

SRI Lanka desperately needs a new global economic strategy, and that is what the Government has promised. But this is not just about dry economics: it must be part of a broader strategy for national renewal. Sri Lanka needs a decisive shift to markets and globalisation.

This is going to be a gargantuan challenge. The good news is that Sri Lanka has its most golden opportunity to achieve its long-advertised potential since the victory of the UNP in June 1977. The bad news is that Sri Lankans squandered that opportunity, as they have squandered opportunities before and after since independence. How can this time be different?

#### What has gone wrong?

What has gone wrong with Sri Lanka in the global economy? Why is its trade and investment performance so under par?

The decade of Rajapaksa rule is a study in retrogression, despite the end of the war and newfound peace. First, Sri Lanka swung to authoritarian politics; it became an “illiberal democracy”. Second, Sinhala-Buddhist chauvinism got worse, increasing ethnic tensions. Third, foreign policy became unbalanced, with China as “first friend” and deteriorating relations with the West and India. And fourth, the economy was deliberalised in the nationalist spirit of Mahinda Chinthana.

The Government intervened much more in the economy, with a predictable rise in cronyism and corruption. Trade protection increased. The tariff structure became more complicated, especially with cesses (additional duties) on imports and exports. Non-tariff barriers proliferated.

Agricultural protectionism soared. One estimate is that import protection effectively doubled during the Rajapaksa years. Regulation of Foreign Direct Investment (FDI) also became more interventionist and opaque, with greater ministerial discretion to grant tax incentives. The Board of Investment was marginalised.

More widely, a worsening domestic business climate – the result of bewildering ad hoc Government interventions on taxes, permits and sundry regulation – deterred foreign investors and traders. Last, post-war growth has been debt-fuelled and led by the low-productivity public sector, while crowding out private investment from local and foreign sources. It has wreaked havoc with public finances, and left Sri Lanka dangerously exposed to foreign commercial borrowings at a time of volatile capital flows to emerging markets. This type of growth has boosted non-tradable sectors at the expense of higher-productivity tradable sectors.

So Sri Lanka has deliberalised and deglobalised at the same time. The big numbers tell the story. Sri Lanka is in 99th place in the World Bank's Doing Business Index – OK by South Asian standards, but terrible by the standards of all but low-income countries in East Asia. Trade (imports and exports) has shrunk to little over 50% of GDP – extraordinarily low for an island of 20 million people. Sri Lanka's export share in global markets has shrunk to 0.05%. East Asian countries with much larger populations, such as Vietnam, Thailand and South Korea, have trade-to-GDP ratios of more than 100%. Taiwan and Malaysia, with comparably small populations to Sri Lanka, have trade-to-GDP ratios of 140% and 160% respectively. Correspondingly, Sri Lanka receives about \$ 1.5 billion annually in FDI – less than 2% of GDP. Again, this is not bad by South Asian standards but pathetic by East Asian standards. Apart from hotel and real-estate projects, FDI has practically dried up.

The upshot is that, except for garments, Sri Lanka is absent from the global value chains (GVCs) that are key drivers of productivity, employment and growth.

What has changed since the January presidential election that toppled the Rajapaksas? The authoritarian slide has been arrested, and the country is moving towards political liberalism. Sinhala-Buddhist chauvinism has been tempered, and early moves made to redress the grievances of the minorities, particularly Tamils in the north and east. And foreign policy has been rebalanced, repairing relations with the West and India while attempting not to alienate China.

But the economy remains a black spot. The Rajapaksas' illiberal economic policies have not been reversed. On the contrary, the UNP-led Government's first Budget contained spending giveaways, price controls and other gimmicky interventions. The central bank has printed money freely. Opposition forces united to defeat Rajapaksa, but they had no consensus on market reforms, and lacked a majority in Parliament. Ahead of the Parliamentary election, Wickremesinghe campaigned for big market reforms under the label of a “social market economy”. Now he has a mandate for economic reform – not a decisive one, but a mandate nonetheless.

Pro-market reforms are imperative for sustained growth and prosperity – and to attain key non-economic objectives. Previous bouts of economic collectivism, going back to the 1950s, ruined the economy, destabilised politics, damaged relations with the West, and stoked ethnic conflict.

# A new global economic strategy for Sri Lanka

A prospering, globalised market economy is the sturdiest foundation for a genuinely open society – for constitutional liberalism, the rule of law, ethnic peace and balanced international relations. Without it, all else fails. It has to be the Government's top priority. And Wickremesinghe needs to proceed fast before his window of opportunity closes.

