

International  
Truth & Justice Project:  
Sri Lanka

Forgotten:  
Sri Lanka's  
exiled  
victims

June 2016



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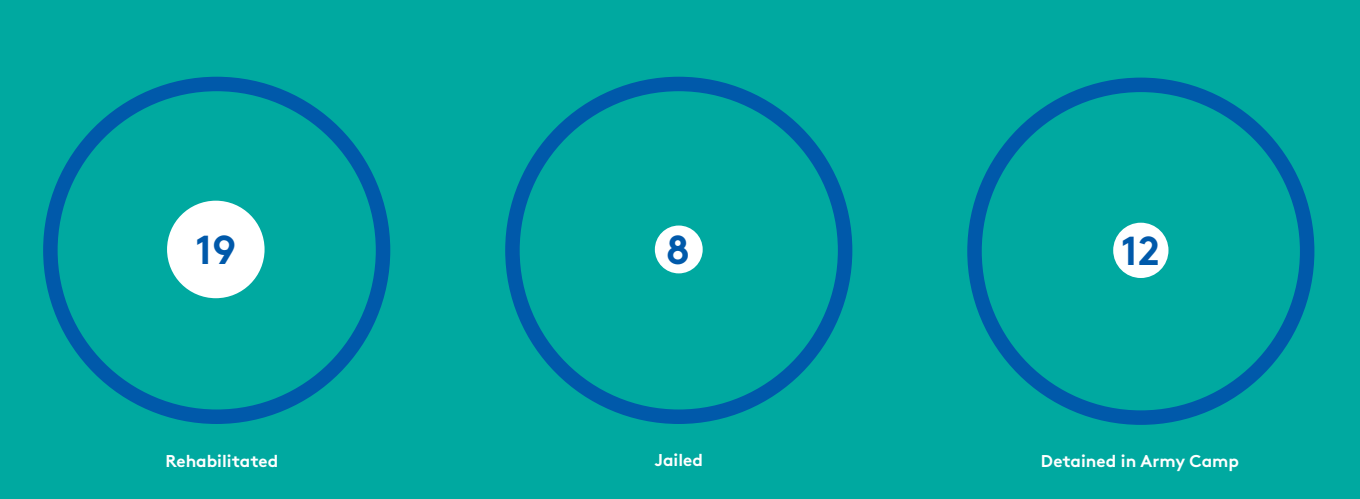
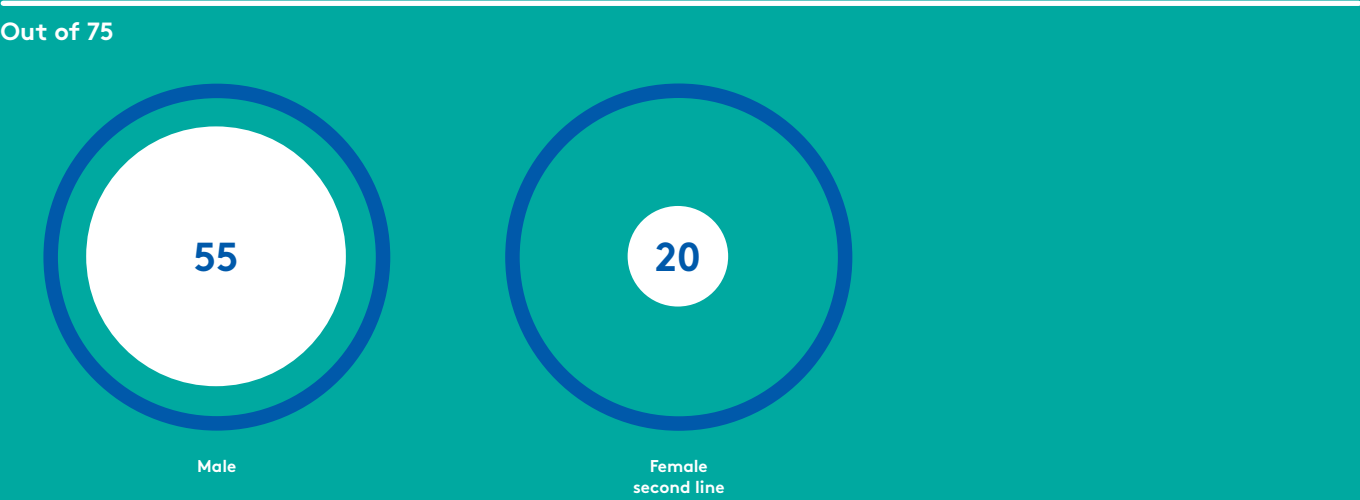
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Photograph: Amarathaas





# Part 1

# Function

# The International Truth and Justice Project:

This is a project run by the Foundation for Human Rights, one of the primary indigenous grant-makers to the human rights sector in South Africa. ITJP is comprised of human rights experts, international prosecutors and investigators and transitional justice experts who have worked in the past for the United Nations, ICTY and the ICC. In 2014 ITJP was the first organisation to make the case that post war torture and sexual violence by the security forces in Sri Lanka amounted to a prima facie case of crimes against humanity. That finding was later upheld by the UN investigation in 2015. In 2015 we were the first to publish the GPS location of a secret naval torture site in Sri Lanka, which was later visited and corroborated by the UN

Working Group on Enforced and Involuntary Disappearance. ITJP now has the largest archive of witness testimony and other evidence outside Sri Lanka pertaining to the final phase of the conflict and post-war torture and sexual violence.

The executive director of the Foundation and ITJP is a leading transitional justice expert, Yasmin Sooka. She is a former member of the South African & the Sierra Leone Truth and Reconciliation Commissions and was a legal advisor to Ban Ki moon on Sri Lanka. She was the Soros inaugural Chair at the School of Public Policy and recently sat on the Panel investigating sexual violence by French peacekeeping troops in the Central African Republic.

# Acknowledgements: Yasmin Sooka

I would like primarily to thank the people who came forward to participate in this exercise. We did not delve into the detail of episodes of torture and sexual violence – especially since ITJP had already documented many of the cases – but it was still difficult for interviewees to reflect upon the totality of their experiences and what might amount to justice for their immense suffering. As soon as interviewees started to answer questions about the final phase of the war, they would recount horrific images – the stuff quite literally of their nightmares. Participating in this process was a brave thing to do. Though many were skeptical about the exercise at the outset, by the end of the interviews several said they were happy that we had solicited their views. The mere act of being consulted was imbued with significance for people who are so marginalized and isolated. I remain convinced that the ultimate test of the credibility of Sri Lanka's transitional justice experiment will be whether these victims will one day be able to testify in safety.

I offer my profound thanks to the Tamil interpreters involved in

this project. They were far more than interpreters, spending energy on translating and patiently explaining, again and again, new concepts to the people we interviewed. They also faced the impossible task of trying to render into English the horror of what survivors in this report witnessed and endured. All of the interpreters worked for the UN or international NGOs in the Vanni and lost everything they possessed in 2009. At times it was extremely difficult for them to relive the events because of the personal trauma they carry. They were always professional in the extreme and we salute their brave determination to carry on serving their people even in exile.

One interviewer did the vast majority of the work. It took enormous patience and stamina to conduct so many interviews in a short space of time and she showed great sensitivity and humanity in dealing with people who are still very damaged by what they've endured. We could not have chosen anyone better to conduct this exercise.

Paaras Abbas tabulated all the data for this report, valiantly reading through all the forms

and inputting the answers into software to calculate. She worked incredibly hard and with great diligence and care in executing the task.

I would like to acknowledge the work of Frances Harrison who is indefatigable, energetic and devoted to the cause of justice and accountability for the victims of the war in Sri Lanka who lived through the atrocities. Without her this project would not exist. Her boundless energy in ensuring that the stories of victims are told is a testament to her commitment.

There are many lawyers who ensure that the victims are accessed and their stories told; too many to thank individually. However without them it would not be possible to do this work. I would like to thank them for their commitment to working with us.

To our funders a big thank you.



# Introduction:



## This Study

This is a consultation exercise that has focused on survivors of the conflict in Sri Lanka that ended in May 2009 and the post-conflict period. It is not a diaspora consultation although there is definitely a need to conduct such an exercise. These recent arrivals are not integrated into the Tamil communities abroad; indeed several fear mixing with other Tamils because they are sexual violence survivors or have family still in the north east of Sri Lanka facing continued harassment. These victims live in limbo, neither rooted in their country of exile nor at home in their own country. Their experience of the final and most bloody phase of the war sets them apart from other members of the Tamil diaspora who came after the 1983 anti-Tamil pogrom, for example, and are now well established in their new countries.

There is a tendency inside Sri Lanka to dismiss all victims outside the country as “diaspora victims”, implying they are politically motivated by diaspora groups and detached from recent events in Sri Lanka. Alternatively, external victims are dismissed as “asylum seekers”, insinuating that they are really people only after a better economic livelihood. Neither assumption is correct or acceptable in the case of

the people interviewed for this study. On the contrary, the fact that these interviewees are geographically sited in Europe does not make them any less authentic, credible or worthy of justice and reparations.

This consultation was conducted in four countries with 75 Tamils most of whom recently fled Sri Lanka for Europe.

**80% are survivors of the final phase of the war.**

**73% say they were tortured in the post-war period.**

These are some of the Tamils worst affected by the alleged war crimes and crimes against humanity in Sri Lanka enumerated in several United Nations reports. They also represent the most marginalised whose views and experiences are not solicited at all.

Almost all these interviewees were forced to leave Sri Lanka following the end of the civil war in 2009. Significantly nearly half fled their country in or after 2012 – several years after the war was supposed to be over. A quarter of those we interviewed had been through the Government’s rehabilitation programme for former LTTE cadres but had found it impossible to survive in the country after being released; in some cases they were abducted and detained again. Many of the victims in this study are intimately connected to recent events on the ground – some having fled their homes in 2015, only 6 months prior to being interviewed. This speaks to the ongoing persecution by the security forces of those Tamils

even tangentially associated with the former armed insurgent group, the Liberation Tigers of Tamil Eelam, or LTTE.

**72% were LTTE members; more than a quarter (27%) of those were child soldiers.**

As is usual with ex-combatants in other post-war contexts, it would be impossible for them to participate openly and frankly in a consultation exercise inside Sri Lanka. They could be subject to arrest, detention or equally violent reprisals. While reconciliation is an important goal of a transitional justice process it is not seen as a priority if you have won the war.

The ITJP decided to conduct these consultations in accordance with the OHCHR Rule of Law Tools for Post-Conflict States, National consultations on transitional justice<sup>1</sup>, with exiled victims as this consultation exercise may well be the only opportunity for them to have a voice in determining the future of their country. The consultation has provided an opportunity to these victims to speak about the horror they witnessed during the war and during the post-conflict period. It also incorporates their views on future transitional justice mechanisms. To our knowledge, this is only the third time that such a consultation process has been conducted outside a country<sup>2</sup>.

