during the last stages of the war as well as the period immediately after it³⁹, and, secondly, in the scathing attacks levelled against the doctrine of Responsibility to Protect (R2P), and anyone seen supporting it.⁴⁰

The honour of war heroes was also exploited to strengthen these arguments of sovereignty-being under attack, where all forms of international action were characterised as threats to prosecute security forces for their role in defeating terrorism. The Office of the High Commissioner for Human Rights (OHCHR) Investigation on Sri Lanka (OISL) report, including its recommendation to establish a special hybrid court,

³⁷ See *The admissions, enrolment, suspension and removal of Attorneys-at-Law*, Part VII, Supreme Court Rules 1978, Gazette Extraordinary No 9/10, 8 November 1978

³⁸ Article 169 (12) and Article 157A (7) of the Constitution

³⁹ Rajiva Wijesinha, *Darkness, Dysfunction and Breakdown: Threats to National Sovereignty 4 A Pincer Movement in August 2007 – London, Geneva, New York and Colombo*, The Island, 5 April 2010, <http://www.island.lk/2010/04/05/features2.html> ; *Engagement - yes; Presence on the ground - No!*, Sunday Island, 9 March 2008, <http://www.island.lk/2008/03/09/news20.html>

⁴⁰ H.L.D Mahindapala, *Radhika & Jayantha promotes the anti-Sri Lankan R2P*, 9 December 2007, Sunday Observer;

was considered as a 'hostile' move by former President Rajapaksa, who asserted that it went against the armed forces and by extension the country.⁴¹ The interpretation propounded by these political actors was of a conspiracy, between the international community and NGOs funded by western governments, to target those who saved Sri Lanka from terrorism.⁴²

The opposition to international involvement on accountability in Sri Lanka generated massive rallies and protests organised by Sinhala nationalist elements with the support of some politicians.⁴³ In 2010, a well-publicised demonstration by a minister of the Rajapaksa government, which was purportedly a 'fast', took place outside the UN Compound, protesting the appointment of the UN Panel of Experts.⁴⁴ The minister claiming to be 'fasting' argued that the appointment of the Panel threatened the honour of war heroes and the sovereignty of Sri Lanka. A few days into the demonstration, President Rajapaksa, arrived at the scene to offer water to the minister, in what looked like a scripted event, urging him to end the fast. These public protests against threats to Sri Lankan sovereignty were also used to bring people to the streets to highlight the popularity of the then government.

Furthermore, specific individuals were targeted for supporting international action. Human rights defenders and lawyers were called traitors and terrorists for urging international investigations. These attacks did not distinguish between local and international advocates. For example, Navi Pillay, the then UN High Commissioner for Human Rights, a South African jurist of Indian-Tamil descent, was accused of "prejudice and lack of objectivity"⁴⁵.

Although the 30th Session of the UNHRC and the Resolution evinced opposition, when compared to previous years, a remarkable shift could be seen in the nationalist position. No large public protests were mounted, either in the lead up to or during the Session; only a few statements by opponents, including that by the former President, made the news. The lack of mobilisation of crowds and impassioned public pleas is by no means indicative of a complete shift in position. Rather, it simply indicates the level of state sponsorship enjoyed by previous demonstrations and the posturing for personal political gain by key individuals in government against any credible effort to investigate past abuses and hold perpetrators to account.

⁴¹ *Mahinda tells Government to reject the OHCHR report*, The Financial Times, 23 September 2015, <http://www.ft.lk/article/474375/Mahinda-tells-Government-to-reject-the-OHCHR-report#sthash.PRTyy7o3.dpuf>

⁴² S. Goonatilake, *Recolonization: Foreign Funded NGOs in Sri Lanka* (New Delhi: Sage Publications 2006); L.S. Ananda Wedaarachchi, *Trade unionists condemn conspiracies against Govt*, *Sunday Observer*, 1 November 2009, <http://www.sundayobserver.lk/2009/11/01/fea02.asp>

