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The Need for a Comprehensive Reparations Policy and Package

DISCUSSION NOTE

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Discussion Note

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

**Centre for Policy Alternatives
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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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Introduction

For any post war society grappling with the consequences of past violence and engaged in exploring modalities for transitional justice, reparations is an important tool. Reparations, if designed and implemented in an inclusive manner that factors in the grievances of the victims and affected communities, can be an effective tool in acknowledging and addressing the injustices of the past. It is a bridge between the past and the future, and an integral element in the transition towards reconciliation.

The numerous transitional justice initiatives in Sri Lanka, in the past, have at different times explored the issue of reparations, many in ad-hoc forms with no comprehensive policy yet to be introduced that meets basic international standards. Past commissions of inquiry (COIs)¹ including the All Island Commission of Inquiry into Involuntary Removal and Disappearance of Certain Persons of 1998 (Disappearances COI)² and the more recent Lessons Learnt Reconciliation Commission (LLRC)³ recognized the need for reparations and made some useful recommendations including legal and policy reform and assistance to victims. There have also been government circulars and programs to award compensation and issue death certificates including the work of the **Rehabilitation of Persons, Properties and Industries Authority (REPPIA)**.⁴ This paper discusses some of these initiatives, some which continue to be relevant and necessary today, and provides recommendations that should be examined and implemented without further delay.

The Centre for Policy Alternatives (CPA) reiterates its advocacy over the years for truth, justice, reparations and institutional reform. In the post war context, CPA has done considerable work in documenting trends and patterns of ongoing violations and advocated reform including legal and policy reform. CPA has also called for action in terms of the four arms of transitional justice and has initiated dialogues among the different stakeholders on the areas that require reform.⁵ In this regard, CPA will produce several policy documents to feed into the design and implementation of processes and mechanisms of transitional justice, which will generate a wider discussion on transitional justice and related issues. This is an initial paper on reparations, which will be followed by several other initiatives.

1. Definition

Reparations include several aspects and the following are discussed in terms of what is relevant in the present Sri Lankan context-

¹ A list of COIs appointed in recent years can be found here: <http://www.cpalanka.org/a-list-of-commissions-of-inquiry-and-committees-appointed-by-the-government-of-sri-lanka-2006-2012/>

² Appointed by Warrant No: SP/6/N/214/97, 30 April 1998

³ More information on the LLRC including report, submissions can be accessed at <http://www.llrcarchive.org/about-llrc/>

⁴ Interview with REPPIA, 23 April 2015. REPPIA was established by The **Rehabilitation of Persons, Properties and Industries Authority Act** No. 29 of 1987 and is presently placed within the Ministry of Resettlement, Reconstruction and Hindu Affairs

⁵ Benchmarks and Issues to Consider when Exploring Transitional Justice in Sri Lanka, CPA, March 2015

Restitution: The re-establishment of the situation, which existed before the wrongful act was committed such as the return of land and property, restoration of freedom and liberty, restoration of social services.

Compensation: The payment of money by the state in recognition of the wrongs and losses.

Rehabilitation: The restoration of a victim's physical and mental health including the provision of psychosocial care.

Satisfaction: This element of reparations is more symbolic and includes an apology, memorials, museums and other forms of the commemoration of the past and victims.

2. International Law and Standards

The right to reparations is enshrined in several international law instruments. The following are relevant to the present paper: The Universal Declaration of Human Rights (Article 8), The International Covenant on Civil and Political Rights (Article 2), The International Convention on the Elimination of All Forms of Racial Discrimination (Article 6), The Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (Article 14), The Convention on the Rights of the Child (Article 39), and The Rome Statute of the International Criminal Court (Articles 68 and 75).

