

Where Justice is Non-Negotiable: Pragmatic Engagement for Accountability in Sri Lanka

Mytili Bala

At its core, transitional justice (TJ) is a process by which post-conflict societies attempt to deal with their divided pasts through processes to seek truth, deliver justice, compensate victims, and guarantee non-recurrence. With the mainstreaming of the field,¹ it is tempting to misconstrue TJ as a sort of post-conflict checklist, where success can be measured by how many mechanisms are established instead of whether those mechanisms address local needs.² However, in a country like Sri Lanka, where civil war and state impunity have bred mistrust and ethnic strife, justice is non-negotiable. Practitioners who recommend that TJ be locally owned and victim-centered must take heed of Sri Lanka's troubling history of failed domestic commissions³ and victims' resulting demands for a credible accountability process.⁴

At the same time, justice is contentious in post-conflict Sri Lanka. Sinhala nationalists oppose prosecuting "war heroes" who ended terrorism, while Tamil nationalists label moderate Tamil politicians "traitors" for engaging with the government on TJ.⁵ In this narrow space, human rights practitioners must consider whether to adapt their accountability advocacy to political realities. This article considers how some have chosen a path of pragmatic engagement with the government and highlights lessons learned.

Background

In 1983, Tamil rebel groups took up arms against the Sri Lankan state, responding to state-sponsored discrimination and violence by seeing a separate homeland. Emergency rule, disappearances, air strikes, and terrorist attacks were the norm until the war's end in 2009, when the Army defeated the LTTE, and impunity reigned throughout. Despite over a dozen commissions set up to investigate disappearances and emblematic human rights cases, domestic processes failed to deliver justice.⁶

¹ Ruti G. Teitel, *Transitional Justice Genealogy*, 16 *Harv. Hum. Rts. J.* 69 (2003); Dustin N. Sharp, *Interrogating the Peripheries: The Preoccupations of Fourth Generation Transitional Justice*, 26 *Harv. Hum. Rts. J.* 149 (2013).

² See, e.g., Dustin N. Sharp, *Addressing Dilemmas of the Global and the Local in Transitional Justice*, 29 *Emory Intl. L. Rev.* 71, 98 (2014) [truth commissions have in some sense become "a box to tick on a post-conflict checklist...rather than the result of a home-grown push for the particular type of truth and accountability that a truth commission can deliver"]; Sandra Rubli, *Transitional Justice: Justice by Bureaucratic Means?* (Swiss Peace, Working Paper No. 4, 2012) [noting that TJ best-practices manuals "depict a rather technocratic, toolbox and recipe-like approach to transitional justice characterized by a strong focus on legalism" and stating that while TJ practitioners "are increasingly talking in terms of adapting policies to the local context, the normative content of their transitional justice policies are rarely actually discussed with local actors"].

³ See Kishali Pinto-Jayawardena, *Post-War Justice in Sri Lanka: Rule of Law, the Criminal Justice System, and Commissions of Inquiry*, *Int'l Com. of Jurists* (Jan. 18, 2010), available at <https://www.icj.org/sri-lanka-icj-releases-report-documenting-the-history-of-impunity-for-human-rights-violations-in-sri-lanka/> (last visited Mar. 20, 2017); *Twenty Years of Make-Believe: Sri Lanka's Commissions of Inquiry*, *Amnesty Int'l* (Jun. 11, 2009), available at <https://www.amnesty.org/en/documents/ASA37/005/2009/en/> (last visited Mar. 19, 2017).

⁴ *Final Report of the Consultation Task Force on Reconciliation Mechanisms* (Nov. 17, 2016), Vol. I, p. x, available at <http://www.scrn.gov.lk/documents-reports> (last visited Mar. 19, 2017) (hereafter, "CTF Final Report").

⁵ *Hands off SL War Heroes: Champika*, *Daily Mirror* (Mar. 20, 2016), <http://www.dailymirror.lk/article/Hands-off-SL-war-heroes-Champika-107097.html> (last visited Mar. 21, 2017); *R. Sampanthan speech to Parliament* (Feb. 23, 2017) <http://srilankabrief.org/2017/02/sri-lanka-you-are-promoting-extremism-in-our-ranks-full-text-of-sampanthnas-speech/> (last visited Mar. 19, 2017).

⁶ *Supra* note 3.