#### What needs to be done?

A new global economic strategy has to be part of a bigger market reform package.

Most urgent is macroeconomic stability. Continuing macroeconomic volatility will derail liberalisation attempts, as it has done before. Taxation and expenditure need radical surgery to prevent further public-debt accumulation and make debt financing more sustainable. The printing press must be stopped rather than continuing to fund Government profligacy.

Second, there should be an overhaul of domestic business regulation – a bonfire of red tape to liberate the private sector. This should focus on product and factor (land, labour and capital) markets. Licensing needs to be simplified radically. Third, education reform is needed to upgrade knowledge and skills, given that Sri Lanka is now a lower middle-income country that cannot compete with cheap labour. Fourth, bloated, loss-making public-sector enterprises should be restructured and downsized. That should include partial or full privatisations, and more reliance on public-private partnerships. And there are other important reforms besides.

Now turn to a new global economic strategy. The overall objective should be to make Sri Lanka the most open, globalised and competitive economy in South Asia by 2020-2025. By then it should be integrated into GVCs, and be an Indian Ocean hub for trade, investment and foreign talent. This would be a reconnection with Sri Lanka's ancient history, when its ports – Manthai, Gokanna, and later Colombo and Galle – were magnets for seagoing trade, halfway between the Arabian Gulf and Southeast Asia and on India's doorstep.

The Government must set key targets to achieve its global economic objectives. These should be ambitious but realistic, with a five-to-10 year timeframe. I suggest five.

■ Trade: The trade-to-GDP ratio should at least double to over 100% by 2020-2025. This would take Sri Lanka out of the South Asian second division and into the East Asian first division. Given the connection between exports and imports, especially in GVCs, imports would rise correspondingly. That should be welcomed, not disparaged.

■ Export markets: The USA and EU will remain the two key export markets, though with a diversified export basket – not only garments and plantation crops. India should be a much bigger export market, especially the four states of South India with a population of 300 million. Southeast Asia and the Far East, including China, should also be bigger export markets. But the Big Three will remain the EU, USA and India.

■ FDI: The FDI-to-GDP ratio should at least double to 4-5% by 2020. Sri Lanka should get about \$ 5 billion in inward investment annually. And it should be in manufacturing, assorted services and agro-processing, in addition to hotels and real estate. Sri Lanka should play host to a wide array of multinationals from the USA, Europe, India, ASEAN and the Far East.

■ GVCs: Sri Lanka should be embedded in GVCs beyond garments. That will happen if the afore-mentioned trade and FDI targets are achieved. Multinationals with export operations will occupy manufacturing niches. But I do not expect a manufacturing take-off, since Sri Lanka lacks a labour-cost advantage (for labour-intensive production) and lags behind East Asian countries in education, skills and connectivity (for mid-value production). Rather the greater promise lies in services. ICT services should expand, though its potential is limited by Sri Lanka's small skill pool. But the biggest prize is for Sri Lanka – Colombo in particular – to become a logistics hub. This would be centred on the port and perhaps the airport, with feed-in from a cluster of transport, financial and business services. These GVC niches depend critically on Sri Lanka linking up with value chains in South India.

■ Domestic competitiveness: Attracting international trade and FDI depends as much on improving the domestic business climate as it does on trade and invest-



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ment policies in the narrow sense. Sri Lanka should be in the top 50 of the World Bank's Doing Business Index by 2020. A domestic deregulation agenda should be geared to that end. Corresponding targets should be set for other global scorecards that foreign investors track keenly, such as Trading Across Borders (a Doing Business sub-index), the World Bank's Logistics Performance Index, the World Economic Forum's Global Competitiveness Index and its Enabling Trade Index, and the Simon Fraser Institute's Economic Freedom of the World Index.

Overall, these targets should be aimed at lifting Sri Lanka out of a South Asian bracket and into an East Asian bracket of comparison, especially with foreign traders and investors in mind. Hence Sri Lanka should benchmark itself against middle and upper-income East Asian countries. That is where most of the relevant best-practice examples lie. I would add one other benchmark: the five best-performing states in India, including Tamil Nadu and Gujarat. They are the locus of India's economic reforms and its globalisation. Sri Lanka should track these states carefully.

