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Making the Case for an Office for Reparations

DISCUSSION PAPER
CENTRE FOR POLICY ALTERNATIVES



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மாற்றுக் கொள்கைகளுக்கான நிலையம்

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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Methodology

The discussion paper is based on research and interviews with a range of stakeholders, conducted in August 2017- May 2018. The desk and field research includes building on previous research by CPA and other organisations, as well as publicly available information and what was shared by partners focusing on responses around the ethnic war, recent interethnic violence, the Meeriyabedda landslide, the explosion at the Salawa camp and the Meethotamulla garbage disaster. The interviews include those conducted with victims and affected communities as well as officials in the focused-on areas. The CPA team also met with government officials including officials at the National Disaster Management Council, the National Disaster Relief Service Centre, the Rehabilitation of Persons, Properties and Industries Authority (REPPPIA), the Bureau of the Commissioner General of Rehabilitation and several local level officials including at District Secretariats, Divisional Secretariats and Grama Niladhari Divisions.

CPA notes that this paper is not an exhaustive study but an attempt to highlight the numerous initiatives and actors that have played, and continue to play, significant roles with relevance to policies and programmes on reparations and the design of a future Office for Reparations.

I. Introduction

This paper examines reparations policy in Sri Lanka as a central component of transitional justice. It makes the case for a comprehensive national reparations policy and examines key considerations in designing such a policy and a possible future Office for Reparations. The Centre for Policy Alternatives (CPA) has previously called for a comprehensive reparations policy and programme and this paper reiterates this call.¹

First, in Section II, the paper examines the need for reparations in societies in transition and why it is important in post war Sri Lanka. Next, the paper sets out previous attempts at providing some forms of reparation and the existing reparations framework in place in Sri Lanka in Section III, demonstrating that the provision of reparations is not new to Sri Lanka but that it is ad hoc and incomprehensive in nature. Finally, in Section IV, the paper outlines a number of pressing matters for consideration in the creation of an Office for Reparations and comprehensive reparations programme in terms of institutional design, legality and communication. Throughout, the paper the paper makes the case why a victim-centred, comprehensive and rights-based future Office for Reparations and reparations programme is critical for genuine transformation in Sri Lanka.

Reparations are an essential part of transitional justice and focus on recognising and repairing past abuses. In many post war and post conflict settings, reparations are introduced to assist victims by way of providing material and symbolic support. By recognising past abuses, institutional failures and disasters and the need to remedy them, reparations are able to empower communities and transform them into rights holders and equal citizens. If implemented in a holistic and comprehensive manner, reparations can thus have an impact at different levels by recognising past wrongs, providing redress, treating victims as equal citizens and building trust among communities who were discriminated and marginalised.

Over the years, Sri Lanka has recognised, committed to and provided different forms of assistance to victims of both man-made and natural disasters. These, however, have had their limitations. Institutions such as the Rehabilitation of Persons, Properties and Industries Authority (REPPIA) and other government entities have provided certain forms of reparation. Yet despite decades of disasters, ongoing conflict and sociopolitical crises, successive governments of Sri Lanka have never dealt with the entire gamut of reparations but merely addressed particular aspects of it by providing inconsistent forms of compensation or restitution.

¹ Bhavani Fonseka, "The Need for a Comprehensive Reparations Policy and Package" CPA (April 2015) <https://www.cpalanka.org/wp-content/uploads/2015/04/The-Need-for-a-Comprehensive-Reparations-Policy-and-Package2.pdf> accessed 18 January 2017

In 2015, the present government recognised the right to reparations by committing to the establishment of an Office for Reparations at the 30th Session of the United Nations Human Rights Council (UNHRC) through UNHRC Resolution 30/1.² This commitment was reaffirmed by the Government in 2017 through UNHRC Resolution 34/1 which extended the deadline of the original Resolution by a further two years.³ Despite this commitment, there has been no real movement on this issue with limited discussions on reparations and the scope of such an entity. Recent news reports⁴ allude to proposals to establish an Office for Reparations but this seemed more in response to the 37th Session of the UNHRC which examined the progress made by the Government of Sri Lanka on commitments contained in Resolution 30/1 and Resolution 34/1. It is indeed unfortunate that despite the presence of the issue on the political agenda for three years and persistent claims of proposals to establish a future Office, there is still limited public information.⁵

The design and implementation of a future Office and a reparations programme must be reflective of the Sri Lankan context and the grievances of its multiple and diverse victims. A reparations programme can include both individual or collective reparations and be material and symbolic. Sri Lanka has had some experience with all of the above at different times in history, and responses in the future must be informed by these past and existing initiatives. Equally important is to ensure such a programme is designed in a transparent and inclusive manner, being explicit about its purpose and safeguarding that it is not a substitute to the other pillars of transitional justice. Finally, basing a reparations programme on a rights framework is essential to ensure cohesion.

Since the commitments in 2015, attention has considerably reduced on transitional justice for a number of reasons, including the lack of political will to address the past and to fully implement transitional justice commitments; competing interests within transitional justice processes; and the prioritisation of other reform processes.⁶ Considering the importance of the issue for a post-conflict society such as Sri Lanka, the government, public authorities and different stakeholders, including civil society actors

² United Nations Human Rights Council, A/HRC/RES/30/1, 1 October, 2015.

³ United Nations Human Rights Council, A/HRC/RES/34/1, 23 March, 2017.

⁴ 'Cabinet nod to set up Reparation Office' (Daily Mirror, 16 March 2018) <http://www.dailymirror.lk/article/Cabinet-nod-to-set-up-Reparation-Office--147338.html> accessed 26 April 2018; 'Statement by foreign minister Tilak Marapana at 37th Session of the UN Human Rights Council' (Ministry of Foreign Affairs, 22 March 2018) <http://www.mfa.gov.lk/statement-by-foreign-minister-tilak-marapana-at-37th-session-of-the-un-human-rights-council-21-march-2018/> accessed 26 April 2018

⁵ "Reparations Bill ready, Compensation for war-affected people" (Sunday Times, 20 May 2018)

⁶ Bhavani Fonseka, Luwie Ganeshathasan and Shalomi Daniel, "Two Years in Government: A Review of the Pledges made in 2015 through the lens of Constitutional Reform, Governance and Transitional Justice", Centre for Policy Alternatives (2 February 2017) available at: <http://www.cpalanka.org/wp-content/uploads/2017/02/2-February-2017-FINAL-REPORT-.pdf> accessed 30 November 2017

and the international community, must refocus attention on transitional justice. This paper is intended to aid this purpose, and specifically to channel focus to the area of reparations and to provide a number of proposals for consideration.

II. The Need for Reparations

Reparations are a critical component of a comprehensive approach to societies reckoning with their pasts. Within a transition expectations may be high for such reckonings with the past and taking steps to correct previous wrongs and prevent future repeats. If designed and implemented in a holistic, comprehensive and complete manner, reparations can aim to provide a sense that all citizens are equal and should be recognised and included in a transition towards peaceful and just society.⁷ This section looks at the theoretical and the international legal basis for reparations, and then examines the reparations sections of the final report of the Consultation Task Force on Reconciliation Mechanisms (CTF). These two components highlight the need for reparations in both a conceptual sense and within the domestic context.

Reparations in Theory and International Law

Reparations are one of the pillars of transitional justice which complement the other three: justice, truth and non-recurrence. Transitional justice is usually present in context of past violence where there is a need to find answers, obtain justice, provide remedies and ensure steps are taken to prevent future violence. The four pillars complement each other and should be implemented in a coherent manner to maximise their intended impact. Here, efforts at truth and justice are meaningless if victims who find answers and see perpetrators punished are not able to rebuild their lives. Likewise, reparations on their own can be seen as merely paying off victims if they are not complemented with efforts to provide meaningful measures of truth and justice. Transitional justice as a whole can be meaningless if steps are not taken to prevent future cycles of violence through reforms, making the fourth pillar of non-recurrence equally important. It is important to focus on all these areas and not merely go with the one or few options that are politically feasible or economically viable. In such a context, mechanisms established for deriving the pillars of transitional justice should have clear linkages between each other.

In many situations that have witnessed grave violations of human rights, however, attention is most often on truth, accountability and non-recurrence. In the initial excitement of pursuing these processes, however, victims' voices are sometimes lost along with calls for material assistance, rehabilitation, restitution and satisfaction. As Pablo de Greiff highlights, in transitional periods reparations seek to contribute to the reconstitution or the constitution of a new political community. In this sense, they are also best thought as part of a wider political project.⁸ Thus, reparations must be seen

⁷ Ibid. Also read C. Lawther, L. Moffett, & D. Jacobs (Eds.), *Research Handbook on Transitional Justice* (Edward Elgar Publishing 2017)

⁸ Pablo De Greiff (ed.): *The Handbook of Reparations* (Oxford University Press 2006) at 555

not merely as assisting or rehabilitating victims but as being meant to have a larger and deeper impact. Their purpose is to reconstitute a new political community where there is recognition, civic trust and solidarity.⁹

Despite not having the same appeal as truth and justice measures, reparations can have a positive and longer term impact.¹⁰ If implemented in a manner that benefits all victims, reparations programmes can build confidence and trust among communities, some of whom may be side-lined in transitional justice processes due to a range of reasons including victim hierarchies, challenging politics and resource limitations. Reparations can also provide much needed material support to rebuild lives and livelihoods and thereby empower communities by giving them back their dignity. Reparations can, as argued by Ruth Rubin-Marin, have a transformative potential as they can be used ‘to subvert, instead of reinforce, pre-existing structural gender inequalities and thereby to contribute, however minimally, to the consolidation of more inclusive democratic regimes’.¹¹ Reparations can also address historic injustices and provide recognition and remedy. But it must also be noted that reparations alone will not provide closure and healing and can be seen as a ‘double edged sword’.¹² Thus, every effort must be taken to implement the four pillars of transitional justice in a manner that is truly transformative and not limited to those that are politically convenient.

The right to reparation is now found in international conventions and jurisprudence.¹³ In 2005, the United Nations adopted “Basic Principles on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law” (Basic Principles) which sets out a framework for reparation and identifies five forms of reparations: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.¹⁴ In the global context, several initiatives at reparations, both administratively and judicially, have been evidenced over the years. Colombia, Guatemala, Australia, Germany, Peru,

⁹ Ibid

¹⁰ Luke Moffett, Reparations in Transitional Justice: Justice or Political Compromise?, *Human Rights and International Legal Discourse* 17(1) (2017)

¹¹ Ruth Rubio-Marin (ed.): *The Gender of Reparations. Unsettling Sexual Hierarchies While Redressing Human Rights Violations* (Cambridge University Press 2009) at 66.

¹² B. Hamber, Repairing the Irreparable: Dealing with the double-binds of making reparations for crimes of the past, *Ethnicity and Health* 5(3/4) 215-226 (2000), p219

¹³ United Nations General Assembly, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, 21 March 2006; P. Mazzeschi, Reparation Claims by Individuals for State Breaches of Humanitarian Law and Human Rights: An Overview, 1 *Journal of International Criminal Justice* (2003) 343 at 339-47.

