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Поощрение и защита всех прав человека, гражданских, политических, экономических, социальных и культурных прав, включая право на развитие

Последующие меры в связи с посещениями Бурунди, Соединенного Королевства Великобритании и Северной Ирландии и Шри-Ланки

Доклад Специального докладчика по вопросу о содействии установлению истины, правосудию, возмещению ущерба и гарантиям неповторения Фабиана Сальвиоли* **

Резюме

Специальный докладчик по вопросу о содействии установлению истины, правосудию, возмещению ущерба и гарантиям неповторения Фабиан Сальвиоли представляет настоящий доклад, подготовленный по итогам официальных визитов, совершенных его предшественником в Бурунди (2014 год), Соединенное Королевство Великобритании и Северной Ирландии (2015 и 2016 годы) и Шри-Ланку (2017 год).

В нем Специальный докладчик оценивает ход выполнения рекомендаций, содержащихся в докладах о посещениях стран, и рассматривает сопутствующие события, произошедшие после визитов. Эта оценка призвана стать для государств, гражданского общества и других ключевых заинтересованных субъектов полезным справочным материалом, посвященным достигнутому прогрессу и областям, требующим дальнейшей разработки.

* На основании достигнутой договоренности настоящий доклад издается позднее предусмотренного срока его публикации в связи с обстоятельствами, не зависящими от представляющей доклад стороны.

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Annex

Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Fabián Salvioli on his visits to Burundi, the United Kingdom of Great Britain and Northern Ireland and Sri Lanka

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I. Introduction

1. Pursuant to Human Rights Council resolution 36/7, the Special Rapporteur on the promotion of justice, reparation and guarantees of non-recurrence, Fabián Salvioli, submits the present report in follow-up to the official visits undertaken by his predecessor, Pablo de Greiff, to Burundi (2014), the United Kingdom of Great Britain and Northern Ireland (2015 and 2016) and Sri Lanka (2017). In the report, the Special Rapporteur provides an assessment of the status of implementation of the recommendations contained in the reports on those visits and considers related developments that have taken place since the visits.

2. To gather input for the report, in December 2020 the Special Rapporteur sent questionnaires to the States concerned and other relevant actors, including United Nations entities and national human rights institutions. He also issued an open call for submissions, requesting input from civil society and other interested actors. Official replies were received from the United Kingdom of Great Britain and Northern Ireland and 14 civil society and national human rights institutions. These submissions, together with information provided by United Nations bodies and civil society, as well as desk-based research, form the basis for the present report.

3. The Special Rapporteur thanks all those who responded to his call for input for the report, which is intended as a useful reference for States, civil society and other key stakeholders and was prepared in recognition of the importance of continuity in the discharge of the mandate.

II. Follow-up on the visit to Burundi

4. The Special Rapporteur regrets that he has not received a response from the Government of Burundi to the questionnaire sent in preparation for the present report. Comments to the present report were received on 8 July 2021.

5. The former Special Rapporteur visited Burundi from 8 to 16 December 2014, at the invitation of the Government, and presented his report on that visit to the Human Rights Council in September 2015.¹ In the present report, the Special Rapporteur assesses the status of implementation of the transitional justice measures recommended in that report. He notes the turbulent events that have taken place in the country since the visit and the challenges involved in assessing compliance with those recommendations. However, the lack of progress on most key aspects, compounded by actions and omissions of the Government that have undermined those recommendations and accelerated the erosion of accountability and the rule of law, are cause of ever-deepening concern.

6. The decision taken by the incumbent President in 2015 to run for a third term resulted in widespread protests, which were in turn met with violent police and military repression using disproportionate force, including killings, arbitrary arrests and severe limitations on freedom of expression and peaceful assembly. In the ensuing months, widespread violence led to serious and systematic human rights violations. A coup d'état was attempted in April 2015.²

7. The former Special Rapporteur conducted another visit to Burundi in March 2016, as part of the independent investigation on Burundi carried out pursuant to Human Rights Council resolution S-24/1 to investigate violations and abuses of human rights in the country. In the final report, issued in September 2016,³ the investigating team noted the pattern of gross human rights violations committed primarily by State agents and those linked to them and the pervasive impunity, and called for the establishment of independent international judicial processes to bring the alleged perpetrators to justice.

¹ A/HRC/30/42/Add.1.

² See communications BDI 3/2015, BDI 5/2015 and BDI 7/2015. All communications cited in the present report are available at <https://spcommreports.ohchr.org/Tmsearch/TMDocuments>.

³ A/HRC/33/37.

8. In September 2016, the Human Rights Council adopted resolution 33/24, by which it created the Commission of Inquiry on Burundi with a mandate to conduct investigations into human rights violations and abuses committed in Burundi since May 2015. In its first report to the Council, the Commission of Inquiry determined that gross and systematic human rights violations had been perpetrated in Burundi since April 2015, mostly by State agents at the highest levels, some of which may constitute crimes against humanity.⁴

9. In November 2018, the Government revised the mandate of the Truth and Reconciliation Commission to cover the colonial period. In parallel, the composition of the Commission changed to include a majority of Commissioners with close political ties to the Government, which the Government argues does not represent a problem due to the Commissioners' impartiality. In a 2019 progress report, the President of the Commission indicated that 142,505 Burundians had been killed or had gone missing from the time of independence in 1962 to the end of the civil war in December 2008. It has also located thousands of mass graves across the country and exhumed many thousands more bodies. Early in 2020, the Commission had exhumed human remains from mass graves in Kamenge dating back to the crisis in 1993–1996, as well as the remains of 6,032 victims, mostly Hutu officials, killed in massacres committed in 1972 in Ruvubu, Karuzi Province. In mid-July 2020, the President of the Commission announced that the remains of over 10,000 people had been exhumed. The Commission has been criticized for focusing mainly on the excavation of sites dating to the 1972 crisis, the main victims of which are known to have been members of the Hutu ethnic group, and for including few victims of Tutsi ethnicity in its investigations. The Commission has responded by emphasizing that all ethnic groups were represented among both the perpetrators and the victims and that the exhumations were still in progress. Furthermore, the Government has said that the Commission will address all violations and that it started with those committed in the 1970s due to the advanced ages of the witnesses and the victims. While acknowledging the progress made by the Commission in identifying and exhuming the remains of thousands of people, the Special Rapporteur recalls the need to ensure ethnic balance in the investigations. He notes with concern the reported political affiliation of Commission members and recalls that truth commissions must not only be independent but be perceived as such by stakeholders. Trust in transitional justice processes is vital for their sustainability and for reconciliation.

10. On 28 February 2019, the Office of the United Nations High Commissioner for Human Rights (OHCHR) closed its office in Burundi upon the request of the Government. This put an end to a programme that had supported Burundi in different areas for over 23 years. There is an urgent need for the Government to reconsider its decision and invite OHCHR to re-establish its presence in the country.

11. In May 2020, the electoral process was reportedly marked by serious human rights violations, including killings, beatings, arbitrary detentions and restrictions to public freedoms, mainly targeting opposition party members and independent journalists.⁵ The Commission of Inquiry on Burundi has concluded, in its most recent report, that there were reasonable grounds to believe that serious human rights violations had been committed in the context of the 2020 electoral process.⁶ The Commission of Inquiry again identified the main perpetrators as Imbonerakure members, local administrative officials, police officers and agents of the national intelligence service, all of whom continue to enjoy near total impunity.⁷

12. The Special Rapporteur notes the progress made in exhuming the remains of victims but regrets, however, the failure to make headway on other aspects of the transitional justice agenda recommended in the visit report, particularly accountability, reparations, land restitution and security and justice sector reform.⁸ Moreover, he regrets the failure to prosecute the alleged perpetrators of the serious violations committed since 2015, many of whom hold senior positions in the Government or within the Imbonerakure. He calls on the

⁴ A/HRC/36/CRP.1/Rev.1 (in French only).

