

Sri Lanka Must Heed Victim Demands and Immediately Halt Plans for Proposed TRC

Collective

We, the undersigned transitional justice and human rights scholars from across the world wish to express our serious concern on the current efforts by the Sri Lankan government to establish a Commission for Truth, Unity, and Reconciliation (CTUR).

We issue this statement in response to a number of interventions made by victim groups and civil society organisations from the war affected North and East in Sri Lanka expressing their objection to the proposed CTUR. Most recently these objections were recapitulated in a letter dated 7 March 2024 signed by several organisations and individuals to the Director General of the Interim Secretariat of the proposed CTUR. These objections are premised on a lack of faith in ‘independent’ commissions, many of which have failed and have a dismal record on delivering justice, as well as the track record of the current political leadership which is found wanting in meeting its commitments under international human rights laws and norms, including on transitional justice. Other reasons for victims’ lack of faith in this commission include: the failure of the Office of Missing Persons and Office of Reparations established as part of Sri Lanka’s commitment under the United Nations Human Rights Council resolution (30/1), both of which appear to be now operationally defunct; the repeated denial of State violations; and the refusal to seriously consider recommendations contained in the 2017 report of the Consultation Task Force (CTF).

The right of individuals to know the truth about past abuses has been affirmed by UN treaty bodies, UN special procedures, regional courts, and international and domestic tribunals. A truth-seeking process in post-war and past authoritarian contexts can contribute towards establishing the extent and the patterns of past

violations, as well as their causes and consequences. In so doing, it can help reconcile deeply divided communities and help bring closure to victim-survivors. However, our research strongly affirms that such processes must be context specific, inclusive and empowering of victims, and lead to justice and accountability. Importantly, a country must be ready for a truth-seeking process.

First, a government seeking to establish such a commission must demonstrate political will to pursue a serious inquiry into past abuses. This government has had ample opportunity to demonstrate its political will through the Office on Missing Persons, while building trust and confidence amongst the victim community by recognising their right of assembly and protest and engaging in meaningful consultations; yet it has failed to do so. Moreover, civil society and victim-survivor groups have raised concerns in their public statements that the establishment of a TRC is a tick-box exercise by the government to feign commitment towards transitional justice and remove Sri Lanka from the UN Human Rights Council agenda. It is due to the failure of the GoSL to meet its commitments made to the UNHCR in 2016 that in 2021 the Council passed a resolution effectively shifting the collection and maintenance of evidence to the UN Office of the High Commission for Human Rights.

Second, the broader context must be conducive to a truth-seeking process. Unfortunately the CTUR bill is being proposed while the current government has credibly been accused of: continuing human rights violations; surveillance and suppression of rights activists and protesters, including family members of the disappeared; enactment of legislative measures oppressive of civil and political rights; and failure to take significant steps to guarantee economic and social rights following the 2021 economic crisis.

Third, victims and witnesses must have trust and faith in the proposed process and be willing to cooperate with it. The fact that victims of the crimes that transitional justice seeks to redress are vehemently opposed to the formation of the proposed CTUR is a reason to not proceed with its establishment. It is now axiomatic that transitional justice mechanisms must be context specific and designed, developed, and implemented through effective victim inclusion. International law requires that affected communities are not only included in the conduct of transitional justice processes but in the design of such mechanisms. Marginalising or excluding victims from the design of mechanisms can result in the denial of truth, justice, accountability, and repair, which are the core aims of transitional justice, and in addition retraumatise, abuse, and undermine victims and cause grave injustice.

We thereby call on the GoSL to refrain from proceeding with this legislation. In solidarity with victim-survivors and civil society organisations we urge the GoSL to study and heed the demands made by organisations and victim-survivor groups. In particular, we urge the government to seriously consider victim-survivors' repeated demand for international participation in any domestic truth and reconciliation commission and the widespread belief that truth or justice cannot be achieved through a purely domestic mechanism.

We additionally urge the government to seek ways to work with the UNHRC's fact finding process to ensure truth and justice for war-related atrocities in Sri Lanka. We call on foreign governments, including those which have experience working on transitional justice, to refrain from supporting the GoSL on the establishment of CTUR in light of opposition from victim-survivors.

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