¹⁴ UN, Basic Principles on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law” (16 December 2005) available at: http://legal.un.org/avl/ha/ga_60-147/ga_60-147.html accessed 4 December 2017

Sierra Leone, Philippines and other countries that have experienced and are experiencing transitional justice efforts have witnessed reparations initiatives.¹⁵ Most recently, reparations were awarded by international tribunals such as the African Chamber that dealt with the *Hissene Habre* case and the International Criminal Court which established its own victims' trust fund.¹⁶

Learnings from the Consultation Task Force on Reconciliation Mechanisms (CTF)

Reparations were explored by the CTF in nationwide consultations held in 2016 and a rich chapter on the issue is contained in its final report.¹⁷ The report highlights the diversity of groups, tensions and the complexities involved and provides a starting point for consideration for a future Office and reparations programme.

The CTF acutely captures the fact that many wanting truth and justice refuse to accept any form of material compensation which are perceived as shutting down avenues to justice. This suspicion echoes the concerns raised regarding post-war efforts to provide assistance to war affected communities such as initiatives on resettlement, rehabilitation, compensation and housing. These efforts were sometimes driven by political actors and the military, naturally raising questions as to whether they were attempts to silence the calls for truth and justice by affected communities. Such efforts, in the absence of a comprehensive reparation framework and in a context where there were efforts to deny past abuses, were seen by many as an attempt to silence victims. In addition, the previous government's preference towards development as opposed to resolving the ethnic question or addressing issues of accountability also contributed to a perception of equating reparations with development.¹⁸ This has resulted in many victims being suspicious of reparations. These feelings have only been exacerbated by

¹⁵ Pablo De Greiff (ed.): *The Handbook of Reparations* (Oxford University Press 2006); Ruth Rubio-Marin (ed.): *The Gender of Reparations. Unsettling Sexual Hierarchies While Redressing Human Rights Violations* (Cambridge University Press 2009); Nelson Camilio Sanchez Leon, Reparations, Responsibility and Victimhood in Transitional Societies: Colombian Report (article in file with CPA).

¹⁶ "After 25 years, a breakthrough for victims of Chad dictator Hissene Habre" (The Guardian, 09 February 2018) <https://www.theguardian.com/global-development/2018/feb/09/trust-fund-established-for-victims-of-former-chad-dictator-hissene-habre> accessed 8 May 2018; Luke Moffett (2017) Reparations for victims at the International Criminal Court: a new way forward?, *The International Journal of Human Rights*, 21:9, 1204-1222

¹⁷ CTF report pp33-98

¹⁸ Post war the previous government initiated two major developments programmes in the North and East of Sri Lanka titled 'Uthuru Wasanthaya' and 'Nagenahira Navaodaya' which were considered flagship development programmes. For more detail, see: Centre for Policy Alternatives, "Land Issues in the Northern Province: Post-War Politics, Policy and Practices" (CPA, 6 December 2011) <http://www.cpalanka.org/land-issues-in-the-northern-province-post-war-politics-policy-and-practices/> accessed 20 June 2017; Centre for Policy Alternatives, "Commentary on Returns, Resettlement and Land Issues in the North of Sri Lanka" (CPA, 14 May 2011) <http://www.cpalanka.org/commentary-on-returns-resettlement-and-land-issues-in-the-north-of-sri-lanka/> accessed 15 October 2017;

the absence of a coherent communication strategy on reparations, by both the previous and current governments. Only such a strategy could address the views such as the sentiment that existing bodies are able to handle reparations without the need of a new entity, which was raised in CTF consultations.

The CTF report raises questions on apportioning responsibility and deciding reparation schemes, be they individual, collective, material or symbolic. For instance, many victims of the LTTE question how reparations can be provided in some instances where the LTTE is alleged to be involved when it was militarily defeated.¹⁹ There are tensions within communities where some in the south feel that former LTTE combatants who are disabled should not receive reparations for their past role and violence. Similarly, there are those who feel the state must be held responsible for commissions and omissions, including events such as the eviction of Muslims from the Northern Province in the 1990s.²⁰ Instances where the line between victim and perpetrator are blurred, such as child combatants who were forcibly recruited by the LTTE and other armed groups, also complicate the picture of reparations provision.

Issues highlighted previously by CPA of victim centrality and the politics of victimhood²¹ are also reiterated in the CTF report, demonstrating the challenges that are likely to be confronted by a future Office when deciding victim categories and reparations programmes. There is also the recognition that a cross section of issues and victims must be considered including those outside the spectrum of the war. This demonstrates the need to have a broad scope which addresses direct abuses arising from the war but also considers structural violence and discrimination.²²

Phenomena such as enforced and involuntary disappearances, which have plagued Sri Lanka for decades and impact all communities, raise particular issues.²³ A significant number of disappeared persons, through both extrajudicial killings and enforced disappearances, are adult men.²⁴ This introduces gendered complications to the

¹⁹ CTF report page 42-43

²⁰ 'The Quest for Redemption: The Story of the Northern Muslims' *Final Report of the Citizens' Commission on the Expulsion of Muslims from the Northern Province by the LTTE in October 1990* (LST 2011); 'Land Occupation in the Northern Province: A Commentary on Ground Realities and Recommendations for Reform', 2016. Available at: <http://www.cpalanka.org/wp-content/uploads/2016/03/Land-Occupation-in-the-Northern-Province.pdf> accessed 26 April 2018.

²¹ Bhavani Fonseka and Joanna Napless-Mitchell, "Victim-Centred Transitional Justice in Sri Lanka: What Does It Really Mean?", CPA (February 2017) <http://www.cpalanka.org/wp-content/uploads/2017/02/Victim-centred-TJ-1.pdf> accessed 1 November 2017

²² The CTF report captures the different categories requiring reparations in page 54

²³ Amnesty International: *"Only Justice Can Heal Our Wounds". Listening to the Demands of Families of the Disappeared in Sri Lanka*, 2017, at 2. Available at: <https://www.amnesty.org/en/documents/asa37/5853/2017/en/>

²⁴ According to the International Committee of the Red Cross, 88% of the still missing persons are adults and an overwhelming majority of 91% are male. International Committee of the Red Cross: *Living with*

equation as women are both the sole breadwinners of their families and tasked with the responsibility of continuing to search for their disappeared loved ones. Policy measures in this context can also fall short. In 2016, the Government of Sri Lanka introduced certificates of absence to address some of the practical difficulties faced by families of disappeared but there continues to be confusion and challenges with their implementation.²⁵

In post-war contexts, most reparation efforts focus on violence against persons but there is now growing recognition globally that displacement and the resulting devastation must also be repaired.²⁶ In Sri Lanka, hundreds of thousands were displaced over the years, some multiple times, due to both natural and man-made disasters with some continuing to face obstacles in returning home and having security of tenure.²⁷ The CTF report emphasises how the persistence of a number of state behaviours complicate the provision of reparations and wider transitional justice efforts. These include continued militarisation²⁸ and land occupation.²⁹ Challenges to memorialisation and commemoration, and the continued surveillance of marginalised communities, also leaves victims unable to mourn their loved ones, highlighting a symbolic barrier to true transitional justice.³⁰ These issues underscore the fact that reparations must be informed by a wide scope which addresses both material loss and hardship and symbolic redress.

Uncertainty. Needs of the Families of Missing Persons in Sri Lanka, 2017, at 3-4. Also refer to Neloufer de Mel, *The Promise of the LLRC: Women's Testimony and Justice in Post-War Sri Lanka* (ICES 2013).

²⁵ Centre For Policy Alternatives, "Certificate of Absence: A Practical Step to Address Challenges Faced by the Families of Disappeared in Sri Lanka", Discussion Paper, September 2015 available at: <https://www.cpalanka.org/wp-content/uploads/2015/09/Certificates-of-Absence-FINAL.pdf> accessed 28 May 2018

²⁶ Naomi Roht-Arriaza, 'Reparations in Latin American Countries: Lessons for Sri Lanka?' in Bhavani Fonseka (ed), *Transitional Justice in Sri Lanka: Moving Beyond Promises* (CPA 2017)

²⁷ Centre for Policy Alternatives, "Land Issues in the Northern Province: Post-War Politics, Policy and Practices" (CPA, 6 December 2011) <http://www.cpalanka.org/land-issues-in-the-northern-province-post-war-politics-policy-and-practices/> accessed 20 June 2017; Centre for Policy Alternatives, "Commentary on Returns, Resettlement and Land Issues in the North of Sri Lanka" (CPA, 14 May 2011) <http://www.cpalanka.org/commentary-on-returns-resettlement-and-land-issues-in-the-north-of-sri-lanka/>. Also see information around the People's Convention on Right to Land, Colombo, 23.08.2017-24.08.2017.

²⁸ Joint Civil Society Submission to the Universal Periodic Review of Sri Lanka - 2017 available at <https://monlar.lk/images/lefilet/PDF/UPR%20Civil%20Society%20Joint%20Report-%20Sri%20%20Lanka%20%202017.pdf> accessed 28 May 2018

²⁹ Centre for Policy Alternatives, "Land Issues in the Northern Province: Post-War Politics, Policy and Practices" (CPA, 6 December 2011) <http://www.cpalanka.org/land-issues-in-the-northern-province-post-war-politics-policy-and-practices/> accessed 20 June 2017; Centre for Policy Alternatives, "Commentary on Returns, Resettlement and Land Issues in the North of Sri Lanka" (CPA, 14 May 2011) <http://www.cpalanka.org/commentary-on-returns-resettlement-and-land-issues-in-the-north-of-sri-lanka/> accessed 15 October 2017.

³⁰ Final Report of the Consultation Task Force on Reconciliation Mechanisms, Vol. 1, 17 November 2016 available at: <http://war-victims-map.org/wp-content/uploads/2017/02/CTF-Final-Report-Volume-I-Nov-16.pdf>, accessed 16 November 2017.

III. Reparations in Sri Lanka

This section examines the different policies, bodies and legal measures which constitute the loose reparations policy framework in Sri Lanka. This examination exposes several areas to consider when designing any reparations policy or mechanism that can be more comprehensive and expansive in nature.

Reparations are not new to Sri Lanka. Forms of reparation have been provided over the decades in the country. REPPIA, the Ministry for Disaster Management and the Resettlement Authority are some government entities that provided compensation, assistance and resettlement following both man-made and natural disasters. The provision of reparations over the years demonstrates state recognition that steps were needed to address the needs of victims and to provide necessary remedies. However, these have usually been carried out without a clear and comprehensive approach, largely to provide relief, compensation, rehabilitation, and restitution to victims of violence and natural disasters.

Reparations became a focal point particularly following the 2004 tsunami with a number of assistance schemes and entities being created; these efforts, however, were not replicated during the end of the ethnic conflict or sustained following the tsunami to constitute any comprehensive approach towards reparations.³¹ Government-appointed mechanisms of enquiry such as the 2011 Lessons Learnt and Reconciliation Commission (LLRC) discuss “restitution and compensatory relief”, however, this is only to be channelled through existing institutions like the REPPIA.³² These inconsistent government efforts at reparations also raise questions as to whether successive governments provided reparations as a substitute to genuine attempts at truth and justice in Sri Lanka.

National Policies Dealing with Reparations

There are a number of existing policies in place which deal with forms of reparations. These policies must be considered in detail when designing any future, comprehensive reparations policy. Such consideration can avoid duplication and ensure equity in implementation.