⁴³ The protests took place outside key institutions, such as the United Nations Compound in Colombo, the US Embassy, the British High Commission, among others. Source media reports

⁴⁴ *Massive protest launched outside UN compound in Sri Lanka capital*, Colombo Page, 6 July 2010, http://www.colombopage.com/archive_10B/Jul06_1278399266JR.php ;

⁴⁵ Samuel Oakford, *Sri Lanka's President Doesn't Want the UN Investigating War Crimes in His Country*, 20 August 2014, available at: <https://news.vice.com/article/sri-lankas-president-doesnt-want-the-un-investigating-war-crimes-in-his-country> [last accessed on 5 January 2016]

Calls for a purely domestic initiative in Sri Lanka relied on specific language. Pressures to investigate serious violations, post-war, resulted in President Rajapaksa's government calling for a 'home-grown' solution, as opposed to anything international.⁴⁶ This resulted in the appointment of the Lessons Learnt and Reconciliation Commission (LLRC), which, in turn, was followed by the Presidential Commission to Investigate into Complaints Regarding Missing Persons (Missing Persons Commission) appointed in 2013.⁴⁷ President Sirisena's government has repeatedly affirmed support for a 'credible *domestic* mechanism'.⁴⁸ These different terms are noteworthy as they indicate the preferences of the different governments for a domestic model. The terminology is also linked to the popular misconception that anything international is invariably a product of a western conspiracy and a violation of national sovereignty, whereas a purely domestic model, despite any inherent flaws, would uphold national sovereignty and be more suitable for local needs.

Notwithstanding recent opposition to international involvement, past initiatives and statements by successive governments demonstrate a willingness to consider international involvement in domestic initiatives (see below). Statements by key actors supportive of international involvement are worthy of note. For instance, on 4 September 2006, President Rajapaksa agreed to have an International Commission to probe into abductions, disappearances and extra-judicial killings in all areas in Sri Lanka.⁴⁹ This was due to the pressure for an independent, international investigation and field presence of the OHCHR. However, this promise of an international commission subsequently changed into one for a domestic Commission of Inquiry (COI), known as the Udalgama Commission, mandated to investigate 16 specific cases. This particular exercise had an international group monitoring and observing proceedings, known as the International Independent Group of Eminent Persons (IIGEP), also discussed later in the Paper.

The main point of note from this is that President Rajapaksa and his government, who took a stance for 'home-grown' solutions in the post-war period, still advocated an international commission at earlier stages. The shifts in positions seem to indicate the influence from particular sections of the domestic constituency, even when that influence completely disregarded the *victim's* right to truth and justice.

The political opposition to any international action will persist. However, it must be borne in mind that this opposition stems from Sinhala nationalist sentiments and political ambitions. There is also a disregard of the collapse of the rule of law, the politicisation of institutions and urgent need for reforms to end the culture of impunity. The victim's right to truth and justice is fundamental and should be the driving force behind the design and

⁴⁶ *Sri Lanka requires a home grown solution - Minister G. L. Peiris tells US Secretary of State*, Hiru News, 19 May 2012, available at: <http://www.hirunews.lk/goldfmnews/34627/sri-lanka-requires-home-grown-solution-minister-g-l-peiris-tells-us-secretary-state> [last accessed on 12 January 2016]

⁴⁷ The latter, however, subsequently inherited an international advisory council.

⁴⁸ Bhavani Fonseka, *Exploring International and Domestic Modalities for Truth and Justice in Sri Lanka*, Groundviews, 2 September 2015, available at: <http://groundviews.org/2015/02/09/exploring-international-and-domestic-modalities-for-truth-and-justice-in-sri-lanka/> [last accessed on 15 January 2016]

⁴⁹ *International body to probe abductions, killings - President*, Daily News, 4 September 2006, available at: <http://archives.dailynews.lk/2006/09/04/pol01.asp> [last accessed on 4 January 2016]

implementation of mechanisms and processes of justice. With the legacy of failed domestic investigations and the scale of violations that require specialised expertise, it is imperative that the authorities introduce reforms to include robust international involvement. This involvement must be treated as supporting nationals in the critical work of truth and justice. Once local capacity has been built, international involvement can be phased out and the transition effected to purely domestic mechanisms.

