

Transitional Justice in Sri Lanka and Ways Forward

**EXPLORING FOUR THEMATIC AREAS: RECRUITMENT &
CONSCRIPTION OF CHILD SOLDIERS, DISAPPEARANCES,
SEXUAL VIOLENCE & INTERNAL DISPLACEMENT**

CENTRE FOR POLICY ALTERNATIVES
JULY 2015



CENTRE FOR POLICY ALTERNATIVES

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

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Acronyms

CPA	Centre for Policy Alternatives
COI	Commission of Inquiry
CONADEP	National Commission on the Disappearance of Persons (Argentina)
CRC	Committee on the Rights of the Child
DDR	Disarmament, Demobilization and Reintegration
ICG	International Crisis Group
ICRC	International Committee of the Red Cross
ICTY	International Court Tribunal for the Former Yugoslavia
IDMC	Internal Displacement Monitoring Center
IDP	Internally Displaced Person
IHL	International Humanitarian Law
IHRL	International Human Rights Law
LLRC	Lessons Learnt and Reconciliation Commission
LTTE	Liberation Tigers of Tamil Eelam
OHCHR	Office of the High Commissioner for Human Rights
OISL	OHCHR Investigation on Sri Lanka
NFZ	No Fire Zone
NIRP	National Involuntary Resettlement Policy
RUF	Revolutionary United Front
SCSL	Special Court of Sierra Leone
TRC	Truth and Reconciliation Commission
UN	United Nations
UNICEF	United Nations Children's Fund
UNHCR	United Nations High Commissioner for Refugees
UNHRC	United Nations Human Rights Council
UNWGEID	UN Working Group on Enforced and Involuntary Disappearances

Introduction

When Sri Lanka's 26-year-long civil war ended in 2009, the need to address the widespread death, destruction, and displacement was overwhelming. The government claimed that during the final stage of the war it pursued a "humanitarian rescue operation" with a policy of "zero civilian casualties". However, there is credible evidence that even during the final years of the war there were serious violations of international human rights law (IHRL) and international humanitarian law (IHL) by all sides, namely the Sri Lankan government, The Liberation Tigers of Tamil Eelam (LTTE), and other armed Tamil groups including the breakaway faction Tamil Makkal Viduthalai Pulikal (TMVP also known as the Karuna Group). Allegations against all sides of the commission of potential war crimes and crimes against humanity demands an independent investigation and the prosecution within a credible court of law of those responsible for international crimes committed during the final stages of the war and during its aftermath.

Recognizing the importance of formal legal processes, accountability for serious crimes also extends beyond investigation and prosecution. The pursuit of accountability must address political, legal, and moral responsibility of those most responsible for grave violations of IHRL and IHL. The achievement of truth, justice, and reparation for victims requires a locally supported, participatory, transitional justice process established in accordance with international standards that allows victims to realize their rights and ensure the non-recurrence of violence. The government of former President Mahinda Rajapaksa, in power at the end of the civil war and until January 2015, stated that such a process would balance reconciliation and accountability with an emphasis on restorative justice. By 2014, more than five years after the war ended, despite the numerous promises, no credible domestic process was ever initiated leading to the perception that undue delay had resulted in the denial of justice.

Mahinda Rajapaksa's near decade-long tenure as president was marked by a culture of impunity resulting from the failure to prosecute those responsible for alleged crimes committed during the civil war, let alone an unwillingness to allow the initiation of independent investigations. The lack of capacity within key institutions to investigate, indict, and prosecute alleged war criminals was further complicated by a lack of trust among different groups and the inability of various political stakeholders to agree on steps to genuinely address the grievances of affected communities across Sri Lanka. Notably, the failure to fully implement the recommendations of the commission of inquiry appointed by Mahinda Rajapaksa titled the Lessons Learnt and Reconciliation Commission (LLRC) resulted in a missed opportunity to thoroughly and independently investigate alleged violations of IHRL and IHL and to address issues of truth and justice as sought by victims, affected communities and Sri Lankan civil society organizations. The UN Human Rights Council (UNHRC) was also unable to secure the cooperation of the Rajapaksa government to establish an independent international investigation. Without a credible investigation into accountability for crimes committed by all sides at the end of the civil war, an understanding of the nature of the violations has not been achieved and as a result the possibility of recurrent conflict remained in January 2015 when President Maithripala Sirisena took office as Sri Lanka's sixth executive president.

Despite the previous government's failures to address past atrocities and pursue reconciliation, there is reason for cautious optimism under the new dispensation. The outcome of the January 2015 Presidential election has created a unique opportunity for President Maithripala Sirisena and his government to address past atrocities, ensure non-recurrence of violence, and begin the process of societal reconciliation. In this regard, the new government has promised to initiate a credible domestic process.¹ The decision of the Office of the High Commissioner for Human Rights to defer the tabling of the report by the OHCHR Investigation on Sri Lanka (OISL) to the 30th session of the UNHRC in September 2015 provides an opportunity for the Sirisena government to demonstrate its plans for truth and justice, though there has so far been limited progress in this regard. Moreover, parliamentary elections to be held on 17th August 2015 provide citizens the opportunity to clearly articulate their position on peace and reconciliation. In such a context, there is space to explore substantive options for transitional justice processes which can lead to sustainable peace and reconciliation.

The present government has made tentative first steps towards cooperating with domestic and international actors in their calls for truth, justice and accountability. President Sirisena has indicated a willingness to seek the truth regarding past atrocities, stating that a domestic process will be initiated to investigate war crimes.² In March-April 2015 the UN Special Rapporteur on Truth, Justice, Reparations and Non-recurrence of violence visited Sri Lanka.³ The Sirisena government has also agreed to allow the UN Working Group on Enforced and Involuntary Disappearances (UNWGEID) to visit in August 2015 and extended an invitation to the UN High Commissioner for Human Rights to visit prior to the 30th Session of the UNHRC. Although scheduled to be released during the 26th session of the UNHRC, the OHCHR deferred the tabling of the OISL report to the 30th session of the UNHRC in September 2015 based on the government's request to establish domestic judicial institutions capable of responding to the allegations and demonstrated "signals of broad cooperation."⁴ To date, there is limited information available regarding the domestic mechanisms promised by the government.

In order for the Sirisena government to illustrate its commitment to truth and justice, several initial steps ought to be taken. All reports of past investigations and inquiries

¹ "President Maithripala Sirisena said yesterday that the domestic mechanism to investigate human rights violations during the last phase of the separatist war would be set up in June." Daily News. "Domestic Mechanism in June." May 21, 2015. <http://www.dailynews.lk/?q=local/domestic-mechanism-june> (accessed June 1, 2015).

² News.lk. "President brief Media Heads on 20A and domestic mechanism." May 20, 2015. <http://www.news.lk/news/politics/item/7758-president-brief-media-heads-on-20a-and-domestic-mechanism> (accessed June 1, 2015).

³ UN Human Rights. *Observations by the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Mr. Pablo de Greiff, on the conclusion of his recent visit to Sri Lanka.* <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15820&LangID=E#sthash.MUeLIWRI.dpuf> (accessed April 30, 2015).

⁴ Sengupta, Somini. "U.N. Delays Release of Report on Possible War Crimes in Sri Lanka," *New York Times*, 16 February 2015. <http://www.nytimes.com/2015/02/17/world/asia/united-nations-postpones-report-possible-war-crimes-sri-lanka.html> (accessed April 29, 2015).

should be made public with status updates regarding the implementation of recommendations. The government also must engage those most affected by the conflict in transitional justice processes, giving priority to victim-centered processes and mechanisms. By doing so this government can build confidence in the domestic process; this will need to include the release of names of current detainees and the publication of their places of detention, providing answers to those who continue to search for loved ones. It is also crucial to introduce an independent process that has the required expertise and capacity to deal with serious human rights violations in accordance with international standards; this must include the introduction of legal and policy reforms in consultation with diverse stakeholders and with the support of the international community.

The Centre for Policy Alternatives (CPA) has consistently called for independent investigations and other accountability measures to address truth, justice, reparations and non-recurrence of violence in Sri Lanka. This appeal continues with the Sirisena government. In this report, CPA sets out a range of processes and mechanisms available to the Sri Lankan government to ensure accountability for serious human rights violations and alleged crimes committed during the war. UN Member States have the opportunity to play a key role as facilitators of reconciliation and therefore should take concrete steps at the 30th session of the UNHRC with a follow up resolution highlighting ongoing violations and action with regards to past violence including credible and independent mechanisms for truth and justice. Continued pressure from the international community on the new government to continue to seek justice and reconciliation, beyond the 100-day plan, will encourage follow through by the Sirisena regime. The ultimate responsibility for truth and justice in Sri Lanka lies with its citizens; accordingly they must play the central role in the design and implementation of future processes and mechanisms.

Although the form and function of selected transitional justice mechanisms is of great importance, consideration of the specific needs of victims and society as a whole is fundamental and depends on the nature of the atrocities committed. Sri Lanka has witnessed a range of grave violations committed by all sides of the conflict and this report selects some of the most serious violations in order to explore different avenues of transitional justice, namely the recruitment and conscription of children, disappearances, internal displacement of people and the use of sexual and gender based violence. The four areas were chosen on the basis of violations during the course of the war with allegations aimed at a range of actors. The choice by no means diminishes the importance of examining and addressing other violations witnessed during the war and post-war period. These, in particular, demonstrate the need for immediate action from a range of stakeholders.

The impacts of such violations affect individuals and communities differently. Thus any attempts to hold perpetrators accountable for these atrocities must consider the psychological, social, economic, and cultural needs of victims in both the design and substance of the process. In order to understand the range of transitional justice options available to Sri Lanka, several case studies are examined in detail. These cases, including Sierra Leone, Argentina, Uganda, East Timor and Colombia, seek to identify mechanisms that provide guidance when exploring potential modalities. By examining diverse approaches to addressing international human rights and humanitarian law violations in

the aftermath of armed conflict, this report recommends specific actions that should be taken by the Sri Lankan government, with the support of UN Member States and agencies, and Sri Lankan civil society. Although CPA notes that there is no “one-size-fits-all” approach, the range of options presented is explored in terms of feasibility in the Sri Lankan context. CPA hopes that the options provided in this report enrich the discussions and debates about the design and implementation of a credible domestic process with the long term goal of achieving truth and justice in Sri Lanka.

I. The Recruitment and Conscription of Child Soldiers

A comprehensive definition laid out in the Cape Town Principles of April 1997, defines a child soldiers as:

Any person under 18 years of age who is part of any kind of regular or irregular armed force in any capacity, including but not limited to cooks, porters, messengers and those accompanying such groups, other than purely as family members. It includes girls recruited for sexual purposes and forced marriage. It does not, therefore, only refer to a child who is carrying or has carried arms.⁵

The definition in itself demonstrates unique and multifaceted challenges regarding the protection of vulnerable populations in armed conflict. The use of children in various capacities by regular or irregular armed forces blurs the lines between victim and perpetrator, raising questions of culpability for crimes committed during conflict and further complicating reconciliation and reintegration efforts after hostilities cease.

The use of children in armed conflict is a serious violation of IHL under the Additional Protocols of the Geneva Conventions of 1977, which requires Parties to a conflict to prevent children younger than 15 from directly participating in hostilities and, in particular, from recruiting them into their armed forces. The Additional Protocols also provide special protections for children younger than 15 who have been forced to take a direct part in hostilities or who have fallen into the power of an adverse Party.

When hostilities cease, transitional justice mechanisms attempt to address the challenges of respecting the rights of former child soldiers and holding those who conscript and enlist children into armed forces accountable. Truth and reconciliation processes specifically endeavor to respect children's right to non-discrimination and enable them to have their unique experiences considered in decisions and procedures affecting them. This section concerns the use of child soldiers in Sri Lanka with a focus on accountability for those who conscripted and enlisted children during the civil war. It also examines processes to achieve reconciliation and for the reintegration of former child soldiers. By considering lessons learned from the use of child soldiers in Sierra Leone, CPA recommends that a rights-based approach be adopted to incorporate children into any potential Sri Lankan transitional justice process.

Overview of the Recruitment and Use of Child Soldiers in Sri Lanka

The use of child soldiers by the LTTE began in the early 1980s. Credible allegations point to the recruitment of boys and girls as young as age 14, particularly in the late stages of the

⁵ Cape Town Annotated Principles and Best Practice on the Prevention of Recruitment of Children into the Armed Forces and Demobilisation and Social Reintegration of Child Soldiers in Africa, adopted on 30th April 1997.

war.⁶ UNICEF recorded more than 5,700 children recruited by the LTTE between 2003 and September 2009, although Human Rights Watch has placed the number closer to 21,000.⁷ After the conflict ended in May 2009, 594 children between the ages of 12 and 18 years surrendered to government armed forces.⁸

The Karuna group broke away from the LTTE in 2004 and subsequently became a pro-government political party during the Rajapaksa government. This group alone allegedly included an estimated 5,000 to 6,000 children—many of them under the age 18—when it broke away from the LTTE in March 2004.⁹ By late 2007, the Karuna group itself had fractured, but its sub-groups continued to engage in armed activity in support of government security forces, recruit and use child soldiers.¹⁰ One hundred and twenty two (122) children were released following the signing of the December 2008 action plan between the TMVP (Political Wing of Karuna group), the Government, and UNICEF. However, it was later determined that 26 children were subsequently recruited.¹¹ The Karuna group carried out the last reported case of child recruitment in Sri Lanka in October 2009.¹²

The Government of Sri Lanka has been criticized for not taking sufficient measures to protect children in government-controlled areas during the years of armed conflict. Government inaction, and in some cases the complicity of security forces, contributed to the problem.¹³ The government has also been accused of abdicating its responsibility to protect children to international organizations.¹⁴ For example, the government was repeatedly condemned for tolerating the channeling of children by its security forces to the Karuna group. Investigations into the complicity of security forces has not progressed

⁶ United Nations. *Report of the Secretary-General's Panel of Experts on Accountability in Sri Lanka*. March 31, 2011. 4. http://www.un.org/News/dh/infocus/Sri_Lanka/POE_Report_Full.pdf (accessed May 26, 2015).

⁷ Palitha Kohona. *Security Council Open Debate on Children and Armed Conflict, March 7th, 2014, Security Council Chamber*. New York: n.p. March 7, 2014. http://www.peacewomen.org/sites/default/files/statement-srilanka_0.pdf (accessed December 30, 2014).