Also important to consider is the adoption by the UN General Assembly in 2005 of the "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of Human Rights Law and Serious Violations of International Humanitarian Law".⁶

3. Basic Principles

It is important to also consider basic principles that should guide the discussions and debates when designing and implementing a reparations policy and package. The following are identified by CPA as key, in moving forward in this area:

- Reparations should be implemented without discrimination or prejudice on the basis of ethnicity, gender, age, political affiliation, class, marital status, sexual orientation, nationality, religion and disability, or any other status.
- For reparation to be effective, it must be inclusive and there must be meaningful participation and consultation of victims in the mapping, design, implementation and monitoring of a reparations policy and package. The process should recognize the role of victims and their integrated role in transitional justice.

⁶ Adopted by General Assembly Resolution 60/147 of 16 December 2005

- Reparations programs must be gender sensitive and address the needs of single headed households and victims of sexual violence, with measures taken to prevent exacerbation of trauma and stigma.
- Reparation programs should avoid situations that lead to further discrimination and marginalization and should not be seen as a form of revenge.
- Reparations should be designed and implemented with links to other transitional justice initiatives such as trials, truth telling processes and institutional reform. Reparation on its own can be construed as 'buying victims'. In Argentina for example, the payment of compensation to the mothers for their disappeared children, was considered by some as 'blood money'. A holistic approach will also demonstrate a genuine will on the part of the state to address the past and not be seen as merely engaging in political maneuvering and empty gestures.

4. Reparations: Overview of Official Positions

With the election of President Maithripala Sirisena in January 2015 and the formation of a new government, there has been a greater interest compared to the past, in addressing past violence and the culture of impunity. The 100- day plan of the present government is an indicator of positions in terms of assistance and compensation. Following are some of the promises made by the Sirisena government that is relevant to the present topic:

- Compensation of Rs 1 million will be paid to fishermen who lose their lives at sea through an insurance scheme with state contributions
- Farmers to benefit from the introduction of a state contributed insurance scheme for crops.
- A new pensions scheme will be introduced for farmers and fishermen.
- A pensions scheme will be introduced for migrant workers, and the interest on their NRFC deposits will be increased by 2½%.
- A programme will be put in place to ensure support and protection for the families of migrant workers in the Middle East and elsewhere who provide an invaluable service to the country through their labour
- New laws will be put in place to prevent abuse of women, abuse of children and sexual harassment of women and measures taken to ensure that women and children can live without fear in Sri Lanka, with responsibility undertaken to enforce the laws effectively
- Measures will be put in place to protect those of all races widowed during the conflict, and their families.
- Steps will be taken to provide land ownership and proper housing to plantation workers instead of their current confinement in line rooms
- Relief will be provided to all those illegally displaced for various reasons from their homes and lands

- The value of the housing and land of which residents of Colombo have been deprived will be calculated and that sum deducted from the housing loans they are currently paying
- A programme will be implemented swiftly to provide housing to the hundreds of thousands who have no shelter

With the completion of the 100 days, limited information is publicly available on the status of implementation of the above, let alone completion of activities. Some positive steps by the governments addressing reparations must be noted. The government made a 'Declaration of Peace' at the Independence Day celebrations on 4 February 2015 paying respects to the citizens of Sri Lanka who lost their lives due to the conflict and to all victims of violence since Independence. A commitment was also made in the declaration to prevent a recurrence of violence. Furthermore, the government promised to release 1000 acres in Jaffna to land owners of which 425 acres were returned in March⁷ to be followed by a subsequent release in the same area.⁸ In April, the Prime Minister established the 'National Center for the Upliftment of the Households Headed by Women'.⁹ This entity is meant to address the needs of women headed households in the North and East but limited information is available on its mandate. There are also promises on removing restrictions on visiting places of worship in the Northern Province and on reconstructing damaged places of religious worship.¹⁰ Progress, if any, in respect of these must be monitored.