The last months of the war were the bloodiest, with allegations of international crimes on both sides and 40,000 civilian deaths.⁷ The president who won the war, Mahinda Rajapaksa, tightened his grip in the years that followed, raising alarm among human rights groups and good governance watchdogs.⁸ Rajapaksa labeled those who sought justice the “LTTE rump” and set up ineffective commissions to claim the state was investigating abuses on its own.⁹ With little domestic progress and a worsening governance climate, the U.N. Human Rights Council (UNHRC) passed three successive resolutions, the last of which, in 2014, authorized an independent U.N. war crimes investigation (the "OISL" investigation).¹⁰

Before the OISL report could be released, Rajapaksa was unexpectedly defeated in presidential elections in 2015 by fellow SLFP party candidate, Maithripala Sirisena. Sirisena ran on a good governance platform and united SLFP moderates with their historic rivals in the UNP. The unity government won parliamentary elections later that year, but Rajapaksa won a seat and held sway among strident Sinhala nationalists. War-affected Tamils voted overwhelmingly for the unity government in both elections, and the moderate Tamil National Alliance (TNA) party promised to engage with the government on TJ and constitutional reform.

⁷ The Secretary-General, *Report of the Secretary-General's Panel of Experts on Accountability in Sri Lanka* (Mar. 31, 2011), available at http://www.un.org/News/dh/infocus/Sri_Lanka/POE_Report_Full.pdf (last visited Mar. 19, 2017); *War Crimes in Sri Lanka*, Int'l Crisis Group (May 17, 2010), available at <https://www.crisisgroup.org/asia/south-asia/sri-lanka/war-crimes-sri-lanka> (last visited Mar. 19, 2017).

⁸ Human rights groups voiced alarm at *post-war* international crimes; increasing militarization, surveillance, harassment; and attacks on human rights defenders, journalists, and religious minorities. See, e.g., *An Unfinished War: Torture and Sexual Violence in Sri Lanka 2009-2014*, The Bar Human Rights Committee of England & Wales, and the International Truth & Justice Project (Mar. 24, 2014), available at <http://www.barhumanrights.org.uk/an-unfinished-war-torture-and-sexual-violence-in-sri-lanka-2009-2014/> (last visited Mar. 20, 2017); *Crimes Against Humanity in Sri Lanka's Northern Province: A Legal Analysis of Post-War Human Rights Violations*, Sri Lanka Campaign for Peace & Justice (Mar. 4, 2014), available at <https://www.srilankacampaign.org/our-new-report-points-to-ongoing-crimes-against-humanity-in-sri-lankas-north/> (last visited Mar. 23, 2017); *Sri Lanka's Authoritarian Turn: The Need for International Action*, Int'l Crisis Group (Feb. 20, 2013), available at <https://www.crisisgroup.org/asia/south-asia/sri-lanka/sri-lanka-s-authoritarian-turn-need-international-action> (last visited Mar. 20, 2017); *Sri Lanka's Assault on Dissent*, Amnesty Int'l (Apr. 30, 2013), available at <https://www.amnesty.org/en/documents/ASA37/003/2013/en/> (last visited Mar. 20, 2017); *CPA Condemns Religious Intolerance and Violence*, Centre for Policy Alternatives [Press release] (Jun. 18, 2014), available at <http://www.cpalanka.org/cpa-condemns-religious-intolerance-and-violence/> (last visited Mar. 19, 2017).

Meanwhile, good governance watchdogs protested nepotism, corruption, and diminishing rule of law. See, e.g., *A Crisis of Legitimacy: The Impeachment of Chief Justice Bandaranayake and the Erosion of the Rule of Law in Sri Lanka*, Int'l Bar Ass'n (Apr. 2013); *Authority without Accountability: The Crisis of Impunity in Sri Lanka*, Int'l Com. of Jurists (Nov. 2012); *Nepotism Visualised: The Rajapaksa tentacles in Sri Lanka* (infographic), Sri Lanka Campaign for Peace and Justice (Mar. 20, 2013), available at <http://groundviews.org/2013/03/20/nepotism-visualised-the-rajapaksa-tentacles-in-sri-lanka/> (last visited Mar. 19, 2017).