⁸ United Nations. "Former Child Soldier Describes Forced Recruitment During Security Council debate, Urges International Community to Aid Other Children Released by Armed Groups." UN News Centre. March 25, 2015. <http://www.un.org/press/en/2015/sc11832.doc.htm> (accessed December 30, 2014).

⁹ Coalition to Stop the Use of Child Soldiers. "Sri Lanka: Report to the Committee on the Rights of the Child on the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict." London, April 2010. 2. http://www.child-soldiers.org/research_report_reader.php?id=311 (accessed December 30, 2014).

¹⁰ Human Rights Watch. "Sri Lanka: Karuna Group and LTTE Continue Abducting and Recruiting Children." March 30, 2007, <http://www.hrw.org/news/2007/03/27/sri-lanka-karuna-group-and-ltte-continue-abducting-and-recruiting-children> (accessed December 30, 2014).

¹¹ United Nations. *Report of the Secretary-General on children and armed conflict in Sri Lanka*. December 21, 2011. 4. <http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/CAC%20S%202011%20793.pdf> (accessed December 30, 2014).

¹² Ibid.

¹³ Statement by Allan Rock, special advisor to the UN Special Representative for Children in Armed Conflict, quoted in Human Rights Watch. "Complicit in Crime: State Collusion in Abductions and Child Recruitment by the Karuna Group." January 2007. 42.

<http://www.hrw.org/sites/default/files/reports/srilanka0107webwcover.pdf> (accessed June 17, 2015).

¹⁴ Human Rights Watch. "Living in Fear: Child Soldiers and the Tamil Tigers in Sri Lanka." November 2004. http://www.hrw.org/reports/2004/srilanka1104/13.htm#_Toc86826266 (accessed December 30, 2014).

satisfactorily because leaders from the security forces and the Karuna group were holding senior government positions during the Rajapaksa administration.¹⁵

In practice, there has been effective impunity for the recruitment and use of children in armed conflict in Sri Lanka. Although *Section 358A(1)(d) of the Penal Code (Amendment) Act, No.16 of 2006* criminalized the use of persons younger than 18 years as soldiers, there is no information publicly available of any investigations or prosecutions under the Penal Code in this regard.¹⁶ The Act explicitly states “*any person who ... engages or recruits a child for use in armed conflict, shall be guilty of an offence*” and Section 358A(2) stipulates that a person who is guilty of conscripting or enlisting a child will “*be liable to imprisonment of either description for a term not exceeding thirty years and to a fine.*”¹⁷ Failure to incorporate the concept of command responsibility into Sri Lankan law has further impeded the effective application of the law. Criminal law reform is needed to ensure accountability for military commanders and other senior officers for conscription and enlistment of children by forces under their effective authority, command, or control.

As of 2010, there were approximately 365 children, formerly associated with armed groups, awaiting reintegration and greatly in need of government child protection officers to work with them.¹⁸ The Emergency Regulations, repealed in 2011, provided for Protective Child Accommodation Centers and Rehabilitation Centers for children leaving armed groups. The operation of the Rehabilitation Centers raised concerns based on the involvement of the military in their management, incomplete separation of children from adults, and increased vulnerability due to irregular access for child protection agencies.¹⁹ Despite the government’s pledge to provide safe and supportive accommodation to former child soldiers, problems persisted.

The election of a new government in January 2015 presents a unique opportunity for Sri Lanka to address unresolved issues regarding child soldiers. Many individuals allegedly responsible for using child soldiers during the war—including commanders Karuna, Iniyabarathi, and Pilliyan—were part of the previous Rajapaksa regime. With the new government in power, these individuals should be investigated by an independent and credible process and held accountable. Despite the UN’s deferral of an inquiry into possible

¹⁵ Vinayagamorthy Muralitharan (Karuna) previously served as Minister of National Integration and subsequently vice president of the SLFP; Iniyabarathi served as Ampara District Coordinator; Sivanesathurai Chandrakanthan (Pilliyani) served as First Chief Minister of Eastern Province.

¹⁶ CPA attempted several times to obtain information from the government in 2015 with no success.

¹⁷ Parliament of the Democratic Socialist Republic of Sri Lanka. Penal Code (Amendment) Act, No. 16 of 2006. <http://www.hsph.harvard.edu/population/trafficking/srilanka.traf.06.pdf> (accessed January 5, 2015).

¹⁸ Sri Lanka Report to the Committee on the Rights of the Child on the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict. 17. April 2010. http://www.child-soldiers.org/user_uploads/pdf/coalitionreporttocrconopacimplementationinsrilankaapril2010645988.pdf (accessed January 5, 2015).

¹⁹ Coalition to Stop the Use of Child Soldiers. “Sri Lanka: Report to the Committee on the Rights of the Child on the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.” London, April 2010. 17. http://www.child-soldiers.org/research_report_reader.php?id=311 (accessed December 30, 2014).

war crimes based on “signals of broad cooperation” from the new Government of Sri Lanka²⁰, the time is right to take action to realize the promise of reconciliation.

The generations of children affected by the armed conflict have the right to access justice and realize their potential as productive members of society in a peaceful Sri Lanka. As key stakeholders in reconciliation and peacebuilding processes in their communities, affected children should be involved early in the design of a child-sensitive approach to transitional justice. The involvement of children, and those who were children when atrocities were committed, is key to promoting a more durable and sustainable peace and preventing the recurrence of armed conflict in the future. The Government of Sri Lanka, with the support of the international community, has the responsibility to establish child-sensitive transitional justice mechanisms that uphold the inherent rights and dignity of former child combatants.

Case Study: Sierra Leone

Like Sri Lanka, Sierra Leone was consumed by a protracted civil conflict that was notable for the recruitment of child soldiers. During the decade-long conflict in Sierra Leone, the Revolutionary United Front (RUF), state forces, and state-supported militias conscripted an estimated 10,000 children.²¹ Approximately 5,000 children were used in combat and 5,000 as support personnel.²² Children aged seven to 14 were placed in the Small Boys Unit, a vicious fighting force based on the Liberian model. These children were forced to commit exceptionally brutal atrocities such as chopping limbs, maiming, and mutilating civilians to instill fear into the population. Although the use of children in combat was not new to Sierra Leone, the use of child soldiers created particular challenges for healing and reconciliation in the war’s aftermath.

Due to the prevalence of child conscription, Sierra Leone pursued innovative approaches to involve children in truth and reconciliation processes, both as victims of the conflict and as change agents in social reconstruction efforts. Three important considerations emerged regarding the participation of children:

1. Understanding children’s participation in the Truth and Reconciliation Commission in relation to their capacity for self-efficacy and their evolving development in a cultural context;
2. Conceptualizing the linkages between protection and participation;

²⁰ Sengupta, Somini. “U.N. Delays Release of Report on Possible War Crimes in Sri Lanka.” *New York Times*. February 16, 2015, <http://www.nytimes.com/2015/02/17/world/asia/united-nations-postpones-report-possible-war-crimes-sri-lanka.html> (accessed January 5, 2015).

²¹ Twum-Danso, Afua. “Africa’s Young Soldiers: The Co-option of Childhood.” (Institute of Security Studies: Pretoria, 2003). 27. <http://www.issafrica.org/uploads/Mono82.pdf> (accessed January 5, 2015).

²² Amnesty International. “Childhood, a Casualty of Conflict.” (AFR 51/6900). March 8, 2000. <https://www.amnesty.org/en/documents/AFR51/069/2000/en/> (accessed January 5, 2015).

3. Learning from children's unique participation as an impetus for broad-based legal and social policy reform, especially in regard to fostering intergenerational healing and promoting sustainable peace-building in the aftermath of conflict.²³

Although there was consensus that those who bore the greatest responsibility for the conflict should be held accountable, opinions differed regarding how former child soldiers should be treated under national and international law. Many argued that children should be reintegrated as responsible members of society rather than face prosecution.²⁴ Others stressed the importance of creating authoritative records of children's experiences via truth telling processes.²⁵ Still others believed that different approaches should consider the modes of joining armed forces—through conscription, enlistment, or voluntary participation—particularly in the process of awarding reparations.²⁶ These views underscore the diverse beliefs regarding the rehabilitative needs of children.

National Practices

After the conflict, Sierra Leone passed national legislation in accordance with international law to provide protection for children from future conscription into armed groups. Following its second periodic report to the Committee on the Rights of the Child (CRC), Sierra Leone passed the Child Rights Act of 2007, which is compatible with the CRC (as well as its Optional Protocols) and the African Charter on the Rights and Welfare of the Child. The Act states that children have the right to be protected from involvement in violent conflicts and sets the minimum age of recruitment into the armed forces at 18. The government is prevented from conscripting or enlisting any child into military or paramilitary service or permitting such practices by the armed forces. The government also set the age of majority for purposes of the Disarmament, Demobilization and Reintegration (DDR) program at 18 years.

Working through the Ministry for Social Welfare, UNICEF-Sierra Leone, and other Child Protection Network (CPN) partners, the government utilized child appropriate programming when responding to problems associated with DDR and related psychosocial trauma. Various Interim Care Centers (ICCs) were established and equipped with welfare support workers and “camp followers” to create a child-centered approach to DDR. Reunification and mediation with families, psychosocial healing, rapid response, education recovery, and skills trainings for older children (adolescents transitioning to adulthood) were systematically utilized. The Family Tracing and Reunification (FTR) program was also initiated to trace and reunite children with their caregivers. Fostering and responsible placement were pursued for children who were orphaned by the conflict or whose caregivers could not be traced. Local and regional child protection organizations undertook medical treatment of children who were victims of sexually transmitted diseases,

²³ Cook, Philip and Cheryl Heykoop in *Children and Transitional Justice: Truth-telling, Accountability and Reconciliation*, ed. Sharanjeet Parmar. Cambridge, MA: Human Rights Program, Harvard Law School. 2010. 162. http://www.unicef-irc.org/publications/pdf/tj_publication_eng.pdf (accessed January 7, 2015).

²⁴ Ibid, 184.

²⁵ Ibid, 166.

²⁶ Cecile Aptel, Associate Professor of International Law at the Fletcher School of Law and Diplomacy & Senior Legal Policy Advisor to the UN High Commissioner for Human Rights. Personal Interview. February 5, 2015.

early/forced pregnancies, and drug abuse. These organizations kept comprehensive data on the abuse of women and girls and the treatment they received.

Special Court for Sierra Leone

Security Council Resolution 1315 of August 2000 instructed the UN Secretary-General to establish a “strong and credible special court” by an agreement with the president of Sierra Leone.²⁷ The resulting Special Court of Sierra Leone (SCSL) is a “hybrid” tribunal based on a bilateral agreement between the UN and the Sierra Leonean government. The SCSL combines both international and domestic institutional mechanisms and laws to try suspected perpetrators in Sierra Leone, where the crimes were committed. A mix of foreign and domestic judges try cases prosecuted and defended by teams of local lawyers working in collaboration with international personnel using domestic law that has been reformed to comply with international standards.

Although the SCSL is “accountable” to a management committee comprised of representatives of states that provide funding to the UN legal department, the Court is effectively outside the control of the Security Council and the Government of Sierra Leone.²⁸ This autonomy makes the SCSL independent of the Sierra Leonean constitution and legal system, thereby obviating a mandated special referendum for its establishment. The safeguard of employing both UN and local judicial personnel ensures that there is never a majority of judges vulnerable to domestic political pressure. By involving local lawyers appointed by the Government of Sierra Leone based on their qualifications in international law, including international humanitarian law, human rights law, criminal law, and juvenile justice, the SCSL built up local professional expertise in a society where many lawyers were killed or forced to flee.

The SCSL is the first international or hybrid court to prosecute crimes committed by children (child soldiers) and has jurisdiction over defendants who were 15 to 21 years of age when the alleged crimes were committed and over adults who are/were alleged to have committed crimes against those under 21 years of age, e.g. forced conscription, rape, etc.²⁹ Based on the understanding that children were not among “those most responsible” for crimes committed during the conflict, the chief prosecutor made it a policy of the Court that those who were under 18 years of age when they allegedly committed crimes would not be prosecuted. In principle, this model of international criminal justice would serve where there is international consensus that war crimes in a particular state should be prosecuted and where the government of the state is willing to accept international assistance to do so effectively and fairly. In practice, however, such a model is very difficult to implement. Governments often complicate efforts by refusing to comply with requests or

²⁷ UN Security Council. *Security Council resolution 1315 [on establishment of a Special Court for Sierra Leone]*. August 14, 2000, S/RES/1315 (2000). <http://www.refworld.org/cgi-bin/texis/vtx/rwmain?docid=3b00f27814> (accessed January 7, 2015).

²⁸ Agreement Between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone. <http://www.rscsl.org/Documents/scsl-agreement.pdf> (accessed January 7, 2015).

²⁹ Special Court for Sierra Leone: Prosecutor v. Sam Hinga Norman. *International Legal Materials* 43.5 (2004): 1129-165. <http://www.rscsl.org/Documents/scsl-statute.pdf> (accessed January 9, 2015).

interfering with international criminal investigations, thereby preventing judicial personnel from effectively carrying out their responsibilities. In other instances, government cooperation may be contingent upon assurances that sitting officials will not be investigated and prosecuted for alleged crimes. This is especially salient in situations, such as Sri Lanka, where fundamental disagreements exist between the government and elements of society regarding the true nature of events that transpired during the conflict.

