

To
Hon. Ranil Wicramasinghe,
Hon. Prime Minister of Sri Lanka,
Prime Minister's Office,
No: 58, Sir Ernest De Silva Mawatha,
Colombo 07.

**AMNESTY
INTERNATIONAL**



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Hon. *Prime Minister*

Amnesty International welcomes the Sri Lankan government's efforts to establish an 'Office for Reparations' through the bill gazetted on 25-06-2018. A number of affected persons and groups have been waiting for long years for the state to adopt a comprehensive approach to dealing with the past, including by providing broad ranging reparations. The setting up of the Office is a key promise made in the 2015 UN Human Rights Council resolution A/HRC/RES/30/1.

While welcoming several positive aspects of the bill, especially with regard to the bill's approach to gender responsiveness, several aspects of the bill concern Amnesty International. Out of a number of concerns, the our key concerns are the following: powers and functions of the Office for Reparations (clause 11(1)(g)) and Rules (clauses 22(3) and (4)).

Amnesty International considers that the clause on powers of the Cabinet as it stands, will undermine the decision-making powers of an independently appointed membership of the Office by shifting it to the Cabinet of Ministers. Further, we feel the clauses on rules we have identified add a layer of unnecessary bureaucracy, which in the long-term will affect the efficiency of the Office. We are attaching a brief with this letter, including past experience with state compensation schemes. We have also listed a number of comments we feel would make the bill more effective to address victims' needs in line with international laws, standards and commitments. We are happy to extend all support necessary to make the mechanism on reparations prompt, effective, adequate and transparent.

We hope you will receive these recommendations positively and take the necessary steps to include them in the bill, which we understand has already been tabled in parliament.

Sincerely Yours

Biraj Patnaik
Biraj Patnaik
Regional Director

1) Powers and functions of the Office for Reparations

Clause 11(1)(g) provides the Cabinet of Ministers the power to make key decisions around policies and guidelines with regard to individual and collective reparations, as opposed to broad policies. According to the bill, the members of the Office are only in a position to formulate and recommend policies and guidelines which include, but are not limited to, the criteria for eligibility for aggrieved persons to obtain reparations, the form, and where appropriate, the quantum of reparations that will be provided to eligible aggrieved persons, the criteria of eligibility of aggrieved persons to financial compensation and the criteria of eligibility of aggrieved persons to urgent reparations.

This is problematic on a number of fronts but primarily as it will impact the independent decision-making of the Office. This provision would reinforce the inequities of the existing systems the Office is meant to replace.

Past experiences of victims' in relation to cabinet approved material reparations in the form of compensation is an indicator of the dangers that may arise as a result of the Cabinet being empowered to make these key decisions.

One example is, the manner in which the Rehabilitation of Persons, Properties and Industries Authority (REPPIA) programme determined reparations. REPPIA, situated within the Ministry of Prison Reforms, Rehabilitation, Resettlement & Hindu Religious Affairs, approved material reparations in the form of compensation to 'the dependents of the deceased persons, those who have sustained injuries due to terrorist violence, ethnic riots, civil unrest and related security operations are entitled for compensation' amounting to Rs. 100,000.¹ However, for the same type of violations, the Cabinet in the past has decided to offer in varying amounts as compensation as ad-hoc reparations, outside of the REPPIA system.

These variations included:

1. The next of kin of the 16 inmates who were killed and the 11 injured during the Welikada prison riots were each awarded Rs. 2 million and Rs. 500,000 respectively.²
2. The 33 victims of Rathupaswala violence (3 deaths and 30 affected) were awarded Rs. 4.68 million.³
3. Victims of Aluthgama were approved compensation by the Cabinet, of Rs. 2 million each for 3 victims killed in the clashes and Rs. 500,000 each for the 12 persons injured.⁴
4. The Cabinet also decided⁵ to compensate victims of recent anti-Muslim attacks in Kandy. Relatives of each deceased person would be given Rs. 500,000 and based on government medical reports, and injured persons would be given up to Rs. 250,000 maximum.

¹ http://www.reppia.gov.lk/web/index.php?option=com_content&view=article&id=37&Itemid=212&lang=en

² 'Welikada Prison riot: Compensation paid for 15 detainees' (Ada Derana, 28 October 2017)

<<http://www.adaderana.lk/news/43851/welikada-prison-riot-compensation-paid-for-15-detainees>> accessed April 2018

³ 'Compensation for victims of Rathupaswala incident' (News.lk, 6 April 2018)

<<https://www.news.lk/news/politics/item/12883-compensation-for-victims-of-rathupaswala-incident>> accessed April 2018

⁴ 'Payment of compensation for Aluthgama riot victims commences' (Ada Derana, 23 March 2018)

<<http://www.adaderana.lk/news/46536/payment-of-compensation-for-aluthgama-riot-victims-commences>> accessed April 2018

⁵ 'DECISIONS TAKEN BY THE CABINET OF MINISTERS AT ITS MEETING HELD ON 10.04.2018' (News.lk, 11 April 2018)

<<https://www.news.lk/cabinet-decusions/item/20103-decisions-taken-by-the-cabinet-of-ministers-at-its-meeting-held-on-10-04-2018>> accessed April 2018

The final report of the Consultation Task Force (CTF) on Reconciliation Mechanisms highlighted the perceptions of affected persons in its chapter on the Office of Reparations⁶, especially around their past experiences of reparations including non-payment or delays in compensation and refusal of restitution, inadequate compensation, concerns over rationale for compensation or lack thereof, non-recognition of certain Injuries or losses as well as perceptions of discrimination and exclusion, to name a few.