⁵ See www.hrw.org/news/2020/06/01/burundi-intimidation-arrests-during-elections. See also A/HRC/45/CRP.1, para. 49 (in French only).

⁶ A/HRC/45/CRP.1, para. 783.

⁷ Ibid.

⁸ Ibid.

Government to take immediate action to end impunity and ensure redress for victims and their families, in compliance with its international obligations.

Table 1

Burundi: status of implementation of recommendations

<i>Recommendations contained in A/HRC/30/42/Add.1</i>	<i>Status</i>
The Special Rapporteur urges the Burundian authorities to refrain from using transitional justice initiatives as instruments of “turn-taking”, but instead, together with the whole Burundian society, develop and implement measures that genuinely redress past massive violations, and devise effective strategies to prevent the recurrence of such violations (para. 108)	Not implemented. The failure of the authorities to bring an end to the continuing violence and human rights violations in Burundi is of deep concern. Impunity for serious violations remains endemic, with a few exceptions reported recently. ⁹
Recalling the importance of the Arusha Agreement and the 2005 Constitution with regard to truth-seeking, the Special Rapporteur calls upon the Truth and Reconciliation Commission: To prioritize the establishment of facts and to refrain from using the pardon procedure in ways that would impede the clarification of facts or criminal prosecutions (para. 109 (a) (i))	Partially implemented. The Truth and Reconciliation Commission has focused on the exhumation of remains from mass graves and paid little attention to other truth-telling aspects, justice, reparations and guarantees of non-recurrence.
To recruit civil society representatives specialized in human rights to its staff and to involve civil society and victims in its work, highlighting the importance for the Commission (para. 109 (a) (ii))	Not implemented. Civil society representatives have not been recruited. Families have reportedly not been consulted, including in connection with the remains of their loved ones.
To utilize the expertise of the international Advisory Council in substantive matters and to allow the Council to exercise its functions unhindered (para. 109 (a) (iii))	Not implemented. An advisory council has not been established.
To conduct targeted training on gender issues for Commissioners and staff and to ensure that a gender perspective is adequately mainstreamed into its work (para. 109 (a) (iv))	Not implemented./No progress reported.
The Special Rapporteur calls upon the Commissioners, against the complicated background of the selection process, to work with independence and impartiality for the benefit of the whole of Burundian society (para. 109 (b) (v))	Not implemented. In November 2018, the composition of the Commission changed to include a majority of Commissioners with close political ties to the Government, which has eroded its credibility. The Commission has been criticized for mainly focusing its investigations on Hutu victims.

⁹ A/HRC/45/CRP.1, paras. 159–160, 291 and 569–577. See also https://trialinternational.org/wp-content/uploads/2020/12/Burundi_Overview-of-the-judicial-system_short-version_202012_EN.pdf.

<i>Recommendations contained in A/HRC/30/42/Add.1</i>	<i>Status</i>
The Special Rapporteur calls upon the relevant State bodies to expedite the adoption of a victim and witness protection framework, attentive to the protective needs arising from the activities of State and non-State actors (para. 109 (c))	Partially implemented. A law for the protection of victims and witnesses in judicial proceedings and those engaging with the Truth and Reconciliation Commission was promulgated (Law No. 1/04 of 26 June 2016), but was not publicized. It is not clear whether a victim protection unit has been set up under the Commission, as provided by the law, nor whether any victims or witnesses have benefited from protection.
The Special Rapporteur calls upon the Government to allocate sufficient resources throughout the mandate of the Commission to enable it to work independently and efficiently (para. 109 (d))	Not implemented./No progress reported. It is unclear whether resources have been provided.
Regarding justice initiatives, the Special Rapporteur urges the Government: To immediately resume discussions, without waiting for the Truth and Reconciliation Commission to complete its work and with the participation of civil society, including victims, on proposed concrete models for a judicial mechanism to prosecute genocide, crimes against humanity, war crimes or other gross human rights violations or serious violations of international humanitarian law (para. 110 (a))	Not implemented.
To revisit the current interpretation and application of the regime of “temporary” immunities in order to remove legal and practical obstacles to the prosecution for past massive violations, in accordance with the framework agreements (para. 110 (b))	Not implemented. The Government maintains its position that judicial prosecutions would start only after the Truth and Reconciliation Commission has concluded its mandate. The Commission has a four-year renewable mandate without limitation. Its mandate was extended most recently in 2018.
To immediately undertake preparatory work for judicial investigations and prosecutions for past massive violations in the framework of a prosecutorial strategy that pays special attention to sexual and gender-based violence and safeguards the independence and impartiality of the prosecutors (para. 110 (c))	Not implemented. Effective prosecution for past massive violations has not taken place.
To allocate adequate resources for documentation and the provision of specific training for investigators on forensic investigation and sexual and gender-based violence (para. 110 (d))	Not implemented./No progress reported.
In the area of reparations, the Special Rapporteur: Reiterates the need for both the National Commission on Land and Other Assets and the Special Court to function in an	Not implemented. It has been reported that the management of land restitution is affected by widespread

Recommendations contained in A/HRC/30/42/Add.1

Status

independent and impartial manner, free from all discriminatory ethnic or political motivations or objectives (para. 111 (a))

corruption and interference by State officials and members of the ruling party.

Calls for broader land reform to overcome pre-existing patterns of discrimination and, in that respect, increase access to land by women through a comprehensive revision of existing legislative provisions on inheritance rights, registration and titling (para. 110 (b))

Not implemented./No progress reported.

Calls upon the Truth and Reconciliation Commission to initiate discussions, with the involvement of civil society, including victims, on a feasible comprehensive reparation programme, with specific attention to health and education (para. 110 (c))

Not implemented.

No process for a reparations programme has been initiated, nor has there been any involvement of victims and civil society organizations in such a process.

Calls for the set-up of immediately available victim assistance programmes dedicated to the most vulnerable groups (para. 110 (d))

Not implemented./No progress reported.

With regard to guarantees of non-recurrence, the Special Rapporteur recommends that the authorities in the area of the security sector:

Not implemented.

Ensure that reform is linked to justice, taking into account the legacies of past violations by security institutions (para. 112 (a) (i))

Security sector reform and its effective oversight remain unachieved.¹⁰ The security forces continue to be implicated in violence and gross violations of human rights and humanitarian law.

Enhance the capacity of the security sector, in particular the police and the national intelligence service, to fully understand their roles with respect to the population and the roles of civil society and the media (para. 112 (a) (ii))

Not implemented./No progress reported.

Strengthen constitutional civilian oversight bodies, such as the Ombudsman and the independent National Human Rights Commission, and address, as a matter of priority, the enormous deficiencies in civilian oversight, in accordance with the Constitution, of the national intelligence service (para. 112 (a) (iii))

Partially implemented.

The National Human Rights Commission has taken steps to address human rights concerns, with capacity-building, technical and financial support from OHCHR. The current Ombudsman is reportedly a close ally of the ruling party and is known for his hostile attitude towards the political opposition, which has undermined the credibility of the ombudsman institution.