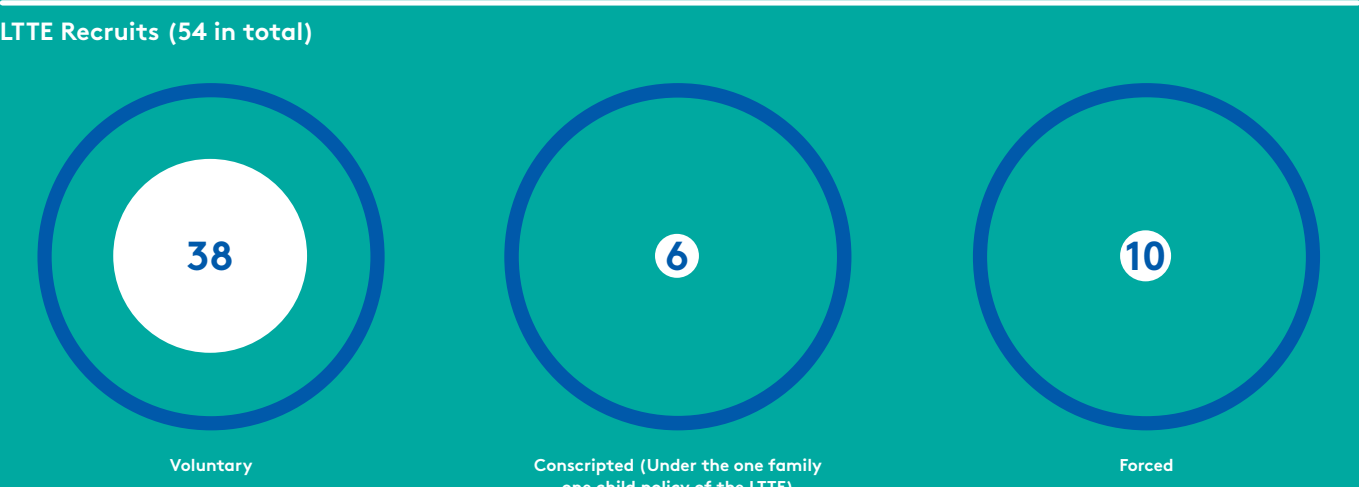
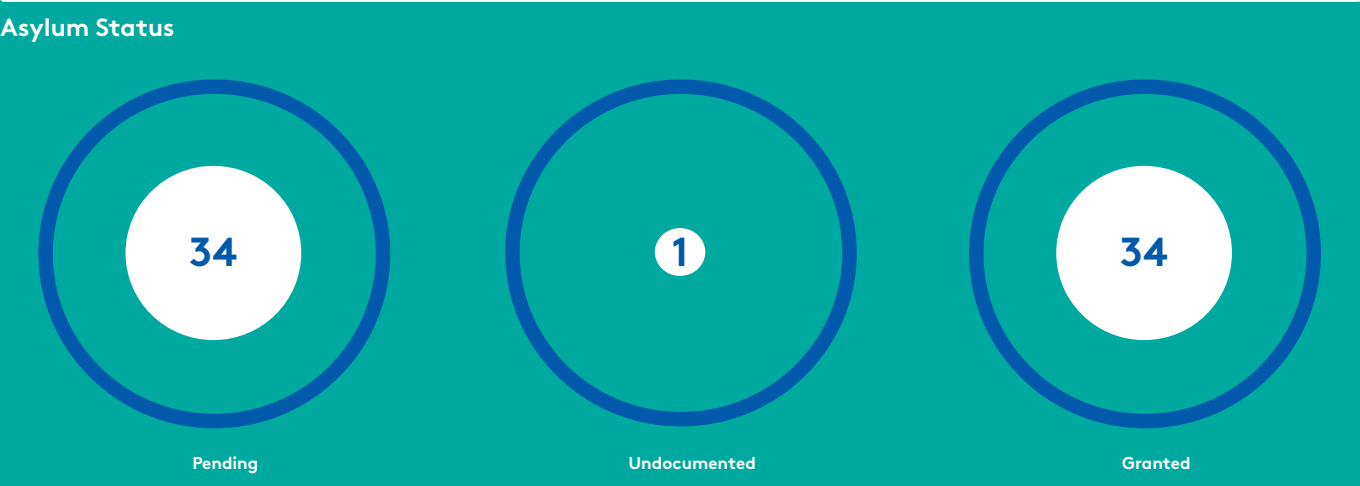
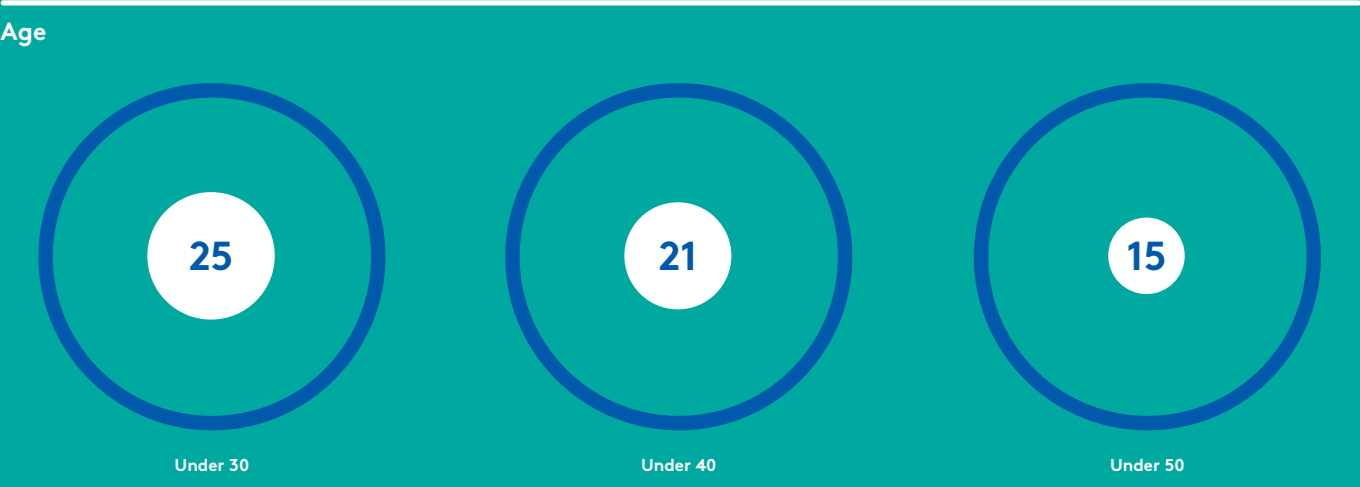
## Ongoing Violations

ITJP has evidence of 23 abductions by the notorious “white vans” used by the Sri Lankan security forces during

2015 and 2016, which resulted in the victims being tortured and/or sexually violated<sup>3</sup>. Recent press reports from Sri Lanka have focused on what is described as the “re-emergence” of the “white van culture”. In reality the practice never stopped. The fact that abduction and torture has continued under the new government was corroborated by the Special Rapporteur, Juan Mendez, who visited Sri Lanka in May 2016<sup>4</sup>.

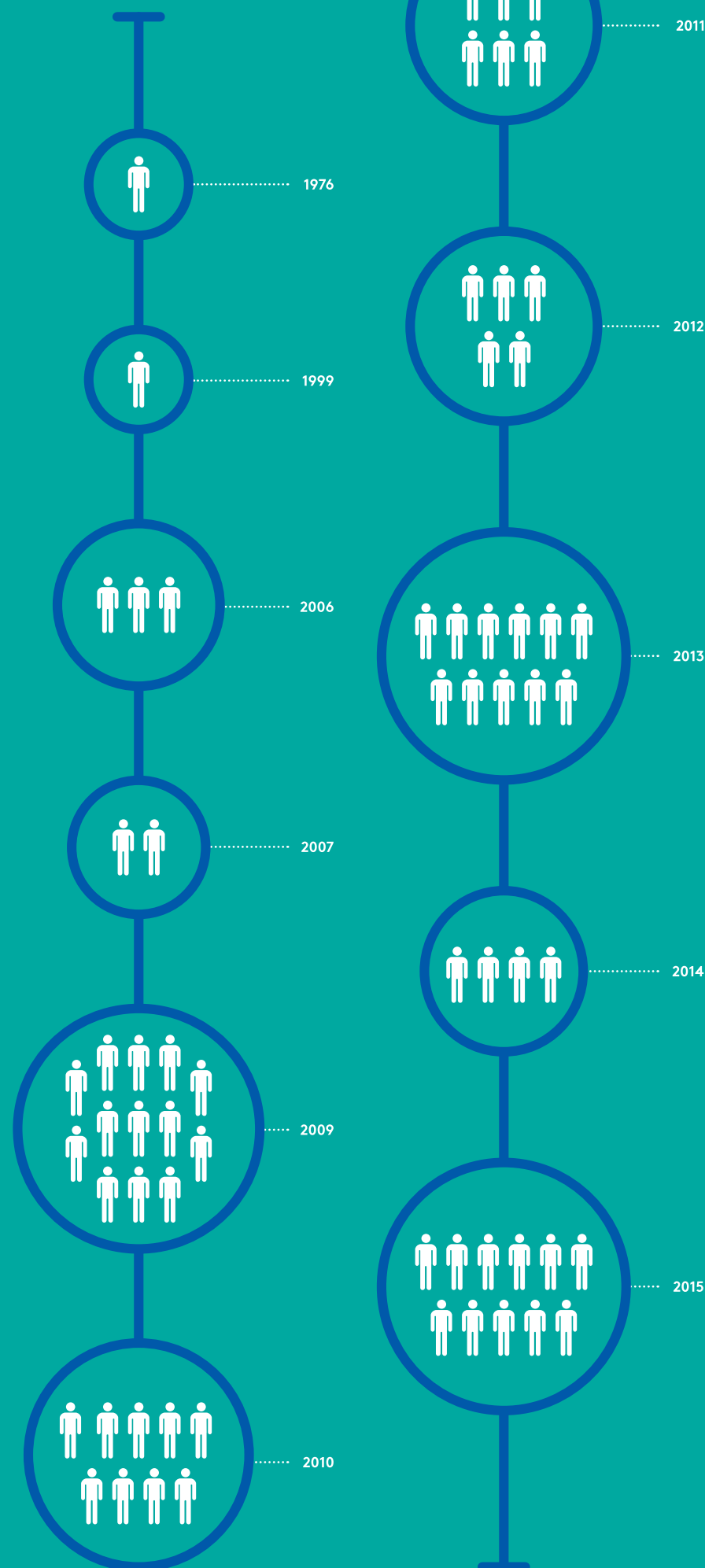
Aside from abductions, it is widely acknowledged that there is continuing harassment, surveillance, intimidation and questioning of the Tamil population of the North East by the security forces, and in particular former LTTE cadres who have gone through so-called rehabilitation are under scrutiny, according to interviewees. One of the reasons the interviewees spoke to us individually and under strict condition of anonymity was fear for their family members still in Sri Lanka.

It is probable that Tamil victims who are eyewitnesses to some of the worst atrocities cannot speak freely to a national consultation process inside Sri Lanka; as a result an external consultation process becomes all the more important in filling that gap.



## Year left Sri Lanka first time

## Years left the second time



## Interviews

This report is based on the views of 75 people. We conducted 66 confidential individual interviews with Sri Lankan Tamils, a group interview with 3 additional people, as well as a pilot group session involving 6 people. 26% of those consulted were women and 74% men. We tried to encourage more participation of women but found that women overall found it more difficult to be available. All but one of the interviewees in the UK have before this consultation, provided the ITJP with detailed testimony, which has been corroborated by other evidence. This was not the case for most of the interviewees in other European countries. The questionnaires were completed by the interviewer in English and the interviews conducted in a quiet safe space. Interviewees were given sufficient opportunity to add their views if the questions asked did not fully capture them.

## Risks

The identity of the interviewees has been kept confidential with

any other identifying details removed for purposes of witness protection. In two cases the interviews had to be abandoned before they were completed as thinking and talking about their experiences had so traumatised or stressed the interviewee. An assessment of the level of trauma and offering to curtail the interview was an element of the methodology. In the UK we have tried to follow up by endeavouring to source help that is needed, such as access to urgent medical care, trauma counselling and English language classes. The needs we have identified are immense and require serious and in some cases urgent attention.

## Pilot

A pilot focus group discussion was conducted in Switzerland at the outset of the exercise. This involved former humanitarian workers from the Vanni. We showed them informative films about other conflict countries in transition but the sight of the suffering proved too distressing for them. During the pilot session in Switzerland, several people pointed out that even if

it were safe for them to return in a couple of years' time, there was no guarantee it would remain safe in the future. If the government changed or the security situation was altered it was liable they could be picked up and tortured again.

## Locations

- London: 41
- Switzerland: 21 (15 individuals plus 6 in pilot group session)
- France: 9
- Norway: 4 (1 individual plus 3 in a group session)

## Target Group

We prioritised people who are survivors of the final phase of the war in Sri Lanka (2008-9) and/or post-war detention and torture. Most had arrived abroad after the end of the war in Sri Lanka however we did

# Methodology:



speak to a few survivors who left Sri Lanka earlier but were affected. We tried to achieve a representative sample of people of all age groups and in particular to include women. We also deliberately chose to interview in 4 different European countries. While we did not factor in whether someone had been granted asylum or not as a criteria for selection as it turned out half of the interviewees already had asylum. The group includes 54 people who were LTTE cadres, of various different levels of seniority. More than a quarter of these former LTTE cadres had been child soldiers and many others had been conscripted under the official “one family one child” policy in the final phase of the war or forcibly recruited. Fifteen of the interviewees were civilians, in addition to the 6 people in the Swiss pilot group.

Those LTTE cadres whom we interviewed belonged to a combination of combat and support units. The combat units

included former cadres from the Radha, Sothiya, Imran Panidyan and Malathy regiments as well as the Intelligence Wing. The non-combat units included the LTTE Media Unit, the TV station, the Political Wing, the Peace Secretariat, the International Secretariat, the Medical Wing, the Transport Unit, the Computer section and Education Section. Those who were not members of the LTTE were either still at school or university, or were in some cases housewives, photographers, teachers, accountants, office administrators, farmers, businessmen or fishermen.

Language

Two internationals conducted all the face-to-face interviews with the help of Tamil interpreters, though in a few cases the interviews were conducted in English or Norwegian directly, without the aid of an interpreter.

Preparation

Interviewees in the UK and Norway were sent a letter of introduction in Tamil explaining the process, the confidentiality and the logistical arrangements; in other countries it was explained in person. The interpreters also telephoned people to explain the project to them in advance. For those with access to email, which was the majority, a Tamil language information pack was sent in advance of the interview for them to read to be properly informed. However we were not sure how many people studied and understood the information so we explained it again in

person during the interview.

This information pack included:

- A 4-page summary of the OHCHR Investigation into Sri Lanka (OISL) report (September 2015).
- A glossary explaining some of the legal and Transitional Justice terms in this summary.
- A translation of the Sri Lankan Foreign Minister’s Speech to the Human Rights Council in September 2015 outlining the country’s transitional justice plan<sup>5</sup>.
- A summary chart visually showing the Government’s proposed mechanisms.
- The consensus UN Resolution on Sri Lanka passed in October 2015.
- A copy of the ITJP questionnaire.

