

# **FINAL REPORT OF THE CONSULTATION TASK FORCE ON RECONCILIATION MECHANISMS**

**17 NOVEMBER 2016**

**VOL. I**



**Final Report of the Consultation Task Force on  
Reconciliation Mechanisms**

**17<sup>th</sup> November 2016**



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**VOLUME II**

Consolidated Report: Zonal Task Forces on Reconciliation Mechanisms

## ACKNOWLEDGEMENTS

Whilst our Consultations make clear that Sri Lankans do not wish to dispense with Reconciliation, they do however distrust the capacity and political will of the Government in bringing about the conditions for it. This Report, based on our island-wide consultations, provides the foundation for the transformation of the challenges of violation and impunity into the opportunity for meaningful reconciliation and national unity.

A continuing pre-requisite for this is the informed engagement of all and at every stage in this journey towards reconciliation. In the light of our experience gained at Consultations, the Task Force urges that the inevitable roadblocks encountered along the way are not given the unfounded status of impassable obstacles, but befaced squarely and constructively overcome.

The Government's recognition of the indispensable role civil society actors must take in the quest for Reconciliation underpinned our decision to provide guidance to and spear-head the consultations with the affected public island-wide, on the design and objectives of transitional justice mechanisms. We thank fellow civil society activists for engaging with the process initiated by us, both by their participation in the process and by their active encouragement of the Affected to come forward.

Our Consultations took place in the frame-work of Twin Challenges:

- that the reconciliation contemplated, is not between friends but between parties who love to hate each other and
- the distrust and lack of confidence in the State's efforts at Reconciliation.

Notwithstanding this, to be consulted on an issue both of national importance as well as of immediate relevance to their circumstances, was electrifying in its effect on affected persons country-wide. That so many chose to participate, some walking long distances to have their voices heard, needs to be recognised and valued. We found therefore, that, after an initial suspicion and holding-back, the Affected engaged with the process in increasing numbers. Their efforts to articulate their perceptions, whether individually at focus group discussions and public meetings or through group submissions made in writing, revealed the common desire to reach out to an abiding peace based on justice, equality and equity, irrespective of whether in a future lived together or apart.

These contributions of participants stem from lived experience and ground realities, not merely book-learning and knowledge of transitional justice and the law, making their insights invaluable tools in designing Sri Lanka's quest for a shared future. Many expressed their frustration at having

come before many previous commissions and ad hoc mechanisms with little or no result. As the CTF, we took the responsibility of explaining the difference in this process of consultations, pointing out that unless the findings of our final report are taken into consideration and the public made aware of this, there is a real danger of this process too, feeding the deep cynicism and despair of the State.

To fellow civil society activists who manned the Zonal Task Forces to such telling effect, my gratitude. Thank you for the unswerving priority you placed on accurately recording the concerns of the persons before you. While, as activists, you would have encouraged those sharing your views to come forward with submissions, you did not let your own personal preferences interfere with your recording of submissions received. It was your participation that made this process distinct and participatory. Despite all your pressing commitments you took up this role and demonstrated how public hearings can be done with more sensitivity. My particular thanks to you for this.

Members of our Advisory Panel and National Representatives Panel, your undeviating partnership in our efforts have made you truly part of us. I know you need no reminder of the intrinsic role that is yours in deciding the final outcome of our efforts.

To Government officials island-wide and at every level, whose assistance and advice ensured orderly and undisrupted consultations, my thanks. I realise what a store of strength for national reconciliation you are.

To representatives of the Human Rights Commission and psychosocial workers, my thanks and appreciation for your presence at ZTF consultations. Your presence provided a sense of security to participants.

To those of the Police and tri-services, who despite initial doubts engaged in this step towards making the Past truly "The Past", my regard.

To all of you who engaged with our Consultations, you have thereby created a true social history of our times; thank you.

I thank our Staff and Team of researchers for your tireless engagement in manifold tasks that ensured a successful outcome to our efforts.

Fellow-members of the Task Force, we have been both a source of enlightenment and a whip-lash of scathing criticism to each other in our shared effort. Let us rest confident that our Report, albeit an initial step on the journey ahead, is definitely one taken in the right direction.

Handwritten signature of Manouri Muttetuwegama in black ink.

Manouri Muttetuwegama

Chairperson

Consultation Task Force on Reconciliation Mechanisms

7<sup>th</sup> November 2016

## LIST OF ACRONYMS AND ABBREVIATIONS

ACTC	-	All Ceylon Tamil Congress
AG	-	Attorney General
CEDAW	-	Convention on the Elimination of all Forms of Discrimination Against Women
CID	-	Criminal Investigation Department
CM	-	Chief Minister
CO	-	Commanding Officer
CoA	-	Certificate of Absence
CoD	-	Certificate of Death
CoI	-	Commission of Inquiry
CP	-	Central Province
CSD	-	Civil Security Defence
CSD	-	Civil Security Division
CSO	-	Civil Society Organisations
CSU	-	Counter Subversive Unit
CTF	-	Consultation Task Force on Reconciliation Mechanisms
DDR	-	Disarmament, Demobilisation and Reintegration
DIG	-	Deputy Inspector General of Police
DS	-	Divisional Secretariat
ECCC	-	Extraordinary Chambers in the Courts of Cambodia
EP	-	Eastern Province
EPDP	-	Eelam People's Democratic Party
EPF	-	Employees' Provident Fund
EPRLF	-	Eelam People's Revolutionary Liberation Front
EROS	-	Eelam Revolutionary Organisation of Students
ETF	-	Employees' Trust Fund
FCID	-	Financial Crimes Investigation Division
FGDs	-	Focus Group Discussions
GA	-	Government Agent
GN	-	Grama Niladhari
GS	-	Grama Sevaka
GoSL	-	Government of Sri Lanka
HR	-	Human Rights
HRC/HRCSL	-	Human Rights Commission of Sri Lanka
ICC	-	International Criminal Court
ICPPED	-	International Convention for the Protection of All Persons from Enforced Disappearance

IHL	-	International Humanitarian Law
IHRL	-	International Human Rights Law
ICT	-	Information and Communication Technologies
ICTY	-	International Criminal Tribunal for the Former Yugoslavia
IDPs	-	Internally Displaced Persons
ICRC	-	International Committee of the Red Cross
IGP	-	Inspector General of Police
ITAK	-	Illankai Tamil Arasu Kachchi
ITJP	-	International Truth and Justice Project
IPKF	-	Indian Peace Keeping Force
JSC	-	Judicial Services Commission
JM	-	Judicial Mechanism
JMO	-	Judicial Medical Officer
JMOA	-	Judicial Medical Officers Association
JVP	-	Janatha Vimukthi Peramuna
LLRC	-	Lessons Learnt and Reconciliation Commission
LTTE	-	Liberation Tigers of Tamil Eelam
LGBTIQ	-	Lesbian, Gay, Bi-Sexual, Transgender, Intersex and Questioning
MFA	-	Minister of Foreign Affairs
MIA	-	Missing in Action
MOs	-	Medical Officers
NCP	-	North Central Province
NCPA	-	National Child Protection Authority
NGOs	-	Non-Governmental Organisations
NIC	-	National Identity Card
NP	-	Northern Province
OMP	-	Office on Missing Persons
OHCHR	-	Office of the United Nations High Commissioner for Human Rights
OISL	-	OHCHR Investigation on Sri Lanka
ONUR	-	Office of National Unity and Reconciliation
PCICMP	-	Presidential Commission to Investigate into Complaints of Missing Persons
PLOTE	-	People's Liberation Organisation of Tamil Eelam
PST	-	Psychosocial Taskforce
PTA	-	Prevention of Terrorism Act
PM	-	Public Meeting
RTI	-	Right to Information
SC	-	Special Counsel
SCRM	-	Secretariat for Coordinating Reconciliation Mechanisms
SGBV	-	Sexual and Gender Based Violence

SP	-	Southern Province
SPO	-	Special Prosecutor's Office
STF	-	Special Task Force
TELO	-	Tamil Eelam Liberation Organisation
TID	-	Terrorism Investigation Division
TJ	-	Transitional Justice
TJRNC	-	Truth Justice Reconciliation and Non-Recurrence Commission
TMVP	-	Tamil Makkal Viduthalai Pulikal
TNA	-	Tamil National Alliance
TULF	-	Tamil United Liberation Front
UK	-	United Kingdom
UN	-	United Nations
UNICEF	-	United Nations Children's Fund
UNHCHR	-	United Nations High Commissioner for Human Rights
UNHCR	-	United Nations High Commissioner for Refugees
UNHRC	-	United Nations Human Rights Council
UNP	-	United National Party
UNWGEID	-	United Nations Working Group on Enforced and Involuntary Disappearances
VAW	-	Violence Against Women
WP	-	Western Province
ZTF	-	Zonal Task Force

## EXECUTIVE SUMMARY

### A. Establishment of the Task Force and Methodology of Consultations

1. The Consultation Task Force (CTF) of 11 members drawn from civil society was appointed by the Prime Minister in late January 2016, to seek the views and comments of the public on the proposed mechanisms for transitional justice and reconciliation, as per the October 2015 UN Human Rights Council resolution on Sri Lanka, co-sponsored by the Government of Sri Lanka. The consultations were not restricted to these mechanisms and encompassed discussion of other mechanisms and processes for reconciliation the public wished to propose.

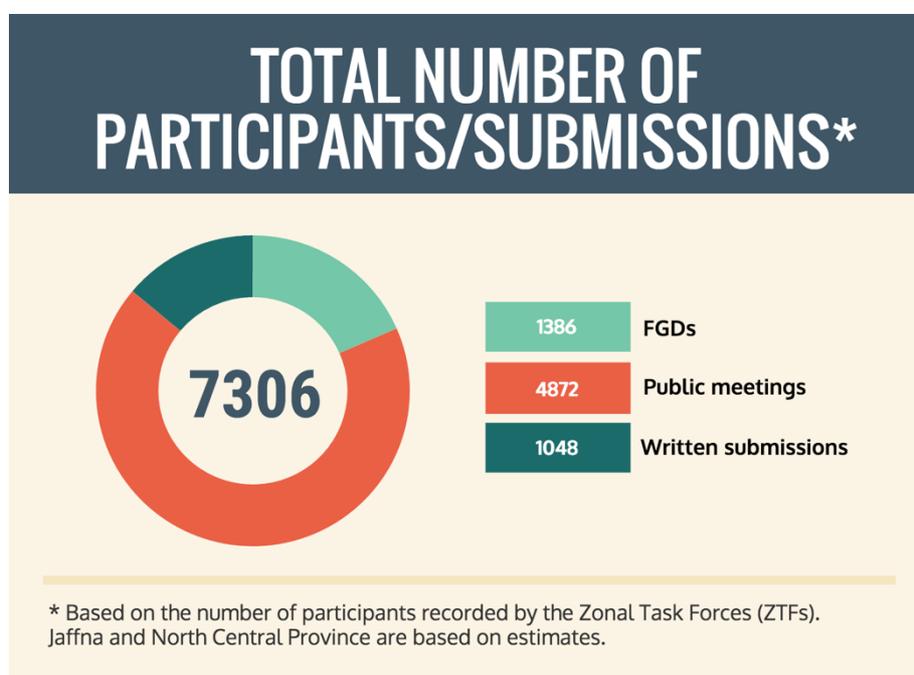
2. The Final Report of the consultation is organised according to the proposed four mechanisms and overarching issues such as psychosocial support and State and societal reform pertaining to transitional justice and reconciliation, with each meriting a chapter of its own. The other chapters include an introduction laying out the context of the consultations and enduring factors that would impact reconciliation into the future as well as a chapter on the methodology of the consultations. The chapters on the mechanisms are based on the views expressed by the public in the consultation process and contain both observations of the public as well as explicit recommendations in respect of each mechanism—the Office on Missing Persons (OMP), Office of Reparations, a Truth, Justice, Reconciliation and Non-Recurrence Commissions (TJRNR) and a Judicial Mechanism comprising of a Special Court and Office of a Special Counsel. The concluding chapter is devoted to the recommendations of the CTF, which are informed by the views and opinions expressed by the general public and stakeholders at the consultations.

3. The CTF was supported by two advisory panels—one of Representatives and the other of Experts. The latter advised the CTF on the substantive content of transitional justice in the consultations, its particular application and relevance to Sri Lanka and the former on the selection of members of the Zonal Task Forces (ZTFs). However, there was significant overlap in their contributions. The ZTFs—one ZTF in each district of the Northern and Eastern Provinces and one each for the other seven provinces—were tasked with conducting the consultations through public meetings and focus group discussions (FGDs) on the premise that people would trust and feel more comfortable expressing their opinions to those from their community and area and in the language of their choice. The ZTF reports based on consultations are compiled as a separate report. They were sent to the CTF for collation and categorisation according to key issue areas and the four mechanisms proposed. The ZTFs were drawn from civil society, the professions, former public servants and in some instances, members of the clergy. In addition to ensuring ethnic and sectoral representation as well as language proficiency as per each zone, there was 50% female representation on the ZTFs. The innovation of ZTFs, their composition and approach,

were greatly appreciated at the community level and constituted a key factor in ensuring the success of consultations island-wide.

4. At the request of the CTF, there was a representative of the Human Rights Commission (HRC) present at the consultations and HRC involvement to ensure follow-up action on incidents at the consultations, which undermined the enabling environment for reconciliation.

5. In addition to the ZTF consultations, the CTF had consultations at the national level with representatives of key sectors—the military, families of the disappeared, lay religious, professional and media organisations, women’s groups, individuals and organisations engaged in the creative arts. Submissions were also received through a dedicated website, by e-mail and by post in all three languages.



6. The CTF received a total of 7,306 submissions of which 4,872 were made at public meetings, 1386 were at focus group discussions (FGDs) and 1048 were sent in to the CTF as written submissions. The highest numbers of submissions were made at the consultations in Batticaloa, Ampara and the Southern Province respectively, averaging in excess of 500 in each zone. Consultations in the North Western and Western Provinces recorded the lowest number of submissions—below 250. The figures for Jaffna and the North Central Province are based on estimates as opposed to a written record in other zones.

## **B. Overarching Issues: Observations and Recommendations**

1. The CTF hoped and argued for advocacy and championship at the highest levels of Government of the rationale for transitional justice in Sri Lanka and the mechanisms proposed by

the Government. This however did not materialise and the predominant focus of the consultations at the community level was on the narratives and experiences of people in their search for loved ones and in seeking redress for grievances, including through appearances and submissions before a number of Presidential Commissions of Inquiry and Investigation in the past. Nevertheless, awareness-raising by the ZTFs and media had some effect in focusing consultations on the four main mechanisms and in eliciting other suggestions related to transitional justice. Consequently, though submissions directly on the more technical aspects of design, process of appointment, powers and functions of the four mechanisms were limited, a high level of public interest, debate and participation at the hearings was generated and views on key issues ascertained. Marking a first step in ensuring participation and public ownership of the overall process, some individuals expressed amazement at being asked for their views. In light of the above, the CTF recommends continuing communication and outreach on transitional justice by the Government and at the highest levels with the public at large.

2. People throughout the country expressed considerable frustration, bitterness and anger at yet another initiative, despite the inconclusive nature and abysmal failure of past efforts to provide any relief or redress. This though was coupled with an expectation and yearning that this particular initiative of consultations on transitional justice mechanisms would be different. This duality in public attitudes was strongly expressed in the consultations and must inform policy-making in the design of mechanisms for transitional justice and reconciliation. The CTF recommends that, given the desire for the truth, accountability of those who gave orders and the strength of feeling against recurrence, there should be constitutional recognition and provision of the right to transitional justice defined in terms of truth, justice and accountability, reparations and guarantees of non-recurrence.

3. It should also be noted that there were submissions, including from the security forces and Police, warning that this process of reconciliation would be counter-productive, compromise national security, deepen wounds and open new ones as well as exacerbate inter-ethnic and religious division. All Security Forces personnel categorically rejected international involvement in the accountability mechanism in particular. However, in most submissions made by the Security Forces and Police, there was unequivocal support for the Government's reconciliation initiatives and for a restorative as opposed to retributive approach, with a call by them for the involvement of religious leaders to enhance the former. They were of the view that reconciliation and reparations should be given priority to ensure non-recurrence, urged constitutional reform and requested greater information sharing by the government with their personnel at all levels, to dispel doubts and misinformation.

4. The Army representatives also stated that although they had achieved the Government's objective under its political direction and in difficult and challenging circumstances, they felt a lack of solidarity and support at present. They stated their support for a truth seeking process and if

there is any evidence of criminal activity, for the prosecution of the guilty. Given that as far as they were concerned, no criminal activity had been undertaken, they saw no need for amnesty either. Whilst they insisted that civilians were not deliberately targeted and that a policy of zero-civilian casualties was followed, they conceded the possibility of civilian deaths on account of civilians being caught in the crossfire. They also denied that sexual violence was used as a weapon of war. The Air Force reiterated that no crimes were committed and no illegal weapons used.

5. In light of the deficit of trust and confidence in the Government's commitment to transitional justice and reconciliation and the reservations expressed with regard to the process of transitional justice and reconciliation, the CTF strongly urges that in addition to 1 above, the vision of a plural, multi-ethnic and religious Sri Lanka in which diversity is recognised as a source of strength and as an asset and in which citizenship is founded on the mutual respect and dignity of all the peoples of Sri Lanka, be propagated and celebrated throughout the country by the highest levels of Government and by civil society. Unity in diversity, respect for and protection of the multiple identities of all Sri Lankans, is fundamental to meaningful reconciliation, peace and prosperity in the country.

6. Accordingly, effective, unequivocal action must be taken by Government to prevent the spread of ethnic division and religious intolerance and to hold to account those responsible under the due process of law, without fear or favour in respect of any community however defined. Some submissions from across the country called for the establishment of a secular State with equal respect accorded to all the religions practiced in the country. They posited this as integral to the sense of equal citizenship and as the starting point for reconciliation. The CTF recommends serious consideration of this in consultation with all stakeholders.

7. Security considerations were at the forefront of the consultations from the very outset. Given the surveillance, questioning and intimidating presence of security, intelligence and Police personnel at hearings of past commissions, the CTF spoke with the Ministry of Defence, service commanders and Police to ensure that an enabling environment would prevail for the duration of consultations and thereafter. Police and military liaison officers were identified and Presidential Directives on Arrest, Detention and Torture reiterated. Despite these measures, there were a number of incidents. CTF members had to personally intervene at some ZTF meetings to ask security/police personnel inhibiting participation at the consultations to leave. The persistence of impunity at the ground level, despite measures agreed upon with the highest levels of the security forces and Police to stop them, is confirmed by these incidents.

8. The persistence of impunity was identified in submissions as a key impediment to reconciliation and in turn, an end to it as a key confidence-building measure that should precede the establishment of mechanisms and thereby bridge the considerable deficit of trust and confidence that prevails in the willingness and ability of the Government to achieve meaningful

reconciliation. The issue of credible Witness and Victim Protection is closely connected to the persistence of impunity, public safety and security and the CTF in its recommendations reinforces local and international calls for robust and independent protection.

9. A number of other confidence building measures that deal specifically with military and security issues were identified in the consultations. They are included in the CTF's recommendations. These relate to the cessation of military involvement in civilian affairs, in the economy and civil administration in particular, expedited return of civilian lands acquired by the forces, demobilisation and demilitarisation. There are also unequivocal demands for the release of detainees and surrendees who have not been charged under the PTA or other laws, the repeal of the PTA, the publication of the list of detainees and of all places of detention.

10. A key confidence-building measure highlighted in consultations is the pivotal need for a political and constitutional settlement of the conflict. Submissions stressed that this was an essential prerequisite for reconciliation and a united country. The CTF has noted this accordingly in its recommendations.

11. The criminalisation and incorporation into Sri Lankan law of international crimes such as war crimes and crimes against humanity as well as the crime of disappearances in line with the definition of the crime under the International Convention for the Protection of All Persons from Enforced Disappearance, were also highlighted as key confidence-building measures. They are included in the CTF recommendations.

12. Yet another overarching consideration that comes out of the consultation process is the need for psychosocial considerations to be factored into the design and operations of transitional justice mechanisms, in particular, restorative psychosocial support and assistance to those affected, be they civilians or combatants across all ethnic divides. The CTF in its recommendations emphasises the primacy of the needs and concerns of those affected, the strengthening and sustenance of existing services in line with the requirements of transitional justice and reconciliation and in cooperation with the Psychosocial Task Force of the Office of National Unity and Reconciliation (ONUR).

13. Whilst this report does not devote separate chapters to Youth and Gender, it treats them as overarching issues that have a significant bearing on all mechanisms and indeed, any reform and reconciliation programme. Throughout the consultations, participants emphasised the critical importance of balanced gender and youth representation on the mechanisms, in particular the appointment of women at all levels of operation, especially as decision makers, prosecutors and judges. They stressed easy access to the mechanisms and the incorporation of gender requirements into the functioning of the mechanisms including the provision of space, guarantees of confidentiality, sensitivity towards and respect of the needs of those subjected to sexual harassment

and abuse, and that of mothers who will engage with the mechanisms. The CTF endorses these concerns and supports the long-standing demand for a National Commission on Women.

14. Land is another overarching issue, central to reconciliation, which came up in multiple submissions, including cases of occupation by the military and other state agencies such as the Forrest Department, and secondary occupation of lands and fishing waters by members of other ethnic communities. It merits specific policy action, including mechanism/s that can address complex inter-ethnic land disputes without delay. The CTF also recommends implementation of the existing constitutional provision for a National Land Commission.

15. The continuing need for highest-level governmental advocacy and championship of transitional justice highlighted in the consultations is prioritised in the CTF recommendations, as well as the coherence of the entire transitional justice and reconciliation policy. Therefore, the crucial requirement that the Government simultaneously spell out a road map for reconciliation along with the policy and operational frameworks for the mechanisms envisaged, their relationships to each other as well as to existing bodies tasked with reconciliation including Government ministries, is singled out for immediate, urgent attention.

16. The importance of ensuring the accessibility of the mechanisms in terms of their location, working languages and composition was also stressed in the consultations; likewise, the needs of the differently abled and marginalised. The public was insistent on the representation of those affected at all levels of all proposed mechanisms where feasible, and on the use of appropriate and non-distorting language for transitional justice mechanisms and instruments such as the Certificate of Absence (CoA). The CTF endorses these demands and in addition, recommends an overall monitoring body of the mechanisms with representation from affected families, human rights defenders, civil society activists and the international community appointed by the President from a list of nominations submitted by the Constitutional Council. The monitoring body should report to the President and its reports made public.

### **C. Recommendations on the Mechanisms**

1. Whilst the consultations were ongoing the Government presented a bill to Parliament on an OMP, which was eventually passed after a considerable disruption in the chamber. Not surprisingly, there was criticism of the Government on this and doubts raised as to the seriousness of the Government's regard for the CTF and its consultations. The CTF issued an Interim Report on the OMP, which is annexed to this Final Report.

2. A number of submissions however, were made on the issue of disappearances and the OMP, prior to and after the passage of the Bill. They formed the bulk of submissions in some public meetings, particularly in the North and East. This may be attributable to the salience of the issue

over three decades, the sense of urgency among family members that something can and must be done to locate missing members of their families, the public discussion of the OMP Bill, types of disappearance and the organisation of families around the issue. The key demands were with regard to highlighting the enforced and involuntary nature of disappearance in the title of the office, limiting the discretion of the OMP over sharing of information with prosecutorial authorities, accessibility of the offices, language, representation, involvement of families of the disappeared in the OMP and protection of those affected. For some family members of the disappeared, discussions on justice and reparations were considered too premature or even dangerous. The urgent task, as they saw it, was to immediately ascertain whether disappeared persons from both the war and the Southern insurrection were still in detention, either in Sri Lanka or abroad.

3. Reparations were understood in a myriad of different ways but with strong acknowledgement and solidarity across ethnic and religious lines for the loss and suffering of communities. At the heart of all calls for reparations is a call for justice, a feeling that wrongs that have been committed against individuals or communities need to be corrected, through redress, repair and restitution. As such, the purpose of reparations was articulated in terms of the accountability of the State for wrongs it had done to citizens and/or the recognition and acknowledgement of their suffering. Further, there was a clear articulation of justice as a form of reparation, or in some instances as the only form of reparation requested. Particularly among those who had suffered killings and disappearances during the 1980s as a result of the war or Southern insurrection and who continue the struggle to cope with the multiple consequences of losing a family member, there was a sense that all that could be expected from the State was some form of compensation to alleviate their suffering. There were submissions from across the country that also posited the provision of justice as both a sufficient and desirable reparation.

4. Suffering was articulated not only in terms of war related violations and ethnicity, but also structural violence and marginalisation of certain communities based on class as well as the Malaiyaha Tamils and Indigenous Communities. Violation of peoples' socio-economic rights including through land grabs and forcible relocations, was also a recurrent theme across the island. This included urban communities whose land had been taken for development projects and indigenous communities, who raised the issue of the erosion of the right to the commons.

5. Submissions also revealed both a reluctance and fear of reparations, on the grounds that development of the country as a whole had rendered them redundant and that reparations—primarily in the form of compensation—would thwart justice and accountability processes or be provided as an alternative to them. This fear was expressed largely in the North and East, particularly by families of the disappeared.

6. Very few submissions noted the need for a separate Office for Reparations. Requests for reparations though, could be categorised as either individual or collective and ranged from the material and financial to the symbolic. Guidelines to be followed in the provision of reparations were also identified in submissions. These included a clear and transparent policy on reparations, an approach to reparations centred on those directly affected and one that provided reparations in an equitable manner with the inclusion and active participation of those affected in the design of programmes.

7. Financial reparations were suggested for different types of losses and groups of victims and survivors as set out below:

- a) Reparations for loss of a family member and/or a breadwinner,
- b) Reparations for material/non-material costs incurred looking for those disappeared/missing,
- c) Reparations for physical violence and injury, including sexual violence and disability,
- d) Reparations for displacement, both internal and external, including restoration of voting rights,
- e) Reparations for loss of property and assets,
- f) Reparations for psychosocial impact and trauma,
- g) Reparations for loss of traditional/indigenous ways of life.

There were also calls for interim reparations to meet immediate needs—employment for vulnerable members of families of the killed or disappeared and for one-off reparation in kind, in the form of educational scholarships for their children.

8. There were a significant number of submissions that raised the need for symbolic reparations in the form of events and spaces for memorialisation, official acknowledgment and apologies.

9. A number of submissions lay significant emphasis on the need for memorialisation to be a process including citizens at all stages. These submissions also noted that monuments—the most popular form of memorialisation—needed to be sensitively designed respecting the multiple narratives of grief, be non-partisan, not be considered the only symbols of memory or risk the re-victimisation of certain groups. Alternative spaces such as libraries and museums where people could actively engage in reflection and learning were also proposed. Submissions also noted that spaces to remember did not necessarily entail monuments. One submission for instance noted that women in Mullivaikkal wanted living memorial spaces filled with trees, birds and water ways as healing and calm spaces.

10. There was considerable divergence in views between the Sinhala and Tamil communities on existing monuments in the North. While Sinhala submissions spoke of these monuments as symbols of pride, of victory achieved by soldiers and also as spaces for remembrance, Tamils felt these monuments were intended to remind them that they as a people had been defeated. They

noted the grief they felt when passing by, particularly as the victory that these monuments celebrated was won at the cost of a number of innocent lives.

11. In addition to the debate on existing monuments, there were a number of calls from across the country for new monuments, including for lives lost in particular through incidents such as massacres to those symbolising disappearances. One submission noted the need to reconstruct the monument for civilian lives lost during the Southern Insurrection that was destroyed in Diyawanna in the post-war period.

12. The right to grieve both publicly and privately was also raised. In the North and East in particular, the destruction of LTTE cemeteries, the grief it had caused and the need to preserve the sanctity of the dead was raised frequently. Many families, particularly of former LTTE cadres, felt they lacked the freedom to grieve even in private due to threats and intimidation. Observance of “Maaveerar Dinam” (Commemoration Day for fallen LTTE cadres), was raised in the North as a practice of grieving for family members that should be allowed to continue. Family members, particularly mothers of deceased LTTE cadre, also expressed the desire to be able to hang a photograph of their son in LTTE uniform, in the privacy of their homes. The CTF recommends the restoration of burial plots to family members and the removal of all buildings subsequently erected on them.

13. A number of days were suggested by different communities as days for commemorating lives lost or for wrongs committed against them.

14. In terms of linkages with other mechanisms, many did not see reparations as separate from the other processes. Many felt that reparations should be part of the other processes, particularly that of truth and justice. Specific linkages are apparent in the call for reparations in the form of documenting and archiving histories—both personal and collective.

15. The CTF received a significant number of submissions on the value of truth seeking/telling and on the objectives of the proposed Truth, Justice, Reconciliation and Non-recurrence Commission (TJRNR). Whilst a number of objectives were identified, a majority of submissions state that the TJRNR must:

- a) establish the truth,
- b) determine the root causes of conflict,
- c) hold perpetrators of violations to account,
- d) achieve equal rights,
- e) build multiple narratives of history,
- f) make recommendations for non-recurrence and enable victims to seek redress for violations and abuses.

Given the failure of previous commissions and a history of inaction, submissions insist that the approach to truth seeking must be fundamentally different to past efforts. They emphasised that the TJRNRC, therefore, must build on existing work, implement the recommendations of previous commissions and follow through with concrete action.

16. Many submissions advocated an inclusive approach, recommending a broad time-frame allowing for greater inclusion of affected individuals, groups and communities. Submissions referred to the armed conflicts and periods of violence, namely that between the LTTE and the GOSL (1983-2009), the youth insurrection and political violence between the JVP and the GOSL (1971 and 1987-89), the anti-Tamil pogrom (1983), violence and discrimination against minority religions (primarily post-war), and other violence involving the State.

17. Many submissions wanted the mandate of the proposed Commission to be clearly defined and differentiated to that of previous Presidential Commissions of Inquiry. They saw the TJRNRC as having a comprehensive investigatory role in establishing the truth as well as one of referring cases of criminal acts to a prosecutorial body. At the same time there were submissions that saw amnesty as an incentive for coming forward with the truth and those, which favoured a compassionate approach to amnesty at lower levels of command responsibility in consultation with victims. Others were flatly opposed to amnesty under any circumstance. The CTF notes that there should not be amnesties for war crimes and crimes against humanity, as well as gross human rights abuses including torture, enforced disappearances and rape.

18. Submissions recommended that the Commission recognise and address past violations such as discriminatory State policies with the power to rectify them. The TJRNRC's link to other reconciliation mechanisms was also commonly recognised, particularly to the Judicial Mechanism and the Office on Reparations. One submission stated that the TJRNRC should not complement the Special Court, but should only focus on reconciliation and non-recurrence as opposed to truth and justice.

19. Particular emphasis was placed on the awareness raising, outreach and communications functions of the TJRNRC, pointing to the importance of involving media personnel and artists in the dissemination of information. Submissions called for the information received by the Commission and its final report to be made widely available to the public in all three languages. Submissions also recognised the importance of documenting and archiving the information, primarily for posterity as an inclusive historical narrative for non-recurrence, to promote reconciliation and for the practical purposes of assisting victims. The CTF endorses the above and also recommends that the findings of the TJRNRC are included in national educational curriculum reform and school text-books.

20. Submissions called for public hearings for select groups of the affected, with the option of giving testimonies in private being made available to others. Receiving complaints and imposing penalties was also seen as an important function, as was reporting. Those submissions that commented on the tenure of the Commission, stated that it must conclude its work within a short period of time, with some recommending a period of two years. The CTF recommends that the tenure of the Commission be determined by the volume of cases before it.

21. Some submissions comment on the structure of the TJRNRC and make suggestions about ensuring access to the mechanism. These submissions prefer a decentralised structure and stress that affected communities should be able to access the TJRNRC. It is also suggested that the mechanism should actively seek information from affected communities by visiting villages around the country. The operational independence of the TJRNRC and the allocation of sufficient funds to enable it to fulfill its mandate without constraints, is also emphasised in submissions.

21. The CTF recommends that the TJRNRC should at the end of its term present a report to Parliament, which in turn should be made public in all three languages. The TJRNRC should also release annual reports on its work according to the same procedure. It should conduct an effective awareness raising and communication campaign involving a dedicated website and Outreach Unit, thereby ensuring engagement with the public and media prior to, during and after the public sittings.

22. The importance of justice was reiterated in submissions from all parts of the country and expressed in various ways including as accountability for past crimes committed in the context of the war and its aftermath, violation of group rights and acts of violence against ethnic and/or religious groups, crimes committed during the southern insurrection, 'everyday violence' and as recognition of the need to end impunity. It was also presented in terms of addressing the failures of the existing judicial system, of providing political and economic solutions for collective rights denied and violated, ensuring non-recurrence and laying the foundation for reconciliation. There were others, mainly from the Sinhala community, who feared that justice might undermine reconciliation and further polarise ethnic/religious communities. The overwhelming call for justice from across the island, must be viewed in terms of the failure of the judicial system to deliver redress, recognise violations, establish accountability and ensure the security of victims and witnesses from reprisals. Accordingly, a Judicial Mechanism with a Special Court and Counsel, which has also been reflected in reports of previous commissions of the State, is seen as a measure that will restore confidence in the judicial process; in particular, independently and impartially address past lapses and shortcomings and ensure accountability. There were submissions as well, reiterating the importance of justice, which insisted that it could be achieved through a more effective and reformed judicial system, rather than a special mechanism.

23. The need for independence, capacity, competence and transparency underpins the call for international judges, prosecutors, investigators and other staff of the Judicial Mechanism. Whilst an overwhelming majority of Tamils in the North and East call for international involvement, most of them also reiterated the importance of having Tamil speakers on the mechanism. This implicit yet effective endorsement of the hybrid model, is further strengthened by the argument advanced that trust and confidence in the mechanism would be generated if it fully reflects the multi-ethnic and religious character of Sri Lanka as well. The CTF also received submissions, largely from the Sinhala community, rejecting any international involvement in what they viewed as a purely domestic process. There were a few submissions that spoke to the more technical aspects, including the ratio of national to international judges, and the need for a gradual transition from a hybrid to a purely domestic mechanism.

24. The CTF recommends a hybrid Court with a majority of national judges as well as a sufficient number of international judges. This will ensure at least one international judge per bench and pre-empt delays due to the absence of one or more judges. It also recommends international participation in the Office of the Special Counsel of prosecutors and investigators, in addition to the provision of technical assistance. There should be clear guidelines and criteria spelt out and made public in respect of all aspects of international participation. International participation should be phased out once trust and confidence in domestic mechanisms are established and when the required expertise and capacity has been built up, nationally.

25. The material jurisdiction of the Judicial Mechanism is to prosecute war crimes, crimes against humanity and violation of customary international law. Particular crimes such as torture, sexual violence, massacres, deliberate targeting of civilians including bombing of hospitals, denial of medicine and food supplies, use of banned weapons, the disappearance of persons who surrendered to armed actors, forcible expulsion of civilians, the use of civilians as human shields and the forcible recruitment of children were specifically mentioned in submissions as crimes to be investigated. The submissions on temporal jurisdiction, though not couched in technical terms, broadly suggest that the Judicial Mechanism should not be limited to crimes committed during the war or to specific periods within the war. Taking into account the range of submissions, the CTF recommends that there should be no temporal limitation on the jurisdiction of the Special Court.

26. Whilst individual submissions made specific suggestions on the Office of the Special Counsel including on the need for foreign personnel, its swift establishment and public outreach, the issue of prosecutorial policy in terms of the scope of prosecutions by the Office of the Special Counsel, selection and treatment of emblematic cases and the fate of remaining cases, was not sufficiently addressed. The CTF recommends that the Office of the Special Counsel should be set up without delay; its powers and functions and its relationship to other mechanisms clearly established and made public. In the event that the Special Court is unable for reasons of practicality/time/resources,

to prosecute all individual cases of violations, the prosecutorial policy must ensure that at a minimum, those bearing the greatest responsibility for international crimes are held accountable.

27. Submissions identify a wide range of perpetrators including State or State supported actors, irrespective of their rank and/or current position and the LTTE. The importance of command responsibility is reiterated to ensure that those who ordered crimes and/or the most senior leaders who may not themselves have directly perpetrated crimes, are covered by the mechanism. On the prosecution of LTTE members, some submissions from the Tamil community take the position that surviving LTTE cadres have been through rehabilitation or have been prosecuted under the existing judicial system and should not be re-tried. According to these submissions, the focus instead could be directed towards leaders of the LTTE who were allied to the Government during or after the final phase of the war or LTTE leaders assumed to be living abroad. Similarly, there were submissions from the Sinhala community expressing concern over the targeting of war heroes. They maintained that some of the acts were committed in the exigencies of the war. There were also submissions from all communities calling for justice to be served and for those responsible to be held to account throughout the command structure, rank and file.

28. Submissions call for the incorporation of international humanitarian law and relevant rules of evidence and procedure into the domestic system. They point to the need to introduce modes of liability such as ordering, superior and command responsibility and joint criminal enterprise into Sri Lankan law. Some technical submissions also address the collection, handling and storing of evidence and the treatment of witness testimonies.

29. A few written submissions address the model and structure of the Court and propose a High Court, akin to the Commercial High Court established by an Act of Parliament. Submissions state that the Office of the Special Counsel should have a clear mandate, be independent and include units for investigation, victim and witness protection, counselling and victim support, public outreach and a special unit on disappearances. Submissions also recommend, a trial monitoring body and a defence and legal unit. Accessibility in terms of location and language were key issues raised by affected persons. There were recommendations that at a minimum, branches of the Court should be located in the provinces and that victims and witnesses be allowed to access the Court in the language of their choice.

30. Specific victim friendly rules of procedure and recommendations for the treatment of victims and witnesses are also highlighted in submissions dealing with special categories of victims and persons before Court, including victims of sexual violence, children and persons who are differently abled or disabled. Some of the more technical submissions received on the Judicial Mechanism, especially on the issue of sexual violence, highlight the failure of the judicial system and call for the exercise of suo-moto powers of Court to take up past complaints that have not been prosecuted to a conclusion. Submissions stress that procedures to address the specific needs

of victims and witnesses, to avoid re-traumatisation and ensure access to justice, must be a priority for the judicial mechanism.

31. On the selection and appointment of judges, prosecutors and staff, submissions emphasise the importance of an independent and rigorous process whereby each candidate is vetted for their capacity, moral character and conflict of interest by an independent authority. There is no consensus on whether judges, particularly international judges, should be appointed through a purely domestic process or one with international participation. Several submissions from the North stressed the importance of appointing judges and staff who have the trust and confidence of the public/affected communities. The CTF recommends the setting out of criteria for the selection of judges and the Special Counsel by the Constitutional Council in consultation with the Human Rights Commission, professional bodies and civil society and in the case of international judges, with the Office of the UN High Commissioner for Human Rights as well. The criteria should be made public and the Constitutional Council should submit a list of names to the President for appointment in respect of the Special Court and the Office of the Special Counsel.

32. While submissions made at public meetings reiterate the importance of the involvement of affected communities in the Judicial Mechanism, some singled out the need for public hearings and public broadcasting of hearings. In this respect, they saw the Judicial Mechanism as a public tribunal where victims would also be involved in the dispensation of justice. Other submissions discussed the role of affected communities in the Judicial Mechanism mainly in terms of standing—of the right to access the Court—representation on the Court and the need to pay attention to security, psychosocial and gender concerns.

33. Measures must be put in place within the ordinary judicial system to ensure prosecution of human rights violations and cases, which are not taken up by the Special Court. This entails systemic reform and structural change at every level including the judiciary, Attorney General's Department, Judicial Medical Officers, Police and a robust Victim and Witness Protection Unit. The call for reforms was made in some written submissions and at sectoral meetings. Whilst at public meetings, the number of challenges faced by those seeking redress and protection in a variety of contexts of armed conflict, religious violence and in 'every-day' law and order were highlighted. In this regard, a number of recommendations are highlighted in the CTF's Final Report.

34. The CTF was open to suggestions for mechanisms other than the four proposed by the Government. In calling for separate mechanisms to address issues such as displacement, land, women and justice, and religious tensions, organisations and individuals were further highlighting the shortcomings of existing systems and the need for urgent action in respect of these issues.

35. The CTF recommends the establishment of a Minority Rights Commission to address issues of concern to minority communities. This Commission should be appointed by the President from a list of nominees submitted by the Constitutional Council and drawn from civil society. It should present an annual report to Parliament on the situation of minorities in the country, which could include suggestions for legislative reform.

36. A number of submissions were received on religious violence, with some stressing the need for justice and others suggesting measures that would be both preventive and responsive, including a separate mechanism. The CTF recommends that the Inter-Religious Advisory Group reportedly established by the President in February 2016, should be tasked with providing early warnings and mediation of potential religious tension and violence and the monitoring of incidents of religious violence, without prejudice to the rights of those affected in such incidents of seeking redress through the established procedures of law and order and justice.

37. Specific recommendations have been made with regard to demilitarisation and to the reintegration of ex-combatants into society. While current military personnel and disabled servicemen raised their concerns with the transitional justice process and made suggestions, including on the need for persons associated with the military to serve on these mechanisms, families of military personnel and of police officers killed or missing in action, pointed to disparities in pensions, compensation and the selection of beneficiaries. Ex-combatants associated with the LTTE made submissions on the four mechanisms and also raised concerns about their current situation, the failure of the rehabilitation programme and their reintegration into society. In addition to pointing to the impact of continuing surveillance by the military, intelligence and police in heightening insecurity and stigmatisation, they also pointed to limited economic opportunities. For some, their marginalisation within the community resulted not only because of their identification by the State as ex-combatants, but also on account of how they were perceived by the community. For all ex-combatants the issue of prestige and the lack of societal respect for what they had sacrificed, was a concern.

38. Not surprisingly, the vast majority of recommendations made in submissions focused on the State. A small number of submissions focused on societal changes required for transitional justice, with many of these being made in sectoral meetings with the media and artists. There were some submissions that called for introspection and self-criticism followed by corrective action, by specific sectors of society.



## **INTRODUCTION: CONTEXT, CONSTRAINTS, CHALLENGES AND KEY OBSERVATIONS IN THE CONSULTATION PROCESS**

1. Pursuant to the commitments made by the Foreign Minister the Hon. Mangala Samaraweera at the UN Human Rights Council, Geneva, in October 2015, which were incorporated into the resolution on Sri Lanka co-sponsored by the Government of Sri Lanka and passed at that session, the Prime Minister appointed a 11-person Consultation Task Force on Reconciliation Mechanisms, hereinafter referred to as the CTF, drawn entirely from civil society. This Introduction to the Report of the CTF highlights the context within which the consultations were carried out, the constraints faced and the salient features of the process, which impacted the consultations and which, could continue to impact the process of reconciliation in Sri Lanka thereafter.

2. At the outset the CTF wishes to place on record that despite challenges and constraints, the consultations constituted an invaluable learning experience for its members, other stakeholders, interested agencies, media and the general public. The willingness of the members of the public to engage the CTF with both written and oral submissions in public meetings and focus group discussions was both sobering and inspiring, attesting to the firm belief of our fellow citizens in the singular importance of reconciliation for our country. The CTF also wishes to place on record that the modus operandi of the CTF, of working through Zonal Task Forces (ZTFs) at the district and provincial levels, considerably facilitated consultations, ensuring that those who made submissions were doing so to people they trusted, were familiar and comfortable with and at venues close to their homes. Furthermore, there were allegations that the consultation process though projected as island-wide in scope, was intended only or predominantly for the Tamils, especially of the North and East. However, the robust response to the consultations in the rest of the country amply demonstrated that this was not a widely held view.

3. The CTF wishes to stress that its Report is based on the submissions made to it and therefore the comprehensiveness of the report in terms of views and perspectives on transitional justice and the mechanisms for reconciliation, is limited by this.

### **1. Mandate**

1.1 The mandate of the CTF was to consult the public on its views and ideas on the design, powers and functions of the mechanisms for reconciliation proposed by the Government and to present a report to the Government on the consultations, which would be made public. The CTF extended the scope of the consultations to include other measures and mechanisms for reconciliation the public wished to propose. The Government had agreed that the report of the

CTF based on the narratives and views presented by the public in consultations will inform the eventual design of mechanisms for reconciliation.

## 2. Complexity in the attitude towards Consultations

2.1 The political changes since January 2015 and the high expectations they gave rise to in respect of governance and reconciliation notwithstanding, arguably the most salient feature of the consultation process was the pain, frustration and even anger of those who participated, coexisting at the same time with their hope and expectation that the consultative process would yield demonstrable action in contrast to the woeful record of previous processes. This needs to be understood in its historical context both in terms of the opportunities this process offers, as well as the dangers of repeating mistakes, in particular, the non-implementation of the recommendations of past commissions that were set up in response to critical demands of victims for truth, justice, reparations and non-recurrence. In no uncertain terms, participants stated that they were fed up of going before commissions of inquiry and investigation without any tangible results. Yet, at the same time they expressed and not always explicitly, the hopeful expectation that this time around things would be different. Some made the point that this would be the last time they recounted their suffering and grievances to a commission-like body. In doing so, they also revealed their initial perception of the CTF as yet another State or Government commission, despite efforts to explain and maintain the independence of the CTF.

2.2 At the consultations, people expressed differing views on the process. That members of their local communities carried out the consultations and in their language, was a crucial factor in facilitating consultations. Some welcomed the initiative by the Government to ascertain their views and suggestions on transitional justice mechanisms, while others—including many in the South—noted this as the first opportunity they had been provided with to talk to a Government-appointed body about the violations that they had suffered. Others, especially in the North, expressed their fears, doubts and skepticism about the consultation process and the Government's intentions but nonetheless engaged, going into extensive details of the types of violations they suffered, their expectations of the consultations and the redress they sought.

2.3 The Government therefore, cannot take for granted this cautious and residual trust in its bona fides on reconciliation. It is a definite expression of the pain and suffering of victims and survivors who, because of their situation and notwithstanding past experience, are effectively willing to place the Government on probation to deliver on reconciliation. If the Government fails to do so, it will be confronted with the deepening of cleavages, the further widening of a wide deficit of trust and confidence.

### 3. The nexus between public awareness, outreach and participation in Consultations

3.1 The point was also made in the consultation process that the disappointing track record of previous processes was a key factor militating against wider and greater participation in the consultations. Widespread disappointment with previous processes, it was noted, has also bred cynicism with regard to the sincerity of any State initiative on disappearances and human rights violations in general.

3.2 As salient a feature and related to the above, was the lack of public awareness of the reconciliation process and in particular of the mechanisms proposed by the Government in this regard. The CTF impressed upon the Government the pivotal importance of open, explicit championship of reconciliation at the highest levels of Government and of the rationale for the mechanisms proposed, prior to beginning the consultation process.

3.3 The absence of this vital Government outreach impacted the level and focus of participation in the consultations. In some cases, consultations were seen by sections of the public as being of secondary importance to the Government, if of any importance at all and a minority liberal civil society driven process with international support. The latter perceptions were reinforced by the passage of legislation on the Office on Missing Persons (OMP) even before the consultations were concluded and the nature of the process by which it was done. Ironically, even the outreach and awareness raising efforts of members of the CTF in print, on electronic and social media as the only public champions of the consultation and reconciliation process, had a similar effect. The CTF thus ended up serving multiple roles—raising public awareness on transitional justice and the mechanisms proposed by the Government as well as mobilising the public to engage with the Government on them. The latter included constituencies that felt that the State had given up on them. For instance, a key question raised by families in the South, including those of M.I.As from the Southern Insurrection, by Up-Country Tamils and by persons affected by ethnic violence such as took place in Puttalam in 1976, was whether the OMP would include their cases. Government failure to address this will only feed suspicion and doubt about this Government and of the State in general.

3.4 It should also be noted, that the consequences of the lack of Government championship and outreach were also compounded by periodic and at times, contradictory statements by leading Government figures on the composition of the accountability mechanism. This led to the reasonable conclusion that the public was made more aware of what the government did not want in respect of reconciliation mechanisms as opposed to what it did. Open championship of the process by the Government and a programme of outreach to give effect to this would have gone a long way in increasing participation, dispelling doubts and distortions regarding the origins and objectives of the consultations and reconciliation process and the authenticity of government bona fides.

3.5 The independence of the 11- member CTF drawn from civil society was seen by some to be compromised by the lack of Government championship of the process and outreach, as well as by the passage of the OMP legislation. The CTF was placed in the position of having to clarify contradictory Government pronouncements, in addition to having to explain the rationale for the mechanisms proposed by Government and their possible powers and functions. This was used in certain areas to substantiate the charge that the CTF was biased and willingly employed as an instrument of government policy and propaganda.

3.6 The absence of an outreach and awareness campaign meant that the majority of submissions that spoke directly and in detail to the design, functions and powers of the mechanisms proposed by the Government, were largely from civil society organizations that work on transitional justice and reconciliation. There was considerable confusion over the overall coherence of the four mechanisms proposed by the Government, the relationship of one to another and the sequencing of their establishment. The CTF therefore has reservations regarding the extent to which the consultations it conducted could be characterized as informed.

3.7 In terms of participants at public meetings, in the North and East the overwhelming majority was from families of the disappeared. In the South too, they formed a fair proportion of those who made submissions. Families of the missing in the South included those of victims of the Southern Insurrections including members of families of those Missing-in-Action as well as families whose loved ones have been disappeared more recently. This indicates that even though they were subjected to other violations, participants made a deliberate choice to focus on the atrocity of disappearance. This reveals their fervent hope for truth and closure and also for confirmation of a deep and abiding belief that a loved one is still alive. That disappearances have been the focus of civil society organisation and advocacy for over three decades must also have been a factor.

#### **4. Enduring security concerns and the enabling environment for Consultations**

4.1 Yet another key factor impacting the level of participation in the consultation process was security considerations and the constraints on bringing about an enabling environment for consultations in the North and East. At the outset, the CTF spoke with the Government, the Service Commanders and the Police to impress upon them the importance of this and their responsibility in ensuring an enabling environment for unimpeded consultations. The CTF also obtained the cooperation of the Human Rights Commission (HRC) to follow up on possible incidents.

4.2 CTF members were personally aware and some had direct experience of the impact of security force and Police questioning, surveillance and intimidation of those who had participated

in earlier presidential commissions of inquiry. Whilst the security forces and Police cooperated with the CTF in identifying liaison officers and personnel at national, district and provincial levels, there were instances of surveillance and the intimidating presence of forces personnel at ZTF meetings in the North and East. In some instances, CTF members and the HRC intervened to ask such personnel to leave. CTF members were also informed of instances of harassment, and one case of torture during the consultations.

**4.3** The security factor was cited by those who participated as inhibiting fuller participation, with some expressing concern and fear of possible repercussions on account of participation in the consultations. The inability of the Government to rein in the security and intelligence machinery during the consultations is of grave concern. It only serves to heighten the fears of victims and activists alike that they will continue to face harassment and be subject to repercussions from the State, even during the process of transitional justice. Although ZTF members in the South were concerned about public protests against and disruptions of the consultations, there was only one such incident. It took place in Kalutara. The ZTF responded by organizing a separate hearing for the protestors.

**4.4** In the North and East especially, there was an emphasis on the crucial importance of immediate confidence building measures to create the enabling environment for mechanisms on reconciliation. People spoke with great emotion about the disappeared, militarization in the North, the pivotal significance of expedited land return and the enduring and debilitating impact of landlessness, the deep scarring and consequent stigma of sexual violence and the marginalization of ex-combatants. Unequivocally they called for the repeal of the Prevention of Terrorism Act – a commitment the government is pledged to fulfill – and the fate of those imprisoned under it without charge. They also saw a political and constitutional settlement of the conflict as central to reconciliation. These views, presented with intensity, solidly underscored their contention that despite the contribution they made to political change in 2015, their situation was effectively the same as before that change. People also spoke about accountability for LTTE violations and atrocities and in doing so convincingly challenged the argument that the process of transitional justice is exclusively about State and security force culpability and moreover, that it is intended as such.

## **5. Key Observations of the Process**

**5.1** Based on their understanding and expectations of the mechanisms, participants expressed three clear positions regarding the structure and functioning of the proposed mechanisms. They were insistent that the mechanisms should be close to or accessible to those affected. Many from the North and East wanted mechanisms to be headquartered in those provinces. As a basic minimum they wanted provincial offices of the respective mechanisms. Many also insisted on the operational use of local languages and warned against the risks of erroneous translations that have

plagued past commissions. The reference to language was also related to the understanding of local contexts. A point made repeatedly by affected families throughout the country and some civil society groups was the need to ensure the involvement of families in the functioning of the mechanisms, including as staff and members. Families made specific suggestions about their participation in activities at exhumation sites and in monitoring the search of detention centres.

5.2 For many the search for truth was paramount, particularly among families of the disappeared. Most urgent for them, was for the State to assist in searching for the missing or disappeared. Some families, particularly those with members who disappeared in 2009 and after the end of the war in the North, even dismissed discussing justice, reparations or any of the mechanisms and measures such as the Certificate of Absence. They stated that they could only do so once they knew the truth. They were apprehensive that voicing an opinion on the mechanisms could have negative repercussions, including violence against the missing whom families believe are still being held in secret detention centres. They also saw the consultations on mechanisms as irrelevant and/or as ruses to buy silence.

5.3 Whilst a number of civil society submissions highlighted the importance of the four pillars of justice, truth, reparations and non-recurrence, with many emphasising the critical importance of the first, in terms of persons coming before the public meetings it is difficult to make sweeping generalisations. For instance, those affected by violations in the 1980s, stated outright that they had no interest or did not see the point of truth and justice, but were desperate for urgent reparations. The call for justice and accountability, in particular, was made by families from the North who were affected by disappearances during the 2008–2009 period. Among some families of the Missing in Action (MIA), despite most of them having secured a death certificate there was a clear demand for the truth as to the fate of the member of their family. The diversity in the calls made by members of families makes clear that the calls for justice, truth, reparations and non-recurrence cannot be simplified through easy categorizations according to region, ethnicity and period of violations. The call for justice was not restricted to the Tamils of the North and East, but was also made by Sinhalese, both with regards to the war and the Southern Insurrections.

5.4 Even while multiple efforts were made by the CTF and ZTF to ensure clarity around the four mechanisms, it is noteworthy that many in the public meetings and even FGDs responded as if the State was proposing one mechanism to perform multiple tasks. This was not merely a case of misunderstanding but also illustrative of how participants wished transitional justice would move forward, with clarity and with no duplication in terms of affected persons having to access a multiplicity of mechanisms to secure redress. The need to share information between mechanisms and of prioritizing confidentiality where necessary was raised by some. Sharing of information relating to prosecutions between mechanisms was favoured especially by human rights organisations.

5.5 Similarly, the conceptual separation of the four pillars of transitional justice was also questioned by families. They tended to see overlaps. Truth and justice were not viewed as separate objectives and the search for them as separate processes, but as part of a continuum. Some families in the North for instance, proposed an inquiry at which perpetrators, including leaders, would come forward to face victims.

5.6 On balance, whilst there were proposals favouring a restorative justice approach as opposed to a retributive or punitive one, participants also stressed the importance of responsibility. Responsibility, ranging from command responsibility to that of individual perpetrators was stressed by a number affected families and civil society groups. Hence, it seems clear that blanket collective amnesties are not an option. For instance, some mothers both in the North and South suggested that the perpetrator provide labour for the households of the missing, while others suggested the death sentence for heinous crimes. A number of civil society groups and also some families were opposed to amnesty for heinous crimes including mass disappearances and sexual violence. Participants either wanted cases sent to the proposed Special Court or wanted each mechanism to have a prosecutorial arm of its own.

5.7 Despite the efforts of the CTF and ZTFs to explain the purpose of the consultation and the four proposed mechanisms, some affected families did treat the consultations as a space for narrating experiences and grievances. Thus the public consultations did on occasion serve as de facto truth hearings, including on issues of alleged war crimes. Inadvertently, the consultations may have ended up contributing to frustrations with the State practice of setting up ad hoc commissions and to an aversion to this mode of hearing and by extension to truth commissions. A frequent request across the country in response to the proposed truth seeking commission was for a mechanism capable of ensuring action, rather than that of merely listening.

5.8 On the controversial issue of the nature and extent of international participation on the Special Court, in particular, it should be noted that while the call for international judges was a predominant demand in the North and the call for a purely domestic mechanism came from the South, there is support for or acceptance of foreign judges in the South, and in the North and East for acceptable and trustworthy individuals regardless of nationality, Tamil speaking judges and multi-ethnic representation. The need for foreign technical expertise was in general recognized and conceded, with some, including MIA families, emphasizing the critical importance of this. Even the participation of internationals in the selection of beneficiaries for reparations was called for. The call for international involvement by various sections of Sri Lankan society should be seen as reflecting the deficit of trust, confidence and credibility in the State.

5.9 A key demand made at public sittings and FGDs, particularly in the South was the need to focus on State reform. The lack of equitable treatment by State officials in the provision of services ranging from relief to development was a frequent theme across the country. The need to ensure

an improvement in institutional structures and the attitude and behaviour of state officials was cited, making clear that the general public saw fundamental state reform as integral to transitional justice. Thus mainstreaming of transitional justice is key. While specific reforms were proposed in the sectors of health, education, resettlement, the judiciary and the security sector, there were also calls for additional mechanisms to be established without delay to deal with the on-going challenges of religious violence and minority rights. The identification of additional mechanisms highlights the public perception of the limitations of the proposed mechanisms as well as that of the reconciliation process as a catalyst for fundamental state reform.

**5.10** The pain and suffering that was expressed at consultations reinforced the CTF belief that psychosocial support, victim support and assistance are integral to reconciliation. Accordingly, the CTF report devotes an entire chapter to victim support and assistance, in particular psychosocial support, on the basis that the ground reality requires that this be highlighted for special attention as an overarching issue. Consultations confirm that this is not an issue of resources alone, but importantly one of acknowledgement, orientation and attitude, empathy and understanding of the deep wounds of victims and survivors yearning for closure and eventual reconciliation.

**5.11** Despite their outright rejection of internationalists on the Judicial Mechanism and categorical denial of war crimes, consultations with the security forces and the Police revealed broad support for reconciliation which stressed the restorative as opposed to punitive aspects of transitional justice. Consultations also revealed that the security forces and the Police too, recognise the importance of Government outreach.

**5.12** The consultations in sum reveal an underlying hope and faith, alongside deep cynicism and apprehension, not just of the Government but also of the State in respect of transitional justice. Thus the State's actions post-consultations will be critical for re-building relations in a fractured society, particularly of victims from all ethnicities who fear that the State has sidelined and forgotten them. The risks of not doing so are multiple, including to the individuals who served on the ZTFs and who despite their own doubts and fears engaged in this effort. It is imperative that the consultations ensure an effective transition to a more just and peaceful country and that the proposed mechanisms do not end up as yet another set of ad hoc mechanisms by the State in response to conflicts, that fails to deal with impunity and suffering.

## I. METHODOLOGY AND PROCESS OF CONSULTATIONS

### 1. Mandate and Scope

1. The Consultation Task Force on Reconciliation Mechanisms (CTF) was appointed on the 09<sup>th</sup> of February 2016 by the Prime Minister of Sri Lanka to carry out public consultations on Transitional Justice mechanisms following, in particular, three decades of civil war. The mechanisms envisaged were announced at the UN Human Rights Commission sessions in September 2015 by the Foreign Minister of Sri Lanka and were incorporated into the resolution on Sri Lanka co-sponsored by the Sri Lankan Government at these sessions. The CTF consists of 11 members from civil society: Manouri Muttetuwegama (Chair), Dr. Paikiasothy Saravanamuttu (Secretary), Shantha Abhimanasingham, Visaka Dharmadasa, Dr. Farzana Haniffa, K.W. Janaranjana, Prof. Sitralega Maunuguru, Mirak Raheem, Prof. Gameela Samarasinghe, Prof. Daya Somasundaram, and Gamini Viyangoda. See Annex 1 for more details on the background of the appointed members.

2. The mandate of the CTF was *“to carry out, on behalf of the Government of Sri Lanka, a wide process of consultations involving all stakeholders including victims of conflict, to ascertain their views regarding the steps that they would like the Government to take including mechanisms to be established to ensure a durable peace, promote and protect human rights of all, strengthen the rule of law, administration of justice, good governance, reconciliation and non-recurrence including measures for reparations in line with the ideas of mechanisms that the Government proposes to establish, which were articulated in the Human Rights Council”*.

The four proposed mechanisms are

- (i) Office on Missing Persons
- (ii) Judicial mechanism with a Special Counsel
- (iii) A Commission for Truth, Justice, Reconciliation and Non-Recurrence.
- (iv) Office of Reparations

### 2. CTF Interpretation of the Mandate and the Guiding Principles of Consultations

3. While the mandate stressed consultations on the four mechanisms, the CTF, recognizing the multiple challenges faced by communities on the ground and the importance of being open to public suggestions, designed a process that would include suggestions on any other mechanism or process related to reconciliation. The CTF mandate did not explicitly specify a focus on the war, and the CTF chose to also include issues from the JVP-led insurgencies, riots and other religious and ethnic conflicts, as well as systemic discrimination so as to ensure that the process would be

inclusive. An additional motivating concern for broadening the scope and content of consultations was the Transitional Justice Principle of Non- Recurrence.<sup>1</sup>

4. In the mandate the need for the consultation process to be victim centric was stressed and the CTF was guided by this focus. Hence, while attempting to encourage as wide participation as possible, the consultation process paid particular emphasis to the voices of affected persons and communities. The consultations focused on gathering suggestions and views on key elements of the mechanisms including powers and authority, scope of issues to be addressed, and type of personnel to be employed in the mechanisms. Further, the CTF expected issues related to the much-needed reform of our law and order mechanisms and systems of justice to be raised. Therefore, the CTF decided to also take into consideration processes that members of the general public will propose, which would address issues of justice, truth, reparations and non-recurrence in addition to the mechanisms proposed by the Government. The mandate of the CTF was to collate all suggestions and views and provide firm recommendations on the four mechanisms and other structures/processes submitted to it, along with other issues that may require attention from the State. The report will be presented to the Government and made public. The CTF stands committed to advocate on these proposals when its term ends upon the submission of the report.

5. While the CTF had the primary responsibility for designing the overall consultation process, the Government provided it with a consultation roadmap. The roadmap was based on a 'consultation-on-consultations' carried out by the Government on the advice of civil society organisations in October and November 2015. The Government set out a framework for a consultation process based on submissions from a wide range of stakeholders. Some of the key proposed features were

- a) Consultations would be carried across the 25 districts by 15 Zonal Task Forces (ZTF): at a district level in the North and East<sup>2</sup> and at a provincial level in the rest of the country. The CTF was tasked with selecting the members of the ZTFs.
- b) The CTF would be advised by two panels: An Expert Advisory Panel which would provide advice on technical issues and a Representative Advisory Panel which would ensure victim and other stakeholder input and ownership. Both panels were to be appointed by the CTF.
- c) A Secretariat, including a protection and victim support unit, would provide capacity and resources for the CTF consultation process.
- d) The consultation process would be victim centric.
- e) The consultations would be completed within three months with the CTF submitting a report to the Government.
- f) The report would be a public document

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<sup>1</sup> United Nations (2010) Guidance Note of the Secretary-General: United Nations Approach to Transitional Justice

<sup>2</sup> The north and east were deemed to have faced the brunt of the war

6. Based on these suggestions the CTF set about developing the overall framework for consultations. While the above suggestions provided guidance, the CTF faced the challenge of not just fleshing out and operationalising the consultation framework but also of making modifications and adjustments to it in response to ground realities and resource constraints.

7. While recognizing the historic opportunity for civil society and the people to influence government action through a democratic process opened up by the consultations, there were grave concerns expressed by CTF members and the advisory panels about whether the information and suggestions received through consultations would be taken into consideration in designing and implementing the post war justice and reconciliation process. The CTF as well as the Expert and Representative advisory panels also expressed concern regarding the government's commitment to the consultation process given that the government had already appointed various technical committees to take the process of designing the reconciliation mechanisms forward and drafted legislations to be passed in parliament (e.g. OMP bill). But there was also recognition of the political pressure that the government was under and the complexities of the local context.

8. The initial meetings of the CTF focused on coming to an agreement on operationalizing its mandate, the principles of working together as a taskforce and on the key approaches to consultations and overarching guiding principles.

9. Following debate on several points<sup>3</sup>, it was agreed that:

1. The purpose of the CTF was to ascertain the opinion of stakeholders on institutions and processes for transitional justice, which would in turn guide their design.
2. It was recognized that the consultation process was the initial and integral part of the accountability and reconciliation process.
3. The consultation process would be designed and directed by the CTF.
4. The consultations would take place within clearly defined parameters, without prejudice to other concerns raised by stakeholders.
5. Consultations would be victim-centred and the deliberations of the CTF would be representative of the views and interests of diverse victims and other stakeholders.
6. Consultations would be conducted in a manner that respects the dignity of those consulted and provide confidence to those wishing to make submissions.
7. While deliberations of the CTF would meet the requirements of transparency, they would be balanced by the right of confidentiality of the affected persons.
8. The process would be accessible to all citizens and efforts taken to that effect, especially in terms of the language needs of those making submissions.
9. Consultations would be preceded by a public awareness and information campaign on the purpose and objective of the consultation process.

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<sup>3</sup> There were a few points on which it was not possible to get consensus, for example on the involvement, advice or observation by UN or other foreign experts in activities of the CTF.

10. The consultations process would follow a robust methodology that is internally coherent and sensitive to the context and needs of stakeholders.
11. Consultations would draw from global and national best practices.
12. The consultations process would be conducted by persons of integrity who are appropriately skilled, knowledgeable and who would prioritize their commitment to the process.
13. Government would support and resource the consultation process.
14. Ensure commitment from the government (in consultation with the CTF) to provide protection and an enabling environment for participants throughout the consultation process and thereafter.

10. A key challenge in the design process was the relationship between the CTF and the Government, and the public perception thereof. Although the CTF fulfilled its mandate on behalf of the Government and by using Government resources, it acted as an independent body. However, even while the civil society nature of the consultations was evident in design and representation, the CTF and the ZTFs were often perceived and treated as representatives of the State, especially when, in the interests of informed consultations, they had to provide an overview of Government proposals where these were available. Despite the explanations of independence, the general public tended to approach and allege that the consultations were yet another state process, albeit one with a less hostile appearance and character to what they had encountered in the past.

### 3. The CTF, Staffing and the SCRM

11. The CTF members met twice a week in Colombo for much of its existence. While there was regular email correspondence, the meetings provided the space for discussion, debate and consensus building. In addition to these formal CTF meetings, there were subcommittees comprising of CTF members and also staff members to think through and draw up supporting documents and guidelines for various aspects of the process, with inputs from the expert advisory panel members. Given that four members resided out of Colombo – in Jaffna, Batticaloa and Kandy – effort was made to ensure participation over Skype. Ensuring full participation however proved challenging due to numerous reasons including technological failings, competing commitments of CTF members and the sheer volume of work required. Most CTF members continued at least a portion of their existing work commitments and the two who applied for secondment from their respective universities were not released until July 2016. In effect, this meant that the CTF had to, at an operational level, rely on half of its capacity for much of its existence. CTF members served on an honorary basis, receiving no payment for their work. CTF commenced meetings at the Ministry of Foreign Affairs but had no formal space of its own until the 26<sup>th</sup> of June when it was provided office space at the BMICH. The Secretariat for Coordinating Reconciliation Mechanisms (SCRM), established on the 18<sup>th</sup> of December 2015, provided early support to the CTF in the form

of staff and space, and continued to play a key role in dealing with the State, including in ensuring cooperation and assistance from the Ministry of Defense, Police, and Finance Ministry and External Affairs.

12. Secretarial support was initially provided to the CTF by staff who later joined the SCRM. It became clear that the Secretariat would have a larger role in coordinating reconciliation related institutions and that the CTF would have to recruit its own staff to provide support for the consultations. From March onwards until end of April, the CTF operated with a small team of 5 researchers and 1 senior researcher, who were seconded to the CTF via arrangements with the OHCHR. More staff were recruited in the months of May to July, including administrative and finance personnel, a senior researcher, research assistants, and note takers. Whilst the CTF began with a staff of 5 members, towards the end of the consultations in September there were 48 staff in total, including 2 Senior Researchers, 4 full time Researchers, 4 Research Assistants, 2 Media Officers, 1 Translator, 1 Logistics Coordinator, 1 Finance Officer, 1 Administration Assistant, 1 Research Coordinator, 6 Part Time Researchers, 6 Coders and 19 Note takers. See Annex 2 for list of names and designations.

13. A critical challenge for the CTF through much of its operations has been finances. Delays in finances being made available and lack of clarity regarding disbursement procedures were a constant challenge, but through the commitment and hard work of CTF staff, SCRM, the Ministry of External Affairs and the United Nations (UN), along with financial advances by CTF members, activities were able to go forward. Delays as a result of these difficulties were however unavoidable. The CTF was initially to submit the report on consultations to the Government in May 2016. The deadline was then shifted to July 2016 and then September 2016, and finally to mid-October 2016. The long time that the process has taken has been of some concern. However, it must be noted that the design handed to the CTF was one that required a far longer time frame than initially proposed. The UN special rapporteur on Transitional Justice in fact indicated to the CTF at initial meetings that based on past experiences of such processes internationally, the proposed timeline was next to impossible.

#### **4. Advisory Panels and the Provision of their Expertise**

14. The two panels of advisors to the CTF were established by end of March 2016. The first, the Panel of Experts, comprising of 13 members, were chosen on the basis of being persons with integrity and for their technical knowledge in specific areas of law, human rights, mental health and psychosocial support, gender, victim-centred approaches, and transitional justice. See Annex 3 for a list of members. The responsibility of the Panel of Experts was to advise the CTF on the design and methodology of the consultations, the content and form of the framework questionnaire, and on the specific technical and procedural issues relating to but not limited to

confidentiality, compilation, documentation and analysis of submissions, as well as psychosocial and protection issues.

15. The second panel, the Panel of Representatives, comprising 49 members from different regions of Sri Lanka, was also required to be of persons with integrity with knowledge of transitional justice, extensive local networks in their respective regions, who could provide additional ethnic, religious, regional or gender perspectives on the consultation process. This panel initially comprised about half the number with the need for greater representation of specific regions and groups resulting in expansion. See Annex 4 for a list of members. The Panel of Representatives, with their regional expertise and networks were required to advise and assist the CTF on several aspects of the zonal consultations, i.e. identifying zonal level issues for focus group discussions, nominating members for a shortlist of the zonal task forces, identifying groups and individuals who the ZTF would need to consult (particularly for focus group discussions and on an individual basis), the provision of advice to the ZTF members in conducting the consultations, and the provision of feedback to the CTF on the consultations in the zones.

16. While in the early stages the two panels served distinct roles, like the role played by the experts in providing feedback on the design of the questionnaire, members of both panels eventually played overlapping roles. The vast bulk of nominees for the ZTF came from the panel members but there were also nominations received from community organisations, networks and individuals. Given the level of skills and expertise from various regions, the CTF took the decision to allow for panel members to serve on the ZTFs. In total 6 did so. Individual panel members also played a hugely supportive role in the design of processes, developing material and resources for the CTF and in the training sessions for ZTFs where they facilitated sessions or conducted individual training sessions. CTF held a number of meetings with its panels, which provided a space for the panel members to raise their concerns with the consultation process. Issues raised by the group included the need for the CTF to strengthen transparency and communication with the panels on the progress of the process, limited public awareness-raising on the consultations process, mixed messages from the Government on its position on transitional justice, and security concerns. The panel raised the issues and called for the CTF to respond.

17. In addition to the panel of advisors, the CTF also engaged with technical experts from state structures, academia, professional and non-governmental organizations and the United Nations, including UN Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence, ICRC and UNICEF. The CTF examined international best practices and the experiences of consultation processes on transitional justice issues in other contexts and in the previous public commission and committee processes from Sri Lanka Reports from previous consultation processes in other contexts were consulted. In addition, the experience of CTF

members in national commissions of inquiry<sup>4</sup> and other consultation processes (for Government and CSOs) also provided useful perspective.

## 5. The Zonal Task Forces

18. The Zonal Task Force represents the most crucial element of the island-wide consultations. The consultations-on-consultations process had advised that, rather than having a select group of individuals largely from Colombo, the consultations should be carried out by respected individuals from the regions who were trusted and had knowledge of issues and local perspectives. As outlined below, this ZTF structure proved to be one of the most positive aspects of the entire consultation process but also one of the most challenging to coordinate.

19. **Selection:** In the roadmap document it was suggested that the unit for consultations (15 zones in total) should be districts in the North and East and provinces in the South given the scale of violations in the former areas. The CTF debated this idea with its panels, and made some adjustments such as deciding to increase the number of ZTF members for the provinces to 8 with a higher concentration of war-affected communities, i.e. in the North Central and North Western Provinces. In the ZTFs outside the North and East, the CTF also attempted to ensure that there would be representation from every district in the zone, which proved successful in all areas apart from Kalutara. Nonetheless the CTF successfully ensured that public meetings were held in all 25 districts of the country.

20. The criteria for nominating persons to the ZTF were set out by the CTF with an emphasis on specific qualities and commitment to carry out the task (see Annex 5). The ZTF members would work with an honorarium and would be reimbursed for travel expenses related to the consultations. Where necessary, CTF would request employers to enable leave for those selected to work on the ZTF when needed. The two Panels of Advisors were invited to make nominations of suitable individuals (including other panel members) for the ZTFs, with a deadline of 15<sup>th</sup> April 2016. Members of the public requested by the CTF and CSOs also made nominations. Where CTF members knew of suitable individuals for specific ZTFs, they were also included in the nominations list.

21. The CTF had the responsibility of selecting the individuals for the ZTF team. In addition to the general criteria for individuals the CTF also laid out the ideal composition of a ZTF team so as to ensure gender, ethnic, religious, language and age-wise representation in addition to having a cross section of sectors. The CTF realized the importance of including representatives outside

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<sup>4</sup> For example, Chairperson Manouri Muttetuwegama was the Chairperson of the Presidential Commission on Disappearances in the South, West & Sabaragamuwa Provinces 1994 - 97 & All-Island Commission on Disappearances 1998 - 2002, Commissioner Human Rights Commission Sri Lanka 2004 - 2007, Commissioner Presidential Commission on some incidents of serious Human Rights Violations 2005 - 7. See Annex 1 for the background of other CTF members.

the NGO sector, including retired state officials, academics and other professionals, and heads of fisheries, multi-cooperative organisations and other such groups. The criteria made specific reference to ensuring 50% gender representation and including victim-survivor representation as a means of better ensuring a process that centred on affected persons.

22. The selection process proved to be labour and time intensive and took over two months. The CTF ran through a total of 254 nominations made to the CTF by April 2016 and selected a short list for each zone based on the applications submitted, which came to a total of 103 by mid-May. In the case of each short-listed individual, staff and members of the CTF checked the background and availability of those nominated. In specific instances there were questions relating to the credibility, integrity and abuses of trust by some nominated individuals. The CTF had neither the resources nor the time to conduct a full inquiry and therefore was compelled to not select these persons based on these limited inquiries. The decisions therefore were very difficult to make. In some districts there were over 60 individuals proposed, while in others there was just a handful or there was little variation between nominated candidates for a zone. In some instances, therefore, the CTF members were required to actively headhunt candidates for the ZTF. The zones that proved hardest included Killinochchi and Mullaitivu in the North and Sabaragamuwa and the North Central Province in the South for completely different reasons. While matching the required diversity and gender balance proved problematic, in some instances, proposed nominees refused to accept the position due to ill health, competing commitments, and distrust of the consultation process or even fear of possible repercussions. The CTF also attempted to ensure that the nominees were currently resident in these zones or at the very least had lived in the areas for significant periods so as to avoid charges of the ZTFs not being drawn from the local population. In a number of cases individuals who agreed to serve and then dropped out at various points either just prior to the training (sometimes without indicating to the CTF) or just after the training, while others resigned due to the delays in the process becoming operational. In one case (NCP) only 50% of the ZTF members received the carefully designed training conducted by the CTF. In the case of the NCP participants who agreed to attend the training did not show up. This happened at both trainings (See below). As a result three persons had to be recruited in to the ZTF after the conclusion of the training. One CTF member therefore, in addition to attending planning meetings and public meetings, attended most of the Focus group discussions to provide support to the ZTF. The CTF had decided on possibly permitting a larger ZTF for the province given its particular history as an area severely impacted by the conflict. But this was not possible and the NCP had only six members.

23. A total of 92 members were appointed to the Zonal Task Forces, representing 24 of the 25 districts in Sri Lanka (See Annex 6). The original plan had been for 6 members in each zone, with the NCP and NW allocated 8 each. However, when operationalizing, there was significant variance with some of the zones including Mullaitivu and Vavuniya having 5 members, Sabaragamuwa 4 members, Uva 8 members, and 2 zones having 7 members, i.e. Jaffna and the

Western ZTFs. The final variations in the number of task force members for each zone can be attributed to a combination of factors including considerations of appropriate representation for a particular zone to better reflect its diversity and pluralism and the challenge in identifying suitable individuals willing to commit the time. Despite all the challenges and limitations, the final line up demonstrated a significant achievement in representing diversity. True to the intended design of 50% female representation, 46 of the 92 members were women, marking a significant achievement in a country where female representation in governance, management, the boardroom or even civil society forums continues to be a major challenge. On account of the zonal design and impact of the war, there is a greater ethnic diversity than the national demographic breakdown. Members of the ZTFs were representative of the following ethnic communities of Sri Lanka: Sinhala, Tamil, Muslim, Malaiyaha Tamil, and Burgher. Amongst the ZTF members were civil society activists, members of the fishing and farming communities, gender advocates, managers and directors of non-governmental organizations, community level advocates, human rights activists, medical professionals, academics, business entrepreneurs, psychosocial support workers, social service workers, development officers, lawyers, teachers, educators, and retired public officials. Several had personal direct experience of conflict and long years of working with communities and groups. 6 members were clergy, representing 3 of the 4 religions in Sri Lanka. Through the consultation process, persons whose work areas may have been restricted to single community groups were provided with the opportunity of working across ethnic gender and regional divides. CTF members observed it to be a transformative experience for many of the ZTF members.

24. **Role and Responsibilities:** In order to ensure that ZTF members were made aware of the purpose and overall design of the consultation process as well as inform them on the logistics, the CTF organised a 3-day orientation and training program. Two rounds of such programs were conducted. One was held in Kandy from the 3<sup>rd</sup> to the 5<sup>th</sup> of June for the ZTF members from the South, and another in Giritale from the 10<sup>th</sup> to the 12<sup>th</sup> of June for the ZTF members from the 8 districts of the North and East. Trainers were drawn from the members of the CTF, the staff of the CTF, members of the panels of advisors, and external resource persons. It was also explained that each zone had a CTF member or two who served as the point person for the CTF along with the CTF staff. This CTF member had to assist in the planning of the zones, including attending zonal planning meetings, and to advise the ZTFs on identifying themes for focus group discussions (FGDs), whom to invite and on questions to ask. CTF members who were directly involved in the consultations took on two or more zones both during the planning and operational phases.

25. In addition to the ZTF members gaining knowledge about transitional justice processes and mechanisms and a clear understanding about the respective roles of CTF and the ZTFs, and the logistics of holding consultations, the training was also meant to impart the importance of dealing with participants in a sensitive and dignified manner. Special emphasis was placed on ensuring that ZTF members would be confident about how to interact amongst themselves and

with the participants, manage the data, and be clear on what steps to take to ensure the protection of the wellbeing of the participants and their own wellbeing.

26. At the workshops ZTF members expressed doubts on overall feasibility of the consultation process and also fears as to possible intimidation from state officials, whether the activities could be carried out in the time frame and with the allotted resources, and whether the state officials would cooperate. Two specific requests were made for identity cards that could be used by the ZTF and requests from the Central Government to district level authorities to cooperate with the consultations. Both these requests which the CTF took up immediately with the Government, took over two months to be met, that in turn resulted in further delays to commencing the zonal level consultations. The ZTFs from Killinochchi and Mullaitivu requested specific assistance from the CTF including physical presence during the consultations and mediation with the security forces and district secretaries.

27. The ZTF members were responsible for coordinating the zonal level public sittings and FGDs and overseeing the logistics for the consultation sessions. The ZTFs were to ensure that data provided through consultations were recorded and sent to the CTF. The specific responsibilities included zonal level awareness raising, and deciding on venue and date and identification of individuals and groups to be invited. The issues for the different FGDs at zonal level were identified by the ZTF and jointly finalized with the CTF. ZTF members would identify and invite victim/affected groups and individuals (who would participate either in public sittings or at FGDs) to ensure all key groups were included.

28. It must be noted that many ZTF members, especially those outside the north and east, in conversation with the CTF realised that this was a process by which to somehow reimagine the country's future as a much more democratic polity and saw it as an opportunity to articulate and address a variety of issues that were causing distress and could lead to potential conflict in the future. The choice of FGD topics was also based on this realization. The conversations in FGDs and in the public meetings were always oriented towards finding solutions to the problems identified.

29. Prior to the consultations, the ZTF raised awareness within the zone about the objectives of the consultations and the dates for meetings. This involved meeting with key public and community figures in the zones, and provision by the CTF of posters and other material for display in public buildings. The ZTF was also responsible for ensuring that the sessions were held in keeping with the guiding principles of the consultation and thereby ensuring the security, confidentiality and dignity of the participants. Were any security issues to occur, the ZTF were required to report to the CTF immediately and also the Human Rights Commission (HRC). The ZTFs were supplied with contact details of designated members of the CTF for security issues, in case of need.

30. Each ZTF appointed a Chair and Secretary at the training. It is notable that five of the fifteen zones had female chairs. The challenges for ZTF members to work with each other was made clear at the training, but over the training period some ZTFs made clear their commitment to make it work. During the planning and operational period it became clear that some individuals who agreed to serve were not willing, interested or able to participate fully. In the provinces especially because of the distances between the districts, all members did not participate in planning meetings and consultations, indicating the cost of travelling merely to attend a planning meeting. Though some members failed to attend any of the meetings, and others barely attended half, some ZTFs were essentially driven by two or three core members. In some ZTFs it became clear that while there were personality clashes, the ethnic and language divides proved significant factors resulting in little coordination and in some cases resulting in constant CTF involvement to ensure that activities did take place in all proposed areas.

31. To support the logistical work of the ZTF a coordinator was appointed, who oversaw the organization of the various meetings and assumed responsibilities for finance and administration, and translators to assist in multi-lingual sessions. All, except the ZTF for Sabaragamuwa hired coordinators for this purpose, as this facility was available in the budgets. The ZTFs conducted several planning and debriefing meetings, met with key administrative officials, law enforcement agencies and community leaders in their respective zones, and obtained the necessary support to carry out the consultation process. The ZTFs were supplied with names and contact details of psychosocial support practitioners, at least one of who should be present at public meetings and FGDs, and available after for those participants requiring additional support. See Annex 7 for a list of the psychosocial practitioners who provided support to participants during the consultations process.

32. Finding qualified psychosocial personnel was sometimes a challenge and in the North Central Province Zonal task force such a support person was available only for one FGD. Psychosocial support personnel were identified based on their qualifications, experience working with victims and where their services could be accessed. Amongst them were counsellors working in the state sector, mental health professionals working as private practitioners either for non-governmental organizations or in the health sector. In some zones where there was no psychosocial support person available, a person had to be identified and travel to the zone to be present at the meetings. One note taker per zone plus a voice recorder was generally provided by the CTF, while for public meetings the ZTF identified an additional note taker.

33. At the end of the consultations in each zone, the ZTF submitted a report that covered in detail the context of consultations, rationales for key decisions made, and factors that impacted on how the consultations were carried out in the zone. Additionally, the zonal reports summarized the information that was generated by the various data gathering exercises in keeping with the mechanisms, security concerns, concerns regarding personnel, and other issues of importance. The

ZTF ensured that data provided through consultations were recorded and sent to the CTF. These 15 reports were used by the CTF to inform the contexts of submissions from each zone.

## 6. Communications and Awareness Raising

34. The CTF identified three key objectives in its communications plan for the consultation process: 1) to increase awareness of the consultation process by developing public information material that could be shared/published on new and traditional media, 2) to utilise social media platforms in order to create a conversation about the consultation process and reconciliation in general, and 3) to create a repository of easily accessible information about the CTF and the consultation process. The communications requirements for a national consultation process – including executing awareness-raising campaigns, ensuring access to documentation in all three languages and enabling public engagement – are intensive and require significant resources, not least of which are adequate funding and specialised human resources.

35. At the time of its establishment, the CTF had requested the Government to carry out a nationwide awareness raising campaign on the proposed reconciliation mechanisms along with an official endorsement of the consultation process to help increase public understanding but this did not take place. Government media assistance came in the form of broadcasting the date and locations of public meetings. However, during the consultation process, the Government did not issue statements explaining the proposed reconciliation mechanisms to the public and the importance of consultations. This affected the informed nature of the consultations and also posed a significant challenge to the legitimacy of the CTF.

36. Furthermore, the CTF did not receive adequate funds to carry out media activities (for example, TV, radio and press advertisements). As a result, the research staff of the CTF was forced to step up and handle media-related work due to the lack of human resources, as this was crucial to public engagement with the consultation process. The overall funding constraints experienced by the CTF severely restricted its ability to communicate as effectively as it wished and to conduct necessary awareness-raising activities throughout the consultation process.

37. The lack of an effective and broad based awareness raising campaign made it more difficult to engage the public, elicit submissions, and ensure representativeness and turnout at public meetings. It also meant that participants sometimes turned up without being aware of the exact purpose and were not prepared to expressly make submissions on the four mechanisms, instead sharing their experiences of the war and making general recommendations and suggestions on what was needed for justice and reconciliation. In some cases, the date, time and place of consultations were not always informed in time or widely. This meant that the ZTF had to reiterate the purpose of the meetings and provide some explanations of the four mechanisms at the meetings. This sometimes had the unintended effect of undermining the perceived independence of the

consultation process. For example, for some groups working with families of the disappeared in both the South and the North, the consultation process was the first time that someone explained the proposal of an OMP. This resulted in the consultation process serving as the default awareness-raising tool on transitional justice.

38. **Social Media:** The CTF took ownership of its own communications in June 2016. Prior to this, the CTF relied primarily on SCRM for all communications support.<sup>5</sup> In June 2016, the CTF created its own social media accounts (Twitter and Facebook) and began publicising details about the consultation process. The research staff and media personnel attached to CTF developed all of the public information material (refer Awareness-raising material section below). CTF's Twitter handle (@ctfsl), which sparked conversations about the substance and process of the consultations, was archived for posterity. Individual posts about the consultation process on CTF's Facebook page were shared widely. Some posts reached over 3000 users. As at 13<sup>th</sup> November 2016, the CTF published over 270 tweets and had over 220 followers on Twitter. CTF's Facebook page had over 450 "likes".

39. **Traditional Media:** The overall media coverage of the consultation process was woefully inadequate, with very few media institutions taking it upon themselves to report on the consultation process. As a result, the CTF received many complaints from the public about the lack of media coverage and awareness on the consultation process. Moreover, some of the coverage that did take place was hardly informative and more often than not in reaction to statements by politicians and external actors in various fora.

40. Despite this lack of interest, the staff of the SCRM and members of the CTF were able to approach media institutions and secure airtime on several popular political talk shows. Largely because of these efforts, the members of the CTF were able to appear on TV and radio to talk about the consultation process, why it was important for the public to participate in the process and the purpose of the reconciliation mechanisms proposed by the Government. Whilst a great deal more support and coverage was required, it is worth noting that some media institutions, particularly in the Tamil media covered the public consultations in specific zones and issued news bulletins about the public consultations. For instance, almost all the public meetings in Killinochchi and Mullaitivu had media presence.

41. **Awareness-raising Material:** The CTF developed information material to increase awareness of the consultation process and to update media institutions, civil society organisations and international organisations. These included infographics on the mandate and on Frequently Asked Questions (FAQs) and a poster for public meetings (see Annexes 8, 9 and 10)

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<sup>5</sup> Please refer <http://www.scrm.gov.lk/media-relases-latest-news> for full list of press releases and calls for submissions.

42. **Zonal Level Awareness Raising:** The ZTFs were provided a limited sum to carry out their own awareness raising campaigns. Some ZTFs proved creative and ran their own ads in local newspapers, printed handbills and hired three wheelers with loud speakers to make announcements in areas where public meetings were to take place, while others used methods that did not incur any costs like using religious institutions and GN officials to inform community members.

## 7. Submissions to the CTF

43. The consultation process sought to gather the views and suggestions from civil society and other vital stakeholders through several mechanisms:

- Written submissions through the post, email, via the SCRM website, and by hand-delivery<sup>6</sup>
- Sectoral Consultations at national level of vital groups, organizations and stakeholders, including those overseas
- Public Hearings through ZTF
- FGDs on important themes
- Individual interviews, where requested on extremely sensitive topics and experiences and at the discretion of ZTF or CTF members

44. **Written Submissions:** The CTF called for members of the public and any other interested persons or organizations, including those overseas and from those who may not wish to be identified or to come forward in public hearings, to send in written submissions with their views on any or all of the proposed mechanisms and any other aspects of the transitional justice process that they felt were important. Additionally, the CTF also reached out to organisations, political parties, and trade unions, inviting them to make submissions. The first call for submissions was made in April 2016, and the deadline subsequently extended on several occasions to the final deadline of 16<sup>th</sup> September 2016 in order to ensure the widest set of consultations possible. A total of 1048 written submissions were received by the CTF. (See Annex 14 for further details.)

45. **Sectoral Consultations:** The sectoral consultations at national level were conducted by the CTF in Colombo to ensure that major national level actors were included in the consultation process. A public call for written submissions from the community organisations, trade unions, lay religious organisations, political parties, professional organisations and media groups was made on the 1<sup>st</sup> of May 2016. Subsequently, individual public sectoral consultations were conducted on individual dates per sector between the 9<sup>th</sup> of June and the 29<sup>th</sup> of August.

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<sup>6</sup> Submissions could be made via the submissions form on [www.scrm.gov.lk](http://www.scrm.gov.lk), via email to [contact@scrm.gov.lk](mailto:contact@scrm.gov.lk), later [ctf.srilanka@gmail.com](mailto:ctf.srilanka@gmail.com) or by registered post to the 'Secretariat for Coordinating Reconciliation Mechanisms, Republic building, Sir Baron Jayathilaka Mv., Colombo 01', later amended to include reference to Dr. Paikiasothy Saravanamuttu (Secretary), Consultation Task Force on Reconciliation Mechanisms for further clarification. In addition, a number of written submissions were delivered in person or via email to CTF members, ZTF members, staff members of the CTF or at the office.

46. The CTF was responsible for organizing each sectoral meeting, which lasted a full day and for which at least 5 CTF members had to be present. The CTF identified a list of key organizations and individuals who may be interested in making submissions to the CTF and who could pass on the details to other interested parties. Email and post invitations to register for a session at the relevant sectoral consultation were sent to those on this list. If unable to attend, they were invited to send in their written submissions. The SCRMM helped to facilitate the sectoral consultations with the Ministry of Defence and with the Police, which were not public. The Advisory Panels further supported the process by contacting relevant organizations and individuals and encouraging submissions.

47. Almost all of the sessions were public and the media was invited (although in many cases, the media did not attend). A few were closed sessions at the request of the participant. All sessions were conducted with simultaneous tri-lingual translation facilities so that participants could choose their language of submission. Note takers were present and the sessions were recorded unless otherwise requested by the participants. Several of those who made presentations also submitted written submissions.

48. Altogether 9 sectoral consultations, totalling 87 sessions in all, were conducted with presentations from interested groups and individuals from the following sectors:

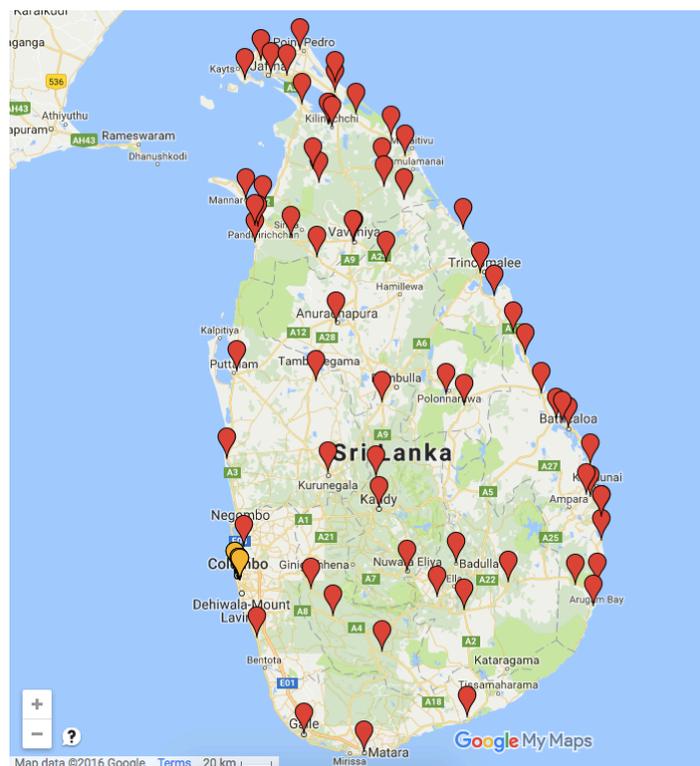
- Armed forces, including commanders and a cross section of officers
- Artists
- Families of the missing, disappeared and surrendeeds
- Lay religious organizations
- Media
- Police
- Professional organizations
- Psycho-social workers
- Youth

49. The sectoral meeting with the families of the missing, disappeared and surrendeeds was organised on the 5<sup>th</sup> of July specially in response to an agreement by the Government to take on board suggestions relating to the Office of Missing Persons Bill from the consultation process. The OMP Bill was introduced to the Parliament on the 22<sup>nd</sup> of May 2016 and passed on 11<sup>th</sup> August 2016.

50. **Public Meetings:** A minimum of three and a maximum of four public meetings were planned for each zone (i.e. at least 45 public meetings across Sri Lanka), with full-day sittings to take place in different locations so as to ensure greater coverage and public accessibility across zones. The sitting would begin with those who had pre-registered for the session, and the rest of

the day would provide a walk-in service. It was decided that possible venues for public meetings would include state institutions such as District or Divisional Secretariat buildings, schools, public halls, but the key criteria for venues was easy accessibility and approach to all those who may wish to participate in that zone. In a majority of cases the preferred venue was either district or divisional secretariats.

51. The public meetings were conducted across the 15 zones, between the 22<sup>nd</sup> of July and the 10<sup>th</sup> of September. See Annex 11 for a full list of the public meetings and the total number of participants.



52. The number of participants varied in the zones with the highest participation being 1190 in Batticaloa and the lowest, 6 in Jaffna and 13 in Uva. There were a number of factors impacting the turn out including the level of awareness raising and mobilisation by District staff including the GN and DS officials, CSO groups and the ZTF members, as well as the lack of trust and fatigue on the part of the public from having had several past Commissions of Inquiries (to no or little effect). Public meetings in the Southern Zone saw high turn-out with more than one hundred participants in each session. The ZTF in such cases split up into two or sometimes more and had 2 or more parallel sessions in order to accommodate the large numbers. Participants were also encouraged to send in written submissions and in some cases where they were unable to wait, made a written submission. The limitations in the awareness raising process meant that not all those participating were fully aware of the mechanisms or sometimes even the purpose of consultations. Explanatory posters and brief introductions by the ZTFs helped to provide some clarity.

53. In the North and East a majority of those coming forward were family members of disappeared persons. In the southern provinces there was a wide variation in the participation. While family members of the disappeared appeared frequently, many in the south also utilized the opportunity to state their opinions on a variety of issues that the state should immediately address. These included education reform, reforms of the public administration, ways in which the state could build a more Sri Lankan and inclusive identity, address issues of corruption and do away with the politicization of access to national resources and preventing politicians from utilizing national assets and services routinely performed by the state for the development of politicians' power bases. While the FGDs and the public meetings featured submissions by representatives of the Up country Tamils, there were many others too that pointed to the issues faced by this community as urgently requiring redress to establish reconciliation in the country.

54. **Focus Group Discussions:** The Focus Group Discussions were intended to enable a representative group, especially victims and those working on these issues, to provide an in-depth and more nuanced discussion with the ZTF personnel on issues especially significant in a district or province, share their own experiences and express recommendations on how these should inform the mechanisms. Some issues required a closed group format due to security and sensitivity concerns (for example, Tamil-Muslim tensions in the east, discussions with ex-combatants or torture victims or sex workers). Most FGDs were designed in a way to ensure a safe space for victim survivors to tell their stories and comment on the reconciliation process.

55. The planned duration for each FGD was no more than 3 hours. The FGDs were to be organised and conducted by the ZTF, with assistance from the coordinator and from any relevant organizations working on the issue. At least 3 ZTF members and one CTF member were required to be present at each FGD. Each FGD would be attended by a note-taker and the session would be recorded. The venues for FGDs had to be secure spaces conducive to such a conversation; possible venues included the offices of NGOs involved in the issue, religious places, and secure public buildings.

56. During the 3-day orientation program, the ZTF members were provided an overview on how FGDs should be held and they generated a shortlist of issues relevant to each zone. This list was then finalized in consultation with the CTF at subsequent planning meetings. While the CTF set out broad parameters for how ZTF participants should be selected to ensure diversity of ethnicities, victims and victim representatives, types and period of violations, in many of the FGDs there was often homogeneity. For instance, in the North most of the FGDs on disappearances had victims from the last years of the war (2007-2009) or post-war. Steps were taken to ensure that there were sufficient common themes across the zones and that the topics were suitably in line with the objectives of the consultations. In a few instances the FGDs were organised around specific themes but participants raised alternate themes that they wanted discussed. For instance,

the Malaiyaha Tamil participants did not want to stick only to the planned topic of land issues but also wanted to talk about the 1983 July Riots and disappearances.

57. It had been initially intended that each zone would have 4 to 6 FGDs (i.e. a total of 60-90 FGDs). This was later amended so that the ZTFs could organize a few more FGDs if it was deemed necessary by ZTFs in consultation with the CTF and within budgetary and time-frame considerations.

58. The FGDs were conducted between the 10<sup>th</sup> of July and the 28<sup>th</sup> of August 2016. A total of 116 FGDs were held in the 15 zones. Most ZTFs conducted 7 but two found it too challenging so held 4. Trincomalee, Mannar and Ampara organized several FGDs in order to cover the various concerns of the ethnic communities in the zones and held 12, 11 and 10, respectively. See Annex 13 for a full list of the FGDs, topics and the number of participants per FGD.

59. Some people who attended had no prior information regarding mechanisms; therefore, FGD participants sometimes focused on telling their story with minimal reference to mechanisms. Some victims long affected by multiple vulnerabilities seemed overwhelmed by their predicament and could only express their state of vulnerability.

60. In some instances Zonal Task Force members were challenged by accusations brought against the military for instance, for arrests and disappearances in the 1990s (NCP). Some of the ethnicised fault-lines prevalent in society were reflected in the composition of ZTFs as well and members of the ZTF were sometimes challenged in the carrying out of FGDs. In many cases that ZTF members rose to the challenge and looked beyond the victimhood of the group that they personally belonged to was a feature of the consultation process that must be appreciated. In the North Central Province, the ZTF which was mainly Sinhala speaking conducted FGDs with Muslim victims of the Palliyagodalla massacre of 1991, and with victims from the Tamil villages of Sathurukondan, Sittandy, Vantharumoolai, Lannichyady, Kokuvil and Mylanthani, where large numbers of disappearances took place in the early 1990s. The Mullaitivu Zonal Task Force conducted focus Group Discussions among the Sinhala villages of Weli Oya. In the Central Province, one public meeting was organized in Dambulla. Only Sinhala participants arrived for the consultations, therefore a decision was taken after the public meeting to conduct one more meeting in Matale to ensure participants from all ethnic groups in the Central Zonal consultations.

61. **Individual Interviews:** The CTF designed individual interviews as an option to be used as required only for very sensitive issues. While there were a few instances where individuals asked to speak with ZTF or CTF members alone, the individual interview format was not widely used by the Zonal Task Forces as a consultation method.

## 8. Security Measures and Incidents

62. From the establishment of the CTF, concerns were raised and expressed of the impact of the prevailing situations of fear and insecurity especially in the North of the country, on the consultations. Despite the election of a new government and a significant improvement in the culture of fear and intimidation by State actors, particularly in the South, the continuation of individual human rights violations and fear was highlighted to the CTF, including by members of the Expert and Representative Panels. For its part, the CTF has insisted from the very beginning that if the consultation process is to be successful, the Government must ensure that the security forces, police and the intelligence services refrain from harassment and intimidation of persons involved in the consultations.

63. The CTF met with security force commanders at a meeting chaired by Secretary to the Ministry of Defence and army and police liaison officers to stress the importance of this condition. Subsequently, the CTF members met with the Military and Police several times and wrote a number of letters to them to keep them informed about the process; to provide instructions to avoid harassment and intimidation, and to highlight the importance of following Presidential Directives on arrest. The CTF instructions clearly laid out guidelines for military and intelligence service personnel not to be at venues during public sittings and not to harass those involved in consultations prior, during or after the sittings. At the discretion of the ZTFs, uniformed police could provide protection (but this facility was only used in a couple of the Southern zones). During the public consultation process carried out in the zones from July to August, a weekly calendar of public meetings was sent to the Ministry of Defence and Police. In addition, the CTF also requested the support of the HRC to monitor consultations through their regional offices and follow up on possible incidents.

64. During the 3-day training, ZTF members expressed apprehension at undertaking the task of consultation for a variety of reasons but those from the North in particular cited security as a key challenge. While ZTF members from southern areas did express security concerns these were related to possible protests and disruptions from Sinhala extremist groups or persons supporting the previous government. ZTFs from Killinochchi and Mullaitivu pointed out the high levels of surveillance in these districts and requested specific attention from the CTF, which the latter attempted to address through its presence at public meetings and in meeting the Security Forces and police in these districts. Notwithstanding these concerns, the public sittings in the Vanni and elsewhere saw significant numbers come forward and people speak up on controversial issues such as the alleged use of phosphorous and cluster munitions and the naming of alleged perpetrators, attesting to some public confidence in the openness of the current context when compared to the environment that prevailed during the previous government.

65. Despite the precautions, several incidents occurred during the consultations, where

members of the intelligence services or others either attempted to question, influence or intimidate those involved in consultations, or to monitor the public meetings. In one case, physical assault was reported. There was a total of 10 incidents reported exclusively from the North and East, with Killinochchi and Mannar in particular reporting a number of incidents. While in some cases the exact identity of those involved is not proven, in others their identity was ascertained through questioning the individuals, through identification by those reporting the violation or by others such as DS staff who were at the venue. The CTF carried out immediate follow up so as to ensure that intelligence officials left the consultation venues and encouraged the ZTF to make complaints with the HRC. It should be noted that there is possible under-reporting as in some venues the sheer number of persons attending or the lack of vigilance by the ZTF to the issue meant that intelligence or security force personnel presence was not detected or noted.

66. There were no such incidents reported from the rest of the country. The majority of public meetings took place without any untoward incidents of protests or disruptions although some ZTF members did flag that there was a threat. There was one incident in Kalutara where Buddhist priests and others attempted to disrupt the sitting but agreed to let the meeting go ahead provided that they were given a time to present their views. At the Anuradhapura public meeting, various groups attempted to disrupt proceedings, including government staff who felt they should be carrying out the consultations.

67. It needs to be noted that the presence of intelligence officers at venues, the incidents of intelligence officials questioning ZTF members and participants, and the ongoing violations undermined the efforts at trust building and strengthened distrust and a climate of fear. In terms of the consultations this has had a direct impact in terms of number of persons participating and the lack of freedom to raise issues. For example, in some areas such as Vakaraai participants repeatedly pointed out that the low turn-out was due to fear of harassment and pointed out that, the previous evening, CID had told some families not to participate. Particular sectors of society were seen to be more vulnerable to intimidation, particularly male and female ex-combatants. There were instances reported such as from Batticaloa where all of the invited ex-combatant failed to turn up to the FGDs, while in other areas there was low turn-out. In Killinochchi those who came forward said they spoke up because of their confidence in the ZTF but were concerned about possible repercussions.

## 9. Data Management and Analysis

68. **Capture and management of data:** Oral submissions (at public meetings, at FGDs and in sectoral consultations) were recorded by note-takers and by digital recorders. The digital recordings were used for archival purposes as well as to check and correct the accuracy of written notes. The written notes were the primary means by which the oral submissions were captured for reporting and analysis.

69. It was decided that written notes would capture the main ideas and concepts using the key phrases and language used by those making the submission (not necessarily in verbatim). The note takers would then complete their notes over the next 48 hours following each meeting and then these would be given to the coders, who would work with the written notes. It was decided not to transcribe the recordings nor translate the written notes because of time-constraints and budgetary restrictions due to the sheer volume of submissions. Instead, translation of the written and coded notes would be used as and when deemed necessary for purposes of analysis or report writing. Researchers fluent in the respective languages would analyse the data and write up relevant sections for the report under guidance of the CTF.

70. It was essential to have skilled note takers to ensure that submissions were accurately captured. Members of the CTF and staff interviewed potential candidates for the post of note taker. Shortlisted note takers attended a full-day training programme in Colombo, which included an assessment component. Those who demonstrated good note taking skills in the assessment were offered the position. However, despite having a list of 35 potential note takers, only 16 were able to take up the post.

71. The number was not quite sufficient to meet the envisaged system of note taking, i.e. at least 3 note takers at each public meeting – 2 fluent in the majority language of the zone (in case of parallel sessions) and 1 in the minority language, 1 note taker for each FGD, and at least 1 note taker at each sectoral consultation meeting. Whilst it was possible to ensure 2 note takers in the majority of the public meetings, having a third (in the minority language) was not always possible. In three FGDs, note takers were absent because of unexpected illness or other engagements on the day of the FGD. In these instances, the ZTF sourced a (untrained) note taker for the day, took notes themselves, and the digital recording was subsequently checked and transcribed. Members of the research team took notes at the sectoral consultations held by the CTF.

72. The intensity of zonal and sectoral consultation meetings in the months of July and August led to an intensive and busy schedule for note takers, especially with short notice of meetings, and many having to cover meetings in districts additional to their own. This delayed the planned timeframe for the completion of their written notes. The heavy workload of the note takers meant that they were only able to complete the full set of written notes by late September 2016.

73. The note takers were provided with formats and guidelines for note taking. Registration sheets and participant details forms were shared with the ZTF chairs and coordinators for recording the demographic backgrounds of those attending the FGDs and public meetings. Note takers sent their written notes to the CTF staff via email. These were logged and stored in the relevant folders as they arrived, and assigned to the coders and research team members.

74. **Data Analysis:** The development of the coding system began in June and was finalized in August. The initial intention had been to use one of the three qualitative analysis software programs – n-Vivo, CATMA or MAXQDA, however queries showed that the cost of purchase and license to be higher than the available budget. Furthermore, the programs could not work with data in Sinhala or Tamil. Additionally, the time needed for coders and researchers to become familiar with the software was limited. Hence, it was decided to rely on Excel and Word to document and code the data. The written notes and written submissions comprised the primary data-set for analysis.

75. At the time of logging data, demographic data was recorded and quantitative information on the number of submissions and details of submissions were extracted.

76. Categories for coding were developed as follows: where any content related to any of the proposed four transitional justice mechanisms or pointed towards any alternative mechanisms or specific institutional reforms these were noted accordingly. Since several of the submissions also referred to institutional reforms and other measures beyond mechanisms, these were also analysed separately. The four proposed mechanisms were further coded in terms of mandate, membership composition, staffing, powers, structures, functions, principles of operation and practice, enabling conditions, required or related legislative measures, gendered aspects, relationship with other mechanisms, relationship with other state agencies, international involvement, people's sentiments about these mechanisms and their desired outcomes. Coders, mostly comprised of note takers who had completed their work and some new recruits, worked closely with members of the research team who provided them with the necessary guidance.

77. Additionally, content analysis was used to identify cross-cutting issues of psychosocial, gender related concerns and protection issues. Furthermore, the types of issues raised and who were those affected by the different issues were also identified. Finally, comments on the overall reconciliation efforts by the state as well as the consultation process itself were also analysed in order to understand the overall perceptions and sentiments regarding the process.

78. Given the time pressures of the deadline for the consultations process, writing began on the chapters whilst data was being collected and coded. New data were incorporated as they were received. The report focuses, first and foremost on the recommendations provided by the submissions on the design and implementation of the mechanisms, the points of concern and suggestions raised by the public in the submissions in relation to the mechanisms and to the process itself, and to the measures of accountability, justice and redress required by those affected by human rights violations. In addition, the report also looked at the grievances and suggestions for reform expressed across the island on a variety of issues concerning the state. A cataloguing of these critiques and the mechanisms proposed were included in one of the report chapters entitled "other mechanisms."

79. The content of the report is organised around each of the four mechanisms proposed by the state, the other mechanisms indicated by the public, institutional reforms and changes, special groups and special issues, victim support and the concluding observations of CTF.

80. **Data Archiving:** The CTF decided that all data including the written submissions received via post, by hand and email, as well as the submissions received during public meetings and focus group discussions would be stored at the Department of National Archives in Colombo at the end of the consultations period. The identity of persons/groups who have appeared at focus group discussions and persons identified in their submissions will be kept confidential and any information that would render people identifiable will be removed from the data. Members of the public will be permitted to access and use the data.

## 10. Administration and Finance

81. This section will highlight the key administrative and finance matters that had a significant impact on the consultations process. In the initial phase of the CTF, the small number of staff members recruited in April 2016 handled administrative and finance matters. It was in June that a Logistics Coordinator and a Finance Officer were recruited, just prior to the start of the zonal consultations process. The number of CTF staff members grew over this period of time to 30 members in August 2016, and occasionally the services of 6 UN volunteers were obtained.

82. The most significant cause for the delay in the timeline of the CTF was due to the unavailability of funds to start the consultations. Despite the short time frame in which consultations were envisaged to take place, it was not clear how the funds were to be obtained. The start of the consultations was delayed over six weeks as the administrative procedures and sources of funds related to financing the consultations were gradually sorted. In some instances, meetings and focus group discussions were organised in anticipation of the requested funds but these had to be subsequently cancelled or postponed as difficulties arose in obtaining the funds. In order to enable the start of the consultations process and to ensure that the public would not lose faith in the reconciliation process, some CTF and ZTF advanced personal funds. In addition, CTF also obtained a number of services on credit. This posed some problems for subsequent meetings as some of these companies and individuals were also not paid within the stipulated timeframes. Most skilled translators, for example, were reluctant to work with the CTF due to the time taken to settle their payments. Following several attempts to jointly address the problem, the issue of funding was sorted in mid-August with support from the OHCHR to the CTF and SCRIM, finally ensuring that the planned meetings could take place as scheduled.

83. The start of the consultations was also delayed because of difficulties in obtaining formal Identity Cards for the Zonal Task Forces to be able to conduct consultations work. Whilst the issue of the identity cards was being addressed, it was possible to obtain letters from the Ministry that

enabled the ZTF members to approach and obtain the assistance of the GAs and DSs prior to the commencement of the public meetings. This delay in being able to obtain state administrative support meant that there was limited time for awareness-raising activities amongst government agencies, government officials and the public before the public meetings were held. In some cases, meetings had to be postponed.

84. These difficulties delayed the start of the consultations to six weeks. This shift in timeline caused additional difficulties to retain staff throughout the consultations process. Researchers who were seconded from other organizations had to extend their periods of absence from their organizations and researchers who had prior commitments had to stop work with CTF before the conclusion of the process. Secondly, delays to payments of staff members also caused tensions with staff members who, whilst committed to the consultations, nonetheless needed payment. In some cases, the staff worked for months without pay, initially because of the lack of funds and subsequently because it was required that balances of the consultations process needed to be settled with the Ministry before any salary payments would be done to the CTF staff members.

85. A further challenge to the consultations process was the identification of skilled bilingual researchers and translators. Given the temporality of the position and the intensity of work, it was difficult to find the skilled personnel available for a short period of time but able to work full-time as required. The shortage of staff was also exacerbated as CTF could not access the UN volunteers after their move to the BMICH, doubling the workload for the administrative and finance staff.

## II. OFFICE OF REPARATIONS

### 1. Introduction

*“Reparations should be a priority. Finish it off.”*

(Lay-religious group, Western Province)

*“I don’t want compensation. Who did this? Why? Only then will I talk about compensation.”*

(Woman whose husband disappeared in 1990, Public meeting, in Kutchaveli, Trincomalee District)

*“I don’t expect compensation... but I need support to look after my child, for his education.”*

(Wife of disappeared, Public meeting, in Kandavalai, Kilinochchi)

1. International law recognises the Principle of *Restitutio ad integrum* for the redress of victims of armed conflict, to help them reconstitute their destroyed ‘life plan’ ([Villalba 2009](#), [Evans 2012](#))<sup>7</sup>. 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 Law<sup>8</sup> provides for five forms of reparations: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition ([UN General Assembly 2005](#)).

2. These five forms are defined as the following:

- Restitution – the return to the original state, before the violation occurred; such as through return of liberty, identity, citizenship, property, and residence;
- Compensation – (payment) for an economically assessable damage, proportional to the gravity of the violation and circumstances of each case; such as material damages, loss of opportunity and benefits, costs incurred for expert assistance and services, physical or mental harm;
- Rehabilitation – includes provision of medical and psychological care, and legal and social services;

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<sup>7</sup> Evans, C. (2012). *The Right to Reparation in International Law for Victims of Armed Conflict*. Cambridge, Cambridge University Press.

Villalba, C. (2009). *Rehabilitation as a Form of Reparation under International Law*. C. Ferstman. London, REDRESS, from [www.redress.org/downloads/publications/The%20right%20to%20rehabilitation.pdf](http://www.redress.org/downloads/publications/The%20right%20to%20rehabilitation.pdf)

<sup>8</sup>General Assembly Resolution 60/147 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 Law, A/RES/60/147 (16 December 2005)

- Satisfaction – encompasses a range of possible measures from the symbolic, such as public apologies and commemoration to search for the disappeared and public disclosure of truth;<sup>9</sup> and
- Guarantees of non-repetition – includes a broader range of reform measures including of State apparatus; such as strengthening of the judiciary and law and security sector reform.<sup>10</sup>

3. All submissions received by the Consultation Task Force (CTF), both written and oral, spoke to at least one of the above aspects of reparation; but there was considerable complexity in the ways those submitting articulated their views on reparation, pointing to a diversity of understanding on what reparations means to them. The submissions encompassed a wide range of material and symbolic actions that individuals and groups see as obligations owed to them and as a remedy or response for violations they have suffered – from killings and disappearances of loved ones to loss of land and property and dignity.

4. There were some objections and even refusals to common forms of reparations such as compensation, from certain individuals – primarily those who had suffered the loss or disappearance of family members. These individuals did not wish to talk about reparations until they had been provided with the truth of what had happened and received justice. This strong, often emotional defiance stemmed for some from the idea that justice in itself is the best form of reparation. For others, there were fears that material reparations, would be a pay-off in place of justice. However, for those who faced violations and loss decades ago, the gravity of their situation has been compounded by long periods of waiting. Thus, an acute urgency for reparation was felt amongst these groups. Particularly poor and vulnerable individuals and families articulated a similar urgency for immediate reparation, as they struggle to meet basic needs of food, shelter and livelihoods.

5. Some submissions referred to relief and development as a form of reparation. These sentiments were often articulated as demands for the State to recognise that it is continuing to wrong a segment of its people by leaving them out of socio-economic development processes. These submissions spoke of reparations in terms of a right to benefit from equitable development and therefore for reparations to be forward looking and address issues of general marginalisation of certain groups of people. Some of these submissions went on to further demand that conflict sensitivity be mainstreamed into existing social welfare programmes for all and as such that they be expanded to be a suitable collective reparative measure. Conversely, there were other submissions that spoke of the need to maintain a clear distinction between the right to reparations and the Government’s responsibility to meet the country’s relief and development needs; that is,

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<sup>9</sup>Included in this chapter in relation to symbolic reparations for harms suffered, but also dealt with in more detail in relation to the missing and disappeared in Chapter IV: OMP and issues related to truth seeking in Chapter III: TJRNRC

<sup>10</sup>State reform is discussed in Chapter VI: Beyond the Four Mechanisms.

that while all citizens should generally benefit from development efforts, affected persons have a special right to reparation measures.

6. Submissions formulated reparations at an individual and/or collective level and included all elements of reparations described above. Further, with regards to guarantees of non-repetition, there were a number of measures that individuals, civil society groups as well as human rights and advocacy groups saw as needing to precede or proceed alongside with a process of reconciliation in order to prevent a return to conflict. Key demands in this regard included, demilitarisation, the abolishing of the Prevention of Terrorism Act (PTA) and the release of political prisoners. Notwithstanding, a majority of the victims spoke of reparations in terms of financial compensation for individual losses suffered – ranging from one-off demands for financial compensation for loss of life and property, or more sustained support such as job quotas, pensions schemes and livelihood support – or symbolic gestures that acknowledge loss and allow for a process of healing.

7. Despite people's engagement with the CTF on the issue of reparations, there was widespread skepticism around the likelihood of it materialising. This position needs to be viewed in the context of people's past experiences with compensation programmes, that most people felt were *ad-hoc* or unclear, discriminatory, inadequate or altogether absent.

8. A majority of the people who appeared before the CTF believed that the responsibility to provide reparation is necessarily vested in the State, regardless of who the perpetrator of the original violation was. However, there were some counter views that noted the State should not have to be accountable for violations attributed to other parties, such as the LTTE.

9. A majority of submissions stressed that, reparations are essential in leading to a process of reconciliation as well as integral to the restoration of dignity and respect of those affected by the conflict and other forms of structural violence. Notably, only a limited number of submissions spoke to the need for a separate office on reparations to administer the process. Instead, a majority of the submissions referred to a more holistic 'reconciliation mechanism' implying that strong linkages between the pillars of Transitional Justice is preferred. Thus, the CTF notes that while the Government, the UN and sections of civil society use the framework of Transitional Justice and its four pillars, the relationship between the pillars was often seamless in the eyes of a majority of the individuals who made submissions.

10. There was a wide range of views on which conflicts and violations should fall within the scope of a post-war reparations process. In this regard, violations relating to the war between the Sri Lanka Government and the LTTE as well as the JVP insurrection period of 1988-1989 were clear and significant inclusions. However, there were calls for a widening of the scope of what constitutes conflict and victimhood. As such, there were demands for the inclusion of issues including structural violence against groups such as the Malaiyaha Tamils and the indigenous

communities. Similarly, mainstreaming concerns of women and LGBTIQ persons into the structure, functioning and implementation of a reparations process was seen as critical, to address the specific nature of vulnerabilities that they face across and with all categories of victims and survivors.

11. Important highlights of the consultations vis-à-vis reparations were instances of acknowledgment and solidarity on the part of certain individuals and groups, of the struggles and losses of people from other communities. These submissions emphasised measures that needed to be taken not only in relation to their own concerns, but also others who they felt had faced grave injustices.

12. This chapter will set out people's demands, views and fears in relation to reparations, based on the submissions received. It will then outline a set of principles seen as important in relation to rolling out a reparations process, followed by considerations for the setting up of an Office of Reparations.

## 2. Purpose of Reparations

*“You can't give money in place of the dead, but can give something to support the living.”*

(FGD with victims of LTTE violations, Trincomalee District)

13. There were clear reasons put forward in relation to demands for reparations. For a majority, particularly those who belong to extremely poor and vulnerable communities – it was primarily in relation to alleviation of their suffering; in many instances over long periods of time. For others, reparations were needed to address structural violence and marginalisation. Reparation was also seen as an acknowledgement on the part of the State of its duty to protect its citizens and a means by which to hold it accountable for its failings in this regard; it was also seen as a means to hold non-state actors accountable for violations.

### 2.1. Reparations as a Means of Alleviating Immediate Suffering

14. The need for financial and material support was raised in a majority of the submissions from across all the provinces. However, it was most strongly emphasised by very poor and vulnerable groups such as differently abled/disabled persons and women-headed households. Further, it must be noted that it was not always articulated as a demand for reparations for specific losses, but more as a plea for urgent support in order to survive. For example, at an FGD women-headed households in Mullaitivu, while having faced numerous other forms of violation chose to prioritise requests for the provision of basic needs for their children and themselves in order to lead a decent life.

15. This is a dire need for many such families directly affected by the conflict – particularly in households where the primary wage earner is missing or dead and where family members need significant care. A parent speaking at an FGD in Trincomalee with victims of mass killings said,

*“My son was shot by the army in 1996 when he was 10 years old in his hip and genitals. Now he is 30 years old. He cannot walk properly on his own. My husband and I take care of him. We sold our agriculture land for 30,000 to pay for his operations. My son with all his physical problems was kept in the Trinco hospital for 10 months, Kandy hospital for 6 months Anuradhapura hospital for 10 months. According to all the hospital reports there was certification that he is eligible for at least 50% compensation. But still no support, even for the medical expenses.”*

16. Another man speaking at an FGD with torture survivors in Batticaloa spoke of his urgent need for financial support.

*“Now I don’t have a job. The army hit me and I had to have an operation in my stomach. After that I could not do any work. Even if I lift a small weight, my stomach swells. But I can’t live without a job. so I try, but I am forced not to do any heavy jobs. I have been complaining since 1990, but no use. I am now old. So either a small job which I can do or some form of pension should be provided.”*

17. Several individual and organisational submissions also spoke to the idea that reparations should be tied to poverty alleviation measures. These highlighted the need for a broader programme of social and economic reform that allows for deeper structural change, while also recognising harms that individuals suffered. This approach was strongly articulated in one submission from a non-governmental organisation in Colombo, which envisaged reparations as being integrated with social welfare, social protection, development policies and economic programmes, which would allow for “transformation of the structural conditions of exclusion, vulnerability and power relations.”

18. Immediate and long-term psychosocial support for vulnerable groups including the disabled and for children affected by conflict were also raised in FGDs and public meetings across the country. This is discussed further in Chapter VII: Psychosocial Considerations and Security.

## **2.2. Recognition of Suffering as a Result of Structural Violence and Discrimination**

19. Some communities feel their suffering has not just been ignored, but also actively denied as a result of years of structural violence and discrimination. This has in turn impacted recognition of their right to compensation.

20. For example, Muslim villagers originally from Palliyagodalla living in the North Central Province raised issues of displacement and massacre in the context of the war in their submissions and said that they now want to move back, but local authorities ask for deeds and documents that they no longer possess. They claim that they are being denied their traditional rights to the land by local authorities primarily due to their ethnicity, and religious identity. A recurrent theme in this and many other submissions made by members of the Muslim community was the general lack of appreciation by State officials that Muslims too have been affected by the conflict.

21. Similarly, a submission made on behalf of the Malaiyaha Tamils said that transitional justice processes need to acknowledge that the violence and exploitation that this community continues to face is inextricably linked to the peculiarity of their circumstances of being governed by private companies, rather than the State. This submission noted that: *“it is critical that the transitional justice process in Sri Lanka accounts for the nearly 200 years of structural and other forms of violence against us that has also included sexual violence against women; systematic discrimination on the basis of ethnicity, national origin, gender, caste, and class; deprivation of labour and language rights; and, denial of equal access to land, health, education, and housing.”*

22. Echoing similar views, a strong demand was put forward by a women’s collective in the East for acknowledgement of structural violence against women, particularly in the form of sexual violence, during the course of the war by all military actors as well as within homes and society in general. Related to this, sexual violence against men as a form of torture was also raised as an often unrecognised or unacknowledged violation that led to extreme feelings of pain and isolation for survivors. One organisation that had obtained testimonies from survivors noted that *“because male rape is a taboo subject, many young men believe they are the only ones to be subjected to this kind of violence. They find it extremely difficult to talk about.”* The issue was also raised indirectly at an FGD with ex-combatants in Mannar.

23. Perceptions of discrimination in compensation and reparations, is further discussed in Section 4.5 of this chapter.

### **2.3. Restitution for Loss Suffered**

24. Reparations were also spoken of in terms of restitution – that is, restoring people to a previous condition, as against compensation for losses suffered. Restitution was particularly raised in relation to land and/or property either forcefully taken or forfeited due to long periods of absence as a result of displacement, but also in terms of a restoration of certain rights that have been denied. Both issues are discussed below.

### 2.3.1. Restoration of land and property

25. Individuals who had been displaced from Kokkilai and Kokkuthoduvai in the Welioya Division (Previously Manal Aru) of the Mullaitivu District made strong submissions at public meetings, choosing to focus on the issue of return of land over even descriptions of mass-scale violence that had taken place when they were being forcibly displaced in 1984. One submission summarised the situation and their view in the following manner:

*“In 1984, 12 [month] on 16 [date], we were chased away by the Army. We still have the permits for those lands. After we were sent away, Sinhalese people from Kandy and Gampaha were brought and the area colonised. The deeds for those lands have also been issued to these people. We went to seek justice for this from all officers in all places. But no justice was given. In August 2015, they announced that they are to have a ‘Land Kachcheri’ and will give us two acres of land. None of us went! Our own land was four acres in extent. Instead of that if they are going to give only two acres, what stories are they telling us? They should give our four acres of land back. Those lands were given to us in 1952. The Sinhalese people themselves say that – “Iyah, these lands are actually yours. What are we to do?”*

(Man making submission, Public meeting, Maritimpeattu, Mullaitivu)

26. Similar strong calls for restitution of land were made in relation to Keppapulavu in Mullaitivu and areas that are being held by the military, during FGDs and public meetings in the Mullaitivu Districts, but also across the North. Individuals making submissions in the Vanni region also called for restitution of property, particularly jewelry and money allegedly taken from LTTE banks during the final stages of the war.

27. Several family members of the disappeared, from the North and East in particular, who made written and oral submissions, said they had received calls asking for ransom money for the return of disappeared individuals, allegedly by third parties including State officials, members of the police and army. In some instances, they had handed over money and they now want the return of this money.

### 2.3.2. Restoration of rights

#### 2.3.2.1. Restoration of traditional ways of life

28. Calls for restitution were made by indigenous communities in an FGD in the Uva Province, in relation to their right to access the forests and rivers that are cornerstones of their identity and traditional way of life.

### **2.3.2.2. Recognition of the ‘right to return’**

29. Recognition of the right of people who were expelled, to return and resettle in their places of origin was a significant demand, which included implementation of relevant State policies that would facilitate return. A Muslim lay-religious organisation, making a submission, viewed resettlement as an important precondition to reconciliation. The same submission went on to say that no decisions around development should take place in these areas that are still disputed. The submission went on to say that the continued denial of the right to return would only deepen the feelings of injustice in the minds of those affected and serve as a cause for future conflict.

### **2.3.2.3. Restoration of voting and citizenship rights for those displaced**

30. This issue was raised specifically in relation to the displaced Northern Muslims and returning refugees who are unable to register their votes in their places of origin even if they wish to; thousands therefore claim to be unregistered as voters anywhere. A written submission by a civil society organisation representing displaced Muslims, suggested that: provisions requiring proof of residence to register as voters in the election laws, should be relaxed lawfully in respect to those affected by protracted displacement; a grace period granted for at least five years to enable a final decision on where they would like to be registered as voters; cluster polling – which has been discontinued at present – to be continued for a further three years, until the resettlement process gains momentum and Northern Muslims make a decision as to where they want to reside permanently.

## **2.4. Holding the State Accountable**

### **2.4.1. Holding the State accountable for violations through commission or omission**

31. A majority of the Tamils and some Muslims from the North and East in their written and oral submissions said that the Government should be held accountable to its people for either active commission of violations against them or conversely omitting to protect them from violations committed by other parties. They were of the opinion that the State was guilty on many counts and needed to make amends in the form of reparations. Accusations in relation to State violations included instances of indiscriminate aerial bombing, massacres of civilians, individual killings, enforced disappearances, torture, assault and rapes by State forces as well as evictions, land grabs and property destruction.