Strengthen coordination and interaction of internal oversight bodies, including the Inspector General of Public Security, with formal and informal civilian oversight mechanisms, including civil society organizations (para. 112 (a) (iv))

Not implemented./No progress reported.

¹⁰ A/HRC/45/CRP.1.

<i>Recommendations contained in A/HRC/30/42/Add.1</i>	<i>Status</i>
Address overlaps in the structure of national police roles and responsibilities, especially between the Ministry of Public Security and the Directorate General of the Police (para. 112 (a) (v))	Not implemented./No progress reported.
Ensure adequate space for informal accountability mechanisms provided by civil society, the media, human rights and non-governmental organizations (para. 112 (a) (vi))	Partially implemented. The civic space has dramatically shrunk since 2015. Independent civil society and media organizations have been suspended or shut down, and their members criminalized. Some were authorized to resume operations in 2021.
Continue efforts to professionalize the security sector through structured and coordinated training programmes in human rights for the security forces, particularly the police force and the national intelligence service, with an emphasis on recognition of the legacies of past violations by security institutions (para. 112 (a) (vii))	Not implemented. There is no information on efforts to professionalize and provide human rights training to this sector.
Pending comprehensive reform, take targeted first steps in the area of vetting, including a census and registration programme for screening past human rights records, and consider linking such programme with recruitment and promotion procedures, in accordance with due process standards (para. 112 (a) (viii))	Not implemented. There is no information on efforts to vet the security forces. Personnel accused of human rights violations remain in the force.
The Special Rapporteur recommends that the authorities in the area of judicial reform:	Not implemented.
Publish in full the results and deliberations of the Estates General on Justice and implement the planned follow-up mechanisms (para. 112 (b) (i))	
Revisit constitutional and legislative provisions to embody respect for the principle of the separation of powers among the three branches of power, thereby strengthening the independence of the judiciary and guaranteeing judicial self-regulation, in law and in practice (para. 112 (b) (ii))	Not implemented. The judiciary remains compromised and lacks independence, which affects access to remedy and discourages victims from filing claims. ¹¹
Review the composition of the Superior Judicial Council to shield it from control by the executive over the judicial branch through appointments, promotions and disciplining procedures, and vest the Superior Judicial Council with enhanced competencies over all procedures that govern the career of magistrates (para. 112 (b) (iii))	The information available is insufficient to assess progress. The Government reported that the Superior Judicial Council was reorganized but did not provide details.

¹¹ A/HRC/45/CRP.1, paras. 153, 570 and 573.

<i>Recommendations contained in A/HRC/30/42/Add.1</i>	<i>Status</i>
Increase the annual budget for the judiciary and review relevant legislation to ensure judicial financial autonomy (para. 112 (b) (iv))	Not implemented./No progress reported.
The Special Rapporteur recommends that the authorities in the area of legal empowerment redouble efforts to ensure access to justice for all; and civil society is encouraged to expand initiatives to strengthen legal empowerment of the population, including through legal aid projects for the most vulnerable (para. 112 (c))	The information available is insufficient to assess progress. The Government provided information on the reinforcement of the legal aid programme, the correction of ethnic and gender imbalances in the judiciary and the rehabilitation of local justice but did not provide details.
The Special Rapporteur recommends that the authorities in the area of history, memorialization and archives: Review the history curricula in order to foster dialogue and social cohesion; review and incorporate past initiatives on rewriting the contemporary history of Burundi (para. 112 (d) (i))	Not implemented. Events since 1962 are reportedly not included in official school history programmes.
Promote citizen-led initiatives in the area of memorialization by guaranteeing even-handed support for such initiatives (para. 112 (d) (ii))	Not implemented. The authorities have not adopted meaningful and effective measures to promote memorialization and a deeper understanding of the country's past.
Put in place immediate measures to locate and preserve mass graves and other burial sites, and establish relevant legal protocols or procedures (para. 112 (d) (iii))	Partially implemented. The Truth and Reconciliation Commission has located thousands of mass graves across the country and exhumed many thousands more bodies, mostly related to Hutu victims.
Start mapping mass burial sites throughout the country, drawing on the knowledge of civil society (para. 112 (d) (iv))	
Establish a policy on national archives, in accordance with the right to know the truth about past violations, and seek international expertise to assist in the development of such a policy (para. 112 (d) (v))	

III. Follow-up on the visit to the United Kingdom of Great Britain and Northern Ireland

13. The former Special Rapporteur visited the United Kingdom of Great Britain and Northern Ireland from 9 to 18 November 2015 at the invitation of the Government. He visited Belfast again from 16 to 18 May 2016. He presented his report on that visit to the Human Rights Council in March 2017.¹² In the present report, the current Special Rapporteur assesses the status of implementation of the recommendations made by his predecessor. The Special

¹² A/HRC/34/62/Add.1.

Rapporteur wishes to thank the Government for its response to his request for information in the preparation of the present report.

14. The Stormont House Agreement was concluded in December 2014 between the Governments of Ireland and the United Kingdom and political parties in Northern Ireland. The Agreement established a framework for dealing with the legacy of the period of violence commonly known as “the Troubles” in Northern Ireland and outlined four new institutions: an independent historical investigations unit, to pursue pending investigations into Troubles-related deaths; an independent commission on information retrieval, to help family members obtain information about the Troubles-related deaths of their relatives; an oral history archive, to enable people from all backgrounds to share experiences related to the Troubles; and an implementation and reconciliation group, to promote reconciliation and assess the implementation of the other legacy institutions proposed in the Agreement.

15. In 2018, the Northern Ireland Office conducted a public consultation aimed at providing information to and supporting the establishment of these institutions. That exercise elicited some 17,000 responses and formed the basis of a summary report prepared by the Northern Ireland Office as input and advice to the Government of the United Kingdom. On 9 January 2020, the Minister for Foreign Affairs and Trade of Ireland and the United Kingdom Secretary of State for Northern Ireland published the *New Decade, New Approach* deal to restore devolved government in Northern Ireland. In the document, the Government of the United Kingdom committed itself to publishing and introducing, within 100 days, legislation in Parliament to implement the Stormont House Agreement, to address Northern Ireland legacy issues.¹³ The deal was tabled at Stormont House for the political parties in Northern Ireland to consider and agree.

16. However, following a change of government in the United Kingdom, on 18 March 2020 the Secretary of State for Northern Ireland issued a written ministerial statement outlining the Government’s new approach to addressing the legacy of the past in Northern Ireland. The statement represents a significant departure from the *New Decade, New Approach* deal, in particular in regard to access to justice for the families of persons killed in connection with the Troubles. The statement prioritizes the sharing of information with families who lost their loved ones in the Troubles over accountability. According to the statement, only cases in connection of which there was a realistic prospect of prosecution, as a result of new compelling evidence, would be the subject of a full police investigation.

17. In April 2020, the Northern Ireland Human Rights Commission wrote to the Secretary of State for Northern Ireland expressing concern that such an approach was not compatible with the human rights obligations of the United Kingdom, in particular with article 2 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), on the right to life. In December 2020, the Committee of Ministers of the Council of Europe expressed profound concern about the fact that the Government of the United Kingdom had not provided any details in response to the Committee’s request for information on the approach set out in the ministerial statement of 18 March 2020, in particular on how the proposal complied with the obligations set out in article 2 of the European Convention on Human Rights. In its submission for the present report, the Government of the United Kingdom informed the Special Rapporteur of its commitment to reforming the current approach to addressing Northern Ireland legacy issues. In its view, the outcome of the 2018 consultations indicated that additional work was needed to address the legitimate concerns of those who had responded to the consultations.