Constraints

In some cases Tamils declined to participate in this consultation exercise as a matter of principle lest it be seen as validating the process in Sri Lanka which they argue is wrongly labeled as a “transition” of power. In one case (not counted in the statistics) a Tamil final war survivor came to the interview but then explained why he could not participate. We had hoped to conduct interviews in Germany but an intermediary organising the appointments there informed us that people

did not want to participate because they objected to the role of the international community in supporting the transitional justice process in Sri Lanka. While we did want to ensure the consultations were inclusive, it is important to recognize the right of the individual not to participate in consultations as this right too is recognized under international law.

Women were difficult to access because many are single mothers whose husbands have been disappeared and they were struggling with juggling work and childcare and simply did not have the time for this exercise.

Data Tabulation

The questionnaire we used mixed multiple choice questions, open questions, ranking questions and provided space for comments, resulting in both quantitative and qualitative data. Some multiple-choice questions asked the interviewee either to select one of two options or to tick both options. Other questions offered many options and interviewees tended to select almost all of them – in these cases the options that were not selected were also tabulated. Where questions asked interviewees to rank options by the importance they attributed to them, we cite only the two most important and least important choices. Figures were calculated using SPSS<sup>6</sup> software that allowed us to vary the sample size easily. This was necessary because in one instance 3 interviewees participated in this process giving their views as a group.



# Background:



The three-decade long Sri Lankan civil war ended in May 2009 with the decisive military victory by the Sri Lankan security forces over the Tamil Liberation Tigers of Tamil Eelam (LTTE). This saw the LTTE utterly destroyed and vanquished, Tamils crushed and subjugated and prima facie evidence emerging of mass atrocities perpetrated against Tamils. In the aftermath of conflict, local and international NGOs and activists lobbied the UN Human Rights Council in Geneva to investigate allegations that all sides committed war crimes and

crimes against humanity in the final and most bloody phase of the conflict.

The government of President Mahinda Rajapaksa denied that violations had in fact been perpetrated and constructed a counter narrative that the military had mounted a “humanitarian rescue operation” in which there had been “zero civilian casualties”<sup>7</sup>. The Rajapaksa government also rejected the role of the UN and the international community in addressing accountability for these crimes<sup>8</sup>. President Rajapaksa enjoyed enormous popularity within the Sinhala community as he was credited

with having won the war. The immediate aftermath of the war presented an ideal moment for pursuing accountability, a rapprochement between victor and vanquished and the building of a firm foundation for peace; this was squandered, resulting in the Tamil community further oppressed and denied any vestige of dignity. The post-conflict period between 2009 and 2014 saw credible allegations of the security forces, in particular the CID and TID, involved in ongoing violations, which continue even under the new government<sup>9</sup>.

In 2011, a UN Panel of Experts appointed by the UN Secretary

General reported credible allegations of war crimes and crimes against humanity and that the conduct of the war represented a grave assault on the entire regime of international law<sup>10</sup>.

In 2012, a UN internal review of its own conduct in Sri Lanka during the final phase of the war was leaked and found the UN had committed grave failures in Sri Lanka failing to protect civilians or learn from the lessons of the genocide in Rwanda<sup>11</sup>. This report indicated that the number of casualties could be as high as 70 000<sup>12</sup>. For the victims and their families, establishing the number of those who died is an extremely important issue, which the Transitional Justice plan needs to take account of.

The Government of Sri Lanka over the years set up its own investigative bodies, such as the Lessons Learnt and Reconciliation Commission (LLRC, 2011), a military inquiry whose findings exonerating the military have never been made public, followed by the Paranagama Commission<sup>13</sup>.

Unhappy with five years of lack of progress on accountability post-war, member states at the UN Human Rights Council voted in 2014 to establish the OHCHR investigation into Sri Lanka (OISL)<sup>14</sup>. While the mandate covered the same time period as the LLRC (2002-2011), it also included a monitoring brief in respect of ongoing violations.

The OISL report was due to be presented to the Human Rights Council in March 2015 but was

deferred till September because of the change of government in Sri Lanka after presidential elections in January 2015 which brought the government of President Sirisena to power<sup>15</sup>. The coming to power of the Sirisena coalition government in 2015 signalled a moment of great hope and optimism for Tamils as they anticipated change<sup>16</sup>.

Presenting the OISL report to the Human Rights Council, the UN High Commissioner for Human Rights said the sheer number of allegations, their gravity and recurrence and the similarities in their modus operandi, as well as the consistent pattern of conduct they indicate, all pointed to system crimes<sup>17</sup>. He concluded that Sri Lanka’s criminal justice system was not currently equipped to conduct an independent and credible investigation into allegations of this breadth and magnitude, or to hold accountable those responsible for such violations<sup>18</sup>.

Prior to the publication of the UN report, the Foreign Minister of Sri Lanka preemptively announced the outline of the country’s transitional justice plan including the establishment of a truth commission, a judicial mechanism or special court, an office for missing persons<sup>19</sup>, a compassionate council made up of clergy, a reparations body and a new constitution.

Following the release of the OISL report<sup>20</sup> in Geneva in September 2015, the Human Rights Council adopted a consensus resolution on “Promoting Reconciliation, Accountability and Human Rights in Sri

Lanka”<sup>21</sup>. The resolution commits the Government of Sri Lanka to establishing four new transitional justice mechanisms. These are a truth commission, a reparations office, a missing person’s office and an independent ‘hybrid’ special court for war crimes with “participation of Commonwealth and other foreign judges, defence lawyers, and authorised prosecutors and investigators”. The resolution also makes reference to law reform, including the requisite legislative changes necessary to prosecute international crimes including war crimes, crimes against humanity and enforced disappearances. In addition it speaks to the repeal of the Prevention of Terrorism Act and a strengthened victims and witness protection authority<sup>22</sup>.



# Violations

"My mother and brothers were injured by shelling in front of my eyes. My cousin's wife was heavily pregnant in the bunker and a shell hit and she was badly injured and the baby came out of her stomach and they both died. I heard the screaming and saw many dead bodies around me and the smell of blood around. Each day we lived between life and death with the injured and corpses. I saw many people starving and crying for food. My mother was injured while waiting in line for food."

Male Interviewee



The questionnaire first asked interviewees to specify the nature of the violations they had personally experienced, as well as those experienced by close family members. They were asked if they had been in the final war zone, about their loss of property, payment of bribes to the security forces and smugglers, education and employment discrimination, war injuries, detention, torture, sexual abuse and other forms of cruel and unusual treatment.

Interviewees were also asked to describe any other traumatic experience that had profoundly affected them and to outline the consequences for their health and mental wellbeing. It was in response to the question about witnessing traumatic experiences that the majority described their experiences in the war.

Questions about violations suffered by the individuals and family members yielded answers describing the extent of the collective as well as individual trauma. Violations were not suffered by just one member of a family but in some cases, several members of the same family had experienced death, disappearance, detention, torture and sexual abuse. For example seven percent of the interviewees who had been abducted in a white van spoke of a close relative (usually a sibling) who had been similarly abducted.

Several interviewees wept during the interviews. Remembering the events was deeply painful

for them and we witnessed trauma at a level that we had not expected. Insomnia was typical after reflecting on the past:

*"If I think about it I can't sleep at night. Tonight I will have to take tablets."*

(Male Interviewee)

### The War

Eighty percent of those interviewed had survived the final phase of the war in the LTTE controlled area. Seven years after the fighting ended they all said they still have nightmares about what they witnessed during those final months. In their dreams they see images of dead children and hear the screech of the fighter jets and the screams of the injured left to die.

*"I think about what happened every day. My hands shake permanently. I sleep poorly from the extreme stress of four years of anxiety and fear when I did not know what would happen the next moment. I am unable to come out of my experiences and what I saw during the war and during detention. My children ask me every day when can we go back to Sri Lanka."*

(Female Interviewee)

It's hard for a reader to imagine the totality of survivors' experiences from the handful of quotations given in this report. It is also worth recalling that the conflict was three decades long and for many survivors of the final phase of the civil war in 2008-9 the trauma has

accumulated throughout their lifetime. Many interviewees described witnessing or experiencing traumatic events as children, which continue to affect them. Apart from dealing with their own trauma, parents have had to cope with their young children exhibiting extreme traumatic reactions after witnessing horrific events during the final phase of the war.

It was worth noting that the interviewees found the questions about having witnessed the suffering of other people were the most distressing in the questionnaire. This was also the case even for interviewees who had experienced post-war torture themselves.

Survivors of the 2009 war often witnessed the killing of close family members or friends killed in front of them, typically blown to pieces by a shell. One young interviewee described hastily burying his father in a bunker in 2009 but after the war being unable to find the spot again despite searching:

*"In Mullivaikkal my dad is buried in some land, which is not a proper graveyard. I don't know where it is. I put nothing there to mark it. Everything is changed and we couldn't find the spot".*

(Male Interviewee)

In many cases interviewees described being unable to bury the bodies of loved ones on account of the danger of remaining in the area still under heavy attack. A fifth of those we interviewed described being shot at while trying to surrender

at the end of the war to the Sri Lankan army.

Some interviewees had been exposed to multiple traumatic events over several years. This man was himself tortured after the war, as well what he witnessed during the war:

*"In 2007 I saw a colleague being shot dead by the Sri Lankan Army (SLA). I witnessed others being arrested by the SLA and once I was forced to walk past an informer in an army vehicle. In 2007 I was shot at when the SLA came to my house. In 2007 my relatives were killed in a kfir<sup>23</sup> attack in Pooneryn. Then I saw Nallu Atha Katha Padasalai school being bombed and 3-4 dead children in 2007 autumn. In 2009 I witnessed dead children and injured children whose parents were killed. I knew the dead children personally. They were left dying and injured. In the camp after the war ended I heard other people screaming."*

(Male Interviewee)

### Disappearance of Family Members

In addition to witnessing the injury or death of friends and family during the war, nearly half of those interviewed had experienced their family members being missing or having disappeared. Some interviewees and their families had not registered disappearance complaints with any organization or body either in Sri Lanka or internationally, so the overall number is surely higher than is currently estimated in country.

One interviewee explained that he has recently received information that his brother who he had been missing during the war was in fact killed in the fighting but it would have been too painful for his mother to accept this and had withheld the truth from her:

*"The disappearance of my younger brother was traumatic. My mother still thinks he is alive and I would break her heart if I told her that one of my brother's fellow LTTE fighters informed me that my brother died fighting in 2009."*

(Male Interviewee)

Others had lucky escapes; this man surrendered on the last day of the war in 2009 but is haunted by the memory of those with him who have now disappeared without trace:

*"I was on a bus with...altogether 75 people, we were taken from Wadduvakkal to Omanthai one night, only round 30 are alive...I still have memories of my friends I surrendered with, flashbacks or sort of waking dreams, and I always think about what happened to them. I feel anxiety and anger."*

(Male Interviewee)

The family members of some interviewees had been disappeared and the interviewees had themselves suffered multiple violations after the war, including abduction, torture and sexual violence. Although interviewees were not asked directly to provide the reasons they believed were responsible for their

abduction and torture, they frequently made the connection between activities related to raising awareness of the fate of the disappeared and their subsequent abduction, detention and torture. Thirty eight percent of those who were tortured also had a family member who was missing or had disappeared.

This suggests that tackling the issue of disappearance presents serious witness protection issues:

*"It is very difficult to get truth from these people because many people abducted by them are unaccounted for. Nobody claims responsibility for any wrongdoing. When we were trying to get justice in Sri Lanka by participating in demonstrations we got more trouble."*

(Male Interviewee)

Those who have survived death and disappearance are frequently left with the burden of taking care of what is left of their extended family as this woman explained:

*"The continuous loss of family members has traumatised me. Additionally I have lost my house and property. I have nothing... I cannot describe in words how I feel about losing so many family members. I take care of my sister's daughter, whose father is also missing since 2009, and my brother."*

(Female Interviewee)

# Witnessing relatives killed:

"In 2009 my father's sister's family were all killed in front of my eyes on 17 May. A shell hit the bunker they were hiding in. We saw they were all blown to pieces but we had to move to save our lives. I saw many dead bodies, also decomposed ones, and I had to help bury people. It has affected me deeply."

Male Interviewee

"My mother's sister and husband who lived next to us died in a shell attack in March 2009 - only their daughter survived because she was in our tent. Another shell exploded on the tent next to ours and killed the entire family living there. I transported injured cadres and civilians to makeshift hospitals where I witnessed so many people unable to receive treatment."

Male Interviewee

"I witnessed many dead bodies on the way to surrender. One man was floating in the water and I saw the body of a little boy with his mother. There was continuous attack and shelling and many people dying but we had to move and we could not help them. My uncle was killed by shelling right in front of my eyes. We could not take him to the hospital. Every day I heard the screaming of people after attacks."

Female Interviewee

"There was a decomposed body and people sat near it and had meals with their kids. I am not sure if it was their relative or not."