³¹ For more information see- Centre for Policy Alternatives, “Monitoring post-tsunami rehabilitation and reconstruction” (CPA, 24 August 2007) <https://www.cpalanka.org/monitoring-post-tsunami-rehabilitation-and-reconstruction/> accessed 24 May 2018.

³² Commission of Inquiry on Lessons Learnt and Reconciliation, *Reports of the Commission of Inquiry on Lessons Learnt and Reconciliation*, November 2011.

National Involuntary Resettlement Policy (NIRP)

The National Involuntary Resettlement Policy (NIRP) was introduced in to address shortcomings related to resettlement and compensation, and particularly to address weaknesses in the Land Acquisition Act.³³ The NIRP was formulated in 2000 with the aim of minimising and mitigating the negative impacts of involuntary settlement and ensuring that affected persons are able to restore their living standards into their new environment. The NIRP guarantees adequate compensation for the affected persons in a timely manner. Relevant factors such as loss of income, improvements made to the land and transaction costs are taken into consideration when calculating compensation under the NIRP.

Despite the areas covered under NIRP, no legislation accompanies the policy. This leaves its enforcement at the discretion of concerned authorities, meaning its implementation is inconsistent and non-comprehensive. The NIRP is also limited to land acquisitions related to development projects and those requiring resettlement due to security reasons are prevented from relying on NIRP principles.

National Policy on Durable Solutions for Conflict Affected Displacement

As a result of the decades of displacement and the multiplicity of issues, the present government adopted the National Policy on Durable Solutions for Conflict Affected Displacement (NPDSAD) in 2016.³⁴ The objectives of the policy include guaranteeing the rights of IDPs and refugee returnees and other displaced persons; providing immediate and long-term solutions; and healing the wounds of war. The NPDSAD provides that the Ministry of Defence, in collaboration with the Ministry of Law and Order, must ensure that an accurate mapping is made of all land that is or was owned, claimed or used by civilians and is currently occupied by any of the security forces. The NPDSAD further notes that all such lands should be released unless the State determines that it is required for public purpose. The policy recognises the principles of equality, non-discrimination, victim-centred services, victim participation, equity and gender sensitivity. Considering the delays and other obstacles with land releases with many affected communities protesting and challenging ongoing land occupation by the

³³ Centre for Policy Alternatives, "Land Occupation in the Northern Province: A Commentary on Ground Realities and Recommendations for Reform" (CPA, 31 March 2016) <http://www.cpalanka.org/land-occupation-in-the-northern-province-a-commentary-on-ground-realities-and-recommendations-for-reform/> accessed 12 October 2017; Centre for Policy Alternatives, "Accelerated Programme on Solving Post-Conflict State Lands Issues in the Northern and Eastern Provinces" (CPA, 5 April 2013) <http://www.cpalanka.org/accelerated-programme-on-solving-post-conflict-state-lands-issues-in-the-northern-and-eastern-provinces/> accessed 15 October 2017.

³⁴ Easwaran Rutnam, 'New policy to Protect rights of IDPs' (The Sunday Leader, 21 August 2016) <http://www.thesundayleader.lk/2016/08/21/new-policy-to-protect-rights-of-idps/> accessed 28 November 2017

security forces and others, it is to be seen whether the Government is able to fully adhere to the NPDSAD.

National Housing Policy (Revised) and programmes

Reconstruction and repairing damaged homes or the provision of new homes is directly linked to the socio-economic recovery of affected communities and has been treated as such in previous initiatives such as the post tsunami and post-war reconstruction efforts. The National Policy on Housing was revised in January 2016 with the objective to achieve the goal 'Shelter for All by the Year of 2025'.³⁵ Different approaches are recognised in the housing policy such as a sustainable approach incorporating the geographic development strategies, an owner-driven approach and an inclusive and equitable approach.³⁶ In addition, the Policy addresses gender by inserting gender responsive solutions within a continuum of housing and land rights.

The owner driven approach ensures the participation of beneficiaries in the construction process and ensures a higher quality of construction than if it was simply undertaken by government agencies. The owner driven approach, however, comes with significant pitfalls. It has been reported that the approach has caused high levels of indebtedness. This is because it provides an option for beneficiaries to deviate from the determined standard of housing while keeping to the minimum standards of the design due to particular choices owners may have.³⁷ Research also shows that one of the main reasons for borrowing money is for the construction of a house, but that this has severe consequences.³⁸ The indebtedness and financial difficulty that it causes has resulted in dramatic increases in rates of alcoholism, drug use, suicide and domestic violence. A holistic evaluation of the owner-driven approach must therefore be undertaken if it is to be replicated in a comprehensive reparations policy.

CPA came across several housing schemes undertaken by different actors in response to different disasters and events such as the 65,000 Housing Project (2016)³⁹, Housing

³⁵ National Housing Policy (Revised in January 2017) available at: <https://drive.google.com/file/d/0B6o-6gqv4JNBRGFfRE1IWXRVzQ/view> accessed 16 October 2017

³⁶ For more information please visit: www.housingpolicy.lk

³⁷ K.Romeshum, Vagisha Gunasekara and Mohamed Munas, "Life and Debt", (CEPA June 2014) http://www.cepa.lk/content_images/0d6e1cc768f1d5f53cdc8ee970a71672-2014-Romeshun-Life-and-Debt.pdf accessed 18 January 2018

³⁸ Ibid

³⁹ This project was initiated under the direction of Minister D.M.Swaminathan with an aim of providing 65,000 fabricated steel houses for war affected families but has faced criticism by elected officials from the area and civil society- Dharisha Bastians, "Sumanthiran Vs Swaminathan on 65,000 houses in NE" (DailyFT, 7 December 2016) <http://www.ft.lk/article/584534/Sumanthiran-Vs--Swaminathan-on-65-000-houses-in-NE> access 18 January 2018. Recent media reports indicate to changes in policy- Azhar Razak, "UN consortium wins bid to build 50,000 brick houses" (Sunday Observer, 27 May 2018) <http://www.sundayobserver.lk/2018/05/27/news/un-consortium-wins-bid-build-50000-brick-houses>.

Project in Meeriyabedda (2015)⁴⁰ and Indian Housing Project in North and East (2012-2015)⁴¹ among others. It is crucial that the Government undertakes a mapping exercise to understand the different schemes and actors involved, with a view towards standardisation.

Circulars on Reparations

Multiple circulars have been issued over the years to regulate or modify the existing compensation process. For example, a circular was issued in 2007 to cancel all previous circulars for the provision of relief measures at the time of natural disasters and to provide new scheme titled Disaster Relief, Rehabilitation and Reconstruction.⁴² In addition, another circular was issued in 2017 to transfer powers to District Secretaries to respond immediately on emergency disaster situations.⁴³ This includes the power of independent decision making with respect to emergency rescue operations and providing relief services.⁴⁴

Ad hoc Reparations Initiatives

Since the end of the war, several man-made and natural disasters have resulted in death, displacement and devastation, consequently leading to the provision of compensation. A brief examination of some of these events, while not exhaustive, demonstrates the different actors involved and the different compensation schemes that were used. While attention in terms of reparations is largely focused around the war, ethno-religious conflict and other forms of violence, consideration of initiatives introduced to address post-disaster situations would ensure there is consistency and

⁴⁰ This project was funded by the Indian Government and the Army was deployed on the construction of the houses. The Ministry of Disaster Management undertook the overall responsibility of this particular housing project. 'Koslanda Landslide Disaster: All but 30 Victim families resettled' (Pressreader, 23 April 2017) <https://www.pressreader.com/sri-lanka/sunday-times-sri-lanka/20170423/281706909564914> accessed 8 May 2018

⁴¹ This housing project was funded by the Indian Government and implemented through the Memorandum of Understanding with the Government. Owner-Driven model was used to construct the houses and the Government of India provided the technical assistance and financial assistance to the beneficiaries. Financial assistance of Rs. 550,000 per beneficiary (for repair Rs. 250,000) is released in stages, and transferred directly into the bank accounts of the beneficiaries by the High Commission of India. 'Indian Housing Project nears completion in North and East' (Daily news, 2 January 2016) <http://www.dailynews.lk/2016/01/02/local/indian-housing-project-nears-completion-north-and-east> accessed 8 May 2018

⁴² Circular No. NDRSC 2007/10. The maximum amount of compensation for injuries sustained due to the Disaster is Rs. 10,000/-. A relief assistance to cover funeral expenses mounting to Rs. 15,000/- may be paid to the next kin of the deceased if his/her death is occurred due to the disaster and the family members are unable to meet the funeral expenses.

⁴³ Home Affairs Circular No: 8/2017

⁴⁴ The powers are conferred on the District Secretaries by the Cabinet Paper No: 171335//715/02

coordination in reparations efforts. This can avoid the discrepancies which lead to discrimination, inequities and the creation of victim hierarchies.

Compensation following manmade and natural disasters is often ad hoc in nature and involves different state actors. For example, in the landslide in Meeriyabedda-Koslanda in October 2014, 39 persons died and nearly 100 homes were buried.⁴⁵ CPA was informed that compensation was provided by the Ministry of Disaster Management with Rs.100,000 compensation for death and Rs.10,000 for each school child who was affected by the landslide.⁴⁶ CPA was also informed that 75 homes were rebuilt by the military but shortcomings remain with livelihood assistance.⁴⁷ The reconstruction process faced numerous delays due to government changes which arrested military involvement in civil construction efforts, and the resettlement itself was fraught with issues of practicality due to inadequate consultation of the affected persons.⁴⁸

In the explosion in the armoury at the Salawa-Kosgama Army Camp in June 2016, one person died and several were injured⁴⁹ with 174 homes completely destroyed, 1,032 homes damaged and 1,325 residents displaced.⁵⁰ In this incident, CPA was informed that the Ministry of Disaster Management provided compensation based on the valuation process conducted by the Valuation Department which amounted to Rs.100,000 being provided for deaths and Rs.25,000 for injuries.⁵¹ CPA was informed that many of the owners rebuilt their damaged and destroyed homes and subsequently received compensation from the government which was determined by the Valuation Department.⁵² The Ministry of Disaster Management has provided compensation worth over Rs.1.3 billion to the victims of Salawa.⁵³

⁴⁵ "Sri Lanka Landslide: 100 feared dead" (BBC News, 29 October 2014)

<http://www.bbc.com/news/world-asia-29813981> accessed 17 September 2017

⁴⁶ Interview with victims of Meeriyabedda Landslide 2014 (Macaldeniya Division, 10 November 2017)

⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ Interview with the Divisional Secretary, Seethawaka Divisional Secretariat (Seethawaka Divisional Secretariat, 12 November 2017)

⁵⁰ "Fire breaks out at Salawa Army Camp" (AdaDerana, 05 June 2016)

<http://www.adaderana.lk/news.php?nid=35559> accessed 27 September 2017;

Dimuthu Attanayake, 'Salawa inferno victims still wait for compensation' (Ceylon Today, 17 September 2017) <http://www.ceylontoday.lk/print20170401CT20170630.php?id=30126> accessed 27 September 2017

⁵¹ Ibid

⁵² Interview with the Divisional Secretary, Seethawaka Divisional Secretariat (Seethawaka Divisional Secretariat, 12 November 2017)

⁵³ Uditha Kumarasinghe, "Over Rs. 1.3B Compensation for Salawa Victims" (Sunday Observer, 4 June 2017) <http://www.sundayobserver.lk/2017/06/04/news/over-rs-13b-compensation-salawa-victims> accessed 8 May 2018