Truth and Reconciliation Commission

The Sierra Leone Truth and Reconciliation Commission (TRC) was the first to call for a focus on children, both as victims of the conflict and change agents in social reconstruction efforts. The Sierra Leone TRC was groundbreaking in setting precedent and developing policies and procedures to protect the rights of children in truth commission processes. The key task of the TRC in relation to children was to create an impartial and official historical record of what happened to children during the armed conflict in Sierra Leone. The Sierra Leone TRC was the first truth commission to involve children in statement taking and in closed and thematic hearings, and it was the first to prepare a child-friendly version of the Commission report, and the creation of National Vision for Sierra Leone³⁰ was ground breaking. This was a way for individuals of all ages to creatively express their expectations and aspirations for Sierra Leone after more than a decade of war. These innovative measures have had a significant impact on the emerging understanding of children's evolving capacities to contribute to the legal and social aspects of TRC activities. Children were involved in Sierra Leone's TRC from the onset. Sierra Leonean children identified by child protection agencies (CPAs) were involved in a 2001 technical meeting on children and the TRC jointly convened by UNICEF, United Nations Mission in Sierra Leone (UNAMSIL), and the National Forum for Human Rights. Social workers accompanied the child participants and helped them prepare their own account and recommendations, which were taken into consideration when the guiding principles were drafted. The resulting guiding principles included:

1. **Special attention to children** due to their specific targeting for grave violations during the armed conflict and the serious impact on their lives, families, and futures;
2. **Child rights standards should inform the process of the TRC**, particularly the CRC and ACRWC;
3. **Equal treatment of all children before the TRC**, considering that children who gave statements were both victims and witnesses of grave violations;
4. **Special attention to girls**, in particular those who experienced sexual violence;
5. **Voluntary participation** with the informed consent of the child and the child's parent or guardian, and without the ability to subpoena children;
6. **Protection through confidentiality** in all aspects of the TRC's work;

³⁰ The National Vision for Sierra Leone (NVSL) is a unique cultural program featuring artwork, literature, essays, performance, and installation by Sierra Leoneans of all ages and backgrounds expressing their hopes and aspirations for a post-conflict Sierra Leone. Developing a vision for the future necessitated reaching out to individuals and groups with the aim of understanding their unique perspectives on post-conflict Sierra Leone. The NVSL is both a portable exhibit and an ongoing project. To learn more about the project, see <http://www.sierraleonetrhc.org/downloads/Volume3bChapter8.pdf>.

7. Preserving the anonymity of children by refraining from disclosing any identifying information³¹

The subsequent Framework of Cooperation established between the TRC and CPAs was also groundbreaking. It established norms for the involvement of children, set valuable precedent for collaboration between CPAs and truth commissions, and informed policy and procedures for protecting the rights of children involved in TRC activities.

Although the TRC was groundbreaking in its involvement of children, the participants, their families, and civil society organizations expressed numerous concerns.³² Many people—both children and adults—recognized the utility of the TRC in pursuing reconciliation, but differed in their views of what was necessary to achieve healing and reconciliation. Many children were confused about the TRC mandate, specifically in regards to compensation for their participation; this underscored the need for extensive community outreach in the early phase of the TRC to explain its objectives and clarify children’s potential roles. Many children desired the opportunity to seek help from traditional and religious leaders and participate in traditional ceremonies; however, child protection authorities advised against this practice due to the involvement of many leaders in the atrocities. Finally, the TRC was expected to promote healing and reconciliation; in practice, however, more emphasis was placed on the authentication of crimes for future generations and the creation of a historical record.

Despite numerous difficulties, the Sierra Leone TRC was an important landmark for children’s rights and has established innovative procedures for children’s protection and participation that can be adapted to other truth-telling and reintegration processes in post-conflict countries. The Sierra Leone TRC successfully applied a rights-based approach to children’s engagement and considered children’s evolving capacities in truth-telling processes, which enabled young people to shape their experiences within the local context. The creative partnerships forged with peers and adults also resulted in stronger inter- and intra-generational grassroots networks, improved citizenship, and peacebuilding practices. The TRC highlighted the need to consider the broader recovery and development contexts in which TRC processes operate, particularly the linkages between truth telling and reintegration with children and young people’s basic economic, education, and protection needs. Finally, the TRC underscored the need for increased understanding of the changing nature of children’s development in the context of war and conflict and the implications for social regeneration and reconstruction processes, including transitional justice mechanisms.

³¹ United Nations Children’s Fund (UNICEF) and National Forum for Human Rights. “Children and the Truth and Reconciliation Commission for Sierra Leone: Recommendations for Policies and Procedures for Addressing and Involving Children in the Truth and Reconciliation Commission.” (UNICEF: Freetown, 2001). 15-19. <http://www.unicef.org/emerg/files/SierraLeone-TRCReport.pdf> (accessed January 12, 2015).

³² “Children and Transitional Justice: Truth-Telling, Accountability and Reconciliation.” 178-185. http://www.unicef-irc.org/publications/pdf/tj_publication_eng.pdf (accessed January 12, 2015).

Applicability to Sri Lankan Context

After examining Sierra Leone's unique approach to children's participation in transitional justice processes, valuable lessons can be learned and adapted to create a child-centered approach to transitional justice in Sri Lanka. Although not every aspect of children's experience in Sierra Leone's transitional justice mechanisms could or should be replicated, many features of children's involvement, particularly in the SCSL and TRC, could guide the creation of a rights-based approach to incorporate former child soldiers and child victims (including the child soldiers) into any mechanisms that are designed and implemented in Sri Lanka. A series of recommendations that recognizes the unique roles and responsibilities of the Sri Lankan Government, UN agencies, and Member States has been included at the end of the report to guide the process of reconciliation and reintegration for former child soldiers.

II. Disappearances

The International Convention for the Protection of All Persons from Enforced Disappearance defines ‘enforced disappearance’ as:

*"the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law."*³³

Even if a state is not a party to this convention the UN asserted an international obligation to protect people from disappearance through the Declaration on the Protection of All Persons from Enforced Disappearance.³⁴ Furthermore disappearance is a violation of customary international law applicable in both international and non-international armed conflicts.³⁵

It is important to note that Rome Statute of the International Criminal Court definition of “disappearance” is slightly different from the aforementioned, in that it states enforced disappearance can occur at both the hands of state actors *or political organizations*, the latter explicitly including non-state armed groups. This is of particular importance in the Sri Lankan context for understanding the extent and circumstances of any disappearances involving the LTTE. The Rome Statute also clarifies that if this crime is part of a widespread or systematic attack directed at any civilian population that it qualifies as a crime against humanity which deems it not subject to a statute of limitations.³⁶ Unfortunately Sri Lanka has neither ratified the Convention for the Protection of All Persons from Enforced Disappearance nor the Rome Statute of the International Criminal Court. However it is still bound by an international obligation as asserted by the UN to protect people from disappearance through the Declaration on the Protection of All Persons from Enforced Disappearance.³⁷

This section concerns the use of “disappearances” in Sri Lanka during the civil war. It suggests steps that can now be taken by the government, international community and civil society to provide accountability for the disappearances, which are essential to the promotion of truth and justice and necessary to healing. CPA advocates that those responsible for the disappearances in Sri Lanka are held accountable and that information

³³ UN General Assembly. *International Convention for the Protection of All Persons from Enforced Disappearance*. December 20, 2006. Article 2.

<http://www.ohchr.org/Documents/ProfessionalInterest/disappearance-convention.pdf> (accessed May 26, 2015).

³⁴ Proclaimed by the General Assembly in its resolution 47/133 of 18 December 1992

³⁵ International Committee of the Red Cross (ICRC). *Customary IHL*, IHL Catalog, Cambridge University Press 2005, Chapt 32, rule 98. https://www.icrc.org/customary-ihl/eng/docs/v1_cha_chapter32_rule98 (access June 1, 2015).

³⁶ UN General Assembly. *Rome Statute of the International Criminal Court* (last amended 2010), 17 July 1998.

³⁷ Proclaimed by the General Assembly in its resolution 47/133 of 18 December 1992.

with regards to the disappeared is shared with family members as soon as it becomes available. In addition to truth and justice, it is expected that this will facilitate the mourning and healing processes in the context of the cultural and religious needs of the Sri Lankan population.

Overview of the Disappearances Issue in Sri Lanka

The phenomenon of disappearances in Sri Lanka predates the armed conflict between the government and Tamil rebel groups. Disappearances started during the first JVP led insurrection in the early 70s. Peaks in the use of this tactic occurred in the 70s, 80s and 90s, coinciding with two JVP- led insurrections and the armed ethnic conflict. While enforced disappearances were sporadic during the early 2000s, with the election of President Rajapaksa in 2005, they became widespread and systematic once more. From that day forward enforced disappearances occurred island-wide, but more so in the highly militarized North and Eastern Provinces and the capital, Colombo, targeting dissenting voices, ethnic and religious minorities especially the Tamil community.³⁸ In total there are at least 64,831 complaints of enforced disappearance filed with domestic mechanisms of Presidential Commissions of Inquiry since 1994.³⁹ There continue to be reports of disappearances in present day Sri Lanka although the number has drastically decreased since the end of the civil war.⁴⁰

As of August 2014, the UN Working Group on Enforced or Involuntary Disappearances had 5,731 cases of enforced or involuntary disappearance in Sri Lanka outstanding. This number of 5,731 does not include people who went missing in the final stages of fighting from 2008 to 2009 and only represents cases sent to the group.⁴¹ According to a report from Amnesty International, Sri Lanka is second only to Iraq globally for the number of

³⁸ Human Rights Watch. *Sri Lanka Return to war Human Rights Under Siege*, 46.

<http://www.hrw.org/reports/2007/srilanka0807/srilanka0807webwcover.pdf> (accessed June 1, 2015); Amnesty International. "DISAPPEARANCES" AND POLITICAL KILLINGS: HUMAN RIGHTS CRISIS OF THE 1990s A MANUAL FOR ACTION. Chapter 2. "Sri Lanka: "Disappearance" and murder as techniques of counter-insurgency" (accessed June 1, 2015).

³⁹ International Crisis Group report SRI LANKA'S HUMAN RIGHTS CRISIS Asia Report N°135 – 14 June 2007.

5. http://www.crisisgroup.org/~media/Files/asia/south-asia/sri-lanka/135_sri_lanka_s_human_rights_crisis.ashx (accessed June 9, 2015); Presidential Commission to Investigate Into Complaints Regarding Missing Persons. Press Release: Submission of the Interim Report by the Presidential Commission on Missing Persons.

<http://www.pcicmp.lk/images/press%20release%20Interim%20Report.pdf> (accessed June 9, 2015).

⁴⁰ WATCHDOG. "Enforced Disappearances in Sri Lanka: 2006-2013."

<http://groundviews.org/2014/01/09/enforced-disappearances-in-sri-lanka-2006-2013/> (accessed June 1, 2015); UN Office of the High Commissioner for Human Rights. Working Group on Enforced or Involuntary Disappearances - Annual reports. <http://www.ohchr.org/EN/Issues/Disappearances/Pages/Annual.aspx> (accessed May 26, 2015).

⁴¹ Many victims and families have not sent in complaints due to a range of reasons including fear of reprisals, not being aware of filing complaints among others.

cases of disappeared persons before the UN Working Group.⁴² A request by the group to visit in country, denied since October 2006⁴³, has finally been scheduled for August 2015. In the context of the recently elected Sirisena government, which has gone on record saying there will be a shift in terms of engaging with the UN team, there is pressure to have a comprehensive and credible domestic process. Initiatives under the extant Sri Lankan Commission Of Inquiry (COI) Act have failed and therefore the new government needs to initiate reform, including structural change, that can bring about truth, justice and accountability.

When addressing the issue of enforced disappearances, it is tempting to focus primarily on the disappeared person, or the perpetrator. CPA advocates also focusing on the families and loved ones that continue to be affected by the disappearances, and are attempting to cope with their grief while they pursue justice for their disappeared family members and themselves. Currently in Sri Lanka there are no official structures in place to provide recourse to the families of the disappeared; the extent of their vulnerability is largely dependent on awareness of their rights, their access to justice and available support systems.⁴⁴ This section looks to what has occurred in Argentina over the past several decades for suggestions of structural reform that can be applied in Sri Lanka as well as an advocacy centered approach by family members and civil society for truth, justice and memory.

Case Study: Argentina

Argentina is an internationally recognized leader in the transitional justice field, having successfully developed and utilized relevant mechanisms to address gross human rights violations committed during military rule (1976-83) including the disappearance of between ten and thirty thousand people. This number included many young students, professors, social workers, political dissidents, and anyone who didn't share the government's view for a purer Argentina.⁴⁵ The large scale human rights violations in Argentina included extrajudicial detention in secret centers, mass murder and covert burial.⁴⁶ It is the location most widely associated with the term "disappeared" as it was one of the first locations where this tactic was recognized as a human rights issue. Habeas corpus became the legal grounds of human rights resistance and relatives formed groups in Argentina, the most famous of which are the Mothers and Grandmothers of the Plaza de Mayo, which continue to exist to this day and became prototypes for human rights

⁴²Amnesty International, Sri Lanka: Activists petition parliament on Day of the Disappeared October 27, 2014. <https://www.amnesty.org/en/press-releases/2014/10/sri-lanka-activists-petition-parliament-day-disappeared/> (accessed June 1, 2015).

⁴³ UN Office of the High Commissioner for Human Rights. Working Group on Enforced or Involuntary Disappearances - Annual reports. <http://www.ohchr.org/EN/Issues/Disappearances/Pages/Annual.aspx> (accessed May 26, 2015).

⁴⁴ WATCHDOG. "Enforced Disappearances in Sri Lanka: 2006-2013." <http://groundviews.org/2014/01/09/enforced-disappearances-in-sri-lanka-2006-2013/> (accessed June 1, 2015).

⁴⁵ Rosenblatt, Adam. Digging for the Disappeared: Forensic Science after Atrocity. 2015. Stanford University Press. 84.

⁴⁶ For more information on forensic genetics see Lindsay Smith's "Genetics is a Study in Faith": Forensic DNA, Kinship Analysis, and the Ethics of Care in Postconflict Latin America.

advocates around the globe.⁴⁷ The following are a variety of legal, political and social steps that were taken in Argentina to ensure accountability.

Transition of Leadership

By the 1970s Argentina had already undergone a violent series of cycles between democracy and military coups. The military rule of 1976-1983 proved to be the most repressive and violent time of all. The media and the military themselves referred to this time as “the Dirty War,” referencing the brutal attacks on the civilian population that took place. On December 10th, 1983 a transition to democracy followed a virtually collapse of the state due to economic crisis and military defeat in the Malvinas War with Great Britain. After the “Dirty War,” the country was faced with the task of reformation, reconstruction, and maintaining national unity. Human rights groups played a major role in ending the “Dirty War” and influenced the manner in which related investigations were conducted. The transition to democracy led to the election of Rafael Alfonsín after a campaign that in part prioritized a response to the gross human rights violations of his predecessors.⁴⁸ President Alfonsín had a plan for retributive justice which included: i) prosecuting both State terrorists and subversives under what is known as the “Two Demons Theory”, ii) limiting responsibility to those highest officials ordering the crimes, not to the foot soldiers who carried out the repression, and finally iii) subjecting all trials to deadlines.⁴⁹

Presidential Appointment of Commission of Inquiry

Alfonsín’s government aimed to address political and social accountability by creating a National Commission on the Disappearance of Persons (CONADEP, acronym in Spanish). CONADEP’s inquiry into government repression simultaneously served the functions of informing the public of the truth about and collecting essential legal evidence necessary for the prosecution of perpetrators in the future.

