

March  
2015

# Benchmarks and Issues to Consider when Exploring Transitional Justice in Sri Lanka

DISCUSSION NOTE  
CENTRE FOR POLICY ALTERNATIVES

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The Centre for Policy Alternatives (CPA) is an independent, non-partisan organisation that focuses primarily on issues of governance and conflict resolution. Formed in 1996 in the firm belief that the vital contribution of civil society to the public policy debate is in need of strengthening, CPA is committed to programmes of research and advocacy through which public policy is critiqued, alternatives identified and disseminated.

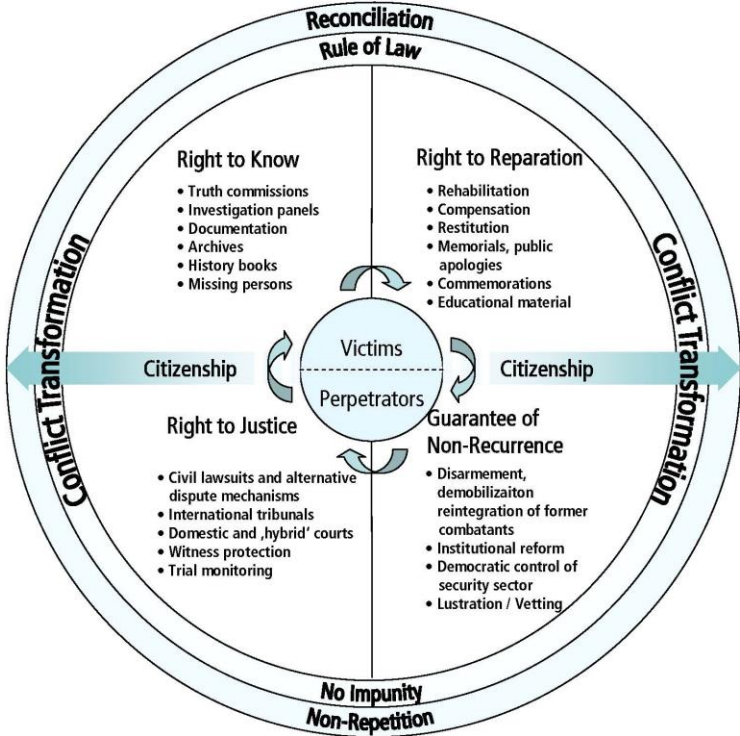
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Several reports in 2015 indicate to the possibility of establishing a ‘credible domestic process’ in Sri Lanka. This comes in a context of failed attempts in the past to address truth and justice in Sri Lanka and the ongoing protests by victims, families of the disappeared and affected communities for greater action. Recent protests also made specific reference to the developments at the 28<sup>th</sup> Session of the United Nations Human Rights Council (UNHRC) and the decision of the Office of the High Commissioner for Human Rights (OHCHR) to defer the tabling of the report by the OHCHR Investigation on Sri Lanka (OISL). The reports of a ‘credible domestic process’ also come in the context of the OISL report being tabled at the 30<sup>th</sup> Session of the UNHRC and pressure on the Government of Sri Lanka to deliver on plans that address past violations and introduce reforms.

Key benchmarks and issues must be discussed when designing and subsequently implementing domestic processes and mechanisms. In this regard, the Centre for Policy Alternatives (CPA) has produced this short note to initiate a discussion among the different stakeholders as to the different elements that must be part and parcel of any process/mechanism.

**Broader Issues to Consider**

No one formula exists in the search for truth and justice in a post violence context. Several broad issues must be addressed. The process must be victim centered and meet the grievances of affected communities, support healing and breaking away from a violent past, assist in finding the truth and provide justice. In this regard the Jointet/Oretlicher Principles to combat impunity and the four pillars advanced are useful to consider: the right to know, right to justice, the right to reparations and the guarantee of non-recurrence.



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Domestic processes and mechanisms to address transitional justice can also capture the multiple narratives of the past and be a historical record. Transitional justice can address many objectives but should ultimately aim to facilitate the building of a society based on respect for human rights, dignity and tolerance. Transitional justice consists of both judicial and non-judicial processes and mechanisms, including trials, truth telling, reparations and institutional reform and should be in conformity with international legal standards and obligations. There were several flawed attempts at trials and truth telling and ad hoc attempts at reparations in the past. CPA has monitored and documented some of these and recommended legal, policy and structural reforms. In the absence of any reforms or change in practices, the credibility of domestic processes and mechanisms is in question. It is timely to introduce much needed reforms to ensure that processes and mechanisms meet basic standards. Such processes and mechanisms should also address root causes of the conflict and a broad range of violations including civil, political, social, economic and cultural rights.