In April 2017, the Meethotamulla garbage tragedy killed 32 people and destroyed or damaged 145 homes.⁵⁴ CPA was informed of the initial decision by the Government to pay Rs.100,000 as compensation for a death which was subsequently increased to Rs.1,000,000 with cabinet approval after protests by the victims.⁵⁵ In addition, other compensation schemes were also promised.⁵⁶ The compensation for the victims of Meethotamulla was paid under the National Insurance Trust Fund by the Ministry of National Disaster Management.⁵⁷

Similar patterns of ad hoc compensation can be observed following episodes of ethnoreligious violence. For instance, as a result of the ethno religious violence where Muslim communities in Aluthgama and Beruwala were attacked by Sinhala Buddhist mobs in June 2014, at least four persons were killed, 80 were injured and 23 homes were fully damaged with 2,017 homes partially damaged.⁵⁸ CPA was informed that REPIIA had initially paid Rs.100,000 for a death before receiving government approval for increasing the amounts to Rs.2,000,000 for each death and Rs.500,000 for injuries.⁵⁹ The government subsequently also approved compensation for damaged property.⁶⁰

⁵⁴ Lahiru Fernando, "Meethotamulla: How a day meant for celebrations turned dark?" (News 1st, 19 April 2017) <http://newsfirst.lk/english/2017/04/meetotamulla-political-blame-game-continues-people-suffer-video/165778> accessed 1 November 2017

⁵⁵ Interview with the Victims of Meethotamulla Garbage Tragedy (Salamulla Flats, 14 November 2017)

⁵⁶ In this instance the Government paid Rs.1 million to the next kin of the deceased. The initial payment was Rs.100,000, however, consequent to resistance from victims, special cabinet approval was granted to provide the Rs.1 million and Rs.2.5 Million for purchasing furniture and household equipment. People who lost their houses were given 50,000 per month to rent a house. CPA has been informed of discrepancies with implementing these schemes. See: Department of Government Information, "Gov. to pay compensation for Meethotamulla Victims" 18 April 2017, available at:

<https://www.dgi.gov.lk/news/latest-news/1000-govt-to-pay-compensation-for-meethotamulla-victims> accessed 1 November 2017; Ashanthi Warunasuriya, "Discrepancies In Meethotamulla Compensation Plan" (The Sunday Leader, 23 July 2017) <http://www.thesundayleader.lk/2017/07/23/discrepancies-in-meethotamulla-compensation-plan/> accessed 18 January 2018

⁵⁷ Department of Government Information, "Gov. to pay compensation for Meethotamulla Victims" 18 April 2017, available at: <https://www.dgi.gov.lk/news/latest-news/1000-govt-to-pay-compensation-for-meethotamulla-victims> accessed 1 November 2017

⁵⁸ Dharisha Bastians, 'Death toll rises to 4 from Aluthgama riots' (DailyFT, 18 June 2014) <http://www.ft.lk/article/308988/Death-toll-rises-to-4-from-Aluthgama-riots> accessed 04 May 2018; Dharisha Bastians, 'The Anguish and Agony of Aluthgama: On the Spot Report' (DBSJYARAJ.COM, 19 June 2014) <http://dbsjeyaraj.com/dbsj/archives/30705> accessed 04 May 2018; Kalana Senarathna, 'Politics of Aluthgama' (Colombo Telegraph, 22 June 2014) <https://www.colombotelegraph.com/index.php/the-politics-of-aluthgama/> accessed 30 October 2017

'Sri Lanka Muslims killed in Aluthgama: Clashes with Buddhist' (BBC, 16 June 2014) <http://www.bbc.com/news/world-asia-27864716> accessed 22 October 2017;

⁵⁹ Interview with N.Pugendran, Ministry of Prison Reforms, Rehabilitation, Resettlement and Hindu Religious Affairs, 14 November 2017. See also "Victims of Aluthgama Clashes to be Compensated" (NEWSRADIO, 23 August 2017) <https://www.newsradio.lk/2017/08/23/victims-aluthgama-clashes-compensated/> accessed 13 October 2017

⁶⁰ 'Cabinet agrees to compensate victims of Aluthgama Violence' (DailyFT, 12 January 2018) <http://www.ft.lk/news/Cabinet-agrees-to-compensate-victims-of-Aluthgama-violence/56-647146> accessed 17 January 2018

In the more recent ethno-religious violence in areas in Kandy district in March 2018, three persons were killed and 465 property damages were recorded.⁶¹ Initially, the Prime Minister stated that four ministries - the Ministry of Buddha Sasana, Ministry of Posts and Muslim Religious Affairs, Ministry of Rehabilitation and Resettlement and the Ministry of Disaster Management - would be involved in the compensation process.⁶² According to his statement, payment of compensation to Buddhist and Muslim places of worship would be made through the Ministry of Buddha Sasana and the Ministry of Muslim Religious Affairs respectively and the compensation payments in respect of damages caused to properties of the general public will be made through the Ministry of Rehabilitation and Resettlement. The Ministry of Disaster Management will be responsible for making a common estimate of the damage. Subsequently CPA was informed by relevant officials⁶³ that all the compensation payments are to be made through the Ministry of Rehabilitation and Resettlement. The Assistant Director of Disaster Management Unit, Kandy District Secretariat stated that, as of May 30, only 280 persons were paid compensation and so far only Rs.100, 000 was paid for a death.⁶⁴

Disaster	Year	Type	Compensation determined	Responsible body	Compensation for death
Salawa camp explosion	2016	Man-made disaster	Existing circular	Ministry of Disaster Management	Rs. 100,000
Meethotamulla garbage collapse	2017	Man-made disaster	Cabinet approval	Ministry of Disaster Management	Rs.1,000,000
Welikada prison massacre	2012	Riot	Cabinet approval	Rehabilitation of Persons, Property and Industries Authority	Rs.2,000,000
Aluthgama-Beruwela riot	2014	Riot	Cabinet approval	Rehabilitation of Persons, Property and Industries Authority	Rs.2,000,000
Kandy religious conflict	2018	Riot	Cabinet approval	Rehabilitation of Persons, Property and Industries Authority	Rs.500,000
Landslide in Meeriyabedda - Koslanda	2014	Natural disaster	Existing circular	Ministry of Disaster Management	Rs.100,000

⁶¹ Tisarane Gunasekera, 'Sri Lankan Muslims: the new 'others'?' (Himal-Southasian, 23 April 2018) <http://himalmag.com/sri-lankan-muslims-the-new-others/> accessed 8 May 2018

⁶² Shiromi Abaysinghe, 'Compensation from four ministries to pay Kandy riot vicims' (Dailynews, 16 March 2018) <http://www.dailynews.lk/2018/03/16/local/145713/compensation-four-ministries-pay-kandy-riot-victims> accessed 26 April 2018

⁶³ Phone interview with the Director of Muslim Religious and Cultural Affairs Department and the Assistant Director of National Disaster Relief Service Centre in May 2018.

⁶⁴ Interview over the Phone with the Assistant Director of Disaster Management Unit, Kandy District Secretariat in May 2018.

The above are a few examples which demonstrate the lack of uniformity in terms of compensation provided to victims. Influencing factors such as public outcry, pressure and political influence can determine what is ultimately given, to whom and when. While attention in the last few years has largely been on reparations connected with the war, compensation made following manmade and natural disasters and ethnoreligious violence must also be considered in order to avoid discrepancies and ensure equity. Studying all previous efforts where successive governments initiated different forms of reparation must be a requisite when designing future mechanisms and programmes for reparations.

Statutory Bodies Responsible for Different Forms of Reparations

Different statutory bodies are involved in different aspects reparations. These multiple actors have been established as a result of the significant numbers of natural disasters in Sri Lanka, coupled with the impact of the war. Their number, however, also exposes multiple different approaches and schemes on reparations, raising questions of equity, coordination and coherence. CPA urges authorities to take note of these multiple structures and programmes and ensure that a future Office for Reparations is an opportunity to ensure uniformity, clarity and coherence.

Rehabilitation of Persons, Properties and Industries Authority Act No. 29 of 1987

Rehabilitation of Persons, Properties and Industries Authority (REPPIA) was established in 1987 and as consequence of the 1983 July riots. The objective of REPPIA is to assist in the rehabilitation of affected persons and it provides financial assistance to affected persons, properties and industries. REPPIA has several schemes. Under the 'Most Affected Persons Compensation Scheme for General Public', the maximum compensation amount is granted for a death is Rs.100,000 and Rs.50,000 for an injury.⁶⁵ Under the 'Most Affected Persons Compensation Scheme for Government Servants', the maximum compensation amount granted for a death is Rs.200,000 and Rs.100,000 for an injury.⁶⁶

In addition, REPPIA has different schemes for property damage due to war and riots. A maximum amount of Rs.100,000 is granted as compensation for the property damage of the general public,⁶⁷ with Rs.150,000 allocated as compensation for the damage of property of government servants. Rs.1 million is provided for the reconstruction of

⁶⁵ Circular No. M/R & R/UAS/MAP/1. This circular has amended in 2009 and 2012. See: <http://www.reppia.gov.lk/web/images/circulars/M-R&R-UAS-MAP-1.pdf> accessed 8 May 2018

⁶⁶ State Administrative Circular No: 59/89. Amendments were made to the Circular. See: <http://www.reppia.gov.lk/web/images/circulars/59-89.pdf> accessed 8 May 2018

⁶⁷ Circular No. MRR/COM/GEN/ 83/95/01/(i). It was amended in 2006. See: [http://www.reppia.gov.lk/web/images/circulars/MRR-COM-GEN-83-95-01-\(I\).pdf](http://www.reppia.gov.lk/web/images/circulars/MRR-COM-GEN-83-95-01-(I).pdf) accessed 8 May 2018

damaged or destroyed places of religious worship.⁶⁸ In addition to the provision of compensation, REPPIA also provides other assistance such as counselling and other initiatives.⁶⁹

Compared with the needs of victims, the compensation amounts allocated by REPPIA is insufficient. This amount is also limited to victims of conflict and violence, and makes a material distinction between victims who work for the government and do not. CPA was informed that the usual practice in the provision of compensation involving other events is for the Cabinet to determine compensation amounts for victims. Because this process is ad hoc in nature, it is seemingly influenced by political interests and public outcry. Numerous cases documented in this report highlight this.