2.3. Practical Issues

The final point to make in terms of the need for robust international involvement is practical. Although domestic politics will significantly influence the course of transitional justice, especially as regards the design of mechanisms, it must be noted that successive governments considered and, at times, included international participants in domestic mechanisms. The failure of these initiatives was due largely to structural flaws and lack of political will. Accordingly, it goes without saying that any future mechanisms must be designed and implemented only within a new legal and policy framework, so that past mistakes are addressed.

The numerous state initiatives for truth and justice by successive governments has resulted in a 'culture of commissions', with a long list of commissions and committees being appointed to investigate abuses.⁵⁰ In the post-war period alone, there have been several initiatives, the most well known being the LLRC, followed by the Missing Persons Commission. The reports made public by these two state initiatives indicate the large number of issues and cases requiring urgent attention. The Missing Persons Commission alone has received over 23,000 complaints⁵¹, with that number increasing at each hearing. Reports by the UN, including the OISL report and civil society documents, while highlighting past and continuing violations, also point out the lack of credible investigations within Sri Lanka and the culture of impunity this has culminated in.

On many cases, investigations are yet to commence. Where investigations have commenced, there has been limited progress with few known indictments and prosecutions. The incidents where serious crimes have led to convictions are few and far between. In 2015, two cases related to sexual violence resulted in convictions, but this was after several years and obstacles to arriving at justice.⁵² Both cases raised serious issues with investigations and prosecutions, as well as protection. Thus, there must be recognition that existing mechanisms and processes of truth and justice have been protracted with instances of victims being traumatised and threatened for pursuing their

⁵⁰ A List of Commissions of Inquiry and Committees Appointed by the Government of Sri Lanka (2006-2012), CPA, available at: <http://www.cpalanka.org/a-list-of-commissions-of-inquiry-and-committees-appointed-by-the-government-of-sri-lanka-2006-2012/> [last accessed on 5 January 2016]

⁵¹ See website of The Presidential Commission to Investigate Into Complaints Regarding Missing Persons at <http://www.pcicmp.lk/> [last accessed on 15 January 2016]

⁵² Ruki Fernando, *Solidarity Actions and Struggles for Justice in Sri Lanka*, Groundviews, 30 December 2015, available at: <http://groundviews.org/2015/12/30/solidarity-actions-and-struggles-for-justice-in-sri-lanka/> [last accessed on 5 January 2016]

basic right to truth and justice.

Documents such as the OISL report also point to the widespread nature of the violations, rendering them classifiable as alleged war crimes and crimes against humanity. The scale and range of violations require specific expertise, particularly in the areas of forensics, investigations and prosecutions for international crimes among others. The specialised, professional training required in these areas, while needing urgent initiation, will still take considerable time. Thus, international participants can support nationals and work with them, building capacity and providing guidance, in the process. Indeed, a few Sri Lankans have already had training and acquired expertise in international crimes, having worked on international and hybrid tribunals elsewhere. This is a positive aspect, though those few with such experience will not be able to shoulder the large caseload of past abuses, on their own and without additional support.

Another aspect to bringing in internationals is that it provides victims the confidence that the government is sincere in addressing past abuses. The failures of past initiatives to provide answers and justice to victims are crucial stumbling blocks in achieving reconciliation. Thousands of individuals continue to search for their loved ones, moving from one investigation to the next, surviving threats and harassment in the process. This demonstrates a commitment and persistence to wanting to know the truth and obtain justice. The fact that families continue to engage with investigations does not justify assumptions of their confidence in those mechanisms: it merely highlights their sheer desperation. The new mechanisms must go beyond the existing framework and practices, ensuring that this unique opportunity is utilised to design and implement initiatives that are independent and credible with qualified experts to deal with international crimes, and thereby capable of winning the confidence of the victims.