18. The Special Rapporteur notes that the economic, social and political root causes of the violence have received relatively modest attention in the efforts of the Government of the United Kingdom to deal with the turbulent past of Northern Ireland. While the Government emphasized, in its submission, its commitment to facilitating assessments of cross-cutting thematic issues, it appears that so far most of that work has been carried out by civil society without much government support. Moreover, at the political and community levels, such

¹³ See https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/856998/2020-01-08_a_new_decade__a_new_approach.pdf, p. 48.

independent research has sometimes been met with mixed responses given that often priority has been given to political viewpoints rather than to objective analysis.

19. The Government does not appear to have taken significant steps to address the concerns outlined in the country visit report regarding the paucity of comprehensive data on the prosecution of State and non-State actors involved in the conflict. The Government has declared that most of the obstacles to progress are related to the passage of time and disputes over the responsibility for alleged crimes.

20. In his report, the former Special Rapporteur expressed concern that the United Kingdom was consistently claiming the right to prevent disclosure of “sensitive information” under the pretext that this could endanger the lives of informants and undermine national security. In the written ministerial statement of 18 March 2020, the Government proposed setting up a new body to manage the recovery of information and investigations. However, the mandate of the independent commission on information retrieval proposed under the Stormont House Agreement already contained provisions citing national security as grounds for redacting reports provided to families. The Government has not specified how the mechanism proposed in the written ministerial statement would manage information recovery and disclosure, and how and to what extent national security grounds would be used for the purpose of removing or redacting information. While national security may in some instances provide valid reasons for non-disclosure, it is imperative that such measures be the exception and kept at an absolute minimum. It is also essential for any such procedures to provide for an effective appeal mechanism to allow for decisions of non-disclosure to be challenged. The Government has asserted that the public-interest immunity process only allows for the redaction of information that poses a real risk of serious harm to an important public interest. The decision of whether to invoke such immunities rests ultimately with the judge, not with the executive branch. The Special Rapporteur wishes to reiterate that national security can only be served within the limits of the law, with effective means of redress in place allowing for breaches of human rights obligations to be addressed.

21. The Special Rapporteur’s attention has been drawn to concerns regarding government plans to introduce a statute of limitations for serious human rights violations. The House of Commons Defence Committee issued a report in 2017 recommending the enactment of a statute of limitations covering all Troubles-related incidents involving former armed forces and occurring prior to the signing of the Good Friday Agreement.¹⁴ In May and July 2021, the Government of the United Kingdom announced that it would introduce a “legacy package” focusing on information recovery and reconciliation and ending the “cycle of investigations”. The package would effectively ban conflict-related prosecutions under a statute of limitations, end criminal cases currently before the courts, end conflict-related police and ombudsman police investigations and coronial inquests, preclude victims’ claims in civil courts and create, instead, an “information recovery body”.¹⁵ The Special Rapporteur expresses deep concern about the proposed plan, which would provide blanket impunity for grave human rights violations and thwart victims’ right to truth and justice, placing the United Kingdom in flagrant violation of its human rights obligations.

22. It is also regrettable that the institutions envisaged under the Stormont House Agreement have not been given any specific competences to ensure that the rights of women and girls are duly represented and that a gender perspective is adopted. The recognition of the severe and specific harm suffered by women and girls during the conflict, including violence and threats of violence, as well as social and economic marginalization and discrimination, is imperative. Addressing violence against women and girls and integrating a gender perspective must be a core component of peacebuilding and post-conflict rehabilitation.

23. The Special Rapporteur regrets the insufficient implementation of the recommendations contained in the country visit report and the current reported plans to obstruct conflict-related accountability and related investigative powers under a “legacy

¹⁴ See <https://publications.parliament.uk/pa/cm201617/cmselect/cmdfence/1064/1064.pdf>, p. 17.

¹⁵ See https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1002140/CP_498_Addressing_the_Legacy_of_Northern_Ireland_s_Past.pdf.

package”. He urges the relevant authorities to adopt effective and immediate measures to ensure that the Government fully complies with, and refrains from regressing on, its international human rights obligations.

Table 2

United Kingdom: status of implementation of recommendations*Recommendations contained in A/HRC/34/62/Add.1**Status*

The Stormont House Agreement contains broad outlines of the new institutional set-up to address the legacy of the Troubles: an independent historical investigations unit (“to take forward investigations into outstanding Troubles-related deaths”); an independent commission on information retrieval (“to enable victims and survivors to seek and privately receive information about the death of their next of kin”); an oral history archive (“to provide a central place to share experiences and narratives related to the Troubles”); and an implementation and reconciliation group (“to oversee themes, archives and information recovery”) (para. 115)

Not implemented.

The institutions envisaged under the Stormont House Agreement have not been established. The written ministerial statement of 18 March 2020 and the recently announced “legacy package” represent a significant departure from the Stormont House Agreement framework, as the emphasis has shifted from the imperative of accountability to prioritizing information recovery. The “legacy package” would reportedly ban conflict-related prosecutions, preclude conflict-related investigations and inquests, end existing prosecutions and preclude victims’ civil claims, instituting a de facto amnesty.

The independence, access to information and adequate funding of the historical investigations unit is critical to avoiding the problems of earlier truth-seeking entities, including the Historical Enquiries Team and the Office of the Police Ombudsman in Northern Ireland (para. 117)

Given that the historical investigations unit, like past mechanisms, will be case-based, the implementation and reconciliation group must be designed, staffed, funded and authorized to address the patterns, themes and structural dimensions of a conflict that cannot be properly understood or addressed as the sum of isolated cases. In the Agreement, the wording referring to the implementation and reconciliation group is vaguer than that referring to the other proposed institutions (para. 118)

The willingness of people to trust the oral history archive with their testimonies is contingent on resolving issues of independence and modalities of support to guarantee access and preservation. For it to achieve its full potential, the archive must be more than a repository of discrete, unconnected stories; it must have the capacity to analyse and discover patterns and themes (para. 119)

Links between the different elements of the architecture are critical to their success; for example, the timelines of each institution must mesh in a reasonable way. Similarly, while the

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Agreement stipulates a different appointment and selection procedure for staffing each institution, the institutions are meant to work as a coordinated whole; however, the current draft provides no incentive for retaining a group of people that can actually work together (para. 120)

The overall challenge is ensuring that this complex institutional apparatus not only performs better than the earlier efforts it seeks to replace, but also delivers results, which earlier efforts did not envision, necessary for accounting for and redressing the past (para. 121)

The surprising shortfall in data on virtually all aspects relating to truth, justice and reparation should be addressed. Lack of data informing assessments of costs, distribution and effectiveness fuel charges of partiality and do not contribute to clarity regarding necessary additional efforts. The United Kingdom has the institutional means to compile such information (para. 123)

The proposals made by the Lord Chief Justice of Northern Ireland to improve the efficacy of coroner inquests should be supported (para. 124)

The structural and systemic dimensions of violence and rights violations and abuses should be examined. A comprehensive understanding of the past requires instruments that do not treat it merely as a series of unconnected events (para. 125)

Truth, justice and reparation initiatives should expand their focus beyond cases leading to death to address violations and abuses largely excluded from their ambit, including torture, sexual harm, disappearance and illegal detention (para. 126)

Not implemented.