#### How to do it?

Let's move to concrete measures to meet economic targets. The watchword should be: KEEP IT SIMPLE. The measures needed are not rocket science; they should not be overcomplicated. The mantra should be: Deregulate as much as possible to expand individuals' economic freedom and unleash the animal spirits of entrepreneurs. And simplify rules of the game for market actors. “Getting the basics right” – prudent fiscal and monetary policies, a stable exchange rate, domestic competition, openness to trade and foreign investment, improving education, skills and infrastructure – is the essence of the East Asian Miracle. That is what Sri Lanka should emulate. And simplicity is as important as anything else.

#### Trade

There should be a bonfire of cesses and non-tariff barriers on imports and exports as soon as possible. Exports should face no restrictions except on narrow national-security grounds. Import protection should be confined to ad valorem tariffs. But the tariff structure needs to be simplified radically, and average nominal tariff protection more than halved. Sri Lanka should move to a uniform tariff of 5% on industrial goods by 2020. All other industrial goods should enter duty-free. This is what Chile did, with spectacular results.

Why a modest uniform tariff? First, it is the best way of removing distortions,

including corruption, arising from different tariffs on different products and at different stages of production. It has the cardinal virtue of simplicity. And second, East Asian trade-weighted import tariffs average 5% or less – which is where Sri Lanka should be.

The obvious objection to tariff-slashing is that the Government would lose much-needed revenue. That is why tariff cuts should be accompanied by tax reform, so that more revenue is raised from domestic taxes, preferably a simple consumption tax. Furthermore, evidence from other countries shows that revenue loss is minimised because simple, low tariffs increase trade volumes and provide the incentive for previously illicit trade to become licit. In many instances, the effect is to increase, not decrease, revenues.

Sadly, it is politically impossible to reduce agricultural protectionism in the same way. But the Government should move to reduce it gradually. Import protection, price controls and subsidies to agriculture condemn a large percentage of the population to living in a low-productivity welfare trap, while forcing up taxes and consumer prices.

Finally, Customs administration needs to be simplified radically to reduce paperwork, delays at the border and corruption. Studies show these trade costs are higher than tariffs. “Automation” and “automaticity” should be the watchwords. Many customs procedures could be put online, with more automatic approval procedures. Where checking is required, there should be tight deadlines for inspection and approval. There are several best-practice models that Sri Lanka could follow, including APEC's Single Window procedure.

#### FDI

Sri Lanka has a fairly liberal regime on inward investment by developing-country standards. Full foreign ownership and non-discriminatory treatment are allowed in many sectors. But the Government should go further. All sectors should be fully open except for a short negative list.

That leaves the question of tax incentives and the role of the Board of Investment. Tax holidays have dominated investment policy since the economy was opened up in the late 1970s. The results have disappointed. Indeed, tax incentives have probably done more harm than good.

Investment policy needs a thorough reorientation. There should be much less emphasis on tax incentives. They should be simplified, with less room for the bureaucratic and political discretion that invites delays and corruption. Where investment policy can add value is by providing the foreign investor with a genuine “one-stop-shop” – a statutory agency that advertises Sri Lanka as an investment destination abroad, and deals with paperwork and approvals so that the investor's path to operating a local business is smooth and seamless. That should

be the BOI's central function, rather than dishing out incentives as a “one-more-stop-shop” among the thicket of ministries and agencies the investor has to deal with.

#### Trade negotiations

All measures recommended above should be implemented unilaterally, not, in the first instance, through trade negotiations. I call this the Nike strategy: “Just Do It!” This will benefit Sri Lanka by signalling it is wide open for business. It will lose precious time and benefits if it delays liberalisation in order to extract concessions from negotiating partners.

International trade agreements, however, can be a helpful auxiliary to unilateral liberalisation. If done well, they lock in and extend domestic reforms, as well as open export markets. But they should never be seen as a substitute for unilateral reforms. So what should be Sri Lanka's trade-negotiations strategy? It should be ambitious but realistic. Let's look first at FTAs.

■ India: The Government should aim to complete the Indo-Lanka CEPA as soon as possible, and be ambitious about market-opening on both sides. But India is generally protectionist, and the CEPA will inevitably be partial, with lots of exemptions and loopholes. Like other Indian FTAs, it will be “trade-light” by international standards.