*“We had queued up to get kanji [porridge] in Mullivaikal, when we were shelled [during the final stages of the war in 2009]. I think more than 200 people died that day, including children. Many were badly injured; we saw this with our own eyes. They [the forces] knew the people they were shelling were civilians”*

(FGD, Victims of the final stages of the war, Mullaitivu District)

*“The LTTE evicted us [1990 eviction of the Muslims], but the State did nothing to prevent it. It did nothing to protect us or assist us on our long journey by foot. We left everything behind and only took a shopping bag.”*

(FGD with Muslims, Mullaitivu)

32. In an FGD on the Divithura Estate in Galle, people raised the issue of there still being no compensation for people who were affected by the 1983 pogrom, and that the State was refusing to take responsibility for it. Accusations of similar complicity were made in relation to the violence that took place in four Southern towns – Aluthgama, Dharga Town, Valipanna and Beruwela – primarily targeting Muslims, but also affecting some Sinhalese. A written submission on this noted that the State was complicit in the violence, that it consistently blamed the residents of Dharga town for the attack and refused to accept any responsibility despite eyewitness accounts pointing to the complicity of law enforcement agencies in letting the mobs run amok.

33. Another instance where the State was seen to have directly violated people’s rights, was reflected in a submission on behalf of those who had been forcibly evicted from their homes in Colombo, by the military. This was part of the Urban Regeneration Plan of the Government and the submission drew parallels to land grabs and property destruction in the North and East by State armed forces.

34. A written submission noted that the State was complicit to some extent in the recruitment of children by the paramilitary group, Tamil Makkal Viduthalai Pulikal (TMVP), in Government-controlled areas of the Eastern Province between 2004 and 2007. The same submission considers it a failure on the part of the State apparatus; that it was not able to prevent the abduction and use of children in war despite complaints being made to it. Therefore, there is a need to hold it to account and also emphasise its responsibility to provide reparation in this regard.

#### **2.4.2. Holding the State responsible regardless of commission or omission**

35. There were also views that the State should be responsible for reparations regardless of any form of complicity through commission or omission, simply because provision of reparations is the duty of the State.

*“The LTTE is no more; the State has to take responsibility now to provide justice and reparations”*

(FGD with disabled, Mullaitivu, District)

*“We lost a lot in 1990, if we stayed back we would have earned so much from our lands. All of this needs to be calculated and addressed by the Government.”*

(FGD with Muslims, Mannar District)

36. A majority of Sinhalese who made submissions at the public meetings and FGDs held in the North Central Province, wanted the Government to provide reparations to those who faced looting and threats to life during attacks by the LTTE on border villages.<sup>11</sup> An individual highlighted that on many occasions it was the farmers engaged in animal husbandry in the jungle who were killed and their animals taken for food by LTTE cadres (Public Meeting, Polonnaruwa district, North-Central Province). The death of home guards particularly in these vulnerable border villages was also raised in public meetings in the North Central Province. Very often these home guards were breadwinners of their families and their widows wanted the State to provide their husbands' salaries and pensions as compensation.

37. At an FGD with disabled soldiers in Hambantota, participants pointed out the duty of the State to all its citizens: "*All those who were affected by the war, or disappeared due to the war are entitled to equal compensation as citizens of this country.*"

## 2.5. Holding Other Actors Accountable for Violations by Commission or Omission

38. There were a few submissions that spoke of non-state actors needing to be held accountable, although this appeared to be more from a point of view of justice than reparations.

39. In the Vanni, in the North for instance, when the question of LTTE violations was raised in FGDs, the frequent response was that the LTTE was no more. However, some did point to ex-leaders of paramilitary groups and any remaining LTTE members living abroad as needing to be accountable for some violations. Muslim participants who made submissions to the CTF in relation to the eviction of Muslims from the North by the LTTE in 1990, said that the Tamil National Alliance (TNA) or any other representatives of the Tamil people also needed to be held accountable. They also called on the TNA and the Northern Provincial Council to provide an official apology for what had happened to the Muslims.

40. Apart from Sri Lanka's political leadership and security forces, an individual submission made by a member of the diaspora said that there were other perpetrators in the war who need to be held accountable. This submission listed these actors as LTTE cadres and leaders- who needed to be held accountable both individually and collectively for their actions - and other Tamil political parties and armed groups. Specific mention was made of the leaders of the Tamil United Liberation Front (TULF), Illankai Tamil Arasu Kachchi (ITAK), All Ceylon Tamil Congress (ACTC) and Tamil National Alliance (TNA) for "*instigating violence against Sri Lanka and the Sinhalese directly and indirectly*" since 1975. Other parties mentioned in this submission included Tamil diaspora groups for "*collecting and remitting money to the LTTE, procuring weapons and anti-Sinhala propaganda*"; India, Indian agencies and politicians from Tamil Nadu as well as NGOs for

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<sup>11</sup>Areas that were between or at the edge of government or LTTE controlled areas.

*“facilitating, promoting and/or financially helping the LTTE, Tamil armed groups and other forms of violence.”*

### **3. Objection or Resistance to Reparations**

*“We don’t want reparations. We want justice. We want the truth. That is the best reparation the State can give us... Only justice can heal our wounds.”*

(FGD with families of the disappeared, Mulliativu District)

*“The Government who engaged in these killings continues to deny them, so then how can they start giving compensation”*

(FGD with women headed households, Trincomalee District)

41. There were a number of instances where discussions on common forms of reparation, such as compensation were not met with immediately favourable responses. Of these, there was a small category of written submissions that outright rejected the need for reparations. A majority of those who were less keen to discuss compensation, however, did not reject them completely but instead simply did not want to speak of reparations outside of or ahead of truth and justice measures. Still others felt that the Government needed to build better trust if reparation programmes are to be meaningfully rolled out.

#### **3.1. There can be no “True” Reparations for Lives Lost or Disappeared**

42. Many individuals in the Northern and Eastern Provinces, whose family members had disappeared, had strong reactions when the issue of compensation was raised.

43. Family members of the disappeared who made submissions at the public meetings in Kandavalai, Kilinochchi, Manthai East, Mannar and Valachenai in Batticaloa refused to engage on the topic and instead made steadfast demands for truth, justice and accountability. In some instances, family members became angry and distressed. A woman who had lost her son, speaking at a public meeting in Nedunkeni in Vavuniya said, *“A coconut sapling [referring to compensation] and a child are not the same.”* In Karachchi, Kilinochchi another mother said: *“No, first tell me what happened, then we can discuss compensation.”* At an FGD in Mullaitivu a mother noted, *“We need our children back. No compensation can make up for their loss. We need the Government to find them and return them to us.”*

44. There was a palpable sense of desperation of wanting to know what happened to family members above all else, even if that meant continued financial hardship. For instance, at an FGD in Mullaitivu with family members of those who surrendered in the final stages of the war, a woman who had surrendered her husband to the ICRC and never saw him again said, she did not

sign the death certificate or the compensation requests because she could not do so until she knew what had happened to him. She said that only when his death is confirmed and she knows why he was killed, could she accept compensation; this she would eventually do she said, because of the financial hardship she faces. In the case of more recent disappearances of people, that is, post-war as well as with victims of the final stages of the war, compensation was viewed as a tool for diverting attention from justice and buying people's silence. Some families referred to the Paranagama Commission's<sup>12</sup> focus on providing compensation as evidence of this.

45. Many families of the missing and disappeared also resisted talk of reparation out of a sense of guilt and fear that it would be seen as giving up on their search and that accepting reparations would be a betrayal of the members of their family. For these families, especially the more recent cases, the reluctance to accept reparations was also tied to a sense of hope as they did not want to accept that their family members had possibly died. As such, many were careful not to even suggest death as a possibility. (FGDs and Public Meetings, Jaffna, Killinochchi and Mullaitivu). Their search was therefore not just for truth of what happened or for a body, but for the person himself/herself.

*“How can I accept reparations for my child? I don't want anything else, please give me my child back.”*

(Mother at Public Meeting, Killinochchi District)

46. Resistance to reparations outside the North and East was less pronounced. Nonetheless, discussions on compensation were almost always prefaced with a strong statement that no form of reparation could match a life lost and calls for justice alongside reparations were still considerable.

*“Can you measure the value of our children's and relatives lives with 15,000 or 25,000 [rupees]? Today, sir, even a cow is worth much more money than that. You can't give us the value of our brothers' and relatives lives, can you? Tell us who did this to them, and why.”*

(FGD with family members of the disappeared, Western Province)

47. Families who lost their kin during the 1988 insurrections similarly described how, at first, they were reluctant to accept compensation, for it seemed like a betrayal of family members. With time, however, as they experienced the long-term financial strain of losing a breadwinner, many expressed a greater willingness and need to accept compensation. Some families accepted compensation after a period of time to commemorate and fulfill their ritual obligations towards the dead. A mother whose 14-year old son was taken by the police in 1988/89 was given 15,000 Rupees by the State. At first she rejected it, thinking, *“what can money buy me when my child was disappeared?”* Her relatives convinced her to take it and she used the money to hold an almsgiving for her child.

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<sup>12</sup>Presidential Commission to Investigate into complaints Regarding Missing Persons, established on August 15, 2016.

### 3.2. Reparations seen as Unnecessary, Unfeasible or Dangerous

48. There were a few submissions that suggested there is no need for reparations, as adequate measures have been taken by the State, particularly in the recent past, to address the destruction and losses caused by the war. For instance, two people from Anuradhapura in the North-Central Province who participated in a public meeting said that they are opposed to all the reconciliation mechanisms including the Office of Reparations. Their view was that reparations have been taking place since the time of the previous Government and therefore a new office is unnecessary.

49. Similarly, large scale development projects across the country were noted in two email submissions from individuals in the Sri Lankan diaspora, as being adequate reparation and to go any further would be a “*waste of this country’s time*”.

50. A web submission to the CTF went a step further to say that reparations could be unfeasible and dangerous. “*Reparations for death are not feasible and all reparations should be out of bounds. This is a dangerous minefield.*”

### 3.3. The Need for Trust Building Prior to Reparations

*“All issues that led to the war need to be addressed; that is reparation; when justice is provided and when people can live in peace.”*

(FGD with Ex-combatants, Kilinochchi District)

51. A considerable number of submissions both written as well as in-person, particularly from minority communities, including Malaiyaha Tamils, spoke to the idea of reparations going beyond a discussion on compensation alone. Genuine attempts, they felt, are still required in terms of addressing the political questions that led to the war, structural issues such as continued militarisation, structural violence and discrimination, and the climate of fear, intimidation and impunity. Addressing these is a priority and should be undertaken prior to or in tandem with reparations processes and indeed as part of the reparation process itself, these submissions noted.

52. There were also submissions that pointed to the need for building trust and creating a conducive political environment for transitional justice. For instance, in a number of public meetings and FGDs as well as in written submissions, participants commended the Government for measures it had begun to take to promote reconciliation, such as the return of lands confiscated by the military in the North and East, the release of political prisoners including former LTTE cadres and the singing of the National anthem in Tamil. Nonetheless, these were always followed by cautions on tokenism and reminders of the vast amount that remains to be done for attempts to be considered genuine or satisfactory.

#### 4. Past Experiences of Reparations

*“We need reparations for disappeared persons as soon as possible. Only in this way can you achieve reconciliation in our country. In 1995 my daughter went missing close to the military camp in my village. Two years ago I was a witness in front of a Commission set up by the President. They said they will give reparations for that but I still haven’t got anything.”*

(Email submission, Valaichenai, Batticaloa District)

*“At least this time make sure we are treated fairly. If you can pay compensation say so, if not, say you can’t. Close this issue altogether; fairly, without going back and forth. Make a law and then issue. If we don’t get any fair outcome from this also, it is not right. We spent the little money we have coming here...”*

(Individual, Public Meeting, Matara, Southern Province)

53. Past experiences in relation to receiving compensation as well as other entitlements were raised in a number of written and direct submissions to the CTF as well as at public meetings and FGDs. These covered the receipt or non-receipt of compensation, inadequacy of compensation and a real or perceived sense of discrimination in the provision of compensation. There were multiple barriers and losses identified; some of them linked to the inadequacy of State mechanisms and failures and or/biases inherent in the governance and administrative process as well as a failure to implement judicial verdicts. Nearly all those who shared their past experiences, expressed some form of dissatisfaction and consequently also expressed skepticism over any new proposed attempts at providing reparations.

##### 4.1. Non-payment or Delays in Compensation and Refusal of Restitution

54. Non-payment or delay was raised by communities across the country at FGDs and public meetings as well as in written submissions. The issue was also raised in organisational submissions. Non-payment and/or delay, also did not appear to be limited to certain types of violations or circumstances, and as such was raised in relation to a diverse range of violations, from death and disappearance to displacement, property loss and land appropriation. For instance, a woman whose family had been affected by the JVP insurgency in 1989 provided an email submission noting that her family was given a warning and had to flee their home in Medamahanuwara in the Kandy district to Colombo, with only a suitcase of their belongings. Their home and her father’s shops were looted and burnt down.

*“We never received any compensation or any support from the Government for our losses, and we rebuilt our lives through our own efforts and suffering. We became homeless, penniless, desperate and scared. My father is currently in his late 70s and lives in Kandy; he is still not comfortable*

*to talk about what happened to us 27 years ago. My mother never overcame the impact our loss and sufferings until her passing a few years ago. For me too, this is the first time I am able to write about it. It is because we were terrorised and victimised to a level that we became numb, scared and hopeless, all at the same time.”*

55. Submissions from an organisation representing issues facing Sri Lankan refugees in South India said that many of those who had returned to Sri Lanka after the end of the war in 2009 continue to face barriers to accessing compensation. Further, the submission noted, that those who returned between 2015 and 2016 have not received a resettlement grant as they did not come under the United Nations High Commissioner for Refugees (UNHCR) facilitated return program. Despite available housing schemes for returnees, several returnees have been unable to avail these and still require shelters. This includes those who returned to Sri Lanka in 2009 as well.

56. Numerous submissions, particularly from displaced individuals, highlighted that documents, particularly those on land ownership, had been destroyed or lost during displacement, a predicament that was then used to deny restitution or compensation. One example cited in an email submission by a collective representing the Northern Muslims, alleged that documents relating to private land now occupied by the Sri Lanka Airforce, had been purposely destroyed in the Land Registry. Additionally, on the issues of military occupation of private land, a group submission on behalf of over 500 families still displaced in the Northern Province said:

*“Security forces are using our highly fertile lands for farming and fish-rich seas for their own use under the name of ensuring national security. In 2004, the courts ordered that all private lands be returned to their owners, but, this has still not been implemented. Soon after the war was over, we protested several times to get our lands back from the security forces. But, there has not been any progress in this regard. We are tired of fighting; we strongly feel that without resettlement in our own lands, ensuring reconciliation will be a challenge.”*

57. A submission from a Colombo-based advocacy organisation drew special attention to the additional burden faced by victims of sexual violence when perpetrators are ordered to pay compensation, but do not do so; or alternatively, when payments are partial or delayed. The submission noted that where reparations are delayed, the harmful impact of sexual violence is multiplied, and economic and social marginalisation of the survivor within the community worsens.

#### **4.2. Inadequate Compensation**

58. Inadequacy was raised in two ways: firstly, inadequacy of compensation vis-à-vis losses incurred and secondly, in relation to the inadequacy of compensation to meet current, basic needs.

While the former speaks to the concept of proportionality, the latter speaks to larger issues raised above with regard to suffering and survival (see Section 2.1 above).

59. In relation to the first aspect, the CTF received an individual email submission from a man who had approached the Rehabilitation Authority for compensation for his house that was destroyed in a non-military operation in October 1995 in Jaffna, when security forces had allegedly broken down his house and other neighbouring houses to collect rubble to build a boundary wall. The submission states that the authority had told him they would pay compensation of only one lakh rupees, whereas the total loss, according to the police report was 16 lakhs even at the time. The submission goes on to note that he had rejected the compensation as the current value of the house is 60 lakhs.

60. Proportionality was also inherent in a submission made on behalf of those forcibly evicted from their homes to make way for development projects as part of the Colombo Regeneration Plan. Those who had previously lived in houses were forced to live in congested “*vertical slums*” with very little ventilation for which they also had to pay a sum of one million.

61. In relation to the second aspect of inadequacy, several submissions raised the point that compensation needed to be sufficient for people to adequately sustain their lives and livelihoods, going beyond one-off payments and providing more sustained support. This was repeatedly stressed by groups of people who are particularly vulnerable, such as women headed households and differently abled or disabled persons, many of whom live in abject poverty.

*“One lakh [Rupees] compensation is not enough. If there are children, can we feed them with one lakh?”*

(Fishermen, FGD with families of the disappeared in Galle District, Southern Province)

62. At meetings in the North Central Province participants spoke to both aspects of inadequacy. They said that 50,000 Rupees was insufficient compensation for death and that the lack of economic support beyond a lump-sum payment had impacts on the upkeep and provision of education for children. Suggestions for alternatives included provision of self-employment training as an additional form of support. A woman from Sampur, in the Trincomalee District, whose husband and child were killed, noted in her submission that although she was resettled during the Government’s resettlement program in Sampur, she continues to live in a tent. She was given 25,000 Rupees, but not provided with any further support, neither was she registered for *Samurdhi* benefits.

63. A submission representing the interests of families of the disappeared from the Northern, Eastern, Southern, Western, North Western and Sabaragamuwa provinces noted there were huge disparities in past compensation from one Government to another, varying from a few lakhs under

one regime to 15,000 rupees under another. This issue also resonates with a lack of clarity as to the basis of compensation, discussed in the next section.

#### **4.3. Concerns over Rationale for Compensation or Lack Thereof**

64. In public meetings and discussions across all the provinces, people said there was a lack of clarity as to the basis on which compensation was calculated and provided, as well as concerns over narrow criteria and favouritism (influential people are perceived to have better access to compensation and also avail larger amounts). According to the submissions received, financial payments received in the past as part of previous reparation programmes, ranged from 15,000 Rupees to 300,000 Rupees. However, no one was clear on what basis these amounts were calculated.

65. In FGDs in Anuradhapura, disabled soldiers brought up problems relating to compensation, payment of salaries and pensions. Further, the categorisation of persons, based on disability, place of injury and cause of death, was highly criticised. For instance, for some disabilities the State only pays 60% of the full compensation available. Further, soldiers injured within the camp are treated differently to soldiers injured on the battlefield. This was reiterated in FGDs and public meetings in the South. Meanwhile, many people in the North and East repeatedly said the points system used to assess vulnerability is unfair. Injuries and disabilities are also rated on a scale of 0 to 100%, a scale that many people do not fully understand or agree with, resulting in the perception that decisions were made arbitrarily.

66. In Trincomalee, a woman said she lost her husband in ethnic violence in 1985. He had been working in the harbour at the time. She was given a month's salary, but no other compensation, although others working with him who had also died in the same incident received a pension. *"I have gone up to the minister with this problem, but have got no response"* (FGD in Trincomalee with Women Headed Households).

67. An issue over criteria for determining eligibility for reparations was also raised at a Public Meeting in Polonnaruwa in the North-Central Province. One woman said that she was not legally married to the person who was missing, but that they had lived together for several years and had two children. Despite this, she had been told that she is not eligible for any compensation.

#### **4.4. Non-recognition of Certain Injuries or Losses**

68. There were particularly vulnerable groups who said that their injuries and losses are either not recognised or given adequate attention by authorities. In all of these cases, it was often because the loss was not overtly 'visible' or was 'hidden.' Or there was non-recognition of the loss as a result of the group that the victim belonged to. For instance, those who suffer severe physical injuries

that may not be immediately and outwardly visible, but nonetheless have resulted in continued physical and medical issues, say that their needs are not necessarily recognised by authorities.

*“I am injured in my head and hip. I can’t see well in my eyes. When I say this, they say what’s wrong with you, you look fine... These need to be said so that everyone knows and it is recorded.”*

(FGD with disabled persons, Batticaloa)

69. Similarly, large number of submissions across the island reflected the view that psychological trauma is not given due attention and remains largely unaddressed.

70. As noted above in relation to acknowledgement of suffering, (see Section 2.2 above) women and men who were sexually violated may also not come forward to complain, due to the social stigma attached. As a result, related injuries, both physical as well as psychological, also remain unaddressed.

71. Vulnerable communities such as the Malaiyaha Tamils and Sri Lanka’s indigenous communities pointed to long-standing structural discrimination that is not necessarily viewed as violence, but nonetheless, needs to be. The indigenous communities in the Uva Province, described historical discriminatory practices on the part of the State that have denied them of their traditional land and ways of life. They also pointed to vast acres of land they had lived on being cleared and redistributed, as well as promises of land being released to them, that were later not honoured.

*“During [former president] Premadasa’s time they spoke to our leader Tissahamy about [the] Gam Udava [project]. They promised us 1500 acres of land. But we don’t want land rights. We want the right to live in the forest. 1500 acres is not a solution.”*

72. A few written submissions made on behalf of ex-combatants as well as submissions from ex-combatants themselves pointed to losses and injuries that they had also faced during the course of conflict that are not recognised. For instance, losses and violations linked to being recruited for combat as children, their continued difficulty in reintegrating back into society and related to this, difficulties in seeking livelihood and psychosocial support.

*“We lost our education and youth during the war, and now we are struggling to live a decent life.”*

(Ex- LTTE cadre, FGD, Kilinochchi District)

#### **4.5. Perceptions of Discrimination and Exclusion**

*“The housing schemes that come our way are usually distributed to people who are known to the Grama Sevaka, Divisional Secretary and also people bribe them to get these”*

(FGD, with inhabitants of border villages, Batticaloa District)

*“The Government officials are stealing money from the poor for whom the assistance is coming.”*

(FGD with Muslims, Mannar District)

73. Members of Sinhalese, Tamil and Muslims communities all expressed skepticism over the equitability of reparation programmes based on their previous experiences. They were of the view that reparations have been and would continue to be discriminatory, biased or deliberately inadequate for certain groups. However, it must be noted that each community’s views often contradicted the views shared by the others, particularly in relation to which groups would be negatively impacted. Sinhalese communities in the North-Central Province said that although they had also suffered from attacks by the LTTE as they lived in border villages, they are being discriminated against in the process of reconciliation and reparations (Public meeting, Kebithigollewa, Anuradhapura, North-Central Province). This view that reparation schemes unfairly favour Tamils was also reiterated in submissions from other parts of the country.

*“The reparations should be given to the Sinhala people also without any discrimination, just like how the war affected in Tamil areas are getting.”*

(FGD with Sinhala people, Mannar)

74. Similarly, the Tamils and Muslims from the North Central Province and Eastern provinces were also of the opinion that it was they who had been discriminated against, by local administrations that are largely insensitive to minority concerns. Both Tamils and Muslims in the North and East referred constantly to some people getting support whilst others who had been through similar situations not getting anything.

*“If someone from the army dies, they give monthly salary and various other allowances, but for us Tamil people, even if someone who was in the Government dies, we are given nothing.”*

(FGD with Women Headed Households, Trincomalee)

75. Submissions made in discussions in the North-Western Province held the view that reparations would only be for the Tamil community. Conversely, Tamils held the view that it would be they who would be discriminated against (FGDs, Kurunegala, North-Western Province).

76. Land related concerns such as resettlement and return programmes for displaced communities and distribution of land to the landless were almost always linked to increased tensions and general mistrust between communities (FGD with inhabitants of border villages, Batticaloa). *“The Muslims get half an acre; the Tamils get one acre. Resources should be distributed equally”* (FGD with Muslims, Mannar). A number of accusations were made of ethnic or political

bias in distribution of housing and that not everyone who deserved it were able to access it. Accusations of nepotism as well as corruption were also made repeatedly in relation to this. In a case raised at an FGD in the Trincomalee District, the submission noted that there are 200 houses being built in Gomarankadawala, with instructions allegedly given to the local administration that they should all be for Sinhala villagers.

#### 4.6. Accusations of Coercion

77. In specific cases raised in the Southern and Eastern provinces, participants at the consultations alleged coercion and intimidation by State officials - including those within the security apparatus- when they accessed these officials seeking compensation. People who spoke about the Kumarapuram massacre (that took place in 1996 in Trincomalee) said that 41 families in their neighbourhood were affected in this incident, but when they went to the local police station to make a claim for compensation, they were asked to first agree to conditions they could not accept.

*“When we went to request for compensation to the police station, we were told, that we would be given one lakh rupees if we signed letters to say that our people had been shot by unidentified persons. But we didn’t accept this, so none of us have any land or houses to live a decent life or any compensation.”*

(FGD with victims of mass killings, Trincomalee District)

78. Similarly, a person who participated in an FGD on an estate in Galle in the Southern Province, speaking of the 1983 pogrom said: *“I know of an incident where a Tamil youth was burnt and killed. Parents filed action in court. The State gave Rs. 10,000/- as compensation and got the parents to sign a paper that said it was Rs. 25,000/-This is the type of injustice Tamil people have had to face.”*

79. In an FGD with women headed households in Batticaloa, the women noted how many of them had been forced by authorities to accept death certificates, but that this was done under the pretext of helping the people to access compensation and relief. They had refused to accept them, so got no compensation. Several Tamil written submissions from individual affected persons from the East, noted that they were asked to sign letters saying that the military or Special Task Force (STF) was not responsible for the deaths, in order to obtain a death certificate. The cause of death was thereafter changed to either “accidental” or “shot by an unidentified person.”

80. Incidents such as these have further fueled suspicion around proposed reparation programmes and intensified calls for justice prior to reparations (See Section 3 above).

## 5. An Office of Reparations: Purpose, Policy and Principles

81. As noted in the introduction to this chapter, only a very limited number of submissions spoke of reparations in relation to an office. Most viewed reparations as being linked in some way to the other transitional justice mechanisms; as part of the processes of those offices and/or of existing State structures. Submissions in relation to operationalising reparations therefore, focus more on a set of normative principles that need to guide this process. In addition, submissions also called for the development of a clear policy on reparations that covers, in particular, issues around victimhood and entitlement to reparations.

82. With regards to sequencing of reparations, a significant number of people, particularly in the North and East felt that reparations need to follow justice or it risks becoming a substitute for justice. Nonetheless, the number of submissions on the difficulties faced by those to whom reparation is due, also raises the importance of prioritising it. A submission by an international organisation suggested that the reparations process should start as soon as possible rather than follow a judicial and truth-seeking process. In this view, provision of reparations was seen as signaling inclusiveness and rebuilding a national community.

83. In terms of a process to follow: an email submission from Canada called for undertaking a robust accounting of human costs, one that separates civilians from combatants before a reparation process begins. A similar call for mapping of affected persons and reparation programmes was also suggested by a Colombo based advocacy organisation, particularly in relation to ensuring there is no duplication of efforts and reparations are distributed fairly. A submission by a Christian lay religious organisation pointed out that a survey should be done by the Office of Reparations to accurately ascertain most deserving and vulnerable individuals and communities. Individuals speaking at the various meetings across the country also laid out a framework for what is expected and what should not happen in relation to the reparations process.

84. The following section lays out some of these considerations for establishing an Office of Reparations as envisaged in the submissions.

### 5.1. Types of Conflicts for which Compensation is Proposed

85. There was a wide range of conflicts, incidents and time periods that submissions pointed out as requiring reparations and as such should be within the scope of the reparations agenda. A synthesised list of these submissions follows:

- The war between the Government of Sri Lanka and the LTTE and the violence that took place therein was the context for much of the discussions and submissions on reparation. Reference was also made to specific incidents within this context. These include: the anti-Tamil pogrom of

1983; the forced eviction of Muslims from the North (1990); massacres such as those that took place in Sathurukondan (1990) and in Kumarapuram (1996), Palliyagodalla in 1992, among others; the period of operation of the Indian Peace Keeping Force (IPKF); the final stages of the war and sexual violence in the context of the war.

- Reparations for violence that took place during the JVP insurrections in 1971 and between 1988 and 1989, but also covering incidents of related violence extending into 1991.
- Reparations for post-war violence and hate signs against ethnic and religious minorities. For instance, the anti-Muslim violence in Aluthgama in June 2014 that was seen as being closely linked to an anti-Muslim sentiment propagated over the years prior to the incident.
- Reparations for forced evictions by the State, as well as cases of abductions and disappearances, post-war.
- Recognition and reparations for long-standing structural violence against certain communities. For instance, the Malaiyaha Tamils pointed to 200 years of systematic structural exclusion and discrimination by the State and continued violence perpetrated against them even today. Similarly, indigenous communities also pointed to specific instances of historical structural discrimination by the State that continues today. These submissions spoke to the need for structural and institutional reform as the suitable form of reparation.
- Some submissions from Sri Lankan diaspora groups referred to the need to include issues of marginalisation and discontent, post-independence until today. Another submission said Sri Lanka's colonial past from 1796 until the end of the war in 2009, needed to be the period for consideration.
- People who participated in an FGD in Ruwanwella in the Sabaragamuwa Province said it was important to go back to root causes of the conflict, one of which was identified as the Sinhala-only language policy enacted in the 1956, and its impacts thereafter.

86. Groups identified repeatedly in the submissions as needing reparations were: 1) families of the missing and disappeared; 2) survivors/victims of physical and sexual violence, including abduction and torture; 3) injured/disabled survivors/victims – both civilian and military; 4) widows and women headed households; 5) those displaced, both internally and externally; 6) Malaiyaha Tamils; 7) victims of property/asset loss 8) soldiers; 9) LTTE and other ex-combatants; 10) those affected by military occupation of land

## **5.2. Entitlement to Reparations**

### **5.2.1 Criteria for establishing victimhood**

87. A few written submissions by civil society organisations raised conceptual questions as to how victimhood would be decided. These included queries on, which communities would be included, which conflicts would be covered, what time frames would be adopted to decide categories of victimhood and how would past abuses would be measured.

88. Another local civil society organisation made the argument that the scope for victimhood should be widened to one that recognises continuous harms from violations suffered and current social and economic vulnerabilities, especially in determining individual reparations. The same submission notes therefore, that criteria for eligibility and entitlements must be adopted and drawn up based on sensitive, informed, participatory and independent assessments of the harms suffered, as well as current vulnerabilities. At least two submissions by organisations called for the terms ‘victim’ and ‘victim family’ to be widely interpreted to ensure that individuals and family members are not excluded based on technical definitions. In a written submission from a women’s rights organisation, made on behalf of LGBTIQ persons, concerns were expressed over restrictive eligibility criteria that could discriminate against such individuals. For instance, definition of the term ‘relative’ to mean spouse or blood relatives only, restricts LGBTIQ partners from seeking redress. Therefore, provision of reparations should not be limited to those who fall under traditional definitions of family, but also include non-traditional family structures. Another submission from a women’s group said, that a woman who has been victimised should be compensated irrespective of her marital status: If her husband has gone missing, and she marries another person, she should still get compensation for her missing husband, the submission said.

### 5.2.2. Claims and counter-claims

89. Whether former LTTE combatants and their families can claim reparations or not was a point of dispute in some submissions. In FGDs with disabled soldiers in the North Central Province and in the South for instance, it was stated that the State should not give anything to the families of former LTTE cadres who were killed. This was reiterated in a few individual email submissions from members of the Sri Lankan diaspora in the UK; these submissions also prescribed the need to exclude widows of LTTE combatants from the category of war widows.

*“If these families need something, Tamil people should take care of that. We can’t give anything to the people who created a struggle against the State.”*

(FGD, Anuradhapura–North Central Province)

*“If any compensation is provided for ex LTTE cadres, that should be less than the soldiers.”*

(FGD Hambantota–Southern Province)

90. This idea was challenged by families of former cadres, who claimed a right to equal compensation; the need for equal treatment was also reiterated in an organisational submission made by a women’s collective. The same submission added that by focusing on each family’s loss, rather than on the affiliation of the family member, reparations can hope to heal communal divides. Individual Tamil civil society actors have also asked for consideration of former LTTE child conscripts and their families for compensation and support, on the basis of the violence they faced

as children. The submissions also pointed out that most child soldiers were originally drawn from under-privileged social and caste groups, further reflecting their exploitation along class and caste divides.

### **5.3. The Need for a Clear Policy on Reparations**

91. There were several demands for a policy on reparations that came from all parts of the country. These calls further stressed that such a policy should be transparent, ensure equity and that the provision of reparations should not lead to further discrimination. Further, a policy should also be formulated in line with international standards and best practices.

92. A need for such a policy to recognise and highlight certain groups, due to the specific ways in which harms are experienced, was raised by groups of individuals as well as organisations. For instance, women and women's groups, in their submissions in this regard, said that a policy on reparations was needed in order to recognise the specific ways in which women experience harms within a patriarchal context. Recognition of specific experiences and vulnerabilities were also raised by differently abled/disabled persons in Batticaloa and Mullaitivu, in relation to their call for a policy. Similarly, a written submission made by a group of persons affected by the Prevention of Terrorism Act (1978) outlined the need for a clear policy statement on what support they can expect from the Government and the steps that will be taken towards reintegrating them back into society.

93. Speaking in relation to the specific content of a policy on reparations, a Christian lay religious organisation was of the view that an Office of Reparations should adopt policies that allow allocation of varied resources rather than only focus on monetary compensation; some examples provided in the submission included income generation support and skills training for affected communities. Similarly, a submission made by a local civil society organisation called for interim reparations to be recognised in a reparations policy or a separate 'Interim Reparations Policy' to be introduced as soon as possible. This was underscored by repeated demands in the consultation process, for interim reparations to meet urgent needs. This point is discussed further in Section 6 below.

### **5.4. Operational and Normative Principles**

94. Submissions made to the CTF, both in written and oral formats and from individuals and organisations alike, spoke to certain key principles or overarching themes that they felt need to be embodied within the reparations process. This is regardless of whether or not it is implemented through a specific mechanism such as an Office of Reparations. These principles and values are outlined below.

#### 5.4.1. Victim centrality

95. The sections immediately above outline the various conflicts and the resultant forms and states of victimhood that submissions made reference to. All suggestions on redress were therefore formulated in terms of effectively addressing the wrongs committed against the victim and reinstating dignity.

96. The principle of victim centrality has at its core the idea that the needs of victims form the defining features of a reparations process. This also places at the forefront, the rights of victims to equal and effective access to justice, adequate, effective and prompt reparations for harms, and access to information. Further, it means that the person or group be considered a victim regardless of whether the perpetrator of the violation is identified, apprehended, prosecuted or convicted, and be treated with compassion and dignity.<sup>13</sup> Nonetheless, a submission by an international organisation said that in deciding who the victims are, it is important that the office speaks to representative interests of the majority of the victims and not just the most capacitated amongst them. It went on to say that the process should not be tied to the politics of a perpetrator-victim relationship, but identify victims in terms of processes.

97. There were several individuals and groups that identified as being victims, in the submissions received by the CTF, and as having a right to redress and reparation. Further, some groups of people wanted specific prioritisation in recognition as victims. However, the extent of choice in the matter, that affected people are likely to have in any reparations process, appeared to be unclear. As one woman in a public meeting in Manthai East in the Mullaitivu District said, *“whatever you decide for me I will accept. Separately for myself, what should I ask?”*

98. A few organisational submissions however, cautioned against exclusive focus on victimhood alone. For example, a written submission cautioned against perpetuating categorisation of people as victims so as to support reintegration into society and in consideration of their dignity. These submissions were made particularly in relation to those who had been recruited as children by paramilitary groups. Similarly, a group submission representing the interests of youth also rejected a victim-centred approach, saying that such an approach should not be adopted due to the subjectivities involved. This submission further noted that while respecting victims’ narratives, the approach adopted should be issue-based.

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<sup>13</sup>General Assembly Resolution 60/147 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 Law, A/RES/60/147 (16 December 2005)

#### 5.4.2. Considerations of equality, equity and asymmetric suffering

99. The submissions made to the CTF spoke broadly to both the principles of equality as well as equity.

100. The case to equality was put forward by individuals from all communities across the island. These submissions noted that in order to minimise potential for bias and further conflict, reparations should be awarded according to losses suffered regardless of ethnicity, religion or location. Those who were of this view also said prioritisation should be according to the type of harms suffered. A written submission on similar lines, pointed out that similarly, post-conflict development cannot only be in areas of the North and East and that beneficiaries need to be seen as being drawn from all parts of the country. A written submission from a group representing war-affected women raised the point that reparations for the same loss cannot vary from one incident to another. So for instance, this submission noted, those who were made homeless by the tsunami should not get more than those made homeless by the war. A submission made by a citizens' collective in relation to the return and resettlement of Muslims also called for equal distribution of reparations amongst different groups affected by the war, including those resettled before and after 2010. The issue of urban evictions also brought up the issue of similarity of experience regardless of location.

101. Conversely, arguments for equity, in submissions from both individuals as well as organisations, spoke strongly to the idea that violations that appear similar may cause different impacts and result in different types of vulnerabilities depending on the individual or group harmed. Therefore, factors such as ethnicity, class, caste, and gender were all points of intersection in the occurrence of harm. According to these submissions therefore, all these factors need to be taken into consideration if reparation processes are to minimise the possibility of creating new hierarchies within victim groups.

102. Numerous minority voices, particularly in the North and East were also quick to point to the asymmetrical suffering they had gone through as a direct result of their identities and in comparisons to other groups or ethnicities. Many of these submissions went on to make a case for why they should therefore be prioritised in order for a reparations process to be fair.

103. Muslims of the North, speaking at an FGD in Mullaitivu noted that they were evicted for no fault of their own and had lost everything as a direct result of their identity, something that needed to be considered when providing reparations. Many Tamil voices also noted that they needed to be prioritised due to the magnitude of suffering they, as a community, have had to face (FGDs, Kilinochchi, Mullaitivu, Batticaloa, Ampara).

*“The final stages of the war brought unimaginable suffering on so many people; it was a genocide.”*

(FGD with victims of the final stages of the war, Mullaitivu District).

*“The Muslims only feared the LTTE, the Tamils were affected by all sides: the army, the LTTE, the Muslims. We lived in the midst of all this and were affected by all sides...”*

(FGD Batticaloa District)

104. Some individuals called for reparation to take into account their current status and the presence or absence of continuous violations in addition to the original harm. For instance, those who spoke at FGDs and public meetings in the North and East spoke of continued harms in the form of militarisation and intimidation. Groups such as women headed households and differently abled or disabled persons also pointed out to the need for targeted assistance given their vulnerable situations and for reparations to also take into account other factors such as the availability of family support, and the number and age of children, among other such factors. (FGD with women headed households and disabled individuals across the country).

#### **5.4.3. Transparency**

*“Reparations should reach the people who are truly affected. Government officials need to distribute resources fairly and the process of distribution of compensation should not be politicised.”*

(FGD with Muslims and Tamils from border villages, Batticaloa District)

105. A majority of the written submissions demanded transparency in the reparations process, both for those receiving it and for the general public. The call for transparency is linked to peoples' perceptions, based on previous experiences, of compensation and development assistance being unclear, biased and discriminatory. A written submission from a member of the Sri Lankan diaspora said that, the basis for compensation must be made clear to the general public, especially if reparations are to be provided with taxpayer monies and that the reparations processes need to be subject to routine audits. Another written submission from an organisation pointed out that there needs to be clarity in the explanation given during the distribution of reparations so that people who receive it know why they are receiving it and that the process followed has been fair.

106. While the above submissions deal with transparency of the process of implementation, a group submission from a religious rights group said that any legislation around reparations should also be made available for public review prior to commencement of the process.

#### **5.4.4. Inclusivity in the design process**

107. The idea of participation of affected people in the design of reparations was raised frequently by people who made submissions at consultations across the North and East and was echoed in organisational and group written submissions. There was a general consensus that a one-size fits

all approach is inadequate and also inappropriate, particularly in relation to the loss of a person's life. As such, those who made submissions were of the view that compensation packages must be developed in close consultation with affected persons. In an FGD with Women Headed Houses in Batticaloa, participants cited houses under the Indian Housing Scheme not having proper toilets as an example of what could happen if people are not consulted.

108. A web submission noted that the decision on what would constitute the most appropriate and relevant form of reparations for problems, losses or violations should be best left to be articulated by affected individuals and/or their families. Similarly, another written submission from a civil society organisation noted that the decision whether reparation should be on an individual or collective basis should be left to the affected people themselves.

109. An advocacy group suggested that the design of a reparations programme, should involve participation of relevant Government actors at the national and provincial levels, victim groups, civil society, healthcare professionals and others. The same submission outlined the features of an integrated reparations programme, which would include areas of documentation, education, finance, gender, health, housing, irrigation and land to name a few. The submission also envisaged publicly available information on the design process that would allow affected people and communities to better engage with it.

#### **5.4.5. Confidentiality**

110. Issues of confidentiality and security for those who seek out the various reconciliation mechanisms are dealt with in greater detail under Chapter III: TJRNRC and Chapter V: Judicial Mechanism. Nonetheless, the issue of confidentiality was also raised in relation to reparations, with several submissions outlining the importance of confidentiality to protect affected persons as many continue to fear possible retaliation as well as social stigma or ostracisation.

111. A submission by a local civil society organisation provided a suggestion that collective reparations could be provided in instances where there is a need to protect the identity of the affected party, such as in the case of sexual violence. The submission went on to note that it is important to reach out to those who may not otherwise seek services or reparations due to a fear of stigmatisation. As such, survivors would be more willing to claim reparations if confidentiality is ensured.

112. This view that survivors/victims of sexual violence would not come forward unless strict confidentiality and protection is ensured, was reiterated in public meetings and FGDs in the North. Many felt that shame and possible negative repercussions of coming forward far outweighed the need to come forward. Similarly, although more relevant to the justice and truth mechanisms, a number of people speaking at public meetings and FGDs in the North and East expressed fear of

coming forward with individual claims for specific wrongs, particularly until witness protection is ensured and a generally safe environment is established.

113. Another view on the need for confidentiality was expressed by some individuals at FGDs in the Southern Province, who said that reparations should be kept confidential as politicians could manipulate the process otherwise, or alternatively, recipients may be intimidated.

## 6. Types and Forms of Reparation Requested

*“The material things we lost – land, houses, livelihoods –people who are alive and not disabled can always earn all of that back. But people like me who are disabled, those who were tortured and lost their dignity, they are not able to come out and start a livelihood again. The things they lost – body parts and their dignity – are not replaceable, so they need to be compensated.”*

(Quote in a submission from an international organisation)

114. Reparations were conceived of in terms of individual and/or collective types of reparations in the submissions received. Individual and or collective reparations could in turn include material (including financial) and or symbolic forms. In an email submission from an individual, a combination of these different types and forms of reparations was seen as being required for Sri Lanka and the scope considered critical in the design of the reparations mechanism: too narrow a scope could lead to frustration among victims and other sections of society that are being ignored and marginalised, whereas too broad a scope may lead to practical issues of implementation. This same submission goes on to explain different forms of reparations, detailed in the next section. A submission by a Christian lay-religious organisation was of the view that reparations for individuals and community are equally important and should be given equal attention.

115. A point that was widely acknowledged by individuals making submissions, particularly in the North and East was the difficulty involved in assessing and providing reparations because they had suffered multiple types and cycles of loss. Many did not even spell out the exact extent of material loss, but preferred to speak in broad terms because they had gone through several cycles of rebuilding, only to be met with loss again. As one woman speaking at a public meeting in Palai in Kilinochchi said, *“It is pointless trying to go through each and every loss that we faced or ask for reparation for each of those, we were displaced countless times, the losses suffered are many...”*

116. The following section outlines some of these broad demands as well as more specific requests for reparation.

## 6.1. Demand for Interim Reparations

*“We have filed a case [Kumarapuram case]. Seven times we have gone to Anuradhapura. The case was taken up only during the last 6 months. I am not well. I don’t have money to travel. I need about 600 rupees per day for medical health. Where will I go for all this? I don’t have money even for eating. They need to give us a solution”*

(FGD, with victims of mass killings, Trincomalee District)

117. There were several demands for interim and/or even immediate reparations among different groups tied to survivors/victims’ immediate needs for basic and urgent support for survival and was particularly raised by sections of the public such as differently abled and disabled persons. Survivors/Victims who have been waiting for years and even many decades for justice, particularly from the southern and eastern parts of the country, saw speedy reparations as being critically important. Even those who sought justice and truth as a primary form of reparation, noted the need nonetheless for interim reparations to meet their immediate needs. (FGDs Kilinochchi District, Mullaitivu District). A submission by a Christian lay religious organisation suggested that interim reparations be given to all victims of mass violations, as reparations will possibly take a very long time to finalise. It also called for a consultation process before interim reparations are actually issued to understand the pressing needs of people. Interim reparations were also demanded for survivors/victims of sexual violence as they may be facing immediate and urgent consequences such as health and psychological issues. An international advocacy organisation pointed out that some survivors/victims need “medical treatment, including surgery as a result of their torture”, and other victims may need Sexually Transmitted Disease (STD) screening or gynecological care.

118. For the CTF, this raised the question as to sequencing – whether one waits for the TRC, OMP and Special Court to do their investigations before granting compensation and if so, what this means for people who have been waiting for redress for years. There were also suggestions that other mechanisms provide interim reparations, such as the Office on Missing Persons. The CTF notes that interim reparations would also serve the purpose of strengthening perceptions of State commitment to meet needs and establish an effective and sustainable reconciliation process.

## 6.2. Material Reparations

119. Demands for material reparations were both at individual and collective levels. For individuals, material reparations whether interim or longer-term, were related to provision of cash payments, pension schemes, land and other assets. In some instances, this was compensation for losses including a call for calculation of opportunity costs. In others, this was a demand for restitution. A submission by an international organisation said that provision of material assistance would help victims/survivors gain agency that would help them participate in other mechanisms.

120. There were also submissions made for collective material benefits such as development of community infrastructure, larger regional and national reconstruction and the broad-basing of economic development. This chapter therefore, reflects these views. Notwithstanding, the CTF notes that the distinction between development and reparations needs to be maintained even in instances where there may be a practical overlap.

### **6.2.1. Individual reparations**

121. Individual reparations treat harms endured by each individual as a separate case and affords recognition to that individual's experiences and provides remedies specific to their circumstances. A wide range of demands were put forward as individual material reparations in public meetings and FGDs across the country for different groups who were affected. The types of individual material reparations that have been asked for include:

- Cash payments for different groups who have been affected by conflict such as families of those killed, missing or disappeared, disabled, as well as other vulnerable groups not necessarily affected by conflict.
- Pension schemes or some form of monthly payments for victim survivors as well as families of those affected.
- Scholarships for children of those killed, missing or disappeared.
- Livelihood support and job quotas for those affected.
- Land, housing, other assets.
- Cancellation of loans taken by those killed, missing or disappeared.
- Access to health care including psychosocial support, surgery, medical screenings and prosthetics for disabled.

In general, the following circumstances were deemed as requiring individual reparations in the form of material or financial compensation.

#### **6.2.1.1. Reparations for those killed, missing or disappeared**

##### **(i) Cash payments:**

122. Families of the disappeared, speaking at FGDs and public meetings, subject to reservations made above in Section 3, asked for compensation based on criteria such as: matching the amount the individual would have earned and provided the family with; providing compensation based on financial losses caused by the disappearance, the length of time the person has been disappeared, and the number of family members affected. This was envisaged in many cases, particularly in relation to the more recent cases in the North, as interim support until a family member is returned. Families also spoke of opportunity costs in terms of earnings, children's educational and other opportunities lost due to the death or disappearance of the father or husband.

123. Overall, families repeatedly stressed the importance of conceptualising reparations in a holistic way, taking into account the losses felt and suffered over a long period of time.

For example, family members of the disappeared in Mullaitivu said:

*“If a person had gone missing the income which could have been generated by him must be compensated. For example, if a missing person had earned Rs.1000/- per day, and has been missing for some time. The timeframe of him gone missing should be considered and the amount calculated and compensated at present to the family.”*

(FGD, Mullaitivu District)

124. Some families named amounts that they wanted: These amounts varied between 10 – 15 lakhs (requested by the wife of a disappeared fisherman in an FGD in Galle), and 1 – 5 lakhs (requested by a wife of a man who was disappeared in 1988/89 during the JVP insurrections at a public meeting in the Southern Province). Some asked for a monthly payment, or stipend or pension. Participants from the Hambantota FGD on disappearances stated that it would be most helpful to receive a lump sum payment as well as a monthly stipend with a view towards providing long-term support to families to compensate for the loss of kin who would have otherwise contributed to the household economy. A lay religious organisation made a submission that families of those killed should be given a settlement of one million rupees as reparation; whether army or civilian in monthly or annual installments. The submission said that with this the discussions on compensation for the dead or missing should be closed.

**(ii) Pensions and salaries:**

125. Families of the disappeared from the 1980s in particular, said they have continued to face significant financial strain throughout their lives as a result of the loss of their child or spouse. This was particularly the case as parents and spouses age with no one to provide for them. Therefore, some participants requested a pension scheme to provide security during their old age: *“In this country, there are farmers’ pensions. However, there is nothing of this kind for those of us who have lost family members”* (FGD, Hambantota, Southern Province).

126. In the North-Central province, the death of family members who were killed while on duty as home guards in border villages, was raised several times at public meetings. Parents and spouses spoke of difficulties in receiving the salary/pension of those killed. (Public Meeting, Anuradhapura District, North-Central Province). There were also written submissions from a women’s collective from the North Western province calling for a properly regulated system of compensation, salary and pension for military widows. In addition, at an FGD with women activists in Colombo, Western Province calls were made for pensions for widows of civilians and for women-headed households, including those not directly affected by conflict, to be introduced, with a monthly allowance that matches the current cost of living. This was seen as ensuring adequate social security for widows and single women (FGD).

**(iii) Scholarships for children:**

127. Families of the disappeared also requested reparations in the form of scholarships for students whose parents had disappeared and support in obtaining employment. A further point raised in an FGD in the Batticaloa district with victims of mass killings, was that children of service personnel get several incentives, but not so for children whose fathers have died in the war. This discrepancy they felt, was unfair and needed to be addressed.

**(iv) Livelihood support:**

128. A man from Hambantota in the Southern Province suggested that the State set up a job quota system and give special points to those families who had disappeared family members (FGD with families of the disappeared, Hambantota, Southern Province). He further stated that this point system should apply to the State sector as well as the private sector.” This call for a job quota for family members of the disappeared was echoed across the country.

**(v) Cancellation of loans and access to benefits:**

129. Participants at the Mannar FGDs wanted all loans that were given to the disappeared when they were alive to be cancelled. The CTF’s Interim Report on the Office on Missing Persons makes note of submissions that call for the validity of certificates of absence to be recognised, so that women can access their husband’s bank accounts, properties, pensions, gratuity/EPF/ETF, subsidies and welfare payments.

**(vi) Payment for costs incurred/would be incurred:**

130. Families of those killed, missing or disappeared said that any award of reparations should consider amounts women have already spent on looking for their family members as well as their deteriorating health and mental status. A mother at a public meeting in the Kilinochchi District said, *“We have begged for money just to get photocopies, how many photocopies...all to submit to various people in the hope of getting our children back.”*

131. Some people noted that interim reparations would also be necessary to support their continued search for truth and justice including paying legal fees, traveling to search for missing persons and visiting detainees (FGDs and Public meetings in Jaffna, Kilinochchi, Mullaitivu).

**6.2.1.2. Reparations for physical violence and injury**

**(i) Sexual violence**

132. Demands for justice and reparation by victims of sexual violence were raised repeatedly at public meetings and FGDs, particularly in the North and East as well as in written submissions. These submissions were made by women’s rights organisations, collectives of women and individuals, documenting concerns of victim survivors. The incidents that were spoken of in the North included reference to the final stages of the war following surrender to the armed forces and while in rehabilitation camps.

133. In relation to material demands for sexual violence, cash handouts and livelihood support were demanded. A submission by a civil society organisation suggested that for victims of sexual violence, assessment of economic damage should quantify impacts arising from gender of the victim and impacts of this within their culture. Further, the submission goes on to say the stigma and marginalisation within the community that arises from being identified as a sexually abused person could affect the victim's earning and marriage potential, which needs to be recognised and quantified. Further, this same submission goes on to suggest that the Government enforce awards of compensation, such that victim survivors are compensated as soon as possible; that provision of interim reparations for sexual violence will help limit the long-term negative impacts on victimised communities, but are not a substitute for continued work after the interim period.

134. As noted above, a women's rights organisation also calls for the recognition of sexual violence that occurs inside the home and the community in consideration of reparations as it is born out of a culture of impunity and structural violence.

135. Other non-material reparations demanded for sexual violence has been included in the chapters on Truth Seeking as well as Judicial Mechanisms in this report.

**(ii) Disability**

*"I do not like to show my disability to other people. When we go to the hospital for treatments, everyone can see it [disability], we are not disabled by birth, and people look at the limb with disgust, like we are animals. I do not like it. So make a method for us to get medical treatments considering the service we have done. Do not misuse us, do not exhibit us."*

(FGD with disabled soldiers, Matara, Southern Province)

136. In relation to disability, many of the submissions that were made to the CTF were from disabled soldiers in the Anuradhapura Kurunegala, Matara and Hambantota, districts (North Central, North Western and Southern Provinces) as well as former LTTE combatants. Disabled civilians, particularly in the North and East also made submissions to the CTF. In all areas, disabled people wanted immediate reparations to meet urgent and basic needs.

137. The following common demands for reparations were put forward:

138. Disabled soldiers wanted a properly regulated system of compensation, salaries and pensions, with their families and relatives also having access to benefits. Some disabled soldiers wanted salaries rather than pensions after the age of 55 due to ongoing struggles as they age. They also asked that the full amount of compensation be paid without consideration as to the type of disability or the place where the injury took place, as is the current system. They said that the difficulties they faced in obtaining their entitlements was at least partly due to newly appointed Government officers

being unaware of what was due to them. Further, there were submissions made at a public meeting in Galle in the Southern Province that barriers faced by relatives of ‘war heroes’ in accessing pensions and salaries should be removed. Conflicts between parents and wives of military officers after their death also emerged as an issue when claiming benefits such as pensions. Parents of these officers said that they do not have any financial support after the death of their child.

139. There were also demands for housing and, infrastructure by disabled soldiers. The demands for reparation raised by disabled soldiers were often tied to concerns over a loss of their dignity and respect. Submissions demanded that the Government ensure their heroic identity as ‘protectors of the nation’ is maintained by providing them with these facilities. They also suggested that a different ward is established in every hospital to treat disabled soldiers. Psychosocial support was also raised, which has been dealt with in more detail in the relevant chapter of this report.

140. In the North and East, disabled persons said that they were struggling to meet basic needs. They also desperately wanted a means of integration into society, to be accepted and for the Government to take proactive steps in this regard (FGD with disabled persons, Batticaloa).

*“You disabled us, took our belongings...now you are not helping us, and don’t even let others help us, then what do you want? What is your plan? Is this your reconciliation? Is this your good governance?”*

(FGD with disabled persons, Kilinochchi)

141. In Mullaitivu a group of disabled individuals including civilians and ex-LTTE cadres requested that the State provide livelihood support, prosthetic care, medical care and psychological counseling. They also made a strong submission for their cases to be considered individually for the compensation to be useful. *“You have to look at the special abilities and disabilities of the person and tailor the livelihood support accordingly.”* Disabled, former combatants also raised the special difficulties they faced. There were complaints of de-prioritisation and discrimination even in accessing health care because they were combatants.

#### **6.2.1.3. Reparations for loss of livelihoods, housing and other assets**

*“In the 1980’s, fighting was intense in our areas. Those days we were living in the jungles, among many difficulties with our small children. Then we left the villages with our children. Their education was disturbed as well. After the war we returned but there were difficulties to find livelihood. All our property was lost. We did not receive any form of reparations. My expectation is that it is good if some sort of reparation takes place.”*

(FGD with people from Aranthalawa and other border villages, Ampara, District)

142. There were different forms of property loss outlined by different groups and members of the public across the island. These included losses of land, housing, trees and livestock as well as personal assets and investments.

**(i) Land**

143. There were varied and recurring concerns over land raised in submissions to the CTF from across the country. As noted above, in relation to lands that have been appropriated in some form, restitution was the most common demand. These included claims for lands lost due to displacement or because they were taken over by the military or other parties, including for setting up of sacred areas (FGD regarding Dambulla sacred area). Nonetheless, a civil society organisation also noted that redistribution of lands where present needs and vulnerabilities of landless people are taken into account, needs to be considered. A submission by an international organisation also suggested the need for a standardised approach to land-distribution due to the dangers of discrimination between communities if a case-by-case approach is adopted.

144. In relation to displacement, submissions made on behalf of the Northern Muslims who were expelled by the LTTE in 1990 called for a mechanism to be set up that would equitably distribute State land to returning landless Muslims for dwelling and for livelihood purposes, including to new families, taking into account the natural increase in populations over time. This is specifically in relation to the opportunity costs that arose from the original loss. In this instance therefore, the rationale given was that, had Muslims continued to live in the North after 1990 without being subject to the forcible expulsion, they would have benefited from regular State land alienation programmes, which was denied to them by the evictions and protracted displacement. A further suggestion was that if land is not available in the villages from which the Northern Muslims originally came from, then alternative land of a similar nature – explained as land suitable for agriculture – should be made available to them. When such alternative land is found, the request was that Muslims be settled in large community groups so that their social networks are not lost through resettlement. Similarly, a network of women’s groups in the East said that agricultural land must be returned to respective owners together with compensation for opportunities costs. Further, it must be ensured that these plots of land are fertile and economically viable. A submission by a collective representing Northern Muslims also demanded that compensation be paid to all Muslims displaced from Mullaitivu in 1987 by the Indian Peace Keeping Force (IPKF) and by the LTTE in 1990 commensurate with compensatory schemes of the UN and in line with international standards.

145. Sinhala families who were displaced from the Eastern province to the North-Central Province during the war, demanded reparations for lands lost in terms of rights to new land and paddy lands for cultivation, such as in the cases below. In one case, a Sinhalese farmer said he was displaced to Dambulla from the East when he was allegedly chased away by the LTTE. He said he lost his paddy and coconut land and that the adjoining Tamil village had taken over the lands and

begun cultivation on it. He is currently living in Dambulla on land belonging to a temple. Another woman whose family was originally from the East, said she had spent most of her life in camps and her education was disrupted. Although she and her family were settled in Dambulla 16 years ago, they were not given rights to ownership of the land and were asked not to build any permanent structures (FGD with conflict affected and displaced families, Dambulla, Central Province).

**(ii) Housing**

146. Provision of housing as reparation was raised multiple times in discussions and public meetings in the Northern, Eastern, North Central, North Western and Uva provinces as the preferred form of compensation for families of those killed or disappeared, for the differently abled or disabled, for those who were evicted from their homes and for Malaiyaha Tamils who face struggles of ownership and poor quality of housing.

147. Disabled persons in Mullaitivu who made submissions to the CTF wanted housing support that took into account the specific circumstances of disabled people. People in the Uva Province said in FGDs that inadequate housing on estates was linked to children being exposed to violence including sexual violence and incest and poor performance at school. A submission to the CTF on the issues faced Malaiyaha Tamils stated that nearly 70% of the estate sector live in line rooms or row houses. Further, while the national percentage of housing units owned by a member of the household has grown from 70% in 1981 to 83% in 2012, in the Estate sector it has only increased to 22% in 2012 from the 1% it was in 1981. A mother from Aheliyagoda Estate in the Uva Province described her situation: *“We don’t have land; we live in line rooms. When our children attain age [reach puberty], they find it difficult to change their clothes because we all live in one room. The estate management doesn’t allow us to extend the room even with our own money. We also have water issues and don’t have proper toilets”*.

148. Malaiyaha Tamils wanted these issues to be resolved speedily with a 3-year period suggested for provision of reparations. Further, they identified the most vulnerable groups among them who should be prioritised for reparations as: victims of disasters and those living in high-risk areas; women heads of households; differently abled or disabled persons and instances where more than one family is living in a line room.

149. Compensation was also demanded for houses that were destroyed by the military both in military as well as non-military operations. An example of the latter was provided in a submission made by a man from Jaffna on the need for adequate compensation for loss of property destroyed by the Sri Lanka Army. The submission states that his house in the Jaffna, in addition to other neighboring houses in the same row were razed to the ground by security forces to collect rubble to build a boundary wall. The submissions state that this area was under Sri Lanka Army control in 1995. *“It was a cruel action by the Army to destroy our ancestral houses, our lifelong savings in a couple*

*of hours for no fault of us. If they wanted to build a boundary wall, they could have brought sand and stones from other places and built it without destroying the valuable neighbouring houses.”*

150. Demands for reparation in the form of adequate compensation were made in a joint submission in Colombo in the Western Province on behalf of those who were forcibly evicted from their homes by the military resulting in numerous impacts, for which no compensation has been provided thus far. The demand for compensation stemmed from impacts outlined in the submission, which included a loss of a higher quality of life for some people who are now living in vertical slums that they are forced to pay for despite not having a choice in moving; debt; a lack of access to income-generating activity; loss of community. These evictions were linked in this submission to broader issue of militarisation in other parts of the island especially with regards to land grabs by the State using military apparatus.

**(iii) Other assets**

151. Other assets that people considered important in consideration of reparations included loss of trees and livestock, looting of jewellery and other domestic and economic goods such as motorcycles or tractors that were also used for livelihoods. These issues were raised by participants in FGDs in the North, East and on the estates in the South. For example: estate workers in Galle in the Southern Province said, *“We haven’t received any compensation for what happened in 1983. Compensation should be calculated not only for loss of property but also lost livestock.”*

152. In Kilinochchi and Mullaitivu special references were made by a number of persons about the gold jewellery and monies deposited in LTTE banks as well as vehicles that were confiscated and destroyed. Return of these items or proportionate compensation were demanded for this. Northern Muslims made similar demands in relation to the destruction and looting of houses and assets respectively, by both the LTTE as well as the Army following the evictions in 1990. Looting was also a significant element in the Aluthgama anti-Muslim riots that took place in 2013.

153. In relation to the Aluthgama violence, there were calls for more to be done in relation to reconstruction efforts to move beyond just clearing of land and ensure that all affected people are given relief through the State (written submission by a civil society organisation). The same submissions also called for quick processing of claims made by affected persons asking for an accounting of their losses.

**(iv) Loss of livelihoods**

154. Requests or demands for livelihood related reparations included sustained livelihood support and or training for people so that they can improve their living standards in the longer-term. This was raised by vulnerable groups such as the differently abled or disabled and survivors of sexual violence as well as torture. In an FGD with torture victims in Batticaloa, a person said that it was not just one time payments that they want, but proper livelihoods. For others, they wanted an

opportunity to ‘catch up’ due to education and vocational opportunities that were disrupted during the war. A written submission made on behalf of those who were recruited as children by paramilitary groups in the East, also asked for livelihood related reparations – vocational training and catch-up education opportunities as their education was disrupted. Also asked for as reparation was priority for public sector jobs they are qualified for or income generating options. As one woman speaking at public meeting in Kutchaveli, in the Trincomalee District said, *“We have got old. Now give us something we can do.”*

155. Indigenous communities in the Uva Province asked for access to jobs and livelihoods that allows them to access as well as share their knowledge of the forest and environment.

*“We don’t have any power now. For example, if we are able to get a job within the forest, we can protect it, rather than be forced to stay away. Today the entire world has come to realise the need to conserve the environment. Furthermore, we have traditional medicinal knowledge that can be used... We are able to educate the public on the environment. We can teach school children about the environment, ayurvedic medicine.”*

(FGD with indigenous communities, Uva Province)

156. In relation to the anti-Muslim riots in Aluthgama in 2013, a submission was made that called on the State to move beyond simply rebuilding homes and buildings and consider the impact on the economic well-being of the community (Written submission, civil society organisation in Colombo). The same submission says that specific interventions aimed at ensuring that the communities are able to rebuild their means of livelihood again are required. A submission by a local civil society organisation in Sri Lanka made the point that reparations are intertwined with other needed action in Sri Lanka. For example, access to resources such as fisheries needs to be ensured such as in cases where these areas are still under military occupation, so that victims may regain their livelihoods.

#### **6.2.1.4. Reparations for displacement**

157. A wide range of material reparations to meet the needs of those internally displaced as well as those of refugees were demanded at public meetings and FGDs. Many of these issues have been raised under other sections and will also be expanded on under concerns over land, which will be discussed in greater detail in the chapter on ‘Other Considerations’.

158. Nonetheless, certain issues and demands will be reiterated here, in so far as they are specific to the provision of reparations for displacement. Further, as displacement and resettlement issues cut across various other groups of affected persons, a submission at a sectoral meeting on the topic of the missing and disappeared held in Colombo, called for a time-bound resettlement policy. It envisaged that this would be implemented through one coordinating mechanism to address current confusion over different Government ministries and departments dealing with various aspects of

resettlement. Given below are demands made by people, at times spoken of in general terms as a need and at other times specifically in terms of reparation.

**(i) Internal displacement**

159. This section covers demands by those who have been displaced internally due to war and conflict. Much of the demands were related to financial compensation, provision of basic needs such as food, water and shelter; provision of land, housing and other infrastructure.

**(ii) Financial compensation**

160. Financial compensation for those displaced from the North and East was primarily asked for in cases where military or police have taken over private lands or houses, either for military camps and police stations. A suggestion was made for an estimated rent to be paid and the lands and buildings released to the owners (FGD, Kilinochchi, Mullaitivu and Jaffna).

**(iii) Provision of basic necessities**

161. A group submission representing over 500 families who are still displaced in the Northern Province asked for compensation for monthly income lost to displacement to date. There was also a demand by this same group for the State to provide basic provisions and services for those returning. This includes rations of dry food, water, sanitation, shelter and other infrastructure. A Hindu lay-religious organisation said that people should 'not be treated as a project' and basic necessities need to be provided, including construction/reconstruction of religious places of worship like kovils and churches.

**(iv) Expediting ongoing resettlement**

162. There were also calls for the expediting of resettlement that is already underway, which some groups say is now lagging behind due to: a lack of facilitation and support by the State; a lack of basic infrastructure and common amenities in the places of return; lack of access – particularly in relation to the denial of free movement to areas of origin and resettlement for example, the Mannar-Puttalam road (written group submission by representatives of Northern Muslims; also a written submission from a civil society organisation). The lack of documentation to facilitate return and the issue of State officials providing little support or efficient redress for needs were also raised at a public meeting in Polonnaruwa in the North Central Province.

163. Specific demands for reparation included: documentation to facilitate return; State officials to be more sensitive to the experiences of displacement. In relation to this, Northern Muslims raised the incident of their expulsion from the North and called for more Muslim officials sensitive to their needs to be appointed to the State Administrative Services in the North. Another submission by a civil society organisation called for facilitation of return of displaced by redrawing of boundaries in areas of original habitation, taking into consideration demographics and population composition at the time of displacement.

#### (v) Refugees

164. For Sri Lankan refugees displaced to South India, being able to return home was, in itself, seen as a restoration of dignity and an opportunity to rebuild. In a written submission by an organisation representing their needs, they said, *“the loss of three and half decades of our lives to this conflict cannot be compensated. However, the very fact you are talking about reparations is a balm that soothes our pain..... In order to grant us some closure and enable our return we request you to pay attention to our needs on our return... This reparation will not only heal the wounds but also the scars that have lasted more than three decades.”*

165. These refugees saw reparations as being essential in different phases to facilitate their return and have explained in detail with costs, what they require from the State. This includes costs of travel from the point at which they leave their camps and costs of resettlement, requirements for subsistence, for education and needs related to documentation. In relation to documentation it was suggested that a Government ordinance be issued to recognise the legality of identification documents issued to them by the Indian Government and that they are also given a new identity card on arrival. The submission also asked for a relief and rehabilitation package for six months to a year with basic facilities and other short-term support. This group has also asked the Government to ensure their safety and security when they return.

166. The same group also said that the ‘Malaiyaha Tamils’ of Indian origin, who were displaced from the tea plantations/hill country to Northern Sri Lanka and then to India, should be prioritised among the returnees and resettled in the areas of their choice.

167. A group of returnee fishermen, speaking at a public meeting in Mannar also claimed compensation from the Indian government for boats that were confiscated from fishermen when they fled to India.

#### 6.2.1.5. Reparations for psychosocial impact and trauma

168. The need for psychosocial support and trauma counseling was raised in discussions, public meetings and in oral and written submissions from across the country. Requests for this support was made primarily from the State but also from the NGO sector in a few instances, with some requests that this be included in a transitional phase or as interim reparation (oral submission by victims of the PTA). This is dealt with in detail in Chapter VII: Psychosocial Considerations and Security.

#### 6.2.2. Collective reparations

169. Collective reparations reach out to a large number of people, and recognise and remedy a wrong they have experienced, collectively. Collective reparations were spoken of primarily in relation to memorialisation, commemoration and apology, in the submissions to the CTF. This

will be discussed further in the next section. In addition, there were also specific instances where affected persons spoke of collective material reparations such as rehabilitation and development projects for their communities as a whole. This was in instances where everyone was seen as having suffered equally, or because access to inequitable development was a root cause of continued suffering and conflict.

170. As noted above, the idea of collective reparations was also suggested as a means to ensure confidentiality and protection of individual victims such as in the case of sexual violence. Further, such collective reparations can take the form of services such as counselling, health and education provided to a community as a whole.

171. The following are suggestions on collective material reparations as provided in the submissions:

#### **6.2.2.1. Collective community infrastructure**

172. The building or rebuilding of community infrastructure to improve the collective lives of communities came up several times in public meetings and FGDs in different parts of the country as well as in written submissions to the CTF. This included collective support for farming communities, access to and development of common natural resources, provision of community health and education facilities (written submission by an advocacy organisation).

173. Provision of grain, fertilizer and irrigation facilities for farming communities in areas affected by the war was also raised in an individual email submission. A local women's rights organisation envisaged that reparations should include access to natural resources, use of common resources, land for agriculture, *chena* cultivation and home gardening, subsidies and revival of rural economies, the renovation of dams and waterways, removal of security presence along coastal belts and abolition of the pass-system imposed on fishing. Indigenous communities in the Uva Province wanted the right to a traditional way of life in the forest,

*“The forest is our temple, hospital, school, university. Our children are educated in the forest. Our girls and boys learn about animals, how to break a honeycomb. Today they are unable to get this practical experience.”*

(FGD with indigenous communities, Uva Province)

174. Echoing this was the call in a submission on psychosocial rehabilitation to rebuild community and traditional structures, institutions, relationships, practices, networks, trust, beliefs, values, norms and social capital that have been systematically destroyed by the war.

175. While the above examples speak to broader community level changes, there were also instances where participants making submissions articulated a direct causal link between these

demands for construction or rehabilitation of community infrastructure and a specific loss. In Chavakatcheri for instance, a woman referred to the need to reconstruct a one and a half kilometer-long road, damaged by heavy vehicles used by the LTTE and subsequently the military after the end of the war. She wanted the road to be repaired and developed so that she and her neighbors could carry out their livelihoods which involved transporting coconuts using a bicycle. She said:

*"During the time in which [names an officer of the LTTE] was here, they drove heavy vehicles down this road. After the LTTE, the army also set up camp in the same place and used their heavy vehicles. The road is damaged and not repaired for the past 28 years. The A9 road is close by and carpeted, but see this road where we live- I want our road to be repaired... during the rainy season it becomes impossible to ride the bicycle down this makki [clay soil] road"*

#### **6.2.2.2. Reconstruction and large-scale infrastructure development**

176. The need for large infrastructure development including roads, bridges, schools, power lines and water supply was raised in a written submission to the CTF, with suggestions that ongoing reconstruction programmes maximise local economic value in ways that would benefit survivor communities. An argument was also made, however, that reconstruction work done in previous years in the North and East cannot be considered as reparation as articulated in a submission from a Tamil diaspora organisation, because *"reparations are distinct from the responsibility a Government has to provide security, economic development and infrastructure to all of its citizens."* The same submission goes on to note that many benefits from this process have also gone to the military and to *"newcomers from the South and elsewhere."*

177. Industrial parks have been suggested in all districts of the country to allow for widespread economic development (Individual email submission, Borlasgamuwa). However, the counter-view that mega-cities cannot be a substitute for reconciliation was also expressed (Individual email submission, Ratmalana).

#### **6.2.2.3. Availability and access to State services: administrative, health, education**

178. A women's collective in the North noted in an email submission that reparations should include better health and educational facilities, including vocational training and skills development, and infrastructure development. The same submission suggested that rehabilitated ex-LTTE cadres also be given the opportunity to join the police force and other civil services on a priority basis. Individual email submissions received also emphasised the need for livelihood and education opportunities for ex-combatants and former child soldiers, so that they can become more self-reliant in the long run. An individual email submission from a local welfare organisation from the Vanni, raised the need for uniforms and access to schools for children in conflict-affected areas who have limited access to schools.

179. In the Puttalam District, a demand was made for reparations to the District of Puttalam district as a whole, since resource allocations were not increased although their population increased significantly when they took in Muslims who were expelled from the North in 1990 (Submission made by a collective of Northern Muslims). The suggestion was for a commission to be set up specifically to look into the issue of resource allocation to Puttalam, making recommendations on measures to uplift the socio-economic conditions of the district targeting sectors including education, health, State employment, university admissions and infrastructure development, and compensation for the population of Puttalam for losses incurred as direct result of the change in demographics.

#### 6.2.2.4. Reform of social security programmes

180. The revision of social protection and welfare schemes so that they are made sensitive to the experiences of conflict and the experiences of the poor, was suggested as a form of reparation. This was seen as leveraging the benefits of existing social welfare schemes to avoid duplication of efforts by a reparations programme. For instance, a women's rights organisation suggested revising the Samurdhi scheme so that it could be a possible vehicle to provide payments to the war-affected: *"The reparations office does not need to reinvent the wheel. It can revise Samurdhi scheme to reach more war affected and increase the amount to meet today's cost of living."*

181. Some groups say they have been actively denied access to the Government's welfare schemes such as Samurdhi and have asked that this be addressed. These include estate employees, those affected by the Prevention of Terrorism Act, and former child soldiers recruited by paramilitary groups.

182. Estate employees demanded that they should receive the same benefits and facilities that a village would receive, adding that they didn't benefit from the Government's Jana Saviya or Samurdhi scheme. As one person expressed:

*"no one thinks it is important for estate workers to have social mobility. If any individual is able to leave the estate life and pursue another course, once people find out he/she was once from the estate, they will make sure that they don't receive any welfare benefits. This injustice takes place because they are Tamil labourers".*

(FGD with estate workers, Galle, Southern Province)

183. Those affected by the Prevention of Terrorism Act said in a submission that they were being discriminated against by Government officers in relation to the receipt of social benefits. *"There are many of us who have lost our limbs and sustained injury during war. When we approach for social benefits, we are told that it is not for former LTTE cadres. We have been sent from Rehabilitation for social re-integration with many assurances. The Government Officers are denying this and discriminating us and this keeps us away from social integration."*

184. An oral submission on behalf of former child soldiers recruited by paramilitary groups also included the request that they be prioritised in social safety net schemes that cover others with similar physical needs and those of similar socio-economic status.

185. A submission cautioned that information pertinent to experiences of dispossession and poverty consequent to the war was not being captured by assessments and surveys currently being conducted to determine socio-economic status of households and as a result people were being left out of social welfare schemes (Submission by a civil society organisation). The same submission further added that economic reparations should not be made conditional to non-receipt of other routine welfare entitlements and benefits.

#### **6.2.2.5. Transformative economic development**

186. A submission by a civil society organisation highlighted the need to consider economic reparations from a perspective that enhances economic security and justice at broader levels. In this approach, reparations would not only be restorative but also attempt to transform underlying structural conditions of exclusion, vulnerability and unequal power relations. Examples given in this submission included redistribution of land as opposed to only restitution, so that issues of landlessness, dispossession and productive land usage are addressed; integrating reparations with social welfare and social protection as well as social and economic policy; and collective economic reparations that focus on regions and sub-regions of the population that may have been marginalised due to conflict.

187. Formulating a land policy to distribute land to the landless, based on citizen consultations and for State land to be also given to women as it is generally given to men at present, were two suggestions made in FGDs held in the Uva Province.

188. Another perspective on more widespread economic development involved the revival of 250-350 local/cottage industries focusing on the Eastern, Central and Uva Provinces. This submission also spoke of a need to improve skills, provide access to markets and provide access to finance (Oral submission, business chambers in Sri Lanka).

#### **6.2.2.6. Building inter-community relations**

189. A role was envisaged to facilitate inter-community dialogue to promote the rights of all communities to truth, justice, and redress (Email submission from an organisation). Written submissions made on behalf of displaced Northern Muslims called for the State and NGO actors to facilitate confidence and trust building measures between Muslims and Tamils in the North to minimise ethnic tensions and allow for the resettlement of Muslims in those areas. In another written submission by a women's rights organisation, a role was also seen for Office of Reparations

together with civil society groups to engage in education and public awareness programmes to combat stigma in relation to victims of sexual violence.

190. A Muslim lay-religious organisation made a submission on the role young people can play in inter-community development by giving them opportunities to engage constructively in their personal development and the development of their community.

#### **6.2.2.7. Reparations for violation of religious freedoms**

191. Demands for material reparations for violation of religious liberties ranged from monetary compensation for affected persons on either an individual or collective basis (Christian lay-religious organisation) to demands for land. In relation to the latter, an example was cited of a Mosque that was demolished in Dambulla for the creation of the Dambulla Sacred Area in 1982. Alternative land was promised but has not been received yet (FGD, regarding land acquired for the Dambulla sacred area in 1982, Dambulla, North Central Province). A submission from a collective, representing the interests of Northern Muslims demanded that all lands that had mosques, madrasas and burial grounds at the time of their expulsion from the North should be renovated and restored to their respective communities by the Government and entrusted to the Wakf Board.<sup>14</sup>

192. The issue of Hindu places of worship being systematically replaced with Buddhist Vihares and Buddha statues in the North and East was raised in public meetings and FGDs. There were calls for these statues and structures to be removed.

193. Minority lay-religious organisations noted that there has been an increase in violations of religious freedoms in the post-war period, primarily against Christian and Muslim communities. A submission by a Christian lay-religious organisation notes that while attacks by organised extremist religious groups have reduced in the period under the Government that came into power in 2015, there are still incidents being perpetrated by local religious leaders and local State actors.

### **6.3. Satisfaction Through Symbolic Reparations**

194. Participants who spoke to the CTF from across all communities spoke to the importance of symbolic reparations; both at an individual as well as a collective level. Symbolic reparations were articulated in both written as well as oral submissions in terms of spaces and monuments for memorialisation, to remember and/or grieve for the dead and disappeared as well as remember events of displacement or disempowerment. Official acknowledgements and apologies from responsible parties, including the State, as well as documentation and archiving of histories and truths were also seen as important elements of this process. There were also calls for recognising

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<sup>14</sup> The Wakf Board as established under the Muslim Mosques and Charitable Trusts or Wakfs Act (No.51 of 1956), and is primarily involved in the appointment of trustees to registered mosques.

the usage of certain terms such as “evicted persons” vis-à-vis the Muslims evicted from the North and “ethnic cleansing” to signify this act of eviction.

195. For many, symbolic reparations were seen as a means of restoring dignity and a way to preserve the memory of different lived experiences. It was also seen as a way to ensure multiple views and narratives of the war are included in the history of Sri Lanka. For instance, a woman making a submission at a public meeting in Maritimpattu, Mullaitivu said, *“The next generations need to know of this struggle and they also need to know of the suffering it brought about. This is our history, everyone needs to recognise this, and understand the causes of the war in order to prevent it from happening again.”* A submission from a women’s collective also articulated the important role that memorialisation can play in healing psychological wounds: *“Reparation should cover not only the economic needs of the family, but also its psychological needs. Thus memorials become very important.”* The need for introspection and sharing of experiences was also highlighted by many participants as imperative in order to achieve reconciliation.

*“Both sides need to understand the pain of losing loved ones. “It is the same...for a mother it is the same.”*

(FGD with families of the disappeared, Mullaitivu District)

196. Acts of memorialisation carried out by the State were perceived by participants, on the one hand as sending a strong message to affected persons, of the Government’s commitment to justice and reconciliation; and as such a powerful symbolic pledge of non-recurrence. On the other hand, there were also expressions of preference for community-driven expressions that commemorate the struggles of the people. *“Monuments should be built like for the tsunami”*, a mother of the disappeared from Kilinochchi said at the Manthai East public meeting, noting that they should be designed and owned by the victims, their families and their communities. Similarly, a submission was made in Colombo by a group speaking on behalf of disappeared families demanding that all memorialisation should be community-driven and memorialisation efforts by the Government in the North and East should be dismantled.

197. There were demands for restoration of destroyed monuments to allow people who have suffered the right to grieve. One written submission demanded the restoration of the ‘Shrine of the Innocents’ overlooking the Diyawanna Oya (river). This was built to remember young people who were killed during 1988-1991 in the South of Sri Lanka during the JVP insurrection; a period which also included State violence. Similarly, a significant number of Tamils in the North and also the East made submissions requesting the restoration of LTTE graves and their right to grieve for those they have lost.

198. There were also some who said that they did not wish to remember. For example, a man speaking at a public meeting in the Kurunegala District in the North-Western Province said he

did not want to remember because remembering (in this case the disappeared) was too painful and caused him to feel hate. Echoing this view, a women's collective noted in a written submission, that memorials and memorialisation processes should respect the wishes of persons who do not want to remember past violence and animosities felt towards other communities.

### 6.3.1. Memorialisation as a process

199. The idea of memorialisation as a process was raised in two oral submissions made in Colombo. Both of these submissions caution against looking at memorialisation as simply the construction of monuments.

200. The importance of the long-drawn out nature of memory initiatives was emphasised in one of the submissions with the caution that simply constructing monuments alone could hinder reconciliation efforts rather than support them. The submission suggested therefore a '*proliferated approach to memorialisation*' rather than monolithic memorials, featuring monuments that are constructed with affected persons so as to not contribute to any re-experiencing of violence or pain. The other submission noted that space for acknowledgement and dialogue need to be created - as such spaces do not exist naturally - through provision of information, clarifying misunderstandings and misinformation and facilitating dialogue and building trust.

201. In Batticaloa, Trincomalee, Ampara and Mullaitivu, members of the Muslim community in particular, spoke at public meetings and FGDs, about the need for a process to promote coexistence initiatives between communities as a means of achieving reconciliation. They went on to say that this was particularly important amongst members of the younger generation who do not know of the history of the close ties that the Muslim and Tamil communities shared in the North and the East prior to the war and even during the early years of it.

202. Any assumption that the memorialisation process can be a one-size-fits-all or a replication of other global experiences, was advised against in another submission by an individual. "*Each exercise in preserving, archiving, dealing with the past and memorialising histories is a unique process, where the process itself is as important as what, where, how, who, why and by whom something is memorialised*", the submission noted.

203. Part of the process of memorialisation also lies in grappling with the emergence of multiple truths, as such the same submission noted that:

*"In the context of healing, the act of telling, for all sides of a conflict, is an important step in the process of reconciliation, building understanding and empathy for the other and non-recurrence of violence. Many personal 'truths' exist and they need to be shared. Creating the space for individuals and groups to be able to remember their version of the 'truth' as lived experience, allow the narrators*

*to feel that they are acknowledged, counted and remembered. . In our own history, a lack of such processes in the 80s, 90s may have contributed to the resurgence of deep-rooted causes of conflict and violence.”*

A national policy on memorialisation was also called for in two written submissions to the CTF; with one of them adding that such a policy is imperative to ensure best practices are included, processes are sustained and that future governments do not perpetuate narrow political agendas.

### **6.3.2. Days of remembrance**

204. There were numerous calls from across the country for day/s of remembrance, ranging from combined days of commemoration for all affected persons, to individual days to signify, remember and mourn categories of victims and particular events.

205. In the South, there was a strong call made for a day to commemorate the disappeared. These sentiments were echoed in other parts of the country, including the North and the East.

*“As a sign of respect for those who disappeared there should be a day dedicated to remember them; for public’s attention and respect, there should be a memorial too.”*

(FGD with families of the disappeared, Hambantota)

206. Many members of the Tamil community who submitted at FGDs and public meetings in the North also called for a day to commemorate the lives lost during the final stages of the war. There was also one expression of solidarity in this regard, from members of the Muslim community in Mullaitivu, who called for a “*Mullivaikkal Day*” to remember the lives lost in the last stages. A considerable number of submissions from Tamil participants in the North together with some from the East also submitted that November 27th should be commemorated as *Maveerar Dinam* or Hero’s day like it used to be, as the struggle is part of their identity and could not simply be forgotten. Muslims at public meetings and FGDs also called for days of commemorations for incidents such as the forced eviction of Muslims from the North in 1990, the Kattankudy mosque massacre in 1990 and the anti-Muslim violence in Aluthgama in 2013. Survivors of mass killings in places such as Kumarapuram and Sathurukondan also wanted days to commemorate the lives lost in these specific incidents.

207. An official day to commemorate and remember civilians was suggested in an email submission by an international human rights organisation. It quoted an interviewee as having said the following:

*“There should be a declared day of mourning, but neither side should commemorate their lost soldiers on that day. That could happen on another day...I personally have no problem with the*

*Government having a day for its soldiers, but it cannot be the same day as is declared for mourning civilians. The Government should declare a day to commemorate the loss of civilians, and it should be for the community to choose how they mourn.”*

208. There was also general consensus among the members of the armed forces who were interviewed, that the LTTE as terrorists who fought against the State, should not be commemorated with those who fought and died for the country. As reflected in a submission made by a representative from the Air force, which stated:

*“Yes, both sides have endured loss. But this is not a community problem. LTTE is not a race but a terrorist organisation. So taking into consideration the atrocities they have committed, targeting civilians, I don’t think having an event where national heroes are celebrated with them is right.”*

209. A submission from a diaspora organisation called for the first Sunday in April to be made ‘National Reconciliation Day’ as April is the month when a majority of Sinhalese and Tamils celebrate the New Year. The submission noted that the Government can support this event as it is a festive season for everyone in Sri Lanka. Similarly, a submission by a Muslim religious organisation called for a ‘national day of prayer for peace and reconciliation’ where intra and inter faith prayers can be observed.

### **6.3.3. Monuments and spaces to remember**

210. Monuments and spaces to remember were a significant demand from all communities who made submissions to the CTF. These ranged from creating symbols that acknowledged pain and suffering- as opposed to victory or loss – as well as healing. There was nonetheless, considerable divergence between communities on the shape and form of these monuments and spaces. Regardless, many who attended public meetings and FGDs across the country expressed the view that the symbols adopted should not be limited to the end of the war, but include all incidents of violence and conflict inflicted on all people since independence.

211. At a meeting with artists, a proposal was made to promote the preservation of memory through a peace museum or educative spaces. The submission suggested that the Old District Secretariat building in Jaffna – ‘*the roofless war ravaged building*’ as a potential space for a peace memorial and museum.

212. Tamils from the North called for monuments that are civilian in nature and recognised the suffering of the people. Numerous calls were also made specifically for a monument to commemorate the victims of the final stages of the war. In the East, there were calls for monuments for commemoration of war victims, but also for specific incidents such as mass killings and massacres in Kumarapuram and Sathurukondan. In all parts of the country, there were strong

demands for the construction of a monument for the disappeared. The establishment of appropriate and sensitive memorials to women who died from sexual violence was also raised in a submission from a women's collective. It said that women must be supported to perform any cultural rituals and remembrances with dignity for those who died due to sexual violence, as well as to remember women's strength in the face of it.

213. A submission from a women's collective noted that women preferred living memorials such as trees for each missing person, so that all families, come together to remember, "*Women want living memorial spaces (trees, birds, waterways), as healing and calm spaces. They want Mullivaikkal being a green space/ a garden of healing*" (Email submission from women's collective.)

#### **6.3.4. War memorials**

214. Views on existing monuments symbolising the end of the war were highly polarised, based largely on how the end of the war was seen and experienced. On the one hand these memorials were seen as symbols of victory as well as mourning of the lives lost in securing that victory and on the other as symbols designed to taunt the 'vanquished.'

215. Submissions were made by Sinhalese who believe these to be symbols of victory over terrorists and the reclaiming of the motherland. As one email submission noted:

*"There are monuments to the war heroes at places such as near the parliament, at the war cemetery near Kandy, at Elephant Pass, at Kilinochchi etc. They should be preserved and protected. Why is the word violence used here? Is it the Sri Lankan Governments who initiated this conflict or is it the LTTE and their leader Prabhakaran?"*

216. Tamils living in the Vanni, however, in their submissions in public meetings and FGDs as well as in written submissions, noted that these monuments were symbols of triumphalism. Further, they expressed the emotional pain the sight of these monuments caused, particularly due to the immense suffering the civilians had endured and the human cost incurred. As was said at an FGD in Mullaitivu, "*Every time we pass the monuments, they remind us that we lost; lost not just the war, but our loved ones too.*" Muslims from the North in a public meeting in Maritimpattu, Mullaitivu voiced similar concerns over the insensitiveness in the triumphalist attitude of the State, both in terms of the construction of monuments as well as in the celebrations that accompanied the end of the war. Echoing this idea, a written submission from a Muslim collective noted: "*the Government of Sri Lanka's defensiveness and denial when it comes to the final stages of the war is doing considerable damage to the credibility of the [reconciliation] process, to the trust of participants, and to chances of reconciliation.*"

### 6.3.5. LTTE graves and commemoration of fighters

217. The destruction of LTTE graves was raised in a number of public meetings and FGDs in the North, with people expressing grief in seeing them destroyed. Families wanted the restoration of these sites or at the least the freedom to pay their respects within the boundaries of the former site. Currently these sites are under military control and inaccessible to residents.

218. Some pointed out that it was disrespectful to the dead to destroy graves, adding that in some cases it was not only LTTE cadres who were buried there, but also soldiers. The LTTE called these gravesites “*thuyilumillam*” translated roughly as ‘sleeping homes.’ A majority of the Tamil people of the North and East who made submissions, continued to refer to these gravesites as such.

*“We used to cry, light candles and place flowers on these graves. We felt better knowing they rested in peace. The army bulldozed them, constructed camps and now walk around in their boots. For us it is ‘punithabhoomi’ (sacred ground)”*

(Public Meeting, Kandavalai, Kilinochchi District.)

219. A submission from an international human rights group noted that 20 LTTE graveyards from across the North and East of Sri Lanka, comprising thousands of graves and commemorative plaques for LTTE fighters were bulldozed after the war. The submission noted that this constituted a crime under international law. The submission went on to say that:

*“For many Tamil families in the North and East of Sri Lanka, the dead fighters were their children – their bones have been bulldozed, with army camps built on the earth where they lay. This is just one more sign for them that there is neither compassion nor willingness to allow them the right to honour the dead, the right to mourn and erect their own memorials in the place of their birth, in their land that is now under military occupation. In this context how is reconciliation, which is a national imperative, possible?”*

220. Related to this were submissions made on the importance of pride and identity for families of dead LTTE cadres. Families continued to refer to their deaths as “*Veera Chaavu*” (heroic death) and the fallen cadres as martyrs. They felt that these combatants had fought a war, just like the Sri Lankan soldiers and had to be recognised as such. Families believed that they should be allowed to have a photo of their lost loved ones even in military fatigues if they so wished, just like the soldiers’ families. There were some views that expressed solidarity with this idea from individuals from the Sinhala community. For instance, in an FGD in Polonnaruwa, North Central Province, the following view was expressed:

*‘In year 2000, we visited a LTTE graveyard. One of the LTTE cadres said, since the plaque is imported from India it costs Rs. 5000 per each. In the South or North, all the innocent [youth]*

*who died are ours. He is a person who was committed to a cause. We should respect him. If we [commemorate] our war heroes, we should give them the right to commemorate theirs.”*

#### **6.3.6. Freedom to grieve**

221. The present Government’s decision to mark May 19<sup>th</sup> as ‘Remembrance Day’ as opposed to ‘Victory Day’ was welcomed in both written and oral submissions, particularly by those in the North and East of the country as well as by a few international rights groups.

222. Nonetheless, these submissions went on to clarify that families still do not feel secure to commemorate the day in ways they would like to, despite the Government’s official policy that allows for private grieving and memorials. Many of them said that they continued to receive threats and intimidation from the CID and military if they attempt to engage in commemorative activities. As one person said at an FGD with survivors of mass killings in the Trincomalee District, *“We cannot commemorate Maveerarthinam (Hero’s day). Can’t ring bells in the temple or conduct pooja, or light a lamp...can’t do anything. The reason is fear. Sometimes because the festival of Karthikaivilakku falls on the same day, we can’t even light a lamp for this. That means, we can’t even practice our religious customs.”*

223. Further, in another FGD with female ex-combatants in Mullaitivu, a participant said:

*“The CID or the military would go around villages to make sure people were not mourning their dead or even lighting a lamp. If someone was caught lighting a lamp or something they would be taken in for interrogation.”*

(FGD with female ex-combatants, Mullaitivu District)

224. There was widespread acceptance in the North and East among the Tamil and Muslim communities that all citizens should be given the freedom to mourn the death of members of their family. People believed this to be their right and some demanded it, while others pleaded to be able to perform their cultural duties for dead family members.

*“If someone’s mother has died, why can't he commemorate it? He is a citizen of this country isn't it? It is his right isn't it?”*

(FGD with disabled persons, Batticaloa District)

225. The importance of the freedom to grieve and the pain caused by not being able to do so was echoed by people whose loved ones were killed during the JVP insurrection in the South.

*“Not only my brother, even my mother was killed, [but]you couldn't speak...In the Naththaranpotha river, in Kundasale Mahawatte, that is where a lot of the terror happened. They had cut him [brother] up and left him there. We identified him from his under-robe. Yet we didn't*

*cry. We couldn't cry. From the fear that we would also be taken away."*

(Brother of Buddhist monk who was disappeared during the JVP insurrection, FGD, Kandy)

### **6.3.7. Acknowledgment and apology**

226. Official apologies and acknowledgement – primarily from the State but also other parties – were raised by several individuals and groups in both written as well as oral submission. The formality of the apology was seen as important in officially acknowledging the violence perpetrated against them as a community, and in restoring the dignity of affected persons. The following were specific demands for apology and in one case, a demand for the State to formally seek forgiveness from the community.

#### **6.3.7.1. Expulsion of Northern Muslims**

227. Representatives of Northern Muslims who were expelled from the North by the LTTE in 1990 called for acknowledgment and an apology from the State as well as the Northern Provincial Council and Tamil political leaders *'on behalf of the Tamil people.'* Many Muslims noted that there needed to be acceptance that it was an *'act of ethnic cleansing'* and hence a *'crime against humanity.'* They also called for the proclamation to be published in a Gazette notice.

228. These submissions speak not only to the idea of acknowledgment of the act of eviction, but also in how it is spoken of and viewed by the community. Another submission by an organisation on behalf of the Northern Muslims called for the experience of expulsion to be recognised through the use of a term other than *'internally displaced people.'* Suggested alternatives were *'forcibly evicted persons'* or *'expelled persons.'*

#### **6.3.7.2. Structural violence against Malaiyaha Tamils**

229. Some submissions called on the State to seek forgiveness from certain sections of its people who had suffered from historical exclusion and structural violence with tacit approval by the State. This was the case with the Malaiyaha Tamils who noted in a group submission that they want the Sri Lankan State to formally seek forgiveness – not merely issue an apology – for the following:

*"Rendering our community stateless and disenfranchised by abusing the power of the law; forcibly repatriating of thousands to India and pushing many thousands into a precarious legal status for decades; failing to undo the historical exclusion and deprivation of the community and instead perpetuating patterns of exclusion, poverty, exploitation and failing to protect us from repeated violence."*

230. The State's act of seeking forgiveness, the submission goes on to say, is a means of restoring the dignity of the community and an acknowledgment of State responsibility for multiple

violations of human rights. The same submission also calls on political and social leaders from the Sri Lankan Tamil and Muslim communities to acknowledge the role played by sections of their own leadership in precipitating the statelessness and disenfranchisement of the community.

#### **6.3.7.3. Sexual violence against women**

231. Women's groups and collectives demanded an apology from the State for the history of sexual violence and its failure to prevent or respond to it effectively. This included the demand for the State to acknowledge the sexual violence that happened during the war and to recognise that both the act of violence as well as the impunity that followed, are forms of structural violence. The complicity of the State in perpetuating the continuum of violence must be acknowledged, this submission noted. At the same time, the submission noted that there also needs to be recognition and acknowledgement of the many years of peace work and resistance carried out by women at the grassroots in responding to sexual violence.

232. The same submission said that tendering of individual apology (including face to face) by perpetrators to survivors and/or their families should also be an option.

#### **6.3.7.4. Lack of recognition for indigenous communities**

233. At an FGD in the Uva Province, Indigenous communities raised the issues of respect and dignity as important to them. Consequently, one of the ways in which they see this respect being given to them is by recognising their knowledge of the forest and the environment and giving them the opportunity to share this knowledge. They also wanted to be granted access to the forests so they are able to continue their traditional ways of living and maintain the close ties they had with nature.

#### **6.3.7.5. Religious freedom violations**

234. A Christian lay religious organisation said a public apology is needed by the State to acknowledge religious freedom violations against the Muslim, Christian and Hindu communities.

235. Speaking to the idea of equality in acknowledging experiences, an alternative view to those expressed above was that, any apology tendered by the State should not be directed towards specific ethnicities, but instead be for all citizens (individual written submission, Sri Lankan diaspora in Australia). Another point of view from an organisation was that a genuine apology should come not just from the State, but from every citizen of the country so as to prevent on-going racism and discrimination. Another written submission was of the view that the Government would need to create momentum so that the public as a whole will understand the need for and importance of an apology.

## 7. Gender and Reparations

236. Several written submissions made to the Consultation Task Force raised the importance of applying a gender lens to all of the transitional justice mechanisms so that patriarchal practices and traditional gender stereotypes are not embraced and perpetuated and that transitional justice efforts actually benefit women. For the reparations process this means for instance that women have effective access to reparations benefits and that the process considers specific needs of women. The following were raised as considerations in applying a gender-lens to reparations:

### 7.1. Recognising the Multiple Roles Women Play

237. Women's rights organisations and groups who submitted to the CTF have recommended that the design, monitoring and implementation of a reparations programme should take into account differences in the experiences of men and women. This includes factoring in the multiple roles women play as primary caregivers and breadwinners as well as the differences in access to services and employment/livelihoods. Women who faced the brunt of the war are also the ones who are forced to provide for their families, playing multiple roles. One woman from Polonnaruwa in the North Central Province said in a focus group discussion that she was forced to leave her children and go abroad after the husband who was the main breadwinner was disappeared. Further, a written submission from a women's rights organisation said that the reparations office shouldn't consider only men as primary income earners. It should consider women as equal income earners and give them equal access and opportunity to establish sustainable livelihood or paid work. A written submission from a civil society organisation also called for recognition in the provision of reparations of the specific intersecting disadvantages women face. For instance, sexual violence hindering the ability of women and girls to access economic opportunities.

### 7.2. Recognising that Women are not only Victims of Sexual Violence

238. Building on the point raised above, a written submission from a women's collective also emphasised that the idea that violations against women are only of a sexual nature should not be perpetuated. *"Women are victims of all forms of violence and crimes, not solely sexual violence. Over-emphasising wartime sexual violence risks ignoring that women suffered mass atrocities (such as arbitrary execution and mass killings, detention and torture, disappearance, eviction, denial of medical treatment for war injury, starvation) apart from rape."*

### 7.3. Ensuring Women have Effective Access to Reparations Benefits

239. That women should have practical access to transfers and payments made as reparations was a recommendation by a civil society organisation in its submission to the CTF. This submission envisages that investments should be made in building the capacities of women to access banks and

other mechanisms so that benefits can be reached and are maximised. In relation to the manner of compensation, a submission by an advocacy organisation said that women victims who are given lump-sum payments are likely to be pressured to give up the payments to relatives or to pay off family debts. The same submission suggests that monthly pension type payments may better serve the purpose of compensating such victims together with skills training so that they are compensated for harm and are also able to achieve self-sufficiency. A woman at an FGD on sexual abuse and gender issues in the Mannar District said, *“the Government needs to understand that women may be unable to construct houses on their own, so the Government may have to build the houses and give it to us directly.”*

#### **7.4. Combating Harassment from State Agencies**

240. The numerous difficulties including harassment that women face in engaging with State agencies was raised repeatedly in focus group discussions across the country. For a reparations process that may link to State agencies at different levels this becomes a serious concern that needs to be addressed.

241. Issues raised included harassment from male officers in local administrative bodies and from military officers in the North in relation to military war-widows. Widows in general also face immense social stigma. (FGD, North-Central Province). Women in Mannar in the Northern province said some Government officers visit houses of women including disabled women and ask for sexual favours to provide development assistance. Vulnerability and the urgent need for support has driven some women to comply.

*“Most officers think that they can use women who are widows or without husband for their personal needs. Steps should be taken to do something about this. But till to date no action is being taken against such officers.”*

(FGD, Mannar District)

#### **7.5. Sensitivity for Persons who Identify as LGBTIQ**

242. Written submissions representing the needs of persons who identify as Lesbian, Gay, Bisexual, Transgender, Intersex and Questioning (LGBTIQ) have called for a process that allows them to make applications for reparation without discrimination and ridicule.

### **8. Structure and Functioning of an Office of Reparations**

243. As highlighted in the introduction to this chapter, only a limited number of submissions spoke directly to the need for a separate Office of Reparations. However, when people making submissions were asked direct questions about the proposed Office, some responses were elicited.

In addition, written submissions in response to a format developed by the CTF that had direct questions on the Office, also provided some indications in this regard. However, even these submissions were less likely to be specifically targeted at an Office of Reparations, but more in relation to transitional justice or reconciliation mechanisms in general or in relation a process for reparations.

### **8.1. Period of Functioning**

244. In relation to period of functioning, two related points were raised: the length of time the Office should function, and the time within which reparations should be processes and completed.

245. While some submissions outlined a period of 2-5 years, as the period for an Office of Reparations, one web submission envisaged a permanent office to evaluate damages and offer compensation. Notwithstanding, a majority of the written submissions from individuals (148) noted that reparations needed to be completed within one year or as soon as possible. This was reflected across the country in submissions made by participants at FGDs and public meetings. In Kutcheveli, Trincomalee district in particular, the need for timeliness of reparation was an oft repeated demand. A family member of the disappeared said after 27 years he got a letter from the Paranagama Commission and said, “...*this time also I will have to wait? I will be dead by then.*”

### **8.2. Physical Structure**

246. The predominant view in written submissions from both individuals and organisations was that there was no need for a separate structure; alternative suggestions included administration by local government offices or through the other transitional justice mechanisms.

247. There was considerable support for the idea that reparations could be channeled through units within the District and Divisional Secretariat offices; offices that are also currently in charge of distributing aid and relief. The general view was that they are best positioned to know the ground realities of the affected persons and the communities they live in. Adding to this, an ex-combatant in Mullaitivu said that reparations should be provided for disabled persons and ex combatants through the DS office, but that a special unit needed to be formed within the DS office with a mandate for this purpose.

248. A submission by an organisation related to the missing and disappeared requested that a separate Office of Reparations in the North and East be brought under the purview of the Northern and Eastern provincial governments.

249. Support for this idea that reparations be handled by local government offices was supported by a submission by a group that had carried out its own discussions with individuals across several

districts in the country; the majority of whom had suggested the same. However, the submission cautioned that bringing the reparations process under the State administration could run the risk of bias, corruption and general malpractice as was the case with a number of services offered by these offices. This was highlighted in this Chapter under Section 3, and is discussed further in Chapter VI: Beyond the Four Mechanisms. The same submission continued, however, to articulate the view shared by others who had also been consulted and who believed that a separate office is needed to ensure that the process of reparations takes place quickly and effectively.

250. Other ideas included the provision of reparations through units within the other transitional justice mechanisms, notably the OMP, but also the truth seeking mechanism and judicial mechanism. For example, a submission from a member of the Sri Lankan diaspora in Canada pointed out that the relevant authority that handles court awarded damages payable by the State should be responsible for making the necessary payments, rather than a separate reparations office. Conversely, a submission from a local organisation said that reparations should not be tied to the judicial processes and not be determined or limited in any way by the result of prosecutions. A role was also envisaged in the same submission for the Office of Reparations to be set up as the co-ordination point for all existing *ad hoc* reparations programmes in existence and to fill gaps in existing programmes to support victims, in coordination with other respective agencies. These could include but not be limited to, international donor-funded and local non-governmental organisation- funded socio-economic interventions.

251. Supporting the view for a separate process, while also highlighting the importance of close linkages, a Colombo-based advocacy organisation said that while restitution and compensation may be awarded through the judicial process, for those who do not want to pursue judicial action and who may not be able to identify perpetrators, an additional programme of restitution and compensation would be needed. This was particularly relevant to victims of sexual violence.

252. Among the few oral submissions made on the structure of an Office of Reparations, participants, at an FGD in Kurunegala in the North-Western Province suggested that different sections or units be allocated for different types of victims as they may have different concerns based on the violation and the reparations they seek.

### **8.2.1. Physical accessibility**

253. The need for regional and mobile offices was raised in relation to accessibility, particularly for communities identified as most affected or most vulnerable. Muslims and Tamils who spoke at FGDs in the North and East were almost unanimous in their view that the “reconciliation office or offices” need to be set up at the District level. This view was further reiterated in a few organisational submissions and by some individuals from the Sri Lankan diaspora. A women’s

rights group further added the importance of the office being located in a place with easy access to public transportation.

### **8.2.2. Facilities**

254. Many submissions spoke in relation to the facilities that need to be provided by the Office, but these were not necessarily limited to or unique to the Office of Reparations. Some of these issues have already been raised vis-à-vis the OMP in the CTF's Interim Report and will be reiterated in Chapter IV: OMP. Nonetheless, the following points are relevant to an Office of Reparations as well. For instance, a written submission listed the need for free translation, photocopying, legal and technical services to be made available. The submission also noted that all services needed to be provided in Sinhala, Tamil and English. Another submission by a women's rights organisation urged the office to have child care support and feeding spaces for women who come forward to be part of any transitional justice process. Financial support, particularly in relation to travel and food expenses, but also in relation to covering any livelihood related loss incurred as a result of having to come to the office repeatedly needs to be considered in order to encourage women's engagement with the process.

### **8.3. Grievance Redressal Mechanisms**

255. A suggestion was made by a non-governmental organisation in Colombo on the need for an effective grievance redressal and appeals process to ensure accountability of the Office of Reparations. Related to this was another idea put forward in a written submission by a group of individuals for a mechanism that could generate data to contest any perceived wrong rulings on the part of the Office of Reparations or generate complementary material to support claims to reparations. An example cited in this submission was the use of a newspaper article on a land appropriation case that may be able to establish land ownership where original deeds have been destroyed or lost.

256. A complaints mechanism to address issues of the conduct of staff was also made in an organisational submission and is described later in this section.

### **8.4. Membership and Staffing**

257. There were several considerations raised related to staffing and capacity of an Office of Reparations in the submissions. These have been grouped as follows:

#### **8.4.1. Involvement of affected families and victims**

258. There were multiple submissions made both by affected individuals and their families as well as organisations, on the need for victim involvement in all transitional justice mechanisms, including an Office of Reparation. One submission envisaged an oversight committee with affected party representation. This view was shared by many affected individuals and their families. In addition to an oversight committee, a common view expressed at these meetings was the need for affected persons and family members to be part of any adjudicating body, as well as hired as staff.

259. Thus, the provision of jobs within these mechanisms was also seen as a means to support affected persons as part of the reparations process itself (FGDs, with families of the disappeared, Kilinochchi, Mullaitivu).

#### **8.4.2. Involvement of civil society**

260. The need to have members of civil societies as either members or staff within the transitional justice mechanisms, including the Office of Reparations was highlighted in oral and written submissions. A written submission made by the Sri Lanka Armed Forces also shared this view.

261. There were also suggestions in written and oral submissions on who should not be included: listed frequently were members of military or paramilitary groups and politicians. There were mixed views on the involvement of clergy, with some noting the need for inclusion while others disagreeing.

#### **8.4.3. International involvement**

262. It was noted that a deep distrust of the State, as evident in FGDs and public meetings primarily across the North and East heightened demands for involvement of international actors in all reconciliation mechanisms. A group submission representing views from the North and East called upon the UN to be a joint partner in Sri Lanka's transitional justice initiatives to alleviate risk of bias and discrimination. A war widow from Valaichenai in the East said that she did not want justice or truth, but wanted compensation in the form of a house. She said international involvement was needed in order to ensure she would be selected as she has been denied assistance all these years. Muslim communities that participated in the consultations of the CTF in Mannar also spoke to the need for international acknowledgment and support for a reparations process for their communities.

263. Notwithstanding, while most members of the Tamil community in the North and East who made submissions were steadfast in their call for international actors to be part of the justice and

truth seeking mechanism, calls were less strong in relation to reparations. It is not entirely clear what the reason for this could be. This pattern was also visible nonetheless, in the written submissions received from affected individuals of the Tamil and Muslim community. Thus, while 93 references were made regarding the need for international actors in various capacities in relation to the truth seeking mechanism, 73 such references in relation to the OMP and a majority of 233 such references in relation to the judicial mechanism, only 6 references for the same were made in relation to the Office of Reparations.

264. The need for Sri Lankans to serve on the Office of Reparations given that it will be responsible for determining the distribution of financial compensation, but with some international involvement, was made in a few individual written submissions. For instance, one individual written submission noted that: *“The reason I say there needs to be Sri Lankan people driving this is that when the apology is provided and compensation given, it will only have value if done by Sri Lankans, not by outsiders ...But to make sure it is done properly and compensation is distributed equally, and for accountability reasons, it needs to somehow be done under the guidance of an external body.”* There were also two submissions from individuals in the Sri Lankan diaspora that completely opposed any international involvement in this office and called for the staff to only consist of Sri Lankan Government officials.

#### **8.4.4. Language and ethnic representation**

265. The need for proportional ethnic representation and language capabilities was the strongest demand made in relation to membership and staffing of the Office. Minority communities across the country stressed not only on the need for Tamil language speakers, but also the need to ensure ethnic representation, preferably sourced locally. Submissions noted that this was not only to overcome language issues that had plagued other commissions in the past, but also to ensure that there was sufficient local knowledge.

*“I shouldn’t have to keep explaining everything including locations and histories of those places constantly. If there is a local person, he or she will know certain things and the chances of misrepresentation will also reduce.”*

(Participant, FGD with disabled persons, Mullaitivu District.)

Reflecting a similar pattern, 186 references were made in relation to the need for Tamil or Tamil speaking staff in the written submissions received in Tamil from affected individual.

#### **8.4.5. Attitudes and conduct of officers**

266. The need for sensitivity and empathy on the part of officials in an Office of Reparations, particularly in interacting with affected people and obtaining testimonials of violations, was raised

in several written submissions. This view was echoed in submissions made across the country in relation to the transitional justice/reconciliation mechanisms as a whole. Differently abled and disabled individuals who participated in FGDs and public meetings from across the country, stressed that officers should be sensitive to their needs.

267. Written submissions including one from a women's collective further stressed that the attitudes and conduct of officers should in no way impede the process or discourage claimants. This view is also reflective of what people said in FGDs and public meetings across the country. An organisational submission made special reference to the need for a publicly displayed Code of Conduct for officers. This code also needs to highlight issues such as bribery - especially sexual bribery - efficiency, professionalism and approaches to communication.

#### **8.4.6. Gender considerations in staffing**

268. The need for equal numbers of women and men staff for an Office of Reparations was raised by participants at an FGD with Women Headed Households in Mannar. They also said that: when support is being provided to women, the officers working on their cases should also be women; all staff need to be sensitive to issues of sexual violence and should have received training on this. Further, staff should be hired only after their capacity on these issues is built. There was widespread support for these views expressed at FGDs and public meetings across the island as well as in the written submissions from individual and organisations.

269. A gender rights group noted, said that any personnel and officials involved in any of the transitional justice processes should be vetted to ensure that individuals accused of SGBV are not included. The submission goes on to suggest 'lustration' - the act of removing or barring human rights abusers from positions of responsibility, as a means of restoring confidence in public institutions and sending a message of zero-tolerance for violence.

#### **8.5. Financing of Reparations**

270. A varied list of potential sources of funding were listed in submissions to the CTF. Some suggested State financing of reparations by: making provisions in the annual budget (Families of the disappeared in the East and South) and by integrating it into the country's public/fiscal policy (written submission from a civil society organisation). The latter point was seen as being important in sustaining financing for reparations so as to make public provisioning of entitlements to war-affected non-negotiable. Representatives of families of the missing as well as from a women's rights group also added, however, that there should be provisions to allow fund raising from international sources.

271. There were three individual submissions from members of the Sri Lankan diaspora that said, monies should be recovered from identified front organisations of the LTTE to finance reparations for crimes committed by the LTTE. On more general lines, a submission by a women's collective noted that there was a need to engage the diaspora groups in the financing reparations process, but also on transitional justice issues as a whole.

272. Other suggestions included approaching host governments, such as Tamil Nadu and India to support return and resettlement of particular groups such as of the refugees returning from South India (Written submission, made by an organisation representing the rights of refugees).

## **8.6. Documentation and Outreach**

273. A strong, safe and reliable process of documentation was considered crucial for an Office of Reparations, in one detailed submission to the CTF. This was considered important for several reasons as listed here: so that cases are more readily proved or disproved, to avoid duplication in the collection of evidence which can re-traumatise victims, provide a central database and repository of information, and play a key role in outreach and education programmes. Developing a strong documentation system was seen as requiring time, resources and specialised knowledge, particularly in relation to building the confidence of victims and witnesses whose experiences would be entrusted to it. The submission envisaged that this process could be led by civil society, building on the experiences of organisations that have been documenting evidence of human rights violations committed during the war and as such, have experience working with victims and communities. These organisations may also hold large volumes of documentation that could support and feed into the reconciliation process as a whole, particularly in relation to truth telling and memorialisation efforts.

274. The need for a separate outreach unit within the office was also mooted by media personnel and media organisations at a meeting in Colombo. This was seen as necessary on two fronts: for raising awareness on the process and what is available; and ensuring engagement of the public. The proposed unit will also need to work on updating families on the purpose of the office and its key processes as well as the status of their claims.

## **9. Links to Other Reconciliation Mechanisms**

275. As noted throughout this report, a majority of the individuals and groups of people who made oral and written submissions spoke on the basis of what they termed a 'reconciliation mechanism.' This speaks to the view emphasised repeatedly that the common perspective was that reconciliation is an interlinked process. Linkages between the mechanisms were therefore seen as both critical as well as implicit. This was especially the case in relation to reparations.

276. Affected individuals speaking at public meetings and FGDs across the country, rationalised the need for reparations to be inbuilt into the other mechanisms as they felt that they should not be expected to go from place to place telling their story to be qualified for reparations. Families of the disappeared and those who had suffered other gross violations of human rights, including those affected by the final stages of the war and other large scale violence, were categorical when making this demand. Further, as pointed out in Section 3, there were fears that the provision of reparations outside of the realm of truth and justice could be used to induce affected persons to remain silent in other transitional justice mechanisms and processes. An organisational submission also made specific reference to the possibility of this happening and noted that authorities should be given clear instructions to prevent this right at the outset.

277. The following subsections will deal with specific linkages that people spoke of or used to rationalise their demand for an interlinked process in addition to the general concerns outlined above.

### **9.1. Linkages with the OMP**

278. The need to ensure that people do not have to go from place to place to access the various pillars of transitional justice was made clear by individuals speaking at public meetings and FGDs. They stated that they were “tired and weary” of going from place to place and as such this process needed to provide redress conclusively in the form of truth, justice and reparations.

279. Organisational submissions that supported this view noted, that in order to ensure that family members are not subjected to constant retelling of tragic details, Section 13 (f) of the OMP Act, needs to allow persons from the relevant reparations authority be part of the OMP from the outset in order to facilitate the reparations process. Alternatively, in addition to the dedicated Office of Reparations envisaged by the Government, submissions called for the establishment of a separate reparations unit within the OMP, mandated and structured to provide both interim and final reparations (Oral and written submissions from organisations – both international and local, as well as civil society and victim group collectives). Many of these submissions also stressed that interim reparations for families of the disappeared should necessarily be handled by the unit within the OMP. Reparations to be provided include: material support primarily of a rehabilitative nature in order to sustain families, including through the provision of monthly allowances; assistance to reduce debt and psychosocial support services. Another specific suggestion, was the need to set up a reparations fund within the OMP resourced through the national budget while maintaining the right to raise independent funds. Further, that the Office of Reparations should be part of a Reparations Policy adopted by the Government which does not create hierarchies of victims, submissions noted.

280. In a public meeting in the North-Central Province, participants pointed out the difficulties involved in awarding compensation as reparations because of the lack of a proper mechanism to issue CoAs. This falls under the Office on Missing Persons and calls for closer ties between the OMP and the body that will be in charge of providing reparations as a means of addressing this gap.

## 9.2. Linkages with Truth and Justice

281. In addition to a general perception implicit in a majority of submissions, made by participants of the consultations, that reparations were necessarily linked to the truth and justice mechanism, some submissions also made reference to specific linkages:

282. In a written submission by an organisation, on reparations for sexual violence, it was noted that *“payment of restitution and compensation should be accompanied by judicial accountability and apologies. Otherwise victims and their communities are more likely to interpret compensation as payment for sexual services or buying the silence of victims.”* In relation to people who are missing or disappeared, many people saw the mandate of the Office of Reparations as one of restorative justice and therefore for it to be a part of the Truth and Reconciliation Commission or accommodate cases referred to it by the Judicial and other mechanisms. (Official submission by a unit of the Sri Lankan Armed Forces)

283. Further, pointing to the possibility of judicial requirements or claims arising as part of the reparations processes, a submission by an organisation representing interests of youth suggested that there should be a separate judicial process linked to reparations to handle concerns that arise from the reparations process. For instance, for people needing declarations from a court with regards to property restitution and claims against the Government or private entities.

284. Strong linkages were also made between the truth-telling mechanism and reparations processes in relation to documenting histories, narratives and truths. Although the documentation of histories falls within a strict definition of reparations, this was raised primarily in relation to the functions of the truth seeking mechanism. Submissions also pointed out to the need to record and preserve multiple narratives and truths in order to ensure non-recurrence. For some minorities this process of documentation was linked to respect for identity. A Christian lay-religious organisation was of the view that the Office of Reparations should maintain a functioning relationship with the Truth Commission, in order for the commissioners serving in the truth commission to refer cases of truly deserving individuals who appear before the commission to testify.

### III. TRUTH, JUSTICE, RECONCILIATION AND NON-RECURRENCE COMMISSION (TJRNR)

#### 1. Introduction

*“How a nation interacts with its past creates the foundation upon which its future is built.”*

(Submission by a local organisation)

*“Everything that happened since 1980 should come out into the open. Incidents of subjugation and racial massacres must be made public. Hereafter, these types of incidents must not take place.”*

(Participant at an FGD in Batticaloa)

*“We demand a truth mechanism that will record and render in detail, archive and disseminate appropriately island-wide a detailed documentation, including our oral histories, of the multiple harms and suffering suffered by the Malaiyaha Makkal as well as our resilience and struggles for rights.”*

(Written submission by a group)

*“Yes, I think it’s important for people to find out the truth - both about what happened in ‘88-‘89 and during the 30-year war. We can show the truth to the family members who were affected, it would be very good.”*

(Public Meeting in Matale)

1. As a direct response to the growing calls for truth, justice and trust building, the current reconciliation process initiated by the Government of Sri Lanka has—to some extent—provided a glimmer of hope to affected communities and groups. This is evident given the overwhelming number of submissions that highlight the continuing search for the truth, the number of people who participated in the consultation process in the hope of finding answers to their questions and grievances, and the various groups and communities seeking acknowledgement of their experiences of conflict and discrimination. It is apparent that the submissions view the proposed Truth, Justice, Reconciliation and Non-recurrence Commission (TJRNR)<sup>15</sup> as a critical part of the reconciliation process, which will work towards finding and establishing the truth as well as understanding and acknowledging the root causes of multiple conflicts in the country.

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<sup>15</sup>The CTF observes that since the initial proposal made at the 30<sup>th</sup> session of the United Nations Human Rights Council, the Minister of Foreign Affairs, Hon. Mangala Samaraweera, has used the term ‘truth-seeking commission’ in reference to this mechanism. However, for the purposes of this report, the CTF will refer to this truth-seeking mechanism as the Truth, Justice, Reconciliation, and Non-Recurrence Commission (TJRNR) in accordance with the initial statement of Minister Mangala Samaraweera and the letter of appointment issued to the members of the CTF by the Secretary to the Prime Minister of Sri Lanka.

2. The calls for the establishment of truth are framed as demands for the acknowledgement of the harms perpetrated by the State, the LTTE, paramilitary groups and other movements in the context of the ethnic conflict and the war. In addition, the CTF received submissions that call for the acknowledgement and recognition of the truth in relation to patterns of historical discrimination suffered by various minority communities and marginalised groups, such as the Tamil community in general, the *Malaiyaha* community, the Muslim community and various other groups. At a collective level, many submissions expect the TJRNRC to acknowledge and address their long-standing grievances. In all of the above, it is apparent that there is no single truth but instead a multiplicity of experiences of harm. As such, these submissions represent a powerful call for the TJRNRC to be a platform that bears witness to and acts upon the stories of all affected persons across all communities.

3. Several submissions also reveal the nexus between any truth-seeking mechanism and the other mechanisms of the reconciliation process. During the consultation process, a majority of affected persons viewed discovering and acknowledging the truth as intrinsically interlinked with justice, reparations (both symbolic and material) and non-recurrence. In many instances, participants who attended public meetings and FGDs spoke of one in relation to the other. At other times, however, the importance and/or necessity of truth seeking is questioned and non-recurrence as well as accountability are emphasised as more important processes in order to achieve reconciliation. Some submissions state that the entire process must be approached with caution and express concern about the possibility of the TJRNRC opening up old wounds and harming existing relationships between communities.

4. A history of failed commissions of inquiry (CoIs) that were appointed to investigate and report on grave violations of human rights was brought up during the consultation process. Many submissions refer to the growing frustration and sense of ‘commission fatigue’ as a result of previous experiences with CoIs. A number of submissions also point out that the findings of these commissions have hardly had an impact on institutional reform and prosecutions. This issue is compounded by an absence of political will to implement the recommendations of previous commissions, which is why a demand for follow-up measures and concrete action is stressed in a majority of submissions. It is also acknowledged that the unrelenting and painful search for the truth by affected communities, sometimes for more than a decade, must inform the TJRNRC’s approach to truth seeking. After calling attention to the long history of failed commissions, one submission stresses that the TJRNRC “...*must be fundamentally different to past initiatives to garner the trust and confidence of victims and different communities*” (Submission by an individual).

5. Notwithstanding the pervasive distrust, frustration and lack of confidence amongst affected communities, the TJRNRC is still considered to be an important and necessary component of the reconciliation process. The demand for truth that comes through these submissions is varied in nature, complicated, contentious, sensitive and yet vital to the overall reconciliation process.

However, this demand for truth is also tempered by voices that advise caution. In this chapter, the CTF attempts to do justice to the multiplicity of calls for the truth and the specific sensitivities borne out of individual and collective experiences of the conflicts.

6. This chapter looks at the value of truth seeking/telling for affected communities and groups, the multiple dimensions of “truth” and the overall objectives of the TJRNRC. It also discusses in detail the vast scope of the TJRNRC—in terms of a timeframe, affected communities, patterns of violence and violations, and perpetrators. The operationalising of the office is discussed with respect to specific principles and practices; the section on the mandate and powers of the commission delineates the functions the commission is expected to undertake; the criteria called for in the appointment of commissioners is considered in connection with the debate on international involvement; the section on the structures and finances of the TJRNRC covers suggestions on decentralisation, independence and the guarantee of financial resources by the State, and the section on security discusses the concerns that were raised during the consultations and the strategies proposed to counter perceived threats from a range of actors. This chapter also runs through the substantive suggestions made with regard to women participating in the TJRNRC. The penultimate section of the chapter provides a detailed overview of the debate on amnesties and prosecutions, particularly in relation to the proposed Compassionate Council. The concluding section looks at how the submissions create a link between the TJRNRC and the other reconciliation mechanisms proposed by the Government of Sri Lanka.

## 2. Purpose and Objectives of the TJRNRC

*“For me, the truth has to come out first. I really want the world to know how much I suffered during the war, caused by both sides [the Sri Lankan Security Forces and LTTE].”*

(Interview, Email submission by an international organisation)

*“To explain the agony, we need to seek out details of what exactly happened.”*

(Submission by an official at a CTF sectoral consultation)

*“Truth must be at the heart of reconciliation.”*

(Submission by an individual)

7. This section presents the sentiments of affected communities and groups on the value of truth seeking and on the role of the TJRNRC in searching for and establishing the truth. A majority of the submissions state that the TJRNRC must primarily establish the truth, determine the root causes of conflict, hold perpetrators of violations to account, achieve equal rights, recognise forms of violations and conflict not limited to the war in the North and East, build multiple narratives of Sri Lanka’s history, make recommendations for non-recurrence and enable victims to seek redress for violations and abuses. Given the failure of previous commissions and a history of inaction, the

submissions demand that the approach to truth seeking must be fundamentally different to past efforts.

## 2.1. The Value of Truth Seeking/Telling

8. A significant number of submissions by affected persons speak to the value of truth seeking in terms of finding out the truth about the fate of their loved ones and the reasons behind the abuses and violations that were committed against them. This demand to know the truth about what happened, above all else, is at the heart of many submissions from around the country and cuts across all communities. As one submission notes, *“They must tell the truth as to why they took him and what they did to him. If our children are there, they must be shown. So far there is no solution. They must give answers at least now”* (Public meeting in Trincomalee).

9. Many submissions also address the value of truth in the context of individual and collective experiences of conflicts in the country. The multiplicity of experiences means that there is no single truth about the war and other conflicts. As one submission notes, *“Even within a community, the war was experienced by the people differently”* (Submission at a public meeting in Jaffna). For example, the same submission states that it is not possible to *“...narrate The Tamil community’s experience of the war without talking about the torture camps the LTTE ran in the North-East and the children it forcibly recruited especially from underprivileged families in the rural regions in the East and Vanni and to fight the war”*. The multiple dimensions of truth are deeply reflected in many submissions and inform the responses and demands of affected persons. Some prioritise individual truth and demand that the fate of their loved ones must be revealed—*“I don’t want compensation. I only want to know the truth about what happened to my son”* (Public meeting in Nannadan). However, other submissions highlight the importance of unearthing patterns of violations where disappearances, killings and other violations occurred *en masse* (Submissions at public meetings; submission by an individual) [See Section 4 of this chapter]. Despite decades of inaction that have turned truth seeking into a frustrating process, affected communities still want the truth to be revealed as a form of acknowledgement. A case in point is the Eravur massacre—

*“In 1990, 123 people were slaughtered at the same time. 10 members of the same family were killed. A pregnant woman’s abdomen was cut open and the baby removed and stabbed to death. People don’t want to speak about it because of mental frustration and dejection. Nothing has happened after informing. The scars of war run deep and will never heal. The future generations must be made to know about the history of wars.”*

(Submission at an FGD in Batticaloa)

10. In some submissions, the acknowledgement of the truth is viewed as an important step to help affected communities move on with their lives. Speaking primarily on the expulsion of the Northern Muslims, one submission notes, *“Now it is time to move on, acknowledge and move on. We*

*look forward to a more reconciled, inclusive future*” (Public meeting in Colombo). The submissions also emphasise the intrinsic value of truth telling as a way of exposing and validating the experiences of affected communities. One submission states that this would help peacebuilding and lay the groundwork for a sustainable political settlement (Submission by an international organisation).

