

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 (TJRNC) 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 (TJRNR)

- 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 TJRNR 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.