3. INVOLVEMENT OF INTERNATIONALS IN PREVIOUS INITIATIVES

The following are a few examples where international participation was included in previous state investigations and inquiries. While, in each respective initiative, the internationals had different roles to play, one common factor is that the appointments were under the Commission of Inquiry Act No. 17 of 1948 (as amended), a law used to investigate and inquire, though based largely on 'the right to know' rather than justice *per se*. Promised mechanisms for truth and justice should be based on a new legal framework, ensuring that the role of internationals – whether judges, lawyers, investigators – is robust, integrated and complementary to nationals, rather than being merely advisory.

1. Commission of Inquiry into the killing of former Premier S.W.R.D. Bandaranaike

In 1963, a COI was appointed by the then Prime Minister Sirima Bandaranaike to probe the political aspects of the S.W.R.D. Bandaranaike assassination. The Commissioners included Justice T.S. Fernando, Justice Abdel Younis from Egypt, and Justice G.C. Mills-Odich from Ghana.⁵³

2. Commission of Inquiry into the killing of Lieutenant General Denzil Kobbekaduwa

Another state initiative, which included internationals in domestic investigations involved the appointment from the Commonwealth to the COI looking in to the killing of Lieutenant-General Denzil Kobbekaduwa in 1993. The then President D.B. Wijetunga appointed Hon. Justice Austin Neeabeohe Evans Amissah, Hon Justice Sir Kenneth James Keith, KBE and Hon Justice Muhammadu Lawal Uwais to lead the investigation.⁵⁴

3. Commission of Inquiry to investigate and inquire into 16 incidents of alleged serious violations of human rights that arose in Sri Lanka since 1 August 2005 (also known as the Udalgama COI)

In November 2006, President Rajapaksa appointed a Commission of Inquiry (also known as the Udalgama COI) to investigate and inquire into 16 incidents of alleged serious violations of human rights that had arisen in Sri Lanka since 1 August 2005. The President subsequently invited eleven persons of international repute to form the

⁵³ T. Ramakrishnan, *Foreign role in probes is not new to Sri Lanka*, The Hindu, 26 September 2015, available at: <http://www.thehindu.com/news/international/foreign-role-in-probes-is-not-new-to-sri-lanka/article7692821.ece>; D.B.S. Jeyaraj, *SWRD Bandaranaike: Assassination of a Prime Minister*, DBSJeyaraj.com 25 September 2009, available at: <http://dbsjeyaraj.com/dbsj/archives/1101> [last accessed on 4 January 2016]

⁵⁴ Bhavani Fonseka, *Exploring International and Domestic Modalities for Truth and Justice in Sri Lanka*, Groundviews, 2 September 2015 available at: <http://groundviews.org/2015/02/09/exploring-international-and-domestic-modalities-for-truth-and-justice-in-sri-lanka/> [last accessed on 15 January 2016]

International Independent Group of Eminent Persons (the IIGEP).⁵⁵ The IIGEP was called to observe the work of the Commission, to comment on the transparency of its investigations and inquiries and their conformity with international norms and standards and to make recommendations.

At the outset, CPA⁵⁶ raised concerns with the limited mandate of the IIGEP including its 'observer role'.⁵⁷ CPA also noted that the mandate of the Udalagama COI provided that it may request a member of the IIGEP to provide technical or other advice, indicating that it was within the discretion of the Udalagama COI to solicit support and advice and that there was no mandatory measure to ensure that the IIGEP was substantively involved in the process.