11. The importance of establishing the truth, without restricting or hiding certain narratives, and the danger of not establishing it is noted in one submission—“*Nothing should be hidden. If something is hidden, it becomes cancerous... Truth is necessary...*” (Public meeting in Kandy). It is also stressed that the truth should be established without influence or involvement by the Government (FGD in Mullaithivu). In other submissions, as mentioned above, the value of the truth lies in revealing its multiplicities and the different perspectives of communities. For example, a military officer states that “*...we all have truths. My experience is different from a Tamil person’s. We will be very happy to know what those men knew. Truth is very much a part of soldiering. There is a blind spot*” (Submission at a CTF sectoral consultation). In general, the submissions by the military acknowledge the importance of truth seeking—“*All people who were affected due to unlawful acts—the truth about this must be revealed*” (Submission at a CTF sectoral consultation with the military). Some submissions, particularly those from the family members of the missing or killed in action, make it clear that establishing the truth is a step towards addressing the uncertainty of family members and achieving some form of recognition and support (FGDs in Hambantota and Matara).

12. At public meetings and FGDs, many participants spoke of truth in relation to justice, reparations and non-recurrence. In the context of violations and abuses, a number of submissions state that once the truth is established, justice should follow—“*The truths should be found out and the punishments should be given to those who order this*” (Submission at a public meeting). The latter follows the views expressed that even though truth seeking is a necessity, it is not a substitute for justice. A few submissions also speak to the importance of economic justice. One submission stresses that without economic justice, through effective reparations, the process of truth seeking would fall short of meeting the expectations of all affected communities (Submission by an individual). Whilst some submissions connect truth to justice, others state that the perpetrators of violations should not be punished and that only the truth should be established along with measures for non-recurrence (Submissions at public meetings and at CTF sectoral consultations).

13. The importance of closure as an outcome of truth is addressed in many submissions. For affected persons making submissions, establishing the truth is an important step towards finally giving them some sense of closure (FGD in Vavuniya). It is important to note that this sentiment is not specific to one community and cuts across most affected communities. As one submission notes, “*It would be a relief of some sort to know that he is no more. I can make up my mind. But today I have no closure*” (FGD in Hambantota). In addition to providing closure, one submission articulates the importance of healing the memories of the entire nation—and not just of affected

communities—by looking at the reasons behind mass atrocities and violence (Submission by a local chapter of an international organisation).

14. The role that the truth can play in clarifying belief systems and resolving the misconceptions of communities is addressed by one submission. This is explained in relation to the idea that the truth would be able to mitigate religious and communal tensions (FGD in Mawanella). According to the submission, the fear of the “unknown” is responsible for many of the existing misconceptions.

## 2.2. Objections to Truth Seeking/Telling

15. Some submissions state that searching for truth is a sensitive issue, particularly in terms of the consequences that may arise and the limits to such a process. It is noted that “...in the absence of a larger social will to reconciliation...”, the truth “...may aggravate the existing communal antipathies.” The other issue is that revealing the truth by itself will not heal the wounds and pain caused by war (Submission at a public meeting in Jaffna). The fear of damaging existing bonds of co-existence between communities, rekindling feelings of hatred, exacerbating or creating divisions and the possible fallout from prosecutions are also concerns expressed by other submissions in relation to truth seeking (FGDs in Vavuniya, Colombo and the Southern Province). It is important to note that not all of these submissions advocate forgetting about the past as an alternative to truth seeking; instead, it is suggested that the consequences of the truth must be carefully and seriously considered. Other submissions also question whether reconciliation can be an outcome of truth seeking. As one submission notes, “When you find out the truth, there’s bound to be conflicts and other unpleasant consequences...Finding out the truth will pose an obstacle to resolving conflict” (Submission at a public meeting in Kandy). Another submission expresses concern about how remembering the past might lead to further conflict—“Actually many things that happened would have receded a bit from people’s memories, but now people will remember again. I feel there will be some conflict when this happens” (Submission at a public meeting in Matale). Another aspect is the fear of the re-victimisation of affected persons if the truth about past violations and incidents of violence is established, which could lead to repercussions in the form of further violations and abuses (Submissions at FGDs and at public meetings in the Northern and Southern Provinces).

16. One submission notes the complexity of establishing the truth with respect to narratives from the military and the LTTE. The submission states that it might be difficult to elicit the truth from soldiers and ex-LTTE cadres due to fear about their fate after they tell the truth. There is also an understanding that telling the truth would essentially mean betraying your own peers and commanders. This particular sentiment is expressed in relation to fellow soldiers and commanding officers. One submission notes that amnesties may need to be considered to overcome this issue (See Section 10: The Issue of Amnesties Versus Prosecution).

17. Whilst acknowledging the enormities of war and the tragedies of human suffering, one particular submission differentiates between “*searching for the truth*” and “*accepting the truth*”. The submission argues that the latter is more important for Sri Lanka (Submission at a public meeting in Kandy). This sentiment was expressed in other submissions as well—“*...link the past to the future...knowledge has to become acknowledgement...so we have a lot of knowledge of what has happened but no one has acknowledged...*” (Submission at a public meeting in Colombo).

### 2.3. Objectives of the TJRNRC

18. In light of the submissions’ demands that the TJRNRC must be different from past commissions, it is very clear that the TJRNRC is not expected to be just a ‘hearing commission’ but rather an ‘action commission’. The submissions, therefore, stress that the TJRNRC must create spaces for truth telling, ensure that the truth being spoken is heard, have the power to take action to find the truth and follow through with measures to actively remedy the wrong. Furthermore, the mechanism is expected to make amends and undertake necessary healing initiatives. In this work, the TJRNRC is expected to prioritise both restorative and preventive (i.e. non-recurrence) aspects (Submissions by organisations at a CTF sectoral consultation). **The following are the key objectives highlighted in the submissions:**

#### 2.3.1. Establish the truth

19. As mentioned above, a fundamental demand expressed by many submissions is that the truth must be established. The submissions stress that in order to do so, the TJRNRC must record an authoritative account of past abuses and violations, and challenge the dominant narrative, which denies or discredits the condition of affected communities—“*There needs to be proper investigations that reveal the truth about these killings and massacres*” (Participant at FGD in Vavunathivu). One submission notes, however, that “*...traditional methods of gathering information and listening to stories will not give people the answers they seek regarding the Truth. Therefore, mechanisms must be created as a consequence of a deep creative listening that links to context history*” (Submission by a local organisation).

20. The submissions also stress the importance of establishing the truth in order to acknowledge the role of the State, LTTE, paramilitary groups and other groups in perpetrating acts of violence against civilians. As one submission notes, the TJRNRC is needed to “*...find out who did it and what happened. The Paranagama Commission report did not tell the truth. You need to see both sides*” (Submission at a public meeting in Thunukai).

21. A number of other affected communities place great importance on the value of truth in terms of their experiences of conflict and discrimination. This includes those affected by the JVP insurrections, the last stages of the war, victims of religious violence, structural oppression of the

Malaiyaha Tamil community, internal displacement, evictions, violence against women and abuses related to land grabbing (See Section 4 of this chapter). For example, there were calls for the truth to be established about mass killings, torture and disappearances during the insurrections by the JVP and counter-insurgency operations carried out by the State. One submission states, *“We need to know the truth about the crimes that took place during the Beeshana kalaya”* (Submission at a public meeting in Galle). In reference to the same period of violence, another submission states, *“Yes, we want to know the truth...Back then even our own relations didn't want to listen to our grievances, they were afraid they will get into trouble for inquiring about this incident. We will never forget that wicked history”* (FGD in Hambantota). The submissions that address the expulsion of the Northern Muslims in October 1990 brought up very specific demands concerning the establishment of the truth, which included finding out the reasons behind the expulsion, the failure of the Government to prevent it and the overall lack of interest in facilitating voluntary return (FGD in the Western Province). The importance of officially acknowledging the plight of this community is also noted (Submissions at public meetings in the North and East).

### **2.3.2. Create spaces for truth telling**

22. Some submissions stress the importance of creating official spaces for truth telling, given the incidences of official actors and state representatives disregarding narratives of loss—*“The truth is being hidden, these need to come out and space for this needs to be created”* (FGD in Batticaloa). The submissions reveal a sense of abandonment and hopelessness amongst affected communities that has arisen due to the lack of any official space to tell their stories and for them to be heard. Moreover, concerns were expressed about stories fading from memory over a period of time—*“Nobody wants to listen to our stories about loss of lives. We are scared that our stories will be hidden”* (Public meeting in Adalachennai).

### **2.3.3. Determine the root causes of the conflict**

23. The need to determine the root causes of the conflict and establish responsibility of all perpetrators for violations and abuses is noted in some submissions (FGDs and public meetings in Southern, Central and Northern Provinces). The submissions highlight the discrimination and oppression faced by minority communities since 1948. As one submission notes, *“There were a number of reasons that lead to the war, including oppression by the state. One of its own communities have almost been wiped out, the state has to therefore acknowledge its role in this...the government knew that the reason behind the LTTE was their own doing...”* (FGD in Batticaloa). A demand connected to this sentiment is that the TJRNRC should determine the reasons behind the start of the Tamil struggle, particularly since those reasons are connected to the root causes of the conflict, and the reasons behind other conflicts (Submissions by local and international organisations; submissions at FGDs and public meetings).

24. The submissions expect that the TJRNRC will begin work on determining root causes as soon as it is established. Therefore, whilst the other mechanisms will address the issues of justice and remedies for mass atrocities, the TJRNRC “...must work in parallel on addressing the root cause(s) of the conflict” (Submission by a local organisation). There is also a call for inquiry into the root causes of a variety of past and on-going abuses and human rights violations.

#### **2.3.4. Hold perpetrators of violations to account**

25. The submissions stress the importance of holding perpetrators to account by ascertaining whether violations were the result of deliberate planning on the part of the State, the LTTE, paramilitary groups, political organisations, other movements and groups of individuals. The clear demands for accountability, however, were not limited to traditional ideas of justice, such as criminal sanctions or other forms of retributive justice (See Section 10: Issue of Punishment Versus Amnesty). For example, one submission stresses that “*the truth from the Government should be found regarding the massacres and cluster bomb attacks which happened in Mullaithivu. The Army Commander and Officers who were there during the war must be made to stand in front of people in a People’s Forum and ask questions as to what happened...*” (Submission at a public meeting in Mullaithivu). Another submission states that the perpetrators should be identified through the TJRNRC and “...there should be a way for them to publicly confess” (Public meeting in the Southern Province).

26. Other submissions demand that the LTTE should be held accountable for the violations committed against specific communities, such as the expulsion of the Northern Muslims in 1990, and the Government as well for failing to protect its citizens. Once again, as much as these submissions demand accountability, there are others that only want acknowledgement—“*That the eviction of the Muslims was an ethnic cleansing should be accepted, publicized and gazetted. The northern provincial council needs to accept and acknowledge the eviction and pass a resolution on this. They (and other Tamils who may have been involved) also need to accept this openly and issue a public apology*” (Submission at a public meeting).

#### **2.3.5. Build multiple narratives of history**

27. In addition to establishing the truth, many submissions address the importance of building inclusive and multiple narratives of events and incidents. This is particularly important given the “...conflict amongst narratives and histories, where individualised truths differ from collective knowledge and more than one “truth” competes for acceptance” (Submission by an individual). As a result, the submissions state that it is important for the TJRNRC to create a public record of mass-scale and systematic violations; identify structural flaws that perpetuate a culture of lawlessness and impunity; hear and record multiple narratives that have been silenced or discredited in the past; factor in political and historical factors; examine different sources, and consider the complexities surrounding the truth (Submissions by organisation and individuals).

### 2.3.6. Make recommendations for non-recurrence

28. Chapter VI (Beyond the Four Mechanisms) examines the various ideas and views on non-recurrence in greater detail. In terms of the TJRNRC, some submissions state that establishing the truth and having it officially acknowledged by the State—in the context of preventing further violations—are necessary guarantees of non-recurrence. It is therefore, envisaged that the TJRNRC will take up and build on the nexus between the truth and non-recurrence (See Section 2.1: The Value of Truth Seeking/Telling). The following excerpts from the FGDs in Southern Province and Eastern Province reveal how affected communities perceive the relationship between truth and non-recurrence:

*“Yes—we need to find out the truth. Through this knowledge, the probability of such incidents taking place in the future can be reduced.”*

(FGD in Hambantota)

*“Need to identify what happened, where it happened etc., All of it needs to come out; only then will it not happen again. They can’t cover up what has happened. If they attempt to do this, different problems, even bigger than this, will take place.”*

(FGD in Soruwila)

29. Some submissions, however, felt it was premature to discuss this component of the mechanism given the existence of practices and structures that continue to violate the rights of specific communities and groups (Submission by a diaspora organisation). Despite this apprehension and the frustration with the *status quo*, the submissions still highlight the importance of measures to protect victims and the public at large from further violations, and to acknowledge that it is the fundamental duty of the State to ensure good governance and the rule of law (See Chapter VI: Beyond the Four Mechanisms, Section 3). As one submission notes, “...we are strong about the fact that there should be no war. But we are also strong on the fact that there should not be any triggers for war either” (FGD in Vavunathivu).

30. In addition to the issues above, the submissions also highlight the following issues as recommendations for non-recurrence that should be considered by the TJRNRC (See Chapter VI: Beyond the Four Mechanisms):

- Ensure demilitarisation of the North and East, including military-driven economic activity, which is identified by some submissions as a form of economic warfare waged against the civilian population;

- Implement a process of lustration (removing human rights violators from positions of responsibility and preventing appointment or reappointment) to increase confidence in public institutions and the overall reconciliation process;
- Militate against the impacts of conflict, intolerance and hatred;
- Abolish the Prevention of Terrorism Act (PTA) and release all remaining individuals detained under the law;
- Address possible new causes and/or triggers of conflicts;
- Develop measures for the non-recurrence of religious violence;
- Promote coexistence and communal harmony;
- Reform the security sector in order to transform the military into a force that does not pose a threat to the communities it is charged with safeguarding;
- Prosecute perpetrators of violations and abuses.

31. Moreover, for many submissions, measures for non-recurrence must involve a necessary process of reforming the existing power structures of the State and its relationship with minority communities. A recurring demand is the need for a political solution, which a number of submissions bring up with reference to addressing the ethnic problem, deconstructing the ideology behind the unitary nation-state structure and implementing federalism (Public meetings in Vavuniya). As one submission notes, *“If there is to be a change, at least federalism should be given”* (Public meeting in Nanaddan).

32. The submissions also highlight constitutional reform as a fundamental measure of non-recurrence, particularly with respect to eliminating majoritarianism, separating religion and the State, ensuring the equality of all communities, guaranteeing non-discrimination and addressing structural racism (Submission by an individual). It is acknowledged that by providing a platform for the collective recognition of past injustices and by pledging to prevent future violence, the constitution could offer official recognition and a guarantee of non-recurrence by the State, which would be meaningful to affected communities (Submission by a local organisation).

### **2.3.7. Create and sustain an impetus for reform**

33. A few submissions note that by making records of past abuses public, actively engaging with the media to broadcast hearings and ensuring public access to reports, the TJRNRC can create an impetus for reform amongst the public. For example, one submission adds to this point by arguing that if the TJRNRC highlights the structural flaws that perpetuate a culture of impunity, this information could be damning enough to motivate the authorities to press home on substantive action. In effect, the constant flow of information would help sustain public pressure around the issue of reform (Submission by a local organisation).

### **2.3.8. Repair relationships and achieve equal rights**

34. The submissions also stress the importance of the TJRNRC actively working on repairing relationships, rehabilitating the social fabric of the country, ensuring recognition of a pluralistic society and achieving equal rights for all communities (Submissions by organisations at a CTF sectoral consultation; submissions at public meetings). The submissions describe the inter-personal, social, political and spiritual relationships of the country as ‘poisoned’, ‘damaged’ and even ‘broken’ (Submissions by organisations at a CTF sectoral consultation). It is argued that such relationships exist not just within the affected groups but also amongst all communities, between the minorities and the majority community, within communities and between the state and the citizen. These relationships are in grave need of repairing and healing, and these requirements fall squarely under the ambit of the TJRNRC.

35. Many submissions also expect that the strengthening of civic rights will flow from the findings of the TJRNRC, contributing to the development of a civic identity that defines all citizens in the country as equal (Submissions by organisations at a CTF sectoral consultation). As one submission notes, *“this understanding should become part of the Sri Lankan identity”* (Submissions by organisations at a CTF sectoral consultation). In short, it is suggested that the outcomes of the TJRNRC should bring Sri Lankans closer to peace and goodwill, communal harmony, and to reconciliation.

### **2.3.9. Build on existing efforts**

36. Some submissions consider the viability of using the work of previous commissions. This is expressed with respect to acting upon previous testimonies and recommendations in reports so as to avoid repeating an identical process of inquiry (Submission by an individual). Another submission states that the proposed truth-seeking mechanism should consider the reports of previous Commissions, particularly the report of the Sansoni Commission from 1980, which presented a particular perspective on ethnic issues in the country (Submission by a diaspora organisation).

37. The submissions also request the Government to implement the recommendations of the LLRC. As one submission notes, *“We believe there is a need to follow through with the LLRC. They commented about a declaration of apology to the citizen and we think that this should be one of the first steps that needs to be taken”* (Submission by an organisation at a CTF sectoral consultation).

### **2.3.10. Identify and address structural violence, prejudice, social divisions and other forms of violations, abuses and conflict**

38. As covered in Section 4, the submissions from affected communities and representative groups highlight a multitude of abuses, violations, conflicts and exploitative relationships that predate the war and that occurred during it. Whilst many of the previous objectives address the violations of civil and political rights, the narratives highlighted below also address **the violations of social, economic and cultural rights**. Accordingly, the submissions demand that the TJRNRC must investigate and follow through with measures to address these specific cases of violations, including those that call for economic justice (See Section 4 of this chapter).

39. For example, one submission states that the struggles faced by the Malaiyaha community should be recorded and redressed, including disenfranchisement, starvation, displacement, exploitation, experiences of violence and violations, women's experiences of violence, sexual abuse and servitude (Submission by a local organisation) [See Section 4 of this chapter]. Similar calls for truth and redress—albeit in different contexts—were made by affected persons who experienced violence and violations during the Southern insurrection, incidents of ethnic and religious violence (for example, Mawanella in 2001 and Aluthgama in 2014) and the expulsion of the Northern Muslims in 1990. A number of submissions stress that the stories of affected persons who lived through the conflicts and whose education, livelihoods and lives were disrupted should be heard and addressed by the TJRNRC (See Chapter II: Reparations, Section 4). This is particularly relevant for young people who were impacted by the war, faced severe hardships, had their right to education taken away due to the conflict and now “...feel a sense of apathy and a lack of hope for peace and equal rights in Sri Lanka” (Submission by an individual).

### **2.3.11. Other objectives**

40. A few submissions identify two more objectives that should be given as much consideration as those presented above. The first is that the TJRNRC must acknowledge affected communities in a safe and supportive environment. The second is that the mechanism must provide a long-term solution for the war-disabled and those individuals disabled due to other conflicts (See Chapter VI: Beyond the Four Mechanisms, Section 6.3). The CTF recognises the importance of both objectives in responding to the fundamental needs of all affected communities.

## **2.4. Opposition, Frustration and Skepticism: Is the TJRNRC Needed?**

41. A significant number of submissions question the need for a new truth-seeking commission. A long history of CoIs has been criticised by affected persons and members of the public. This criticism stems from the fact that these CoIs have become synonymous with impunity given the lack of action and follow-up measures on their findings.

42. As a result of decades of inaction, CoIs have become a source of frustration for the thousands of people who came forward not once but repeatedly to testify and seek redress—*“The more time passes, these incidents will be forgotten. If this is a mechanism to forget, we don’t need it”* (FGD in Vavunathivu). The excerpts listed below from submissions at public meetings and FGDs in North and East highlight the demand for action and the widespread perception of commissions as an instrument of impunity.

*“We went to meetings for 14 years in search of our son. We told our problems. But there were no end results...”*

(Public Meeting in Nannadan)

*“There have been so many Commissions appointed by the Presidents. What happened to their recommendations? Even the Reconciliation Commission’s (LLRC) recommendations came, but what was done regarding that? If they can’t fulfill their promises, what use is it asking people for recommendations?”*

(Public Meeting in Nannadan)

*“The Government keeps calling meetings but they are only reminding us of our old pain. They should stop this and this time give us a solution.”*

(FGD in Ampara)

43. Many affected persons criticise the Paranagama Commission for failing to take necessary action to address the thousands of testimonies heard during its sittings. A participant at an FGD in Vavuniya categorically stated that the *“Paranagama Commission was a lie”*. Another submission questioned the intentions of the Paranagama Commission and stated that it *“...was only interested in inquiring from the people as to what crimes the LTTE did. We do not know if they even took in what the people had to say. They only wanted to hear bad things about the LTTE”* (Public meeting in Nanaddan). The lack of substantive action after obtaining the testimonies of affected persons has strengthened the view that the State is unable and/or unwilling to address the violations and abuses suffered by thousands of its citizens—*“The State looks after its own and not others”* (FGD in Vavuniya). It is also stated that the proposed TJRNRC *“will have to work hard to earn and retain the trust of the survivor community”* (Submission by an international organisation).

44. The CTF notes that it faced critical questions about the consultation process as a result of the feelings of distrust and frustration created by the failure of previous commissions and the inaction of successive governments—*“We are not sure who you are and what your motivations are. Who is instigating this? The Government or someone from outside?”* (FGD in Vavunathivu). At an FGD in Mullaithivu, participants expressed their uncertainty about the consultation process since they had not received any solutions from previous commissions (FGD in Mullaithivu).

45. In some submissions, the idea of the TJRNRC is met with outright opposition. One submission states that the *“truth-seeking mechanism is not only irrelevant but is also inapplicable in the Sri Lankan context; it undermines Sri Lanka's sovereignty, national security and national interests”* (Submission by an individual). Other submissions recommend a shift in focus towards national security and sustainable economic growth, instead of investing in the TJRNRC (Submission by a diaspora organisation). One submission notes that the TJRNRC might be a *“wasteful exercise, as it could be long, drawn out hearing (sic.) all the tales of atrocities committed over three decades from victims who have lost family members or suffered severe mistreatment by the authorities, or political/militant groups engaged in the conflict which dates back from around the mid-1970's to May 2009”* (Submission by an individual).

46. Some submissions consider the financial cost of the TJRNRC. For example, one submission opposes the use of public funds for *“feel good initiatives”* such as the TJRNRC (Submission by an individual). Despite stating that the process of truth seeking should go ahead, another submission argues that it is important to give some thought as to whether the end justifies the means—*“Knowing full well that they are dead, are we going to waste government money by digging up the past? We know for sure that heads were put on poles and we buried those bodies. I don't think we should waste money like this”* (Public meeting in Kandy).

47. A few submissions express concern about the link between the TJRNRC and the prosecution of war crimes. At an FGD in North Western Province, a participant recalls asking President Sirisena, *“Is the TRC similar to the Special Court or is the TRC a different thing?”* The conflation between the purpose of the TJRNRC and the Judicial mechanism, particularly on the issue of punitive justice, was apparent in some submissions, which heightens suspicion and opposition towards the TJRNRC. For example, at public meetings held in North-Central Province, participants were not opposed to the idea of the TJRNRC but they were concerned about the Special Court and skeptical about the functions of the TJRNRC—*“Truth and Justice Commission is good. However, only the truth should be told...people do not tell the truth. Will people tell the truth? That is the problem”* (FGD in Polonnaruwa).

48. One submission questions the capacity of the TJRNRC to determine the truth since the events in question would span a number of decades—*“Are we to spend a great deal of time going over suspect narratives that could only further harm the prevailing relations between the communities? The negatives seem to outweigh the positives of this process”* (Submission by an individual). The same submission proposes undertaking cases that have strong evidence to pursue a legal case, which would result in a potential indictment. Moreover, the retelling of stories was seen as something that would *“merely open old wounds and widen the divide instead of healing and bringing reconciliation,”* without the ability for the commission to provide plausible remedy or satisfaction (Submission by an individual). To this end, it is suggested that only those *“who can substantiate the wrongs done to*

*them should be allowed to apply for redress by court*”—and not through the TJRNRC (See Section 10 of this chapter for more information on this point).

49. Whilst the flaws and failures of previous commissions are severe enough to warrant the establishment of the TJRNRC, it is clear that many submissions prefer consolidating existing efforts and acting on existing information. The CTF notes that this approach will enable the TJRNRC to build on the existing work of previous commissions and immediately move forward with follow-up measures that satisfy the recurring demand for concrete action.

## **2.5. Applicability of International Truth-Seeking Models**

50. There is no clear consensus on a preferred model of truth seeking. Much of the discussion around domestic models is centred around specific issues, such as language and the purpose of truth seeking. Some submissions note that the model of truth seeking/telling must be considered according to the specific context of that country and the needs of affected communities (Submission by a diaspora organisation). For example, providing a space for affected persons and perpetrators to come forward to speak about their experiences and acknowledge past abuses was an important process in South Africa. Despite this, some submissions question whether it is appropriate for the TJRNRC in Sri Lanka to be modelled after South Africa’s mechanisms given the differences in context, specifically in terms of the status of power relations between the majority and minority communities in each country. Moreover, one submission notes that in Argentina and Chile the overarching need was to address the findings of a number of commissions and publicly recognise past abuses and gross violations (Submission by an individual).

51. A few individual submissions call for a comparative study on truth commissions around the world—albeit based on their suitability and applicability to the specific context in Sri Lanka (Submissions by individuals; submission by a diaspora organisation). This includes considering the failures of international truth-seeking mechanisms and, if it is established that these mechanisms only managed to address part of the problem, the attributes or processes required for the TJRNRC to succeed in Sri Lanka. As one submission asks, “*...how do we get beyond that in Sri Lanka? How might the commission recognise in its processes that truth is not easily told? How do we allow initial truths to open the door to subsequent and possibly more difficult ones?*” (Submission by an individual, CTF sectoral consultation).

52. Some submissions note that it is important to examine international models of truth seeking and previous national models in order to determine what is suitable for the reconciliation process in Sri Lanka. One submission notes that the models adopted in Sierra Leone and East Timor indicate that the participation of key stakeholders—survivors, civil society, opposition groups, government and the international community—before and after the establishment of the TJRNRC is critical if it is to succeed.

### **3. Operating Principles and Practices**

*“The process regarding finding the truth and final solution should not be made in AC rooms. That should be made people oriented.”*

(Men representing a society for disabled persons at a public meeting in Jaffna)

53. Submissions often outlined underlying and overarching principles and practices that the transitional justice process and the TJRNRC must abide by. These are as follows.

#### **3.1. Transparency**

54. Transparency around the Government’s plans for the TJRNRC specifically, and transitional justice mechanisms in general, was raised in a number of submissions. Functions, funding, duration, structure, basis of appointments, coercive powers, confidentiality, safeguards and procedures, and availability of information were specifically identified areas where transparency is essential.

#### **3.2. Centrality of Affected Persons**

55. Submissions saw the need for an inclusive process centred on the affected persons and their participation within the mechanisms—both in terms of receiving services and in terms of being involved in the design and implementation of solutions, including through representation in office (See Section 6.6 of this chapter). This was seen as vital to credibly address the specific needs of the affected communities and retain agency of the affected group. The likelihood that the TJRNRC would suffer from a lack of legitimacy and relevance in the event that the affected communities are not consulted and do not participate in the process was pointed out by an international organisation. One submission by a refugee organisation saw the concept of the centrality of affected persons as inclusive of perpetrators taking responsibility to recognise the needs of affected communities and offer reparations.

#### **3.3. Consultative, Responsive Process**

56. The submissions stress the need to continue the dialogue and consultations with civil society and victims’ groups during all phases of the TJRNRC’s mandate and to allow for continuous feedback and assessment during the period of operation (Submission by a local and international organisation). An international human rights organisation recommends that consultations should not end with the current national consultations, particularly since at this initial stage limited details of the proposed commission are publicly available, and therefore the Government should hold further consultations focused on the legislation establishing the TJRNRC, and the design and the

mandate of the Commission. The submissions highlight the need for representation and inclusion of women and youth in these deliberations on the design, and the consultation of religious leaders and all parties, including alleged perpetrators, in establishing the office, for credibility.

### **3.4. Gender Sensitivity**

57. In addition to the participation of women in the consultation process mentioned above, submissions also state that a gender balance must be maintained with the Commissioners and staff as well, since women are often affected by conflicts and violence in unique ways (Submissions at a CTF sectoral consultation) and as: “... *women have worked more than men on this process. They are the only people who can bring affected people to talk about their problems*” (FGD in Western Province).

58. In terms of accessing the TJRNRC, a submission recommended that all accountability mechanisms should be accessible to both men and women with special attention to gendered power relations, which may discourage women from participating (Submission by a women’s rights organisation). Another submission recommended that the investigations should be gender sensitive as well (Submission by an individual) [See Section 9 of this chapter].

### **3.5. Non-discrimination**

59. A number of submissions recommend that all victims are treated equally and that there should be no differentiation between the affected persons. A women’s rights organisation made the added point that “...*officials and personnel working within the Transitional Justice frameworks and mechanisms...*” should be sensitised to adopt a non-discriminatory approach and to be more accepting of people with diverse gender expressions and sexual orientations. It is also stated that all individuals who come into contact with the commissioners or the staff of the TJRNRC must be treated with respect and courtesy (Submission by a local organisation).

60. Non-discrimination was also raised in terms of representation of minority ethnic and religious groups, and women in the appointments to the TJRNRC (Submissions at zonal and sectoral consultations; submissions by individuals) [See Section 6.1 of this chapter]. A youth group also requested that young people, particularly those who are marginalised, should be represented at all levels of decision making (Submission at a CTF sectoral consultation).

### **3.6. Accessibility**

61. Accessibility was seen in terms of language and modes of communication, as well as in terms of the physical structures. A local organisation stressed that the transitional justice processes should be multi-lingual, multi-method and should be accessible to a variety of groups, including persons with disability, women, the elderly and children. At least one submission states that people with

disabilities must be provided with transport assistance and the infrastructure of venues should be accessible (See Chapter VI: Beyond the Four Mechanisms, Section 6.3). It was also stated that victims and witnesses should have the right to engage with the commission in a language of their choice/the local language and interpretation facilities must be available for this purpose. Accessibility was also seen in terms of information documentation and dissemination in all three languages, in Braille and any other technological medium accessible for persons with visual, hearing and sensory impairments. Information archived by the TJRNRC is also expected to be made accessible to the public.

### **3.7. Independence and Impartiality**

62. A number of submissions called for the mechanisms to function independently with no political interference, influence and corruption or partisan association (zonal consultations in the NCP and local organisations). One submission by an international organisation added that the TJRNRC must be established as an “independent” and “impartial” body in order to achieve its objectives (See Section 7.1.1 of this chapter). This principle was also extended to the appointed commissioners and staff who must be seen as independent and impartial according to one submission (See Section 6 of this chapter). During the sectoral consultations held with military and police officers, it was also stressed that the TJRNRC should be unbiased, address all parties, and give equal and fair treatment and consideration to all communities from all parts of the country. This was seen as necessary for the political credibility and durability of the processes.

### **3.8. Fair Procedure**

63. It was stated that the reconciliation measures must respect the rights and dignity of the affected persons and alleged perpetrators, and in particular must not force affected groups to meet with alleged perpetrators. Submissions also recognise the need to fully respect the rights of suspected perpetrators who may participate in the process and appear before the TJRNRC. The latter must be reflected in enabling legislation that is in accordance with international procedural standards and safeguards. One submission by an international human rights organisation outlines fair procedure as follows:

1. Suspects must be presumed innocent unless and until proven guilty beyond a reasonable doubt according to law in separate criminal proceeding;
2. Suspects should not be compelled to confess guilt or testify against themselves;
3. When participating voluntarily, suspects should be informed that allegations have been made against them, that statements they make may have criminal consequences and that they may, if they choose, be assisted by legal counsel.
4. The TJRNRC should also provide legal assistance where suspects lack the means to pay for counsel;

5. Where the Commission identifies suspects, it should not name them publicly, but pass on information and evidence collected to the judicial mechanism in a confidential manner. Although another submission stated that, where the commission identifies suspects through information divulged by a person who has been compelled to appear before the TJRNRC, in the interest of a fair trial, such incriminating evidence cannot be passed on to prosecutions (See Section 5.1.3: Power to Refer Cases for Prosecution).
6. Entering into confidentiality agreements and immunities with suspects must be precluded, particularly with regard to crimes that fall under international law, which the State has obligations to investigate and prosecute if there is sufficient evidence.

### **3.9. Confidentiality**

64. One submission by a women's rights organisation states that confidentiality must be assured and maintained and that the TJRNRC must also be transparent regarding the steps it will take towards this. Maintaining confidentiality is also mentioned, when transferring information regarding suspected perpetrators to the judicial body. The discretion for the TJRNRC to hold hearings in private or conceal the identity or any other information to protect the rights and wishes of the victims and witnesses, was also recognised. Confidentiality was also seen as a prerequisite, due to security concerns, for people to come forward with information they know or suspect (FGD in Hambanthota).

### **3.10. Psychosocial Support**

65. The submissions recognise that victims and witnesses must be able to access professional psychological and medical treatment as well as counselling services, either internally or through referrals for all the mechanisms.

### **3.11. Other Principles**

66. Overall, submissions highlight other principles, including that the TJRNRC should follow a rights-based approach (Submissions by local and international organisations).

## **4. Scope: Timeframe, Groups and Violations**

67. During the consultation process, the CTF received a large of number of complaints, stories and narratives of discrimination, marginalisation, rights violations and abuses directly linked to the years of war as well as to other periods of violence from all affected communities across the country. These submissions refer to the need to look into the way in which rights were violated at an individual as well as collective level (See Section 2.1: Value of Truth Seeking/Telling).

#### 4.1. Timeframe: Challenges, Choices and Limitations

*“If Sri Lanka’s transitional justice programme is to be truly transformational then it must look beyond the war and its final stages and into issues of prejudice and racism that have for too long characterised Sri Lankan society. This is a process in which all ethnic groups including the ‘Upcountry’ Tamil and Veddah communities must have a right to participate.”*

(Submission by an international organisation)

*“The early repressions did not have ethnic connections it was around socioeconomic conflict of rural lower middle class and working class and this caused a youth rebellion compared with the long-time ongoing recently halted ethnic conflict. The cut-off date is important because if one ignored the repression arising from socioeconomic conflict and focus only on the repression arising from ethnic conflict the reconciliation process, the justice process, the investigation process all will have an ethnic bias.”*

(Submission at the CTF Sectoral Consultation)

*“Finding the truth is very important and it should be for the past 30 years. Government should have the responsibility to express the truth and should maintain the justice.”*

(Submission at a public meeting in Jaffna)

*“The period from the beginning of the Ceasefire (Feb 2002) - to date, would be a good start. If the Commission can deliver a credible outcome for this period, the “Pandora's box” will open to an outpouring of the same from 1948 to 2002. This will include the two JVP insurrections and the many communal riots and pogroms including Black July '83, to name a few’*

(Submission by an individual)

68. Depending on the identity that the affected individual or group subscribes to, and the experiences and incidents faced, the timeframe recommended varied. Some submissions even dismissed the need for a set timeframe and many others merely spoke to the importance of including specific conflicts and issues.

69. Accordingly some submissions recommend a shorter period of consideration with many of these stating that the final phase of the war should be the key period of investigation (an international organisation) whilst many others called for a longer period with a broader focus. Many submissions recommend that the minimum period of investigation should be at least the past 30 years. In relation to this, a number of submissions identify 1983 as a time of ethnic violence and outbreak of war and recommend this date as the starting point. A significant number of submissions also recommend that the commission should not be temporally or otherwise limited

to looking at only the ethnic conflict and the war between the LTTE and the Government, but also include conflicts based on other forms of identification—such as the socio-economic based conflict of the Southern insurrections in 1971 and 1987–1989. Others recommend that the commission goes further back to the time of independence in 1948—in order to capture the discrimination and violence that led to the war—with a significant number of submissions also recommending that the TJRNRC includes the 1956 language policy “...which resulted in creating ethnic divisions on linguistic lines” (Submission by a local organisation). A small number of submissions also state the need for the Commission to go back to times of colonisation, citing its divide and rule policy and the need to address the injustices experienced as a result of it.

70. Whilst some submissions suggest that the end date of the scope for the TJRNRC should be 2009, a handful of submissions also suggest 2010, 2011 and 2015 amongst others. However, a majority of submissions did not specify an end date. Many submissions did not necessarily request that the TJRNRC should end with the war or limit its scope to past incidents, particularly those submissions that stress the importance of including and addressing religious violence. “...the non-recurrence aspect should not only address the past conflict but should proactively look into the new factors and triggers and address them” (Submission by a religious organisation at a CTF sectoral consultation).

71. Some submissions note the practical issue of the loss of witnesses as time goes on. In relation to this, one submission questioned the practicality of going back to historical times of colonisation and kings (FGD in Ruwanwella) with another participant at a FGD in Trincomalee noting the same in relation to a much shorter period as well: “It’s been 20 years since the people were killed and fighting took place...Some people who were affected during this period have also already died, as time goes on the witnesses will all be lost.”

72. Submissions also inclined towards giving the TJRNRC discretion to decide how far back in time its inquiry will extend stating that the temporal mandate should be shaped by the testimonies received (Submission by a local organisation). At a sectoral consultation with the police force, it was stated that the commission “...has to look at the time period the person who faced the incident says” and that it must be a time period relevant to all affected groups.

#### 4.2. Affected Groups and Alleged Perpetrators

*“The sorrows, pain and indignity felt by the Tamils must be documented.”*

(Participant at public meeting in Mullaithivu)

*“Sri Lanka’s Muslim community has suffered considerably from all sides during the years of conflict. Yet their issues and stories are invariably overlooked. A truth seeking mechanism must pay particular attention to the views and stories of Muslim survivors.”*

(Submission by an international organisation)

*“I live in a border village in the North. There were many attacks on us who are Sinhalese...Even though the major blow was to the Tamil population, we also felt it.”*

(Participant at a FGD in Vavuniya)

*“During the time of the war, apart from the 2–3 ethnic groups that were affected, a group that was particularly affected was the journalists—by reporting the war journalists were killed, disappeared, attacked, threatened...”*

(Submission at a CTF Sectoral Consultation)

*“Ex-combatants should not continuously be looked at with fear or suspicion. We have already lost everything (our youth, physical health, mental health, investment, relatives and society). An opportunity should be given for us to live as humans.”*

(Submission at Public Meeting at Palai)

*“This is more victims centered. It should be, but what about us?”*

(Submission at a CTF sectoral consultation with the military)

*“It is important that the war, both in its final phase and the ethnic conflict, are not seen as a binaristic Sinhala-Tamil conflict, or purely as a Tamil versus Sri Lankan state phenomenon, implying in the end a simple division between victims and perpetrators.”*

(Submission by an individual)

73. Submissions talk of discrimination, violations and abuses in terms of the identity of the group whether ethnic, religious, professional, gender, age, region and location. They also highlight the ways in which the various conflicts have affected different groups, as evidenced in the above quotes. During the consultations, the CTF received particular submissions from Tamil, Malaiyaha Tamil, Sinhalese and Muslim participants affected by violence from the war, insurrections, religious and other conflicts. Some of the submissions speak to their collective experiences of abuses and violations (See Section 4.3 of this chapter). However, as one submission notes, even within these communities, war was experienced differently and the way in which “...social divisions such as class, caste and gender pluralize the people’s experiences of the war” must be considered. Accordingly, submissions spoke to other forms of identification as well. For example, some submissions highlight the manner in which journalists and media professionals were affected by the war. Another speaks about the importance of hearing the stories and experiences of young people whose right to education was disrupted and denied because of the armed conflict. Other submissions called for the members of the diaspora, refugees (particularly those living in India) and those who had been physically and sexually abused and fled abroad to be enabled to appear before the TJRNRC (diaspora, local and international organisations). While during zonal consultations, particularly in

the North and the East, those disabled by the war also call for recognition of their experiences and plight (See Chapter VI, Section 6.3).

74. Many submissions advocate for an inclusive and holistic approach that enables a broad category of affected people to come before the commission, with one submission noting that if this is not ensured, there will be divisions. One submission very specifically recommends that the commission is inclusive of all minority communities. Another email submission, whilst recognising the grievances of the Tamil community and the need for a space to talk about these grievances, also notes that “*Burghers, Indian Tamils, Muslims and even the Sinhalese who were JVPers/people affected by JVP*” would also have their own specific grievances and therefore recommends that the problems faced by *all Sri Lankans* are understood and addressed (Submission by a member of the diaspora). An email submission by an individual also states that “equal justice” needs to be given to all affected people, including “*victims of LTTE terror /victims of JVP killings / Victims of UNP extrajudicial killings / Victims of IPKF / victims of government / victims of armed forces with proof*”. These are calls to imagine the scope of the TJRNRC creatively and widely; although some of these submissions also call for separate mechanisms for specific kinds of violations or for specific groups or peoples (See Chapter VI, Section 5). Nonetheless it becomes clear that over a broad timeframe, various ethnic and religious groups have faced varying degrees of injustices and identify with victimhood, calling for their stories and experiences to be captured and recognised within the scope of the Commission.

75. Diverse perpetrators—both state and non-state—are implicated by submissions. These include the military and law enforcement arms of the State, the armed groups working in association with it and non-state groups such as the LTTE, the TMVP, other Tamil militant groups, the JVP and international actors—namely the Indian Peace Keeping Force (IPKF). In some cases, individuals who held top-level positions of power or were in charge of certain operating divisions within these groups were also identified.

76. Rejecting a simplistic binary distinction of the war as one between the Sinhalese and the Tamils, or between victims and perpetrators, the submissions recognised the need for the TJRNRC to hear from the suspected perpetrators. One submission points out that the stakeholders of war, such as ex-combatants and the military, also carry trauma and find it difficult to reintegrate into society, stating that addressing this group is an important part of restorative justice and non-recurrence. During consultations with the armed forces, it was stated that the conflict is regrettable and that the military has also suffered from it. A feeling of victimisation was expressed in that the military are already prejudged. In this respect, a truth commission was seen as helping to clear the good name of the Army. As one Army officer stated, “...*the people in Jaffna are very nice...we have interacted with them. They don't have direct animosity, just doubts as to who killed who. Maybe the truth commission will be able to reveal what happened for them and us*” (Submission at a CTF sectoral consultation). Another section of participants in the war, the ex-combatants, also indicate specific

circumstances of victimisation, difficulties in post-war reintegration into society, a loss of dignity and identity, and the need for acceptance within the community (See Section 3.2.2 of Chapter VI: Beyond the Four Mechanisms).

### 4.3. Types of Violations and Abuses

77. The bulk of submissions received by the CTF raise questions of truth, justice and non-recurrence in relation to the war, the political violence of 1971 and 1987-1989, the recent rise in religious violence and tensions, and of discrimination, marginalisation and violations by the State outside of the ethnic, religious and political conflicts. Some submission caution that the TJRNRC's mandate should not be reduced to addressing specific types of violations and abuses of international human rights and humanitarian law for, victims that fall outside the scope will be excluded from accessing truth, and as it will prevent the commission's capacity to draw links between different kinds of violations and abuses, which may be crucial to making effective recommendations for reparations and non-recurrence (Submission by an international human rights organisation). Instead the Commission should facilitate the "whole truth" to come out (Submission by an international organisation).

78. The ensuing section details all the violations and abuses submitted to the CTF by the various groups and individuals, where some form of truth seeking, acknowledgement or recognition is called for.

#### 4.3.1. Structural violence and state policies

*"The Sinhala only act kept the Tamil community away from the day to day national life and the use of standardization in education has debarred a large number of Tamil youth from seeking higher education. The commission should address these and other such grievances of the Tamil community methodically and with urgency."*

(Submission by an organisation at a CTF sectoral consultation)

*"Despite all the developments in the world, we are in the same state as our grandparents. We are always given line rooms, we don't have any dignity...No matter where we go we face injustice, whether it is the AG office or bank."*

(Malaiyaha Tamil Participant at an FGD in Galle)

79. A number of submissions recognise the need to look at State policies that led to the ethnic conflict and subsequent war. Tracing and acknowledging discriminatory and oppressive policies and structures were seen as important to put the more recent war into context and rewrite the present narrative from one that is only about the state response to terrorism to that of a larger problem of a community's struggle for equal rights and parity. Of these, the Sinhala Only Act of

1956 was frequently mentioned and attributed as one of the root causes of the conflict, with a number of submissions recommending that the Commission looks into language issues. At least one submission points out discriminatory education policies. Another submission states the need to reflect on why the war started, citing discrimination and oppression by the State since 1948. Submissions also stress that the State needs to acknowledge its role in bringing about the conflict. *“Discrimination and inequality is the root cause that led to this cruel bloody war for thirty years. The history of this country since Independence bears witness to this. The war was not against Terrorism as projected. The war was all about an ethnic minority asking for equal rights and equal parity in the country’s national political journey...A well-established truth Commission, if it listens to stories since Independence will establish this minority’s struggle for equality and non-discrimination and rewrite another narrative”* (Submission by a local organisation [based in the Eastern Province] at a CTF sectoral consultation).

80. Other marginalised communities also raised issues of structural discrimination. In relation to truth, a submission from the lesbian, gay, bi-sexual, transgender, intersex and questioning (LGBTIQ) community drew attention to the adverse impacts of laws that discriminate against and criminalise non-normative relationships and suggested that the particular issues of this group should be included within the TJRNRC (ZTF Report, Western Province; written submission). Submissions from the Malaiyaha Tamil community also cited structural discrimination (For a more detailed overview of the truth-seeking measures requested by members of the community, see Section 4.3.16 of this chapter. Also see Section 6 of Chapter VI for further discussion on structural violence and discrimination faced by various marginalised groups).

#### **4.3.2. Specific violations related to the last stage of the war**

*“First we must know the actual truth of what happened during the last stages of war. We want justice for that.”*

(Participant at a Public Meeting in Mullaithivu)

*“We can forgive an incident which happened for only one day. But brutal cruel crimes such as cluster bomb attack, sexual violence unleashed on women and the white flag incident should be investigated and truth found and punishment given.”*

(Participant at a Public Meeting in Mullaithivu)

*“I saw chemical weapons and cluster bombs being used. I saw a chemical bomb falling on a place and the whole area being burnt. People also were burnt. They announced No Fire Zones, we believed them and went there but all the shells fell in that place. But they say such things did not happen. This is why they are not ready to listen to what the people have to say.”*

(Participant at a Public Meeting in Nanaddan)

*“Not giving proper medical treatment in the last stages caused a lot of deaths. In the last stage many people were sick, they were in fatigue with no food so many people were taken saying to hospital for medical treatment but...they have not returned since.”*

(Submission at a Public Meeting in Kandavalai)

*“The state should first acknowledge its faults. Without that the people won’t come for reconciliation. The state should first accept the truth and acknowledge that this is what happened.”*

(Participant at a Public Meeting in Nanaddan)

81. The call for truth regarding the allegations of violations during the last stages of the war and the immediate post-war period was one of the most compelling narratives raised primarily in the zonal consultations in the North but also in written submissions. The truth is viewed in relation to finding out what happened to loved ones, justice being served, unveiling and acknowledging what happened during the last stages of the war and publicly stating this truth (See Section 2 of this chapter). The call for truth was regarding allegations of the use of cluster bombs and chemical weapons, shelling of no-fire zones, indiscriminate bombing of civilian targets, the administering of chemical injections, the disappearance of those who surrendered, deaths, sexual violence against women, the white flag incident, medical negligence of the injured and sick, amongst others by the State forces. A few participants spoke of LTTE abuses such as allegations of preventing people from leaving the war zone, using people as human shields, and forced recruitments during the last stages (Vavuniya ZTF Report; Submission at a public meeting in Manthai East). The call for truth regarding these incidents were very often of an investigative nature and accompanied by a strong call for justice (see Chapter V: Judicial Mechanisms, Section 6.2). Some also called for a space to recognise, remember and commemorate loved ones lost (for a detailed discussion on remembrance, refer Chapter II: Reparations, Section 6.3). The need for the State to acknowledge and “*express the truth publicly*” (Public Meeting at Oddusudan) was stressed, with submissions emphasising that the truth is important given that other local communities only know one side of the story, which is told by state-controlled media (Vavuniya ZTF Report).

82. Former LTTE combatants who surrendered to the Army at the end of the war and who are now missing were key issues that emerged in relation to the last stages of the war, particularly during the focus group discussions in Kilinochchi, Mullaitivu and Mannar. “*We handed over our spouses and children directly to the army and now they are missing. Even though I handed my husband over through a Christian Father, now he is missing too. Also there are instances of surrender of LTTE members with their small children*” (Tamil wife of surrendee, FGD in Mullaitivu). (For a more detailed discussion on this point, see Chapter IV: Office on Missing Persons, Section 2.2, Paragraphs 25–27).

### 4.3.3. Enforced disappearances

*“We can tolerate the pain and can wait to find out our relatives who were missed. But truths should be found out and expressed publicly.”*

(Participant at a Public Meeting in Oddusudan)

*“We need to have the right to know the truth about them [the missing due to the war]. It should be brought out in the open. As we were asked to sign, stating that we will not divulge anything to hinder state security, we could not openly tell everything.”*

(Participant at a FGD in Batticaloa)

*“At that time we didn’t have the mind-set to search about these things. Some people said that he was half burnt and killed...if the criminals can at least confess saying that they did it...it will be a relief for us because we can make up our minds that they are dead. Today we cannot even do that without knowing exactly what happened. I want justice, whether put in a mass grave? What happened?”*

(Family member of a person who disappeared between 1987–1989, FGD in Hambantota)

83. One of the most pressing calls for truth seeking during the consultations emerged from family members of the disappeared, including from Tamil, Sinhala, Muslim and Malaiyaha communities. Disappearances were in relation to primarily the war and the period of 1971 and 1987–1989. Both State and non-State actors, including the LTTE, were identified as perpetrators. Whilst many of these submissions expressed desire to know whether the loved one is still alive, others also requested that information about those that have been disappeared is brought to light and made public as a deterrent. For details on the range and scope of this issue, see Chapter IV: OMP, Section 2.1.

### 4.3.4. Killings and deaths

*“We need a solution that has the truth in it. The death certificate doesn’t say the army killed. They gave 50,000 death certificates forcibly...At least they should give saying that these are the ones that killed.”*

(Female participant at an FGD on women-headed households in Batticaloa)

*“Actually we do not know who asked our father to come. We don’t know if it was the Army, we don’t know if it was to take revenge, we don’t know if it was the JVP. I pray that we would never see another such ‘Bheeshanaya’ period”*

(Participant at a Public Meeting in Kurunegala)

*“The mothers are suspicious about how their sons died. When the reports come saying they shot themselves the mothers say their sons would not do such a thing. So truth seeking is essential. This falls under ‘other causes’ and then there are major issues when you go to get the salary. Therefore, you need to find out about these kinds of deaths.”*

(Submission at a Public Meeting in Galle)

*“About 120 cadres who have been released from detention have died. They have not been provided proper health check-ups or medicine. Those who have been released from detention/ rehabilitation should be examined by expert doctors. Those 120 deaths should also be investigated.”*

(Submission at a Public Meeting in Nanaddan)

84. In this context, truth seeking is viewed in terms of revealing perpetrators and reasons for deaths for justice, effective reparations and recognising truths through official certification. In most of these cases, the problem of state inaction was stressed. For instance, a submission regarding the Southern Insurrections stated, *“A medical student was killed in front of me and they [the police] took my statement but there were no results, we still have no reports about this”* (public meeting in Galle).

85. Zonal consultations in the North and the East revealed a number of incidents of family members killed by State forces. In Ampara, one wife whose husband was allegedly taken by an Army Commander and killed along with 17 others, stated that she wants to know the truth behind why her husband was killed and receive compensation as well as livelihood assistance. Issues with death certificates were raised frequently, with the call to give *“proper details”* stating the actual cause of deaths (FGDs in Mannar and Trincomalee). Many whose loved ones were killed, including many women, raised this issue in terms of truth at the individual level.

86. Submissions also point to other deaths caused by the LTTE. These include the executions of members of the Sri Lankan Armed Forces, the Police Force and the Civil Defence Force; and the killing of political leaders, civil servants, senior military and police officers, prelates, activists, academics, journalists and other professionals who dissented against the LTTE leadership (Submission by an individual). One submission also highlights the killing of Tamil dissidents by the LTTE. The family members of Muslims who died in LTTE attacks also call for the cause of death to be clarified and recognised in official documentation. One Muslim participant at an FGD in Muttur stated, *“When we went get a death certificate, they said that those who were killed cannot be given death certificates; so then they gave a death certificate saying died as a result of unidentified persons.”* During an FGD in Batticaloa, one participant alleged that the IPKF killed her husband—*“I don’t have any evidence, but everyone knows.”*

87. Multiple submissions, particularly from the Central, North Western, Southern, Sabaragamuwa, Uva and Western provinces, spoke of deaths and other violations that took place during the 1971 and 1987–1989 period. Many of these family members who lost loved ones are yet

to receive answers, justice, reparation or support. Others point to the problem of state inaction and stress the importance of non-recurrence.

88. Killings were not only limited to the time of war, the ethnic conflict or the period of 1971 and 1987- 1989. During a public meeting held in Ja-Ela, the mother whose son was killed during a state crackdown of a protest in 2011 expressed the need to know the truth surrounding the death of her son and pointed to the inadequacy of compensation alone for the healing process. *“In the protest against EPF and ETF my son...was shot and killed...Army did this, army killed him. His life was priced as 10 lakhs and EPF was finished at that. We need to know how he died. The protested group receives EPF now. You cannot lessen the pain with money. We want to find what happened with the Mahanama Thilakaratne report, we need to know. We have the right to know, about how this happened.”*

89. In relation to soldiers who fought for the State, there were doubts and suspicions raised among the mothers and wives as to how their sons/husbands died. The uncertainty surrounding the death of soldiers also has an economic impact as such deaths are often categorised under ‘other causes’, which affects compensation and services received (See Chapter II: Reparations). *“I haven’t got the Virusara card. As my husband died from ‘other causes’ they did not give the Virusara card. Before my husband died, he had problems with the C.O. who had beaten up my husband once. I doubt my husband’s death. I need to know what happened. I need to know the truth.”* (Military war widow at an FGD in Matara). It was stated that the categorisation of the deaths due to Other Causes also affects the recognition that the deceased soldier’s spouse and children receives in society (Refer to Chapter VI: Beyond the Four Mechanisms; Section 3.2.3 for a more detailed discussion of the issues pertaining to this group)

90. The issue of sudden deaths of ex-combatants who underwent post-war rehabilitation was raised during consultations in Jaffna, Mullaithivu and Mannar. It was also brought up by local organisations. These submissions called for a special inquiry into these deaths. *“Those who returned from rehabilitation are dying mysteriously. This should be investigated. State should give proper medical facilities and save them. A special medical committee including humanitarian doctors and with UN oversight should conduct the examinations”* (Submission at a public meeting in Palali) [See Section 3.2.4 in Chapter VI: Beyond the Four Mechanisms and Section 4.3.9 of this chapter].

#### **4.3.5. Mass killings and suicide attacks**

*“The damage done in the 1990s exists till now, the Kathankudy Mosque massacre, the Eravur massacres are incidents that keep the people even now in great fear. The abduction and massacre in Kurukkalmadam in 1990 and the non-excavation of that massacre site has caused us great bitterness.”*

(Participant at a Public Meeting in Batticaloa)

*“If there are 100 persons and 5 Tigers among them all 100 will be killed. The STF killed the people. Due to personal problems and political gains and losses many massacres occurred. The Prawn Farm problem was just personal. But because of it, more than 60 innocent people were killed. Due to the cunning and scheming attitudes of politicians too lives and villages were destroyed.”*

(Participant at an FGD in Batticaloa)

*“My husband served at the Ahangama Police Station. He died in the Aranaganvila terrorist attack in 2000. Need to find out the truth. The information given must be the truth. This opportunity to talk about our grievances is very valuable. I suggest that your institute supports these kinds of people who have gone through distress”*

(Participant at a Public Meeting in the Southern Province)

91. A number of submissions refer to alleged mass killings by both the armed forces and the LTTE. These include mass killings by State Forces, such as Kokkadichchola (1987), Sathurukondan (1990), Vantharamoolai (1990), Sithandi (1990), Makiladitivu (1991), Maiylanthai (1992), Kumarapuram (1996) and Muttur (2006); as well as mass killings by the LTTE in Anuradhapura (1985), Kattankudy (1990), Eravur (1990) and a number of mass killings and attacks targeting villages bordering the North and East—such as Aluth Oya (1987) Mahadivulwewa (1986), Palliyagodalla (1991), Kallarawa (1995), Gonagala (1999), among others. Other submissions point to deaths as a result of bomb blasts (such as Kebethigollewa and Mamaduwa). One submission alleged that the mass-scale abduction of 100 police officers by the LTTE took place in Akkaraipattu in 1990 (FGD in Ampara). In relation to these deaths, the need to remember the deaths at the collective level, bring to light stories of loss, as well as the need for justice, reparations and accurate death certificates were raised—*“My brother died in a suicide bomb attack in 2000. Need to find out the truth behind this. Because in the death certificate, it says died by terrorist. Who is this terrorist? Muslim terrorist, Tamil or LTTE terrorist?”* (Participant at an FGD in Muttur).

92. A number of oral testimonies made during FGDs in Batticaloa highlight mass-scale violence and killings experienced by the Tamil community in the East as well as the need for justice and a space to remember. These submissions express fear about speaking of these experiences and narrating truths. At an FGD in Batticaloa, a participant spoke of “ethnic killings” that took place in Makiladitivu. Whilst detailing the atrocities of this incidents (*“One day more than 200 people were killed in mills, dug holes in the ground, poured petrol and burned...Instances of one family with 7 members all killed inside the mill”*), the submission states that there is silence surrounding these incidents due to the general fear about the consequences of speaking out—*“We don’t talk about this because we are afraid. We are afraid of our lives.”* Therefore, the submissions stress the need for an office to document and archive testimonies and evidence. The documentation and archiving of truth is viewed as a critical process in securing justice for mass killings. A participant speaking about the Sathurukondan mass killings also noted the impunity and lack of credence given to their voices,

even where information has been gathered—“...we have faced a number of presidential commissions, we have told them that the army has done it directly to their faces. But still nothing has come out of it...All this information is already there” (FGD in Batticaloa). At another FGD in Batticaloa, it was stressed that there is a need for space to remember the dead of Sathurukondan and Maiylanthai without being branded as LTTE.

93. The establishment of independent ethnic commissions to specifically look into the matter of mass killings has come up in relation to the Kattankudy and Eravur mass killings, where the Muslim population was targeted. This submission states that the consequences of these incidents are still felt and still causes fear and bitterness. During a public meeting in Eravur, an investigation to reveal the truth was requested in relation to alleged abductions by the LTTE in 1990 and the alleged abduction and killing of people at Kurukkalmadam. Others spoke of LTTE attacks in the border villages particularly in Udur, Alingipathana and Palliyagodalla. One participant at a public meeting in Polonnaruwa spoke of past experiences of attacks at these border villages in the early part of the 1990s, and called for recognition of the fact that the conflict affected not only the Sinhala and Tamil communities but also the Muslims and the need to remember, particularly for the younger generation. It was stated that the year 1992, which was when the most amount of loss was experienced, is currently commemorated in all three religions: “*What we want is for people to know that our people also gave their lives for the conflict. Sometimes the children may not know. These were not announced on television. Commemoration is a must for everyone. We engage in religious activities in it [the commemoration].*” During an FGD on issues faced by border villagers in Batticaloa, participants requested for the establishment of a special government-endorsed mechanism/commission to look into issues that Muslims from the border villages have faced.

94. Attacks and mass killings of Sinhala-populated border villages in the Eastern, North Central and parts of the Northern Province were also raised. The grievances of the communities residing in these border villages of Maha Oya, Aranthalawa, Kebethigollawe, Idigollawa, Athawetuna wewa, Mahanika wewa among others were expressed during FGDs in Ampara, Vavuniya South, Moneragala and the North Central Province. Participants spoke of attacks including mass killings during the war by the LTTE and in some instances the TMVP and unidentified groups. Many also spoke of the violence they experienced during the years of the war—“*Maradammaduwa is the last border village; we experienced many forms of victimisation. One LTTE attack killed 26. Houses were burnt with people. We had to drag the bodies out. Two of my uncles were abducted, if we can at least get their bones back.*” (Participant at an FGD in Vavuniya). Others spoke of the lasting impression these attacks have had on their collective consciousness. One submission made in Ampara by a Buddhist monk on the 1987 Arantalawa mass killing of novice Buddhist monks by the LTTE states that “...the Arantalawa attack has made a mark in our minds and hearts that will not be erased”. One submission notes that the State has not looked into or accounted for deaths at these border villages (FGD in Ampara). Still others expressed satisfaction at being included in the reconciliation narrative and for the space to give their accounts of victimisation—“*I’m happy that someone is looking*

*into the conditions of our lives as a Sinhalese from Vavuniya South. We do not hate the Tamil people. We hate the LTTE. When my father died I was ten and my sister was three. There are many disabled people living in these villages. No one asked how we are coping all this time. You also go and ask from the tigers. Tigers killed our children. My father is gone. Did you not see the children laid in lines because of the bomb in Kebathigollawa. When taking ideas about reconciliation, take ideas from the innocent Tamil people. We were saved because of the army”* (Participant at an FGD in Vavuniya). At an FGD in Ampara, there was a call for a separate mechanism to look into the conditions of these border villages.

95. Other submissions spoke to the mass scale violence and killings during the 1971 and 1987–1989 period. One male participant at a public meeting in Matale also raised the issue of mass graves in relation to this period, pointing out the need to include other issues in the discourse as well: *‘Most people say that this is a mechanism against the army. You must be knowing that in ‘89 people disappeared, and then bodies were found buried here in Matale. No one talks about those.’* Another oral testimony pointed to the normalisation of such violence, the lack of any reparation or explanation for the deaths and the need to know the truth:

*I remember the conflicts of 89. In our village, in the night 8 people were cut up and killed. Still their families have not been given any reparation. And there is no explanation as to why these people were killed...No one knows who did this or why they did it. My uncle also disappeared. He was taken away, and some others in the room were also taken and cut, and killed...*

*Q: Did you tell the police about this?*

*No. Those days such killings were normal. But I'd like to know the truth.*

(Female participant at a Public Meeting in Matale)

#### 4.3.6. Torture

*“There needs to be an acknowledgement of torture – those who tortured should also admit to this torture.”*

(Participant at a FGD in Batticaloa)

*“I was also beaten by the police. Then I was in Boosa prison. From there I was taken to Colombo to treat the broken limbs. There are no hospitals reports; I was taken by the police. Due to the beating I have headaches and difficulty hearing. I was beaten on the head with a heavy book.”*

(Participant at a Public Meeting in Moneragala)

96. Submissions regarding torture were raised both in the North and East and all of the South, particularly in relation to the war and the period of 1971 and 1987–1989. During consultations in Mannar, it was stated that persons who were tortured have not been adequately investigated or treated. Many noted the lack of medical records in the case of torture. In Batticaloa, a participant, who alleged that he was tortured by the Army, stated that *“...the truth is being hidden...”* as the medical

certificate does not mention torture and added that these truths “...need to come out and space for this needs to be created.” Torture survivors at an FGD in Batticaloa also stated that “*proper evidence needs to be gathered to record the truth of all these*” to primarily create a path for those who suffered from torture to get justice through the law. Others called for medical reports of the victims to be made public. Torture survivors also expressed a need for acknowledgement of their suffering and also for the perpetrators to take responsibility for their actions. Written submissions from the Tamil community point to the torture of Tamil dissidents and the maintenance of torture camps in the North and East by the LTTE as well. The lack of adequate investigation and treatment, lack of adequate access to police and medical records were complained of throughout the country. “*I myself was taken by the army and beaten. They tried to put me in a pit in the cemetery and tried to burn me, and then again let me go. There is a lack of witnesses about these incidences. There is an anti-terrorist unit (TID) in each police department and these units have all the reports about these incidences during the “Beeshana period”. So this truth commission you mention has to look at them. The police should give permission for the truth commission to look at these reports*”

(Participant at a public meeting in Galle).

#### **4.3.7. Loss of property**

97. Issues in maintaining correct records were also raised with regard to loss of property, particularly in the East: “...*the army burnt our house but when recorded it was recorded as burnt by LTTE. Proper evidence needs to be gathered to record the truth of all these*” (FGD in Batticaloa). A Muslim participant at a public meeting in Addalaichenai made the request for a special inquiry into the burning of 200 shops in 1985 during terrorist attacks, primarily for the purpose of reparations.

98. One participant in Moneragala, who had been tortured, stated that “*my house was also burned by the police; it was officers that we knew*” and points to widespread damages to property during the period of 1987-89. The submission stresses the complicity of the State in violence and abuses, and demands an investigation into the violence.

#### **4.3.8. Violations of media freedom**

99. Submissions point out that journalists have been disappeared, killed and detained under the Prevention of Terrorism Act (PTA) whilst media institutions have been attacked and media websites blocked in order to curtail the freedom of expressing views primarily during the time of the war but also in the time of the Southern Insurrections.

*“This government should conduct inquiries justly and provide justice to the journalists who were murdered during the period of past governments...Murders of Journalists like Isaipriya are still a mystery and these should be found out.”*

(Submission at a Public Meeting in Jaffna)

*“Even though journalists were very often affected, there is no mechanism to find out about this.”*  
(Submission at a CTF Sectoral Consultation)

100. The submissions accordingly suggest a special investigation unit to probe cases where journalists have been murdered, tortured and disappeared, as well as the attacks on media institutions, and even the need for a special commission on these violations. It was stated that this special unit should be equipped with the capabilities and powers to find the truth, collect evidence, arrest the alleged perpetrators, proceed with legal action and ultimately ensure justice (Submissions by organisations at a CTF Sectoral Consultation). At a public meeting in Jaffna, the unresolved murders of journalists were flagged as one issue that needs to be inquired into for the sole purpose of serving justice.

#### **4.3.9. Health concerns of ex-combatants and persons with disability**

101. During consultations in the North, the medical issues of ex-combatants who underwent rehabilitations with suspicions of the ex-combatants/surrendeers being injected with drugs, being poisoned and suffering from mysterious illnesses were raised (Submissions at zonal consultations in Jaffna, Kilinochchi, Mannar, Vavuniya and Mullaitivu; Submission by a local organisation). It was recommended that an immediate solution should be provided by a permanent mechanism (Submission at public meeting in Vavuniya North), that those who are released should be examined by trustworthy doctors in an unbiased process (FGD in Mannar) and that there should be an investigation into these issues, which should be included in the TJRNRC (Submission by a local organisation) [For further details on the specific issues faced by ex-combatants, see Chapter VI: Beyond the Four Mechanisms, 3.2.4].

102. A written submission made by a group of women disabled by the war also suggested negligence of war-disabled persons in rehabilitation centres and in general. They requested that the TJRNRC should collect complete details on how the disabled were treated at the rehabilitation centres or hospitals, reflect the medicines prescribed and administered in its reports, which will help assess the non-recoverable impacts this may have had. They also suggest that the TJRNRC should determine the weapons used during the war and consider the testimonies regarding the treatment prescribed during rehabilitation based on the United Nations Inquiry (OISL) report. To this end, it was proposed that there should be inquiries/testimonies from war-disabled persons at their own residence, including those who currently reside overseas, and from doctors who served in the North during the war.

#### 4.3.10. Recruitment of child soldiers

*“The children and youth (now adults) seek dignity. They do not want to be victims forever, nor be seen by the state and community with suspicion and a feeling of aversion.”*

(Submission on child conscription by a group of individuals)

*“3 of my children died in June 2008. One daughter is alive. She went to take medicine when LTTE caught her. I went to LTTE office and said she is ill and asked to give her back. We lost her in 2008 Dec and reported at Pokkanai HRC”*

(Female participant at a Public Meeting in Manthai East)

103. Submissions point to the recruitment of child soldiers by the LTTE and other Tamil militant movements. They describe the way in which such recruitments disproportionately targeted and exploited the socially marginalised caste groups and economically under-privileged rural segments of the Tamil community in the East and the Vanni; denying these children their basic right to education, leaving some disabled and others with serious trauma. The complicity of diaspora organisations that funded the organisation unconditionally was also pointed out. The submission also stresses the failure of the State to address the grievances of these child recruits and of their parents, with many of these child soldiers who surrendered to the Sri Lankan Army yet to be returned to their families. These submissions, therefore, underscore the importance of taking into account these voices as a major part of the Tamil community’s experience of the war and to ensure justice as well as reparations.

104. Another written submission highlights the issue of underage recruitment of soldiers by the TMVP in the Eastern Province and the alleged complicity of the state security forces in this regard. The submission calls for the truth-seeking mechanism to ascertain in detail the truth about the role of the State with its acts of omission and commission, to deal with the issue of child soldiers as a separate issue within the truth commission, and to record the reasons, *modus* and impact of underage recruitment carried out by LTTE and other armed groups.

#### 4.3.11. Expulsion of northern Muslims from the Northern Province

*“The Muslim said that they now returned to their own places after 26 years yet they don’t know why they were chased out by the LTTE and they want the reason to be found out. The government, provincial council, Tamils’ side and LTTE are to reveal the reasons to them.”*

(A Report from an FGD in Vavuniya South)

*“Because the displaced live in Puttalam, there also needs to be a committee assigned to look into issues in Puttalam.”*

(Participant at a FGD in Puttalam with IDPs)

105. The expulsion of Northern Muslims in 1990 by the LTTE was frequently raised in relation to truth seeking. The grievances of the displaced Muslim community were reiterated at several public meetings and FGDs in the Northern (Jaffna, Vavuniya and Mannar) and North Western Provinces, where some submissions wanted to know the reason behind the expulsion, whilst others called for accountability and reparations. Recommendations from local non-government organisations and these zonal consultations in relation to acknowledging the Northern Muslims' specific experiences include:

1. That the Government acknowledge and accept the forcible expulsion of the entire community of Muslims in October 1990 from the Northern Province as an 'act of ethnic cleansing' and 'a crime against humanity' and reflect this in the official conflict and war narrative with legal effect through a proclamation made in the Gazette.
2. That the Government of Sri Lanka acknowledges its failure to protect its own citizens from being expelled from places of natural and longstanding residence. The failure of the State to protect its citizens and to give due recognition to the issue was a recurring theme. A participant at a public meeting in Mullaithivu noted that the Government also failed to safeguard the Muslims and that whilst the LTTE functions no more, the Government *"...should take the responsibility to say why the Muslims were chased away"* and inquire into former LTTE leaders who are now part of the Government (See Section 2.3.4 of this chapter).
3. That an appropriate Special Unit is established within the TJRNRC to ascertain the truth in relation to the violence unleashed on and the expulsion of Muslims. The period of this special unit should go beyond 1990 and include the years 1976, 1987, 1990 as well as *'...when the Muslims tried to return to the North during the ceasefire specially in 2002 and 2003 and in the aftermath of end of the war in 2009.'*
4. That the State also acknowledges the difficulties faced by the host community and consider compensation. During zonal consultations in Puttalam, the need for the Government to ensure that services are provided to all the affected people was stated and the establishment of a special commission was recommended to inquire into the impact of the influx of a large number of IDPs into the area and to address issues faced by the people of the area. It was specifically stated that this request was being made on behalf of the entire Puttalam community and not one ethnic or religious group.

106. It is clear that many of the people who settled in Puttalam still have grievances and a sense of neglect and marginalisation. A participant at an FGD in Puttalam stated *"now our situation is low. Three presidents have ruled the country since. Anyone of them have not come to see our situation or resettled us. We have been demanding a commission to look after the problems of IDP Muslims since 1995... There is no remedy for the problem of IDP's. Boundaries should be set after settling Sinhala and Muslim people in the North. There should be a special commission to listen to the problems of the Muslims and award*

*compensation. The truth why we have been expelled should be revealed*” (Participant at an FGD in Puttalam). In a letter to the CTF a member of the Muslim community stated challenges that IDPs in Puttalam faced in terms of housing, infrastructure, education, health care services, access to clean water and the present day lack of any effective solutions such as “*development projects and special allocation of resources*” for both the IDPs and the host community. It went on to state that “*Puttalam people are leading their lives with many physical and mental disturbances*” and that the “*...long-lasting pressures, frustration and disappointment may create unrest and depression among community people.*”

#### **4.3.12. Land acquisition in the North and East**

*“Our ancestral land should be returned to us. Military and Navy should completely withdraw from civilian lands.”*

(Participant at a Public Meeting in Nanaddan)

*“My old land has been taken as a reserve. When I approached the Grama Sewaka and the District Secretary, they said that my documentation is not valid. I need to know the truth..”*

(Sinhalese participant at an FGD in Ampara)

*“Cultures and Traditions of an area should be protected in proper manner.”*

(Tamil participant at a Public Meeting in Pooneryn)

107. The issue of land in the North is immensely complicated and is dealt with in detail in Section 3.6 in Chapter VI: Beyond the Four Mechanisms. Military occupation of ancestral land and land grabbing by the State were often cited by a significant number of submissions in the consultations in the North and the East. Submissions also highlight the contested ownership of land at the individual and community level, grievances in relation to what was commonly referred to as ‘colonisation’ with planned settlements of the Sinhalese and the building of Buddhist shrines and temples in areas in the North and East, primarily populated by Tamils and Muslims (Submissions at public meetings and FGDs; submission by a local organisation).

108. With regard to truth seeking, a local organisation points out that the State has not made an attempt to ascertain how much of personal, state or public land the military has acquired in the North. The same submission notes that the State had also not been transparent in the acquisition of land and is stifling dissent, which has led to a lot of speculation. Therefore, it recommends that an accurate analysis of the amount of land taken, how the land has been acquired and the level of involvement of the military in administrative matters is carried out in order to find a solution.

#### 4.3.13. Religious freedom violations

*“Actually the ethnic problem in Sri Lanka started between two languages Tamil and Sinhala. But now it moves towards religious differences.”*

(Participant at an FGD in Colombo)

*“Despite the war ending, there are religious problems that are now erupting.”*

(Participant at an FGD in the Uva province)

109. Many submissions note the rise in violations of religious freedom in post war Sri Lanka, targeting the Christians, Muslims and Hindus (See Section 4.3.14 of this chapter). The submissions state that it is crucial to shed light on and address religiously-motivated incidents and violations in order to achieve true reconciliation.

110. One submission by a lay Christian religious organisation calls for the establishment of an instrument within the TJRNRC that addresses issues concerning religious freedom that enables victims to report rights violations. It is also recommended that there should be an acknowledgement, apology and commitment to non-recurrence around the issue of violations of religious freedom. Furthermore at least two submissions requested that violence against minorities even after the end of the war is studied in detail. One of these submissions by a lay Christian religious organisation recommends the establishment of a separate commission on ‘Freedom of Religion or Belief’ to explore the root causes of violence and develop strategies to ensure non-recurrence of tensions along religious lines.

#### 4.3.14. Ethnic and religious violence and pogroms

*“The Muslim community in general is seeking to know the truth—there has been violence. There have been targets against the minorities particularly the Muslims and the Evangelical Christians—despite there being laws that are capable of bringing the offenders to book as to why these steps have not been taken and no one has to date since Mawanella 2002 [sic.] to Aluthgama 2014 not been brought to book or held accountable yet. In regard to this violence there is this yearning to seek truth as well as they want justice.”*

(Participant at a Public Meeting in Colombo)

111. The issues of ethnic and religious-based violence were raised during the consultations. One submission specifically recommends that the use of ethnic violence throughout post-independence history must be examined, noting that these are not a part of the history books. It states that: *“The people who were affected have memories about what happened [.] their stories should be recorded and they should be compensated for their losses. In Aluthgama, the army built the shops and houses that were*

*damaged. But in other places everyone has forgotten that violence occurred. This is probably true for many upcountry Tamil communities as well” (Submission by an individual).*

112. During a FGD in Colombo with those affected by the July 1983 pogrom it was reported that the participants felt that the truth about 1983 must be officially acknowledged and made public and that the State must take responsibility for its role in the riots, the breakdown of law and order and the complicity of law enforcement authorities. It was also stated that those responsible for the pogrom must be named for reconciliation (Western Province ZTF Report). The impact of the 1983 pogrom on Malaiyaha Tamils was also raised during the zonal consultations in the Southern, Uva and Central zones. During a focus group discussion in the South, for example, the lack of adequate and fair compensation for the loss of property, livelihood, livestock and birth certification was raised, with one participant stating that “...*the State bears no responsibility towards Tamil people.*”

113. During an FGD in Puttalam, it was noted that the racial and economic problems that emerged after the 1976 ethnic violence in the district, which mainly targeted its Muslim population, are not resolved even now. It was stated that a special commission is needed to look into the event and provide some justice and reparation. One participant stated that “...*we want those affected during 1976 found and listed and compensated*” (Puttalam FGD). The more recent religious-based violence in Aluthgama in 2014 and Mawanella in 2001 targeting the Muslim religious identity was also raised during zonal consultations in the Western, Central and Sabaragamuwa provinces. During public meetings in Kaluthara and Colombo, participants expressed the importance of addressing the complicity of the State, inaction of law enforcement, the lack of accountability and the truth regarding those responsible for the violence.

*“There were about 2500 security officers in Dharga town. Between 6 and 8 all these destructions took place. Shops and houses were destroyed, people were beaten. More than villagers it was outsiders who did this. So they were not recognised. Police did not do anything...Within two hours everything was destroyed, in Dharga town, Aluthgama, Mihiripanna etc...So beseech you to form a commission to find who did this, who gave the command...and to talk to the people in this area and provide them with some form of punishment.”*

(Religious leader at a Public Meeting in Kalutara).

#### **4.3.15. Fear mongering and rise in racist rhetoric**

*“When we were about to have that [attitude change in the country], two or three in the parliament got together and put stickers in the vehicles saying “Sinha Le”. This is a poisonous ideology, this is racism. I asked people to explain this but they cannot...whatever “Le”, we must see who is behind this...Who is spending for this? Racism is a poisonous yet tasty drink.”*

(FGD in Uva Province)

114. A significant number of submissions spoke of the spread of mistruths and rumours, particularly regarding the Muslim community, which has led to its ‘othering’. One participant at the Western Province public meeting stated that “...*there should be something done for the Muslim citizens. The Muslim citizens are in a helpless situation. The media gives false reports about justice, the Muslim citizens do not have anything in terms of truth.*” Others expressed concerns about the rise in hate speech and racist campaigns, as well as the need to ascertain who is responsible (as expressed in the opening quote). A woman representing a Muslim organisation at the public meeting in Kaluthara recommended that a separate commission is established to look into hate speech which will have control over the media—“*also we need certain commissions to inquire into these hate speech incidences including Aluthgama.*” Evidently, these are not incidents that are of the past and still prevail as ongoing tensions between communities.

#### **4.3.16. Historical marginalisation and discrimination faced by the Malaiyaha Makkal Tamil community**

115. During the consultations, the marginalisation and discrimination faced by the Malaiyaha community also emerged in the written submissions as well as the Zonal FGDs and public meetings. One written submission from the community highlights the historical marginalisation and exploitation the community has faced; for example, serving as indentured labourers in the plantation economy during the colonial times, being made Stateless and disenfranchised by the newly independent Sri Lankan State, targeted in communal violence and having its youth used by the LTTE. The issue of marginalisation and discrimination of Malaiyaha Tamils was also raised in the zonal consultations and is discussed in detail in Section 6.2 of Chapter VI: Transitional Justice Beyond the Four Mechanisms.

116. The submission, therefore, states that it is critical for the transitional justice process to account for the nearly 200 years of structural violence and other forms of violence that the community has faced. It calls for the State to acknowledge and seek forgiveness for these violations, which is seen as central to restoring the community’s dignity. It also calls for a truth-seeking mechanism to record, archive and disseminate detailed documentation of the multiple violations the community has faced as well as its resilience and struggle for rights. The truth-seeking mechanism should be supported by the State but led by and consist of a significant number of representatives from the Malaiyaha community, who are not politicians. The mechanism is also to cover a broad timeframe beginning with the forced transportation of the ancestors of the community from India to Sri Lanka to after independence and during the war. The issues that the mechanism should record include statelessness, disenfranchisement and repatriations in the post-1948 era; starvation and sickness in the early 70’s owing to restrictions and controls on food; experience of violence, evictions and displacement at the hand of the State and non-state actors; violence following the Bindunuweva mass killing in 2000; displacement and violence experienced by those from the

community who sought refuge in the Vanni, Jaffna or elsewhere in the North and East; and women's experiences of exploitation and violence, including forced servitude and sexual abuse.

## 5. Powers and Functions of the TJRNRC

### 5.1. Powers and Mandate

117. The mandate of the TJRNRC must ensure that it is able to establish the truth for all victims of human rights abuses and that its work complements other efforts to deliver justice, truth and reparations (Submission by an international organisation). Many submissions state that the proposed Commission's TJRNRC's mandate needs to be clearly defined and differentiated to that of previous Presidential Commissions of Inquiry. Some saw the TJRNRC as having a comprehensive investigatory role whilst other submissions focused on the non-recurrence aspect of the commission.

#### 5.1.1. Powers of investigation

*"First of all, truth has to be found out through investigations. Then the solution is to be sought."*

(Participant at an FGD in Kilinochchi)

118. Many submissions envisage the TJRNRC's mandate as moving beyond the previous Commission of Inquiry and having a comprehensive investigatory role in order to find out the truth. The investigative element is seen as leading, where possible, to the identification of persons, authorities and institutions/organisations involved and to determine whether the violations were a result of deliberate planning for further criminal investigations as well as to provide a "...detailed oversight of the harm caused to victims by violations and abuses as well as their needs..." for reparations (Submission by an international organisation). Submissions, therefore, envisage the TJRNRC having the following powers (Submission by an international organisation; submissions by a few local and diaspora organisations; submissions by individuals):

- To take statements and investigate any person, group or institution, including victims and witnesses in foreign countries;
- To gather information by taking written or oral statements and by conducting both public and confidential hearings.
- To compel attendance and cooperation of any person, including State officials. However, submissions note that self-incriminating information or evidence gathered by the TJRNRC through a subpoena cannot be forwarded to prosecutions (See Section 3.9 and Section 5.1.3).
- To administer oaths during investigation for the taking and making of statements, the falsity of which is punishable for perjury.

- To order production of any documents, records or other information from any source *in the country*, from executive, legislative and judicial authorities; to subpoena evidence from any individual or institution, including state institutions, and the military, with penalties for non-compliance, and to entertain existing testimonies with NGOs and local mass media as well. Reports with the Terrorist Investigation Division (TID) in the police departments related to the youth insurrections of 1971 and 1989 received specific mention. Another submission related to child soldiers also called for access to documents of government bodies established in response to allegations of child recruitment and the complicity of security forces. The Mahanama Tilakaratne Commission report was mentioned by at least two submissions as an example of an important report that needed to be published.
- To request information from authorities and government officials *of foreign countries* and international media and information gathered by the UN Secretary General.
- To appoint experts, including in the fields of psychology, pathology and forensics.
- To take other appropriate measures to address threats or risks to the life, health or safety of a person concerned by its inquiry.

119. In granting the TJRNRC with greater powers of investigation, the submissions envisage a link between the Commission and the judicial mechanism, with the former feeding into the latter.

#### **5.1.2. Power to recommend amnesty**

120. The TJRNRC or a body within the TJRNRC may be empowered to recommend amnesty, with the participation of affected persons or families of affected persons. The submissions call for criteria for recommending amnesty, which clearly indicate the limits of amnesty: for acts that do not amount to serious international crimes such as war crimes, crimes against humanity or genocide, as defined by international law and those who commanded the commission of crimes (See Section 10 for the amnesty versus punishment debate).

#### **5.1.3. Power to refer cases for prosecutions**

121. Submissions state that where there is information indicating individual criminal responsibility or *prima facie* evidence of a serious crime—including war crimes, crimes against humanity, or genocide—there is a duty on the State to investigate and prosecute international crimes under international law. This would require a truth-seeking mechanism—which is an arm of the State—to be mandated to voluntarily pass on any information relating to grave violations of human rights law and international crimes to ongoing and new criminal proceedings of a judicial body, including the Special Counsel, in a confidential manner. However, other submissions also note the following exceptions to this obligation: 1) where perpetrators may be compelled to incriminate themselves if summoned by subpoena before the TJRNRC in order to protect the principle of fair trial rights (See Section 3.9 of this chapter) and 2) where the mandate of the

TJRNRC allows for it to receive information from witnesses on a confidential basis (See Section 10.1 of this chapter).

122. However, at least one other submission recommends that the TJRNRC should not be complementary to the Judicial Mechanism with a Special Counsel (Submission by the military). Another report by a local organisation draws comparisons to the Tunisian truth model, where the law allows for the commission to directly forward cases to the prosecutor's office and the prosecution does not have the discretion to decline a prosecution. The same submission notes that "*...as a result, this imposes a heavy onus on the TDC [Truth and Dignity Commission] to operate according to the principles of criminal law, including due process. In effect the truth commission becomes 'prosecutorialised', and creates a strain in the function of the commission.*"

#### **5.1.4. Power to 'name names'**

123. Where there is evidence to establish the *prima facie* involvement of individuals in human rights violations, patterns of human rights abuse or in the misuse of public power, a local organisation identifies that the TJRNRC must be given the power to identify such individuals conditional to the right of such individuals to be heard before 'naming' and on the basis that 'naming' does not itself establish criminal culpability.

#### **5.1.5. Making recommendations for reparations**

124. The Commission's investigation should provide a detailed oversight of the harm caused to victims as well as their needs for individual and collective reparations, which must be shared along with recommendations for effective reparation with the Government and the proposed Office of Reparations to inform its decision making (Submission by an international and local organisation).

#### **5.1.6. Power to rectify past mistakes and make recommendations for non-Recurrence**

125. Given the nomenclature of the Commission, one submission states that "*the Truth, justice, reconciliation and non-recurrence commission should be able to recognise and highlight the past mistakes and rectify them.*" This suggestion is made particularly in relation to discriminatory state policies such as the 'Sinhala Only Act' (Submissions by organisations at a CTF Sectoral Consultation). The power in the TJRNRC to make recommendations for non-recurrence is given particular emphasis in submissions with particular reference to addressing 'institutional factors'.

### **5.2. Functions**

126. In terms of functions, a significant number of submissions recommend strategies for awareness raising, communications and outreach. A number of submissions also made

recommendations regarding documenting and archiving information and on conducting hearings. A few submissions offered suggestions on the reporting function and the tenure of the office. One submission also commented on the process of receiving complaints and imposing penalties.

### **5.2.1. Awareness raising, communications and outreach**

127. A significant number of submissions call for strong communications and media outreach by the Commission through all stages of its functioning. The dissemination of information to the public is viewed as more than just sharing information about the TJRNRC. The submissions stress the importance of sharing the testimonies given to the Commission (Submission by an individual). Recommendations in relation to awareness raising, outreach and communication made by a range of organisations and individuals include the following:

#### **Pre-Hearings**

- Draft a national plan at the outset to inform the public about the TJRNRC's mandate, composition, plan and timelines. The mandate is to be simplified and explained in the local languages so that all communities understand it.
- If an amnesty provision is agreed upon, then make it clear at the outset so that those coming before the Commission are fully informed of consequences.
- Utilise information and communications technologies (ICTs) and a range of media, including print, television, radio, arts and drama, and social media, to raise awareness and generate public interest about the objectives and proposed work of the Commission.
- Establish a well-resourced and reasonably staffed media unit/communication division to implement outreach programmes, provide information to the public on a regular basis, and to disseminate information on proceedings and relevant findings in all three languages.
- Develop an outreach programme specifically for members of the diaspora.
- Adopt a collaborative approach by partnering with civil society, media, victim groups and religious groups to design and implement outreach activities.

#### **During Hearings**

- Once the Commission is operational, give the media and the public access, as far as possible, to the proceedings. Use the media to push out information and change negative perceptions.
- The proceedings of the TJRNRC should be broadcast on television and live streamed on the internet to ensure widespread local and international viewership, with careful attention to victim and witness protection, and with simultaneous translations to the greatest extent possible.
- Give artists access to the hearings as far as possible and engage with creative media in order to disseminate testimonies that can be made publicly accessible, such as reading edited transcripts with translations on radio and using documentary art, with sensitivity to victim

and witness protection. Engage visual, literary and other artists in the TJRNRC process to mediate and represent in subtle forms artistic responses to the testimonies or the witnessing of the TJRNRC in progress—in what could also be a collaboration between groups of artists. Facilitate and create a supportive space for this kind of engagement with the TJRNRC by artists from all communities (Submission by an individual; submissions at a CTF sectoral consultation) [For more on the use of the arts in the reconciliation process, see Chapter VI: Beyond the Four Mechanisms, Section 4.2].

### **After the Hearings**

- Proclaim, publish, nationally disseminate and communicate through media, without any delay, the TJRNRC's interim report, final report and its recommendations.
- Communicate the summary of the final report through radio, town hall meetings, the distribution of books and education material in schools and translate the summary in the Sinhala and Tamil languages.
- Publish the reports and transcripts in Sinhala, Tamil and English. Truth as seen and presented by individuals describing their experience according to their local environments must be published as is.
- Make available and accessible all information to all members involved in the process and ensure that all processes are transparent—“*Also make public our submissions and also let us see them*” (Submission at an FGD in Trincomalee).
- Hold meetings outside of Sri Lanka to disseminate information.
- Publish reports or books with the endorsement of the Government.
- Once the truth is established and justice is meted out, disseminate information in order to facilitate and enable perpetrators and victims to reconcile.

128. The need for truth to be publicly expressed across the country and to the other community was a recurring sentiment expressed in zonal consultations in the North. A powerful dissemination strategy will therefore be an important component of the TJRNRC for cross-regional communication and to increase awareness and empathy for the suffering and injustices faced by citizens across the country.

### **5.2.2. Conducting hearings and collecting testimonies**

129. With regard to conducting hearings and receiving testimonies, the submissions recommend that:

- Public hearings should be organised for select victims of grave human rights violations who wish to publically share their experiences on a national platform in front of a national audience and the media.
- The truth commission must organise multiple public hearings covering all parts of the country.

- All members of the TJRNRC should be part of every public hearing, save in exceptional circumstances.
- Victims should be given the option of delivering testimonies in private if they wish to do so. However, the TJRNRC must make transparent its reasons for conducting private hearings.
- Group testimonies should be accepted, particularly in relation to women.
- The services of sign language experts should be arranged to get testimonies from persons with speech impairment.
- The Commission should visit villages to collect testimonies from affected communities (FGD in Trincomalee) and include narratives from the grassroots (Submission by an organisation; submission at a public meeting in the North). In the event that affected persons reside overseas, the Commissioners should be able to travel to these countries and record statements.

130. A number of submissions also suggest that the TJRNRC should make arrangements to hear from certain affected people and groups. These recommendations include that the Commission:

- Provides special conditions to enable victims of sexual violence, women, children, the elderly, disabled persons, ex-combatants and other groups to present testimonies.
- Allows for not only victims but also witnesses who have seen mass atrocities and grave forms of IHL and IHRL violations to testify before the TJRNRC.
- Ensures that its processes are accessible to members of the diaspora—both victims and perpetrators—to come before the commission to present testimonies in person or remotely through appropriate technology in a safe and convenient manner.
- Makes special provisions with the co-operation of the Indian Government “...to allow for *dispossessed Tamil refugees from the war living in camps or elsewhere in Tamil Nadu to appear and contribute to the truth-telling effort*” (Submission by a diaspora organisation).

### 5.2.3. Documenting and archiving

131. Many submissions underscore that it is vital that the information received by the TJRNRC is documented and archived for posterity; “...*future generations will rely on this information*” (Submission by an organisation at a CTF sectoral consultation). This expectation is particularly relevant given that previous commissions have been unable or unwilling to document and archive the information received in a manner that allows for widespread public access. A far more serious issue is that the websites of previous commissions ceased to function after a period of time and any information collected in those inquiries are completely inaccessible to the public. As one submission notes, “*I am appalled by the loss of all the information leading up to the LLRC.*”

132. The submissions also envisage that the information would contribute to an inclusive historical narrative that eschews the divisiveness of the past and accepts the mistakes of all

communities in order to enable peaceful co-existence (Submissions at a CTF sectoral consultation; submissions by individuals). Specific recommendations in this regard include that the Commission:

- Archive information, create a searchable platform and make it accessible to the public *via* the web and traditional media;
- Use information communications technologies (ICTs) in all stages of operations, including for early awareness raising, sensitisation activities, mapping of violations, background research, documenting essential material and archival work;
- Preserve documents and evidence submitted to it;
- Make relevant information and reports available to the Department of National Archives;
- Use the information to formulate modules for school curricula as a measure of non-recurrence. The objective here is to guide children to be “*agents of peace and reconciliation*”;
- Share the information through creative media, which includes using the information to write plays, children's stories about the war and stories about the perseverance of conflict-affected communities (For an overview on the use of arts in documentation, see Chapter VI, Section 4.2);
- Sustain an ongoing public conversation about the violations and abuses that took place during all conflicts;
- Maintain a centralised national database of violations and testimonies;
- Establish criteria to evaluate/validate the information before making it public;
- Ensure a gender-based analysis when information is recorded and documented;
- Distribute copies of important documents to women and other victims, and provide a receipt that acknowledges the date of their submissions.
- Document legislative enactments that intentionally marginalised minority communities.

#### **5.2.4. Receiving complaints and imposing penalties**

133. A local women’s rights organisation recommends that a system to record complaints should be established to address cases where those involved in operationalising the TJRNRC violate basic standards in receiving testimony and to provide redress or services to any of the reconciliation mechanisms. It was submitted that the TJRNRC should impose penalties on those committing offenses against it, including obstructing the TJRNRC from performing its duties, fabricating witness testimony, failing to obey summons, disclosing confidential information and destroying or manipulating evidence.

#### **5.2.5. Tenure of office**

134. A submission by an international organisation notes that an appropriate balance must be struck between establishing the truth promptly and ensuring an inclusive and thorough process. The submission recommends two years with a possibility of extension if necessary. Most other

submissions also recommend a two-year period. However, one submission states that the reconciliation mechanisms should work and discharge its duties in a short time frame, though it did not specify the exact time limit. One submission suggests that the TJRNRC should be established within a year, while another notes that within the first three months of the tenure, the TJRNRC should divide its work into specific tasks, decide on a timeline for each and make the plan public.

#### **5.2.6. Reporting**

135. Submissions stated that the TJRNRC should provide regular interim reports regarding its work apart from the final report with recommendations (Submission by an international organisation) and that these reports should be released bi-annually in all three languages, contain details about the progress of the commission and its future plans. While some submission calls for the TJRNRC to report to the parliament, others states that the TJRNRC must directly make the report public and not send it to the Government or any other body for prior review. Furthermore, it is expected that the range of reports produced by the TJRNRC will have specific “buy-in” from all stakeholders and will be followed up with concrete action by the Government if the mechanism is to fulfil its mandate (Submission by a local organisation).

#### **5.2.7. Making recommendations**

136. Recommendations are to be made not only at the end of the TJRNRC’s work in the final report but also on an interim basis and annually (Submissions by an international organisation and a diaspora organisation). It is stated that recommendations for action to the other reconciliation mechanisms must also come with a clear indication of which body is responsible for carrying out each recommendation.

### **6. Appointments to the TJRNRC**

137. A number of submissions state that some form of international involvement in the TJRNRC is required due to the failure of previous commissions. Others argue that the mechanism should be a locally-driven process in order to avoid interference by international actors. A majority of submissions highlight the need for competent, impartial and professional commissioners with a reputation for integrity and good conduct. In terms of process, the submissions stress the importance of nominations from the public. It is also suggested that there must be gender balance in the TJRNRC, that affected persons should vet appointments and that all functions should be victim centric.

## 6.1. Advantages and Disadvantages of International Involvement

*“There needs to be international involvement in the TRC because we don’t trust the State. The State committed most of the destruction against us.”*

(FGD in Trincomalee)

*“What I fear is that if the Government has control over the truth commission, it will bring out something that it calls the truth, but is not the real truth...So in terms of who should serve on [the Commission], it definitely cannot be anyone the Government appoints.”*

(Interview, Submission by an international organisation)

138. In most submissions, particularly at public meetings and FGDs in the North and East, the idea of a TJRNRC that is completely under the control of the Government—in terms of appointments and the exercise of powers—is viewed with distrust. There are, however, contradictory positions expressed based on individual and collective experiences of conflict. The submissions made by some individuals from the North and East state that this trust deficit can only be bridged with some degree of international involvement (Submission at a public meeting in Nanaddan). At the same time, a participant at an FGD in Poonochimunai stated that international involvement would not be required if affected persons are involved in the mechanism.

139. Section 2 (Purpose and Objectives of the TJRNRC) of this chapter notes that the failure of previous commissions has made many affected communities question the commitment of the Government to truth seeking and the ability of the State to provide redress—the *“international community should intervene because local commissions have not behaved truthfully”* (Public meeting in Palai). The call for international involvement, therefore, is essentially a call for an independent process, justice, impartiality and the guarantee of follow-up measures or solutions (Submissions by international organisations and local organisations). As one submission notes, *“Up to now none of the Commissions have given any solutions. That is why we are requesting foreign investigation Commissions. We don’t want internal investigating Commissions”* (FGD in Trincomalee).

### 6.1.1. Forms of international involvement

140. A number of submissions envisage two distinct forms of international involvement in the TJRNRC—direct involvement in the mechanism through appointment as members and indirect involvement through an advisory or oversight role. The submissions that call for direct involvement suggest that the TJRNRC should include both local and international members, internationals who have relevant expertise, and members of the diaspora who have *“moderate views”* and accept that all communities are stakeholders. Some submissions also grapple with the issue of the leadership of the TJRNRC, particularly with respect to confronting accusations of bias if the Chairperson is a member of one of the ethnic communities in the country. To address this issue,

one submission suggests that the Chairperson should be a neutral, well-respected, international official (Submissions by organisations and individuals).

141. In the case of indirect involvement, the submissions suggest the establishment of an international committee of experts to advise the national commissioners on best practices and the implementation of an oversight function through which international experts would monitor and scrutinise the process (Submissions by international and local organisations). The submissions also call for independent observers, which could include members of the diaspora, and suggest that if the TJRNRC is monitored by an international organisation (for example, the UN) or international experts, then the mechanism could comprise of local commissioners (Submission by a diaspora organisation; web submission by an individual).

### **6.1.2. Opposition to international involvement**

142. Some submissions oppose international involvement in the TJRNRC and highlight the importance of local ownership of the mechanism—*“We need local people for this...We should fix our own problems. No need to give it to outsiders”* (FGD in Ruwanwella). Another submission states, *“...only Sri Lankan citizens paid solely by the Government of Sri Lanka should serve on such a commission.”* The reason given for this is that any international involvement (OHCHR is highlighted by the submission as an example) would work towards furthering the interests of US imperialism (Submission by an individual). Other submissions, however, are willing to accept the assistance of international experts and some degree of involvement by the UN. For example, the opposition to international involvement in facilitating the establishment of the TJRNRC was criticised at a public meeting in the North Central Province. It was stated that people do not have enough knowledge about the process locally and that *“...they (foreigners) are not coming to make any court decisions. They are coming to support the process and assist”* (Submission at a public meeting in the North Central Province).

### **6.2. Criteria for Selecting Commissioners**

143. The issue of appointing commissioners and the basis of the appointments threw up a number of different suggestions, some in stark contrast to one another in terms of composition, but all united in the demand for fair representation. Many submissions stress the importance of including all ethnic groups in the TJRNRC—*“...every communal group should be included”* (FGD in Kurunegala and public meetings in the North, East, North West, North Central and South). One submission suggests that a quota system for all communities and affected groups should be considered and that 50 percent of the commissioners should be members of the Tamil community (Submission by a diaspora organisation). In terms of fundamental criteria for appointments, many submissions state that the Commissioners of the TJRNRC must be selected on the basis of their reputation for good conduct, historical and geographical knowledge of conflicts, professionalism,

impartiality, integrity and empathy—members “...*who understand and will speak for the people*” (Submissions by individuals; FGD in Trincomalee). In addition, a “proven” track record of independence and non-partisan conduct was also identified as basic criteria for selection. One submission states that the Commissioners should not have any record or be accused of sexual and gender-based violence (Submission by a local organisation).

144. Some submissions suggest that victims, well-respected academics, medical doctors, female physicians, war-disabled individuals, psychosocial experts, public servants, members of civil society, ordinary citizens, retired judges, religious leaders, experts in relevant fields and any other actors who have been involved in peace-building processes should be considered as candidates for appointment (Submissions by individuals; submissions at public meetings in the Northern, Eastern, Southern and Central Provinces). Moreover, some submissions by the families of the missing in action and by groups of disabled soldiers stress that there should be representation from the families of the armed forces in the TJRNRC. One submission plays down the need for the president to appoint any commissioners and instead stresses the importance of appointing “...*someone who we can trust, who will talk about our problems*” (FGD in Matara).

145. The submissions were divided on the involvement of the clergy in the mechanism. Whilst some submissions oppose the involvement of religious leaders, others are less opposed but argue that the TJRNRC should not comprise solely of religious leaders. Despite acknowledging that religious leaders could play a role in the recommendation of amnesties (See Section 10 of this chapter), one submission suggests that it would be prudent to exercise caution when appointing religious leaders given the role some of them have played in dividing communities and stoking racial hatred (Submission by a local organisation).

146. The issue of empathy is one that cuts across most submissions, especially those that recount individual experiences of dealing with previous commissions and enduring an insensitive line of questioning as well as insulting comments. This lack of sensitivity is the reason why many submissions suggest that the commissioners should have “...*proven knowledge, expertise and experience in the promotion of international human rights and humanitarian law and dealing with traumatised victims, victims of sexual violence and child victims*” (Submissions by international organisations; submissions by individuals). On the issue of language, the submissions stress that the commissioners and staff must be able to communicate in the respective language of affected communities (Submissions by local organisations; submissions by individuals).

147. The following were considered as fundamental selection criteria and qualifiers in the appointment process for the TJRNRC:

- Appoint 7 to 9 commissioners to serve on the TJRNRC
- Ensure equal gender representation

- Include a “...pluralist representation of Sri Lankan civil society, including representatives of non-governmental organisations involved in the promotion and protection of human rights and women’s groups.”
- Ensure a fair representation of minority communities
- Ensure that members of civil society, opposition groups, the Government and the international community participate in and contribute to the design, selection process and implementation of the mechanism.

### 6.3. Process of Appointment

148. Due to a history of political appointments and the politicisation of institutions, which continues even today, some submissions suggest several processes for ensuring suitable and fair appointments to the TJRNRC (and the other mechanisms). The submissions note the importance of upholding an independent process, preventing political interference and ensuring that affected communities are able to nominate commissioners. As such, the submissions suggest the following processes of appointment (Submissions by local and international organisations):

- All appointments should be managed through a transparent process, which begins with a public nomination process, a review process by a qualified and representative panel, a further round of public scrutiny and finally ends with a shortlist presented to the President of Sri Lanka or a relevant appointing authority for consideration.
- A separate nominations committee should be established and made responsible for soliciting nominations and applications from all sources, shortlisting between 75 to 100 names and publishing the list to enable public vetting of the candidates. Following which, the committee will draw another shortlist of 25 names that will be passed on as recommendations to the Constitutional Council. The Council will select the candidates for appointment and make recommendations to the President of Sri Lanka. The President should not be permitted to appoint candidates outside of the recommendations of the Council.
- The Commissioners should be appointed by an independent committee that comprises members of civil society, minority groups (both ethnic and religious) and representatives of affected communities.

### 6.4. Recruitment of Staff

149. In terms of appointments or recruitment after its establishment, the submissions suggest that the TJRNRC should be vested with the power to hire qualified professionals, technical and administrative (national or international) staff, and to second public officials. The TJRNRC should also be able to obtain technical advice from consultants on a wide variety of areas related to its investigations, including law, medicine, forensic science and any other required fields of expertise

(Submission by an international organisation). In order to ensure complete synergy and clarity between the mechanisms, it is suggested that the staff of the TJRNRC should “...*function coherently, connected to each other and to other TJ mechanisms. At present, there are different bodies...each doing its own work. This confuses affected people and reduces participation*” (Submission by a local organisation).

#### **6.5. Execution of Duties**

150. In order to protect the integrity of the TJRNRC, it is important that the commissioners of the TJRNRC are independent and non-partisan actors. One submission states that the Commissioners and staff should “...*act independently and without political or other bias, prejudice or motive*” (Submission by an international organisation) Moreover, the submission suggests that the commissioners should be given certain privileges and immunities in order to protect them from defamation proceedings and other civil or criminal action as a result of the opinions and recommendations that are published in the reports of the TJRNRC.

#### **6.6. Victim-centric Processes**

151. The importance of a victim-centric process and victims’ ownership of the TJRNRC is underscored in many submissions. As one submission states, “*the victims and their loved ones should be given pride of place and importance in the search for truth, complemented by whatever assistance and support they would want*” (Submission by an individual). During the consultations, many affected persons stated that they did not want a process of truth seeking that was driven by “*self-appointed community leaders and political leaders*” (Submission by an international organisation). At a fundamental level, affected persons from all communities believe that they must have a substantive role to play in the mechanisms, including in the design and functions, because “*self-serving*” political leaders could no longer be trusted to represent their views (Submission by a diaspora organisation; submissions at public meetings in Jaffna). This would include the appointment of representatives from specific affected groups to positions of authority in the structure that would be responsible for implementing and operationalising the TJRNRC (Submission by an international organisation).

#### **6.7. Vetting Appointments**

152. It is important that the Commissioners and staff of the TJRNRC are vetted to ensure that persons accused of sexual and gender-based violence are not part of any of the processes and units of the mechanism (Submissions by international and local organisations). Many affected persons believe that they should be empowered to select and have veto rights over Commissioners and any other appointments to positions of authority within the TJRNRC (Submission by an international organisation).

## 6.8. Security of Tenure and Grounds for Removal

153. The framework for safeguards within the TJRNRC should factor in the security of tenure for commissioners, which is important in order to prevent any attempts to alter the composition of the TJRNRC based on partisan interests or political pressure. One submission, however, notes that security of tenure should be guaranteed “...except on grounds of incapacity or behaviour rendering them unfit to discharge their duties” (Submission by an international organisation) In the case of the latter, the decision to terminate a Commissioner would be made according to due process.

## 7. Structure and Finances of the TJRNRC

154. Some submissions comment on the structure of the TJRNRC, including the importance of functioning as an independent body, having a decentralised structure, ensuring access to affected communities and allocating adequate funding in order to exercise its mandate without constraint. It is also suggested that an independent secretariat should be established along with special administrative structures for the purpose of supporting the TJRNRC. It is important to note that these suggestions are linked to the demand that the structural integrity and procedural independence of the TJRNRC should be safeguarded.

### 7.1. Structure of the TJRNRC

155. The CTF observes that very few submissions address the structures and finances of the proposed TJRNRC. A clear demand from the few submissions that did is that the TJRNRC should establish a presence in the most affected regions, provide translation services for other languages spoken in the region and ensure transparency in operations. These suggestions focus mainly on the issue of access, which has been a constant concern for many who participated in the consultation process. It is also suggested that the TJRNRC should be composed of specialised units that are responsible for research and investigation, outreach and communication, and administration (Submission by a local organisation). Whilst the overall structure of the TJRNRC could vary depending on particular preferences with respect to design, the CTF stresses that the TJRNRC should be accessible to the most affected communities and groups.

156. In general, the submissions prefer a decentralised structure, with individual units of the TJRNRC established on a district basis (Submissions by individuals). The CTF notes that the submissions did not express a preference for regional commissions or a national commission. The submissions do, however, envisage the TJRNRC reaching out to affected communities and seeking information from them by visiting villages around the country (FGD in Trincomalee). It is worth noting that some submissions demand for separate commissions or ethnic commissions to investigate and record the specific violations and abuses committed against certain communities

(Submissions at several public meetings) [See Chapter VI: Beyond the Four Mechanisms, Section 5].

### 7.1.1. Structural integrity and procedural independence

157. A few submissions address the importance of safeguarding the independence and integrity of the TJRNRC, particularly with regard to interference from the Government. It is acknowledged that the TJRNRC should function as a wholly independent body with no administrative connections to the executive functions of the Government and to any institutions or agencies that might be the focus of investigations in the future (Submission by an international organisation). This is closely linked to the expectation that the TJRNRC, as an independent body, must be able to exercise executive authority and should implement its mandate without any intervention or supervision from the Government (Submission by an international organisation). It is also suggested that an independent secretariat should be established by the TJRNRC in order to support its work (Submission by an international organisation). Another submission states that special administrative structures should be considered to support and manage the overall process (Submission by an individual).

158. Other comments with regard to the structure and processes of the TJRNRC include the following suggestions:

- Consult families and inform them about the structures of the TJRNRC before it is established. The importance of open spaces for discussion is noted by some submissions.
- Ensure that the TJRNRC and its structures are disability-friendly spaces, and provide access to appropriate facilities and services.
- The Government should establish a mechanism (as an extension of the TRC) outside of the country to enable members of the diaspora (both affected persons and suspected perpetrators) to participate.
- Anticipate and plan for communal unrest in reaction to the work of TJRNRC. In these plans, develop measures to respond to and ameliorate tensions throughout the process.
- Establish a separate department within the TJRNRC to oversee non-recurrence in order to ensure that it is given priority. This department should be led by a senior deputy commissioner.

### 7.2. Ensuring adequate funding

159. Some submissions highlight the challenges with regard to funding, particularly as numerous commissions have faced significant funding issues that not only contributed to procedural delays but also undermined their work. The submissions highlight the need for a well-resourced TJRNRC with *“sufficient staff and physical resources to carry out a thorough and timely operation”*

(Submission by a diaspora organisation). In order to ensure this, it is suggested that the State should allocate sufficient financial resources to the TJRNRC through the Consolidated Fund so that it is able to function independently and without constraint. Moreover, the mechanism must be permitted to receive funds from foreign, domestic, corporate and individual sources (Submissions by international and diaspora organisations).

160. One submission specifically states that a strategic plan and a two-year budget proposal should be developed and made public. The Government should review the plan with the participation of international experts and relevant technical organisations. Afterwards, the Government should approve the final budget and make a public commitment to fund the TJRNRC (Submission by an international organisation). As the CTF notes in the Methodology chapter, the funding issues it experienced during critical points of the consultation process should serve as a point of concern about the ability of the Government to allocate adequate resources and to support the structures of the proposed reconciliation mechanisms.

## 8. Security Concerns

*“We are all eye witnesses, we have seen a lot, we could not do anything because we have to save ourselves and then we were afraid.”*

(Female participant at a Public Meeting in Mullaithivu)

*“The commissions only get evidence from people. They write reports and their job is done. They need to guarantee security for those who made gave evidence even after that... We don’t trust fully to speak to the commissions, the reason being fear.”*

(FGD in Trincomalee)

161. Safety continues to be a critical concern and is also perceived as a barrier to wider participation in the reconciliation process. The submissions express concerns about the security of those who testify and the social ostracisation that could occur as a result of participating in the process.

### 8.1. Safety and Security of Affected Persons

162. The fear of telling and seeking the truth was also expressed during zonal consultations in the Southern Province and the North Central Province. In the latter, the submissions state that those who possess information and who may appear before the Commission to speak the truth must be protected:

*“We should be concerned about the security of the person who is telling the truth. We cannot get away from the matter after we get the truth from the person, saying that we know the truth now.”*

*We have to think about the damage we have done to the person. We know the information. After, that particular person is over. Then that person might get disappeared. If that person knows information, special security should be provided to that person. Otherwise, people do not come out to tell the truth.”*

(Participant, FGD in Anuradhapura)

163. A written submission by a local organisation also points to the number of official and unofficial surveillance structures in place at present, primarily through the CID, TID and even social media. These structures are used to intimidate people and exaggerate issues, which has the overall effect of preventing people from coming forward to tell the truth. This point was reiterated during the zonal consultations, where fear and a lack of trust actively inhibit people from freely speaking the truth.

*“We don’t know who is who in society. There is always someone watching. Even in this group there might be someone. There is no security. If we are to tell the truth, there needs to be a guarantee of safety.”*

(Submission by a torture survivor at a FGD in Batticaloa)

164. It is, therefore, suggested that the TJRNRC should develop a conducive environment for truth telling, which would go some way towards encouraging people to participate. This point is particularly relevant given the general fear of engaging with previous commissions, including the Paranagama Commission, due to threats and the presence of security officials (Participants at public meetings in the North).

165. Members of the diaspora, particularly affected persons who were forced to flee the country, have also reiterated similar concerns about security. The submissions made by women’s groups underscore the importance of security and the need to mitigate any form of social ostracisation or cultural repercussions that women who come before the TJRNRC might face.

166. The following suggestions were made as solutions to the issues and concerns highlighted above:

- Protection for affected persons and witnesses should start from the beginning of the process and continue until the end—from preparation and delivery to implementation. Safety must also be ensured after the testimonial process.
- An expert must be placed in charge of protecting affected communities (who may come under attack for talking about larger-level atrocities) and analysing the security conditions from time to time. This level of protection should be immediately available.
- Some submissions suggest the use of an intermediary—a role that could be played by international non-governmental organisations or even the UN—in order to gather the

voices of affected persons living overseas and loop them into the transitional justice process. Others suggest neutral foreign embassies and similar venues.

- The government should give clear instructions to the security forces and police that they are not to interfere with the TJRNRC's work around the country.
- The TJRNRC should be provided with adequate security to ensure that its staff, the information collected, work material and institutional infrastructure are not harmed or destroyed during the course of its work.
- In the case of the North Central Province, the hesitation to tell the truth may be due to the fact that people do not trust government authorities. Furthermore, in order to build the trust required for truth telling, interaction amongst different ethnic communities was also suggested.

## 8.2. Victim and Witness Protection

167. In light of security concerns, a number of submissions prioritise the need for Victim and Witness Protection Unit. This Unit should be established under the TJRNRC or as an outreach unit. Instead of centralising this particular function, one submission proposes that regional offices should be established (Submission by an international organisation). The same submission suggests that the main functions of this Unit should be the following:

- Provide effective protection to affected persons, witnesses, their families and others who are put at risk due to their engagement with the TJRNRC. Protection should be provided from the time a witness first engages with a mechanism, throughout any proceedings that may ensue, after the proceedings are completed and when the witnesses return to their villages/homes;
- Train and advise all staff of the TJRNRC and the Commissioners on dealing with affected persons without causing any further harm; and
- Provide effective support, including psychosocial assistance, to witnesses participating in the TJRNRC and giving testimony (See Chapter VII: Psychosocial Considerations and Security)

168. This Unit is also seen as a coordinating body with the Victim and Witness Protection Units of the other mechanisms as well as the national Victim and Witness Protection Authority and Division (Submission by an international organisation). It is recommended that civil society should provide technical assistance, guide the process and function as watch-dogs on victim protection (Submission by a local organisation).

## 9. Women and the TJRNRC

*“Previously established commissions...have a clear disregard for the reality and interest of women. Gender-blind mandates fail to consider the mental trauma and economic conditions.”*

(Submission at a public meeting in the Western Province)

*“Women should not be refused in the process towards final solutions. Women and children are affected so much in several areas. So women representation is very essential.”*

(Submission at a public meeting in Jaffna)

169. The significant number of women who continue to come forward in search of the truth underscores the need to consider the challenges faced by them as a result of multiple conflicts. The submissions stress the importance of ensuring gender equality and participation; developing supportive structures and spaces; creating an enabling environment, and providing adequate security.

### 9.1. Acknowledging Violations and Violence Committed Against Women

*“I too underwent much atrocities...When I was on the 4th floor I couldn't bear the torture and my activities changed. I laughed when I had to cry and cried when I wanted to laugh. So they wrote in a card that I was mentally ill and sent me to the Vavuniya hospital.”*

(Submission by a female ex-combatant at a public meeting in Kilinochchi)

170. Many submissions call for the inclusion of rape and the sexual assault of women during the war within the Scope of the TJRNRC (Submissions at FGDs and public meetings in Jaffna and Mannar; written submissions). At an FGD in Ampara, the vulnerability and rape of women from border villages in IDP camps was also raised by a participant, who went on to stress that the State and security forces should bear responsibility. One submission by a local women's rights organisation, however, stressed the importance of not only acknowledging the crime of sexual violence but also the multiple violations and abuses committed against women, which include arbitrary executions, torture and mass killings (Submission by a local organisation). It is also suggested that the TJRNRC should consider the violations of socio-economic rights and record the severe economic losses suffered by women as a result of the war and other conflicts.

### 9.2. Including Women's Voices

171. The submissions envisage women participating in decision-making processes and providing leadership as potential Commissioners of the TJRNRC. In terms of representation, the preference for a quota varied slightly, with one submission calling for at least 30% representation of women and the others calling for 50% representation. It is suggested that affected women from all

communities must be represented at all levels of the TJRNRC and appointed as members of staff (Submissions by local organisations). The submissions note that issues pertinent to women should be managed by them, especially the crime of sexual violence (Submissions at public meetings). It is also suggested that the multiple truths, experiences and demands of women should be recorded in a separate chapter of the report(s), which would be written and published by the TJRNRC. The same submission states that these experiences should be translated and reflective not only of language but also of body language and emotions. During the process of recording and documenting information, the TJRNRC should ensure that it carries out a gender-based analysis (Submission by a local organisation).

### **9.3. Developing Supportive Structures and Spaces**

172. Some submissions state that the obstacles preventing women from testifying—such as finance, transportation, health issues, mental well-being, disability, language, accessibility and child care—must be accounted for in the design of the TJRNRC. For example, it is important that the TJRNRC provides adequate sanitary facilities and private spaces for mothers who need to nurse their children. Moreover, one submission states that a conducive space must be provided, where women would feel comfortable enough to share their experiences (Submission by a local organisation). It is also suggested that some form of support should be provided before experiences are shared in order to encourage women to participate. This supportive capacity could be spearheaded by women's organisations, women trained in advocacy and human rights issues, and other groups or individuals that work closely with affected women (Submission by a local organisation).

173. Some submissions identify the need for a special unit to be established within the TJRNRC, which would be responsible for receiving women's stories and testimonies of violations and abuses. The submissions note that this unit should include affected women from the diaspora and their stories of displacement, loss and suffering (Submissions by local organisations). A similar suggestion was put forward with respect to the TJRNRC establishing and appointing a 'Gendered Task Force', which would create a safe and confidential environment for female victims of sexual violence to present their testimonies (Submission by a local organisation). In order to facilitate unrestricted participation at all levels, the TJRNRC should be mandated to travel abroad in order to record women's testimonies, particularly in relation to rape and torture. If requested, affected women should be allowed to testify in groups (Submission by a local organisation). The submissions also stress that appropriate time must be given to affected women and witnesses to prepare themselves for the process of testifying. If any specific recommendations or complaints arise from the testimonies, the TJRNRC should implement them (Submissions by local organisations).

174. One submission suggests that a gender and sexuality unit should be established within the TJRNRC and that adequate funds should be allocated for its activities. The submission, however,

does not specify the specific purpose and functions of such a unit. The same submission proposes a specific budgetary allocation for gender within the TJRNRC (Submission by a local organisation).

#### **9.4. Creating a Safe and Enabling Environment**

175. The submissions note the importance of creating a space for women to testify freely before the TJRNRC, including the possibility to testify confidentially. The submissions express concerns about possible social ostracisation, cultural repercussions, gender-based discrimination and disparities that women may face if they testify before the TJRNRC (Submissions by local organisations and individuals). In order to mitigate these issues and prevent the re-victimisation of affected women, the submissions suggest the following processes and structures:

- Affected women/victims and witness who share information with the TJRNRC must be ensured of their safety and should not be placed in a disadvantaged or precarious position. A mechanism must be in place to counter any threats to affected women and witnesses;
- As the current Victim and Witness Protection Act and the relevant protection authority are viewed as incapable of providing adequate security, community-level actors (especially women's groups) should be involved in sharing their experience of protection-related work;
- The TJRNRC should have a code of conduct for gender sensitivity;
- Adequate support and care must be provided to affected persons and witnesses who are likely to be ostracised by their community for speaking out about the injustices they have endured;
- The TJRNRC must make recommendations to address violence and hate speech against women, to remove security officials from civilian spaces and to include more tri-lingual women in the police force;
- In terms of non-recurrence, the TJRNRC should ensure that women are consulted on security-sector reform so that the military are able to understand women's perspectives on security.

#### **10. Issue of Punishment versus Amnesty**

176. There was no consensus on the matter of providing or recommending amnesties. Some submissions favoured the idea of amnesties, as both an incentive for truth, and as a necessity for reconciliation, whilst there were others who sought punishment and justice for crimes committed against them for non-recurrence. This section attempts to encapsulate the nuances around the 'punishment versus amnesty' debate as highlighted by the submissions.

177. On punishment and prosecutions, there were strong sentiments expressed that only

punishment will ensure non-recurrence. It is also important to note the broad interpretation of what affected persons and families interpreted as ‘punishment’ and ‘justice’—which often veered away from a traditional understanding of justice. When it came to retributive justice, there was then the question of who undertakes its delivery.

178. Those who favour amnesties also speak of various caveats around the issue, such as crimes and perpetrators beyond amnesty, coupled with questions around who makes the call on amnesties and what role affected persons will play in making these decisions.

179. Submissions also highlight this dichotomy between prosecutions and amnesties in the following manner:

*“With the South African Truth and Reconciliation Commission, the granting of amnesty is considered one of the most controversial aspects with Bishop Tutu arguing that “freedom was exchanged for truth”. The trade-offs must be considered at the outset of any transitional justice process. Can there be trade-offs for truth? For justice? And at what price? These questions bring out the tensions between restorative and retributive justice into sharp focus. Offering an amnesty may facilitate the truth but it may close the door on accountability. The balance between truth and justice is a delicate one, requiring considerable attention—especially to avoid its use as a tool to serve vested political interests. While jurisprudence now establishes particular limitations with amnesties, there needs to be greater thinking and debate on incentives and options for truth and justice.”*

(Submission by an individual)

180. The CTF observes that the consultation process itself was considered to be providing an opportunity and space to speak about, reflect on and transform previously held strong opinions on prosecution and punishment, to more mellow forms of punishment, based on an acute sense of pragmatism and forgiveness.

### 10.1. Prosecution and Punishment

181. For the transitional justice process to be effective, it is necessary that ‘justice’ is accepted by victim groups and is *seen* to be acceptable and satisfactory. Given the lack of faith by the affected communities in the State’s ability to mete out justice, and the failure of a long line of COIs to pursue punishment through prosecution of wrong-doers, it is crucial that the **TJRNRC enables prosecutions through a fair, acceptable judicial mechanism against those responsible**. For example, one submission notes, *“Thus, a truth commission minus trials will not satisfy victims for whose ostensible benefit it will be established, and will therefore likely meet their displeasure”* (Submission by an organisation). The Judicial Mechanism chapter (Chapter V) deals with this aspect comprehensively.

182. The CTF received a number of submissions from all parts of the country calling for retributive justice for crimes by way of punishment through prosecutions. These sentiments were not limited to the North and East, where affected communities sought punishment for crimes committed against them by the State forces, the LTTE, as well as paramilitary groups, but was a call also common in the South. For example, a participant at a public meeting in Puttalam held that, *“According to the death certificate it’s clear the LTTE was responsible, but to date we have not been able to find any information... I’m asking you to enable justice for us... please ensure a mechanism for this. Either we’re given information if our father is alive, or we have to get assistance. We want to get justice for those who ended his life.”* Similarly, a participant at a public meeting in the South observed, *“If soldiers did something wrong, they have to be punished, or the law should extend to those who ordered the commission of the crimes, and punish them. The law should be enforced up to those who ordered it, and they should be tried for the truth and punished.”*

183. While there was an unmistakable sense of vengeance in some of the participants who favoured prosecutions, they also felt that punishment is the only way to **fight the culture of impunity and guarantee its non-recurrence in the future**—*“Legal action is essential. The families of the perpetrator must also experience what we suffered for seven years. Punishment should be like that. Then only it will not happen to the future generation as well... Agree that this will not amount to reconciliation. But they should be punished”* (Submission at an FGD in Mullaithivu). This was also reflected in submissions calling for prosecutions in order to end the cycle of impunity—*“Sri Lanka’s culture of impunity has been demonstrated to lead to cyclical mass violence. This cycle will not be broken if amnesties are granted”* (Submission by a local organisation). Furthermore, participants also felt that punishment was necessary to *“...create the mentality that even a high official can be punished before the law equally”* (Submission at an FGD in Mullaithivu).

184. The submissions that favoured punishment, however, also felt that law enforcement must be done sensitively, taking into account circumstances. It was stated in a FGD with Disabled soldiers in Anuradhapura that, *“If there was something wrong that was done, whether we like it or not, the law should be enforced. However, law enforcement must be done sensitively. No one here has gone and killed anyone because they wanted to do so personally—no one has that intention... We’re sent to war. There’s enemy before him, then what do you do? He does his duty. He never wanted to kill an innocent man.”*

#### 10.1.1. Who undertakes the delivery of retributive justice?

*“Perpetrators should be brought before the law. They should be punished by the judiciary. To avoid recurrence, they need to be punished.”*

(Submission at a Public Meeting in Karaveddy)

*“The commission should also have the option to refer matters of grave human rights violations to the judicial mechanism.”*

185. It appeared, perhaps due to the nature of previously appointed COIs, that the submissions did not envisage the TJRNRC itself to have the power to deliver punishment/retributive justice. As a non-judicial body, the TJRNRC was perceived to be ill-equipped with the knowledge and expertise to assign criminal responsibility—*“This mechanism is considered important for the reconciliation process. It is however noted that “Truth” and “Justice” parts are pursued through “Judicial Mechanism with a Special Counsel”—it is assumed that the said mechanism makes a punitive approach. Therefore, it is suggested that only the “reconciliation and non-recurrence” parts be assigned to this mechanism... the mandate of Reconciliation and Non-Recurrence Commission should be limited only to make recommendations, and if necessary to achieve restorative justice”* (Submission by one branch of the armed forces).

186. Some submissions specifically highlight the need to punish perpetrators responsible for disappearances. Of these submissions, some saw no relevance of the TJRNRC in investigating disappearances for two reasons: 1) There was an expectation that this was mandated to the OMP, 2) Due the TJRNRC’s perceived power to grant amnesties to perpetrators. These submissions insisted on accountability—*“Although OMP talks about truth seeking, the women want OMP to talk about accountability. They want to know who did what to their husbands and sons. At the same time, they want to make sure that this kind of injustice acts should not repeat again in the future. Therefore, they need the responsible person to be punished. All the legal system in the country must be strengthened”* (FGD in the Western Province) and called on the OMP to refer the findings to a Special Hybrid Court (Submission by an organisation).

187. However, with regard to other crimes, for which there is no dedicated truth-seeking mechanism, there was an expectation that prosecutions and punishment will follow truth revealed through the TJRNRC, through an appropriate judicial body (for exceptions on divulging information gathered through the TJRNRC to prosecutions, see Section 5.1.3: Power to Refer Cases for Prosecutions). The submissions, therefore, recommend that the TJRNRC works closely with a judicial mechanism to refer and assist with information, cases where crimes were committed and where victims deemed and demanded that prosecution was necessary—*“The Truth so found should feed into Special Court that could mete out justice to those affected”* (Submission by an organisation), *“The Truth Commission should co-operate with prosecutors to ensure that perpetrators who truthfully testify before the Truth Commission are granted reduced sentences in the event that they are later tried and found guilty”* (Submission by an organisation). One submission also recommends that a special legal committee reviews statements for adequate evidence to pursue redress through the special court, with access to legal aid (Submission by an individual).