The shortfall in data to make informed decisions in regard to truth, justice, reparations and guarantees of non-recurrence persists.

Partially implemented (possible regression).

In 2019, the Department of Justice of Northern Ireland established a Legacy Inquest Unit within the Coroner's Service under the remit of the Lord Chief Justice. The work has been delayed by the coronavirus disease (COVID-19) pandemic and may be thwarted by the new "legacy package".

Not implemented.

Independent research has been undertaken into the structural and systemic dimensions of violence, without significant government support. Official investigations will reportedly be thwarted under the "legacy package".

Partially implemented (possible regression).

The Police Service and the Office of the Police Ombudsman in Northern Ireland investigate abductions, non-fatal shootings and cases of torture and sexual harm. The Independent Commission for the Location of Victims' Remains recovered remains in 13 of the 16 cases under its mandate. The written ministerial statement of 18 March 2020 did not expand the mandate of the historical investigations unit to address torture, enforced disappearance or sexual violence. The new "legacy package" will reportedly end all conflict-related investigations and inquiries.

Recommendations contained in A/HRC/34/62/Add.1	Status
All future truth-seeking and justice arrangements should incorporate procedures to guarantee both the reality and appearance of independence and impartiality. Similarly, they should be funded in a reliable way that guarantees independence and effectiveness, and allows for long-term planning (para. 127)	Partially implemented. The Office of the Police Ombudsman in Northern Ireland enjoys operational independence and funding provided by the Department of Justice. More should be done to strengthen independence and impartiality. The new “legacy package” will affect effectiveness by reportedly thwarting conflict-related investigations.
Adjudicating issues concerning disclosure is central to the credibility of truth and justice initiatives. The use of “national security” as a blanket term should be avoided in order to make transparent past practices that were, retrospectively, illegal under national and international law and of dubious effectiveness in furthering security. The Special Rapporteur encourages the Government to work with academic and non-governmental experts to devise an approach that makes disclosure practices compliant with human rights and the Constitution (para. 128)	Partially implemented. The public-interest immunity process allows for the redaction of information posing a serious risk to public interests, with decisions resting ultimately with the judiciary. The written ministerial statement of 18 March 2020 proposed a single body to manage conflict-related information recovery and investigations, but did not clarify how national security considerations would be handled.
National security, in accordance with both national and international obligations, may only be served within the limits of the law, and allowing for adequate means of comprehensive redress in cases of breach of obligations (para. 129)	Not implemented. The Covert Human Intelligence Sources (Criminal Conduct) Act 2021 raises concerns that there is no clear limitation on the types of crimes which could be authorized under the Act.
Reparations for victims should be tackled seriously and systematically. It is unclear whether the conflation of eligibility criteria and the ends of reparations, demobilization and a general safety net have delivered an ideal outcome. Reparation involves an acknowledgment of responsibility (which is not the same as criminal guilt). Beneficiaries qualify for programmes solely on the basis of a violation of their rights. Regardless, the issue concerning pensions for almost 500 seriously injured victims urgently needs resolution (para. 130)	Partially implemented. The Victims’ Payments Regulations 2020 adopted in January 2020 established a scheme for payments to be made in respect of a person having sustained an injury related to the Troubles. Issues related to funding and eligibility criteria have caused delays in implementation. The scheme was due to become open for applications on 30 June 2021 but was reportedly delayed until 31 August 2021.
Demobilized persons, many of whom have made important contributions to maintaining peace, need ongoing support. It is also crucial to ensure that the discriminatory barriers to reintegration are eliminated, as recommended by the Fresh Start Panel (para. 131)	Partially implemented. The recommendations of the Fresh Start Panel are yet to be fully implemented, although some action has been taken. The Fair Employment and Treatment (Northern Ireland) Order 1998 has been amended but no further progress has been reported. The Northern Ireland Executive Office’s Communities in Transition project aims to support the building of capacities of communities in transition. Guidance for employers on recruiting people with conflict-related convictions has been

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adopted and a review panel is assessing the progress achieved in terms of access to employment and insurance. The executive programme for tackling paramilitary activity and organized crime will be extended for three years, with renewed funding.

Variations in the model of services to victims should be considered, including giving increased support to organizations that make an effort to build bridges between communities and victims' groups (para. 132)

Partially implemented.

Relations between communities remain complicated and it is difficult to publicly engage in this type of work in many locations. Some inter-community work is being carried out under the auspices of the Victims and Survivors Forum and the Victims and Survivors Practitioners Working Group. Under the Victims and Survivors (Northern Ireland) Order 2006, the Forum is to represent victims' and survivors' experiences for the purpose of consultation and discussion. Some initiatives to support bridge-building have been funded through the European Peace Facility. With the United Kingdom leaving the European Union, it is unclear whether and how that funding will continue.

The Special Rapporteur calls upon civil society organizations in general and non-governmental organizations in particular to consider whether continued focus on particular groups of victims should not, decades after the end of the conflict, give way to a focus on all victims, regardless of their affiliation or identity, in order to depoliticize support for victims. The transition from a sectarian to a multi-ethnic, diverse society will not be possible without the initiative and participation of all members of civil society (para. 133)

Not implemented.

The narrative on victims remains highly politicized. Gradually changing this situation requires trust to be built between communities. Implementing the Stormont House Agreement and setting up a comprehensive institutional framework as envisaged would help in this regard.

The Special Rapporteur urges all stakeholders to re-engage immediately with work on adopting a bill of rights (para. 135)

Partially implemented.

The *New Decade, New Approach* deal provided for the establishment of an ad hoc committee on a bill of rights in the Northern Ireland Assembly. Such a committee, which was established in March 2020, held a public consultation on creating a bill of rights in February 2021. The initiative needs the continued support of all stakeholders.

Removing exclusionary barriers, reducing inequalities and minimizing poverty are essential for non-recurrence. Policy instruments to achieve these aims are, however, not obviously being enacted. Unsurprisingly, housing and education segregation continues to be the norm. Nonetheless, discrimination in the workplace has diminished significantly, proving that progress is possible. In general, redressing past violations and abuses is also facilitated when discussions about the past are not mingled with debates about sectarian distribution of the means of survival (para. 136)

Partially implemented.

In the *New Decade, New Approach* deal, the Government committed itself to developing an anti-poverty strategy and in October 2020 the Department for Communities published a proposed timeline for its preparation. The strategy is to be opened for public consultation in August 2021 and to be published in December 2021. The deal also provided for a new child poverty strategy. The current child poverty strategy has been extended until May 2022. The Government of the United Kingdom has supported the Northern Ireland executive by providing £3 billion for individuals and businesses affected by the COVID-19 pandemic and £500 million to develop integrated schools. A programme of work is under way to improve social cohesion

IV. Follow-up on the visit to Sri Lanka

24. The former Special Rapporteur visited Sri Lanka from 10 to 23 October 2017 at the invitation of the Government. He presented his [end-of-mission](#) statement with preliminary findings and recommendations on the visit in November 2017 and presented his final report to the Human Rights Council in September 2020.¹⁶ The present report contains an assessment of the status of implementation of the recommendations made in the country visit report, which had already been formulated in the end-of-mission statement of October 2017.¹⁷ This is to ensure sufficient time has been allowed for their implementation.