In addition, CPA noted the intrusive role the state may play in investigations that are meant to be independent. In addition to counsel from the Attorney General's Department leading questions on behalf of the Udalagama COI, the role of officials in the IIGEP secretariat was also raised.⁵⁸

The IIGEP ultimately became an ineffective body due to the numerous limitations imposed upon them, demonstrating that careful consideration is needed when designing a mechanism. An advisory and observer role is insufficient considering the scale of past abuses and structural reform required. CPA noted in 2007:

⁵⁵ The IIGEP was established when the last Commission Member's nomination was approved by the Government of Sri Lanka in February 2007

⁵⁶ CPA and other national civil society organisations received standing before the Udalagama COI to represent the interests of the victims, thereby monitoring the public sittings and making submissions. CPA also commented on the proceedings, raising concerns including structural flaws, state interference and protection issues.

⁵⁷ The following observations were made by CPA in 2007:

"An active role for the IIGEP in the investigations has not been delineated. Therefore the role of the IIGEP seems to be merely to observe the investigations and inquiries. The TOR also adds if any advice, assistance, services, resources, facilities, opportunities including access to witnesses interviewed by the CoI, and information and material is required by the IIGEP in the performance of its said role and for the purpose of ensuring the transparency of the investigations and inquiries, the IIGEP should bring such requirements to the attention of the Chairman of CoI and the head of the IIGEP. The TOR further states that the AG is to be kept notified of such requirements. Such restrictions raise concern as to the exact role of the IIGEP. In particular, since in reality the IIGEP has little powers in respect of the investigations and inquiries, as to whether it has been appointed by the government to satisfy the international community through the presence of internationals. An additional concern, given the overarching requirement of independence from the state relates to the requirement of having to inform the AG. That the legitimacy of the process is to be provided by the IIGEP ensuring transparency of such investigations and inquiries, and that such investigations and inquiries are conducted in accordance with basic international norms and standards, should also be noted in this context."

CPA Policy Brief No. 1, 2007: A Commentary on the Commission of Inquiry and the International Independent Group of Eminent Persons

⁵⁸ CPA raised concerns with this structure:

"CPA expresses concern on the overly intrusive role government officials are to play in the Secretariat to the IIGEP, as this could weaken the IIGEP's image of independence and impartiality. It is also vital that the staff of the Secretariat are independent and not connected to the government or any other political and military body. CPA urges the authorities to provide all necessary support, and to ensure that staff recruited to assist the IIGEP and the Secretariat are independent of any government, political or military affiliation and patronage."

“A question that needs to be asked is as to whether the appointment of the IIGEP is merely to demonstrate an international dimension to the investigations and inquiries, while in reality, imposing various restrictions on the activities of the IIGEP, thereby jeopardising its work.”

The IIGEP functioned for a year, and during this period it made several public statements. These are worth examining to understand the limitations of its mandate, the frustrations with a flawed process of investigations and the lack of political will. In its final statement it noted:

“The IIGEP is of the opinion that there has not been the minimum level of trust necessary for the success of the work of the Commission and the IIGEP. The IIGEP model may be unique. However, experiences associating national and international persons and processes in the past, with the view to harmonising national practice with international norms and standards, have always relied on confidence and trust for their success.”

4. Presidential Commission to investigate into complaints regarding missing persons (Missing Persons Commission)

The most recent international component to a domestic process is the ‘Advisory Council’ to the Missing Persons Commission. The Advisory Council was established in July 2014 by Gazette No 1871/18 and consisted of six internationals, including Sir Desmond de Silva (UK), Sir Geoffrey Nice (UK), Prof David Crane (USA), Prof Avdash Kaushal (India), Mr Ahmer Bilal Soofi (Pakistan) and Mr Motoo Noguchi (Japan). According to the mandate, the Advisory Council is to ‘advise the Chairman and Members of the Commission of Inquiry, at their request, on matters pertaining to the work of the Commission’. Over a year later, questions still remain as to the exact role played by the ‘Advisory Council’, including as to whether they were to advise the Missing Persons Commission or the Government of Sri Lanka.⁵⁹ That secrecy continues to surround the entity’s role, raises alarming questions about its independence and the nature of engagement.