CPA was informed by officials at REPPIA of the thousands of applications for compensation still pending, in some instances for years, due to the lack of finance.⁷⁰ Officials at REPPIA stated that the funds allocated towards REPPIA is simply not sufficient to deal with the bulk of applications remaining at REPPIA. For example, allocations for compensation in 2016⁷¹ and 2017⁷² were low and numbered around Rs.450 million but increased over fourfold in the 2018 budget to Rs.2 billion.⁷³

CPA was informed that other compensation schemes falling outside of REPPIA are approved by Cabinet but as repeatedly highlighted in this report, there is a lack of uniformity in terms of the compensation provided in response to different incidents. For example, the compensation amounts for the victims of the Welikada prison massacre in 2012 and victims of the Aluthgama riots in 2016 were determined by special cabinet approvals. Victims who lost their lives in the Welikada prison massacre were paid Rs.2 million each as compensation⁷⁴ and as per the Cabinet approval, victims who lost their

⁶⁸ 'Current circulars relating to the REPPIA activities' available at:

http://www.reppia.gov.lk/web/index.php?option=com_content&view=article&id=24&Itemid=139&lang=en accessed 8 May 2018

⁶⁹ Ibid 45

⁷⁰ Interview with N.Pugendran, REPPIA (Ministry of Prison Reforms, Rehabilitation, Resettlement and Hindu Religious Affairs, 14 November 2017)

⁷¹ Rs.450,000,000 was allocated in 2016- Sri Lanka Budget 2016, available at:

<http://www.treasury.gov.lk/documents/10181/161077/bdgtestmates2016E-vol2.pdf/9e84ab34-fce6-4233-a2e1-0c45ead4d95e>

⁷² Rs.479,000,000 was allocated in 2017- Sri Lanka Budget 2017, available at:

<http://www.treasury.gov.lk/documents/10181/336544/volume2.pdf/a92d3511-9316-41de-9e23-a4af68fc521f>

⁷³ Rs.2,000,000,000. 2018 Sri Lanka Budget, available at: <http://www.treasury.gov.lk/budget-estimates-2018>

⁷⁴ Interview with N.Pugendran, REPPIA (Ministry of Prison Reforms, Rehabilitation, Resettlement and Hindu Religious Affairs, 14 November 2017)

lives in the Aluthgama riots will be paid Rs.2 million each as compensation.⁷⁵ Conversely, Cabinet approved only Rs.500,000 rupees as compensation for the victims who lost their lives in the recent Kandy-Digana ethno religious violence.⁷⁶

In contrast to these ad hoc compensation approvals, compensation provided under formalised REPIIA schemes are much lower. For instance, as noted above, compensation for war affected persons under the 'Most Affected Persons Compensation Scheme for General Public' scheme is Rs.100,000 per death.

Bureau of the Commissioner General of Rehabilitation (BCGR)

In 2006, the Government established the Bureau of the Commissioner General of Rehabilitation (BCGR) for the rehabilitation of ex-combatants.⁷⁷ Concerns have been raised with this initiative such as issues around protection and access of independent actors.⁷⁸ Rehabilitation falls within the purview of reparations and it is to be seen whether a future Office will bring this aspect within its mandate or whether it will coordinate with existing actors.

Ministry of Disaster Management and Related Bodies

The Disaster Management Act No 13 of 2005 provides for the National Council for Disaster Management, the Disaster Management Centre, the appointment of Technical Advisory Committees, the preparation of disaster management plans and the award of compensation among. The term "Disaster" in the Act includes the natural disasters, man-made disasters and riots/strife.⁷⁹

The Act provides that the National Council for Disaster Management shall formulate a national policy/programme on the management of disasters which shall provide the effective use of resources for preparedness, prevention, response, relief, reconstruction and rehabilitation⁸⁰ and to facilitate the emergency response, recovery, relief,

⁷⁵ 'Aluthgama riot victims' compensation after LG polls' (Daily News, 18 January 2018) <http://www.dailynews.lk/2018/01/18/local/140266/aluthgama-riot-victims'-compensation-after-lg-polls> accessed 01 May 2018

⁷⁶ 'People killed in Kandy conflicts paid compensations' (ITNNews.lk, 13 March 2018) <https://www.itnnews.lk/local-news/people-killed-in-kandy-conflicts-paid-compensations/> accessed 01 May 2018

⁷⁷ Government Gazette Notification No 1462/8 published in 12th day of the September 2006.

⁷⁸ International commission of Jurists, 'Beyond Lawful Constraints: Sri Lanka's Mass Detention of LTTE Suspects', September 2010 https://reliefweb.int/sites/reliefweb.int/files/resources/28738E40D73D48AB492577AF000B5BD6-Full_Report.pdf accessed 27 April 2018;

⁷⁹ Section 25 of the Disaster Management Act No 13 of 2005

⁸⁰ Section 4 a (ii) of the Disaster Management Act No 13 of 2005

rehabilitation and reconstruction in the event of any disaster.⁸¹ In addition, the National Council for Disaster Management is responsible for promoting public awareness campaigns relating to disaster management and funding research and development on disaster management.⁸² Considering the numerous disasters in Sri Lanka's recent history including the impact of more recent floods and other natural disasters, this is a key area that requires attention.

Administrative Structures at the Local Level

Two existing ministries are responsible for the compensation processes at the national level, namely the Ministry of Disaster Management and the Ministry of Prison Reforms, Rehabilitation, Resettlement and Hindu Affairs. Several administrative actors are involved in the compensation process on the ground.⁸³ The Grama Niladhari (GN) divisions are the smallest and closest to the victims with each local area having a GN who is meant to oversee the day to day administrative functions.

A Divisional Secretariat is represented in each administrative division where the respective GNs report to in the event of a disaster and other issue. Divisional Secretariats would communicate the same to the District Secretariat with the respective District Secretary also known as the Government Agent being responsible overall for each District. Funding for respective projects and programmes are usually transmitted via a line ministry and sent to the District Secretariat and then to the Divisional Secretariat. In terms of the payment of compensation, the administrative actors on the ground play a critical role in compiling lists and verification and then with the disbursement of assistance and compensation.

CPA was informed that in some instances GN officials experienced the influence of political actors while processing compensation work.⁸⁴ CPA was also informed by affected communities of the delays they face in obtaining compensation due to issues linked to their respective Divisional Secretariats and District Secretariats.⁸⁵ However, the relevant officials informed that compensation has to come through the Ministry and there were several reasons for delays such as delays with the Valuation Department in determining the compensation amount.⁸⁶ The above demonstrates that despite the existence of several administrative actors in terms of providing

⁸¹ Section 4 d of the Disaster Management Act No 13 of 2005

⁸² Section 4(j) of the Disaster Management Act No 13 of 2005

⁸³ For more information, check the official website of Public Administration Ministry to see the structure of organisation: <http://www.pubad.gov.lk/web/>

⁸⁴ Interview with the former GN Muruthagama Division (Kanampella, 12 November 2017)

⁸⁵ Ibid, Interview with the Victims of Meethotamulla Garbage Tragedy (Salamulla Flats, 14 November 2017)

⁸⁶ Interview with the Divisional Secretary, Seethawaka Divisional Secretariat (Seethawaka Divisional Secretariat, 12 November 2017)

assistance/compensation and other forms of reparations, there continues to be challenges. The proposal to establish a future Office notes the role of the different actors in the area of reparation and the government must take all steps immediately to address existing administrative and financial challenges, ensuring a future reparations programme is provided in an effective and transparent manner.

Human Rights Commission of Sri Lanka Act No 21 of 1996

The Human Rights Commission of Sri Lanka (HRCSL) was established in 1996 with the aim of protecting and promoting human rights in Sri Lanka. The HRCSL has the mandate to document and monitor the national human rights situation and the mandate to recommend the payment of compensation to victims⁸⁷ though with no coercive powers to enforce its recommendations. It is to be seen whether a future Office will liaise with the HRCSL in terms of uniformity in terms of compensation.

Reparations and the Constitution

Recognising the Right to Reparation as a Fundamental Right in the Constitution

Article 17⁸⁸ of the Constitution of Sri Lanka read with Article 126(2)⁸⁹ state that every person is entitled to a remedy for the infringement of fundamental rights by State action. The sole and exclusive jurisdiction to deal with the fundamental rights cases is vested with the Supreme Court of Sri Lanka. The Supreme Court has the power to provide a range of remedies including compensation for the violation of rights guaranteed in the Constitution. Accordingly, if a right to reparation is included as a fundamental right in the Constitution, there is a mechanism for it to be enforced.

The recent constitutional reform exercise featured a public consultation process which captured the views of a significant population across Sri Lanka. It produced a report demonstrating diverse views on what should be in a new constitution including proposals for a future bill of rights. The debates around a new bill of rights have touched

⁸⁷ Section 16(6) of the Human Rights Commission of Sri Lanka Act No 21 of 1996

⁸⁸ Article 17 of the Constitution of Sri Lanka reads as: "Every person shall be entitled to apply to the Supreme Court, as provided by Article 126, in respect of the infringement or imminent infringement, by executive or administrative action, of a fundamental right to which such person is entitled under the provisions of this Chapter."

⁸⁹ Article 126 (2) of the Constitution of Sri Lanka reads as: "Where any person alleges that any such fundamental right or language right relating to such person has been infringed or is about to be infringed by executive or administrative action, he may himself or by an attorney-at-law on his behalf, within one month thereof, in accordance with such rules of court as may be in force, apply to the Supreme Court by way of petition in writing addressed to such Court praying for relief or redress in respect of such infringement. Such application may be proceeded with only with leave to proceed first had and obtained from the Supreme Court, which leave may be granted or refused, as the case may be, by not less than two judges."

on a broad range of topics including proposals on the inclusion of the right to truth, justice and reparations. CPA called for the inclusion of the right to reparation in the new Constitution and recommended the following to the sub-committee on Fundamental Rights:

“In light of the current discourse on transitional justice (TJ) in Sri Lanka, there now exists a unique opportunity to analyse principles of transitional justice that can be incorporated into a new constitution. Whilst Parliament is yet to adopt the relevant laws in order to set up the proposed TJ mechanisms promised by the government, granting constitutional protection to such mechanisms will signal the government’s commitment to follow through with its promises. Alternatively drafters could include language that captures the TJ commitments with references to the need to address truth, justice, and reparation in line with international norms and standards.”⁹⁰

The CTF, too, made recommendations for the inclusion of transitional justice in a future constitution. Comparative examples⁹¹ show that some countries have included certain transitional justice provisions in their respective constitutions and it is worth considering for Sri Lanka and when attempting to draft a new constitution.

However, even if a right to reparation was constitutionalised, there remain practical obstacles to having it fully enforced. For example, it can take years for a determination on fundamental rights from the Supreme Court, and the process can be costly, provide limited time for aggrieved parties to respond and place geographic obstacles for parties based outside of Colombo.⁹² In addition, compensation amounts provided where the right to reparation is recognised by the Court could vary between cases.

The constitutional reform process again provides some scope to address some of these issues. For example, the report of the subcommittee on Judiciary for a new constitution recommends establishing a Court of Appeal in every province and providing fundamental rights jurisdiction to these Courts.⁹³ In addition, the report of the Subcommittee on Fundamental Rights for a new constitution expands the definition of

⁹⁰ Written submissions by the Centre for Policy Alternatives to the subcommittee of the Constitutional Assembly on Fundamental Rights, available at: <https://www.cpalanka.org/wp-content/uploads/2016/07/CPA-WS-to-Subcom-on-FR-Final.pdf> accessed 28 May 2018

⁹¹ Juan Mendez, ‘Constitutionalism and Transitional Justice’ in Michel Rosenfeld and Andrés Sajó (ed), *The Oxford Handbook of Comparative Constitutional Law* (Oxford University Press 2012); Nabeela Raji, ‘Prospects for Transitional Justice in the Constitutional Reform Process in Sri Lanka’ in Bhavani Fonseka (ed), *Transitional Justice in Sri Lanka: Moving Beyond Promises* (Centre for Policy Alternatives 2017)

⁹² Kumari Jayawardena and Kishali Pinto –Jayawardena, *The Search for Justice: The Sri Lanka Papers* (Zubaan 2016)

⁹³ The Steering Committee of the Constitutional Assembly, ‘Report of the Sub-Committee on Judiciary’ available at: <https://english.constitutionalassembly.lk/images/pdf/02-judiciary-ste1.pdf> accessed 28 May 2018

‘State action’ to include legislative action, administrative or executive action and judicial action.⁹⁴ In the present Constitution, only administrative and executive action is considered as a state action.⁹⁵ It is to be seen whether the present government is able to carry through its promise of a new constitution or at the very minimum, introduce significant amendments to the present constitution.