25. The Special Rapporteur regrets that no submission for the present report was received from the Government of Sri Lanka. Comments to the present report were received on 9 July 2021.

26. The commitments made by the administration led by President Maithripala Sirisena to undertake constitutional reforms, strengthen oversight bodies, curb corruption and engage with the international community to provide accountability for past abuses, including through implementation of Human Rights Council resolution 30/1, took an abrupt turn with the presidential elections in November 2019. The new administration, led by President Gotabaya Rajapaksa, proceeded to withdraw Sri Lanka from its international commitments regarding transitional justice, including in respect of resolution 30/1. This political shift has translated into a slowdown in the transitional justice agenda and a reversal of some of the progress made during the previous administration.¹⁸

27. Concerning accountability for past human rights violations, the Special Rapporteur regrets the lack of substantive progress in the investigation of emblematic cases, despite initial progress. Under the previous administration, the Criminal Investigation Department had made progress in investigating some violations, enabling some indictments and arrests; the High Court Trial-at-Bar held a hearing in the case of disappeared journalist Prageeth Eknaligoda; a High Court at Bar was appointed for the Weliveriya case; the Attorney General reopened investigations into the 2006 killing of Tamil students in Trincomalee; and indictments were served against suspects in the murder of 27 inmates at the Welikada Prison and against suspects in the 2013 Rathupaswela killings.

¹⁶ A/HRC/45/45/Add.1.

¹⁷ See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22274&LangID=E.

¹⁸ See communications AL LKA 1/2020 and AL LKA 7/2020.

28. However, progress on several emblematic cases has stalled or encountered serious setbacks under the current administration. Investigations into military and security officers allegedly linked to serious human rights violations have in several instances been suspended. In some cases, the alleged perpetrators have been promoted despite the allegations against them. The commission of inquiry to investigate allegations of political victimization of public servants established by the current President has intervened in favour of military intelligence officers in ongoing judicial proceedings, including in the 2008 murder of journalist Lasantha Wickrematunge and the 2010 enforced disappearance of Prageeth Eknaligoda. It has also issued directives to the Attorney General to halt the prosecution of former Navy Commander Admiral Wasantha Karannagoda and former Navy Spokesman Commodore D.K.P. Dassanayake in relation to the killing of 11 youths by Navy officers, which have been rejected by the Attorney General.¹⁹ The Court of Appeal also issued an interim injunction order staying the case, following a writ submitted by Mr. Karannagoda. The case is due to be heard by that Court. The above-mentioned commission of inquiry has also interfered in other criminal trials, including by withholding documentary evidence, threatening prosecutors with legal action and running parallel and contradictory examinations of individuals already appearing before trial courts. In April 2021, the Prime Minister tabled a resolution seeking legislative approval to implement the recommendations of the commission of inquiry to institute criminal proceedings against investigators, lawyers, witnesses and others involved in some emblematic cases and to dismiss several cases currently pending in court. A special Presidential commission of inquiry composed of three sitting judges is to decide on the commission's recommendations.

29. Efforts to ensure accountability have been further obstructed by reported reprisals against several members of the Criminal Investigation Department involved in the past in investigations into a number of high-profile killings, enforced disappearances and corruption.²⁰ Some have been arrested and later released on bail, and another has left the country.

30. The current administration has shown that it is unwilling or unable to make progress in the effective investigation, prosecution and sanctioning of serious violations of human rights and humanitarian law, which deeply worries the Special Rapporteur. In this context, he welcomes the adoption in March 2021 of Human Rights Council resolution 46/1, by which the Council decided to strengthen the capacity of OHCHR to collect and preserve evidence for future accountability processes for gross violations of human rights or serious violations of international humanitarian law in Sri Lanka and present recommendations to the international community on how justice and accountability can be delivered. The adoption of the resolution was opposed by the delegation of Sri Lanka, which cited ongoing domestic remedies and independent processes.

31. The Special Rapporteur regrets that no truth commission has been established to date. Such a mechanism would be of considerable value in helping Sri Lanka to understand the root causes of the conflict and open a common public platform for all communities to share their lived experience.

32. During the period 2015–2019, progress was reported in the work of the Office on Missing Persons, which opened four regional offices in Batticaloa, Jaffna, Matara and Mannar covering also adjoining districts, adopted a psychosocial support strategy for families of disappeared persons in consultation with victims and other stakeholders and participated in forensics and archiving training. However, since 2020 progress has stalled and the Office has faced interference from the Government, which reportedly intends to review the law establishing and defining the mandate of the Office and which has appointed the former Chair of the commission of inquiry to investigate allegations of political victimization, Upali Abeyrathne, to head the Office. As the original set of commissioners ended their mandate in February 2021, there is considerable concern that this and other new proposed appointments will seriously undermine the independence and credibility of the institution, eroding victims'

¹⁹ See www.dailynews.lk/2020/01/29/law-order/209856/pcoi-has-no-power-order-ag-refrain-performing-statutory-functions-ag.

²⁰ See communications [AL LKA 1/2020](#) and [AL LKA 7/2020](#).

trust in it and weakening the Office's ability to discharge its mandate effectively.²¹ The Government has reported that the commissioners have been appointed following constitutional procedures.

33. The Special Rapporteur urges the Government to maintain its support for the Office on Missing Persons, including by providing it with sufficient resources and technical means, and to guarantee its independence and effective functioning.

34. The Special Rapporteur is concerned about the several instances since November 2019 in which government authorities have tried, through judicial action, to suppress memorialization efforts by families of victims and conflict-affected communities, citing security as well as COVID-19-related public health risks.²²

35. The harassment, threats, surveillance and obstruction of activities of victims and human rights defenders has reportedly increased both in frequency and intensity in 2020, which the Government justifies as related to security concerns. In one reported case of reprisal, representatives of families of the disappeared in the North-East who attended Human Rights Council sessions in 2018 and 2019 were subjected to surveillance, harassment and intimidation upon their return to Sri Lanka. Families of the disappeared and witnesses to human rights violations have reportedly been harassed in similar ways.²³

36. In July 2019, the Office on Missing Persons issued a protection strategy and established a dedicated unit for victim and witness protection that has developed procedures for the documentation of protection concerns and has reportedly intervened in relation to attacks against family members and other stakeholders involved in court proceedings in disappearances cases. The Government must ensure that victims, witnesses and human rights defenders are able to carry out their invaluable work in safety and without fear of reprisal. The Special Rapporteur reiterates his call for victims, witnesses and human rights defenders to be better protected as a key component of the transitional justice process in Sri Lanka.

37. With respect to guarantees of non-recurrence, on 22 October 2020 Parliament adopted the twentieth amendment to the Constitution introducing fundamental changes in the relationships and balance of power between the different branches of government. The amendment, which the Government argues was adopted following constitutional procedures, has strengthened the power of the President and the executive, effectively reversing many of the democratic gains introduced by the nineteenth amendment, adopted in 2015. It has also significantly weakened the independence of several key institutions, including the Human Rights Commission of Sri Lanka and the National Police Commission (whose Chairs can now be appointed and dismissed by the President), as well as the judiciary (senior judges and members of the Judicial Service Commission are now appointed by the President).²⁴ The Government contends that institutional independence remains unchallenged despite the changes introduced by the new amendment.