In addition to COIs, internationals have in the past supported criminal investigations in Sri Lanka. For example, in April 1993, Scotland Yard assisted the police with investigations into the killing of politician Lalith Athulathmudali.⁶⁰ Therefore, past practices demonstrate that international involvement is not a novel concept to Sri Lanka. What must differ from past practices is to ensure the involvement is integrated and that internationals work in partnership with locals, supporting to build capacity and expertise and in the furtherance of the victim’s right to truth and justice.

⁵⁹ There has been some publicity on the high amounts paid to the Advisory Council. According to the Sunday Times report:

“For just seven months – from July 7, 2014 to February 7, 2015 – a staggering amount of more than Rs. 135 million has been paid out to them as well as others who were connected with this exercise, according to documents obtained by the Sunday Times. These payments, as well as others revealed today, have been made directly by the Central Bank without approval from the Cabinet of Ministers.”

See *Rs. 400 m spent on foreign advisors for domestic HR inquiry*, The Sunday Times, 15 February 2015, available at: <http://www.sundaytimes.lk/150215/columns/rs-400-m-spent-on-foreign-advisors-for-domestic-hr-inquiry-135809.html> [last accessed on 4 January 2016].

⁶⁰ T. Ramakrishnan, *Foreign role in probes is not new to Sri Lanka*, 26 September 2015, available at: <http://www.thehindu.com/news/international/foreign-role-in-probes-is-not-new-to-sri-lanka/article7692821.ece>, [last accessed on 4 January 2016]

4. MOVING BEYOND HYBRID VS. DOMESTIC: KEY CONSIDERATIONS

Sri Lanka is in a unique position to address past abuses and transition from a post war society to one that is post conflict. In this regard, there must be a paradigm shift in how Sri Lanka deals with the past. The enthusiasm in the past to appoint COIs which are fundamentally flawed in terms of independence and scope must not be allowed to sabotage this unique moment in which to appoint mechanisms that are able to deliver on truth, justice, reparations and non-recurrence. These must be designed and implemented in consultation with victims, civil society and other key stakeholders, ensuring that the process is inclusive and the mechanisms meet international standards. In the haste to appoint mechanisms, one must not forget other crucial issues for a society in transition including those related to protection and psychosocial and security sector reform.

The 2015 Resolution provides a broad framework for consideration. Several months after its adoption, conversations persist on the design of mechanisms including whether they can be hybrid or purely domestic. This paper discusses the legal, political and practical issues related to hybrid mechanisms, examining past initiatives, which had some international involvement and the failures of such initiatives. Thus, a new framework must be introduced that goes beyond the past practices, with internationals working in partnership with locals to investigate and prosecute international crimes and develop the expertise within Sri Lanka for future credible domestic mechanisms. It is paramount that this unique moment of transition should not be lost to fundamentally flawed frameworks or be sabotaged for political expediency. Thus, it is timely to identify and design new frameworks with adherence to Sri Lanka's Constitutional framework and meeting international standards, ensuring that mechanisms and processes best serve the victims interests and rights.

It is important to revisit the OISL report and the statement by the UN High Commissioner for Human Rights Zeid on 16 September 2014, when he formally presented the OISL report to the UNHRC.⁶¹ He articulated the past failures, lack of capacity and the culture of impunity within Sri Lanka, calling for a hybrid court to address the past abuses.

“The levels of mistrust in State authorities and institutions by broad segments of Sri Lankan society should not be underestimated. It is for this reason that the establishment of a hybrid special court, integrating international judges, prosecutors, lawyers and investigators, is so essential. A purely domestic court procedure will have no chance of overcoming widespread and justifiable suspicions fuelled by decades of violations, malpractice and broken promises.”

“The domestic criminal justice system also needs to be strengthened and reformed, so it can win the confidence of the public, but that is a process which will take several years to achieve and needs to be undertaken in parallel to the establishment of a special hybrid court, not in place of it. Indeed such a court may help stimulate the reforms needed to set Sri Lanka on a new path to justice, building public confidence along the way.”