The Commission had a very specific and highly publicized mandate “to investigate the disappearances of people between 1976 and 1983 and uncover the facts involved in those cases, including the locations of the bodies.”⁵⁰ CONADEP was given a period of six months to receive reports of disappearances (after which it would immediately have to share them with the courts), inquire into the fate of the disappeared, locate abducted children, report to the courts any attempt to conceal or destroy evidence and, lastly, issue a final report.⁵¹

⁴⁷ Rosenblatt, Adam. *Digging for the Disappeared: Forensic Science after Atrocity*. 2015. Stanford University Press.

⁴⁸ Balardini, Lorena. *The Long Struggle for Accountability in Argentina. The role of civil society’s activism and State actors*. Prepared for delivery at the 2014 Congress of the Latin American Studies Association, Chicago, IL May 21 - 24, 2014. <http://www.cels.org.ar/common/Documentos/PonenciaLASABalardini-CELS.pdf> (accessed February 1st, 2015).

⁴⁹ The laws were so unpopular with the public that their passage was partially responsible for President Alfonsín’s forced resignation 6 months in advance of his end of term.

⁵⁰ United States Institute of Peace. *Truth Commission: Argentina*. <http://www.usip.org/publications/truth-commission-argentina> (accessed February 3rd, 2015).

⁵¹ It is important to note that the commission did not hold public hearings.

The main outcome of this Commission was the 5,000 page report submitted to the President. The public had access to an edited version called *Nunca Mas* (Never Again) published by the University of Buenos Aires; it has remained a best seller in Argentina since 1984. The report exposed the violations of political and religious principles and rights; the impact was very significant upon a public that did not recognize the reality of what had happened in the country.⁵² In the report CONADEP recommended that enforced disappearances should be considered crimes against humanity, that financial, social and educational aid for the victims should be given, and that there was an essential need for a “deep judicial investigation” of reported events.⁵³

In nine months the truth commission received 7,000 testimonies and documented 8,961 cases of disappeared persons. Witnesses included 1,500 survivors who provided detailed accounts of the conditions and torture to which they were subjected. It obtained proof of the existence of 365 clandestine detention centers and inspected 50 of them.⁵⁴

CONADEP's investigations expanded the new government's, international monitors' and the public's knowledge of the number and extent of disappearances. The Commission established a new public truth about these crimes that refuted the dictatorship's view, which denied or minimized their occurrence. The evidence gathered, due to its exhaustiveness, turned the inquiry into a true investigation providing the key resource for prosecutors in the initial trial against the military junta officials, before the impunity laws went into effect, as well as in more recent prosecutions against perpetrators after the impunity laws were repealed (see below).⁵⁵

The CONADEP report demonstrated the importance of constructing a public truth about the crimes as soon as possible. It illustrates that, despite distrust and problematic institutional and political contexts, governments and human rights organizations can collaborate and that such collaboration can be productive in terms of unearthing new

⁵²Crenzel, Emilio. Argentina's National Commission on the Disappearance of Persons: Contributions to Transitional Justice. *The International Journal of Transitional Justice*, Vol. 2, 2008. https://www.essex.ac.uk/armedcon/themes/international_courts_tribunals/CONADEPoxfordjournal.pdf (accessed May 26, 2015).

⁵³ United States Institute of Peace. Truth Commission: Argentina. <http://www.usip.org/publications/truth-commission-argentina> (accessed May 26, 2015); Crenzel, Emilio. Argentina's National Commission on the Disappearance of Persons: Contributions to Transitional Justice. *The International Journal of Transitional Justice*, Vol. 2, 2008. https://www.essex.ac.uk/armedcon/themes/international_courts_tribunals/CONADEPoxfordjournal.pdf (accessed May 26, 2015).

⁵⁴ Balardini, Lorena. The Long Struggle for Accountability in Argentina. The role of civil society's activism and State actors. Prepared for delivery at the 2014 Congress of the Latin American Studies Association, Chicago, IL May 21 - 24, 2014. <http://www.cels.org.ar/common/Documentos/PonenciaLASABalardini-CELS.pdf> (accessed February 1st, 2015).

⁵⁵ United States Institute of Peace. Truth Commission: Argentina. <http://www.usip.org/publications/truth-commission-argentina> (accessed May 26, 2015); Crenzel, Emilio. Argentina's National Commission on the Disappearance of Persons: Contributions to Transitional Justice. *The International Journal of Transitional Justice*, Vol. 2, 2008. https://www.essex.ac.uk/armedcon/themes/international_courts_tribunals/CONADEPoxfordjournal.pdf (accessed May 26, 2015).

knowledge and can serve as a counterbalance to the tendency of post-dictatorship regimes to limit the scope of the truth. The presence of the human rights organizations within CONADEP also demonstrates that the possibility of objectively presenting violations is not thwarted by the involvement of those whose principal goal is to advocate for human rights. This Commission's releasing of progress reports while their work is still ongoing strengthened the legitimacy of that temporary body. Any similar body (whether existing or yet to be commissioned) in Sri Lanka should follow this model and make their results and findings known to the public periodically. The truth telling initiative in Argentina did NOT preclude criminal prosecutions.⁵⁶ The same should be the case in Sri Lanka.

Forensic Investigation

CONADEP and human rights organizations were involved in bringing forensic anthropology experts and techniques to Argentina to assist in the exhumation and analysis of human remains, documenting evidence of mass violations of human rights, and identifying and returning remains to family members.⁵⁷ In the context of CONADEP conducting investigations, commissioners requested a team of US forensic experts to investigate suspicious mass graves. These experts trained a local team, building local capacity a form of political accountability. Argentina's forensic anthropology team (EAAF, acronym in Spanish) has identified the remains of 444 individuals disappeared in Argentina over the course of its investigations since 1984.⁵⁸ EAAF currently have 600 skeletons in their custody; and has collected and analyzed 5,200 blood samples from relatives of disappeared persons and is beginning to collect samples from people living in Europe and South America who had relatives disappeared in Argentina.⁵⁹

Impunity Laws

Under increasing pressure from the military, and due to the volatile politics of the new democracy, Alfonsín's government was pressured into passing two impunity laws, known as Full Stop (1986) and Due Obedience (1987), that significantly limited victims' chances to secure to legal accountability. These laws did leave the possibility for case-by-case prosecution of those who were directly involved in the disappearance of children but otherwise ended class actions, i.e., the national persecution of officials from the former

⁵⁶ Argentina's National Commission on the Disappearance of Persons: Contributions to Transitional Justice.

⁵⁷ Argentine Forensic Anthropology Team. *History of EAAF*. http://eaaf.typepad.com/founding_of_eaaf/ (accessed May 26, 2015); Human rights organizations (HROs) also designed strategies based on the detailed records they kept of reports that had been filed at home and abroad. To strengthen this idea of exposing the truth of past atrocities, in August 1983 the main HROs formed a Technical Commission for Data Production, the main objective of which was to gather and systematize the information they had in their archives on the victims. The availability of this information was an essential element in CONADEP's methodology and has also contributed to the consolidation of research and documentation which later proved to be very useful for both advocacy and legal action.

⁵⁸ Argentine Forensic Anthropology Team. Publications. 2007-2009. http://www.eaaf.org/eaaf_reports/2007-2009/AR09_p16-87_Argentina.pdf (accessed June 1, 2015).

⁵⁹ Argentine Forensic Anthropology Team. Publications. LIIDS Annual Mini-Reports 2008. http://www.eaaf.org/eaaf/LIID_01-56_eng.pdf (accessed June 1, 2015).

repressive regime. This forced human rights organizations to get creative, going to the Inter-American Court, holding trials abroad and instituting “truth trials”.⁶⁰

Regional Bodies and Truth Trials

In the late 1990s and early 2000s, Argentines won recognition in the Inter-American Court of the “right to truth”,⁶¹ which was deemed to be indivisible from the right to justice, both in domestic law and in International Human Rights Law (IHL). These rulings set the precedent for “truth trials” to begin in Argentina and sought to address alleged crimes against humanity, despite the fact that those responsible could not be prosecuted because of above mentioned impunity laws.⁶²

International Pressure and Criminal Trials

During the period when the impunity laws were in effect, trials abroad became another alternative to achieving justice since the possibility of domestic trials was severely limited. Utilizing the doctrine of universal jurisdiction, courts in Spain, Italy, France, Germany and Sweden sought the extradition of members of the Argentine armed forces for the disappearance of their citizens during military rule.⁶³

Changes in Domestic Legislation and the Emergence of Trials for Everyone Implicated

In 1994 Argentina developed the concept of “certificates of absence by enforced disappearance” as opposed to issuing a death certificate. The ambiguous legal construct was enacted through legislation,⁶⁴ creating a legal status for the disappeared, without mentioning the possible death of the victim or a presumed date of death. The certificates only required that relatives applying establish the date of detention/deprivation of liberty and the last time there was news of the victim and were open for all cases for disappearances before December 10th, 1983 the formal date of transition to democracy. The application of this status rightfully takes into account the psychological implications for relatives who might otherwise be forced to declare their loved ones dead. This legal status has provided a wide array of practical benefits, including property

⁶⁰ The laws were so unpopular with the public that their passage was partially responsible for President Alfonsín’s forced resignation 6 months in advance of his end of term.

⁶¹ The social and legal basis of this claim lay in the right of the victims’ families and society as a whole to know the fate of the disappeared. This was only possible because the President at the time, Carlos Menem, had a strong desire to maintain a virtuous international image.

⁶² As military witnesses were not afraid of being prosecuted, many of them revealed important information on the nature of the crimes and the actions they carried out to perpetrate them. Additionally about a dozen retired officers were held under house arrest on charges of ordering the theft of babies born to mothers in secret detention and their handover for adoption to military families. These crimes had been expressly excluded from the amnesty laws.

⁶³ Human Rights. Watch World Report 2002. Americas: Argentina. <http://www.hrw.org/legacy/wr2k2/americas1.html> (accessed May 20, 2015); Although such extraditions did not materialize, investigations and prosecution in absentia by foreign courts became a source of legitimacy and positive pressure that allowed for the development/demand that those responsible for crimes against humanity be tried in Argentina.

⁶⁴ Law No. 24.321 of Argentina on the Law of Absence by Forced Disappearance, art. 1.

transfer/ownership, access to frozen bank accounts, social security benefits and the ability to formalize new partnerships. It also contributed to repairing the social impact of enforced disappearance on family members by publicly acknowledging their loss.⁶⁵

In 1994, constitutional reform gave legislative priority to international human rights treaties. This allowed lawyers and jurists to propose the incorporation of model international human rights laws into domestic legislation, primarily as a way to end amnesty.⁶⁶ In 2001, an Argentine federal judge used international human rights legal arguments to declare the nullity of Argentina's amnesty laws. These were successfully abolished by Congress in 2003 and declared unconstitutional by the Supreme Court in 2005, opening the way for trials in domestic courts.⁶⁷ Once the legal barriers were removed, cases that had been suspended under the amnesty began to re-open along with many new claims. The first trial of this phase was held in 2006, nearly 25 years after the passage of the impunity laws.⁶⁸ Unfortunately, when this phase began, neither the government nor the Supreme Court had designed a clear and operational prosecutorial strategy which resulted in inconsistent verdicts and increased likelihood of appeals.

Applicability in Sri Lankan Context:

CPA hopes that a transition in government, like in Argentina, will facilitate long overdue transitional justice mechanisms for family members of the disappeared. President Sirisena ran on a platform of good governance and constitutional reforms to limit executive power and restore independent oversight bodies. President Sirisena has inherited a justice system which could play a leading role in the pursuit of accountability, but which has been unable to independently function over the last 9 years (during the Rajapaksa regime) due to politicization and interference with its work.⁶⁹

For twenty years successive presidents have appointed multiple ad hoc “commissions of inquiry” for violations, including enforced disappearances, unlawful killings, and torture.⁷⁰

⁶⁵ International Center for Transitional Justice. GENDER JUSTICE The Disappeared and Invisible Revealing the Enduring Impact of Enforced Disappearance on Women. March 2015. <https://www.ictj.org/sites/default/files/ICTJ-Global-Gender-Disappearances-2015.pdf> (accessed on March 31, 2015).

⁶⁶ While the decision to extradite constitutes a State's sovereign right according to international legal precedents, when it comes to crimes against humanity, extradition becomes an obligation if the State has not complied with the “extradite or judge” principle.

⁶⁷ The International Federation for Human Rights. ARGENTINA Advances and Obstacles in legal proceedings against those responsible for crimes against humanity Committed during the dictatorship. www2.ohchr.org/english/bodies/hrc/docs/ngos/fidh_argentina_en1.doc (Accessed May 26, 2015).

⁶⁸ Procuración General de la Nación. Unidad Fiscal de Coordinación y Seguimiento de las causas por violaciones a los Derechos Humanos cometidas durante el terrorismo de Estado. 2012. http://www.mpf.gov.ar/docs/Links/DDHH/informe_de_la_web_diciembre_2012.pdf (accessed May 26, 2015).

⁶⁹ UN Secretary-General (UNSG). *Report of the Secretary General's Panel of Experts on Accountability in Sri Lanka*; For example the independence of the Supreme court has been weakened significantly and the former Chief Justice impeachment of Chief Justice Dr. Shirani Bandaranayake was dismissed in January 2013.

⁷⁰ Amnesty International, Human Rights Watch & International Crisis Group. Letter to S.M. Samarakoon, Secretary of the Commission of Inquiry on Lessons Learnt and Reconciliation. October 14, 2010. [http://www.crisisgroup.org/~media/Files/misc/sri-lanka-llrc-joint-letter.ashx](http://www.crisisgroup.org/~/media/Files/misc/sri-lanka-llrc-joint-letter.ashx) (accessed May 26, 2015).

“The Presidential Commission to Investigate into Complaints Regarding Missing Persons” is not sufficient. A year into its mandate, the government expanded the said mandate to make this commission the sole mechanism for addressing past violations of IHRL and IHL, compounding this commission’s task with a number of other inquiries not directly related to the issue of disappearances.⁷¹ Whatever this commission is able to accomplish, it must at the very minimum, release a comprehensive report in a timely manner for the public as CONADEP did with *Nunca Más*.