In addition to official statements, the government established in February 2015 a Special Presidential Task Force on Reconciliation to examine and advice on steps the government should take towards reconciliation. The Task Force has now been transformed into the Office for National Unity and Reconciliation.¹¹ Furthermore, there have been several high profile international visitors to Sri Lanka on the issue of transitional justice including the United Nations Special Rapporteur on Truth, Justice, Reparations and the Guarantees of Non-recurrence.¹² These developments must be seen in the context of the government's promise of a credible domestic process, the contours of which, however, are not known to the public. Although it is early days, the establishment of the Office for National Unity and Reconciliation sends a positive message in terms of one entity that is mandated to examine issues related to reconciliation including reparations. What is yet unclear is how this new entity will work with existing government actors including those who have met and discussed with international visitors the issue of credible domestic processes. With much more work

⁷ Sri Lanka returns land seized from Tamils, 24 March 2015, <http://www.asianage.com/international/sri-lanka-returns-land-seized-tamils-785>

⁸ Interview with officials at the Office of the National Unity and Reconciliation, 22 April 2015

⁹ Sri Lanka to set up center in war-torn North to uplift families headed by women, 5 April 2015, http://www.colombopage.com/archive_15A/Apr06_1428260089CH.php

¹⁰ Address by Minister Mangala Samaraweera at the Carnegie Endowment for International Peace, 11 February 2015

¹¹ 'CBK to chair high level office on national unity', Daily News, 27 March 2015

¹² 'Observations by the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence', Mr. Pablo de Greiff, on the conclusion of his recent visit to Sri Lanka, 11 April 2015, https://mail.google.com/_scs/mail-static/_js/k=gmail.main.en.piH2wZyhh0s.O/m=m_i.t.it/am=PiMa4U7G_UGMNWeXvkLZv_9-dkmxk8-L-ggTQLlzAP5v9v8Afg_ooy1k/rt=h/d=1/t=zcms/rs=AHGWq9AE5LNmW0BXiXyZz7plvaXE0e6uIA

needed including on the government's own promises and pledges related to truth, justice, reparations and guarantees of non-recurrence, it is to be seen as to whether the government has the will to take the much needed steps towards sustainable peace and reconciliation.

5. Reparations Specific to Disappearances and Land and Property

This document highlights two areas where considerable work has already been done in terms of the findings and recommendations of past COIs and some initiatives by successive governments. The choice of the two issues- disappearances and land and property- is not indicative of a prioritization of issues but is used merely as examples to stimulate discourse on reparations as a whole. Moving forward, CPA calls on the authorities to examine the reports of past COIs, assess the impact and identify lessons from past initiatives and formulate a reparations policy and package that address the needs and grievances of different communities.

Disappearances

The numerous COIs appointed to investigate disappearances including the Disappearances COI and the present Presidential Commission to Investigate into Complaints Regarding Missing Persons¹³ headed by Maxwell Paranagama (Maxwell COI) demonstrate the grave situation of enforced and involuntary disappearances in Sri Lanka. The UN Working Group on Enforced and Involuntary Disappearances (UNWGEID) has over 5000 cases of disappearances complaints before them. The Maxwell Paranagama COI has so far received over 21,000 complaints with new cases received at every sitting held across the North and East of Sri Lanka. What is a common theme from across the decades of COIs on the issue of disappearances is the persistent search by families for their loved ones, going from one state initiative to another in search of answers. The testimony before the Maxwell Paranagama COI demonstrates the critical, continuing attention and preparation that is required for the design and implementation of a comprehensive truth and justice mechanism including the ratification of the International Convention for the Protection of All Persons from Enforced Disappearance and introduce enabling legislation.¹⁴

Past COIs on disappearances and related issues made several useful recommendations including payment of compensation and rehabilitation. It is worthwhile revisiting the findings and recommendations of the Disappearances COI, other documents and recommendations, which are still relevant. In the area of compensation, a recommendation was made for the compensation to be paid to the next of kin with identified monetary amounts depending on relationship to the victim. A recommendation was also made to pay those involuntarily removed, tortured and released or escaped an amount of Rs.25,000. There was also a finding that compensation should be paid without distinction of whether the victim was a public servant or a member of public. The Disappearances COI also recommended the issuing of death

¹³ <http://www.pcicmp.lk/>

¹⁴ For more information refer to: The Presidential Commission to Investigate into Complaints Regarding Missing Persons: Trends, Practices and Implications, CPA, December 2014

certificates in accordance with the Registration of Deaths (Temporary Provisions) Act No.2 of 1995. There have also been recommendations to assist families of victims including scholarships to children of disappeared persons and the provision of vocational training.