■ USA and TPP: The Government should aim for an FTA with the USA. This should be its top priority for trade negotiations. Why? Because the USA is Sri Lanka's second biggest export market; it is and will remain the most innovative economy in the world; it is home to the world's best multinationals who can integrate Sri Lanka into GVCs, particularly in services; and, geopolitically, it would cement an alliance with the world's only superpower and “balancing power” in Asia, which is also a civilised liberal democracy. Also, US FTAs, unlike Asian FTAs, are serious: they are comprehensive and deep. They demand substantial liberalisation in goods, services, investment and public procurement, underpinned by strong disciplines and enforced by strong dispute-settlement procedures. Unlike FTAs with China, India and other Asian partners, an FTA with the USA would spur domestic market reforms and expand competition in the economy, in addition to gaining extra access to the US market. But negotiating an FTA with the USA is usually excruciating and often induces a domestic political backlash. So it is important to do a careful cost-benefit analysis before proceeding. However, there may be no need to negotiate a bilateral FTA with the USA. It and 10 other Asia-Pacific countries are in the final stages of negotiating the Trans-Pacific Partnership (TPP), intended to be an ambitious FTA covering 40% of the world economy. If and when the TPP is concluded, Sri Lanka should consider lodging an application to join it.

That would obviate bilateral FTAs with other potentially important trading partners such as Japan, Australia, Malaysia and Singapore. And it would be a great signal to foreign investors: Sri Lanka would be the first South Asian country in the TPP.

■ EU: The Government should aim for an FTA with the EU as well. EU FTAs are relatively strong, though not as strong as US FTAs. The EU has a long-stalled FTA negotiation with India, so an EU-Lanka FTA could be the EU's first in South Asia.

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## My View



## Global Economics

By Razeen Sally

### There’s viral...

**Continued from page 14**  
**Cartel Democracy is a Castle in the Air (NUISANCE)**

All the people who voted out one junta that had become a cabal must now be interrogating themselves with plaintive wails, like the children of Israel by the rivers of Babylon: “How can we sing a joyful song in a strange land?” Or, in classical terms, as Caesar might have ejaculated on being told that Gaul was no longer divided into three parts: “Quid?” (Or, “Why?” Or, “Why not?”) How has it come to pass so soon, so unexpectedly for some, that another jumbo business – A.K.A. ‘new political culture’ incarnate as a ‘national coalition government’ – is coming into being as a cartel, albeit a still visibly democratic one? Still a nuisance from the point of view of sundry duped electors!

<Conventional Wisdom> People get the parliaments they deserve. (It works well for the people when parliaments aren’t hung and elected representatives work for the electorate rather than for executive agendas.)

<Devil’s Advocate> People get the parliaments they deserve. (It works well for parliamentarians when the people can’t be bothered to engage with their legislators in the eventuality and/or aftermath of hung parliaments, and the House can be hijacked by the best – or worst – of vested interests.)

**Collusive Republicanism is a Limp Balloon (NASTY)**

The poor poop who’s penning this piece has a slightly more subversive perspective of present happenings. It’s NICE, yes, when our New Political Culture means that parties of unexpected parts are cooperating in the business of governance for the ostensible betterment of democratic-republicanism. It’s NECESSARY, indeed,

that the New Political Culture needs to accommodate candidates for Cabinet who are less than clean or competent, to put it more than charitably! It’s a NUISANCE, by the way, that while growth, development, and progress are now “fast-tracked” and “streamlined” and “rationalised” – if the propagandists for the neo-republican project are to be taken at face value – the price citizens have to pay is to put up with the customary allocation of incentives (both material and intangible) for the prize of a parliament that has no effective opposition to represent the larger national interest, and not simply the longevity of the legislature...

Dear me, what’s that you say – the TNA? Don’t hold your breath for too long or the wrong reasons, dears. There’s a difference between a critical Opposition which is contrapuntal to Government’s moves forward, and a collusive set of opportunists who are contrary and supportive in slightly contradictory ways that militate against the national interest. Be that as it may, there are many gentlemen whose appointment to formal opposition was too long coming. And despite their differences with the democratic mainstream which desires a centre that can hold, we wish them well in their attempt to make an ancient cause heard again. Even if it is an ambivalent case for federalism in any form presented by Members of Parliament of principle who, under pressure from marginal constituencies, might cave into demands for the self-determinative form of the F-word...