Sri Lanka can learn from changes that Argentina made in domestic law including prioritizing international human rights treaties, acceding to the International Convention for the Protection of All Persons from Enforced Disappearances, and reforming the Penal Code. The current Sri Lankan Penal Code, Section 353, defines abductions—the only legal way to classify enforced disappearances at this time. Abduction is not a crime against humanity and has a statute of limitations guaranteeing impunity for crimes of enforced disappearance if they are not categorized separately and in line with international norms.⁷² Additionally, the activism of human rights groups of Argentina should encourage Sri Lankan groups to continue to mobilize and coordinate their efforts at both the national and international levels. As the Sri Lankan government has promised credible domestic processes but not clarified modalities, this should be a point for review by local human rights groups. Other recommendations that recognize the unique roles and responsibilities of the Sri Lankan Government, UN agencies, and Member States have been included at the end of the report to guide the process supporting family members of the disappeared in their quest for truth, justice and accountability.

⁷¹ Centre for Policy Alternatives. The Presidential Commission to Investigate into Complaints Regarding Missing Persons: Trends, Practices and Implications. December 17, 2014. <http://www.cpalanka.org/the-presidential-commission-to-investigate-into-complaints-regarding-missing-persons-trends-practices-and-implications/> (accessed May 26, 2015).

⁷² The Rome Statute clarifies that if this crime is part of a widespread or systematic attack directed at any civilian population that it qualifies as a crime against humanity which by definition confirms the non-applicability of statute of limitations. UN General Assembly. Rome Statute of the International Criminal Court (last amended 2010), 17 July 1998.

III. Sexual Violence

Overview of Sexual Violence in Sri Lanka

Public acknowledgment of the systematic sexual violence that took place during and after the conflict in Sri Lanka is currently coming to the fore. Reports emerging as recently as July, 2015 provided evidence that the Rajapaksa government condoned sexual violence against Tamils, particularly toward the end of the conflict. Such reports also indicated that the Sirisena government is upholding this policy despite promises made in the 100-day reform program.⁷³

A primary challenge in defining the perpetration of sexual violence as a war crime in Sri Lanka concerns the lack of data due to government restrictions and lack of self-reporting due to fear of stigmatization. However, available data collected by local groups and others indicates that acts of sexual violence perpetrated by the Sri Lankan military against Tamil citizens, both men and women, “were widespread and systematic during the final years of the conflict and [have been] in the years since.”⁷⁴ There are also increased reports of sexual violence perpetrated within the community including gang rape and murder as seen most recently with the incident in Jaffna involving 18 year old Vidhya Sivaloganathan.⁷⁵

Section 363 of the Penal Code of Sri Lanka defines and outlaws the crime of rape and statutory rape. Under this law, the woman must be able to identify her assailant(s), prove that she was actually raped and prove that she did not consent. Sentencing for the crime of rape is seven to twenty years of imprisonment.⁷⁶ Marital rape is not considered a crime under the law unless a judge has ordered spousal separation. In 1995, this code was amended by Act, No. 22 to include and define “custodial rape” or rape of a woman who is in the care of an institution, either the state or a hospital. In terms of the state, the law states that custodial rape is “(1) acts committed by public officers or persons in positions of authority against women in official custody or against women who have been wrongly restrained; (2) acts committed by a person on the management or staff of a home or other place of custody established by law against women inmates.”⁷⁷ In terms of consent, the Supreme Court ruling in the *Kamal Addararatchichi* case, upheld that “victims of rape must show evidence of struggle to prove a lack of consent.”⁷⁸ Finally, while the 1995 amendment stipulated mandatory minimum sentences for rape, unnatural offenses and grave sexual

⁷³ International Truth and Justice Project Sri Lanka. “A Still Unfinished War: Sri Lanka’s Survivors of Torture and Sexual Violence 2009-2015. July 2015; Sooka, Yasmin. “An Unfinished War: Torture and Sexual Violence in Sri Lanka 2009-2014.” Bar Human Rights Committee of England and Wales and the International Truth & Justice Project, Sri Lanka: 2014. 6.

⁷⁴ Human Rights Watch. “We Will Teach You A Lesson.” February 2013. 2.

⁷⁵ Satkunanathan, Ambika. Groundviews. “The Rape and Murder of Vidya: Do Women Really Matter in Sri Lanka?” 26 May 2015. <http://groundviews.org/2015/05/26/the-rape-and-murder-of-vidya-do-women-really-matter-in-sri-lanka/> (accessed June 1, 2015).

⁷⁶ International Models Project on Women’s Rights. “Current Legal Framework: Rape and sexual assault in Sri Lanka.” June 27, 2012. http://www.impowr.org/content/current-legal-framework-rape-and-sexual-assault-sri-lanka#footnoteref2_ghg4a5z (accessed April 10, 2015).

⁷⁷ Penal Code Section 364(2).

⁷⁸ International Models Project on Women’s Rights. “Current Legal Framework: Rape and sexual assault in Sri Lanka.” June 27, 2012.

abuse, there are concerns with the enforcement resulting in continued impunity for sexual violence.⁷⁹

Numerous reports and studies indicate that sexual violence against men has been used as a weapon of war in Sri Lanka.⁸⁰ In particular, there are many reports of Tamil men experiencing sexual torture during detention.⁸¹ Most often, sexual violence is perpetrated specifically against men for the purposes of “emasculatation or feminization, homosexualization, and prevention of procreation.”⁸² As with women, sexual violence against men is often underreported due to the stigma associated with the crime. For men in particular, sexual violence challenges their self-identification as aggressors in conflict and can also “greatly reduce—if not completely destroy—the man’s role as protector, changing the perceptions of his family and community.”⁸³

During the conflict, reports showed that military officials would detain citizens without due process, subject them to torture and inhuman treatment as well as sexual violence and rape as a tactic for obtaining coercive confessions.⁸⁴ Typically, the men and women who reported the illegal detainment and subsequent sexual assault were only released after their families paid bribes to the military officials. Evidentiary material suggests that most of these victims were targeted because of their actual or perceived involvement with the LTTE.⁸⁵ After the conflict ended, instances of rape and sexual violence did not decrease. Al Jazeera reported that, “...According to police statistics, incidents of rape have increased by nearly 20 percent in the last two years, with 4,393 cases registered during 2012-2014 as compared to 3,624 in 2010-2012.”⁸⁶

In addition to illegally detaining and sexually abusing Tamil citizens in conflict zones, instances of similar crimes have been reported in internally displaced persons (IDP) camps managed by the Sri Lankan military. Situations where young Tamil girls being taken and questioned by the military in the camps only to return with allegation of sexual abuse are prevalent. However, the Rajapaksa government did not allow independent observers into the camps to verify allegations and denied the presence of any systematic sexual violence.⁸⁷

⁷⁹ The Women and Media Collective – Colombo. “Sri Lanka Shadow Report To the Committee on the Elimination of All Forms of Discrimination Against Women.” July 2010.

http://www2.ohchr.org/english/bodies/cedaw/docs/ngo/WMD_SriLanka48.pdf (accessed April 10, 2015).

⁸⁰ Sivakumaran, Sandesh. “Sexual Violence Against Men in Armed Conflict.” *European Journal of International Law*. Vol. 18: 2. 2007. 253-276.

⁸¹ M Peel, A Mahtani, G Hinshelwood, D Forrest, The sexual abuse of men in detention in Sri Lanka, *The Lancet*, Volume 355, Issue 9220, 10 June 2000. 2069-2070.

⁸² *Ibid*, 645.

⁸³ *Ibid*, 650.

⁸⁴ *Ibid*, 3.

⁸⁵ Island of Impunity? Investigation into international crimes in the final stages of the Sri Lankan civil war. International Crimes Evidence Project: February 1, 2014.

⁸⁶ Colombage, Dinouk. “Rapes Surge in Sri Lanka Amidst Weak Laws.” *Al Jazeera*. August 17, 2014. <http://www.aljazeera.com/indepth/features/2014/08/rapes-surge-sri-lanka-amid-weak-marital-laws-201481772359790802.html> (accessed December 30, 2014).

⁸⁷ European Center for Constitutional and Human Rights. “Alternative report on the implementation of the UN Convention on the Elimination of Discrimination against Women (CEDAW) – Sri Lanka.” January 2010.

Militarization of the north and east of Sri Lanka, home to a significant number of Tamil speaking people comprising of both Muslims and Tamils, has serious implications for minority women and girls. The ICG reports that women must rely on the primarily Sinhalese military for everyday needs which “not only puts them at greater risk of gender-based violence, but also prevents them from building their own capacity within communities.”⁸⁸ Minority women in the north and east are often subject to various forms of gender-based violence including domestic abuse, forced prostitution, coercive sexual relationships, and trafficking.⁸⁹

The March 2014 UNHRC resolution (25/1) specifically refers to sexual violence in the perambulatory phrase: “Expressing serious concern at the continuing reports of violations of human rights in Sri Lanka, including sexual and gender-based violence.”⁹⁰ However, the international effort to shed light on crimes that took place during the conflict was met with great resistance by the Sri Lankan government, which enjoyed the advantage of the apparent majority public opinion on its side on the grounds that the rebel Tamil group was a terrorist organization and part of a “widely despised, brutal insurgency.”⁹¹ With the January 9th inauguration of President Sirisena, there is the possibility of the new government putting an end to and reversing policies on sexual violence that were supported by the Rajapaksa regime. For example, in Sirisena’s 100-day reform program, he states that the government will implement new laws “to prevent abuse of women, abuse of children and sexual harassment of women and measures taken to ensure that women and children can live without fear in Sri Lanka, with responsibility undertaken to enforce the laws effectively.”⁹² Additionally, the 100-day reform plan states that the government will implement measures to protect war widows and their families of all races. Finally, the plan states that in efforts to increase women’s participation in decision-making, the government will pass legislation to ensure “at least 25% of women’s representation in Provincial Councils and Local Government bodies.”⁹³

http://www2.ohchr.org/english/bodies/cedaw/docs/ECCHR_Sri_Lanka_for_the_session_CEDAW48.pdf (accessed December 30, 2014). 14.

⁸⁸ International Crisis Group. “Sri Lanka: Women’s Insecurity in the North and East.” December 20, 2011.

<http://www.crisisgroup.org/en/regions/asia/south-asia/sri-lanka/217-sri-lanka-womens-insecurity-in-the-north-and-east.aspx> (accessed December 30, 2014).

⁸⁹ Ibid.

⁹⁰ UN Human Rights Council. *Promoting reconciliation, accountability and human rights in Sri Lanka : resolution / adopted by the Human Rights Council*. April 9, 2014, A/HRC/RES/25/1.

http://www2.ohchr.org/english/bodies/cedaw/docs/ngo/WMD_SriLanka48.pdf (accessed December 30, 2014).

⁹¹ Sengupta, Somini. “Facing a War Crimes Inquiry, Sri Lanka Continues to Vex the U.N.” *The New York Times*. March 26, 2014. <http://www.nytimes.com/2014/03/27/world/asia/sri-lanka.html> (accessed December 30, 2014).

⁹² Columbo Telegraph. “Maithripala Sirisena’s 100 Day Work Programme; Detailed Diary Description.” December 20, 2014. <https://www.colombotelegraph.com/index.php/maithripala-sirisenas-100-day-work-programme-detailed-diary-description/> (accessed February 12, 2015).

⁹³ Ibid.

Notably, President Sirisena continues to reinforce the position of the Rajapaksa regime: justice will be the “business of national independent judicial mechanisms.”⁹⁴ Though the government does not condone international criminal tribunals, President Sirisena and Mangala Samaraweera, the foreign minister, have acknowledged that they would be open to technical assistance.⁹⁵ At the time of writing this report, no information was publicly available as to the contours of such a mechanism. The International Truth and Justice Project Sri Lanka’s July 2015 report enumerates the difficulties in establishing a successful domestic mechanism for accountability including the fact that alleged perpetrators are still in positions of authority and that violations are ongoing. It is important to note that this same report includes reliable evidence of eight instances of torture and sexual assault that occurred after Maithripala Sirisena’s rise to power. The report also alleges reprisal harassment of Tamils living abroad and their family members in Sri Lanka including repeated surveillance of their activities as part of the Tamil diaspora.

Finally, though the new government is now allowing the people to call for accountability, not suppressing dissidents, and has installed democratic civil administrations in the north and south, government security forces remain present in the north of the country.⁹⁶ According to UN Secretary-General Ban Ki-moon’s March 2015 report to the Security Council on conflict-related sexual violence, instance of sexual violence and rape have increased post-conflict and sexual violence continues in particular against Tamil women and girls in the militarized north.⁹⁷ Additionally, the Secretary-General emphasizes that impunity for sexual violence that occurred during the conflict remains a major issue in the country that must be addressed.⁹⁸ As a result, under the Sirisena regime, the future of transitional justice mechanisms for crimes of sexual violence is uncertain and there are serious doubts as to the commitment of the Sirisena regime to ending impunity for perpetrators and ensuring justice for victims of sexual violence.

Case Study: Uganda

Providing redress for sexual violence victims is an increasingly important issue to be addressed through the lens of transitional justice, especially as international law has become clearer on the illegality of sexual violence during war. The case of Uganda demonstrates how, when transitional justice mechanisms address sexual violence, important gains can be made on behalf of both the survivors and in supporting the overall stability and sustainability of peace efforts.

The brutal Lord’s Resistance Army (LRA) is known for its human rights abuses including the recruitment of child soldiers and widespread forced marriages, a significant number of

⁹⁴ Ibid.

⁹⁵ Hogg, Chara Lata. “A new start for Sri Lanka.” Chatham House. Volume 71, Number 1. February 2015. http://www.chathamhouse.org/sites/files/chathamhouse/field/field_publication_docs/WT0115LataHogg.pdf (accessed February 12, 2015).

⁹⁶ Ibid.

⁹⁷ UN Security Council. *Conflict-related sexual violence : report of the Secretary-General*. March 23, 2015, S/2015/203. <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G14/132/86/PDF/G1413286.pdf?OpenElement> (accessed May 26, 2015).

⁹⁸ Ibid.

which involve sexual violence, as well as sexual slavery.⁹⁹ The illegality of LRA tactics under international law is well documented, and now that the conflict has come to an official end, attention has been turned to the question of providing reparations to victims for these damages.