### 10.1.2. Varied perceptions of ‘Justice’ and ‘Punishment’

*We don't need roads; we don't need lights...we need [the former President] taken out of parliament. He needs to come and face questions from the people.”*

(Submission at Public Meeting in Maritimpeattu)

188. It is clear in the submissions that affected communities’ demands for and interpretation of justice are very personal. It is also evident that the passage of time had dimmed the need for justice for some, whilst for others, time aggravated the need for justice. Affected communities’ relationship with and experience of justice reflected the **lack of faith in any domestic accountability mechanism to securely and fairly mete out any real form of justice** and this influenced their views and demands. The CTF notes that this is a larger issue beyond affected communities’ real preference of any particular form of justice.

189. While submissions expected a judicial body to undertake prosecutions in order to deliver justice of a retributive nature, participants also spoke to the sheer breadth of types and forms of justice and punishment available in a transitional justice setting, which may perhaps be undertaken through a body such as the TJRNRC. As such, a participant from a public meeting in the Western province notes that *“People are thinking in terms of punitive justice right now and this has to be taken into consideration; in situations where people have committed exceptionally vile acts then punitive justice should come to place. But on a general basis we have to be committed towards the perpetrator as well.”*

190. The submissions varied on the interpretation of what constitutes ‘justice’ and ‘punishment’. The scope of what constitutes a ‘fair remedy’ for crimes committed against them spanned from retributive forms of justice such as legal penalties to reparative and restorative forms of justice. Some submissions also seemed to recommend these variants, expecting a faster outcome for disputes through the TJRNRC, in light of the long delays experienced in the existing justice system (Submission by an individual).

- Restorative justice: Rehabilitation already undergone or currently underway—as a form of punishment or justice.
- Retributive justice: Submissions indicate that detention already undergone (through PTA’s enforcement for example) or currently undergoing should be treated as a form of punishment or justice for crimes committed. Some submissions expressed anger at how former governments have treated perpetrators, forgiving them and co-opting them into government, despite crimes committed, and demanded strong legal sentences as punishment, such as the imprisonment or the death sentence (Public meetings in the South, FGD in Aranthalawa). Submissions were also very specific in their call for perpetrators to “suffer”. They demanded that perpetrators are made to suffer for the same amount of time

or at least half the number of years affected communities suffered through due to the crime(s) committed (FGD in Mullaitivu).

- Reparative justice: Submissions state that affected communities will be satisfied if any state benefits, such as pensions that the perpetrator is entitled to, are revoked and channelled towards the affected person's well-being (FGD in South). Submissions also request forms of compensation and livelihood support (as elaborated in Chapter II: Reparations) as justice.
- A fuller understanding of truth constituted as justice for some (See Section 2 of this chapter).
- Getting their loved ones back from official or unofficial detention as justice.
- State's public acceptance of the crime and acknowledgement of its responsibility and culpability in being unable to prevent the crime—as a form of justice.
- Perpetrator's confession, acceptance or acknowledgement of crimes committed, perhaps publicly—as a form of justice: *"If you find people who committed the crimes, we would like it if they confessed to their wrongs. At least if they say that they did something like this., then the truth can be a form of relief/compensation"* (FGD in Hambantota.)

191. As stated above, whilst it is important that the TJRNRC enables and forwards information for prosecutions in cases where affected persons seek retributive punishment through a judicial mechanism, there are other types of punishment or justice that could be administered by the TJRNRC.

### 10.1.3. Tribunal

*"Who is responsible [for Mullivaikkal massacre]?...Whoever is responsible should be brought in front of people? Should come in front and ask for forgiveness."*

(Male participant at Public Meeting in Mullaitivu)

192. In some submissions from Kilinochchi and Mullaitivu, there were calls for a mechanism that would include elements of truth-telling and justice and accountability. In this sense, the mechanism as they conceive it stands between a judicial mechanism and a truth-seeking commission, and in many ways resembles a public tribunal. Key elements that they spoke about include a) public truth telling that included broadcasting on the media of their accounts and suffering b) holding perpetrators to account before the public.

193. With regard to justice, some persons felt it was important that perpetrators be held to account but in other instances they felt that amnesty could be considered. A key element of this mechanism is victim participation, including in hearing cases and making decisions on punishment or amnesty. They also suggested the involvement of international judges in this tribunal. The specific violations that were suggested for this mechanism all pertained to the last stages of the war, including the use of cluster bombs and chemical weapons, rapes and the indiscriminate bombing of civilian targets (including hospitals and food distribution centers).

## 10.2. Amnesties

*“All political prisoners need to be granted amnesty if there is to be general reconciliation.”*  
(FGD in Mannar)

*“I am affected because my son, who would have looked after the whole family is missing and his loss was critical. But I don’t want to punish those who did this with the same kind of punishment. This will not amount to reconciliation. But if they are willing to accept their charges, I am prepared to excuse them.”*

(FGD in Mullaithivu)

194. Given the perception that amnesties are a tool used to evade accountability, the objective of establishing the TJRNRC is perceived to be that of truth seeking rather than a body established to provide amnesties. Submissions suggest that the Government clearly communicates the objective of providing amnesties so as to also avoid a situation of being seen as favouring one section or community over others. Additionally, amnesties were highlighted in submissions as a way of addressing an already overwhelmed, inundated and inefficient criminal justice system.

195. A vast majority of submissions that recommended granting amnesties to perpetrators, justified it based on two main reasons: 1) As an incentive to participate and reveal the whole truth and 2) For reconciliation. These are discussed in detail below. Alongside these reasons, there were those who opted for amnesties for other reasons. These include:

- Families did not believe their disappeared loved ones were still alive, or they already had confirmation of their death—*“No use of punishing whoever it is. Forgive them. We won’t get our children back”* (Submission from Manthai East).
- Families did not believe that punishment and retributive justice could deter or prevent the recurrence of violence—*“Ask them what they did, but don’t punish them. Prosecution will not make better people”* (Submission by a family member of a disappeared person).

### 10.2.1. Amnesties for truth/as an incentive to participate

*“If soldiers come forward and accept their mistakes, I feel they should not be punished. They are also somebody’s children. Their parents should not go through what we are going through. No one should.”*

(FGD in Mullaithivu)

*“They said that decision regarding forgiving those who give valuable information regarding our children can be made only when the TRC reveals the truth behind their tragedy.”*

(FGD in Kilinochchi)

*“I was an ex-cadre. I was given amnesty... But we should find out who did what crimes.”*  
(Public Meeting in Mullaithivu)

196. There was recognition that amnesties can be useful as **a tool to draw out truth and information that is otherwise difficult to procure**. Submissions were cognisant of this in the following ways:

*“Given the right climate and incentives some persons may want to present themselves before the Commission, and own/admit any wrongdoing during the conflict period. This would provide an opportunity for the ‘guilty party’ to face individuals/families who have been harmed. Should the persons who have suffered as a result accept the apology of the individual, he should be exonerated of his misdeeds. The matter should end there.”*

(Submission by an individual)

*“Do you think someone from the army or the LTTE can speak the truth? I may tell you something that I witnessed but that might be something that will get someone else into a lot of trouble. Therefore, it is unlikely that people from the military or the LTTE will tell the truth. Therefore, amnesty is essential in such cases.”*

(Submission by a military officer at an FGD in North Central Province)

197. A number of participants from the North and the East suggested that they are willing to offer amnesty to State forces in return for acceptance of their wrongs. As held by a participant from Mullaithivu, *“The Defense Ministry which was there during the war must be called in for questioning and need to get the truth from them. Punishment must also be given to them. If the officers involved come forward on their own accord to say what happened actually, they could be given general pardon. We are very firm on this matter.”*

198. On disappearances, submissions illustrated a willingness to forgive perpetrators so that families could find out the truth about their missing family members, any information about them or to have them back. In Kilinochchi, Mullaithivu and Batticaloa in particular this was a strong request of the TJRNRC: *“We are prepared to forgive and forget, just let them go”; “If people provide information on the whereabouts they should definitely be provided amnesty”; “Offer incentive to come forward”; “Abductions were done not only by the Government but by individuals too. As such they themselves should come forward and confess to everything and ask for forgiveness. These types of information must be brought out by the officers and Army” and “Not only will we give them amnesty but we will give them our thalis”* (Mother of a disappeared person in Kandavalai).

199. Whilst there are good reasons to offer amnesties to capture the most comprehensive account of the truth, at least one submission alludes to a different approach to incentivising perpetrators to

cooperate with the truth. The submission argues that a strong prosecutorial arm in a truth-seeking mechanism (referring to the OMP), could provide incentives for perpetrators to participate by having the power to offer immunity agreements, plea bargains or reduced sentences for where the witness is able to provide useful information. The submission argues further that this would ensure that participating witnesses receive *“tangible guarantees in exchange for their full cooperation”* (Submission by an organisation). Another submission, however, cautions that such agreements *“must exclude immunities or confidentiality for information regarding crimes under international law, which the state has obligations under international law to investigate and, where sufficient evidence exist, prosecute those suspected of committing them”* (Submission by an organisation).

200. A clear exception however were families who had surrendered family members to government forces at the end of the war based on the promise that they will be released after questioning. Similarly, certain communities will be reluctant to engage with the TJRNRC and provide information and truths on the promise of amnesties for perpetrators—if those perpetrators are known to them—given their past experience with the promises of the State.

#### 10.2.2. Amnesties for reconciliation

*“Army could be given amnesty, but written promises must be recorded, so as to enable non-occurrence.”*

(Public Meeting in Mullaithivu)

*“When you talk about these incidents a lot of hatred and anger is aroused. Now they grin and bear saying the army killed them, but when you talk about such issues there is hatred created afresh. So I think these should be allowed to be gradually forgotten.”*

(Public Meeting in Kandy)

*“The establishment of any court; especially the truth commission should not be dealt with in a punitive manner. This could lead to misgiving and feeling that this is revenge. I think reparation and non-recurrence should be given priority to ensure non-recurrence.”*

(CTF sectoral consultation with the Navy)

201. Religious undertones in some submissions that favoured amnesties as a basis for reconciliation were distinct and unmistakable. The submissions that highlight this view looked at the violations committed against individuals/communities from a point of view of the **larger reconciliatory benefits of pardoning**. Some submissions focused on resolving differences amicably and moving on peacefully through forgiveness (Submission by an individual). These submissions also emphasised the need for acknowledgement of the past by both parties for reconciliation, more so to ‘forgive and forget’ and move forward—*“Reconciliation is a two-way street, where the parties to a conflict need to genuinely acknowledge their errors, make positive overtures to*

*the other side to win their trust and agree to forgive and forget the past and make a new beginning in peaceful coexistence” (Submission by an individual).*

202. A submission by a Christian lay religious organisation too took the stance that truth revealed through the TJRNRC would assist *“to restore, heal, and bring together communities that have been deeply wounded and scarred for decades through truth-telling, forgiveness, and a process of justice that is tempered with mercy. If hate begets hate, we then want to suggest, based on myriads of examples from across the world in different cultures and contexts—restoration begets true reconciliation.”*

203. Some submissions spoke of the practical difficulties of pursuing justice and called for forgiveness—*“State entities and civilian entities... everyone has been involved in this so if we go for a mass trial and identify there will be most of people you know that will be a barrier for really creating the future... Unless we forgive the past we will not be able to develop the future.”* (Organisation at CTF sectoral consultation)

204. Another submission points out that pursuing charges against religious leaders involved in violence will not help social harmony and will aggravate the problem in a context where there is already so much religious hate. Acknowledgement of wrong, instead of punishment, is said to be sufficient in these cases of religious violence (Submission by an organisation).

205. A similar sentiment was expressed by a participant attending a public meeting in Galle, where he stated that he does not intend to press charges against those responsible for crimes committed against him because that would result in *“unwanted problems”*.

### 10.2.3. Who recommends amnesties?

206. As an overarching principle, a considerable number of submissions spoke of the **affected persons’ or families of the affected persons’ right to decide on amnesty or pardon for crimes committed against them**, indicating a strong, active role for affected persons and their families in the body empowered to recommend amnesties. Some submissions from Batticaloa urged that, *“The justice wanted by the people must be given. If they want forgiveness, it should be done through concerned persons. Only family members of affected parties or the affected party themselves are in a position to forgive.”* The same point was raised by a lay religious organisation making submissions at CTF’s sectoral consultations: *“We look at in two ways. One is that the victims have the right to forgive and they should be given the right to forgive.”*

207. One pre-condition noted in the submissions was the requirement that the truth be revealed prior to making any decision regarding the provision of amnesties. For example, the submissions state, *“About the people who have disappeared: we must find out how they disappeared, who is responsible. These things must be revealed to the public. We can decide later whether to punish or forgive them. Justice*

*should be there* (Public meeting in Kandy) and that “*After he is brought in front of my eyes, depending on how I feel at the time I might forgive him. I will put forward my views at the court... apology or life imprisonment will depend after he is brought before me*” (FGD in Trincomalee). The CTF notes that in the interest of transparency, clarity and fair procedure, the TJRNRC must put in place clear guidelines from the outset in order to incentivise the participation and engagement of fully-informed perpetrators. Information indicating clearly when a decision on recommending amnesty is made (before the revelation of truth by a witness or a perpetrator or after) will be crucial deciding factors for participation in and engagement with the TJRNRC.

#### 10.2.3.1. Compassionate Council/Amnesty Board

*“So at least people who have minor issues can come to a compassionate council where you use the religious resources to resolve such issues may be useful still to consider.”*

(Submission by an organisation CTF sectoral consultation)

208. A Compassionate Council made up of religious leaders was proposed by the Government when it first unveiled its plans for the TJRNRC.

- Several submissions reject the idea of a Compassionate Council, stating that, “*The idea floated by the Foreign Minister in September 2015 in a speech to the HRC of a Compassionate Council made up of religious leaders working alongside a Truth Commission who could provide amnesty to criminals would be in violation of Sri Lanka’s commitments and international law*” (Submission by an organisation). Others support the idea of a Compassionate Council, without indicating any opinion as to who would sit on such a Council—“*An amnesty procedure should be made available within the commission for low-level perpetrators and the victims should be consulted during this process (whenever possible). These matters should be addressed by the Compassionate Council*” (CTF sectoral consultation).
- A few submissions support the idea of religious leaders heading a panel—“*Religious leaders must be able to give forgiveness, without being politicised. In a properly organised manner, and on a long term basis, a group should be established on the lines of religion. This should consist of religious leaders with training and experience to accept confessions. In the name of religion many massacres have taken place* (Submission from Kilinochchi); “*Religious leaders have the social legitimacy and moral influence to engage key influencers and grass-roots constituencies to lead social change, while the faiths they practice can promote tolerance and acceptance of pluralistic identities that connect groups through shared values and aspirations across other conflict divides. In Sri Lanka, religious leaders are also uniquely positioned to address local issues of conflict and vulnerability amidst social and political stress, and channel community concerns to influencers and decision-makers (i.e., connecting the more people to key people), thereby functioning to transform everyday interventions into peace-writ-large*” (Submission by an organisation) and “*There should be an influence of the religious leaders for this. It should not be done in a revengeful attitude. It should not be political but spiritual*” (Submissions by officers at a CTF sectoral consultation)

with the military). At least one submission cautions against the involvement of religious leaders, stating that *“It is not appropriate for only clergymen to sit and hear women’s suffering.”* The same submission notes that *“Authorities must also be mindful of religious leaders having played a key role in dividing communities”* (Submission by an organisation).

- Given the ambiguity and the lack of explicit reference to the purpose or power of the Council, submissions highlight the lack of clarity regarding the role of the proposed Compassionate Council—whether the Council, as suggested by the Government, would be empowered to recommend amnesties. As a result, the submissions call for the Government to clarify the scope of the Council and to *“...ensure that it is not used to undermine the functions of the other transitional justice mechanisms”* (Submission by an organisation). Another submission notes that *“The government is considering setting up both a Truth Commission and a Compassionate Council. How these two bodies will interact is unclear, as is the role, form or function of the latter body. Without knowing more about what is envisaged it is difficult to comment further on these bodies”* (Submission by an organisation). A submission also raised the fear of whether the compassionate council would undermine the judicial process and offer blanket amnesties (Submission by an organisation at CTF sectoral consultation).
- In this context submissions note the importance of formulating, with the assistance of experts, a list of human rights violations and crimes that are beyond amnesty (See more on this in the Section ‘Crimes and Perpetrators Beyond Amnesty’)
- At least one submission recommends that a ‘Board’ should be established within the TJRNRC to give amnesties: *“A Board for Amnesty must be established and chance given to anyone who wants to get forgiveness. Those selected for the board must be people of honesty, integrity and with human feelings”* (FGD in Batticaloa).

209. Nonetheless, the submissions that support the idea of a Compassionate Council note the following specifics.

#### **10.2.3.2. Powers, functions and operation**

- 1) Provide or recommend amnesties or a form of pardon to low-level perpetrators (child soldiers etc.) with close consultation of affected persons or their families;
- 2) Grant perpetrators, whether State or non-State actors, with an opportunity to acknowledge the suffering that resulted from their wrongs;
- 3) Provide religious resources/support to deal with issues;
- 4) Bring in comparative experiences from elsewhere in the world when establishing the same in Sri Lanka (See Section 2.5 of this chapter).

#### **10.2.3.3. Composition, criteria and qualifiers**

- 1) Representation of all religions, denominations and faiths in the Compassionate Council by both clergy and laity;

- 2) Members must be moderate leaders, ideally with a record of standing up for human rights;
- 3) Must include religious leaders from the affected communities themselves;
- 4) Members must not be perceived to be ‘extremists’ who will favour one group over the other to ‘give blanket amnesties’;
- 5) Members must not have previous allegations of past crimes or human rights violations, and
- 6) Must undergo a period of training before taking up position. A submission highlighted that it is important for the Compassionate Council to include/engage/involve religious leaders associated with district inter-religious committees (now active in 12 districts) in the Compassionate Council itself or as a district-level tier that can actively engage with the general population (Submission by an organisation).

#### 10.2.3.4. Appointment

210. Submissions note that the process of appointment must be ‘democratic’, where the Council is not appointed by one person or the TJRNRC.

#### 10.2.4. Crimes and perpetrators beyond amnesty

**Can some things that happened during the last stage be subject to excuse or pardon?**

A- Deaths and those who were made to disappear cannot be excused.

B- Cluster bombs caused many deaths. This is the action of an army that was ordered by the then President. That cannot be excused.

C- We can forgive and forget the deaths of our relatives during the war. But we cannot excuse anyone for the missing of persons who were handed over, and also to the bombing of security zones which they announced. This should be investigated properly.

**Can there be a general amnesty for those who come forward as witnesses regarding missing persons or give details of such persons?**

C- Yes, they can be excused if they do so (FGD in Mullaithivu)

*“Acts in the battle front or in common can be excused but not those of a personal nature.”*  
(FGD in Mullaithivu)

*“... brutal cruel crimes such as cluster bomb attack, sexual violence unleashed on women and the white flag incident should be investigated and truth found and punishment given.”*  
(Public Meeting in Mullaithivu)

*“... there should be some distinction between people who have been forced to take part... So those are things that we need to kind of think through and how this distinction can be made.”*

211. A large majority of submissions that favour amnesties indicate that they do not want ‘blanket’ or ‘general’ amnesties (For example, a participant from a public meeting in the South stated, “*Don’t give general amnesties to those responsible for disappearances in 88/89. We ask for imprisonment of about 10 years for those responsible.*”).

212. Submissions indicate a willingness to provide amnesties for some crimes, but certainly not all types of crimes. **Amnesty was not seen as an appropriate response to war crimes, crimes against humanity, genocide, as defined in international law or crimes of sexual violence.** Submissions highlight that recommending, without exception, amnesties, pardons and similar measures for impunity is “...*prohibited by international law and prevent the emergence of truth, a final judicial determination of guilt or innocence and full reparation to victims and their families*” (Submission by an organisation).

213. Submissions particularly highlight that there cannot be any amnesties for 1) Torture, 2) Extrajudicial killings, 3) Sexual violence, 4) Use of children in armed conflict, 5) The white flag incident, 6) Ordering indiscriminate attacks through means such as shelling or cluster bombs, especially in government-declared No Fire Zones, and 7) The fate of those who surrendered to government forces. On enforced disappearances, while some participants sought punishment of perpetrators, others were willing to “*Provide amnesties for those who come forward with information on the disappeared*” (FGDs in Kilinochchi and Mullaithivu).

*“Instead of punishment I want my son back”*  
(Public meeting in Trincomalee).

214. To this end, a submission recommends the formulation of a list of offences that are not ‘serious’ human rights violations and that could come within the purview of the Compassionate Council. This list must be drafted with the assistance of experts.

215. On the issue of responsibility, a majority of submissions indicate **a willingness to pardon/provide amnesty to low-level perpetrators of crimes, but not those who commanded their commission:** “*The chain of military officers who are responsible for the crime should be punished*” (FGD in North Central Province). However, there are also some submissions that urge for low-level perpetrators to be subject to punishment. They held,

*“All Army men, both who shot and who ordered to shoot, must be punished.”*  
(Public Meeting in Mullaithivu)

*“Those who were responsible for persons who’ve gone missing, must be found, and given punishment according to the international laws—to all those perpetrators and those who committed the crime. From the commanders who gave orders to the soldiers and to the soldier who committed the crime must be punished severely. Because, only if the soldiers are arrested the commanders will be identified.”*

(FGD in Mannar)

216. A submission at a sectoral consultation with the military suggests that there should be no justice/accountability element for the commanders: *“Definitely the families have a right to know. The command and control in the forces should not be mixed with justice. Forces are subjected to two laws; very strict law. So the command should not get mixed with the justice. On the battlefield we have actually trained person to kill. Difference of a service person is that they know when to use it.”*

217. It is important to highlight here that CTF’s sectoral consultations with lower and mid-level ranking officers of the military revealed that they did not seem to think they need amnesty, because they *“...were clear of [their] operations.”* They only noted that they should receive amnesties for the loss of civilian life during operations.

## 11. Links to Other Mechanisms

218. While analysing the submissions received by CTF it is evident that most submissions perceived inter-linkages, co-relationships or a flow between the TJRNRC and the rest of the mechanisms through a *“holistic approach”*. The mechanisms were seen as functioning as independent entities but where necessary complementing and coordinating with each other. As one submission notes, *“...yet another commission established without meaningful guarantee of accountability and reparations will signal a lack of commitment to the Government’s own commitments and to genuinely breaking with the past.”*

219. Although submissions did not often speak of an explicit connection to the Office on Missing Persons, except that the two should work together and in terms of sequencing, the linkages between the Judicial Mechanism with a Special Counsel and the Office of Reparations were overtly stated (See Section 5). Particularly with the Judicial Mechanism, the submissions tended to be polarising. A number of submissions recommend that where there is evidence of a crime revealed through the TJRNRC, it is incumbent upon the Commission to share this information with the Judicial Mechanism for prosecutions. One submission by an international organisation states that this should be done in a confidential manner. There were also exceptions to this obligation to share information for prosecutions (See Section 5.1.3: Power to Refer Cases for Prosecution). It is also recommended that lessons from other countries, such as Sierra Leone, where challenges were faced due to the truth-seeking mechanism and the special court functioning separately, should be considered. However, one submission states that there should be no linkage or complementarity

between the two mechanisms, drawing a sharp distinction between truth/justice and reconciliation/non-recurrence.

220. Less contested was the connection between the TJRNRC and the Office of Reparations, which was explicitly or implicitly stated as one of the outcomes of truth telling; “*regarding reparation, truth is the foremost*” (Submission at a sectoral consultation with the military). This could either be in the form of material or symbolic reparations. One submission directly stated that the TJRNRC should formulate recommendations for effective reparations for affected persons and their relatives (Submission by an international organisation). The truth for the sake of truth, without economic justice, was cited by at least one submission as hindering the entire reconciliation project (Submission by a diaspora organisation). Furthermore, as in the case of the displaced Northern Muslims and the Up-country Tamil communities, acknowledgement by the State is also seen as being accompanied by symbolic reparations, such as a public apology or the State officially seeking forgiveness.

221. However, whilst the submissions note the link to the Office of Reparations and the Judicial Mechanism, the submissions did not see the commission itself dispatching these services but merely facilitating and referring victims. For example, one submission explicitly states that there should be no monetary compensation through the process and that where the commission finds any unlawful actions, the victims must be facilitated to seek remedy through appropriate channels, but not directly from the TJRNRC (Submissions by an individual).

222. As the TJRNRC is a platform for various forms of human rights violations to be heard, outside of commissions of inquiry established to inquire into specific incidents, there are a number of recommendations for non-recurrence that emerged. In many submissions, the recommendations of the TJRNRC were viewed as being linked to non-recurrence.

223. Submissions at the zonal consultations saw the various mechanisms as part of a whole. At an FGD in Kilinochchi, participants stated that the Office of Missing Persons, the Special Court and TJRNRC must work together. From the perspective of the affected people there was no separation between truth, justice and reparations, but rather a sequencing—“*What I am saying is, need to find the truth as to why they chased us away. Justice must be meted for this and compensation given.*” (Submission at a public meeting in Puttalam).

224. On the issue of sequencing, the TJRNRC is viewed as a mechanism that would function in parallel to the other reconciliation mechanisms and conversely that the other reconciliation processes should not wait for the establishment of the TJRNRC. The submissions also stress that the TJRNRC should convey relevant information to the other reconciliation mechanisms on a regular basis.

## IV. OFFICE ON MISSING PERSONS

### 1. Introduction

*“There will be over 100,000 complaints to the Office on Missing Persons.”*

(Organisation of families of the disappeared)

*“There should be no more inquiries, just tell us if our children are alive or not.”*

(Tamil mother from Mannar, Northern Province)

*“My brother was taken by the LTTE in 1986... My parents tried a lot to find him. They must have gone to all the devales (shrines) this country.”*

(Sinhalese man in Kanthale, Eastern Province)

*“Since 88/89, we have been waiting for 27 years. There are others like me. Regardless of ethnicity or religion, it is only those who faced disappearances who understand its pain.”*

(Sinhalese Participant at FGD on Disappearances, Western Province)

1. Disappearances constituted the most recurrent and pressing issue brought before the CTF. In their submissions, participants raised concerns about the fate of the missing, urgently seeking to establish if they are alive. The depth of their pain and their resolute determination to locate their loved ones came through in hearings across the country. As affected families filled the halls of public meetings and focus group discussions (FGDs) and told their stories, they opened files with documents, photographs, letters to agencies, newspaper clippings, shards of evidence they had pieced together over months and years, sometimes even decades. Many recounted their exhausting and unsuccessful search for the missing, in some cases, at great cost to themselves, risking intimidation, detention, and interrogation. Some were fearful that their testimonies would compromise their safety, and more poignantly, the safety of the disappeared person if still alive. Others openly named abductors. Many described the devastating effects of enforced disappearances—how it had impacted families and restructured social relations, depleted household economies and spread suspicion and division within communities. An overwhelming number of participants were women, revealing that women from all parts of the island affected by the war and the Southern Insurrections have disproportionately borne the burden of searching for the disappeared. Significantly, while participants differed in their responses to the Office on Missing Persons (OMP), the CTF heard an unequivocal call across the country to end the practice of disappearances, to investigate and provide answers to the thousands of cases of the disappeared. Several explicitly stated they wanted no one to suffer what they had endured.

2. Such sentiments underscore a critical finding from the consultations: disappearances were reported from all zones where hearings were held, revealing how they have been carried out across time and geographic regions, by both State and non-State actors, subjecting families and entire communities to terror and trauma. Testimonies demonstrate that families throughout the island have shared experiences of disappearances that cut across ethnic, religious and class differences. The statements below uncover the common experiences of pain and collective suffering expressed by Tamil, Sinhala, Malaiyaha Tamil, and Muslim participants.

*“In 1987–88, there was a preoccupation with representing a “Sinhala nation,” yet all these [Sinhalese] people went missing.”*

(Sinhalese man, Public Meeting, Kandy, Central Province)

*“36 Tamil journalists have been killed, disappeared or suffered various forms of violence. But there has been no solution. The Ekneligoda and Lasantha cases are being investigated. Suharishan, Nadesan, Sriramanan, Nimalarajan Atputhan, KS Raja--what is the solution for them?”*

(Journalist at Kalmunai, Ampara)

*“Many Muslims too went missing, arrested/abducted or made to disappear in the years prior to 1990, in 1990, and afterwards. Perpetrators range from Government forces and other security apparatus, LTTE, EPRLF, PLOTE, EPDP, TELO, EROS, politicians and IPKF.”*

(Organisation representing Northern Muslims, Written submission)

*“People think that these things happen only in the North and East. They don’t know that there are Tamils living in Moneragala. They don’t know people from here have also disappeared.”*

(Malaiyaha Tamil participant, FGD on Disappearances Buttala, Uva Province)

3. These submissions, and others, underscore the grave and pervasive nature of enforced disappearances in Sri Lanka. They show how the police, the armed forces, and multiple armed groups, including the LTTE, have used disappearances as an extrajudicial procedure during each period of significant unrest on the island, beginning with the two Southern insurrections, throughout the Civil War, and well into the post-war years. Even as consultations were underway and the Government took steps to pass the Bill on Office on Missing Persons (OMP), the CTF was alerted of incidents of abductions that were taking place in parallel.

4. Strikingly, a higher number of persons affected by disappearances came before the CTF than persons affected by other violations. Several ZTF members additionally observed that even participants who had suffered other violations chose to foreground their experiences of disappearances. Amongst other factors, the timing may have played a crucial role, given the interest, expectation and concern about the Government’s decision to proceed with a bill to set

up the OMP in parallel to the consultations. The CTF took submissions on the OMP Bill, and disappearances more broadly, and published its interim report titled: ‘The Office on Missing Persons Bill and Issues Concerning the Missing, Disappeared, and the Surrendered’ on August 11<sup>th</sup> 2016.

5. The passage of the OMP Bill into law on August 12<sup>th</sup> 2016 marks a historic achievement. It provides affected families with a permanent mechanism to seek the fate of thousands of disappeared persons. Once operationalised, the OMP will serve a unique and marginalised constituency in Sri Lanka--the disappeared and their families--the former, whose voices cannot be heard, and the latter, who are vocal advocates seeking to establish what happened to them, bringing distinctive needs for the OMP to address.

6. While the CTF welcomed the passage of the Act, in its subsequent press release, it also highlighted that the recommendations from public submissions, as outlined in the Interim Report, had not been incorporated. The CTF wishes to reiterate the fact that **none of the amendments to the Bill adopted in the Act were reflective of recommendations from public consultations**. Thus, in this chapter, the CTF presents submissions that it included in the Interim Report as well as others subsequently received that address the operationalising of the OMP. In addition, the CTF highlights other measures participants have asked the State to adopt that extend beyond the OMP to fully address the issue of disappearances and to ensure its non-recurrence. Both these sections are preceded by an analysis of testimonies from consultations that not only provide an understanding of the experiences of disappearances, but also form the basis of key recommendations by participants on the mechanism.

## 2. Disappearances in Sri Lanka

*“The OMP should start from an understanding of what it means to have a family member disappeared”*

(Women’s collective, Written submission)

7. The call made in the above submission highlights the demand from families and organisations working on the disappeared that there needs to be an effort by the OMP to come to a deeper understanding of the scale and impact of disappearances. In recognition of this, the following sections will present submissions made by participants on three areas: (1) the nature of disappearances in Sri Lanka, including shared patterns and differences in the manner, period, and region where disappearances were carried out; (2) the barriers that families have faced when searching for the missing, which they want addressed by the OMP (3) the social, economic, and psychosocial effects on families and communities that they seek to support and redress by the OMP.

8. The CTF wishes to draw attention to the significance of these three components of the submissions for the mechanism. To begin with, by outlining the range of ways in which disappearances took place, the participant accounts below underscore that the OMP will need to be prepared to flexibly address diverse cases. They also elucidate why measures outlined in subsequent sections are important for families of the disappeared. Many families framed their recommendations on the OMP in relation to their previous experiences with State agencies, which they did not want repeated. For instance, the call for the OMP to have substantial numbers of female staff came from women who had faced sexual harassment at State offices that they had appealed to. The experiences presented below point to issues that are both general and distinct to particular cases, in order to give the reader a sense of the magnitude, breadth, depth, and complexity of cases that the OMP will need to address. In essence, they lay out the scope of the OMP as envisioned by those whom it seeks to serve.

### 2.1. Types and Patterns of Disappearances

*“On 19.6.2007 my son was abducted when he was returning home after duty...Another son was abducted by the LTTE. No news about him too. Both my sons must be found.”*

(Tamil mother from Trincomalee, Eastern Province)

*“In 1989 January, they came and took him in a jeep to the Hambantota camp. They tied his face with a cloth and took him away. When I went there, they said: ‘the bastard ran away.’”*

(Sinhalese wife of abductee at FGD in Galle, Southern Province)

*“My son was abducted by a man called [X] in Puttalam. People saw him do it. I know him. He is from the village. He was a CID and he took my son. He is outside while my son is missing.”*

(Muslim mother at FGD in Mullaithivu, Northern Province)

*“Student-activists from the University of Jaffna like Chelvi Thiagarajah and George Manoharan and several others who openly critiqued the LTTE on its anti-democratic politics were abducted and incarcerated by the movement.”*

(Tamil Academics, Written Submission)

*"Our children did not disappear in the war zone. They disappeared in Colombo – a security area. When [the former president’s] children are arrested, even for a day, they are getting flustered. So do they only have children? Don’t we have children?"*

(Tamil mother of 21-year old university student, abducted in Colombo, Western Province)

9. The statements above constitute a cross section of accounts from consultations. The range of cases brought before the CTF provides a sobering catalogue of the many different ways in which

persons across the country were made to disappear. While the breadth of cases preclude easy categorisation of the means of disappearance, the CTF received a significant volume of submissions on disappearances listed below.<sup>16</sup>

1. **Village Roundups** of Tamil and Muslim civilians (wartime and post-war) and Sinhalese civilians during the Southern insurrections by the police, army and intelligence services.
2. **White Van abductions** of Tamil, Muslim, and Sinhala civilians, including human-rights defenders, journalists, aid workers, university students, and others.
3. **Surrenders and subsequent disappearances** of Tamil combatants to the armed forces and police, particularly during the last stages of the war.
4. **Families of surrendered LTTE cadres**, including very young children who disappeared.
5. **Injured Persons who disappeared** during the war, particularly in its last stages, who were left behind in hospitals in LTTE-controlled areas or handed over to the military and seen taken away in military vehicles.
6. **LTTE and TMVP abductions** of Tamil children and youth for recruitment whose current location is unknown.
7. **LTTE or other militant group abductions** of Sinhalese and Muslim civilians.
8. **IPKF abductions of Tamil and Muslim civilians**
9. **JVP abductions of Sinhalese civilians who**
10. **Disappearances of fishermen**, Tamil, Sinhalese, and Muslim, by the LTTE and Navy.
11. **Abductions of Tamil civilians by other Tamil militant groups.**
12. **Disappearances during rehabilitation** of ex-or suspected LTTE combatants.
13. **Disappearances inside IDP camps**, mostly of Tamil and Muslim civilians and combatants.
14. **Combatant and police disappearances**, including members of the armed forces who went missing in action, police personnel, and LTTE combatants.
15. **Disappearances** that took place across the island in a context of pervasive abductions.

10. The CTF also received submissions from persons who had been abducted and subsequently released, and from organisations that had interviewed such persons and provided reports with testimonies. Additionally, the CTF received several submissions from families of abductees who found their relatives dying, or located remains of the disappeared, who had been decapitated, hacked, or burned alive, both during the insurrections and the war. Related to this, a written submission listed ongoing abductions in the North, including a case of a fisherman from Mannar who had been arrested multiple times, and abducted and killed as recently as June 2016.

11. In addition to providing a record of the numerous ways in which disappearances have been carried out, participant accounts demonstrate both shared and divergent patterns of disappearances

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<sup>16</sup>It should be noted that while the list is varied, it does not capture all categories of disappearances that have taken place in Sri Lanka, in terms of victims, perpetrators or mode of abduction/disappearance.

across time, region, and ethnic groups subjected to the crime. Submissions from the **Northern and Eastern Provinces** underscore the compounded effects of disappearance, mass displacement, property loss, and death. Many also spoke of disappearances within wider contexts of intimidation, torture, and sexual abuse by the armed forces and other militants. Submissions from both provinces revealed a high volume of village roundups in the early years of the war, and a rise of white van abductions in the latter stages and in the post-war years. Some pointed to a wave of LTTE abductions in the Vanni, largely for recruitment, and some abductees subsequently disappeared. Several had children forcibly conscripted to the LTTE who are now missing. The Northern Province, particularly Mullaithivu and Kilinochchi also had a high volume of disappearances of LTTE combatants and civilians who surrendered at the end of the war.

12. In the **Eastern Province**, many described disappearances that took place in the 1980s and 1990s, some of which happened alongside massacres by both the State and the LTTE. Arrests and enforced disappearances of large groups also took place in camps in the East, including at Eastern University and Sittandy in 1990. Submissions from the East attributed disappearances to a range of armed groups, including the security forces, the Navy, the LTTE, TMVP, and IPKF. The LTTE was also said to have disappeared large numbers of Muslims. A written submission alleged that the LTTE and the TMVP recruited hundreds of children Trincomalee, Ampara, and Batticaloa, some of whom were abducted with the complicity of the Sri Lankan Army after the latter broke away from the former; a number of these child recruits remain missing. The East also had many disappeared fishermen, both Sinhala and Tamil. In the Northern, Eastern, and North Central provinces, submissions mentioned LTTE abductions of Tamil, Muslim, and Sinhalese persons. Families from the **Northern, Eastern and North Western Provinces** also spoke of disappearances by other militant groups, although only some were able to identify the groups that carried them out. Northern Muslims who were displaced to the North Western Province discussed disappearances in the context of mass displacement and abuse from the LTTE, other militant groups, the IPKF and the army. They also spoke of disappearances after displacement.

13. In the **Southern, Central, Sabaragamuwa, North Western, Western and Uva Provinces**, Sinhalese participants described in great detail, enforced disappearances that took place during the two Southern insurrections. Many attributed responsibility to the police and army, particularly in cases of village roundups. Some also spoke of JVP abductions. In both contexts, stories of disappearances were narrated alongside accounts of killings, torture, rape, and everyday experiences of terror within villages. In the **Southern Province**, families of disappeared fishermen spoke of losing their kin at sea (many of them in the East), describing how multiple boats carrying dozens of fishermen had disappeared at once. Families of MIA servicemen from multiple provinces expressed their desire to know the fate of their missing son or husband and stated their distress about the State's lack of interest in providing them with answers or redress.

14. Malaiyaha Tamil participants, particularly in the **Central and Uva Provinces** and also in Kilinochchi, spoke of disappearances they had faced, and how these losses were exacerbated by their long-standing marginalisation, discrimination, and neglect by the State. They stated that disappearances had intensified their suffering as, Sinhalese neighbours labelled them as LTTE members following white van abductions. At least two submissions highlighted that Malaiyaha Tamils were the first to experience disappearances, having been subjected to them for 180 years, starting from British rule where indentured workers were frequently disappeared.

15. In the **Western Province**, participants highlighted disappearances in the region from the insurrection periods, during the war, and the post-war years. The Western Province, particularly Colombo, had one of the highest citations of white van abductions in the consultations, with a majority of the Tamil language submissions stating it as a reason for their loss of kin. A number of families from the North also stated that their children had disappeared *en route* to, or in the capital city when they had gone there seeking medical checkups, education, and administrative services.

## 2.2. Experiences of Disappearances: Testimonies of Loss, Terror, and Trauma

*“My husband was taken in the night from home by the army... They came and tapped, then one of them whistled and they pulled him into a van and drove away. When I cried out, they put the gun to my ear and told me not to shout. Three of them surrounded me. They were wearing army uniform with a black cloth covering their faces. It happened in 1994.”*

(Tamil woman, Public Meeting, Polonnaruwa, North Central Province)

16. Such testimonies came from zones across the island. Regardless of who carried them out, enforced disappearances have not only traumatised families but also crippled entire communities. Accounts of village roundups--both of Tamils during the war and Sinhalese during the insurrections--show the terror, helplessness, and desperation of families who saw their loved ones, including young children, forcibly removed from home and taken away. Tamil women from the North and North Central Provinces spoke of how the army regularly conducted roundups at night, which made them both fearful to go out and vulnerable within their own homes. Sinhalese persons affected by insurrection-related disappearances remembered being caught between the JVP, which asked them to follow orders with ultimatums of death, and the army and the police, which swept through villages taking anyone they suspected with JVP ties. Women from all ethnic groups described how they were threatened, intimidated, or tied up while men were forcibly removed. A Tamil mother from Polonnaruwa whose husband and daughter were taken together, asked with great consternation, “why did they take the girls, and what did they do to them?”

17. Alongside the disappearances of individuals, participants described group abductions and arrests. Tamil women who attended the Polonnaruwa Public Meeting, testified that five of them lost their husbands at a wedding. In Kandy, a Sinhalese man described how two men were taken

at a funeral in 1991--one of whom was the son of the deceased man. He decried it as an inhumane act. Many described how the normalcy of life was shattered as life events were transformed into moments of collective terror and loss.

18. In the East, participants highlighted grave events of mass disappearances:

*"I have come here to speak for the people of my village. In 1990.08.2016, 135 persons were taken away from the Campus. They have issued death certificates but their bodies were never given. We only know that the Army came and took them away. We don't know what happened to these 135."*

(Tamil Participant speaking of abducted refugees, Public Meeting, Batticaloa)

*"When the Sathrukondan massacre took place, there was a meeting by an army leader called [X], we asked him directly where our people were. And he said, 'go and ask your Prabhakaran.' Then there was intimidation that we also would be killed if we tried to be too smart. But we have a list of people who went missing from Sathrukondan."*

(Participants at Vavunathivu, Eastern Province)

*"Suddenly the LTTE abducted more than a 100 police officers. We don't know what happened to my brother, but I believe he is dead... My parents became psychologically ill after this."*

(Sinhalese man, brother of disappeared police officer, at meeting in Ampara, Eastern Province)

The above cases, and others, show that both the armed forces and the LTTE targeted entire communities through mass disappearances. Others discussed the collective effects of enforced disappearances by highlighting how they spread divisiveness within villages. Sinhalese participants discussed how the security forces conducting roundups during the insurrections used informants within the village to identify affected persons through the use of the notorious "billa," a person whose face was covered with a sack. The woman below describes the trauma of such an experience:

*"My husband was taken during the Bheeshanaya. Suddenly, they came with weapons and surrounded the house. We thought they were the police, but we heard the word STF frequently. They brought a "billa" with a sack over his head. I could only see his eyes. Some of them went in and dragged my husband out. My mother ran out crying. I came out carrying the baby. They shoved their guns into our chests and ordered us to be quiet. They started questioning him. My husband saw us screaming and couldn't answer. He kept looking at us in fear. They took him up to the billa, who shook his head. They also took the billa. Later, we learnt they had killed the billa... He was a worker from the estate my husband managed. Poor man. They must have forced him to come to identify my husband."*

(Sinhalese woman, FGD on Disappearances, Kandy, Central Province)

19. This participant's story of terror and helplessness is echoed by mothers, fathers, and wives across the country who were held at gunpoint while their loved ones were forcibly removed. Many described the inordinate efforts they took to protect their children from disappearances. Some sent their children away. Others hid them. Yet others went to LTTE camps, pleaded for their release, and brought them back. A written submission stated: “The heroic efforts of some members of the [Tamil] community who helped them hide when the abductors came, or stood up to the abductors, negotiated with them for release etc. when the State mechanisms that were set up to protect them was turning a blind eye or being complicit in the process needs to be recognised. Sometimes, protecting one’s children involved great emotional costs. A Sinhalese woman whose brother was arrested and killed by the army in 1989, and who was later taken in for questioning remembered how, upon receiving her brother’s death certificate, her father burned it, along with all his belongings and photographs, in fear that the army would use it as a reason to arrest her. Some families actively resisted their loved ones being taken away. A Sinhalese mother remembered how she argued with the police when they came for her 14-year old son, asking them what statement they could possibly want from a child. As they covered his face with his shirt and took him away, she tried, unsuccessfully, to run after the van.

20. The accounts above provide a glimpse of the conditions of fear and the scale at which the State, the LTTE and other armed groups carried out disappearances. They underscore that the OMP must be prepared to address a range of cases, from individual abductions to mass disappearances, which will require the collection of different kinds of evidence. Accounts from consultations across the country show that the different ways in which people were disappeared left different kinds of traces shaping the availability by information with families, both on the disappeared and the abductors. The sections below will therefore briefly address the kinds of knowledge, relationships to perpetrators, gaps in information that families of the disappeared said they possessed.

*“The army took my husband on 26.02.2009. I don’t know why. After four months when I saw these four army persons and asked, they said that they didn’t catch him and said to go to the police. They also frighten me, telling me to go home; if not, they will make me disappear also... I can still identify who caught my husband, they are here.”*

(Tamil woman at Vavuniya Meeting, Northern Province)

21. Like the woman above, a significant number of participants from all ethnic groups stated that they could identify those who arrested their relatives during the war and the insurrections. Several said could identify whether they were from the CID, military, police or intelligence groups. Many participants also knew the detention camps abductees had been taken to, and named the military and police officials in charge. As the Vavuniya ZTF report points out, many families who witnessed abductions “confirmed that the abductors were from the armed forces, stating for

example that the vehicles that the abductors used would enter military camps.” Similar statements were made about Navy camps in Trincomalee and centres of detention and torture in Southern and Central provinces during the insurrections. Abductions were also often carried out in high security zones and during curfew where only the military could move about with ease.

22. Regarding LTTE abductions of Tamil civilians, several participants said they knew the LTTE camps abductees were taken to and visited them, pleading their release. Sometimes the same person was abducted multiple times. A woman from Mannar said that her 15-year-old son was “taken by the movement” and injured. He subsequently went missing from the hospital and she concluded the ‘movement’ must have taken him again. Muslim participants too spoke of their helplessness in the face of LTTE abductions. A participant from the Eravur Public Meeting stated “Those who returned from Hajj were abducted at Kurukkalmadam by the LTTE and killed. There should be an independent investigation on this and the truth revealed.” A Tamil woman from Trincomalee said she went to an LTTE camp and secured the release of her abducted husband, but three years later, he was abducted again, this time in a white van that was seen going into a Navy camp.

23. There was also a large number of participants who did not know the abductors, yet had contact with military or intelligence officials about their relatives after they were disappeared. For instance, although the perpetrators of white van abductions were hard to identify, several families stated that the CID or TID had contacted them demanding information or ransom, leading them to conclude that the State had a hand in the abductions and had information about their kin. A woman whose brother disappeared in Puthumathalan in 2009 said CID visited her house 8 times asking about him. She stated: “how are they visiting me without having any information about him?” In another case, where the means of abduction were unknown, a Tamil mother whose son disappeared in Colombo *en route* to the kovil in 2008 stated that four years later, an army soldier came to her house in Trincomalee with her son’s wallet, saying it was found in the office of a high-ranking Navy official. Expressing her outrage, the mother asked: “Was the Navy [leader] given a uniform and gun to abduct the public?” Accounts such as this reveals that information about the disappeared can emerge years after the event, and the OMP should make provisions to solicit evidence from those who have information (See section 6.8).

*“My brother disappeared in 1990. 4 other boys disappeared with him. When he was going to school at the age of 13, this happened.”*

(Participant at Eravur Public Meeting, Eastern Province)

24. Yet, a large number of participants did not have a clear sense of who disappeared their children or whom to approach to seek recourse. These included families of fishermen who disappeared at sea, some suspected to have been taken by LTTE along with their boats and others who may have died in crossfire between the Navy and the LTTE. Similarly, Sinhalese families

whose relatives were disappeared by the LTTE had no way to appeal for their release. In addition, a number of Tamil, Sinhala and Muslim families lost their relatives when they were travelling, some moving from the North to the South, others en route to work, school or some other venue.

25. The disappearance of LTTE combatants who surrendered to the military, some with their families, in the last stages of the war was a focal point of discussions in the North, particularly in Jaffna, Kilinochchi and Mullaitivu. Families of surrendees stated with great emotion that they had handed their loved ones over to the military, under the guarantee of State protection, never to see them again. Many had done so following army announcements asking those with ties to the LTTE to surrender. Many said surrenders had occurred in large groups. The CTF received a number of submissions on a group surrender at the end of the war, where families handed their relatives to the army, along with a priest, Father Francis. They were taken away in a bus and never seen again:

*“My daughter and her entire family surrendered. Whole families surrendered. They surrendered with Father Francis. How did they have the heart to do this to them? To children?”*

(Tamil mother at Public Meeting, Kandavalai, Northern Province)

26. Significantly, a written submission on child soldiers pointed out that amongst surrendees there were LTTE child conscripts. They had been taken into State custody, sent to rehabilitation camps, and subsequently disappeared. Even more tragically, amongst these child conscripts were some whom the LTTE themselves had abducted to fight on their behalf. In addition to child soldiers, Northern families also spoke of surrenders at the Omanthai checkpoint during the last stages of the war, and immediately afterwards, where civilians and combatants crossing over to army-controlled areas were stopped, taken in, and never re-emerged. A mother of one such surrendee stated: “Those who surrendered to the army alive at Omanthai, the Government has to give them back to us. How can they say they don’t know where they are? The Government officially took them.” Like her, many relatives of surrendees refused to believe that their loved ones could not be found. Amongst those who strongly believed that their children are alive, was a Tamil woman who during the 2015 election, saw a notice with a photograph of her daughter with the current President of Sri Lanka. Despite submitting this evidence to various authorities, she has heard no response. Other participants produced letters and notes from their loved ones smuggled out of prisons or mentioned reports by former prisoners that they had seen the disappeared person in prison. Yet other parents of surrendees stressed that the State must possess records on them, as the CID and TID has since contacted them for information.

27. The CTF wishes to note that families of surrendees categorically refused to accept the designation of their kin as “missing,” insisting that both the OMP and the State recognise them as surrendees in official documents, given that they were placed in the charge of the State, which failed in its obligation to return them to safety. The direct handing over to State custody is

pointed out as the reason for treating surrendees, as well as their families who went with them, as a distinct category to other cases of disappearances.

### 3. The Search: Barriers to Finding the Missing

*“My child must be found. There is no place where I have not searched.”*  
(Tamil participant, Public Meeting Trincomalee, Eastern Province)

*“We have spent whole afternoons in front of their gates, carrying our babies. The police won’t search for them. They won’t record a police entry. All because of Bheeshanaya.”*  
(Sinhalese woman whose husband was arrested in ’89, Kandy, Central Province)

*“We are always on the road trying to find our children. How can we give up? That would be a betrayal to them.”*  
(Tamil mother, Public Meeting, Mullaitivu, Northern Province)

*“The army took my younger brother from home on 14 Sep 2008 for inquiry... His son who is eight is asking for his father. What can I say? We don’t want anything. Even if his legs and arms are broken, give him to me, we can look after him.”*  
(Tamil participant, Public Meeting, Vavuniya, Northern Province)

28. These statements capture the sense of desperation and urgency with which families came to the consultations, in the hope, however limited, of gaining assistance for their search. Repeatedly, participants described how they had put their lives on hold, gathered information, travelled to police stations, and camps and appeared before numerous Presidential Commissions, only to face one failed attempt after another in finding their loved ones. In addition to these State-based bodies, families had also appealed to the Human Rights Commission, the National Child Protection Authority, the ICRC, and NGOs. Amongst these families were parents whose young children had been abducted by the TMVP or LTTE for recruitment. Many families had also pleaded with members of the armed forces, paramilitary groups as well as political parties and political representatives. A number of women described the inordinate lengths they had gone to, to find their kin, some putting their own lives at risk and others facing great indignities.

*Till the end we believed our husbands are alive. I even went to Kilinochchi alone to the LTTE camp and talked with them to give my husband back. We got so much courage to walk into LTTE camps because our husbands mean that much to us. The army officers asked me where I am going and laughed when I said I’m going to the LTTE camps. When I got to the camps, the LTTE girls surrounded me. There was one Sinhala speaking girl and I told her my details. If I went to the LTTE to get information, the Government also could have gone.”*  
(Sinhalese woman, wife of disappeared fisherman at Kanthale, Eastern Province)

29. At the heart of the frustration, anger, and exhaustion that affected families shared with the CTF, was a prevailing sense that the State, the police, and the State-institutions that they had sought help from had failed their obligations to provide them information and assist them with their search. These statements of disappointment came from a range of participants including Tamil, Sinhala and Muslim families, military families trying to trace the whereabouts of MIA servicemen, and families of disappeared fishermen, including those taken by the LTTE. While some, such as military families, expressed disappointment that the State had no interest in locating their relatives, others charged State institutions of intentionally withholding information, obstructing their search, and, even more gravely, of detaining, interrogating and torturing them when they sought help. While many participants felt that other actors they had appealed to, from politicians to NGOs had also let them down, a majority expressed that it was primarily the responsibility of the State to locate its disappeared citizens, regardless of who carried out the disappearances.

30. Despite the lack of trust in the State, the consultations revealed an overwhelming sentiment that the OMP was needed, and welcomed. Significantly, when the CTF elicited recommendations from affected families on the OMP, while a few made stand-alone suggestions, many framed their comments on what the OMP should do with detailed accounts of the administrative barriers they had faced and the physical, psychological and sexual violations they had experienced from State officials and non-State actors. Their accounts should be understood as constituting the content of a core set of administrative, legal, socio-economic and administrative issues and gaps that the OMP needs to address. Several participants stressed, *if the OMP is to truly provide them with the solutions, it has to address the obstacles they have already faced from the State, and crucially, to ensure that it wouldn't repeating errors of other State agencies.* Therefore, the following sections outline participants' accounts of these challenges.

### **3.1. Encounters with the State: Denial, Refusal to Document, Misinformation, Coercion**

*"I tried to meet [the former defence secretary] but I only got to see [the former president]. I was checked, and stripped, and asked to remove my clothes down to my underwear. Going to all these offices, I had to show my bare body, but I wanted to see my daughter so badly that I did it."*

(Tamil mother, FGD on Surrendees, Kilinochchi, Northern Province)

31. Affected families described a range of barriers they faced upon taking cases to the police, armed forces and administrative officials. These included the following: denial of arrest and detention; refusal to record statement or police entry; misreporting information; disposal of paperwork filed by families of the disappeared; delays in following up on cases; neglect of cases; requesting documentation they couldn't provide, and the use of coercion in making families accept

death certificates and compensation. A range of problems that families recounted about their encounters with the State are provided below, including the following account of a woman whose husband was abducted while he was at a State office.

*“When he was waiting at the DS Office, he was abducted. When we went to complain that he was abducted from the DS Office, they are asking for evidence. For evidence, where do we go?”*

(Tamil woman at Valachchenai, Batticaloa, Eastern Province)

*“I have been searching for my son since 2009. Due to the stress and trauma of losing my son I forgot to register that with the police. Now, when I asked them for a report of disappearance, they tell me to get it at the place I lost him. How can I get it from Mullivaikkal?”*

(Tamil mother, Public Meeting, Mannar, North Western Province)

*“Though I complained to the police that the army took him away, they wrote it down as he had gone missing. When I asked the officer not to do so, he said that if he hadn’t done so, he would be interdicted.”*

(Tamil participant, wife of disappeared man, Public Meeting, Trincomalee, Eastern Province)

32. A common experience of many family members was their mounting frustrations as they attempted to locate the disappeared, travelling to multiple military camps, police stations, prisons, Tamil militant camps or offices, Government offices, the ICRC and many others. Most often they were informed that there was no such person held there, even in instances where witnesses had seen security personnel take their relatives into those camps. Participants described how the State’s denial of enforced disappearances has forced them to face a chasm of uncertainty and fear, as they cannot find out if their relatives are alive or dead. This pain has been exacerbated by the insensitive treatment by the police. A mother whose sons were taken in the early 1990s describes the devastation she felt during such an encounter:

*“They took both my sons. The second one disappeared a week after he finished his O/Levels... I went to search in the Nawanagera police station the CID police officers there showed me the torture rooms. There was no one there, but after we saw the rooms, we were faintish. There was blood and pieces of cloth but no victims. There were others with me and we looked at all 3 rooms. There was blood on the walls. There were pipes on the floor. That is how we know this is the room where people are tortured. Why were we shown this? When we go to ask about our children why do they show this to us? I thought our children are gone, no longer alive.”*

(Tamil mother, Public Meeting, Polonnaruwa, North Central Province)

33. In addition to their denial of abductions, many Tamil families stated that even when the police did take down statements, they made errors in documentation due to their lack of

knowledge of Tamil and lack of interest in accurately writing down affected person's names and other details. Many also mentioned that letters from the State about their disappeared kin were written in Sinhala, which they could not read. Many Tamil participants made recommendations about corrective measures the OMP could make to address these linguistic problems, and these are outlined in section 6.1.

34. While some accounts flag different ways in which the police and armed forces denied that enforced disappearances took place, other accounts reveal that security forces and intelligence services maintained contact with families following arrests, surrenders and abductions. At a Colombo FGD, a woman whose brother was abducted in a white van in 2008 described how the TID and Army repeatedly visited them afterwards, and returned in 2012 and 2015 first demanding information, and then later asking if she had received a death certificate. Many others also noted how, despite the initial denial and refusal to document arrests, the police gave them instructions to collect death certificates and compensation, often against their will. The following submissions show the harassment families have faced upon refusing to accept compensation.

*"I have hidden inside my house due to the CIDs bothering. The moment I know they are coming, I go and hide, because they force me to accept the money. They tried to get my signature several times.... They also threatened us that they will label us as LTTE if we don't accept the money. But we refuse because we want to see our children."*

(Tamil mother of Surrendee at Kilinochchi, Northern Province)

*"On 26.7.1990 my husband was taken away from home... They took him inside the Army camp. They had also personally threatened and tormented me. 3 years later the CID came and threatened me to collect the death certificate. Since the CID had threatened, fearing for the children's security I went and obtained the death certificate."*

(Tamil woman at meeting in Trincomalee, Eastern Province)

35. A number of families also stated that when they sought death certificates, they were forced to sign that the disappeared were members of the LTTE, and were denied the certificates when they refused to do so. The forcible provision of death certificates and compensation reveal why many families, particularly in the North, have suspicion about receiving Certificates of Absence and Certificates of Death, and why some refuse compensation, even when they are in financial distress. It is critical that the OMP takes this into account and respond sensitively to families when they coordinate the provision of documents and reparations to affected families (See sections 7 and 9.1).

### 3.2. Interrogation, Torture, and Sexual Abuse of Relatives of the Disappeared

*“Those people who looked for bodies also became bodies.”*  
(Tamil mother in Vavunaithivu, Batticaloa, Eastern Province)

*“As my husband is always taken away, I garlanded the photo of my missing son. That time they came by an auto to shoot us, and were checking. Neighbours informed me not to stay and to run away somewhere. We ran helter skelter. They asked the neighbours whether my son was dead, and when they said yes, only then they left.”*

(Tamil mother at meeting in Trincomalee, Eastern Province)

*“[Interviewees] frequently made the connection between activities related to raising awareness of the fate of the disappeared and their subsequent abduction, detention and torture...”*

(Written Submission from justice seeking collective)

36. The intimidation and harassment of families seeking help from the police and State agencies were a recurring theme in consultations. Many Tamil participants from the North stated that the army had contacted them to come and visit their loved ones, only to interrogate them. Other participants narrated accounts of how they were arrested and tortured by intelligence services when they went looking for their children. One such account is presented below:

*“My son was taken. The CID told me to accept a death certificate. I refused. I was taken to the 4<sup>th</sup> floor and beaten up, saying that my son is in the LTTE. I still have the marks from that... When a case was filed, a CID person called [X] said ‘we mistakenly beat you up,’ asked me to withdraw the case, and handed over a cheque for 10,000 rupees. I was in the Welikada prison for a year due to my son’s inquiry. There they beat my head on the wall and did other cruel stuff. I still have injuries on my legs.”*

(Tamil mother at a Public Meeting, Mannar, Northern Province)

37. Some cases brought before the CTF revealed how acts of abduction drew in multiple parties within and outside the State, and that parties other than the State, with links to the State, have carried out the intimidation of families. The following account from a Tamil mother searching for her son illustrates this:

*“[X] told me he got to know that my son is in Kanakasanthurai and asked me to go there. I called them and I could hear the officer there saying: “if we show him now, we will be in trouble.” That is because they have tortured my son (she starts crying). Now I am living with my sister in Jaffna. One day when I was at home, a person got off from the auto and called me by my son’s name, and asked me if I was his mother. My sister told him, “I am his mother” and got into the auto.*

*They took her to an empty space. There were 4 people from the EPDP and they were ready to shoot her. One person told she is not [X]'s mother, drop her back"*

(Tamil Mother whose son was arrested and disappeared in 2005, Kilinochchi, Northern Province)

38. Submissions also show a high incidence of extortion, where abductors have contacted families demanding ransom, both baiting them with promises to release their kin and threatening them to kill their loved ones if they didn't send money. In their desperation to find their relatives, some had lost large sums of money—some of it collected through loans, pawning family jewellery, the sale of land or borrowing. A mother from Trincomalee who believes her sons were abducted by the Navy described how much ransom she paid. She said: "After abducting, they call at all times in the night and demand money to release them... They ordered us to put 10 lakhs into the Account of one Khan." Yet her son was not released. Similarly, a participant at the Buttala FGD described how she received a phone call after her husband was abducted, asking for 3 lakhs, telling her not to breathe a word to anyone, threatening to "cut him up" if she does. Such accounts were found in submissions across the country.

39. Submissions also revealed a grave pattern of sexual harassment of women by the police and Government administrators when they went in search of the disappeared. In particular, women cited numerous incidents of being asked for sexual favours in exchange for information about the missing. Such harassment was raised in FGDs about the insurrections in the South as well as those from more recent years in the North and East, as the stories below show:

*"They threaten us saying: "If you make a fuss, bad things can happen," And a lot of bad things did happen in Manikhinna. Women got raped and abused. We realised the same fate would come to us if we persisted."*

(Sinhalese woman whose husband was disappeared in Kandy, Central Province)

*"Once again, if they say to me 'your husband is there, come without anyone knowing,' I will go. Because I have not seen my husband's dead body. Anybody will do the same".*

(Tamil wife of disappeared man, FGD on Disappearances Trincomalee, Eastern Province)

*"In the search for my husband, I have only my life and honour left intact. All the rest I have lost. They called me for questioning to the Joseph Camp, and I went with my sister-in-law. That was to a hotel. They questioned us individually inside closed rooms. They had taken away my phone too. Shaken and scared, I wrote 'good van' (nalle in Tamil) instead of 'white van' (wellai in Tamil) and came off. At the same speed we came, we paid for the lodge and returned by bus. They sold our phones, got drunk and danced on the road. We have no trust, Sir. We have no trust."*

(Tamil woman from FGD on disappearances, Trincomalee, Eastern Province)

40. A woman from Kurunegala remembered how when her mother went to the police station in search of her father whom they had arrested, the IGP told her: ‘even if your husband is not there, we are here.’ Similarly, the wife of a navy officer missing in action stated that when she went to the Grama Sevaka to collect a letter stating that she remained single, the Grama Sevaka said he will bring the letter to her house in the evening. The Vavuniya ZTF also noted that young wives or mothers of the disappeared were asked for sexual favours for the release of their abducted or arrested loved ones. These experiences have influenced the strong call by families of the disappeared and organisations for adequate female representation in the OMP (See section 6.4) and for a strong complaints mechanism (See section 6.7)

#### 4. The Aftermath of Disappearance: Social, Economic, and Psychological Impacts

*“My brother was disappeared in 89. My mother was distraught and died sick from worrying. He was the only one to get us out of poverty...They abducted one person. But my mother died of grief. My father died from grief. They destroyed our whole family. It amounted to killing us all.”*  
(Sinhalese woman at FGD on the Disappeared, Western Province)

*“The tears we cried, we added them to the great ocean and made up our minds.”*  
(Sinhalese wife of missing fisherman, at FGD in Kanthale, Eastern Province)

*“When you see us, you see people who are going about life, but we are living with extreme pain in our hearts unable to cry in front of our children. We cry when we walk on the street.”*  
(Tamil wife of surrendee, Mullaitivu, Northern Province)

*“In two years’ time, we won’t be alive. Parents like us can’t manage this.”*  
(Tamil father of disappeared woman, from Mullaitivu, Northern Province)

41. One after another, mothers, fathers, wives, and daughters of the disappeared described the devastating impact the loss of their kin had on their families and communities. Submissions underscore how abductions not only arrested the lives of the disappeared, but also reconfigured families, restructuring relations across generations. These impacts extended beyond families to larger collectives, paralysing whole neighbourhoods and villages. While the mandate of the OMP is primarily to investigate and provide answers to relatives of the disappeared, a critical component of its work will be to coordinate with other State offices, mechanisms and units to address families’ needs, to provide reparations, psychosocial care, legal support or livelihood support. Thus it will be required to account for these impacts on families and communities.

42. Submissions from participants about the multiple ways in which disappearances have restructured their lives underscore the vital point that the effects on families must be seen and

addressed in a holistic way, rather than separating out their social, economic, and psychosocial needs. This is critical, as families have experienced the cost of disappearances simultaneously on multiple fronts. For instance, a Tamil woman from Polonnaruwa whose husband and daughter were arrested together and disappeared told the CTF of the burdens she endured: She had four other children, and her abducted daughter had four children of her own. Following their disappearances, she had to raise 8 children by herself, eking out a living making string hoppers. Her story shows how disappearances have, at once, restructured generational responsibilities and had debilitating economic effects.

43. That enforced disappearances dismantled household economies and networks of care became clear in the accounts of women who spoke of how their expectations that brothers, fathers and sons would provide for them were shattered when they were disappeared. This forced numerous families into desperate circumstances where they couldn't provide the care they needed for their children and aging parents. For instance, a Sinhalese participant in Polonnaruwa who lived with her partner without being legally married when the LTTE abducted him spoke of how she had to send her children to a children's home while she worked in shops to earn money to raise them. Another poignant statement about such stark choices came from the brother of a disappeared man in Mullaitivu who said: "I have stopped looking for him. I can't handle it with my work." Revealing how the loss of income earners have deprived some families with the most basic necessities, multiple parents in Vavuniya stated that they didn't want reparations, only money for food until their children were found. A wife of an abducted man described how desperate her circumstances had become:

*"I used to rear poultry. Now I have cleaned out the hen cages, for me to live. If my husband had been there I would not have incurred so much trouble. When my husband was taken away I was 6 months pregnant with my son."*

(Wife of abductee, Valachchenai, Batticaloa, Eastern Province)

44. The submissions revealed that disappearances have had both immediate and long-term effects on families. Wives of recently disappeared men from the North described how it sent them spiralling into poverty. Mothers from the South spoke of the long shadow it cast on their lives, decades later, as they aged. A woman from Mannar articulated this point when she said, "The children who could have earned for us have been made to disappear." A similar statement came from the sister of two men who were disappeared in Trincomalee:

*"On 10.11.85 my younger brother was taken. Another younger brother was taken in 83...My brother was shot and killed and dumped at 10<sup>th</sup> Verugal. We don't know the plight of the other brother. I was the one who brought up both my brothers. I want my missing brother to be found. I don't have any income. If my brothers had been there, they would have cared for me."*

(Tamil Participant, Trincomalee, Eastern Province)

45. Like the participant above, the CTF met numerous families who had experienced the tragedy of disappearances not only once, but several times. Some said several relatives were taken together in village roundups or surrendered to the military at the end of the war. Others had loved ones disappeared at different periods of the conflict. For instance, at the Polonnaruwa public meeting, two Tamil mothers spoke of how they lost multiple loved ones: the first described how both her husband and daughter were forcibly removed from their house one night by the army; the second stated that she lost all three children after the army took them away at different times. Many participants from the East brought up such multiple events:

*"I lost my son in 1991 and my other son was taken in 2007, while in Muthur. On 2006/8/4 my Father and younger sister were martyred at the same time. Now I'm a lone tree."*

(Tamil mother, FGD on Disappearances Trincomalee, Eastern Province)

*"My 3 sons were abducted. All in front of my eyes... I have no one to help me. The remaining son was taken to Pankulam, beaten and tortured."*

(Tamil mother in Trincomalee, Eastern Province)

*"I got married. After three days, they abducted him in 1989... I know they were JVP... Then I got married again had two children; he was also disappeared."*

(Woman from Puttalam, North Western Province)

46. Many who spoke of disappearances had also experienced other tragedies. Many had also seen loved ones brutally killed. At the Oddusudan Public Meeting, a man who spoke to the CTF of his missing son, also mentioned that seven other members of his family died during the war.

#### 4.1. Consequences for Women

*"Somehow, try to find my husband. All are considering us rather derogatorily."*

(Tamil woman at FGD on Disappearances Trincomalee, Eastern Province)

*"The society stigmatises the women who have been widowed.... Those women need a special system of law to complain. Going to the police is not a solution. We want something with civil public, like this. And it should especially include a woman. You can discuss certain issues with a woman face to face."*

(Sinhalese participant, wife of disappeared fisherman at Kanthale)

47. A large majority of those who came before the CTF were women, and their stories show how women have disproportionately borne the brunt of the social, economic, and psychosocial consequences of disappearances. Women across the country discussed their isolation, vulnerability,

lack of physical and financial security, and social stigma following the disappearances. Women in the North and East described how they suffered compounded effects of displacement, land loss, injury, and loss of loved ones. Wives of the missing from 88/89 spoke of the social pressure they received from families, first facing allegations from in-laws that they would immediately remarry, and later, blamed by relatives for not remarrying. A Sinhalese participant from Kandy stated that after her husband's disappearance, his relatives told her that her husband had taken loans from them, asking her to repay these debts. A Tamil participant from Kandy whose husband was abducted in a white van stated she hadn't recovered the money that people owed him, as they refused to pay her back, charging that her husband must be part of the LTTE if he was disappeared. Her account shows how the impacts of disappearance are exacerbated for minority women who face additional discrimination based on their ethnicity. Wives of MIA soldiers also spoke of the conflicts that had arisen between themselves and their husbands' relatives over distributing their husbands' salaries. Some, who had remarried were abandoned by their new husbands who left with their compensation.

48. Compounding these effects of loss, wives of disappeared men, both from the insurrection periods and the war, described the difficulties of raising children alone. A significant number of women, particularly wives of young men abducted during the insurrection periods, mentioned that they were pregnant when the event of disappearance happened. They spoke with great pain that their children had never seen their fathers. Ageing widows who had lost their husbands and mothers who lost children found themselves in precarious financial conditions in the late years of their lives. For all these reasons, it is vital that the OMP takes special measures to provide psychosocial, financial and institutional support for women whose kin have been disappeared.

## 5. The Office on Missing Persons (OMP)

*"Disappearance isn't the same as death. Families are searching for the truth. Revealing that truth is important."*

(Sinhala participant, Matara public meeting)

Q: *"So establishing this OMP is good?"*

A: *"Yes."*

Q: *"Some people say that this measure is to hunt out army soldiers."*

A: *"No, I don't think we can say that. I think these family members who are waiting to know what happened to their loved ones need a chance to know the truth."*

(Sinhala participant, Kandy public meeting)

*"If someone went missing, we would definitely want to find out what happened to him/ her. If we lose even a cat, how much do we look for it? We may not even feel like eating till it's found. Then how much more would we want to search for a missing person. If someone is missing, I'd*

*still be looking. So yes, no one would say no to this office. But we have to take our State situation into account. You can't do anything with the State."*

(Muslim participant, Kandy public meeting)

Q: *"What do you think about the OMP? It's going to be established as a permanent office. Do you think that is good?"*

A: *"Yes, it's good. What we say is this should not be just for one section – we're all Sri Lankans, and are as the children of one mother. So this mechanism should be there for everyone equally."*

(Participant, Kandy public meeting)

## 5.1 Response to the Rushed Passage of the OMP Bill

49. The current Government first announced its plan for an Office on Missing Persons in September 2015 based on the transitional justice principle of the 'families' right to know, to be set up by Statute with expertise from the ICRC, and in line with internationally accepted standards.<sup>17</sup> In May 2016, and whilst the CTF was currently undertaking its consultations, the Ministry of Foreign Affairs presented a 'concept note' on the proposed OMP to the CTF, followed shortly after by a de-briefing to members of civil society and a larger meeting with family members of the missing and disappeared.

50. The Bill titled 'Office on Missing Persons (Establishment, Administration and Discharge of Functions)<sup>18</sup>' was then gazetted on 27<sup>th</sup> May 2016 and the second reading of the Bill in parliament was advanced to 11<sup>th</sup> August 2016. Amidst protests by the joint opposition in parliament, the committee stage debate scheduled for 12<sup>th</sup> August, was brought forward and after amendments were moved the Bill was passed on the same day. The Bill certified on 23<sup>th</sup> August as the 'Office on Missing Persons (Establishment, Administration and Discharge of Functions) Act, No. 14 of 2016', was gazetted on 26<sup>th</sup> August 2016.<sup>19</sup>

51. In response to prevailing concerns about the proposed OMP Bill and to inform the parliamentary debates on the Bill, the CTF publicly released an interim report titled 'The Office on Missing Persons Bill and Issues Concerning the Missing, the Disappeared and the Surrendered,<sup>20</sup> on 11<sup>th</sup> August 2016. The recommendations in this interim report were based on all written submissions received as at 17<sup>th</sup> July 2016 and FGDs and sectoral consultations conducted until 8<sup>th</sup> August 2016.

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<sup>17</sup><http://www.mea.gov.lk/index.php/en/media/media-releases/6178-slfm-hrc30>

<sup>18</sup><http://www.parliament.lk/uploads/bills/gbills/english/6016.pdf>

<sup>19</sup>[http://documents.gov.lk/files/act/2016/8/14-2016\\_E.pdf](http://documents.gov.lk/files/act/2016/8/14-2016_E.pdf)

<sup>20</sup>[http://media.wix.com/ugd/bd81c0\\_1872d48845bd45afaafa7813ce2c89a0.pdf](http://media.wix.com/ugd/bd81c0_1872d48845bd45afaafa7813ce2c89a0.pdf)

52. The CTF, in a statement<sup>21</sup> welcomed the passage of the OMP Bill into law, however raised concerns around the expedited passage of the Bill while the public consultation process was still ongoing. The interim report too makes the crucial point that ‘the lack of consultations impoverishes the design of the OMP in servicing the needs of those who will be using it.’<sup>22</sup> Submissions received by the CTF, aside from echoing the same frustration about the Bill being drafted prior to the conclusion of consultations, also questioned the Government’s ability to meet the commitment to engage in “broad national consultations with the inclusion of those affected and civil society, including non-governmental organisations, from all affected communities, which will inform the design and implementation of these processes, drawing on international expertise, assistance and best practices.”<sup>23</sup>

53. For example, submissions raised these concerns in the following manner:

*“Frustration at the failure to set in place the promised transitional justice mechanisms and fulfil the commitments made under the 2015 UN Human Rights Council Resolution on Sri Lanka must be balanced against complaints that the process underlying the establishment of the OMP, the first mechanism to see the light of day, has been rushed and failed to consult those most affected...”* The same submission noted that *“This urgency would only make sense if it were driven by a desire to provide speedy redress to families”*

(Email submission)

*...we appreciate the appointment of the Office on Missing Persons. However, we regret the lack of consultations conducted prior to the drafting of the Bill. We also want to note that the manner in which the first of the four transitional justice mechanisms promised by the Government had been introduced, has given rise to scepticism and a fear as to whether the remaining mechanisms too would be designed without due input from affected parties.*

(Sectoral submission made by an organisation)

*The sudden urgency shown by the Government in what appears to be a rushing through of a draft outline for an OMP and it being presented to cabinet within a short period of two weeks as stated by the foreign minister raises questions with regards to the Government’s commitment to a victim driven process as promised by the foreign minister both at national and international forums.*

(Group submission)

*Establishing transitional justice mechanisms in compliance with international standards is the principal of the four prerequisites in providing the UN Peace Building Fund. For that reason, the Sri Lankan Government put forward four mechanisms and went ahead and passed the Office on*

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<sup>21</sup>[http://media.wix.com/ugd/bd81c0\\_3583553d441741deb4bc548c37b5e9e5.pdf](http://media.wix.com/ugd/bd81c0_3583553d441741deb4bc548c37b5e9e5.pdf)

<sup>22</sup>[http://media.wix.com/ugd/bd81c0\\_1872d48845bd45afaafa7813ce2c89a0.pdf](http://media.wix.com/ugd/bd81c0_1872d48845bd45afaafa7813ce2c89a0.pdf) page ix

<sup>23</sup> A/HRC/RES/30/1

*the Missing Persons (OMP) bill in parliament. However, the bill was approved by the Cabinet before the National Consultation process could take place. Further, the reasonable concerns and recommendations put forward by the war affected people and the initiatives taken up by the Government seem to lack relevance. We wish to draw attention to the contents of the Interim Report of the National Consultation Task force on Reconciliation Mechanisms.*

(Submission by an organisation)

54. Aside from groups and organisations that expressed frustration at the establishment of the office prior to the conclusion of consultation, affected communities, at zonal level attending public meetings and FGDs too expressed similar sentiments. A submission from the North Western province stated: “*The consultation has been finalised. Only the Speaker’s sign is missing. What’s the point of talking about this?*” (Participant, Chilaw public meeting)

55. While there were persons who did not support the establishment of an OMP from the outset (for example, one mother in a public meeting in Kandavalai noted the establishment of such an office would only exacerbate the problem as the office would require the continuation of disappearances in order to keep functioning), the CTF was able to observe a general sense of relief about the establishment of the OMP- if only with the hope that it acts as a mechanism that takes on the search of family members who have disappeared.

56. The CTF continued to receive submissions on the issue of enforced disappearances, missing and the surrendees even after the adoption of the OMP Act. Many participants expressed disappointment regarding the failure of the Government to guarantee or incorporate recommendations provided to them through the CTF, by including them in the draft Bill or as amendments to the Bill in parliament. A sense of mistrust around the Government’s true intentions relating to the OMP was already apparent, with participants from the Western province drawing parallels to past failed mechanisms on the disappeared. They noted that they are not ready to trust the OMP and reiterated the importance of truth and justice (by way of an investigation followed by the perpetrator held to account) before they can have any faith in the OMP.

## **5.2. Summary of Recommendations to Amend the OMP Bill**

57. There were a number of suggestions, recommendations and comments received by the CTF on the proposed OMP. The interim report tabulated these recommendations as suggested amendments to the OMP bill. Annex 15 replicates this tabulation and indicates the status of their incorporation into the OMP Act.

58. At the time of writing, only 3 amendments made to the OMP Bill were reflected in the OMP Act. These pertain to the general powers of the OMP (section 11a), powers of investigation (section 12f), and the power of the OMP to raise funds (section 21). And indeed, **none of the**

amendments adopted were reflective of suggestions coming out of the CTF's public consultations. Instead, some of these *counter* the essence of recommendations that asked for clarity and explicitness in the Act.

59. In summary, recommendations for the amendment of the OMP bill as reflected in the Interim report related to:

(a) **The name of the proposed office:**

The number of submissions that expressed their frustration at the name of the office illustrated that it is a very emotive issue for many affected families. While understanding the rationale for using the term 'missing', i.e. in order to ensure that persons whose fate and whereabouts are unknown for reasons other than due to enforced disappearances are not excluded from the OMP's mandate, submissions urged that they would like the name of the office to acknowledge the deliberate nature of the act of being disappeared. Submissions therefore suggested that the name of the OMP be changed to include 'Involuntary or Enforced disappearances', or add 'Forcibly disappeared and Surrendees' to the existing title.

(b) **Definition of 'missing person'**

It was submitted that the definition of missing person be brought in line with that of the International Convention on Enforced Disappearances (i.e. recognise the enforced nature of disappearances) while also recognising that non-state actors may also be perpetrators of enforced disappearances.

(c) **Mandate**

While appreciating the expansive scope of the mandate, submissions pointed out that in some cases ascertaining whether the disappearance relates to the armed conflict, political unrest or civil disturbance- as defined in OMP's mandate- may only be possible after an investigation. Submissions therefore requested that there is provision to prohibit the OMP from refusing to investigate a complaint on the basis that it does not fall within its mandate, unless the OMP has investigated the case and provides justifiable reasons to support a belief that the case falls outside its mandate.

(d) **Aims and powers**

- *Establishment of a database*- To provide the OMP with power to access, collate and archive all information held by a range of governmental and non-governmental agencies.
- *Investigations*- Submissions listed out the investigative powers the OMP must have in order to effectively carry out its mandate in a community & victim-centred manner, while also listing out points about investigations that relate to initiating investigations, the manner of conducting investigations and truth seeking including enabling a flow of information

through a targeted public campaign, criteria for selecting investigators, the prioritising of investigations as well as the time taken for investigations.

- *Excavations and exhumations*- Creation of a forensic unit, OMP's role in Magistrates' inquiries and legal reform in order to handle cases of mass graves.
- *Provisions relating to the confidentiality regime*- Indicating clear identifiable criteria for sharing of information, especially with prosecution.
- *OMP's role in carrying out/enabling/facilitating prosecutions*- Calls for a mandatory (as opposed to discretionary) duty of the OMP to refer all cases to prosecutions; Calls for a prosecutor within the office; Recommendation that the prosecuting authority must be privy to all information with the OMP in relation to the offence.
- *Witness and Victim protection*- Called for a clarification of the role and relationship of the Victim and Witness Protection Authority established under the Assistance to and Protection of Witness and Victim Protection Act and the OMP's Victim and Witness Protection Division, highlighting inadequacies of the former.
- *Issuance of reports to families of the missing and disappeared*- Calling for mandatory provision for sharing of information with family members, to make provision with regard to frequency with which these reports are issued, and clarification of OMP's relationship with the RTI Act.
- *The Certificate of Absence*- Recommendations to review the title of the Certificate, to extend the period of validity beyond two years, to include a provision to cancel any Certificate of Death already issued in place of a Certificate of Absence for families who are uncertain of the fate of their loved ones.
- *Recommending reparations*- To establish a unit within the OMP to handle reparations, as well as list out types of reparations.

(e) **Structure**

- *Head office and regional offices*- Calling for mandatory establishment of regional offices.
- *Additional units*- On forensics, reparations, communication and outreach, psychosocial, complaints on the OMP as well as an oversight, advisory or monitoring body.

(f) **Members**

- *Appointment process*- Recommending a public call for nominations with sufficient time provided for responses.
- *Composition*- To be reflective of the pluralistic nature of Sri Lankan society, including gender, ethnic, regional and representation of families. For members to have previous experience and qualifications relevant to the carrying out OMP's functions.
- *Role, function and status of members*- Clarifying their nature of interaction with affected persons, function as executive or governance role, membership on full-time or part-time basis and security of tenure.

- (g) **Staff**  
Eligibility, qualifications and competencies to represent gender, language proficiency, family members of the missing and disappeared.
- (h) **Women**  
To issue gender-sensitive policies and guidelines.
- (i) **International involvement**  
To make provision for international involvement in OMP's membership, as staff in specific functions and to fulfil an oversight function.
- (j) **Relationships with other transitional justice mechanisms**  
To clarify the relationship with other TJ mechanisms.

For the sake of brevity and the avoidance of repetition, please refer to the interim report for full details of these recommendations.

## 6. Operationalisation of the OMP

60. Noting the difference in the Government's approach to operationalising the Right to Information (RTI) Act and the OMP, a submission stated that the OMP Bill (now Act), does not contain any provision as to when the law will come into effect, as it gives the Minister the discretion to decide when the law will come into effect. The RTI Act, on the other hand, provides that the law is to come into effect within 6 months of its passage through parliament. Highlighting the rushed passage of the OMP bill at the cost of comprehensive consultations, the submission urged that the OMP Act becomes operational as early as possible, of course taking into account other factors such as criminalising disappearances.

61. A number of recommendations speak directly to the operations of the OMP. Despite the passage of the Act, it is evident that a number of written and oral submissions received by the CTF particularly from family members remain relevant and must be taken into account in the operationalisation of the OMP. Submissions further stated that "*The OMP must engage throughout its tenure in ongoing consultations with families of the disappeared and greater civil society, especially since its creation did not involve extensive consultation with these important sources of legitimacy and information*" (Submission by an organisation). Not only will these suggestions and recommendations on operationalising the OMP strengthen the effectiveness of the office and make it more responsive and acceptable to the affected groups, it will also relieve the distress and compounded suffering associated with the callous and indifferent encounters family members have so far faced at the hand State agencies when searching for their loved ones.

62. The CTF urges the membership of the OMP in particular to read through carefully the recommendations for the OMP listed out in great detail in the interim report and wishes to draw their focus to the sections below, dealing with operational and functional aspects of the OMP, to make the office survivor/victim-centred, as envisaged and enriched by the process of public consultations.

### 6.1. Membership, Staffing and Operation

*“The competency, political independence and ethnic neutrality of the members of the OMP recommended by the Constitutional Council and appointed by the President, along with other staff of the body, including investigators, researchers, and translators, will be crucial to the success of this effort.”*

(Submission by an organisation)

#### 6.1.1. Appointment and removal of members

*“If it’s a membership of 7 persons, there definitely has to be a representative from the MIA families... they shouldn’t be some Presidential appointee. Someone who we can trust to bring up our problems.”*

(Participant, FGD, Matara)

*“Get people to nominate candidates for OMP members.”*

(Participant, Public Meeting Southern province)

*“Include the victims and their loved ones, their representative organisations, and the civic organisations that advocate on their behalf as full time functionaries. They will then be able to co-opt any other technical instruments and initiatives that may be required.*

(Web submission)

63. Submissions suggested that the Constitutional Council should make a public call for nominations specifying the criteria and qualifications for membership in the OMP with sufficient time and opportunity given for families and the public to nominate suitable persons. A submission expressing regret that the Bill did not expressly require a fair balance of female and male members, requested that this should be addressed by the Constitutional Council in its public call, by encouraging highly qualified women to apply and ensuring that the call is brought to their attention. Submissions noted that the call should be made with a minimum period of two weeks for nomination. They suggested that once nominations are received, a shortlist of nominees, comprising approximately 15–20 persons, should be made public to enable families and the public to comment as part of a vetting process. The list was then asked to be reduced to the number of positions in the OMP on the basis of comments and views received from the public and on the

judgment of the Constitutional Council, which is forwarded to the President and also made public. Submissions noted that it would be useful to have at least four of the seven members function as full-time members and the rest of the members be available for at least fifteen working days a month. Submissions further spoke about ensuring security of tenure of OMP members in order for them to be able to perform their responsibilities without hindrance or political interference.

64. A submission, elaborating on security of tenure of OMP members noted that while section 7(3) contains a number of grounds for removal from office, requested that this should be *“applied strictly in accordance with the requirement in international standards that persons should not be removed during their term of office except on grounds of incapacity or behaviour rendering them unfit to discharge their duties and pursuant to procedures ensuring fair, impartial and independent determinations.”* (Submission by an organisation)

### 6.1.2. Language

*“Speak our language. Listen to what we’re saying.”*  
(Written submission from a female in Mannar)

65. A large number of those who made submissions to the CTF emphasised the need for competent OMP members and staff with Tamil language capacity- a notable flaw in previous Commissions of Inquiry (COIs). The inability to receive and share information in the language of their understanding not only increased the sense of alienation and frustration experienced as a result, but also seriously impeded the accuracy of sometimes even in the most basic and fundamental of information – such as when taking down the names of those who have been disappeared. To avoid such misrepresentation of crucial information, OMP must employ competent personnel with good language skills and equally good translators, however some submissions spoke of the competency to respond to and interact with those affected and their families without having to resort to translations on a regular basis. Another key operating principle that was proposed is that the OMP should be able to function in all three languages. All communications – both conversation and correspondence – must be in the native language of those appearing before the OMP so they are able to fully comprehend its contents. They said:

*“The OMP must operate in all three languages; Tamil, Sinhala, and English. Families who wish to engage with the OMP must be able to do so in their preferred language. Procedures for families to follow (such as filling out forms and selecting from available options) should be communicated in all three languages. Families should not be detrimentally affected due to language.”*

(Group submission)

### 6.1.3. Contextual understanding

66. Submissions highlighted that OMP members and staff must possess understanding of the context in which the disappearances took place. In a number of accounts brought before the CTF, this lack of understanding of the complexities of the conflict context undermined the ability to share relevant information and proceed with follow-up, in a meaningful manner. Submissions also noted that knowing the areas in which families reside in and being able to visit them at their homes will also create a better understanding of the specific needs of the families and the circumstances of the disappearance and make the OMP more accountable to those they serve. To this end, Families' involvement in the mechanism is described in a section below.

### 6.1.4. Sensitivity, demeanour and qualities

67. In a number of submissions, participants described the requisite manner and personal qualities of OMP members and staff to ensure that families are provided with the appropriate space and support during their engagement with the OMP by 'people-friendly', dedicated members and staff. They also asked that the appointees be of high integrity and have the respect of the community. The large majority of submissions across the board, from all parts of the country urged that there be no members or staff in the OMP who are even the least bit politically affiliated or partisan (for example, one submission: "*They do whatever the politicians say if their own needs are fulfilled. So I am in no way agreeable to involving politicians in this endeavour. There should be no politicians.*") (Participant, Public Meeting, Kandy). Submissions also spoke of trustworthy and neutral persons who will protect the privacy and confidentiality of all communications, testimony and data.

68. Describing the demeanour expected of those working in the OMP, participants said they need to recognise the significance of enforced disappearance and its devastating impact on families and appreciate the enduring drive of family members to seek the whereabouts of their loved ones. Participants asked that those appointed must be able to respect the opinions of those coming before the OMP. As explained in submissions,

*"The demeanour and approach of the OMP staff will be crucial. The overriding purpose of the OMP should be to assist a family find their missing or disappeared family member. Families should not feel judged, treated like criminals, or dismissed when engaging with the OMP and its staff. The OMP should operate with a focus on assisting victim families and create a caring, accepting, and respectful environment for the victim families."*

(Group submission)

*“When the mechanisms are being operationalised, staff should be understanding and empathetic to our feelings.”*

(Participant, FGD, Trincomalee)

*“The OMP should be honest, open... they must understand the feelings of the affected people... Those who are favourable to the Government must not be members”.*

(Participant, FGD, Mannar)

#### **6.1.5. Diversity**

69. Another point repeatedly encountered in the submissions was the need for diversity in the backgrounds of OMP personnel. The need for multi-ethnic, religious representation reflecting the pluralistic nature of Sri Lankan society was made, for instance at the public meeting in Kuchchaveli, a participating male whose 16-year old brother went missing in 1986, said: *“the OMP should not be biased, it must have all communities”*. Submissions also highlighted the need for staff and members from all affected regions, with a good community and communication network. Submissions argued that the different perspectives of those such as retired judges, lawyers, doctorate holders, academics, “neutral” religious leaders, other professionals, gender activists and civil activists would allow for a more nuanced and better informed documentation, investigation and response to the cases brought before the OMP.

#### **6.1.6. Staff and specialists**

70. Submissions received by the CTF recommend that OMP should stipulate clear criteria for recruiting staff/personnel at all levels, as well those who will not be eligible for recruitment. They state that staff should have the requisite professional qualifications and experience, relevant to their particular position/unit. Submissions, from across the country urged the importance of OMP being equipped with various experts and technical specialists required to carry out its mandated tasks. These include, human rights experts, personnel with previous experience in fact finding, investigations and working with the families of the missing and disappeared, technical specialists to obtain information, assistance and training in forensics, database management, database privacy etc., to carry out investigations, for witness and victim protection, to provide psychosocial support and to perform an oversight/monitoring role.

#### **6.1.7. Vetting of personnel**

71. Submissions also urged a vetting process for both members and staff of the OMP. They urged that *“offenders accused of sexual and gender based violence are not part of these processes”* (Submission by an organisation) and that *“OMP staff should be carefully vetted to ensure they are trustworthy and do not have any prior record of harassment, intimidation, or violence. They should be*

*persons who can be trusted to protect the privacy and confidentiality of all communications, testimony, and data. They should be known for their neutrality”* (Submission by an organisation). Submissions went on to suggest that persons who have been or are implicated/held responsible for disappearances or being complicit by way of denying, justifying, or covering up the crime in the past in any local and international fora, persons who are or have been members of the security forces or armed groups and persons who hold or have held political office, must not be involved in the OMP. While a majority of submissions explicitly rejected the idea of having those militarily involved within the OMP (for example a web submission stated: “*Definitely not military personnel or politicians*”), some submissions suggested that their inclusion is necessary to address the perception that the OMP was established only to service the North and the East of the country.

#### **6.1.8. Confidentiality**

72. In light of section 12(c)(iv) and (v), the latter of which empowers the OMP to ‘establish a process to accept information on the condition of confidentiality’, submissions noted that the OMP must provide clear guidelines and limitations to the operation of the confidentiality clause, to clarify if confidentiality will extend even in cases where there is material to suggest that a crime has been committed. On this point, a submission recommended the OMP should clarify that such agreements will exclude information relating to crimes under international law which will be shared with criminal investigators.

73. Submissions further suggested that only information regarding the identity of the person providing the information be withheld from the family if confidentiality is explicitly requested, and not the information itself.

#### **6.1.9. Witness and victim protection**

74. While noting a number of inadequacies in the Assistance to and Protection of Victims of Crimes and Witness Protection Act, submissions generally welcomed the division within the OMP to carry out this function, however made reference to some aspects that will be useful when operationalising it in terms of sections 13(1)(g) and 18. Submissions expressed general fear and suspicion regarding providing testimony, and specifically mentioned that they did not trust State intelligence personnel or the Police. Submissions also indicated that this division should be required to function independently from the AG, IGP, and TID and be staffed with members of civil society, Human Rights Commission Sri Lanka, and international human rights observers. The OMP must therefore pay due heed when appointing personnel responsible for implementing victim and witness protection. Furthermore, submissions called for the unit to guarantee personal safety as well as protection from any societal backlash, especially for those affected and witnesses who share confidential information. The submission recommended that members of the community can be mobilised to help ensure this.

## 6.2. Families' Involvement

*"If there's going to be an office set up to look at disappearances, I want to recommend that they appoint representatives of family members of the disappeared and those who actually faced these issues, to it."*

(Participant, FGD, Hambantota)

*"It is a grave mistake to dismiss victims and family members, as being incapable of providing input into this 'technical exercise' on account of their lack of knowledge or a heightened level of emotional involvement that would compromise their ability to effectively engage. Arguably, victims and families may not have specific input on, for example, whether or not foreign experts should be involved in certain technical aspects of the OMP, but they bring what none of us can to the table – years of experience in engaging State mechanisms in a hostile and challenging environment on the issue of disappearances."*

(Email submission)

75. In stark contrast to previous Government mechanisms established to inquire into the missing and the disappeared, where Presidential appointees and public servants carry out mandated tasks, submissions to the CTF envisage a more proactive role for families of the missing and the disappeared, in the OMP. An email submission also noted that a *"purely State-led top-down initiative would be alienating and distressingly reminiscent of the failure of previous State/Government initiatives to inspire confidence amongst families of the disappeared."* Furthermore, it elaborated that representation is *"crucial at a time when the country is undergoing an attempt to transform aspects of the conflict, but crucially, methods of governance. A high-handed approach to victims would undermine the essence of the democratic politics that was promised or at least wished for following the political transformation in January 2015."*

76. An overwhelming majority of submissions highlighted the participation of families in the OMP- from all affected groups in all parts of the country, including but not limited to the North, East and the South- as paramount. Participation and engagement of families, submissions urged, must extend to not only as members and staff, but also in various other forms. Families involvement was envisioned in a monitoring/advisory capacity in the proposed oversight body, as well as in specific functions such as in assisting investigations of detention centres, in monitoring gravesites and excavations. It is noteworthy that family members, as opposed to civil society groups, tended to highlight a more proactive role for themselves in activities of the OMP. Furthermore, participants from both Kilinochchi and Mullaitivu urged that families should be involved in the tracing and investigating process, where they would, with international supervision, be able to take part in investigation of camps and other detention centres. Submissions also specifically named

family members of ex-cadres who have disappeared as those who might have information on and be able to assist in investigations.

77. Groups of affected persons were also prepared to take up tasks to assist the OMP by way of checking forms and any output of the OMP. Individual submissions saw the employment in the OMP as a form of reparation.

78. The point was also made in the submissions that there should be clear guidelines on involvement of family members in cases where there is a conflict of interest.

### 6.3. International Involvement

*“There should be direct involvement of affected people and the international community in the office. The officers involved should be righteous and truthful. There should be no involvement of politicians in the OMP.”*

(Participant, FGD, Vavuniya)

*“Respectful local and international members.”*

(Web submission)

*“If we need the assistance of the international community to resolve this issue, then we can involve them also.”*

(Participant, Ruwanwella FGD, Sabaragamuwa)

*“Political interference shouldn’t take place. Undue pressure shouldn’t be exerted. If foreigners are to come, they should come without any conditions. An honest individual who is accepted by everyone, and thinks of the country should be in this process. People should be appointed according to a process stipulated in law. Educational qualifications are important and this individual shouldn’t be appointed based on the fancy of the Government. It should be a just man with social standing who has an understanding of the law. That individual also requires protection. There may be attempts to influence this individual or his/her family.”*

(Participant, Eheliyagoda FGD, Uva)

79. A majority of submissions favoured a level of international involvement in the OMP, while a minority felt there shouldn’t be any foreign involvement in the OMP. Those that see internationals as necessary, felt internationals are necessary as members, staff and in order to provide technical/expert advice and to fulfil an oversight function. The need for international involvement in investigations, victim and witness protection and the forensic unit was also specifically mentioned, not just in terms of legitimacy but also expertise. Aside from calls for international

involvement in the OMP by participants from the North and the East, it was a significant point raised also by families affected by disappearances in the South, including families of MIA soldiers who recommended international forensic expertise in OMP's investigations.

80. An expansive interpretation of the phrase 'any person or organisation' as seen in section 11(a) of the Act (which 'makes provision to enter into agreements with any person or organisation in order to achieve its mandate') is strongly called for by submissions received by the CTF at public consultations, given the lack of trust in the Government to carry out functions of the OMP. Although diluted by way of an amendment moved to the Bill in parliament, the Act does not remove OMP's power to involve international agencies and individuals at various levels of the OMP. These include: as members of the OMP, to provide information, to provide technical expertise, support and training (in forensics, database, database privacy), to carry out investigations, for witness and victim protection and to perform an oversight/monitoring role.

81. Submissions called for qualified foreign individuals known for their integrity, independence and professionalism appointed by the UN, through the UNWED or OHCHR, should form half of the membership of the OMP. They went on to state that without international involvement it will be "*extremely difficult for victims to place faith in the OMP and that it is difficult to conceive how the OMP made exclusively of Sri Lankans... will have the moral and practical courage to enter camps and prisons and properly investigate alleged acts of disappearance.*"

#### 6.4. Gender

*"All OMP members should be gender-sensitive or they must be trained to deal with gender-specific issues, since large number of survivors who would engage with OMP are women."*

(Submission by an organisation working on Women)

82. Since the majority of those who conduct the search for their loved ones are women, it is necessary to ensure that women constitute a significant part of the OMP. Submissions called for female representation *at all levels*, including as members of the OMP, as staff, in the recommended oversight body. This will contribute towards making complainants less vulnerable to harassment and exploitation— as has been their experience with previous State mechanisms in the past—and indeed help to create a safer space for the complainants, thereby removing a considerable source of stress for families.

83. Submissions also called,

- To ensure that staff at all levels must include at least 50% women (some submissions asked for a larger female to male representation ratio in staff)
- For a mechanism whereby the OMP offers women support for various livelihood and other activities through the participation of women field officers

- To prioritise gender concerns when mobilising resources for the OMP
- For gender training of staff
- To ensure that a conducive environment is created so that women who access its services feel comfortable and at ease in providing their statements.
- To ensure that women engaging with the OMP are reimbursed for associated costs
- To ensure provision of child-care facilities to accommodate children who will accompany adults to the OMP (submissions urged sensitivity and special attention to this section, specifically highlighting needs of those engaging with OMP, such as a room for breast-feeding mothers)
- To ensure that the reports that are prepared by the OMP dedicate a chapter to capture the experiences of women who have accessed the services and remedies that are provided by the OMP

84. It is recommended therefore that the OMP puts in place gender-sensitive policies, rules and guidelines in the operation of the OMP.

#### 6.5. Location of Offices

*If they are designing offices, they should plan for offices at the district level. We have kids to look after and without a husband we live in great difficulty. We're not able to go to Colombo for everything.*

(Participant, FGD with disabled soldiers, Matara)

85. Given that the OMP Act allows for the establishment of regional offices (section 3(3)), setting up such offices, as specified in the recommendations, would serve to alleviate difficulties that impede the search for family members. Submissions noted the importance of establishing a number of regional offices in its early stages, to reach out to all communities and assist those affected and their families to engage in the process. Having to regularly travel back and forth to Colombo to the various Government agencies has left a lot of families exhausted and financially constrained. Some participants spoke of having to take loans in order to finance their visits, leaving them in an additionally precarious and vulnerable situation of indebtedness.

86. For this reason, accessibility to regional offices was valued highly, with many submissions from all over the country, making the case for location of offices in areas well-served by public transport, where those making complaints 'can come and go without fear.' In some cases, specific locations/towns were identified based on the volume of cases and accessibility of families- for example, in Trincomalee, Ampara, Vavuniya, Kilinochchi, Mullaitivu. Some submissions even recommended offices in each village, divisional, district or provincial level, and even at local kovils, temples and mosques for new registrations. It was also submitted that OMP's Head Office should be located in the North- all illustrating the level of accessibility perceived as necessary by affected

groups to engage with the OMP. Recommendations also included having OMP officers at existing Divisional Secretary offices. There was general consensus that locating the offices in or close to areas with high incidence of enforced disappearances would help with investigations and with understanding the context in which loved ones were taken away and were disappeared. Submissions also requested proactive engagement from regional offices, by dispatching field officers to families of the missing and the disappeared without placing the burden of follow-up solely on them.

## 6.6. Consolidation of Data and Database

*“The first task of the OMP should be to analyse the evidence that already exists. The OMP should not request additional information from families relating to existing victim files, request information from the public, or conduct field investigations until the existing evidence is analysed and rationalised. In this first phase of the OMP, the only new information it should accept should be completely new cases of missing or disappeared persons. That is, cases that have not previously been reported to any Sri Lankan Government mechanism (including Commissions of Inquiry, the HRCSL, the Police, and other investigative mechanisms into missing and disappeared persons).”*

(Group submission)

*“The ICRC and HRC also need to let us know what they know... Need to identify what happened, where it happened etc., Everything needs to come out, only then will it not happen again. They can't cover up what has happened or even bigger problems than this will happen.”*

(Participant, FGD, Polonnaruwa)

*“We go everywhere they tell us to go to register our complaint. Commissions, Police, ICRC, the list is endless. Then we go to various camps and police stations. We continue to go everywhere with the hope we will find them... We have begged for money just to get photocopies, how many photocopies... all to submit to various people in the hope of getting our children back.”*

(Participant, Public Meeting, Kandavalai)

*“Check from an available list, who are left in the detention camps. Then make public the list of missing persons and officially accept that they are missing.”*

(Web submission)

87. Several submissions stated that the preceding series of Government mechanisms to address the issue of the missing and the disappeared would already have within its possession, valuable information that will assist the work of the OMP. Given that the main purpose of the OMP is to clarify the fate of those who have disappeared, having access to various sources of information, submissions noted, must be treated as critical. The submissions call for the Government to utilise

this data, based on sections 10(e) and sections 13(l)(h) of the Act.<sup>24</sup> This measure is expected to avoid duplication of efforts taken already by mechanisms such as COIs to document complaints and information relating disappearances, and to also avoid re-traumatisation of families of the missing and the disappeared who have appeared before COI after COI seeking answers and closure.

88. To consolidate this information to create the database, it was requested that the OMP approach:

- All Government mechanisms- COIs and units created to address disappearances
- The Human Rights Commission of Sri Lanka
- The National Child Protection Authority
- Sri Lanka Police
- Tri forces
- Political parties and representatives
- Non-governmental organisations and groups (including peace committees) with records and documentation of disappearances cases
- International agencies such as the UNICEF (including information from the database of child abductions and recruitment), UNWGEID, UN Human Rights committee, Committee Against Torture, ICRC (including information on family reunification) and Peace Monitors
- Court records of *habeas corpus* cases and mass graves
- Hospital records
- IDP camp records
- Rehabilitation centre records
- Detainees lists
- Surrendees lists

89. Submissions recommend that the OMP procure through the above sources, information provided to them on each case- such as copies of documents etc. and not just the basic details of the case. Submissions also suggested creating individual files on affected persons for better organising the case-load, to establish a line of communication with families whose cases are being considered by the OMP, and to create an archive of material collected during the course of tracing and investigations since, as one submission put it, 'recording stories of the families is important. It is part of the history of the Tamils.'

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<sup>24</sup> Provides for collating 'data related to missing persons obtained by processes presently being carried out, or which were previously carried out, by other institutions, organisations, Government Departments and Commissions of Inquiry and Special Presidential Commission of Inquiry and centralise all available data within the database established under this Act', and making the OMP duty bound to 'to create, manage and maintain a database which will include all particulars concerning missing persons.'

90. Submissions also recommended that a version of the database be prepared to be placed with the Department of National Archives for public access of documentation and archival of historical information that will be gathered: *“It should be duplicated and one set of documents should be placed in the Dept. of National Archives. (Web submission), Archive such information and make it accessible to the public via internet and traditional spaces.”* (Web submission)

#### 6.7. Additional Units

*“The functions of the office should include giving credible information regarding the missing people, providing security, providing counselling services to affected relatives, providing compensation from the date of disappearance to now and giving livelihood assistance which are not to be considered as the compensation for the lives of the disappeared.”*

(Participant, FGD, Jaffna)

91. The Act empowers the OMP to create new units in section 11(e): ‘to establish from time to time, and in addition to those Units and Divisions specifically mentioned in this Act, such Committees and/or Divisions and/or Units as are required for the effective administration and functioning of the OMP, and shall also have the power to delegate such powers and functions as are necessary to such Committees, Divisions and Units.’ As such, the OMP could implement the recommendations proposed by participants on the structure of the OMP by establishing the units outlined below:

- **Psychosocial Support Unit**

92. An explicit recommendation made in the submissions before the CTF was to create a Psychosocial Support Unit, to ensure that affected persons and families have access to appropriate psychosocial support, including group support and clinical psychological services. Submissions stated that families should be offered psychological assistance either *via* the unit or separate referrals to psychologists who would meet affected families on a *pro bono* basis. Submissions also pointed out the need for specialised psycho-social training to carry out this task.

- **Forensic Unit**

93. The OMP will benefit from a Forensic Unit with a mandate to identify those affected and return remains to families, which should work closely with the families of the disappeared in developing a database of *ante-mortem* data and in exhumation of graves. A submission stated: *“To meet international best practices, forensics work does not start with DNA, but instead with a comprehensive database of ante mortem data. This data allows forensics experts to draw correlations and suggest hypotheses about who the remains in mass graves may be. Under an investigative-led approach, families are at the center of the process of gathering ante mortem data, and DNA is used only later to corroborate results.”* The unit should collaborate and coordinate with the other branches of the OMP to consider issues of compensation, death certificates and psychosocial support.

- **Reparations Unit and Reparations Fund**

94. Although as it stands the OMP is only given the power to recommend reparations to be administered through the relevant authority to grant reparations (section 13(1)(f)), submissions urged that the OMP should itself have an Interim and Final Reparations Unit in order to avoid a situation where affected families are subject to retelling the tragic details of their story to a number of authorities. Submissions suggested that this unit could either include personnel from the relevant reparations authority from the outset of OMP's operations or in addition to the dedicated Office of Reparations envisaged by the Government, the OMP should be mandated and structured to provide reparations, as a mechanism specialising on missing and disappeared persons. Submissions requested that the reparations fund within the OMP should be created within four months of the Office's establishment and resourced from the National Budget whilst reserving the right to raise independent funds.

- **Advisory or Monitoring Body**

95. The lack of faith in Government mechanisms has been consistently expressed by families of the missing and disappeared. Submissions request a body/bodies to perform an oversight function of the OMP, particularly at the district level. It is expected that this body would regularly review the work of the OMP and make its findings public, suggest improvements to the structure and processes of the OMP and be partly composed of rotating family members of the missing/disappeared from different ethnic backgrounds, geographical areas and time periods when incidents occurred, and include local and international experts, experts on gender and representatives from local women's groups and organisations working on disappearances. There should be continuous consultation with the affected and organisations working on disappearances in order to avoid mistakes and help build trust. The interim report also lists out the recommended composition of this unit.

- **Complaints Mechanism**

96. There should be a mechanism to make complaints against OMP members of staff who behave insensitively or inappropriately towards families of the missing and disappeared, especially where the affected are women. The OMP should take immediate corrective action based on these complaints received. A submission indicated this unit to be responsive to the feedback of those who engage with the office: *"there must be a mechanism for families to communicate their concerns on the practical working of the OMP and for these concerns to be considered and internalised."* (Email submission)

- **Communications and Outreach Unit**

*"To ensure public trust and confidence in the Office and ensure the engagement of victims and their families, the Government should develop and launch a public outreach campaign as soon as possible which includes addressing some of the criticisms regarding the process to date and concerns about the content of the Bill. As soon as the Office is established, it should develop an on-going*

*outreach strategy to inform victims and families from all sectors of Sri Lankan society about the work of the office, its strategies and how victims and their families can engage with it. Family members of victims who are active on enforced disappearances have advocated appointment of victim representatives to work with the Office to support this engagement.”*

(Submission by an organisation)

97. This unit will be responsible for regular communication with families and also raise awareness of the OMP. This unit will also support investigations by way of crowdsourcing information/witnesses on cases of the missing and the disappeared. There were submissions that called for a transparent database of missing persons to be made available on the web. (Web submission). Submissions also requested that a dedicated unit of professionals who are sensitised to the needs of families to carry out this function.

### 6.8. Investigations

*“If you’re ready, take us directly to camps so we can search for those persons. That will give us chance and hope.”*

(Participant, FGD, Mullaitivu)

*“The missing children are kept secretly in Camps. Secret camps still exist. Recently evidence for one had been found in Trincomalee and cases are pending in the local courts. In one day all the secret camps and army camps must be searched.”*

(Participant, FGD)

*“We’ve heard that there’s a massive detention camp like a big hole, in Anuradhapura. Apparently a lot of those who disappeared are held there. If possible, please show us even a photo if our sons are alive? Doesn’t matter if they’re disabled or without limbs. If they’re alive that’s enough. That will be a huge relief.”*

(Participant, FGD, Western province)

*“OMP must have the power to investigate Police investigations.”*

(Participant, Public Meeting, Matara)

98. Disappointed by the lack of follow-up and investigations through previous mechanisms appointed to search for the disappeared, participants expected the OMP to be equipped with a strong investigation arm. Submissions, particularly from organisations, urged that investigations are closely followed by criminal prosecutions of any wrong-doers. The submissions suggest that investigations by the OMP must be informed by the context within which the disappearances took place; the time lapse between the incident and investigation; and the extent of evidence relating to

disappearances already available—within communities, families and organisations working on this issue—but which may not be recorded in official complaints.

99. Families of the missing and the disappeared making submissions before the CTF were enthusiastic to provide information which could be useful in investigations such as links and patterns related to history and context and responsibility for acts and patterns of disappearances stressing the need to facilitate witness testimonies. Submissions alluded to cases that had not been taken up for investigation, despite family members and other witnesses providing considerable evidence, including the identity of the individuals who had abducted or arrested the family member. The sense of desperation and urgency with which they offered to assist the OMP was proof of families' unwavering hope that their loved ones are still alive. Participants from the North and the East listed out detention sites in Palali, Kathirkamam and Trincomalee, and alleged to secret detention centres, in Kadirgamam (Kataragama), Pulmottai and the Maldives, Trincomalee and Verugal. Participants further called for an investigation into officers who were operating Omanthai camp, where a number of those who surrendered at the end of the war are alleged to have been disappeared.

100. Participants from the Southern zones were keen to provide information on disappearances during the insurrections and on servicemen MIA with equal ambition. At the same time these participants flagged the need for investigations to strategise in a way that enables investigations where the availability of evidence is minimal due to significant lapse of time. In the case of servicemen MIA, it was submitted that it may be necessary to interview LTTE cadres who are in custody, or who have been rehabilitated, as well as certain politicians, in the effort to find the truth relating to the fate of these servicemen. It was submitted that a lot of family members of servicemen still believe that they are alive and are living in camps in India, and they require closure through truth. These submissions too spoke of OMP's responsibility to go beyond the investigation of individual cases to understand patterns and the larger context within which these incidents took place. The need to offer an amnesty as an incentive to obtain information also came from the Association of Families of Servicemen Missing in Action.

101. While submissions spoke of OMP's ability to prosecute perpetrators or undertake criminal investigations with a view of enabling prosecutions (see section on link to judicial mechanism), some submissions made the point that they are prepared to forego punishment for perpetrators just to get their loved ones back alive, and some were reluctant to even broach the subject of prosecutions, afraid that their loved ones may be killed by whoever that is holding them captive. For example, submissions stated: *"If people provide information on the whereabouts they should definitely be provided amnesty, offer incentives to come forward."*

102. It was also stated that some families were not prepared to accept a certificate of death without a proper investigation: *"Can't take death certificate without knowing truth."*

*“They said they have just been requested to take the death certificate of their missing relative without giving any information regarding them, and they asked why they can’t know where he/she is buried.”*

(Participant, FGD, Vavuniya)

103. While appreciating the OMP’s broad powers of investigation, submissions also highlighted the manner in which they expect investigations to be conducted that could make ascertaining the fate of missing and disappeared persons, faster and more effective. While the interim report details recommendations for conducting investigations based on submissions, the CTF lists them out here, summarised, as suggestions for operationalising investigations of the OMP.

- Initiate investigations into all cases consolidated in the database, including those reported to national and international bodies and *habeas corpus* cases.
- Formulate criteria for selection of investigators, including a vetting process especially if current or past members of the Police or military are considered as investigators. Submissions stated that at no point should the TID or Military personnel, particularly Military intelligence, be involved. Participants from war affected areas expressed strong views about the composition and investigations of the OMP, overwhelmingly calling for international presence in investigatory teams.
- Initiate targeted public campaigns to enable the flow of information. This may be through crowdsourcing information through State and non-State media, and through a secure and dedicated telephone number, email and postal address.
- Identify possible mass gravesites and secure those sites for further investigations. Submissions noted that since the OMP’s mandate covers prevention of further disappearances, it is important to pay attention to the cases of large-scale killings.
- Those affected and their families must be consulted regarding their readiness to interact with perpetrators in the course of investigations.
- Secure the assistance of families themselves who have essential information which may not have been recorded in official complaints.
- Treat politically-sensitive cases with extra care and caution.
- Get assistance and information from ex-cadres in custody and those rehabilitated.
- Be committed to continue investigations into a case until it is, or has as best as possible, provided information of the fate of the missing person and clarified the circumstances in which the person went missing, and in cases where the missing person is deceased, their remains are returned to the family.

*“We must be immediately informed of whether the children who were caught or handed over are still there or not.”*

(Participant, FGD, Mullaithivu)

Prioritisation of cases for investigation:

Section 12(b) of the Act provides for a prioritisation of cases based on,

- (i) Incidents of missing persons that have occurred most recently,
- (ii) Incidents in which there is substantial evidence already available,
- (iii) Such incidents that are, in the opinion of the OMP, of public importance.

Submissions noted that this prioritisation should also,

- 1) Extend to include cases where there is evidence that a person may still be alive, and
- 2) Include the public's view of which cases are of 'public importance',
- 3) Recognise that the availability of evidence may differ in cases of missing persons, enforced disappearances, and surrendees,

104. On time taken to conclude investigations, affected families stressed the need to know, as a matter of urgency. Many felt that they have waited long enough. Families say that they need answers within 3 months to one year.

105. Given the number of complaints in submissions around the treatment of families in their search for missing loved ones, the CTF notes that where during the OMP investigations it is revealed that a crime has taken place, such as sexual harassment or extortion, the OMP must investigate the allegation or refer it to the prosecutorial body who will undertake criminal investigations.

## **6.9. Notification of Status of and Information from the Investigation**

*"We need to know what's happening to the complaint and this trail needs to be made public particularly to the family- what has happened to the complaint."*

(Participant, FGD, Batticaloa)

106. Provided that investigations will begin, based on prioritisation, with material already available with previous State mechanisms, families of the disappeared desired a notification of their case being taken up by the OMP. Submissions pointed to the importance of specifically being informed of the date of when investigations are beginning (which has a bearing upon periodic updates on investigation status expected by families), and corroboration of information already collated by the OMP to initiate investigations, as some submissions noted that information given to Government authorities have not been recorded accurately or have been misrepresented.

107. Although the OMP Act holds the office duty bound under section 13 to inform relatives of the status of investigations, it does not stipulate the provision of information to family members as a mandatory duty nor does it give the frequency with and the extent and manner in which such

information ought to be shared or the language it should be communicated to families in. Submissions recommended that the OMP formulate rules or guidelines in this regard to report its activities, procedures and general findings, where appropriate to the public and/or family members and provide an explanation for any delay, in a language of the families' choice. In their submissions, people recommend making it mandatory for families to be provided with updates relating to an on-going investigation:

- Periodically (at least twice a year);
- Whenever there is a significant development; and
- When a case has been sent to a law enforcement or prosecuting authority on evidence that an offence under the law has been committed.
- Aside from reports to families, submissions recommend that OMP must also publicly "*publish reports in all three languages on progress in a timely (at least quarterly) and transparent manner if it is to have credibility*" (Submission by an organisation), as enabled by the Act.

108. While section 13(c) obliges the OMP to keep the relatives informed of the status of investigation, it also provides the office the discretion to withhold information if it is 'of the view that such would hinder the ongoing investigation or that it is not in the best interests of the missing person.' Submissions raised the concern that this limitation is vague and unclear as to how this discretion will be exercised. They suggested, that at the very minimum, and in the interest of operational transparency, there must be a duty for the OMP to provide reasons to family members where information is withheld.

109. Furthermore, although section 13(b) makes provision for the OMP to provide information to the families, as to the whereabouts of the person if the person is found alive, the disclosure of this information is subject to the consent of the missing person. This limitation, submissions raised, applies even at the conclusion of an investigation except that under Clause 13(d) family members will at least be provided information regarding the circumstances of the disappearance. A submission raised that "*it is imperative that families are able to verify that a person is in fact alive; are capable of making free and independent decisions; and that they are not being held in detention or under any form of duress. An individual's right to privacy, especially where they do not wish to be reconnected with their family, is not in doubt. However, this must be balanced against the rights of families to know the truth and to ensure that the person is in fact alive and well.*" (Email submission)

110. Aside from the report to be issued by the OMP to family members on the conclusion of an investigation, submissions also requested a "receipt" or "certificate" as a form of acknowledgement from the State that an individual has been disappeared.

## 6.10. Excavations and Exhumations

111. As noted in the interim report, aside from a separate forensics unit, submissions raised the need to include forensic experts, including internationals, in the membership of the OMP, as members of staff as well as monitors, especially within the Tracing Unit. As the Act only allows the OMP to act as an observer during excavations and exhumations and noting the limited resourcing and capacity of domestic systems in place at present, submissions also suggested the OMP build a working relationship in order to assist or advise Magistrates with experts in the fields of forensic anthropology, forensic archaeology, forensic pathology, forensic medicine and other similar expertise to conduct and/or to supervise the excavations and/or exhumations, especially in mass graves, **with a view of enabling any criminal prosecutions**. Furthermore, the OMP, where possible and when appropriate, must make it a standard operating procedure to engage special services to preserve the body so as to enable family members to identify their loved ones and direct appropriate authorities and supervise the return of human remains or any items associated with such remains, which have been identified as belonging to relatives of missing persons.

112. Submissions spoke to the need of a sound scientific approach in cases of mass grave excavations. The current legal framework, which is intended to cover instances of routine ‘domestic murder, is inadequate to address the problem of mass graves and has contributed to the mishandling of these sites right from the outset’ (College of Forensic Pathologists). While submissions recommended legal reform to address this critical gap (enacting new laws to handle mass graves and amending the Criminal Procedure Code to include the *post-mortem* examination of the dead in large-scale disasters and atrocities), at the lack of a dedicated legal framework around the issue of mass graves, the CTF observes that OMP’s operations must formulate and set out procedural guidelines and best practices around the subject to avoid mishandling of these sites. This ensures the successful completion of investigations with a view to deliver justice to the affected by respecting the right of a person to be correctly identified after death, returning the remains to families for dignified burial, and finding answers to relevant medico-legal and legal issues in any subsequent prosecution of the culprits.

113. Submissions further recommended that the Government should give clear instructions to the security forces and police that they are not to interfere with the OMP’s work, for example, *“security and police forces should be barred from presiding over exhumations of mass graves as their presence could be construed as a form of intimidation. The OMP should be provided adequate security to ensure that its staff, collected evidence and work materials are not harmed or destroyed during the course of its work.”* (Submission by an organisation)

## 7. The Certificate of Absence and Certificate of Death

*“Temporary certificates should be given... they should be given by the Government and it should be legally valid to perform certain functions.”*

(Participant, FGD, Mullaithivu)

*“1990.08.2016, 135 persons were taken away from the Campus. They have issued death Certificates but their bodies were never given. We only know that the Army came and took them away.”*

(Female participant, Public Meeting, Valachchenai)

*“Along with my son, another boy from Madawachchiya went missing. They gave his wife a job. They offered our daughter a job too but I refused saying look what happened after sending my son to the Navy. Forces are trying to somehow give us the death certificate and shape it off.”*

(Participant, Public Meeting, Southern province)

### 7.1. Certificate of Absence

*“The Certificate must allow resolution of such vital issues for survivors as inheritance, land tenure, pensions, widows’ benefits, accessing frozen bank accounts, etc. There is apprehension among the relatives of accepting certificates of absence. They should be reassured that it is only an acknowledgment of their loved ones status as a missing person, but efforts will continue to find out their whereabouts, circumstances and eventual status. Providing a Certificate by itself without a vigorous effort of searching out information on what befell the missing person will not be sufficient. This initial acknowledgment should also entitle survivors to receive partial reparations from the body entrusted with Reparations.”*

(Submission by an organisation)

114. Although the OMP does not have the power to directly issue a Certificate of Absence (CoA) or a Certificate of Death (CoD), it is mandated (in section 13(1)(a)(i)) to provide interim reports to family members which enables the Registrar-General’s Department to issue either a CoA or a CoD. This links operations of the OMP quite closely with the provision of these documents to affected families. Compared to the attention around the OMP, there was relatively little focus on the CoA, which aims to, given the staggering the number of cases of such in Sri Lanka, create a legal status for the missing and the disappeared.

### 7.1.1. Recommendations relating to the Certificate of Absence

115. On 25<sup>th</sup> August 2016, the Registration of Deaths (Temporary Provisions) (Amendment) bill<sup>25</sup> that enables the issuing of a CoA, was passed in parliament. The Act, certified on 7<sup>th</sup> September 2016 was gazetted as law on 9<sup>th</sup> September, 2016.<sup>26</sup> **The CTF notes that the only suggestion coming out of public consultations incorporated in the Act is to make provision to cancel a CoD and opt for a CoA. None of the other recommendations detailed in the Interim Report were incorporated into the Act.**

116. Based on suggestions made to the CTF at the time, the CTF recommended amendments to the Bill in its interim report. These recommendations are explained in detail in the interim report, however below is a summary of some those recommendations.

117. Amend the Bill to,

- Rename the Certificate of Absence as a Certificate of (Enforced) Disappearance or Certificate of Surrender to explicitly express that the person was made to disappear or surrendered, and is not merely absent or missing.
- Review the terms used in Sinhala and Tamil for “absence”
- Extend the CoA’s period of validity beyond 2 years: It was submitted that this short validity period and renewal of the CoA may result in undue distress and bureaucratic hassle for families of the disappeared, and as a result is “unrealistic and unreasonable,” particularly given the large volume of cases. It was submitted that where the OMP is still investigating a case the CoA’s period of validity must be extended to 10 years. Submissions further held that *“It would be difficult for the public to keep renewing the Certificate every two years... besides, it’s the Government’s duty to search and inform us. Therefore, I ask that the Government issues a certificate of absence instead of a death certificate and that it investigates the case and it works towards renewing the certificate on its own initiative. Until such time that it can be proven that a death certificate can be issued, it is up to the Government to do this.”* (Participant, FGD, Hambantota)
- Include a provision to cancel any CoD already issued in place of a CoA for families who are uncertain of the fate of their loved ones: *“A few have been given death certificates by force. We won’t take them. We should be issued with the Missing Person’s Certificate. Already issued Death Certificates must be taken back and missing persons’ certificates must be issued to them. Along with that our lost children must be found and given.”* (Participant, FGD, Trincomalee)

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<sup>25</sup><http://www.parliament.lk/uploads/bills/gbills/english/6018.pdf>

<sup>26</sup>[http://documents.gov.lk/files/act/2016/9/16-2016\\_E.pdf](http://documents.gov.lk/files/act/2016/9/16-2016_E.pdf)

- Include a provision that where the OMP has declared a person as missing even after an investigation, the CoA should have no expiry date.
- To ensure that the definition of missing persons and conflict is consistent with that of the OMP.
- To broaden the definition of the term ‘relative’ to include minors (through a guardian) and relatives living abroad.
- Implement a public awareness campaign about the purpose and implications of the CoA.

118. In addition to the recommendations made above, submissions raised a number of practical challenges that would need to be resolved when implementing the CoA under the provisions of the Act. They also highlighted that the Act places an unfair burden on affected families to provide information on the status of the disappeared. The CTF hopes that these practical difficulties are accounted for in implementing the CoA. For example, submissions raised ground realities such as:

- Lack of documentation (particularly in the North and East) to prove relationships,
- Lack of access to official documents including CoI reports,
- Lack of cooperation from Grama Niladhari to assist families,
- The requirement to submit an application for a CoA to the Registrar-General or the District Registrar of the District in the area in which the missing/disappeared person was permanently resided, as opposed to where family members currently reside (particularly given the contexts of displacement).

