



# Sri Lanka: Tangible Steps

September 2022

These are some tangible steps that the human rights bodies championed by the Sri Lankan Foreign Minister in Geneva could take, if serious. The list is by no means exhaustive.

GOVERNMENT OF SRI LANKA COMMITMENTS	SUGGESTED ACTIONS/CONDITIONALITY
<p><b>The Office on Missing Persons (OMP)<sup>1</sup></b></p>	
<p>Sri Lanka’s Foreign Minister Ali Sabry stated in September 2022 that the country had “<i>commenced the process of inquiry and verification, set up separate units on Tracing and Victim and Family Support, and acts as an Observer on relevant judicial proceedings.</i>” Please note Sabry was Minister of Justice from 2019-22.</p> <p>The UN Resident Coordinator Hannah Singer also said in 2022 “<i>more needs to be done to win the confidence of the families of victims and provide credible processes for addressing their grievances in accordance with international standards</i>”<sup>2</sup>.</p> <p>In Feb. 2022 the UN OHCHR report said, “<i>The two transitional justice structures established by the previous Government - the Office on Missing Persons (OMP) and the Office on Reparations (OfR) – continue to exist. However, they have struggled to achieve the confidence of victims, particularly following changes in their membership.</i>” A/HRC/49/9.</p> <p>In 2021 Journalists for Democracy in Sri Lanka (JDS) reported families have been asked to supply 20 documents as part of the inquiry<sup>3</sup>.</p> <p>In 2012, the Sri Lankan Government’s own Lessons Learnt and Reconciliation Commission (LLRC) also expressed its “<i>grave concern</i>” (para 4.318) about the number of alleged disappearances of LTTE cadres who had surrendered to the Sri Lanka Army at the end of the war. The LLRC again reminded the Sri Lankan Government of its duty to investigate (para 4.319).</p>	<p><b>18 May 2009 Enforced Disappearance- information needed from GOSL:</b></p> <ol style="list-style-type: none"> <li>1. Surrender List as requested by lawyers in the habeus corpus case to be obtained from 58 Division not the rehabilitation list;</li> <li>2. Ascertain which Army Divisions (and within that the specific battalions AND Special Force and Commando Regiment) were present at Wadduvakkal Bridge on 17,18 and 19 May 2009 (breaking the information down by each day). Who was in command of each unit at that time.</li> <li>3. Indicate command structure at that time (de facto or de jure) and locations on a detailed map of the war zone. To whom did the ground forces report in Colombo – especially when General Fonseka was abroad?</li> <li>4. Ensure each commander listed above in (2) be interviewed by the OMP, as requested by the families of victims re. what happened to the hundreds of people, including children, who surrendered? If not, why not? Have their bodyguards and communications assistants been interviewed?</li> <li>5. Interviews should include why there are photographs and videos of Tamil surrendeeds alive in army custody and then dead in army custody from that period, not to mention hundreds of eyewitnesses to the same.</li> <li>6. Can the SL Army supply the OMP a confidential list of Tamil informers who worked with the army to spot people at the Wadduvakkal bridge and make these people available for interview?</li> </ol>

<sup>1</sup> Statement by Hon. Ali Sabry Minister of Foreign Affairs of Sri Lanka at the Interactive Dialogue on the High Commissioner’s comprehensive report on Sri Lanka, (Geneva, 12 September 2022)

<sup>2</sup> <https://colombogazette.com/2022/08/30/un-says-more-needs-to-be-done-in-sri-lanka/>

<sup>3</sup> <http://www.jdslanka.org/index.php/news-features/politics-a-current-affairs/1058-sri-lanka-omp-calls-for-20-documents-to-search-for-the-disappeared>