Prior to deciding on processes and mechanisms, a wide national consultation among the relevant groups including victims, affected communities, religious leaders, community groups and civil society must be organised. This is essential to ensure ownership of the process and be inclusive and transparent when moving forward. A wide consultation also provides credibility to a process that is meant to reconcile and address grievances of communities and interested parties. Such consultations should not be rushed but done in a manner that captures the diversity of views in a post-war society and facilitate planning of future processes and mechanisms. It is also timely to revisit work done by previous investigations including examining reports of past commissions and committees.

Listed below are some benchmarks and issues that should be factored in when designing domestic processes and mechanisms and subsequent implementation. This is not an exhaustive list and will be expanded by CPA in the coming weeks and months, enriched by discussions with diverse stakeholders from across Sri Lanka.

### **Benchmarks and issues relating to the design of specific processes and mechanisms**

- There should be clarity in terms of mandate and objective of possible truth telling and justice processes and mechanisms.
- Clear statement of the time period under review.
- Recognise the centrality of victims and their special status in the design and implementation of such processes. In this regard, it is important to also ensure the actual implementation of the legislation providing protection for victims and witnesses.
- Identifying respected individuals with expertise in areas of law, governance, human rights, history, psychosocial issues and other relevant areas for possible truth telling processes and mechanisms. Similarly, competent and experienced lawyers and

judges must be selected for justice and accountability processes and mechanisms.

- Processes and mechanisms must be transparent and open to the public, unless in instances where there are credible security concerns. In the past, the public have not been fully aware and informed of public sittings and this must be addressed by a comprehensive information dissemination strategy in all three languages.
- An independent fund should be established for domestic processes and mechanisms, thereby providing a safeguard from possible interferences.
- There should be no amnesties offered for serious human rights violations including war crimes and crimes against humanity.

### **Issues relating to the implementation of domestic processes and mechanisms**

- There should be clarity regarding the information collected via a truth telling process, particularly as to whether the information received will be investigated and subsequently used for prosecutions. In this regard there should be an experienced and competent team of independent lawyers and investigators who are able to examine the information received and decide next steps without undue delay.
- Truth and justice processes should employ experienced and competent translators and have all necessary documentation related to the processes in all three languages.
- There should be sensitivity towards ethnic, religious and gender issues with necessary steps taken to ensure processes and mechanisms are not compromised or biased towards one particular group. Steps also should be taken to provide adequate resources and space for particular groups to engage with processes and mechanisms including private spaces to provide testimony.
- There should be regular progress updates of processes and mechanisms to ensure the public is kept informed and involved.
- Important to revisit findings of previous commissions and other mechanisms established to investigate and inquire into past incidents. Steps should be taken to make public reports of previous entities and to inform the public regarding the status of the implementation of recommendations.

### **Benchmarks and issues relating to the broader legal framework**

- Is there a need for new legislation? The existing Commission of Inquiry Act provides for the establishment of a Commission of Inquiry but a truth telling process such as a truth and reconciliation commission would require separate legislation. Similarly, legislative reform will be required for justice and accountability processes.

- In terms of legal reform that meets international standards and obligations, Sri Lanka should ratify the International Convention for the Protection of All Persons from Enforced Disappearance and introduce enabling legislation.
- Revisit debates of setting up an independent prosecutors office with the mandate of prosecuting grave human rights violations.

### **Initiatives to assist victims and affected communities**

- Introduce a comprehensive reparations programme that provides for a range of material and symbolic benefits to victims. Reparations can include monetary compensation, medical and psychological services, return of land and property or the provision of damages or compensation for loss.
- Initiatives to assist relatives and friends of missing persons to help locate these individuals, including through a publicly accessible and responsive family tracing system. There should also be an immediate release of lists of detainees and places of detention.
- The International Committee of the Red Cross (ICRC) should be given access to all detention and rehabilitation centres.

### **Archiving, memorialisation and other issues**

- There must be a comprehensive documentation and archiving system for past processes and mechanisms and any future initiative.
- Attention should be on identifying initiatives establishing memory spaces, which recognise the multiple narratives and provides the space for victims, families and others to grieve, remember and recognise.
- A National Day to remember all the victims of the conflict should be declared.