Land & Property

Both natural and man made disasters resulted in years of problems and disputes related to land and property across Sri Lanka. The war, the 2004 tsunami and recent drives at urban development and beautification have all contributed to thousands becoming internally displaced persons (IDPs), with some in the North and East being displaced multiple times. Although many are resettled, thousands continue to be unable to return to their legally owned lands due to ad-hoc high security zones (HSZ), occupation of land and development related issues.¹⁵ Some have lived in welfare camps for decades such as those displaced from their lands in Valikamam North in the Jaffna District due to over 6000 acres of land being occupied by security forces. Others such as IDPs from Sampur, Trincomalee were displaced in 2006 due to the war and their displacement continued with the subsequent creation of a HSZ and economic zone in the area. The issue of land and property rights, displacement and evictions are not only limited to the North and East, but recent drives at urbanization and beautification in Colombo and other urban areas has witnessed hundreds being evicted from their homes with scant regard for due process.¹⁶

Several attempts at resolving land and property disputes in the past resulted in the introduction of land circulars and programs. For example, land taskforces were set up previously to address disputes and land alienation schemes were introduced to address several land issues including landlessness. Regardless, six years after the war, many issues continue to require attention. Thousands still continue to be unable to live on their own land with others not having sufficient land documentation to prove ownership and yet others having issues related to competing claims of ownership and boundary disputes.

Several steps can be taken by the authorities to address these issues. A starting point would be the full implementation of the Thirteenth Amendment to the Constitution that devolves land powers to Provincial Councils and requires the establishment of a National Land Commission. It is also pertinent to examine state policies and programs that provide for compensation and are effective such as the National Involuntary Resettlement Policy¹⁷ and the existing initiatives such as those within REPPIA. It would also be pertinent to revisit some of the recommendations of the LLRC which look into land issues including those that recommended the reduction of land under occupation and the return of land to legal owners. While it is important to revisit some of the

¹⁵ For more information refer to: Bhavani Fonseka & Dharsha Jegatheeswaran, Politics, Policies and Practices with Land Acquisitions and Related Issues in the North and East of Sri Lanka, CPA, November 2013

¹⁶ For more information refer to: Forced Evictions in Colombo: The Ugly Price of Beautification, CPA, July 2014; Bhavani Fonseka, Legal and Policy Implications of Recent Land Acquisitions, Evictions and Related Issues in Sri Lanka, CPA, November 2014

¹⁷ Land Acquisition and Implementation of the National Involuntary Resettlement Policy: A Guide for Public Officials on Good Practices, Ministry of Land and Land Development, 2013

constructive recommendations of previous state initiatives, it is also timely to examine broader issues in terms of reparations and reconciliation.

6. Recommendations

This paper discusses the importance of reparations to facilitate reconciliation. The issues of disappearances and land and property are used to demonstrate the need to design and implement a comprehensive reparations policy and package that meet the present needs and grievances of different communities in Sri Lanka.

As mentioned, many of the recommendations made by previous COIs on this issue continues to be relevant today and should be revisited by the authorities. It is important for the authorities to review existing compensation schemes and circulars and identify lessons learnt. This paper highlights the principles that should be used as a guide when designing a policy and package that seeks to redress grievances, and with the aim of long term peace and reconciliation. CPA recommends the following as immediate measures that can be taken-

I. Larger Policy Initiatives

- Formulate a Reparations Package that provides for legal and policy reform and formulates administrative measures that address the grievances of different communities.
- Introduce a comprehensive Reparations Policy after wide consultations with different stakeholders including victims and affected communities.
- Revise existing circulars and administrative measures and ensure all administrative policies and practices meet international standards and basic principles. These include revising amounts to be paid as compensation.
- Initiate an outreach campaign in Sinhala, Tamil and English to inform of the different reparation initiatives and steps people should take to access assistance and services.