Reparations under the Provincial Council System

The Thirteenth Amendment to the Constitution, enacted in 1987, provides for the establishment of Provincial Councils and envisages a limited devolution of legislative⁹⁶ and executive powers⁹⁷ to Provincial Councils. The Thirteenth Amendment divides the subjects and functions of government into three separate lists: Provincial Council List (List I), Reserved List (List II) and the Concurrent List (List III).

The Provincial Council List (List I) includes the subject matters in respect of which the Provinces could exercise legislative and executive powers.⁹⁸ These mainly cover those areas of activity where decisions directly affect the province. The subject matters in List I includes Planning, Social Services and Rehabilitation, Education and Educational Service, Provincial Housing and Construction, and Land (meaning rights in or over land, tenure, transfer and alienation, use, settlement and improvement).

The Reserved List (List II) contains areas coming under the central executive and legislative control.⁹⁹ The Provincial Councils cannot exercise any power nor pass any statute in respect of any subject under this list. National policy formulation comes within the reserved list as well as finance in relation to national revenue, monetary policy and external resources.

The Concurrent List (List III) is a list that contains the subjects over which both the Centre and the Provincial Councils can legislate with provision for both to work together by consulting with each other.¹⁰⁰ It includes areas such as planning, Education and Education Services, Higher Education, National Housing and Construction, Acquisition and requisitioning of Property, Social Services and Rehabilitation and other

⁹⁴ The Steering Committee of the Constitutional Assembly, ‘Report of the Sub-Committee on Fundamental Rights’ available at: <https://english.constitutionalassembly.lk/images/pdf/01-Fundamental-Rights-ste.pdf> accessed 28 May 2018

⁹⁵ Article 17 of the Constitution of Sri Lanka reads as: “Every person shall be entitled to apply to the Supreme Court, as provided by Article 126, in respect of the infringement or imminent infringement, by executive or administrative action, of a fundamental right to which such person is entitled under the provisions of this Chapter”

⁹⁶ Article 154 G (I) of the Constitution

⁹⁷ Article 154 C reads with Article 154 F (I) of the Constitution

⁹⁸ Article 154G (1)–(4)

⁹⁹ Article 154(G) 7

¹⁰⁰ Article 154 (G)(5)

areas. Generally the power given to Provincial Councils to make statutes with respect to matters falling under List III is restricted.¹⁰¹

According to these lists, some of the areas that may come within the meaning of reparations may fall within the Provincial Council list such as rehabilitation, Provincial housing and land. However, within the scheme of the Thirteenth Amendment, the power of Provincial Councils to draft statutes is subject significant procedural restrictions by central government actors and there are numerous examples of such central government actors preventing Provincial Councils from passing statutes on subjects within the Provincial Councils list.¹⁰² Even when not encumbered by central government actors, the track record of enacting statutes is dismal in some councils for a variety of factors.¹⁰³

Despite devolving some powers, Provincial Councils have no role to play in the formulation of national policy. In fact, the legislative scheme is such that central government actors have used the nebulous concept of national policy to wrest control of even subjects and functions included in the Provincial Council List.¹⁰⁴ Thus, while the Thirteenth Amendment provides for some devolution, the central government exerts a restrictive influence on the powers exercised by Provincial Councils.

Under the Thirteenth Amendment, authority for the design of a reparations policy will remain with the central government with implementation of some forms of reparation devolved to provincial councils. The design of a future Office for Reparations, which is constrained within the existing constitutional framework, must therefore explore how an entity based within the central government is able to work with Provincial Councils across Sri Lanka. It is also important that the clarity and coherence of power sharing and division of labour facilitates the effective provision of reparations and not be victim to political and bureaucratic obstacles.

Even if Provincial Councils had a role in reparations in Sri Lanka, they would still face significant problems in allocating finances. This is because Provincial Councils are almost entirely dependent on the central government for their finances and central

¹⁰¹ Article 154 (G)(5)b and 154(G)(9)

¹⁰² A. Welikala, Devolution in the Eastern Province: Implementation of the Thirteenth Amendment and Public Perceptions, 2008-2010 (CPA 2011): pp.33-43, available at: <http://www.cpalanka.org/devolution-in-the-eastern-province-implementation-of-the-thirteenth-amendment-and-public-perceptions-2008-2010/>

¹⁰³ L. Ganeshathasan & M. Mendis, Devolution in the Northern Province: September 2013 – February 2015 (CPA 2015): p.17-18, available at <http://f.cl.ly/items/030o3a2b160S3P2Q1J1v/Devolution%20in%20the%20Northern%20Province.pdf>

¹⁰⁴ A. Welikala, Devolution in the Eastern Province: Implementation of the Thirteenth Amendment and Public Perceptions, 2008-2010 (CPA 2011): pp.38-39

government actors exercise overbearing powers over Provincial finances.¹⁰⁵ There is also concern whether certain Provincial Councils have the capacity and expertise to fully exercise their powers and utilise allocated budgets. Most recently, concerns were raised with the under-utilisation of the budget allocated to the Northern Provincial Council.¹⁰⁶

These issues underscore the longstanding critique of the Thirteenth Amendment which is that it provides for a weak system of devolution.¹⁰⁷ The present constitutional reform process may be able to address some of the conceptual issues and provide for greater devolution, though questions are raised as to how far constitutional reform will proceed in light of numerous delays and setbacks. Attention is also be required at the administrative and financial level to introduce new procedures to ensure an efficient and effective system. This is beyond the scope of this paper but is a critical component if a political solution is to be achieved in Sri Lanka in the present context.

CPA also notes the need to pay attention to several existing laws, policies and structures when formulating legislation for a future Office and when planning for a comprehensive reparations policy. For example, considering the significant issue of disappearances and the future workings of the OMP, this particular caseload is likely to require attention. Past Commissions commented on the issue of compensation which should be addressed, though a future Office will need to formulate compensation schemes which ensure equity and non-discrimination.¹⁰⁸ Attention will also need to be on other schemes of compensation provided through legislation such as the Land Acquisition Act¹⁰⁹ and the Disaster Management Act.

¹⁰⁵ Ibid., pp. 29- 44

¹⁰⁶ 'Underutilization of funds allocated to Provincial Councils- Editorial' (Daily Mirror, 21 December 2015) <http://www.dailymirror.lk/100389/underutilisation-of-funds-allocated-to-provincial-councils-editorial> accessed 27 April 2018. L. Ganeshathasan & M. Mendis, Devolution in the Northern Province: September 2013 – February 2015 (CPA 2015): p.17-18, available at <http://f.cl.ly/items/030o3a2b160S3P2Q1J1v/Devolution%20in%20the%20Northern%20Province.pdf>

¹⁰⁷ A. Welikala, A New Devolution Settlement for Sri Lanka: Proceedings and Outcomes, Conference of Provincial Councils (CPA 2016)

¹⁰⁸ Bhavani Fonseka, 'The Importance of Reparations within Sri Lanka's Reform Agenda' in Bhavani Fonseka (ed), *Transitional Justice in Sri Lanka: Moving Beyond Promises* (CPA 2017)

¹⁰⁹ Centre for Policy Alternatives, "Legal and Policy Implications of Recent Land Acquisitions, Evictions and Related Issues in Sri Lanka" (CPA, 17 November 2014) <http://www.cpalanka.org/legal-and-policy-implications-of-recent-land-acquisitions-evictions-and-related-issues-in-sri-lanka/> accessed 20 June 2017; Centre for Policy Alternatives, "Policy Brief: Politics, Policies and Practices with Land Acquisitions and Related Issues in the North and East of Sri Lanka" (CPA, 19 November 2013) <http://www.cpalanka.org/policy-brief-politics-policies-and-practices-with-land-acquisitions-and-related-issues-in-the-north-and-east-of-sri-lanka/> accessed 2 January 2018; Centre for Policy Alternatives, "Land Issues in the Northern Province: Post-War Politics, Policy and Practices" (CPA, 6 December 2011) <http://www.cpalanka.org/land-issues-in-the-northern-province-post-war-politics-policy-and-practices/> accessed 20 June 2017; Centre for Policy Alternatives, "Commentary on Returns, Resettlement and Land Issues in the North of Sri Lanka" (CPA, 14 May 2011)

IV. The Office for Reparations: Some Ideas

The cabinet in March 2018 approved a proposal by the Prime Minister to establish an Office for Reparations and it is reported that a draft bill is now being drafted by the Legal Draftsman's Office.¹¹⁰ According to the proposal approved by Cabinet, the Office is to consist of five members who are to be appointed by the President on the recommendation of the Constitutional Council and will hold Office for three years. It also provides for the headquarters to be in Colombo with the option of a number of regional, temporary or mobile offices. The proposal provides for a list of powers and functions including to 'receive claims from victims of serious violations of human rights or humanitarian law, or from their relatives or representatives and to verify the authenticity of such claims'; to formulate and recommend to the cabinet reparation policies for the grant of individual and collective reparations; to implement reparation policies; to implement programmes of REPPIA; to create, manage and maintain a database; and to 'request and receive assistance from any State, government, provincial or local authority or agency', among others.

Taking this as a starting point, this section will examine a number of issues of importance to a future Office for Reparations and a reparations programme. The issues proceed from the need for outreach on a future Office to legal issues concerning a future Office to key considerations in design and implementation.

As this paper has repeatedly highlighted, reparations in Sri Lanka are administered through numerous policies and bodies, resulting in an ad hoc system that does not meet the needs of victims in any comprehensive manner. CPA's field research into some recent disasters in parts of Sri Lanka in particular expose the makeshift decisions taken in the allocation of compensation which are subject to change based on public outcry and political interests. The informal nature of the administration of reparations and an absence of a comprehensive policy framework accommodates patronage politics and engenders further discrimination and inequalities.

A single entity that brings together existing policies, schemes and programmes of assistance within one Office can therefore help ensure uniformity and avoid the creation of hierarchies and discrimination. One central Office to decide on policy could be critical in a country that has witnessed decades of conflict, disasters and crises, and is likely not immune to them in future. Such an Office can ensure greater coordination among existing bodies and actors and ensure there is coherence in future reparation schemes. By concentrating reparations administration into a single entity—or, at least moving

<http://www.cpalanka.org/commentary-on-returns-resettlement-and-land-issues-in-the-north-of-sri-lanka/> accessed 15 October 2017;

¹¹⁰ "Reparations Bill ready, Compensation for war-affected people" (Sunday Times, 20 May 2018)

responsibility for reparations coordination into a single entity—there is less opportunity for undue political influence.

