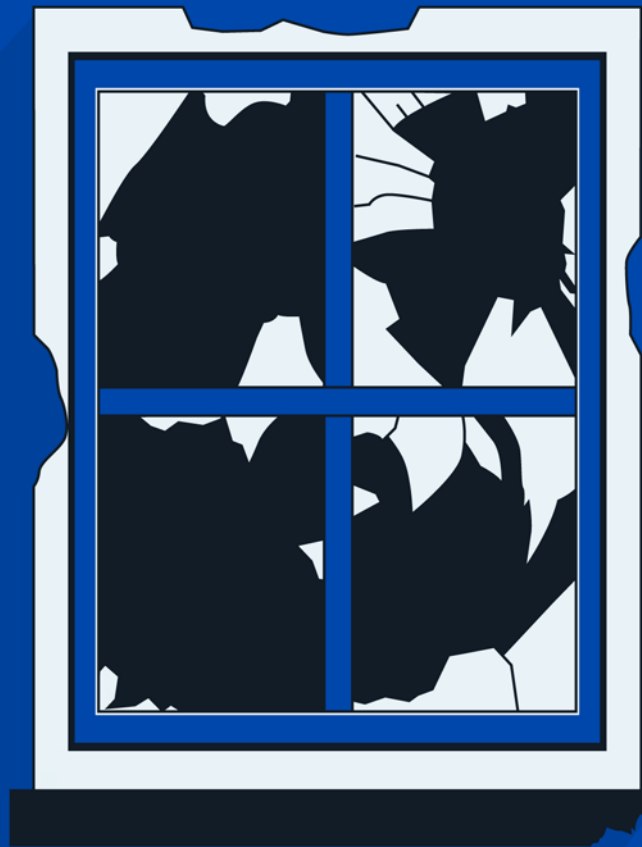


A BRIEF ON **WOMEN** AND **REPARATIONS** IN SRI LANKA



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This brief by the Centre for Equality and Justice (CEJ) using CEJ research materials is intended to keep the international community informed about the status of women and reparations in Sri Lanka, and to provide them with necessary information for their interventions on Sri Lanka at international level.

SRI LANKA'S TRANSITIONAL JUSTICE COMMITMENTS

At the General Debate of the 30th session of the United Nations Human Rights Council (UNHRC) in Geneva on the 14th of September, 2015, the then Sri Lankan Foreign Minister Mangala Samaraweera said in his speech¹ introducing the mechanisms for transitional justice that, “The Government of Sri Lanka recognises fully that the process of reconciliation involves addressing the broad areas of truth seeking, justice, reparations and non-recurrence and for non-recurrence to become truly meaningful, the necessity of reaching a political settlement that addresses the grievances of the Tamil people.”²

Accordingly, on the victims’ right to reparations, he pledged that “an Office for Reparations [will] be set up by Statute to facilitate the implementation of recommendations relating to reparations made by the proposed Commission on Truth, Justice, Reconciliation and Non-recurrence, the Office of the Missing Persons, the LLRC and any other entity.”³ The Office for Reparations (OfR) was one of the four main mechanisms proposed by the government to address outstanding issues around the right to truth, justice and reparations. Other mechanisms identified were the Commission for Truth, Justice, Reconciliation and Non-recurrence; an office on missing persons, and a judicial mechanism with a special counsel to investigate allegations of violations and abuses of human rights and violations of international humanitarian law.⁴

NATIONAL CONSULTATIONS

Further, in order to “strengthen and safeguard the credibility of the processes”, the Sri Lankan government committed to “engaging in broad national consultations with the inclusion of victims and civil society, including non-governmental organisations, from all affected communities, which will inform the design and implementation of these processes, drawing on international expertise, assistance and best practices.”⁵ In accordance with this commitment, the then Prime Minister appointed a Consultation Task-Force (CTF) on Reconciliation Mechanisms. The CTF’s report was handed over to the government in January 2017, and consisted of a comprehensive chapter of comments and recommendations on the proposed OfR which was intended to act as a blueprint for how the Office would be established.