In April 2014, the Ugandan parliament voted unanimously to begin the process of funding the nation's first gender-sensitive reparations fund for those who were affected by the LRA; this is to allow the addressing of the needs of victims of sexual violence as well as other gendered effects of the conflict. The report on the program "recommends expanding the budget to incorporate additional free health services for victims, specifically in the realms of reproductive health, orthopedics, and psycho-social support."¹⁰⁰

On the international level, the OHCHR and the Uganda Human Rights Commission have been conducting training since 2008 to build awareness of reparations, while simultaneously conducting research on the views of conflict-affected communities. "During outreach, codes in local languages have been used to refer to body parts and gender-based and sexual violence, allowing victims to circumvent the taboo of speaking about sexual violence."¹⁰¹

Additionally, Ugandan victims receive reparations from the International Criminal Court's Trust Fund for Victims (TFV). An evaluation of the ongoing TFV programs in Uganda revealed key achievements concerning sexual and gender-based violence in particular:

*"At the individual level, SGBV survivors indicated that the assistance they received helped them stop blaming themselves for the crimes they had experienced, and helped them to see themselves as "real women" again. Many others also attributed the ability to return to work and be economically active as the greatest contributor to their newfound positive mental health."*¹⁰²

The above noted undertakings can work together to bring wide-scale attention to the existence of the crimes during the process of making reparations. "Female survivors of sexual and gender-based crimes by the LRA can benefit greatly from public condemnation of the crimes. It is vital to help them regain their sense of humanity, to reestablish trust

⁹⁹ Carlson, Kristopher & Dyan Mazurana. "Accountability for Sexual and Gender-Based Crimes by the Lord's Resistance Army." *Children and Transitional Justice*. Eds. Sharanjeet Parmar, Mindy Jane Roseman, Saudamini Siegrist, Theo Sawa. UNICEF IRC: 2010. 237.

¹⁰⁰ International Center for Transitional Justice. "My Healing Has Begun": Uganda Votes to Provide Gender-Sensitive Reparations Fund." April 23, 2014. <https://www.ictj.org/news/uganda-gender-sensitive-reparations-fund> (accessed December 30, 2014).

¹⁰¹ "Analytical study focusing on gender-based and sexual violence in relation to transitional justice," Report of the Office of the United Nations High Commissioner for Human Rights, UN Human Rights Council, 27th session: June 30, 2012.

¹⁰² McClearly-Stills, Jennifer and Mukasa, Stella. "External Evaluation of the Trust Fund for Victims Programmes in Northern Uganda and the Democratic Republic of the Congo: Towards a Perspective for Upcoming Interventions." International Center for Research on Women: November 2013. 8. http://www.trustfundforvictims.org/sites/default/files/media_library/documents/pdf/ICRWTFVExternalPr ogEvaluation2013Final.pdf (accessed December 30, 2014).

within their homes and to have a voice in reconciliation forums. Traditional, religious and social institutions need to support these women and girls when they participate in public and legal forums and to advocate for robust accountability measures. It is also crucial for male leaders to hear what these women and girls have to say.”¹⁰³

Applicability to the Sri Lankan Context

These cases prove useful in the Sri Lankan context because they illustrate that not all reparations need to nor should be addressed through larger political frameworks or international criminal proceedings. In fact, localized measures of addressing, treating and providing reparations for systematic sexual violence should be enacted while the international human rights advocacy process seeks to gain formal recognition from the government of the atrocities committed during the war. The government does not have to agree with the UNHRC’s characterization of its actions in order to begin providing, or at least allowing for, the type of support that women in Uganda received; and such support should be offered to both women and men in Sri Lanka since, as noted above, sexual violence against men is underreported and severely stigmatized.

Civil society groups and public health organizations can reach out discreetly to offer support for both men and women in both Sri Lanka and Tamil Diaspora Communities. In addition to underreporting, sexual violence against men in conflict is often not adequately addressed by government, non-governmental organizations and international organizations. For example, Security Council Resolution 1820 on sexual violence in armed conflict focuses solely on women and girls except for one line in Clause 3 which includes all civilians as opposed to a focus on only women and girls.¹⁰⁴

Evidence shows that psychosocial counseling and medical care was critical to some Ugandan’s rehabilitation as economically productive members of society and as family members or leaders in their communities. While impunity for perpetrators continues, there is no reason that the victims of sexual assault should not begin to receive the counseling and attention they will certainly need to heal from the trauma they experienced.

¹⁰³ Carlson, Khristopher & Dyan Mazurana. “Accountability for Sexual and Gender-Based Crimes by the Lord’s Resistance Army.” *Children and Transitional Justice*. Eds. Sharanjeet Parmar, Mindy Jane Roseman, Saudamini Siegrist, Theo Sawa. UNICEF IRC: 2010. 263.

¹⁰⁴ UN Security Council. *Security Council resolution 1820 (2008) [on acts of sexual violence against civilians in armed conflicts]*. June 19, 2008, S/RES/1820 (2008).
<http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/CAC%20S%20RES%201820.pdf> (accessed May 26, 2015).

IV. Internal Displacement

Overview of Internal Displacement in Sri Lanka

Figures of internally displaced persons (IDPs) from Sri Lanka's internal armed conflict reflect large discrepancies. According to UNHCR statistics obtained from local government officials, some 93,447 people were internally displaced at the end of 2012, the most recent year in which such UN statistics were collected, and 42,000 was the number then projected for the end of 2013.¹⁰⁵ The Sri Lankan Ministry of Resettlement, on the other hand, reported 23,568 IDPs and the Ministry of External Affairs referred to 22,000 IDPs at the end of 2013.¹⁰⁶ On its website, the Internal Displacement Monitoring Centre (IDMC) reports that as of May 2015 there are about 73,700 people still living in internal displacement in the country's Northern and Eastern provinces as a result of the conflict, the overwhelming majority belonging to Tamil and Muslim minorities. In addition the same IDMC report estimated that several tens of thousands among the more than 794,000 who are registered as having returned to their homes still have not achieved a durable solution to their displacement.¹⁰⁷ These figures are only compounded when one includes the group of Sri Lankans evicted from their homes due to development projects or those displaced from natural disasters including drought, floods and landslides that occurred in late 2014.¹⁰⁸

The majority of IDPs in Sri Lanka are from the North and Eastern provinces and are predominantly Tamil speaking, including both Tamil and Muslim IDPs, with a small number being Sinhalese. They reside mainly in the districts of Jaffna, Kilinochchi, Mullaitivu, Vavuniya and Mannar in Northern province; Trincomalee, Batticaloa and Ampara in Eastern province; Puttalam in North Western province; and Anuradhapura in North Central province. The IDP population continues to face numerous obstacles to durable solutions including militarization of civilian life, state illegal acquisition of land, a lack of compensation for original property and lack of access to housing, water and sanitation, livelihoods and food as well as discrimination on ethnic grounds.¹⁰⁹ Inconsistencies exist in the arbitrary counting of IDPs; those displaced before the last stage of the war are no longer counted as such after being moved to permanent relocation sites and others, mostly northern Muslims, are deregistered as IDPs but have not achieved a durable solution and remain landless.¹¹⁰ As of August 2014, the government and various humanitarian organizations finalized a Joint Needs Assessment (JNA) on the situation of 500 IDP households but no information was available on the results of the assessment or a

¹⁰⁵ Report of the Special Rapporteur on the human rights of internally displaced persons, Visit to Sri Lanka, Chaloka Beyani. Human Rights Council. December 2013

¹⁰⁶ NRC-IDMC. Submission from the Internal Displacement Monitoring Centre (IDMC) of the Norwegian Refugee Council (NRC) to the Human Rights Committee (HRCttee) for Consideration at its 112th Session (7-31 October 2014) Sri Lanka 12 September 2014: IDMC & Norwegian Refugee Council, 2014. 2

¹⁰⁷ IDMC, Sri Lanka, Overview, Updated July 2015, <http://www.internal-displacement.org/assets/Uploads/201507-ap-sri-lanka-time-for-a-new-approach-en.pdf> (accessed July 13, 2015).

¹⁰⁸ UN OCHA Situation Report, August 2014.

¹⁰⁹ NRC-IDMC. Submission from the Internal Displacement Monitoring Centre (IDMC) of the Norwegian Refugee Council (NRC) to the Human Rights Committee (HRCttee) for Consideration at its 112th Session (7-31 October 2014) Sri Lanka 12 September 2014: IDMC & Norwegian Refugee Council, 2014. 2.

¹¹⁰ Ibid.

complete evaluation of the situation of these households.¹¹¹ Moreover, informants to a recent IDMC report shared concerns about the methodology of the JNA and expressed that the findings did not accurately reflect the realities on the ground.¹¹²

During the Rajapaksa government, Sri Lanka simply did not have a formal policy or legislation to address the situation of IDPs. The Sirisena government has inherited a legal and policy framework within which land and property rights are less articulated than the authority of the government and/or military to make land acquisitions, fostering a failure to adequately inform people of impending displacements as well as a lack of transparency altogether on a citizen's right to land ownership and access.¹¹³ This is only magnified by the centralization and militarization of land ownership.¹¹⁴ Efforts were led in 2007-8 by the Human Rights Commission of Sri Lanka and by the former Ministry of Disaster Management and Human Rights to develop a comprehensive draft bill on the protection of IDPs but both the bill and recommendations, following public consultations, were never pursued or implemented. At the 2008 Universal Periodic Review for Sri Lanka at the UNHRC, the previous government pledged that it would establish a national IDP policy but never did. The LLRC also included two chapters on IDPs (5 and 6) that recognized the importance of finding durable solutions for IDPs and of the need of a uniform State policy aimed at resettlement and/or host community integration.¹¹⁵ Many questions remain regarding full implementation of these recommendations.

The National Involuntary Resettlement Policy (NIRP) and the Draft Resettlement Policy need attention. Sri Lanka's National Human Rights Action Plan for 2011 to 2016 included the development of a policy on internal displacement which was published by the former Ministry of Resettlement in July 2013 and updated in November 2013. This plan, however, was never sent for review to the Cabinet. Even the process of creating the draft was characterized by a lack of transparency and exclusion of relevant stakeholders.¹¹⁶ While the draft policy provided for acquisition of land for public purpose, payment of compensation for acquired property and for acquisition to follow due processes, the policy seemed to be only applicable to private lands of those displaced by development or natural disasters versus those displaced by military action. The draft plan seemed to state a preference for the physical movement of IDPs as opposed to durable solutions and it made no mention of

¹¹¹ OCHA Humanitarian Bulletin, Sri Lanka, Issue 3, Aug. 2014, 2.

http://reliefweb.int/sites/reliefweb.int/files/resources/Humanitarian%20Bulletin_SRI%20LANKA_Aug%202014.pdf (accessed May 26, 2015).

¹¹² IDMC, Sri Lanka, Overview, Updated July 2015, <http://www.internal-displacement.org/assets/Uploads/201507-ap-sri-lanka-time-for-a-new-approach-en.pdf> (accessed July 13, 2015).

¹¹³ Fonseka, Bhavani. Legal and Policy Implications of Recent Land Acquisitions, Evictions and Related Issues in Sri Lanka: Centre for Policy Alternatives, 2014. 7.

¹¹⁴ Ibid.

¹¹⁵ Report of the Commission of Inquiry on Lesson Learnt and Reconciliation, November 2011, para. 9.83.

¹¹⁶ NRC-IDMC. Submission from the Internal Displacement Monitoring Centre (IDMC) of the Norwegian Refugee Council (NRC) to the Human Rights Committee (HRCtte) for Consideration at its 112th Session (7-31 October 2014) Sri Lanka 12 September 2014: IDMC & Norwegian Refugee Council, 2014.

the lands being re-occupied by those who had already returned from detention camps or prisons.¹¹⁷

International human rights bodies and representatives have also spoken out on the situation of IDPs in Sri Lanka for more than ten years. Following his mission to the country in December 2013, the UN Special Rapporteur on the Human Rights of IDPs, Chaloka Beyani, emphasized the necessity of comprehensive data on the displaced and called for a gender breakdown; ensuring IDPs consultation and participation in the pursuit of durable solutions in accordance with standards set forth in the IASC Framework on Durable Solutions and the need to address obstacles to durable solutions in development plans and other government programs.¹¹⁸ Prior to this visit, the UN High Commissioner for Human Rights, Navanethem Pillay, visited Sri Lanka in August 2013, raising a number of key issues relevant to IDPs including the military's presence in the North and East of the country and the state's acquisition of private land. Her visit came after that of Walter Kalin's visits in 2007 and 2009 and Frances Deng's in 1993.¹¹⁹

The new government led by President Sirisena has begun to show some progress on the situation of IDPs. The President included measures related to internal displacement in his "100 Day Action Plan" and pledged to have Parliament formulate a National Policy Framework that would include the following actions related to IDPs: take steps to provide land ownership and proper housing to plantation workers instead of their current confinement in line rooms, provide relief to all those illegally displaced for various reasons from their homes and lands, and calculate the land value of the housing and land from which residents of Colombo have been deprived and deduct it from the housing loans they are paying.¹²⁰ In February 2015, the President stated that the government would return lands and buildings in the districts of Jaffna and Trincomalee which are occupied by Sri Lankan Army and Air Force to establish a modern village for resettlement of 1,022 families displaced by the conflict and to distribute financial support to construct homes.¹²¹ As of May 2015, negotiations to release further lands were reportedly under way.¹²² Upon the completion of his 100 days in office in April, President Sirisena defended the government

¹¹⁷ Fonseka, Bhavani. Legal and Policy Implications of Recent Land Acquisitions, Evictions and Related Issues in Sri Lanka: Centre for Policy Alternatives, 2014. 43.

¹¹⁸ Report of the Special Rapporteur on the human rights of internally displaced persons, Visit to Sri Lanka, Chaloka Beyani, Human Rights Council. June 2014. 5

¹¹⁹ Ibid, 5.

¹²⁰ D.B.S Jeyaraj, Blog, *What the Newly Sworn in Sri Lankan President Maithripala Sirisena Plans to do in his First 100 Days of Office*, January 2015. <http://dbsjeyaraj.com/dbsj/archives/36387> (accessed February 10, 2015).

¹²¹ Lanka Business Online, Real Estate & Construction, Sri Lanka to return lands occupied by military troops, Feb. 12, 2015. <http://www.lankabusinessonline.com/sri-lanka-to-return-lands-occupied-by-military-troops/> (accessed February 15, 2015).

¹²² IDMC, Sri Lanka, Overview, Updated July 2015, <http://www.internal-displacement.org/assets/Uploads/201507-ap-sri-lanka-time-for-a-new-approach-en.pdf> (accessed July 13, 2015).

policy to return land previously used by security forces in the North and East to their rightful owners.¹²³

Considering the overall lack of progress in finding durable solutions for IDPs in Sri Lanka, this section will focus on analyzing the lessons learned from two case studies of national response policies and legislation for IDPs from armed conflicts in Colombia and Timor-Leste. The Timor-Leste case will focus more on the inclusion of IDPs in a national response while the Colombian case will provide an example of progressive IDP legislation, the incorporation of civil society monitoring mechanisms in its development, and the recognition of the special situation of minority IDPs.