Male Interviewee



# Interviewees' childhood exposure to war trauma:

**"I witnessed an attack on people fishing, one was beheaded and I saw that. I also witnessed the forcible recruitment of LTTE and I was scared. That affected me mentally."**

**Male Interviewee**  
(Aged 14-15 years then)

**"In 1995 when the Sri Lankan military captured Jaffna peninsula we faced hardship. From 1996 masked men came to the village to identify people to be taken to be severely tortured. My cousin was taken like this and he was later shot by the army. I saw his corpse. I was asked to go and identify him driving slowly past on a school bus."**

**Male Interviewee (Aged 9 then)**

**"When the attack happened on Sencholai (orphanage) in 2006 my sister was there so I rushed there. I saw all these dead bodies of kids and the damage. During that attack my sister narrowly escaped and at first we had no information about my sister and we had to look at every dead body to locate her. I was about 14 then. I went with my father and uncle. Sometimes I dream about it."**

**Male Interviewee**





## Interviewees' children:

"I saw people dying from shelling. After one rocket attack, I found all 7 children and parents blown to pieces. My son and I witnessed another shell hitting two girls who were blown to pieces, the head of one of the girls landed in front of my then 6-year-old son, and he was severely traumatised for 3 years as a result, and still has nightmares."

Male Interviewee

"During one displacement there was heavy shelling and one shell landed behind us, the head of a woman was blown off and hung on a tree. My son witnessed this and was so traumatised he could not talk until we got to the IDP camp when I performed some religious rituals to make him talk. He was only 14 years old at the time."

Female Interviewee

"My daughter was 12 at the time of the final phase of the war. When we walked through the dead and injured bodies, with people begging for help, one grabbed onto her leg and begged her for help. She is still traumatised by this."

Female Interviewee

# Torture:

The questionnaire asked interviewees where they had been detained: providing the options of an IDP camp, army camp, a jail, a secret camp or unknown place. It asked if interviewees had been tortured, raped or sexually violated or subjected to severe ill treatment or cruel and unusual treatment while in detention. Interviewees responding were also asked to specify if they had been subjected to multiple and distinct periods of detention in different years.

Seventy three percent of the interviewees had been tortured. There were 6 cases where an individual had been detained and tortured on multiple separate occasions over the last seven years in the post war period. This did not include continuous periods

of detention that occurred in various different “rehabilitation” sites. This reflects an enormous amount of trauma. In one case an interviewee had been twice abducted in a “white van” and tortured on two different occasions in different years.

While the focus of ITJP’s work has been post-war torture and sexual violence, it is worth recalling this abuse also occurred in previous decades of the conflict. One interviewee was tortured by the Indian army during the Indian Peace Keeping Force period in the late eighties and more recently by the Sri Lankan army:

“I receive treatment for back pain caused by the torture I received from the Indian army. I still have bleeding from my anus when I have constipation due to the Sri Lankan torture and I take anti depressants and sleeping tablets”.

(Male Interviewee)

The close family members of 44 percent of the torture survivors consulted for this report had also been tortured. Sometimes families had experienced several generations of torture; one interviewee’s father was tortured and killed by the LTTE but he was later detained and ill-treated by the Sri Lankan army:

“The LTTE police arrested and tortured my father to death in 1994 in Jaffna because they accused him of buying some stolen equipment...My family became poor again after the death of my father and I could not get work as an ex-cadre. The death of my father was a turning point in my life. I was 24 and then in charge of providing for my family.”

(Male Interviewee)

Those who had been tortured talked about routinely experiencing flashbacks, panic attacks, anxiety, palpitations, headaches and have difficulty in concentrating<sup>24</sup>. They are terrified by noise, they fear men in uniform. Many were confined in solitary cells and never saw other inmates but heard them:

“I heard the screaming of other people being tortured – they were begging not to be hurt and for the torture to stop”.

(Female Interviewee)

At least 25 percent of the torture survivors we interviewed in the UK reported having felt suicidal at some time, after having arrived abroad:

“I can’t sleep and I have unforgettable memories of the war and detention and torture. I feel anxious and feel

“In 2010, the Sri Lankan Army came and separated me from my wife, army officers tried to rape my wife and daughter. I took a stick and hit the one interrogating me. I rushed to my wife and daughter who had already been pinned down by four army men. They attacked me instead. My wife and daughter screamed, the neighbours came and the army left. My daughter was 14. The army had broken my hip in 3 places by beating me with a stick.”

Male Interviewee

like killing myself. The GP did not say anything to me about counselling. They gave me sleeping pills and painkillers but they do not help much. I am afraid if I hear sudden loud noises – it reminds me of the explosions in the Vanni”.

(Male Interviewee)

For mothers who have to cope with the aftermath of torture and care for young children alone it is particularly difficult:

“I live like a dead body and I live only for others, like my child. I have poor appetite. I sleep badly and have low iron levels. I also had breathing problems because of my memories but now I am better.”

(Female Interviewee)

It is likely that the memory of the pain of torture endured will remain throughout their lives:

“I still have body pain and I have dreams about the torture and I am disturbed by my dreams. I have not yet started counselling.

I have trouble sleeping and I have flashbacks. My whole body is in pain. It is difficult to be on the bed. I also have a hernia problem because of the torture.”

(Male Interviewee)

## Rape and other Forms of Sexual Violence

Just over half of the interviewees said they had been subjected to rape or other forms of sexual violence. They described intense shame and stigma that makes it impossible for them to tell their families what they endured or seek professional help.

Because male rape is a taboo subject, many young men believe they are the only ones to be subjected to this kind of violence. They find it extremely difficult to talk about.

While it is well known that the rape of women by the security forces took place, female LTTE cadres who are rape survivors also find it hard to talk about this.

In addition, Tamil women who are post-war rape survivors and who are widows or whose husbands have disappeared remain traumatised while being straddled with single motherhood and learning to cope in a foreign country. Being forced to hide their pain from both the community and their children adds to the terrible burden they have inherited.

Some interviewees also described the experience of seeing their family members assaulted or humiliated:

“When I surrendered to the Sri Lankan Army, my wife was 9 months pregnant, and the soldiers stripped her naked in front of everyone. This pains me to this day.”

(Male Interviewee)

**"In March 2009, the Sri Lankan Army captured a spot manned by female LTTE cadres. We heard them screaming and we attacked the army. We found one dead female cadre, naked, with a baton inserted into her vagina, stabbed all over her body. The other cadre had escaped when we attacked."**

**Male Interviewee**

**"I feel ashamed and worry that people won't see me as a normal person due to the rape and sexual abuse. I am still unable to recover from this."**

**Female Interviewee**

**"Sometimes I have problems and I start crying and my children ask me what's wrong. So I need to keep everything inside."**

**Female Interviewee**

**"I feel hopeless and worthless to live. I am on sleeping pills and anti depressants."**

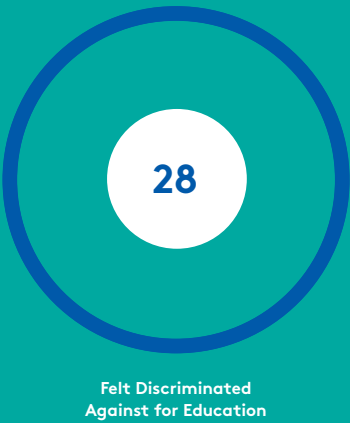
**Female Interviewee**



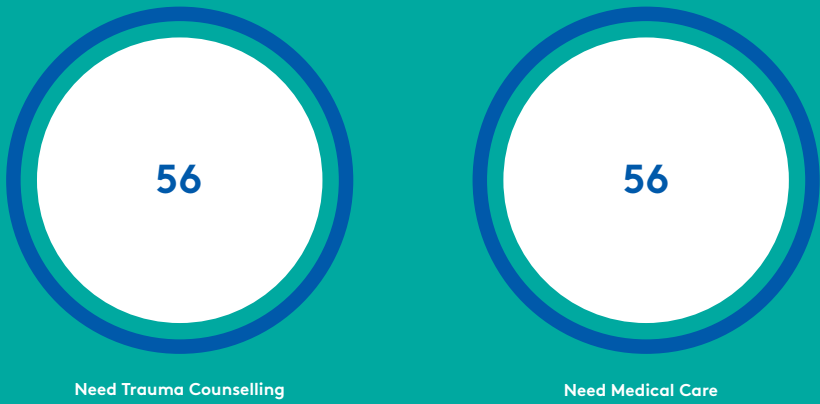
Families (out of 69):



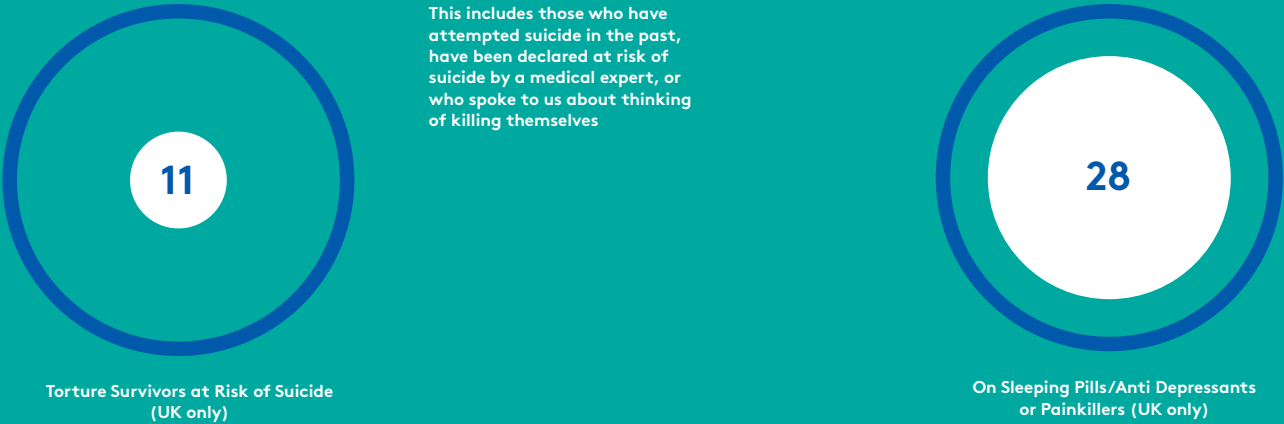
Socio Economic Losses



Trauma



Out of 40



# Socio economic losses:

Almost all (87%) interviewees had experienced the destruction of their home at least once during the war; in some cases their homes had been destroyed twice or thrice during different phases of fighting.

In addition 86% of interviewees described having lost tractors, motorcycles, fishing boats and engines, furniture and household goods, gold, deposits in the LTTE bank and land – in short almost everything their families had accumulated over a lifetime.

Most interviewees (67%) had been further impoverished by their families having to pay bribes for their release to the security forces to escape detention. 87% had also paid human smugglers to flee the country. Our previous reports document the size of ransoms and bribes being paid as recently as 2015. These sums have been paid by families already impoverished by war

and often involve borrowing money and/or selling land.

We asked about discrimination for employment. 41% (28 people) of those we interviewed said it was not applicable to them. They were too young to have experienced discrimination for employment while still in Sri Lanka or spent so many years in detention that they were not on the job market. Others lived in the areas under the LTTE control so did not face individual discrimination as Tamils from the Sri Lankan authorities though of course the whole area was under an economic embargo for many years causing widespread poverty and deprivation. Only 15% of those we interviewed said they felt discriminated against in the job market because of being Tamil. This woman was one of the few who said she'd faced employment problems as a Tamil:

"I applied for many jobs but never got interviews. In terms of education we never had the same facilities as Sinhalese students."

(Female Interviewee)

This is not to say that Tamils in other parts of Sri Lanka do not face employment discrimination but rather that the people we interviewed did not identify this as a major problem or had not attempted to get jobs.

Again only 41% of those we interviewed felt they had been discriminated against for education because most lived in LTTE controlled areas and had not applied to university or other higher learning institutes outside. A third said this wasn't applicable to them. Some people did say physical dangers during the conflict interfered with their education:

"There was shelling on my school during the war time which disrupted my education and we didn't get the books we needed. Even when I sat for my O Level exam there was a Kfir jet attack nearby and we couldn't write our exams".

(Male Interviewee)

Several interviewees believed the exam marking system in Sri Lanka discriminated against Tamils.

"The people who marked the exams were Sinhalese and they cheated in the exam marking by making the grades tougher for Tamils. We were not sent books on time – they were deliberately delayed."

(Male Interviewee)

This perception was cited by several interviewees from the Vanni but we have no way of ascertaining if it is based on facts.

# Impact:

Photograph: Amarathaas



**"I am separate from my homeland,  
my husband and my family. I am forced  
to live a life where I miss everything."**

**Female Interviewee**

## War Injuries Untreated

Half of those surveyed in this study had been injured in the war. Many of those said they are still in physical pain. Interviewees described a plethora of problems including blood pressure issues, amputated limbs, nerve damage and scar tissue. At times it seemed absurd to be asking people about their views on transitional justice mechanisms when they were still carrying pieces of shrapnel inside their bodies causing them suffering<sup>25</sup>.

What emerged from the interviewees is a large number of family members still in Sri Lanka have not had adequate treatment for war injuries yet.

Sixty percent of this group had family members injured in the final phase of the war. Some said they, or their close family members, have been too frightened to seek medical help from government clinics in Sri Lanka for war injuries lest it arouse the suspicion of the authorities and identify them as connected to the LTTE<sup>26</sup>. They are also nervous about the presence of Sinhalese medical staff in the hospitals because they fear they will report on them to the security agencies resulting in interrogations or detention.