⁹ Among others, Rajapaksa established the *Udalagama Commission* to investigate 15 emblematic human rights cases, the *Lessons Learnt and Reconciliation Commission* to investigate the breakdown of the ceasefire agreement through the end of the war (2002-2009), and the *Paranagama Commission* to investigate disappearances (and, later, an amended mandate to consider alleged violations of international humanitarian law). Interestingly, both the Udalagama and Paranagama Commissions included participation of foreign experts, a point the unity government could choose to emphasize (but so far has not) to build popular support for a hybrid court. Are citations needed here? [If you'd like, we can cross reference the sites in FN 26 re: Pres/PM rejecting the hybrid court. I don't have a citation for the specific proposition that the govt has not mentioned that there was international participation in Rajapaksa-appointed commissions.].

¹⁰ U.N. Human Rights Council Res. 25/1, U.N. Doc. A/HRC/25/L.1.Rev.1 (Mar. 27, 2014).

The U.N. delayed releasing the OISL report to give the new government time and space. The government, in turn, told the world, “Unlike the previous government we are not in a state of denial, saying such violations have not happened. We believe such violations have happened.”¹¹ It claimed accountability would “feature as a key component of the reconciliation process,”¹² promised accountability and truth-seeking processes would “function in parallel,”¹³ and suggested it would have frameworks be in place by September 2015.¹⁴ On the ground, the government improved media and civil society freedoms in the south, but Tamils in the north and east reported a continuing climate of harassment and surveillance.¹⁵

Released in September 2015, the OISL report found reasonable grounds to believe that Sri Lankan forces, paramilitaries, and the LTTE had engaged in *system* crimes, including war crimes and crimes against humanity.¹⁶ The report found impunity “deeply entrenched in Sri Lanka”; victims “often faced, and continue to face, threats, intimidation or even physical abuse when seeking to present complaints to the police or courts.”¹⁷ Few state actors had ever been convicted for killing a Tamil person, and the report concluded many Tamils doubted the state would protect their lives through the rule of law.¹⁸ The report discussed key structural barriers to justice and concluded that “for an accountability mechanism to succeed,” it would “require more than a domestic mechanism.”¹⁹ OISL recommended a hybrid court with international participation; the U.N. High Commissioner for Human Rights supported that call.²⁰

Pragmatic Engagement

At this juncture, human rights groups had to decide whether to support a hybrid court. A purely domestic mechanism would lack credibility, given Sri Lanka's many past failures. Some

¹¹ *Sri Lanka Says Seeking Delay in War Crimes Report*, Aderana.lk (Feb. 12, 2015), <http://www.aderana.lk/news/29770/sri-lanka-says-seeking-delay-in-un-war-crimes-report> (last visited Mar. 20, 2017); *Sri Lanka After the Presidential Election* [Samaraweera's remarks at Carnegie Endowment for International Peace], available at <http://carnegieendowment.org/2015/02/11/sri-lanka-after-presidential-election-event-4718> (last visited Mar. 20, 2017).

¹² *SL, U.S. agree to build on a multifaceted bilateral relationship, forge stronger links*, News.lk [Official GoSL Portal] (May 2, 2015), <http://news.lk/news/sri-lanka/item/7450-sl-u-s-agree-to-build-on-a-multifaceted-bilateral-relationship-forge-stronger-links> (last visited Mar. 19, 2017).

¹³ *Foreign Minister Samaraweera speaks at Carnegie Endowment for International Peace in Washington*, News.lk [Official GoSL Portal] (Feb. 13, 2015), <http://www.news.lk/features/item/6172-foreign-minister-samaraweera-speaks-at-carnegie-endowment-for-international-peace-in-washington> (last visited Mar. 19, 2017).

¹⁴ *Sri Lanka to begin war crimes probe by September*, News.lk [Official GoSL Portal] (May 10, 2015), <http://www.news.lk/news/business/item/7565-sri-lanka-to-begin-war-crimes-probe-by-september> (last visited March 19, 2017).

¹⁵ See, e.g., Ruki Fernando, *Human Rights and 50 days of Sri Lanka's Presidency*, Groundviews (Mar. 2, 2015), <http://groundviews.org/2015/03/02/human-rights-and-50-days-of-sri-lankas-new-presidency/> (last visited Mar. 19, 2017).

¹⁶ Report of the OHCHR Investigation on Sri Lanka (OISL), U.N. Doc. A/HRC/30/CRP.2, ¶ 1113 (Sept. 16, 2015) (hereafter, “OISL report”).