<Conventional Wisdom> National government is a bump in the road towards a mature democracy struggling to make the transition from a regime to a republic.  
<Devil’s Advocate>

National government is, in reality, a loose coalition of players with a looser ethic than really desirable. It is a temporary setback in the bumpy journey towards an undefined destination, in which to arrive might find the idealistic or naive citizenry in for more surprises as regards the devolution of power and the emerging nature of what our own brand of democratic-republicanism is beginning to look like – A small wedge of the internationalist neo-conservative, neo-colonial, pie; with foreign electors setting an agenda alien to our ethnocracy (national government is such a majoritarian rule).

**Challenge**  
Let us leave aside a rant for later. Cooler, saner, heads must prevail in the midst of disappointment and disapprobation. There is a longer-term project by virtue of which present concerns may seem to be non-sequiturs or events of no great significance or import. Of course, this entails Civil Society taking an equally pragmatic, strategic, cynical view...

Of course, one can never quite be sure that reforms – whatever they entail – will bring the relief or rewards or restoration of full-blown republicanism – whatever that movement might espouse. Men since Marius and Sulla have been making pacts with ruffians and brigands for the betterment of the democratic norms they valued and eventually upheld, after ever-so-brief wobbles. Maithripala Sirisena and the as-yet unsullied leaders we follow down the primrose-path of dalliance with the Muthuhettigamas and Lansas of the world will deliver in the end, we hope... because if the end doesn’t justify the means, we are lost...

### A new global...

**Continued from page 15**  
■China: The Government should complete the China-Lanka FTA. But this will be trade-light, like China’s other FTAs.

■Prioritisation: It is imperative the Government does not agree to FTA negotiations with all and sundry. Rather its priorities should be India, the USA (ideally via the TPP) and EU. For one thing, Sri Lanka has hardly any trade-negotiating capacity. It will have to be built up virtually from scratch; and it will have more than enough on its plate with India, TPP, the EU and China.

■WTO: The Doha Round has been stalled for many years, and action on trade negotiations shifted to FTAs over a decade ago. But a multilateral rules-based trading system is still important, especially for small economies like Sri Lanka. So Sri Lanka should re-engage, only this time with a different strategy. It should break ranks with India and other Third World foot draggers, and join forces with the OECD and emerging-market countries (like Chile, Colombia, Costa Rica, Singapore and Hong Kong) that favour liberalisation and pro-market rules. In this spirit, Sri Lanka should join the Information Technology

Agreement, which has zero tariffs on IT goods, as well as the plurilateral TISA negotiations to liberalise trade in services.

■Process issues: Having the right ideas and policies is one thing. But, ultimately, success depends on effective implementation. The national unity Government’s monstrously large Cabinet does not augur well. No serious country has a Cabinet of almost fifty ministers. On the other hand, it was the right decision to create a new Ministry of International Trade and Investment, and to have a senior figure enjoying the Prime Minister’s full confidence at its helm. Trade and FDI are joined at the hip in today’s world of GVCs, so they should be housed in a single ministry. All relevant statutory boards such as the BOI and EDB should come under this ministry.

The politics of trade and other economic reforms will be extremely difficult. Ultimately, reforms depend on Wickremesinghe – Sri Lanka’s only senior politician who gets the case for markets and globalisation – and a handful of clean, competent professionals in his inner circle. It is vital they control the major reform areas. The danger is that a large, unwieldy national unity

Government, full of old-style populist politicians, will dilute and slow down reforms, thereby perpetuating Sri Lanka’s pattern of squandering heaven-sent opportunities.

■Conclusion: a plea for economic liberalism

Economic collectivism is the central source of Sri Lanka’s post-independence failure. It has bred too much politics at all levels of society. It has metastasised a political class that has served the country so disastrously since independence. Political connections are needed to get even the most basic things done – fine for the rich and influential, but terrible for everyone else, particularly the poor and excluded.

Very few Sri Lankan politicians, intellectuals and even businesspeople understand the damage done by collectivist policies and the importance of economic freedom.

There is a growing constituency for liberalism in politics, but still a tiny one for economic liberalism. But what Sri Lankans need most is economic freedom – the freedom to produce and consume goods and services. This is the kind of freedom that affects ordinary people’s daily lives most. That demands better rules of the game for markets and

competition, and much less room for politicians to control people’s livelihoods.

This is what Adam Smith had in mind when he called for “natural liberty, upon the liberal plan of freedom, equality and justice” almost two-and-a-half centuries ago. In his Wealth of Nations, he conceived of government as an effective umpire, policing the rule-framework of a free market economy. He assailed governments that were also players in the market, distorting the game and compromising their umpiring role. As the German sociologist Alexander Rüstow put it, the state should be “small but strong”, performing its legitimate limited functions well. But the modern state has become “big and weak”, intervening badly left, right and centre while neglecting its core functions.

