

KEY ISSUES TO CONSIDER FOR TRUTH, JUSTICE AND REPARATIONS IN THE IMMEDIATE AND LONG TERM

Centre for Policy Alternatives (CPA)

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Recent statements by the Government of Sri Lanka indicate some movement in the area of truth, justice and reparations in the coming months. The Minister for Foreign Affairs has earlier referred to a 'credible domestic mechanism'¹ with the President most recently stating that a domestic process is to be initiated in June 2015.² Furthermore, the Office of National Unity and Reconciliation was established with a mandate to address issues relevant to reparations and related issues. While these statements and initiatives are welcome, there is a lack of information in the public realm on how processes and mechanisms relevant to transitional justice will be designed and implemented. Additionally, clarity is needed in terms of the contours of such mechanisms as well as the issues and violations that are likely to be considered, and any temporal and territorial limitations.

This short note is the latest in a series of documents produced by the Centre for Policy Alternatives (CPA) raising issues and providing recommendations in the area of transitional justice. CPA has previously noted the importance of addressing the four pillars of transitional justice – truth, justice, reparations, and non-recurrence of violence – in an inclusive, timely and transparent manner, with a focus on a victim-centered process. This short note is compiled to assist in identifying immediate and long-term issues that should be factored in when discussing and designing mechanisms in the areas of truth, justice and reparations. CPA notes that several of the issues highlighted apply to all three areas, and therefore are not self-contained in any one area, underscoring the fact that truth, justice and reparations must be examined and addressed in a manner that reinforces each other than treated *in silos*. CPA has also addressed these areas in light of the recent statements and initiatives, and in the firm belief that key benchmarks and issues must inform future debates and discussions.

¹ Kelum Bandara, “Our foreign policy is based on practical realities, not on ideological fantasies”, The Daily Mirror, 24 April 2015, <http://www.dailymirror.lk/70191/our-foreign-policy-is-based-on-practical-realities-not-on-ideological-fantasies>

² Political Column, “Sirisena wavers amid raging waters of SLFP split”, The Sunday Times, 24 May 2015, <http://www.sundaytimes.lk/150524/columns/sirisena-wavers-amid-raging-waters-of-slfp-split-150404.html>

	Immediate	Long Term
Truth	<p><u>Issues to consider during the planning and design stages</u></p> <ul style="list-style-type: none"> • The design stage should be transparent and inclusive, ensuring that stakeholders from across Sri Lanka are consulted. • Discussions with all stakeholders, including victims and civil society, must commence immediately to clarify the mandate and objective of possible truth-telling and justice processes and mechanisms, with clarity on any restrictions, including the basis on which the number and nature of cases will be selected, as well as temporal and territorial issues. • Ensure the centrality of victims in the design and implementation of truth and justice processes and mechanisms. • Prior to holding consultations, steps should be taken to make public reports of previous commissions and other investigations and to inform the public regarding the status of the implementation of those recommendations. 	<p><u>Issues relating to the design of truth-telling and justice processes and mechanisms</u></p> <ul style="list-style-type: none"> • Transparency as to what a truth-telling process and mechanism entails, including the legal framework and terms of reference. A space should be available to debate the pros and cons of such a process and mechanism. • A truth-telling mechanism should serve as a source of information about systematic failures and thereby inform the reform agendas. • A truth-telling mechanism should not be overburdened by an expansive mandate, making it difficult for it to meet its objectives within the mandated deadline. • A truth-telling mechanism should be independent and impartial, and be perceived as such by the public, with no member of such a mechanism disclosing a conflict of interest. Any individual that served as an official for either party during the conflict, where he/she had a role that may raise questions of impartiality, should be ineligible for appointment to such a mechanism.