#### 7.1.2. Lack of awareness

119. The CTF observed that while some submissions, particularly from organisations, welcomed the proposal of the CoA, many participants from the CTF’s zonal consultations were apprehensive about the CoA as they were not aware of its potential benefits. The CoA provides a legal status to the missing and aims to address the practical needs of the families (to access bank accounts, exercise ownership over land and other assets.) without families having to obtain a CoD in cases where they believe the person is still alive. Submissions also highlighted the need for the CoA to be recognised by the private sector. These issues were raised by a number of participants across the island:

*“I still have no way to get the money in the bank. They ask for his death certificate. How do I take the death certificate without knowing whether he’s alive or dead?”*

(Participant, FGD, Kandy)

*“He was insured with Ceylinco. They are willing to pay us money, but are asking for the death certificate.”*

(Participant, Public Meeting, Southern province)

*“The land we’re living in now belongs to my missing husband. Because there’s no death certificate for him we won’t get ownership to this land.”*

(Participant, Public Meeting, Puttlam)

120. Because of the lack of information about the CoA, it was evident to the CTF during consultations that some affected communities harboured a sense of suspicion of the certificate, while others feared the consequences of accepting a CoA. Submissions spoke of instances of families being forced to accept a CoD (*“on the orders of the Government the GS forced me to take the Death Certificate”* - Female participant, Valachchenai public meeting), and perhaps resulting from that, some feared accepting a CoA reasoning that it might later be equal to a death certificate and therefore their plea to find their missing loved ones would not be heard anymore: *“they will give the certificate and that will be it.”* (Participant, FGD, Kilinochchi)

*“CID keeps coming to my house lately and once said we will give you Rs. 50000 sign this document that your son has died. I said prove that my son is dead I will sign it. The GS also said that he will get me a death certificate for my son. I want to know the truth about what happened to my son.”*

(Participant from Silavathurai)

121. As noted in the interim report, a number of perspectives emerged on the CoA’s title. A considerable number of submissions associated the CoA with a State certification of their loved one’s “absence” rather than “disappearance.” As it appeared that families were seeking for a clear acknowledgement that a crime of disappearance had taken place, submissions requested that it be re-titled as ‘Certificate of Disappearance.’ Some participants specified that they were not happy with the certificate because it only spoke to those who went missing. These families of surrendeers reiterated that they handed over their husbands to Sri Lanka military, personally, and therefore insisted that the CoA must acknowledge that their husbands have been enforced disappeared. (Western Province FGD). At the same time, there were also persons who felt that whatever the certificate was titled, they would not accept it since it would be akin to accepting a death certificate: *“It would be a betrayal to accept it, when we continue to search.”* On this matter, the CTF notes that establishing whether a person is missing or absent may be easier than establishing whether they were subject to enforced disappearance, which will require an investigation. However, the CTF deems it necessary that families are reassured that the CoA is different to the CoD, in order for affected communities to gain back some of the faith that was lost due to their previous experiences with the State.

122. The CoA is an example of how even positive measures by Government to provide relief to affected persons are looked upon negatively and are perceived with scepticism due to deep rooted mistrust of Government, exacerbated by the limited communication of Government's intentions.

## 7.2. Certificate of Death

123. On the CoD, participants, across the island noted the difficulties they have faced when trying to obtain a CoD. Even after applying for it, a significant number of participants expressed frustration about how they are still waiting for it to be issued:

*"It has been over 10 years since I applied for a death certificate. I still haven't got one."*  
(Participant, FGD, Devinuwara)

*"There should be legal action against those who are responsible for the omission to provide a death certificate."*

(Participant, Public Meeting, Matara)

124. Submissions from across the country emphasised that law enforcement authorities were reluctant to say their family members were 'disappeared' in the CoD and instead said in their report that the victim was 'shot by unidentified persons'.

125. Another issue that came out through submissions was the lack of information available on getting a death certificate, even in instances where families were willing to do so. Submissions recommended that the Government makes public and seeks ways of issuing compensation and death certificates where necessary (Web submission).

126. Noting these defects, the CTF notes that it is important for the Government to ensure that the process through which the CoA and CoD is implemented, addresses public confusion and fears as stated in submissions. The OMP must therefore include in their operational guidelines to inform individuals of any consequences in accepting a CoA or a CoD.

## 8. Beyond the OMP: Other Measures to Address Disappearances

*"PTA must be removed. If it is removed there won't be any more troubles. If the abductor is caught, then the person who ordered him to do so should be punished. Then only these types of things will not happen again."*

(Tamil man at Public Meeting, Trincomalee, Eastern Province)

*“Don’t let those who have suffered suffer further. Release the children being held in prisons as well as those who have been disappeared. This is the only way to soothe” (thavitthu thiriyum pengalukku oru aaruthal)*

(Tamil Participant at Ampara, Eastern Province)

127. Submissions received by the CTF on disappearances drew attention to issues that went beyond the articles of the Act and operationalising the OMP, to urgent measures to assist in the search for the missing, as well as to address justice, memorialisation, trauma, and non-recurrence. Both written and oral submissions made recommendations regarding immediate and long-term needs of those affected and their families. Immediate measures that submissions addressed dealt with two areas: (1) Measures for those currently in detention and (2) support for families in the interim until a reparations package is established. These are elaborated below:

**Detention centres, detainees and rehabilitees:**

- Release list of all detention centres;
- Release the names of all political prisoners currently in detention;
- Publish list of all surrendees/those in rehabilitation;
- Take measures to free political prisoners within one year;
- Ensure that political prisoners are not tortured and harmed while in detention and while investigations are on-going;
- Expedite and complete within six months all *habeas corpus* cases.

**Support for families of the missing:**

- Guarantee witness protection to families searching for the missing;
- Implement a financial allowance for families of the disappeared;
- Appoint a special officer at District and Divisional Secretariats to support the affected. Amongst these officers ensure that there are female officers to support women and ensure the prevention of sexual harassment of female relatives;
- Give preference/priority to families of the disappeared in providing Government facilities such as housing and land.

128. It needs to be emphasised that many submissions received by the CTF and ZTFs evince the need to repeal certain laws, reform other laws, and enact new laws to strengthen the existing justice system. This is seen as necessary to prevent abductions, arbitrary arrests, illegal detentions and disappearances in the future, and to ensure justice and accountability. Submissions call for the following legal changes:

1. The repeal of the PTA: It is stated that laws like the PTA are one of the major causes of enforced disappearances, torture and custodial deaths of Tamils in the North and East, as they have allowed State security forces to abduct and arbitrarily detain persons without the requirement that they should be produced before a Magistrate within 24 hours. It is also

submitted that despite promises of reform, the PTA remains in effect, and the CID and TID continue to subject persons in the North and East to widespread surveillance, harassment and detention with impunity under the provisions of the Act.

2. Ensure Presidential Directives on arrests and detention are implemented.
3. Enactment of enabling legislation to give effect to the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED), including criminalisation of enforced disappearance.
4. Enactment of a new law dealing specifically with mass gravesites in order to address the lacunae in the law and reform existing laws.
5. Amendment of sections 269-273 of the Criminal Procedure Code to include the *post-mortem* examination of dead in large-scale disasters and atrocities.

## 9. Links with Other Mechanisms

### 9.1. OMP and Reparations

*“They gave assistance under the headings of affected due to war and affected due to tsunami. Never under the category of disappeared. Anyway this issue must be given importance under the new office.”*

(Female participant, Public Meeting, Valachchenai)

*“My son disappeared when we come to Vavuniya from Vanni in 2009. I searched in every camp, but couldn’t find him. Till I find him, the Government should help me monthly to get my daily food.”*

(73-year old Tamil mother at Public Meeting in Vavuniya, Northern Province)

129. Section 13(1)(f) and 13(1)(k)(vii) of the OMP Act states that the OMP is empowered to recommend that the relevant authority grant reparations to missing persons and their relatives, including administrative, welfare, and psychosocial services, as well as support with other means to improve their social and economic conditions. A large number of submissions addressed reparations and discussed different types of compensation and flagged their needs and concerns related to its distribution. Submissions recommended a ‘Reparations Unit and Reparations fund’ within the OMP itself to provide interim and final reparations (as described in section 6.7). Submissions also noted the practical difficulties that would arise, given the sequencing of these proposed mechanisms, given that *“there is no timeline for the setting up of such an authority and it ignores the needs of families of the disappeared for even interim reparations to be granted by the OMP at a minimum.”*

130. For all other forms of reparations, it is advised that the OMP maintains a working relationship with the mechanism tasked with reparations. A written submission from a women’s

collective directly addressed the relationship between the OMP and the Office of Reparations saying: “The OMP should be linked to a reparations unit/office that can quickly process reparations; people who are affected by such violence should not have to go to multiple different places as they rebuild their lives.”

131. Both organisations that work with families of the disappeared, and families themselves, described the financial and psychological burden they experience when they are forced to go to different places information and compensation. Significantly, they saw this process of being referred from place to place without answers as an integral part of the problem of access to information and compensation that they expected the OMP to rectify. To prevent cases from becoming held up or lost in the bureaucratic process of coordinating between offices, participants recommended that persons from the relevant reparations authority be part of the OMP from the outset in order to facilitate the reparations process. It was also recommended that family members should have the opportunity to question reparation decisions.

132. Participants requested the OMP to coordinate with the Office of Reparations to provide the following reparations:

1) **Monetary compensation.** Families requested both (a) lump-sum payments and (b) long-term financial support that take into account how long the victim was missing and the amount of money the person would have otherwise brought home as remuneration. Some from Vavuniya said they wanted monthly payments, similar to what families of army soldiers receive. Families also requested support for expenses incurred while the OMP conducts its investigations, especially to cover travel and other expenses.

2) **Material reparations.** The most common form of material reparation requested was housing, especially those in the North and East who have faced displacement and disappearance.

3) **Debt Relief.** Families requested the cancellation of all debt provided to the disappeared or assistance in reducing debt obligations for affected women.

4) **Pensions** for aging kin, including parents of disappeared children and wives.

5) **Educational and job opportunities.** Preferential school admission and educational scholarships were requested for children of the disappeared. Families also requested preferences in job quotas in Government and private sectors and support in securing employment for children of those affected.

6) **Psychosocial services** should be made available in an accessible manner for any relative of disappeared victim throughout the entire process- from the initial engagement, to learning of a disappeared person's whereabouts, to identifying remains and performing death rituals if the person was killed.

7) **Other assistance** such as for recovery of monies paid to the CID, TID, politicians and paramilitary groups in the search for missing and disappeared family members.

133. Family members affected by disappearances in the late 1980s and early 1990s who received a one-time compensation pointed out the lack of any long term support by the State. They requested:

- A pension for women who are over a certain age and can no longer benefit from livelihood assistance;
- That the State institute an official accessible at the local level who can provide support to women in the pursuit of livelihood related or other everyday activities where women may need to deal with authority figures.

134. While families of the disappeared across the country highlighted their needs for support and compensation, many expressed divergent views about reparations, with some wanting them, others refusing them, and many others emphasising that their capacity to think about reparations was tied to other needs such as finding out what happened to their kin, and finding justice. Although most participants' main focus of concern was learning of the fate of the disappeared, many described the socio-economic difficulties they were facing and the need for support, at least for their children. Therefore, it is vital that the staff of the OMP and the Office of Reparations is trained to engage sensitively with families on these issues while facilitating or providing compensation. It is also important that the OMP coordinate with the other three mechanisms of transitional justice to ensure that families of the affected receive reparations in a range of ways that they envision it, including symbolic and judicial forms.

## 9.2. Links with Judicial Mechanism and Views on Accountability and Justice

*“If there is to be an OMP, it has to investigate who gave the orders to carry out the disappearances, find why they gave such orders and committed such crimes. An Office on Missing Persons that doesn't do that is of no use to us. We need justice.”*

(Sinhalese participant from FGD on Disappearances, Western Province.)

*“If we talk about the punishment, they won't release [our kin].”*

(Tamil Participant from Mullaitivu, Northern Province)

135. As it stands, section 12(i) of OMP provides that ‘where it appears to the OMP that an offence within the meaning of the Penal Code or any other law, has been committed, that warrants investigation, the OMP may, after consultation with such relatives of the missing person as it deems fit, in due consideration of the best interests of the survivors/victims, relatives and society, report the same to the relevant law enforcement or prosecuting authority.’ Although there is no provision for the OMP to get directly involved with prosecutions within the existing framework of the OMP, **the expectation by affected families that the findings of the OMP would lead to some form of justice, cannot be overstated.** As with the Office of Reparations, submissions

underscored the critical importance of the OMP's close collaboration with a prosecutorial authority or the Judicial Mechanism and Special Court, with information gathered by the OMP indicating individual criminal responsibility for crimes under international law (including enforced disappearance, torture, war crimes and crimes against humanity), is forwarded confidentially to the Special Counsel of the proposed justice mechanism for further criminal investigation, highlighting the close link between the OMP's tracing investigations and criminal investigations leading to prosecutions (Email submission from an organisation). A submission further urged that the OMP does not provide amnesty or use immunity to persons providing evidence and documentation of crimes under international law. Submissions highlighted how important it is that the OMP handles the evidence and material made available to it or uncovered in the course of its tracing inquiries, carefully, as the OMP will play a crucial role in facilitating or hindering prosecutions and the affected persons' right to justice. This is essential, as a significant portion of the OMP's work will involve investigative issues that directly deal with legal issues including, but not limited to: arrests and detentions that took place under the PTA; surrenders of affected persons to the army; continued detentions of political prisoners; and the chain of command that enabled and permitted enforced disappearances as a tool of war. It also involves broader issues brought forward by the affected concerning justice, accountability, prosecutions, amnesty, and forgiveness. On this point, submissions raised concern about the sequencing of Government's proposed transitional justice mechanisms: *"Since the OMP will not engage in criminal investigations and the office of the special prosecutor has yet to be set up, it is unlikely that inquiries by the OMP will happen alongside criminal investigations. This raises concern regarding the proper handling of evidence. Not enough safeguards are in place to ensure the proper handling of evidence to ensure that it does not compromise prosecutions, forcing families to make an impossible choice between truth and justice."* (Email submission)

136. An overwhelming number of submissions received by the CTF and ZTFs articulate the need to punish perpetrators and to hold the Sri Lankan State to account. They submit that this is the only way to ensure non-recurrence of these incidents. However, many wanted the authorities and those giving orders to be held responsible, more than those carrying out the acts. In oral submissions before the CTF, it was clarified that while the LTTE is also responsible for disappearances, it is the State that is primarily answerable to its citizens, including the Tamil population. A view that was expressed predominantly by Tamil civil society organisations was that if the LTTE was functioning and its leader was still alive, then it would be necessary to find a way to hold the LTTE to account. Some groups did note that there are individuals, including former LTTE leaders who could be punished.

137. Yet the question of justice and accountability for disappearances is not directly addressed by the OMP. It is vested with the power to refer cases where it suspects a criminal offence has been committed, to a prosecuting or law enforcement authority. However, in the absence of legislation giving effect to Sri Lanka's obligation under the ICPPED, including criminalising disappearances and the lack of information about the mandate of the Special Court, several submissions raise the

question of whether these cases will be referred to the Attorney General's office or the Police for prosecution. Submissions clearly articulate their lack of trust and confidence in the existing criminal justice system. In the current context, submissions point out that law enforcement officers who are implicated in disappearances [including the Terrorism Investigation Department (TID) and the Criminal Investigation Department (CID) may get involved in the investigations and prosecution of these complaints, a conflict of interest in ordinary circumstances. Submissions urge as imperative that adequate administrative arrangements and checks are instituted to ensure independence and foster confidence in the eyes of the families of the missing and disappeared.

### 9.3. Links to TJRNRC

138. While the overwhelming idea of justice that emerges from submissions is the idea of retributive justice, a few submissions refer to the need for "rehabilitation" of perpetrators and reconciliation between the affected and perpetrators. One submission points out that affected persons and perpetrators of disappearances are living side by side in some communities, and that therefore they would ask the Government to explore mechanisms that have a restorative justice process in mind. They would like the Government to commit, at a minimum, the same space for restorative justice processes as for legal processes. Another states that those persons who are found guilty of disappearances must go through the same kind of rehabilitation that the LTTE cadres were subject to, following the end of the war. Some expressed that those who opted to become State witnesses could be pardoned. At an FGD held in Kilinochchi, one mother whose son had surrendered to the Army during the final phase of the war stated that she simply wants her son back and she is not interested in seeing those responsible punished. She further stated that she does not want another mother to go through the kind of suffering that she is going through. Given these sentiments, it is recommended that there is a link between the OMP and the proposed TJRNRC, which is expected to take up matters relating to truth as well as forms of non-retributive justice.

### 9.4. Recognition of Shared Experiences and Non-recurrence

*"If there was justice done to the perpetrators at that time, there wouldn't have been a situation like this for the Tamil sisters in the North and East today."*

(Mother from Moneragala at Meeting with SCRM)

*"No mother like me, should be in tears again."*

(Tamil mother whose son was a mechanic in LTTE, who went to 18 places to look for him, from Kandavalai, Northern Province)

*"We will not get justice from being given a sum of money. How can money give life to a life that was lost? It must be ensured that this will never happen again."*

(Participant from Colombo, Western Province)

139. The observation that enforced disappearances have been a shared experience of communities across ethnic groups and geographic locations was made by participants themselves. Some Tamil participants from the Northern Province stated that the OMP should examine not only their cases but also those of Sinhalese families whose relatives were abducted by the LTTE during the war, and those disappeared by the State and JVP during the insurrection periods. Sinhalese families who had experienced the insurrections made similar comments about Tamil victims of disappearances in the North and East. This recognition of shared suffering came through clearly in the statement of a woman from Kandy who said: “As of late, for about 5 days a year, we go to Jaffna. When we go there, and see how they have suffered, it almost feels like our suffering is negligible.” Similarly, a Sinhalese man who described his experiences from the insurrection period, grimly noted that if the Sinhalese army committed such atrocities towards Sinhalese people, he could not begin to imagine what it had done to Tamil minorities in the North and East. While not all families of disappeared persons were ready to recognise the pain of families from other ethnic groups, these sentiments show that shared traumas may also provide some grounds for empathy and alliance building across lines of ethnicity.

140. Alongside the recognition of shared suffering, the CTF also heard a resounding call across the country to criminalise enforced disappearances ensure that it is no longer used as an extra-legal procedure in Sri Lanka. This call not only came from families that had lost relatives to disappearances but also from one of the few voices of the disappeared that the CTF was able to hear. A Sinhalese man from Deraniyagala who had been abducted multiple times during the 1971 insurrection, and escaped, recounted his experiences to the CTF, saying that no prior commission had asked him about, or documented, what he went through as an abductee. Following his long and detailed account of the immense terror he underwent during these successive abductions and the multiple crimes he had witnessed in detention, including the rape of several female abductees, he concluded with the statement: *“we suffered because of an army that had no discipline and because of a Government that had no discipline... and because of a lack of democracy. We must take the responsibility to ensure that something like this will never happen again.”*

## V. JUDICIAL MECHANISM

### 1. Introduction

1. The question of justice was addressed by a number of written submissions received by the CTF as well as at focus group discussions and public meetings in the North and South.

2. Participants stressed the importance of justice as a pre-cursor to reconciliation towards ensuring accountability and non-recurrence and ending the prevalent culture of impunity. Justice was also viewed as a goal in itself as a means of addressing past wrongs and violations. The CTF received extensive evidence on the failure of the existing justice system to deliver justice and re-victimisation of victims and witnesses through the justice system. There were some, who felt that justice would hinder reconciliation.

3. The CTF also heard varied conceptions of justice articulated in the submissions: some saw it at different levels for individual cases or at a collective level; while others emphasised specific aspects such as accountability for war related human rights violations; an end to impunity; recognition of group rights and wrongs suffered to the collective such as recognition of the right to self-determination and a future defined by Tamils themselves; acknowledgement that injustices and violations were committed or as social and economic justice.

4. Submissions called for a range of possible responses to the crisis of justice, accountability and to end impunity including to work within the existing system despite its drawbacks; establish a special court and special counsel (i.e. a special judicial mechanism) under which a range of crimes, punishments and perpetrators could be prosecuted; and the possibility of ad hoc courts/ tribunals for specific issues. While there was a large volume of submissions on the need for a judicial mechanism and specific aspects, the CTF received very few submissions on the structural and procedural aspects of a justice mechanism.

5. For the purpose of this chapter, the CTF considers those submissions that address issues of justice accountability for human rights violations, with special emphasis on the judicial mechanism. Submissions relating to the problems with the existing justice and law and order systems are referenced in this Chapter, recommendations for reform of these structures are included in Chapter VI: Beyond the Four Mechanisms.

## 2. Justice, Accountability and the Need for a Special Court

### 2.1. Demand for Justice

*“Justice is very important for all ethnicities and all religions. We need to accept it has happened to all communities.”*

(Buddhist Priest in Galle)

*“Justice during a reconciliation process includes transitional justice (fair civil or criminal trials for accused individuals and institutions, fact finding bodies that include the truth commission, office for reparations and adequate support to all people hardly hit by the conflict especially families of missing people) as well as social justice and economic justice.”*

(Written submission by an organisation)

*“In order, to build up a society where permanent and peaceful life is possible. We want fair justice, on the terms justifiable solution with equal rights, equal justice on humanitarian base.”*

(FGD, Kilinochchi)

6. A large number of submissions stressed the importance of justice, particularly in the context of accountability, and putting an end to impunity, deterring future crimes, to meet the needs of affected persons and families and lay the foundation for peace. The calls for justice, were referred to in the context of the failure of the existing system to deliver justice, accountability and redress for a wide range of crimes/affected persons including the experiences of Tamil persons during and after the war, the violations suffered in the South during the southern insurgency in 1987-89 and more recent incidents of religious violence in the South and police and military excesses throughout the island.

7. The failure of the existing justice system also grounds the call for international involvement and/or supervision and the need to reform the existing system alongside any special justice mechanism. The specific submissions on the failure of the existing justice system (referred to as the ordinary justice system as against any proposed special mechanism) are detailed further below (See Section 2.2 of this chapter). The following section details the call for justice, reflecting the spectrum and the importance placed on justice and accountability mainly in public meetings, focus groups discussions, sectoral submissions and a few written submissions that addressed technical points.

### 2.1.1. Justice as punishment of perpetrators

*“If the Government wishes to function as a Government which abides justice and truth, whoever the perpetrator is, they should make them to stand in court and say the truth. They must not be given protection and weaken the punishment.”*

(FGD, Mannar)

*“People did not just die, someone killed them. Like the missing, they just did not go missing. Somebody did it”*

(Mother of disappeared in Manthai East)

8. The vast majority of those who came before Zonal Task Forces in the North and East wanted the perpetrators prosecuted and punished. One person called for the death penalty, while another stressed that *“perpetrators need to be prosecuted and punished, and a system established to ensure non-recurrence”*<sup>27</sup>. There were others who felt that punishment should be minimal, so that perpetrators could understand the effect of their actions on the lives of affected persons and their families. Families of the disappeared in two separate submissions said that *“If the person is found to be alive, then the perpetrator may be forgiven”* or in the converse *“if they have killed them I need punishment...”*. A detailed discussion on submissions related to punishment including on the importance of forgiveness is at section 7.11 below.

### 2.1.2. Justice as a precondition for reconciliation

9. A number of submissions view accountability as a precondition for reconciliation, peace and development in Sri Lanka. *“Key prerequisites for a successful reconciliation process are administering justice and maintaining law and order as well as an appropriate degree of security to prevent any backlashes or new violence particularly created by opponents of the reconciliation process.”* (Written Submission by an organisation)

### 2.1.3. Justice as a deterrent – non-recurrence

10. Accountability and ending the prevailing culture of impunity through justice are seen to serve as a deterrent against future acts of violence and crimes. Therefore, justice is viewed as important to ensure non-recurrence. A teacher in Thunukkai said *“If people are punished then others seeing it won’t do it”*. An organisation working with torture survivors, reflecting on their consultations with torture survivors living outside Sri Lanka, stressed the importance of justice for non-recurrence. *“The vital importance of justice is a recurring theme in discussions we have with torture*

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<sup>27</sup> Similar sentiments were expressed at the Batticaloa FGD.

*survivors from Sri Lanka and many other parts of the world. We asked this group why justice is so important to them. They provided a range of views but most stressed the value of justice as a safeguard against recurrence of widespread torture in Sri Lanka.”*

#### **2.1.4. Justice for religious violence**

11. While the majority of submissions were related to accountability in the context of the ethnic conflict, there were also submissions that addressed the issue of religious violence especially in the context of increased violence and attacks against religious minorities, following the end of the war. An organisation working on religious freedom stated *“we propose for religious freedom violations to be taken up in this judicial mechanism sorely because if you take the judiciary of Sri Lanka, a majority of the time when it comes to religious freedom violations cases we have not received justice. And usually parties have been forced to settle cases so we want an unbiased, independent judicial mechanism to actually take up these religious freedom violations cases, which are ongoing and past”*.

#### **2.1.5. Opposition and/or apathy towards a justice mechanism**

12. There was also a section that sees justice as counter-productive or even irrelevant to reconciliation and dealing with the past. Concerns, that justice would hinder progress, have been articulated in submissions made by Sinhalese in FGDs held in the south and from some abroad. Tamil opposition to a justice mechanism appears to be based on a sense of cynicism about what the mechanism can really deliver. A Tamil woman from Valaichchenai, whose father, husband and brother are all missing said that she did not want justice – she did not know what happened to them but she knew that they were dead and requested for support for herself. In Manthai East, a woman whose son was taken by the LTTE and died in fighting said there was *“no use of punishment, God will see to that”*. Others stressed the need to prioritise more pressing concerns such as the parents of a disappeared person in Thunukkai who said that they *“don’t want prosecution, only want loved ones to return”*.

13. Even while recognising the importance of accountability, one submission also stated that the main aim should be to look forward to the future rather than backwards. *“The accusations and counter accusations can go on forever, we have only a limited time in this window period. Already 6 years have passed since the Terrorist War came to an end”*. (Written submission by an organisation).

## **2.2. Impunity and Failure of the Ordinary Justice System**

*“War crimes have been committed by both sides. Nothing has been done about it”*  
(FGD, Mullaitivu)

14. As stated above, submissions on the importance of justice must be understood in the context of the failure of the ordinary justice system to provide redress and accountability. An organisation working on religious freedom in its statement on religious violence referenced above, said that a special mechanism is needed because the courts have failed to provide justice in the ordinary course. The judicial mechanism is seen as a significant mechanism that will challenge the culture of impunity in Sri Lanka. Submissions reflected their experiences in dealing with the police and the justice system and the various ways in which the State has failed to address the needs of affected persons, witnesses and families (See Chapter VI: Beyond the Four Mechanisms, sections 3.3 and 3.4).

### 2.2.1. The Police - failure to record complaints, investigate, bias

15. The failure by police to record and investigate complaints and act in an independent and impartial manner was raised in submissions. A man whose elder brother was abducted in 2008 talked of how the police failed to take down his complaint or even take action. He believed the police were assisting the perpetrator. He said he knew the two men involved and he will come forward. *"I want justice. I want an international court. I have no trust in police or existing legal system"*. The mother of a disappeared person in Thunukkai said that when she tried to record a complaint with the Mullaitivu police that her son was missing, the police had asked her why she wanted a police report after so long and advised her to get a death certificate.

16. Complaints against the police and State authorities also came from the South and related experiences particularly from the southern insurgency in 1987-89. A Buddhist priest in Galle said that *"a man was murdered in front of me [during bheeshanaya]. I gave testimony but nothing happened... We created an organisation for disappeared to seek them out and find them"*. Another man at the Galle FGD said that *"...The people that hurt us are still alive. If we go to punish those who hurt us we will have unwanted problems... When we went to the police, they didn't allow us to report the incident. They chased us"*.

### 2.2.2. The Judiciary - Delays, Language, Lack of independence

*"Judiciary should act with equality. The de-merger of North-East provinces, recent release of army persons in the Kumarapuram murder case etc. creates loss of hope in the judiciary and reconciliation."*

(Participant, Public Meeting, Karavetty)

17. Submissions cited lack of faith in the judiciary and the politicisation of the court process. The recent judgment in the Kumarapuram Massacre case had given rise to distrust and disbelief that justice could be provided through the Sri Lankan judicial system. A person at the Killinochchi FGD said *"Now, an authority created by the discriminatory and racially biased Government gives solutions."*

*Even judges cannot give proper judgments*”. This was in reference to the transfer of the judge in the Kumarapuram Case purportedly for political reasons. The submission went on to state that *“if we take the Kumarapuram Case, they took it to Ampara, then transferred it to Trincomalee. Likewise, they misdirected it. What happened in the case was miscarriage of justice...in the Killiveddi Kumarapuram Case, the judgment was handed down with no justice.”*

18. Submissions made at the Trincomalee FGD echoed this view stating that in *“1996 they shot 26 people at one go. There is a case that is still ongoing on this. This case was held in Anuradhapura. We have gone for this 8 times already, but no proceedings. Only last month was the first proceedings. But none of us know Sinhala and they take what we say in Sinhala, we don’t know whether they are writing positively or negative about what we say”*. This submission is also relevant to the language of the Court, where very often proceedings are conducted in the Sinhala language, alienating Tamil speaking persons from participating effectively in the justice process.

19. Similarly, at the Trincomalee FGD a woman related the struggle for justice for victims of rape and sexual violence *“My daughter [name withheld], in 1996, was 16 years old. When she was returning from school, and going for evening classes, two people from the home guards and army raped her on the road itself. After that, she was taken to a deserted house and killed by stabbing her with a soda bottle. I found my daughter dead in this state. I keep going to Anuradhapura for the case, but all these years, no redress for the loss of my daughter’s life.”* (See also section 10.1 of this Chapter on women, gender and the judicial mechanism).

20. A woman at the Mullaitivu Surrendee’s FGD stated that she does not have faith in such process and that the judiciary was also biased asking unnecessary questions and delaying the process.

### **2.3. Need for a Special Court**

*“There should be special courts with decisions handed over within a specified time period (either 6 months or 1 year. Sri Lankan judges and lawyers cannot give a proper judgment to all the problems that occurred. There is not enough will for that.”*

(Participant, Public Meeting, Mannar)

*“There are many life threatening incidents happening in the North-East. These should be investigated by a special judicial mechanism.”*

(Participant, Public Meeting, Kaluvanchikkudy)

*“Perpetrators should be brought before the law. They should be punished by the judiciary. To avoid recurrence, they need to be punished.”*

(Participant, Public Meeting, Karavetty)

21. Recommendations for a special court and/or special counsel or at least a dedicated prosecutorial department within the existing system have been recommended by the regional commissions on enforced disappearances and the all island commission which submitted its report in 2001<sup>28</sup>. The CTF has received a wide range of submissions on possible solutions to the crisis of justice and accountability of which submissions calling for a special counsel and judicial mechanism are addressed in this chapter. Submissions recommending a tribunal, inquiry model, truth and justice system as possible mechanisms are analysed in a separate chapter on Truth, Justice, Reconciliation and Non-recurrence (See Chapter III: TJRNRC).

22. A delegation comprising five members at the Karaichi (Kilinochchi) Public Meeting said that there *“should be a special court”*. At one FGD in Sabaragamuwa it was submitted that *“In the present system the High Court takes 10, 15, 20 years to reach a verdict. We need a special court... Today we don't have any faith in those that adjudicate. This is a time when DIGs are also arrested”*.

23. An organisation that works on religious freedom stressed the importance of a special mechanism to address delays in the existing system and to address political interference. *“Considering the nature and the sensitive character of the issues, it may be prudent to put in place additional processes for expeditious dispensation of cases. These measures could include retaining special Counsel and the engagement of foreign advisors or as counsels as independent observers in the process to build confidence. This may be necessary given the scale of political interference the judiciary has undergone during the past regime.”*

### 3. International Involvement

*“Foreign Judges should be included in a judicial process to find out the truth.”*

(Participant, Public Meeting, Verugal)

*“...survivors are clear that for the process to be credible and for it to contribute to long-term peace and stability in Sri Lanka, the participation of international judges is non-negotiable.”*

(An organisation that works with torture survivors)

*“Not only by another country but get by moon, what matters is to make justice to the public”*

(Buddhist Monk from Anuradhapura)

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<sup>28</sup> The regional Commission of Inquiry into Involuntary Removal of Persons and Disappearances After 1<sup>st</sup> January 1988 in the Central, North Western, North Central and Uva Provinces recommended a special court to hear cases on disappearances. The All Island Commission and the regional Commission for the Western, Southern and Sabaragamuwa provinces recommended that an Office of independent human rights prosecutor should be established.

*“Need international involvement or we won’t solve this problem.”*

(Family member of a disappeared person in Valaichchenai)

*“Given the role of the international component is to impart trust in the process, their role in practice is both that of whistleblower and canary. Our analysis is that who they are, and their credibility, is to a certain extent more important than what role in the process they perform. That said, for survivors to have trust in the process, international actors must have a substantial role.”*

(An organisation that works for peace and justice)

24. The CTF notes that the issue of international involvement (arguments in favour and against) occupied the bulk of the submissions on the judicial mechanism and were broadly polarised along ethnic lines with the call for some form of international involvement coming mainly from the Tamil community and other minority interest groups, who have expressed a lack of faith and confidence in a domestic process.

25. The call for international involvement is on a spectrum from a purely international mechanism, through a hybrid court to a purely domestic process. The hybrid option in some cases is a compromise and in others a more considered response to the need for confidence and faith in the mechanism and includes the necessity of multi community representation, especially from affected groups/communities. The mainly Sinhala opposition to any international involvement are also detailed below in section 3.4. The CTF notes that the submissions on composition focus heavily on judges with less attention to staff, the special counsel and investigators.

### **3.1. Conflicting Political Statements**

26. One submission expressed concern regarding the political commitment to the judicial mechanism based on conflicting statements from the political leadership regarding the judicial mechanism, particularly with respect to international involvement. Affected persons interviewed by an organisation that works with torture survivors for a submission made to the CTF expressed concerns about the statement made by President Sirisena on 21<sup>st</sup> January to the BBC that he would *“never agree to international involvement in this matter”* and that Sri Lanka has *“more than enough specialists, experts and knowledgeable people in our country to solve our internal issues”*, while the submission notes that Prime Minister Ranil Wickremesinghe subsequently told Channel 4 News that in fact international involvement in the justice mechanism is *“not ruled out”*.

### **3.2. Calls for a Purely International Mechanism**

*“Recently the Kumarapuram massacre judgment was dismissed. Also the Batticaloa Mylanthanai massacre judgment. If we consider these we can look with only suspicion at any solution through a local mechanism. It is clear that a local mechanism is unacceptable. Further, in a hybrid system,*

*the one who should be inquired will be judging along with foreign judges. This is unacceptable. An international inquiry using foreign judges should be done, other alternatives are not acceptable.”*

(Participant, Public Meeting, Nedunkerny)

27. The call for a purely international mechanism was made by Tamil participants at FGDs, public meetings and in written submissions based on a number of factors.

### **3.2.1. Lack of trust in a domestic mechanism**

28. One of the main reasons cited was the lack of faith and confidence in a Government led domestic mechanism. The father of a disappeared daughter said, *“We need an international court, we will not trust this Government”*. An elderly man from Manthai East stated that since the Government is responsible, it cannot be its own judge – an *“outside country should judge”*.

29. Recent decisions by local courts such as the Kumarapuram judgment have further eroded people’s faith in local justice. At the Kilinochchi FGD it was emphatically put forward that, *“[We] were considering the mixed court, but found it inappropriate after the Kumarapuram Case. If it is done, the majority attitude of ‘issues could be solved locally’ will come. We don’t believe that a proper solution will come out of this method...The international judicial system should establish a judicial mechanism here. Mixed court has become questionable after the Kumarapuram Massacre Case verdict.”*

### **3.2.2. Fear of reprisals**

30. A submission from the Mannar FGD referred to the fear of reprisals under a purely domestic model. *“We have no trust in internal investigations, because, no sooner we return home from the investigations, the harassment by the intelligence continues to this day. No trust in the politics and we have to safeguard the witnesses.”*

### **3.2.3. Fear of discrimination/bias**

31. Another reason for rejecting a local and/or hybrid model was the fear that the Sinhalese community would dominate the process and that it would discriminate against the Tamil minority. At the Kaluvanchikkudy Public Meeting it was submitted that *“We need an international judicial investigation of all the planned incidents. Only foreign experts will be non discriminatory. Locals will discriminate”*. Further, at the FGD for Mullaitivu surrendees it was stated that, *“...If a mixed court is established 90% of the judges would be Sinhalese. The judicial mechanism must consist 100% of foreigners. Mixed court will not do. Proper justice will not be given.”*

### 3.2.4. International mechanism as an alternative to a hybrid court

32. A human rights watchdog suggests an international mechanism as a last resort, if the hybrid court is not accepted or put in place by the Sri Lankan Government. It notes that in the event it is not possible to establish a hybrid mechanism due to lack of support within parliament, it was of the view that the Government should either request the United Nations Security Council to establish an ad hoc international criminal tribunal or make a declaration accepting the jurisdiction of the International Criminal Court.

### 3.3. Argument for a Hybrid Court

*“In investigations about the disappeared, both honest local judges and foreign representatives should be involved to have proper investigations.”*

(Participant, Public Meeting, Nanaddan)

*“we have waited enough for local judges. We want a mixed group”*

(Woman in Thunukkai)

*“Both international and local judges should be there in equal numbers. Here public opinion must be important.”*

(Participant, Public Meeting, Trincomalee)

*“There should be hybrid courts. Foreign experts should be involved in judicial decisions and proceedings. They should show what the law is and then take into account the views of foreign experts.”*

(Participant, Public Meeting, Kandy)

33. Taking a cue from the wording of the HRC resolution, a number of written submissions refer to the need to establish a hybrid international–national justice mechanism, which comprise both foreign and local judges. The hybrid mechanism should be independent and autonomous from the national justice system. International participation is seen as vital to impart trust and confidence in the judicial mechanism.

#### 3.3.1. Compromise

34. As mentioned above, the call for a hybrid mechanism as against a purely international one by Tamil participants has been a practical compromise in the case of some, and a more considered approach to ensure trust, confidence and capacity while also including local community

representations in others. The submission from an organisation that works with torture survivors states that *'Initially all the Tamil people wanted international justice but Sri Lanka has always said it will be national; rather than that happening, at least this is better than having domestic justice'*. Submissions on community representation are considered at section 4.

### 3.3.2. Role of internationals

35. There were different views on the role of internationals in the mechanism. Some suggested that they participate as observers or as advisors *"It can even be by local people and foreign people as observers – a combined or hybrid method"* (Participant, Public Meeting, Vavuniya North). *"Foreign individuals can be brought in, not to hear cases but at least as observers..."* (FGD, Sabaragamuwa). *"...We need the opinion, advice, assistance, training, knowledge from internationals..."* (Participant, Public Meeting, Matara). An organisation that works on religious freedom submits that *'...The mechanisms should be one where a panel of international experts work alongside domestic legal professionals, and their views and recommendations should be implemented in the trial and investigative processes.'*

36. Others recommended the active involvement of internationals in decision making at least during the initial stages of the judicial mechanism. *"Give competent, international judges, prosecutors, lawyers, and investigators key roles in the different components of the judicial mechanism with a special counsel, at least in its initial period of operation, ensuring that they are involved directly in important decisions in relation to investigations, prosecutions, trials and judgments."* (Individual written submission)

### 3.3.3. Ensuring independence and trust

37. An organisation that works on peace and justice points out that the issue of international involvement is not one of capacity but one of trust. An individual written submission states that international involvement will guarantee *"...independence, impartiality, credibility, legitimacy, greater transparency and a fair and just trial"*. At a Matara Public Meeting it was said that *"Internationals are less likely to succumb to pressure like those in our local legal system"*.

38. Similarly, the involvement of foreign judges was seen as providing much transparency to the justice process. A participant at the Public Meeting in Karavetty stated that, *"[T]he involvement of foreign judges is also important. For example, mass grave was found in Chemmani. International organisations came, the remains were examined and then we were informed that 'they were remains of disappeared people.' There needs to be transparency. Rule of Law and Accountability is necessary for transparency in a Good Governance regime."*

#### **3.3.4. Capacity and expertise**

39. A local organisation also emphasised the need for international participation on the ground of lack of expertise and capacity within Sri Lanka to deal with international crimes (see further below). A submission in Galle referring to disappearances that took place during the Southern insurgency in 1987-89 said that *“We want international because more experience, we have been trying for so long.”*

#### **3.3.5. Which internationals should be involved**

40. On who from the international community should be involved, a family member of the disappeared in Valaichchenai said *“China and Pakistan no hope. Norway, UK and US instead”*. A mother of a disappeared person in Kandavalai said *“Geneva people must come and Mannar bishop and intellectuals”*. A submission from the Karaichi (Killinochchi) public meeting said that persons from the UN and Sri Lankans, especially those who speak for the people should be included.

#### **3.3.6. International staff of the judicial mechanism**

41. While most of the submissions focused on the inclusion of international judges, some technical submissions, at public meetings and FGDs also addressed other staff of the special mechanism. An elderly man in Thunukkai said that *“we need international lawyers”*. A women’s network and a local organisation spoke of international staff recruited on the basis of expertise in key areas and ensuring representation of women experts. (See section 10.1.1).

42. A local organisation that works on transitional justice submitted that for the first 10 years, the special counsel must be an international prosecutor. At a public meeting in the South, it was said that *“For the special judicial mechanism there should be local as well as international lawyers involved. Their legal systems are more advanced and it is important to get this international legal assistance for our system”*

#### **3.3.7. Appointment and criteria**

43. Specific submissions on the appointment and criteria for judges and staff of the mechanism are discussed at sections 11 and 13 below.

#### **3.3.8. Ratio**

44. A few submissions refer to the appropriate balance between international and local participation. A local organisation was of the view that the ratio of international to nationals will be critical. It went on to state that there must be careful consideration as to the number of judges,

lawyers, commissioners, investigators and other relevant staff. An organisation that works with torture survivors and an organisation that works on documenting torture stated that the majority of the judges must be of international origin. At the Jaffna FGD for ex-combatants, it was said that there should be a “proper ratio” of international and Tamil speaking judges. At the Karavetty Public Meeting it was suggested that, “[J]udges from other countries should be included in more numbers in the special judicial process.” “If we have at least two foreign actors in the local team, that will be good. Today we don’t have any faith in those that adjudicate.” (FGD, Sabaragamuwa)

### 3.3.9. Transition to a domestic mechanism

45. A number of submissions recognised that in the long term, the judicial mechanism could transition to a fully domestic court. A human rights watchdog envisaged that such a transition would occur no sooner than three years after the commencement of the hybrid mechanism. It was further suggested that during this period, consideration should be given on a case-by-case basis to appointing a majority of national judges. At an appropriate stage thereafter, at least three years after, consideration should be given to establishing panels completely comprised of Sri Lankan judges. A local organisation also envisaged that there would be a gradual phasing out of internationals over time, as expertise and capacity amongst Sri Lankans developed. Submissions mentioned that this was done in Bosnia-Herzegovina.

### 3.4. Opposition to International Involvement

*‘National courts and national judges are competent to take up criminal cases against all perpetrators. We do not require foreign judges or foreign tribunals or changes to local laws.’*

(Individual written submission)

*‘Only local legal expertise or Sri Lankan experts domiciled in foreign countries should be recruited to the judicial mechanism. Involvement of foreign judges would once again be a ploy by the Government to implement pre determined foreign agendas...’*

(Individual written submission)

*‘A parallel judicial system will lead to disorderly prosecutions creating a manic media scrum akin to a soap opera. This mayhem has the potential to drive a wedge between communities living harmoniously side by side at present.’*

(Submission from an organisation)

*‘Foreign consultation is not appropriate for the country. It is not appropriate for Sri Lanka. Our family problems cannot be solved by [outsiders]. There is no problem mediating the process.’*

(Government official, Anuradhapura)

46. As evidenced by the above quotes, the CTF received a number of submissions, which expressed opposition to international involvement in the court primarily from individuals and organisations representing the Sinhala community within and outside Sri Lanka. It must also be noted that the representatives of the armed forces and the police were categorical in their rejection of foreign participation in any of the mechanisms including the judicial mechanism. The opposition stems from

- (1) Fears that that involvement of foreign counsel in whatever form would be a ploy to implement foreign agendas that are not in the national interest of Sri Lanka. (FGD, NCP; Public Meeting, NCP; FGD, Sabaragamuwa).

*“It is not preferred to establish a Court with a foreign counsel. Sinhala race will be in trouble. There is this idea that, this [Court with a foreign counsel] would be supported by the diaspora...”*

(Participant from Anuradhapura)

- (2) Skepticism towards the mechanism and danger of being unfavourable to the State military (Public Meeting, NCP, FGD, NCP).

- (3) That there is sufficient expertise within Sri Lanka and therefore there is no need for foreign involvement;

*‘In the event, there are staffing deficiencies, you could always draw on the services of qualified Sri Lankan personnel serving in other jurisdictions... Non-Sri Lankan persons should not be considered as there are enough and more highly regarded Sri Lankan persons working in the legal field outside the country...’*

(Individual written submission)

- (4) Confidence in the ability of local justice system to be impartial and deliver justice

*‘There is no need for the composition of the Court to include foreign judges. There may have been a time in the recent past where Judges of the Supreme Court was subject to Executive pressure. Such is not the case now, and they can be expected to be impartial. It would be an affront to the Judiciary if foreign judges are required...’*

(Individual written submission)

- (5) Fear that foreign involvement will drive a wedge between communities living harmoniously in Sri Lanka (Submission from an organisation, Public Meeting, Southern Province).

- (6) High costs of foreign involvement (Individual written submissions).

- (7) Argument that this is a domestic matter that should be resolved internally - *“It is wrong to seek help from the neighbour to solve my household problem. We have to solve our country’s problems*

*within the country... Sometimes my problems are unknown to an outsider. That person may not have an idea about root causes of our problems, our culture. So, our problems should be solved domestically.”*

(Female participant from Ratnapura).

47. There were also submissions that pointed to the failure of the existing system but did not call for an international mechanism either. For instance, a Muslim family member of a disappeared person in Valaichchenai talked of how the police failed to record her complaint but also stated that she did not want foreign assistance.

### 3.5. International Oversight

48. Some submissions appeared to make a distinction between international involvement and international oversight. Public consultations in the North stressed the importance of international oversight over the judicial mechanism **irrespective of its national/international composition**.

49. A human rights watch dog was of the view that the Government should enter into an agreement with the United Nations to establish this mechanism within Sri Lanka. It is submitted that this Agreement should set out its mandate, structure, applicable law, the Government's obligations towards establishing and providing full cooperation with the mechanism, the funding mechanism and tentative and non-binding timelines and phases for transition to a domestic court. A Buddhist priest in Galle, who saw the need for international involvement but had concerns about its practicality said *“not sure if international will work. It would be better if we have international monitors.”*

## 4. Representation of Different Interest/identity Groups

50. A representative of the Sri Lankan Armed Forces recommended that in addition to the special counsel and Sri Lankan judicial officers, the mechanism must include – representatives of the aggrieved parties; accused parties, civil communities affected from all major ethnic communities and parties involved in the conflict, in order to instil confidence in the process.

51. The CTF has also received submissions from the Tamil community calling for multi-community representation. A submission from Manthai East suggested that in addition to international involvement the special mechanism should include persons from the Sinhala, Muslim and Tamil communities. A religious organisation made a submission that all JSC appointments to fill the vacancies should be based on giving full representation to all religious communities. A participant at the Karaichi (Killinochchi) public meeting said that *“Persons who speak for the people should be included. Unselfish Tamil speaking lawyers should be included. Representatives of the affected must be accepted into it”*. An organisation working on religious freedom in its submission stated that, *“Civil society should play a significant role in monitoring the judicial mechanism and there should be room*

*for victims to participate in the investigative and trial processes in order to ensure closure and reconciliation.”*

## **5. Working Methods and Principles**

52. The following recommendations on the working methods and principles of the court emerged from submissions relating to the judicial mechanism. These submissions recommended that the court should:

- Be fully victim-centred and safe
- Approach affected persons and witnesses in a respectful and non-judgmental manner and in an environment where they feel safe to reveal all aspects of their evidence, without fear of intimidation, reprisal, stigmatisation, or sanction
- Conduct proceeding in the language of the person affected and if needed, provide simultaneous translation so long as such translation does not interrupt her or his flow of communication or disregard the emotions in it. Female and male translators should be available for all three languages.
- Provide a specific period for inquiry without prolonging proceedings. Prosecutors and court staff should be transparent about the reasons for any delay.
- Inspire trust in the people who are coming to testify by a way of expediting the judgments/verdicts.
- Protect the dignity of each individual who comes to testify before it.
- Approach affected persons with empathy.
- Be closely observed by the international community.
- Follow precedents and judgments of similar courts in other countries where war crimes have been identified and judgments have been given.
- Adopt procedures that are compatible with internationally accepted standards.
- Be transparent as far as possible, with reference to the investigation and prosecution strategies followed by the special counsel.
- Be inclusive of physically challenged persons by providing access, braille and sign language facilities.
- Incorporate CEDAW principles.
- The submission also expressed concern about the risk for many who gave evidence of forcible removal back to Sri Lanka and called for safeguards against this.

## **6. Mandate and Jurisdiction**

53. This section addresses submissions on the mandate of the court and the material and temporal jurisdiction of the special mechanism. The mandate of the mechanism is a broader concept than the technical aspects of what crimes, types of perpetrators, time period if any would be caught within the jurisdiction of the court, and includes the broader legacy of the mechanism in addressing accountability and impunity including within the ordinary justice system.

## 6.1. Mandate of the Court

54. The CTF notes that the mandate of the Court must take into account the complexity of demands for/of this special mechanism which range from accountability for individual cases through a traditional court structure to a public tribunal model focusing on truth telling and reparative justice. The CTF has received submissions on the mandate of the judicial mechanism in terms of prosecuting particular crimes/perpetrators and also addressing broader issues of accountability and impunity including in the ordinary court structure.

55. Some submissions suggested that the Judicial Mechanism should not follow the model of a traditional court. One submission urged the court to interrogate the context within which the war was waged. *“What was the reason behind it? What were the consequences? There should be specific incidents that need to be investigated, including sexual violence against women: how it has been committed, how it has been structurally targeting a particular community. The court should examine the emotional and social impact of torture and violence as well”*. This need to examine the root causes as opposed to investigating specific incidents was highlighted in submissions in public meetings in Killinochchi and Mullaitivu. A man in Manthai East was of the view that there should be judges and affected persons who can forgive.

56. A representative of the Sri Lankan Armed Forces submitted that, *“the mandate of this mechanism should be limited only to make recommendations. If any further legal action is contemplated against any violators of law, same is to be referred to courts of law established under the existing constitution of the Democratic Socialist Republic of Sri Lanka. Thereafter, the responsibility of trying the violators should be the responsibility of local judicial mechanism”*.

57. The CTF notes that submissions do not address the issue of prosecutorial policy in terms of the criteria for selection of cases to be prosecuted and the manner in which cases would be prioritised. The practical constraints of prosecuting all individual cases through the special mechanism and the need for developing a model of perhaps emblematic cases have not been addressed in the submissions. While some submissions do make reference to the role of the special court in addressing impunity and mainstreaming rule of law, there has been relatively less attention on the issue of reforming the function of ordinary courts, the attorney general’s department and investigative agencies.

## 6.2. Types of Crimes and Harms to be Covered

58. The CTF notes the several submissions detailing the types of crimes to be addressed by the special mechanism including specific crimes and incidents. Although the first category of ‘crimes under international law’ includes the specific incidents and crimes mentioned below, the CTF has

included all such crimes that have been highlighted in the submissions in order to provide a more detailed sense of what cases and types of crimes the public wish to be covered under the Judicial Mechanism.

- Crimes under international law – crimes against humanity, war crimes, genocide, torture, enforced disappearances and extrajudicial execution should be defined in Sri Lankan law strictly in accordance with definitions under international law. (A human rights organisation)

*“So many people died due to starvation and lack of medicine during the war. I saw with my own eyes, an injured LTTE female cadre surrendered. On the 12th of May 2009, she was trying to join us but she was injured, the army told us you don’t come here, we are going to take this girl, she is an LTTE cadre, she will be shot. We had only walked a few distance when we heard her being shot. They also shot a lot of people who went to surrender (go into army controlled area). When we tried to move towards the army controlled area the army which was just 75m away told us not come close and shot at us. We went back to our bunkers. Then we were told to hoist white flags. We hoisted white flags from our bunkers. They started aiming and shooting at the white flags. How can we trust them and their mechanisms after all this? These are incidents I saw with my own eyes.”*

(A priest at Public Meeting, Nanaddan)

*“There are many persons who surrendered and wounded who are still missing. I saw several persons wounded were struggling but was unable to do anything. I in some instances made change to their appearances so they did not look like LTTE. I did this because army raped dead bodies too in the past. In 1995 at Kokkuthoduvai I witnessed this. Also in the last war time the army persons are in the influence of alcohol and they are not like the young army now seen in our areas.”*

(Ex-combatant, FGD, Mullaitivu)

- Worst events the Tamil Community have suffered or witnessed: Atrocity Crimes; most serious violations of human rights, discrimination in every sphere of life. (Individual written submission)
- Use of cluster bombs by Government forces (FGD, Mullaitivu).  
An Elderly man in Thunukkai who spoke of cluster bombs said “international community was watching. We are the witnesses.”

*“I saw chemical weapons and cluster bombs being used. I saw a chemical bomb falling on a place and the whole area being burnt. People also were burnt. They announced No Fire Zones, we believed them and went there but all the shells fell in that place. But they say such things did not happen. This is why they are not ready to listen to what the people have to say.”*

(A priest, Public Meeting, Nanaddan)

*“We can forgive an incident which happened for only 1 day. But brutal cruel crimes such as cluster bomb attack, sexual violence unleashed on women and the white flag incident should be investigated and truth found and punishment given. Action should be taken to decide whether cluster bombs were used or not. In Mullivaikal due to cluster bomb 7 ditches have formed and is filled with different colour water. You must take that water and sample it. The truth will be known.”*

(A journalist and human rights activist, Public Meeting, Mullaitivu)

59. A participant from Mallaavi at the Public Meeting in Thunukkai mentioned that, “[I]n the last war several countries participated and provided weapons. There were Pakistan made weapons, a single bomb spread into 60 pieces. Also cluster bombs were used in the war though it was banned by world countries. Army announced war free zones and they bombed into those areas and because of that several persons died.”

- Expulsion of the Northern Muslims (Submission by a forum that works on the rights of the Northern Muslims); - *“The eviction of the Muslims and the involvement of the LTTE needs to be investigated, addressed and publicised. Justice needs to be provided to those who were forcibly evicted.”*  
(IDPs, FGD, Puttalam)
- Killings and enforced disappearances by the LTTE, para-military groups and the armed forces.

60. There were some civilians, particularly the parents of children who were abducted by the LTTE during the last phase of the war who asked for punishment of those responsible. A woman whose son was abducted by LTTE in Manthai East, but believes he may be alive in a Government prison stated that those responsible for abduction should be punished; mother of disappeared also repeated line *“whoever is responsible for the crime should be punished.”*

61. Another woman at the Nanaddan Public Meeting stated that, *“On 1994 October 27, when including my husband 11 persons went to work (fishing) the Navy surrounded them and shot 6 of them. My husband escaped and with 3 others swam to shore. They were chased and captured, and tyres put around their necks and their throats were then cut. 9 people were killed. 2 escaped. Their bodies were not given to us. They were killed by the Navy but in the death certificates we received it said killed by unknown persons.”*

- Torture and sexual violence committed in custody.<sup>29</sup> In particular it is submitted that sexual

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<sup>29</sup>An organisation that works with torture survivors submitted that Sri Lanka has been the top country of origin for those referred to it for clinical services and that in 2015 alone, more than 300 Sri Lankans were referred for psychological therapy or forensic documentation of torture injuries. One submission also draws attention to continuing reports of rape being used as a means of torture in custody against both men and women. A local women’s collective quotes another organisation’s findings to the effect that two thirds of their post-war torture victims are male, and that “(a)nal rape of male detainees by the Sri Lankan security forces appears prevalent and is an even less recognised issue than vaginal and anal rape of women”.

violence is prosecuted as a war crime and crime against humanity or as torture. A Buddhist priest in Galle spoke of two cases during the Southern Insurrection where 2 soldiers raped two sisters in Nakiadeniya, Galle. One participant in an FGD in Batticaloa stated, *“There needs to be acknowledgement of torture – those who tortured should also admit to this torture.”*

- Other International Humanitarian Law (IHL) and International Human Rights Law (IHRL) violations suffered by women as a consequence of the war (A local women’s collective).
- Violations of religious freedom. In particular, past and present litigation related to the freedom of religion or belief in Sri Lanka (An organisation that works on religious freedom).
- Corruption and bribery (sexual bribery) as well. For example, sexual bribery can be investigated as a crime against humanity or as torture (A local women’s collective).
- Buying and using of weapons of mass destruction and banned and outdated arms (A local women’s collective).
- Child recruitment by the LTTE and the TMVP/Karuna Group (a local organisation that works on transitional justice; Individual written submissions)

*‘Child recruitment by both by the LTTE and the Karuna Group (TMVP) is a clear violation of UN Resolution 1612 and other customary international law and constitutes a war crime if proven in a court of law. Further, the State security forces were aware that the Karuna Group/TMVP abducted and recruited children in areas under Government control and indications are that they were complicit in the process.’*

(Individual written submission)

- Failure by the Government to provide basic/life-saving medical treatment inside the Government run IDP camps. (A woman in Kandavalai said that her father had been sick and died in Menik farm. She believes that he could have been saved if there was an ambulance. She was not allowed to bury her father and she had to fight with the authorities to bury him. She said it was the *“fault of Government why so many people died.”*)
- Food shortages (Elderly man in Thunukkai said that many people died due to food shortages)
- Deliberate targeting of civilians with weapons and explosives causing heavy injuries and disability among the civilian population - Submission by 20 disabled women from the North (see also section 9.5)
- Massacres that occurred in the Northern and Eastern provinces. (An organisation that works in the North-East)

*“We want solutions on the killings and the disappearances. In Makiladitheevu – ethnic killings took place. One day more than 200 people were killed in mills, dug holes in the ground, poured on petrol and burnt. In 2005, in Sithandi they cut the throat and took the neck around. The woman said this is the one who cut his throat, but no steps were taken. Evidence and witnesses were not accepted.”*

(Woman headed households. FGD, Batticaloa)

*“85 people were killed in a prawn farm. They were made to get into the machine box and when standing up were shot. All 85 were shot like this.”*

(Participant, Public Meeting, Paddipalai)

*“Vantharumoolai, Mayilanthanai massacres need to be taken to the special court.”*

(FGD, Batticaloa)

*“The accused military in the Kumarapuram massacre case were identified. Why was the case transferred to Anuradhapura when there is a court in Trincomalee. Now it has been dismissed. They killed 26 persons in 1996. We have all these lessons. There has been no investigation nor any justice. In 1958 there was violence. In 1984 in Othiyamalai 32 persons were massacred. They bombed the Navali church. Then there were the Kilali massacres. In Kilali on a boat I saw a woman’s hair was tied to another woman’s hair and acid was thrown on them. I saw bodies in each of the boats like this. Another was the Kumuthini boat massacre. Also the murder of the humanitarian workers in Muthur. Even Geneva hasn’t given justice for that. In Trincomalee the students were killed. In Nagarkovil they bombed a school. In Senchulai 64 students were killed. In Chemmani, Krishanthi was abused and killed. Further, the Vangalai massacre, the Kokkaddicholai massacre. In Vadamaradchi, Operation Liberation left dead bodies on every street. Only on the 3<sup>rd</sup> day were we allowed to go home. In Vavuniya, Nimaluraban was attacked and killed in prison. Finally, Mullivaikkal in 2009. First we were told Oddusuddan was a No Fire Zone. People went there. Later they said area near Yellow Bridge was safe. Finally, they said Mullivaikkal was safe area. It was just about 3-4 km<sup>2</sup> but all the people were there, about 500 000 people were barricaded there. There was a poisonous bomb thrown. We were unconscious for about 15 minutes. Cluster bombs, poison bombs, Multi barrel rockets, we escaped all this and only came here.”*

(Participant, Public Meeting, Nedunkerny)

*“The final place of the war, Mullivaikaal, is covered with burial mounds. All the bunkers were bulldozed. There are witnesses to this. The complete area of Mullivaikaal must be excavated and international inquiries instigated.”*

(FGD, Mannar)

- Prolonged detention of persons under Prevention of Terrorism Act (North East Coordinating Committee) – *“If the Government cannot decide whether my husband is LTTE or not for 10 years (2006-2016), then why are they keeping him in prison?”* (Female participant, Public Meeting, Manthai East)
- Killing of 27 prisoners in the Welikada Prison Massacre (A group that works on protecting the rights of prisoners)
- Crimes committed by the military during the second Southern Insurgency Period in 1987-89 (see military as perpetrators in section 6.3)

### 6.3. Perpetrators to be Covered

*“My father was killed in 1988 as he worked for UNP. I would like to attest. Each criminal should be found and punished”*

(Daughter of a disappeared person, Matara)

*“Government is responsible for its own people, not like LTTE. They brought us to a place and killed us. That is not a responsible Government.”*

(Elderly man in Thunukkai)

*“My son worked at the Army, he died. I am suspicious about his death. Cause of death is mentioned as explosion of two hand grenades [committed suicide by using hand grenades]. There was no any other inquiry.”*

(Mother of a soldier, Matara)

*“My father went missing in 2011/12/20. Father’s name is [name withheld]. There are very powerful people behind father’s abduction. Because of that, normal Court cannot bring us justice because of that.”*

(Participant, Public Meeting, Puttalam)

62. The issue of individuals and categories of persons that should be tried by the special judicial mechanism have been addressed in a number of submissions. Submissions as to perpetrators must be considered alongside the crimes detailed at section 6.2 above, while the categories detailed below may be responsible for any one or more violations of international crimes.

- Those who planned, orchestrated and ordered crimes to be committed, whether they are members of the armed forces, civil or political authorities, as well as those who were directly leading the groups involved in the violations (i.e. command responsibility)<sup>30</sup>

63. Suggestions were made to punish the people who gave orders to commit crimes (Disabled soldier from Hambantota). An organisation that works with torture survivors submitted that, *“We want to make sure that those who ordered the crimes are held to account”*<sup>31</sup>.

64. Affected persons interviewed by that organisation are reported to have expressed the view that there has to be investigation and prosecution of the most senior leaders responsible for international crimes, as well as others who perpetrated crimes including the political leadership

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<sup>30</sup>Political and military leaders responsible for torture and other international crimes

<sup>31</sup> *“Must bring in line from President to the soldier.”* (Buddhist priest in Galle).

during the final phase of the war, (which includes the previous and current heads of State, former defence secretary) and military chief.

- Senior Tamil leaders that broke away from the LTTE and joined the Government during the final phase of the war, such as the TMVP should be held responsible for the international crimes committed while they were in the LTTE.

65. An ex-combatant in the Mannar FGD said that the TMVP leader should be investigated for the killing of 600 policemen who surrendered to his group. Another participant at the Mullaitivu FGD said, *“I went and joined the ‘movement’ at 16 years of age. The person, who taught me to use the gun, was [a former LTTE eastern province leader who broke away from the movement]. He instigated us to fight against the Army. He is now with the Government. So why are we being punished?”*

- In the case of State supported Tamil paramilitary groups, the Government is also liable for crimes committed by these groups.

66. A participant at the Mullaitivu Surrendees FGD while speaking about the EPDP party, stated that, *“they also worked for army. So Government should be liable. The cases against those persons should be conducted in the presence of us(victims).”*

- LTTE cadres and leaders – must be held accountable collectively and individually, for bomb attacks, attacks on villages, weapons movements, attacks on security forces, torture and killing of Tamil dissenters foreign shipping vessels and commercial vessels and the IPKF. (Individual written submission)

67. Submissions against holding LTTE cadres and leaders accountable under the judicial mechanism broadly state the following reasons;

- LTTE cadres have already gone through a period of detention and rehabilitation and therefore no further action should be taken against them.
- There is no LTTE leadership to be held accountable with the exception of breakaways (such as the TMVP leadership) and those that fled abroad.
- The LTTE did not directly shoot at civilians. The same submission, however, admits that all those against the LTTE were shot and killing were a method of dealing with opposition from Sinhalese or Tamils (ex-combatant in the FGD, Mannar).
- Security forces – Submissions express the view that Security Forces must be held accountable for their action applying the laws of war. Specific units of the military are named as responsible for crimes during the war and the Southern Insurrection period.

68. A few submissions from the Southern Province were of the opinion that, prosecutions should be conducted regardless of the status of the criminal. As they said, if the ‘war heroes’ have been involved in any crime he should be punished.

*“If some person has involved in any crime, he is not a ‘hero’ anymore. If any war hero is involved in any crime he should be punished through the judiciary”*

(Buddhist Monk, Public Meeting, Hambantota)

69. The following broad concerns with prosecuting soldiers could be identified from the submissions;

- Need to acknowledge the sacrifices and commitment of security forces personnel to bring peace to the country.
- One-sided justice system, which would only target Government security forces, while Tamils were not held to account.

A submission noted that, accountability will be directed only against the Sinhalese, since all senior military officers and most soldiers are Sinhalese. *“No accountability process exists to hold Tamils accountable for their action”*, and that *“(t)his is unfair, discriminatory and outright racist.”* It further states that unless the accountability process holds all parties to the conflict accountable, it will be not be accepted by Sri Lankan society. (Individual written submission).

- Even the ordinary justice system is biased against the military and the purpose is to punish the military in the name of reconciliation. Several State intelligence and military officers being detained (for the Thajudeen murder and Prageeth Ekneligoda’s case), when they should have been given bail. (Individual at a Public Meeting, Western Province).
- Prosecutions may cause greater social disintegration and be harmful to reconciliation

70. A representative of the Sri Lankan Armed Forces noted that, *“It is important to ensure that another party will not be aggrieved as a result of the judicial process. If such a situation was to come about, the process will be counterproductive and it will create conditions for greater degree of estrangement or social disintegration (most probably on ethnic lines).”*

- The killings committed by the military were part of the exigency of war and that the soldiers are therefore blameless. (Participant, Public Meeting, Anuradhapura)

*“Killings might have happened by war heroes. People die when there is a war. At the final stages there might be a massacre. But that cannot be understood in that way [in form of war crime...Our Sinhala children also killed by them [LTTE], Army personnel were killed by them [LTTE]. Are they [Tamils], Tamils also should be punished?”*

(Disabled soldier, Anuradhapura)

- A religious council said that any quest for accountability must take into account that there are geopolitical forces that maybe larger than the State that led to the conflict and

therefore when looking for those responsible amnesty should take precedence.

- All parties connected to the war: One submission makes the point that the war had many parties, military, political and international actors: The Security forces, the Sri Lankan political leadership, LTTE, other Tamil armed groups, Tamil political leadership, Tamil Diaspora, Tamil expatriates and Tamil Diaspora groups, Tamil Nadu politicians and parties, India and Indian agencies and certain non-governmental organisations operating in Sri Lanka. This submission states that all these parties must be held accountable for their actions.

71. A participant from a border village near Veeramunai and Sammanthurai who made his submission at the Ampara Public Meeting spoke of how the Indian Army (IPKF) instigated and supported attacks against Muslims living in the border of Veeramunai and Sammanthurai. As a result, they “*were attacked, killed, and their possessions destroyed and looted*”

#### **6.4. Temporal Mandate**

72. A few submissions dealt with the temporal mandate of the mechanism. The CTF notes that broadly submissions on temporal jurisdiction, though not couched in technical terms, recommend that the judicial mechanism should not limit itself to crimes committed during the war and its final phase and include crimes committed during the Southern insurgency and after the end of the war in 2009. Some of the massacres listed by participants under crimes at section 6.2 cover a wide time period.

A summary of submissions is detailed here below.

- Three different time frames should be considered namely, before 1983, 1983 to 2005 & 2005 to 2009. Everything that occurred during the war should be inquired through this special court. (Public Meeting, Karavetty)
- International inquiry should look into crimes in the time period 1980 to 2009. (Public Meeting, Kaluvanchikkudy)
- Crimes committed during the Southern insurgency in 1987–89 should be included. (Public Meeting, Southern Province)
- Post war violations (after the end of the war in 2009) should be addressed through the mechanism (An organisation that works with torture survivors which notes the prevalence of torture to date).

#### **6.5. Addressing Impunity/ Accountability – Reforming the Ordinary Justice System**

73. Some submissions addressed the importance of developing the ordinary justice system and mainstreaming rule of law. The CTF considers these submissions as part of the broader mandate of the judicial mechanism beyond its material jurisdiction to prosecute international crimes.

74. A local women's organisation notes the need to end the culture of impunity through legal and structural reform. *"Culture of impunity needs to be eliminated and reform to existing legal structures and law and order structure is an integral part of TJ (Security and Legal sector reform). If there are laws that are discriminatory, they need to be cancelled. The laws that are in existence which are fair need to be strengthened. The regular law and order and justice structures should function effectively. The TJ process should enhance the efficiency of the regular justice system as well."*

Another submission states –*"The past events in Sri Lanka highlight the need for strong, credible and impartial judicial system for stability of the country. The security services and the judiciary must function in the interests of all its citizens. It was in this area, we suggest that the CTORM [Consultation Task Force on Reconciliation Mechanisms] recommend practical and intelligence measures to ensure, prevention of the country's key institutions being seriously corroded and corrupted during three decades of conflict and human rights violations."*

(Written submission by an organisation)

75. Although the submissions addressing a broader mandate or legacy for the judicial mechanism are limited in number, the CTF notes the large number of submissions which call for justice and accountability and which highlight the failure of the existing system discussed at section 2.2 above. The mandate for reform must be located within these submissions. The reform of ordinary justice is also imperative in the event that not all cases of international crimes are taken up by the international court and the remaining cases are to be taken up by ordinary courts.

## 7. Model and Structure

### 7.1. Model

76. The CTF notes that the model of the Court will have to be determined chiefly by its mandate (discussed at section 6 above). A local organisation that works on transitional justice refers to the establishment of a High Court for International Crimes with exclusive jurisdiction over war crimes, crimes against humanity and genocide. Another local organisation, submits that *"Parliament has the power to create a new special court as a new division of the High Court, akin to the special Commercial High Court, via ordinary legislation, or a new court section entirely"*.

77. An organisation working on religious freedom suggests that, *"The proposed mechanism should be an ad hoc instrument before which referred cases should be heard and tried within a reasonable period of time"*.

## 7.2. Location of the Court and Access

78. The CTF notes that in public meetings and FGDs in Mullaitivu and Killinochchi, the issue of access to the judicial mechanism was a pressing concern. Access to justice and accessibility involve a range of issues of which the physical location of the Court is an important feature.

79. A local women's organisation highlights the significance of the special court's location in relation to access. It submits that ideally the special court should be either mobile or decentralised and prosecutors must be able to travel to places where those affected by these crimes and those who witnessed them live or where mass atrocities took place. The location of the court would also have a bearing on the safety of these people – (see victim and witness protection in Section 14 below)

80. This need is echoed in oral submissions where there are repeated calls for the Court to be located at the divisional/local level. In Manthai East a father of a disappeared woman said that the mechanism should be located in Mullaitivu. A female participant at the Kaluvanchikkudy Public Meeting said *"The court should be in all the districts"*.<sup>32</sup>

81. A human rights watchdog submits that in order to ensure access to justice for affected persons throughout the country and allow them to follow the proceedings the mechanism should not be located only in Colombo. It recommends that, *"subject to thorough security evaluations, chambers of the justice mechanism should be established in several locations throughout Sri Lanka, including in towns or cities where regional branches of the High Court exist. Chambers should also be permitted to hold in situ hearings, as appropriate, throughout the country with effective security systems put in place at each location"*.

## 7.3. Structure

82. The structure of the justice mechanism should also be tailored to its mandate, size and functions. There were only a few submissions, which had recommendations dealing with a comprehensive structure for the judicial mechanism. Several submissions simply refer to the need for certain units. The following different units are mentioned in the submissions;

- A. The Court
  - a. Multiple trial chambers
  - b. A separate chamber to deal with sexual violence
  - c. An appeals chamber
- B. An office of the special counsel

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<sup>32</sup>The woman also said "I know the CID who captured my husband, keep me as witness and conduct the case."

- a. Investigation unit
  - b. Victim and witness protection unit
  - c. Counselling and Support unit
  - d. Consolidation unit
  - e. Victim outreach on prosecutorial policy
  - f. Special Unit on Disappeared Persons
- C. Registry
  - D. Defence and Legal aid unit
  - E. Trial Monitoring body

83. While not all submissions have indicated the precise order or form in which the different units will be grouped, the CTF has broadly categorised certain units under the Court and Special Counsel office as it best reflects the submissions. The remainder is included as stand-alone structures of the mechanism. Some of the key structures such as the office of special counsel, appointment of judges, victim and witness protection are dealt with separately further below and are cross referenced.

### **7.3.1. The Court**

#### **7.3.1.1. Trial chambers**

84. In light of the scale of crimes committed in recent decades, the justice mechanism should initially include multiple trial chambers so that it can conduct numerous parallel trials in order to deal promptly with a significant number of cases. Given the complex nature of the cases, they should be heard and decided by a panel of judges with relevant expertise rather than a jury. Each trial chamber should be made up of at least three judges and be composed, at least initially, of a majority of international judges with established expertise and experience in conducting such trials.

#### **7.3.1.2. Appeals chamber**

85. A human rights watchdog suggested at least one appellate chamber mandated to consider interlocutory appeals. A local organisation that works on transitional justice refers to an Appellate Chamber for appeals on any matter or proceedings involving a substantial question of law. Final appeal to the Supreme Court on substantial question of law—not involving a question of international law—must be available in order to minimise the risk of litigants approaching the Court of Appeal invoking its revisionary jurisdiction.

86. A human rights watchdog submitted that appeals against a conviction or sentence should also initially include a majority of international judges and its composition may be reviewed at similar intervals as the trial chambers. Any further appeals to Sri Lanka's Supreme Court (as several Sri Lankan legal experts have proposed) should be limited to interpretation of the law applied by the hybrid mechanism and be conducted without delay. If further appeals are conducted by the

Supreme Court, ad hoc international judges should be appointed to work with national judges in considering the appeals.

#### **7.3.1.3. Office of the special counsel / special prosecutor<sup>33</sup>**

87. The CTF received a few submissions which specifically refer to the Office of the special counsel / special prosecutor. The recommendations relating to the special Counsel and the suggested units – investigation, victim outreach, special unit for disappearances, victim and witness protection, counselling and support and consolidation unit are further detailed separately at section 12 further below.

#### **7.3.1.4. Defence and legal aid**

88. It is submitted (by a local organisation that works on transitional justice) that those accused of crimes have a right to a fair trial, which includes being able to conduct a defence in person or through legal assistance of their choosing, without payment if they lack sufficient means to pay for it.

89. For this purpose, it is envisaged that the defence office will develop and maintain a list of highly qualified national and international counsel, to administer legal aid and to provide expert legal and other support to defence teams. It should either be established as an independent office or as an autonomous office within the Registry for administrative purposes only (see below section 7.3.1.5).

90. It is further submitted that to ensure that suspects are able to exercise their right to choose their counsel they should be able to select counsel from the list or others of their choice. Defence counsel should be highly qualified with substantial experience of defending suspects in complex criminal cases, experience and knowledge in international criminal law, international humanitarian law and international human rights law, including defending suspects accused of crimes under international law and other serious human rights abuses.

91. If counsel selected lacks such experience and knowledge, they should be provided with training and expert support throughout the proceedings from co-counsel or staff within the defence team and through the defence office. Legal aid must be sufficient to conduct potentially complex proceedings, including allowing for the defence to conduct its own investigations and to seek expert assistance on matters of international law. A submission from the Kaluvanchikkudy Public Meeting stated in relation to legal assistance that, “*during court cases, legal assistance given to the army should be without discrimination given to those who were in the LTTE as well.*”

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<sup>33</sup> Submissions understand the special counsel to be special prosecutor.

#### **7.3.1.5. Registry/registrars' office**

92. It is submitted that there should be registry or registrar's office within the judicial mechanism, which is independent and neutral. This is to ensure the autonomy of the hybrid mechanism, as well as facilitate establishment of specialised independent units (e.g.: victims and witnesses, and outreach), as well as to prepare budgets and reports for submission to the Government of Sri Lanka, international community and funders.

#### **7.3.1.6. Trial monitoring body**

93. A local organisation submitted that, *"An independent trial monitoring body, with authorisation to observe all proceedings, should be established within the special court"*.

### **7.4. Powers and Functions**

94. The CTF notes that the submissions on the powers of the judicial mechanism do not address all technical aspects of its powers and functions, particularly on powers to take oral and written evidence, summon witnesses and compel cooperation by State authorities. The content of submissions received are detailed below:

#### **7.4.1. Transfer of evidence from other institutions**

95. An organisation that works with torture survivors/victims pointed out that many Sri Lankan survivors/victims of human rights violations living in exile have already provided detailed evidence to the UN and inquire whether and how this evidence could be transmitted to the justice mechanism. They stated that any such process would require specific consent, navigation of confidentiality issues, and guarantees of safety for family members in Sri Lanka.

#### **7.4.2. Obtaining testimony from persons living outside of Sri Lanka**

96. An organisation that works on documenting torture submitted that Sri Lankans living abroad who have experienced torture in Sri Lanka are willing to provide testimony from abroad, provided they are allowed to testify from behind a screen, without using their names or identifying details, and in some cases with their voices disguised. They go on to state that, *"Given many are survivors of sexual violence, anonymity is essential. For others, the main consideration was the safety of family members inside Sri Lanka. None would agree to having a Sri Lankan Government official sitting in the room with them abroad"*.

## 7.5. Storing and Archiving of Testimony

97. It is submitted that attention must be paid to instituting secure forms of storing and archiving information. A local women's organisation submitted that testimonies and evidence should not only be preserved in Sri Lanka but also outside Sri Lanka, in case the Sri Lankan Government wants to destroy them. "*There needs to be an office to secure testimonies and evidence and archive them.*" (Women Headed Households FGD, Batticaloa)

## 7.6. Public Outreach

98. A submission in Manthai East talked about the need for publicity – i.e. that people hear what is being said in court. He said that publicity is important during the process, not limited to trials taking place but also what is said in court. A submission was made during the media sectoral meeting that there should be a Media Unit established under each mechanism which communicates with the public via the media on a regular basis.

## 7.7. Suomoto Powers

99. It is submitted that the court should have the power to take up old criminal cases against members of the armed forces accused of crimes "on its own motion" which has been suspended /laid by, by the Attorney General's Department. The exercise of *suomoto* powers in the context of past sexual violence cases is discussed in detail at section 10.1.

## 7.8. Power to Make Recommendations

100. A local women's organisation submitted that the court should be able to make recommendations to the Sri Lankan Government and judiciary, identifying various discriminatory laws. These recommendations should include that Sri Lankan women get equal access to justice and should bring in the international standards and best practices to violence against women (VAW) inquires and prosecution.

## 7.9. Rules of Procedure/Evidence

101. None of the submissions deal with rules of procedure and/or evidence specifically apart from the submissions on the treatment of women affected by sexual violence. The CTF notes, that principles articulated in the submissions on gender, women and the judicial mechanism, would be equally applicable to the treatment of all victims and witnesses by the Court and encapsulate principles of natural justice and international best practice. Below is a summary of key points

adjusted to affected men and women and witnesses. The CTF notes that the below list is not exhaustive and only reflects the submissions made.

- Provide for contemporaneous video recordings of victims and witnesses.
- Media should be restricted because they usually expose the identities of those affected and any reporting must be done sensitively.
- Victim and witness testimony should be fully and not selectively recorded and they should be allowed to give their full story—space, timing, use of local language, manner of translation are important. (They should not be stopped while testifying for translation or questioning which can interrupt their thought process and emotional expressions).
- Re-traumatisation should be avoided. In order to do so, pre-existing testimonies, pending court cases & documents and documentary evidence and testimonies of experts (JMOs, counsellors, doctors, psychiatrists, activists, community mobilisers and NGO workers) should be considered to establish patterns and systems of violence.
- The taking of testimony should not be humiliating and affected persons should not be interrogated.
- Those affected must be given regular breaks and access to a trained counsellor.
- Affected persons should be provided transcripts of their testimony.
- Court officers must be well prepared for hearings and interviews. Victims and witnesses should not be called before the court repeatedly to provide the same information

#### **7.10. Treatment of Evidence**

- Evidence should be evaluated with sensitivity. Testimony should not be impeached on the basis of imperfect or inconsistent recollections.

102. A religious organisation in its submission briefly addressed the issue of absence of witnesses and the patterns of crime *“Suppose all the witnesses are dead, if I do or not, if proven in court, judge cannot leave it. It has to be punished. Now you have to decide whether the witness is also important. Not only one that happen, it is a chain link, if somewhere one is missing then everything is missing. It should go step by step”*.

#### **7.11. Punishment**

103. The CTF notes the several submissions on punishment and particularly the link between justice, amnesty and the transitional justice mechanisms. Since this is a cross cutting issue, it is dealt with separately in another chapter of the report.

104. The CTF further notes that submissions do not directly address the court’s power to order punishments to those convicted for crimes falling under its jurisdiction. However, several

submissions state that the court must take action against the former President in order to instil confidence in the process. A person from Mullaitivu said *“we don’t need roads, we don’t need lights. We need the former President taken out of parliament. He needs to come and face questions from the people”*.

105. Another submission said that, *“Reparations should be a priority to heal the wounds of the people... But accountability should be there. People who did it should work the book, punished so that others in the forces or in the civil society will never think of doing it again. Punishment has to be there”*.

(Individual written submission)

106. A participant at the Nedunkerny public meeting said that, *“Perpetrators have to be firstly identified. It is only through an international inquiry that perpetrators must be identified. They can be given a good punishment according to Sri Lankan law. Or they can be punished according to international standards pertaining to the sentencing of war criminals.”*

107. At the Mannar FGD a participant stated that *“[T]hose who were responsible for the persons gone missing, must be found, and given punishment according to the International Laws to all those perpetrators and those who committed the crime. From the Commanders who gave orders to the soldiers and to the soldier who committed the crime must be punished severely. Because, only if the soldiers are arrested the Commanders will be identified.”*

108. At the FGD for surrendees in Mullaitivu, the following views were expressed: *“Legal action is essential. Their families also have to experience our suffering for seven years. Punishments should be like that. Then only it will not happen to the future generation as well. “At least they should be given punishment by which make them to suffer like us for the half of the time we experienced”*

109. There were also submissions that spoke against punishment and questioned its effectiveness in changing mind-sets. A man in Manthai East whose children were killed said there was *“no use of punishing whoever it is. Forgive them. We won’t get our children back”*. Another girl from Thunukkai whose brother was disappeared said that the mechanism should, *“ask them why they did it, but don’t punish them. Prosecution will not make better people.”* A participant at the Mullaitivu surrendees FGD said that she is also affected because her son was the person who looked after the whole family and his loss was critical. But she did not want to punish those who did this with the same kind of punishment. She did not see that this would help with reconciliation. Instead she expected them to accept the charges against them and she is prepared to excuse them.

110. At the religious sectoral meeting, religious organisations spoke about punishment and amnesty. On the granting of special amnesty a religious organisation submitted contextual reasoning in support of the grant of amnesties stating that, *“...because this has evolved over a long period and in our understanding this is not only emanating from within the country but there are also*

*external geopolitical influences...we cannot bring lot of people who have been the string pullers of these offers. Therefore, we have to come for a general amnesty and then we have to look forward to the next stage.”*

111. Another religious organisation, responding to questions from the CTF on justice accountability and punishment further submitted that punishment should depends on the individual and the circumstances in which a crime was committed. *“If say crossfire then many will die, that is natural. If purposefully done then we have to take that punishment. First it is who will decide this happened or not. What circumstance are we going to decide?”* While not ruling out punishment the representative from the organisation that said, it *“Depends on the individual. If I do something wrong if I apologise and don’t repeat it can be forgiven. If you are doing again there is nothing in there.”* However, on the issue of atrocities the religious organisation was clear that *“atrocities nobody likes. Then it should be punished. If it is atrocities it should be punished. If it is natural or circumstances that is different.”*

## **8. The Standing of Persons Affected and their Families**

112. A local organisation raises the question of legal standing of affected persons before the special court in its submission, but does not elaborate in detail.

*“There should be a special court. There should be a legal adviser for when we go to court. More than arguing using a lawyer, we should be able to give our own opinions. There should be foreign officers in the court. The hybrid court should have lawyers from the affected areas from the North and East including Muslims.”*

(Public Meeting, Kaluvanchikkudy)

113. An organisation working on religious freedom submits that *“There should be an availability of lawyers within the mechanism who are able to protect the interests of affected persons during trial and investigations”*.

114. The submissions on legal aid (mentioned above) is limited to defence and does not consider representation of the affected and their families before Court except through the special counsel.

## **9. Applicable Law**

115. A number of submissions draw attention to certain legal reforms that are necessary to set the stage for the establishment of a hybrid judicial mechanism and for the prosecution of crimes as international crimes.

116. An ex-combatant in Mannar said that there is a *“Need to incorporate foreign laws into Sri Lankan law while removing the Prevention of Terrorism Act. There is also need to re-investigate persons*

*who have been tried under PTA". At the Mannar FGD it was noted that, "some laws must be in the international form. Local laws should be in conformation with international human rights law."*

117. A local organisation that works on transitional justice states that Sri Lanka does not specifically criminalise genocide, war crimes or crimes against humanity and that violations committed by the LTTE and Sri Lankan Security Forces may only be prosecuted as ordinary domestic crimes. It is submitted that this is unsatisfactory for a number of reasons.

- Some acts that are criminal under domestic law may yet be lawful if committed in the context of an armed conflict. Failure to incorporate IHL applicable in non-international armed conflict and to criminalise war crimes may lead to unfair situations where combatants may be prosecuted for domestic crimes despite acting in accordance with the generally accepted laws of armed conflict.
- Acts that are illegal under IHL and amount to war crimes may not be criminal under Sri Lankan law. These offences include the use of human shields and the intentional deprivation of humanitarian aid.
- Finally, for many crimes, domestic offences inadequately cover the relevant elements of international crimes. It is submitted that international and ordinary crimes are different in nature and in terms of the values protected. Atrocity crimes usually involve grave, large-scale violence with systematic elements. Thus, characterising international crimes as ordinary offences fails to recognise the context in which the crimes were committed: an armed conflict, a widespread and systematic attack or pursuant to a State policy to destroy a protected group. Additionally, international crimes connote offences of such a grave and heinous nature that one of the purposes of their punishment *"lies precisely in stigmatising conduct which has infringed a value fundamental not merely to a given society, but to humanity as a whole [...]"*.

118. The same organisation mentioned above, submitted that in drawing up the required legislation, the definition and elements of each of these crimes may be borrowed from the Rome Statute of the International Criminal Court (ICC), while introducing modes of responsibility recognised by the ICC Statute. This would enable prosecution of a wider range of perpetrators, beyond trigger pullers to include persons higher up the chain of command.

119. It also further submitted that a law criminalising international crimes must apply retroactively to acts committed before the law was passed. It is of the view that in terms of Article 13(6) of the Sri Lankan Constitution, it is possible to criminalise international crimes retroactively, provided that these acts were recognised as international crimes under customary international law at the time when they were committed.

120. A human rights watchdog also emphasises the need for reform of criminal laws at the outset to ensure that violations and abuses are prosecuted as crimes under international human rights and

humanitarian law, and not merely as ordinary crimes under national law in order to address impunity. It also states that the crimes should be applied retrospectively, consistent with the principle of legality that permits the trial and punishment of persons “for any act or omission, which at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations”. They go on to state that this would involve amendment of the national criminal code, the criminal procedure code and other relevant national laws to remove any impediments to justice and to enable the hybrid mechanism and other national courts to exercise jurisdiction over such crimes in line with international law. Further, they also submit that stand alone legislation that relates exclusively to the hybrid mechanism should be avoided, while the laws and rules applied by the hybrid mechanism must be strictly in accordance with international law and compliant with international human rights law.

## 10. Special Categories of Persons Before the Special Mechanism

### 10.1. Women, Gender and Accountability

*‘In order to meet human rights obligations, all TJ processes must include accountability mechanisms that are accessible to both men and women. Such mechanisms must pay attention to gendered power relations and differences, which may discourage women from voicing their concerns or lodging complaints.’*

*(A local organisation)*

*“Women are victims of all forms of violence and crimes, not solely sexual violence. Over emphasising wartime sexual violence risks ignoring that women suffered mass atrocities (such as arbitrary execution and mass killings, detention and torture, disappearance, eviction, denial of medical treatment for war injury, starvation) apart from rape.”*

*(A local women’s organisation).*

*“In our experience cultures, customs and customary laws have always set barriers for women, particularly in relation to speaking sexual violence.”*

*(A women’s coalition)*

*“There should be a special judicial investigation into sexual violence and abuse against women. Most of the women stressed need for Special court. In this special court sexually violated women must be given special opportunity to reveal their story in a confidential manner.”*

*(FGD with Women’s Activists, Western Province)*

121. Gender and women’s concerns as it pertains to the court are raised in a number of submissions to the CTF. These range from the importance of representation of women to the need for sensitivity in addressing violence against women.

### 10.1.1. Representation of women

122. A number of written submissions recommend that the special court, like the other mechanisms, should have a representative number of women at all levels of staffing. A local women's organisation submitted that the court should have 50 percent women's representation, including prosecutors, judges, lawyers, staff members, people who take testimony and registrars.

### 10.1.2. Gender sensitive approach

123. Submissions also emphasised the need for all staff whether men or women to be gender sensitive and the need to take a gender-sensitive approach, in all work of the court including when planning victim and witness protection and psycho-social support. In particular, a number of submissions emphasised the need for gender sensitivity in addressing the issue of sexual violence committed against women. It is also submitted that the architecture of the court should take special note of women's needs including pregnant women. It is recommended that pregnant women and women with children should have facilities, particularly separate toilets, rest rooms, canteens (reasonable priced), and access to drinking water. Women who are breastfeeding their children should have access to feeding facilities and regular breaks.

### 10.1.3. Women as persons affected by and witnesses to sexual violence

124. Submissions stated that the court should investigate and prosecute sexual and gender-based violence with sensitivity to the needs of women affected by sexual violence. A local women's organisation stated that sexual violence against women during the conflict has been well documented outside the country and that the OISL report acknowledges that women and men have been raped and sexually tortured in detention. It further submits that to investigate sexual violence-related crimes, the special court will need to train its investigators and prosecutors on the legal and practical challenges, including the need to overcome pre-conceived notions and attitudes about sexual violence and their cultural and gender biases.

125. An organisation working on documenting torture stated that many affected persons they interviewed "*reinterpreted the question about women's participation to mean how to persuade female sexual violence survivors to testify*". It is submitted that they identified threats from the security forces as well as stigma in the Tamil community as the main hurdles. An organisation that works with torture survivors also referred to the importance of addressing the special needs of female victims and witnesses including vulnerabilities arising from the stigma attached to sexual violence and ongoing security challenges for women and girls, including widows of the disappeared. The organisation further stated that even if "*100% safety is guaranteed, survivors [male or female] could be reluctant to disclose sexual violence.*"

126. A local organisation submitted that females affected by sexual violence and torture have indicated a preference towards having female judges, prosecutors, investigators and translators. An organisation that works on women's rights recommends in camera hearings especially where women affected by violence give evidence and women only hearings.

127. The organisation that works on documenting torture (mentioned above) recommends the involvement of international personnel to overcome the shame and stigma surrounding sexual abuse, and the need for confidentiality.

128. A local women's organisation recommends that the special court should be divided into two sections: one for all forms of war crimes and another especially for sexual violence committed against women and men.

#### **10.1.4. Recommendations in relation to prosecution of sexual violence**

**129. This section is based on submissions mainly received from organisations working on women's rights.**

- Governing principles
  - Justice and accountability processes should be designed to ensure that they hold and support women's experiences and expressions of harms and emotions with dignity. Cultural sensitivity, confidentiality and support for those affected, both emotional and financial, must be central to special court unit that will investigate sexual violence.
  - The justice agenda must include the following
    - Public acknowledgement of the history of sexual violence in Sri Lanka
    - Establishing appropriate and sensitive memorials to remember sexual violence as well as women's strength in the face of it;
    - Reforming existing laws or bringing in new ones, including as part of the constitutional reform process or recognise violence against women and girls and to ensure non recurrence;
    - Recognising the many years of peace work and resistance of women at the local level in responding to sexual violence.
- Access – women who wish to pursue legal justice through investigation, prosecution and punishment of perpetrators should be fully enabled to do so and the Court registrar should take gender sensitive measures to facilitate full participation at every stage of the proceedings.
- Procedure – ensure that the procedure of court is sensitive to the needs of women including

- Take measures to ensure that cases of sexual violence of women are given priority in prosecution
- There should be an experienced prosecutor with necessary resources to investigate sexual violence (rape and sexual torture) not only inside the country but also from the diaspora women who have survived such abuse
- Provide for contemporaneous video recordings of victims and witnesses
- Media should be restricted because they usually expose identities of those affected and any reporting must be done sensitively.
- Women's testimony should be fully and not selectively recorded. Women should be allowed to give their full story—space, timing, use of local language, manner of translation are important. They should not be stopped while testifying for translation or questioning which can interrupt their thought process and emotional expressions
- Re-traumatisation should be avoided. In order to do so, pre-existing testimonies, pending court cases & documents and documentary evidence and testimonies of experts (JMOs, counsellors, doctors, psychiatrists, women rights activists, community mobilisers and NGO workers) should be considered to establish patterns and systems of such sexual violence.
- The taking of testimony should not be humiliating and the woman should not be interrogated. She should be given regular breaks and access to a trained counsellor or her accompaniment.
- Women should be provided transcripts of their testimony.
- Court officers must be well prepared for hearings and interviews. Women should not be called before the court repeatedly to provide the same information
- Treatment of Evidence
  - Evidence relating to sexual violence should be evaluated with sensitivity. Women's testimony should not be impeached on the basis of imperfect or inconsistent recollections.
  - Ensure that corroboration is not a requisite for cases of sexual violence
- Law – Any form of penetration or sexual torture should receive the same punishment as statutory rape.
- Confidentiality – The court must secure the confidentiality for those affected– in terms of securing their information and protecting their identities (sometimes from their family members)
- Protection – The Court has to give women and their families and individuals supporting them special physical protection.
- Dealing with trauma –support and other services - There should be space for acknowledgement of the many impacts of sexual violence including the psychological and emotional costs.

- the court should retain the service of an expert adviser (probably through the UN system) who could give technical / legal advice as well as input with broader psycho-social aspects of sexual violence.
- Justice processes must ensure the inclusion of securing social recognition and dignity for women within the community as part of their goals and outcomes.
- As far as possible and with consent of both, a truth and accountability process should create a space for women survivors and their families to talk to the families of the perpetrators.

#### 10.1.5. *Suomoto* power to take up cases of past complaints

130. It is also submitted that the court should have the power to *suomoto* take up cases of past complaints of sexual violence related to the conflict which was not prosecuted to a completion. It is submitted that there are many cases where witnesses were harassed and intimidated and cases transferred from courts in the North to the South ensuring that these cases petered away without a decision. A submission provides the following details relating to two cases:

131. **Malathi and Laxmi**<sup>34</sup> from Mannar were raped on 19<sup>th</sup> March 2001. Twelve police officers and two navy officers were arrested. In August 2005 indictments were filed against three CSU officers and nine navy personnel. The first hearing was fixed for 21<sup>st</sup> September 2005. Given the long history of threats, neither of the women turned up for the case in Anuradhapura. A women's group in Mannar that wanted to reopen the case found that Malathi has since fled to India as a refugee. Laxmi who lives in a rural area in the North told the group that she would go through with reopening the case only if Malathi is also willing.

132. **Subha**<sup>35</sup>, a Tamil woman of Indian origin, who was living in a boarding house in Colombo, was allegedly raped by three policemen on 24 June 2001. A complaint was made to the Maradana police station. Three police officers and three soldiers were arrested in connection and released on bail. No charges were filed against the alleged perpetrators. However, following a fundamental rights application, the Supreme Court held that it is clear that the petitioner was raped and awarded a sum of Rs 150,000/- as compensation and costs payable by the State

133. In particular, it is recommended that the court should be empowered to request information from the Attorney General in relation to:

- (i) The total number of complaints of sexual violence made against the armed forces, police and paramilitary groups from the commencement of the armed conflict to date;
- (ii) The number of cases where there was an investigations and findings of such investigations;
- (iii) The number of cases where there was no investigation conducted following a complaint;

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<sup>34</sup> Names changed to protect victim's privacy

<sup>35</sup> Name changed to protect victim's privacy

- (iv) The number of cases where an investigation was commenced and abandoned and reasons for abandoning the investigation;
- (v) The number of cases where there was an indictment against the perpetrators, and the progress of such cases;
- (vi) The number of prosecutions which were abandoned, and whether these cases can be reopened;

134. It is submitted that where the complainant in a sexual violence case is still alive, further action with regard to accountability in relation to such case will require close engagement and consultation with the surviving victim and her family members. Where a rape victim is no longer alive, the court may have to consult family members on the possible course of action. It will also be necessary to create a conducive environment to reopen these cases including strengthening the legislation relating to witness and victim protection and investigation and prosecution of sexual violence by agents of the State (Individual written submission).

## 10.2. Males Affected by Sexual Violence

135. It must be noted that an organisation that works on documenting torture drew attention to the fact that two thirds of the persons affected by post-war torture are male. They state that “*(a)nal rape of male detainees by members of the Sri Lankan security forces appears prevalent and is an even less recognised issue than vaginal and anal rape of women*”. An organisation that works with torture survivors notes that even males affected by rape do not find it easy to speak of this violence. Therefore, being gender sensitive in the prosecution of sexual violence will mean being sensitive to the needs of both men and women who have experienced sexual violence in the context of the war.

## 10.3. Children and Accountability

136. It is submitted that an accountability mechanism in Sri Lanka must take legal account of children both as affected and perpetrators and make special provision for participation of children. It is recommended that procedures must be in place to protect the rights of children in their interactions with a special mechanism in line with international standards. For example, special arrangements for children to testify in private, establishing a victim and witness unit to provide counselling, protection and other forms of support for children affected (a local organisation that works on transitional justice).

137. The same organisation asserts that the legal framework for the accountability mechanism in Sri Lanka must criminalise the conscription and enlistment of children and the use of them to participate in hostilities as a war crime and crime against humanity.

138. One submission recommends the setting up of a “*specially empowered and mandated crimes investigation unit (similar to FCID) with the active involvement and monitoring of independent actors (Expert Representative appointed by UN Secretary General’s Special Representative on Children and Armed Conflict and Representative from Civil Society) with a time bound mandate to investigate instances of forcible child recruitment*”. This unit could link up with other Transitional Justice mechanisms including the judicial mechanism. (Individual written submission)

139. The submission goes on to state that “*to date, despite large scale abductions, recruitment and use of children and youth in war, there has not been a single charge, independent investigation or conviction against any perpetrator... nor have there been any independent investigations into the alleged complicity of the security forces in recruitment of children*”. The submission recommends that there must be “*thorough investigation and charge those who carried out the orders and committed the crime as defined in our penal code, in Sri Lankan courts. Those whom the investigations find as having made the decision to recruit children, designed and knowingly resourced the modus operandi, gave orders to forcibly recruit, commanded them directly or indirectly in the war/fighting should be charged for war crimes in the special Judicial Mechanism to be established*”.

140. Another issue that must be considered in relation to accountability is the age of criminal responsibility of children who have were abducted and recruited as child soldiers for crimes committed would not recognise that they too are affected. It is submitted that in Sierra Leone and Liberia, where child recruitment was widespread, child soldiers were not subject to prosecutions as they were considered victims of war and were not deemed to be responsible for the crimes that took place. The local organisation that works on transitional justice (mentioned above) also points out that that International Criminal Court does not prosecute individuals who are under the age of 18 at the time of the alleged crimes. Another submission reiterates that “*perpetrators who were children at the time of committing the crime must be treated in the manner set out in the Paris Principles and agreed international norms*”. (Individual written submission)

#### **10.4. Differently Abled Persons**

*“It is highly important to get testimonies from the persons with disability in the judicial mechanism.”*

(Submission by 20 differently abled women from the North)

141. A group of 20 differently abled women from the Northern Province submitted that a special investigation should take place into the circumstances in which persons were rendered differently abled. “*An inquiry should take place about the use of weapons, explosives and the bombs that made the persons disabled and the side effects of them. For this purpose, testimonies from the doctors who worked during the war-time and persons who worked in clearing the remnants of the war should be taken. The doctors who worked in the rehabilitation centres and prisons should be inquired about the types of*

*treatments provided*". The investigation team should include "a judicial medical officer and he/she should be a foreign expert".

142. While calling for perpetrators to be punished, the submission includes reparation within their notion of justice. *"It is vital to take livelihood, health, counselling and maintenance issues into consideration in planning assistance to the disabled."*

## 11. Appointment of Judges

*"Judges of the special court must be recruited by a strong and independent body in accordance with a transparent appointment process and clear, published criteria. These criteria should be carefully developed to ensure that the recruited judges have undergone training in international criminal law, offer diversity in terms of gender, ethnicity and language and have no past that might affect their actual or perceived impartiality with regards to the conflict."*

(Written submission by a local organisation)

### 11.1. Criteria for Appointment

143. Submissions, which referred to the composition of the court, made explicit references to issues of representation as well as qualifications. One submission also states that appointments should be made on the basis of expertise and merit, rather than political connections.

### 11.2. Qualities

144. The CTF received a number of submissions relating to the qualities / characteristics that judges who are appointed to the judicial mechanism should have as follows:

- Independent and perceived as such;
- Impartial;
- Uncorrupt;
- Of high moral character;
- Integrity;
- Strong commitment to fair and effective trials;
- Not susceptible to instructions from any person, government or other source;
- Persons who will listen attentively, be kind and loving;
- Persons who inspire the confidence of both the affected and the public;
- Fearless and courageous lawyers whose independence would cause them to "speak out against any human rights crisis.";
- Credible persons who are capable of resisting pressure from certain high-ranking perpetrators of the atrocity crimes;

### 11.3. Qualifications

145. The need for appropriate professional qualifications are mentioned in a number of submissions. A human rights watchdog states that judges should be *highly qualified and willing to undertake training*. The following qualifications are further elaborated in their submission:

- International judges should have established competence in international criminal law and procedure and relevant experience in international criminal proceedings.

*“International Judges who have had former experience of solving war related issues elsewhere, should be included in the group which will inquire into our problems and give justice to us.”*

(FGD, Mullaitivu)

- National judges, (whether already sitting or appointed directly to the mechanism), should have established competence in criminal law and procedure and relevant experience in national criminal proceedings. Competence or experience in international criminal law, international humanitarian law and international human rights law should be highly desirable.
- Expertise in effectively dealing with crimes of sexual and gender-based violence as well as violence against children
- Appointed Sri Lankan judges should undertake appropriate training in international criminal law and practice, international humanitarian law and international human rights law. Appointed international judges should undertake appropriate training in Sri Lankan law.

146. A local organisation that works on transitional justice states that for the first ten years of the Court’s operation, a majority of the judges of the High Court and of the Appellate Chamber must have distinguished themselves with previous experience adjudicating international crimes.

### 11.4 Representation/Composition

147. The need for both international and local judges as well as appropriate ratio of local and international judges has already been mentioned above. (see section 3 on hybrid courts)

148. In addition, submissions stated that in order to ensure the confidence of all communities in the justice process, there should be a fair balance of Sri Lankan judges from the Sinhala, Tamil and Muslim communities as well as from all religious communities within Sri Lanka.

149. It is further submitted that there should be an equal number of female and male judges. (Written submissions by organisations)

150. A forum that works on the rights of the Northern Muslims submitted that local judges should also come from among the Northern Muslim Community competent in the Tamil language and knowing the history and geographic complexities. Competency in the Tamil language was also frequently brought up by the participants from the North and East.

151. There were also several submissions on the appointment of Tamil speaking judges and local Tamils who have knowledge of context and/or have been affected themselves. *“Tamils found locally, with legal knowledge and being affected themselves and who could speak on behalf of the affected people must also be included.”* (FGD, Mannar). *“Tamil speaking people must be there”* (Public Meeting, Trincomalee; Public Meeting, Maruthankerny). The submission at the Kaluvanchikkudy Public Meeting stated that persons who are capable of speaking all 3 languages should be in the court. This section on language is of particular reference to the issue of access to court, discussed under structure - location at section 7.2 above.

#### **11.5. Disqualification**

152. A submission stated that there should be provision for the *“...vetting of personnel and officials involved in any arm of the transitional justice processes, to ensure that offenders accused of sexual and gender based violence are not part of these processes, and for a whistleblower mechanism to be established that would take action against such offenders where there are credible complaints of abuse of power with regard to sexual and gender based violence”*.

#### **11.6. Process of Appointment**

153. A number of submissions refer to the process that should be followed in the appointment of judges in the following terms: Several submissions stated that the process of appointment must be rigorous, open and transparent, effective, independent and neutral.

154. On international involvement in the selection process, a priest, at the Nanaddan Public Meeting said that *“In selecting local judges, the opinion of people should be garnered. Also the UN should also be involved in the selection of judges. Those who the people do not like should not be involved.”*

155. A human rights watchdog stated that *“This should include making the names of short-listed candidates under consideration public with sufficient time for public assessment and input, including submissions from the legal community and civil society. To ensure that the highest qualified candidates from Sri Lanka are considered, a call for applications should be made public and advertised nationally. The advertisement should set out the criteria upon which the candidates will be assessed. Specific efforts should*

be made to bring the advertisement to the attention of highly qualified women and to encourage them to apply”.

### 11.7. Responsible Authority

156. Agreeing on a formula for selecting the domestic judges was identified as of vital importance to the legitimacy of the internationalised justice process (an organisation that works with torture survivors). A local organisation that works on transitional justice stated that the Judicial Service Commission Rules must provide for a scheme of recruitment for international judges, for the two chambers. An organisation that works on peace and justice suggested that international judges must be selected preferably by an external and independent individual or body. The Office of the High Commissioner for Human Rights, which serves as the Secretariat to the Human Rights Council and which has a mandate to provide technical assistance, is the obvious choice. The Commonwealth Secretary-General is another option. Affected persons interviewed by an organisation that works with torture survivors suggested that the candidates must enjoy the trust of the Tamil community and to that extent the community should have a say in the selection of judges.

### 11.8. Measures to Ensure Independence of the Judges

157. A human rights watchdog was of the view that safeguards set out in the United Nations Basic Principles on the Independence of the Judiciary, including conditions and security of tenure, professional immunity and principles on discipline, suspension and removal must be applied.

158. While calling for independence and impartiality one submission refers to the “*entrenched corruption in the Sri Lankan legal system*” and “*even among Tamil judges*” and discusses the importance of strong anti-corruption guarantees. This submission states: “*When the [previous] regime existed, whatever the judges decided had to reflect what [the previous president] said. We need to make sure that the judges aren’t saying what the Government wants them to say . . . Independence and impartiality means the judges must not be corrupt*”.

## 12. Special Counsel

159. The CTF received a few technical submissions on the office of the Special Counsel (SC). These submissions made the following recommendations.

### 12.1 Mandate/Prosecutorial Policy

160. The SC be mandated to develop, in consultation with affected persons and civil society, a

prosecution strategy outlining the scope of the investigations and prosecutions planned and budget estimates for a two or three-year period. This should be made public and updated every two or three years.

161. A local organisation that works on transitional justice submitted that, *“the Prosecutor would have the discretion to choose a prosecutorial strategy that could also be sequenced appropriate to the political context. Thus, sensitivity to political context is built into the special court model”*.

## **12.2. Independence**

162. A local organisation and an organisation working on religious freedom stated categorically that the SC must be independent of other authorities. A human rights watchdog stated that given the widespread allegations of human rights violations by the police and the continuing failures of the police, the magistrates’ courts and the Attorney-General’s Department to effectively investigate human rights violations and prosecute those suspected of committing them, the justice mechanism’s systems of prosecution should be fully independent of these authorities. The SC should establish an independent office, including investigation units and prosecution teams that are fully independent of existing authorities and free from political pressure (a local organisation).

## **12.3. Powers and Functions**

163. The SC should have all necessary powers, to conduct their work independently and effectively. It must have full authority over the management and administration of the Office, including the staff, facilities and other resources thereof, including the power to recruit international staff with expertise to ensure that the office can effectively investigate and prosecute crimes under international law and to build the capacity of national investigators and prosecutors.

## **12.4. Affected Person Outreach**

164. A local organisation recommends a separate unit for outreach under the office of the special prosecutor that will function in all three languages. *“Early victim-outreach must be conducted by the Special Prosecutor’s Office (SPO (in conjunction with other bodies) to ensure that victims understand the mandate of the SPO and the special court and the independence of these bodies. This will also allow prosecutors to identify the range of possible charges at an early stage. Outreach should be conducted in all three languages and target mainstream media, social media, community level dissemination of information and other tools.”*

## 12.5. Investigation Unit

165. A local organisation recommends establishing an Investigations Unit within the Special Prosecutor's Office (SPO) itself. *"This will allow prosecutors to give directions as to the kind of evidence required. To ensure impartiality, particularly where investigations surround former or current police personnel, investigators should comprise both foreign and national staff and should implement existing international protocols on the investigations of international crimes. There should be a team of investigators with the Investigations Unit dedicated to the investigation of sexual violence crimes. Ethnic and gender considerations should be taken note of when recruiting investigators"*.

166. The submissions also referred to an independent investigation unit set up under the Special Counsel's office that will exercise all powers and privileges of peace officers and Police Officers (a local organisation that works on transitional justice). Submissions relating to involvement of international and local staff will apply to the investigative unit as well. However, the CTF notes that it has not received submissions on the specifics of the investigation unit, the scope of its powers and background of staff.

167. A local organisation further notes that, *"The Judicial Medical Officers (JMO) and the Government Analyst Department should be financially strengthened and offered international technical assistance to ensure investigations are given the best technical support, have the necessary expertise, are independent and protected from political and other interference. Attention must also be on ensuring strengthening documentation and archiving systems in these departments and others"*.

## 12.6. Selecting Perpetrators

168. A local organisation in its submission stated that, *"Consideration should be given to prosecuting only those perpetrators who are 'most responsible', according to a two-limbed test which covers: a) Individuals who had the most organisational responsibility in the execution of plans and operations resulting in crimes; and b) Individuals who have committed exceptionally or particularly heinous and abhorrent crimes themselves, regardless of the position they occupied within their organisations"*.

169. A human rights watchdog on the other hand states that although the mandate might emphasise prosecuting *"those most responsible"* that would limit the focus on only a small number of perpetrators and therefore it would be more strategic as recognised by the Prosecutor of the ICC *"to focus on lower, mid and high-level suspects in order to ultimately have a reasonable prospect of conviction for the most responsible and to deliver justice in particularly grave or notorious cases."*

## 12.7. Consolidating Trials

170. ‘To ensure efficient justice, a Coordination Unit should be established within the SPO to assist prosecutors to strategise and connect ‘linked’ cases into consolidated trials whereby all the affected persons and accused for a single event (or place of detention) are dealt with in one set of proceedings.’ (A local organisation)

## 12.8. Conduct of Prosecutions

171. *“The SPO must have a publicly available prosecutorial policy with clear criteria governing charging decisions. Decisions should be explained in a publicly available written document against these criteria (with redactions if necessary to maintain confidentiality). This document and any other meant for outreach must be available in Sinhala, Tamil and English. Consideration must be given to a mechanism whereby the affected can have charging decisions reviewed (for example, by an administrative organ of the special court or an independent statutory body). Plea-bargaining should only be used by the SPO as a last resort and should only ever offer sentence reductions, not lesser charges.”* (A local organisation)

## 12.9. Special Unit on Disappeared Persons

172. A large number of submissions that the CTF received were related to the fate of missing/disappeared persons. A view expressed by some was that these disappearances should be brought before a court of law. Families of the disappeared submitted that, *“Prosecutions relating to disappearances should be dealt with through a special unit of the special court.”* A woman at the Missing Persons FGD stated that *“[T]here should be an appointed special lawyer for the missing persons and file the case since missing persons also have to get good justice. I know who had kidnapped my husband, he went abroad he has to returned to Sri Lanka I would ask him where is my husband?”* The CTF understands this to mean that there exists a request for a special unit to be established to deal with cases of disappearances.

## 12.10. Counselling and Support Unit

173. It is submitted that the court should also have a special section for psycho-social counselling and a medical doctor on call. There should be a separate counselling unit that has women counsellors who are sensitive and also understand the gender-specific issues (a local women’s organisation). It is also submitted that the counselling unit should be able to address special needs of children (a local organisation that works on transitional justice).

### 12.11. Resources and Staff of the Special Prosecutor's Office

174. The Special Counsel's Office must be adequately resourced. A human rights watchdog stated that the special counsel should be provided with sufficient staff and resources. A local organisation submitted that *"to increase its perceived legitimacy, the SPO should be staffed by a diverse body of prosecutors in terms of language, ethnicity, religion and gender. The SPO should also have its own dedicated team of full-time interpreters and prioritise the recruitment of those who can speak both Sinhala and Tamil to ensure its work is accessible to all. The recruitment of female prosecutors and investigators from a diversity of ethnic backgrounds must be considered, given persons affected by sexual violence frequently prefer working with female prosecutors, investigators and others"*.

### 12.12. Recruitment/Appointment Criteria

- There is general agreement among the technical submissions that international involvement is necessary in terms of expertise and neutrality, and that this should gradually be phased into a domestic mechanism.
- A local organisation that works on transitional justice recommends that for the first 10 years, the special prosecutor be an international prosecutor with at least 7 years of experience in prosecuting international crimes.
- A local organisation suggests that the chief prosecutor should ideally be Sri Lankan with the temporary appointment of a foreign Deputy Special Prosecutor and assistant co-prosecutors.
- A local organisation that works on transitional justice also states that the rank of the Deputy Special Prosecutor should be at least similar to that of Assistant Solicitor General.
- The Special Counsel should be recruited and appointed in an open, independent and transparent process, which brings the process to the attention of highly qualified women and encourages them to apply (a local organisation that works on transitional justice). Another submission suggested that the appointment be made by the Constitutional Council.

175. It is recommended that the person so recruited should be of high moral character, highly competent and have extensive experience in the investigation and prosecution of serious criminal offences, including human rights violations and sexual and gender-based violence.

176. On selection criteria, a local organisation recommended, *"The establishment of publicly available selection criteria for the appointment of prosecutors must be considered, along with a stringent vetting procedure and a mechanism whereby individuals and/or civil society can challenge appointments. The following should be considered as criteria that would prevent an individual from being appointed to the SPO: (1) publicly expressing an opinion against accountability for conflict-related crimes; (2) denial of the victimhood of certain groups (3) representation of the Government in an official capacity, such as at the UN and (4) active membership in political parties and other groups that raises questions of independence and impartiality"*.

177. An organisation working on religious freedom submitted that “*All parties involved in the mechanism should be familiar with the historical, military and political details of the country. Those appointed to the special court should be members who inspire the confidence of both those affected and the public*”.

### 13. Staff of the Judicial Mechanism

178. Submissions relating to the staffing make the following points:

- Staff should be drawn from all Sri Lankan communities
- There should be an equal representation of men and women at all levels.
- International staff should be recruited based on the need for international expertise in key areas. Range of areas where international expertise may be needed include forensics, investigations, protection, archiving, prosecutions and adjudication (refer international involvement at section 3)
- There should be mentoring and training of Sri Lankans so that they can eventually take over the roles of international staff.
- Staff under the special counsel should be vetted to ensure that they have not engaged in past human rights abuses; are not professionally or personally connected to those that may be investigated and prosecuted; and have not been involved in obstructing investigations and prosecutions of human rights abuses.
- Staff should comprise of 50% international experts who are women, who have experience in carrying out women-specific prosecutions. (refer section on women, gender and accountability at section 10.1 and international involvement at section 3)
- The appointment process of officers who serve on the special court should be made transparent.

### 14. Victim and Witness Protection

*“If people come to testify their protection must be secured.”*  
(Ex combatant in FGD, Mannar)

*“In all the villages, there are intelligence officers who could be noting who is talking to investigators. This needs to be sorted out. A full safety net is required”*  
(An organisation that works with torture survivors)

*“There should be protection for witnesses. There is intimidation by those who are not in uniform too. Security should be given in the hands of the civil authorities (Police).”*  
(Participant, Public Meeting, Maruthankerny)

*“The presence of the International Community is necessary to protect witnesses.”*

(Participant, Public Meeting, Chettikulam)

*“... (T)he hybrid justice process requires its own witness and victim protection programme. They consider that such a programme should be run by UN or other international staff because victims and witnesses do not trust the ability of the Sri Lankan Government to ensure safety.”*

(An organisation that works with torture survivors)

179. A number of submissions envisage that the judicial mechanism will have the power to ensure the safety and protection of affected persons and witnesses prior to, during, and after engagement with the judicial mechanism. An organisation that works for religious freedom said that victim and witness protection must be secured for all mechanisms. A local organisation submitted that *“threats and harassment faced by the affected and witnesses have in previous instances impacted testimony and ultimately been a factor in the ability to investigate and prosecute”*.

180. Similarly, an organisation that works with torture survivors pointed out that reprisal against the affected and witnesses is a longstanding problem in Sri Lanka as demonstrated by crackdowns on those who spoke out during separate visits to the north of the country in 2013 by the Prime Minister of the United Kingdom, David Cameron and the UN High Commissioner for Human Rights, Navi Pillay.

181. An organisation that works with torture survivors submitted that safety of witnesses must be assured via a specialist internationalised and gender-sensitive programme built into the justice mechanism. They make the following recommendations in this regard:

- Any interviews with affected persons and witnesses in the community must take place when the army is not in the vicinity because they are known to be perpetrating violations still.
- Intermediaries should be used to gather evidence as an additional means of security.
- Persons affected by torture should be involved in facilitating testimony from other affected persons and witnesses;
- If needed international protection must be assured to persons who come forward to testify and give evidence.

The protection of affected persons and witnesses who have given evidence abroad and later return to Sri Lanka has also been raised. Further, depending on the location of the Court, for instance if the Court was in Colombo, then it should provide witnesses and affected persons safe accommodation facilities and transportation.

182. The organisation that works with torture survivors stated that this unit should be run by the UN or other international staff, not the Sri Lankan Government; a local organisation states that selection of personnel to this unit should be done under a rigorous screening process, to ensure

that the personnel are comprised of individuals who have the necessary skills and expertise and are independent and professional.

#### 14.1. Protecting the Identities of Affected Persons and Witnesses

*“Whether providing evidence inside or outside Sri Lanka, our identities must be protected.”*

(An organisation that works with torture survivors)

183. There were submissions that emphasised the need to ensure the confidentiality of evidence and testimony. A number of written submissions from organisations recommended that consideration be given as to how testimony can be obtained without disclosing the identity of the affected and witnesses such as by using voice and image distortion and giving evidence behind screens/in another room.

184. However, an organisation that works on documenting torture submitted that *“a minority of the affected interviewed felt that it was too dangerous to testify to a court or commission whatever the precautions and safeguards because the details of their case would identify them.”*

185. The opposing view was that anonymity of witnesses would prejudice the accused, if the defence lawyer were not permitted to cross-examine the witness. One submission said – *“Absolute no to any new Acts of Parliament which, if approved, will enable courts of law in Sri Lanka to accept evidence provided by anonymous witnesses whose identities will only be revealed after twenty years (these so called ‘witnesses’ are in fact LTTE terrorists or their supporters and their ‘evidence’ are all bogus lies)”*.

(Individual written submission)

#### 15. Funding the Judicial Mechanism

186. The CTF has received limited submissions relating to the funding of the proposed mechanism. A local organisation in its submission stated that it is crucial to identify funding sources that are able to sustain transitional justice initiatives for several years and possibly decades. This is mainly because international tribunals have proven to be costly exercises. It submits that Sri Lanka would have to identify these funding sources while ensuring that funding *“does not influence or interfere”* with the workings of the mechanism. The same organisation submitted that relating to this, there should be a trust fund for the affected which is independent and works as a neutral source of funding.

187. A local organisation that works on transitional justice, pointed out that in the East Timor process there was never an effective victim and witness protection programme due to the lack of funding. Because of this, there were significant complaints of intimidation with regard to witnesses involved in the Special Panels there. Similarly, it states that in Cambodia funding constraints

threatened to derail the work of the ECCC. Therefore, it states that ‘budgetary implications and responsibility for funding the mechanism must be identified in advance and agreed upon, to ensure that funding constraints do not impede the work of the court.’

188. Further, it states that any division of funding responsibilities between the Government and the international community should be transparent and final. There should also be clear commitments by those responsible for such funding to support the work of the court unconditionally.

189. Yet another organisation (a human rights watchdog) stated that it should be the Registry that is mandated to prepare an annual budget in consultation with the Special Counsel, the chambers, the defence office and other parts of the mechanism and that this budget should be reviewed in a transparent process by the Government of Sri Lanka and the United Nations. It further states that the Sri Lankan Government should contribute a percentage (agreed to with the UN) to the funding of the hybrid mechanism.

190. With regard to the remainder of the budget, including the costs of international officials and staff, this organisation stated that they should be funded through the regular budget of the United Nations. It also takes the view that, “voluntary contributions should only be considered as a last resort and, if employed, donors should make multi-year commitments”.

## **16. Conclusion**

191. The CTF has in this Chapter presented the submissions it received on the establishment of a judicial mechanism. Based on written submissions, FGDs and Public Meetings a general observation to make would be that there is some public support for the establishment of a hybrid judicial mechanism. In accordance to the submissions received the CTF has therefore outlined above the specifics to be looked at when establishing such a mechanism in the near future.

## VI. TRANSITIONAL JUSTICE BEYOND THE FOUR MECHANISMS

### 1. Introduction

*“The solutions to our problems lie outside the four mechanisms.”*  
(Participant at FGD with Aadivaasi community in Dambana)

1. In consultations, many spoke about alternate mechanisms and measures required for the transitional justice process, which extend beyond the four mechanisms proposed by the Government. These measures were proposed to address a range of issues, which varied from violations relating to the war, the Southern insurrections, religious violence, and other ongoing tensions, to structural problems regarding the State, such as institutional discrimination, politicisation of State service provision, and militarisation. Submissions also brought up more ‘day-to-day’ issues regarding gaining access to welfare and other State services. In addition, they raised concerns regarding inter- and intra-community problems, including the widespread consequences of structural marginalisation and exclusion based on factors such as ethnicity, caste, and political affiliation. These submissions highlighted the varied understanding of the purpose of consultations and also of transitional justice itself. While some may have seen the consultations as a forum to air their everyday grievances and secure some recognition and redress, others saw issues of justice and reconciliation as encompassing a broad spectrum and took the opportunity to suggest ways to creatively imagine a more egalitarian and prosperous future. Furthermore, these submissions highlighted the perceived linkages between problems faced every day and the extraordinary contexts of armed conflict, drawing attention to the need for more comprehensive and effective solutions and redress. Taking the opportunity presented by the emerging transitional justice process, the submissions outlined many fault lines at the State, institutional and societal levels that continue to plague Sri Lanka and require State interventions. Thus the submissions call for a broader reform process that goes beyond the four mechanisms and address State, institutional and societal reform processes.

2. Transitional justice processes in other countries have been criticised for applying too narrow a definition of the measures required for transitioning from situations of conflict to a lasting peace, and have thus proven inadequate or even ineffectual in the long-term in effecting necessary change and reform. The CTF decided that interpreting transitional justice in terms of the four mechanisms alone would be insufficient and broadened the process by eliciting representations from the public to include “any other mechanisms.” The CTF also did not want to dismiss any submissions as irrelevant to transitional justice on the grounds that they do not mention the four mechanisms or they raise problems and solutions that cannot be easily placed within these mechanisms. It recognised that suggestions relating to State reform, equality for marginalised communities, and societal reform, are all critical components for the efficacy of a transitional justice process and as

well as for securing a just and sustainable peace. The ZTFs, in turn, raised alternate issues and specific perspectives that needed to be included into the consultation process, which also broadened the scope of consultations.

3. While it may have been easy to include many of these issues into the scope of TJRNRC under non-recurrence, the CTF recognised the problems of doing so. In addition to extending the scope of the TJRNRC to making it impracticable, there were multiple submissions that highlighted Sri Lanka's history of commissions and their ineffectiveness. Participants were explicit that the solutions for some problems could not, nor should not, be delayed by forwarding it to yet another State commission, which they feared would function through hearings and produce a set of recommendations that would not be acted upon by the State. Instead, they called for immediate action on urgent problems. Further, members of the public have provided suggestions for alternate mechanisms that aim to more effectively address key issues that are central to peace, justice and reconciliation, including at least one (a religious council), which has been proposed a number of times by and to successive governments. They have also suggested concrete steps that can be taken to resolve specific issues, including by existing institutions.

4. This chapter has collated issues raised in the submissions related to transitional justice beyond the four mechanisms under several broad themes. It presents a series of other mechanisms that submissions proposed to address grievances that do not fit squarely within the four mechanisms but aim to address problems critical for transitional justice and long-term peace in Sri Lanka. It collates submissions that pertain to reform at various levels – State, sectoral and institutional, and societal. The chapter concludes by presenting the call for inclusion made by specific groups that identified themselves as distinctly vulnerable based on their gender, sexual orientation, vocation, and disability, and their long-standing exclusions within Sri Lankan society. These groups raised questions about whether the transitional justice process was inclusive enough to address their concerns and asked that the State address key structural, legal and policy issues that prevent them from enjoying full citizenship.

## 2. Reform of State and Society: Non-Recurrence and Redress

*“In our generation we need to learn history so it won't happen again”*  
(Brother of disappeared man, Vakara)

5. Those who made these recommendations that went beyond the four mechanisms did so primarily on the basis of two principles. The most emphatic of these was that of non-recurrence. Non-recurrence was a theme that frequently emerged in submissions, both from organisations and individuals. These submissions strongly argued that these measures were crucial to ensure that armed conflict and violent phenomena did not take place again and that future generations did not have to endure the pain and suffering experienced by the previous and present generations. In

specific instances, such as in Matara, Anuradhapura and Batticaloa there were individuals, in all three cases women who had lost one or more family members, who stated that they had not come to the public meetings to ask for compensation, justice or truth. Their common refrain was that no other person should suffer as they had. For these people, the call for ensuring non-recurrence was a moral imperative.

6. In order to ensure that these conflicts and violent phenomena did not take place again, submissions highlighted a variety of recommendations, not only relating to justice, truth telling and reparations but also others relating to the reform of State and society. While some pointed to constitutional reforms, including those pertaining to the political solution and devolution, others drew attention to reforms in justice and State administration and specific problems and measures to address religious conflicts, militarisation or inter-ethnic land disputes. A number of submissions looked at actions, such as cultural exchanges, championing the rights of affected communities, inter-ethnic sports and cultural events and statements of acknowledgement and apologies by political parties and community leaders that could be taken by society, including by specific actors such as the media and religious leaders who are seen to have significant influence. Further, short to longer-term solutions were listed on a range of issues by various affected groups including those displaced within and outside the country by the conflict, families of military personnel killed or missing in action, and former LTTE combatants affected by the war.

7. The second set of principles articulated in the submissions was primarily regarding the rights for equality, fairness and non-discrimination. These concepts of equality, non-discrimination and marginalisation were frequently raised in the submissions, and revealed the levels of dissatisfaction and questioning of what many seemed to see as the narrow scope of the four mechanisms being used in the transitional justice process. In these submissions, the recommendations and suggested reforms looked not just at non-recurrence but also at solutions for immediate and more structural problems. For instance, addressing the structural violence and discrimination against the Malaiyaha Tamil community, including issues of documentation, land ownership, living conditions, wages in estates and alternate livelihoods has some bearing on non-recurrence but is also about the need to ensure recognition, justice, and respect of the rights of a community that has suffered as a result of the war, pogroms that predated the armed conflict and the denial of full citizenship rights. Similarly, a teacher in Thunnukai mentioned the importance of justice and the need for a political solution but also raised the solution to the war as lying in equal rights. Thus, while these demands fit into the overall framework of transitional justice, they raise questions about the narrow scope of the four mechanisms being used.