⁶¹ UN urges creation of special court in Sri Lanka after new report confirms ‘horrific’ abuses, UN News Centre, 16 September 2015, available at: <http://www.un.org/apps/news/story.asp?NewsID=51889#.VpaSbFIR-eA> [last accessed on 5 January 2016]

On 8 December 2015, the High Commissioner reiterated this call for 'significant integration of internationals'.⁶²

The following are key areas that must be addressed in the short term:

Legislative reform: CPA notes there is no impediment within the Constitutional framework to allow internationals to work in Sri Lanka. What will be required is legal reform to enact international crimes into Sri Lanka's legal framework and to introduce the new mechanisms promised including the Special Court, Truth, Justice, Reconciliation and Non-Recurrence Commission, Office of the Missing Person and Office for Reparations. CPA also recognises the importance of engaging with the judiciary and lawyers in Sri Lanka, important stakeholders in the design and implementation of legal and policy reform.

Awareness raising and inclusive process: Limited information is publicly available as to what the government promises to establish. There should be an immediate effort to disseminate information on the government's proposals for transitional justice, explaining the different mechanisms and their uses, mandate and composition. It is also critical that consultations with victims and others are inclusive and provide the space to gather views from a cross section of society, thereby feeding into the design of processes and mechanisms.

Key elements for international involvement: This paper sets out experiences from the past that should be factored in when providing for international involvement. Going by Sri Lanka's own experiences, there are specific areas to be considered including the level of involvement, independence, expertise, composition, duration and phasing. These are discussed below-

Level of involvement

Internationals must have a robust involvement in mechanisms. Past experiences have indicated that internationals have been commissioners, observers and advisers. Lessons from the past have also indicated pitfalls in merely having an advisory role and that for real change, internationals should work along side nationals and be fully integrated into the mechanisms.

Credible and Independent

Mechanisms must be designed and implemented to ensure an independent and impartial process is underway with individuals who have the confidence of victims and communities. Appointments should be made on expertise and merit, rather than political connections. International experts will be required in a range of areas including forensics, investigations, protection, archiving, prosecutions and adjudication. This too must be given attention, ensuring that those appointed are impartial and have the necessary skills

⁶² UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein at the 8th Annual Emilio Mignone Lecture on Transitional Justice, <https://www.ictj.org/news/un-rights-chief-sees-hope-amid-challenges-fight-impunity> [last accessed on 5 January 2016]

and expertise. Selections for these mechanisms should undergo a rigorous process, which meets standards of professionalism, neutrality, integrity and independence.

Composition and Phasing

The ratio of internationals and nationals will be critical. There must be careful consideration as to the number of judges, lawyers, commissioners, investigators and other relevant staff and also the national-international ratio. In terms of dealing with international crimes and the lack of expertise within Sri Lanka at present, there must be consideration as to how best to move on this. To ensure no gaps in investigations and prosecutions arise, it would be ideal to consider more internationals at the beginning, phasing out with time as expertise and capacity among Sri Lankans develop. This was done with the War Crimes Chamber of the Court of Bosnia-Herzegovina where there were both international and national judges and with time the phasing out to a more domestic model.⁶³ The composition of both internationals and nationals at the early stages will also engender the confidence of victims, who have witnessed countless state investigations with limited follow up.

Funding: It is crucial to identify funding sources that are able to sustain transitional justice initiatives for several years and possibly decades. International tribunals have proved to be costly exercises and there is now more interest towards hybrid or domestic mechanisms. Sri Lanka will need to identify funding sources for the different mechanisms and initiatives promised, ensuring that funding does not influence or interfere with the workings of the mechanisms and processes.

Related to funding should be consideration of a trust fund for victims. This too must be independent, providing a neutral source of funding.