II. Recommendations Addressing Needs of Communities Affected by Violence

- Establish a Trust Fund for Victims, which provides for financial assistance to dependents including scholarships for children of victims of past violence.
- Initiate health care programs for victims and affected communities that address both physical and psychosocial health issues.
- Provide for a vocational training scheme for victims, affected communities and their families.

III. Recommendations Specific to Disappearances

- Explore avenues to introduce a provision when issuing death certificates based on 'absence by reason of disappearance' as seen in Argentina and Peru which provides for a civil status for victims and their relatives without declaring victims dead. This can provide for the families to access compensation and other reparations without declaring the person dead.
- Introduce initiatives to assist relatives and friends of missing persons to help locate these individuals, including through a publicly accessible and responsive family tracing system.
- Issue a list of people detained and places of detention and provide detainees access to their families and legal counsel.
- Provide the International Committee of the Red Cross (ICRC) access to all detention and rehabilitation centres in Sri Lanka.
- Appoint a panel of lay persons including individuals from civil society who are able to regularly visit police stations, detention and rehabilitation centres to speak to detainees and check police records and who are able to keep the relevant authorities including the Human Rights Commission informed of the status of cases and raise issues related to arrests and detentions.

IV. Recommendations Related to Land & Property

- Conduct a comprehensive survey on the situation of IDPs and a comprehensive survey to assess the situation of land and property which can provide an informed opinion on the situation of those living in displacement, ownership of land, damage to property and situation of landlessness among others and inform assistance programs.
- Return lands, including lands occupied by security forces to legal land -owners. Lands required for official and security reasons should be acquired in adherence to the Land Acquisition Act.
- Provide land documentation to people whose documents were destroyed or lost during the war.
- Initiate dispute resolution processes at the divisional level to decide on land disputes including competing claims and boundary issues with different mechanisms such as land task forces and Special Mediation Boards.¹⁸

¹⁸ There are recent attempts to use the Special Mediation Boards to address land issues including the 'settlement of dispute relating to the possession or ownership of land' in Jaffna, Killinochchi, Trincomalee, Batticaloa and Anuradhapura districts- Gazette 1904/41 of 4 March 2015

- The Registration of Title Act should be implemented across Sri Lanka to ensure secure title. This should be done with an awareness campaign as to what the titling project entails and therefore ensure that people are informed of the process and its impact.
- Assistance should be provided to address damage to property. The Office for National Unity and Reconciliation should work with the relevant ministries and district and divisional actors in the areas to identify housing and other needs and formulate an assistance package.
- The head of household concept should include both men and women and this should be recognized at the administrative levels.

V. Symbolic Measures

- A public apology from the Government to recognize the past violence and promise steps at institutional reform to prevent a recurrence of violence.
- Creation of memory spaces across Sri Lanka, which recognize the multiple narratives and provides the space for victims, families and others to grieve, remember and recognize.
- A National Day to remember all the victims of the conflict.
- Initiate a publicly accessible, comprehensive documentation and archiving system for past processes and mechanisms as well as any future initiative.

7. Conclusion

The first 100 days of the government has passed with limited progress in terms of transitional justice and reconciliation. It is to be seen what awaits us in the next 100 days and beyond. A comprehensive reparations policy and package is necessary to demonstrate the government's commitment to recognizing and correcting the injustice and wrongs of the past. Both individual and collective reparation packages can be identified, which benefit the people from across Sri Lanka. These can contain both actual and symbolic measures and include compensation, health and education assistance, return of land and the creation and maintenance of memory spaces. There is no bar to the number of initiatives that can be introduced. What is important is that process and substance meet basic international standards and principles. Any short cuts or compromises due to political expediency will result in perpetuating the wrongs and injustices of the past. Therefore, the design and implementation of a reparations policy and package must require urgent and careful attention.