



International Working Group on Sri Lanka

### Sri Lanka's Flawed Plans for a 'Truth Commission'

We, nine international human rights organizations, have grave reservations about the Sri Lankan government's proposed National Unity and Reconciliation Commission. Our concerns echo many of those already raised by victims of conflict-related abuses and their families.

Sri Lanka has a long history of convening similar bodies, none of which has provided justice, truth or reparation to the many people who have engaged with them. The latest initiative risks repeating the mistakes of the past, exposing victims to renewed security threats and re-traumatization without any realistic chance of a different outcome. There have not been any genuine confidence-building measures, or steps to ensure a safe and conducive environment for such a commission to function effectively. There has been no meaningful consultation, including with affected communities. Moreover, as set out in reports to the United Nations Human Rights Council, existing domestic transitional justice mechanisms such as the Office of Missing Persons are unable to function effectively, and there are ongoing attempts to block prosecutions of crimes under international law.

The Sri Lankan government should approach transitional justice as a holistic process that includes truth-seeking, investigation and prosecution of international crimes, and effective remedies such as reparations, redress and guarantees of non-recurrence. Any successful transitional justice process requires inclusive consultation with stakeholders, including with victims and civil society organizations, and substantial confidence-building measures to ensure that victims can participate without fear. It must have credibility among affected communities.

**A legacy of failed commissions:** The UN High Commissioner for Human Rights [noted](#) in January 2021 that "numerous commissions of inquiry appointed by successive governments failed to credibly establish truth and ensure accountability." Past commissions produced [reports](#) and [recommendations](#) that went unimplemented, and gathered evidence that was not acted upon, failing to provide redress to victims. These include the Presidential Commission of Inquiry appointed to Investigate and Inquire into Alleged Serious Violations of Human Rights arising since 1 August 2005 (known as the 'Udalagama Commission'), set up in 2006; the Lessons Learnt and Reconciliation Commission, which published its [report](#) in 2011; and the Presidential Commission of Inquiry into Complaints of Abductions and Disappearances (known as the 'Paranagama Commission'), set up in 2013. In January 2021, a new three-member Commission of Inquiry headed by former Supreme Court Justice A.H.M. Nawaz was created to examine the findings of previous domestic inquiries. A synopsis of the recommendations in the draft final report was [presented](#) to President Wickremesinghe in February 2023, but has not been made public.

There is no indication in the government's current proposals for a National Unity and Reconciliation

Commission, or in the manner and circumstances in which it is being established, to suggest that it will be willing or able to provide truth, justice or reparation where previous commissions have failed. Many victims and their relatives have already engaged in multiple similar processes over decades. The current proposals risk further re-traumatization, with little expectation that victims' rights and needs will be addressed.

**The lack of a conducive environment or confidence-building efforts:** In the Northern and Eastern Provinces, which were the most affected by the armed conflict, victims of gross human rights violations such as enforced disappearances and unlawful killings and their families, as well as human rights defenders and activists, face routine surveillance, harassment and intimidation by government security and intelligence agencies. There are [severe restrictions](#) on the rights to freedom of peaceful assembly, freedom of expression, freedom of association, and political participation. Draconian laws – notably the Prevention of Terrorism Act (PTA), which has facilitated torture and other ill-treatment and arbitrary detention, especially of members of minority communities – remain in use. The proposed new anti-terrorism law if enacted as it is currently formulated would retain and even extend many of the PTA's abusive powers. In the north and east, several state agencies are engaged in a campaign of [land grabs targeting the property and the religious sites of minority communities](#). In this environment, it is not possible to conduct a credible truth-seeking process in which communities that have faced discrimination and violence for decades can participate with confidence and in safety.

Meanwhile, in July this year, the government [appointed](#) retired admiral Ravindra Wijegunaratne as High Commissioner to Pakistan, despite a court order for his arrest in connection with the emblematic [Navy 11 case](#) in which victims were kidnapped for ransom, tortured and killed. This is indicative of the government's efforts to ensure impunity for those suspected of criminal responsibility for crimes under international law and gross human rights violations, many of whom continue to hold senior official positions.

Many Sri Lankan human rights groups, including victims' groups, have laid out a number of steps the government should take before establishing yet another commission. These include:

- Ending the harassment and intimidation by state agencies of conflict-affected people, human rights defenders and activists;
- Releasing political prisoners held under the PTA;
- Investigating, with international participation, enforced disappearances and mass graves;
- Adopting a holistic and comprehensive approach to transitional justice, with meaningful international participation, to provide for truth, justice, reparations and institutional reforms;
- Ending land grabs, occupation and encroachment by state agencies;
- Recognizing the widespread discrimination against and denial of equality and equal protection to people from the Tamil community, and acknowledging their right to remember and memorialize victims of the armed conflict;
- Implementing recommendations from previous commissions of inquiry through the development of a plan and timeframe to do so;
- Expediting court cases on enforced disappearances, unlawful killings and mass graves;
- Making public all relevant documents concerning military tribunals;
- Initiating credible inquiries into armed groups suspected of criminal responsibility for enforced disappearances, child abduction, and the recruitment of child soldiers; and
- Adopting all necessary measures to end human rights violations linked to the militarization of the North and East, including the unlawful confiscation of property, and violations of the rights to freedom of expression and freedom of association.