The Need for Outreach

As is the case with most of the transitional justice commitments it has made, the Government has so far missed an opportunity to engage with citizens in the establishment of the Office for Reparations. The lack of communication and ownership by the political leadership and the prioritisation of other processes over transitional justice have all contributed to limited attention and progress on the issue. Although some media reports alluded to proposals of the Office for Reparations being presented in 2018,¹¹¹ the conversation seems to be limited so far. The interest around the 37th Session of the UNHRC galvanised some interest around the issue at the time with statements by ministers and senior officials alluding to impending legislation to establish a future Office. More than two months after, however, there is still limited public information, raising concerns as to whether sections of the government were more interested in keeping the UNHRC informed than actually engaging with both reparations policy and the citizens in Sri Lanka. Senior ministers and officials in government are reported to have stated that the draft for a future Office is presently being finalised¹¹² but there is limited public information as to what exactly is contained in the draft bill.¹¹³

As the CTF findings and other studies demonstrate, there is a limited to no understanding among many Sri Lankans as to what reparations are meant to address and what a future Office is meant to do. It is therefore critical that the authorities speedily act on their commitments and engages with different stakeholders on the issue. In the course of CPA's research, it became evident that many were unaware of the meaning of the term in Sinhala and Tamil, many limiting the term to only compensation and not being aware of its wider meaning.¹¹⁴ Furthermore, despite the passage of time, there has been limited communication and awareness-raising by the state in terms of why reparations are important and what it is meant in the Sri Lankan context. This lack

¹¹¹ "Legislation to compensate the victims of war' (Sunday Observer 23 July 2017) <http://www.sundayobserver.lk/2017/07/23/news/legislation-compensate-victims-war> accessed 18 January 2018

¹¹² 'Statement by foreign minister Tilak Marapana at 37th Session of the UN Human Rights Council' (Ministry of Foreign Affairs, 22 March 2018) <http://www.mfa.gov.lk/statement-by-foreign-minister-tilak-marapana-at-37th-session-of-the-un-human-rights-council-21-march-2018/> accessed 26 April 2018, 'Reconciliation mechanisms to be presented in the house soon' (Daily Mirror, 21 March 2018) <http://www.dailymirror.lk/article/Reconciliation-mechanism-to-be-presented-to-the-house-soon-147626.html> accessed 27 April 2018

¹¹³ What is now publicly available is the proposal approved by Cabinet with no information available on the draft bill to establish an Office for Reparations.

¹¹⁴ This resulted in CPA producing the first glossary of words and terms around transitional justice in Sri Lanka. For more information, visit www.cpalanka.org and www.tjsrilanka.org

of information and understanding facilitates the spread of misinformation, particularly by those seeking to discredit and disrupt transitional justice efforts.

Under such conditions, it is paramount that relevant authorities immediately commence a communication strategy to inform the public of their proposals and have a transparent process in the establishment of a future Office. The lessons from the process to establish and operationalise the Office on Missing Persons (OMP) must be understood and reflected by ensuring there is transparency, participation and a coherent communication strategy. CPA also reiterates its calls for a transitional justice roadmap and comprehensive communication programme in the three languages. Considering the delays and setbacks faced since 2015, there is concern whether the government is genuinely committed to the 2015 agenda and what is actually possible considering the present political context. While this paper focuses on the very specific topic of the establishment of a future Office for Reparations and the issues around it, CPA notes that this and a few other steps taken since 2015 such as the operationalising of the OMP are insufficient to address past wrongs and achieve genuine reconciliation in Sri Lanka.

In the context of the promise to establish an Office for Reparations, attention must be given to both the design aspect of a future reparations programme and Office and raising awareness as to what they entail. With the first, care must be taken to review all previous efforts at reparations by successive governments (including those related to the war, 2004 tsunami and other natural and manmade crises) in order to have an understanding of the issues with past efforts and to inform a future programme that is holistic and equitable. With the latter, the government must work with media, civil society and others to engage stakeholders to raise awareness as to what reparations entail and impact, facilitating discussions on the topic.

Legal Issues

Questions will be raised as to how reparations will fit within the existing constitutional framework, particularly when considering the role of the centre and provinces. Under the present framework, the Office for Reparations will be with the centre and should work on implementation with existing actors at the central, provincial and local levels. If the future Office is to have powers that fall within the purview of the Provincial Council list, which is likely to be the case as discussed in Section III, the Provincial Councils must be consulted in adherence to constitutional guarantees and jurisprudence from Sri Lankan courts.¹¹⁵ Powers falling within the purview of the Provincial Councils should be

¹¹⁵ The jurisprudence of the courts in Sri Lanka provide guidance when enacting legislation including examples where courts have struck down bills for not adhering to the process set out in the Thirteenth Amendment to the Constitution. Several cases filed by CPA have contributed to this jurisprudence and

clearly defined, ensuring that provincial administrations lead implementation in their respective provinces. Finances and capacity issues must especially be considered carefully during the design of a future Office and in the planning and budgeting stages.

CPA urges the authorities to take note of existing structures and legislation when drafting legislation in this area. This paper highlights several existing actors including REPPIA and others who have a role in administering some forms of reparation. The proposal to establish a future Office for Reparations which was approved by cabinet references REPPIA and 'also assistance from any State, government, provincial or local authority or agency'.

Design and Implementation

In designing a reparations programme, the **scope** is critical. A narrow scope can lead to frustration among victims and others that sections of society are being ignored and marginalised. A broad scope may lead to practical issues of implementation. Would the Office only focus on war related reparations? Would it be able to address issues related violence and ethnic tensions? Would there be scope for natural disasters? Sri Lanka's own past demonstrates careful consideration is required to enable feasibility and efficacy but also to ensure equity and non-discrimination.

The scope can also determine how to proceed with designing programmes and registering victims. A comprehensive database will be required to ensure there is a structured system in place to determine the range of victims and to help determine reparations programmes. Victim registries in other contexts such as Colombia have helped design programmes.¹¹⁶

It is also critical to ensure a **victim-centred** approach. A victim-centred reparations programme ensures that victims and their needs, interests and rights are always at the centre of attention and constitute the goal of each policy.¹¹⁷ Here, "victims" are not a homogeneous group and the term has to be used carefully. The core challenge for a comprehensive reparations policy is to address the huge diversity of affected individuals and groups and the complexity of their situations. For example, attention must be placed on the distinction between victim and perpetrator and instances where the line maybe blurred such as the situation of forced conscription of child soldiers. This

information can be accessed on www.cpalanka.org. Also refer to Lakshman Marasinghe & Jayampathy Wickramaratne, Judicial Pronouncements on the 13th Amendment (ICS 2010)

¹¹⁶ Nelson Camilio Sanchez Leon, Reparations, Responsibility and Victimhood in Transitional Societies: Colombian Report (article in file with CPA).

¹¹⁷ Bhavani Fonseka and Joanna Napless- Mitchell, "Victim-Centred Transitional Justice in Sri Lanka: What Does It Really Mean?", CPA (February 2017) <http://www.cpalanka.org/wp-content/uploads/2017/02/Victim-centred-TJ-1.pdf> accessed 1 November 2017

heterogeneity and complexity are reasons to facilitate comprehensive citizen participation because it assures that information about the needs of victims is recognised in design and implementation. An inclusive approach recognises the political right of every victim to participate and also considers that the knowledge of victims is needed for a successful implementation. As previously noted by CPA, effort must also be on avoiding a hierarchy of victims and what has been termed as the ‘contentious politics of victimhood’.¹¹⁸

Considering the **gender** dimension of the range of violations and their particular impact on victims, a future Office and a reparations programme must factor in gender and be gender sensitive. A gender focus allows consideration of the victims of sexual violence and torture, understanding their specific grievances and sensitivities.¹¹⁹ Such a focus also brings to consideration single headed households and the significant number of women who are heads of households in Sri Lanka, especially in war-affected communities.¹²⁰ Such households are also a concern when considering enforced disappearances and missing because the victims tend to be men, meaning that their surviving families are headed by women. The issue of ex-combatants also require attention with concerns of livelihood support, stigma and problems linked to disabilities and gender.¹²¹ In the past, the gender dimension to providing redress was raised. For example, certificates of ownership for houses granted under the Tsunami Housing Policy of April 2006 only recognised male heads of households even when the property was originally owned by women members of a family.¹²² CPA was informed of a change

¹¹⁸ Kimberly Theidon, *Intimate Enemies: Violence & Reconciliation in Peru*, (University of Pennsylvania Press 2012); Bhavani Fonseka and Joanna Naples- Mitchell, “Victim-Centred Transitional Justice in Sri Lanka: What Does It Really Mean?”, CPA (February 2017); Bhavani Fonseka (ed), *Transitional Justice in Sri Lanka: Moving Beyond Promises* (Centre for Policy Alternatives 2017)

¹¹⁹ Centre for Policy Alternatives, ‘Accountability and Reparations for Victims of Conflict Related Sexual Violence in Sri Lanka’, Discussion Paper (July 2016); Raquel Saavedra and Shreen Saroor, ‘A gendered approach to Transitional Justice in Sri Lanka: Women’s perspectives and International best practices’, SACLs, 24 January 2017 (<http://sacls.org/resources/publications/reports/a-gendered-approach-to-transitional-justice-in-sri-lanka-women-s-perspectives-and-international-best-practices> accessed 26 April 2018)

¹²⁰ Chulani Kodikara, *Doing This and That – Self-employment and Economic Survival of Women Heads of Households in Mullaitivu* (ICES, 2017); Vasuki Jayasankar & Savini Ganahewa, *Making Ends Meet: Women’s Livelihoods in Post-War Sri Lanka* (ICES 2017)

¹²¹ Information shared by participants at a workshop organised by CPA in September 2017. See also: Raquel Saavedra and Shreen Saroor, ‘A gendered approach to Transitional Justice in Sri Lanka: Women’s perspectives and International best practices’, SACLs, 24 January 2017 (<http://sacls.org/resources/publications/reports/a-gendered-approach-to-transitional-justice-in-sri-lanka-women-s-perspectives-and-international-best-practices> accessed 26 April 2018; International Crisis Group: *Sri Lanka’s Conflict-Affected Women: Dealing with the Legacy of War*, at 8 published on 28th July 2017 available at <https://www.crisisgroup.org/asia/south-asia/sri-lanka/289-sri-lankas-conflict-affected-women-dealing-legacy-war> accessed 27 April 2018.

¹²² Centre for Policy Alternatives, “Landlessness and Land Rights in Post Tsunami Sri Lanka”, Discussion paper, November 2005 available at: https://www.cpalanka.org/wp-content/uploads/2007/8/IFRC_land_study.pdf accessed 30 May 2018

from this when recently equal ownership of the spouse is mentioned in the ownership papers given to victims of the Meeriyabedda landslide.¹²³

Equity is critical for a future reparations programme and Office. While this paper is not an attempt to map all the different initiatives at providing reparations in Sri Lanka, the initiatives examined by CPA demonstrate clear discrepancies in response and reparations provided due to factors such as political influence, public outcry and victimhood. These have been highlighted previously and it is worth noting the different amounts allocated by REPPIA as opposed to compensation paid after cabinet approval as seen in Aluthgama (2014), Kandy (2018), the Welikada prison massacre, the Meethotamulla garbage dump collapse and the Salawa explosion. Here, **neutrality** and **independence** are also critical considerations and a future Office must not be hostage to political influence or interference.