Against this backdrop, leaving the Cabinet to decide on these on individual cases will severely dent the impartiality of the Office made possible through the independent appointment process.

2) Rules

Clause 22(3) states, *'the Policies on Reparations and guidelines approved by the Cabinet of Ministers shall be placed before Parliament and published in the Gazette within a reasonable period not exceeding three months.'* This we feel is excessive as policies, unlike rules, do not need parliamentary approval.

Similarly, Clause 22(4) provides that *'Policies on Reparations and guidelines authorizing disbursement of funds shall be placed before Parliament for approval and published in the Gazette within a reasonable period not exceeding three months, and any disbursement in terms of such Policies on Reparations and guidelines shall only be effected after such approval.'* Amnesty International believes that there is adequate Parliamentary oversight for disbursement of funds already allocated for the Office through its own Fund instituted through clause 16(1), where *'all such sums may be voted by Parliament from time to time for the purposes of this Act'*. Clause 22 (4), could thus be deemed unnecessary and redundant.

We are of the strong opinion that both these clauses stand to delay the effective operation of the Office for Reparations.

Apart from the independence and integrity of the policies of the Office at stake and procedural inefficiencies that Amnesty International foresees, the organization is further concerned about a number of other aspects. Please find below our suggestions to further strengthen the mechanism.

- The definition of an “aggrieved person” in clause 27(a) refers to the Geneva Conventions I-IV, which do not apply in principle to the internal armed conflict in Sri Lanka. Therefore we urge that reference to the Geneva Conventions is removed;
- Establish an effective appeal process following the failure to verify the authenticity of an application in clause 11(1)(b);
- The provision for an independent and effective witness and victim protection mechanism within the Office in clause 11(1)(k);
- Include provision for the office to take necessary steps to archive the Office’s database and data in clause 13(2);

⁶ Final report of the Consultation Task Force on Reconciliation Mechanisms, pp 33-98, accessible at: <https://drive.google.com/file/d/0ByOKvXw6zYVpRHgyZUZZeWZpMDQ/view>

- Clarify the term ‘periodically’ in informing aggrieved persons or representatives of aggrieved persons of the status of the applications made for reparations in clause 11(1)(v);
- Include medical assistance to the list of administrative assistance as defined under “individual reparations” in clause 27(a);
- Include “any individual who has suffered harm as the direct result of a human rights violations or a violation of international humanitarian law” in clause 27(a), in order to broaden the definition of an “aggrieved person” to include non-“relatives” who are directly affected;
- Include any individual whose land and or property has been affected in the circumstances listed out in the definition of an “aggrieved person” in clause 27(a);
- Add “or a combination of both” in deciding the manner of payments- whether lump sum or staggered payments- in the best interest of the aggrieved persons in clause 12(1)(d)(v);
- Collective reparations in clause 27 to recognize guarantees of non-repetition, including law reform;
- Individual reparations in clause 27 to include measures as are intended to recognize the right to an effective remedy and benefits to the satisfaction of an individual aggrieved person.

The organization is of the view that these suggested amendments to the bill will make the bill stronger and better suited to meet the demands of affected persons and bring it in line with international law and standards and commitments, elaborated below.

International standards and commitments

A number of international legal instruments provide for the right to reparations under international law.⁷ More specifically, the United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law⁸ adopted and proclaimed by General Assembly resolution 60/147 of 16 December 2005, holds that,

‘Adequate, effective and prompt reparation is intended to promote justice by redressing gross violations of international human rights law or serious violations of international humanitarian law. Reparation should be proportional to the gravity of the violations and the harm suffered. In accordance with its domestic laws and international legal obligations, a State shall provide reparation to victims for acts or omissions which can be attributed to the State and constitute gross violations of international human rights law or serious violations of international humanitarian law.’⁹ (Emphasis added)

⁷ ‘... article 8 of the Universal Declaration of Human Rights, article 2 of the International Covenant on Civil and Political Rights, article 6 of the International Convention on the Elimination of All Forms of Racial Discrimination, article 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and article 39 of the Convention on the Rights of the Child, and of international humanitarian law as found in article 3 of the Hague Convention respecting the Laws and Customs of War on Land of 18 October 1907 (Convention IV), article 91 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) of 8 June 1977, and articles 68 and 75 of the Rome Statute of the International Criminal Court’, Preamble 1, General Assembly resolution 60/147 of 16 December 2005 (*UN Office of the High Commissioner*), accessible at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RemedyAndReparation.aspx>

⁸ *Ibid*

⁹ *Ibid*

Furthermore, Article 2(3) of the ICCPR holds that,

'Each State Party to the present Covenant undertakes

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
(Emphasis added)

In light of Sri Lanka's past experience with reparations it is essential that reparations are prompt, effective, adequate and transparent. In order to facilitate such reparations, key decisions around aggrieved persons must be made by a sufficiently independent body. Further, the provision of reparations must be swift in order to meet the demands of affected persons. We recommend to the government to amend the bill to reflect the concerns raised, and ensure the spirit of, and the independence called for in the CTF consultations.