	<p><u>Issues relating to legal reform</u></p> <ul style="list-style-type: none">• Steps must be taken to ensure that any truth-telling and justice processes and mechanisms are independent and impartial. This includes the formulation of new legislation to ensure independence and prevent interference in its work by any external actor. Sufficient time should be taken to debate and discuss legislation and procedural issues related to any truth and justice processes and mechanisms, including legislation establishing such mechanisms.• The Commission of Inquiry Act does not provide a suitable mechanism for a truth-telling and justice process. If it is to be used for such an initiative, significant reform should take place in order to ensure that future Commissions of Inquiry are independent and free from interference by the Executive and his/her agents. <p><u>Other issues to be considered prior to establishing truth-telling and justice processes and mechanisms</u></p> <ul style="list-style-type: none">• Introduce a vetting process for the selection of individuals who are to play a role in any truth and justice process and mechanism, including judges, commissioners, prosecutors, investigators and others.	<ul style="list-style-type: none">• The composition of a truth-telling mechanism should be representative of the diversity of Sri Lankan society and perspectives of the conflict. Women should be adequately represented in such a mechanism.• Respected individuals with expertise in areas of law, governance, human rights, history, psychosocial issues and other relevant areas must be identified to assist in a possible truth-telling process and mechanism.• An independent fund should be established for domestic truth and justice processes and mechanisms, thereby providing a safeguard from possible interferences.• There must be no amnesty offered for serious human rights violations, including war crimes and crimes against humanity. <p><u>Issues relating to implementation</u></p> <ul style="list-style-type: none">• Processes and mechanisms must be transparent and open to the public, unless in instances where there are credible security concerns. Additionally, permission to televise the processes and mechanisms should be granted to all media outlets, with a zero-tolerance policy for
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	<ul style="list-style-type: none">• Provide for the necessary resources for independent and effective investigations, as well as victim- and witness-protection, including having trained and experienced staff and necessary technology.• Explore avenues on obtaining the testimony of those residing outside of Sri Lanka, including through video technology. Steps should be taken to ensure that those providing testimony in such a manner also can choose whether to have legal representation.• Initiate steps to archive all material related to truth and justice processes and mechanisms.• Revisit and review findings of previous commissions and other mechanisms established to investigate and inquire into past incidents and fully implement their recommendations.	<p>the intimidation or harassment of local journalists covering the proceedings.</p> <ul style="list-style-type: none">• Victims and witnesses providing testimony should be provided with the necessary protection including through an effective “National Authority for the Protection of Victims of Crime and Witnesses”.• There must be a comprehensive strategy on the dissemination of information, in all three languages, to ensure that the public is fully aware of public sittings and outcomes.• In terms of a truth-telling process and mechanism, there should be wide publicity in all three languages in advance, pertaining to the date and place of sittings.• Truth and justice mechanisms should employ experienced and competent translators and have all necessary documentation related to the processes in all three languages.
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<p>Justice</p>	<p><u>Issues to consider during the planning and design stage</u></p> <ul style="list-style-type: none"> • Commence discussions immediately with all stakeholders regarding government plans for a framework for justice and accountability and also ensure that the design of such processes and mechanisms is transparent and inclusive. • Discussions must be had on whether the information collected via a truth-telling process will be used for prosecutions. • Discussions must be had on how to sensitively address ethnic, religious and gender issues and how to provide adequate resources and space for particular groups to engage with processes and mechanisms including private spaces to provide testimony. <p><u>Issues relating to legal reform</u></p> <ul style="list-style-type: none"> • Review the present legal framework in Sri Lanka pertaining to serious violations of international human rights law (IHRL) and international humanitarian law (IHL) and formulate legislation in areas that require reform. This includes introducing laws that criminalizes war crimes and crimes against humanity in Sri Lanka. 	<p><u>Issues related to institutional capacity</u></p> <ul style="list-style-type: none"> • Ensure that justice and accountability mechanism/s have experienced and trained judges and prosecutors with competence in international human rights law (IHRL) and international humanitarian law (IHL). • An independent prosecutor’s office should take the lead in case selection, investigations, and in initiating prosecutions. • An experienced and competent team of lawyers and investigators should examine the information gathered through the truth-telling mechanism and decide the next steps without undue delay. <p><u>Procedural and prosecutorial issues</u></p> <ul style="list-style-type: none"> • There must be clarity on the procedural issues and standard of evidence relevant to a justice and accountability initiative. • Information should be available in terms of the nature of first-instance hearings as well as the appeals process. • There must be no amnesty offered for serious
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	<ul style="list-style-type: none"> • Steps should be taken to ratify the International Convention for the Protection of All Persons from Enforced Disappearances and introduce enabling legislation. • Revisit debates on the establishment of an independent prosecutor’s office with a mandate of prosecuting IHRL and IHL violations. <p><u>Other issues to be considered prior to establishing a justice and accountability mechanism</u></p> <ul style="list-style-type: none"> • Ensure steps are taken to recruit experienced and trained staff for a justice and accountability mechanism including for the administration of such a mechanism, investigations, victim- and witness-protection, and archiving. • Steps should also be taken to fully implement the Victims of Crimes and Witnesses Protection Act and ensure that any truth and justice mechanism has space for victims and families to be involved and be represented. • Plan for a protection system for victims and witnesses who provide testimony, including in-court protection such as separate entrances and additional spaces, as well as transport. 	<p>human rights violations, including war crimes and crimes against humanity.</p> <ul style="list-style-type: none"> • Steps must be taken to introduce a case-management system to ensure that cases proceed smoothly without undue delays <p><u>Issues relating to implementation</u></p> <ul style="list-style-type: none"> • Sittings of truth and justice mechanisms must not be limited to Colombo but held in all parts of Sri Lanka. • Psychological support should be available to victims of IHRL and IHL violations, including gender-based violence before, during and after any truth and justice mechanisms. • There should be regular progress updates of processes and mechanisms to ensure the public is kept informed and involved. These updates should be in all three languages.
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	<ul style="list-style-type: none"> • Explore avenues in how to obtain testimony of those residing outside of Sri Lanka including through video technology. Steps should be taken to ensure that those providing testimony in such a manner also have a choice of obtaining legal representation. 	
<p>Reparations</p>	<p><u>Issues to consider during the planning and design stage</u></p> <ul style="list-style-type: none"> • Reparations should be designed and 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. • There must be meaningful participation and consultation of victims and affected communities in the mapping, design, implementation and monitoring of a reparations policy and package. • Reparations should be designed and implemented with links to other transitional justice initiatives such as trials, truth-telling processes and institutional reform to ensure that reparations are not seen as merely engaging in political manoeuvring and empty gestures. 	<p><u>Long term reparations</u></p> <ul style="list-style-type: none"> • A Trust Fund for Victims should be established which provides financial assistance to victims and dependents including scholarships for children of victims of past violence. • Considering how exhumations can contribute significantly to truth and justice processes, and the importance for families of victims, and communities, to be ensured proper burial of the deceased, renewed attention should be paid to victim-tracing, including attention on the necessary resources. • There must be a comprehensive, publicly accessible documentation and archiving system of past processes and mechanisms and any future initiatives.