“There are many with shrapnel in their bodies still in Sri Lanka – they are a bit scared to go and get treatment in hospitals

because some Sinhalese doctors and nurses are working in Killinochchi as well.”

(Male Interviewee)

Another young torture survivor in considerable pain said two more members of his family in Sri Lanka also still had shrapnel in their bodies causing them suffering. They were unable to seek private medical help in Sri Lanka because of lack of money. Similarly another interviewee’s wife who is still in Sri Lanka is struggling to access treatment:

“My wife has physical difficulties after she was injured – after the surgery one leg is shorter than the other and they put a plate in. She needs medical

attention and in Sri Lanka the MSF did some (in 2009) but she needs follow up. She needs an operation. They have a lack of facilities in Sri Lanka and it wasn’t properly treated. It costs too much and she is in pain and her leg is swollen.”

(Male Interviewee)

An interviewee told us her son in Sri Lanka is in pain from shrapnel injuries incurred 7 years ago but is in hiding and unable to have an operation to remove the metal fragments.

## Health and Social Needs

We asked interviewees to tell us about any issues or problems they faced in their countries of asylum, focusing on health, access to education (language classes), access to employment, and the level of respect experienced in their country of asylum.

In Switzerland and Norway, interviewees were well supported by the Tamil community as well as the public health systems. In France there was less support available; one interviewee who arrived in 2014 was still waiting to have a doctor assigned, despite having shrapnel in her hand and urgently needing trauma counselling. Interviewees in France and Switzerland said they needed more access to language classes to integrate and get jobs.

In the UK torture and war survivors were particularly poorly served compared to those interviewed in other countries. They tended to be young, in their early twenties and unable

to access existing services. Many urgently needed assistance. The majority (68%) of torture and war survivors interviewed were on sleeping pills and anti-depressants and quite often painkillers for injuries. Many have been on such medication for years and some complained the pills no longer worked. They described still experiencing flashbacks, nightmares, insomnia and anxiety attacks. Many doctors in the UK hand out pills but appear to fail to secure patients expert trauma counselling, physiotherapy or specialist medical opinions regarding war injuries. Torture and sexual violence survivors in the UK are waiting years to get counselling and sometimes never access it. In addition, those who are disabled or impaired by torture or war injuries say they need access to physiotherapy and physical exercise to be rehabilitated. Several interviewees said they would like access to a gym or swimming pool to exercise. This is particularly important for people who have been beaten on the soles of the feet, which they said makes it painful to walk or put pressure on the foot<sup>27</sup>.

The term “loneliness” doesn’t begin to capture the agony of parents and children, husbands and wives, separated across continents for many years with no idea when they will be reunited. In most cases those interviewees who had fled abroad remain frightened to telephone home regularly lest they put their relatives in Sri Lanka in trouble, believing their calls are monitored by the Sri Lankan authorities. For those

who are young being apart from their parents with whom they are used to living, is particularly difficult when they are trying to recover from torture and/or war trauma.

For longstanding LTTE cadres the defeat of the movement they sacrificed their youth for is a bitter pill to swallow. Interviewees spoke about how they and their comrades gave up an enormous amount for a cause that ultimately failed:

“I lost my life. I took up arms because the lives of Tamils were in danger. Even today their fates and mine remain unchanged.”

(Male Interviewee)

**“I would like a new prosthetic limb – I have pain all the time when I take it off at night. I would also like counselling. I get sleeping pills and anti depressants and pain killers.”**

**Male Interviewee**

**“I still have pain in my body and still have shrapnel in my left leg and the left side of my body which hurts me. I am unable to function as a normal person. The doctors in the UK took an X ray and did an assessment of the shrapnel and I was told until the asylum issue was sorted out they would not be able to take serious action. I was just given painkillers.”**

**Male Interviewee**



# Challenges of treatment for Tamil torture survivors who seek refuge in the UK:

**By Dr William Hopkins, consultant psychiatrist and psychotherapist at Freedom from Torture**

Since 1985 Freedom from Torture has been the only UK human rights organisation dedicated to the treatment and support of torture survivors who seek refuge in this country. We do this primarily through offering psychological therapies and forensic documentation of torture injuries.

As readers of our recent report *Tainted Peace* will be aware, Tamils tortured in Sri Lanka represent the biggest group by nationality referred to us in recent years. They have been both physically and psychologically deeply traumatised by beatings, suspensions, asphyxiation,

sexual violence and burning, often with hot metal implements.

It can be a challenge for them to communicate the physical and emotional suffering they have endured to health professionals because of their limited English. This can mean GPs are not aware of their psychological, neurological or other physical problems so that they do not receive appropriate investigations or treatments.

They may have thought that after having escaped a very dangerous situation in Sri Lanka they would feel safe and welcome here in the UK. The opposite can often sadly be the case for those attempting to apply for asylum. Interviews by Home Office officials and harrowing Tribunal hearings can make torture survivors from Sri Lanka and elsewhere feel unwanted and disbelieved.

Navigating a complex legal system can be confusing,

dispiriting and expensive (despite the availability of legal aid, we find that many Tamil torture survivors pay for their legal representation and this is often of poor quality). They frequently have to do this with little welfare support, made all the more difficult because of their loneliness, isolation and separation from their families.

This can be further compounded by the anxiety they feel about what harm might come to their families back in Sri Lanka when they hear of police and intelligence agency harassment of their families or enquiries about their whereabouts.

Their asylum accommodation can be of a sub-standard quality. I have worked with Tamil asylum seekers forced to share facilities with threatening and intoxicated individuals whose behaviour can trigger terrifying flashbacks of past traumas. Until they are granted asylum they have to live with the constant fear that they could



Photograph: Amarathaas

be returned to Sri Lanka with the possibility of being tortured again or even killed. This can make compulsory reporting (or 'signing') to the Home Office a very distressing ordeal because of a fear of detention and forced removal back to Sri Lanka.

These fears and anxieties can impede the rehabilitation work that is essential to help them address the nightmares, flashbacks, avoidant behaviour, suicidal thoughts, depressive and shameful feelings which result from having been tortured. Stabilisation – creating a secure and safe environment for torture survivors – is a key element of their rehabilitation and these uncertainties and fears make this recovery even more challenging.

Medication, as it is easy to dispense, can be a more common form of treatment than more appropriate group or individual talking therapies such as those offered by Freedom from Torture. But

without addressing the deep psychological damage of traumatic memories or complex feelings of guilt and shame it would be difficult for a survivor of torture to start to recover their self-worth, dignity, hope for the future and the sense of who they are and what they can do, rather than being preoccupied by what has been done to them.

The length of time that it takes to be granted asylum, which can be many years, adds to their sense of helplessness and hopelessness. This, what I call "asylum limbo", causes considerable psychological damage because the survivor cannot plan for the future; they cannot find purposeful activity; they cannot re-start their damaged lives and there is always the constant threat of being returned.



**Freedom from Torture**  
Medical Foundation for the Care of Victims of Torture





**“We need accountability for  
the wrong things that took  
place and only after  
that a political settlement.”**

**Male Interviewee**

# Views on Sri Lanka's transitional justice process

# Priorities:

Interviewees, when asked which issues for them were the most acute in a transitional justice process, ranked justice and truth as the top two priorities. The least important were reconciliation and political stability. Only one person said constitutional reform was important to them personally.

### Prosecutions:

In answer to another question, 78% also said prosecutions were their top priority. Reparations and an apology were the lowest priority.

### Commanders:

71% believed those in command responsibility positions should

be prosecuted as a matter of priority, as opposed to the individual perpetrators.

### Tamil Paramilitaries:

Everyone (100%) said the Tamil paramilitary leaders should be prosecuted for crimes they have allegedly committed. Many interviewees said this should include crimes allegedly committed while under LTTE command as well as while working for the Government.

### Tamil Informers:

60% said Tamil informers should be prosecuted for their role in violations even if they had acted under duress, for example after being tortured themselves. The

remainder (40%) said these people should not be prosecuted.

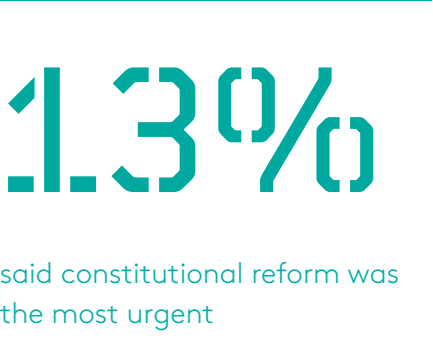
### Truth about the Disappeared:

In addition interviewees expressed the need for the Government of Sri Lanka to respect the right of victims to know the truth in respect of the disappearance of loved ones and pursue accountability through investigation, prosecution of those responsible and reparations for the family.

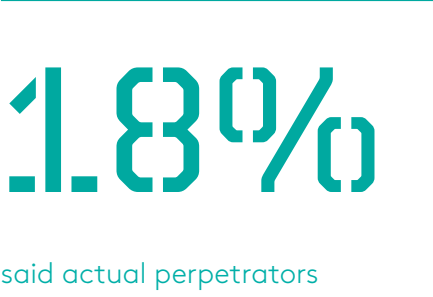
**“We are not seeking the political solution at the moment – we want accountability for all atrocities we suffered first”.**

**Male Interviewee**

**Most Urgent:**  
If asked to choose between accountability or constitutional reform



**Prioritise the Prosecution of:**





# Trust:

## The Government of Sri Lanka

Interviewees were asked if they thought the Government of Sri Lanka would listen to their views as expressed in this consultation process. Almost all (94%) of those interviewed thought the Government would not listen:

“The Government of Sri Lanka will never listen to my views. They already made it clear they will not punish anyone in the army.”

(Male Interviewee)

The lack of trust in the Sri Lankan Government was pronounced among those interviewed, irrespective of the change of political parties in power:

“I don’t trust the Government of Sri Lanka. Nothing would make me trust them. I don’t trust them. It is not an honest government. There is a lot of political influence and competition. All the governments in Sri Lanka are like this. They are pretending to be a good government but they are not.”

(Male Interviewee)

Many referred to the experiences with past governments saying

that promises had been made before only to be broken:

“In the past they never behaved in a way that we could trust them. There never have been trust building measures.”

(Male Interviewee)

## The International Community

Interviewees also showed considerable mistrust of the international community, including the United Nations, because of their perceived support for the new Government with few demands in exchange:

“I am very angry with the international community, they just visit and do nothing to pressure the Government of Sri Lanka to clarify the fate of the missing.”

(Female Interviewee)

This sense of betrayal by the international community in 2016 feeds off the bitter experience in 2009 where the United Nations failed to offer humanitarian protection to Tamils in the war zone or speak out loudly for human rights<sup>28</sup>:

“What was the reason why the international community turned a blind eye to what happened in the final phase of the war?”

(Male Interviewee)

“Why did the UN leave the Vanni in 2008? Why is the international community still waiting for Sri Lanka to act?”

(Male Interviewee)

Several Tamil victims we interviewed said their only hope was international pressure on the new Government of Sri Lanka. This is in sharp contrast to supporters of the Government who argue that too much pressure could destabilise the coalition in power.

“There is a need for international pressure. Only international pressure could pave the way for the Government of Sri Lanka to listen to our views.”

(Male Interviewee)

“The Government won’t listen to my views unless the international community directly intervenes.”

(Male Interviewee)

## Initial Trust Building Steps

We asked interviewees what immediate steps the Government of Sri Lanka could initiate to show their good faith. Some said nothing would convince them to trust the government:

“Nothing. I have no trust in anyone. I am 36 years old and since childhood we could not trust”.

(Male Interviewee)

Others said they wanted the prevailing climate of denial to stop before mechanisms were established:

“First of all there should be an open acknowledgement that these things happened.”

(Female Interviewee)

One interviewee said the Sri Lankan President ought to lead the way and tell the truth about his role in the final phase of the war.

However the majority of interviewees cited specific steps the Government could take to win their trust. The one issue that stood out was the need to return land occupied by the Sri Lankan military to its owners. Others were: demilitarisation, releasing political prisoners, information about the disappeared, security and freedom of media, and clearing the name of those who’d been in detention.





# Testifying:

## Willingness to testify long distance

We asked exiled victims if they would consider testifying long-distance through video link up to a Truth Commission inside Sri Lanka or a Special Court, if their safety and anonymity were guaranteed.

**82% said they would testify to a Special Court in Sri Lanka**

**78% said they would testify to a Truth Commission in Sri Lanka.**

Interviewees understood this as testifying from behind a screen, without using their names or

identifying details, and in some cases with their voices disguised. Given many are survivors of sexual violence anonymity is essential. For others, the main consideration was the safety of family members inside Sri Lanka. None would agree to having a Sri Lankan government official sitting in the room with them abroad, as was proposed by the Attorney General's office during the International Independent Group of Eminent Persons (IIGEP) mission<sup>29</sup>.

However there were some (20% when averaged) who said it was too dangerous to testify to a court or commission, whatever the precautions and safeguards

because the details of their case would identify them<sup>30</sup>.

*"Any law in Sri Lanka is just a piece of paper and in practice meaningless."*

(Male Interviewee)

Other interviewees said the risks meant they would only submit written testimony<sup>31</sup>.