38. There has also been a deepening and accelerating militarization of civilian government functions. On 29 December 2019, the Government brought 31 public entities under the oversight of the Ministry of Defence, including the police, the Secretariat for Non-Governmental Organizations, the National Media Centre and the Telecommunications Regulatory Commission. It also appointed 25 senior army officers as chief coordinating officers for maintaining COVID-19 protocols in all districts. In July 2021, the Government reported that most of the public entities that had been under the oversight of the Ministry of Defence were no longer under its purview.

39. Several special procedure mandate holders²⁵ have strongly recommended replacing the Prevention of Terrorism Act with legislation that complies with international standards. While the previous Government had initiated alternative legislation that raised concerns from

²¹ See communication AL LKA 1/2020.

²² See communication AL LKA 7/2020.

²³ See communications AL LKA 2/2017, AL LKA 2/2018, AL LKA 6/2020 and AL LKA 7/2020.

²⁴ See communication OL LKA 9/2020 and the State response thereto.

²⁵ See, e.g., A/HRC/40/52/Add.3, paras. 10–37; and A/HRC/35/31/Add.1, paras. 70–71. See also A/HRC/45/45/Add.1.

a human rights perspective²⁶ and was later shelved, the present administration has failed to make any progress in this regard. Instead, in March 2021 the President issued a set of regulations on deradicalization and countering violent extremist religious ideology under the Prevention of Terrorism Act that allows for the arbitrary administrative detention of people for up to two years without trial. Several arbitrary arrests under the Prevention of Terrorism Act have been reported in the past year, many involving Tamils and Muslims. Furthermore, over 300 Tamil and Muslim individuals and organizations have been labelled as terrorist and included in an extraordinary issue of the official gazette. The Government has reported that it has commenced a process of reviewing some provisions of the Act and has accordingly released detainees held in extended judicial custody. The Special Rapporteur urges the Government to place an immediate moratorium on arrests under the Prevention of Terrorism Act, with a view to repealing it as a matter of priority, and undertakes prompt, effective and transparent legal review of all persons detained under the Act.

40. Sri Lanka is yet to set up a land commission to document and carry out a systematic mapping of military-occupied private and public land for effective and comprehensive restitution. The Government has reported that 89.26 per cent of State land and 92.22 per cent of private land occupied by the military has been released and that the rest will be reviewed, taking into consideration strategic military requirements. A scheme will reportedly offer compensation to holders of private land unreleased owing to national security concerns. The Special Rapporteur recalls that the mapping and restitution of land must be entrusted to an independent and impartial body.

41. Over the past 18 months, the human rights situation in Sri Lanka has seen a marked deterioration that is not conducive to advancing the country's transitional justice process and may in fact threaten it. The Special Rapporteur deeply regrets the insufficient implementation of the recommendations made by his predecessor and the blatant regression in the areas of accountability, memorialization and guarantees of non-recurrence and the insufficient progress made regarding truth-seeking. He urges the Government to swiftly revert this trend in order to comply with its international obligations.

Table 3

Sri Lanka: status of implementation of the recommendations contained in the visit report, which had already been formulated in the end-of-mission statement of October 2017²⁷

<i>Recommendations contained in the end-of-mission statement</i>	<i>Status</i>
Develop a comprehensive transitional justice strategy that includes a clear timeline for the establishment of the different transitional justice mechanisms, identifies needs regarding budget, staff and required expertise and outlines the links between the different elements of the strategy. Allow the public to engage in consultations in the development of the strategy and seek, in particular, the views of women, given the differential impact that violations and the conflict have had on them and children.	Not implemented. The Government has not developed a comprehensive transitional justice strategy.
Take greater advantage of the report of the Consultation Task Force on Reconciliation Mechanisms. In its report, the Task Force identifies expectations,	Insufficiently implemented. The Government has reported that the report of the Task Force was considered solely in the context of the elaboration of the

²⁶ See communication [OL LKA 3/2016](#).

²⁷ This measure was adopted to ensure sufficient time has been allowed for the implementation of recommendations. The end-of-mission statement is available at www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22274&LangID=E.

Recommendations contained in the end-of-mission statement

Status

needs, challenges and priorities as expressed by key stakeholders and provides information that could be invaluable to the Government's efforts to align its intentions with the needs of victims. The network that the Task Force put in place in 2016 could prove very useful for continuing the dialogue and holding consultations on the design and implementation of reconciliation mechanisms.

reparation policy, which has not been approved by the Cabinet.

Tap more into the expertise that could be provided by OHCHR.

Partially implemented.

The ability of OHCHR to provide continued support for transitional justice has been affected by the decision taken by Sri Lanka to withdraw from its commitments regarding transitional justice, including in respect of Human Rights Council resolution 30/1.

Take greater advantage of its Human Rights Commission during the entire process of drafting legislation. The Government must commit itself to providing the Commission with sufficient resources to carry out its crucial functions and to taking its views and recommendations seriously.

Not implemented.

The Human Rights Commission has seen its integrity and independence severely undermined by government interference and the concentration of power in the President, including through the adoption of the twentieth amendment to the Constitution. The Government has reported that the Commission has been reconstituted in accordance with the Constitution and that it continues to receive resources.

Repeal the Prevention of Terrorism Act and promptly replace it with new counter-terrorism legislation that adheres to international best practices. Promptly deal with long-standing cases pending under the Act and put in place a procedure to review convictions handed down under the Act that were based solely on the confession of the accused.

Not implemented.

The Government has not repealed the Prevention of Terrorism Act and has introduced regulations that contravene international standards. Review of some long-standing cases has reportedly commenced, although plans in this regard have not been disclosed and the number of long-term detainees is unknown.

Cease the continued harassment and surveillance by security and intelligence personnel of human rights defenders and other social actors, especially women.

Not implemented.

Harassment and surveillance of victims' groups, human rights defenders and civil society representatives has increased both in frequency and intensity, particularly since 2019.

Move to terminate military involvement in commercial activities and reduce military presence in those areas, such as the North and East.

Not implemented.

Military involvement has continued, reportedly due to national security concerns, COVID-19-related public health requirements and natural disaster and civil construction efforts. Instructions to refrain from commercial activities have been issued but some such activities continue.

Recommendations contained in the end-of-mission statement

Status

Given continued apprehensions about surveillance and security, ensure that the transitional justice process incorporates witness and victim protection instruments and strengthen the existing (but incipient) witness and victim protection scheme.

Insufficiently implemented.

The Office on Missing Persons has set up, under the previous administration, a protection strategy and dedicated unit for victim and witness protection. It is unclear whether it has become operational.

Concerning truth-seeking, the Government should publish all reports of previous commissions and make their records and archives available to any future transitional justice mechanism.

Insufficiently implemented.

Not all reports of previous commissions of inquiry have been made public. In particular, the following reports have not been published: the report regarding the serious violations of human rights allegedly committed since 1 August 2005 of the Udagama Commission (2006); the report of the Presidential commission of inquiry on the circumstances surrounding the mass graves in Matale (2013); and the final report on the first mandate of the Presidential commission charged with investigating the complaints regarding missing persons (2013).

A new commission of inquiry was appointed in January 2021 to assess the work of preceding ones and the status of implementation of their recommendations. Its commissioners represent various ethnicities and are led by a Supreme Court judge. The commission has faced criticism concerning its terms of reference and the lack of independence of its members.²⁸

Concerning the Office on Missing Persons, the Government should:

Partially implemented.