Protection Issues: A key problem faced with previous investigations is the threats and harassment faced by victims and witnesses, impacting testimony and ultimately a factor in the ability to investigate and prosecute.⁶⁴ Although Sri Lanka now has legislation on victim and witness protection, there continue to be gaps. In addition to legislative reform, there must also be practical steps taken to provide protection and support to victims and witnesses prior to, during and post engagement with mechanisms. It is also ideal for each mechanism to have its own protection team. Selection of personnel to the protection mechanisms should undergo a rigorous screening process, ensuring that the protection teams comprise of individuals who have the necessary skills and expertise and are independent and professional.

⁶³ Cecile Aptel, *International and Hybrid Criminal Tribunals: Recognising or Stigmatizing?* in Paige Arthur (ed), *Identities in Transition: Challenges for Transitional Justice in Divided Societies* (Cambridge 2011)

⁶⁴ *Concerns on the Proceedings of the Presidential Commission to Investigate into Complaints Regarding Missing Persons*, CPA, 2 October 2014, available at: <http://www.cpalanka.org/concerns-on-the-proceedings-of-the-presidential-commission-to-investigate-into-complaints-regarding-missing-persons/> [last accessed on 5 January 2016]; *The Presidential Commission to Investigate into Complaints Regarding Missing Persons: Trends, Practices and Implications*, at pg 8, CPA, December 2014, available at: <http://www.cpalanka.org/the-presidential-commission-to-investigate-into-complaints-regarding-missing-persons-trends-practices-and-implications/> [last accessed on 5 January 2016]

Managing Expectations: The OISL report and civil society reports have documented serious violations in the past, attributed to the GOSL forces, the LTTE and others. These require independent investigations and prosecutions. But the challenge lies in prosecuting all potential perpetrators. Lack of sufficient evidence and weak witness testimony can result in fewer indictments. Thus lies a dilemma in terms of an impunity gap: The number of perpetrators as opposed to those who can be prosecuted. Therefore it is important to explain to victims and communities the different processes for truth, justice, reparations and non-recurrence and explain why not all cases can lead to criminal justice.

This is also an opportunity to clarify that the four pillars of transitional justice compliment and support each other and should not be treated as adversarial or competitive. An accountability mechanism, regardless of being hybrid or domestic, cannot on its own address all the past abuses and reconcile. Truth and reparations are crucial in the reconciliation efforts, enabling victims to know what happened, provide a space for their narratives to be heard, provide redress and assist in rebuilding. Therefore, there must be a realisation of the different tools present in transitional justice and what is most feasible.

5. CONCLUSION

The promise to establish transitional justice mechanisms will need to be followed through with careful consideration in respect of their design and implementation. While this paper discusses one aspect, that of international involvement in truth and justice, many other issues will require attention and action. More than three months after the adoption of the Resolution and promises by the GOSL, action is necessary and timely. Arguments to delay and water down potential mechanisms to address truth and justice must be countered immediately, demonstrating the government's sincerity to facilitate the victim's right to truth and justice. This can be a demonstration of the commitment to unveil denials and end silence and impunity. The paper highlights that the arguments opposing integrated international involvement in mechanisms do not hold. If nothing else, there is a glaring need to obtain support with investigations and prosecutions from experts conversant with international crimes. As the paper also highlights the design of a mechanism can include a sunset clause with regard to participation of international actors. Internationals who work with nationals in the specific areas can with time build the necessary capacity and assist in developing expertise within Sri Lanka, facilitating the growth of skills and knowledge for purely domestic mechanisms in the future. Further, reform is essential to restore the rule of law and the independence of key institutions, ending with it the culture of impunity in Sri Lanka.

The unique opportunity upon us must be handled with care and responsibility. Every effort must be used to ensure all victims in Sri Lanka are able to find the truth, obtain justice and reparations. This historic moment is also an opportunity to initiate reforms with the aim of non-recurrence and reconciliation. There should be no more excuses and delays. Promises made in 2015 must now be implemented and done with due attention to the rights of victims.