## Witness Protection Legislation

Almost all the interviewees in this study are victims or witnesses of war crimes or crimes against humanity. All of them (100%) said witness protection in Sri Lanka was currently inadequate.

*"Although the government has changed they still have the same military structure in place."*

(Male Interviewee)

We asked interviewees what they thought about the current witness protection legislation in Sri Lanka. 77% said they knew nothing about the law but that they did not feel there was sufficient witness protection in practice.

**"I want to know why I was tortured and detained for a long time even though I was forcefully recruited (by the LTTE)."**

**Male Interviewee**

Interviewees were asked what the concept of truth meant to them. 19%<sup>32</sup> said it meant knowing why and how so many Tamil civilians were killed in the war, in particular the indiscriminate killing of civilians<sup>33</sup>:

*"The truth is getting answers as to why civilians were killed and targeted for violations from 1986 till today".*

(Male Interviewee)

*"The most important for me is how the Government of Sri Lanka and the Sri Lankan army tried to wipe out Tamil civilians and LTTE alike – failing to distinguish between them."*

(Male Interviewee)

In addition some interviewees

said the truth meant knowing why the international community abandoned them to die in 2009 at the height of the final phase of the war:

*"Truth means finding out why did the international community not take action during the last phase of the war."*

(Male Interviewee)

*"I want the truth about why the international community did not stop the systematic violence against Tamils and intervene?"*

(Female Interviewee)

For about half of the interviewees truth meant knowing the fate of those who had disappeared. Given the high level of interviewees who have experienced a loved one

# Truth:

or friend disappear, it's not surprising they desperately want answers<sup>34</sup>. Among the demands is that there should be transparency about who is actually missing. Several people wanted a list published with all the names of the disappeared:

*"Accountability for and clarity about who went missing from 1990 until now, publish a list of all those who went missing."*

(Female Interviewee)

At the most basic level, mothers want to know if their children still have a father or not. The desire to know what happened is acute among those interviewees

who personally handed their loved ones over to the army at the end of the war. They know they were in custody but there has been no accounting for their fate.

"I handed my husband over to the Sri Lankan Army and am still searching for him. On 17 May, around 7:30am, the Sri Lankan Army came before the Mullivaikkal bridge. There were more than 150 people who had surrendered. The army ordered LTTE to come forward. My husband, myself and others came forward and identified ourselves. I told the Sri Lankan Army I needed to accompany him. They refused, and I had to get on a bus, while my husband stayed there with others. There were army soldiers in camouflage uniforms, heavy weapons like machine guns and helmets. I could not communicate with them so someone translated.

They all seemed to be Sinhalese. It was the last time I saw my husband on 17 May around 10 am. Every day my son is asking for his father and I am unable to answer him."

(Female Interviewee)

Several people had friends who disappeared in state custody and they too want to know the truth about their fate<sup>35</sup>. Even those who didn't personally know the disappeared said they still wanted answers about what had happened to them in custody and why they had disappeared.

Some people said truth for them meant identifying the perpetrators and punishing them<sup>36</sup>. Others said it meant identifying those who had ordered all the crimes from 1983 till the present day<sup>37</sup>. For 18% it was specifically about finding out why they had been hurt or

their relatives had been killed.

Another group said truth meant international recognition for the Tamil struggle – why it had started and that it amounted to a genocide<sup>38</sup>. Others said they wanted the terrorism designation removed:

"The LTTE was branded as a terrorist organisation by many countries but they fought for our rights and the freedom of our people. So the truth should come out that they were not terrorists."

(Female Interviewee)

"Truth means people should stop looking at Tamils as terrorists."

(Male Interviewee)

**"Why did the Government of Sri Lanka send people to the Tamil area just to kill them? I want the army members identified who came to my house to attack me and family, and I want to know why."**

**Male Interviewee**

**"Justice should be like a sharp knife – if someone did something there should be no chance to escape justice".**

**Male Interviewee**

The vast majority of interviewees wanted the perpetrators prosecuted and punished. One person said, "Those who committed war crimes should be hanged – the death penalty". Others said, "perpetrators need to be prosecuted and punished, and a system established to ensure non-recurrence".

It was notable that interviewees tended to view justice collectively – as something for the Tamil people as a whole, rather than for themselves personally or their immediate families. Only when pushed many interviewees did say what they wanted to happen to those who had harmed them personally. This included people who had suffered torture, sometimes on a repeated basis, but still prioritised others' rights and demands. Many of the interviewees had joined the LTTE or supported the Tamil nationalist cause out of a strong sense of idealism and self-sacrifice. That was also clearly a motivating factor for the interviewees in this process to come forward and give their views, speaking on behalf of those inside the country whom they believe are not as free to articulate their political ideas about the LTTE without being

charged under the Prevention of Terrorism Act.

Many interviewees said justice for them was Tamil Eelam, a separate homeland or self-determination<sup>39</sup>. It's clear the concept of "Tamil Eelam" means many things to many people – the geographical area delineated on the LTTE maps of Sri Lanka, the heyday of Tamil Kingdoms of the past, the best aspects of the de facto separate state run by the LTTE in the Vanni before they were defeated in 2009 and a dream of a future homeland where Tamils can live in peace, safety and with full rights. One person said justice meant recognising a genocide of Tamils had occurred. Others said it meant the right to self determination or a future

# Justice:

defined by Tamils themselves. Some interviewees were willing to settle for less than a separate state – equal power sharing in a federal structure:

"Justice means that the perpetrators be investigated, prosecuted and punished, and then the truth comes out, and Tamils are granted equal power. I don't think we will get Tamil Eelam so equal power is ok for me."

(Female Interviewee)

"I want a permanent solution where Tamils can live freely and in safety – I am not asking for Tamil Eelam."

(Female Interviewee)

**"My perpetrators should be prosecuted and severely punished."**

**Male Interviewee**

**"I don't want personally to have a solution to my problems but in general I would like a solution for my people."**

**Male Interviewee**

**"Justice means Tamils living with freedom and punishment for the killers of my father and the people who hurt me."**

**Male Interviewee**

**"Justice means punishment for my torturers. They should also be 'rehabilitated' in the same way I was."**

**Male Interviewee**

**"Justice is proper reparation for the affected. I seek justice for everyone not just for me personally"**

**Female Interviewee**

# Transitional justice mechanisms:

## **Temporal Mandate:**

Interviewees were asked what the temporal mandate should be for the mechanisms being established in Sri Lanka. The two most popular start dates were 1948 (31 people) and 1983 (27 people). The majority, 64 people, wanted the end date to be the present day. One wanted 2009, and two wanted 2011.

## **Time Frame:**

79% of interviewees wanted a Truth Commission and Special Court established within a year.

## **Amnesties:**

Three quarters of interviewees said there should be no amnesty awarded even for those who tell the full truth about their role in violations. Interviewees were adamant those who committed rape or murder, extra judicial killings, genocide, crimes against humanity or war crimes should not be given amnesty. When asked directly for which crimes the interviewee could under no circumstances accept an amnesty, the answer was most often rape and other forms of sexual violence. Some added that those who had attacked civilians or those surrendering should also not be given amnesty<sup>40</sup>.

## **Profile of Officials:**

97% of people said that there should be a quota to ensure women made up half the commissioners and judges sitting on the future Transitional Justice bodies<sup>41</sup>. 42% of people interviewed said there should be an age quota (for both young people and the elderly) but the majority said there was no need. The vast majority said the religion of the commissioners or judges was irrelevant.

## **The Compassionate Council:**

70% of interviewees said the Compassionate Council proposed by the Government of Sri Lanka should be exclusively made up of trauma experts. The remainder cited a mixture of different religious representatives and/or trauma experts. There was a clear bias against the clergy, especially the Buddhist clergy, being involved in the Transitional Justice mechanisms.

## **Truth Commission and Special Court:**

Interviewees were unanimous in saying these bodies must have a majority of international commissioners or judges and staff. Only 24% said it was necessary to have any Sinhalese

and Muslim Commissioners as well as Internationals and Tamils. Only 9% thought there was a role for prosecutors who were Sinhalese or Muslim as opposed to International or Tamil.

## **Apology from the other communities:**

When asked about the importance of an apology from the Government, individual perpetrators, and community as a whole on the whole, many did not care for an apology. The highest important was given to an apology from the Government (41) followed by an apology from individual perpetrators (37) and the majority did not care for an apology from the entire community because they said they had nothing to apologise for (47). 19 interviewees they did not care about an apology from anyone.



**“International involvement is important. I want an international court without Sri Lankan government interference or involvement - that is the only chance for real justice.”**

**Male Interviewee**

“The LTTE fought for our rights and when Sinhalese and Muslims were affected it was because they were acting against Tamils. I cannot blame the LTTE for anything.”

(Male Interviewee)

46% however said the LTTE or Tamils should apologise for actions such as the expulsion of Muslims from the North.

“We are all human beings. Something bad was done to the other side as well”.

(Male Interviewee)

An additional 11% said yes there should be an apology only IF the LTTE had done anything wrong.

Interviewees however were divided about whether the LTTE should apologise to Tamils who were forcibly recruited during the war:

“The LTTE should apologise for forced recruitment in the final stages but I don’t think they should apologise for doing anything wrong to the Sinhalese.”

(Male Interviewee)

“The LTTE should apologise for forced recruitment and if they did anything criminal they should be prosecuted or apologise.”

(Male Interviewee)

Interestingly some interviewees who had themselves been victims of forced recruitment in the final stages of the war now think it was justified considering

the circumstances; others who were victims still want redress.

“Although the LTTE forcefully recruited us we realised why they were right to recruit us to fight. I realised this when I saw the shelling and bodies at the end of the war.”

(Female Interviewee)

“Even if I was forcefully recruited the LTTE did it for my freedom and everyone’s freedom”.

(Male Interviewee)

#### **Forgiveness:**

91% said they could not - or probably could not - forgive those who had made them suffer. Only 9% said they could forgive those that had violated them<sup>42</sup>.

**“We can’t expect reasonable commissioners in Sri Lanka - the process is polluted or influenced by politicians of the current regime unless it is an international commission.”**

**Male Interviewee**

#### **Apology by LTTE or Tamil community:**

43% of those interviewed said there was no need for Tamils or the LTTE to apologise to Sinhalese or Muslims for actions in the past:

“They (the LTTE) fought for us, the oppressed, and they didn’t do anything wrong. It was a just war. We did not occupy Sinhalese places”.

(Male Interviewee)

# Women’s participation:

One question asked participants how to ensure women participated fully in the transitional justice process in Sri Lanka. Many interviewees said women needed awareness raising programmes so they understood the processes commencing in Sri Lanka:

“It should be explained to women, both individually and in person to convince them that participating in the process will benefit them and make them feel stronger. Women should be the ones discussing with women. It will help women if they can talk more openly about the crimes committed against them”.

(Female Interviewee)

All acknowledged that women were very badly affected by the war and needed prioritizing. One person even suggested a Truth Commission comprised only of women; others emphasized the need for female staff at all levels:

“Women should be dealt with individually by other females (Staff and Commissioners). It is extremely difficult also for me to talk about sexual violence and rape.”

(Female Interviewee)

Very few interviewees raised the issue of childcare provision

to enable women to participate, even though in practice we found female victims cited the lack of childcare and the need to work or study as a reason why they didn’t have time to participate in this consultation exercise.

Many interviewees reinterpreted the question about women’s participation to mean how to persuade female sexual violence survivors to testify. They identified threats from the security forces as well as stigma in the Tamil community as the main hurdles:

“The structure of our society is the biggest problem for women to come forward. It is a process that will take time to break the stigma of rape - we need to talk to men about not marrying them. We have to be present in communities to identify rape victims to see those who are isolating themselves, but it is a challenging task.”

(Female Interviewee)

“In many cases even if women want to give evidence, husbands will not allow or like it.”

(Male Interviewee)

As a result interviewees recommended the involvement of international personnel to overcome the shame and stigma surrounding

sexual abuse. The need for confidentiality was also repeatedly emphasised, including by male survivors:

“Allow women to testify anonymously without showing their faces. I also feel too shy to talk to someone about torture and sexual violence facing someone”.

(Male Interviewee)

“It is really important to preserve confidentiality. I only told my whole story to ITJP and my doctor - not even my lawyer or relatives I stay with here. The stigma is the most important issue. It is important to address the stigma but we don’t know how.”

(Female Interviewee)

# Memorialization:

## Mourning ceremonies:

Interviewees were asked what ceremonies were helpful for healing. They cited LTTE related events such as Heroes Day and Mullivaikkal Remembrance Day as well as going to the Temple or Church.

## Sri Lankan Army war monuments:

Interviewees were asked what they thought about the war monuments and statues in the Vanni erected by the Sri Lankan military. The responses were universally extremely negative<sup>43</sup>. It became clear these statues erected to honour the government's military victory in 2009 are causing huge offence:

"Sri Lankan Army memorials are symbols of occupation and should be removed immediately."

(Male Interviewee)

"Sri Lankan Army memorials should not remain in the Vanni as they are causing us pain – they destroyed our identity and our memories. To me they are a celebration of war crimes."