8. The need to look at the root causes of the conflict was highlighted in written submissions, by individuals at public meetings and sectoral consultations. A number of submissions expressed sentiments akin to the one below:

*"Prabhakaran was a young boy when he started all this. So he was probably reacting to the social situation around him and wanted to solve these problems. We remember and have heard of what happened in 88-89. There were no jobs for the youth and only if you worshipped the politicians you could get a job. We have to catch this serpent and change this political scenario."*

(Sinhalese man, FGD, North Central Province)

9. In suggestions for truth seeking, the need to go back to the past, including post-1948 or 1956 in order to provide a comprehensive view of what went wrong was made more explicit. In most instances, the focus was the State – to look at the “systemic anomalies of governance” including the Constitution, State structures and policies, while for a few it was to review the role of other societal actors as well. In addition to looking at the past, one submission noted the importance of looking at possible dangers in the future, so to take steps to deal with prevention. Thus, this chapter aims to encapsulate these broader viewpoints of reform to include State and society, non-recurrence and redress for violations suffered so far, and past, present and future.

### 3. State Reform

10. Among the submissions there were a number that spoke directly on the design, structure and powers of the State, including issues relating to State institutions and relations between the centre and periphery. This section looks at submissions that propose a fundamental change to the role and powers of State institutions, and also suggestions on changes to the responsibilities and conduct by officials serving in State institutions. Furthermore, the submissions recommended changes to existing policies and processes in relation to specific sectors such as education and land.

#### 3.1. Political Solution and Constitutional Changes

11. Alongside the demands for truth seeking, justice and compensation, the need for a political solution came up in submissions from a range of persons, including from participants at public meetings. The demands for a political solution and greater devolution came largely from Tamils in the North and East, but was also echoed by others.

12. While some saw the need for such a solution as self-evident, others provided a rationale. Some submissions pointed out how the lack of powers to the Northern Provincial Council had exacerbated problems in the post-war period, such as issues of land claims. Others expressed that it was the lack of power and centralisation that was the problem, such as the person who stated: *“The political system is not good. We need a federal system, because laws are imposed from parliament.”* (Displaced person in FGD in Mannar). Some submissions noted the importance of a political solution and devolution as critical for non-recurrence and to ensure equal rights. An organisation that interviewed people affected by the war mentions in its written submission that their interviewees spoke of the need for self-determination in the North and East.

*“The Government needs to put in place a political solution recognising the Tamil call for self-rule. That has been the only thing Tamils have ever asked for. We live mainly in the North and the East and have our own language and culture and traditions. We just need to be treated as equal citizens and need a political solution to address our desire for self-determination.”*

(Interview with war affected persons found in written submission by an organisation)

13. The organisation mentioned that their interviewees emphasised continuously that they were not asking for a separate state as part of the political solution: *“We are not asking for a separate country – it is about power sharing and having our own power to determine issues in our area.”* (Interview with war affected people found in written submission by an organisation)

14. Specific references for a federal system and the meaningful devolution of powers, including police and land, were made at public meetings.

*“Sinhala people are prioritised in this country. Tamils need a constitutional solution for their fundamental political problems. We want a federal style of government. There should be autonomy. For us a political solution is the highest priority. We must be given police powers acceptable to the people. Land powers should be given, but they should not be taken back. The 13<sup>th</sup> Amendment if implemented properly is adequate. Without this any political solution is not satisfactory.”*

(Participant, Public Meeting, Kaluvanchikkudy)

*“If there is to be a change, at least Federalism should be given”*

(Participant, Public Meeting, Nanaddan)

15. Some submissions, including an individual written submission at the Pooneryn Public Meeting, Killinochchi, stressed the implementation of the devolution of powers so that provincial councils can exercise adequate power. The importance of addressing power in a substantial and symbolic manner through devolution was also highlighted in submissions:

*“Devolving powers to the provinces and ascertain non-absolutist recognition of the political differences of our ethnic communities is important. This recognition involves seeing differences both as products of power and state formation and as interdependent entities because of the geographic, cultural and economic entanglements that have emerged among us historically.”*

16. Opposition to devolution to provinces was expressed in a couple of submissions, including at public meetings. A participant at the public meeting in Kandy said that in every village, town, district and at national level, there should be distribution of political power. He stated that “things like Federal and United are outdated. So lists should be nulled.” He submitted that while

strengthening the provinces, the cabinet should have strong members. He also submitted that there should be a system with a senate. The same idea of revisiting the unit of devolution was made in a written submission which called for power being devolved to a village council, district council, electorate, a provincial council or a hybrid. The demand made by the submission is that the unit should be decided by the people and not politicians, alongside the decision of whether the State should be federal or unitary. The submission further notes that in case a federal system is accepted, the Indian federal system is best suited for Sri Lanka.

17. An individual written submission received by the CTF states that, *'All political solutions focus only on Tamils and disregard the grievances and aspirations of Muslims and Sinhalese.'* The submission further notes that,

*'Muslims and Sinhalese have no faith in these Apartheid 'solutions'. For instance, people were not consulted in passing the 13th Amendment which created provincial councils that share the burden of governance. People never demanded power to be devolved from the parliament which is the custodian of people's sovereignty.'*

The submission goes on to note that the 13th Amendment should be put to a referendum.

18. A written group submission to the CTF states that the powers of the Governor in the existing Provincial Council system is considered detrimental to the Tamils. The submission notes that the relations between the Centre and the Northern and Eastern Provinces seem to be in a state of constant tension. While the appointment of civilian Governors was a positive step, it does not seem to have helped create a stable and productive working relationship between the Chief Minister (CM) and the Governor in the two provinces. They submit that one hardly hears of any serious problems between the Governors and CMs of the other seven provinces and that rightly or wrongly, there is a perception among people in the North and East that the Provincial Governors are 'Colombo's Viceroys.' They submit that the Government must review the Centre-Province relations with a view to strengthen the Provincial Councils and redefine the role of the Governor.

19. Some submissions looked at other constitutional safeguards against majoritarianism as it exists in a Parliamentary democracy. A written submission noted that:

*'It should be a policy of the government and of the future governments that no law detrimental to the interest and rights of the minority be passed by the parliament with the only numerical majority votes in the name of democracy. The in depth effects of the law on the affected community should be considered sensitively.'*

The submission mentions that if this approach had been there during the passage of the Sinhala Only Act, the war could have been avoided. The submissions mention that the type of preventive

provisions such as the one found in the 1947 (Soulbury) Constitution (Section 29) should be included in the new constitution. The submission suggests that any solution put forward should at least be agreed upon by the Tamil political parties (at least the main Tamil party which has more than 75% support of the Tamil population) before it is passed in Parliament.

20. **Constitutional changes on religion and language:** In addition to devolution, submissions were made on other aspects of the Constitution that require change. As noted by an individual in the Thunukkai Public Meeting, “*There should be no more separation in this country. The Constitution says it is a Sinhala Buddhist country. That should change.*” The request for a secular Constitution as opposed to one that gave Buddhism a foremost place as per Article 9 came up in a number of public meetings, in the North and East as well as in the South. Minority religious leaders and laypeople from the Southern and Central Provinces also spoke of numerous ways in which they have been marginalised due to Article 9, and called for the State to be secularised or for the State to provide equal protection to all religions. This was countered in other submissions, largely by Sinhalese, and in a few written submissions suggesting that Sri Lanka should continue to award the supreme place to Buddhism and that it must ‘*not become a secular nation as it will be seen as an extension of India, which is secular only by name.*’ In submissions from the South, some religious leaders asked for the special place given to Buddhism be removed and for all religions to be considered equally, but most non-Buddhist religious leaders stressed on equality.

21. The CTF received a large number of submissions from Tamil speaking populations across the country, stating that their language rights were not sufficiently honoured by the State and State institutions. The language issue came up both with regards to recommendations on mechanisms and in others noted in this chapter, including with regards to the police, administrative reform and the education sector. While Tamil is recognised in the Constitution as an official language, including as a language of administration at the provincial and local levels, submissions show that it is not implemented as such. Submissions from Tamil speakers from many parts of the island highlighted a litany of obstacles they face due to their lack of access to State services in their language. These ranged from difficulties in getting birth and death certificates and recording police statements in Tamil to finding Tamil-speaking administrative staff at provincial, district, and Grama Niladhari offices and a number of other obstacles. Submissions highlighted that the detrimental effects of the 1956 Sinhala-Only policies were still being felt; some cited it as a root cause of the Civil War. Calls for the provision of State services in Tamil in accordance with the constitutionally recognised rights of Tamil speakers came from Tamils in the North and East, Malaiyaha Tamils and Muslims as well as organisations at sectoral meetings. Significantly, a number of Sinhalese participants at Public Meetings also stated that providing Tamil-speakers equal access to services in their language was an important step towards reconciliation. One written submission to CTF differed, stating that the North must be administered in Tamil while in the East it should be Tamil and Sinhala and possibly Arabic language and all other provinces it states must be administered in Sinhala only. The CTF wishes to note that this sentiment was not

supported by a majority of submissions, across the ethnic and linguistic spectrum, which stressed the importance of providing multilingual services island wide.

22. Another individual written submission handed over at the Pooneryn Public Meeting notes that fundamental rights should be implemented equally in practice and that the election system should ensure proportionate representation for minorities and women.

### **3.2. Demilitarisation and Security Sector Reform**

23. The role of the military in a post-war and a transitional justice context was an issue raised in multiple public meetings, FGDs, sectoral meetings and written submissions. A frequent theme in public meetings was the demand for demilitarisation, which covers a range of issues from releasing land occupied by the military to reducing military presence and stepping away from sectors and activities that traditionally are not undertaken by the security forces. The call to transform the role of the security forces, which came up in consultations from various parts of the country, emerged not only in relation to the transitional justice process but also with respect to specific problems that military personnel and their families face. Given that the security forces are a key stakeholder, the CTF carried out sectoral consultations with senior commanders and mid-level officials, and organisations of family members of Missing in Action. In addition, at the zonal level, family members of security force personnel killed or MIA, and disabled former service personnel were consulted.

24. The situation of former combatants associated with the LTTE, including continuing insecurity, harassment, social marginalisation and economic vulnerability were raised by former combatants and other groups in the North and East, making clear that their reintegration into society remains an issue for reconciliation and post-war recovery. ZTFs carried out FGDs with both male and female ex-combatants, while some also provided submissions at public meetings.

#### **3.2.1. Response of the security forces and police to transitional justice**

25. Given the importance of the Security Forces and the Law enforcement agencies, as a stakeholder in the reconciliation process, the CTF consulted a wide cross section of representatives from these agencies, including senior commanders and mid-level officers. The following are some key points made and recommendations for the overall transitional justice process.

26. All members of the Forces and Police stated unequivocally that they fully support the Government's reconciliation initiatives and called for an approach that was restorative rather than retributive. They stated that they were supportive of a truth seeking process and that if evidence of any criminal activity is unearthed by such a process, wrongdoers must be prosecuted. They saw no need for amnesty given that, as far as they were concerned, no criminal activity had been

undertaken.

27. All forces personnel were categorical in their rejection of foreign involvement. They stated that they would not want to be judged by foreigners, and in relation to the other mechanisms, that there are enough competent people who have the respect of all ethnic communities in the country who can be appointed. They also called for the involvement of religious leaders to enhance the restorative nature of the process.

28. The Army representatives also stated that as an arm of the Government their activities were carried out under difficult circumstances in the face of many challenges to successfully achieve the Government's political objectives. Given that their work was carried out at the Government behest and under political direction they stated that they felt that there was no one who is standing with them at this time.

29. While they admitted that under challenging battle conditions civilians may have been caught in the crossfire and collateral damage must have occurred, they planned for zero casualties and therefore denied that civilian populations were deliberately targeted. They challenged the accusation that they were a racist force by calling attention to their actions in 1971 and 1988-89 where they were called upon to address a threat to State power in the South, which they accomplished successfully. They also denied that sexual violence was used as a weapon of war. The Air Force also reiterated that no crimes have been committed, and no illegal weapons were used.

30. The representatives stated that there was a deficit of trust among communities and the transitional justice process must build up trust. In this reconciliation process no single party should be either favoured or victimised unfairly, they said. Some officers cautioned that this process has the possibility of making things worse. If it is not done in a way that respects the suffering of all sectors of the population, and the sensibilities of all who have suffered losses it is likely that it will exacerbate ethnic tensions. The forces personnel also urged patience. They pointed out that reconciliation takes a long time and if it is seen to be rushed, it may create suspicion. They stated that reconciliation and reparations should be given priority to ensure non-recurrence alongside urged constitutional reform.

31. Some key recommendations made by the military and police include:

- While senior officers noted that there was some awareness raising, mid-level officials requested greater information sharing by the Government with their personnel at all levels to dispel doubts and misinformation.
- They also asked that all parties and all affected from both the North and the South be consulted and their perspectives taken into consideration.

### 3.2.2. Demilitarisation

32. This was an issue that was raised repeatedly and primarily by affected individuals and groups based in the North and East. While the demand for demilitarisation was usually voiced as a demand for the military presence to be reduced or withdrawn and the release of lands held by the military, there were also suggestions that the overall role of the military in the North and East needs to be transformed. Nonetheless, there were other submissions, most notably by military personnel, but also from other voices including that of displaced Muslims, that expressed the need for a strong military presence and countered some of the demands for immediate demilitarisation.

33. The need for demilitarisation as a confidence building measure for transitional justice was noted in a number of submissions, both from human rights and civil society organisations as well as individuals and groups making direct submissions to the CTF in the North and East. Some of these submissions pointed out that it should precede the setting up of mechanisms as proof of the Government's sincerity. In other submissions the argument was that demilitarisation was integral to bringing about a situation of normalcy, so that the North and East could become like the rest of the country. As outlined below, the multiple impacts, at an individual, family and community level of militarisation were highlighted. Concrete examples of how the military presence thwarts the restoration of rights and normalcy, most evident in the case of land occupation but also in the involvement of the military in multiple spheres ranging from surveillance and regulation of access to resources to economic activities were cited. Insecurity as a result of heavy military presence was also cited. For some, the link between demilitarisation and the restoration of the rule of law and consolidation of peace was self-evident: *"There should be no more war. There should be respect for laws. Need for military to be removed"* (Kandavalai public meeting)

34. Key demands for demilitarisation included the following:

- Ending military occupation of land, both public and private: In submissions, persons listed areas where they were unable to return to their own homes and traditional occupations due to military occupation, including from the districts of Jaffna, Mullaitivu, Killinochchi, Mannar, Ampara and Batticaloa. The frustration this has caused is illustrated in the following examples from submissions:

*“We had never been displaced (before) from our homes during the 30 years of the war; we only had to move during the final stages; after all that hardship we faced we are now unable to even return to our own lands in Keppapulavu, because the army is holding it and has a big camp there.”*

(FGD on land issues, Mullaitivu)

35. While Tamils are the population principally affected and hence raised the issue, Muslims who are also affected raised concerns: *“Army has to move from populated areas. Should give back land they have taken from the Muslims and given back to the people.”* (FGD with Muslims, Mannar). In the Pottuvil Public meeting the occupation of land claimed by Muslims but which they fled from during the war was also cited. While the majority of cases were from the North, there were also cases from outside the North and East. In a submission from Northern Muslims they cited a case where they claim 1,000 acres in Kalpitiya, between Kandal-kuli and Kappaladi had been taken over by the Air Force.

36. In speaking of their efforts to secure their lands, individuals, particularly women spoke of their harassment including one incident involving a woman with a differently abled son:

*“The commander was alone. He looked at my documents put them away and told me to come with him once and he would give me my land and then he pulled my hand. I used all the strength I had and fought with him and escaped. That day he called and said to forget about my land and wrote that this land could not be released.”*

(FGD, Killinochchi)

37. In another incident raised in the submissions, six women who had filed a court case regarding the occupation of their land, stated that they were berated *“using bad words and talked badly about our character.”* While some called for immediate withdrawal, some individuals were willing to see a phased release process. Some also demanded compensation for occupation in the past, while others wanted payment for continuing occupation.

- A specific demand was for the need for the military to vacate lands which had previously served as LTTE cemeteries. For instance, a woman at the public meeting in Manthai East, Mullaitivu noted: *“some military camps can stay for longer but those on cemeteries need to be moved.”* Further discussion of this issue is found in the reparations chapter.

- The reduction in the size and presence of the military particularly in the North but also in the East was raised. This presence was seen as an obstacle to restoring normalcy as it created fear and limited the freedom of movement.

*“People should have the freedom of movement. Military presence in all civil spaces such as schools, playgrounds, and cultural places should be removed completely. The military should not travel in*

*public transport.”*

(FGD on sexual violence, Mannar)

38. The fear that the heavy military presence aroused, was raised by some. For instance, a mother with eight children stated that with a military camp next door, she always locks her door out of fear that something will happen to her daughters or herself (public meeting in Karachchi, Killinochchi). In another instance, participants at an FGD in Mullaitivu spoke of an incident where a soldier had looked at a woman while she was bathing and as a result, the woman’s husband beat her. The soldier was then handed over to the police, but the police failed to file action.

39. The location of army camps is also a source of tension:

*“There is an army camp just next to the District Secretariat of Killinochchi - a civil administration...Extensive presence of the military in a civil administrative area is a sign of the pressure that is exerted on the civil administration in the area. There is no need for the military to be present right at the center of a civil administration. They have also taken land belonging to the Agricultural Extensions Services”.*

(Youth Services and Irrigation Department.)

- The involvement of the military in administrative issues, policing, monitoring and surveillance of victims of specific violations, ex-combatants and activists was highlighted in public meetings in Killinochchi, Mullaitivu, Jaffna and Batticaloa.

*“They come and tell us to call them if we arrange any meetings, saying - we should come and preside at the meeting, they say. There is no need for them to come to our meetings no?”*

(Participant at FGD, Killinochchi)

40. Ex-combatants in particular complained of harassment. *“For a long time they used to ask us to come and sign regularly, now that is not there, but still they come to our houses suddenly asking various questions.”* (Female, Ex- combatant, Mullaitivu) At the public meeting in Kandavalai, at least two families of the disappeared raised the issue of military presence and surveillance. As one mother noted *“Peace has come. There should be no army, no TID, no CID”.* (Public meeting in Kandavalai, Killinochchi).

- The militarisation of Tamil society post-war particularly in terms of the role of the Civil Security Defence (CSD) was highlighted. One area highlighted in public meetings was the role of the CSD running primary schools in the Vanni.

*“The learning and teaching activities are directly and fully under the Commander. The teachers are called to Army camps twice a month. Teachers are trained on how to teach by the army. In*

*Sri Lanka, which other districts other than Killinochchi and Mullaitivu, can you see the army conducting nurseries? They are not allowing even independent nursery learning and teaching activities. People say that the brain develops the most up to the age of 5...the fundamental target of this programme is to impart slavery within those 5yrs of the child... If you see, it is printed as CSD at the back of the school uniform of each child. Children wear a badge on the pocket with an emblem that contains an Army person running with a gun...it is a worst thing to do, running the nurseries under CSD. This too doesn't seem to be a step for reconciliation."*

41. The CSD inducting Tamil youth into their ranks was also highlighted. One ex-combatant in Mullaitivu noted, how they wanted to move away from a military identity but a number of ex-combatants had been absorbed into the CSD.

*"They call it a force and they wear a kind of uniform...this should not be done when the country is trying to bring about peace...children will also be influenced at a young age by people in uniform...it is not good.... they are paying people and making them join this force, and people join because of the lack of jobs...I don't know what the motive behind this is?"*

- The involvement of the military in economic activities, including operating farms and commercial ventures in the Vanni and Batticaloa. For instance, at an FGD in Batticaloa with those affected by mass killings, participants noted that: in areas that Tamil people had shops in Vaharai; the navy has set up businesses, forcing these people to take their business elsewhere, leaving their families behind.

- Military restrictions on accessing fishing waters. This was raised by a fisherman in Mannar who pointed out that they still have restrictions on areas where they can fish, imposed by the navy, and called for equal treatment as the South (Displaced person, focus group discussion, Mannar). This issue was also raised in Mullaitivu:

*"We have fished from Vattu-vahal to every other place within Mullaitivu. From childhood this was our profession. Now the Army has constructed barriers and fences in the areas where we fish... So, we tried going through the jungles and go fishing off the jetty. This too has been stopped by the Army by erecting fences."*

(Man, Public Meeting, Maritimpattu, Mullaitivu)

- Military involvement in inter-ethnic land disputes and 'colonisation' was highlighted with regards to Mullaitivu. The key role of the military both during the war and in the post-war context to assist Sinhala fishermen take over fishing rights traditionally held by Tamils in Kokillai was pointed out.

*"Now in Kokkilai, persons from other areas are coming to fish. They are using drag nets (Karai-*

*valai) and doing fishing. We don't get permission. But the Army is allowing other area people to come and fish."*

(Man, Public Meeting, Maritimpattu, Mullaitivu)

- Military involvement in establishing Buddhist religious symbols, including Bo Trees and Buddha statues was highlighted in public meetings in the North and East and individual written submissions.

42. As seen in the cases cited above, the overwhelming number of issues pertain to the North and East but the impact of militarisation was also highlighted in other areas. In a submission at a public meeting in Colombo, the militarisation of Urban Development was highlighted not just in the urban development being included under the Ministry of Defence under the previous Government, but also the use of the military to remove persons from parts of Colombo, as part of the Urban Regeneration Plan that left many families landless.

43. The importance of security sector reform to take in gender considerations and as a step towards providing security for women and to providing an enabling environment for Sexual and Gender-based Violation (SGBV) cases to be taken up was also highlighted in submissions. As noted above, the importance of reducing military presence to ensuring greater security for women in contexts that are highly militarised was raised both by individuals and organisations. In addition, the following recommendations were made:

- Women must be involved in matters of ensuring their safety and security. For example, there must be a proportionate number of females in the police force.
- Women must also be engaged in the security sector reform process.
- The military/army must undertake gender equity studies as part of their training.
- Former female soldiers should be engaged in the police force.

44. Nonetheless, there were some people who felt that army presence continued to be of some importance; alternatively, those who felt that an army is a vital part of State infrastructure and as such, could not be removed completely. At an FGD with ex-combatants in Kilinochchi, one ex-cadre said that he understood as a former combatant, that army presence could not be removed completely as the State needs to ensure security; he also said that the army was more disciplined than the police and he feared that if the army was replaced by the police, things such as corruption, crime and violence against women could increase. Individual Muslims at a FGD in Mullaitivu said that they felt that some army presence is needed to be maintained until there was a feeling of safety and security and guarantees of non-recurrence of events such as their evictions in 1990.

45. As noted in the quotes above, some were categorical in their demands for immediate demilitarisation, while others saw a phased approach. In a sectoral meeting with the CTF, commanders from the security forces while pointing to the need for reconciliation and their

support to such a process, pointed out that there was a lack of awareness about the role the military played in the immediate aftermath of the war, especially in the resettlement programme. They recognised that there “*maybe bad feeling in the north towards the military after a war that lasted thirty years*” but noted that there was “*no attempt being made, no mechanism established,*” to change people’s perceptions about the army in the transformed post war context.

### **3.2.3. Addressing issues pertaining to state security personnel and their families**

46. While the issue of security sector reform was raised in individual submissions, specific submissions on demobilisation and reintegration of members of the armed forces were rare. One specific submission that laid out on-going efforts to address DDR spoke about Civil Security Division (CSD). The submission set out the plan that will be implemented over a ten-year period that will result in an end to CSD operations. Some of the measures that were detailed included a freeze on new personnel being inducted into the CSD and re-training of current personnel to assist their re-entry into the civilian labour force.

47. There were multiple submissions from military personnel who have retired and the families of military personnel, including service men and women who were killed or disappeared during the war. In addition to public meetings in the North West, North Central and Southern Provinces, specific FGDs were held with families of MIA or those killed in action and with service personnel disabled in the war. The problems cited suggested that military personnel and their families felt that there was insufficient or even a lack of attention to their predicament. This in turn informed their response to transitional justice mechanisms as they cited the lack of information on the proposed mechanisms. Families of the MIA for instance asked if the OMP would include their cases as they noted how the State, civil society and the international community has not expressed an interest in taking up these cases and ascertain their fate. This lack of information on the mechanisms, the judicial mechanism in particular, was also cited by some serving military personnel from the tri-forces in the sectoral meeting as well as by military personnel, serving and retired in public meetings and FGDs. As noted in the OMP Chapter, a number of families were positive about the mechanism and put forward specific suggestions including on the need for international expertise on forensics and for involvement of MIA families in the office. Fear that the military was being unfairly persecuted and the consequences of establishing a judicial mechanism came up particularly in conversations with the mid-level ranked military officers at sectoral meetings. The call for awareness raising and greater information was a repeated suggestion. In the conversations with rank and file, it is apparent to the CTF that there has to be an effective information campaign and State engagement with the military and affected families.

48. The current assistance provided by the State to military personnel and their families came up repeatedly, with multiple aspects highlighted:

- The variance between those who were included on the list in 2007 and after who receive a

higher amount than those on the list prior to that year.

- The selection of beneficiaries for financial payments for personnel who were killed in battle or MIA, including the lack of assistance to parents as opposed to wives.
- The non-payment of salaries after 55 or pensions for families of personnel killed or disappeared.
- The exclusion of personnel who may have died in service (due to accidents or natural causes) but not in the battlefield, as much of assistance is focussed on 'war heroes'. As a soldier at a public meeting in Matara pointed out

*"If the war hero died when he is on leave, if he came on permitted leave, it is a death which belongs to the time of the mission. These wives of war heroes are divided into two groups. Families of the soldiers who died from LTTE attacks get everything. Families of the soldiers who died from 'other causes' do not get anything."*

- The multiple problems faced by widows of military and police personnel ranging from the lack of counselling to deal with finance issues to the lack of livelihoods, the challenges of providing for children's education and other needs, housing among others were cited. A number including those speaking at FGDs in Kurunegala and Anuradhapura stated the significant psychosocial burden they and their children faced, while some also spoke to concerns about their physical vulnerability and their position in society. *"We didn't get any counselling or protection. It is difficult to face the problems that come from the society."* (Police war widow from Kurunegala)

49. An overall frustration expressed by family members was that they felt marginalised by the State, given the sacrifices and suffering that they had endured and the incapacity of existing institutions to deal with these problems.

50. A distinct issue raised by individual wives and parents of military personnel was that their family members had died in mysterious circumstances and they requested a fresh inquiry. The circumstances cited include medical negligence by a senior officer who did not let the soldier access medical assistance due to a personal feud and cases of alleged suicide where the family contests that this was the case. In one case, a woman noted that when she went to make a complaint to the police regarding the mysterious death of her husband while serving in the military she was harassed by the policeman.

51. The need for psychosocial support was raised mainly by women from families of the MIA or servicemen who had been killed or died as they stated how the loss of their husbands or sons had a devastating impact on their lives. In addition, an individual working in psychosocial issues pointed out examples of service personnel suffering from PTSD, depression and other psychological problems, which were affecting both the individual and their families, resulting even in domestic violence.

#### 3.2.4. Former LTTE combatants

52. The issues faced by ex-combatants from Tamil militant groups in the post-war context was highlighted in public meetings, FGDs and sectoral meetings, and through written submissions. The issue of ex-combatants was raised not just by members of this group and family members, but also by other Tamil civilians and individuals in the South, particularly former and serving military personnel and their families who saw this group as a key stakeholder. In talking through their experiences of marginalisation and suffering, the ex-combatants themselves pointed out how they were a distinct category of persons affected by the war. They made a variety of submissions, relating to the four mechanisms but also outside them. Almost all the ex-combatants who came before the public meetings and identified themselves as such were former LTTE cadres.

53. **Rehabilitation:** The rehabilitation process that many who served in the LTTE, even if it was for short durations and were forcibly recruited, have been through was the focus of multiple criticisms. While submissions, including from the military pointed out the positives of the process, a significant number pointed to its gaps and problems. The rehabilitation process was seen as problematic by many former combatants both in terms of the process and its purpose. Some cadres complained about their treatment during rehabilitation, with a number of cadres making very specific allegations such as disappearances of former cadres from the centres, verbal abuse, torture, medical negligence, and rape. For instance, several former combatants noted that they had needed medical attention during rehabilitation, but were kept for long periods for interrogation without being provided medication: “My arm was so infected that maggots started to come out of it; only then was I taken to the hospital” noted one former combatant. Specific medical concerns were raised by ex-combatants and others from Tamil civil society including individual cadres who pointed out that they still had pieces of shrapnel in their bodies or had problems in movement or prolonged headaches that made daily life difficult.

54. One of the more charged issues relating to ex-combatants was the high incidence of death following release which came up in public meetings in Killinochchi, Mannar and Mullaitivu and FGD’s in Jaffna, Killinochchi, Mannar and Mullaitivu. It was claimed over 100 had died, including some from cancer. Some alleged that this was related to the injections that they were given during rehabilitation. In this regard there was a demand for immediate international medical investigations to be conducted as most ex-combatants claimed that they did not trust local doctors. There was also a call for the truth to be ascertained through an independent verification process.

55. However, a few cadres were less critical of their experience and said that the Government and the military had tried their best to ensure they were treated well. For example, in Mullaitivu, a former cadre dismissed claims of rape and sexual abuse against female combatants outright, noting that: “Given the circumstances, I think they treated us well. All these stories of poisoning, rape and torture inside the rehabilitation centres are false. They are made up for various

political gain.” A similar point of view was also shared by an ex-combatant at a public meeting in Vavuniya.

56. Regardless of the severity of treatment, a majority of ex combatants however – as noted in this section – felt that the period of rehabilitation would account as punishment by the State, with some stressing that this punishment had not ended due to the continued surveillance and intimidation that they faced, making it impossible for them to lead normal lives.

57. Combatants who have been through rehabilitation complained that the process did little to equip them for life after release, and requested assistance to address their current difficulties. They highlighted the multiple challenges they face, particularly lack of appropriate employment, a steady income and opportunities. A key challenge cited by cadres was the stigma attached to them that made it difficult to obtain jobs, including with the State. Others cited the lack of recognition of their qualifications, skills and experiences serving in the LTTE. For instance, several female ex-cadres in Kilinochchi and Mullaitivu noted that they had been trained for occupations such as filmmaking, administration or nursing and possess other such technical skills, but were forced to take sewing lessons inside the rehabilitation camps. “They looked at us as if we were some uneducated, uncivilized lot; but we all received education, and training within the LTTE...” (Kandavalai Public Meeting, Kilinochchi). Some former cadres also complained about the types of job available to them including in textile factories and in the Civil Defence Force, which they saw as below their status but also in case of the latter problematic, given its association with the security forces. Some cadres were nevertheless, specific in their request for government jobs. Former cadres also spoke about personal problems such as alcoholism, stress and mental illness as a result of their past experiences and current situation.

58. **Insecurity and Stigma:** Beyond, the problems with this process of rehabilitation, many cadres spoke to other challenges, particularly relating to marginalisation and insecurity. While a number of factors were cited as contributing to their current situation, they pointed out that it was their overall treatment by the State that resulted in their current situation. Insecurity was a key issue raised by former cadres, specifically in relation to being under constant surveillance and the fear of being re/arrested. This includes ex-combatants who have undergone rehabilitation and others who did not but fear they will be arrested and sent for rehabilitation.

*“Everyone is under stress, we are under constant surveillance, even now. We had to go and sign once a week even after they let us out... They said we were rehabilitated, so then why are they continuing to treat us this way? There is no need for this.”*

59. CTF notes that the fear among ex-combatants manifested itself in the consultations with either low turnout by ex-combatants at FGDs as compared to other groups, where they sought repeated reassurances about their safety and flagged the possibility of later harassment for

participating, and at least one FGD where no person turned up despite confirmations. Hence, this continuing fear may also impact their participation in transitional justice processes and other programs for them.

60. The surveillance was cited as a critical factor in their social marginalisation and stigma by Government officials and members of their own community. For instance, one cadre in a FGD in Mannar spoke about how he felt he was a risk to his family and felt very isolated within his community. Former cadres pointed out how Government officials treat them differently and how their association with the LTTE results in discrimination against them and their families including in terms of government services. They drew attention to a subcategory of persons who were either not cadres or those forcibly recruited for a very short period whom the State identifies as ex-combatants. Ex-combatants complained they had been rejected by society, whereas they had sacrificed themselves for society (Participants at FGD, Jaffna).

61. **Loss of Social Status and Accountability:** The loss of social status and pride was an issue raised both explicitly and implicitly by ex-combatants, with examples cited of former commanders now becoming toddy tappers or day labourers in order to earn a living. The CTF heard statements such as: “We lost all our rights; our dignity; the government cannot compensate for this.” Their post-war experience was also spoken about in relation to issues of identity, pride and dignity: “We don’t need our uniform, but we need our pride. For that we need acknowledgment. We fought for the people. Earlier they used to come to us with their problems, now they see us as a problem.” While some former cadres suggested this is due to the overall post-war political and security situation that stigmatises ex-combatants, a few ex-combatants pointed out that this may be related to the lack of appreciation among their own community and also resentment of how the LTTE and cadres behaved in the past.

62. The submissions reveal a complicated relationship between the cadres and other community members, which also reflects how the LTTE is perceived by Tamil society in a post-war, post-LTTE context. On the one hand, there was respect for them as part of a group that fought for the rights of the people; on the other hand, there was criticism of the LTTE and the cadres, particularly for forcibly recruiting their children, brutality, arrogance, perceived betrayal and also spying for the military in the current context. As noted in the Justice section, there are calls from Tamil communities for LTTE cadres and leaders to be held to account. Some, however, point to the fact that the government-administered rehabilitation process itself was equivalent to serving time and their current challenges are a form of punishment. This was reiterated by former cadres. Thus, CTF notes the issue of social integration of cadres remains complex and highlights the need for intra-community dialogue and reconciliation.

63. Many former cadres echoed some of the demands made by other Tamils in the North and East in calling for accountability and international judges. On the question of the LTTE being

prosecuted, however, many were not in agreement as they did not see how the LTTE could be prosecuted, although a few did suggest that breakaway leaders of the LTTE and those residing abroad could be held accountable.

64. **Special Vulnerable Groups:** The specific issues faced by particularly vulnerable groups of ex-combatants were highlighted in FGDs and public meetings. The challenges faced by female cadres, including on the continuing monitoring by the CID (for instance, the CID reportedly pressurises cadres to get married) and the social ostracism by the community due to female cadres being seen as non-conformists were raised by female and male ex-cadres in Mullaitivu. They believed that if they stopped being identified as ex-cadres and constantly labelled in this manner, reintegration back into society would be smoother. Employment, material support and counselling support to address problems of care, general mental and physical well-being, the day-to-day survival and the burden on families of seriously injured or disabled cadres was highlighted. The Government was urged to take a more prominent role in assisting them. The particularly vulnerable situation of disabled female cadres was highlighted in written submissions they had made. Disabled female cadres who participated in FGDs also noted that they were often without any support or entirely dependent on other family members. They said they could not get married or secure employment and that society completely rejects them.

65. While the recruitment of children by Tamil armed groups was raised in public meetings, particularly relating to issues of disappearance, there were written submissions that highlighted the problems many former child combatants faced in the East and North. As noted in a submission by three individuals *“The children and youth (now adults) seek dignity. They do not want to be victims forever, nor be seen by the state and community with suspicion and a feeling of aversion.”* The submission called for them to be engaged in transitional justice processes and in other aspects of governance and development, including in designing their own livelihood projects. While this and the other submissions pointed to the need to ensure educational catch-up programmes, vocational training, prioritisation in terms of social services and employment opportunities, the need to address the stigma of former child combatants was highlighted.

66. **Special Unit/Mechanism:** There were specific recommendations made with regards to establishing a special unit/mechanism to deal with the needs of ex-cadres, as it was felt that existing systems were not helpful or sympathetic. The suggestions include:

- a) a special unit within the Office for Reparations
- b) a special unit within the DS office or a separate mechanism altogether that will look into the needs of ex-combatants.
- c) a special mechanism to look into the issue of ex-combatants

As proposed, the unit or mechanism could monitor the ex-combatants and also provide them with a place to come to for assistance and support. A key task suggested for the unit is negotiating with other State bodies, including negotiating to ensure government jobs. The inclusion of former

combatants into the proposed unit or other mechanisms was requested by ex-cadres.

### 3.3. Reform of Justice and Law and Order Systems

67. The CTF has observed that many of the submissions it received from the public express a dissatisfaction with the existing justice system. Their frustration arises from complaints of excessive delay in decision making, politicisation, lack of access (non-affordability and distance), and a lack of independence. There were also expressions of dismay at the outcome of individual cases where rulings were given. There were only a few written submissions before the CTF which addressed how the existing system should be reformed. In public meetings and in FGDs people coming before the consultations highlighted their frustrations with the existing system but specific recommendations for reform were rare and found mainly in a few written submissions. (See Chapter V: Judicial Mechanism).

#### 3.3.1. Judiciary

68. The issue of delays in dealing with cases within the judicial system came up repeatedly. At a public meeting in Kurunegala, it was a recurrent theme and a number of specific cases were referred to and the delays were highlighted including the high profile murder of a school girl, Seya. The CTF was told: *“Courts should be established in district levels. This system is so slow.”* Another comment at the same public meeting is illustrative of the delays and their impact:

*“Uncle has raped a 9-years old child. When the decision made by the courts the child 27 years. Presently this girl is married and having a child. What would happen to that marriage?”*

69. The manner in which justice that is delayed gets politically manipulated was also spoken about in the Kurunegala public meeting.

*“You need to give the punishments within the timeframe of the sitting government. After some time passes, even that becomes a weapon. Now, they are digging up graves, saying this is what was done by the previous government”*

70. A written submission simply noted *“the massive delays which are commonplace in the criminal justice system and for fundamental rights petitions be addressed.”* The non-affordability of legal services was a recurrent theme that came up in multiple public meetings, particularly in the North Western and Southern zones.

71. The lack of faith in the judiciary came up in multiple meetings, particularly that judges were not providing fair and just decisions. In some instances, the lack of equal treatment was cited with regards to income and social status: *“Law should be fair for everyone. It is not fair to treat people*

*according to their status.*” (FGD, Southern Province). A fear of ethnic bias was prevalent amongst a large number of the Tamil public who appeared before the CTF. A participant at the Oddusuddan Public Meeting stated that that he lost hope in the judiciary. He said that recently the Kumarapuram murder case was changed from Trincomalee district to Anuradhapura district and the suspects were released. He insisted that this case should be appealed again and court proceedings should be conducted. He wanted the judges to be impartial and independent. The personal experiences in court were cited as concrete examples of how the court was unsympathetic in its treatment. The mother of a surrendee in Mullaitivu pointed out how in that case she was even asked whether her child was born to her husband, as the only documents they had were those given by the LTTE (which politically controlled the area) and were not accepted by the Court. An organisation submitted a written submission that asserts that there needs to be an end to the culture in the security sector that targets Tamils and the culture in the judicial system that tolerates “State-sponsored criminality.” It further suggests that there should be an end to torture and deaths in custody.

72. The delays and lack of justice so far was seen as strengthening the culture of impunity:

*“In Vangalai, in 2006, a family of four were killed and hanged, rape had also been committed. There has been no action on that case. In 2001, after Sivamani Sasikala was raped the then President Chandrika established a Commission. But no justice has been given so far. Protection for women in our area is lacking. Therefore, when such incidents are not resolved it will keep taking place.”*

(Public Meeting, Mannar)

73. A written submission to the CTF says that there exists a lack of independence in the courts, delays, and routine postponement of fundamental rights cases. It notes that there is a lack of power in Magistrates’ courts to take action in cases under the PTA. Further, the submission cited the conservative attitude of Court and its reluctance/refusal to exercise suo moto powers to overcome technical objections and/or embody a more victim centred approach is a big drawback. The submission states that there are rules of standing that prevent access to justice in some cases, further there are rules of procedure and evidence that need to be amended to accommodate international best practice; and also notes that unfortunately the regressive attitude of the Court to affected persons under the previous regime has had a chilling effect on people approaching court and a loss of faith and trust in Court.

74. There were a couple of submissions with regard to appointment and conduct of judges. A religious organisation proposed that the Judicial Services Commission (JSC) be answerable to Parliament and that all JSC appointments to fill vacancies be based on giving full representation of all religious communities. A local organisation submitted that the Sri Lankan judiciary should function in accordance with law and order as agreed upon by the United Nations Human Rights

Conventions.

### **3.3.2. Need for legal reform**

75. There were specific and repeated requests to introduce new or amend existing laws, some with immediate effect:

- repealing the PTA,
- enacting enabling legislation to give effect to the UN Convention on Disappearances which should include the criminalisation of enforced disappearances,
- the necessity of enacting a new law dealing specifically with mass grave sites,
- the need to amend sections 269-273 of the Criminal Procedure Code to include post-mortem examination of the dead in large-scale disasters and atrocities.

A written submission suggests that amendments to the rules of procedure and evidence be made to reflect international best practice when dealing with international crimes, that there be domestic law reform to include international crimes. The submission also notes that magistrates should be empowered to look into the legality of detention under the PTA or any counter-terrorism/public security law.

### **3.3.3. Strengthening role and capacity of the JMO**

76. The importance of the JMO's role was highlighted in specific submissions and also during the sectoral meeting with the Judicial Medical Officers (JMO) Association. An issue that was highlighted was the limited staff as opposed to the positions that needed to be filled. Further, there are few female JMOs and this is a significant impediment in the context of cases of sexual violence. The lack of proper procedure in how law enforcement authorities deal with mass grave sites was cited as an area that needed to be clearly set out especially given that the Magistrate and the police lack competency in this area of forensic investigation. Currently, when the police receive a complaint or information relating to a mass grave, they commence an investigation. This may involve digging of the site to verify reliability of information received and to find 'evidence'. It was submitted by the JMOA that this could result in the contamination of the site and even the destruction of evidence. If there is sufficient evidence, a report of the investigation is sent to the Magistrate to commence the excavation or exhumation of the site. Such exhumation or excavation is generally conducted by the JMO in the area on the request of the Magistrate in terms of Section 369 - 373 of the Criminal Procedure Code. The JMOA suggested that there should be a new law enacted to deal specifically with mass gravesites to address the lacunae in the existing law. One submission was of the view that training for forensics, JMO etc. with international experts on international best practice in the context of international crimes, mass graves etc. should be provided.

77. A written submission made to the CTF pointed out that there are excessive delays in obtaining forensic/post mortem reports from the Government Analyst, the JMO and particularly from the only facility available in Sri Lanka for DNA testing. The latter, the submission notes has a huge caseload including cases referred to it by the Government. Therefore, delays are routine and there are instances where families have waited over a year for DNA results in cases of sexual violence. This submission notes that computer forensics – technological equipment including CCTV footage, computers etc. are sent to the University of Moratuwa for analysis, and here too there is a huge backlog of cases, sometimes for several years.

78. Also, the submission pointed out the importance of the JMO report in an investigation and prosecution. It noted that the report could result in a cover up of physical evidence of crimes that appear on the body of the victim, (including torture, rape, extrajudicial killing). There are allegations of political interference in the function of the JMO and of JMOs covering up crimes committed by the police and State officers. Further, it notes that affected persons should be given a copy of the JMO report directly, as the current practice of not doing so further exacerbates this issue.

#### **3.3.4. Attorney-General's department**

79. Submissions highlighted the role of the Attorney General's Department (AG) and recommendations were made with regards to the need to reform. As a written submission noted the AG's department plays a dual role – as prosecutor and as advisory and representative to the State (advising on laws, policies, international agreements, commercial trade agreements and also representing the State in court). This dual role creates a conflict of interest which is critical in the context of prosecution for war crimes. The submission notes that senior officers of the Department have defended the State against violations despite clear evidence to the contrary, taken up technical objections to defeat fundamental rights applications from being heard on merit; and most importantly the reluctance to frame charges against offending State officers has eroded confidence in the Department as a whole. It asserts that Senior AG's department officers have been accused of threatening witnesses and affected persons and defending persons accused of torture further diminishing public faith in the institution. The establishment of an independent Director of Public Prosecutions was mooted in at least two submissions. One submission supports the bifurcation of the Attorney General's Department into a department of public prosecutions and the AG (the latter should continue to represent the State while the separate Director of Public Prosecutions handles prosecutions exclusively which then removes at least somewhat the conflict of interest issue).

80. Further there is also a problem of delay, caused by excessive caseload. The lack of trained staff at a mid-level is also a problem. Once the inquiry is completed, the framing of charges by the AG's department is a bottleneck at which many cases are stuck for several years. The suggestion was for increased staff. It also supports the training of a special cadre of State counsel to handle cases

of sexual violence and international crimes. These officers must be screened, vetted for any conflict of interest, and trained not only in the technical aspects of international law but also on how to deal with affected persons and witnesses etc.

81. A three-member written submission on child recruitment that the CTF received pointed out that when confronted with credible reports of systematic abduction of children by TMVP and collusion of armed forces, the Sri Lankan Government's response has been blanket denial. It submitted that the officials of the Ministry of Human Rights and Disaster Management, and AG were also involved in this "propaganda campaign. "Therefore, the submission suggests that the role of such bodies in engaging in such exercise and the checks and balances that are to be in place to ensure accountability for holding such a brief for the Government needs to be reassessed. It submits that the fact that the AG's Department was deeply involved in advocating on behalf of the Government's line of denial and counter accusations had compromised their standing among the affected who had suffered these atrocities. The CTF also received submissions which suggested that there should be a special team of State Counsel appointed to work with investigators in disappearance cases.

### **3.3.5. Victim and witness protection:**

82. The need for victim and witness protection was a recurrent theme in submissions relating to the four mechanisms, particularly the judicial mechanism. A written submission noted that victim and witness security and protection cannot exist under the present authority and that there must be a separate unit established which is representative of a broad coalition of State and non-state actors. The existing unit is probably capable of handling victims of ordinary crimes and against reprisals by private citizens. However, it notes that the law and order system is not equipped to handle cases where the threat stems from the police and/or the State (See Chapter VII: Psychosocial Considerations and Security). Other submissions called for an independent and effective victim and witness protection agency without noting the existence of the present authority.

### **3.3.6. Cross cutting**

83. Some submissions cut across the multiple structures in the justice system. The CTF also received submissions regarding the reform of the existing justice system on a number of issues in which immediate action was considered necessary including calls to publish a list of the surrendees, calls to free all political prisoners, calls to release a list of all detention centres, and requests to complete all habeas corpus cases within six months. One organisation was of the view that justice reform across all structures was necessary to assure that the police and courts were responsive to all the people of Sri Lanka. Key structures that were highlighted include the Judiciary, police, AG's Department and JMO.

- Language is an issue that was repeatedly highlighted in public meetings, FGDs and written

submissions. It identified as a fundamental step, the fact that people interact with the judiciary in their own language and that Provinces be given a voice in the judicial system in the new Constitution that is presently being drafted. Multiple examples were provided of the difficulties faced by Tamil-speaking affected persons in making complaints to Sinhala speaking police officers.

- The need to focus on the staffing of all structures dealing with the judicial process. In addition to language proficiency, gender and ethnic representation were repeatedly highlighted. One submission noted that similar to the military there is a lack of representation of other communities in the judicial profession except in a few high profile examples, and suggests a quota system be implemented particularly in some key offices that have special impact on ethnicity-based crimes such as the Attorney-General's office. Further, it suggests that there should be a vetting procedure for ethnic neutrality and training be provided on how to administer the law in a neutral fashion and that clear avenues be established to appeal when bias is found. The submission states that clear hiring and promotion criteria needs to be laid out and that neutrality be given equal importance to competence. Further, since the judiciary is being called on to deal with the consequences of decades of abuses against all communities on the island, the organisation submits that training in human rights and humanitarian law be provided. The need for increased cadre was also pointed out. One submission suggested an increase of cadres in the AG department, Police officers (particularly women police constables and Tamil speaking officers), JMOs and Forensics.
- Strengthening capacity for these structures was highlighted including through specialised training, seconding skilled and experienced personnel (including international experts) and added resources such as forensic labs.
- The need for monitoring of the judicial system was recommended. A written submission was of the view that international/civil society oversight and monitoring over the conduct of cases related to international crimes from complaint through prosecution to conviction or appeal was necessary. Another written submission noted that a review of the commissions and omissions of these institutions so as to ensure greater public accountability is required.
- While victim centeredness came up as a recurrent theme there were only a couple of suggestions on the measures to ensure this in the existing justice system, while a number focussed on how to make the four mechanisms victim centric in their design, approach and structure. One submission supported the development of a policy on victim centeredness covering procedural and structural aspects at every step of the justice system, which is then broken down and shared through departmental circulars or any other effective means; and adds that must be a scheme which makes a State authority open to being challenged by way of writ if it fails to give effect to the said policy.
- There were a couple of submissions which called for recognition of the right of an aggrieved person to file a private plaint.
- Submission was also made to establish a Legal Advisory Service Bureau to provide legal assistance to members of families of the disappeared.

### 3.3.7. Inclusion of persons who have experienced sexual and gender based violence

*“Women are victims of all forms of violence and crimes, not solely sexual violence. Overemphasising wartime sexual violence risks ignoring that women suffered mass atrocities (such as arbitrary execution and mass killings, detention and torture, disappearance, eviction, denial of medical treatment for war injury, starvation) apart from rape.”*

(Submission by an organisation)

84. Sexual and gender-based violence (SGBV) came up as a recurring theme throughout the consultation process. Submissions also noted that Violence Against Women (VAW) is not limited to war-time sexual violence but is commonly practiced against women, to date, making women an especially vulnerable group. As such, submissions noted that sexual violence both related and unrelated to conflict remains a major issue. Participants described a number of instances where they were exposed to SGBV, including but not limited to, during the search for missing family members, when in IDP camps, detention centres and in custody, during search operations in private homes and also being coerced into transactional sex ‘to access resources and food entitlements or to receive assistance for building homes, accessing State facilities and jobs.’ Yet, as the quote above suggests there were also submissions stressing that the experience of women during war should not be reduced to sexual violence alone and that all other types of violations that women had to suffer should be looked at.

85. Given its prevalence, it was submitted that SGBV is severely under-reported. This was also evident in the consultations as there were only a handful of those affected by sexual and gender based violence who came forward and identified themselves as such, even though many others, both individuals and organisations raised the issue of various types of violations and the need for redress, including the incidence of rape in the context of the war. In the submissions, the issue of under-reporting was commented on and multiple reasons were provided including shame (of both men and women), fear of reprisals, lack of faith in the criminal justice system and also a concern that the public ‘outing’ would result in isolation and disempowerment.

86. There were a number of submissions that raised issues of sexual and gender based violence. These submissions not only highlighted the suffering and various challenges and problems faced by those affected by sexual and gender based violence but they also had a series of technical recommendations, particularly relating to judicial and legal reform. As such, this section will highlight the main recommendations in this regard which range from specific reforms in the existing legal system to a re-envisioning of the justice system and the approach to the crime and to those affected by it.

87. **Taking up cases *suo moto*:** The risks of reporting and the social stigma attached to the crime, compounded by the lack of faith in the justice system, has meant that pursuing justice for

SBGV is especially difficult for survivors. A broad set of reasons regarding why those affected by SGBV have not proceeded to successful prosecution, were highlighted in the submissions. These include the following: no investigations by the Police, no case filed, non-conclusion of case, which in themselves are due a variety of specific and systemic factors relating to the police, judiciary and other institutions involved in such cases.

88. Given the state of the existing domestic legal justice system to undertake and effectively prosecute offenders of SGBV, submissions recommend that the proposed judicial mechanism takes up cases of SGBV that has come to light or that have been brought to its attention, *suo moto*: “*The judicial mechanism that will be established by the government should be vested with suo moto powers to inquire into past cases which have not been prosecuted to a conclusion*” (Individual email submission). To this end, it was recommended that patterns of violence during the war context such as the profile of the perpetrators, the profile of the affected, the geographical and chronological distribution of the crime, the modus operandi in the commission of the crime, must be investigated alongside the structural targeting of particular communities and the widespread and systematic nature of violence. Submissions cautioned that investigations must be cognisant of the emotional and social impact of SGBV. Submissions also request that the judicial mechanism be empowered to request for information from the Attorney General’s Department in relation to complaints made against the armed forces, police and paramilitary groups, including investigation findings, reasons for lack of or abandonment of investigation, progress of cases where there has been an indictment and whether there are cases that can be reopened. Submissions also highlighted that where survivors of such cases are still alive, pursuing these cases will require close engagement and consultation with the surviving affected and family members. In instances where affected persons are no longer alive, it was submitted that the judicial mechanism may have to consult family members on possible course of action.

89. **Law reform and creating a safe environment for survivors to come forward:** Submissions also recorded that it is important to create a conducive environment for survivors to come forward and report crimes committed against them and also to reopen cases that have been concluded where complainants are not satisfied with the outcome, or further evidence has come to light since the case was concluded.

*“Further, these crimes are such that the current domestic legal framework lacks the capacity to address them in order to bring effective remedy to their victims, undermines accountability as it does not recognise command responsibility and remains open to interference and influence by powerful political, security and military actors.”*

(Submission by an organisation)

90. It was noted that creating such a safe environment would include legal reform such as:

- Standards of evidence must be designed for the prosecution of sexual violence and clearly

defined, cognisant of difficulties in war-time evidence collection and gender sensitivities. The submission noted that rules of other courts such as the International Criminal Court rules of Evidence and Procedure or the ICTY Rules of Procedure and Evidence provide helpful guidance;

- Strengthening existing legislation, for example legislating that any form of penetration or sexual torture should receive the same punishment as statutory rape and amending the definition of rape in the Penal Code to include affected males;
- Implementing and reforming existing domestic legislation such as the Convention Against Torture Act (which can be used to prosecute sexual violence, while also amending the Act to prohibit inhumane and degrading treatment) and the Geneva Conventions Act;
- Incorporating international legal standards as set out in CEDAW into domestic law and introducing constitutional provisions to enable implementation;
- Prosecuting sexual violence as war crimes and crimes against humanity, which, unlike the current domestic legal framework, recognises the gravity and scale of the offence and the powerlessness of those affected in the context of armed conflict;
- Adopting the language of international instruments including the Geneva Conventions and Additional Protocols II, ratifying the Rome Statute and enabling domestic legislation in order to domestically prosecute conflict-related sexual violence as war crimes and crimes against humanity;
- Incorporate command responsibility into law, allowing officers and other public officials to be held responsible for acts they oversaw. Submissions state that *'Command responsibility is highly applicable in the Sri Lankan context where reports indicate that sexual violence was perpetrated by the military and police systematically and on a widespread scale'*;
- The domestication of international laws must also be made retroactive so that crimes during the conflict can be prosecuted under it;
- Re-evaluating existing witness and victim protection authorities and legislation around it;
- Investigating and prosecuting SGBV related cases by agents of the State.

91. **Justice through transformation of structures:** Some submissions noted that for justice to be ensured in the long-term, fundamental changes were required in key structures and society in general, calling for a more expansive understanding of justice.

- Submissions called for the promotion of women's leadership in all decision making bodies, including in all levels of all transitional justice mechanisms, where plans, policies and adequate financial allocation is secured in the final budgets, targeting women's participation and equal opportunities for women as opposed to symbolic or tokenistic representation of women's issues in an otherwise male-dominated setting. A submission elaborated that women's equal representation needs to be reassured in justice, defence, security, and health structures, while adding that men employed in these structures should be gender-sensitive and must undergo gender-sensitive training.
- A lustration or vetting process be instituted in order to ensure perpetrators of mass atrocity and SGBV are not allowed to come back to power and are barred from running for political office.
- Long-term measures that would create attitudinal and social change regarding gender-based

issues, including acknowledgement of multiple truths and suggestions such as portraying women as role models in history text books and including content that educates children on women's struggles and life experiences.

- Transitional justice must look beyond war-related atrocities to create unity and equality by creating social transformation, including by addressing structural inequalities such as the culture of impunity for VAW and immunity of those in power and traditional disparities. Submissions sought *transformative* justice, beyond transitional justice, where a long-term process of political, economic, social and cultural transformation would be initiated. In terms of non-recurrence, submissions suggested the implementation of a policy to prevent future sexual violence and ensure continuing accountability.

### 3.4. Police Reform

*"The police should not be acting like extremists"*

(Participant, FGD with religious leaders, Southern Province)

*"On the one hand we have laws prohibiting torture even in a state of emergency. On the hand we have police as an institution which promotes torture openly as a method of investigation, even in non-emergency, minor offence, or even worse, when no proven crime has been committed. How do we counter this?"*

(Written Submission on Police Reform)

*"In a country where there are multiple ethnicities State has to protect all these."*

(Muslim participant, FGD, Uva)

92. There was a clear call from participants in all provinces about the pressing need for police reform. Grievances expressed regarding the police ranged from charges of inefficiency, arbitrary arrests, corruption and abuses including torture and sexual violence during people's everyday dealings with them to grave allegations about the police's widespread use of torture, rape, and summary executions, first during the Southern insurrections, and then during the war which impacted not just the Northern and Eastern parts of the island. Many of these submissions stated, unequivocally, that police brutality and violations must be stopped, and violators held accountable.

93. A written submission drew attention to the investigative powers of the police stating that the police routinely refuse to record and/or investigate allegations of crimes where the alleged perpetrators are State officers. It further states that the lack of a victim-centred approach and the fear of reprisals by police prevent access to justice. Further, in many cases, police are seen as being complicit either directly and/or in covering up the evidence of crimes committed by State officers resulting in a clear conflict of interest. Due to this failure by police to do their job, in terms of recording and investigating alleged crimes, it results in the failure to get prosecutions or

convictions in the few cases that may go to trial. These have also been highlighted in the frustration the people expressed with the justice system in their submissions before the CTF.

94. The CTF received a substantial number of cases from Tamil, Sinhala and Muslim participants affected by police abuse, particularly during the conflict and the insurrections. These submissions provided detailed accounts of police abuse. The CTF also received a submission that documented the history of police violence. It traced how, during the JVP insurrections the police were given discretionary powers to make arbitrary arrests and dispose of bodies without a post-mortem, which the submissions claims contributed to an estimated 30,000 extra judicial killings, and failed to bring perpetrators to justice. It went on to argue that the police then used and expanded upon these methods in the North and East during the war. Speaking of how the brutalising of the police force becomes intensified in times of emergency, it argues further that “when the police, a body for civilian administration, intermingles with the military the former acquires the characteristics of the latter.”

95. Some suggestions for police reform were generic. One submission called for the police to respond promptly, effectively, independently and thoroughly investigate all allegations of human rights abuses, including violations by the police, while other submissions pointed to issues of capacity and representative nature, including language, gender and ethnicity. Another submission argues further that holding individual officers accountable will not serve to address the systemic nature of the problem. It calls for a range of police reforms, including: the provision of better training; the introduction of interrogative practices that do not use torture or abusive practices; and professional training in conduct, accountability and responsibility must be used. One submission stated that there needs to exist an effective public complaints and monitoring system against conduct/inaction of the police which will result in open and transparent disciplinary proceedings.

96. The CTF also received one written submission exclusively on police reform. This submission pointed out that up to now there have been four Commissions to review the police institution, starting from 1946, and recommendations made 65 years ago about better recruitment and promotions, and subsequent recommendations about corruption, discipline and abusive police practices are still in need of implementation today. The CTF urges the State to review and implement these recommendations. As another submission noted the National Police Commission must be transparent about the manner in which it treats complaints against the police/investigators.

97. Some groups and individuals highlighted issues faced by specific sectors of society and also made related recommendations. Issues faced by women who had to deal with the police came up in a number of submissions. Families of the missing from the war and the Southern Insurrection both spoke of instances where they went to make complaints about their missing family member

and either were asked for a bribe or sexual favours. Thus some of the recommendations responded to the issue of gender:

*“Women are facing plenty of problems from Army and police but they will not speak openly... And also women say that they need more women police officers who can speak in Tamil.”*

(FGD in Western Province).

98. In addition to populations affected by the conflict and insurrections, submissions drew attention to the need to reform the way the police respond to events of religious and ethnic violence. Ethnic and religious minorities expressed a strong sense of betrayal by the police for failing to provide protection, for standing by and watching, and sometimes even colluding and participating in violence during anti-Tamil riots, including the 1983 pogrom, and more recently, in attacks against religious minorities, particularly Muslims and Christians. A Christian Priest from the Southern Province described how, upon hearing of an impending attack on his church, he went to the police station to ask for protection only to hear the HQI say, *“if you want to practice your religion go to Negombo. These are Buddhist villages.”* In FGDs with lay and religious leaders, religious minorities stated that they felt the police simply did not recognise or carry out its obligations to protect them in moments of vulnerability. One Christian priest described it using the idiom: *“it is as if the house of worship you seek refuge in comes crashing down on you.”*

99. To address such problems, there were a couple of submissions, mainly by lay religious organisations and activist groups calling for the establishment of a special unit to deal with religious violence. One submission even suggested a name for the unit ‘Reconciliation and Proactive Police Force.’ The submission for a separate unit was recommended on the grounds of police inaction and apathy when responding to issues of religious violence faced by minority communities. This submission suggested that this unit should be drawn from the Sri Lanka Police Department and vested with special powers under a senior DIG to intervene and to direct the police department where necessary, in respect to maintaining law and order in community conflict hot spots and to take into custody anyone breaching the peace and causing communal disharmony.

### **3.5. Administrative Reform and State Officials**

*“The DS Valaichchenai said that this is Government land and asked us to leave...She brought bulldozers and destroyed our huts, fences, and pulled up the coconut and mango trees. When she came, I begged her: “madam we will not fight and will live happily, please don’t do this.” For that, she said: “Muslims (Sony) and crows (kakai) have no place here.”*

(Muslim man, Public Meeting, Valachchenai)

*“We consider the Government Officers appointed here as a curse. They never do their duty properly. They will do whatever the higher officers and politicians tell...”*

(Tamil Participant Public Meeting, Mullaitivu)

*In the Divisional Secretariat Office (DSO) there are land problems every day.... All officials have divided the power among themselves, and they laugh at the innocent, saying they are uneducated.*

(Sinhala Participant, Public Meeting, Polonnaruwa)

100. The call for the transformation of public administration, particularly with respect to the conduct of State officials was made in submissions across the country. This section relates to the conduct of officials involved in public administration and State institutions that results in discrimination, political patronage, corruption, and lack of access. While some explicitly asked for the reform of public administration, many stated that unless existing issues related to discrimination, political patronage, corruption and access were addressed now, the provision of reparations, and documentation during the transitional justice process will be undercut by the same problems that they are seeking redress for.

101. Participants expressed dissatisfaction with the conduct and practices of State officials at multiple levels, from officials at the Provincial Councils, District Secretariats and Divisional Secretariats to the Grama Nildharis, and administrators at various public institutions, such as the Mahaveli Authority, Samurdhi, and the Forest Department. The problems and grievances raised ranged from public officials' inefficiency, lack of sensitivity, professionalism and lethargy in providing services, to institutional racism and discrimination against persons coming before them based on their ethnicity, religion, caste and class. The issue of ethnic bias in particular came up repeatedly, and there were a range of recommendations suggested, including those listed below that called for an improvement in personnel, structures and processes. Hence, beyond having Government officials who could speak the language of people of the area, the need for ethnic representation was raised in a number of submissions in public meetings. For instance, in the public meeting in Karachchi, a group of Malaiyaha Tamils suggested it may be a good idea to appoint a Sinhala AGA for the district as they felt discriminated against by Jaffna Tamils who dominated the district level administration. In Manthai and Musali, Mannar District, Northern Muslims complained that the Northern Provincial Council was preventing their access to housing programmes. Some stated that when they went to resettle in their houses in Jaffna, Tamil administrative offices treated them badly and would not take action to survey and distribute their lands back to them. For some the solution lies in ethnic representation within district and provincial level units.

*“Administratively Muslims need an equal share. If the GA is a Tamil person, a Muslim person must be the additional GA.”*

(Muslim participant, Public Meeting, Eravur)

102. Some submissions, however, noted that these issues were tied to larger political or structural

issues, like devolution and re-demarcation of administrative boundaries. In one instance, a number of participants stated that their developmental and administrative issues would transform only if their administrative unit was upgraded. The request from many of the persons who identified as Sinhalese at the Weli Oya Public Meeting held at the DS's office was for a new district to be established in Weli Oya. They felt that in being part of a Tamil majority district –Mullaitivu – their needs were being marginalised. Other Sinhala residents who were part of a FGD in the same area, however, also cited the multiple problems that they faced and stated that despite their suffering during the war, saw little use of talking about the past and instead expressed the need for development for their village, including in terms of housing. They did not necessarily see the bias in the district level administration and even claimed some of the Tamil public officials were more helpful than their Sinhala counterparts. They did, however, complain about the issue of language as it proved to be a hurdle. Language was also cited by many others, particularly Tamil speakers in the South, but also in the North and East in having to deal with public administrative officers many of whom who are not proficient in both languages. There were also widespread allegations of corruption and the politicisation of public services.

103. While many of these complaints centred around day-to-day interactions with local administrators, in areas affected by war, the insurrections, and sites with ongoing religious tensions, public officials were charged with exploiting or exacerbating the vulnerability of affected persons seeking help. For instance, Tamil parents from Valachchenai who sought death certificates for their disappeared children from local Government offices were told that they would only be given the document if they signed papers stating that these children belonged to the LTTE, even when they had no such affiliations.

104. In some cases, State officials are alleged to have participated and even orchestrated violence against vulnerable minority groups. One Catholic priest from a district in the Southern province claimed that after he went to register a Sunday school, the DS officer organised a Buddhist mob to protest against the establishment of his Sunday school. Also, women from all ethnic communities described how they had been asked to provide sexual favours in exchange for services. For example, discussing the conduct of Samurdhi officials and officials in charge of housing schemes, the Batticaloa ZTF notes stated:

*“Some women believe that they will only get access to houses if they do what these men ask. These men ask for bribes and if they are unable to pay they expect sexual favours.”*

*Provincial councils should be empowered. The job opportunities should be provided through provincial councils. Interviews should be conducted without the interference of the politicians. Another big issue is language issues. At least in government offices other than North and East the situation of people can do their works in Tamil should be ensured.”*

(Tamil social activists, Public Meeting, Oddusudan.)

105. A series of recommendations were made during consultations to reform the conduct of public officials. As the quote above demonstrates some individual submissions had multiple suggestions:

- Greater language proficiency, particularly the use of Tamil and ensuring more bilingual officers in State offices. While the majority of persons raising this issue were Tamil speakers, a few Sinhala speaking individuals also pointed out they were unable to freely use their mother tongue in district level offices.
- The need for ethnic representation in public administration, particularly at the district level was recommended.
- There were also suggestions for more women to be appointed in public service.
- In their training programmes, public officials should be informed of the rights of minorities, and of the fact that they are duty bound to serve their constituents regardless of ethnic, religious, linguistic, caste or class differences.
- A complaints mechanism should be put in place at the provincial or district level to file complaints against public administrators who engage in corruption and discriminatory practices.

*“I think there should be an institution to which we can go, to air our grievances. It should be independent of any politics and should have the highest authority. The country’s citizens should have a right to air their grievances. It can be at provincial or district level... and should be an impartial forum, an active organisation for that particular district.”*

(Sinhalese participant, FGD, Polonnaruwa)

106. One organisation suggested that one option for providing redress at the district level was to appoint an Ombudsman who would serve under the President and be provided six months to work through problems.

- State services should be decentralised and local governance strengthened so that access to services can be improved.
- Greater devolution of powers would also allow regional elected bodies to perform more effectively and address grievances of local communities.
- Public offices should either be secularised or religious symbols of all religious groups should be represented, unlike the existing situation where most State offices only contain Buddha statues.

### **3.6. Land Issues in Relation to the Conflicts and State Actions**

107. Land was a recurrent problem raised in every zone. The nature of the problems ranged from on-going military occupation or secondary occupation of land by civilians and lost documents to non-conflict related land issues of lack of documentation or inadequate rights to ownership and development over land. This section will focus on land issues that are not captured in other sections,

such as in demilitarisation (Section 3.2.2.),

### 3.6.1. Land and displacement

108. The need for displaced persons to be provided land was articulated from various parts of the country. In individual submissions persons affected by displacement pointed out various situations in which they found themselves without ownership to land they claimed:

109. **Displaced persons in sites of local integrations:** Some families have been displaced and are currently settled elsewhere. Rather than return, they are attempting to rebuild their lives locally by integrating in locations where they have been living in long-term displacement. As such, they are seeking to claim ownership for the land they are currently living in. For example, submissions were received from multiple Sinhalese families from Trincomalee who fled the war and were displaced to Dambulla and have been living there for years. They wanted to be provided ownership of the land they have been living on. One such woman noted,

*“We have written to various places regarding this. We have an annual permit but we don’t have a legal document to prove ownership. We are disappointed. We vote, but there is no one to speak up for our rights. At least through these institutions we hope to get some justice...we have been told not to build any permanent structures, even toilet, and have been asked not to plant any long term crops. Despite this we have been able to build two rooms, and plant coconut.”*

110. In two more similar cases from Dambulla, the land is owned by a temple so the family are not being provided ownership.

111. **Land disputes with non-military State agencies:** Individual cases of land disputes between civilians and State agencies, aside from the military, was also raised. Problems with State agencies such as the Mahaveli Authority and the Forest Department were cited at public meetings in the North and East, including in Mullaitivu, and Batticaloa. In these cases, civilians assert that they had prior claim and even ownership documents to prove these claims.

*“There are a lot of disturbances by the officials from forest department. They intervene when we clean our own land...”*

(Participant, Public Meeting, Mullaitivu)

In the North and East there were a number of allegations relating to state involvement in “colonisation.” While the submissions did not always specify which state agency was involved they pointed out that the State was involved in bringing in Sinhalese persons into Tamil and Muslim areas and/or building or allocating land for new Temples. Both these issues came up in Ampara. One submission pointed to the issue in a historical perspective noting that the district’s

demographics dramatically shifted since the 1960s. The submission also raised the issue of land lost in Savalakadai to a Buddhist temple.

112. In the South, communities pointed out how State policies and actions were resulting in them losing their land and rights. For instance, in the public meeting in Dambulla, Sinhala residents pointed out how they, along with their Tamil neighbours were losing their land due to the declaration of the area as a Sacred area. They were clear that they did not want compensation but wanted their own or alternate land. In the public meeting in Colombo, two individuals made a submission relating to the Urban Development Authority seizing and acquiring land in a lower-income settlement of Colombo, without ensuring a fair compensation and relocation package.

113. In other instances, it was not clear which State agency was responsible for not releasing land claimed by civilians. Sinhalese displaced from Raigamwella in the Ampara district stated at the public meeting in Lahugala that their land which had been originally occupied by the military after the war was not being officially released to them and they are still waiting to return and rebuild their lives.

### **3.6.2. Laws and land ownership rights**

114. A whole host of land ownership issues were raised, highlighting the lack of awareness on land ownership and conditions set by the State and existing problems that people have with land laws, particularly State land. These submissions came from across the country, with some communities raising distinct problems. Some of these relate to more general land issues, but many relate to the non-provision of documentation (including after payment); restrictions placed on developing State land provided through permits and grants (families want to further develop their lands but they have restrictions on growing and building) and subdivision of land in practice not being allowed or not recognised by the State. There were also problems raised with the authorities responsible for administering land, the submissions cited corruption of State officials and institutions; politicisation of land distribution; inability of State officials and offices to respond in official languages; and key land institutions being located in Colombo as significant problems.

*“It is bribery that is happening here. They send us from one person to another. They all look for files. Clearly if things are in order then this wouldn’t happen...there are no point in laws if they are not implemented properly.”*

(Participant at FGD, Uva)

115. Issues around the Mahaveli Authority distributing land were highlighted including allegations of corruption.

116. To address this, various recommendations were made including reviewing existing laws and

amending or introducing new lands; providing women ownership rights over State land (joint-ownership); greater awareness on land laws and rights; establishing a policy to distribute land to the landless; holding more mobile land clinics/katchcheris. On advocacy the need to ensure greater civil society pressure and usage of the Right to Information Act was also noted.

117. While landlessness was a general theme raised around the country, including by farmers in the South and the displaced in the North and East who pointed out that their children born in displacement were not being granted land rights, the systematic denial of land rights was raised as a specific issue by Malaiyaha Tamils who both in public meetings and written submissions stated they were not included in land distribution schemes unlike their neighbours.

### **3.6.3. Inter-ethnic land disputes relating to conflicts**

118. Specific cases of land disputes between ethnic communities were raised in submissions. In the public meeting in Maritime Pattu a couple of individuals raised the issue of Tamil fishermen losing their padu in Kokkilai and hence the land to keep their nets and boats to Sinhala fishermen who they allege were protected and assisted by the security forces. They claim that due to the fighting and threat of violence they fled in the mid 1980s and have been unable to reclaim their rights. In Ampara district land issues particularly between ethnic communities was a recurrent theme. In Samanthurai one Muslim man alleged that in 1990 the LTTE gave weapons to Tamil people to kill Muslims. He described how their houses were burned and a number of persons were killed. Following the attack and the flight of Muslims, he claims Tamil people “captured” their properties (Public meeting Samanthurai). At the same meeting another person from Savalakadai claimed that after they fled the area due to fear, the land was taken over by the Government for a police station and a further 100 acres were allocated to a Buddhist temple.

### **3.6.4. Access to common lands and waters**

119. Issues of access to common lands and water was raised in individual submissions. Adivassis in the focus group discussion stood out in terms of all other submissions in the manner in which they spoke about common resources, not just in terms of access and use and exploitation but as something to be protected (See Section 6.1 of this Chapter). In their discussion they did, however, indicate that they had lost access and any real say in how the forests they inhabited were used and managed. This sense of loss was expressed in the following way *"What happened to us was what happened to the LTTE in the east. Before them, we could have taken up arms."*

120. Other individuals pointed out their fears of how common waters could be used and exploited. Concerns about the exploitation of resources and degradation of the ecology was also raised in specific submissions. In Vakarai fishermen expressed concerns that their traditional prawn fishing was under threat as outsiders were to be given access to setup prawn farms similar to those

in Chilaw and Puttalam. They pointed out what had happened to these prawn farms when they were all affected by an infection that destroyed the prawns and left the waterways and land scarred.

### **3.7. Education Reform**

121. Education was a recurring concern among people who approached the CTF in public meetings, focus group discussions, as well as in written submissions. There were those whose education or that of their children's was directly affected due to conflicts, through injury or high risks in accessing schools. For those displaced, they face problems such as the lack of documentation and an inability to show permanent places of residence. The issue of poor quality education in rural and conflict affected areas versus cities and more affluent areas was raised. Suggestions for addressing concerns varied, but at its core they saw education as an important means to addressing reconciliation between communities.

#### **3.7.1. Disruption of education due to conflict**

122. Lost educational opportunities as a result of the war or southern insurrection were cited. The factors included the destruction, damage and closure of schools, displacement, injuries to school children, destruction of books and other possessions, the threat of violence and fear relating to the safety of school children. Children who saw violence suffer from psychological issues and have dropped out of school (FGD Batticaloa). In addition, the limited resources and conditions of poverty in war-affected areas was cited as an additional factor even in the post-war context, as noted in the following cases from Mannar. Participants at a public meeting in Mullikulam said the school in the area has grades only up to year 9 and a lack of teachers. In a public meeting in Vellankulam people said that education facilities were in a very backward state, the quality of teaching staff was low and that the Department of Education needs to take action against this. The view was also expressed that it is the poor who are ignored and the more affluent who are catered to in terms of public schools and State resources.

123. The lack of equitable educational opportunities or discrimination in access to the same was seen by some as fomenting conflict and one of the root causes of the war, and therefore a critical issue to be addressed in the reconciliation process. At least two written submissions stated that the level of education needed to be improved in all rural provincial schools irrespective of ethnicities and geographical location. Others wanted an opportunity to 'catch-up' because of opportunities the lost. For instance, some ex-combatants in Batticaloa said they had no formal education and asked for special educational assistance that would help them access jobs and higher education. (FGD, disabled, Batticaloa).

124. The demands by the indigenous community of Sri Lanka for their rights to education was tied to demands that their ways of life be recognised and respected, and that they are given access to forests.

*“The forest is our temple, hospital, school, university. Our children are educated in the forest. Our girls and boys learn about animals, how to break a honey comb. Today they are unable to get this practical experience.... we are able to educate the public on the environment. We can teach school children about the environment, ayurvedic medicine. There needs to be respect and dignity for indigenous communities.”*

(FGD, indigenous community, Uva Province).

### 3.7.2. Changes to curricula

125. There were calls for the school curricula to be revised:

- There were suggestions that the issues of the armed conflicts and their multiple impacts to be included into school and university criteria. One written submission recommended that the war be included into history, citizenship, civics, and political science subjects in a meaningful way that would not incite resentment but foster recognition, reconciliation, and restitution. A suggestion was made that a timeline outlining a brief history of post-independence Sri Lanka be published and distributed widely to schools, public libraries, public and private institutions and to the general public. Families of the disappeared wanted the war and the fact of disappearances to be documented and included as part of the history curriculum in schools and universities. Another written submission said that many young people especially Sinhalese did not know of events before Black July – the anti-Tamil pogrom of 1983.

- A change in the approach to teaching was recommended. The way history is written and taught was also questioned: *“In teaching history to school children we should stop teaching things like [Sinhalese King] Dutugemunu defeated [Tamil King] Ellalan. This sort of stories will increase the gap between communities.”* (FGD with women activists, Colombo, Western Province). Attention was drawn to the general idea that there needs to be a sensitive way to teach children or talk to them about the war, such that it does not lead to the development of extremist views or insensitivity to others experiences. Linked to this, the same submission also called for better training for teachers in how to talk about the conflict in a sensitive way.

- A written submission by an inter-religious organisation stated that concepts of coexistence, tolerance and social harmony should be taught in schools and universities. In an FGD with Muslims and Tamils from border villages in Batticaloa it was suggested that children be given education on co-existence. Ex-combatants of the LTTE echoed similar views in a focus group discussion in Jaffna, saying that ideas of reconciliation between various ethnicities should be built in at school level.

- There were also calls for regular inter-community dialogue so people are made familiar with other’s cultures and religious beliefs, which would include inter-school exchanges. Another

written suggestion was made that more practical approaches be adopted by encouraging site visits to different places of worship and encouraging students to mingle with students from other communities. A suggestion was made in this same submission that the Government should support the Ministry of Education and other stakeholders to expand school programmes that facilitate contact between children of different ethnic groups, particularly those who live in relatively more mono-ethnic or isolated communities.

- Women activists also made the demand that school syllabi should ensure gender equality. *“Now school books say that Kandan goes to shop and Kamala scrapes coconut. This should be changed.”* (Women activists, FGD, Colombo, Western Province).

- A Hindu lay-religious organisation wanted information on all religions to be included in the school curriculum. In a FGD in Colombo, there were contrary views that religion is not a public matter and therefore should be practiced in a private space, hence should not be taught in schools. There were also other issues raised such as the need to ban tuition, ensure no corruption in schools and ensuring that children are better geared to deal with contemporary and future challenges such as climate change and globalisation.

### **3.7.3. Change to the current school structure**

126. There were a number of submissions that critiqued the existing school system where children are separated based on language, ethnicity and religion. A written submission suggested a phasing out and eventual ban of educational institutions that promote specific ethnicities, languages or religions or to open them up to the general public of all denominations. This was echoed in a public meeting in Batticaloa: *“There should be no Tamil, Muslim, Sinhala schools. Everyone should be studying together in common schools. Children of all ethnicities should be able to study together in all schools, and this should be facilitated.”* Women activists in Colombo also pointed to differences in language and religion as being one of the root causes of conflict and stated that schools with religious identities should be removed.

### **3.7.4. Language of instruction**

127. Separation of children by language was cited as a key obstacle. A written submission from Jaffna suggested that English be made the language of instruction in schools. A trilingual education system was also suggested in a FGD in Batticaloa, so that children speaking any language can join any school. It was also suggested in an FGD with women activists in Colombo, Western Province, that in Sinhala and Tamil schools, four subjects be taught in English to overcome issues of communication between children of different groups.

128. Malaiyaha Tamils spoke of the discrimination in language they faced as a Tamil community living in Galle. As one participant pointed out the lack of teachers instructing in Tamil in some schools resulted in Tamil-speaking children dropping out:

*“it is very unfair that the State treats Sinhalese and Tamils differently. Tamil children are forced to give up studying in their mother tongue because of poor Government policies. Will children be able to fare well in their exams when they switch mediums after O/Ls? Therefore, the alternative of Tamil children having to switch mediums is completely unfair. Children who switch mediums like this also find it difficult to secure jobs. We have raised these issues with the Education Ministry but have not received any solutions.”*

(FGD, Divithura Estate, Galle)

### **3.7.5. School and university admissions and quotas**

129. Issues around university admissions were raised in relation to families displaced during the war, and concerns over loss of documents pertaining to their identification and inability to show permanent residence, required to gain seats in some schools and universities. A woman said in an FGD in Batticaloa that children who were born during the war do not have the birth certificates and therefore cannot join school. Displaced Muslims from Mannar who made submissions to the CTF in focus group discussions said they wanted district quotas in local schools when they return to their places of origin. They also said that they faced difficulties and resistance in attending schools in these places, which was affecting their reintegration into these communities. As one person said, *“they are not letting children from here to use the quota from here. But we have been voting for this area.”* Muslims who attended a public meeting in Mullaitivu also said that students are facing issues of university entrance because they cannot show registration of permanent residence there. Accessing these rights were seen as central to the restoration of rights lost due to displacement.

130. An email submission from a member of the diaspora argued for ethnic quotas in university admission as against merit or district based quotas, stating that undergraduate opportunities provided to people of each ethnicity should reflect their ethnic composition in the population.

## **4. Societal Reform**

*“Reconciliation thus means not just re-structuring the state and creating the conditions necessary for a future of ethnic co-existence but also a process of self-evaluation that we need to undertake as communities.”*

(Written submission by Tamil Civil Society Activist and Academic)

*“From birth we get divided as Sinhalese, Tamils, and Muslims. In schools they do the same thing. Why can’t we go as Sri Lankans? Remove all these other labels and label us all as Sri Lankans. They even label us separately when we die. Yet in hospital we are all born in the same rooms. We say we are Sinhalese, and we then treat Tamil people differently. To tell you the truth, when Tamil woman who gets into a bus carrying a child, people don’t even give her a seat. When things*

*like this happen, it is understandable that they get angered.”*

(Sinhalese Participant, Public Meeting, Deraniyagala)

131. In expressing their views on transitional justice and reconciliation, some, participants across the island, including peace activists, religious leaders, artists, and journalists to servicemen and administrators expressed a desire to repair social relations that had been damaged by the war and other violent events and conflicts. The CTF observed that there was a general consensus that ethnic and religious relations had been strained and needed to be strengthened, even while it also encountered skepticism about and resistance to the transitional justice process at points. An overwhelming majority directed their appeals for systemic and structural change towards the State, even while expressing a distrust in the State’s intentions and/or its willingness to act. Politicians were also blamed but rarely presented as change makers. A minority stressed that the responsibility for transforming the conditions that led to the war, and for rebuilding social worlds that had been torn asunder through the war and other conflicts, lay in the hands of Sri Lanka’s citizens. This sentiment is encapsulated in the following statement:

*“As communities, we have particularised our responses to the war in such a way that we can easily abdicate our responsibility of scrutinizing how we as activists, militants, catalyts, mute spectators and even victims are complicit in the crimes committed in our name against others which include not just the Mullivaikal tragedy but also the disenfranchisement of the plantation Tamil workers, state-aided anti-Tamil pogroms before the start of the militancy...the eviction of the Muslims from the North, the Tamil-Muslim killings in the East, to name a few.”*

(Written submission by Tamil Civil Society Activist and Academic)

132. Thus, submissions spoke of an array of broader changes that were required from actors across the social spectrum, ranging from civil society, media institutions and artist collectives to their fellow citizens and neighbours, stating that for the transitional justice process to actualise their desire for equal citizenship and to bring about a real sense of reconciliation, societal change was required on many fronts. A few submissions called for introspection about the role that different segments of the island’s society and polity had played in perpetuating social divisions and in being bystanders during events of violence. Religious leaders, for instance, stressed that they needed to reflect on how members of the clergy too had contributed to spreading fear and suspicion within their congregations about other communities and for not speaking the truth. Members of the media raised concerns how it had supported the Government’s war campaign without looking into the suffering it caused. A written submission articulated a similar point, stating that comprehending and narrating Tamil people’s experience of the war also requires confronting the LTTE’s killings and torture of Tamil dissidents and its forcible recruitment of children from under privileged families in the East and the Vanni. On a similar theme another written submission noted *“Reconciliation thus means not just re-structuring the state and creating the conditions necessary for a future of ethnic co-existence but also a process of self-evaluation that we need to undertake as communities.”*

133. Furthermore, this submission and others articulated a pressing need for Sri Lankans to recognise that their fellow citizens' experiences of the conflict were shaped by social hierarchies and forms of marginalisation, such as caste, class, and gender, that had long predated the war. For instance, a written submission on caste-based marginalisation in the North highlighted that a disproportionate number of those in IDP camps were people of oppressed caste groups, and discussed a number of ways in which caste-based discrimination has undercut their efforts to resettle and rebuild their lives. Further outlining how this discrimination has heightened their invisibility and, neglect, the submission stated the following: *"When the Tamil media and political discourses present these IDPs in the camps as one of the communities rendered acutely vulnerable by the war, they hardly mention the ways in which the caste identities of the IDPs have compounded and exacerbated their social, economic and cultural hardships resulting from the war and the displacement."*

134. One written submission made clear that the process of introspection also requires an effort to complicate *"the ideas of truth as given"* and the notion that *"truth would always lead to reconciliation,"* further *"raising questions such as what we should do as communities, apart from legal measures, to achieve reconciliation, and what kind of co-existence is possible at this historical juncture, seven years after the end of the civil war."* Redress for these issues lay, therefore, not only with the State, but also in the neighbourhoods, villages, and communities where these social relations were felt, experienced and perpetrated on a day-to-day basis. Some submissions also pointed out how the development of trust in interpersonal and social relationships takes time, with one submission reflecting on this as requiring at least a generation of work to undo long-held prejudices.

135. Expressions of empathy and solidarity were expressed by affected persons in public meetings. For instance, a group of Muslims at the public meeting in Maritimpattu, Mullaitivu while calling for a day of commemoration of and inquiry by the Judicial mechanism into the Expulsion of Northern Muslims also requested the same for the last stages of the war. In the public meeting in Kandy, an individual spoke of one incident in 1989 when he claimed his house had been burned by the army and police, and where a young man from the village was bound and put into the inferno: *"If we as Sinhala people experience such incidents, then what kind of problems people in the North and East must be having?!"* Individuals who had undertaken inter-community exchanges spoke at public meetings about how they were able to better understand what people from other communities had experienced.

136. A number of submissions in the Southern Province also expressed the need to rebuild trust between neighbours and to counter harmful stereotypes and misconceptions that had strained relations within neighbourhoods and villages. Muslim religious leaders in Kandy spoke of misconceptions that people from other communities have of what goes on in mosques, particularly during Friday prayer, how this has become the basis of suspicion Muslims who gather for prayer. This call for countering misconceptions about "the other" were made not only with respect to

inter-ethnic relations, but also in terms of a number of other relations, including intra-ethnic, class, caste, and gender relations. For some, their extreme marginalisation from mainstream social and political spheres made popular perceptions of them particularly difficult to counter. For instance, Adivaasi participants spoke of their frustration with public images of them as “uncivilised people,” and deeply painful it has been for them to see and hear their fellow citizens label anyone they see as acting uncivil to “behaving like veddas.” Similarly, Malaiyaha Tamils spoke of how they had long suffered from the equation of Tamils with “terrorists.” A Malaiyaha Tamil participant from Galle: *“Though we are Tamils that doesn’t mean every Tamil person is a terrorist. The fact that they believed that is in itself a form of discrimination.”* Thus many of these participants expressed that reconciliation first required a change in the mind-set of their fellow citizens and the responsibility for this change lay not only with the State but also within society at large. The “violence against women” in the mainstream media and social media was also pointed out in this context.

137. While the CTF did not receive many detailed suggestions of how to bring about societal change, there were two areas in which substantial recommendations were made at sectoral meetings, including how the media and the arts could play a key role in transforming divisive ideologies, discourses and stereotypes and building empathy and understanding across a spectrum of social differences. These recommendations are elaborated below.

#### **4.1. Media Conduct and Reform**

*“We need to make people understand the need for reconciliation. People don’t know how many people died. They don’t know how many children died. Media does not do it. They need to know.”*

(Submission at a Public Meeting in Kalutara, August 3)

*“Media should be prevented from spreading racist news. People are influenced by that.”*

(Participant at FGD in Batticaloa)

138. Notwithstanding a number of failures and shortcomings, many submissions envisage the media playing an important role in truth telling, reporting on the plight of affected communities and promoting reconciliation. While the bulk of the submissions relating to the media came from within the sector itself at a media sectoral meeting, others also spoke of the positive and negative roles played by the media. Many submissions bring up specific examples of irresponsible, insensitive, racist and parochial journalism. However, one submission stated that the media can become a catalyst for change and it has an important role to play in establishing the truth, ensuring justice, achieving reconciliation and contributing to non-recurrence.

##### **4.1.1. Media conduct: problems raised**

139. A number of submissions draw attention to two key issues with regard to the conduct of the

media. The first is the failure of the media to play an active role in promoting reconciliation. The second is the trend of irresponsible and erroneous reporting that has played some part in exacerbating ethnic disharmony. As one submission points out, there is a tendency for the media to focus more on extremist and racist fringe groups rather than engaging in a more critical and balanced approach to reportage—*“Instead of giving a stage to these racist communities, the media should bring out the problems faced by those affected by war”* (Submission by an organisation). Submissions also question the priorities of the media, both in terms of the State media’s lack of interest in covering reconciliation issues and the market dynamics driving private media. In addition, they also point to the lack of knowledge and awareness on reconciliation issues, particularly amongst young journalists. Some submissions envisage the media addressing and countering racist ideologies in the country. Others argue that there is a need to address knowledge gaps, raise awareness and rectify unethical conduct that threatens the objectives of reconciliation.

140. A number of patterns (for example, media houses varying their angle on the same story to appeal to different language audiences) and motives (such as being market-oriented and biased) were listed in submission including. An example provided was how some media purposely refer to ethnicity in cases where Muslims have allegedly committed a crime but never refer to ethnicity when it involves a member of the Sinhala Buddhist community (Submissions at a public meeting in Colombo). In such cases, the media can heighten feelings of discord by discriminating against or targeting a specific community. Along these lines, another submission states that in matters of peace and reconciliation, the media has hardly made a substantive contribution (Submission from an organisation). Some submissions point out critical gaps in reportage as well as the media’s role in exacerbating discrimination and violence against particular segments of society. For instance, the role of “media violence” towards women, including stereotyping of women and using violent expressions against them was highlighted in one submission, alongside the online abuse faced by women from extremist groups on social media. Speaking of gaps in State-run newspapers, one submission argued that they focus more on development issues and tax increases than on the importance of the Public Representations Committee and the constitutional reform process. Asking, *“Why are there no proper newspaper articles on the process?”* it states further that *“We need to question why the Government is not showing an interest in reconciliation.”* (Submission by an organisation).

#### **4.1.2. Suggestions for reform**

141. A majority of submissions that address media conduct highlights the need for a change in mind-set within the industry. Some submissions suggest that appropriate measures and education programmes should be implemented for local media, stressing the importance of sensitising journalists and educating them about social responsibility and media ethics. One submission argues for the implementation of media programmes that would work towards promoting the values of multiculturalism and pluralism within the industry (email submission from an organisation), whilst

another submission suggests a process that develops responsible journalism and instructs journalists on how to become “peace communicators” (Submission from an organisation). This is also reflected in other submissions that call for the electronic and print media to actively deal with racial bias and communalism. Submissions also highlight the need to publicise different viewpoints that are representative of the multiple experiences of conflict and discrimination within all groups and communities in the country. Whilst the objectives and ideas above demonstrate a preference for an interventionary and preventive role, one particular submission cautions the CTF, stressing that “*the media is not an educational institution...however, the media can offer bridging communicational content*” (Submission from an organisation at a CTF sectoral consultation).

142. Some submissions favour regulation of the industry: “*media needs to be regulated to function as a mode of truth telling and to bring reconciliation*” (Submission by an organisation). The CTF notes, however, that it did not receive any substantive submissions on the reform of the industry and the implementation of regulatory structures. Yet, there were individual submissions calling for a State body to scrutinise racially harmful content. Moreover, it is suggested that an independent body should be established to regulate State media institutions and to prevent politicians from interfering with or influencing the media. This is reiterated by another submission that calls for the establishment of independent media councils on a provincial basis (Written submissions and submissions from a sectoral consultation).

143. Some of the submissions state that the approach to reportage requires a fundamental change. The submissions put forward the following ideas and objectives:

- Allocate space for articles on ethnic harmony and on the importance of co-existence,
- Actively promote non-recurrence and reconciliation in the news,
- Appoint competent persons to handle inter-religious interactions on the web,
- Both electronic and print media should deal with racial issues on an equitable basis,
- Address and rebuke sexist narratives and violence against women on the web,
- Implement public campaigns on radio and television in order to promote the fight against communal hatred.

#### **4.2. Role of the Arts for a Culture of Reconciliation**

144. The creative arts were seen as an important medium in promoting reconciliation, establishing multiple truths, remembering the past, and ensuring non-recurrence. In this context arts are used generically, encompassing drama, visual art, film, literature and in general any form of cultural production. Although the potential of art was unanimously recognised, some submissions noted that art has not always played a constructive role, having been appropriated for State and political sponsored propaganda and used to establish hegemonic one-sided historical narratives in the recent past. Nonetheless the arts were seen as having a powerful potential to

promote a culture of reconciliation and as playing a myriad of roles towards this.

#### 4.2.1. Methods for promoting reconciliation

145. **Acknowledging painful pasts:** Art was seen as carefully facilitating painful histories and memories at the individual and community level in order to bring closure and ensure non-recurrence. Furthermore, art, drama, and music therapy was also seen as powerful tools to address the ‘social trauma’ of the war, the independence struggle and the experience of colonisation. This was seen as not only important for those affected by war but for the stakeholders of war, such as ex-combatants. Related to this, art was also seen as unveiling perpetrators’ stories and histories in a process that is not a part of the State or judiciary (Submissions at a CTF Sectoral Consultation).

146. **Recording Histories and Stories:** Where official State historical narratives may have overlooked marginalised community histories, artistic expressions can take on the mantle of documenting them. One submission made by a Malaiyaha Tamil artist spoke of the role oral history/storytelling and folk music has played in documenting history, particularly the Malaiyaha Tamil community’s history during colonial times as well as its post-independence history of labour unions. The inclusion of Sinhala and English vocabulary in folk music was pointed to as enabling these forms of documentation to also connect to other cultures and people. At least one other submission also envisaged the arts as playing a role in recording, archiving and creatively communicating truths- of the last phases of the war and the southern insurrection for example- as human truths rather than an intellectual argument.

147. **Challenging partial historical narratives:** One submission noted that in the previous years, cultural productions such as films were utilised to propagate one-sided narratives of Sri Lankan history and raised concern regarding the impact such narratives have had on youth and children. Submissions implied that art could also play the converse role in challenging and undoing such partial historical narratives of either the Sinhala or Tamil sides, for reconciliation and non-recurrence (Submission at a CTF Sectoral Consultation).

148. **Connecting People and Bridging the Language Barrier:** Art was seen as a tool to bridge ethnic, cultural, urban-rural and North and South divides between communities and people for reconciliation. One submission by a theatre group based in Batticaloa spoke of a previous positive experience of being trained by a famous Sinhala artist and noted the positive role such trainings can have. The submission also noted the role drama can play in transcending the language barrier and bridging communities and recommended the use of silent plays and mimes, to communicate to the other communities the experiences of the affected Tamil people. Visual art was also identified as a tool to connect people for reconciliation, as it does not depend on language (Submission by an artist at a CTF Sectoral Consultation). During the zonal consultations in the North, many submissions stated the need for their experiences and stories from the war to be told to the rest of

the country and to the other communities. Given the failure of the media, art with its potential to transcend language barriers and connect people was seen as a particularly advantageous tool to present the experiences of the people affected by the war, (Submission at a CTF Sectoral Consultation). Similarly, a submission made in the Matale public meeting pointed that good artistic productions on reconciliation in the South does not go to the North and pointed to the need for translations of these. The use of modern technology for storytelling was also seen as playing a role in bringing people together and *helping 'people see 'the other' not as an abstract concept, but as people,'* adding that while it is *'easy to hate the idea of a person, once you know circumstances that led that individual to act in the ways they did, it's harder to judge or hate any longer'.* (Submission by a youth group at a CTF Sectoral Consultation).

149. **Remembering and Memorialisation:** The need for young artists from conflict affected areas to express their experience of the war and keep the memories of the past alive was also reported from the Western Province. It was stated that, as per the consultations from that zone, reconciliation could not be limited to laws or structures alone but that the memory of the past had to be kept alive and remembrance ensured (ZTF Report, Western Province). A submission noted the urgency to preserve memory, given that memory will only be there for a short time, and the erasing of memories has already begun.

150. **Disseminating Reports:** The arts were seen as playing an important role in translating commission findings and reports into creative media and disseminating in a simplified manner that can be easily understood by the public.

#### 4.2.2. Challenges and cautions

151. A number of submissions also expressed challenges and caution against the easy packaging of art from the outset as reconciliation. One theatre practitioner stated the challenges of funded projects dictating the agenda for art, raised doubts regarding the success, creativity and influence such projects have, and stated the need for the artistic vision of the artist to be supported. While one submission advocated for the use of mass media to sell the message and values of reconciliation to the masses, another was more cautious stating that the term 'reconciliation' should not be hijacked and commercialised. Another submission cautioned against the 'crime of storification', where people and their experiences of the war become mere stories to consume. As a step to avoid 'storification', it was suggested that art is always presented back to the person whose story is being told, to ensure a sense of responsibility to the person whose history is being recorded. Another submission pointed to the problem of artistic endeavours remaining delinked from structures of education, remaining as individual efforts of artists outside of the mainstream. One group, speaking of its experience in film, noted that although there are many artists who would like to document and tell their stories for healing there is a lack of a mechanisms to for artists to receive funding and support for this outlet (Submissions at a CTF Sectoral Consultation). The lack of freedom and

barriers for people to express their ideas and pursue artistic pursuits was also noted by one artist (Public Meeting in Colombo).

152. Addressing these concerns, submissions made the following suggestions primarily by organisations and individuals engaged in the creative arts, at CTF Sectoral and zonal consultations:

- Support artists in a more structured manner by linking creative artists to sustainable structures such as education.
- Filmmakers who want to work on truth and justice should be supported by way of a fund or grant, such as in South Africa, where there are various film funds available for different groups such as youth.
- Have mechanisms to translate Sinhala and Tamil literature and the arts to the other language (Vavuniya North and Matale)
- Create spaces for artistic expression and practice to flourish, both within Colombo and outside Colombo including in terms of facilities such as gallery spaces and theatres and also in terms of providing a space for members of Tamil communities to write and express their experiences.
- Provide facilities and money for the artists to meet, particularly young artists. This was seen as one space wherein truth and remembering can take place.

153. While many of the recommendations related to artists themselves, groups supporting and collaborating with artists, and wider society, there were series of recommendations made to the State, even while a number of submissions cautioned against State control and the role it played in fostering ethno-nationalist art. One submission from an individual artist at Colombo public meeting called for a mechanism to be put in place to stop State interference. Other submissions at a CTF Sectoral and Zonal consultation in the Western province called for the following in relation to this:

- The need for a cultural policy that incorporates reconciliation with a plan to implement this policy in the long term. The policy is to be tied to the education system and create an attitudinal change.
- There are many artists at the local village level and these need to be supported by the State.
- The State should identify cultural activists across all communities who can work creatively to bring about reconciliation (ZTF Report, Western Province). Although one other submission cautioned against the appointing of State artists and instead stated the need to create a supportive space for artists to engage with the reconciliation mechanisms.

The need for the reconciliation mechanisms to engage with artists was raised in a number of submissions. Another called for a broad based mechanism to incorporate culture and the arts into the reconciliation process (Western Province ZTF Report).

## 5. Other Proposed Mechanisms

154. Some submissions made specific recommendations for establishing alternate mechanisms to

the four proposed by Government. It is noteworthy that while the call for separate mechanisms to address specific problems was taken up in a number of submissions, including at public meetings, the more detailed proposals for alternate mechanisms were made largely by lay religious organisations.

### 5.1. A Mechanism for Investigating and Addressing Religious Rights Violations

155. The need for measures to address religious violence were highlighted in a number of submissions including those that called specifically for justice but not for a special judicial mechanism (See Chapter V: Judicial Mechanism). Some, however, called for a specific mechanism to address religious violence and tensions. The call was made primarily by lay religious groups from different faiths. The principal argument for such a mechanism was the magnitude of violations against religious minorities and some groups even indicating that this is the most recent conflict that could intensify if left unaddressed. A few submissions pointed out that although the number of violations have decreased since the election of the new Government, the incidents continue. Those representing Christian Evangelical organisations noted that the incidents of religious violations had not changed with this Government. Hence, the need for a mechanism that will address this issue remains. A key argument for a specific mechanism was that if all violations are brought under the proposed TJRNRC, the focus on religious freedom will get side-tracked because primary focus will be given to other rights violations.

156. A number of submissions made the point that religion plays a major role in Sri Lanka and hence could play a central role in building lasting reconciliation.

*“And we always believe that the reconciliation process in our country must be driven through an inter-faith mechanism so that religious cohesion also helps and when you bring religions together you bring all ethnic communities as well...And when we work together the effect the impact is much greater, than what you see.”*

(Submission at a CTF Sectoral Consultation)

157. A few cited this as a reason for needing to set up a mechanism that dealt with religious violence, particularly given the failure of systems of law and order and governance to respond to incidents of violence and tensions. Religious leaders of mosques and churches highlighted numerous events of violence committed on their places of worship by Buddhist mobs, emphasising that they have been denied protection by State officials as they sought to draw attention to these events, including in attempting to make police entries, elicit the help of the GS and the DS offices, and seek justice through the courts.

158. The specific mechanism that was proposed was more along the lines of an inter-religious committee that could bring together individuals from different faiths to address problems. There

were suggestions about the title for such a mechanism including Inter-Religious Council or Joint Religious Committee. One of the groups making submissions noted that the religious council idea had already been proposed to and welcomed by President Sirisena but there had been no progress on implementing the concept. The CTF notes that on the Presidential website there is a press release dated February 25 2016 stating that he “would appoint” an inter-religious advisory committee.

159. While some submissions suggested a series of actions to be taken (with examples of incidents to intervene in), others focussed on one or more of the following tasks:

- Understand root causes of religion-related violence.
- Investigate religious rights and freedom violations. Examples that were provided included the current contestation and tension over the Kanniya Hot Wells, Trincomalee, which was put forward by a Hindu group. In addition, it was proposed that the mechanism should undertake visits to places of conflict in order to investigate.
- Play an active role in mediating disputes, including to visit locations where violence or disputes were taking place, and to play a preventive role by intervening in disputes prior to violence or intensification of tensions.
- Document and archive incidents of religiously motivated violence against religious minorities, and their places of worship.
- Produce a report compiling these violations, analysing root causes of religious tensions and recommendations for non-recurrence.
- Grant compensation to affected persons.
- Examine past and present litigation related to the freedom of religion or belief, and refer cases to court as deemed necessary.

160. Submissions also highlighted points on the composition and appointment of representatives to the mechanism:

- A few submissions noted that it should comprise of equal representation of all religious groups.
- One group pointed out that representation of religious groups at State meetings tended to only include the more dominant denominations in each faith, excluding groups often at the receiving end of the violence, such as Evangelical Christians. The need to ensure representation from all affected groups was proposed.
- It must involve civil society members as well as eminent persons such as retired judges and public servants.

161. In terms of how this mechanism was to operate there were recommendations including

- It must be independent and not have any affiliation with governments.
- A supporting unit to the mechanism be established to ensure the protection of victims and witnesses who testify against rights violations.

162. Beyond the mechanism, submissions called for the following measures to be implemented:
- Religious violence must also be taken up in terms of non-recurrence.
  - Proper documentation of incidents of violence against religious minorities, including war-related violence and pogroms is needed.
  - Reconstruction of damaged kovils, mosques and churches is needed.
  - Religious activities of all captive persons irrespective of religious differences must be honoured.

## 5.2. Commission for Displaced Persons and their Resettlement

163. A mechanism or special structure dealing specifically with displaced persons was suggested in individual submissions. In these and other submissions the importance of addressing the challenges faced by internally displaced persons (IDPs) in order to achieve reconciliation and the limitations and failings of existing structures was highlighted. The continuing plight of various populations of displaced persons were highlighted, including refugees in India, Northern Muslims, Tamils affected by military occupation in the North and East or who had their land taken over by members from other communities, and Sinhala populations unable to return due multiple reasons, including the State or other civilians seizing their land. As submissions point out, the continued denial of their right to return will only deepen the feelings of injustice and serve as a cause for the future conflict. The demand for this commission is in addition to specific recommendations relating to truth seeking (for instance with regards to alleged land grabs in Mullaitivu and the impact of a mass influx of IDPs into Puttalam) and reparations (ranging from compensation to demands on changes in the behaviour of State officials). There were also other demands such as by Northern Muslims for a specific policy to assist their resettlement and by persons who are affected by military occupation who called for immediate release.

164. At least two different suggestions were made regarding alternate structures:
- One recommendation was to establish this structure within the Truth, Justice, Reconciliation and Non-recurrence Commission as a specifically mandated department to address the issues of IDPs and help achieve durable solutions.
  - Others suggested a separate commission.

Some submissions pointed to the need for this commission to work closely with the other transitional justice mechanisms. In one submission that called for a separate commission there was a suggestion that the finding and recommendations from the TJRNRC could be used to define the mandate of this commission on displacement and resettlement.

165. In the submissions there was a lack of clarity in how this mechanism was to work with Central Government, including the Ministry of Resettlement, and district-level actors, in particular whether it would be a purely oversight body with a complaints mechanism or whether it would

have some role in implementation. In terms of current gaps, the lack of an effective grievance mechanism that would allow displaced and resettled communities to make complaints and seeking redress particularly with regards to the decisions of State officials in providing documentation, selecting beneficiaries for assistance and development programmes and settling land claims, was frequently pointed out.

166. Submissions relating to displacement and resettlement specifically referenced principles that could be applied for the mechanism and the resettlement process in general. These include:

- The need to ensure equality and non-discrimination in both resettlement and compensation frequently appeared.
- To approach resettlement in a holistic rights based approach so as to ensure rights to property, compensation and reparations, documentation, to election and be elected, would be protected.
- The need for clarity and transparency in the resettlement process, including clear information on assistance, compensation packages.
- The need for awareness raising and education on challenges and ongoing initiatives relating to displacement, resettlement and land.
- The right to return of all internally displaced people must be guaranteed.
- The need to ensure return is viable including through providing necessary infrastructure.
- Affected people should be given the rights to protest and lodge complaints against those officials and entities that hinder smooth resettlement.
- The need for consultation of displaced persons not just in resettlement but also development in these areas was raised. In one submission there was an explicit point that no development decisions in the conflict areas should be permitted until people's rights tied to such areas are considered for adequate reparation and compensation.

167. In terms of scope, various groups made differing suggestions. Some submissions spoke at a more general level on expediting resettlement and ensuring assistance for all, while others focussed on specific communities like the Sinhalese and the Muslim 'ethnically cleansed and disposed of their properties' by the LTTE and other non-state armed entities. A submission from Northern Muslims in fact, called for two separate commissions based on scope. The first to deal with three subjects relating to land (including restoring lost land documents, returning lands currently used and/or claimed by secondary occupants, inclusion into State land alienation schemes) economic losses suffered by the community (due to expulsion and the closure of the Puttalam-Mannar road) and voting rights. The second a Commission to Redress the Resource Allocation in Puttalam that would "*recommend measures to uplift the socio economic conditions including in sectors such as education, health, state employment, university admissions and other common infrastructure development forthwith.*" At least one submission noted the need to include land as a key area alongside displacement in a mechanism devoted to addressing these two interlinked issues. This reflects the concerns made by groups affected by displacement who made submissions on the need to address their land problems

such as military occupation, secondary occupation by other civilians, lack of documentation, and landlessness (including for ‘new families’).

### **5.3. A Mechanism on Land Issues**

168. The need for a specific land mechanism was made only in one submission but the problem of land and suggestions for specific measures and processes to address it was made in a number of submissions across the country (See Section 3.6 in this Chapter). In the public meeting in Pottuvil for instance, a number of Muslim participants wanted a mechanism with judicial powers to investigate land issues. The central task as laid out in one submission was to endorse and authenticate ownership, by creating an evidentiary and registration system where ownership documents and records are lost due to conflict.

### **5.4. A Commission for Justice for Women**

169. Citing the variety of issues women face in terms of the law, its implementation and violations committed against women, there was a request for a Commission for Justice for Women made by a women’s group from the North and East. This submission did echo a number of specific suggestions on key problems highlighted by other women’s groups and individuals in public meetings including:

- Reform of personal laws including Muslim and Thesavalamai in order to make them equal.
- Ensure the age of marriage for women made equal and increase to 18.

There were no recommendations made with regards to the powers and functions for the commission. It was, however, suggested in terms of appointments that no Government officials should serve on the commission.

### **5.5. Supra Authority**

170. A national lay religious organisation proposed creation of a Supra Authority above the current bureaucracy as a special vehicle for the speedy implementation of the goals set by the Government in terms of transitional justice. The proposal is for a permanent body to play both an oversight and implementation role, outlined below. While there are questions about its functions overlapping with existing bodies such as SCRM, the basic idea resonated with a couple of submissions that there should be one body handling transitional justice, and a more general concern of the need for coordination and effective implementation of the transitional justice process. This can be seen as a response to the experiences of many affected families who spoke about of having to deal with multiple and successive State bodies (including the existing bureaucracy, State institutions and successive ad hoc bodies) and the lack of action despite the number of institutions that are meant to or have been established to look at their issues. Thus, even if this Supra-body is not established the reasons cited for the requirement of such a body need to be taken into account

and responded to in the design of the overall transitional justice framework and the individual mechanisms.

171. As envisaged in the submission it would have extra-ordinary constitutional powers to override any other State institution and evolve into becoming the sole authority dealing with transitional justice, reconciliation and nation building, and also dealing with the protection of fundamental rights and religious liberties. As suggested in the submission the authority is to have an ambitious range of tasks from developing special mechanisms to implementing activities such documenting history and violations; identifying causal factors, systemic anomalies and geopolitical influences that contributed to the conflict; rescind land policies and gazettes, and ensure implementation.

172. The proposed head of the authority is the Prime Minister, with a competent authority who would serve as the operational head of the authority. The authority as proposed would have representatives from other State institutions and will be constituted by and answerable to Parliament. The authority would include an advisory panel of Eminent Persons from civil society representing all three communities equally and a technical consultative panel of permanent secretaries from ministries and other State institutions. It would also have observers from the UN and other international agencies. At the operational level a number of units are suggested a) investigative and judicial unit b) media court c) land court d) Missing persons and war reparation commission (to perform some of the functions that overlap with the OMP and Office of Reparations) e) Special commissions of inquiry to inquire into massacres f) Special Police Unit (Section 3.4 of this Chapter) g) Ombudsman to look into complaints about violations of people's rights, inequity, racism and issues pertaining to the Authority. A class of special divisional secretaries are to be appointed to serve in the former conflict affected areas.

## **5.6. Other Bodies**

173. Other suggestions were made for bodies such as a Quasi Judicial Body and a commission with a mandate to ensure economic and livelihood rights of people but details were provided. There was also a suggestion for a special mechanism to address the needs of ex-combatants (See Section 3.2.4 of this Chapter). A Special Commission of Inquiry to inquire into massacres, ethnic cleansing, riots, and other civil commotions & assassinations of political/community leaders during and post war, perpetrated by State armed entities, non state armed entities and politicians and politically motivated riots and commotions like in Aluthgama, Aranthalawa and Kattankudy.

## 6. The Call for Equality and Inclusion

*“The leader of this country and the society must respect indigenous people. Not only us. They must respect all minorities.”*

(Aadivaasi Participant at FGD with Aadivaasis in Dambana, Central Province)

*“We are people of this country; we were born here; we feel the belongingness to this country. It’s not just one community; we also belong to this country.”*

(Muslim Participant, Lay religious sector)

*“Aren’t we citizens of Sri Lanka? Why [is] everybody calling us Indian origin?”*

(Malaiyaha Tamil Participant, FGD, Galle)

174. Experiences of marginalisation was a general theme that cut across many groups and communities that came to the consultations. Various factors including political affiliation, ethnicity, religion, gender, class and in rare occasions caste were cited. Some expressed that their very victimhood became a grounds for further marginalisation, like in the case of families of the disappeared. Yet, amongst these diverse collectives, some explicitly made the claim that as a result of their distinct identity they feared that they would be excluded from a transitional justice process, as systematic exclusion by the State of their rights and full citizens as was their previous experience. These distinct identities as expressed by these groups are based on ethnicity, indigeneity, being differently abled, gender identity and sexual orientation and vocation. They questioned whether the transitional justice process was receptive and open to their concerns, particularly as forms of structural discrimination had long prevented them from accessing the State in other contexts. Malaiyaha and Aadivaasi communities spoke of systematic and structural forms of neglect and exclusion that had barred them from accessing basic needs and rights over several centuries. Persons with disabilities, including former servicemen, ex-combatants, and civilians injured by the war drew attention to the neglect they suffered in their everyday lives, and made a call for both recognition of what they had suffered through the war and for accommodation in the future. Three written submissions highlighted how, in the Northern Province, oppressed caste communities affected by the war are being pushed into deeper forms of precarity as they face obstacles in resettling, both due to their landlessness and due to caste-discrimination in the land market, where upper caste communities refuse to sell properties to them. Some groups, such as LGBTIQ participants highlighted the fact that their very identity is not recognised in the existing legal framework and is criminalised; this proved to be a serious obstacle for them to engage with the proposed transitional justice framework. The lack of legal protection and recognition on the one hand and social exclusion and stigma on the other were obstacles highlighted by them, and other groups. Some, such as sex workers, pointed to the criminalisation of their vocation as a source of ongoing violence against them, which spilled over into multiple other aspects of their lives.

175. The CTF observed that a common theme that cut across these groups was their prevailing sense that there has been a failure by the State, its institutions, and Sri Lankan society more broadly, to acknowledge, serve and protect them. These participants underscored how existing forms of structural marginalisation exacerbated the harm they have experienced from all armed conflicts on the island. Their narratives revealed how these structural barriers have increased their lack of visibility and capacity to be heard by State actors with decision making power. Some of these groups, therefore, highlighted the call for inclusion as their central demand. While their requests for recognition were most often articulated with regards to the State, they also frequently mentioned the need for inclusion within local communities and Sri Lankan society more broadly.

176. While members of these groups made suggestions relating to the mechanisms, for some issues, they stressed that redress lies in broader processes of State and institutional reform, in changes to everyday practices of governance, and the transformations of existing societal relations, and hierarchies. It is these concerns that the sections below will address. This listing below cannot be taken as comprehensive, and is merely illustrative of the perspectives that were explicitly highlighted in this consultation process. It does, however offer key insight into how issues of marginalisation need to be accommodated to ensure that both transitional justice and state building processes are inclusive.

#### **6.1. Inclusion of Adivaasis/Indigenous People**

*“We have a 37,000-year-old history. From the day that King Vijaya came here, until today, we have only been subjected to harassment.”*

(Adivaasi Leader at FGD, Dambana, Central Province)

177. The CTF held consultations with Adivaasi communities in the Central and Uva provinces about their needs and requests from the transitional justice process. Adivaasi leaders who spoke at these meetings recounted a long history of systematic and structural discrimination they have faced. Key issues that they raised related to their loss of autonomy, their loss of rights to inhabit the forests, and the damage done to their communities and their environment through development projects over successive governments. Participants made the following statements regarding this:

*“...when the state was formed, development became its key focus. They made roads. They made buildings. With that, we lost our freedom, our environment, our traditional authority, our leadership, and our capacity to make decisions. Until 1931, we had sovereignty. We didn’t have anyone to answer to. After that they turned us into villagers. We had to answer to the headmen. This way, we lost our power”*

(Adivaasi Leader at FGD, Dambana, Central Province)

178. Adivasi participants also listed promises made to them by multiple Presidents of Sri Lanka, which remain unfulfilled. They emphasised that these failed promises have contributed to their marginalisation and left them with a strong sense of being cheated by the leaders of the State. One Adivasi leader recounted how, in the 1980s, when an Adivasi elder went to meet the acting President of Sri Lanka to voice his opposition to the Mahaweli development scheme, the President treated him degradingly, mocking him by taking his bow and arrow and pretending to shoot with it. Speaking of how this reflected the role of stereotypes in stigmatising them, and even more, the failure of the State to recognise and provide redress for their grievances, he stated: *“When a leader of a whole community goes to the highest authority in the country with his people’s problems, and when even he doesn’t take it seriously, there is no one else to go to.”*

179. At the heart of the demands made by Adivasi communities was that their dignity and autonomy are recognised and respected by the State and society in Sri Lanka. They also wanted their rights to live in the forest reinstated to them. Pointing out how piecemeal solutions proposed by prior State development schemes have been inadequate, one participant stated: *“During Gammudawa, in Pallekale, they told us that they will give us 1500 acres of lands. We don’t want land rights. We want rights to live in the forest.”*

180. Emphasising that the State needed to address their grievances and that some of the solutions to these grievances lay outside the four mechanisms, Adivasi communities made the following requests:

- Respect Adivasi leadership.
- Maintain and sustain relationships with Adivasis (request made to State leaders).
- Allocate funds from the budget for Adivasis.
- In process of providing reparations, many reparations are owed to Adivasis.
- Draw up a scheme for protecting Adivasi communities and their rights and legislate these measures.
- Provide Adivasis with jobs related to protecting the forest.
- Provide Adivasi leaders with the powers given to Grama Sevakas and appoint them as State officials.
- Enable Adivasis to provide environmental education to school children around the country.

## **6.2. Inclusion of Malaiyaha Makkal**

181. Malaiyaha Tamil participants came before public consultations in the Central, Uva, and Southern Provinces, and Killinochchi and Batticaloa districts and asked that their distinct experiences of suffering, both during the war and through long-standing forms of structural discrimination are acknowledged, recognised and accommodated in the transitional justice process. The key challenge posed by Malaiyaha Tamils to the transitional justice process is not whether it

will include them within the four mechanisms, but rather if it will change the current prevailing socio-economic framework:

*“A mere recognition of social and economic rights within a system of production relations that is deeply exploitative of our people, their labour and nature will not result in justice for the Malaiyaha Makkal. Therefore there is a need for transitional justice mechanisms to be part of a broader comprehensive and transformative development with justice”*

(Written submission by Malaiyaha CSOs).

182. As they participated in public consultations, they spoke about how they, like other Tamil communities, had experienced multiple forms of discrimination and violence throughout the war. However, many stressed that their experiences were distinct from other Tamil groups, given their history and the long shadows it has cast in leaving them with enduring forms of precarity. In the consultations, they engaged with questions of justice, truth seeking and reparations requesting attention to what they had suffered and the redress they sought. Beyond the four mechanisms, however, they inquired how the State would address their unique position in the country as an ethnic community still trying to claim full citizenship. Malaiyaha Tamils, in their submissions pointed out historic and structural challenges faced by them:

*“The British colonial State’s plantation economy in the Up-Country was built on a system of indenture that effectively meant a form of slavery and forced labour that led to the death, severe impoverishment and brutal exploitation of hundreds of thousands from our community... It is critical that the transitional justice process in Sri Lanka accounts for the nearly 200 years of structural and other forms of violence against us that has also included sexual violence against women; systematic discrimination on the basis of ethnicity, national origin, gender, caste, and class; deprivation of labour and language rights; and, denial of equal access to land, health, education, and housing.*

(Group submission from Malaiyaha CSOs)

183. As this submission sets out, the current economic and social precarity of this community are tied to two distinct features: a history of discrimination and oppression on the one hand and ongoing structural discrimination on the other. With regards to the former, this submission specifically pointed to the disenfranchisement of the community in the wake of independence as a critical event for their people and the country at large, describing it *“as the first mass atrocity committed by the Sri Lankan state against an ethnic group.”* They stressed that the manifold injustices as a result of it continue, *“needing legislation as recently as 2003 to address.”* In terms of the war, it is noteworthy, that while many spoke of issues such as disappearances and detention, a number of participants kept referring to the pogroms they had suffered from prior to the war. The experience of violence, destruction and displacement relating to the riots and pogroms of 1977, 1981 and 1983 were repeatedly highlighted in submissions. They also drew attention to the limited compensation,

or complete lack of compensation they had received for what they suffered during these riots. Thinking through why the community had remained largely silent of the violations it had suffered, a group submission from Malaiyaha CSOs stated: *“Their extreme insecurity and fear coupled with impoverishment and marginalisation prevented and continues to prevent many in the Up-Country from even speaking out about the extra-judicial killings, disappearances, torture, and illegal detentions of their loved ones.”*

184. In terms of their ongoing discrimination, the submission points out how Malaiyaha Tamils face a very distinct situation as many of them live within the boundaries of estates, which has ramifications for all aspects of their lives. Referring to these estates as the ‘Company Raj’, this submission stated: *“In our everyday lives we continue to be subjects of Estate Superintendents and worker-subjects rather than full citizens; whether it is securing approval to migrate abroad for work or to change our name or even bury our dead, our everyday lives are governed by the jurisdiction of the company rather than the state.”* Their ongoing socio-economic struggles were laid out in multiple submissions, including the inadequate monthly wages, the lack of literacy, the proportion of women with a low body mass index and access to drinking water where the estate sector fares much worse off than other rural and urban sectors. It was also pointed out that some communities do not yet have personal mailing addresses. In addition to their longstanding discrimination as workers in the plantation sector, Malaiyaha Tamils also pointed to the suffering they experience as domestic workers in households across Sri Lanka. At the Kandy Public meeting, Malaiyaha Tamil participants spoke of the inadequate salaries they received as domestic workers, sometimes as little as Rs.300 a day. They also spoke of how they were forced to work long days, without breaks or time limits. They highlighted the physical and mental health issues they experienced due to this. They also described the sexual abuse women constantly face at the hands of their employers and the fact that child labour is used for domestic work, depriving children of their childhood and access to education.

185. The lack of recognition of their distinct problems was made in many submissions. In specific instances, they pointed out that until the consultations, no concerted efforts had been made by the State to record violations suffered by their community. In terms of the State’s neglect and lack of awareness of the administrative problems they faced, in one FGD in the Southern Province, the respondents spoke of the numerous problems they undergo due to the lack of basic documents such as birth certificates, identity cards and marriage certificates. *“The Divisional Secretariat office was not aware of the extent of the problem. They said at most it might be 7 or 8 individuals who don’t have NICs. They were surprised when they realised how many didn’t possess a NIC.”* (FGD, Southern Province) The lack of recognition of the problems of the Malaiyaha community is attributed in a group submission as not just due to ignorance or lack of awareness but also *“to a combination of systematic invisibility and marginalisation.”* The specific instance of the destruction of a Hindu Temple in Dambulla which went largely unnoticed as opposed to the media and public attention to the Mosque in the area was cited as one such example.

186. While geographically dispersed Malaiyaha communities raised a number of similar issues, they also pointed to distinct factors that contributed to their particular experiences of marginalisation. At the public meeting in Karachchi, Killinochchi a group of Malaiyaha Tamil individuals made a joint submission and spoke about concerns they shared with other people in the area including enforced disappearances, detention, and the need for international involvement. They also highlighted how their situation had created distinct problems for them, which set them apart from others in the vicinity. They stated that they were displaced from the Central Highlands in 1977, and they pointed out that many of them still have no documents proving land ownership in their original homes. Poignantly, they told the CTF: *“We are still refugees.”*

187. While many Malaiyaha Tamils pointed out similar broad issues relating to lack of basic documents, land and housing rights, labour standards and employment opportunities, poor living conditions, and discrimination by State officials, some of those making submissions highlighted distinct local concerns. For instance, at the public meeting in Karachchi, Killinochchi a group of Malaiyaha Tamil representatives called for representation of the community in Parliament from areas where they claim they are unrepresented such as Killinochchi. Furthermore, they claimed, *“Our people are not given opportunities for representation. If we are living as a national community we have the right to claim our fundamental rights.”* They also pointed out the prejudice they faced from the Jaffna Tamil communities, who they claimed dominated administration, politics and society in the region. They also cited how the LTTE in 1992 called for their expulsion from the North, two years after the forcible eviction of Northern Muslims. One member even asked the question whether they should continue to live in Killinochchi or return to the hill country which they fled from following riots/pogroms prior to the war. The lack of pride and security in self-identification as a Malaiyaha Tamil was also noted as a factor in their vulnerability.

188. Participants also highlighted other vulnerabilities that Malaiyaha Tamils faced, in particular those experienced by women:

*“Plantation communities, workers, especially women workers have been historically discriminated and culturally, politically, economically and socially oppressed. Neoliberal economic policies such as privatisation have reproduced conditions of subordination, exploitation and regimented forms of labour within a residential estate labour regime.”*

(Participant FGD, Uva Province)

189. The specific challenges faced by women, including exploitation by employers and violence in the household were also raised and recommendations made to ensure equality in wages between men and women in the estate sector and 50% female representation in trade unions.

190. Submissions from Malaiyaha Tamils called for a variety of specific measures relating to the OMP and the disappeared, truth seeking, justice and reparations, there were other sets of recommendations pertaining to structural reform. In one of the group submissions by Malaiyaha CSOs there was a call for a comprehensive approach. It called for the *“drawing up and implementation of agenda to restore full citizenship rights that would cease to leave our people subjects of plantation companies.”* The central demand is for the State to assume total responsibility for essential services, governance and development work currently enjoyed by estate officials, while addressing the full range of rights and needs of the community including opportunity costs suffered in terms of land, housing, education, health and labour rights, as well the ecological challenges. As issues of access to such resources and services were highlighted, the importance of addressing specific labour issues including minimum wages and quantum of work days, inequalities between male and female wages and the need for Labour Advisory Councils at the Provincial level was also listed. The submission calls for a larger process of transforming the estate economic system and to ensure full equality and citizenship. In order to ensure and monitor the implementation of this agenda an Implementation Commission is recommended. As per the submission it should not include any politicians and must have fifty percent women and in addition to monitoring the implementation is to ensure coordination between responsible agencies

### **6.3. Inclusion of People with Disabilities, including those Incurred through Conflict**

*“It feels like we are broken birds imprisoned in a nest”*  
(Submission at a FGD in Mullaithivu).

*“If we expect dominant groups to take charge of non-dominant groups, we have to learn [from how we are treating the disabled] – that shows we are not doing that. We have not worked it out properly. If we can learn to do that...”*

(Individual submission at sectoral meeting)

191. A number of submissions from disabled persons and, individuals and organisations working with the disabled point to the limited assistance and support available to them. In the submissions made by those disabled by the war (including ex-combatants from the military and the LTTE) and other disabled persons, many stress the failure on the part of the State to provide adequate support structures, including comprehensive benefits and livelihood support. While emphasising State neglect and the lack of recognition by the State, some also alleged discrimination, highlighting differential treatment between groups of differently-abled persons. A common theme across many submissions is the expressed desire to be treated as a full-fledged citizen and to be guaranteed a right to redress and support services

192. Discrimination, Neglect and Marginalisation: In some cases, particularly where State actors are involved, the degree of discrimination extends to what is identified as the active prevention of

support that would otherwise address fundamental needs. A few submissions state that certain actors have prevented assistance from being provided to war-disabled persons in the North. (Participant at an FGD in Kilinochchi) (See section 3.2.4 in this Chapter for more information).