Ensure that the Office can establish its presence at the provincial and district levels, to facilitate access by victims and their families, as planned;

Progress was made and geographical representation was enhanced under the previous administration, but progress has reportedly stalled under the current one. The government has reported that: the Office has worked collaboratively with several government and judicial entities; provided training on operational, investigative and psychosocial support skills; set up a mechanism to expedite its work in several areas; shared a list of missing persons with victims and the public; and assisted families with legal advice, referrals and obtaining absence or death certificates, through a multidisciplinary team. However, the credibility and integrity of the institution has been fundamentally jeopardized by government interference and by its current composition.

Require all State institutions to collaborate with the Office;

Enable the Office to strengthen its capacity on crucial skills, including forensic investigations, through training provided by national, regional and international experts;

Support the Office's plan to incorporate psychosocial support for victims to avoid retraumatization.

Concerning the establishment of a truth commission, the Government should:

Not implemented.

A truth commission has not been established.

²⁸ A/HRC/46/20, para. 41.

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Status

Ensure that such a truth commission can act as a crucial tool to establish patterns of violations and abuses over many cycles of violence, demonstrating that all communities have victims, and to uncover the root causes of discriminatory practices leading to conflict. This calls for giving the commission a broad temporal scope. Legislation establishing a truth commission should be adopted promptly but with adequate consultation with civil society;

Ensure the independence of its commissioners and that victims are adequately represented among the commissioners and the commission's staff;

Ensure support to victims in terms of security and psychosocial services;

Make sure that gender considerations are adequately institutionalized at all levels.

Address the lack of tangible progress on emblematic cases, which points to the serious limitations of the current justice system in addressing human rights violations.

Not implemented.

Progress on emblematic cases has stalled or encountered serious setbacks under the current administration.

Strengthen both the current accountability system, which is weak, and any future system of this kind. Many countries have developed such capacities, including in respect of police investigations, forensics and the articulation of prosecutorial strategies. Efforts to reach South-South cooperation agreements to strengthen or develop the relevant capacities should be made immediately.

Not implemented.

While the Government has reported an increase of 500 per cent in the budget allocated to building the capacity of the judiciary, accountability systems remain weak and compromised owing to political interference.

Focus the discussions about accountability on the means and preconditions for the establishment of credible procedures that guarantee the rights of victims and the accused.

Not implemented.

The ability of the judiciary to function with independence and integrity remains weak and compromised owing to political interference.

Preserve records, information documenting violations and the results of mapping out the existing archives of previous relevant mechanisms.

Not implemented./No progress reported.

Concerning the Office for Reparations, the Government should:

Partially implemented.

Undertake the serious work, including mapping of the universe of potential beneficiaries, costs, and necessary structures that will be required to establish a reparations programme to redress violations, and in which the triggering criterion is the fact of having

The Government has reported that a gender-sensitive and victim-centred approach was introduced in the 2018 reparations Act; that the Office for Reparations has developed a reparations policy following consultations with stakeholders and a plan of action; that it meets quarterly with the Office on Missing Persons and the Office for National

Recommendations contained in the end-of-mission statement

Status

suffered a violation, regardless of all other considerations, including ethnicity, religion, regional origin, or other factors;

In making reparations, acknowledge responsibility. Making a link with the work of the truth commission would be useful in this respect;

Make sure that all aspects of the design of such a programme are gender-sensitive and respond to the special needs of women, in particular those who are heads of households, who should be consulted at each step of the process;

Reparations should not be seen as a tool to “sideline” truth and justice efforts.

Concerning land restitution, the Government should:

Carry out a comprehensive mapping of occupied land and, on the basis of its findings, define a strategy with deadlines for the release of land;

Ensure that the armed forces retain only land that is strictly necessary for security purposes (narrowly and objectively interpreted);

Ensure that decisions to retain land should not be within the sole purview of the military. A body or procedure should be set up in order to broaden the scope of stakeholders and decision makers on this issue;

Consider establishing a land commission as a specialized entity able to address the issue of military-occupied private and public land and the multiple conflicting claims over land by communities displaced at different times;

Strengthen its resettlement policy, as there continue to be camps where internally displaced persons have lived for almost 30 years and in conditions that do not befit a middle-income country;

Consult beneficiaries on issues regarding new housing programmes to avoid future problems, including questions about suitability and indebtedness, in particular among vulnerable communities.

Concerning memorialization measures, the Government should support memorialization efforts, as these can have a reparative effect provided that they are even-handed and not used by anybody as part of a zero-sum game in which the basic aim is to reaffirm a single-sided narrative. Throughout the country,

Unity and Reconciliation; and that it has taken steps to professionalize its work, establish a comprehensive information management system, disseminate the Act and train personnel on providing support to victims and on operational and gender issues. Moreover, 12,114 reparation claims have been processed and 11,511 payments have been made since December 2018, while 12,184 claims remain unprocessed. Families of disappeared members of the Liberation Tigers of Tamil Eelam (LTTE) reported discrimination in the granting of reparations, which the Government denies.

Not implemented.

The Government has not undertaken a systematic mapping exercise, has not documented the land occupied by the army, nor has it established a land commission. The Government has reported having released 89.26 per cent of State land and 92.22 per cent of private land and having established a scheme for compensating owners of land not released owing to national security concerns. Decisions to retain land rest with the military and national security considerations.

Not implemented.

Memorialization remains a highly controversial and polarizing issue. The State has not established memorial sites to recognize all victims and has suppressed or dismantled those sites established by

Recommendations contained in the end-of-mission statement

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communities need spaces to mourn and remember those they have lost, especially civilian casualties.

victims' groups or affected communities citing security concerns.

Concerning guarantees of non-recurrence, the Government should ratify the International Convention for the Protection of All Persons from Enforced Disappearance and enact legislation to incorporate the Convention into the domestic legal system.

Implemented.

Sri Lanka ratified the Convention on 25 May 2016. The International Convention for the Protection of All Persons from Enforced Disappearance Act (Act No. 5 of 2018), which was adopted on 21 March 2018, incorporates the provisions of the Convention and explicitly prohibits enforced disappearance in Sri Lanka.

The constitutional reform project has been undertaken in part to provide guarantees of non-recurrence and has tremendous preventive and reconciliatory potential.

Not implemented.

No action has been taken to separate the investigatory and prosecutorial functions from the state advisory role of the Attorney-General's Department.

That project should be expanded to achieve the following:

The ability of the Office of the Attorney General to function with independence and integrity remains weak and compromised due to political interference.

The separation of the investigatory and prosecutorial roles from the State advocacy roles of the Office of the Attorney General and the establishment, for example, of an independent prosecutorial authority;

Strengthened provisions on the independence of the judiciary;

Not implemented.

Since the adoption in 2020 of the twentieth amendment to the Constitution, the President appoints senior judges and members of the Judicial Service Commission, undermining their independence²⁹ and further concentrating power in the hands of the President.

The articulation of a bill of rights for all Sri Lankans;

Not implemented.

No steps have been taken to strengthen the fundamental rights chapter of the Constitution.

The delimitation of functions of the different parts of the security system (armed forces, police and intelligence services) and the establishment of multilayered civilian oversight systems.

Not implemented.

There has been no delimitation of the different components of the security system, no restructuring of the security forces and no establishment of civilian oversight mechanisms.

V. Concluding remarks

42. The Special Rapporteur expresses concern about the insufficient progress in the implementation of the recommendations addressed to the reviewed States. He urges the

²⁹ See communication [OL LKA 9/2020](#).

States to accelerate implementation and recalls that many of the recommendations represent the development of treaty obligations assumed by States that require compliance.