A new global economic strategy for Sri Lanka should be seen in this frame. It should be part of a bigger agenda to limit the state and expand economic freedom. Without greater economic freedom, Sri Lanka will never achieve its potential for prosperity with political stability, the rule of law and ethnic harmony.

### Economy grows...

**Continued from page 1**  
The ‘Agriculture, Livestock and Forestry’ subsector grew substantially by 5% compared to the second quarter of 2014, but noted that the overall contribution of Agriculture, Livestock and Forestry’ activities to the total GDP had further declined by 0.12%. The marine fishing and marine aquaculture subsector recorded the highest share of 1.2%.

Harvested paddy production in the 2015 Yala season was the highest ever recorded paddy production which is 90.9 million bushels. The favourable weather which prevailed during the Yala season throughout the country was the chief reason for this huge increase in paddy production.

In comparison, during the second quarter of 2014 the sub-activity of ‘growing of tea’ had dropped by 7.2%.

Sri Lanka’s tea exports for this quarter of 2015 amounted to 78,334.5 MT, a decline of 3,875 MT from the same period last year. This shows a decline of 4.7% in exports. Furthermore, the average price of one kilogramme of tea in the second quarter of 2015 was Rs. 400.93 in comparison to Rs. 469.06 for the same period of 2014.

Despite the fact the low grown tea had the largest market share, around 57% of the total tea production; it recorded a 9.3% decline in this quarter.

The industry activities which contribute nearly 23.5% to the total GDP recorded a growth rate of 2% in the second quarter of 2015.

The sub-activity of ‘manufacture of textiles, wearing apparel and leather products’ recorded a negative growth rate of 5.9% in this quarter compared to the corresponding quarter of 2014.

Despite the export value of apparel increasing by 1.9%, the

export volumes of textile and leather products decreased by 10.3% and 8.8% in the second quarter of this year.

The real value added of ‘electricity, gas, steam and air conditioning supply’ had increased by 3.3%. Construction activities grew by 6.4%. The major materials used in the construction industry had increased by 4.5% and of that cement supply increased by 13.2%. The total imports of cement and the domestic supply of cement has grown by 4.7% and 31.1% respectively in the second quarter of 2015.

The service sector contributed the highest share of 61.2% to the GDP, recording a 7.9% increase in the second quarter of 2015.

‘Wholesale and retail trade’ which contributes nearly 13.5% to the total GDP, reported a 5.9% growth rate in the second quarter of 2015, in comparison to the high growth of 19.3% recorded in the second quarter of 2014.

The value added of wholesale and retail trade activities were affected by fluctuation in total imports and total domestic production. Thus, the growths of these activities were dependent on three variables of imports, agriculture production and industrial production.

According to the Balance of Payment (BoP) Statistics of the Central Bank of Sri Lanka, the total import expenditure in the second quarter of this year has increased to Rs. 628,424 million from Rs. 552,744 million in the same quarter of last year, indicating a high growth rate of 13.7%.

The real value added figure of the telecommunication has increased by 19.4%.

The sub-activity of ‘financial service activities and auxiliary financial services’ has recorded a 13.7% growth rate for this quarter compared to 15.9% recorded during the same period last year.

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### Promoting...

88. The High Commissioner remains convinced that for accountability to be achieved in Sri Lanka, it will require more than a domestic mechanism. Sri Lanka should draw on the lessons learnt and good practices of other countries that have succeeded with hybrid special courts, integrating international judges, prosecutors, lawyers and investigators. Such a mechanism will be essential to give confidence to all Sri Lankans, in particular the victims, in the independence and impartiality of the process, particularly given the politicisation and highly polarised environment in Sri Lanka. OHCHR stands ready to continue providing its advice and technical assistance in the design of such a mechanism.

89. The High Commissioner also believes the Human Rights Council has – and should continue to play – a critically important role in encouraging progress on accountability and reconciliation in Sri Lanka. As the process now moves into a new stage, he urges Council members to sustain their monitoring of developments in Sri Lanka with a view to further actions that may be required at the international level should there not be concrete results.