¹⁷ *Id.* at ¶ 1178.

¹⁸ *Ibid.*

¹⁹ *Id.* at ¶¶ 1246, 1278.

²⁰ *Id.* at ¶¶ 1182, 1246, 1278; Report of the Office of the United Nations High Commissioner for Human Rights on Promoting Reconciliation, Accountability, and Human Rights in Sri Lanka, U.N. Doc. A/HRC/30/61, ¶ 88 (Sept. 16, 2015).

groups, like the Centre for Human Rights and Development rejected a hybrid court and demanded *international* accountability (ICC or an ad hoc tribunal). Yet, those routes seemed (then, as now) unfeasible.²¹ Opting for a pragmatic middle ground, others, including the Centre for Policy Alternatives (CPA) and South Asian Centre for Legal Studies (SACLS), embraced the hybrid court. They demanded key safeguards to ensure credibility: a special prosecutor; international judges, lawyers, and staff; and the incorporation of international crimes and modes of liability into Sri Lankan law.²² Each demand was grounded in the government’s own words, including its hope for “technical assistance from the U.N., perhaps judges from the Commonwealth.”²³

The pragmatic approach proved successful, on paper. Unlike in years past, Sri Lanka co-sponsored the 2015 UNHRC resolution, committing to a “comprehensive approach with dealing with the past.” On accountability, the government promised a “judicial mechanism with a special counsel,” staffed by “Commonwealth and other foreign judges, defence lawyers and authorized prosecutors and investigators,” to prosecute “those most responsible” for international crimes.²⁴ The government promised a *victim-centered* approach with “broad consultations” to inform the design and implementation of each TJ mechanism.²⁵

Back at home, implementation has missed the mark. President Sirisena claimed he would never agree to foreign judges, and Prime Minister Ranil Wickremesinghe suggested a hybrid court was not “practical.”²⁶ Sirisena promoted alleged war criminals Jagath Dias and Sarath Fonseka to Army Chief of Staff and minister, respectively. The chair of the National Unity Office (ONUR) Chandrika Kumaratunga claimed that once constitutional reforms and the Office of Missing Persons were in place, “there would not be any necessity to have courts to probe war crimes.”²⁷ As his loyalists threatened to split the SLFP, Rajapaksa accused Sirisena of attempting

²¹ Sri Lanka is not a signatory to the Rome Statute, and a Security Council referral appeared out of the question. The Security Council has referred only two situations to the ICC—Darfur (2005) and Libya (2011)—and Russia and China supported the congratulatory 2009 UNHRC resolution *praising* the Sri Lankan government’s handling of the war. See U.N. Human Rights Council, Res. S-11/1, U.N. Doc. A/HRC/RES/S-11/1 (May 27, 2009). Further, whereas bold denunciations of the Rajapaksa regime may have seemed reasonable, the unity government was saying the right things, and many states were keen to provide space and support.

²² See, e.g., *A Hybrid Court: Ideas for Sri Lanka*, South Asian Centre for Legal Studies (May 6, 2015), available at <http://sacls.org/resources/publications/reports/a-hybrid-court-ideas-for-sri-lanka> (last visited Mar. 19, 2017).

²³ *Sri Lanka’s Policies Towards India and China Need Course Correction* [interview of FM Samaraweera], *Swarajya Magazine* (Feb. 2, 2015), available at https://issuu.com/swarajyamag/docs/_swarajya_feb_2015_issue_final (last visited Mar. 19, 2017).

²⁴ U.N. Human Rights Council, Promoting reconciliation, accountability, and human rights in Sri Lanka, U.N. Doc. A/HRC/RES/30, ¶¶ 6-7, (Oct. 1, 2015) (hereafter, “2015 UNHRC Resolution”).

²⁵ *Id.* at ¶ 3.

²⁶ *Sri Lanka president wants ‘internal’ war crimes court*, BBC News (Jan. 21, 2016), <http://www.bbc.com/news/world-asia-35376719> (last visited Mar. 19, 2017); *Sri Lanka says ‘no’ to foreign judges in war crimes probe*, *The Hindu* (Mar. 5, 2017), <http://www.thehindu.com/news/international/sri-lanka-says-no-to-foreign-judges-in-war-crimes-probe/article17413166.ece> (last visited Mar. 19, 2017).