	<p><u>Areas to consider for a reparations package</u></p> <ul style="list-style-type: none">• Initiate discussions regarding the establishment of a Trust Fund for Victims.• Initiate a vocational training scheme for victims, affected communities and their families.• Initiatives to assist relatives and friends of missing persons to help locate these individuals, including through a publicly accessible and responsive family-tracing system, must be discussed and subsequently implemented.• Immediately release lists of detainees and places of detention.• Detainees should be provided with access to their families and legal counsel.• The International Committee of the Red Cross (ICRC) should be given access to all detention and rehabilitation centres.• A panel of laypersons should be established, 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. These panellists should keep the relevant	<p><u>Symbolic initiatives</u></p> <ul style="list-style-type: none">• Attention should be on identifying initiatives establishing memory spaces, which recognize the multiple narratives and provides the space for victims, families and others to grieve, remember and recognize.• Memory spaces should be created across Sri Lanka, which recognize the multiple narratives and provide the space for victims, families and others to grieve, remember and recognize.
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	<p>authorities, including the Human Rights Commission, informed on the status of cases and raise issues related to arrests and detentions.</p> <ul style="list-style-type: none">• Design and implement gender sensitive reparations programs that address the needs of single-headed households and victims of sexual violence, with measures taken to prevent exacerbation of trauma and stigma.• Implement healthcare programs for victims and affected communities that address both physical and psychosocial health issues.• Explore avenues to introduce a provision that allow death certificates to be issued based on an 'absence by reason of disappearance'. Argentina and Peru provide civil status for victims and their relatives without declaring victims dead. This can provide families with access to compensation and other reparations, without declaring a person as deceased.• Land documentation should be provided to people whose documents were destroyed or lost during the war.• All lands including land occupied by security forces should be returned to their legal owners.	
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	<ul style="list-style-type: none">• Land required for official and security reasons should be acquired in adherence to the Land Acquisition Act.• Review existing compensation and assistance schemes and introduce new packages that are timely and recognize the needs of the victims and affected communities. Special attention should be paid to single-headed households. <p><u>Symbolic measures to be initiated immediately</u></p> <ul style="list-style-type: none">• A National Day to remember all the victims of the conflict should be declared.• The government should issue a public apology in recognition of past violence and initiate political and constitutional reform to resolve the conflict.• Commence discussions across Sri Lanka on what should be part of a memorialization initiative, with space provided to remember and acknowledge the violence of the past.	
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