LEGISLATION ESTABLISHING THE OFR

By way of international law – including the ICCPR to which Sri Lanka is a state party – Sri Lanka has a legal obligation to provide reparations to address consequences of its acts or omissions that have resulted in human rights violations. The right to reparations for victims of atrocity crimes such as war crimes and crimes against humanity, is widely regarded as fully or nearly crystallised in treaty and customary international law.⁶

In line with these obligations, in mid-2018 the Cabinet of Ministers approved the bill and gazetted the setting up of the OfR.⁷ However, the bill failed to build upon many of the

¹ <https://www.colombotelegraph.com/index.php/sri-lankas-response-to-unhrc-the-full-text-of-foreign-affairs-ministers-speech-today/>

² UNHRC resolution 30/1

³ UNHRC resolution 30/1

⁴ UNHRC resolution 30/1

⁵ UNHRC resolution 30/1

⁶ Office of the United Nations High Commissioner for Human Rights, Rule-of-Law Tools for Post-Conflict States, Reparations Programs, (2008).

<https://www.ictj.org/sites/default/files/UNHCHR-Global-Reparations-Programmes-2008-English.pdf>

⁷ http://documents.gov.lk/files/bill/2018/6/500-2018_E.pdf

recommendations made by the CTF based on extensive public consultations. By way of the legislation setting up the OfR, civil society identified two key issues with the proposed Act :

- a** The office had no decision-making power with respect to policies and guidelines on reparations. In fact, policies and guidelines formulated by the proposed Office were only to be adopted upon approval by the Cabinet of Ministers (Section 11(1)(g)).⁸
- b** Policies and guidelines approved by the Cabinet of Ministers and authorising the disbursement of funds are to be placed before Parliament for its approval (Section 22(4)). Given that the proposed Office has its own Fund to implement its mandate, this redundant procedural requirement serves only to add another unnecessary layer of Parliamentary oversight and further dilute the Office’s autonomy on reparations policies and guidelines.⁹

Civil society organisations also provided recommendations¹⁰ for strengthening the proposed legislation conforming to international standards – for example, amending the definition of an “aggrieved person”, and establishing mechanisms to provide an independent and effective witness and victim protection mechanism within the OfR.

However, there were also notable positives in the proposed legislation :

- 1** Recognition of the need
 - a** for specialised policies on public education, memorialisation, and on children, youth, women and victims of sexual violence and persons with disabilities ;¹¹
 - b** to ensure that the composition of the Office reflects the pluralistic nature of Sri Lankan society, including gender ;¹²
- 2** The OfR was vested with the powers to create rules and issue guidelines that include gender and child responsive policies for the staff of the Office to follow when exercising and performing their duties,¹³ and to provide specific training for this purpose.¹⁴
- 3** When formulating its policies and issuing guidelines, the OfR is
 - a** obligated to ensure that advisors with relevant expertise are available at all times to advise the Office on gender responsiveness, and the specific needs of aggrieved persons who are women, children and persons with disabilities,¹⁵
 - b** to be guided by principles of non-discrimination, victim-centrality and fairness, and with due consideration to the special needs of women, children and persons with disabilities,¹⁶
 - c** to give due regard to the need to provide special measures for vulnerable aggrieved persons including women, children, and persons with disabilities.¹⁷

⁸ <https://www.cpalanka.org/civil-society-raises-concerns-with-the-office-for-reparations-bill/>

⁹ <https://www.cpalanka.org/civil-society-raises-concerns-with-the-office-for-reparations-bill/>

¹⁰ <https://www.amnesty.org/en/documents/asa37/9219/2018/en/>

¹¹ Section 2(b) of the Act

¹² Section 4(4)(a) of the Act

¹³ Section 11(1)(f) of the Act

¹⁴ Section 11(1)(i) of the Act

¹⁵ Section 12(1)(b) of the Act

¹⁶ Section 12(1)(c) of the Act

¹⁷ Section 12(1)(d)(iii) of the Act

THE OFR IN OPERATION

According to the Reparations Policies and Guidelines formulated by the OfR in compliance with the Office for Reparations Act,¹⁸ the OfR carried out public consultations in Mannar, Kilinochchi, Mullaitivu, Jaffna, Batticaloa, Matara and Hambantota districts with the assistance of the District/Divisional Secretariats. The categories of aggrieved persons invited to participate in these public consultations included :

- + Mothers and wives of the missing persons – including women who headed households
- + Women whose husbands died in the conflict, civil disturbances or political unrest
- + Internally displaced and/or resettled persons; persons with disabilities
- + Persons injured in the conflict, civil disturbances or political unrest
- + Family members of persons who died in the conflict, civil disturbances or political unrest
- + Retired or disabled members of Government armed forces and the police, and their families
- + Families of deceased or missing members of Government armed forces and the police
- + Rehabilitated and socially reintegrated former LTTE cadre
- + Refugees who returned from India
- + Persons psychologically affected by the conflict, civil disturbances or political unrest,

or the effects thereof

- + Persons who lost property (both movable and immovable), during the conflict, civil disturbances or political unrest.

