

## 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.

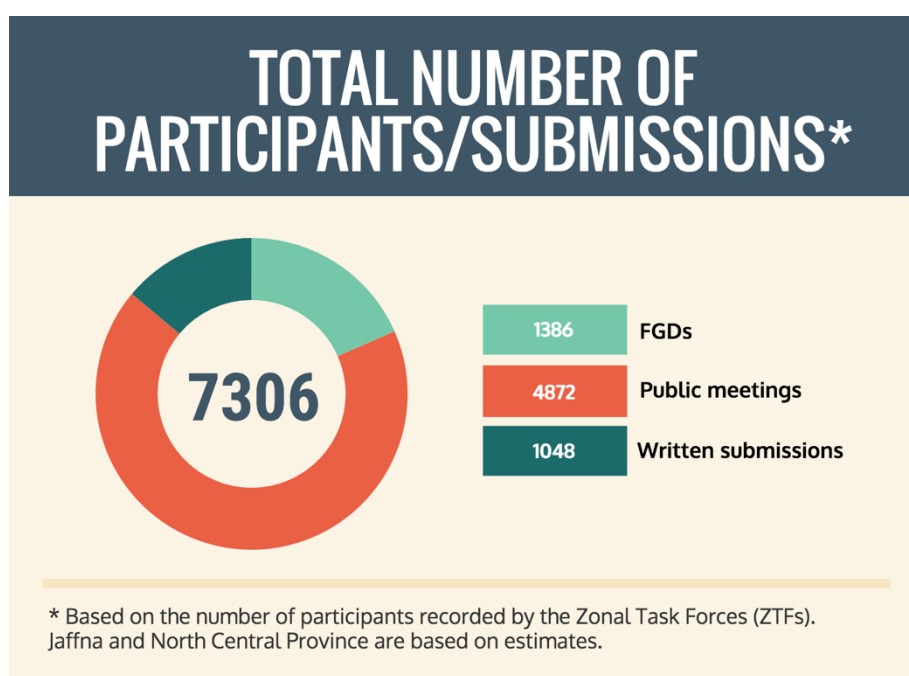
2. The Final Report of the consultation is organised according to the proposed four mechanisms and overarching issues such as psychosocial support and State and societal reform pertaining to transitional justice and reconciliation, with each meriting a chapter of its own. The other chapters include an 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 (TJRNRRC) 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 (TJRNRNRC). Whilst a number of objectives were identified, a majority of submissions state that the TJRNRNRC 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.