**A lack of meaningful consultations:** If any future truth-seeking mechanism is to earn the trust of victims and their families, many of whom have lost faith in domestic institutions, it is necessary for the government to hold meaningful consultations and take steps to address their concerns. Instead, hurried meetings hosted by

the Foreign Ministry in July this year involved select civil society groups and trade unions but excluded key victim and stakeholder groups, further increasing distrust between the state and victims. A victim-centric approach, where all stakeholders are involved in the formation of institutions to address past violations, is essential to ensure that any mechanism will achieve its goals.

The Consultation Task Force on Reconciliation Mechanisms carried out comprehensive consultations in 2016 and produced a [report](#) with recommendations. We deplore the failure to adopt or otherwise take into account those recommendations during the current process.

**The failure of domestic institutions:** Existing transitional justice bodies, such as the Office on Missing Persons, and the Office for National Unity and Reconciliation, have achieved little or nothing nearly five years since they were established. They have been widely [rejected](#) among victim communities. In October 2022, the United Nations High Commissioner for Human Rights [told the Human Rights Council](#), “the Office on Missing Persons and the Office for Reparations – the only two (out of four) transitional justice structures established – have failed to achieve the tangible results expected by victims and other stakeholders.”

**International involvement:** In a recent [media interview](#), President Ranil Wickremesinghe said the proposed commission would have foreign observers. However, the involvement of international observers in previous commissions did not make them credible or effective. The International Independent Group of Eminent Persons (IIGEP) was appointed in 2006 to act as observers to the Udalgama Commission. They resigned [citing](#) a conflict of interest in the proceedings of the commission, a lack of effective victim and witness protection, a lack of transparency and timeliness in the proceedings, a lack of co-operation by state bodies, and a lack of financial independence of the commission. The Paranagama Commission also had an advisory council of international experts, whose role and terms of reference were [unclear](#), and who made no substantial contribution to the commission’s mandate to investigate cases of enforced disappearances. In light of these experiences, the inclusion of foreign observers alone is no guarantee of an effective process, which requires other issues raised by victims to be meaningfully addressed.

**Blocking prosecutions:** We are concerned by the President’s [remarks](#) that any parallel criminal investigations may undermine the work of the new commission. This is especially concerning given Sri Lanka’s position at its recent Universal Periodic Review by the UN Human Rights Council, where the government rejected [recommendations](#) by states to end impunity for human rights violations, abuses and harassment, especially against members of ethnic and religious minority communities, by holding those suspected of criminal responsibility to account before ordinary civilian courts, including security forces and government officials.

Truth commissions should not be instituted as an alternative to criminal investigations and prosecutions aimed at establishing individual criminal responsibility for crimes under international law. Any credible truth-seeking mechanism should have the power to refer crimes under international law for prosecutions before the civilian courts.

The United Nations Human Rights Council, in its [resolution](#) on Sri Lanka of 6 October 2022, emphasized the importance of a comprehensive approach to dealing with the past, incorporating judicial and non-judicial measures, to ensure accountability, to serve justice, to provide remedies to victims, to avoid the recurrence of violations of human rights, and to promote healing and reconciliation.

We urge the government of Sri Lanka to:

- Fully engage with the victims of human rights violations and their families;
- Deliver a transitional justice process that upholds their rights and abides by Sri Lanka’s obligations under international human rights and humanitarian law;
- Demonstrate its commitment to providing truth, justice, reparations and guarantees of non-recurrence by immediately ending human rights violations against victims’ families and communities;

- Uphold its legal obligation under international law to appropriately prosecute those suspected of criminal responsibility for crimes under international law and gross human rights violations.

We urge other states, particularly members of the UN Human Rights Council, and those in a position to influence the Sri Lankan government, to call for an end to ongoing violations and for substantive confidence-building measures to ensure that victims be able to participate in any future reconciliation and accountability process safely and with confidence. Foreign governments and the United Nations should engage with any future process in a manner that is transparent, upholds principles of international law, and makes the concerns of victims and their families the priority. Following decades of abuses, some of which continue to this day, the Sri Lankan government needs to take urgent and meaningful steps to earn victims' confidence.

1. Amnesty International
2. Asian Forum for Human Rights and Development (FORUM-ASIA)
3. Franciscans International
4. Front Line Defenders
5. Human Rights Watch
6. International Commission of Jurists
7. International Federation for Human Rights (FIDH)
8. International Working Group on Sri Lanka
9. Sri Lanka Campaign