²⁷ *MR’s acolytes want old regime back for survival-CBK*, *Daily Mirror* (Feb. 2, 2017), <http://www.dailymirror.lk/article/MR-s-acolytes-want-old-regime-back-for-survival-CBK-123161.html#sthash.myvDXUy0.dpuf> (last visited Mar. 19, 2017).

to prosecute war heroes by bringing in foreign judges.²⁸ Mano Tittawella, head of the coordinating body designing TJ mechanisms, announced that the judicial mechanism would be sequenced last, with no definite timetable.²⁹

The one bright spot in implementation has been the Consultations Task Force (CTF) and the regional Zonal Task Forces, which received submissions from over 7,000 Sri Lankans on their aspirations for reconciliation and ideas for TJ. Among the many recommendations gathered from affected communities, the CTF's final report reiterated the need for a hybrid court with international judges and the prohibition of amnesties.³⁰ Rather than embrace the report, officials dismissed it and claimed "no confidence" in its findings.³¹

In February 2017, the High Commissioner concluded the government had "yet to present a sufficiently convincing or comprehensive transitional justice strategy to overcome the legacy of mistrust and skepticism left by a number of inconclusive ad hoc commissions and procedures."³² In July, the special rapporteur for counterterrorism and human rights Ben Emmerson concluded progress was "not only slow but seems to have ground to a virtual halt" and that "[n]one of the measures so far adopted ... are adequate to ensure real progress."³³

Only one TJ mechanism, the Office of Missing Persons (OMP), has enabling legislation in place.³⁴ It took eleven months for the President to place the OMP Act in an official gazette, and there are major constitutional hurdles before the OMP can begin its work.³⁵ There has been no movement on other mechanisms. As the High Commissioner noted, the government could have completed preliminary steps for accountability by now, such as incorporating international crimes into domestic law.³⁶

With so little progress to show, the government asked the UNHRC in March 2017 for a two-year extension. This again left human rights groups with a choice. Some call for Sri Lanka

²⁸ *When I regain power, I will return everything they stole: SLFP de facto leader Mahinda Rajapaksa*, Colombo Telegraph (Jan. 27, 2017), <https://www.colombotelegraph.com/index.php/when-i-regain-power-i-will-return-everything-they-stole-slfp-de-facto-leader-mahinda-rajapaksa/> (last visited Mar. 19, 2017).

²⁹ Open Dialogue with Civil Society, SCRM Takeaways (Sept. 20, 2016), http://imadr.org/wordpress/wp-content/uploads/2016/11/SCRM-Takeaways_Open-Dialogue-with-Civil-Society_20September2016.pdf (last visited Mar. 19, 2017).

³⁰ CTF Final Report, *supra* note 4, at pp. xviii, 173, 443-445.

³¹ *Statement by the Former Members of the Consultation Task Force on Reconciliation Mechanisms* (Mar. 15, 2017), available at <https://drive.google.com/file/d/0BxZMNxOUfVXZbDFWMU1NS315MnM/view> (last visited Mar. 19, 2017); *I have no confidence in the CTF: Wijeyadasa*, Daily Mirror (Jan. 6, 2017), <http://www.dailymirror.lk/article/I-have-no-confidence-in-the-CTF-Wijeyadasa-121817.html> (last visited Mar. 19, 2017).

³² Report of the Office of the U.N. High Commissioner for Human Rights on Sri Lanka, U.N. Doc. A/HRC/34/20, ¶ 12 (Feb. 10, 2017) (hereafter, "2017 High Commissioner Report").

³³ Human rights and counter-terrorism: Preliminary findings of the visit to Sri Lanka (Jul. 14, 2017), available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21883&LangID=E>

³⁴ 2017 High Commissioner Report, *supra* note 32, at ¶ 16; Concluding observations on the eighth periodic report of Sri Lanka, CEDAW Committee, U.N. Doc. CEDAW/C/LKA/CO8, ¶ 16(c) (Feb. 2017).

³⁵ Press Release, Centre for Policy Alternatives, *Importance of Adhering to the Constitutional and Legal Framework in the Establishment and Operationalizing of the Office of Missing Persons* (Jul. 24, 2017), available at <http://www.cpalanka.org/wp-content/uploads/2017/07/OMP-gazette-statement-.pdf>

³⁶ 2017 High Commissioner Report, *supra* note 32, at ¶ 23.

to now be referred to the ICC, but nothing suggests that dynamics have changed for a referral.³⁷ Continued engagement with the UNHRC and oversight by the High Commissioner appeared to offer the only available avenues to advance the TJ agenda. A two-year extension, granted in March 2017, will at least keep Sri Lanka on the UNHRC docket and international community's radar to put some pressure on the government to follow through on its TJ commitments.