In its Reparations Policies and Guidelines document, the OfR cites having also carried out consultations with 13 civil society organisations representing aggrieved persons from around the country in December 2019. Further, the OfR met the members of the CTF to obtain input on the needs and circumstances of aggrieved persons in order to formulate its policies and guidelines. The document also refers to the OfR having examined the CTF's Final Report and the LLRC Report.

THE NEED FOR WOMEN-SPECIFIC CONSULTATIONS TO MEET VICTIM DEMANDS AND EXPECTATIONS (SATISFACTION)

Women have played a crucial role in Sri Lanka during periods of conflict and its aftermath , including in the search for the disappeared, efforts to nurture and rebuild fractured families and communities, and demanding justice. Given that many male breadwinners were disappeared or were killed during the conflict, women have had to take up the role of sole breadwinners and providers for their families, while also seeking truth and justice for gross human rights violations during the conflict periods.¹⁹ However, reparations programs in the past were not designed with women's specific needs and vulnerabilities in mind, i.e. there was no gender-specific focus. Women are therefore often exploited in their efforts to access reparations, or searches for missing loved one – some even

¹⁸ Reparations policies and guidelines 2021, Formulated by the Office for Reparations in compliance with Section 2(a) read with Section 11(1)(g) of the Office for Reparations Act, No. 34 of 2018 and approved by the Cabinet of Ministers. (The document has not yet been made public). CEJ has been privy to a copy of the policy.

¹⁹ Remembrance of Loss: 25 Case Studies on Women and Reparations in Sri Lanka, CEJ

facing sexual bribery and sexual violence.

There are several reasons why women must be a specific focus in any reparations scheme:²⁰

- + Reparations provide women with much-needed assistance to rebuild lives and livelihoods and to reaffirm their dignity.
- + Even when women are subjected to the same violations as men, their pre-existing socioeconomic and legal status results in the consequences being different.
- + Women are made to take sole responsibility of caring for their families during or after conflict situations.
- + Female heads of households including widows can be ostracised in their communities and abandoned by their families.
- + Female victim-survivors of violence are left destitute with fewer opportunities for economic engagement in comparison to men.

Despite this, the list of types of consultations carried out by the OfR as enumerated in its policy document²¹ shows that, apart from a few female victim groups, the Office has not conducted wide-ranging women-specific consultations to meaningfully capture the gender dimensions of reparations and the healing, repairing and restitution of women's socio-economic, civil and political status. For example, the OfR has not consulted women affected by conflict-related sexual violence (CRSV). Such conversations would require fit for purpose individual or focus group discussions where the consultations are closed, and where women can freely share their comments, recommendations and expectations, in a way public consultations with multiple categories of victims would be unable to provide

the opportunity for.

Women-specific consultations are necessary due to the under-reporting and prevalence of, for example, conflict-related sexual violence, and the different types of reparations requested by victim survivors of gender-based violence. For example, in research findings based on interviews conducted with victim survivors,²² the Centre for Equality and Justice has found a multitude of expectations as reparations. Some of the findings are detailed below.

TYPES OF VIOLATIONS

According to findings in a study conducted by the CEJ with 25 Sinhalese, Tamil and Muslim women affected by war from the Southern, North Central, North Western, Eastern and Northern provinces, the types of violations suffered by the interviewees for the study include:

- 1 Internal displacement
- 2 Killing or disappearance of family members
- 3 Forced recruitment of children
- 4 Physical and mental disabilities
- 5 Loss of livelihood
- 6 Having to marry off children – especially girl children – at a very young age
- 7 Having to abandon their house, land and hometown
- 8 Arbitrary land grabs
- 9 Obstacles to accessing education

²⁰ Remembrance of Loss: 25 Case Studies on Women and Reparations in Sri Lanka, CEJ

²¹ CEJ has been privy to a copy of the policy.

²² The Life I Used to Live: Realizing Reparations for Victim Survivors of Sexual Violence in Sri Lanka, CEJ

²³ Remembrance of Loss: 25 Case Studies on Women and Reparations in Sri Lanka, CEJ

REPARATION EXPECTED BY VICTIM SURVIVORS

CEJ broadly identified three key areas of expectations of reparations by these victim survivors.

Monetary compensation and services :

Due to their present circumstances, a majority of women expressed a preference for monetary compensation and services to meet their own as well as their family members' basic needs. Common demands of women included services such as assistance to build a house, medical and psychological services, employment for a family member, or education for their children.