(Male Interviewee)

Many Interviewees said they wanted them removed because they see them as a deliberate attempt to humiliate them:

"The Sri Lankan army monuments in the Vanni make me angry – they are built to humiliate us."

(Male Interviewee)

## Desecration of Tamil graves:

The LTTE had 20 graveyards across the north east of Sri Lanka in the areas they controlled. Each one contained thousands of graves. These were for LTTE fighters. Without exception, every single one was bulldozed after the war. Not surprisingly a very high number (84%) of the interviewees in this study said a loved one's grave had been desecrated.

## The right to mourn:

Interviewees were asked if they felt free to mourn their dead. All said they were unable to remember their dead freely while in Sri Lanka, adding that they could before 2008-9 if they lived in the Vanni, and since then only in their countries of exile.

# Reparations:

Most interviewees were reluctant to prioritise reparations and especially to discuss compensation because of an overwhelming sense that nothing, especially money, could ever compensate for the loss of life and suffering they'd experienced. However some did highlight the problems faced by disabled former LTTE cadres:

"The Government should set up a commission or office to handle the issue of LTTE members who are struggling and are handicapped or lost limbs. They were rehabilitated by the Government so they have all their details. They should prioritise them."

(Male Interviewee)

"Former LTTE cadres should receive war veteran's pension and get recognition as war veterans. They are now slowly dying day by day. Disabled cadres are being shunned by the community".

(Male Interviewee)

Interviewees also indicated they would like to access grants and pensions while outside the country. Exiles expressed the need for language classes as well as sports therapy, medical care and trauma counselling.





# Summary

"I won't go back to Sri Lanka. I would like to go only if we have a separate state of Eelam. I will not go back even when I am an old man. I am suffering a lot. Before I reach that point I will die. Yes I think about suicide. I never tried it. Sometimes I have unbearable mental trauma and severe pain which I find difficult to cope with."

Male Interviewee



For a full analysis of the findings see Part II of this report, which looks in detail at the implications for the transitional justice process and Sri Lanka's obligations.

Almost all the interviewees in this exercise had experienced the horrors of a long war, suffered multiple violations and had family members killed or disappeared. Despite the fact that the questions brought back memories of a time they'd like to forget, interviewees took the exercise very seriously, thought carefully about the answers, and weighed the options. They appeared pleased to have been asked their opinions even though they were sceptical that the Government of Sri Lanka will take note of them. They participated fully.

This exercise makes it clear exiled victims want criminal accountability, including the prosecution of those who were in positions of command responsibility. They also want to know the fate of the disappeared and missing.

International participation in the proposed Special Court and Truth Commission is essential for these victims. They require a majority of international commissioners, judges, lawyers and investigators for the process to have any credibility.

It emerges that some of the worst affected victims now living abroad are willing to testify to the future Commission and Court if their identity and that

of their families is protected adequately. This has significant implications for the design of the mechanisms in Sri Lanka and will require an agreement to allow this to happen securely.

Constitutional reform and reconciliation were not an immediate priority for this group because accountability took precedence at this point. However, despite their immense suffering, there was little hostility expressed towards ordinary Sinhalese or Muslims, who were not held responsible for the violations they'd experienced. A few interviewees even said they knew there were decent Sinhalese within the armed forces and not all had committed violations.

What was perhaps most striking were the extraordinary levels of trauma interviewees described seven years after the war ended. Many who had been abroad for several years had not begun the process of recovery because they are separated from family and still in limbo waiting for asylum. They do not speak the language, suffer mental and physical health problems, feel unsafe and ashamed and are impoverished. There is a great deal the Government of Sri Lanka and the Tamil Diaspora could do to improve their lives.

ITJP has conducted a needs assessment of the 40 interviewees in the UK and has begun trying to source or provide urgent assistance, such as access to counselling and other trauma rehabilitation activities, Tamil speaking doctors to assist with medical issues and basic English classes.

**"My mother is why I would want to go back. My dream is to go to Sri Lanka as easily as you might go from the UK to France – with no complications and no fear".**

**Male Interviewee**

**"I have no idea to return to Sri Lanka. Maybe I will think about it during the end of my life. I miss it a lot."**

**Male Interviewee**

**"No I will never go back. For me Sri Lanka is a killing field. I would rather end my life than go back".**

**Male Interviewee**

**"I would have to think carefully about going back. Maybe the next generation will be safe".**

**Male Interviewee**

# Analysis

## Part 2

# Transitional

# Justice

## Evolution of transitional justice

Transitional justice was initially defined as that conception of justice associated with periods of political change<sup>44</sup>. The establishment of the Nuremberg Trials and the Tokyo trials in the 1950s when Japanese and German military leaders were tried for war crimes by the victorious allied forces mark the inception of this field which has evolved over time. Transitional justice in the Latin American context in the 1990s raised critical questions in respect of criminal accountability of previous regimes responsible for mass atrocities and gross human rights violations without derailing the democratic process<sup>45</sup>. The dilemmas raised during this period focused on the extent to which the balance of forces obstructed criminal prosecutions. This period also saw the false dichotomy of the “peace versus justice” debate and the use of amnesties.

The establishment of truth commissions became a new tool in the transitional justice toolbox. The establishment of the South African Truth and Reconciliation Commission in

1995 marked a turning point for the field as it ambitiously introduced the notion of national building and reconciliation<sup>46</sup>.

Changing paradigms and the reality on the ground led the UN Secretary General in 2004 to codify transitional justice as the full range of processes and mechanisms associated with a society’s attempts to come to terms with the legacy of large-scale past abuses in order to ensure accountability, serve justice and achieve reconciliation within the context of international human rights law and the fight against impunity<sup>47</sup>. This approach focussed on: (a) the State’s obligation to investigate and prosecute alleged perpetrators of gross violations of human rights and serious violations of international humanitarian law, including sexual violence, and to punish those found guilty; (b) the right to know the truth about past abuses and the fate of disappeared persons; (c) the right to reparations for victims of gross violations of human rights and serious violations of international humanitarian law and (d) the State’s obligation to prevent, through different measures, the reoccurrence of



# Application of transitional Justice in Sri Lanka in the context of a military victory:

such atrocities in the future<sup>48</sup>. Fulfilling these obligations has led to the establishment of truth-seeking mechanisms such as truth commissions; judicial mechanisms (national, international or hybrid); reparations and institutional reform, including vetting. The development of the Principles to Combat Impunity authored by Special Rapporteur Louis Joinet in 1996 and updated by Diane Orentlicher in 2006 strengthened the rights regime for victims, putting the onus of fulfilling these rights squarely at the feet of the State<sup>49</sup>.

**Aims and Objectives of a Transitional Justice Policy**  
The primary objective of any transitional justice policy is to end the culture of impunity and establish the rule of law.

## **A transitional justice policy should aim to:**

- Bring an immediate end to ongoing human rights abuses;
- Investigate past crimes and identify those responsible for human rights violations;
- Impose sanctions on those responsible (where possible);
- Provide reparations to victims;
- Prevent future abuses;
- Provide for security sector reform;
- Establish new institutions to prevent future abuses and build democracy
- Establish programmes to foster individual and national reconciliation.

Transitional Justice has also evolved over the last two decades to include a focus on how the root causes of conflict are addressed. Louise Arbour, the former UN High Commissioner for Human Rights, points out that,

“Transitional justice must have the ambition of assisting the transformation of oppressed societies into free societies by addressing the injustices of the past through measures that will procure an equitable future. It must reach to, but also beyond, the crimes and abuses committed during the conflict which led to the transition, into the human rights violations that pre-existed the conflict and caused or contributed to it”<sup>50</sup>.

This sentiment was echoed by the Secretary General in his 2010 Guidance Note when he called upon the United Nations to

“strive to ensure transitional justice processes and mechanisms take account of the root causes of conflict and repressive rule and address violations of all rights, including economic, social and cultural rights and linked this to building peace: ”<sup>51</sup>.

In societies such as Sri Lanka that have been exposed to the violence of civil war over many decades and whose values have been undermined and the legitimacy of the State eroded, transitional justice offers an opportunity to begin again. Sri Lankan society was already deeply divided and polarized before the start of the war in 2009. These divisions became more pronounced following the victory of the Sri Lankan military forces. The military victory dramatically altered the balance of forces in Sri Lanka at a number of levels including political, socio-economic and cultural. Under these circumstances the Sri Lankan State cannot adopt a conventional “one size fits all” approach in establishing a Transitional Justice programme. The survivors of the conflict have huge expectations that there will be accountability for serious crimes in the form of prosecutions as well as a truth commission which will address critical questions on how the war was conducted leading to the enormous loss of life and mass atrocities. The massive lack of trust in the Sri Lankan government is linked to the long delays in addressing

issues of accountability, the ongoing persecution of Tamils by the security forces, as well as outstanding issues regarding the return of land and the demilitarization of the North and East of the country. However if the state is to address accountability conclusively it will have to prosecute those members of the security forces for the crimes committed which the former government characterized as heroic acts against “terrorists”.

## **Legacy of Impunity**

The current transitional justice programme in Sri Lanka is currently being constructed in the context of a legacy of impunity, which has rarely seen a perpetrator being brought to justice for political violence or system crimes of the past<sup>52</sup>. Paramilitary leaders have yet to be held accountable for their role in both the conflict and post-conflict period and continue to serve in the government. In addition, past Commissions of Inquiry, which have been intensely politicized, have been an ongoing feature of the government’s claim to accountability<sup>53</sup>.

## **Denial of War Crimes**

President Sirisena’s ongoing denial that Sri Lankan security forces committed atrocities during the final phase of the war alienates the Tamil community and contributes to the growing political polarization in the country<sup>54</sup>. This coupled with the Government’s failure to dismantle the security structures and promote a comprehensive security sector reform programme is in all probability responsible for the ongoing violations which continue even to the present day<sup>55</sup>. The military occupation of the North and East of Sri Lanka, the ongoing white van abductions, enforced disappearances, failure to inform families of the fate and whereabouts of loved ones, as well as the continued repression and surveillance, torture and sexual violence by the security forces has totally demoralized the Tamil community leading to a loss of trust in the state<sup>56</sup>. This presents a dilemma as to be

effective, any transitional justice programme must develop an ethos of “inclusivity” as well as implement measures which build trust in a society where the victors are the majority and in power.

## Building Trust

“Inclusiveness” is an attitude that encourages a sense of moral, psychological, or social obligation toward the “other” in one’s society<sup>57</sup>. Whether rooted in moral, intellectual, ideological, physical, or spiritual factors, it is the kind of feeling that produces events like the reaction of South Korea’s citizens to the country’s 1997 financial crisis where thousands came forward offering jewellery and other personal valuables to help the country overcome the crisis<sup>58</sup>.

Building trust across divided and polarized communities is a major challenge and places an enormous responsibility on the Sri Lankan state given its previous role in officially sanctioning racism and discrimination against the Tamil and Muslim minorities, in order to reduce fear and mistrust, particularly amongst minority groups.

Transitional Justice Expert, Paige Arthur, in a project dealing with Transitional Justice and identity in divided societies set out a series of pillars developed as tools that can be used to ensure minority rights claims

are addressed by transitional justice practitioners<sup>59</sup>:

**The right to non-discrimination** which protects minorities from direct or indirect discrimination on the basis of ethnic, religious, linguistic or cultural identity.

**The right to exist** which obliges States to protect the existence of minority communities as a whole, which means the prohibition of genocide and assimilation—which would lead to the disappearance of a minority as a community with its own identity—and population displacement resulting in the expulsion of communities from the country.

**The right to protection of identity** preserving the freedom of minorities to practice their culture, religion and language in the public and private spheres, and taking measures to enable minorities to develop these aspects of their identity.

**The right to participation in public affairs** ensuring that minorities can participate in decision-making processes that affect them at the local and national level, particularly as regards how their communities are governed.

These pillars also offer guidance on how Transitional Justice mechanisms, including the process, participation, and design would benefit from a minority rights approach which would require outreach specifically to minority groups, allowing them to feed into national consultations<sup>60</sup>.

# Interviewee perspectives on trust:

## Distrust in the Government

Interviewees raised their deep distrust of the government:

“I don’t trust the Government of Sri Lanka”, “Nothing would make me trust them”, “I don’t trust them. It is not an honest government”, “There is a lot of political influence and competition. All the governments in Sri Lanka are like this. They are pretending to be a good government but they are not”.

## Distrust within Communities

A further issue that emerged during the consultations was the high levels of mistrust within communities, which is linked to the lack of trust Tamil citizens not only have in the State and its institutions but also to how former comrades have been turned into informers for the state. Divisions between rival Tamil groups go back decades, be it over ideology, strategy, power or money. Historically the approach of the Government also forced Tamils to take sides staunchly for or against the

LTTE, with no middle ground. In the post-war period betrayal has been a tactic used by the Government to undermine the Tamil community with scores of Tamil informers being recruited. Diaspora communities have also been infiltrated with divisions rife amongst the various groups<sup>61</sup>.

The government can address the issues of mistrust through ensuring that the process of consultations is transparent and inclusive so that the views of those most affected are taken into account. The creation of an enabling environment, which restores the trust of all citizens in the state and its institutions, will require political will and commitment by the government.