Lessons Learned

Sri Lanka's experience offers some takeaways for human rights practitioners who seek justice in polarized post-conflict climates. First, practitioners should not compromise on justice where it is the cornerstone of the entire TJ project. In a country like Sri Lanka, marred by separatist armed conflict and entrenched impunity, accountability is not just one box in a TJ checklist. Instead, it is essential to help the Tamil minority believe that state institutions and courts will recognize them as equal rights-holders. Unless there is a *credible* accountability mechanism, Sri Lanka will struggle to move from its violent, divided past to a shared future grounded in the rule of law.

With Sri Lanka's history of failed domestic commissions, there is "considerable frustration, bitterness, and anger at yet another initiative," alongside yearning that this particular effort will be different.³⁸ As the CTF report notes, victims identify the persistence of impunity as "a key impediment to reconciliation," and in turn, accountability as a key confidence-building measure.³⁹ They have expressed "deep reservations about justice being sidelined as other mechanisms are developed and prioritized."⁴⁰ Sri Lanka's failure to deliver justice through domestic courts is what precipitated the need for international involvement in the first place and necessitates a hybrid court. The real risk is that Sri Lanka, a place that desperately *needs* accountability to meaningfully deal with its past, might be given a pass by the international community if it shows progress on other TJ goals.

Sri Lanka seems to be opting for a "truth first, justice later" approach, perhaps following guidance from U.N. advisors and TJ experts.⁴¹ But TJ in Sri Lanka is not part of a negotiated agreement (as was the case in South Africa or Colombia), and models that may work in other contexts may not in a place with so many past failures.⁴² Victims told the CTF in no unclear

³⁷ With changed leadership in the U.S. and U.K., it is possible that political realities are even less favorable now for an ICC referral or ad hoc tribunal.

³⁸ CTF Final Report, *supra* note 4, at p. ix.

³⁹ CTF Final Report, *supra* note 4, at p. x.

⁴⁰ Shreen Saroor, *Delivering On Sri Lanka's Promise Of Victim-Centered Transitional Justice*, Colombo Telegraph (Oct. 2, 2016), <https://www.colombotelegraph.com/index.php/delivering-on-sri-lankas-promise-of-victim-centered-transitional-justice/> [Saroor co-founded Women's Action Network, a coalition of eight women's organizations in the north and east working on behalf of war-affected women.].

⁴¹ See, e.g., Isabelle Lassee, *The Politics of Sequencing: A Threat to Justice?*, South Asian Centre for Legal Studies (Nov. 29, 2016), available at <http://sacls.org/resources/publications/reports/the-politics-of-sequencing-a-threat-to-justice-2> (last visited Mar. 23, 2017).

⁴² Mark Salter writes that TJ often involves political compromise, "with neither victims nor victors getting everything they want and quite possibly deserve." See Mark Salter, *Sri Lanka and the Politics of Justice*, openDemocracy (Oct. 14, 2015), <https://www.opendemocracy.net/mark-salter/sri-lanka-and-politics-of-justice> (last visited Mar. 20, 2017). While this may be true, it is likely not the proper function for *human rights groups* (as opposed to politicians) to make compromises on victims' rights to remedy.

terms that they “view accountability as a precondition for reconciliation”; a truth or reparations program unaccompanied by accountability will not be deemed acceptable.⁴³ If TJ in Sri Lanka is to be victim-centered and context-dependent, it must reflect this truth.

Second, human rights groups should explore pragmatic ways to engage on accountability. By pushing for a hybrid court, groups like CPA and SACLs made the government commit to robust benchmarks that an ICC-only strategy may not have achieved. Although the government has failed to deliver, those benchmarks set the framework for continued advocacy. Human rights groups can point to where Sri Lanka has fallen short on its own promises and press for more action. It was Rajapaksa’s failure to deliver on successive UNHRC commitments that led the UNHRC to authorize the OISL investigation in 2014. In 2017, as Sri Lanka sought to restore preferential trade status with the EU (GSP+) after losing it for its poor human rights record, some groups tried to condition return of GSP+ on full implementation of the 2015 UNHRC resolution.⁴⁴ Even where they are not met, benchmarks can advance incremental human rights advocacy.