	<ol style="list-style-type: none"> <li>7. In videos (C4 execution video inter alia) there are clearly visible faces of soldiers – can evidence be supplied to prove these photos have been run through army personnel data bases and what the findings were?</li> <li>8. Call records from 16-9 May 2009 from the CDMA phones used by Shavendra Silva and Kamal Gunaratne and Special Forces Commander Kodipilli and Military Intelligence at the frontline. Call records from defence secretary for those days.</li> <li>9. Attendance records for the Control Room in Colombo where commanders could watch drone and surveillance footage for 16-19 May.</li> <li>10. Vehicle logs from same period for transporting people to and from Omanthai and Joseph Camp. Army bus drivers’ rosta logs from same period.</li> <li>11. Which units were responsible for disposal of bodies at Wadduvakkal? Have they been interviewed by the OMP?</li> <li>12. Army video and still photographers – have their images from this period been requested by the OMP?</li> <li>13. Can the Army specify the procedures in place at war end to identify alleged LTTE suspects at the frontline? Were there lists of individuals being sought? On what basis were people identified and sorted?</li> </ol>
<p>The 2013 the domestic Paranagama Commission in Sri Lanka said inter alia that the country should launch a judicial-led inquiry into the white flag incident. (§450-60<sup>4</sup>).</p>	<p><b>White Flag Surrenders and Subsequent Disappearances (as a subset of 18 May cases)</b>  Apart from the above information also seek:</p> <ol style="list-style-type: none"> <li>1. Interviews with Minister Johnston Fernando, Basil Rajapaksa, Gotabaya Rajapaksa (ex US citizen), Mahinda Rajapaksa, Palitha Kohona (Australian Citizen), Satish Nambiar (UN), ex MP Rohan Chandra Nehru, and a range of diplomats involved in negotiations for the surrender<sup>5</sup>.</li> </ol>
<p><b>JVP Period</b>  Sri Lanka is talking about “a credible truth-seeking mechanism” (GOSL 2022) but it has conducted such a process for the JVP era and not acted on the perpetrator information with the result several politicians, military and police officials named were actually promoted, bolstering impunity more than if there had been no inquiry.</p> <p>One of the recommendations of the All Island Presidential Commission on Disappearances for example was that police records be handed over to</p>	<p><b>JVP era commissions:</b></p> <ol style="list-style-type: none"> <li>1. Publish the names in the confidential alleged perpetrator lists in the annexes to the 3 Zonal and one All Island Disappearance presidential commissions.</li> <li>2. Follow up on court cases initiated in 2000 onwards following from these Commissions. What is the status of these cases.</li> <li>3. Make public how many policemen and soldiers were promoted after credible allegations brought against them?</li> </ol>

<sup>4</sup> “Due to the seriousness of these allegations, the Commission has come to the conclusion that an independent judicial inquiry is necessary to establish the facts, determine responsibility and arrive at the truth.”

<sup>5</sup> <http://white-flags.org/>

<p>the Commission of Inquiry, and that the Criminal Investigation Unit be responsible for the safety of such information books and records</p>	<p>4. Lift the Official Secrets Act ban on releasing the commission's report annexes. The explanation for not acting at the time was the ongoing war against the LTTE which is no longer valid.</p>
<p><b>Draft 2022 UN Resolution</b> "stresses the importance of re-energising the Office on Missing Persons and the Office for Reparations."</p>	<p><b>OMP Lists:</b></p> <ol style="list-style-type: none"> <li>1. Organise OMP information in such a way that it focuses on location of disappearance not the family's current locations. Cluster the disappearances by location and date and cross reference these with army units where it involves surrender or an army camp/checkpoint. Establish the commanders of those units and interview them.</li> <li>2. Ensure the names collected by previous disappearance commissions are included in the OMP lists correctly so that evidence is not contaminated. Homogenise spellings across the languages and dates of disappearance<sup>6</sup>.</li> </ol>
	<p><b>Mass graves:</b></p> <ol style="list-style-type: none"> <li>1. Ensure the independence of the sample selection. Re-test Matale and the two Mannar mass grave samples.</li> </ol>
<p><b>OHCHR</b> said OMP "has not been able to trace a single disappeared person or clarify the fate of the disappeared in meaningful ways, and its current orientation is to expedite the closure of files".</p>	<ol style="list-style-type: none"> <li>1. Appoint credible staff on the OMP<sup>7</sup> without conflicts of interest and consult victims on these appointments. Do not include politicians or individuals from the security forces.</li> </ol>
<p><b>Criminal Accountability</b></p>	<ol style="list-style-type: none"> <li>1. Set up an office of an Independent Prosecutor as first recommended 25 years ago by a Sri Lankan commission of inquiry in 1997 to institute prosecutions with necessary legal safeguards to ensure independence.</li> <li>2. Enact legislation to criminalize war crimes, crimes against humanity, genocide and enforced disappearances, without statute of limitation. Enact various modes of criminal liability, notably command or superior responsibility.</li> </ol>
<p><b>"The Office for Reparations (OR)</b> continues to deliver on its mandate, and the recently adopted National Reparations Policy and Guidelines have expanded the work of the Office beyond monetary compensation, to other forms of support." GOSL 2022</p> <p>LLRC in 2011 called for "a collective act of contrition".</p>	<ol style="list-style-type: none"> <li>1. Nullify the Political Victimisation Commission fundings.</li> <li>2. Issue a clear statement saying that the political victimisation commission is not going to issue reparations to politicians and civil servants accused of corruption under the "good governance" period;</li> </ol>