Truth, satisfaction, symbolic reparations and non-repetition :

Women stated that they want information relating to their missing loved ones, satisfaction, symbolic reparations, and guarantees of non-recurrence by the government.

Individual and collective reparations :

When asked whether they prefer individual or collective reparations, most women expressed the importance of providing both individual and collective reparations, as the scale of the violations are colossal, and a large number of people have been affected.

The following section details these expectations.

COMPENSATION

Compensation refers to financial awards made for damages resulting from violations that can be accounted for in some economic sense. For example :

- + Physical and mental harm
- + Lost opportunities, including employment, education and social benefits
- + Material damages and loss of earnings, including loss of earning potential
- + Moral damage
- + Costs associated with legal or expert assistance, medicine and medical services, and psychological and social services.²⁴

REHABILITATION

Rehabilitation seeks to

- provide victim-survivors with necessary physical and mental healthcare and access to legal and social services.²⁵
- achieve maximum physical and psychological fitness by addressing the individual, the family, local community and even the society as a whole.²⁶

²⁴ Remembrance of Loss: 25 Case Studies on Women and Reparations in Sri Lanka, CEJ

²⁵ 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

²⁶ Dinah Shelton, Remedies in International Human Rights Law (Oxford Univ. Press, 2005)

In essence, it aims to recompense loss, and includes :

- + Access to medical and/or psychosocial support
- + Economic assistance such as housing schemes, employment for offspring and monetary compensation
- + The freedom to engage in religious activities, provide education for children, access information about missing loved ones
- + A guarantee of non-repetition by the government.²⁷

SATISFACTION

Satisfaction includes a large number of possible symbolic forms of reparations such as

- + Commemorations and memorialisation
- + Public apologies
- + Truth-seeking
- + Judicial and administrative sanctions against perpetrators of violations,
- + Verifying facts and searching for the disappeared.²⁸

SYMBOLIC REPARATIONS

According to the South African Truth and Reconciliation Commission (TRC), symbolic reparations refer to measures that facilitate the “*communal process of remembering and commemorating the pain and victories of the past.*”²⁹ Such measures – seen as mechanisms to restore the dignity of victims and survivors – include verifying facts, searching for the disappeared and having commemorations, tributes and public apologies.³⁰

MEMORIALISATION

Memorialisation is an integral aspect of coming to terms with past abuses and honouring, recognising and remembering deceased loved ones.³¹ Some such activities listed by victim survivors include

- + Participating in religious ceremonies and activities
- + Declaring a National Memorial Day
- + Erecting monuments and memorials at the local and national level
- + Naming public places and roads with victims’ names
- + Exchanging and sharing information with other women and families
- + Collectively demanding answers and justice from the government.

²⁷ Remembrance of Loss: 25 Case Studies on Women and Reparations in Sri Lanka, CEJ

²⁸ Remembrance of Loss: 25 Case Studies on Women and Reparations in Sri Lanka, CEJ

²⁹ Truth and Reconciliation Committee of South Africa, Final Report, volume 5, Chapter 5 on Reparation and Rehabilitation Policy <<https://omalley.nelsonmandela.org/omalley/index.php/site/q/03lv02167/04lv02264/05lv02335/06lv02357/07lv02398/08lv02403.htm>>

³⁰ Remembrance of Loss: 25 Case Studies on Women and Reparations in Sri Lanka, CEJ

³¹ Remembrance of Loss: 25 Case Studies on Women and Reparations in Sri Lanka, CEJ

APOLOGY

Apologies are an important form of symbolic reparation. An apology is a formal, solemn, and often public acknowledgement that human rights violations were committed in the past, and that such violations caused serious and often irreparable harm to victims, and further, that the state, group, or individual tendering apology is accepting some or all of the responsibility for what happened.³² Women highlighted the importance of combining apologies with other forms of reparations for it to be truly meaningful and significant. They pointed out that apologies alone are not enough for serious violations they have faced. Some preferred personal apologies while others wanted public apologies.³³

TRUTH SEEKING AND JUSTICE

Truth Commissions are a type of mechanism to investigate past patterns of human rights violations that occurred over a specified period of time. Such commissions can help facilitate a transition from violent conflict to post-conflict peacebuilding. These Commissions can create awareness about violations of the past, give victims a sense of relief, and give them hope that violations will be addressed and similar abuses will be prevented from occurring in the future. While seeking justice, a majority of the women indicated that they complained to the Police, provided information to several commissions, approached the Grama Niladhari, made complaints to the Human Rights Commission, International Committee of the Red Cross and Office on Missing Persons but have not received any justice to date.³⁴