90. A comprehensive set of recommendations is included in the accompanying OISL report (A/HRC/30/CRP.2). In particular, the High Commissioner wishes to highlight the following recommendations:

### To the Government of Sri Lanka

**General**

(a) Set up a high-level executive group to develop a coordinated, time-bound plan and oversee progress in implementing the recommendations contained in this report and previous reports by the High Commissioner to the Human Rights Council, as well as relevant outstanding recommendations of the LLRC and past commissions of inquiry;

(b) Invite OHCHR to establish a full-fledged country presence to monitor the human rights situation, advise on implementation

of the High Commissioner’s recommendations and of all HRC resolutions, and provide technical assistance;

(c) Initiate genuine consultations on transitional justice, in particular truth-seeking and accountability mechanisms, reparations and memorialisation, with the public, victims and witness groups, civil society and other stakeholders; These should be accompanied by public education programmes that ensure informed participation in the process;

(d) Invite the Special Rapporteur on truth, justice, reparations and guarantees of non-recurrence to continue his engagement so that he accompanies and advises in this process; Invite other relevant Special Representatives of the Secretary-General and Special Procedures mandate holders, notably the Special Rapporteurs on extrajudicial killings and torture, to make early country visits, particularly those highlighted in the OISL report.

#### Institutional reforms

(e) Through the Constitutional Council, appoint qualified new members to the Human Rights Commission of Sri Lanka of the utmost independence and integrity, and review legislation to strengthen the Commission’s independence and its capacity to refer cases to the courts;

(f) Issue clear, public and unequivocal instructions to all branches of the military and security forces that torture, rape, sexual violence and other human rights violations are prohibited and that those responsible, both directly or as commander or superior, will be investigated and punished; Order an end to all surveillance, harassment and reprisals against human rights defenders;

(g) Develop a fully-fledged vetting process respecting due process to remove from office military and security force personnel and any other public official where there are reasonable grounds to believe that they were involved in human rights violations;

(h) Prioritise the return of private land that has been occupied by the military and end military involvement in civilian activities;

(i) Take immediate steps to identify and disarm groups

affiliated with political parties and sever their linkages with security forces, intelligence services and other Government authorities;

(j) Initiate a high-level review of the Prevention of Terrorism Act (PTA) and its regulations and the Public Security Ordinance Act with a view to their repeal and the formulation of a new national security framework fully complying with international law;

#### Justice

(k) Review the Victim and Witness Protection Act with a view to incorporating better safeguards for the independence and effectiveness of the witness protection programme in line with international standards; Ensure the independence and integrity of those appointed to the Witness Protection Authority and that the police personnel assigned to this program are fully vetted; Ensure adequate resources for the witness protection system;

(l) Accede to the International Convention on the Protection of All Persons from Enforced Disappearances, the Additional Protocols to the Geneva Convention, and the Rome Statute of the International Criminal Court;

(m) Enact legislation to criminalise war crimes, crimes against humanity, genocide and enforced disappearances without statute of limitation; Enact various modes of criminal liability, notably command or superior responsibility;

(n) Adopt a specific legislation establishing an ad hoc hybrid special court, integrating international judges, prosecutors, lawyers and investigators, mandated to try war crimes and crimes against humanity, with its own independent investigative and prosecuting organ, defense office and witness and victims protection program, and resource it so that it can promptly and effectively try those responsible;

(o) Carry out a comprehensive mapping of all criminal investigations, habeas corpus and fundamental rights petitions related to serious human rights violations, as well as the findings of all Commissions of Inquiries where they have identified specific cases, and refer these cases to the special court upon its establishment;

(p) Reinforce the forensic capacity of the judiciary and ensure that it is adequately resourced, including for DNA testing, forensic anthropology and archaeology;

(q) Review all cases of detainees held under the PTA and either release them or immediately bring them to trial; Review the cases of those convicted under the PTA and serving long sentences, particularly where convictions were based on confessions extracted under torture;

#### Truth/right to know

(r) Dispense with the current Presidential Commission on Missing Persons and transfer its cases to a credible and independent institution developed in consultation with families of the disappeared;

(s) Develop a central database of all detainees, with independent verification, where relatives can obtain information of the whereabouts of family members detained, and publish a list of all detention centres;

(t) 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;

(u) Develop a comprehensive plan/mechanism for preserving all existing records and documentation relating to human rights violations, whether held by public or private institutions;

#### Reparations

(v) Develop a national reparations policy, considering the specific needs of women and children, and make adequate provision from the State budget;

(w) Strengthen programmes of psychosocial support for victims;