Case Study: Timor-Leste

Background

Timor-Leste underwent a crisis in 2006 four years after gaining its independence, largely the result of a build-up of the dissatisfaction of the local population. As a result of the unrest and violence, close to 15% of the population was displaced from their homes.¹²⁴

National Recovery Strategy (NRS)

The plan that the government undertook in 2007 to respond to the internal displacement was called the National Recovery Strategy (NRS). The NRS had the objective of addressing all obstacles faced by IDPs when they returned or resettled with a special focus on the integrated closure of the camps. The Plan had “five pillars” focusing on: building trust between the people and the government, creating livelihood opportunities, ensuring secure conditions for return or resettlement, establishing a social safety net for the most vulnerable and building homes for IDPs. In practice, however, only the first and last pillars were implemented.

Dialogue with IDPs

Dialogue teams established by the Ministry of Social Solidarity were composed of authorities, international staff, IDPs, and affected communities and focused on facilitating the return and resettlement process of IDPs. The teams-

- Engaged in local peacemaking and reconciliation processes (mediating conversations between families or with entire communities), tackled social problems and helped in “rebuilding relationships among community members for sustainable return of IDPs.”¹²⁵

¹²³ Sri Lanka Brief, News. “President Sirisena Defends Return of Land to Minorities.” April 2015. <http://srilankabrief.org/2015/04/president-sirisena-defends-return-of-land-to-minorities/> (accessed April 25, 2015).

¹²⁴ Report of the Special Rapporteur on the human rights of internally displaced persons, Visit to Sri Lanka, Chaloka Beyani, Human Rights Council, December 2013.

¹²⁵ Van der Auweraert, Peter. Dealing with the 2006 Internal Displacement Crisis in Timor-Leste: International Center for Transitional Justice, 2012. 10

- Confirmed with local authorities and communities whether families had been living in homes prior to their displacement in the absence of land titles.
- Held sessions focused on solutions for IDPs who had suffered human rights violations, including how to organize visits by IDP representatives to areas and neighborhoods of origin and how to meet concrete demands for destroyed or damaged housing.
- Facilitated high level government officials such as the Minister of Social Solidarity and the Prime Minister participation in sessions held in the IDP camps to provide recognition of what IDPs had suffered and to acknowledge government responsibility in the crisis.¹²⁶

Cash Grants for IDPs-“Together Building Homes”

The government made the decision to distribute recovery packages or cash grants to the heads of IDP households to compensate for the destruction of or damage to property and the loss of household goods and small-businesses.¹²⁷ The decision to offer cash grants was a conscious decision by the government acknowledging that neither the public nor the national private sector was sufficiently strong to build or reconstruct houses within an acceptable timeframe.

Terminology: The government chose never to use “reparations” or “compensation” terminology with the IDPs and instead used “recovery packages”.

Gender Consideration: The Ministry of Social Solidarity considered the possible impacts on men and women in dispensing the cash to females within the households by ensuring that both spouses were fully informed of the allocation of the cash grant and requiring both to sign the relevant documents. While further research is needed to assess the impact of the cash grants on men and women, actions by the Ministry speak to an initial foresight by the government to consider the gender impacts of the NRS plan and to phrase the recovery package in a way that would avoid tension within IDP households.

International Community Support for National Recovery Strategy: State institutions had limited capacity to carry out the plan and were largely supported by a team of international advisors and staff members from the International Organization for Migration and for the dialog teams, the United Nations Development Program (UNDP).

¹²⁶ Ibid.

¹²⁷ Van der Auweraert, Peter. Dealing with the 2006 Internal Displacement Crisis in Timor-Leste: International Center for Transitional Justice, 2012. 10

Conclusions & Lessons Learnt for Sri Lanka

- **Multidisciplinary perspective aide in planning for improvement in the situation of IDPs-** The situation of IDPs improved considerably following the implementation of the plan.¹²⁸
- **Need for evaluation plan of any strategy-** A formal evaluation plan was never incorporated into the strategy. The design of the plan was also mostly a top-down process.
- **Importance of dialogue & outreach with IDPs-** Dialogue teams were key in holding conversations with IDPs on human rights violations, mediation and reconciliation.
- **International composition of dialog teams-** The mix of international and local staff in the dialog teams was essential especially in contexts of ethnic violence where tensions remain high between certain groups.

Case Study: Colombia

Background

With over 5 million IDPs, Colombia ranks as one of the countries with the highest numbers of internal displacement in the world.¹²⁹ The displacement is largely a result of the armed conflict that has raged in Colombia for more than fifty years.¹³⁰ The majority of IDPs in Colombia were displaced mainly by non-state armed forces, or paramilitaries, who forced people to move from rural to urban areas.¹³¹ In particular, Afrocolombian, indigenous, female and rural populations have been disproportionately impacted by the armed conflict and represent the highest numbers of IDPs.¹³²

As Colombia is known to have some of the most progressive legislation for IDPs in the world, it is worth reviewing various relevant laws.

Progressive Legislation for IDPs

Law 387 (1997)- Creation of Framework for Assistance for IDPs

- Measures for the prevention of forced displacement: providing assistance, protection, consolidation and socioeconomic stabilization of the displaced; included a series of mechanisms for guaranteeing the rights of IDPs.¹³³

¹²⁸ Van der Auweraert, Peter. Dealing with the 2006 Internal Displacement Crisis in Timor-Leste: International Center for Transitional Justice, 2012. 10.

¹²⁹ IDMC, Colombia, Overview, Updated December 2014, <http://www.internal-displacement.org/americas/colombia/> (accessed April 24, 2014).

¹³⁰ Meertens, Donny. Forced Displacement and Gender Justice in Colombia-between Disproportional Effects of Violence and Historical Injustice: International Center for Transitional Justice, 2012.

¹³¹ Transitional Justice and Victims' Rights'. 491.

¹³² UNHCR. Afrodescendientes ACNUR En Colombia: UNHCR, 2011. 7.

¹³³ Colombian Government, Law 387, 1997. 8.

http://www.brookings.edu/~media/Projects/idp/Colombia_Law387_1997_Eng.pdf (accessed May 26, 2015).

- Creation of the *National System for Comprehensive Assistance to Populations Displaced by Violence*, the *Fund for Comprehensive Assistance to Populations Displaced by Violence* and a *National Information Network for Assistance to Displaced Populations* as the main institutions to fund, provide assistance to, monitor and evaluate the situation of IDPs in the country.¹³⁴
- Development of departmental, district, and municipal committees and offices where people could self-register as IDPs to receive governmental assistance.
- Formation of a program for the protection of land and assets of displaced persons and a national database of lost properties as the basis for the restitution of land to displaced persons.¹³⁵

Recognition of the State's Failure to Provide Adequate IDP Assistance

A "T-025 finding" was made by the Colombian Constitutional Court in 2004, stating that the way in which assistance was being granted to IDPs represented an "unconstitutional state of affairs."¹³⁶ T-025 was a response to the high numbers of lawsuits the Court received relating to delays and problems IDPs were having in receiving assistance despite having gone through the systems set in place by Law 387.¹³⁷ The Court required the government to grant a series of awards, including the following instructions, meant to correct the ineffective situation:

- Focus on specific groups among IDPs such as women and Afrocolombians.
- Create a Civil Society Commission on Displaced Persons, a permanent monitoring system on public policies on displacement. This group was tasked to hold regular hearings with organizations and created its own series of indicators to evaluate the government's response to IDPs.¹³⁸ The Commission is today housed within an NGO and has the support of international scholars and experts.¹³⁹
- Included recognition of the *UN Guiding Principles on Internal Displacement* in explaining the failure of the government's policies in addressing IDP needs.

Civil Society Hearings on IDPs Before Regional Human Rights Bodies

- Civil society groups have presented numerous hearings on IDP rights violations before the Inter-American Commission of Human Rights and most recently a case regarding the egregious violations of rights of Afrocolombian IDPs in the conflict (Marino López v. Colombia) was submitted to the jurisdiction of the Inter-American Court.
- The Court released its judgment on the case in 2014 finding that the State had violated several of the articles within the American Convention including right to life, right to

¹³⁴ Ibid.

¹³⁵ Vidal-Lopez, Roberto. Truth Telling and Internal Displacement in Colombia: International Center for Transitional Justice. 2010.

¹³⁶ Colombian Constitutional Court. T-025 Sentence. 1.

<http://www.corteconstitucional.gov.co/relatoria/2004/t-025-04.htm> (accessed May 26, 2015).

¹³⁷ Ibid.

¹³⁸ Vidal-Lopez, Roberto. Truth Telling and Internal Displacement in Colombia: International Center for Transitional Justice, 2010. 8.

¹³⁹ Ibid, 12.

personal integrity, freedom of movement and residence, and freedom from inhumane torture. The Court's interpretation of the violation of rights related to internal displacement during an armed conflict reflected an important and precedent-setting interpretation of the Geneva Convention-Protocol II, the American Convention and the UN Guiding Principles on Internal Displacement.

Law 975, "Justice & Peace Law" (2005)

- Created a special criminal procedure for prosecuting demobilized paramilitaries charged with gross human rights violations.¹⁴⁰ The indictment of thousands of paramilitary leaders has helped society accept the history that internal displacement was not only an unintended result of the clash between the army and non-state actors, but also often part of a systematic pattern of forced movement of populations that had to do with the exploitation of the lands of rural communities, especially the indigenous and Afro-Colombians.¹⁴¹

Victims and Land Restitution Law (2011)

- Aims to facilitate truth, justice, and integral reparations for victims and recognizes IDPs as a unique category of victims among others.¹⁴²

Conclusions & Lessons Learnt for Sri Lanka

- Importance of the **inclusion of civil society in IDP legislation and policy design & monitoring.**
- Need for **a range of policies and legislation** to create mechanisms to support the complex situation of IDPs such as outreach/registration centers, funding mechanism, information network, prosecutions, etc.
- Utilization of **UN Guiding Principles on Internal Displacement** in the evaluation of government policies and legislation and for broader advocacy & precedent setting before international human rights bodies

¹⁴⁰ Ibid, 9.

¹⁴¹ Vidal-Lopez, Roberto. Truth Telling and Internal Displacement in Colombia: International Center for Transitional Justice. 2010. 9.

¹⁴² Meertens, Donny. Forced Displacement and Gender Justice in Colombia-between Disproportional Effects of Violence and Historical Injustice: International Center for Transitional Justice, 2012. 14.

Recommendations

1. General

The Government of Sri Lanka should introduce a **credible domestic process with international involvement and meeting international standards** to address issues of truth, justice and reparations which is designed with wide consultations and is victim centered. The different initiatives and institutions needed for such a process must be designed in a transparent and participatory manner.

The government should request **technical assistance from the OHCHR** to assist in establishing and implementing domestic mechanisms to address truth and justice and in implementing recommendations in the UNHRC resolutions.

Support the UNHRC's call for the Government of Sri Lanka to "conduct an independent and credible investigation into allegations of violations of international human rights law and international humanitarian law" and **hold violators responsible**.¹⁴³ The Council must take this request further and ensure that it is acted upon. This should include a follow up resolution at the 30th session of the UNHRC which provides for follow up action including monitoring and reporting by the OHCHR.

The international community should continuously **monitor and report on Sri Lanka's progress** toward transitional justice and reparations. The international community should maintain continuous pressure on the transitional justice and reparations process, as the protracted nature of the end of the conflict has put off reconciliation for too long.

Introduce an effective **victim and witness protection** process with domestic mechanisms established on truth and justice having its own protection teams.

2. On the Recruitment and Conscription of Child Soldiers

For the Sri Lankan Government

1. Conduct an independent investigation into the means by which children entered armed groups to determine if children joined willingly or were coerced:
 - a. If children were coerced, a process that involves publicly acknowledging atrocities committed by them while under the control of the armed groups should be considered as a means of seeking forgiveness and aiding reintegration efforts.
 - b. If children joined willingly, a study should be conducted to determine the factors that led to voluntary association with armed groups and consider these findings in the determining child-specific reparations.

¹⁴³ UN Human Rights Council. *Promoting reconciliation, accountability and human rights in Sri Lanka : resolution / adopted by the Human Rights Council*. April 9, 2014, A/HRC/RES/25/.

2. Establish an independent and credible truth telling mechanism and involve children in proceedings with special sensitivity that acknowledges crimes committed by and against them.
3. Incorporate the following lessons from the Sierra Leone TRC into the design of a TRC in Sri Lanka:
 - a. Child rights standards should inform the process of the TRC
 - b. Ensure equal treatment of all children before the TRC
 - c. Special attention should be paid to girls
 - d. Participation should be voluntary
 - e. Children should be protected through confidentiality
 - f. The anonymity of children should be preserved
4. Involve children in each phase of the truth-telling process including taking statements, facilitating public hearings, soliciting expert submissions, creating a child-friendly version of the TRC report, and articulating a vision of Sri Lanka's post-conflict future.
5. Adopt legislation to provide protection to child participants in transitional justice mechanisms and establish an effective victim and witness protection program for children who witnessed human rights violations.
6. Train and equip psychologists to provide necessary support to former child soldiers in their reintegration into civilian life (i.e. pursuing an education or vocational training).
7. Engage in dialog on a reintegration and reparations policy that would take into account special needs of children abducted by armed groups when they were minors and who are now above 18 years of age.
8. Initiate independent investigations and prosecute leaders of the LTTE and Karuna group most responsible for grave violations—including Karuna, Iniyabarathi, and Piliyan.
9. Institute criminal law reform to ensure prosecutions for those responsible for the recruitment by force of children for use in hostilities by forces under their effective authority, command or control.
10. Ensure that the length of a child's stay in rehabilitation programs is balanced with the time that they were in ranks of the armed groups.
11. Follow community-based approach for reintegration of former child soldiers in accordance with the Paris Principles and guidelines of child demobilization.
12. Support mediation with families, psychological healing, rapid response, and education recovery methods.
13. Provide an "exit strategy" for children to trace and reunite them with their parents/guardians or relations, and support fostering and responsible placement for children who were orphaned by the conflict or whose parents/guardians could not be traced.