GUARANTEES OF NON-RECURRENCE

Guarantees of non-repetition – which focus on the prevention of future violations – are crucial to providing assurance to victims who may fear retaliation or future harm. Some guarantees that victim survivors in the CEJ study sought included :

- + Reviewing and drafting laws to prevent violations recurring and ensuring that these laws are implemented effectively
- + Preventing delays in and expediting cases of grave human rights violations
- + Ensuring the independence of the judiciary
- + Ensuring that punishments provided for in law are strictly implemented
- + Preventing persecution based on political opinion and ideology
- + Reforming and restructuring the police force and security forces
- + Creating awareness and information sessions on legal frameworks and policies to the public
- + Establishing independent commissions such as truth commissions to ensure accurate information on past violations
- + Strengthening the criminal justice system in the country
- + Taking immediate steps to provide reparations and solutions for past abuses in order to ensure that these are not passed onto future generations

³² ICTJ, 'More Than Words: Apologies as a Form of Reparation' (ICTJ, 2016)
<<https://www.ictj.org/publication/more-than-words-apologies-form-reparation>>

³³ Remembrance of Loss: 25 Case Studies on Women and Reparations in Sri Lanka, CEJ

³⁴ Remembrance of Loss: 25 Case Studies on Women and Reparations in Sri Lanka, CEJ

- + Guaranteeing fundamental rights of all citizens without discrimination based on race, religion or language
- + Ensuring equality before the law and equal protection of the law without any discrimination.

A lack of understanding on the importance of gender and reparations among the staff of the OfR, policymakers and organisations working on transitional justice and the general public can exacerbate the situation of victim survivors. Consultations must therefore be carried out with wide-ranging victim groups and in great detail.

WITHDRAWAL OF GOVERNMENT SUPPORT FOR TRANSITIONAL JUSTICE COMMITMENTS IN 2020, AND NEW CHALLENGES

Following the change in government in November 2019, the Sri Lankan Foreign Minister announced the government's intention to withdraw support for UNHRC resolution 30/1.³⁵ At the time there were concerns about the future of the mechanisms already set up in line with the resolution.

Further, in October 2020, the new government passed the 20th amendment to the Sri Lankan Constitution.³⁶ The amendment effectively removed the de-politicisation of appointments made to key independent institutions that have the power to act as safeguards against human rights abuse or as recourse for violations of human rights. Under the amendment, appointments to the OfR will effectively be made

directly by the President, with the Parliamentary Council required only to provide their non-binding observations on appointments to the President.

New nominations have reportedly been made to the OfR membership,³⁷ but are not reflected in the Office's official website.³⁸

RECOMMENDATIONS TO THE OFR

- + Identify and provide interim reparations as a matter of urgency – especially to women
- + Provide full and wide-ranging reparations as described to victims of human rights violations
- + Interpret their mandate provided by the Act as broadly as possible
- + Provide reparations to the largest group of beneficiaries/aggrieved persons
- + Operate under the principle of equality and transparency in all its operations
- + Make the policy on reparations public on its website and by other means
- + Have public outreach on the availability of reparations
- + Continue to carry out consultations regularly in order to serve the mandate better, especially with women victim survivors
- + Be guided by the findings and recommendations of the Consultations Task Force

³⁵ <https://mfa.gov.lk/43rd-session-hrc/>

³⁶ http://documents.gov.lk/files/act/2020/10/00-2020_E.pdf

³⁷ <https://twitter.com/ParliamentLK/status/1395393686322618377?s=20>

³⁸ <https://www.reparations.gov.lk/web/index.php?lang=en>

- + Seek support from experts in the field of reparations for capacity-building and technical assistance.

RECOMMENDATIONS TO THE SRI LANKAN GOVERNMENT

- + Ensure that the Cabinet is guided by victim survivors' needs when approving policies and guidelines on reparations, including form and quantum of compensation
- + Allocate sufficient resources through annual budgets for the work of the OfR
- + Proactively support reparations initiatives, including creating the space for memorialisation in all quarters. This support should also be extended by law enforcement officers
- + Proactively undertake security-sector reform
- + Allow the Attorney General's department to carry out independent investigations into cases of human rights violations where there is sufficient evidence.

RECOMMENDATIONS TO THE INTERNATIONAL COMMUNITY

- + Monitor the process and progress of reparations in Sri Lanka
- + Actively lobby for inclusivity of all victim survivors as beneficiaries/aggrieved persons
- + Support the work of the OfR through donations, grants or gifts in line with the Act.

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