### To the United Nations system and Member States

(a) Provide technical and financial support for the development of transitional justice mechanisms provided that they meet international standards; Set up a coordination mechanism among donors in Sri Lanka to ensure focussed and concerted

efforts to support the transitional justice process;

(b) Apply stringent vetting procedures to Sri Lankan police and military personnel identified for peacekeeping, military exchanges and training programmes;

(c) Wherever possible, notably under universal jurisdiction, investigate and prosecute those responsible for violations such as torture, war crimes or crimes against humanity;

(d) Ensure a policy of non-refoulement of Tamils who have suffered torture and other human rights violations until guarantees of non-recurrence are sufficient to ensure that they will not be subject to further abuse, in particular torture and sexual violence;

(e) Continue to monitor human rights developments and progress towards accountability and reconciliation through the Human Rights Council; Should there be insufficient progress, the Human Rights Council should consider further international action to ensure accountability for international crimes.

#### Footnotes

<sup>1</sup> Late submission.

<sup>2</sup> Mr. Martti Ahtisaari, former President of Finland; Dame Silvia Cartwright, former High Court judge of New Zealand; and Ms. Asma Jahangir, former President of the Human Rights Commission of Pakistan.

<sup>3</sup> <http://www.statistics.gov.lk/HIES/HIES2012PreliminaryReport.pdf>

<sup>4</sup> Human Rights Committee, Concluding observations on the fifth periodic report of Sri Lanka, CCPR/C/LKA/CO/5, 21 November 2014.

<sup>5</sup> “Tainted Peace: Torture in Sri Lanka since May 2009”. Freedom from Torture (Medical Foundation for the Care of Victims of Torture), August 2015.

<sup>6</sup> <http://secretariatformuslims.org/>

<sup>7</sup> <http://nceas.org/category/incident-reports/>

<sup>8</sup> ICRC, Database on customary international humanitarian law, Rule 56.

<sup>9</sup> ICRC, Database on customary international humanitarian law, Rule 53.

<sup>10</sup> See Report of the High Commissioner, March 2013, A/

HRC/25/23.

<sup>11</sup> In 2014, the period covered by the Commission was extended from 1 June 1990 to 1 January 1983 - 19 May 2009.

<sup>12</sup> <http://www.pcicmp.lk/images/NewsEvents/Press%20Release%2024.07.15.pdf>

<sup>13</sup> See Oral Update of the High Commissioner for Human Rights, September 2014, A/HRC/27/CRP.2

<sup>14</sup> A/HRC/WGEID/103/1, para157; A/HRC/WGEID/102/1, paras 128-138.

<sup>15</sup> See Report of the High Commissioner, February 2014, A/HRC/25/23, para 24.

<sup>16</sup> Ibid.

<sup>17</sup> HRC-SL inquiry report on intervention of the forces to disperse the demonstration at Weliveriya on right to drinking water in Rathupaswala area; <http://hrcls.lk/english/wp-content/uploads/2015/02/HRCSL-inquiry-report-on-intervention-of-the-forces-on-disperses-the-demonstration-at-Weliveriya-on-right-to-drinking-water-in-Rathupaswala-area.pdf>

<sup>18</sup> The High Commissioner notes his opposition to the death penalty handed down in this case, and Sri Lanka’s current status as a de facto abolitionist State.

<sup>19</sup> According to the Government, in the ACF case, the Criminal Investigation Department (CID) has recorded statements of 18 military personnel since January 2015 and a further 22 are to be interviewed. CID wishes to interview two key witnesses believed to be living in France. In the Trincomalee case, the prosecution has presented the depositions of 25 witnesses and eight other witnesses are being sought from overseas; the next hearing in the case is scheduled for 7 December 2015.

<sup>20</sup> <http://www.dailynews.lk/?q=police-legal/cid-arrests-four-army-officers>, <http://www.dailynews.lk/?q=local/sgt-major-confesses-grilling-ekneligoda>

<sup>21</sup> <http://www.dailynews.lk/?q=local/sgt-major-confesses-grilling-ekneligoda>

<sup>22</sup> See United Front for Good Governance election manifesto, <https://www.colombotelegraph.com/wp-content/uploads/2015/08/Election-held-LAA.xls.pdf>

<sup>23</sup> A/HRC/RES/25/1, preamble.

<sup>24</sup> Ibid.

<sup>25</sup> A/HRC/27/CRP.2, para 25.