Timely action will be required and a future Office will need to be efficient in providing reparation. Media reports sometimes allude to speedy relief efforts but long term reparation is often delayed. For example, some Muslims who were evicted from the north still continue to live in displacement with limited support and assistance from the State. More recently, CPA was informed that victims in Meeriyabedda were only resettled after two years with many concerns around durable solutions with several other cases. This compared to the interest shown and speedy support provided to victims of other disasters such as the Meethotamulla garbage tragedy which received wider public attention. It has also been reported that victims of Aluthgama violence in 2014 are still waiting for compensation.¹²⁴ A future Office and programme for reparations must take note of how state efforts at reparation to date have been influenced by public outcry and attempt to ensure that future provision of reparations is timely regardless of any particular situation's public and political profile.

There should be **regular consultations** and discussions with victims and other stakeholders to be better informed of needs and grievances that can inform programmes and implementation. Effort must be taken to prevent a perception of a top down, elite driven process with no links to victim communities. While compensation schemes or land restitution will be dependent on policy decisions, affected communities should be informed and their views heard when decisions are taken. Such practices have been lacking in the past. For example, land for resettlement in Meeriyabedda was selected without any consultations with victims and plans towards resettlement

CEPA, "Housing and Property Restitution in Sri Lanka: Learning from other jurisdictions" available at: http://www.cepa.lk/content_images/publications/documents/217-S-COHRE-Housing%20and%20property%20restitution%20in%20SL.pdf accessed 18 January 2018

¹²³ Interview with victims of Meeriyabedda Landslide 2014 (Macaldeniya Division, 10 November 2017)

¹²⁴ 'Aluthgama riot victims' compensation after LG polls' (Daily News, 18 January 2018) <http://www.dailynews.lk/2018/01/18/local/140266/aluthgama-riot-victims%E2%80%99-compensation-after-lg-polls> accessed 01 May 2018

subsequently had to be halted after protests by victims.¹²⁵ Consultation would have revealed that the planned resettlement site was too distant from victims' places of employment. Although alternative land was identified and used, there were significant delays in with compensation and resettlement. Similar issues with land, resettlement and relocation were and continue to be witnessed in the North and East of Sri Lanka.¹²⁶

Apart from the mandate and general principles, attention must be given to **financing** a future reparations programme. A significant amount will be required considering the range of issues already highlighted. Attention will need to be on the sources of funding and whether it is to come from the national budget; whether a special trust fund can be created; whether external support can be obtained; or whether a combination of funding sources needs to be considered. Whatever funding source is used needs certainty; concerns have already been raised with funding for the OMP, which is charged to a separate discretionary fund despite the empowering legislation requiring it to be charged to the Consolidated Fund, leaving the funds vulnerable to being diverted.¹²⁷ Such an issue must be especially avoided in the case of an Office for Reparations as one of its primary functions is to disperse funds.

Linked to this is the method of payments and whether payments are a one off in nature or administered through a regular payment scheme. This will need to be decided by the Office, taking note of the range of victims, their grievances and context, and financial situations. For example, some victims have requested for a regular payment scheme than a one off payment which provides them a form of security.¹²⁸ At the same time, poverty and indebtedness must also considered with a future Office liaising with relevant officials and stakeholders needing to address existing structural inequalities.

Questions will be raised as to when the Office is likely to be established and **sequencing** with other mechanisms. At the outset, it must be noted that the delays and obstacles in establishing the OMP highlights the challenges confronting any future transitional justice mechanism, with concerns raised whether this government is able and willing to

¹²⁵ Interview with victims of Meeriyabedda Landslide 2014 (Macaldeniya Division, 10 November 2017)

¹²⁶ Centre for Policy Alternatives, "Policy Brief: Politics, Policies and Practices with Land Acquisitions and Related Issues in the North and East of Sri Lanka" (CPA, 19 November 2013)

<http://www.cpalanka.org/policy-brief-politics-policies-and-practices-with-land-acquisitions-and-related-issues-in-the-north-and-east-of-sri-lanka/> accessed 2 January 2018; Centre for Policy Alternatives, "Land Issues in the Northern Province: Post-War Politics, Policy and Practices" (CPA, 6 December 2011) <http://www.cpalanka.org/land-issues-in-the-northern-province-post-war-politics-policy-and-practices/> accessed 20 June 2017; Centre for Policy Alternatives, "Commentary on Returns, Resettlement and Land Issues in the North of Sri Lanka" (CPA, 14 May 2011) <http://www.cpalanka.org/commentary-on-returns-resettlement-and-land-issues-in-the-north-of-sri-lanka/> accessed 15 October 2017

¹²⁷ 'Allocation of Funds to the OMP: Twice Betrayed' (Sunday Observer, May 20, 2018)

<http://sundayobserver.lk/2018/05/20/news-features/allocation-funds-omp> accessed 20 May 2018.

¹²⁸ Centre for Policy Alternatives, 'Accountability and Reparations for Victims of Conflict Related Sexual Violence in Sri Lanka', Discussion Paper (July 2016)

fully implement its own commitments. Media reports suggest that the Office for Reparations is likely to be the second mechanism to be appointed but there is no credible information available in the public domain to demonstrate whether the government is willing to implement its own commitment. Consideration is thus required on how the Office for Reparations will work alongside the already established OMP, and how it will work with future mechanisms, and how it could function if no future mechanisms (namely a commission for truth, justice, reconciliation and non-recurrence, and judicial mechanism with a special counsel) are established. The goal of having a comprehensive approach to transitional justice must not be forgotten.

V. Conclusion and Recommendations

The paper makes the case why reparations can have a long term positive impact in building civic trust and empowering previously marginalised communities. It also highlights previous attempts at providing reparations in Sri Lanka and why a comprehensive reparations programme is critical. In Sri Lanka, an Office for Reparations has been promised but limited information is publicly available as to the contours of such an Office or the scope of a future reparations programme. Considering the challenges compounding the Sri Lankan transitional justice process, there are genuine concerns as to the status of reparations and whether an Office for Reparations will be actually established and operationalised.

Many areas require attention if the Government is able to move forward with the establishment of a future Office and this paper flags some major areas for consideration. Key principles such as equity, non-discrimination, gender sensitivity must all be given attention to ensure a future Office is able to respond to all victims and not be limited to a few. A future entity must also work within the existing constitutional and legal framework, recognising the Provincial Councils and powers devolved under the Thirteenth Amendment as well as the administrative structures in place on the ground.

In the design and planning stages, it is paramount that authorities consider what is politically and economically feasible from a future Office. Attempting to respond to all violations and not being able to address any of them will put the future Office in a weak footing. Consideration will also need to be given as to past and present initiatives, avoiding duplication but also striving for consistency and coherence. Reparations should be designed in a way that can produce long-term impacts on victims' wellbeing, and at the same time be capable of reaching a large number of them. There is the risk of establishing victim hierarchies during the design and provision of reparations and care must be taken at the outset to address such problems. In this it is critical to learn lessons from Sri Lanka's own experiences as well as look to comparative settings.

Communication has been the Achilles heel of this government, as evidenced during the CTF process and in the establishment of the OMP. It is critical that the government learn from past mistakes and have a comprehensive communication strategy to explain what reparations mean in the Sri Lankan context and to articulate the mandate of a future Office. In light of communication gaps, attention must also be given to linkages to other transitional justice mechanisms and initiatives, explaining for example why receiving reparations will not close the door to justice. An effective communications strategy will also ensure that the marginalised and often excluded are informed and able to engage with future transitional justice initiatives.

More than three years after the political transition in Sri Lanka and more than nine years after the end of the war, it is critical for the government and all other stakeholders to revisit the impacts of Sri Lanka's violent past and the series of disasters and crises it has suffered. Truth, justice, reparation and non-recurrence are all essential in this. The possibility of an Office for Reparations raises expectations but as this paper highlights, much care, consideration and commitment is required in the design stage and in the implementation if it is to actually address the grievances of victims and affected communities and contribute towards achieving genuine transformation and reconciliation in Sri Lanka.

Recommendations

The present paper contains many recommendations for consideration in the establishment of a future Office for Reparations and reparations programme. These recommendations are captured below for easy reference.

Standards

- Reparations must be designed and provided in conformity with the constitutional framework in Sri Lanka including with the participation of relevant actors including Provincial Councils.
- Sri Lanka's constitutional, legal and policy framework should be reflective of international law and standards with the relevant reforms introduced to ensure reparations are recognised as a right and provided in adherence to a rights-based framework.
- The Government must introduce a transitional justice road map ensuring the sequencing of the transitional justice initiatives and facilitating linkages within the different mechanisms.
- A reparations policy and programme must be victim centred. Attention must be given to equity with steps taken to avoid the creation of victim hierarchies.

Process

- The establishment of the Office for Reparations should be a transparent and inclusive process, ensuring victims and other stakeholders are consulted and their views taken on board when drafting legislation and devising future reparations programmes and a policy.
- The draft legislation to establish a future Office must be available in all three languages with sufficient time given for victims and other stakeholders to comment.
- There should be a review of all existing legislation and policies on reparations and future legislation and policies drafted to avoid duplication and confusion. In this regard, a reparations policy or policies must be in adherence to a rights-based framework and reflective of the grievances of all communities across Sri Lanka

- There should be a mapping done of existing actors who are involved in providing different forms of reparations to explore how they can work with and can be brought within a future Office.
- There should be a review of the existing compensation schemes and other relevant assistance schemes that inform the formulation of new scheme to ensure uniformity and equity.
- The Government must ensure there is a communication programme in all three languages to explain what is envisaged via a future Office and a reparations programme. In addition, the Office and any other entity that is involved in the design and implementation of reparations must also initiate communication programmes to provide wide publicity and address any concerns of victims and other stakeholders.
- The design of a future reparations programme should be done with wide consultations with different stakeholders and be informed by previous initiatives that have focused on reparation such as the CTF report, LLRC report and civil society reports.

Function

- The process of selection of the members should be transparent with the process clearly articulated and conducted independent of political interference.
- The members should have the necessary expertise in areas relevant to reparations.
- There should be sufficient finances for the operationalising of the Office and for the creation of a trust fund that will support the different reparations programmes. The funding for the Office must be secure and not able to be diverted. Consideration will need to be given to funding sources including what is provided by the state and other sources to ensure the sustainability of programmes.
- Recruitment of staff and experts should be done in a transparent manner to reflect the needs of the Office and expertise required for the implementation of its work.
- The Office must have a wide field presence, ensuring that victims and other stakeholders have access to their Offices and have resources available in all three languages.
- The Office must establish the necessary teams and units for the implementation of its work including a team focusing on awareness raising and outreach.
- The design and creation of a database for the future Office should be informed by previous initiatives and be comprehensive.
- The Office should have regular consultations with victims and other stakeholders to inform its work and also to raise awareness of its mandate and programmes.
- The Office should have a comprehensive communication strategy in the three languages to raise awareness and to keep the different stakeholders informed of its work.

For the International Community, Civil Society Actors and Other Stakeholders

- The need for reparations must be continuously raised with the Government and other key actors including sharing of knowledge from other contexts.
- Support should be provided to the Government in the design of a future Office and reparations programme which is situated within the Sri Lankan context.
- Necessary financial and technical resources should be provided during the establishment and operationalising of the Office and the implementation of a reparations programme.
- Victims, affected communities and civil society should monitor the workings of the future Office and the implementation of a reparations programme and regularly interact with the Office and other stakeholders to raise concerns and improve the process.