Third, human rights groups should act quickly when space opens. When the unity government took office in January 2015, Sri Lankans were ready for change and welcomed the new rhetoric. Instead of seizing this opportunity, the U.N. delayed release of the OISL report, and the international community seemed preoccupied with downplaying accountability in a (misguided) attempt to prevent a Rajapaksa return. Given time and space, the unity government did little to sell the Sinhalese majority on TJ, and the same rhetoric of “war heroes” and “sovereignty” reemerged. Knowing that time is short, human rights groups should convey the need for urgency on accountability in places like Sri Lanka to experts who suggest sequencing justice last.⁴⁵

Fourth, human rights groups should clearly communicate their intentions to stakeholders as to *why* they continue to engage with a government that has made so little progress. In March

Furthermore, insofar as South Africa is held up as a model, its truth-for-amnesty compromise was supposed to be accompanied by prosecutions of those who did not accept amnesty and reparations for victims. In a 2016 interview with Groundviews editor Sanjana Hattotuwa, TJ expert Howard Varney cautioned that while South Africans found some truth through the TRC, viewed holistically, the state failed to deliver on its commitments for justice or reparations. *Interview: Prospects for Transitional Justice in Sri Lanka*, Groundviews (Apr. 16, 2016), <http://groundviews.org/2016/04/16/interview-prospects-for-transitional-justice-in-sri-lanka/> (last visited Mar. 22, 2017).

⁴³ CTF Final Report, *supra* note 4, at pp. 98, 111, 161-162, 174, 235-236.

⁴⁴ *Sri Lanka: Making Prompt and Concrete Progress on Rights Issues Vital to Regain GSP+ - EU*, Sri Lanka Brief (Mar. 14, 2017), <http://srilankabrief.org/2017/03/sri-lanka-making-prompt-and-concrete-progress-on-rights-issues-vital-to-regain-gsp-eu/> (last visited Mar. 19, 2017).

⁴⁵ Among the Sri Lankan human rights community, some question whether foreign TJ experts have sufficient understanding of efforts Sri Lanka has tried in the past in offering recommendations on sequencing and mechanism design. For example, experts who spoke at a 2016 event sponsored by the International Centre for Ethnic Studies drew lessons from truth commissions in other countries and suggested that truth-seeking could “represent a kind of justice.” Civil society pushed back on this notion, highlighting “commission fatigue” and asking how a new truth commission might succeed where past ones have failed. The experts offered only that live-streaming technologies could render this commission more accountable to the public and that civil society could play an important role—neither of which fully addressed the concern. See *The Relationship between Truth-Seeking and Prosecution*, International Centre for Ethnic Studies, pp. 5, 18-19 (May 2016), available at <http://ices.lk/publications/reports/the-relationship-between-truth-seeking-and-prosecution/> (last visited Mar. 20, 2017).

2017, the nationalist Tamil Civil Society Forum told Tamils that moderate human rights groups and the TNA were selling them out by engaging with the government and agreeing to a UNHRC extension. These groups in turn had to explain that they shared the Tamil community's frustrations and sought an extension as the best way to make the government keep its promises. Tensions among groups seeking accountability can divide victim communities, leaving them unsure of who to support and what position to take. If human rights groups engage with a government that makes little progress, they must explain to stakeholders their intentions and reasons for doing so.

There are other lessons, too. In Sri Lanka, bellicose talk of shielding “war heroes” from accountability is actually at odds with preserving the “honor” of the Sri Lankan armed forces. In co-sponsoring the 2015 UNHRC resolution, the Sri Lankan government acknowledged that accountability would shift blame from whole groups to individual perpetrators and thereby “safeguard the reputation of those, including within the security forces, who conducted themselves in an appropriate manner.”⁴⁶ To date, government officials have failed to make the public case for TJ. In this void, human rights defenders can try to build support by pointing out that accountability would *remove* the stain and safeguard honor.

Ultimately, without accountability, Sri Lanka's TJ project will not achieve its essential purpose. Practitioners who hold this belief can pragmatically engage with the government on TJ so long as they maintain that bottom line.

⁴⁶ 2015 UNHRC Resolution, *supra* note 24 (preamble).