193. Some submissions also perceive discrimination and marginalisation of disabled persons resulting not just from their disability but also due to other factors such as ethnicity and political affiliations. This was voiced largely by the war-disabled from Tamil communities. As one submission states, "...there are many like me who are affected...we are Tamil women; that's why we face so many burdens...how many problems do we have to face?" (Submission at FGD). It is also stressed that vulnerable groups have many layers—disability, gender, poverty and ethnicity—which can lead to their exclusion or marginalisation in the current system (Submission at a CTF sectoral consultation). The exclusion from assistance was a problem raised by some: "I have been going to the Divisional Secretariat Office for a long time to receive the special allowance of Rs 3,000 due to the disabled; I haven't still received it." Furthermore, political identity can be another factor, particularly for persons associated with the LTTE. Many war-disabled ex-combatants describe their status as outliers of society who live under constant suspicion and with the threat of military and police intervention—"There is no need to follow a disabled person; it's not like I can go into the jungle and fight. They should stop doing this to us." (Participant at an FGD in Batticaloa) As noted in Section 3.2.4, these ex-combatants feel insecure and vulnerable, particularly due to the presence of security officials. Other submissions note how State officials sexually harass disabled persons by asking them for sexual favours in return for assistance and how "...some women out of vulnerability have accepted such requests" (Submission at an FGD). Moreover, the vulnerability of women as caregivers to disabled ex-combatants and the vulnerability of other members from their community is often implied. In some cases, the lack of support and inadequate medical attention places the caregivers in a more vulnerable situation. "Our family members are with special needs; disabled due to the war; we need appropriate compensation." One particular submission from a sectoral consultation comments on such a case—"...we have to keep the wife and child actually hidden from the guy because he is so violent. Those families don't get any help" (See Chapter VII for more information on psychosocial issues)

194. The process for identifying disabled persons and the degree of disability was also critiqued. This was in addition to the critique made of the current assistance package for disabled persons which is seen as limited: Some persons, particularly those suffering injuries and medical conditions due to the war, claimed that they are not officially recognised as disabled and yet require specific support, including medical support. The encounters with some State officials and other actors who are unsympathetic to the plight of disabled persons have exacerbated this sense of helplessness:

*"I am injured in my head and hip; I can't see well in my eyes. When I say this, they said, what's wrong with you? You look fine. But I have to draw water using my teeth."*

(Submission at an FGD in Batticaloa)

*“I was injured but I am still unable to get a medical certificate to obtain special assistance.”*

(Written submission from Vavuniya)

195. The criteria for providing compensation based on the level of disability is also critiqued in a number of submissions. As one submission states,

*“Disability is compensated differently. Rs. 60,000 for a leg. If it is cut a little higher, then Rs. 80,000. They should stop assessments based on the percentage (of the body). Our entire body is worth only Rs. 100,000...A disabled person’s mother gets something like Rs. 750.”*

(FGD in Hambantota)

196. Another submission notes the sheer absurdity of the system by stating that a prosthetic leg costs Rs. 360,000 but their own legs only cost Rs. 60,000 according to the ill-defined criteria used by State officials (Submission at an FGD in Hambantota).

197. Even in cases where the State has institutions and programmes to address specific categories of disabled, there are assertions that the State is not paying due attention to specific needs and treatment. Some submissions by disabled service personnel, including in the Southern and North Central zones, reveal experiences of marginalisation and an overall feeling of disappointment about being neglected by the State and society at large (Public meeting in Matara and an FGD in Abhimandala, Anuradhapura). The submissions state that disabled soldiers do not receive equal treatment from the armed forces and call for the recognition of their sacrifices—“Everyone should remember that we saved their lives” (Participant at an FGD in Hambantota). Moreover, the existing support systems for disabled service personnel are considered inadequate and fail to address a number of issues faced by them. For example, some submissions complain that the Ranaviru Sewa Authority is wasting money on events instead of identifying and addressing the fundamental needs of disabled soldiers. They stress the need for economic stability, proper healthcare, livelihood support and substantive assistance for family members in terms of education and employment (Participants at an FGD in Hambantota). The submissions also highlight and criticise the severe inefficiencies of the existing welfare system provided by the State. Some submissions argue that the Government has created more obstacles within the system and has failed to deliver on promises with respect to low-interest loans, vehicles and scholarships.

198. Institutional Gaps: The state of support services for disabilities is described as “pathetic” with inadequate care provided by the State to persons with intellectual, physical and chronic mental disabilities. As one submission asks, “If as a society we can’t look after the marginalised and the weak, how are we going to look after the minorities in whichever area they are?” (Submission at a CTF sectoral consultation). Several organisations highlight the lack of staff, resources and

infrastructure. One submission states that hundreds of children with intellectual disabilities do not have access to proper education in Kilinochchi. A similar situation prevails in other districts around the country. The same submission stresses that the main structures responsible for providing services—the Ministry of Social Services, the Ministry of Education and the health sector—have no plans to address the fundamental needs of vulnerable groups. Moreover, the lack of capacity exacerbates the existing patterns of marginalisation—“The State takes no responsibility to address this issue. If you take the social services department or Ministry, what level of professionalization is there? How many psychologists are there? How many professional social workers are there? There is none.” The submission highlights the following examples as structures/institutions that serve limited roles: The Department of Social Services limits its involvement to the disbursement of Rs. 3000 a month for each case under its purview and the health sector believes its responsibility is only to provide acute care.

199. Another submission highlights how ex-combatants have been housed at a centre in Vavuniya with no support from State institutions—“...the State has completely washed its hand off... Isn't it the responsibility of the State to do that with the community and support (them)?” (Submission at a CTF sectoral consultation). It is also asserted that the State has not adopted a uniform policy on welfare provision for all disabled persons, including disabled ex-combatants. In addition, the institutionalised prejudices and the State's complicity in violence have exacerbated distrust and discord amongst and between communities. All of these issues prevent affected communities, especially war-disabled persons, from accessing and using existing services provided by the State.

200. In many cases, disabled persons identify various forms of assistance, including low-interest loans, trainings and medical treatments, which would alleviate their suffering, enable them to be more self-sufficient and rebuild their lives by focusing on employment —“I can't drive now, but if I get a new type of prosthetic leg, I can get the license and work as a driver or take our family members. I have two daughters and I need to educate and bring them up.”

201. Whilst disabled persons engaged with the four proposed mechanisms and made suggestions, including the need for justice and international judges (ex-combatants FGD Mannar), they also warned of the possible fallout from truth seeking and justice (disabled servicemen FGD, NCP). With regard to disabled persons and the four mechanisms, the submission make the following recommendations:

- Ensure accessibility for disabled persons to all offices of the four mechanisms;
- Ensure outreach to disabled persons as part of awareness-raising and engagement/participation activities of the four mechanisms;
- Identify disabled persons who have been affected by the war and provide compensation as well as support;

- Appoint one disabled soldier from every district to any national committees/commissions that are established in the future;
- Recruit members of representative organisations working on disability issues and appoint them to positions within the mechanism (identified as the “Office for the Disabled”).

202. Given the degree of marginalisation experienced by disabled persons and the lack of adequate support, the submissions detail a number of measures that fall outside of the proposed mechanisms, but that must be seriously considered by the Government of Sri Lanka if it is to substantially address the needs of all affected communities and groups. War-affected communities and disabled persons make the following suggestions:

- Establish a separate mechanism (similar to the Office on Missing Persons or attached to it) to address the multitude of issues faced by disabled persons;
- Address all of the issues faced by disabled persons and not just demands for compensation;
- Ensure that disabled persons are represented in the Parliament of Sri Lanka and are able to visit in order to recount their experiences;
- Reform and strengthen the welfare system for disabled persons;
- Ensure the disparities between disabled ex-servicemen in the tri-forces are removed.

203. In addition, disabled persons made a range of other recommendations on the provision of specific State services, including dedicated ones for disabled persons and disabled service personnel: 1) Recruit trained and skilled professionals to the State services in order to ensure professionalisation of all services 2) Gather data, monitor and provide psychosocial care 3) Provide prosthetic limbs 4) Provide specialised livelihood support, training and livelihood opportunities, including low-interest loans; 5) Ensure access to State institutions and transport, including special disabled-friendly cars.

204. The need for greater sensitivity and support from society was also highlighted. Some submissions also recount instances of insensitivity and disregard for the condition of disabled persons from wider society—“*We don’t get seats in buses, people don’t stop for us*” (Submission at an FGD in Kilinochchi).

#### **6.4. Inclusion of LGBTIQ Persons**

205. The call for inclusion in the transitional justice process was most clearly articulated in a written submission from individuals identifying as Lesbian, Gay, Bisexual, Transgender, Intersex and Questioning (LGBTIQ) who face discrimination and vulnerability. In a written submission, members of this community highlighted the knock-on effect from the war and the militarisation of society had had an impact on sexual and gender identities and their security: “*militarisation led to the reinforcement of heteronormativity and heteropatriarchy, and forced people to be covert about their sexuality and gender identity.*” Specific examples that were cited including the surveillance apparatus

of the State and society, which made mobility difficult, particularly for transgender persons. The setbacks to possible efforts at legal reform including with regards to repealing 365a of the Penal Code and the Vagrancy Ordinance were also noted. In addition to the lack of public space to articulate a need for rights and needs, the individuals within the LGBTIQ and NGOs that worked on such issues faced a repressive and homophobic environment during the years of the war and the immediate post-war context. While noting that greater space had been created to articulate their views since the January 2015 election, including to the Public Representations' Committee to ensure that they secure recognition and protection within the new Constitution, they pointed out to the continuing obstacles on the ground in terms of the legal framework and protection from the State, in addition to social bias.

206. As such the submission made a specific set of suggestions:

*“any processes and mechanisms for reconciliation in Sri Lanka should be open and conducive to receiving submissions and complaints from members of the LGBTIQ community, in a manner that encourages them to come forward with their narratives of violence, abuse and violations; that ensures them of full acceptance of their choices; and that provides security in the eventuality that their submissions are met with contempt.”*

207. The submission pointed to the fears of and problems faced by LGBTIQ members when approaching the existing systems of redress that needed to be avoided in transitional justice mechanisms. In both the design and implementation of offices and processes, including vetting in appointments to ensure those engaged in gender based violence are not included and selection of beneficiaries to avoid exclusion based on notions of the 'traditional family', that LGBTIQ concerns needed to be integrated. It also recommended that officials working within such mechanisms should adopt a non-discriminatory approach towards persons with diverse gender expressions and sexual orientations as per UN Resolution 1325.

## **6.5. Sex Workers**

208. For other groups who came before the consultations and who lacked any prior information on a transitional justice process, they could not relate their struggle for redress to this framework and were seeking justice within the existing system. One such group who expressed fears that they have no real space to seek effective redress, within the existing governance and rule of law structures are sex workers. In a FGD in the North West Province, they explained the difficulties they faced with securing basic documentation such as identity cards for themselves and their children increases their vulnerability. That sex work is illegal in Sri Lanka places them in a very vulnerable position so that even when they are the victims of robbery or rape they face multiple challenges to get any redress and sometimes even face further abuse by the authorities. They also highlighted how the law is implemented in a patriarchal manner by the Police, in that it is women

who are arrested under the Vagrancy Ordinance. They also highlighted the social stigma they and their families face, including active isolation by their village and extended or close family members and in some instances violence. Their appeal was for a legalisation of sex work and for creating a fairer system of rule of law from which they could seek protection and redress.

## 6.6. Women-Headed Households

209. Women headed households were one of the key target groups identified by the zonal task forces as requiring special focus during the consultations. A majority of the zones therefore, conducted FGDs with this category of persons. They were also identified in a number of written submissions from organisations and civil society collectives as a particularly vulnerable group, requiring particular attention within transitional justice processes. The women themselves articulated the fears, insecurities and vulnerabilities they face, at the FGDs and public meetings they participated in and stressed on the need to address these problems as a matter of priority.

210. There was nonetheless, some uncertainty over what or who constituted a woman headed household. Many of those who made submissions understood the term to include war widows (including military war widows) or those whose husbands have been disappeared or are being held in prison/detention. Nonetheless, attention was also drawn to the fact that this term was applicable to women whose sons had been taking care of the household and who had been killed or disappeared; women who were faced with the task of taking care of their injured or disabled husbands and children with limited external support; and households where the husband had simply left, abandoning the family – a phenomenon that was noted as exceedingly common within war affected communities. There was also a category of young women who had been given in marriage at a young age in order to escape LTTE recruitment. These marriages were said to be highly unsustainable, with a high rate of young men abandoning their wives after a few years of marriage. A number of female ex-combatants who participated in the consultations also said that their marriages after the end of the war had not lasted as their husbands had abandoned them. There were also instances of older women- grandmothers taking care of their orphaned grandchildren and who identified themselves as women headed households. While some of these women said they receive some support from extended families, many did not have any support.

211. Following are the key types of challenges raised by the women in addition to their primary complaints in relation to death, disappearance of other forms of direct violations.

212. **Insecurity:** Women in the North and East in particular, said they that in general they never feel safe or comfortable, as they have had to face incidents of harassment by the military, Government officials as well as ordinary men. The women said that many men have tried to take advantage of their lone status and asked for sexual favours in return for help. In turn, society also tends to blame them for “immoral behaviour” or call them names, even if they do not engage in

any such acts. The women emphasise that not only did these issues need to be addressed through adequate punishment and lustration processes, but that there should also be a strict policy against such exploitation within the transitional justice mechanisms.

*“Most officers think that they can use women who are widows or without husband for their personal needs. ...They say that the women need to provide for their requests to avail the development support, and some women out of vulnerability have accepted such requests...Steps should be taken to do something about this. But till date no action is being taken against such officers.”*

(Participant FGD on sexual offences, Mannar)

*“I went to the Police to complain [over suspicions of the cause of her husband’s death]. They [police] call at midnight and harass me. Is this what wives of war heroes get?”*

(Military war widow, speaking at FGD in Matara)

*“We have an Army Checkpoint near to our house. When my two daughters came passing the checkpoint an army person asked her for her telephone number; the next day he wrote his number on a paper and threw it into the basket of my daughter’s bicycle. These types of things are done by the teenagers in the area too. I’m living alone with my girls. If my daughter has to go somewhere, I need to accompany her till the bus stand. When I keep going out like this the others in the village also start talk behind my back.”*

(Participant FGD with women headed households, Kilinochchi District)

**213. Economic challenges:** One of the key challenges that women headed households face is the need to provide for their families with little or no support. Women in Mullaitivu for instance pleaded for support in the form of immediate monetary compensation or support for their children’s upkeep and education, as they were finding it difficult to survive and provide for these needs. However, a number of the women asked for support not only in terms of payments or handouts, but also support to come to terms with their new lives and role as breadwinner, and support to build their skills. As such, there were frequent calls for vocational training, self-employment support and job placements. These economic challenges, the women felt, needed to be factored in when designing reparation packages.

*“We can earn and live. I don’t like to live on others financial help. Give us jobs according to our ability and qualification. Then we won’t feel guilty [of getting handouts due to the disappearance of the husband]”.*

(Participant FGD with women headed households, Kilinochchi District)

*“I only have the title to his pension. That is not enough to survive. The country’s economy is so difficult. I am educated. Give me a job.”*

(Military war widow, speaking at FGD in Matara)

214. **Counselling and Psychosocial needs:** A majority of the women who had suffered loss and now identified as women headed households spoke of psychosocial issues they faced and the lack of anyone to support them to heal their psychological and emotional wounds. Several women speaking at public meetings said they had been pregnant when their husband was killed or disappeared or had seen incidents of extreme violence with their own eyes; and as a result have been unable to get over it. They said that they were not only dealing with this initial loss of their people, but also dealing with the suffering they have had to face afterwards, both in relation to their search for justice as well as the burden of having to provide for their households on their own.

*“Counselling and psychological support need to be provided prioritised above loan schemes and other economic support.”*

(Muslim woman speaking at an FGD in Demodara, Uva Province).

215. Psychological issues were also raised specifically by military war widows, who said that their trauma had not been adequately addressed.

*“We don’t know how to get rid of the pressure we get as widows. We don’t have anyone to get any advice. We don’t know about any organisation. There aren’t any programmes to help us make up our mind. It is good if we have that sort of a programme”*

(Police war widow from Kurunegala)

216. However, as this quote demonstrates the call for counselling is not just for psychosocial support but also related decision making so counselling support needs to be understood in a broad way. Overall, the women felt that it was imperative that this aspect is addressed as a priority area within the transitional justice processes, in order to rebuild a healthy society and ensure non-recurrence.

## VII. SUPPORT FOR AFFECTED INDIVIDUALS AND COMMUNITIES: PSYCHOSOCIAL CONSIDERATIONS AND SECURITY

### 1. Introduction

*“Over the past two decades, Sri Lanka has seen thousands of women and men come forward to participate in diverse commissions and State-run inquiries into violence associated with political and armed conflicts. For many, speaking before and participating in these processes has been both emotionally difficult and personally risky, but their motivation to seek truth and justice has overridden such concerns. The forthcoming reconciliation mechanisms will be no exception.”*

(Group submission, Psychosocial Sectoral Consultations, Zone 5)

*“There must be psychosocial support and there must be security (in the transitional justice process). Otherwise people cannot participate.”*

(Group submission, Artists Sectoral Consultation, Colombo)

1. This chapter comprises two sections, one on psychosocial considerations in the transitional justice for those affected and the second on guaranteeing the security and safety of those taking part in the transitional justice mechanisms. The distress and suffering of those who made submissions were clearly evident at the public meetings and focus group discussions (FGDs) as were the concerns about the risks posed to their present and future security in coming forward. These concerns were reiterated in the written submissions.

2. The volume of requests and emphasis placed on these two issues in the submissions led to the decision that a separate chapter was required in the report to present in greater detail the suggestions and observations on how to design a transitional justice process that minimises risk and harm to the participants and provides adequate protection and support. The chapter draws on three different sources of information available to the CTF: the submissions that directly emphasise psychosocial and security concerns, the submissions in which the content indirectly refers to these concerns, and the observations made by the ZTF and CTF members during the consultations process.

## Part I – Psychosocial Considerations

### 1. Psychosocial Considerations for the Transitional Justice Process

#### 1.1. Psychosocial Impacts of Conflict and Violence

*“After they shot my younger brother, when my husband went to buy a wreath he was beaten so we did not go to collect the body. They took the body by tractor and buried the body. We stood by the roadside and cried. My mother is mentally ill and does not go anywhere now.”*

(Woman, FGD on disappearances, Mannar)

3. In most of the submissions to the CTF, there are emotive references, both direct and indirect, to the range of psychosocial impacts of the war and conflict experiences from across the country. In describing their and others’ experiences and the impact of these on their mental and emotional states, people spoke about intense suffering, pain, grief, anger, frustration, and fear. That people continue to be profoundly affected was very much in evidence at the focus group discussions, the public meetings and the written submissions, even in the South, where the insurgency and terror happened more than 25 years ago. People expressed the agony of losing family members to violent deaths and enforced disappearances, the horrors of seeing dead bodies and heavily injured people following incidents of bombing and massacres, the sorrow of lost educational opportunities for their children, the fear and shame following experiences of torture or sexual violence, the grief of seeing their children grow up and go through various life-events without their parent/parents or relatives, anger at losing their lands and at the destruction of their property, and the bitterness of disability and displacement. Those who had seen active combat also identified as having been severely affected both during and in the aftermath of the conflict. In many cases, those making the submissions referred to how their lives had been changed irrevocably after these events and described how they were still attempting to rebuild their lives. Frequent references to “*mental scars*”, “*scars in the mind*”, “*psychological harm*”, “*immense suffering*”, and “*trauma*” and of being deeply emotionally and mentally affected are found in the oral and written submissions to the CTF.

*“One of her younger brother was a suicide cadre. Hence her mother and she were handcuffed and taken to the 2<sup>nd</sup> floor. After their release, due to the immense shock and trouble caused by the CID coming to their house often, she was given in marriage to the first person who came.... She is suffering for a crime she never did. Even now she is scared to be alone.”*

(Tamil woman, FGD on disappearances, Trincomalee)

*My sister’s son went missing in 2007. The CID questioned him before he was abducted. Since her son went missing my sister did not eat properly and is unable to talk properly. I am the one*

*who speaks on her behalf. If you can find whether our child is still there, that is enough. We give food for the orphanage on his birthday but we cannot give alms. Find her son for her.*

(Aunt of disappeared person, FGD, Colombo)

*“Muslims were instructed to leave Jaffna within 2 hours without taking their properties. When we asked about that, they said that this is the command from the LTTE leader and if we fail they will shoot us. We didn’t know where to go. Without decisions we left within 2 hours. Education of our children, business and several other losses were caused. Psychologically we were affected a lot at that moment. 3050 families displaced without doing any wrong.”*

(Muslim participant, Public Meeting, Jaffna)

4. Additionally, many of the people also referred to the structural, economic and social conditions that contribute to the entrenchment and continuation of their distress and suffering. These include living in poverty, struggling to educate their children, coping with inadequate food, water, healthcare, housing, and suffering the impacts from the loss of land and other assets, both private and communal. From different parts of the country, they stressed the difficulties they experienced as a result of social stigma and marginalisation when widowed, disabled and/or displaced which were very common experiences of conflict and violence.

*“It was a horrible experience, and many are affected physically, emotionally and mentally. Our living and community standards have dropped. We have lost our social status and our identities. Many of us are living our lives with mental and physical disturbances because we have no say in what happens to us and nobody cares about us. We cannot tolerate this anymore. These kinds of long-lasting pressures, and the frustration and disappointment we all feel may create further social unrests and cause us depression.”*

(Displaced individual, Written submission, Puttalam)

*“In one day we would distribute food to about 25,000 people. Caught in the congestion even children have died. When the Army moved in, we didn’t know what to do. We stacked bags with the blue World Food Programme label on them in a belief they wouldn’t be shelled. When they started to shell, one fell next to me and I thought I lost my legs. When I woke up, I was in the make-shift hospital. The doctor says I need special shoes that cost 4000 monthly for me to be able to walk. Where will I go for the money? I have 2 daughters and wife. If I am unable to do anything, my ultimate decision is to commit suicide.”*

(Disabled former public servant who was caught up in the last stages of the war, FGD, Trincomalee)

5. Women who were widowed or whose husbands had disappeared or were missing spoke bitterly and anxiously about continued harassment and intimidation, including sexual exploitation

and abuse by members of their communities as well as by State service providers and security personnel. The violence that they had experienced appears to have heightened their vulnerability.

*“If we go to the police station, they ask me to come alone later and meet them alone. They say ‘your husband is there, come without anyone knowing’. Tell me, can I go?”*

(Woman, FGD on disappearances, Ampara)

6. In addition, some of the people spoke about living in fear and shame and of being ‘marked’ as a result of their identity and past experience. For example, submissions from some IDPs, widows, wives of those who have been disappeared, ex-combatants, disabled, up-country Tamils, and child soldiers shared concerns such as these.

*“Find my husband for me. He was abducted and disappeared five years ago. We have 5 daughters and everybody is looking in a derogatory manner at us.”*

(Woman, FGD on disappearances, Ampara)

*“I do not like to show my disability to other people. When we go to the hospital for treatments, everyone can see it (the disability), we are not disabled by birth, and people look at the limb with disgust, like we are animals. I do not like it.”*

(Disabled soldier, FGD with soldiers, Southern Province)

*“And a whole lot has to be done, I mean even their children at school are referred to in Tamil as ex-combatants’ children. So the tag is there.”*

(Organisational submission, Lay Religious Sectoral Consultations, Colombo)

For many of those who made submissions, the key issue was the failure to know what had happened to family members who had disappeared and the subsequent dismissive, hostile and sometimes callous and cruel responses they had encountered from the State and State officials whilst searching for them (see Chapter IV: OMP, Section 3.1). The very evident distress that people demonstrated during the consultations such as anger, tears, pleas were linked to the current lack of answers, which many believed that an effective and committed investigation by the Government would be able to reveal.

7. Moreover, people described having faced multiplicity of these events and experiences, which have compounded their distress. In many cases, their traumas and losses were not singular: rather, the suffering brought about by enforced disappearances, disabilities, displacements, forced child recruitment, bombings, massacres, and/or other atrocious acts of terror and violence. These experiences were compounded by experience of further acts of violence, subsequent loss of income, their struggle to take care of and to educate their children, and the marginalisation and

stigmatisation stemming from their status in society as well as the increased vulnerability and resultant stresses that accompany these situations.

*“We were affected by the war in 2006, we got displaced and went to Batticaloa and lived there. We had to move from one district to another. After 3 years we came back and lived in the refugee camp in Muttur. After living for another 7 years, we were resettled in our own village. When the new Government took office, all acres of our lands were handed over to us. Later, measures were taken to resettle us in our lands. Our names and information were on those lists. The GS settled us in stages. After 3 months, the GS, the DS, the Commissioner of Lands and police officers all came together and informed us that all these lands are State lands and that we must leave.”*

(Displaced man, Public Meeting, Trincomalee)

8. Those who have been disabled are vulnerable not only in terms of stigma and social marginalisation but also economically as they are unable to work and are dependent on their families (see Chapter VI: Beyond the Four Mechanisms, Section 6.3). They may also be subject to neglect and abuse where the burden of care becomes overwhelming for the family. Some of those making submissions also implied that, for women with disability in situations of care, some were vulnerable to sexual abuse by caregivers. Ex-combatants also reported struggling to come to terms with the loss of social status, prestige and power they had experienced in their former positions; their defeat had left with little options for work and means of re-integrating themselves into society. Some of the ex-combatants expressed their desire for a Government job, recognising that this was a source of prestige in the community.

9. Notably, decades of armed conflict and violence have also impacted severely on the social fabric of community life, and damaged relationships within and across communities.

*“The conflict has left not only individuals but also families, communities and the nation as a whole with deep psychological and social scars, which have left a legacy of mutual mistrust, hostility, and have damaged the social fabric in ways that are not easily repaired.”*

(Organisation, Written submission, Colombo)

10. In the FGDs and public meetings, CTF members and the researchers noted several instances where other community groups were talked about in very negative terms, for example, comments such as *“Tamils are inhumane and cannot be trusted”*, *“the Sinhalese are dogs”*, and *“I hate all Muslims”* were encountered in the course of the consultations by some of those who made submissions. These sentiments were also reiterated in some of the written submissions where the tone was one of resentment, anger and suspicion when talking about communities other than the one that the writer belonged to. Several other submissions however struck an inclusive tone and expressed a desire to move beyond such social dynamics of hate and anger.

11. Some of the submissions also pointed to the breakdown of relationship between the State and some of its citizens as a source of continued stress. They pointed to manifest failures of the State and its institutions to protect those under attack following various incidents of ethnic riots, attacks on religious places of worship, and hate speech. Some of the submissions pointed out that the State itself has been implicated in sanctioning such violence or in providing protection for perpetrators; and has also been a source of violent, discriminatory and repressive practices such as intimidation, harassment, unlawful detentions, arbitrary arrests, and torture in custody. One such submission listed out all the different ways in which the State has been actively involved in damaging its relationship with its own citizens. These were some of the reasons why people lack trust in the State's ability to look after their needs or to protect them as needed.

*“People have been threatened or murdered. Direct interference and meddling by the political and military authorities. State is itself unwilling or unable to carry out investigations and prosecute. Difficulties in protecting victims and witnesses of abuses, difficulties in gathering and protecting evidence. Failure to combat impunity and immunity enjoyed by the perpetrators. State's unwillingness to enforce the rule of law.”*

(Former civil servant, Written submission, Colombo)

*“We live in a predominantly Tamil area. There were no Sinhalese. But at the centre of the village is a police station, there are no Tamil officers. If we go to file an entry from questioning to recording will be done in Sinhala. Without knowing what has been written we may have to put our signature. Even the police officers who know Tamil also write in Sinhala. If we dare to question them, we are sure to end up with further troubles. Showing discrimination language wise will only point to the opposite direction of reconciliation.”*

(Individual, Public Meeting, Eastern Province)

*“The Sri Lankan Government had closed off all the roads and left us to die of hunger. We were left to suffer in coastal areas with no basic amenities.”*

(Man, FGD in Mullaitivu)

*“Years of hostilities, institutionalised prejudices and State complicity in violence of past decades have created deep-seated suspicion and distrust not only amongst Sinhalese, Tamils and Muslims but also towards the Government.”*

(Organisation working with conflict-affected, Written submission, Colombo)

12. The breakdown of the relationship with the State is linked in the submissions to feelings of distrust, fear, hopelessness and cynicism. These feelings were exacerbated for many in the north and east of the country by the continued surveillance that restricts their ability to continue their lives without stress.

*“Members of the CID will sit in on meetings, will call up individuals to ask them questions and will drop by the office of an NGO to find out details about their recent activities. ... The emotional associations of being questioned by the CID coupled with a fear that this surveillance may be used as part of crackdown should the political climate change means that even this comparatively mild form of intimidation is enough to maintain a climate of fear in the north and east of the country...”*

(Group of individuals, Written submission, Western Province)

*“We have been rehabilitated into civil life. I don’t have a criminal offense but they keep on calling for questioning. Once a week we must go and sign. If we miss even one week it becomes a big problem. Many disturbing calls come, asking where are you? Have you married? What are you doing? This and that. I have been released. Then why am I being harassed like this.”*

(Former combatant, FGD, Killinochchi)

13. The different descriptions in the submissions that referred to the psychosocial state of individuals and/or particular groups showed a wide range of strong emotional responses and pervasive distress brought about in response to experiences of conflict and violence.

14. At the same time, many of the oral and written submissions referred to the resilience and strength shown by individuals, families and communities in the face of severe threat, violence and disruptions to life. People reported having drawn on available resources, such as their emotions of hope, determination and even anger, support networks, spiritual faith, love for their children, ideological frameworks, their principles and values, and kindness and help from others, in order to cope with their difficulties and continue with their lives.

15. The CTF notes that these observations are an important consideration for the devising of appropriate psychosocial interventions in the transitional justice process. Since the psychosocial conditions of those affected by war and violence in the past decades of Sri Lanka are complex, the psychosocial approaches and interventions adopted must necessarily also be correspondingly complex, and care must be taken not to undermine the coping mechanisms and resilience of people or reduce the resources and services people have found useful without putting in place appropriate alternative support as needed.

## **1.2. Impacts of Transitional Justice Mechanisms on Psychosocial Wellbeing**

In addition to recommending that consideration be given to the psychosocial impacts of the people’s experiences of violence and conflict in the transitional justice process, some of the submissions also warned that the transitional justice process itself will have considerable psychosocial impacts on the wellbeing of those who participate in the different mechanisms. This

was recognised by several of the individuals and organisations who made submissions, particularly in the sectoral and written submissions.

### 1.2.1. Re-traumatisation

16. Most of these submissions cautioned that the participation in the transitional justice mechanisms is likely to trigger past painful memories and re-traumatise people who have suffered. They therefore called upon those in positions of responsibility to ensure that steps are taken to minimise the risks of re-traumatisation and that people are adequately supported through the process. According to those who made the submissions, re-traumatisation could result in several ways, but is most closely linked with the frequent re-telling of experiences that participation in the mechanisms is likely to demand.

*“There is a real possibility for ‘re-traumatisation’ and an increase in symptoms associated with depression, PTSD, anxiety and sadness of those who participate, because the re-telling of their stories re-activate distressing emotions and memories.”*

(Group submission, Psychosocial Sectoral Consultations, Colombo)

*“All procedures must ensure respect for the emotional needs and comfort levels of victims/witnesses.”*

(Women’s rights organisation, Written submission, Batticaloa)

17. The submission went on to note, that affected persons who did not participate in the process and indeed even those who may not have been directly affected by the conflict may experience *“vicarious traumatisation from hearing about the atrocities done to others.”*

18. According to this and other submissions, re-traumatisation of participants may also occur as a result of the reactions of those to whom they tell their accounts. The submissions note that responses that are indifferent, hostile, derisive or dismissive can exacerbate distress and deepen the disillusionment and sense of betrayal by the State whilst a caring and supportive environment will make the experience more tolerable and perhaps even validating. A number of these submissions go on to state that the public and media responses to their experiences are equally likely to have an impact on their emotional wellbeing, as will the actual outcomes of their cases and how safe and protected they are from possible reprisals and attempts at intimidation for truth-telling or seeking redress.

### 1.2.2. Over-emphasis on healing and forgiveness

19. A few of the submissions also made note of the fact that participants may be distressed, pressured and challenged by a number of assumptions commonly associated with transitional

justice processes but for which there is little empirical evidence, mainly a) that the process is inherently healing and will aid the recovery of affected persons and b) expectations that forgiveness is a given and requisite outcome of the process. Some submissions did indeed stress the need for forgiveness, such as the one below,

*“... we have to forgive those who are involved. Unless we have that forgiving past we will not be developing the future... “We look at it in two ways: one is that the victims have the right to forgive and they should be given the right to forgive. They should be educated how to forgive and their minds have to be made to forgive. Because we have to pass this era and go to a new era...”*

(Organisation, Lay Religious Sectoral Consultations, Colombo)

Other submissions qualified the term of forgiveness with restitutive actions,

*“From the viewpoint of religious leaders, forgiveness is more important. But giving consolation to victims is part of forgiveness. So in this country not only during war but before and after it, and not only in the North and East but outside those; there were injustices. We must forgive and also must give back what they lost.”*

(Organisation, Lay Religious Sectoral Consultations, Colombo)

20. Yet other submissions emphasised that forgiveness is not always possible and indeed must not be expected for some types of violations; most notable amongst these was sexual violence. An organisation working with women survivors of sexual violence from Batticaloa stressed that, *“most women say that they cannot forgive and forget sexual abuse.”*

### **1.2.3. Increase in communal tensions**

21. There was also fear expressed in a number of submissions that the transitional justice process posed a substantive risk of worsening the current tensions and animosity that exists between the communities. This concern was especially strong in a number of submissions in relation to prosecutions and accountability, and many of these felt it would be important either to a) ensure individual and collective preparation or b) explore alternative options such as acknowledgement and a public apology in those cases where prosecutions pose a real risk of aggravating communal disharmony.

*“The divisions and mistrust between and within communities pose a major threat to reconciliation as there is a risk that without appropriate individual and collective preparation, survivors engaging with the inevitably challenging processes for transitional justice will inflame old wounds and hurts rather than heal these.”*

(Organisation, Written submission, Colombo)

*“The compassionate council will be where we wouldn’t press charges. We wouldn’t want conviction especially religious leaders who may have taken part in religious violence because we believe that this will not help social harmony and that (it) may actually aggravate the problem. So if there is a public acknowledgement and accountability a public apology that would be something we would be happy with, and compensation from the State.”*

(Organisation, Lay Religious Sectoral Consultations, Colombo)

22. Taken together, these submissions sounded a cautionary note that expectations and fears of transitional justice must be managed and those who are stakeholders must be helped to keep an informed perspective on what is desirable, what can be reasonably achieved, what sorts of compromises may be reached and what is non-negotiable.

#### **1.2.4. Beneficial psychosocial impacts of transitional justice**

23. Whilst acknowledging the potential for distress that engagement in the transitional justice process is likely to bring, some of the submissions simultaneously noted the potential benefits of the transitional justice: acknowledgement of their experience, accountability of those who committed human rights violations reinforcing a sense of justice, practical measures that relieve suffering and the stresses of deprivation and discrimination, and the subsequent transformation of institutions to prevent recurrence. The submissions also noted that these measures can alleviate sorrow, provide hope for the future and bring a sense of closure to many. Writing to the CTF, a woman based in the USA noted how the consultations process provided her with the opportunity to begin to explore the impact and ramifications of her and her family’s experiences of violence in Sri Lanka over two decades ago.

*“This is the first time I have been able to write about what happened. It is because we were terrorized and victimized to a level that we became numb and hopeless all at the same time.”*

(Individual, Written submission, Diaspora)

24. She continued on to note that the loss and suffering is lifelong. It was pointed out that, even whilst people continue to grieve the losses they have experienced, such losses may acquire additional meaning in the context of a well-delivered transitional justice programme. Despite the potential toll on individual psychosocial wellbeing, a few submissions have noted the evidence for collective social benefits in post-transitional justice societies, such as multiple narratives that enrich the understanding of the conflicts and violence and enhance the feelings of belonging to a country. These submissions suggested that it is best to be cautious about what can be expected from the transitional justice in terms of directly enhancing individual psychosocial wellbeing.

25. Taken in totality, the submissions highlighted the need for psychosocial support and intervention in the course of transitional justice process both in relation to the enduring impacts

of violence and violations as well as to protect psychosocial wellbeing against potential re-traumatisation in the implementation of the mechanisms. The CTF notes that this is the first time in the history of Commissions of Inquiry and other investigations that psychosocial wellbeing of those who have been affected by the violence and of those who may participate in the mechanisms is being considered in Sri Lanka. It welcomes this focus.

### 1.3. Affected Persons, Perpetrators and the Complexities of Labelling

26. Whilst the majority of the submissions emphasised the psychosocial impacts on those who had most directly suffered violence and human rights violations, some of the FGDs, written submissions and sectoral consultations identified those who had engaged in direct combat as another group that required special psychosocial attention. The negative psychosocial impacts on soldiers and former combatants were well recognised by themselves, their submissions and in others' submissions.

27. By referring to the post-traumatic stress resulting from experiencing violence at close quarters, the desperation of severe disability and disfigurements, and the suffering experienced by families of combatants who disappeared after surrendering and by families of soldiers who are missing in action, these submissions made a strong case for the provision of psychosocial support and intervention for these groups of people.

*"We must not be looked at as former militants. We must be considered as equal human beings. We had served our punishment for being militants. Generally, everyone must understand we are also human beings and we fought for our race."*

(FGD, Trincomalee)

*"Now I have no teeth and one hand is disabled. I find it difficult to do any work. Every day is a misery for me."*

(Disabled ex-combatant, FGD in Northern Province)

*"Even within the Tamil community, the integration has not taken place. People still avoid visiting them for various reasons."*

(Organisation working with ex-combatants, Submission at the Lay Religious Sectoral Consultations, Colombo)

28. In reference to their situation in post rehabilitation former cadres, while speaking about lack of economic opportunities, social marginalisation, and fear, also raised mental health concerns. A few mentioned that problems such as stress, alcoholism and mental illness were prevalent among many former cadres. A few who spoke at the consultations also claimed to have attempted suicide. The need for counselling was raised. They were also equally concerned about the non-availability

of immediate medical care for health-related problems arising out of their injuries in the war. Many reported this to be an urgent need.

29. With regards to the armed forces, one officer of high-ranking commented,

*“Some people are still very affected, still very affected. But we do offer psychological services. The families of those MIA need further support.”*

(Commander, Security Forces Sectoral Consultations, Colombo)

30. The psychosocial considerations become an even greater focus when questions of choice, control and agency were brought into the equation. The most pressing issues appeared to be those of forced recruitment, child soldiers and the duty to obey orders. One of the submissions pointed to the issue with great poignancy, noting that the LTTE policy of forced recruitment of one child per family, harsh and violent environments of training camps, severe punishment of those who tried to escape and repressive measures against those families whose children escaped recruitment meant few alternative choices for this group of ex-combatants. Hence the deaths, disabilities and disappearances of those who were forcibly recruited as combatants continue to be a great source of distress to families; they see their children as having suffered multiple forms of victimhood.

*“We were forced into this war. I did not want any part of it.”*

(Disabled ex-combatant, Focus Group Discussions, Mullaitivu)

31. At the same time, some of the submissions called for recognition of the atrocities by the LTTE in the transitional justice process. Whilst many of those submissions concerned with this issue noted that the former combatants had already paid their dues during their rehabilitation process and did not deserve further punishment, some were also of the opinion that it was necessary to hold their chain-of-command leadership responsible through the transitional justice mechanisms.

One of the written submissions from the Northern Province went further, outlining how the repressive culture and violence meant that forcibly recruited combatants had little choice with regards to fighting for the LTTE. It stated,

*“It is absolutely necessary to record violations of Tamil people by militant movements and of the atrocities conducted by these whilst purporting to be the liberators and representatives of Tamil people otherwise incomplete and inaccurate narrative; torture and killing of dissidents, human rights activities, and others who did not follow their narrow nationalistic politics and totalitarian culture, child conscription through forced propaganda in schools, not allowing children to leave of their own volition or upon parent’s requests (except for those of the elite) and through mandatory conscription, violating children’s right of choice and to education, they were not mentally or*

*physically prepared for war and so subject to severe violence and coercion whilst in training camps and later in the battlefield, some killed and many injured sometimes permanently, several had to go through 'severe trauma'. Marginalised section was made to bear a disproportionate share of consequences of armed struggle. We need to recognise the complicity of diaspora Tamils in LTTE violations of Tamil people's and children's freedoms and rights."*

(Individual, Written Submission, Jaffna, Northern Province)

32. Another submission recommended a number of measures particularly to do with agency and participation, with active spearheading roles and initiatives incorporated into the design of the transitional justice process for child conscripts.

33. In the consultations, military forces consistently emphasised their close knowledge of international humanitarian law and that soldiers were trained in respecting it. Moreover, they insisted that soldiers had the right to make their individual choices in the moment on the battlefield, in line with the law.

*"While there is a clear chain of command if it is your battle space you have the discretion to act as you see fit. There are object targets and you have the discretion to say no."*

Officer, Security Forces Sectoral Consultations, Colombo

Nonetheless, in FGDs with disabled soldiers from the Southern Province, a few soldiers mentioned that they were required to follow orders from the chain-of-command and that the situation on the field gave them little space to manoeuvre and circumvent atrocities on the battlefield.

*"You don't know our situation of war there; it was kill or be killed. We had to attack knowing that the LTTE combatants hid their families in the bunkers with them. So now we will be unfairly punished."*

(Disabled soldier, FGD, North Western Province)

*"I accomplished the task assigned to me by the State so I cannot agree to any sort of mechanism where military personnel would be prosecuted for war crimes."*

(Disabled soldier, FGD, Anuradhapura)

34. These statements from soldiers and former combatants suggest that whilst these considerations did not exonerate the culpability and guilt of those who committed atrocities, it was important to recognise that, from a psychosocial perspective, those from perpetrator groups would also like the circumstances of their situations and choices shared in order to be more publicly understood. They suggested the need for the transitional justice process to undertake a public and transparent examination of the context of violence in which atrocities were carried out and to sensitively unpick the issues of culpability and guilt, agency and responsibility, chain of command

and choice and control over one's life and conscience in the context of conflict and political violence in Sri Lanka.

35. Equally, some of the submissions and focus group discussions that examined the impact of the transitional justice process on alleged perpetrators such as soldiers and former combatants suggested that these groups – and their families and communities – were unlikely to remain unaffected. The submissions pointed out that those who were members of the social groups accused of being perpetrators may be discomfited by the truths they encounter, find it difficult to cope with hearing about the horrors others experienced at the hands of their members, and struggle with challenges to the ideological meaning-making that may have helped them cope so far with the difficult situations they have faced, choices they may have made and actions they or those close to them carried out. The FGDs suggest that some members believed they acted in accordance with orders from those in positions of leadership and that any atrocities were a necessary means by which to win the war, and as such it would not be fair to hold (any of) them accountable. Indeed, these set of submissions pointed to the potential demoralising and demonising effects on members of the group that committed atrocities and the accompanying potential inter-community disharmony as justifiable grounds for avoiding any attempt at truth-seeking or accountability, and for focusing instead on the role of reparations, reconciliation and non-recurrence in transitional justice.

36. In all the security forces consultations and in those with the police, there was recognition of the need and value of truth seeking; it appeared that most would welcome an opportunity to represent their versions of events, to share the circumstances and rationale for their actions with a wider public, and to be given an opportunity to demonstrate that they had acted reasonably within their means. An individual writing from Jaffna noted that the transitional justice process should be understood and designed as a *“painful journey towards understanding the motivations of offenders and then to address the pain and suffering.”*

37. Some groups reported feeling pre-judged because of the accusations levelled against them and because the consultations had been conceived as victim-centred, which was predominantly understood as excluding the armed forces. There was also some resistance and resentment because of the belief that the *“justice mechanism is a one-party mechanism”* where only one party would be held accountable. Where members of the security forces were made to understand that the transitional justice process contained both truth seeking and reconciliation aspects and was not solely an exercise in accountability, they were more welcoming and supportive of the initiative.

*“Our superiors addressed us that there will be a number of occasions and opportunity for everybody to tell their story. Airing everybody's grievances is very important.”*

(Officer, Security Forces Sectoral Consultations, Colombo)

38. Additionally, many of the submissions from different parts of the country pointed to the ways that perpetration of atrocities was not solely the province of Sri Lankan security forces and Tamil separatist militants in active combat. Apart from references to several other perpetrators such as diverse paramilitary groups, insurgency groups, and the Indian Peace Keeping Force, references were also made in the submissions to the roles that informers from within the community played in the terror in the South. Similarly, there are references to the roles that neighbours and other community members played in the violence against Malaiyaha Tamils in 1983 and subsequent incidents of violence, and how mobs of civilians and ethnic and religious leaders were the primary perpetrators of violence against minority groups in a number of past and recent riots, whether or not sponsored or sanctioned by the Government. In referring to these actors and the violence they were a part of inflicting, most of these submissions note the lack of accountability for their actions and the protection of the State afforded to these groups. Several of these submissions were in the written form and were accompanied by copies of statements made to the police and to officials in other State administrative offices. Those who made these submissions required not only accountability but also reform of those State services and institutions that have so far neglected to bring these perpetrators to justice.

39. An analysis of these sets of submissions demonstrated three key psychosocial issues. Firstly, that the identification and labelling of people and groups as solely affected persons or perpetrators is not straightforward and hence psychosocial services must be ready to engage both groups. (Also see Chapter II: Reparations, Sections 2.4, 2.5 and 5.3 for a similar discussion). Secondly, there is the need for an acknowledgement of the broader role that individuals and communities, as well as State and non-state entities have played in committing, encouraging and sanctioning violence. This requires a closer examination of the perpetration of violence in the transitional justice process, and the broader population supported to reflect upon this in a way that helps them understand the context of violence in which others operated. Thirdly, from a psychosocial perspective, it is important to consider how to engage those who have committed and sanctioned violence in the transitional justice process, and to do so with a view towards reconciliation and non-recurrence. As was noted in one submission,

*“The more perpetrators acknowledge their actions and the harm they have created, assume responsibility, express regret and apologize, show empathy and concern for the pain and suffering of the victims, and offer money or compensatory action as reparation, the more they help survivors feel safe, affirm their worth, and balance the relationship.”*

(Group submission, Psychosocial Sectoral Consultations, Zone 5)

#### **1.4. Complexity of Psychosocial Considerations for the TJ Process**

40. Several of the submissions to the CTF, whether written or sectoral, at FGDs or public meetings, called for psychosocial support for those who are suffering due to their experiences of the conflict and violence and to mitigate against potential harmful psychosocial impacts of

participation in the transitional justice process. The submissions emphasised the need for provision of psychosocial support to those who engage in the processes and the importance of psychosocially sensitive transitional justice mechanisms, both of which are necessary to protect and promote psychosocial wellbeing of those who engage in the transitional justice process. Moreover, an understanding of the psychosocial responses of individuals and communities to the outcomes of the transitional justice may be necessary in order to be able to manage expectations, allay fears and respond to resistance around issues of transitional justice.

41. Finally, a few of the submissions made the case that all members of some specific groups, if not all people of Sri Lanka, have been psychosocially affected by the events and consequences of the past decades though perhaps not to the same degree. Consequently, they suggest that everybody needs some form of healing from the past, and the opportunity to develop a different mentality.

*“We feel it is important to have a process for healing of memories for everyone – not just trauma counselling. Trauma counselling is thinking of those who are affected. This is important for the entire nation not just those directly affected when we look at things in our day-to-day life.”*

(Organisation, Youth Sectoral submissions, Colombo)

42. In looking at the breadth and scope of psychosocial issues that have been identified from the submissions to the consultations process, it is clear to the CTF that the psychosocial response must be a broad one that is capable of responding to the many dimensions of psychosocial impacts on individuals, families and communities within and outside the proposed transitional justice mechanisms. A single one-fix for all approach will be highly unsuitable. It is therefore important to consider this complexity when designing the guidelines and proposals for psychosocial support to affected individuals and communities before, during and after their participation in the transitional justice and reconciliation mechanisms proposed by the Government. Most importantly, it is imperative that the transitional justice mechanisms are themselves designed to be psychosocially sensitive. Devising the psychosocial means by which to respond to all stakeholders to the process will be of importance to keep the transitional justice process on track.

## **2. Proposals for Psychosocial Services and Support**

43. In recognition of the vast and complex range of psychosocial impacts of the conflict and violence, several of the submissions emphasised the need for psychosocial services and support in the transitional justice process to meet the needs of those affected and proposed several measures for the incorporation, expansion and development of psychosocial services in the process. This was most often expressed in terms of the need for counselling as part of the transitional justice process for those who have been affected by violence but without any further specifications.

However, a number of submissions underlined the importance of designing psychosocially sensitive transitional justice mechanisms.

## 2.1. Measures Suggested in the Submissions for Integrating Psychosocial Support in the Transitional Justice Process

### 2.1.1. Designing psychosocially sensitive transitional justice mechanisms

44. The emphasis in many submissions on preventing re-traumatisation through repeated re-telling of their experiences, for example, underlined the importance of designing the transitional justice mechanisms to be supportive of psychosocial needs of participants and their families. A number of these submissions made recommendations on how psychosocial considerations should shape the design of the transitional justice mechanisms. It is also important to note that only a small percentage of those affected and accessing the mechanisms will need medical, psychiatric or psychological treatment from specialists in those fields, as noted by some of the written submissions. They are not necessarily ‘traumatized’ as in the clinical diagnosis for trauma though they may be suffering and grieving. Many of them have coped for years by finding “*strength and resilience in their community*”, as some submissions have stated. It is necessary not to pathologise their issues but rather to ensure that their problems are redressed and their resilience and support mechanisms are not undermined.

*“For reconciliation, it is necessary to think in a broader way not focussing essentially on problems. Must normalise problems”.*

(Individual, Psychosocial Sectoral submissions, Colombo)

45. The importance of considering the psychosocial needs of children, women and men in each mechanism and in the process of seeking transitional justice was highlighted in various submissions. Some of these submissions acknowledged that the vast majority of those using the mechanisms, especially the OMP, are likely to be women. They also acknowledged that the war has burdened women disproportionately with economic, social, and psychological consequences as they attempt to rebuild their own and their children’s lives. Some of the submissions also pointed to the ways in which men shouldered the consequences of the war and violence, with high rates of deaths, torture and disability, as well as militarisation and militancy that have left them unable to cope with civilian life.

*“The counselling unit should be able to address special needs of children”.*

(Organisation, Written submission, Colombo)

*“Women are victims of all forms of violence and crimes, not solely sexual violence. Overemphasising wartime sexual violence risks ignoring that women suffered mass atrocities (such*

*as arbitrary execution and mass killings, detention and torture, disappearance, eviction, denial of medical treatment for war injury, starvation) apart from rape”.*

(Organisation working with women, Batticaloa)

46. In sum, the submissions outlined different stages of the process where such psychosocial considerations could be protective of wellbeing. This includes, firstly, the stages between the consultations process and the operationalisation of mechanisms. Realistically, there will be a period of time people will have to wait until their grievances are addressed. A few submissions noted that an unduly long time-lag as well as silences about the progress of the mechanisms can only increase the disillusionment and sense of hopelessness and betrayal that many of those making submissions have stated they feel.

*“I can’t take it anymore; I don’t know how much this will be dragged on”*

(Tamil mother at Public Meeting, Mullaitivu)

47. Conversely, one of the points raised in the security forces consultations was that the process of reconciliation should not be rushed at the expense of getting it right. A member of the security forces cautioned, *“This seems rushed. Feeling rushed has to be avoided. If you rush, it could feed nationalism.”*

48. The large number of written and oral submissions that were received during the consultations suggested that, encouraged by the current political circumstances, people have some semblance of hope that their voices will be heard and recommendations taken into account in the design and actual implementation of the mechanisms. It was argued that continued dialogue, consultations and involvement of those affected in the design and operationalisation of mechanisms would help counter their sense of marginalisation or lack of agency. Most importantly however, many of the submissions recognised the actual ‘taking on board’ of the suggestions and ideas recommended by those affected, especially where these have special emotional significance – one example was the terminology used in the Office of Missing Persons Act and in Tamil translations of the Certificates of Absence. The CTF notes that it is important not to lose the opportunity to repair the relationship between citizens and the State, in this instance.

49. Secondly, there was agreement in most submissions to the CTF to the statement made that *“all aspects of design of mechanisms, standard operating procedures, services, recruitment, must include a psychosocial perspective.”* It was suggested by a number of submissions that integrating options and choices where possible into the mechanisms would help those who have been victimised to regain a sense of control and agency, and address the imbalances of power they have experienced.

*“What needs to be stressed is that such a design includes due consideration for the psychological processes that promote individual, family and social healing, recovery and integration. It is*

*important that programmes take into account the wishes of the local population concerned, that they are given active and deciding roles rather than dependent, 'victims' roles, to promote full participation and thus their eventual psychological recovery. Emergent self-help groups and local leadership should be encouraged to resume traditional and habitual patterns of behaviour, re-establish social networks and community functioning at the grass root level. Local skills and resources must be utilised so the community gains a sense of accomplishment and fulfilment in the recovery process."*

(Individual written submission, Psychosocial Sectoral Consultations, Jaffna)

50. Explanations on how a mechanism can be psychosocially sensitive were given in some submissions:

*"When designing a mechanism, targeting and assessing needs has to be done sensitively in order to minimise risks of favouring one individual or group over another."*

(Group submission, Psychosocial Sectoral Consultations, Colombo)

*"For groups that may be stigmatised or at-risk, such as women, families of the missing and children, it is advisable to use 'Opt-in', not 'Opt-out' approaches to out-reach. The increased fear of discovery, loss of social supports with relocation, and social stigma may lead a victim to choose to not partake in the truth commission. An opt-out approach may increase feelings of guilt, however, the opt-in system would be that people can opt-in only while the mechanism is active, or there is a need, even if they are not in a position to do so."*

(Group submission, Written submission, Batticaloa)

51. One submission pointed out that learning more about the special psychosocial needs required and what is expected of such services from those affected, could be a starting point.

*"Psychosocial wellbeing is a complex dynamic concept, it means different things to different people with the changing context. So the first thing we would like to do is conduct mapping studies to better understand the local connotations of psychosocial needs in reconciliation."*

(Organisation, Psychosocial Sectoral Submission, Colombo)

52. Thirdly, submissions noted the importance of preparing all stakeholders to participate in the transitional justice process. They identified the various ways in which participants, whether affected persons, witnesses or family members, should be prepared, including knowing how to access mechanisms, the options that would be available to them and the choices they would need to make, the benefits and risks involved in participation, and what to expect as possible outcomes. One submission noted that this could be done through affected person groups at community level while another suggested that those organisations currently working with affected persons could collaborate with existing State and non-governmental organisations. However, there was also

acknowledgement that all sections of the population needed better information on the transitional justice process.

*“Reconciliation will proceed faster and better if Sinhala population does not feel threatened by the news or suspect it is a pathway to separatism. Good outreach programme, reconciliation must not be seen as a sacrifice.”*

(Individual, Written submission, Diaspora)

53. Talking about this issue, soldiers in the FGDs from the North Central Province (NCP) noted that the lack of awareness about the reconciliation aspect of the transitional justice mechanisms and the distorted information available through the media has built up mistrust amongst military families about the reconciliation process (see Chapter VI: Beyond the Four Mechanisms, Section 3.2). The submissions noted the importance of providing a detailed picture of what is entailed in the transitional justice process to the public, including military families and others who may be stakeholders in the process.

54. Equally importantly, another submission argued that, *“more victims need help to be proactive.”* “There was special reference to children in one submission:

*“For children, research and outreach must be conducted with special care to prevent re-victimising children or exposing them to traumatic information that they are unable to process.”*

(Organisation, Psychosocial Sectoral Consultations, Colombo)

55. Furthermore, many submissions noted that staff at the mechanisms must explain to participants what the process entails and its possible outcomes before they begin their engagement with the mechanism. They stated that this would enable people to make informed choices, help them manage their expectations and be psychosocially ready to engage in the process.

56. Once participants are engaged in the process, there are several ways in which psychosocial support could be made available to them, as identified by several submissions. One submission noted that the participants would begin their engagement with the transitional justice mechanism with a mixture of emotions such as hope, anxiety, fear, worry, and uncertainty regarding the outcome of their engagement. Other submissions also pointed to a myriad of roller-coaster emotions that may accompany people during the whole period of their engagement, through which they will need psychosocial support. Making the point strongly, one submission from an organisation that regularly supports affected persons in similar processes noted that *“the demands (of such processes) on their emotional and social resources can leave families and individuals exhausted and vulnerable, their coping mechanisms depleted.”*

57. These submissions therefore recommend to the CTF that the design of the transitional justice mechanisms allow for persons engaging in the mechanism to be accompanied while using services at the mechanisms; psychosocial practitioners, community volunteers, or befrienders could do accompaniment. Such accompanying persons would be responsible for physically being there through the process, intervening when things go wrong or if the affected are particularly distressed, exploring and discussing options of what is best together and preparing people for the next steps. This was seen as especially important in relation to persons affected by sexual violence. Other suggestions included allowing for the strategic use of in-camera recordings to avoid repeated telling of experiences, incorporating processes that ensure seamless transitions from one mechanism to the other where necessary, and equipping staff at the mechanisms with information on referrals and provision of psychosocial support, that they are required to pass on to participants as needed.

58. Finally, many submissions noted that those affected by war and violence will continue to need psychosocial support services post-transitional justice and they recommended that such service be made both available and sustainable.

*“In our experience people who have experienced layers upon layers of trauma from displacement, from loss of family members, from the Tsunami, from various things, once they come before a process of some sort of reconciliation mechanism or truth seeking mechanism, it would trigger memories of incidents by the fact that they will have to repeatedly state things that have happened over and over again. Once the trigger begins people descend into a state where they do need additional care and what we are proposing is that there be some kind of established mechanism through the State that would provide this sort of support. Once the people go home back to their communities they will access counselling systems through the Divisional Secretariats or the Medical Officers for Mental Health through the hospitals, where appropriate.”*

(Organisation, Psychosocial Sectoral Consultations, Colombo)

59. Many of the submissions recognised that reconciliation and transitional justice processes are prolonged affairs, taking years to reach conclusions in many cases and the fall-outs of which may affect individuals, families and communities for some period to come. It was recognised that people will need support over this period of time, and some for the course of all their lifetimes, or at different times of their lives. Submissions from the sector agreed that the psychosocial sector must be prepared to deal with this longevity, both in terms of human resources, the skills-set and sensitivities, and the structures for delivery of service.

*“I feel that if you are looking at it at a long term perspective and certainly you have to for this kind of mental health issues. You cannot take a short-term approach to it.*

(Organisational representative, Psychosocial Sectoral Submissions, Colombo)

60. Some submissions mentioned psychosocial needs that will cross generations, as the children of those affected are also likely to continue to need psychosocial support at various points in their lives. Other submissions pointed to the risks of participation that may continue to endanger the wellbeing of those who have come forward; some refer the stigma that is associated with the situation for example, persons affected by sexual violence, widows, and wives of the missing. Acknowledging the possibility of such stigmatisation, one submission stated baldly,

*“It will be important to ensure that the participants who choose to take part in the process, are not stigmatised further (e.g. wives of missing persons seen as bringing bad luck).”*

(Organisation, Written submission, Batticaloa)

61. Other forms of follow-up activities that would protect psychosocial wellbeing of participants were also recommended in some of the submissions. These included receiving updates and definitive information on the progress and outcomes of their case and having access to reports and other information related to the mechanism and its work. One submission, speaking of the role of such information in the Judicial Mechanism with Special Counsel, highlighted the importance that participants do not feel abandoned.

*“Witnesses who receive no post-trial follow-up or information often report feeling ‘abandoned’ and have a more negative overall view of their testimony experience”.*

(Organisation, Written submission, Colombo)

### **2.1.2. Psychosocial services and units within mechanisms**

62. Many of the written submissions pointed to the need to establish psychosocial services accessible within the mechanism, most commonly in the form of a psychosocial unit.

*“Psychosocial support and services should be prioritised in all mechanisms and be readily accessible to those who need it.”*

(Organisation, Written submission, Batticaloa)

*“The OMP shall have a psychosocial unit and should provide psychosocial support.”*

(Organisation, Written submission, Western Province)

*“The truth commission should make appropriate psychological or emotional support services readily accessible to victims.”*

(Organisation, Written submission, Western Province)

*“The core of the special courts should include psychosocial experts. Witnesses must be provided protection from reprisals as well as support services such as psychosocial counselling and advice.”*

(Organisation, Written submission, Western Province)

63. The submissions suggested a variety of functions for this proposed unit. These included direct provision of psychosocial services such as counselling to those who participate in the mechanism, referrals to specialist and follow-up services and coordinating of psychosocial services. Other submissions suggested that the staff of the psychosocial unit be responsible for making the design and implementation of services at the mechanism psychosocially sensitive and providing psychosocial sensitisation training to staff and members of the mechanism. One submission noted that the staff at the psychosocial unit must be present during the sessions held by the mechanism and should be able to intervene on behalf of those making representations or otherwise using services. The submission stated,

*“The staff at the unit will be capable of assessing the level of stress of the persons using the mechanisms. They will be responsible for ensuring that affected people are not further distressed while at the mechanism. They can recommend that a session be halted, for the person to take a break, and/or the session resumed at a later date.”*

(Organisation, Written submission, Colombo)

### **2.1.3. A psychosocial institute/authority**

64. Some of the written submissions from the psychosocial sectoral consultations recommended an independent psychosocial authority or institute or some other “autonomous support system”. According to these submissions, its main function would be to set up the minimum standards for standard operating procedures with regards to psychosocial issues in all the mechanisms and helping in the design of psychosocially sensitive mechanisms. They also suggested that the institute would be responsible for ensuring a coordinated delivery of services across the State and non-state psychosocial sectors and for overseeing the psychosocial sensitivity of all mechanisms, ensuring that these are responsive to the needs and specific circumstances of those who participate in the mechanisms.

### **2.1.4. General strengthening of the existing State and non-governmental psychosocial services**

65. Many of the submissions that discussed in greater detail the need to provide services to psychosocially affected individuals and communities emphasised that these services need to be made available through State and non-governmental services. These submissions cite different benefits of placing services in these two sectors.

*“We believe that the State and the NGO sectors are equally important.”*

(Organisation, Psychosocial Sectoral Consultations, Colombo)

*“Given the lack of psychosocial Government services and mistrust towards Government institutions, the role of NGOs working on mental health and psychosocial services to complement and mediate between traumatised individuals and communities and State and non-state service providers become essential.”*

(Organisation, Written submission, Colombo)

*“Because NGOs rely on donor funding which is unreliable, it is very important to concurrently ramp up the support to the State sector as well because eventually we have to have that service available everywhere in the country with the State sector for free.”*

(Organisation, Psychosocial Sectoral consultations, Colombo)

66. These submissions wanted existing mental health and psychosocial services in the State and non-state sectors to be strengthened so that they could continue to play a role in supporting people who are affected by war and violence. Some submissions made the point that the existing psychosocial sector must also engage with the mechanisms. For example, organisations already providing psychosocial support to persons affected by conflict and violence can assist those who are interested in presenting at a mechanism by providing them with relevant information and the various options for participating, accompanying them to, and throughout their engagement with, the mechanism, or with subsequent mechanisms as the person or family wishes. These submissions suggested that the service providers would already be working in or close to the locations where the mechanisms and regional offices would be established so that access to their services is easy.

#### **2.1.5. Extension of services of the psychosocial sector**

67. Other submissions noted that psychosocial services must be extended further to meet the complex needs of those affected and to help ensure reconciliation and non-recurrence.

*“A fairly large number of people have suffered in the last two and half decades. There must be psychosocial practitioners throughout the country. American soldiers who came back from Vietnam – their children suffered for a considerable time. Till about early 90s, though it was an issue in the 60s. The programmes continued for the Americans. That’s why we in Sri Lanka also need to continue these programmes for soldiers, their families, and for others who have been traumatised.”*

(Commander, Security Forces consultations, Colombo)

68. In these submissions, extension of the sector referred to both the geographical coverage and wider accessibility of psychosocial services as well as the development of psychosocial services to meet specific needs of those affected. One submission noted that such extensions should correspond to where need is greatest or where there are few services available in relation to existing need but noted that there was lack of funding available to extend the services as necessary.

*“Another obstacle to proper implementation of the transitional justice process is the serious lack of State and non-state psychosocial services addressing trauma. Even with the Government of Sri Lanka’s National Mental Health Policy 2005 -2015 implemented, the various services are vastly under-resourced, especially in heavily war-affected north and east of the country.”*

(Organisation working with violence-affected people, Written submission)

69. It was also pointed out that the range of services presently available is not able to technically meet all the psychosocial needs of persons affected by violence and conflict.

*“But we believe that the counsellors and Medical Officers for Mental Health need special training because the nature of these types of traumas that they have gone through requires a set of skills that they don’t currently have.”*

(Organisation, Psychosocial Sectoral Consultations, Colombo)

70. One submission suggested collaborations with national and local bodies in order to extend the services. It referred to initiatives such as one currently with the Office for National Unity and Reconciliation where a nationwide psychosocial training for various workers is being planned. Another submission also welcomed initiatives currently being taken by Office for National Unity and Reconciliation (ONUR) to extend psychosocial support to communities and individuals that are in need of such care. It asserted that such programmes should be established in order to reach out to the affected throughout the country.

#### **2.1.6. Mainstreaming of psychosocial services into existing structures**

71. Another way in which psychosocial support could be provided to those affected by war and violence, according to a number of submissions, is to integrate psychosocial services into existing structures and services such as education, healthcare and social services. Some of these submissions argued that this would help towards ensuring the sustainability of psychosocial services. Two of the submissions recommended specific interventions that could be incorporated into the healthcare system; one comprised the establishment of a psychosocial unit at the health department that would have a strong training component to build capacities of medical and non-medical healthcare practitioners across the country.

72. One submission cautioned that the healthcare system should not be the sole or primary actor in the delivery of care, especially to people who have disabilities, as their needs are complex and mostly community-based. This submission also pointed to the psychosocial and medical needs of people with disabilities as an arena for piloting reconciliation measures. The focus would be on improving the general standards of service, including psychosocial support, social welfare and

medical care, for all those who have disabilities, regardless of whether these are due to war and violence or not.

73. Speaking of the way in which artists and those who do cultural programmes may need assistance from psychosocial practitioners to better understand trauma, and of one particular incidence of cultural exchange programme between students, one artist emphasised,

*“We need support in the psychosocial area, very few experts in the country who can deal with trauma healing. Need to invest in building capacities of psychosocial health workers who can work with these programmes. If we ever do a programme of this nature again, we need a counsellor with us, and this person needs to be involved in the design... traumatic experiences are difficult to take out, process, understand and relate to. Need a lot of thinking and also learning.”*

(Group, Artists Sectoral Consultations, Colombo)

## **2.2. Psychosocial Services Required in the Transitional Justice Process**

### **2.2.1. Provision of counselling services**

74. In the submissions to the CTF, one of the most frequently mentioned forms of support required for those participating in the mechanisms and those affected by the history of conflict and violence in Sri Lanka is skilled counselling. The submissions stated that counselling was necessary to help people to heal and to cope with their grief.

*“Counselling is needed to heal their mental scars.”*

(Individual, FGD, North Western Province)

*“Counselling must be provided to rebuild their minds.”*

(Individual, Written submission, Jaffna)

75. Some of those who made oral submissions however caution against the use of counselling as the primary form of psychosocial support, noting instead how ensuring that the transitional justice meet other needs – such as the truth, reparative measures, memorialisation, justice and accountability, and governance reforms – would help to address their suffering and contribute to their psychosocial wellbeing. This view was reflected by a woman at a public meeting in the Northern Province who said, “just because I am crying doesn’t mean I need counselling.” Similarly, another said that it was more important to focus on the transitional justice response to their issues rather than on attempts to prevent and manage her distress.

76. These recommendations are in line with other submissions that note whilst counselling services must be offered to those affected by war and violence, only a smaller proportion of those

affected would need specialist technical assistance such as clinical support, psychiatric intervention or trauma counselling.

### 2.2.2. Provision of psychosocial rehabilitation services

77. The need for psychosocial rehabilitation for those traumatised by the war, both civilians and those who had faced active combat, was recognised in several submissions, with one written submission making a strong and detailed case for it. This submission recommends how a psychosocial rehabilitation program needs to be designed and what factors need to be taken into consideration in the design of such a programme. It states that:

*“The goal of psychosocial rehabilitation and national reconciliation would be to rebuild the interdependent, community bridges that were once there between the ethnic groups. Rehabilitation programmes should include education, vocational training, income generating projects, loans and housing that is tailored to the needs of the survivors and post war situation. Close liaison, co-operation, collaboration and networking with Governmental and NGO’s involved in relief, rehabilitation, reconstruction and development work will be very productive.”*

(Individual, Written submission, Vavuniya)

78. One such submission, whilst talking of the complexity of the situation for children who were armed and made into perpetrators, noted that – from a psychosocial perspective – it would be far more effective to:

*“Look for the little things to support, (and) make it simple.”*

(Practitioner, Psychosocial Sectoral Consultations, Colombo)

79. Some of the submissions reiterated this point pointing to a large number of activities and opportunities that would help improve and protect the psychosocial wellbeing of those affected. These included spaces to relax especially for the women, group work and group support, and chances to engage in creative work and activities. One submission also highlighted the importance of psychosocial education to improve understanding and acceptance of psychosocial impacts and issues.

80. The holistic nature of the psychosocial rehabilitation programme proposed was supported by the participants in the FGD that took place in the Northern Province. The participants who were ex-combatants expressed the need for holistic rehabilitation programmes for them to re-integrate with their families and society. They were dissatisfied with the rehabilitation they had received. They said that it did not address their psychological trauma nor did it prepare for their re-integration with society through appropriate education, training and job opportunities. At the FGD, an ex-combatant leader said:

*“Society did not care for them when they were released.”*  
(FGD on ex-combatants, Mullaitivu)

81. A detailed and long-term process was outlined in the sectoral submission that focused on the rehabilitation and reintegration of the civil defence forces instituted at the village level in the course of the war. The submission referred to the gradual deployment of these forces in civilian activities and the different strategic ways in which reconciliation and rehabilitation were attempted. This submission also highlighted the long-term view that was required and emphasised the need for a supportive non-judgmental approach to rehabilitation.

### **2.2.3. Working to reduce stigma and marginalisation of some groups**

82. Another key area where those affected would require psychosocial support is dealing with stigma, ostracism and marginalisation, as noted by some of the submissions. Many of the those who have suffered various consequences of war are also equally impacted by the subsequent stigmatisation of their situation, such as children and wives of those who have disappeared or are missing, children of ex-combatants, people with disabilities and their families, displaced families, widows, survivors of sexual violence and their family members, families where there is no male parent present, sex workers and their children, and people with LGBTQ orientations. One such submission highlighted the seriousness of stigmatisation as follows:

*“In Sri Lanka, chastity and purity is often linked to the marriageability and social standing of women. A woman who has lost her virginity, even without her consent, loses her access to marriage and thus economic stability. For a married woman, identification as a victim is likely to humiliate and de-masculinise her husband and stigmatize her children. The entire family faces serious consequences and may abandon the victim.”*

(Organisation, Written submission, Colombo)

83. The submissions called upon psychosocial practitioners to work alongside these individuals and families to support them through such psychosocial impacts and, equally, to challenge attitudes and actions, advocate on behalf of those who are stigmatised and change prevailing perceptions about these groups.

### **2.2.4. Building on existing cultural and social resources**

84. One submission recommended that “local supportive and healing resources - people, activities, organisations - have to be identified and built on in order to avoid imposing mechanisms from above and from outside of communities. It noted that such local healing resources may include local networks of affected people who comfort each other and organise activities such as

commemorative events, religious and community leaders, or traditional practitioners, referring to evidence that people in Sri Lanka resort to a wide array of practices and healers to seek relief for physical and mental suffering. These range from allopathic practitioners prescribing drugs, monks chanting pirith and priests conducting pujas to oracles 'speaking truth', mantravadis performing acts of healing and sorcery, and ritual practitioners organising large-scale appeasement rituals.

85. At the same time, some submissions cautioned against an indiscriminate and un-vetted promotion of community-based healing practices, noting that these are not devoid of power relations, may often reinforce inequalities and in some cases may be exploitative of some individuals or groups of people. They note that in some cases, some of the practices may be discriminatory with regard to gender, caste or social status. Hence, these submissions recommended that vulnerable groups have to be consulted and assessment of their suitability for transitional justice mechanisms done rather than indiscriminately promoting local healing resources.

86. Another aspect of community and social resources that would require attention was inter-community work, according to some of the submissions that identified this as another psychosocial activity. These submissions argued that building community relationships must include a focus on the emotional and psychological aspect of the conflict, if they are to effectively lead to conflict transformation and reconciliation.

#### **2.2.5. Sensitising the media**

*“When media representatives debate and argue about the modalities of transitional justice mechanisms, or make pronouncements about the facts of the conflict, they must remember that their public statements and publications will have an immediate impact on the emotional status of individuals and families that have suffered directly. Media personnel must be sensitive in how they convey or represent views that are related to issues such as the fate of missing persons, atrocities committed or judgements about culpability.”*

(Group, Written submission, Colombo)

87. A number of submissions recognise the role that the media can play in triggering distress for those who have been affected by war and violence and heighten the risk of their re-traumatisation. In its strongly worded statement, the particular submission quoted above, highlighted the ways in which media reporting of the transitional justice process and the specific incidents that are brought to light can impact on the psychosocial wellbeing of individuals and groups and made recommendations on how the media can demonstrate sensitivity towards the affected and perpetrators in its reporting.

88. It also mentioned the need to be sensitive to the fact that different groups may receive the same news differently, and that a balanced and fair representation of events and their impacts must

be incorporated into media reporting. One of the main criticisms of the media made in the sectoral consultations was that it provided different perspectives of the same event in accordance to the prevailing views and prejudices of its circulation. They pointed to a number of incidents where this was the case, even an instance the Sinhala and Tamil versions of the same newspaper issued differing viewpoints of the same incidents. Further, one of the submissions stated how labelling and stigmatizing certain groups or individuals by the media can also cause unnecessary harm.

89. Highlighting the way that media reporting can threaten individual and family safety, another statement noted:

*“Bringing individual cases into the limelight can have negative repercussions – in terms of physical safety, emotional toll etc. This may create or revive expectations on part of other families, resurfacing of memories; cause disruption of existing coping mechanisms, and disrupt family relations. Therefore, great care must be taken not to provide personal details of participants or to misrepresent or homogenise people’s experiences. This can impact them at different levels – individual, family, community etc.”*

(Group, Written submission, Colombo)

90. Recognising this issue, a few of the submissions recommended that a psychosocially sensitive transitional justice process would also involve issuing guidelines for the media and provide them with the necessary competencies to protect the psychosocial wellbeing of individuals, families and communities.

### 2.3. Staffing

91. A number of written and sectoral submissions called for psychosocially sensitised staff at the mechanisms, stating that those who access the mechanisms must feel comfortable, safe and secure, and that they should not be subjected to actions that re-traumatise them. However, some submissions highlighted a number of additional qualities that they saw as important for the protection of psychosocial wellbeing of participants and which should be present in all practitioners who provided participants with psychosocial services regardless of whether this is within, or without, the mechanisms.

92. Nonetheless, the most important consideration for staff, as noted by many of the submissions, was that the staff member must be able to communicate to the participant in the language of her/his choice. Equally importantly, it was recognised in many submissions that the gender of the staff mattered: having women staff members was seen as crucial to making sure that participants feel comfortable and safe, especially for women whose past experiences include sexual violence or harassment.

### 2.3.1. Psychosocial support personnel

93. Noting that the most important aspect of psychosocial support was not the particular approach used but the qualities of the person providing the services, one submission stated,

*“... the recognition that the essential ingredients and tools for care resides in the person of the psychosocial practitioner – whether in clinical or community approaches.”*

(Individual, Psychosocial Sectoral Consultations, Colombo)

*“Families should be offered psychological assistance either via the above support mechanism or separate referrals given to psychologists who would meet these families on a pro bono basis. Persons providing services in particular psychological or medical services should be academically and professionally qualified or have equivalent competences and work under the supervision of qualified and regular supervisors.”*

(Group working with families affected by conflict, Written submission)

94. In many of the submissions to the CTF, the importance of the “demeanour and competence” of the staff that people will encounter in the transitional justice mechanisms was recognised. Their qualities as human beings were described as significantly important. Those submissions that focused on the qualities of psychosocial personnel variously noted that psychosocial service providers should have:

- Sensitivity to the political context of cases. The former apolitical, political or current position of psychosocial support practitioners may no longer be suitable in some of the situations. They must not push their own agendas – political or personal or of vested interests – onto the people they serve. They must remain neutral and be in a position to exercise that neutrality. Moreover, they must be acceptable to the families.
- The necessary training to deal sensitively with persons who use their services and to recognise the need for continued supervision.
- The ability to guard their own wellbeing so that they can deliver effective service to those who need them.
- Experience working with the affected, their families and communities or be supervised by those who do whilst they gain such experience.
- The ability to maintain a supportive therapeutic relationship with the user of the mechanism.

95. One submission at the psychosocial sectoral consultation added that the psychosocial service providers must be passionate and committed to their work – not simply graduates. Recognising the potential impact on the wellbeing of the service provider as a result of listening to and supporting the affected, this submission also identified the need to regularly check whether staff are getting burnt out and to give them some time off, if that is the case.

### **2.3.2. Staff of the transitional justice mechanisms**

96. Many of the submissions to the CTF also pointed out that psychosocial training is required for the staff of the transitional justice mechanisms, whether these staff are administrative or technical personnel. In addition, it was noted in a number of submissions that important psychosocial considerations for staff include that the staff members are gender-sensitive and can communicate to those who use the services in their own language. Several submissions also noted that women participants would feel more secure with women staff members, especially where their experiences and accounts involve sexual harassment or sexual violence.

### **2.3.3. Commissioners and advisors**

97. Although Commissioners and Advisors may not always find themselves in direct contact with the affected, a few of the submissions pointed out that they need to be sensitised to the psychosocial vulnerabilities of those using the services of these offices and able to support appropriately the design and implementation of these services.

## **2.4. Location of Mechanisms and the Facilities Available at Mechanisms**

98. Many submissions recommended district-based services and not mechanism-based services. By this, it is understood that services should be easily accessible to the affected. The choice of locations may depend on where most affected persons are based. Some submissions described the process and justification of accessing the district-based services as a means to long term sustainable support:

*“Ultimately I think it is about referral. I think what we were imagining is also that there will be a series of referral processes where either they were given some kind of a leaflet which provided the care available in their district or something like that because I don’t think it is necessary at that moment when they are in Colombo at a particular institution but more likely when they go home that they will have the need for some kind of long time care”.*

(Individual, Psychosocial Sectoral Consultations, Colombo)

## **2.5. Enabling a Conducive Environment for Sharing Experiences**

99. The environment in which representations are made to the transitional justice mechanisms is also considered important in some submissions. For example, it was mentioned that the environment must be conducive for sharing experiences and that people need to feel safe and comfortable before they are ready to talk about their experiences and their distress. One submission also noted the importance of this for the provision of psychosocial and other related services. Other

submissions mentioned the availability of childcare facilities within the offices, as these help women in particular to access the mechanisms.

### **3. Principles for the Psychosocial Sector**

100. One submission outlined the following principles to guide the design and delivery of psychosocial services:

- Psychosocial considerations in the transitional justice mechanisms and in the delivery of services must focus on the concept of ‘Do No Harm’ to prevent re-traumatising participants or putting the lives and wellbeing of the participants and their families at risk.
- Psychosocial support and services must remain focused on the best interests of the participant and the persons and families who are using their services. It must not be a means of advancing a particular political purpose or philosophy over the ethical principle of neutrality and support.
- The transitional justice process must be supportive of recovery and of protecting the wellbeing of those who participate in the mechanisms.
- One of the most protective elements of psychological wellbeing is predictability – having a sense of knowing what may happen and what to expect. Another is having a sense of control over what happens to oneself. Experiences of conflict and violence destabilise and damage these. A transitional justice process, mechanisms and related services such as psychosocial support and security measures that are mindful of these aspects can contribute to addressing the imbalance.
- The transitional justice mechanisms and any related services must provide an environment that is calm, respectful of human dignity and afford a level of privacy to participants and their families.
- The transitional justice mechanisms must place paramount importance on the safety and protection of participants and their families.
- Psychosocial services and support must focus on strengthening the social support and connectedness available to participants and their families.
- A proportion of those in distress will need focused or specialised services. Access to these services must be made available to these individuals and their families.
- People use a wide variety of methods to take care of their wellbeing including cultural and social, spiritual and religious, professional and informal resources in order to do so. It is important not to over-emphasise one means of supporting wellbeing over another, whilst being cautious about promoting gender- or caste-discriminatory cultural practices.

### **4. Special Psychosocial Considerations for Women, Children and Men**

101. In many of the oral and written submissions submitted to the CTF, special references are made regarding the psychosocial impacts of violence and conflict on women and children.

Women's horrific experiences have been described at length. A large majority of those who came before the CTF were women, and their accounts reveal the extent to which women have disproportionately borne the brunt of the social, economic, and psychosocial consequences of disappearances, displacements and disabilities.

102. Women with missing daughters, sons and husbands from the North and East, wives of disappeared fishermen from the South, and wives, sisters and daughters of men abducted during the 88/89 insurrections, and wives of missing in action (MIA) servicemen spoke of the isolation, vulnerability, lack of physical and financial security, and social stigma they have faced over time. Women affected by the war, especially in the North and East described how they suffered compounded effects of displacement, land loss, disappearance, injury, and loss of loved ones. The psychosocial toll of these experiences on their wellbeing and the wellbeing of their children were shared during the consultations.

*“My people are on the road searching for their loved ones. I travel on the cycle tears streaming down, sometimes I don't know where I am going.”*

(Tamil Woman, Public Meeting, Kilinochchi)

*“My brother was disappeared. My mother was distraught and died sick from worrying about it. He disappeared in '89. He was the only one who could get us out of poverty... What did we do, for them to make us suffer so much? They abducted one person. But my mother died of grief. My father died from grief. They destroyed our whole family. It amounted to killing us all.”*

(Sinhalese woman, FGD on the Disappeared, Western Province)

#### 4.1. Experiences of Sexual Harassment

103. Women who made submissions repeatedly emphasised the difficulties caused by such sexual harassment in their everyday lives. A wife from Anuradhapura whose husband is a navy officer currently missing in action shared her experience of going to the Grama Sevaka to collect a letter stating that she had not re-married; he had said that he would bring the letter to her house late in the evening.

*“In the search for my husband, I have only my life and honour left intact. All the rest I have lost. They called me for questioning to the Joseph Camp, and I went with my sister-in-law. That was to a hotel. As those who had complained to the Police will be caught, they questioned us individually inside closed rooms. They had taken away my phone too. Shaken and scared, I wrote ‘good van’ (nalle in Tamil) instead of ‘white van’ (wellai in Tamil) and came off. At the same speed we came, we paid for the lodge and returned by bus. They sold our phones, got drunk and danced on the road. We have no trust Sir. We have no trust.”*

(Tamil woman, FGD on Disappeared, Trincomalee)

*“I lost my son in 1991 and my other son was caught in 2007. On 2006/8/4 my Father and younger sister were martyred at the same time. Now I’m a lone tree. I’m being harassed both by the Army and Navy. There are more like me.”*

(Tamil Mother, FGD on Disappearances, Batticaloa)

#### **4.2. Increase of Economic Burdens on Women**

104. The submissions further revealed how enforced disappearances produce both immediate and long-term economic effects. Women from the North whose husbands had recently disappeared described how it sent them spiralling into poverty.

*“On 10.11.85 my younger brother was caught. Another younger brother along with 2 other women was taken in 83...Those 2 females were killed and dumped naked. My brother was shot and killed and dumped at 10<sup>th</sup> Verugal. We brought his body and buried it. We don’t know the plight of the other brother. I was the one who brought up both my brothers. I want my missing brother to be found. I don’t have any income. If both my brothers had been there, they would have cared for me.*

(Sister of disappeared, Public Meeting, Trincomalee)

105. Many of the women stated that their lack of security was also due to the fact that their experience depleted their support networks. The isolation they faced and the support that they anticipated was not available in their family networks which were also stretched due to poverty and stigma. Women shared the vulnerabilities they faced within their own families, as in-laws and extended family members tried to take advantage of them. A Sinhalese participant from Kandy stated that after her husband’s disappearance, his relatives told her that her husband had taken loans from them, and asked her to repay these debts. A Tamil participant from Kandy whose husband was abducted in a white van described how hard it was to recover the money that people owed him, because they refused to pay her back, charging that her husband must be part of the LTTE if he had disappeared. Female ex-combatants spoke of the additional vulnerabilities they faced in gaining support from their families and communities. Such accounts show gendered impacts are compounded for minority women who reside in multi-ethnic communities and face additional discrimination based on their ethnicity.

106. Wives of missing soldiers also spoke of how conflicts had arisen between them and their husband’s parents and siblings over the distribution of salaries. Wives of the missing from 88/89 described how at first they faced allegations from in-laws that they would immediately remarry, and later, were blamed by neighbours and relatives for not remarrying. Some, who had remarried, found that they were abandoned after their new husbands took away the compensation they received.

*“We get proposals, but we can’t agree to them. When we become widows, it is a big burden on our parents. When our husbands were disappeared, it was not for us that we lived all this time. It is psychologically very difficult to continue living our lives without gaining a bad reputation. Let’s say we go and tell someone about our suffering; those people also try to take advantage of us. The police did a lot of these things. It was very difficult. Lots of family problems emerged. These knots only tightened. They didn’t loosen.”*

(Woman, FGD on Disappearances, Kandy)

#### **4.3. Social Stigmatisation and Marginalisation**

107. Compounding these effects of loss, wives of disappeared men, both from the Bheeshanaya period and the war, described the difficulties they faced of raising children alone. Due to the social stigma attached to the fact of 'not having a father', the wife of a missing officer shared how her son does not tell the truth about him and always says that his father is abroad. She described how she and her son lived isolated from the society to avoid undue attention from men. She also shared, in great detail, her loneliness and psychological struggles that have resulted from her loss and isolation. Like her, many other women described the trauma and psychological struggles they have endured.

#### **4.4. Vulnerabilities of Children**

108. It was also recognised in the submissions that children are the most vulnerable group in this respect and appropriate psychosocial measures should be taken to help them assimilate into society despite the trauma and stigma tied to their plight. Issues specific to children include underage recruitment and gross human rights violations that were committed by the LTTE against them. As one submission made to the CTF states, these have resulted in *“children going missing, children engaging in armed conflict and getting injured, children being encouraged and forced to commit human rights violations, and children killed in combat”*, leaving them with *“deep psychological impacts, physical disabilities and challenges in earning a livelihood and re-integrating into the society.”*

109. One of the main challenges in designing each transitional justice process would be to ensure that these acts do not recur and that appropriate and meaningful psychosocial support is provided for former child soldiers and their families, as these children and youth (now adults) come to terms with their past and integrate back into society. It was also pointed out that in doing so, their *“agency and participation”* should be sought when designing and implementing solutions for them and emphasis for the society in which they live to understand, accept and normalise their situation.

110. A significant number of women, particularly wives of young men abducted during the Bheeshanaya periods, stated that they were pregnant when the event of disappearance happened. They spoke with great pain that their children had never seen their fathers. One woman, who gave

birth to twins, said that she was unable to function or do anything to find her missing husband for the first seven months, as she grappled with the simultaneous loss of her partner and birth of children whom she had to raise by herself. Other women with young children recounted how their children's education was curtailed or significantly compromised once their husbands went missing. Ageing widows who had lost their husbands and mothers who lost children found themselves in precarious financial conditions in the later years of their lives.

*“My husband died in 1995/05/31, because of a LTTE attack. He was in the civil protection unit. I was 21 then. Attack was at 12 in the night, bombed and shot, the body was there. We lived in huts and they protected us. Only my husband was killed, others were injured. I was pregnant with one daughter the other was two years old. Now the eldest is 23 and married. I live with my parents now. I could not educate the children. They passed to A/Ls, they are both very intelligent, but I could not afford them to continue.”*

(Sinhalese woman, Public Meeting, North Western Province)

*“Our children don't look after us after they get married. They don't think “our mothers brought us up alone, without our fathers, amidst great suffering” Retired farmers and others get pensions. It is only we who don't get any special consideration”*

(Sinhalese woman, FGD on Disappearances, Southern Province)

111. In light of these experiences, several submissions to the CTF recommended special considerations for women and children in the transitional justice mechanisms and emphasised the need to provide psychosocial support to them. Psychosocial support and counselling for women and children who have experienced such difficulties and immense suffering is widely recommended across several submissions to the CTF. It is also recognised in these submissions that families, especially women with young children, require greater institutional support to deal with these issues. Having a significant number of women members as commissioners and staff as well as promoting gender-sensitive approaches within the mechanisms were stated as crucial for the effective functioning of these mechanisms. Additionally, providing psychosocial support and treatment for substance abuse and perpetrators of domestic violence is recommended as part of the rehabilitative effort to counter individual and community-wide effects.

*“They need counselling for their upliftment.”*

(Tamil woman, Public Meeting, North Western Province)

*“The society stigmatises the women who have been widowed. So there should be some programme to spread the word to treat these women with kindness. Those women need a special system of law to complain. Going to the police is not a solution. We want something with civil public, like this. And it should specially include a woman. You can discuss certain issues with a woman face to face.”*

(Sinhalese woman, FGD on Disappearances, Southern Province)

#### 4.5. Vulnerabilities of Men

112. The experiences of many men suggested that their experience of armed conflict and violence – becoming disabled or displaced, losing means and assets of their livelihoods, losing former positions of prestige or finding themselves helpless in the face of enforced disappearances of their children – compromised their ability to meet their expected roles of bread-winner and protector. This had resulted in compounding their psychosocial distress and in some cases has led to further violence within the communities. According to the one of the submissions, an increase in domestic violence and marital rape within Tamil communities in Sri Lanka has been reported. Substance abuse rates have increased amongst men and women.

### 5. Specific Mechanisms

113. A number of submissions highlighted some specific situations which carried greater psychosocial significance that would occur in different transitional justice mechanisms. These submissions argued that greater attention to the psychosocial wellbeing of participants is warranted in these situations, and therefore that the design of the transitional justice mechanism should consider these aspects.

#### 5.1. Office on Missing Persons

114. The majority of the written submissions sent to the CTF concerned disappearances and at public meetings and focus group discussions, families of the disappeared came in hundreds from all over the country, as they wanted to know the fate of the missing members of their family. Their pain was evident in their submissions and was also expressed during the consultations.

*“The tears we cried, we added them to the great ocean and made up our minds”  
(Sinhalese wife of missing fisherman, FGD on missing persons, Trincomalee.)*

*“When you see us, you see as people who are going about life, but we are living with extreme pain in our hearts unable to cry in front of our children. We cry when we walk on the street.”*

(Tamil wife of Surrendee, FGD on Surrendees, Zone 15)

115. At a FGD on missing persons in the Central Province, a ZTF member asked what should be done for families of the disappeared who must have undergone a lot of difficulty without having a way to make a living. A participant responded: *“Firstly, you have to help them rebuild their minds. When we first came to Father X, we came crying like mad people.”* The many expressions of intense pain and suffering in families of disappeared and missing persons is a clear indication of the special

importance of including psychosocial considerations in the design of the OMP. Some of the submissions highlighted the sense of closure that the OMP could provide if it were to uncover the truth of what happened to family members who had disappeared.

116. With regards to the operationalisation of the OMP, submissions pointed out to the need to include as staff, (1) family members of the disappeared, that (2) the staff should have a good understanding of the context of disappearances, (3) the OMP should function in all three languages, (4) offices should be in locations that are easily accessible to families of the disappeared, (5) that the environment is conducive for women in particular, as more women will access the services of the OMP, and (6) families must be kept updated on the progress of their particular cases. The CTF notes that all these recommendations indicate concerns of participants and have psychosocial significance.

117. Two particular aspects of the OMP stand out in relation to impact on the psychosocial wellbeing of participants and require special considerations, as noted by the submissions. These are related to forensic investigations and exhumations and to grieving in the absence of a body. Both of these aspects are looked at in greater detail below.

#### **5.1.1. Forensic investigations and exhumations**

118. A number of submissions to the CTF included considerations of psychosocial impacts on the wellbeing of families of the disappeared especially during forensic investigations and after their findings.

*“The families may also need to come to grips with a complicated forensic investigative process, attempting to accrue evidence and establish accountability for the cause and manner of death of the victims. This type of investigation is often a slow and very lengthy process; although it may also strive to provide victim identification for those of the missing who are deceased and return their mortal remains to their families, the primary goal of the investigators is usually criminal prosecution. This, and many other factors, may result in the delay of the humanitarian goal of identification.”*

(Organisation, Written submission, Colombo)

*“Sadly, insufficient recognition of the importance of ensuring proper management of the dead and of caring for the needs of the bereaved, coupled with the frequent collapse of forensic services in the aftermath of catastrophes, contribute to perpetuating the tragedy and trauma suffered by survivors forever unable properly to bury and mourn their dead.”*

(Individual, Professional Organisations Sectoral Consultations, Colombo)

119. Many submissions to the CTF on this topic commented that the OMP must have psychosocial considerations at the centre of the process of preparation of families of the disappeared before any investigation takes place, and this they proposed, can be done by maintaining communication with participants and accompanying them through this tedious and emotionally tense process.

*“Depending on how they are conducted, they can either provoke a re-victimisation of the family members or they can have a reparatory effect. In some contexts, psychosocial work has minimised the negative impacts of the forensic process and fostered its reparatory nature. It is, therefore, essential that States work together with society, on the basis of the family’s demands and needs, with a cross-cutting psychosocial perspective.”*

(Organisation that works with families of the disappeared, Written submission)

*“Staff developed a community-based education programme designed to inform families of the expectations and limitations of the forensic and victim recovery process. There is an evident need to prepare to support people for failure of search, investigation and justice processes.”*

(Organisation that works with families of the disappeared, Written submission)

120. These statements pointed to the fact that in the event that the details of the loss remain ambiguous even after the OMP intervenes, it is important that the family is given psychosocial support to manage the emotional and social implications of this, so that they can continue living their lives as effectively as possible. One submission from a joint group of individuals and organisations working with families of the disappeared and missing also cautioned about the potential psychological consequences on affected persons that insensitive reportage can cause. For example, the statement notes how

*“... speculative pronouncements on the fate of victims, especially in relation to the families of the missing, can crush their hopes or revive great expectations without a solid basis.”*

(Group, Written submission, Colombo)

It concludes that the OMP must work closely with the media to ensure that the media does not cause further harm to these families.

### **5.1.2. Grieving over the disappeared**

121. Most of the submissions from the sectoral meeting with families of the disappeared and missing and organisations working with them and in the FGDs on the disappeared, as well as observations while these consultations were in process showed the wide range of emotions families experience as can be seen in the following statements.

*“We handed over our spouses and children directly to the army and now they are missing. Even though I handed my husband over through a Christian Father, now he is too missing. Also there are instances of surrender of LTTE members with their small children. Those children are victims too.”*

(Tamil wife of surrendee at FGD on Surrendees, Mullaitivu)

*“There was war here since year 1983. We lived in many refugee camps. Those were sad days in our lives. When we came back our houses were destroyed. So we collected what we can out of it and were living when my husband went missing. In 1991 my husband who was a fisherman went missing while engaging in fishing. Forty-seven people from seven boats went missing on the same day, same time. Some were found, some were missing. The Government said that these fishermen are not coming back, they were caught by terrorism.”*

(Sinhalese woman, FGD on missing persons, Trincomalee)

122. Consultations and submissions identified the complex emotions and unanswered questions evoked by the issue of death certificates and many emphasised that obtaining such a certificate was not an option for most of them:

*“We asked ‘why should we take the death certificate? If so, show his body to us? Who killed my brother? Show them to us? Then we will decide about the death certificate.’ For that, they said ‘the Navy will also come.’ I said, ‘let them come and I will answer them.’ The CID only abducted him. He had done no wrong. If he had, then question him and punish him. Show us where our brother is. Our father died thinking of him. Mother has become sickly. Find our brother for us. (starts to cry)*

(Tamil woman, FGD on Disappearances, Colombo)

123. Submissions that focused on this issue noted that the OMP should be sensitive to these complex emotions and develop ways to respond to them appropriately, as these families come to terms with the new reality that forensic investigations may bring. They stated that the OMP should take into account that each family may want to grieve differently in the absence of a body. Three of the possibilities suggested in the submissions for psychosocial support for families in this situation are psychological first aid, counselling and other forms of psychosocial support including symbolic and culturally meaningful rituals.

## **5.2. Office of Reparations**

### **5.2.1. Meaning of reparations and its meaningfulness to psychosocial wellbeing**

124. In most submissions to the CTF, reparations were described as compensation for individual victims of war and structural violence. However, many submissions also defined reparations as a

response to broader issues of failings on the part of the State, including structural and institutionalised forms of discrimination, unemployment, poverty, lack of education and infrastructure, and in terms of the loss of rights. Submissions with this view directly and indirectly endorsed the psychosocial significance of material and symbolic reparations. Other submissions took the stance that the provision of psychosocial and other services as well as of psychosocial rehabilitation to regain lost life plans, is itself a form of reparation and indeed a right of the affected after the trauma of war.

*“The LTTE evicted us [1990 eviction of the Muslims], but the State did nothing to prevent it. It did nothing to protect us or assist us on our long journey by foot. We left everything behind and only took a shopping bag.”*

(Man, FGD with Muslims, Mullaitivu)

125. While reparative measures are useful, when granted, to acknowledge the suffering and losses of affected persons and their families and they play an important role in their healing process, they do not make suffering vanish nor are they a satisfactory substitute for a missing family member, as outlined by the following quotes and other submissions.

*“Can you measure the value of our children’s and relatives’ lives with 15000 or 25000 [rupees]? Today, sir, even a cow is worth much more money than that. You can’t give us the value of our brothers’ and relatives’ lives, can you? Tell us who did this to them, and why.”*

(FGD with family members of the disappeared, Western Province)

*“How can I accept reparations for my child? I don’t want anything else, please give me my child back.”*

(Mother at Public Meeting, Killinochchi)

*“Nothing could compensate in the pain and trauma suffered in the last ten years. Am I to choose between justice and reparation?”*

(Mother, Public Meeting, Trincomalee)

126. On the other hand, some submissions noted that reparations could impact psychosocial wellbeing when it helps relieve sources of suffering and distress such as financial difficulties, meeting children’s educational needs or providing a means for establishing a livelihood. These submissions also recognise that reparative measures that permit affected persons to access support that directly relieves their emotional or medical suffering could be psychosocially beneficial. Some suggest that receiving a monthly allowance over a period of time as opposed to a one-time grant may make it easier for families to move on from their traumatic experiences. Other submissions note the multiple needs of a family or individual and recommend that a tailored reparative package with different options may also be an appropriate way of ensuring that reparations do truly make

a difference to the person or the family psychosocially. A statement to one of the CTF members by a woman from the Eastern Province who was struggling to meet her and her family's needs emphasised this point,

*“The Government gave me a house – but did they expect me to break pieces of the walls and eat?”*

(reported by CTF member, Focus Group Discussion)

127. The submissions also reiterate that reparations alone cannot be considered a solution to the wide range of circumstances people have gone through. Rather, they suggest that affected persons and their families with the support from psychosocial service providers will have to work through their traumas of the past and help them regain their dignity, self-image, motivation, self-efficacy, trust and meaning. Therefore, expectations indicated in some submissions that reparations will be an adequate means by which to help families of the missing and disappeared move on with their lives, may not be realistic. Some families of the missing and disappeared stated that they felt unable to consider reparations until they knew the truth of what had happened to their family members. Conversely, the dire financial situation of some families and their struggle to feed and house themselves and their families meant that they felt unable to consider truth, accountability or indeed recovery prior to reparative measures that may help them fulfil their basic needs. A number of others highlighted the issue of immediate medical care, noting that the severe injuries they had experienced in the armed conflict and violence meant that they lived in great difficulty and distress. One young man from the North talked about shrapnel embedded in his body, which caused him on-going pain. He noted that the invisibility of this sort of harm was often overlooked in the provision of care.

*“Basic needs and survival issues have to be attended to before people can think of truth and recovery.”*

(Individual, Public Meeting, Killinochchi)

128. For these reasons, many of the submissions that focused on the role of reparations in the transitional justice process emphasised the need for close collaboration and seamless linkages between the Office of Reparations and the OMP, the Truth Justice Reconciliation and Non-recurrence (TJRNR) Commission and the Judicial Mechanism with Special Counsel.

129. A few of the submissions highlighted other key psychosocial considerations for the Office for Reparations; these include a) ensuring that they do not further contribute to stigmatising and the labelling of persons, especially by forcing them to adopt and maintain certain identities in order to access services, b) not reinforcing gender stereotypes when granting reparations such as writing ownership of land only to the male head of household, c) grading of people's suffering loss in a judgmental or arbitrary manner and d) avoiding the perpetuation of dependency, rather

encouraging and helping people to take control over their lives and aiding self-sufficiency. As such, the reparations and other transitional justice mechanisms will need to be designed holistically and implemented in ways that are psychosocially healing, promote recovery and reconciliation. Perhaps more so than other mechanisms, the reparative measures will continue to feature in the lives of affected persons and their families for several decades to come, if not their entire lifetimes. For this reason, one submission makes the case that the Office of Reparations must be expected to work closely with those who access its services and to build a relationship of trust and confidence through continued dialogue and service provision that respects and dignifies the participants.

### 5.2.2. Memorialisation and commemorative acts

130. The issue of memorialisation in the transitional justice process is discussed in greater length in the chapter on reparations (see Chapter II: Reparations, Section 6.3). The psychosocial and emotional significance of memorialisation and commemorative acts in the transitional justice process was recognised in a number of submissions. It was stated that these spaces and events provide space for grieving and for coming to terms with loss and opportunities for families to make meaning and develop understanding of the events, thereby helping them to cope emotionally with the past events and experiences of their lives. Moreover, some of these submissions also noted that the collective nature of memorialisation and commemorative events help people to share their pain and feel in solidarity with others, both of which are psychosocially beneficial.

*“(We) request the authorities in Government and civil society organisations to erect a non-partisan memorial in a suitable location to enable all citizens of this country to remember and pay respect to all those who have died due to ethnic conflict and the civil war”.*

(Scholars who participated in the conference on "Body, Mind and Healing" organised by researchers drawn from the University of Colombo, the University of Peradeniya, the University of Jaffna, the South-eastern University of Sri Lanka and the University of Heidelberg from August 21 to 23, 2015, memoranda, submitted to the CTF)

*“The martyrs’ cemeteries are to be rebuilt. You can name as you want, but they are the children of the land and their parents are still here with us.”*

(Individual, Public Meeting, Mullaitivu)

131. For these reasons, some of the oral submissions made with regard to such memorialisation and commemorative sites were especially emotional in their discussions of what these sites meant, the importance of creating, preserving and safeguarding such sites. These submissions highlighted an important aspect of the reparative measures, i.e. how the transitional justice process chooses to treat the issue of memorialisation and commemoration and particularly the inclusivity of its approach to recognising and respecting the different losses that people have experienced will play a considerable role in the emotional healing process at individual and collective levels. They suggest

that ensuring there is memorialisation and commemorative acts that allow different groups to recognise their specific situations is important, and that all such spaces need to be respected.

### 5.3. Judicial Mechanism with a Special Counsel

132. Submissions at the public meetings and FGDs indicated a wide range of emotions and desired outcomes with regards to prosecution and punishment. Some people expressed anger and hatred towards perpetrators and wanted to see them served with the death penalty, whilst others expressed varying degrees of forgiveness and granting of amnesties, especially to the lower ranks of the military or militants who were merely carrying out orders.

133. Moreover, several of the sectoral and some of the written submissions noted that past experiences of accessing justice services in Sri Lanka show it to be an intimidating and oft-times frustrating experience for several people. They cautioned that care must be taken to avoid this in the proposed judicial mechanism of the transitional justice process and identified several points in the judicial process in which affected persons are likely to experience distress. These included seeing their former tormentors or others who should be held criminally accountable for crimes, having to testify against powerful perpetrators, and having their anonymity possibly compromised by coming forward.

134. Recognising these elements of the judicial process, a number of submissions recommended that psychosocial considerations be incorporated into the judicial mechanism with a view to supporting participants through the process and preparing them for various outcomes. Some of these submissions particularly noted the vulnerability of women participants in the process, especially where prosecuting for sexual violence is concerned. Regarding this one submission noted that,

*“In our experience cultures, customs and customary laws have always set barriers for women, particularly in relation to speaking about sexual violence”.*

(Organisation, Written submission, Colombo)

This and other submissions recommend that,

*“The court should also have a special section for psychosocial counselling and a medical doctor on call. There should be a separate counselling unit that has women counsellors who are sensitive and also understand the gender-specific issues”*

(Organisation, Written submission, Batticaloa)

#### 5.4. TJRNR Commission

135. Several of those who made submissions in relation to their experiences of the war and violence in Sri Lanka emphasised the importance of the truth, knowing what exactly happened during these events, what happened to their family members who were missing in particular, who ordered or enabled these events, and why. They demanded to know what would be the exact mandate of the TJRNR Commission and whether it would have the scope to deal with the issues of significance to them. Equally, the submissions suggested that people are driven to find out the truth, and that the truth has huge psychosocial significance for them.

*“My daughter-in-law is now only recovering from taking poison. We don’t want compensation instead of him. We need the strength to search for him. Till then we have to live.”*

(Tamil Mother, FGD on Disappearances, Colombo)

136. Similarly, for many members of the Sri Lankan security forces, being able to share the truth of their battlefield experiences appear to be psychosocially important. As noted earlier, preparing and managing the national and community level readiness and response to hear the truths of what people bring forward is a key psychosocial consideration in the TJRNR Commission

137. For these reasons, many of the submissions agree that psychosocial considerations must be included in the design of the TJRNR Commission and in its operationalisation. These submissions stated that people should know what to expect from the TJRNR, and whether they would benefit from participating in it, and that they must be informed of the potential risks they face in coming forward with their particular cases so that they can make reasonably informed choices about their participation. Other similar submissions stated that there is a specific risk of re-traumatisation and worsening of distress in truth seeking because the process involves re-telling of events and because the process is fraught with uncertainty. They therefore noted that it is imperative for such commissions to find creative and meaningful ways to reduce the psychosocial impacts on participants and their families. These could involve for example, the use of detailed recordings from participants about their experiences, requiring that all participants be kept adequately informed of the progress of the commissions’ work, providing guarantees of confidentiality and enabling accompaniment throughout the process.

#### 5.5. Governance Reforms

138. Some of those who made oral submissions to the CTF identified the inconveniences, dismissal, denial, rudeness, discrimination and harassment they had experienced at the hands of a number of State service providers as psychosocially distressing and stressful. These submissions stressed that they would derive psychosocial benefits from the transformation and reform of a

number of State agencies that resulted in the change of the prevailing attitude and practices of service providers. In the same way that economic struggles tended to make their lives especially difficult, those who had been affected by the war and violence pointed out that bureaucratic dysfunctions, corrupt behaviours and discriminatory practices demoralise them and further worsens their mental health.

139. A prerequisite for reconciliation is the repair of relationships between the State and citizen; as one submission from Ratmalana notes *“all citizens must feel free to go into any Government institution to conduct their business without a feeling of a ‘second-class’ citizen, which is prevalent today.”*

140. They also pointed out that engaging with administrative and bureaucratic agencies becomes especially necessary for individuals and families affected by war and violence such as displacements, disabilities and disappearances. They need to access social welfare, obtain and renew relevant personal documents, and in many cases, their situations are irregular, meaning they need extra documents provided by State administration to access services, for example for displaced children to attend local schools. As such, these submissions made the point that reforming these agencies and mandating public officials to provide a transparent and fair service would help relieve the psychosocial suffering of individuals and families in many ways.

## Part II – Security and Protection Work in the Transitional Justice Process

### 6. Security Risks and Violations

*“No matter what shape the credible domestic mechanism takes, strong victim and witness protection must be a pre-condition to any transitional justice mechanism.”*

(Organisation, Written submission, Colombo)

141. That the safety and security of those who participate in the transitional justice mechanisms continues to be a critical concern, which must be addressed if reconciliation and transitional justice is to be effective, was a point made in several submissions, and observed by the CTF and ZTF members during the consultations. In the written and oral submissions received by the CTF, grave concerns were expressed about on-going human rights violations in the North and East, including abductions<sup>36</sup>, torture, harassment, surveillance, intimidation and questioning of members of the

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<sup>36</sup> Submissions make references to following incidents:

ITJP states that they have evidence of 23 abductions during 2015 and 2016, which resulted in the victims being tortured and/or sexually violated.

Watchdog Collective refers to 11 Abduction of mainly Tamil men reported in the last three months from in the Northern province (30 March – 30 June 2016). These include:

- Renukaruban, a Tamil with a British passport who was visiting Sri Lanka, was assaulted and abducted from his home in Jaffna in front of his mother and sister, by unidentified men. He was later found in remand custody.
- Jeyanthan, a former Liberation Tigers of Tamil Eelam (“LTTE”) cadre, was abducted in April 2016 from his home in Jaffna by unidentified men claiming to be from the Police, and later found to be in TID custody.

142. Tamil population in particular by the intelligence services, police and security forces, and former LTTE cadres who have gone through rehabilitation. There were several expressions of deep regret and disappointment at the unwillingness of the Government to condemn or even acknowledge these abductions, or to take action against alleged perpetrators. Further, it is contended in one of the submissions that if such abductions are being carried out by State forces without Government authorisation, it is an even more alarming state of affairs, as it implies that the Government is not in control of the security forces and surveillance structures.

143. For its part, the CTF has from the time of its establishment in January 2016 insisted that if the consultation process is to be successful, the Government must ensure that the security forces, police and the intelligence services avoid harassment and intimidation of persons involved in the consultations. The CTF has met and corresponded with the military and police, on providing instructions on avoiding harassment and intimidation during consultations, and on following Presidential Directives on arrest as well as following up on the abduction cases in the wake of the incidents reported to the CTF prior to the consultations. During the public consultation process, from July to August, a weekly calendar of public meetings was sent to the Ministry of Defence and Police. In addition, the CTF also requested the support of the Human Rights Commission (HRC) to monitor consultations through their regional offices and follow up on possible incidents. For additional details, see Chapter I: Methodology and Process, Section 8.

144. In highlighting such concerns, these submissions refer to several reported incidents of harassment, intimidation and violation carried out by members of the security forces, the police, intelligence agents, and members of militant and paramilitary groups. In both oral and written submissions, many describe personal experiences of such incidents. These submissions reiterate the importance of having effective and extensive protection measures and several strong recommendations on how to strengthen security and protection for those and their families who participate in the process of transitional justice.

### **6.1. On-going Incidents of Intimidation and Harassment**

*“Law enforcement has been repeatedly accused of perpetuating abuse.”*  
(Individual, Written submission, Eastern Province)

*“The ability of witnesses to come forward with information and to testify during trial is critical to success of criminal trials. There is need to promote best interests of victims at every stage of*

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- Nakulanand Ram, two other former LTTE leaders, who were abducted in two separate incidents in April 2016, in Jaffna and Ampara respectively, who were also subsequently found to be in TID custody.
  - Santhiogu Anton from Mannar who abducted on 30 June 2016 around 11.30 pm who was later found dumped on the roadside, badly beaten up and burnt.

*process and adopt protection framework to facilitate witness participation without fear of intimidation or reprisals.”*

(Organisation, Written submission, Colombo)

145. Many of the submissions concerned with security and safety note that Sri Lanka lacks an effective protection framework for witnesses, especially in those cases where public officials have been accused of misconduct and human rights violations. They note the high number of reports of “*law enforcement authorities and others intimidating and pressuring victims, witnesses and their families to either drop human rights cases or stop them from participating in proceedings,*” citing a number of cases where witnesses have died in suspicious circumstances, left the country or were pressurised not to appear before the court or commissions.

146. A number of written submissions from international and national organisations working on issues of human rights violations describe “*patterns of persistent and large-scale violations*” in Sri Lanka, particularly the brutal use of torture and of enforced disappearance by Sri Lankan security and police forces. These are resonant with the descriptions of personal experience in the oral and written submissions from individuals. At the same time, several of these submissions also point to the prevalence of intimidation, harassment and reprisals against those who seek to bring perpetrators of these violations to justice and accountability.

*“Families of the missing might be afraid of negative consequences that could come from reporting their case because the authorities might be involved in that person’s disappearance”.*

(Organisation working with families of the disappeared, written submission, Colombo)

147. Details from the submissions suggest that victim and witness intimidation is most likely to happen when those affected by human rights violations are active in seeking to have these experiences officially acknowledged or are seeking redress. For example, many of these submissions describe how those who came before the previous Commissions of Inquiry, most notably the Maxwell Paranagama Commission, the Lessons Learnt and Reconciliation Commission (LLRC) and the Presidential Commission to Investigate into Complaints of Missing Persons (PCICMP), were subsequently threatened. Similarly, the submissions highlight the incidents of intimidation and threat that follow when those affected have meetings in groups or with key public figures on their specific cases or on these issues. One set of submissions referred to the intimidation that occurred after families of the disappeared spoke out during the visit by the UN High Commissioner for Human Rights to the north of the country, whilst others described similar incidents following the visit of the former UK Prime Minister in 2013. Referring to these incidents, the submissions stressed that there should not be a repetition of that situation either during the consultations process or during the transitional justice process. Talking about this situation, a representative from an organisation working on behalf of the families of the disappeared stated,

*“There should also be no threats or intimidation to those who come forward to complain or talk about these issues or the witnesses. The intelligence units were all sitting in the meeting. They watched proceedings and then followed the people and gave them death threats and intimidation. ... for example, on 2013 Human Rights Day, the police arrested me. In the police station also I got death threats. I went to the Human Rights Commission and the Police Head Quarters but nothing is being done about it being done still. There are so many questions about how they will initiate the investigations.”*

148. Indeed, participants also raised the issue of security and safety due to a number of incidents directly related to the consultations process. This involved an encounter where a member of the ZTF was threatened during the consultations process and a number of incidents where those who were invited to focus group discussions were warned not to attend by members of the police and of the security forces. These are described in greater detail in the section on security and fear in Chapter 2.

149. While it is noted in the submissions that these incidents are not occurring in such an overt, widespread or systematic manner as it was under the previous regime, the continuation of these incidents under the present Government is a matter of serious concern. A joint submission from some families of the disappeared stated clearly that,

*“Under this Government, people who are abducted come back after three or four days. This is important, but, if the CTF is going all over the country consulting people, they should have the trust towards the Government that they would not be abducted after giving testimonies to the CTF. Earlier, victims didn’t come and talk openly. But now police, army and everyone knows are the victims, and who is giving testimonies. The abductions are a huge obstacle to the consultation process.”*

150. An analysis of these submissions suggest that the groups of people most vulnerable to such threats are the families of the disappeared and the missing, families of those who have been extrajudicially killed, male and female ex-combatants and their families, those who have experienced torture, those with other fundamental rights cases against the State, and human rights defenders and others who work on behalf of these groups.

*“The family members of some interviewees had been disappeared and the interviewees had themselves suffered multiple violations after the war, including abduction, torture and sexual violence. Although interviewees were not asked directly to provide the reasons they believed were responsible for their abduction and torture, they frequently made the connection between activities related to raising awareness of the fate of the disappeared and their subsequent abduction, detention and torture. Thirty-eight percent of those who were tortured also had a family member who was missing or had disappeared.”*

(Organisation working on issues related to transitional justice, Written submission, international)

*“We registered entries about those who were kidnapped and disappeared. After that the CID made inquiries about us.”*

(Female, FGD on disappearances, Mannar)

151. The submissions state that in most of the cases of intimidation, perpetrators were members of the security forces or the police force. It was also reported in the submissions to the CTF that women have been asked for bribes (including sexual favours) in return for information about their disappeared relatives. Almost without exception, all the women in the FGDs on disappearances in the Northern Province noted that in the past they were threatened, harassed and warned not to attend any meetings on disappearances by the police and security forces, after they made an official complaint.

## **6.2. Lack of Action in Response to Reports of Intimidation, Harassment and Violence**

*“There is no genuine attempt by the Government to investigate any of the incidents that have taken place up to now; therefore, we don’t have real faith in the systems and mechanisms that have the human rights violations will be investigated and perpetrators punished.”*

(Individual, Written submission, Mannar)

152. A number of oral and written submissions note the lack of Government action in response to reports of victim and witness intimidation and violence. They describe how action had not been taken when they had reported these incidents to the formal authorities. In some of these cases, the police had refused to take down these statements, had written down inaccurate information, for example stating that the act had been carried out by unknown persons rather than those named by the complainants, or had not taken any investigative action following the filing of the complaint.

153. Some of the submissions also described situations where police officers had refrained from acting to prevent or halt violence although present at the time, raising questions about the impartiality of the police. Some of the submissions provide descriptions of those instances, even in cases where there is strong evidence of the perpetrators.

*“When a shrine or mosque was demolished, we see all kind stars from police officers (i.e. high-ranking police officers). From the SPs, DIGs, everyone just became spectators when these places of worship were destroyed. Photographs and videos are available. They are all there and perpetrators walk scot-free.... Civil unrest let it be Mawanella, Dharga town, Beruwala, Dambulla or Anuradhapura, burning of churches, burning of other religious places, intimidation*

*and going and stopping meetings all these taking place under the noses of the law enforcement agents. Maybe they are asked to not to take action or to ignore...*

(Organisation, Lay Religious Sectoral Consultations)

154. The lack of action against violence or investigation into complaints of violence meant, for many of those making submissions, that their trust in Government and their sense of belonging to the country as equal citizens are also affected. Some of these submissions stated that the lack of adequate action on the part of the State to prevent such acts of violence, of holding those who committed the violence accountable results in their feeling as though they were “*second-class citizens*”, discriminated against and were not “*equal in the eyes of the law*”. Most importantly, the lack of strong action allowed perpetrators to continue carrying out their acts of violence and harassment, as noted by the submissions. The lack of impartiality in the police response to incidents of intimidation and human rights violations enables subsequent impunity.

*“Police and State must take responsibility. So those police officers were not punished, and next they did it in Dambulla. They were not punished, and then they go place to place.”*

(Organisation, Lay Religious Sectoral Consultations)

*“Today whether one goes to the North or to the South to a village they will have the same fear of going to a police station to record. The bulk of the repressive activities or political thuggery occurs in the police stations outside the metropolitan centres.”*

(Individual, written submission, Colombo)

*“If they (the police officers) are punished, they will be deterred from doing it again.”*

(Individual, Media Sectoral Consultations)

*“If suspects are known (security forces, political parties) the chances of these cases taken up lower.”*

(Individual, Public Meeting, Northern Province)

155. In another submission, one woman from the Northern Province describes reporting an incident of police intimidation to the Human Rights Commission she had experienced previously and noted that there was no follow-up action or acknowledgement of her complaint. Similarly, one of the submissions notes how the relevant authorities have not followed up official medical-legal reports on abuse and torture in the post-war period.

*“We examined so many sexual abuse and torture cases in Vavuniya Hospital post-war in 2009. We wrote the reports. Mainly, the cases we suspect are referred to the judiciary.”*

(Organisation working on legal and medical services, Professional Organisations Sectoral consultations)

Summing up the situation, one national organisation stated,

*“Impunity remains deeply embedded in Sri Lanka so (the government) needs to give confidence to all Sri Lankans in the independence and impartiality of the (transitional justice) process, given the politicisation and highly polarised environment in Sri Lanka.”*

### **6.3. Failure to Obtain and Safeguard Evidence about Incidents of Intimidation and Human Rights Violations Committed by Police or Security Forces**

156. A third issue highlighted in some of the submissions was the failure of police officers and others charged with the responsibility into investigation of human rights violations to obtain and safeguard evidence. Talking about the collection of evidence with regards to incidents of human rights violations, some of the submissions at the sectoral consultations as well a number of the written submissions point to how opportunities for collecting evidence of human rights violations are minimised and how evidence could be lost, contaminated, tampered with, or otherwise rendered inadmissible in courts due to ineffective procedures.

157. One of the submissions makes a number of detailed points with regards to this issue. Firstly, it notes that the different procedures in the Prevention of Terrorism Act allow for continued detention of a person without appropriate investigation and consultation by Judicial Medical Officers, as is required in other cases of arrest and detention where a medical report has to be obtained before the person is produced before the magistrate or court. In the cases of detention under the PTA and generally within prisons, suspects are not allowed regular access to medical services.

*“If someone is tortured by the police and remanded, for example, they cannot access legal medical services and therefore cannot provide evidence to corroborate their cases. Prison legal officers are there, but they have no power. What they can do is to suggest the need for a medical examination to prison authorities. So they have to decide whether this case should be sent to the JMO or not. In the current set-up, prisoners have been denied access to services by the prison officials and authorities.”*

(Organisation working on legal and medical services, Professional Organisations Sectoral consultations)

158. This submission also noted that there were no practicing women judicial medical officers which hindered (but did not prevent) medical examinations in cases of suspected sexual abuse in detention and after the war.

159. Another of the points made in this submission referred to the current legislative procedures with regards to the discovery, investigation and excavation of graves, which result in loss and

contamination of data that may be valuable for the identification of the bodies or of perpetrators, and that could be used for prosecution. Referring to the investigations into mass graves previously discovered in Sri Lanka, it points out how there is little regard for the collection of evidence for investigation and prosecution purposes and suggests a number of legislative and procedural changes required in order to safeguard data and to use it effectively.

160. Other submissions point to the numerous incidents where affected persons and witnesses have been threatened in relation to providing testimony. These submissions also point to how weak witness participation and inconsistent testimonies have been the primary cause for acquittals of police officers accused of extra judicial killings and disappearances. They argue that safeguarding of affected persons and witnesses in order to enable the provision of testimony in the transitional justice process is crucial to its success.

161. The submissions clearly reveal the detrimental impact of the on-going violations on the credibility of the current transitional justice process and of the Government's commitment to the goals of reconciliation, truth, accountability, justice and non-recurrence. In their submissions to the CTF, people call for the Government to demonstrate their commitment to the stated goals through acknowledgement of the on-going violations in the North and East and by taking steps to stop it.

162. The submissions emphasise the need for the transitional justice process to have a strong framework and system for security and protection work established from the very outset. They note that guarantees of safety and security are a pre-requisite to an effective transitional justice process, whereby members of the public can come forward to share their accounts without fear or risk of reprisals, whether as affected persons, witnesses, bystanders or perpetrators. A clear viewpoint from the submissions is that such testimonies will be key to enriching the narratives that emerge from the process, providing multiple perspective and securing truth, accountability and justice and enabling true reconciliation.

## **7. Criticisms of the National Authority for Victim and Witness Protection and the Victims of Crime and Witnesses Assistance and Protection Division of the Sri Lanka Police Department**

163. Many of those submissions concerned with the protection of victims and witnesses pointed out that the National Authority for the Protection of Victims and Witnesses of Crime and the related Victims of Crime and Witness Assistance and Protection Division have several shortcomings. The submissions stress that the institutional and operational set up of these two mechanisms are particularly unsuited to protecting citizens in those cases where public officials or agencies of the State are the alleged perpetrators of crime. In particular, the submissions note that

the Authority and the Division are neither independent nor have the necessary powers to enforce their recommendations, ensure good practices or carry out an effective investigation.

164. Specifically, the members of the Authority are made up of 7 ex-officio members and 5 presidential appointees whilst the Senior Superintendent of Police heads the Division. As such, neither the Authority nor the Division inspires public confidence in their impartiality. The composition of members and the close operational relationship with the Superintendent of the Police, it is stated in the submissions, undermines independence and renders the investigation of public officials and police officers ineffective.

165. One submission from an organisation working on legislative measures in Sri Lanka notes that the Act lists as offences several situations where affected persons and witnesses may be kept from lodging a complaint or providing testimony. The Act makes it an offence to threaten, hurt or restrain affected persons, witnesses and their relatives. However, as this submission notes, the Act does not make provisions for circumstances where public officials violate the rights of affected persons and witnesses in the course of their duties, for example when police officers refuse to take down statements, are negligent of their duties of protection or deliberately compromise evidence for a case. The submission notes this omission as “*striking*” and suggests that, “*wrongful conduct by public officials should attract higher penalties.*”

166. Instead, the submission highlights, there are a number of legal and practical restrictions on private complaints that have the sum result that complaints cannot be brought against misconduct committed by public officials, even where police officers fail to carry out their duties. The submission goes on to recommend that wrongful conduct by public officials, including neglect and failure to carry out duties, need to be criminalised especially where these discriminate against citizens or compromise their safety and security. Speaking of one such incident, a representative at the Media Sectoral Consultations described how, when a journalist wrote a critical article about the conduct of the Divisional Secretariat in relation to a local incident, the DS complained to the police, and the journalist was taken in for questioning. Furthermore, the representative described how,

“...the police officer steps out of his position and advises (the journalist) not to write articles like that.”

167. This submission goes on to state that the impartiality of the police demonstrated in this case (where the police officer shows a desire to mute the media in favour of the Government for example) underlines the need to review the relationship between the State and the police force. It notes that this relationship becomes highly relevant in those cases where perpetrators are State officials. The submissions also make a case for a strong leadership that is able to imbue the Authority and the Division with a set of values and practices that are victim-centred and rights-oriented.

Instead, as one of the submissions argues, the history of police work in Sri Lanka has been geared towards the protection of the State and State officials against its citizens.

*“The law, as implemented, is an instrument to protect political and military leaders.”*  
(Organisation, Written submission, Colombo)

168. Overturning this approach, as is required for the transitional justice process in which the focus is on violations committed by State actors, will be very hard indeed, as pointed out in these submissions. However, as some submissions have pointed out, messages regarding the level of tolerance of such misconduct from those in positions of power and authority do influence how both public officials as well as other actors conduct themselves.

*“Now (there is a) change of mentality of the police with the change of the Government. The violent elements were also wait-and-see policies, but now they feel Government is a bit weak or not interested. So it has started again and incidents are taking place again. It is a very pathetic, sad situation that the Government in power should take responsibility for.”*  
(Organisation, Lay Religious Sectoral Consultations)

169. In addition, some submissions argue that experience of protection work is vital to establishing good practice within the Authority. These submissions point out that currently, protection experience resides in non-governmental and international organisations who have been active in safeguarding affected persons and witnesses who may wish to produce evidence against those who are in positions of power and authority.

170. As it currently stands, police working in the Division are expected to provide protection to affected persons and witnesses in many of the cases that will be brought before the transitional justice mechanisms against fellow members of the police or public officials. That they will be able to carry out actions against their fellow officers in an independent and impartial manner is questioned in these submissions. Furthermore, a few of the submissions note that the recommendations are non-binding on other departments and agencies and, therefore, have very little ability to meaningfully influence practice within other agencies, including the Division that is meant to carry out protection work.