<sup>6</sup> [https://itjpsl.com/assets/ITJP\\_briefing\\_note3-ENGLISH-FINAL.pdf](https://itjpsl.com/assets/ITJP_briefing_note3-ENGLISH-FINAL.pdf)

<sup>7</sup> Upali Abeyratne is one of these members, and Amnesty highlighted how Abeyratne "...served as the chairman to the Presidential Commission of Inquiry on Political Victimization, when the Commission attempted to interfere in the prosecution of state actors accused of enforced disappearances".

<https://www.tamilguardian.com/content/still-no-answers-amnesty-international-highlights-struggle-tamil-families-disappeared>

	<ol style="list-style-type: none"> <li>3. Issue reparations to all who have a rehabilitation certificate on the grounds they were subjected to arbitrary detention, including those abroad (<i>see below regarding an apology</i>)</li> <li>4. Investigate the role of IOM in the rehabilitation programme where torture occurred and those released were abducted and detained again.</li> <li>5. Reparations for Muslim families whose loved ones were forced to be cremated during Covid.</li> <li>6. Initiate action to seek a Supreme Court review of the decision in the Singarasa case<sup>8</sup> to affirm the applicability of international human rights treaties in domestic law and reinstate the competence of the UN Human Rights Committee to consider individual complaints (OISL 2015).</li> <li>7. Award each family a grant to reconstruct the tomb stones deliberately destroyed by the Army (which is a war crime) in the fashion the individual family chooses. (<i>see right to mourn below</i>).</li> <li>8. OISL said in countries where there is a significant Tamil population, carry out an assessment of needs for psychosocial support for those who have been victims of violations and as necessary fund the development of such services.</li> </ol>
<p><b>Commission to Investigate Allegations of Bribery and Corruption (CIABOC)</b></p>	<ol style="list-style-type: none"> <li>1. Appoint credible individuals to the CIABOC – there are 3 commissioners in charge – one is Deepali Wijesundara sentenced journalist JS Tissainayagam to 20 years rigorous imprisonment - a writer Obama heralded as a prisoner of conscience who is now in the USA; another is CN Wakishta of TID (see ITJP dossier on his command role in torture); the third is reported to be close to the Rajapaksas.</li> <li>2. Charge the ex FCID director Ravi Waidyalankara for his alleged role in Edward Rienzie case, arrest Rienzie and extradite him and his money laundered assets to US.</li> <li>3. Suspend from service (rather than promoting) the secretaries of ministries investigated and in some cases, charged under the 2015-19 government. Make this a condition of loans.</li> <li>4. Overturn the Political Victimsation Commission ruling on Nishanka Senadhipatti because he wasn't a civil servant.</li> </ol>

	<p>5. Investigate/charge Sri Lankan Airlines accused of taking a \$2m bribe - Priyanka Niyomali Wijenayaka, the wife of the CEO of Sri Lankan Airlines, Kapila Chandrasena<sup>9</sup>.</p>
<p><b>Office for National Unity and Reconciliation (ONUR)</b></p> <p>LLRC: “Cinema, TV and stage drama, productions that highlight commonalities and mutual understanding between communities should be encouraged and disseminated specially for the benefit of the younger generation.”</p> <p>“The process of reconciliation requires a full acknowledgement of the tragedy of the conflict and a collective act of contrition by the political leaders and civil society, of both Sinhala and Tamil communities.” §9.284, LLRC, 2011.</p>	<p>1. Broadcast C4 Killing Fields in Sinhala and Silenced Voices on SLRC and ITN.</p> <p>2. Immediately cease the “rehabilitation” programme forthwith because it has been tainted by torture and illegal detention.</p> <p>3. As UN WGAD said, offer an apology to rehabilitees for arbitrary detention and reparations. Including thousands now abroad.</p> <p>4. Disband the C/TID.</p> <p><b>Right to Mourn</b></p> <p>5. Former LTTE cemeteries that were bulldozed –allow bereaved families to restore those where the land is still there and in other sites built over to extract and preserve the remains of their loved ones.</p> <p>6. 18 May anniversary of war end – enable Tamils to exercise right to mourn without fear and have international observers present to ensure people are not picked up after events.</p> <p><b>De-militarise</b></p> <p>7. Issue and edit and enforce it that no military officers will attend civilian functions (sporting and cultural for example) in the North East in their official capacities.</p> <p>8. Ensure <i>grama sevakas</i> are the ones who give permission for village level cultural and sporting events not the military and ensure military officers are not working in or influencing the operation of civilian bodies like the katcheri offices in North and East.</p> <p>9. Stop military backed building of new Buddhist temples on top of Hindu archaeological and devotional sites.</p> <p>10. Prioritize the return of private land which has been occupied by the military and end military involvement in civilian activities. Hand over ownership to local people of military run businesses in the former conflict areas.</p>