United Nations Agencies and Civil Society

1. Strengthen communication and working relationships with local communities and local nongovernmental organizations in order to better support affected children and families, during the reintegration process.

2. Advocate for a framework to protect the rights of children in truth-telling processes.
3. Continue to provide vocational training opportunities for affected children.

3. On Disappearances in Sri Lanka

For the Sri Lankan Government

1. The process of truth and reconciliation takes time and the process must have credibility with the communities in Sri Lanka. A genuine attempt must be made by the Sri Lankan Government to document, investigate and prosecute those responsible of propagating gross violations of human rights. This includes:
 - a. Repealing the Prevention of Terrorism Act (PTA) that has been in place since 1978.
 - b. Ratifying the International Convention for the Protection of All Persons from Enforced Disappearance and introduce enabling domestic legislation.
 - c. Domestic legislation should be framed to specifically criminalize enforced disappearances.
 - d. Release current updated detainee lists and places of detention.
2. Establish a permanent office to explore, follow up and take action on the large case load of missing persons and enforced disappearances. This office should be established by law and be independent in its work with a mandate to address a range of issues including having a verified database of missing persons, archives of relevant documents, assisting in obtaining necessary documents and assistance for family members, tracing, follow through with investigations into cases of disappearances and be involved in forensics and other areas.
3. The importance of a victims centered approach in transitional justice mechanisms has been demonstrated, but the range of needs for victims' families goes much beyond this.
 - a. Thus this process must include a mechanism of truth and justice that reveal as much of the truth of what happened to family members as possible.
 - i. Conduct independent investigations and prosecute alleged perpetrators in a credible court of law.
 - ii. Recruit competent judges, prosecutors, investigators and other staff who have expertise and are competent in dealing with such cases. Provide trainings for staff who will be involved in investigations and related issues.
 - iii. Ensure that such retributive processes have places for victims to be heard/represented.
 - iv. Provide effective victim and witness protection for anyone who wishes to testify.
 - b. Part of this process necessarily involves the exhumation of mass graves throughout Sri Lanka. Specific steps must be taken to ensure such practices follow international standards and have trained and competent staff. There also must be attention on the role of families and their representatives in this area including the following:

- i. Families and their advocates should be officially included at the decision-making table in the context of exhumation policy making and priority setting.
 - ii. Implement a context specific and culturally sensitive approach including appropriate memorials, ceremonies and proclamations, which must be determined through direct dialogue with families and their representatives.
- c. Make public government documents and Commission of Inquiry reports as well as a report specifically written for the public that summarizes the extent of the evidence.
- d. The government should explore legislation and administrative procedures to create a legal status of disappeared and provide certificates of absence
- e. The government must make a commitment to help families even if their case may not be resolved.
 - i. This could include providing access to health care, education benefits, compensation, and housing as a means of reparation.

For Sri Lankan Civil Society

1. Support family members of the disappeared in a range of areas including advocacy, obtaining assistance for families and other related issues.
2. Advocate for necessary legal, policy and administrative changes including the introduction and implementation of certificates of absence.
3. Actively engage with domestic and international investigations.

For the international community

1. If the Sri Lankan government is unwilling or unable to complete this process, as has unfortunately and consistently been demonstrated, the option of international accountability should be explored.
2. Member states should urge their foreign ministers to request detailed information on the fate of those who have disappeared.
3. Member states should consider using Universal Jurisdiction and other legal mechanisms available to begin to prosecute perpetrators of IHRL and IHL violations.

4. On Sexual Violence in Sri Lanka

For the Sri Lankan Government

1. Initiate independent investigations and prosecutions against perpetrators of rape and sexual violence for violations that took place both during and after the conflict in a credible domestic court of law.
 - a. These should be credible, independent investigations with international involvement that prosecute alleged perpetrators.

2. Reform the Penal Code, of Sri Lanka, including Section 363, to ensure laws concerning treatment of victims of sexual violence and rape and prosecution and sentencing of perpetrators are consistent with international standards.
3. Provide both material and psychosocial support to survivors of sexual violence as part of a holistic effort to reintegrate victims into a supportive community. Compensation and reparations should be arranged. Reparations would assist with reversing some of the persistent material insecurity women who were affected by sexual violence continue to feel.¹⁴⁴
4. Ensure that medical personnel, mental health counselors, or NGOs providing psychosocial support and treatment are able to access to victims of human rights violations.
5. Collaborate with domestic and international NGOs to ensure the provision of reproductive and sexual health services, and psychosocial support for all victims of alleged rape and other sexual violence. It should especially “permit appropriate domestic and international nongovernmental organizations to provide these services to individuals in northern and eastern Sri Lanka.”¹⁴⁵ Reparations should be negotiated as part of an inclusive and participatory process in which women and victims have a significant voice.
6. Enact legislation on measures concerning abuse of women and children, the protection of single headed households, and increasing women’s participation in decision-making and ensure that legislation applies to all ethnic and religious groups.
7. End the militarization of the north and east. Specifically, the government should transfer administrative control to civilians. Land taken by the military must also be returned or acquired in accordance with the legal framework and adequate compensation provided.¹⁴⁶

For Sri Lankan Civil Society

1. Work with local security sector organizations such as police to facilitate reconciliation and reform in the police and military. Demilitarization in the north of Sri Lanka is an important step toward providing a safe and secure environment in which all Sri Lankans feel secure and ready to rebuild their communities. It is particularly important for women and victims of sexual violence.
2. Provide support for victims of sexual violence and raise awareness on this issue in order to systematically reduce the stigma of having experienced this type of violence. Publicly supporting a truth telling process that also investigates sexual violence allegations will have a positive impact on reducing the stigma of sexual violence in Sri Lankan society. OHCHR has produced a report to the UNHRC on sexual violence in transitional justice. In this report, the High Commissioner reports that truth commissions can assist in reflecting the “systematic nature of sexual violence,

¹⁴⁴ Wallström, Margot. “Introduction: Making the Link Between Transitional Justice and Conflict-Related Sexual Violence” in *William and Mary Journal of Women and the Law* (19) 1: 2012, 5.

¹⁴⁵ Human Rights Watch. “We Will Teach You a Lesson.” February 2013. 47.

¹⁴⁶ For more information, refer to reports and policy briefs by CPA on this issue which are available on www.cpalanka.org.

particularly where it is used as a method of warfare” as well as to help dispel stigma around sexual violence.¹⁴⁷

3. Actively promote ethnic reconciliation by bringing groups together for meaningful dialogue and discussion.
4. Provide psychosocial support and social services for families and individuals seeking to reestablish normalcy and healing.

For the International Community

1. Provide technical assistance for security sector reform. Steps to reduce militarization could include facilitating return of administrative functions to the civil administration, devolution and decentralization of power to lower level elected bodies including provincial councils and local authorities and introducing much needed reforms such as training the police to be able to respond to security issues faced by women and girls.
2. Provide a model and technical assistance that the government could use to process the reporting and investigation of rape cases.
3. Assist in the reconciliation and truth telling process by providing technical assistance on victim and witness protection and supporting independent prosecutors. Reform and reparations for sexual violence and other crimes will require a bolstered justice system, including trained judges, lawyers, court and other staff.

5. On Internal Displacement in Sri Lanka

For the Sri Lankan Government

1. Revise and redraft the stalled Draft Resettlement Policy or ensure the following elements into the new National Policy Framework to be completed in 2015-16:
2. A comprehensive definition of internal displacement, which includes displacement from armed conflict, development projects and natural disasters and which does not discriminate between IDPs who have already been relocated or resettled but still lack access to basic services and those who remain displaced. Any policy should omit the Sri Lankan practice of distinguishing between “old IDPs”, those who suffered displacement before 2008 and “new IDPs” those who suffered displacement after 2008.
3. Recognition of the differential impact of internal displacement on the different ethnic communities of Sri Lanka to understand how it may be a direct threat to their cultural, historic, livelihood and property ties as well as the effect on women and children.
4. Establishment of a streamlined National System for assistance to IDPs, including a fund and the creation of an information network including outreach centers and dialogue teams. This system should be designed with the participation of Sri Lankan civil society organizations, the advice and participation of international aid organizations and other

¹⁴⁷ UN General Assembly. Analytical study focusing on gender-based and sexual violence in relation to transitional justice: Report of the Office of the United Nations High Commissioner for Human Rights. June 30, 2014. Res. A/HRC/27/2 2014.

international, expert representatives. Such a system should have local and regional representation via offices dispersed across the country, provide for the capacity for IDPs to self-register as well as the incorporation of international and local staff in dialogue teams to reach out to all ethnic groups of IDPs and facilitate discussions in communities on local reconciliation, human rights violations and identifying and documenting land ownership according to local practices and resolving conflicting land claims between various ethnic groups. Dialogue teams should be trained and sensitized in speaking with IDPs who may have been subject to gender based violence and provide in collaboration with the government; appropriate remedy and support for victims. A mechanism for providing IDPs with information on their relevant land rights, including capacity to appeal acquisition of land by the State or military, the components of the Resettlement Policy itself and phased withdrawal of military presence on various lands should also be defined with a view to reflecting the information in the necessary languages and means to reach the entire population, including illiterate groups. Moreover, the fund should be established to provide IDPs with appropriate compensation for removals from their land or loss of it.

5. Ensure a focus on land occupation, property damage, livelihoods, disappearances and detentions in the Office of National Unity and Reconciliation and to implement programs that end discrimination, return land to legal owners, provide assistance and compensation for death, injury, disappearances and damage and provide relief for violations of fundamental rights and freedoms.
6. In terms of land occupation, the Ministry of Land and Ministry of Defense should immediately assess the extent of land occupied by the military and other state entities and return lands to their legal owners. Land required for public purposes should be acquired in terms of the legal provisions provided in the Land Acquisition Act.
7. Implement fully the Thirteenth Amendment to the Constitution and establish the National Land Commission.
8. The NIRP should be fully implemented across Sri Lanka and laws introduced to reflect the provisions of NIRP.
9. Explore the possibility of setting up specialized Land Claims Court or Land Task Force to resolve conflicting land claims as well as State and military acquisition cases and to amplify the recent steps announced by the Minister of Resettlement to return lands occupied by the Sri Lankan Army and Air Force. Such a mechanism along with the dialogue teams could help resolve pending IDP land acquisition cases, including those appealing lands held under the occupation of the so-called High Security Zones, Special Economic Zones or No Entry Zones.
10. Ensure that any implementation of the LLRC Chapters 5 and 6 recommendations and the Draft Resettlement Policy follows the UN Guiding Principles on Internal Displacement, the Pinheiro Principles on Housing and Property Restitution for Refugees and the Displaced, and the IASC Framework on Durable Solutions for Internally Displaced Persons, with clear benchmarks for durable solutions to ensure a transparent process and reinforce credibility.
11. Share further information around the results and methodology of the governmental-UN Joint Needs Assessment with the public and initiate a national dialogue with civil society representatives to build on this initial assessment, define policies and legislation to address gaps in providing durable solutions for IDPs.

12. Update official IDP numbers as well as information on IDPs who have returned, are locally integrated or have settled elsewhere with the assistance of international actors, including a comprehensive durable solutions assessment in order to continue to determine the extent of the support needed.
13. Ensure that all human rights violations of a criminal nature committed against IDPs, returnees and relocated persons are subject to criminal investigation and that the alleged perpetrators are brought to justice, including defining a mechanism for holding the military accountable for violations.
14. Enable proper working conditions without intimidation or surveillance for human rights defenders, NGOs, journalists and civil society organizations working with IDPs and returnees in the north and the east as well as for local IDP activist and leaders.
15. Cooperate with U.N. authorities and representatives, such as the U.N. Special Rapporteur on the Human Rights of IDPs and the U.N. High Commissioner for Human Rights.

For Sri Lankan Civil Society

1. Engage and collaborate with the Sirisena government to contribute to the revision or drafting of any national level policy or legislation for IDPs as well as to monitor its subsequent implementation.
2. Develop and implement joint governmental and non-governmental monitoring indicators for any proposed legislation or national level policy to address the situation of IDPs to monitor their progress, evaluate their success and hold the government accountable to them.
3. Utilize the *UN Guiding Principles on Internal Displacement* to better highlight the previous government's failure in responding to the plight of IDPs from Sri Lanka's armed conflict, development projects and natural disasters and as a starting point for developing new policies and legislation with the current administration and in reports to international organizations, relevant U.N. human rights bodies, and the Special Rapporteur on the Human Rights of IDPs. In particular, Principles 3, 4, 6, 7, 8, 9, 11, 13, 16, 17, 18, 20, 22, 23, 15, 28 and 29 of the Guiding Principles could be useful to the Sri Lankan case.¹⁴⁸ Moreover, civil society should demonstrate the role of the military in any failure to respond to IDPs and emphasize that it represents a systematic pattern to forcibly remove people from their homes and fail to assist them in their return and resettlement.

¹⁴⁸ UN High Commissioner for Refugees (UNHCR). *Guiding Principles on Internal Displacement*. July 22, 1998. ADM 1.1,PRL 12.1. PR00/98/109. <http://www.unhcr.org/43ce1cff2.html> (accessed May 26, 2015).

For the International Community

1. The United Nations and international organization actors should aid the government in implementing an assessment of the IDP population and utilize the results as a benchmark to implement measures to fill any gaps in needs in collaboration with the government.
2. UNHCR, IOM and other international organizations should explore the possibility of providing support or directly participating in IDP resettlement and reconciliation dialogue teams and increasing their humanitarian funding to Sri Lanka as the new government will likely require funds to carry out sustainable programs. Any future development projects or programs to provide assistance to IDPs should follow the UN Guiding Principles on Internal Displacement, the Pinheiro Principles on Housing and Property Restitution for Refugees and the Displaced and the IASC Framework on Durable Solutions for Internally Displaced Persons.
3. The UNHCR strategic planning for Sri Lanka for the next two years should include financial support to assist the government in achieving a range of durable solutions and resettlement options for IDPs.
4. The UN Special Rapporteur on the Human Rights of IDPs should follow-up with the new government on the areas mentioned in his 2013 report following his visit to the country and conduct a follow up trip to the country.
5. Transitional justice and post-conflict experts such as those from Colombia or Timor-Leste should be sought out to provide advice and guidance to the development of land task forces or claims courts, as well as in setting up national systems, policies and legislation to respond to IDP needs and in trying members of the military for human rights violations and participation in forced movements. Civil society, especially organizations of IDPs, from these countries could also provide guidance on setting up monitoring commissions and monitors on IDP legislation and policies.