## **8. Enabling Environment for Victim and Witness Protection**

### **8.1. Transitional Justice Mechanisms that Prioritise Participant Security**

*“There should also be no threats or intimidation to those who come forward to complain or talk about these issues or the witnesses. The intelligence units were all sitting in the meeting. They*

*watched proceedings and then followed the people and gave them death threats and intimidation...”*

(Organisation working with families of the disappeared, Written submission)

171. Given the importance placed on safety and security of those participating in the transitional justice mechanisms, designing a process that is security-conscious and that prioritises the safety of participants is key to its effectiveness according to several of the submissions concerned with this aspect. This requires an understanding of the security risks to participants and their relatives posed by the different functions of each mechanism and devising measures to counter those risks in the design and operation of the mechanisms at all stages of the process. Taken jointly, the submissions list a number of actions that should be taken across all the mechanisms of the transitional justice and that must be built into their design and delivery. See also Chapter III: TJRNRC, Section 8, Chapter IV, OMP, Section 6.1, and Chapter V, Judicial Mechanism, Section 12.

172. As stated by these submissions, security measures must be put in place prior to the commencement of the transitional justice mechanisms. This includes the way currently available evidence and testimony is handled, transferred and stored as well as how on-going violations and attempts at intimidation are currently dealt with. In addition, submissions note that passing legislative and procedural measures will develop and protect a safe environment for participants and their families, such as criminalising both enforced disappearances and misconduct by public officials.

173. The submissions emphasise confidentiality and protection services as key measures to ensure the safety of affected persons, witnesses and their relatives during their engagement with the mechanisms. Some of the submissions also point to other safety measures. For example, noting that vulnerable women have been subjected to sexual harassment in their interactions with a number of public officials such as GNs and police officers, some submissions stress that staff working at the mechanisms must be held to higher standards of conduct, there must be more female staff to ensure women feel comfortable, there must be feedback mechanisms to ensure reporting of harassment and investigative action taken followed by disciplinary action taken against officers responsible. Other suggestions include provision of temporary or permanent relocation to secure accommodation of those witnesses and family members who may be at risk of intimidation or reprisal. Another key area, as stated by one submission, is in deciding the criteria of what constitutes security risks and when protection measures must be instituted for those who participate in the transitional justice process. As outlined in several submissions, allowing participants to choose the level of confidentiality they feel comfortable with is an important measure of security as well as conducting an independent assessment of the risks faced by any participant.

174. Submissions also emphasise the provision of security in the post-transitional justice context, as there may continue to be retaliatory actions or reprisals against participants and their relatives

especially where perpetrators have been brought to account. How confidential data is handled and stored in the post-transitional justice context is also of importance, according to one submission, since maintaining anonymity post-transitional justice is equally important.

*“The State needs both long- and short-term plans for systems of protection and support for victims, especially for those who lose anonymity after testifying.”*

(Organisation, Written submission, Colombo)

## **8.2. Precautions Must Be Taken at Community Level to Ensure Safety and Security of Participants**

175. A number of the submissions pointed out how interactions at community level could endanger participants in the process, including any of those interviewed as witnesses and their families in relation to specific incidents. These submissions describe how vicinity to alleged perpetrators create special vulnerabilities to those at the community level, especially since they could be observed and subsequently harassed.

*“There is no security for the families of the disappeared; harassment is continuous for these families.”*

(Individual, Written submission, Mannar)

*“In all the villages, there are intelligence officers who could be noting who is talking to investigators. This needs to be sorted out. A full safety net is required”*

(Organisation, Written submission, Northern Province)

*“The CID continues to operate a powerful surveillance network in villages, discouraging any peaceful political activity or protests against Government actions such as land occupations by security forces. The CID also monitors people, including following people, visiting houses, checking phones, etc.”*

(Organisation working with torture survivors, Written submission, U.K.)

176. These submissions stressed a number of measures that should be used to ensure people are safe during the transitional justice process and to create an environment conducive for people to share their experiences and to give evidence. One suggestion was the decommissioning of army camps in those areas where the transitional justice mechanisms are located. Another was the use of credible and reliable intermediaries to take down statements, including other survivors.

*“All interviews in the community must take place when the army is not in the vicinity because they are known to be perpetrating violations still. Intermediaries should be used to gather evidence as an additional means of security, which is a trusted local intermediary as foreigners may draw*

*too much attention. Survivors must be involved in facilitating testimony from other victims and witnessed because they would never tamper with evidence.”*

(Organisation working with torture survivors, Written submission, U.K.)

A number of submissions emphasised the importance of maintaining the anonymity of people providing testimony especially when interactions and interviews take place at community level.

## **9. Structure and Units for Security and Protection Services**

### **9.1. An Independent Body for Security and Protection Work**

177. A number of submissions also called for an independent security and protection unit for affected persons, witnesses and their families. According to these submissions, this should be based within the justice ministry or the interior ministry, the Human Rights Commission or an oversight body for the transitional justice mechanisms. It was suggested that the unit be comprised of representatives from related fields, and that it should have clear administrative and organisational autonomy. Several of these submissions noted that the unit must be operationally isolated from the other law enforcement bodies.

178. It is recommended that the mandate for the independent body include promoting best practices for protection, developing codes of conduct and guidelines for security and protection work across all the mechanisms, sensitising staff of the mechanisms and public officials on the principles of protection work, on how to work with affected persons and potential witnesses within the protection framework, and on how to ensure that evidence and testimony is kept safe and reliable. The submissions identified the following groups, in particular, as requiring sensitisation: staff, commissioners and members of the mechanisms, police officers, probation officers, prisons department, and judicial medical officers.

179. In sum, as outlined by one organisation well-versed with provision of protection to people in danger, the main functions of this Unit are to provide:

- *“effective protection to victims, witnesses, their families, and others who are put at risk due to their engagement with the Commission;*
- *train and advice to all staff of the Commission and Commissioners on dealing with victims without causing any further harm; and*
- *effective support, including psychosocial assistance, to witnesses participating in the Commission and giving testimony.”*

The unit is also expected to coordinate with the other victim and witness protection units of the mechanisms, the National Victim and Witness Protection Authority and the Division.

180. Apart from criticisms of the structure of the current Authority, another reason put forward by a number of submissions for an independent unit is the need to promote within it a culture of values that prioritises the protection of the rights of citizens over that of protecting the power of the State, catering to executive conveniences and safeguarding perceived rights of State functionaries. For this purpose, many of these submissions suggest that the security and protection services for the transitional justice critically need to “*internalise and operationalise a rights-based framework*” that ensures the statutory rights for affected persons. Such a culture, it is noted in the submissions, can only be promoted within a unit that is independent from other branches of law and enforcement.

## **9.2. Establishment of Security and Protection Units within Each Mechanism**

181. Several of the submissions suggest that there be a security and protection unit within each of the mechanisms. This was seen as especially important for the Office on Missing Persons, the TRJNR Commission and the Judicial Mechanism in order to ensure affected person and witness participation without possibility of intimidation, reprisal and sanctions. In particular, some of the submissions pointed out that these protection services must not be centralised and should be available at each of the regional offices of the different mechanisms.

## **10. Procedures and Measures for Protection**

### **10.1. Confidentiality**

182. A large number of written and sectoral submissions were concerned with issues of confidentiality and outlined a number of important considerations when designing the transitional justice process. They recommended a number of measures to ensure confidentiality for affected persons at risk of harm. These include: allowing affected persons to give testimonies or provide evidence in private, at a distance from perpetrators or through proxy; use of voice and image distortion or giving evidence behind screens; safe storage of evidence and testimony; removing any details that may compromise the anonymity of affected persons from information that is made public or shared with any other agencies including any oversight bodies and other transitional justice mechanisms; ensuring staff are aware of the importance of confidentiality and of reporting any compromising incidents quickly to those concerned, having in place safe and confidential means of contacting, corresponding with and updating participants.

*“Whether providing evidence inside or outside Sri Lanka, our identities must be protected”*  
(Organisation, Written submission)

183. One of the submissions recommended that in the interests of protecting confidentiality and hence the security of those at risk, it may be necessary to destroy any recordings and remove identifying information at the conclusion of the transitional justice process.

184. Strong guarantees of confidentiality must be made to especially vulnerable groups such as those who have experienced sexual violence or whose narratives may name violent perpetrators who have already engaged in acts of intimidation or harassment. These submissions argue that, not only will these help facilitate their participation and vital testimonies, but equally importantly such guarantees will prevent persons affected by violence from being further victimised by discrimination and ostracism from their families, communities and society at large. Where confidentiality cannot be guaranteed, it is recommended that this must be disclosed to participants at the outset of their participation. Similarly, if the terms of confidentiality change at any stage of engagement due to new circumstances or developments, participants must be informed immediately and opportunity given to them to decide whether and how the case should proceed. The submissions state that where confidentiality may have become compromised, those responsible for security and protection of participants in the transitional justice mechanisms must be duty bound to inform those concerned and to take immediate steps to safeguard them.

185. Some of the submissions also argue that the guarantee of confidentiality, if given during engagement with the Office on Missing Persons or the TRJNR Commission, must be extended to cover material that suggest a crime has been committed even if the case has been referred to prosecution. One submission recommends that applying confidentiality guarantees even to perpetrator witnesses would “*incentivise people to come forward with information, thereby facilitating the families’ right to truth*” as there would be no risk of prosecution or reprisals. Others argued that this would hinder investigations and the ability to bring perpetrators to justice – if testimony from witnesses was not made available for prosecution. On these grounds, these submissions favoured the sharing of information between mechanisms, with the limits of confidentiality made clear to participants. An alternative view proposed by some of the submissions was for the OMP, the TRJNR Commission or the Office of Reparations to be able to share some of the information it obtains without compromising confidentiality (for example, patterns that would help establish accountability) that would enable the Judicial Mechanism to conduct its own investigations and establish the evidence it requires. For this reason, some of the submissions identified the absolute need to have clear policies and guidelines on confidentiality, its definition and criteria, and its limitations, so that people can provide informed consent.

186. A few of the organisations working on behalf of those who had been subjected to violence stated that a minority felt that the details of their case would identify them and therefore believed it was too dangerous to provide testimony, whatever precautions and safeguards were established.

187. Another viewpoint expressed in a small number of submissions was that it was unnecessary to allow for anonymity of those who provide testimony in the submissions especially in prosecutions, that it would unduly prejudice the accused, and that it would not allow the defence lawyer to cross-examine affected persons and witnesses.

*“Absolute no to any new Acts of Parliament which, if approved, will enable courts of law in Sri Lanka to accept evidence provided by anonymous witnesses whose identities will only be revealed after twenty years (these so called ‘witnesses’ are in fact LTTE terrorists or their supporters and their ‘evidence’ are all bogus lies). At present, a witness has to appear in person in a court of law so that the defendant’s lawyer can cross-examine any witness to figure out if the witness is lying. Not being able to do so is a grave injustice, not justice.”*

(Individual, Written submission, United Kingdom)

## **10.2. Special Vetting Measures to Ensure Staff do not Pose any Risk to Participants**

188. A number of submissions highlighted the need to vet the members and staff of the mechanisms as well as, most importantly, those providing protection services. The vetting procedures should ensure that staff are credible to those who are likely to participate and unlikely to pose a risk.

189. A number of submissions focusing on the security aspects stated that personnel providing security and protection services should be vetted to ensure they are trustworthy and do not have any prior record of harassment, intimidation, or violence. There were some submissions that called for the explicit exclusion of current or former law enforcement and military personnel and those who have held political office, in order to ensure the highest levels of safety and security for participants and their families.

190. These submissions highlighted the difficulties of ensuring independence of officers from the police or security forces where they are called upon to investigate their colleagues. The high incidence of political interference in the police force was also given as a reason for the exclusion of politicians from security and protection services in the transitional justice mechanisms.

## **10.3. Provision of Safe Accommodation and Transport**

191. Some of the submissions highlighted the issue of safe accommodation and transportation facilities for affected persons and witnesses wishing to participate in the mechanisms, especially if they were required to be in Colombo or elsewhere away from their residence. These were seen as important especially for women and children who might be required to stay overnight or for a few days.

192. Similarly, the issue of safe accommodation and transport was also raised in the submissions for those participants who may be especially at risk of reprisals, threats and intimidation. In these cases, some of the submissions suggest that participants and those at risk are provided with temporary relocation into safe accommodation and provided with secure transport.

193. Some of the submissions also point out that a number of participants may remain at risk following the conclusion of their participation in the transitional justice process.

*“We should be concerned about the security of the person who is telling the truth. We cannot get away from the matter after we get the truth from the person, saying that we know the truth now. We have to think about the damage we have done to the person. We know the information. After, that particular person is over. Then that person might get disappeared. If that person knows information, special security should be provided to that person. Otherwise, people do not come out to tell the truth.”*

(Religious leader, FGD, North Central Province)

194. The submissions make a strong case that appropriate measures should be taken to ensure that those who provide truth and testimony are given special security measures. Some of the submissions specify this to include temporary or permanent relocation within or outside of Sri Lanka. A number of submissions call for international assistance in the protection programme for this purpose. The protection of affected persons and witnesses who have given evidence abroad and are later returned to Sri Lanka has also been raised. If needed international protection must be assured to persons who come forward to testify and give evidence.

#### **10.4. Rapid Response and Feedback Systems to Ensure Timely and Effective Assistance for Those Who Need Help**

195. One of the submissions from an organisation working with families of the disappeared pointed out the need to have a rapid response mechanism put into place *“i.e. mediators must be available to respond, should participants (victims or victim families and perpetrators or perpetrator families) need help.”*

196. Another submission made a similar proposition, pointing to a feedback mechanism whereby participants can alert protection services if they believe their or their family’s safety has been compromised or if they have been subjected to any threats, intimidation or harassment. Such a feedback mechanism is also necessary to ensure that protection services can be effectively monitored and evaluated, and strengthened where necessary, according to another submission. This submission emphasised the need to ensure that mechanisms are designed with the capacity to monitor, learn from, and adapt in response to their impact on participants or changing external factors, and that this is especially important for protection and security services.

197. Some submissions point out that people in general are hesitant to lodge complaints against State agencies and bureaucrats. These recommend alternative mechanisms for such feedback and complaints are put in place, taking into consideration what would make participants comfortable in sharing their experiences as well as what would ensure that their complaints are taken seriously and lead to an effective response.

#### **10.5. Firm Action Against Those who Threaten, Intimidate or Harass Participants**

198. Many of the written submissions concerned with the issue of on-going violations and the security of participants in the transitional justice mechanisms call for immediate and effective response by the Government to allegations of victim and witness intimidation, noting that this would restore public confidence in the transitional justice process, facilitate participation, and protect participants and their families against future violence. These submissions require that those responsible for security and protection services have a duty to investigate any imminent or alleged complaints of threat, reprisals, harassment of violations committed against those who are participating in any of the transitional justice mechanisms.

199. In order to do so effectively, the submissions require the security and protection unit to have broad powers of investigation, in particular powers related to summon people, request documents, and inspect premises. These submissions suggest that those who fail to comply must be charged with the offence of contempt for authority and punished by the Supreme Court. They also recommend that swift disciplinary or prosecutorial action is taken against those who commit such acts.

#### **10.6. Enabling the Collection of Evidence with Regard to Protection and Security Services**

200. One of the problems highlighted earlier which was raised in some of the submissions was the issue of collecting evidence that can be used to establish the identity of perpetrators, establish proof of guilt and bring those responsible to accountability. The measures highlighted in these submissions include:

- Enabling regular and unimpeded access to investigative services, including judicial medical officers. This includes allowing participants to request these services.
- Involvement of the medico-legal services at the appropriate time and place, for example, organising regular visits from investigative services to the mechanisms and conducting staff audits.
- Implementation of correct investigative procedures at the scene of the crime
- Ensuring proper handling, storage and safeguarding of evidence and testimony

## 10.7. Legislative Measures and an Enabling Environment to Enhance Security and Safety of Participants

201. Several submissions make the point that if the Office on Missing Persons is to have any impact, the Government must repeal the Prevention of Terrorism Act (PTA). Laws like the PTA are one of the major causes of enforced disappearances, as they have allowed State security forces to abduct and arbitrarily detain persons without producing them before a magistrate. The PTA is responsible for disappearances, torture, and custodial deaths of Tamils in the north and east, and also of the Malaiyaha Tamils in the Central and Southern Provinces.

202. It is also recommended that while the Government has now ratified the U.N. Convention on Enforced and Involuntary Disappearance, it must now introduce law that will criminalise enforced disappearance.

203. An opposing perspective is presented by a few submissions that juxtapose national security against the personal security of those who participate in the transitional justice process. These submissions argue that the transitional justice process itself is likely to create conditions that endanger national security and that the repealing the PTA and decommissioning of military presence is to be discouraged. These suggest, for example, that,

*“... the proposed transitional justice mechanisms will create social dysfunction and be detrimental to orderly civilian life... The focus should not be on healing wounds but on maintaining national security and economic growth for all citizens.”*

(Organisation, Written submission, Victoria, Australia)

204. These submissions suggest that there is little need for the transitional justice process, and whilst acknowledging the importance of closure in relation to missing persons, indicate that some may simply have migrated elsewhere, without their family’s knowledge, for economic rather than security reasons.

205. These viewpoints on national security issues are sometimes but not always shared by the submissions made by the security forces themselves in the consultations. In one set of consultations with high-ranking officials, one officer commented,

*“We were able to completely defeat the LTTE. There is no residual threat militarily.”*

Others indicate that some of the camps will be retained, for example, navy camps, but that others may be reviewed and adjusted accordingly.

206. In their responses to questions about these allegations of human rights violations in the consultations, the security forces members acknowledge the existence of such allegations but refer to the lack of evidence. They were mostly of the view that given proof of such actions, perpetrators must be held to account. The greater concern however was the necessity to establish proof.

*“In the recent past, various allegations have been made against the armed forces and particularly that the armed forces has been present or interfered with those who have sessions with these commissions. We cannot go looking without substantial proof. There are sweeping statements being made without any basis. That will have to be looked.”*

207. Their statements suggest that the provision of evidence and substantial proof is a key element in their acceptance of these events, giving greater impetus to the need to ensure evidence (including testimony) is collected and protected when such allegations are made. Given this pivotal importance of testimony and evidence in prosecutions, a number of submissions call for an immediate and strong strategy for protecting witnesses, their testimonies and other evidence, to be put in place.

## **11. Personnel Working in Security and Protection**

208. The submissions point to the history of protection work in Sri Lanka carried out by the non-government sector in protecting affected persons and witnesses against reprisals, intimidation and harassment, and facilitating their participation in the criminal justice systems. They identify particular civil society activists, human rights defenders, and church leaders as demonstrated “the highest integrity in protection work” and suggest that these should be key actors who are involved in designing the protection and security systems for the transitional justice mechanisms.

### **11.1. Upholding the Affected Person’s Rights and Principles of Protection Work**

209. Several of the submissions refer to the following rights of affected persons and principles for protection work:

- Affected persons and witnesses have a right to access to justice and to fair treatment within the justice system
- They have a right to be treated with compassion and for their dignity to be respected.
- They have a right to restitution from the offender and where this is not available, to compensation from the State
- Affected persons and witnesses who wish to provide testimony must be given every assistance to do so, including logistical support.

## 11.2. Linguistic Competence of Staff

210. It was stressed in the submissions that there must be officers who are able to speak the dominant languages of the region and that the mechanisms must be capable of operating in these languages too. This is also especially true for security and protection services, as outlined in the following quotes from the submissions.

*“When he goes to the police he is questioned in Sinhalese, which he doesn’t understand and with him is his uncle whose understanding of Sinhala language is also limited. When a Tamil journalist thinks, after forty-four journalists killed, and I still can’t go complain about something in my language, that is a terrible problem.”*

(Individual, Media Sectoral Consultations)

*“The language we work in is Sinhala. But when you go from here to the north, many peoples’ language is Tamil. So there is a problem of not understanding. Because of that there is problem of not getting clear and correct answers for their problems – our department has a rule of recruiting Tamil people but the implementation of this needs to increase more. Without understanding their problems clearly, you cannot have answers.”*

(Police officer, Focus Group Discussion, Security consultations)

## 11.3. International Assistance and Involvement in Protection Services

211. Some submissions also recommend that expertise from international actors who have done similar work in other post-war contexts should be sought, especially with regards to design of security-conscious transitional justice mechanisms. Others suggest that international actors and agencies should play a direct role in protection work, most often because of the low levels of trust in the Sri Lankan Government’s ability to provide protection and ensure safety.

*“Strong international participation at every stage and level of process. This is the only way for Sri Lankans to place trust in process.”*

A submission from an organisation working directly with survivors of violence state

*“the UN High Commissioner for Human Rights (must) explore during his visit (to Sri Lanka) how the UN can play a direct role in ensuring safety for survivors wishing to provide evidence in the internationalised justice process.”*

212. Whilst a few of the submissions strongly suggest that international involvement in protection services should extend to providing protection in cases where participants and their families are at high risk, others suggest an advisory and oversight role, with technical inputs into

design and delivery as well as capacity building. A number of submissions also recommend that international agencies work together with other governments to put into place temporary or permanent relocation to those participants whose lives may be at risk if they continue to stay in Sri Lanka.

#### **11.4. Sensitisation of Staff to Security Risks**

213. According to a number of submissions, staff working in the mechanisms must be made aware of the security risks to participants and their families and how to respond appropriately to any safety threats. In addition to being briefed on the protection services and protocols, the submissions point to the need to ensure staff members are familiar with the multitudes of ways in which the safety and security of affected persons and witnesses may be compromised. This includes exploitation, bribery and intimidation, especially of vulnerable groups such as women whose family members have been disappeared. For this reason, gender-sensitivity was also seen as a key safety measure.

214. Furthermore, the submissions also recommend that commissioners and members of the transitional justice mechanisms must be sensitised to the security risks to participants in the mechanisms.

#### **12. Location of Offices**

215. The submissions call for an independent body with a mandate for victim and witness protection, security and protection units to be established within each mechanism and to have their services decentralised to regional offices. This would mean having units based at each of the regional offices of the mechanisms.

216. Members of the diaspora, particularly those who were forced to flee the country, also reiterated similar demands. One such submission recommended that the Government establish mechanisms outside the country to enable participation by persons affected by violence who are overseas. Another suggest that intermediaries could play a role in facilitating participation of those who wits to engage with the process of transitional justice in Sri Lanka but who live abroad.

## VIII. CTF OBSERVATIONS AND RECOMMENDATIONS

In addition to the submissions made by those who participated in the consultation process, the CTF has the following observations and recommendations to make of its own. These observations and recommendations are informed by the consultation process and relate to the context in which reconciliation is being pursued and the proposed mechanisms to achieve it. The following CTF observations and recommendations are grouped accordingly:

### A. General

- 1.1 The vision of a plural, multi-religious and multi-ethnic Sri Lanka in which diversity is recognised as a strength and asset to be celebrated and in which citizenship is firmly grounded in mutual respect, needs to be propagated and celebrated throughout the country by Government - especially at its highest levels - and by civil society. Unity in diversity, respect for and protection of the multiple identities of all Sri Lankans, is fundamental to meaningful reconciliation, peace and prosperity in the country.
- 1.2 To bridge the considerable and persistent deficit in trust and confidence regarding the State's commitment to reconciliation, effective and unequivocal action must be taken by the Government to prevent the spread of ethnic division and religious intolerance and to hold to account under the due process of law those responsible, without fear or favour in respect of any community however defined.
- 1.3 The CTF strongly recommends that meaningful steps should be taken through consultation with all stakeholders, towards a secular State and with equal respect accorded to the multiple religions practiced in the country.
- 1.4 In recognition of the pivotal importance of transitional justice for meaningful peace and unity, the right of every citizen to the truth of past conflicts should be recognised in the constitution, as well as the violations of human rights that took place in them and what gave rise to them.
- 1.5 Everyone who has suffered harm or loss in such conflicts must have the right to an effective remedy, including
  - a. effective accountability, inclusive of criminal justice; and
  - b. adequate, effective and prompt reparation and rehabilitation.
- 1.6 The State must take all reasonable measures to ensure that such conflicts and human rights violations never occur again, and in particular steps must be taken to reform institutions that caused or failed to prevent human rights violations. The culture of impunity must be comprehensively reversed.
- 1.7 Agreement on a political and a constitutional settlement of the ethnic conflict based on effective and meaningful powers haring and its full implementation is critical in this regard. This was identified in many submissions as an essential prerequisite for reconciliation and

as one that would ensure the vital enabling environment for the establishment and functioning of mechanisms for reconciliation.

- 1.8 Shortcomings in bi-lingual language proficiency throughout the machinery of the State, was identified in most submissions across the country, as a major impediment to reconciliation. The CTF recommends that this be addressed as a priority.
- 1.9 A number of confidence–building measures ranging from the expedited return of land held by the military, to the release of a list of all detainees and detention centres, the repeal of the Prevention of Terrorism Act (PTA) and the immediate release of persons held under the PTA without charges, must be undertaken without delay to bridge the considerable deficit in trust and confidence.
- 1.10 The Government must ensure that the Police, security forces and intelligence agencies follow the Presidential Directives on Arrest and Detention reissued in June 2016.
- 1.11 The necessary legislative measures should be taken without delay to criminalise enforced disappearances in line with the definition of the crime under the International Convention for the Protection of All Persons from Enforced Disappearance.
- 1.12 International crimes such as war crimes and crimes against humanity must be criminalised and incorporated into Sri Lankan law immediately through legislation, without temporal prescriptions and in a manner that allows for the prosecution of these crimes committed in the past, in line with Article 13(6) of the Constitution and Article 13(2) of the International Covenant on Civil and Political Rights (ICCPR).
- 1.13 The Government must draw up a roadmap laying out the establishment and functioning of the mechanisms for transitional justice and reconciliation. The roadmap should address the existence of a multiplicity of State bodies, including ministries, with overlapping mandates for reconciliation. It should streamline the number of Government entities involved as well as their mandates, clarify their powers and functions, relationships to each other as well as to the mechanisms to be established for transitional justice and reconciliation.
- 1.14 The President and Prime Minister, engaging all stakeholders in an island-wide outreach programme must champion the roadmap on transitional justice and take overall responsibility for it. Continuing dialogue and consultation between Government and all stakeholders beyond the CTF consultations, in the preparation of legislation on mechanisms and thereafter, also remains of fundamental and critical importance in bridging the prevailing deficit of trust and confidence with the general public and the armed forces. Public outreach with a clear media strategy is important for its success.
- 1.15 To ensure the overall coherence of the mechanisms and reconciliation process, especially the prevailing confusion over the relationships between the respective mechanisms, and in order to counter public cynicism as to whether all four mechanisms would be established, the policy and operational frameworks for all the mechanisms should be prioritised at the outset, swiftly made public and operational.

- 1.16 The State must take the responsibility to ensure adequate funding of the mechanisms in a timely manner and as such, appropriate budgetary allocations must be made.
- 1.17 In order to avoid distortion, inappropriate and harmful terminology such as the Tamil term currently in use for the Certificates of Absence (CoA), due attention must be paid to the use of appropriate language in the naming and operation of the mechanisms and other measures for reconciliation and transitional justice. Experts in the field, who are knowledgeable in local language usage, should be consulted.
- 1.18 The State must ensure a more transparent and inclusive law making process, particularly with regard to public security and counter-terrorism legislation. It is imperative that Sri Lanka's legal and policy framework conforms to the fundamental rights guaranteed in the Constitution and international human rights obligations.

**i) Demilitarisation**

- 1.19 Given the critical role of the military in the transition from war to peace, it is imperative that all ranks of the military be kept fully informed of the transitional justice process and the different mechanisms, with a specific focus on the accountability mechanism. There must be clear recognition and understanding of the role and responsibilities of the military in a post-conflict, functioning democracy by the State, the military and civilian authorities. The recognition of this role must be complemented by its operationalisation. Accordingly, the Government must take steps to ensure demilitarisation and security sector reform. In particular, the military should relinquish its roles in activities that should be undertaken by the civilian administration and Police, and from economic activities.
- 1.20 There needs to be a process of phased demobilisation of security forces accompanied by rehabilitation to reintegrate into society and civilian life. The overall rehabilitation should include psychosocial rehabilitation, re-education and necessary vocational training for personnel. Following which, those without any record of human rights violations or crimes can be employed with commensurate positions in civilian institutions or found employment overseas. There should be an attractive discharge/early retirement package offered to them which can include pensions, family packages, scholarships and admissions to schools for children, support and services, follow up medical and psychosocial support and treatment, accommodation, income generating loans and opportunities. Information regarding this process must be provided to the persons who will be affected by it.
- 1.21 With regards to private and public land currently held by the military that is claimed by civilians, there needs to be a comprehensive mapping process with public involvement and a detailed plan for release of land. An annual review should be conducted to re-evaluate the release process.

## ii) Police and Judicial Reform

- 1.22 A considerable number of submissions highlighted the delays and blockages in seeking redress through the judicial and law and order systems. As such there is a clear need to review and reform the structures and processes of justice and law and order. Transitional justice principles framed in terms of the right to truth, justice and accountability, the right to reparations and to guarantees of non-recurrence should be integrated into them.
- 1.23 Effective remedy and accountability through ordinary courts must involve systemic reform and structural change to address broad issues which impede access to justice and accountability including systemic delays, lack of independence and politicisation, conflict of interest, lack of capacity and competence and an overall lack of victim centeredness, at every level including the judiciary, the Attorney General's Department, Judicial Medical Officers, investigators and victim and witness protection.
- 1.24 In the case of human rights violations that do not meet the threshold of the Special Court's jurisdiction and/or cases that for reasons of prosecutorial policy are not prosecuted by the Special Court, measures must be in place to ensure prosecution within the ordinary justice system.

### **Key specific recommendations include the following:**

- a. Increase cadre in the Attorney General's Department, the Police (including forensics) and Judicial Medical Officers (JMOs) to address existing gaps, delays and backlog of cases and complaints. Address the need for specific competencies including language and forensic skills and adequate representation of women and all ethnic groups. It may be necessary to look at temporary measures such as the hiring of lawyers as judicial officers to serve as unofficial magistrates, for a specified period of time.
- b. Strengthen capacity and competence of the Judiciary and the above institutions. This entails allocating additional resources, including for dedicated forensic facilities, which are currently lacking in the State system, training, at a more general level, such as on transitional justice and at a more specific level, especially on the jurisprudence in respect of human rights, international crimes and sexual violence as well as providing local officers access and exposure to international technical expertise. Specifically designed courses for the personnel from the above institutions, including for judges and practising lawyers, on transitional justice - especially on human rights jurisprudence, international crimes and sexual violence - should be provided in all educational institutions of legal learning. Promotions should take into account the improved competence of personnel in the above institutions. This needs to be clearly set out and implemented.
- c. Measures must also be taken to address current practice of Courts including the higher judiciary, which impede justice, including systemic delays in the hearing and management of cases.

d. The State must take measures to address the pressing issue of conflict of interest particularly in the Attorney General's Department and the Police. Bifurcation of the Attorney General's Department and reverting to a Director of Public Prosecutions as a separate and independent entity is recommended to avoid conflict of interest in prosecuting crimes alleged against State officers. In the case of the Police, the CTF recommends a separate unit to investigate allegations against the Police given the current conflict of interest with the special investigations units. The officers of this unit should be independent of and insulated from the regular police force.

e. To increase public confidence, transparency and accountability, key actors involved in the investigative, prosecutorial and judicial processes must formulate and make public their policies and procedures on the treatment of cases involving human rights violations, international crimes, and sexual violence.

f. Recognising that the current justice system fails to take into account in practice, the rights and particular needs of affected persons, the CTF recommends developing a national policy on victim centeredness which will cover procedural and structural aspects at every step of the justice system, while ensuring universally recognised rights of the accused. This policy needs to be enforced through specific departmental circulars to ensure effective implementation. Current procedural bars to access to justice such as the failure to provide adequate information to affected persons including the current practice of denying such persons a copy of their own judicial medical report and the restrictive nature of the statute of limitations, must be addressed as a matter of priority. There should be full recognition and implementation of bilingualism throughout the justice system. Accordingly, there should be sufficient numbers of competent interpreters in the courts.

g. The CTF recommends that an effective public complaints and monitoring system of all structures involved in justice delivery must be put in place in order that inaction, delay and other conduct by the State that impedes access to justice is identified and addressed as a matter of priority.

h. The CTF notes the lack of transparent and effective disciplinary proceedings against State officers who fail to act according to their mandate or overstep the bounds of their authority in the course of their official work. This includes complaints of bias not limited to ethnicity, religion, gender, caste or class. Accountability of errant State officers must be transparent and be proportionate to the alleged violation. The CTF notes that the practice of transferring officers found guilty of torture/custodial violence without further steps to ensure non-recurrence, erodes public confidence in the system and perpetuates a culture of impunity.

i. With regard to the Police, the CTF recommends reviewing current efforts at community policing with a view to expanding such services, while ensuring that this does not reinforce existing problems in the community such as the policing of women and religious minorities.

### **iii) Post-war Development, Displacement and Land**

- 1.25 The destruction to both regional and local economies in the conflict affected areas of the North, East and bordering regions, must be factored into development programmes in order to ensure that regional disparities are not exacerbated. Emphasis should be placed on re-building and expanding community-level infrastructure and local economies. On-going problems, including debt, need to be examined to ensure regulation of the financial sector and relief for those affected.
- 1.26 The Government must commit to finding durable solutions for Internally Displaced Persons (IDPs) and refugees. Specific measures need to be taken to recognise populations still living in displacement or unable to secure durable solutions, and to overcome obstacles, including those relating to land, documentation, infrastructure and assistance.
- 1.27 A number of conflict related land problems were highlighted and require urgent action. This includes allegations of 'land grabs' by State agencies and by civilians from other ethnic communities.
- 1.28 While ensuring it does not settle persons from other parts of the country prior to settling land issues in the North and East, the Government must undertake measures to address conflict-related land issues in the North, East and border areas, including destruction/damage, lack of documentation, secondary occupation by State agencies or other civilians, and restrictions on common resources such as fishing waters and irrigation schemes.
- 1.29 In order to ensure timely and effective State response, specific measures should be undertaken, such as mobile units to provide missing documents, and the establishment of district level mechanisms bringing together community leaders, district level officials and politicians to address complex inter and intra-ethnic land disputes as well as those between civilians and state agencies.
- 1.30 As per the Constitution, the National Land Commission should be appointed.

### **iv) Women**

- 1.31 The CTF received submissions that called urgent attention to the grave human rights violations against women during the conflict as well as to the long ranging, systematic and structural misogyny that manifested itself through the use of rape as a form of punishment, persistent harassment of women – especially women perceived to be single – by persons in authority and women's need to simultaneously bear the burdens of care provision and income generation in a threatening social context, not limited to the war affected and

militarised areas of the North and East. Women are compelled to balance their care-giving role, together with the need to earn income in a context where many government personnel consider sexually predatory behaviour towards women who come to access services, to be the norm. The State must take due cognizance of this burden placed on women throughout the country, and especially on those affected by conflict. The CTF recommends that:

- a. Women's economic, social, political, legal and cultural rights irrespective of any constraints on the basis of custom, caste or any other consideration should be safeguarded and ensured in the Constitution, law, policy and practice.
- b. Establishment of the National Commission on Women without delay.
- c. Ensure women's representation in key decision-making positions in all mechanisms as well as in everyday operational positions.
- d. Take into account all measures required for affected women to access and engage with the proposed four mechanisms. See recommendations 2.15 and 2.16
- e. Gender sensitivity training at all levels of society including in educational institutions and in training for the public services.
- f. Recognition of the harassment of women as a punishable crime within the establishment code of the public service, and the institution of a complaints mechanism for such harassment.
- g. Ensure that the private sector also takes the above into account.

**v) Children and Youth**

- 1.32 The children and youth of the country are its future and the success of the transitional justice and reconciliation process depends on the inclusion of their needs and concerns at all levels of the reconciliation process. Youth should be encouraged to participate in and opportunities provided for them to take leadership roles in public affairs. Opportunities and facilities should be created for them in the arts, media, modern technology, sports and other social endeavours to express themselves and find meaning, particularly in mixed ethnic and gender settings.
- 1.33 Educational curricula and spaces must be designed to promote a more inclusive and pluralist society. Reviewing and redrafting the curricula of history and other subjects in order to ensure a greater inclusiveness, points of commonality and a sense of shared history is fundamental to reconciliation. Sri Lankan universities should conduct research and foster

an intellectual space where students are encouraged to question certain stereotypes such as nationalism, majoritarianism, patriarchy and heteronormativity. They should be further encouraged to work against all forms of injustice and inequality. Values of respect and dignity for women and gender minorities, minorities (both national and regional), depressed classes, marginalised people, differently abled and mentally ill should be systematically introduced in the school curriculum and also through the media and social institutions.

- 1.34 Special attention and services should be provided for war- affected youth such as young refugees, internally displaced persons, former child soldiers and young single mothers. This includes a wide range of specific assistance- from catch-up education and vocational training to medical, psychosocial care, counselling on reproductive health, alcohol and drugs.

**vi) Civil Society**

- 1.35 Whilst the CTF recognises the primary duty of the State to address the challenges of transitional justice and reconciliation, the CTF emphasises the important and complementary role of society in general in this regard. In particular, the media, the business community, religious actors, professional organisations, and all civil society groups as well as political parties, should support such State initiatives as well as take initiatives of their own. CTF notes that a majority of submissions look to the State to take corrective action but only provide marginal reference to other actors. For an effective transitional justice process the involvement and participation of all these actors working at multiple levels, from the national to the local, is vital.
- 1.36 The indispensable role of civil society in a transitional justice process needs to be recognised. The legal framework enabling civil society organisations to fulfill this role needs to be strengthened, and the space for them to do so provided and protected. Their valuable contribution needs to be facilitated especially by district level State officials.
- 1.37 While the vast majority of suggestions focused on national level interventions requiring changes of law, policy or constitution, or the involvement of national level actors in local level problems, a number of submissions spoke to the need for local level participation and ownership in the design and implementation of mechanisms. It is imperative that civil society and policy makers invest energy at the district or community level to strengthen already existing forums or networks for this and in establishing new ones to address issues of coexistence and tensions, in parallel to national efforts at transitional justice.
- 1.38 Consultations should not be seen as a one-off activity, but should be continuous and integral to the transitional justice process. This will strengthen the design, functioning and effectiveness of the individual mechanisms.

## vii) Archiving

- 1.39 Appropriate measures must be taken to ensure the archiving and protection of data produced by the consultation process and the operations of the reconciliation mechanisms. The data produced is invaluable and therefore should be archived and protected without prejudice to public access. The relevant provisions of the Right to Information Act should be considered in this regard.
- 1.40 The CTF recommends that the Government publish, widely disseminate and make easily accessible to the public, compilations of the submissions made to the CTF. This will further public understanding and awareness as a starting point for meaningful reconciliation.

## B. Cross-cutting Recommendations on the Mechanisms

- 2.1 Legislation setting up the mechanisms should be introduced without delay.
- 2.2 Given the instances of surveillance reported to the CTF and witnessed by its members at consultations, the intimidating presence of security personnel at consultations, the questioning of participants and fears expressed by them in the consultations with regard to repercussions, the CTF recommends that from the very outset of the establishment of the reconciliation mechanisms, urgent steps must be taken to put in place a protection system to guarantee the security of those who participated in the consultation process, as well as of those who will access the mechanisms once established. As such, clear instructions must be issued by the Ministry of Defence and the Ministry of Law and Order to avoid incidents of harassment and intimidation.
- 2.3 Accordingly, it is necessary to establish a Special Victim and Witness Protection Unit that will include Police personnel and which will be overseen by a board that includes representation from the Human Rights Commission and the mechanisms once operational. The Unit must draw on local experiences, including those of civil society actors, and obtain international technical expertise in establishing the framework for the Unit, developing its operational systems and monitoring its functioning. The Unit should be independent from political and other interference, have the necessary powers for training, for enforcement, for rapid response and continuing protection of affected persons and witnesses throughout their engagement with the mechanisms and beyond. To facilitate this, the Unit should be represented in each of the mechanisms. It should report to the President.
- 2.4 The current Witness and Victim Protection Authority should be re-constituted as an independent body and its powers and functions revised in line with 2.3.
- 2.5 To reinforce 2.3 there should be a monitoring body comprised of representatives of affected families, human rights defenders, civil society activists and the international community. It should be officially mandated to report to the President on the effectiveness of the mechanisms and prevailing protection measures and its report should be made public. The monitoring body should also be tasked with advising on additional measures to strengthen

the mechanisms and the protection of witnesses and victims. At the outset, the monitoring body must follow-up on the security and protection of those who were subjected to surveillance, questioning and intimidation, detention and torture during the consultation process. Representation of the international community in the monitoring body must be in accordance with strict guidelines such as those outlined below- recommendations 2.12 and 2.13 - in respect of international participation and membership of the mechanisms.

- 2.6 The monitoring body should be appointed by the President from a list of nominations submitted by the Constitutional Council and drawn from recommendations made to the Council by civil society. Members of the monitoring body should serve for a term of three years only to ensure the representativeness of the body.
- 2.7 The accessibility of the mechanisms in terms of the location of offices in the regions where practicable, must be ensured. District-level mobile teams of the mechanisms should be considered where appropriate.
- 2.8 The mechanisms must endeavour to ensure tri-lingual and sign language capacity at headquarters and regional sub-offices, as well as in outreach activities.
- 2.9 The representation of stakeholders on the mechanisms, including families of those affected must be ensured. The complex issue of representation on the mechanisms must take account of the existence of multiple perpetrator-groups that carried out violations and ensure against conflict of interest of both those affected as well as alleged perpetrators in representation on the mechanisms.
- 2.10 Consultations in the North and East in particular, as well as in some in the rest of the country, revealed the overwhelming lack of trust in the State, its institutions and mechanisms. The belief was strongly expressed that exclusively domestic mechanisms would not be credible. At the same time, consultations outside of the North and East and with the armed forces, revealed strong opposition to international participation on the mechanisms. Many however, did recognise that given the limitations of existing national capacity in specific areas, international expertise should be engaged. The CTF also notes the commitments made by the Government of Sri Lanka on international participation in the mechanisms, in the resolution that it co-sponsored at the UN Human Rights Council in October 2015. Therefore, the CTF recommends the participation of both international and national personnel on the four mechanisms ranging from the provision of advice and expertise to active membership of the mechanisms including as judges and prosecutors, as spelt out in the UN Human Rights Council Resolution of October 2015, co-sponsored by the Government of Sri Lanka.
- 2.11 National representation on the mechanisms should be by competent and experienced persons of integrity and independence, drawn from the main ethnic communities in Sri Lanka. There should be clear criteria for the positions nationals will occupy as well as for the choice of nationals so as to ensure that the representation on the mechanism will encompass a diversity of ethnicity, language, gender, experience and skills. In addition, the

commitment of time required of them must be clearly specified. Further training should be provided for nationals, as required.

- 2.12 There must be clear criteria and justifications for the positions that internationals will occupy and for the choice of internationals – especially their independence, integrity, training and experience must be ensured. The commitment of time required should also be spelt out. Due recognition of the challenges of language competence and familiarity with the local context should be taken into account and measures to deal with them put in place before internationals are nominated. Transparency of this process must be ensured.
- 2.13 As in other contexts of international participation on transitional justice mechanisms, internationals should be phased out once trust and confidence in exclusively national mechanisms, national capabilities and competence have been built up.
- 2.14 A careful vetting process of staff of the four mechanisms, including investigators of the Judicial Mechanism, the Office on Missing Persons (OMP) and the Truth, Justice, Reconciliation and Non- Recurrence Commission (TJRNR) should be ensured. The process of lustration whereby officials associated with human rights violations are ineligible, must apply.
- 2.15 Measures need to be put in place at the outset to prevent sexual exploitation, bribery, breaches of confidence and intimidation of those accessing the mechanisms by staff of the mechanisms. These should include strict codes of conduct and processes for monitoring, complaints mechanisms and disciplinary action.
- 2.16 Mechanisms must have balanced gender representation at all levels of operation and be sensitive to the gendered needs of those who utilise them. They must provide childcare facilities (including space for breast-feeding and infant care) and safe sanitation.
- 2.17 Reimbursement of costs of travel and accommodation of those who access the mechanisms, according to need, must be considered.
- 2.18 The staff of mechanisms must
  - a) be sensitive to the needs of all communities and individuals that access the mechanisms, including the minorities, indigenous peoples, the marginalised, depressed castes, and LGBTQI community, ensuring in particular that stigma and discrimination do not deter or impede their engagement with them,
  - b) take into consideration the special needs of those who are differently abled and the mechanisms should be designed and located to ensure easy access to all.
- 2.19 Provision of justice and design of schemes for redress for sexual violence and other gendered crimes should be sensitive, offer confidentiality/privacy/safe environment such that survivors are encouraged to come forward and are not re-victimised/re-traumatised.
- 2.20 An independent body must be established to advise, design and coordinate the services within the mechanisms, to set up the proposed psychosocial units within each mechanism and to support the strengthening and extension of psychosocial services throughout the country as needed. In this regard it could work closely with the Psychosocial Task Force of the Office of National Unity and Reconciliation.

- 2.21 Psychosocial services must be made available to those affected at the community level before, during and after their engagement with the transitional justice mechanisms. This should be done by strengthening capacity, ensuring sustainability, and by expanding the scope of existing services provided by civil society organisations and state institutions.
- 2.22 The potential for conflicts of interest must be recognised in the direct provision of psychosocial and other services by the State, especially in cases where agents of the State may be responsible for human rights violations. Therefore, whilst the State is responsible for ensuring the availability of psychosocial and other services, it may be necessary for civil society actors to be involved in the delivery of services (in coordination with State services as appropriate). This is to ensure the independence and neutrality of the psychosocial and other service providers.
- 2.23 A Victim Trust Fund must be established so as to ensure sufficient funds to address various needs of affected persons. The Government should also encourage private sector and diaspora contributions to the Fund, in addition to contributions from other international donors.
- 2.24 Trustees of the Fund should be appointed by the President, on the recommendations of the Constitutional Council. The recommendations should be drawn from nominations submitted by civil society.
- 2.25 Each mechanism should have an Outreach and Information Unit to liaise with the general public and those directly affected on the work of the mechanism. Each mechanism should have a clear public information and dissemination strategy and its own website. The Outreach and Information Units will be responsible for uploading material to their respective websites and for dealing with questions and queries posted regarding the work of their respective mechanisms.
- 2.26 Efforts must be made to ensure outreach to non-resident Sri Lankans abroad and their engagement with the mechanisms. Failure to do so would limit the scope of the reconciliation process and even provide the basis for questioning its legitimacy.

### **C. Specific Mechanisms**

#### **3. Office on Missing Persons (OMP) and the Certificate of Absence (CoA)**

- 3.1 As emphasised in the consultation process, the name of the mechanism must clearly reflect the enforced and involuntary nature of disappearances.
- 3.2 From the outset, the OMP should establish regional offices in central locations and later in district offices to ensure accessibility for families in the districts.
- 3.3 Whilst ensuring no conflict of interest, especially in terms of its investigative function, appropriately skilled members of families of the disappeared should be employed as staff of the Office including in the monitoring mechanism of its operations, for specific activities such as exhumation of mass graves and for the vetting of forms to be used by the Office.

Once the OMP is appointed it should review the recommendations made by families and organisations working on disappearances in the CTF's Interim Report and other such reports.

- 3.4 There should be international technical involvement in the OMP including foreign personnel, specifically with regard to forensics.
- 3.5 The OMP should make public its rules of procedure and the criteria it will adopt in the exercise of its discretion over the sharing of information with prosecutorial authorities. This should include criteria for the confidentiality of information in its possession. In this regard the OMP should clearly spell out its obligations under the impending Right to Information regime.
- 3.6 Excavations and exhumations must take place bearing in mind not only the identification of skeletal remains, but also of the possibility of prosecutions. Therefore, they must be conducted with due care to ensure the integrity of skeletal remains and other evidence. The procedures for excavations and exhumations must pay heed to the sensitivities and psychological needs of families and communities.
- 3.7 The role of the Judicial Mechanism, the Office of a Special Counsel and the OMP in investigations, has to be clarified and made public. The public must be made aware of the scope of the Special Court and Counsel and their responsibilities in respect of cases of disappearances. Given the large volume of disappearances, current delays and other obstructions in progressing with cases, necessary judicial reforms must be undertaken to enable prosecution for disappearances, including the establishment of a special bench of the relevant court to hear cases of disappearances.
- 3.8 All available information on disappearances from national bodies and past commissions must be made available to the OMP.
- 3.9 The OMP must periodically update families concerned on progress in respect of the case/s of disappearance reported by them.
- 3.10 Families accessing the OMP must have access to Witness and Victim Protection. See 2.3-2.6 above.
- 3.11 Terminology for the Certificate of Absence, particularly the word for 'absence' must be sensitive and appropriate in the Sinhala and Tamil languages, reflecting the nature of disappearance and absence rather than death. An amendment to the Registration of Deaths (Temporary Provisions) Act will be required.
- 3.12 Given the time it will take the OMP and the State to verify if a disappeared person is alive or not, the current validity period of 2 years for a CoA is inadequate. The Registration of Deaths (Temporary Provisions) Act must be amended to extend the validity of the CoA to 10 years, in order to avoid burdening families with having to renew the certificate every two years.

#### 4. Office of Reparations

- 4.1 Acceptance of reparations should not in any way preclude or lead to the forfeiting of the right to access truth and justice via the other transitional justice mechanisms and the regular judicial system.
- 4.2 A mapping of past and on-going efforts at compensation and reparations, including of existing institutions and programmes that have a bearing on reparations, and of existing criteria for beneficiary selection of social welfare and development projects must be undertaken. This needs to be factored into the design of the Office of Reparations and the policy on reparations.
- 4.3 A clear policy on reparations that recognises the right to reparations and a clear set of normative and operational guidelines to give effect to this, should be set out and made public. The right to reparations should be seen as distinct from and in addition to the right to development. The policy should be imaginative and responsive to the various forms of large- scale conflict related and systemic violations that individuals and communities have suffered. It should devise multiple forms of reparations including financial compensation to individuals, families and communities, other material forms of assistance, psychosocial rehabilitation, collective reparations, cultural reparations and symbolic measures.
- 4.4 It should ensure that conflicts between different sets of affected persons as well as within the general population are not exacerbated.
- 4.5 The clear and transparent guidelines for the provision of reparations, particularly the form and quantum of awards, must take into account the following:
- Eligibility for reparations must be based on a broad definition of ‘victim’ and ‘victim family’ so as to recognise the diversity of relationships.
  - Prioritisation of reparations should be according to the level of vulnerability and need.
  - Reparations should be proportional to the loss and trauma suffered.
  - Primary consideration to be paid to the type of harm for which reparation is sought.
  - Loss and trauma suffered as a result of structural violence and/or marginalisation in addition to conflict- related loss must be considered.
  - Compensation, based not only on original loss but on the current situation of the claimant and any other specific vulnerabilities i.e. reparations are for all affected, but financial reparations are made on the basis of the current economic situation of those affected in order to enable their functioning.
- 4.6 Interim reparations, primarily material, should be considered so people can meet immediate needs. This is especially the case for those who have waited long periods for justice as well as for particularly vulnerable groups.
- 4.7 There should be a one-off payment to families for family members killed in conflicts. The payment for the loss of life of civilians should be made commensurate to that for armed forces and public officials.

- 4.8 There should be one-off reparation in kind, in the form of scholarships for the children and employment for the vulnerable family members of those who have been killed or disappeared.
- 4.9 Efforts should be made to ensure the recovery and return of items, specifically gold jewellery, monies and other movable properties taken from individuals during armed conflicts.
- 4.10 The State should recognise and respect the right of affected persons to mourn and commemorate the death or disappearance of loved ones.
- 4.11 While the State has a key role to play in memorialisation, this should not be considered as an exclusive one. Any State process to create a memorial should not override existing memorials or rituals performed by the families and communities who are directly affected. The State should ensure that its own processes of memorialisation are participatory, involving affected persons and communities and that these processes strive for a sense of collective ownership of the memorials. This consultative process should be integral to the conception and construction of the memorials, including but not limited to identifying locations, selecting artists to design non-partisan, victim sensitive memorials, construction and maintenance of the memorials, and the planning of ceremonies to be performed in the space. A variety of ideas for state memorials, including memorial gardens should be considered through this consultative process.
- 4.12 The Task Force recommends that the sanctity of all sites, where those who perished or disappeared in armed conflicts are buried, interred or symbolically remembered is respected and families be granted the ownership of individual plots to mourn and practice whatever cultural and religious rites or ceremonies, they think appropriate. Any buildings or structures built subsequently on these sites should be removed.
- 4.13 A memorial day for victims of all armed conflicts in Sri Lanka should be declared and the sensitivities of all affected person respected in commemoration activities by the State on that day.
- 4.14 There should be official acknowledgement by the State and pledges by it to ensure non-recurrence of the losses and suffering endured by many communities, including but not limited to the persons affected in 1983 and of Aluthgama 2014, for instance. The suffering endured in the final stages of the war, the Southern insurrections, the eviction of Northern Muslims, recognition of the structural violence and/or marginalisation faced by certain groups such as the Malaiyaha community, must also be considered in this regard.

## **5. Truth, Justice, Reconciliation and Non-Recurrence Commission (TJRNC)**

- 5.1 Given the lack of clarity and contrary opinions expressed in the consultations as to the mandate of the truth seeking mechanism, it is imperative that the purpose and scope of this mechanism, types of violations it should address and the key tasks to be performed by it be carefully formulated. In addition, given that the TJRNC is part of a larger reconciliation

process promised by the Government its relationship to the other mechanisms should be spelt out.

- 5.2 In particular, there must be clarity on whether the TJRNRC will take up individual or emblematic cases that speak to collective experiences and suffering.
- 5.3 The CTF is of the opinion that at a minimum, the purpose of the TJRNRC must be to establish the truth of what happened in the conflicts in Sri Lanka including discriminatory practices, and official acknowledgement of the truth once established. Official acknowledgement must include legislative measures where appropriate.
- 5.4 Truth in this context entails responsibility, but establishing criminal responsibility, i.e. the determination of who is a perpetrator, is best suited to a judicial mechanism or the existing judicial system. The CTF is of the opinion that the TJRNRC is not an appropriate mechanism to ascertain and assign criminal responsibility and therefore should not be empowered to grant amnesties.
- 5.5 The CTF recommends that the TJRNRC conduct investigations in order to find the truth and share information relating to criminal conduct with a prosecutorial body.
- 5.6 The TJRNRC should have a fixed term at the end of which, it should present a report to Parliament, which will be simultaneously released to the public. The length of the term of the mechanism should be determined by the volume of cases before it. The TJRNRC should publish annual reports, with clear actionable recommendations. These too should be presented to Parliament and simultaneously released to the public.
- 5.7 The TJRNRC should consider particular themes, issues and/or subjects for investigation and report. Due consideration must be paid to their selection. A number of requests were made in consultations for a specific focus on the last stages of the war, the Expulsion of Muslims from the North and the Malaiyaha community.
- 5.8 Given the history of commissions and unimplemented recommendations of previous reports, it is important that a review of these recommendations be undertaken to highlight what actions can and should be undertaken in a timely manner.
- 5.9 In light of the demands by the public for the Commission to be an action-oriented body as opposed to a passive listener, the TJRNRC should devise proactive ways for truth seeking as well as make specific and actionable recommendations in respect of it.
- 5.10 TJRNRC's reports detailing historical incidents must inform contemporary history and school curricula. Historical confirmation, official acknowledgment and acceptance of responsibility for human rights violations, accountability as well as the individual and collective understanding of the consequences of these, are central to reconciliation. This must apply to gross violations against whole communities and in particular, their cultural identities. Examples of such violations are the burning of the Jaffna Public Library, the anti-Tamil pogrom of 1983, the expulsion of Muslims from the Northern Province, the killing of policemen in the East, massacres at the Jaffna Hospital, Aranthalawa, Anuradhapura, St. Peter's church, Sathurukondan, Kattankudy, Palliyagodalla, Bindunuwewa and the attack on the Sri Dalada Maligawa, which should be described in the school history books as examples of gross human rights atrocities.

- 5.11 Given the importance of ascertaining the truth it is imperative that the TJRNRC has a strong investigation unit made up of researchers with relevant skills including in the law, history, anthropology, forensics, criminology, psychology and sociology. Additionally, the TJRNRC should have regional investigative offices employing and involving local expertise, which will also conduct research.
- 5.12 Prior to the public sittings of the TJRNRC an island-wide awareness raising strategy and outreach programme must be devised. There must be full and substantive coverage of all sittings and hearings of the Commission that are not in camera, including live streaming. Social media must be mobilised in all three languages. A media or communications unit for the TJRNRC must be established and adequately funded for the purpose of communicating with stakeholders and the wider public.
- 5.13 The findings of the Commission must be widely disseminated and an easily accessible, simple language version of these findings must be shared with the general public and affected communities that appear before the Commission. Media institutions, artists and academia must be encouraged to engage with the findings to create a constructive public discourse, both during the process and upon the submission of the interim and final reports of the TJRNRC.
- 5.14 Adequate attention should be taken to ensure the security of all participants and to create safe spaces for participation.

## **6. Judicial Mechanism (Special Court and Office of Special Counsel)**

- 6.1 Bearing in mind the need for active international participation – from judges to the Office of the Special Counsel, investigators and staff – recommendations 2.12 and 2.13 shall apply.
- 6.2 The selection criteria for appointment of national and international judges to be set out by the Constitutional Council in consultation with professional and civil society organisations, and in the case of internationals, with the Office of the UN High Commissioner for Human Rights as well. In both instances appointments will be made by the President and the criteria should be made public.
- 6.3 Provision should be made to ensure an adequate number of judges, so that the absence of one or more judge does not result in delays.
- 6.4 The Court shall ensure that there will be a majority of national judges and at least one international judge on every bench.
- 6.5 Every effort should be made to ensure gender representation and that of all ethnic communities in respect of judges and prosecutors on both the Court and the Office of the Special Counsel, respectively.
- 6.6 The Special Court must be equipped in terms of procedure, staff and composition to address the specific needs of affected persons and witnesses, particularly women and children. See 2.19. It is imperative that affected person are not re-traumatised during the Court process and that the Court procedure is fair by both affected persons and the accused.

- 6.7 Key international standards pertaining to courts hearing war crimes cases should be included by explicit reference in the setting up the proposed hybrid Court, including the Bangalore Principles and ICJ's Practitioners Guide on Judicial Accountability. The treatment of evidence and the procedure of the Court should conform to international best practice and should be incorporated into domestic law.
- 6.8 The Special Court should be mandated to try international crimes, including war crimes and crimes against humanity and pay particular attention to crimes of sexual violence and crimes against children. Bearing in mind the mandate of the court in terms of transitional justice and addressing impunity, the CTF recommends that there be no temporal limitations to the jurisdiction of the Special Court.
- 6.9 The Office of the Special Counsel should be established without delay. Its powers, functions and relationship to the other mechanisms clearly established and made public.
- 6.10 In devising prosecutorial policy, the choices of Special Counsel's office must be designed to reflect the broad range of international crimes alleged to have been committed in Sri Lanka, the diversity of persons affected by these crimes and the several categories of perpetrators. The alleged violations that may be considered, subject to the availability of evidence, should include, but not be limited to, the use of cluster weapons and other illegal weapons and armaments; firing on hospitals and safety zones; the use of human shields; child recruitment; mass surrender and subsequent disappearances; massacres; mass disappearances; rape and other forms of sexual violence; forcible mass expulsion of persons; indiscriminate killing of civilian populations including bombing, shelling and shooting; and deliberate denial of access to food and medicine to civilian populations trapped by fighting.
- 6.11 In the event that the Special Counsel is unable for reasons of practicality/time/resources, to prosecute all individual cases of violations, the prosecutorial policy must ensure that at a minimum, those bearing the greatest responsibility for international crimes are held accountable. This would require the introduction of modes of liability such as ordering, superior and command responsibility and joint criminal enterprise into Sri Lankan law.
- 6.12 The Special Counsel should have its own investigating unit. The staff should have international personnel. All personnel should be vetted to ensure independence, credibility, and no allegations of involvement in any of the crimes forming the material jurisdiction of the Court. Given the potential conflict of interest of specific units or offices like the TID, which had prior involvement in investigating such cases, members of such units should be barred from being members of this investigating unit.
- 6.13 Amnesties for international crimes such as war crimes and crimes against humanity, as well as gross human rights abuses including torture, enforced disappearances and rape are illegal and unacceptable. They should not be considered.
- 6.14 Affected persons should be capable of being represented in the Judicial Mechanism at every stage, with or without the services of a counsel. There must be sufficient information given at all stages to the affected persons and units of the mechanism to enable effective

involvement and participation while simultaneously guarding against any conduct which may in any way prejudice or harm the work of the Special Court or Special Counsel.

6.15 The provision of legal advice and representation to the defence must be safeguarded.

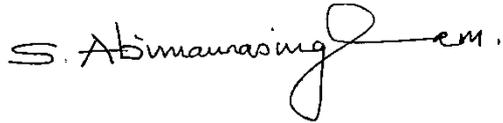
## 7. Other Recommendations

- 7.1 A Inter-Religious Advisory Council was reportedly established by the President in February 2016 to advise on religious and cultural issues. As per the recommendations the CTF has received, it is important that this Council include representation from all religious groups, including the multiple sects in each of the major faiths, in order for this mechanism to be effective and inclusive. Furthermore, the terms of reference laying out the role of the Council should be made public. Tasks such as early warning, mediation and monitoring of incidents of religious violence, should be taken up by the Council without prejudice to the right of those affected in such incidents of seeking redress through the established procedures of law and order and justice.
- 7.2 In respect of military personnel, police and home guards, the variations in the quantum of compensation, pensions and other forms of assistance and the selection of and criteria used for selection of beneficiaries was raised as problems by former military personnel and the families of military personnel, killed or missing in action. These variations should be reviewed, the rationale for them explained to families and adjustments made accordingly.
- 7.3 The situation of ex-combatants associated with former Tamil militant groups, including but not limited to the LTTE, TMVP, EPDP and others needs to be examined, with the aim of drawing up a reintegration programme that will address the existing security, economic, physical, psychological and social challenges that act as obstacles to reintegration. The State's security concerns, current practices such as constant home visits by military personnel and intelligence and the requirement of having to report to army camps can result in apprehension, social ostracism and withdrawal, further marginalisation and radicalisation. Hence this approach needs to be re-examined. Reporting can be to the local Divisional Secretariat or designated civilian authority, which can be given the responsibility for monitoring ex-combatants and looking after their welfare. A programme for re-instilling notions of well-being through psychosocial rehabilitation, skills building and the promotion of self-sufficiency needs to be developed. After a process of vetting, eligible candidates could be considered for jobs in the public sector.
- 7.4 Vulnerable groups among this larger group identified as former combatants, need specific attention. These include former child, female and disabled ex-combatants. They need catch up education and/or vocational training, while ensuring that other youth in the same communities are also afforded such facilities. Devising assistance for female ex-combatants as part of assistance to other young women needs to be ensured. The situation of disabled former combatants needs to be addressed alongside that of other differently abled persons, so as to ensure medical care, re-assessment of disability status, physiotherapy, support for

care givers, education and alternate livelihood skills for the disabled and monitoring of protection.

- 7.5 The State needs to provide redress for communities who have been systematically denied land rights. This includes Malaiyaha Tamils who have not been included in state land distribution schemes, depressed castes and also Adivassis whose historical collective rights of access to their traditional forests and other protected areas has been denied without redress.
- 7.6 The CTF recommends the establishment of a Minority Rights Commission in consultation with all stakeholders, to look into these and other issues affecting minority communities. The CTF recommends that such a Commission be appointed by the President from a list of nominees submitted by the Constitutional Council and drawn from civil society. The Commission should present to Parliament an annual report on the situation of minorities in the country, including suggestions for legislative reform.

The final report of the Consultation Task Force on Reconciliation Mechanisms was completed on the 17<sup>th</sup> of November 2016.



Shantha Abhimanasingham (PC)



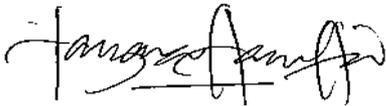
Mirak Raheem



Visaka Dharmadasa



Prof. Gameela Samarasinghe



Dr. Farzana Haniffa



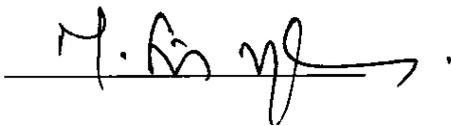
Dr. Paikiasothy Saravanamuttu  
Secretary



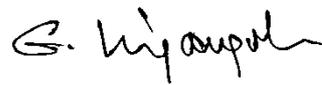
K.W. Janaranjana



Prof. Daya Somasundaram



Prof. Sitralega Maunaguru



Gamini Viyangoda



Manouri Muttetuwegama  
Chairperson

## ANNEXURES

## **Annex 1**

### **Members of the Consultation Task Force on Reconciliation Mechanisms (CTF)**

#### **Ms. Shantha Abhimanasingham (P.C.)**

President of the Jaffna Bar Association, the sole President's Counsel residing in the North and East, and the Chairperson of the National Committee studying the problems faced by Women-Headed Households.

#### **Ms. Visaka Dharmadasa**

Founder and Chair of Association of War Affected Women and Parents of Servicemen Missing in Action. Her second son a Sri Lankan Military officer was reported missing in action in 1998. Struggling to end the civil war, she was able to bring women together across the conflict lines to work for peace. In coordination with the "1000 Peace women across the globe" movement, she was nominated for a collective Nobel Peace Prize in 2005. Visaka Dharmadasa holds a degree in negotiations and mediation skills from the United States Institute for Peace, Washington, and in women and security from Harvard University, Cambridge, USA.

#### **Dr. Farzana Haniffa**

Farzana Haniffa obtained her PhD in Anthropology from Columbia University in New York in 2007 and is currently a Senior Lecturer in the Sociology Department of the University of Colombo. Her research and activist interests for the past fifteen years have concentrated on minority politics and transitional justice in Sri Lanka with an emphasis on the country's Muslim communities. Farzana has published locally and internationally on issues of women and conflict, transitional justice, militarization, and child rights in Sri Lanka. She is a member of the management council of the Social Scientists' Association and Chair of the Board of Directors of the Secretariat for Muslims.

#### **Mr. K. W. Janaranjana**

Mr. K. W. Janaranjana is an Attorney-at-Law, senior journalist and is also the Editor of the newspaper "Ravaya" as well as the Director of the Ravaya Publications Guarantee Limited. He served as the founder member and the CEO of Rights Now Collective for Democracy through 2007-2008 periods. In addition, Mr. Janaranjana functioned as the assistant secretary and secretary for Free Media Movement prior to his current undertaking where he serves as an executive committee member.

#### **Prof. Sitrallega Maunaguru**

Sitrallega Maunaguru is a retired Professor from the Eastern University Sri Lanka. Her teaching career spread over 30 years both at the University of Jaffna and at the Eastern University. While teaching at the university she has been constantly involved with various organizations engaging in women's rights and peace activism. She is one of the few who forged academic work and social activism in their career.

She has been the founder member of various organizations working on women's rights and social justice. She was engaged with Mother's Front, Women's Study Circle and Poorani Women's Centre in Jaffna in the 80s and early 90s. Her work continues with Suriya Women's Development Centre in Batticaloa. She was honoured by UNHCR in 2003 for her efforts to support internally displaced women and Gender Equality in Sri Lanka. She was appointed by GOSL to serve in the National Committee on Women from 2007 to 2010. Sitralega's research interests are gender, Tamil literature, and folklore.

**Ms. Manouri Muttetuwegama (CHAIRPERSON)**

L.L.M, Barrister, Attorney-at-Law. Practitioner in Public Law, Human Rights activist, Chairperson Presidential Commission on Disappearances in the South, West & Sabaragamuwa Provinces 1994 - 97 & All-Island Commission on Disappearances 1998 - 2002, Commissioner Human Rights Commission Sri Lanka 2004 - 2007, Commissioner Presidential Commission on some incidents of serious Human Rights Violations 2005 - 7.

**Mr. Mirak Raheem**

Mirak Raheem is a researcher and activist working on human rights, reconciliation, land, displacement and minority issues. He is currently a consultant to the Ministry of Resettlement and is leading their consultation process. He worked as a Senior Researcher at the Peace and Conflict Analysis Unit of the Centre for Policy Alternatives, Sri Lanka for 9 years. He has served on a number of boards, including the Secretariat for Muslims, where he currently serves. He obtained his undergraduate degree in International Relations & History from London School of Economics and Political Sciences, and a Masters in Peace Studies from Notre Dame University, USA.

**Prof. Gameela Samarasinghe**

Gameela Samarasinghe is a Clinical Psychologist and currently an Associate Professor in the Department of Sociology, University of Colombo. She teaches undergraduate courses in Psychology in the Department of Sociology and postgraduate courses at the Faculty of Graduate Studies, University of Colombo. She introduced a Postgraduate Diploma and a Master's in Counselling and Psychosocial Work at the Faculty of Graduate Studies, University of Colombo. These postgraduate programmes try to provoke thinking on alternative visions of what support to individuals and communities might look like while at the same time providing training on conventional counselling skills. She has been a member of various advisory groups developing strategies for post-conflict trauma in Sri Lanka and internationally.

She has been the recipient of many awards including the Fulbright-Hays Senior Research Scholar Award (2004-2005) at Boston University and the Fulbright Advanced Research Award 2013 - 2014 at Columbia University, New York.

Amongst other national contributions, she was a Member of the Drafting Committee on the section on Torture of the National Action Plan for the Promotion and Protection of Human Rights, Ministry of Disaster Management and Human Rights, July 2009 - 2011. This year, she was appointed to the research committee of the NCPA, and is serving on the Task Forces on the psychosocial programme to develop a healing process for the families affected by the

conflict and the women for reconciliation programme at the Office of National Unity and Reconciliation.

**Dr. Paikiasothy Saravanamuttu (SECRETARY)**

Paikiasothy Saravanamuttu is the founder Executive Director of the Centre for Policy Alternatives, (CPA). He has presented papers on governance and peace in Sri Lanka at a number of international conferences and is widely quoted in the international and local media. He is also a founder director of the Sri Lanka Chapter of Transparency International and a founding Co-Convener of the Centre for Monitoring Election Violence (CMEV), which has monitored all the major elections in Sri Lanka since 1997. In 2004 he was an Eisenhower Fellow.

**Prof. Daya Somasundaram**

Daya Somasundaram is a senior professor of psychiatry at the Faculty of Medicine, University of Jaffna, and a consultant psychiatrist working in northern Sri Lanka for over two decades.

He has also worked in Cambodia for two years in a community mental health programme with the Transcultural Psychosocial Organisation. Apart from teaching and training a variety of health staff and community-level workers, his research and publications have mainly concentrated on the psychological effects of disasters, both man-made wars and natural tsunami, and the treatment of such effects. His book "Scarred Communities: Psychosocial Impact of Man-made and Natural Disasters on Sri Lankan Society" is a qualitative, psycho-ecological study of the long-term effects of disasters—both man-made and natural—on Sri Lankan communities. He has co-authored *The Broken Palmyra: The Tamil Crisis in Sri Lanka: An Inside Account*.

He is a fellow of the Royal College of Psychiatrists, Royal Australian and New Zealand College of Psychiatrists and Sri Lanka College of Psychiatrists. He has functioned as co-chair of the subcommittee on PTSD formed under the WHO working group on stress-related disorders during the ICD-11 revision process. Currently on an extended sabbatical in Australia, he is working as a consultant psychiatrist at Glenside Hospital, supporting Survivors of Torture and Trauma Assistance and Rehabilitation Service (STTARS), and is a clinical associate professor at the University of Adelaide.

**Mr. Gamini Viyangoda**

Gamini Viyangoda, a graduate in Development Studies from the University of Colombo, is well known as a writer in Sinhala. He is a prolific translator of 27 great literary works into Sinhala, introducing post-modernist literary trend to Sinhala readership for the first time.

As a columnist for the last three decades, he has been a leading socio-political critic in the public discourse of democracy and good-governance, in addition to being one of the founders and chief organizers of *The Purawesi Balaya* (Citizens' Power), a social movement of artistes, intellectuals, professionals and civil activists who threw their weight behind President Maithripala Sirisena's successful bid for presidency.

## Annex 2

### Members of Staff

Name	Designation
Ms. A.R. Dilani Surangika Senevirathna	Coder - Sinhala Medium
Ms. Anushka Kahandagama	Researcher
Ms. Aruni John	Research Coordinator
Ms. Asnah Anver	Researcher
Ms. Chamika Wijesuriya	Research Assistant
Ms. Chiara Wijetunga	Research Assistant
Ms. Chulani Kodikara	Senior Researcher
Ms. Deanne Uyangoda	Part-time Researcher
Ms. Dishni Manesha Chandradas	Coder - Tamil Medium
Ms. Ishani Aluwihare	Accounts Officer
Mr. Jayasiri Jayasekara	Media Officer - Sinhala Media
Ms. Jeyani Thiyagarajah	Research Assistant
Ms. Krishna Velupillai	Researcher
Ms. Maleeka Salih	Senior Researcher
Ms. Mathurabhasini Thamilmaran	Researcher
Ms. Nethra Samarawickrama	Researcher
Mr. Nigel Nugawela	Researcher
Ms. Nilanthi Gunawardhana	Coordinator - Logistics
Mr. Paul Bright	Coder - Tamil Medium
Ms. Rajasunderam Geetha Rajani	Translator
Ms. Roshni Hiranthi Alles	Research Consultant
Ms. S. Thayalini	Coder - Tamil Medium
Ms. Sivajiny Raja	Coder - Tamil Medium
Ms. Tanuja Thurairajah	Researcher
Ms. M. S. Thewagowry	Media Officer - Tamil Media
Ms. Thiagi Hepziba Piyadasa	Part-time Researcher
Ms. Thyagi Ruwanpathirana	Researcher
Ms. Udari Perusinghe	Coder - Sinhala Medium
Ms. Vanathy Shanmuganathan	Assistant Logistics Coordinator / Database
Ms. Wathsala Abeykoon	Coder - Sinhala Medium
Ms. Zainab Ibrahim	Part-time Researcher

## **Annex 3**

### **Members of the Expert Advisory Panel**

Mr. Ananda Galappatti  
Ms. Bhavani Fonseka  
Mr. Brito Fernando  
Dr. M. Ganeshan  
Rev. V. Yogeswaran  
Ms. Juwairiya Mohideen  
Mr. Niran Anketell  
Prof. Vijayakumar  
Ms. Ramani Muttetuwegama  
Ms. Sarala Emmanuel  
Mr. S. Sivagurunathan  
Mr. Arumugam Sornalingam  
Ms. Vasuki Nesiah

## Annex 4

### Members of the Representative Advisory Panel

Mr. A.R.M. Badiuddeen	Mr. Manel Rathnayaka
Mr. Ahilan Kadirgamar	Ms. Menaha Kandasamy
Ms. Amitha Priyanthi	Mr. Naja Mohamed
Ms. Aneesa Firthous	Ms. Nimalka Fernando
Mr. G.L. Ariyadasa	Ms. Rajani Chandrasekram
Mr. Kalimuththu Arumugam	Mr. Rajeendra Narangoda
Mr. Brito Fernando	Mr. Ranjith Wijenayaka
Mr. Buhari Jihad	Rev. E. Sebamallai
Mr. Chitral Perera	Rev. Walaswewe Gnanarathna
Rev. Elil Rajendram	Ms. Rupa Gamage
Rev. Nandana Manatunga	Ms. Shreen Saroor
Rev. V. Yogeswaran	Mr. Ponnampalam Narasingham
Mr. Herman Kumara	Mr. Arumugam Sornalingam
Mr. Hilmy Ahamed	Mr. Subramaniam Vellayan
Ms. Indrani Kusumalatha	Ms. Sumika Perera
Ms. Janaki Rathnayaka	Mr. T. M. Premawardana
Ms. Jansila Majeed	Ms. Theiventheram Suganthini
Mr. Jehan Perera	Ms. U.D.M. Sheelawathi
Ms. Jinadhari Parameshwaram	Ms. Upulangani Malagamuwa
Ms. Juwairiya Mohideen	Mr. Vinya Ariyaratne
Mr. K. G. Wilson	Ms. Wimali Karunarathna
Ms. Kumudini Samuel	

## Annex 5

### Criteria for Zonal Task Force Membership

- Must be a person of integrity, and be able to record diverse public views without personal bias.
- Must have sensitivity and skills to listen to and speak with victims from diverse social backgrounds
- Preferably have extensive experience of working on issues for peace and human rights, and/or directly with affected persons
- Must be people who are respected within the community for their integrity, skills and strong record of service (can be from government, retired or civil society)
- Must be available, capable and committed to undertaking significant workload over a 4-6 week period: attend 3 day residential training out of district; undertake preparatory work and carry out a minimum of 3 full-day public meetings, ~10 focus group discussions and ~10 individual interviews.
- Must be living in relevant zone currently (apart from exceptional cases)
- Must NOT have any involvement with violence, crime or corruption
- Must NOT be leaders of any political party in the district/province

### Composition Requirements

- Must include minimum of 3 women (50%)
- Must represent the major ethnic/religious communities in zone
- Some members must be fluent in language/s of zone (so if Tamil and Sinhala spoken by significant number of persons in district then both language competencies must be there in the zonal task force)
- Must include minimum of 2 persons who have long-standing experience of working with victims (could be victim advocate, community worker or psychosocial practitioner)

## Annex 6

### Members of the Zonal Task Force

Zone	District	Title	Name
South	Galle	Mr.	Winodan Dias
		Ms.	Sriyani Pathirage
	Matara	Mr.	Sahan Gonalagoda
		Mr.	Wasantha Kariyawasam
	Hambantota	Mr.	Amal Hettiarachchi
North West	Kurunegala	Ms.	Sumika Perera
		Mr.	P.D. Gunathilaka
		Mr.	Sendil Sivagnanam
	Puttlam	Ms.	Indrani Kusumalatha
		Ms.	Juwairiya Mohideen
		Dr.	I.M. Illiyas
North Central	Anuradhapura	Ms.	Rupa Gamage
		Ven.	Piyarathana Thero
		Mr	Priyanka Deepal Edirisinghe
	Polonnaruwa	Ms.	Y. K. W. R. M. Yasawathi
		Mr.	Alexander Perera
		Mr.	M. L. Musathdigin
Central	Kandy	Dr.	Muhammed Muzzammil Cader
	Matale	Mr.	K.G. Wijeratne
		Ms.	S. Anandi
	Nuwara Eliya	Ms.	Wimali Karunaratne
		Ms.	Rani Singarajah
		Mr.	Ramiah Manisegaran
West	Gampaha	Ms.	Chamila Thushari
		Mr.	J.B.C.K Jayasekera
	Colombo	Mr.	Sudharshana Gunawardane
		Ms.	Kumudini Samuel
		Dr.	Selvy Tiruchandran
		Mr.	Hilmy Ahamed
		Ms.	Kuhanithi Kuhanesan
Sabaragamuwa	Ratnapura	Ms.	Rohini Dep Weerasinghe
		Mr.	Charles Ravi
	Kegalle	Ms.	Padma Pushpakanthi
		Mr.	Priyantha Gamage
		Mr.	Faisal Maharroof
Uva	Badulla	Ms.	Menaha Kandasamy
		Mr.	G.A. Prabath Kumara
		Ms.	Jeslin Punchihewa
		Mr.	Nadesan Suresh

	Monaragala	Ms.	U.D.M. Seelawathi
		Mr.	K.G.K. Weerathna
		Ms.	K.P. Somalatha
		Mr.	Gokula Ramanan
East	Trinco	Ms.	Renu Alakenthiram
		Ven.	Galkandawala Sri Sumanasaara Thero
		Ms.	Noor Ismiya
		Mr.	A. Jathindra
		Mr.	A.R. Mohammed Thaslim
		Mr.	U. Welikala
	Ampara	Mr.	G.L. Ariyadasa
		Ms.	R.N. Chandani
		Ms.	Sathiyavani Simon De Silva
		Dr.	Anuzsiya Senadhiraja
		Mr.	S.H.M. Manurudeen
		Mr.	I. Amaanulla
	Batticaloa	Ms.	Vellathambi Junaida
		Mr.	Sunny Ockerze
		Ms.	T. Sarathadevi
		Mr.	Sheikh. M.B.M. Firthous (Naleemi)
		Mr.	K. Kandeepan
		Ms.	P. Jayadeepa
Mr.		R. Kiruparajah	
North	Vavuniya	Ms.	Kalavathy Sinnaiya
		Fr.	Elil Rajendran
		Mr.	A.R. Abdul Ramees
		Ms.	Kohila Nithyanathan
		Ms.	Sepali Subasinghe
	Mannar	Ms.	Mahaluxumi Kurushanthan
		Rev.	Emmanuel Sebamalai
		Mr.	P.M. Mujeebur Rahman
		Ms.	Janooriya (A.J. Begum)
		Mr.	Raghavan Alphonsus
		Ms.	Nishanthini G. Stalin
	Jaffna	Ms.	Rajany Chandrasegaram
		Ms.	Ithayaraj Shayla
		Ms.	Somesasunthary Krishnakumar
		Mr.	Jamal Mohideen
		Dr.	Chelliah Surendran Nachinarkinian
		Mr.	Nadarajah Sujeevan
		Mr.	P. Kuhaneswaran
	Killinochchi	Ms.	Suganthini Theiventhirum
		Ms.	Yogarasa Kanakaranjini
		Ms.	Leeladevi Anandarajah

		Mr.	K Rajendram
		Mr.	F. Fatheen
		Fr.	Selvanathan David Parimala Selvan
	Mullaitivu	Ms.	Jansila Majeed
		Ms.	Arumuham Radhika
		Ms.	Smith Hudson Chandraleela
		Ms.	Naguleshwaran Nagarani
		Mr.	Raththinarajah Mayooran

## Annex 7

### List of Psychosocial Practitioners

Zone	Title	Name
South	Ms	Samudra Kumari Panditha
	Mr	Vitharana Thanthirige Mahinda
North West	Ms	Thushari Chandrasekera
Central	Mr.	Naja Yahiya
Uva	Mr.	Selliah Prabakaran
Trincomalee	Mrs.	Prabha Mailvahanam
Ampara	Mr.	M.H.P.L Gunasinghe
	Mr.	Deen Mohamed
Batticaloa	Ms	Tharshini Baskaran
Vavuniya	Mr.	Kirushnapillai Vasantharupan
Mannar	Mr.	Jesuthasan Joseph Reegan Miranda
	Mr.	Sahayapragash Manuelpillai
	Ms	Tharmalingam Feliciya
Jaffna	Mr.	N. Uthayakumar
Kilinochchi	Mr.	T. Thushyanthan
	Mrs.	Shanmugappriya Renold Kajanthan
Mullaithivu	Ms	Kemathas Arunthini
	Ms	Shiyamini Violet

Infographic on CTF Mandate and Methodology

# CONSULTATION TASK FORCE ON RECONCILIATION MECHANISMS

11 INDEPENDENT EMINENT PERSONS MAKE UP THE CONSULTATION TASK FORCE

## MANDATE

TO CONSULT MEMBERS OF THE PUBLIC ON THE PROCESSES AND MECHANISMS FOR RECONCILIATION IN SRI LANKA

SEEKING SUGGESTIONS FOR THE DESIGN OF

- AN OFFICE OF MISSING PERSONS
- A TRUTH, JUSTICE, RECONCILIATION & NON-RECURRENCE COMMISSION
- A JUDICIAL MECHANISM WITH A SPECIAL COUNSEL
- AN OFFICE OF REPARATIONS
- ANY OTHER MECHANISM

## METHODOLOGY

TO GATHER PUBLIC VIEWS ON THE PROCESSES AND MECHANISMS FOR RECONCILIATION

SECTORAL CONSULTATIONS	ZONAL TASK FORCES	SUBMISSIONS
<p>TO ENSURE MAJOR NATIONAL-LEVEL ACTORS PARTICIPATE IN THE CONSULTATION PROCESS, CONSULTATIONS WITH VARIOUS SECTORS SUCH AS THE</p> <ul style="list-style-type: none"> <li>✓ RELIGIOUS GROUPS</li> <li>✓ TRI FORCES &amp; POLICE</li> <li>✓ PROFESSIONAL ASSOCIATIONS</li> <li>✓ POLITICAL PARTIES</li> <li>✓ MEDIA etc.</li> </ul>	<p>TO ENSURE PUBLIC LEGITIMACY, OWNERSHIP &amp; PARTICIPATION, PARTICULARLY TO GIVE VOICE TO VICTIMS FROM VARIOUS ETHNO-RELIGIOUS COMMUNITIES IN DIFFERENT PARTS OF THE COUNTRY, 15 ZONAL TASK FORCES REPRESENTING ALL DISTRICTS &amp; PROVINCES WILL HOLD</p> <p>PUBLIC CONSULTATIONS</p> <p>FOCUS GROUP DISCUSSIONS</p> <p>INDIVIDUAL MEETINGS</p> 	<p>DIRECT SUBMISSIONS TO THE CONSULTATION TASK FORCE, RELATING TO MECHANISMS FOR RECONCILIATION VIA</p> <ul style="list-style-type: none"> <li>POST</li> <li>EMAIL</li> <li>WEB FORM</li> </ul>

## ENGAGE WITH US

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Infographic on Frequently Asked Questions

# 1 PUBLIC CONSULTATIONS ON TRUTH, JUSTICE & RECONCILIATION

## FREQUENTLY ASKED QUESTIONS

<b>1 WHY HAS A CONSULTATION PROCESS ON RECONCILIATION MECHANISMS BEEN ESTABLISHED?</b>	<p>The Government is seeking suggestions from the public on the proposed mechanisms to bring about reconciliation. These mechanisms are intended to establish truth, provide redress for violence and harm caused by Sri Lanka's conflicts, and ensure peaceful coexistence.</p>
<b>2 ARE PUBLIC CONSULTATIONS ON RECONCILIATION NECESSARY?</b>	<p>Yes, because all the people of this country, especially victims, have a right to decide how we deal with our past and secure our future. Experiences of similar processes from other countries have shown that genuine participation of the public improves the likelihood of achieving truth, justice and reconciliation. Public consultation increases the chances that the future mechanisms will be meaningful and acceptable to victims and the wider Sri Lankan public.</p>
<b>3 HOW CAN YOU PARTICIPATE IN THE CONSULTATION PROCESS?</b>	<p>You can participate by:</p> <ol style="list-style-type: none"> <li>① Sending in a written submission via post or email (a written submission can outline your suggestions for the mechanisms proposed by the Government or for any other mechanisms that you want to propose). Your submissions should be addressed to:             <ul style="list-style-type: none"> <li>a) Via registered post: Dr. Paikiasothy Saravanamuttu Consultations Task Force on Reconciliation Mechanisms c/o Secretariat for Coordinating Reconciliation Mechanisms, Ministry of Foreign Affairs, Republic Building, Sir Baron Jayatilaka Mw., Colombo 01</li> <li>b) Via email: <a href="mailto:ctf.srilanka@gmail.com">ctf.srilanka@gmail.com</a></li> </ul> </li> <li>② Attending the public meetings that will be held in every district (where you can make verbal representations and submit documents if necessary)</li> <li>③ Sending in submissions anonymously via post if you or a group you belong to have concerns about safety or confidentiality. You may send your submissions to the address above.</li> </ol>
<b>4 WHAT IS THE FOCUS OF THE CONSULTATIONS?</b>	<p>The consultations will focus on mechanisms to be established for reconciliation. The Government has already stated that it will be considering the following mechanisms:</p> <ol style="list-style-type: none"> <li>① A Judicial Mechanism with a Special Counsel</li> <li>② A Truth, Justice, Reconciliation and Non-Recurrence Commission</li> <li>③ An Office of Reparations</li> <li>④ An Office of Missing Persons</li> </ol> <p>The Task Force is seeking suggestions on these and other mechanisms, processes and measures that would bring about justice, truth and reconciliation.</p>
<b>5 WHAT CAN THE CONSULTATION PROCESS DO FOR YOU?</b>	<p>The consultation process cannot directly take action on any problem you face individually or as a group. For example, it does not have the power to conduct investigations, provide compensation or dispense justice. Therefore, this process is not like previous commissions you may have attended or heard about. This process can, however, record and reflect your views on how grievances or past events should be dealt with so that the Government can design structures and processes that would bring about justice, truth and reconciliation. For example, you can submit suggestions on how investigations should be conducted and by whom, what reparations should be provided for different kinds of violations and what reforms (of institutions or laws for example) are required to ensure a just and peaceful future.</p>

The CONSULTATION TASK FORCE ON RECONCILIATION MECHANISMS prepared these responses to frequently asked questions about the consultation process.

Consultation Task Force on Reconciliation Mechanism, c/o Secretariat for Coordinating Reconciliation Mechanisms, Republic Building, Ministry of Foreign Affairs, Sir Baron Jayatilaka Mw., Col. 01  
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## PUBLIC CONSULTATIONS ON TRUTH, JUSTICE & RECONCILIATION

### FREQUENTLY ASKED QUESTIONS

#### 6 WHO IS CONDUCTING THE PROCESS?

The Government has appointed eleven independent experts from civil society to design and oversee the consultations. This Consultation Task Force will be assisted by 15 Zonal Task Forces, which are comprised of locally respected and appropriately skilled persons from the relevant districts or provinces. The role of the members of these task forces is to record the views of the public without bias so that the full range of public views expressed is accurately reflected in the final consultation report.

#### 7 IS THIS AN INDEPENDENT CONSULTATION PROCESS?

The Consultation Task Force is established as an independent body to implement the consultation process. Its members have undertaken to carry out the task of consulting the public and reporting on consultation findings without influence from members of the Government or any other interested parties - whilst inviting all stakeholders to submit their views. The members of Zonal Task Forces who will carry out community-level consultations will also act impartially and independently. The consultation process will receive logistical, financial and institutional support from the Secretariat for Coordinating Reconciliation Mechanisms, which is an institution established by the Government. The members of the Consultation Task Force will not receive any payment by the Government for their work. An independent report on the consultation findings will be produced by the Consultation Task Force and presented to the Government for its consideration and action. It will also be made public.

#### 8 HOW WILL THE CONSULTATIONS BE CARRIED OUT?

In addition to seeking public views as detailed in the answer to Question 3, the Consultation Task Force will be holding public meetings in every district, conducting focus group discussions about locally-relevant issues and conducting individual interviews where required. The Task Force will also be seeking submissions from professional groups, the media, the security forces, religious groups and political parties at the national level.

#### 9 WHEN WILL THE CONSULTATIONS BE HELD?

The consultation process has already commenced with online submissions. The public meetings will be held in every district between July and August 2016. Exact dates and locations will be announced so that members of the public can make appointments for an allocated time or bring their submissions to the public meetings.

#### 10 HOW WILL YOUR SUBMISSION BE USED & WHAT WILL BE THE OUTCOME OF CONSULTATIONS?

All submissions will be analysed and compiled in a report that will reflect the full range of public views expressed. This report will be handed over to the Government and made public. The Consultation Task Force expects the Government to fulfil its commitment to designing and implementing the future reconciliation mechanisms, taking into consideration the views of the Sri Lankan public, especially the victims of Sri Lanka's conflicts.

The CONSULTATION TASK FORCE ON RECONCILIATION MECHANISMS prepared these responses to frequently asked questions about the consultation process.

🏠 Consultation Task Force on Reconciliation Mechanisms, c/o Secretariat for Coordinating Reconciliation Mechanisms, Republic Building, Ministry of Foreign Affairs, Sir Baron Jayatilaka Mw., Col. 01

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Poster for Public Meetings

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# HAVE YOUR SAY!

VOICE YOUR OPINIONS AT THE PUBLIC CONSULTATIONS ON THE MECHANISMS FOR TRUTH, JUSTICE, REPARATIONS AND NON-RECURRENCE\*

DATE	LOCATION	TIME

CONTACT [REDACTED]  
HELD BY THE [REDACTED] ZONAL TASK FORCE  
(APPOINTED BY THE GOVERNMENT OF SRI LANKA)

## ALL ARE WELCOME

\* The Government of Sri Lanka has proposed the following reconciliation mechanisms:  
1) An Office of Missing Persons 2) An Office of Reparations  
3) A Truth, Justice, Reconciliation and Non-Recurrence Commission  
4) A Judicial Mechanism with a Special Counsel.

***Make your comments on these four mechanisms or any others that you think are needed.***

**Consultation Task Force on Reconciliation Mechanisms**  
c/o Secretariat for Coordinating Reconciliation Mechanisms, Ministry of Foreign Affairs, Republic Building,  
Sir Baron Jayatilaka Mw., Colombo 01.

**0114232857**

## Annex 11

### List of Public Meetings

Zone	Number of Public Meetings	Date	Location	Specific Location
Central	4	3rd August	Kandy	District Secretariat Office Kandy
		6th August	Dambulla	Dambulla Bus Stand Hall
		8th August	Nuwara Eliya	Nuwara Eliya Cooperative Holiday Home
		31st August	Matale	District Secretariat Office Matale
Trincomalee	4	23rd August	Muttur	3CD Office Muttur
		24th August	Kuchchaveli	Divisional Secretariat Office Kuchchaveli
		26th August	Verugal	Divisional Secretariat Office Verugal
		28th August	Trincomalee	Kachcheri Trincomalee
Batticaloa	6	9th August	Valachchenai	Divisional Secretariat Auditorium Valaichenai
		12th August	Kaluwanchikudy	Divisional Secretariat Auditorium Kaluwanchikudy
		13th August	Batticaloa	Divisional Secretariat Office Batticaloa Derba Hall
		16th August	Vaharai	Divisional Secretariat Office Auditorium Vaharai
		18th August	Pattipalai	Divisional Secretariat Office Pattipalai
		24th August	Eravur	Divisional Secretariat Office Eravur
Ampara	8	13th August	Addalaichenai	Lloyd's Meeting Hall Addalaichenai
		30th July	Addalaichenai	Addalaichenai, Aisha Balika Primary Section
		23rd August	Thirukovil	Cultural Hall Thirukkivil
		27th August	Pottuvil	Divisional Secretariat Office Pothuvil
		28th August	Sammanthurai	Abdul Majeed People's Hall
		10th Sept	Lahugala	Divisional Secretariat Office Lahugala
		10th Sept	Panama	Marana Sasanaya Sangama Panama/Laukkala
		14th August	Kalmunai	Kalmunai

Jaffna	6	25th July	Velanai	Velanai
		30th July	Sandilippai	Divisional Secretariat Office Sandilippai
		31st July	Karaveddy	Divisional Secretariat Office Karavetty
		5th August	Marathankern y	Divisional Secretariat Office Marathankerny
		6th August	Nallur	Divisional Secretariat Office/Kachcheri
		7th August	Chavakachcheri	Divisional Secretariat Office Chavakachcheri
Mullaithivu	6	26th July	Karthoorapattu	Divisional Secretariat Office Karthoorapattu
		27th July	Maanthai East	Divisional Secretariat Office Maanthai East
		28th July	Thunukkai	Divisional Secretariat Office Thunukkai
		30th July	Oddusuddan	Divisional Secretariat Office Oddusudan
		2nd August	Puthukudiyurupu	Divisional Secretariat Office Puthukudiyuruppu
		4th August	Weli Oya	Divisional Secretariat Office Weli Oya
Kilinochchi	5	25th July	Kandavalai	Divisional Secretariat Office Kandavalai
		29th July	Karachi	Divisional Secretariat Office Karachi
		30th July	Karachi	Divisional Secretariat Office Karachi
		1st August	Palai	Divisional Secretariat Office Pachchilapalli
		2nd August	Pooneryn	Divisional Secretariat Office Pooneryn
Vavuniya	4	9th August	Nedunkerny	Divisional Secretariat Office Nedunkerny
		12th August	Vavuniya South	Divisional Secretariat Office Vavuniya South
		13th August	Chettikulam	Divisional Secretariat Office Chettikulam
		17th August	Vavuniya	Divisional Secretariat Office Vavuniya
Mannar	6	26th July	Museli	Divisional Secretariat Office Museli
		28th July	Manthai West	Divisional Secretariat Office Manthai West

		29th July	Madhu	Divisional Secretariat Office Madhu
		30th July	Mannar	Divisional Secretariat Office Mannar
		1st August	Nanattan	Divisional Secretariat Office Nanattan
		2nd August	Vellakulam	Indian Housing project Vellankulam
Sabaragamuwa	4	10th August	Ratnapura	Divisional Secretariat Office Ratnapura
		16th August	Godakawela	Divisional Secretariat Office Godakawela
		11th August	Ruwanwella	Yatanwella Viharasthanaya
		18th August	Eheliyagoda	Divisional Secretariat Office Eheliyagoda
Uva	4	3rd August	Haputale	Pradeshiya Sabhava Hall Haputale
		4th August	Wellawaya	Divisional Secretariat Office Wellawaya
		6th August	Badulla	Badulla Kachcheri
		8th August	Monaragala	Divisional Secretariat Office Moneragala
North Central	4	9th August	Polonnaruwa	Divisional Secretariat Office Polonnaruwa Dimbulagala
		10th August	Polonnaruwa	Divisional Secretariat Office Polonnaruwa Thamankaduwa
		11th August	Anuradhapura	District Secretariat Office Anuradhapura
		12th August	Anuradhapura	Divisional Secretariat Office Anuradhapura Kebithigollewa
North Western	4	3rd August	Kurunegala	Divisional Secretariat Office Kurunegala
		18th August	Galgamuwa	Divisional Secretariat Office Galgamuwa
		22nd August	Chilaw	Divisional Secretariat Office Chilaw
		24th August	Puttalam	District Secretariat Office Puttalam
Western	4	1st August	Colombo	Mahaweli Centre, Colombo
		2nd August	Ja-Ela	Divisional Secretariat Office Ja-Ela
		3rd August	Kaluthara	Divisional Secretariat Office Kalutara
		15th August	Colombo	District Secretariat Office Colombo

Southern	3	8th August	Galle	District Secretariat Office Galle
		10th August	Matara	District Secretariat Office Hambantota
		11th August	Hambantota	District Secretariat Office Matara

## Annex 12

### List of Sectoral Consultations

Sectoral Consultation	Date
Lay Religious Groups	9th June 2016
Commanders from the Tri-Forces and Civil Security Department	16th June 2016
Professional Organisations	17th June 2016
Media Organisations	28th June 2016
Organisations Working on the Issues of the Missing, the Disappeared, and the Missing in Action	5th July 2016
IGP	8th August 2016
Organisations providing Psychosocial Support to Affected People, including Especially Vulnerable Persons and Groups	13th August 2016
Officers from the Tri-Forces	18th August 2016
Youth Groups	18th August 2016
Individuals and Groups Engaged in Creative Occupations	19th August 2016
Police Officers	29th August 2016

Annex 13

List of Focus Group Discussions (FGDs)

Type of FGD	NWP	NCP	Uva	Trincomalee	Batticaloa	Ampara	Vavuniya	Mannar	Kilinochchi	Mullaithivu	Jaffna	CP	Sabaragamuwa	WP	SP	Total
Disappearance s (Divitura Estate, Families of soldiers & the disabled; Families of the disappeared during the period 1988-1989; Fisheries sector disappearances ; Loss of life after disappearances ; Compensation ; Widows; Organised groups; Impact on livelihoods)				1		5	1			1	1	1		2	4	16
Land & property issues (Farmers; Loss of land & property due to sacred city development; Resettlement; Public rights;		3	3	5		3	1	1	1	1		2				20

Violations by security forces and state officials; Specific to Tamils; Specific to Sinhalese)																
Issues related to persons with disabilities (Injuries; Sinhalese specific; Tamil specific; soldiers)	1	1		1.5*	1			1	2							7.5
Ex-Combatants (Specific to men; Specific to women)				1				1	2	2	1					7
Muslim community (Mass scale violations and violence; Specific to women; Land issues; LTTE victims of assassinations; 1990 expulsion)			1	1		1	1	2		1						7
Women (War widows; Women headed	1	1		1.5*	2		2	3	1	3	1			1		16.5

households; Specific to children; University students)																
Civil society activists (LGBT; Specific to women, NGOs)	1	1			1	1								2		6
Malaiyaha Tamil related issues (Estate workers; Human rights violations; Forced to leave upcountry due to war; Plantation sector in general)				1								2			1	4
Mass scale violations & violence (1983; riots; Specific to Muslims; Specific to Tamils;1989)					1	3							1.5*	1	1	7.5
Border villages (Sinhala community; Soruvila)		1				1			1							3

Religious issues (violence; Minorities; 1976; Galle & Matara; Buddhist monks/lay leaders)	1											1	0.5*	1	1	4.5
Surrendees									1	1						2
Torture victims					1											1
Youth											1					1
Political detainees								1								1
IDPs	1															1
Indigenous group			1													1
EPDP														1		1
Grama Niladhari													1			1
Sex workers	1															1
Sexual abuses								1								1
Conflict (last stages of the war); Livelihood and education loss	1				1	2			1	1						6
																116

\*Indicates that half of the FGD focused on one issue and the other half focused on another.

## Annex 14

### Written Submissions Received

Individuals	759
Groups and organisations	152
Not specified/details not given	137
<b>Total</b>	<b>1048</b>

### Zonal Breakdown

Ampara	115
Anuradhapura	1
Badulla	1
Batticaloa	114
Coombo	58
Galle	57
Gampaha	7
Hambantota	66
Jaffna	49
Kandy	6
Kilinochchi	21
Kurunegala	2
Mannar	116
Matale	1
Matara	176
Monaragala	1
Mullaitivu	32
Nuwara Eliya	1
Polonnaruwa	21
Puttalam	47
Ratnapura	4
Trincomalee	21
Vavuniya	20
Diaspora	41
Not specified	70
<b>Total</b>	<b>1048</b>

Annex 15

**Summary of Actions Recommended to Amend the OMP Bill**  
(Refer to page 60 of the interim report. Amended to include column on right)

OMP Bill Amendments	Actions recommended in the Submissions – including amendments to the Bill and suggestions for working methods and principles	Recommendations included in the OMP Act?
Name of the Office	<p>Four different suggestions are expressed in the submissions with regards to the name of the Office (Section 3 (1)):</p> <p>1) Replace ‘Missing Persons’ with ‘Involuntary Disappearances’ or with ‘Enforced Disappearances in the current title, [i.e. Office of Enforced Disappearances] in order to accurately represent the enforced nature of disappearances and because the current term is more commonly used to refer to soldiers missing in action.</p> <p>2) Add ‘Forcibly Disappeared’ to the current title [i.e. Office of Missing Persons and the Forcibly Disappeared OR Office of the Forcibly Disappeared and Missing Persons] in order to be inclusive, and also because investigations will confirm the nature of disappeared or missing.</p> <p>3) Include ‘surrendees’ in the title [i.e. Office of the Missing, Forcibly Disappeared and Surrendered] to acknowledge the special nature of disappearance of those who surrendered to the army at the conclusion of the war.</p>	<p>No</p> <p>No</p> <p>No</p>
Mandate of the OMP, Preamble and Definition of ‘Missing Person’	<p>While acknowledging the broad mandate currently provided for in the Bill, the following recommendations are made to the mandate of the OMP, its preamble and the definition of ‘missing person’:</p> <p>Amend the mandate of the OMP Bill in Section 10 to prohibit the OMP from rejecting or refusing to investigate a complaint on the basis that it does not fall within its mandate, unless the OMP has investigated the case and provides justifiable reasons to support a belief that the case falls outside its mandate.</p> <p>Add to the preamble of the OMP Bill a provision to embody the commitment to reconciliation and what this means particularly to handling of information regarding</p>	<p>No</p> <p>No</p> <p>No</p>

	<p>fatalities and human remains. The following addition or a similar paragraph is suggested:</p> <p><i>And WHEREAS information in respect of fatalities and discovery of human remains shall be treated with dignity and in consideration of Sri Lanka's commitment to reconciliation, and remains where possible shall be returned after due process:</i></p> <p>Ensure that the definition of missing person in Section 27 is in line with that of the International Convention on Enforced Disappearances (i.e recognise the enforced nature of disappearances) and while recognising that non-state actors may also be perpetrators of enforced disappearances.</p> <p>Establish separate offices for the 'disappeared' and for 'the missing' so as not to conflate the issues, with relevant corresponding titles, so as not to dilute the issue of enforced disappearances and because the Government already has better investigation of and compensation for those families whose soldiers are MIA.</p>	<p>No</p> <p>No</p>
Aims and Powers	<p><b><u>Database</u></b></p> <p>Make provision in Section 10 (e) for the OMP to access all documentary information and evidence relating to the missing, disappeared and surrendered from national bodies, including past commissions of inquiry the Police, the Human Rights Commission of Sri Lanka, which have received complaints relating to the missing and disappeared.</p> <p>Make provision in Section 10 (e) for the OMP to access all documentary information and evidence relating to the missing, disappeared and surrendered from international bodies, including, the UN Human Rights Committee, the Committee Against Torture, the UN Working Group on Enforced and Involuntary Disappearance (WGEID), and the International Committee of the Red Cross which have received complaints.</p> <p>Make provision in Section 10 (e) for the OMP to obtain and access all court records in relation to habeas corpus cases and to map mass graves.</p> <p>Make explicit reference to the duty of the OMP to make available statistical information of cases being handled as</p>	<p>No</p> <p>No</p> <p>No</p> <p>No</p>

	<p>well as the number of persons in detention, detention locations, the number of detainees released, with appropriate safeguards to protect identities.</p> <p>Make explicit reference in Section 13 (h) to the duty of the OMP to combine existing lists of missing and disappeared persons as found by previous state investigative mechanisms and determine if an instance of a missing or disappeared person has or has not been previously recorded.. If it is a new case, then the OMP can require a full and detailed complaint to be made by the family. If it is not new, the OMP should not require the family to make another full and detailed complaint and the existing information should be assessed prior to seeking any further information from the family.</p> <p>Make explicit reference in Section 13 (h) to the duty of the OMP to create individual victim files to ensure that it begins its work utilizing all available data, subject to verification by existing family members. Families must be called to corroborate information in possession of the OMP as police records of complaints at the time of disappearance may not always tally with what actually took place.</p> <p><b><u>Investigations</u></b></p> <p>Make explicit reference in Section 12 to the duty of the OMP to conduct investigations in a community- &amp; victim-centred manner. This should involve taking into account the context within which the disappearances took place; the time lapse between the incident and investigation; and the extent of evidence relating to disappearances already available—within communities, families and organizations working on this issue—but which may not be recorded in official complaints. Similarly, in operational terms the OMP may need to interview LTTE cadres who are in custody, those who have been rehabilitated, and certain politicians, in the effort to find the truth relating to the fate of missing servicemen.</p> <p>Make explicit reference to the duty of the OMP to conduct a targeted public campaign to enable the flow of information.</p>	<p>No</p> <p>No</p> <p>No</p> <p>No</p> <p>No</p> <p>No</p> <p>No</p>
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	<p>Make provision for the OMP to have a strategy to investigate cases where the evidence is minimal given the lengthy passage of time in some of the cases.</p>	No
	<p>Make provision for the OMP to provide incentives for persons / perpetrators to share information</p>	No
	<p>Clarify in the OMP bill, the criteria for selection of investigators including  1)Use of current or past police officers or military investigators; Some submission call for complete exclusion (as in officers from the TID for example) . Others call for a thorough vetting process.</p>	No
	<p>2)Inclusion of Foreign investigators with the relevant experience. Some submissions recommend that foreign investigators should be included to strengthen both technical skills of, and public confidence in, the team.</p>	No
	<p>Extend the criteria in Section 12 (b) for prioritising cases to include 1) those missing who are suspected to be still alive and 2) public's view of what is of public importance (not just the view of the OMP), and 3) recognition that the availability of evidence may differ in cases of missing persons, enforced disappearances, and surrendees.</p>	No
	<p>Make express provision in the OMP bill that no investigation into a missing person shall be considered closed until the fate of the person and circumstances in which the person went missing are clarified, and in cases where the missing person is deceased, their remains are returned to the family [if available].</p>	No
	<p><b><u>Excavations/ Exhumations</u></b></p>	
	<p>Amend the OMP Bill to include forensic expertise to the list of expertise from which the OMP will draw its members.</p>	No
	<p>Amend Section 4(2)(b) to specifically require members with forensic expertise.</p>	
	<p>Make provision for a separate Forensic Unit to be established within the OMP.</p>	No
	<p>Make provision for the OMP to recommend, experts in the fields of forensic anthropology, forensic archaeology, forensic pathology, forensic medicine and other similar</p>	

	<p>expertise to conduct and/or to supervise the excavations and/or exhumations and to assist or advise the Magistrate on excavations and exhumations.</p> <p>Make provision for the OMP where possible and when appropriate to initiate judicial proceedings to direct appropriate authorities and supervise the return of human remains or any items associated with such remains which have been identified as belonging to relatives of missing persons.</p> <p>Make explicit provision for the OMP to draw on internationally recognized best practices developed and experiences from similar work in Latin America and the Balkans, in investigating identified mass grave-sites.</p> <p>Make provision for the OMP to be able to provide staff and technical expertise to the Magistrate with regards to excavation and exhumation of sites.</p> <p><b><u>Confidentiality Regime of the OMP</u></b></p> <p>Strengthen the provisions in Section 15 regarding the accepting and withholding of confidential information, and clarify and make transparent when confidentiality is to be triggered and the scope of confidentiality with regards to information being shared with families of the missing and disappeared. In addition, make provision to the effect that only the identity of the person providing the information should be withheld from the family, if confidentiality is explicitly requested, and not the information itself.</p> <p><b><u>Prosecution and sharing of information</u></b></p> <p>Two divergent views are expressed by submissions: Make mandatory provision requiring the OMP to share all information with prosecutorial authorities where offences are involved. The prosecutorial authorities must first and foremost include the Special Counsel of the proposed Transitional Justice mechanisms.</p> <p>Make provision for the OMP to proceed with prosecutions.</p> <p><b><u>Victim and Witness Protection</u></b></p> <p>Clarify the relationship between the OMP and the Assistance to and Protection of Witness and Victim Protection Act No. 4 of 2015 as well as the relationship</p>	<p>No</p> <p>No</p> <p>No</p> <p>No</p> <p>No</p> <p>No</p> <p>No</p> <p>No</p>
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	<p>between the Victim and Witness Protection Division of the OMP and the Victim and Witness Protection Authority and Division established under that Act.</p> <p><b><u>Issuance of Reports and sharing information with families of the disappeared</u></b></p> <p>Make mandatory provision for sharing of information with family members; Make provision with regard to frequency, extent and manner in which information is shared. For instance it should be mandatory for the families to be provided with updates relating to an on-going investigation in the language of their preference, periodically at least twice a year, whenever there is a significant development, and when a case has been sent to a law enforcement or prosecuting authority on evidence that an offence under the law has been committed.</p> <p>Make explicit reference to the duty of the OMP to share information in a clear, transparent and sensitive manner, particularly if the message is of a very distressing nature.</p> <p>Make explicit reference to the family's right to know whether a person is alive as a paramount right. If the person found to be alive was at any point previously subject to an enforced disappearance, where the person is not capable of expressing consent, or if the person is subject to reasonable apprehension of fear or threat in expressing his or her views to the OMP, the whereabouts of a person should not be withheld from the relatives.</p> <p>Make mandatory for the OMP to publicly report its activities, procedures, and general findings.</p> <p>Clarify the scope of the Right to Information Act in relation to information given to affected persons on incidents of enforced disappearance under the OMP.</p> <p><b><u>Certificates of Absence and Disappearance</u></b></p> <p>Recognise in the OMP Bill that it is possible for those who had previously obtained a Death Certificate without proper investigations for purposes of reparation (under force or active persuasion) could now have this revoked for the issuance of a Certificate of Absence.</p>	<p>No</p> <p>No</p> <p>No</p> <p>No</p> <p>No</p> <p>No</p> <p>No</p> <p>No</p>
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	<p>Make explicit reference to the duty of the OMP to inform individuals of any consequences in accepting a death certificate, certificate of absence, or certificate of disappearance/ surrender for their disappeared kin.</p> <p>Make explicit reference to the duty of the OMP to facilitate the issue as expeditiously as possible certificates of absence/disappearance, as is noted in the submissions that otherwise they may be of no use for the families.</p> <p>Make explicit provision that Certificates of Absence/Disappearance /surrender are presumptively valid to enable women to access their husbands' bank accounts, pensions, properties, subsidies, gratuity/EPF/ETF, welfare payments, and life insurance.</p> <p>Make explicit reference to the duty of the OMP to facilitate private sector recognition of these certificates.</p> <p>Make explicit provision that Interim reports and reports issued to the Registrar-General for the issuance of Certificates of Absence and Death Certificates are binding directives.</p> <p>Making Recommendations on Reparations In order to ensure that family members are not subjected to retelling the tragic details of their story yet again, make provision in Section 13 (f) to either:</p> <ul style="list-style-type: none"> <li>• Allow persons from the relevant reparations authority be part of the OMP from the outset in order to facilitate the reparations process; or</li> <li>• in addition to the dedicated Office of Reparations envisaged by the Government, establish a separate reparations unit with the OMP mandated and structured to provide both interim and final reparations, as a mechanism specialising on missing and disappeared persons.</li> </ul> <p>A number of suggestions were made regarding the kinds of reparations that should be provided by the OMP and potential structures</p> <p>Make provision in Section 13 (f) for an interim reparations unit to make recommendations relating to the following kinds of reparations:</p>	<p>No</p> <p>No</p> <p>No</p> <p>No</p> <p>No</p> <p>No</p> <p>No</p>
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	<ul style="list-style-type: none"> <li>• Monthly monetary amount commensurate to the income of the missing person until the fate and whereabouts of the person has been determined.</li> <li>• Scholarships for children.</li> <li>• Preferential school admissions.</li> <li>• Special allowance for vulnerable groups including disabled persons and senior citizens.</li> <li>• Facilitating job placements, including in the private sector.</li> <li>• Assisting in reducing debt obligations for affected women who are carrying the debts of their missing husbands, fathers, and sons.</li> <li>• Recovery of monies paid to the CID, TID, politicians, and paramilitary groups in the search for missing and disappeared family members.</li> <li>• Psychosocial support that is available throughout the process from initial engagement, to learning a disappeared person's whereabouts, to identifying remains, and performing death rituals if the person was killed, as long as family members require such support.</li> <li>• A special pension scheme for families of the missing and disappeared.</li> <li>• A percentage of employment opportunities for families of the victims of enforced disappearances and political prisoners.</li> </ul> <p>Make provision in Section 13 (f) for the grant of final reparations in the form of a lump sum after the fate and whereabouts have been determined, to compensate for the loss of the person. Final reparations must be based on clear criteria which n the duration of time a family has received monthly allowances and other considerations.</p> <p>Make provision for a reparations fund within the OMP, created within four months of the establishment of the OMP, resourced from the national budget while maintaining the right to raise independent funds.</p> <p>Make provision to allow family members to question reparation decisions.</p> <p>Make explicit provision in Section 13 (f) that the reparations unit will be linked to the Office of Reparations and be part of a Reparations Policy adopted</p>	<p>No</p> <p>No</p> <p>No</p> <p>No</p>
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	by the government which does not create hierarchies of victims.	
Structure	<p><b><u>Head Office and Regional Offices</u></b></p> <p>Make provision in Section 3 (3) for the Head Office of the OMP and its regional offices to be established in relatively well-known areas in the region that can be easily accessed through public transport.</p> <p>Make explicit reference to the duty of the OMP to establish regional offices as a mandatory duty of the OMP, particularly in the North and East. and particularly at the outset. It is suggested that offices are established at the district level in the North and East and at the provincial level in the South. Specific suggestions were made about potential locations for an office in the North, including Killinochchi or Jaffna.</p>	No
	<p><b><u>Forensics Unit</u></b></p> <p>Amend Section 16 of the OMP Bill to create a dedicated forensics unit, with a mandate to identify victims and return remains to the families. One suggested possibility is to model this unit after the Office of Missing Persons and Forensics in Kosovo and learn from the victim-centred approaches of the Peruvian Team of Forensic Anthropology and the Guatemalan Team of Forensic Anthropology.</p> <p>Make explicit reference to the duty of the OMP to work with affected families and victims' groups to develop a database of ante-mortem data.</p>	No
	<p><b><u>Oversight, Advisory or Monitoring Body</u></b></p> <p>Make provision in Section 16 for an oversight body, with the power to :</p> <ul style="list-style-type: none"> <li>• review the work of the OMP on a quarterly basis and make public its findings; and</li> <li>• suggest improvements to the structure or processes of the OMP, both at the regional and national levels, if the initial structure proves to be unresponsive to complainants' needs and issues.</li> <li>• ensure continuous consultations with victims and organisations working on the issues of</li> </ul>	No

	<p>disappearances, in order to avoid mistakes and to build trust.</p> <p>Make provision relating to the composition of this Body which takes into account the following recommendations:</p> <ul style="list-style-type: none"> <li>• The Oversight Body should be comprised of 25% of families of the missing or disappeared—from diverse ethnic backgrounds, geographical areas, and time periods when incidents occurred—or in the alternative two family members.</li> <li>• Membership should be rotated every three years, to enable different families to be represented.</li> <li>• It should consist of independent local and international experts, including women experts who will monitor it for gender sensitivity.</li> <li>• It should consist of representatives from local women’s groups and organisations working on disappearances.</li> </ul> <p><b><u>Reparations Unit</u></b> Make provision for the establishment of a Reparations Unit in Section 16 (see above for further details).</p> <p><b><u>Complaints Mechanism</u></b> Make provision in Section 16 for a Complaints Unit within the OMP where victims can make complaints against OMP staff members who behave insensitively or inappropriately toward them, and the power of the OMP to take corrective action.</p> <p><b><u>Outreach Unit</u></b> Make provision in Section 16 for an Outreach Unit with power to handle communications with the families of the missing/disappeared, and engage with the public.</p> <p><b><u>Psychosocial Unit</u></b> Make provision in Section 16 for a Psychosocial Unit that will coordinate the provision of psychosocial support to those engaging with the transitional justice mechanisms and beyond, and ensure that the process is psychosocially sensitive.</p>	<p>No</p> <p>No</p> <p>No</p> <p>No</p>
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Members	<p><b><u>Appointment Process</u></b></p> <p>Clarify and make adequate provision in Section 4 (1a &amp; 1b) for public involvement in the process of appointment of members taking into account the following suggestions which emerge from submissions:</p> <ul style="list-style-type: none"> <li>• The Constitutional Council make a public call for nominations specifying the criteria and qualifications for membership in the OMP with sufficient time and opportunity given for families and the public to nominate suitable persons. The call should be made with minimum a period of two weeks for nomination.</li> <li>• Once nominations are received, a long list of the nominations must to be made public to enable families and the public to comment as part of a vetting process.</li> <li>• The long list to be reduced to the number of positions in the OMP on the basis of comments and views received from the public, which is forwarded to the President and also made public.</li> <li>• The President is to be expressly bound to make appointments from the recommendations made by the Constitutional Council.</li> <li>• Appointments to the OMP should be made by the Constitutional Council and the UNWGED and/or the OHCHR with the Constitutional Council making local appointments and the UNWGED /OHCHR making international appointments to the OMP.</li> </ul> <p><b><u>Membership Criteria</u></b></p> <p>Add criteria in Section 4 (2a &amp; 2b) for consideration in the composition of members for the OMP to include:</p> <ul style="list-style-type: none"> <li>• Gender: more than 50% of the OMP members should be women and highly qualified women should be encouraged to apply.</li> <li>• Ethnicity: members must reflect the caseload of the OMP. There were also suggestions for the membership to reflect the major ethnic communities of the country.</li> <li>• Professional experience of working with the families of the missing and disappeared.</li> <li>• Experience in provision of psychosocial support</li> </ul>	<p>No</p> <p>No</p>
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	<ul style="list-style-type: none"> <li>• Family members of the missing /disappeared (on account of their experience of searching for family members) and family members of servicemen /soldiers missing /disappeared must be represented. There was a specific suggestion to recognise the experience of searching for missing as an area of expertise.</li> <li>• Integrity and respect of the community;</li> <li>• From the region (in the context of this submission region has to be understood as North and East) and having competency in the language of the region;</li> <li>• Forensic anthropology expertise.</li> <li>• Qualified foreign individuals known for their integrity, independence and professionalism (appointed by the UNWED or OHCHR) should form half of the membership of the OMP. It is stated in the submissions that, without international involvement, victims would find it “extremely difficult to place faith in the OMP and that it is difficult to conceive how the OMP made exclusively of Sri Lankans . . . will have the moral and practical courage to enter camps and prisons and properly investigate alleged acts of disappearance.”</li> <li>• Availability to commit to the working days of the OMP should be part of the eligibility criteria for selection.</li> </ul> <p><b><u>Exclusion of Eligibility for Membership</u></b></p> <p>Make explicit provision in Section 4 of the Bill to exclude from eligibility for membership of the OMP:</p> <ul style="list-style-type: none"> <li>• Persons who have been or are implicated/held responsible for disappearances or being complicit by way of denying, justifying, or covering up the crime in the past in any local and international fora.</li> <li>• Persons who are or have been members of the security forces or armed groups.</li> <li>• Persons who hold or have held political office.</li> </ul> <p><b><u>Chair</u></b></p> <p>Consider the following recommendations relating to the Chairperson:</p> <ol style="list-style-type: none"> <li>a) a small group of 3 individuals heading the team</li> <li>b) a rotating chair.</li> </ol>	<p>No</p> <p>No</p> <p>No</p> <p>No</p>
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	<p>These were suggested for the purposes of ensuring unbiased decision- making.</p> <p>Make provision for three of the members of the OMP to function as deputy CEOs or in any other relevant executive capacity.</p> <p><b><u>Roles, Functions and Status of the Members</u></b> Clarify in the OMP Bill:</p> <ul style="list-style-type: none"> <li>• the nature of interaction between Members and complainants and families;</li> <li>• the ‘governance’ and ‘executive’ role of Members;</li> <li>• whether members work on a part time or full time basis.; and</li> <li>• whether the role is commensurate to handling the caseload of the OMP, if as expected, it exceeds 20,000 cases of disappeared persons.</li> </ul> <p>Amend the bill to provide for at least four of the seven to function on a full time basis. Also make provision stipulating a minimum number of days per month that other Members need to commit (i.e. at least 15 working days a month).</p> <p><b><u>Security of Tenure</u></b> Make provision for security of tenure of OMP members in order that they can perform their responsibilities without hindrance or political interference. In particular clarify that Section 7(3) of the Bill will be applied strictly in accordance with international standards.</p>	<p>No</p> <p>No</p>
Staff	<p><b><u>Criteria for recruiting staff</u></b> Make provision in Section 16 (2) stipulating clear criteria for recruiting staff/personnel, at all levels as well those who will not be eligible for recruitment, taking into account the following recommendations:</p> <ul style="list-style-type: none"> <li>• All staff should have the requisite professional qualifications and experience, relevant to their particular position/ unit.</li> <li>• Family members of the missing /disappeared should be represented within staff.</li> <li>• 50% of OMP staff should be women.</li> <li>• Competency to respond to and interact with victims and families without having to resort to translations</li> </ul>	<p>No</p>

	<p>on a regular basis. The OMP Bill must contain an explicit provision stating this language requirement relating to OMP personnel (relating to the Members, the Tracing Unit, the Victims and Witnesses Division, and all other intended units/divisions of the OMP). When such staff is not available, the OMP must always make female translators available.</p> <ul style="list-style-type: none"> <li>• Staff will include international personnel to undertake specific tasks with regard to forensics and investigation.</li> </ul> <p>Also make provision for other qualities which staff should be endowed with as follows:</p> <ul style="list-style-type: none"> <li>• Gender-sensitivity</li> <li>• Sensitivity to the issues, the context and grievances of those engaging with the office.</li> <li>• A demeanour that reflects an aim to pursue and provide truth to families of the missing and disappeared.</li> <li>• Caring and trustworthy locals who understand the geography, language, and history of the area and are experienced with working on enforced disappearances.</li> <li>• Trustworthy and neutral persons who will protect the privacy and confidentiality of all communications, testimony, and data.</li> <li>• Persons who give victims adequate time and space to tell their stories.</li> </ul> <p><b><u>Exclusion for eligibility as staff</u></b></p> <p>Make provision in Section 16 (2) to the effect that staff should not have any prior record of harassment, intimidation, or violence. Individuals who are implicated of having any involvement in any instance of a missing or disappeared person or involvement in any other serious crime must be categorically excluded. In this regard, there should be an explicit provision containing this exclusion relating to the recruitment of current or former law enforcement and military personnel.</p>	<p>No</p> <p>No</p>
<p>Women and OMP</p>	<p>Amend the OMP Bill to make it more gender sensitive as follows:</p> <ul style="list-style-type: none"> <li>• Amend Section 11(c) so as to impose a mandatory duty on the OMP to issue gender-sensitive internal policies. These guidelines to include the following:</li> </ul>	<p>No</p>

	<ul style="list-style-type: none"> <li>• Providing gender-sensitive training for all staff.</li> <li>• prioritizing gender concerns when mobilizing resources for the OMP.</li> <li>• Ensuring that a conducive environment is created so that women who access its services feel comfortable and at ease in providing their statements.</li> <li>• Ensuring that women who have no finances are reimbursed for cost associated with travelling to the OMP.</li> <li>• Ensuring provision of child-care facilities to accommodate children that will accompany adults to the OMP.</li> <li>• Ensuring that the reports that are prepared by the OMP dedicate a whole chapter to capture the experiences of women who have accessed the services and remedies that are provided by the OMP.</li> </ul>	
International Involvement	<p>Make provision for the involvement of international actors specifically in the following positions within the OMP</p> <ol style="list-style-type: none"> <li>1) in the membership of the OMP,</li> <li>2) to serve as staff in specific functions including in forensic and investigations</li> <li>3) to fulfil an oversight function.</li> </ol> <p>Some submissions also mention that the United Nations must be a partner in the transitional justice process in Sri Lanka to ensure legitimacy, trust and confidence in the process.</p>	<p>No</p> <p>In fact, Section 11 (a) of the Bill which provided OMP with the power ‘to enter into such agreements, where necessary, with any person or organization whether incorporated or otherwise, and whether domestic or foreign, including agreements securing assistance in obtaining information; obtaining technical support and training (forensic or otherwise) and collaboration; establishing databases and personal data protection; and in respect of confidentiality of information;’</p> <p>was diluted in the Act:</p>

		<p>‘to enter into agreements, as are necessary to achieve the mandate of the OMP, with any person or organization’,</p> <p>making international involvement and assistance <b>less</b> explicit.</p>
Relationship with other TJ mechanisms	<p>Clarify the relationship with other TJ mechanisms.</p> <p>The OMP must not limit itself to the question of truth vis-à-vis the disappearances, but must also deal with issues of justice and reparations.</p>	No

## Annex 16

### List of note takers

Ms. Wathsala Abeykoon  
Ms. Shalini Abayasekera  
Mr. Mohamed Arshath  
Mr. Paul Bright  
Ms. Ram Dayalini  
Ms. K. H. Kanchana Kumudumali  
Ms. Jinandani Parameshwaram  
Ms. Udari Perusinghe  
Mr. Antonyrajah Ponnegipprenthirarajah  
Ms. Galani Samodaya  
Ms. Dilani Senevirathna  
Ms. Ithayarani Sithravel  
Ms. Piragasini Sivagnanam  
Mr. Thusharan Sivarajah  
Ms. Kriya Somasekeram  
Mr. Thayaparan Thivagar  
Ms. Chamika Wijesuriya  
Ms. Chiara Wijetunga  
Ms. Mayooraan Valentina

## Annex 17

### List of coordinators

Mr. S. J. Wiudhanapathirana  
Mr. Abdul Cader Mohammed Rumaiz  
Mr. Sunil Kahagalla  
Mr. Sameera Laksiri Narampanawa  
Mr. Y. G. Punchibanda  
Mr. A.H. Stephen  
Mr. Prabodha Rathnayake  
Mr. Subramaniam Thavaseelan  
Mr. M. Marianesam  
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Mr. Mohamed Saly Jaleel  
Ms. Shanthi Sivanesan  
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