<sup>9</sup> **UK Court Judgement**

In January 2020, Southwark Crown Court in London fined Airbus a record \$3 million in penalties for paying bribes for contracts in 20 countries. Among them was the payment of a bribe of \$2 million allegedly to Priyanka Niyomali Wijenayaka, the wife of the CEO of Sri Lankan Airlines Kapila Chandrasena. The court judgement said she had been offered up to \$16.84 million in 2013 to influence SLA’s purchase of 10 Airbus aircraft and the lease of an additional 4 aircraft but only \$2 million was paid. After the UK court judgement, in Feb. 2020 Kapila Chandrasena and his wife Priyanka Niyomali Wijenayaka were briefly arrested in Sri Lanka and then released a month later on bail.

	<p><b>Publish Previous Inquiries</b></p> <ol style="list-style-type: none"> <li>11. Publish the 1991 and 1992 Premadasa or Wijetunga Commissions looking into disappearance.</li> <li>12. Make public the findings of the investigation process for the Sri Lankan peacekeepers repatriated from Haiti. Respond to UNCAT's queries about this issue.</li> <li>13. Publish all unpublished reports of the many human rights-related commissions of inquiry, the Presidential Commission on the Missing, and the Army Court of Inquiry into civilian casualties.</li> </ol> <p><b>Bar from Public Office</b></p> <ol style="list-style-type: none"> <li>14. Stop appointing Douglas Devananda who is named in the UN OISL report as an alleged perpetrator as a Minister in every government.</li> <li>15. Likewise, Karuna, Pilliyan and Inyabharati should be vetted and not allowed to hold public positions.</li> </ol>
<b>The Human Rights Commission of Sri Lanka (HRCSL)</b>	<ol style="list-style-type: none"> <li>1. Share all of its casefiles with UN SLAP, including on killings, torture, abductions, sexual violence and other violations.</li> <li>2. Publish the names of all soldiers being deployed abroad for peacekeeping.</li> <li>3. Publish Digana violence report.</li> <li>4. Publish post-Easter Sunday anti Muslim violence report.</li> <li>5. Publish findings of 9 May 2022 violence inquiry.</li> </ol>
<b>National Dialogue</b>	<ol style="list-style-type: none"> <li>1. No need for more consultation, rather adopt the Consultation Task Force recommendations.</li> </ol>
<b>Truth Commission</b>	<ol style="list-style-type: none"> <li>1. Comply with the Updated Principles to Combat Impunity, and implement a comprehensive holistic transitional program including the four pillars: a truth commission, a hybrid court, appropriate reparations and institutional reform including security sector reform if it is to have any validity.</li> <li>2. Awareness programs including survivor needs to be live telecast in 3 languages and online live so that diaspora communities can access and participate. That would require investment now in simultaneous translation skills.</li> </ol>
<p><b>Security Sector Reform</b></p> <p><i>These are some suggested goodwill initial steps, not comprehensive reform.</i></p>	<ol style="list-style-type: none"> <li>1. Vetting and screening of army officials active in Haiti (2004-7) as well as in the final phase of the war in north or east, including logistics support and command. Include those in command responsibility roles outside the war zone and those who failed to investigate</li> </ol>

	<p>allegations (legal department of Army for example).</p> <ol style="list-style-type: none"><li>2. Publish full names, ranks of peacekeepers going abroad to demonstrate transparency regarding the vetting process.</li><li>3. Nobody who is explicitly/implicitly named in OISL report to remain in office and promoted to other positions, with particular reference to Shavendra Silva, Kamal Gunaratne, Suresh Sallay, and other implicated persons.</li><li>4. Nobody credibly implicated in corruption allegations/investigations to be appointed until they have cleared their name in a credible judicial process.</li><li>5. Reduction of defence budget.</li><li>6. Reduction of defence personnel.</li><li>7. Demilitarisation of police command roles.</li><li>8. Scotland Yard have been invited to assist with the Easter Sunday bombing investigation – invite them to review the Trincomalee Gunsite investigation as one of the emblematic cases.</li></ol>
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