Trust is major issue for interviewees when considering the composition of the various transitional justice mechanisms. While some witnesses were willing to consider the appointment of Sinhalese and Muslims as judges, commissioners and prosecutors, these witnesses

were outnumbered by those who believed that members of these groups would not be independent of the State and could therefore not be trusted<sup>62</sup>.

Interviewees expressed the view that the credibility of these transitional justice mechanisms including the Truth Commission, the Special Court and the Office of Missing Persons also depends on the participation and commitment of the international community:

“The Government won’t listen to my views unless the international community directly intervenes.”

# Acknowledgement of crimes:

The issue of acknowledgement remains a crucial issue for some interviewees who felt that it was important to include Sinhala representatives in these mechanisms, so that they would acknowledge that crimes had been perpetrated against Tamil citizens<sup>63</sup>. The indicators for a successful transitional justice programme must therefore be able to respond positively to the following questions: Does the TJ programme build inclusivity? Has the process allowed for the participation of minority ethnic and religious groups as well as marginalized groups? Has the government taken into account confidence building measures in order to build trust in the state and its institutions?

These could include the measures set out in the OISL report's recommendations. A responsive state must take these indicators into account in designing and implementing any transitional justice programme. National consultations are an intrinsic component of this process.

# National consultations:

A holistic transitional justice framework which incorporates a rights-based approach is participatory and takes account of the views of victims and their families. The Commission on Human Rights<sup>64</sup> affirms the importance of a comprehensive process of national consultation, particularly with those impacted by gross human rights violations, taking account of the particular circumstances of every situation and in conformity with international human rights standards<sup>65</sup>.

National Consultations if properly planned and conducted enable the voices of the most marginalised to be heard and taken into account. National consultations also facilitate local ownership of the process as seen in South Africa, Liberia and Tunisia. National consultations have not only determined the kind of transitional mechanisms to be adopted but also the sequence and design of transitional justice mechanisms, the temporal mandate to be covered by

various transitional justice mechanisms as well as how best to craft recommendations on reparations<sup>66</sup>. In its Rule of Law Tools on National Consultations<sup>67</sup>, the Office of the High Commissioner for Human Rights (OHCHR) indicates that national consultations should also be preceded by a tailor-made sensitization programme so that those consulted have the requisite information and understanding so that they can express informed viewpoints including on the transitional justice options open to them<sup>68</sup>. The ITJP sensitized all interviewees about the OISL report and the resolution regarding the transitional justice measures the Government of Sri Lanka has committed to.

## Who should be consulted?

Victims and witnesses to past patterns of abuse and oppression are regarded as key stakeholders who should



# Perspectives of Interviewees on Transitional Justice

participate in national consultations<sup>69</sup>. The voices of women and children are essential to this participatory process. A group that is often neglected in this process are victims and witnesses who live abroad whose voices should be heard as many of them have been directly affected by the war and have been the subject of ongoing violations that forced them to leave the country. This is also true for diaspora groups who remain linked to family members in Sri Lanka.

## Creating an Enabling Environment

The OISL Inquiry on Sri Lanka recommended that victims and their families be included in the design of all truth-seeking mechanisms and future institutions dealing with the issue of disappearances, through a process of genuine, informed and participatory consultation<sup>70</sup>. An enabling environment conducive to victims and witnesses being able to testify without fear of persecution and reprisals against themselves or family members is key to achieving accountability for past violations.

National consultations should pay special attention to marginalized voices in asymmetrical situations, where access to resources is restricted and who lack language skills. These voices must be included in the design and implementation

of programmes. The State is obliged to ensure that information is accessible to members of these marginalized communities. This includes sensitization and capacity building so that people are equipped to take part in these programmes overcoming the obstacles they currently face<sup>71</sup>. While the government's transitional justice programme is to be welcomed, it requires political commitment and national ownership. This view is endorsed by Pablo de Greiff, the Special Rapporteur on the Promotion of Truth, Justice, Reparations and the Guarantee of Non-recurrence in his report following his first visit to Sri Lanka, which noted that:

*"Sri Lankans have of late taken decisions that open the possibility of important progress in the protection of rights of all citizens. Those decisions reflect the view that a military victory does not – by far – settle all questions about how people can live together. If handled well, the case of Sri Lanka has the potential to constitute an example for the region and for the world of how a sustainable peace ought to be achieved"*<sup>72</sup>.

The Special Rapporteur has also observed that while Sri Lanka has obligations to others, including the international community, ultimately its obligations are to its own citizens.

*"These obligations include the right to the full truth about the violations that took place during a long swath of its history; to the investigation, prosecution, and punishment of those*

*responsible for those violations; to the effective and equitable reparation of the violations; and to measures that seek to prevent the recurrence of those violations in the future"*<sup>73</sup>.

Following his 2016 mission to Sri Lanka, Special Rapporteur de Greiff observed that any mechanism would need to take account of the historical violations perpetrated against both the Sinhala community and the Tamil community and would need to ensure that benefits target all communities strengthening the rights of all Sri Lankan citizens<sup>74</sup>. However this should not be done on the basis of moral equivalence between victim communities but should rather serve to recognize the victims of war crimes and crimes against humanity.

De Greiff warns against:

*"The instrumentalization of transitional justice measures for narrow partisan political purposes" that "undermine the legitimacy of one of the few means available for the reintegration of societies in the aftermath of mass violations and abuses."*<sup>75</sup>

Transitional Justice Programs have been most successful when the State has provided for proper consultations, which result in important input into legislation and implementation processes. In the Sri Lankan context the sub-contracting of this process to a civilian task team without proper support or resources highlights a complete lack of ownership on the part of the State and the lack of a coherent strategy.

# Perspectives on justice:

Interviewees interpreted Justice as a collective goal for Tamils to have a place of their own. Their notion of a state is not expressed as the need for a “separate” state but is intertwined with the notion of “never, never again” and the assurance that the violations and suffering over the last decades will not happen again. Justice therefore for many of the interviewees is connected to the need to be able to return to their homes, to a time before they were displaced by the war, free from the surveillance and scrutiny of the security forces and militarization. A few of the interviewees did however express their desire for a separate state for Tamils such as Tamil Eelam.

“Justice is not the putting in jail of the killers of my father or the people who tortured me. That won’t be proper justice. A separate state is the only solution that will prevent these things from happening again.”

(Male Interviewee)

Justice for most interviewees entails the desire for punishment.

“All the wrongdoers should be punished. My torturers should be punished according to the degree of the crimes they committed.”

(Male Interviewee)

For others, Justice is conceived as an encounter between the victim and perpetrators in order to find solutions. An interviewee articulated that he was not looking for an individual solution but rather one for his people.

Many interviewees said they understood justice to mean collective justice, denoting justice for all Tamils. In terms of how justice would apply specifically to crimes committed against themselves individually they wanted the truth to be established, prosecutions and public acknowledgement.

A theme emerging from these consultations is a pressing need to address the structural issues underpinning the conflict.

The Right to Truth requires States, in the aftermath of atrocities, to establish mechanisms and procedures empowered to seek information, ascertain facts and effectively reveal the truth about what has happened, thereby contributing to the fight against impunity, the strengthening of the rule of law, and ultimately reconciliation<sup>76</sup>. Truth Commissions are bodies usually established to facilitate Truth Recovery.

## Prosecution of the War by the Sri Lankan Military

Interviewees were unanimous in their view that establishing the truth about the past was a priority and in particular, establishing the truth about the manner in which the Sri Lankan military conducted the final phase of the war.

Interviewees also expressed their need to know the truth about what happened to loved ones whom they had to abandon in the war zone as they fled the advancing army, bombings and shelling. Did they die? Were they properly buried and if alive what happened to them? What did the security forces do with their bodies? Interviewees also raised questions around what happened to those LTTE cadres who were last seen or heard of on the battlefield. They also raised the need to establish what happened to those who surrendered to the security forces.

## Blurring of Distinction between Civilians and Combatants

# Perspectives on truth recovery:

The OISL Inquiry found that the,

“sheer number of allegations, their gravity, recurrence and the similarities in their modus operandi, as well as the consistent pattern of conduct they indicate, all point towards system crimes.”<sup>77</sup>

The Inquiry also found that these system crimes if proven before a court of law, would amount to war crimes and/or crimes against humanity (depending on the circumstances) and pointed out that these were apparently committed on discriminatory grounds<sup>78</sup>.

Interviewees in this consultation collectively lost more than 101 relatives in the course of the war<sup>79</sup>. While the Panel of Experts Report on Sri Lanka suggested a casualty figure of around 40 000, an internal UN report suggests that as many as 70,000 Tamil people lost their lives during the final phase of the war<sup>80</sup>. The Sri Lankan mechanisms set up after the war have not succeeded in establishing reliable casualty figures and these figures remain an outstanding issue. The high number of casualties has also been attributed to the blurring of the distinction between combatants and civilians, which resulted in the killing of innocent Tamil civilians in the final phase of the conflict.

## Establishing the Truth about those responsible for War Crimes and Crimes against Humanity

Interviewees also demanded that the Truth Commission establish the truth about the identity of those responsible for extra-judicial executions, enforced disappearances, torture and sexual violence, for purposes of prosecution. One interviewee said:

“(President) Sirisena should announce that he personally will appear in the Truth Commission and tell the truth as he knows it about his time as acting defence minister in 2009, and recall former army people who are serving as ambassadors in foreign countries.”

(Male Interviewee)

## Culpability of the International Community

The failure of the international community to respond to their entreaties to stop the slaughter and intervene in the war during 2009 was raised as a key issue of concern by interviewees. In particular they expressed a deep sense of betrayal about the international community’s withdrawal from the LTTE-controlled Vanni in September 2008.

# Perspectives on criminal justice process:

Criminal Prosecutions contribute to the recognition of victims as rights holders, the re-establishment of trust in the legal and judicial system, strengthening of the rule of law and the promotion of social reconciliation and cohesion<sup>81</sup>. States have a duty to investigate and prosecute violations of Human Rights and Humanitarian Law, which constitute crimes under Domestic or International Law, in particular Genocide, War Crimes, Crimes Against Humanity, or other Gross Violations of Human Rights, including Summary or Extrajudicial Killings, Torture and other forms of Cruel, Inhuman or Degrading Treatment, Slavery, Enforced Disappearance, Rape and other forms of Sexual Violence, and other serious violations of International Humanitarian law. Failure to investigate and prosecute such violations gives rise to a separate breach of human rights treaty law<sup>82</sup>.

## Establishing a hybrid special court

The OISL Inquiry found that the Sri Lankan judicial

system had a long history of impunity for serious crimes. Given the perception that the judicial system was politically compromised, the OISL called for a “hybrid special court, integrating international judges, prosecutors, lawyers and investigators”, and a range of institutional and legal reforms<sup>83</sup>. The Sri Lankan government committed itself to establishing “an independent special court for war crimes” with the “participation of Commonwealth and other foreign judges, defence lawyers, and authorised prosecutors and investigators” in the joint 2015 UN resolution on “Promoting Reconciliation, Accountability and Human Rights in Sri Lanka”<sup>84</sup>.

## Victim participation in the design of prosecutorial strategies

The Special Rapporteur for the Promotion of Truth, Justice, Reparations and the Guarantee of Non-recurrence has stated that victim participation affirms the recognition of victims as rights holders and acknowledges the crucial role they have played in initiating procedures and in collecting, sharing and preserving evidence<sup>85</sup>. He emphasized that their demands for justice contribute to the guarantee of non-recurrence<sup>86</sup>.

The Special Rapporteur has also stressed that the participation of victims in the design of prosecutorial strategies at international and hybrid courts has proven crucial in identifying the array of possible violations<sup>87</sup>.

## Amending the penal code

Interviewees were adamant that war crimes and crimes against humanity must be prosecuted.

“Perpetrators need to be prosecuted and punished, and a system established to ensure non-recurrence.”

(Male Interviewee)

Sri Lanka’s Penal Code does not include war crimes and crimes against humanity; neither does it recognize command responsibility, joint criminal enterprise, and other recognized theories of liability under international law<sup>88</sup>. This requires therefore that the State legislate for the incorporation of these categories of international crimes at a domestic level in order to facilitate the prosecution of international crimes at a domestic level and through the ‘Hybrid Special Court’ to be established in accordance with the Consensus Resolution<sup>89</sup>.

## Superior and command responsibility

Interviewees were adamant that those who were responsible for their torture and violations must be identified and prosecuted. In addition when questioned about what they meant by the ‘actual’ perpetrators, they also expressed the view that

those who enjoy superior and command responsibility should also be prosecuted as a priority. This finding has implications for future amendments of the law establishing the Special Court, as there is no provision for command responsibility under Sri Lankan Penal Code. The issue of superior and command responsibility for most interviewees must be understood in the context of how systemic and structural the violations are and the relentless manner in which Tamils were persecuted during the war and in the post-conflict period. For many it is about establishing the truth and understanding how it was possible and why they as a group were targeted in this way. This is also linked to the State’s failure to distinguish between civilian and combatant and to treat all Tamils including civilians as the enemy.

## Prosecuting informers and paramilitaries

The ITJP has in previous reports documented the role of Tamil paramilitary leaders in the war and post-conflict period. The interviewees almost all demanded that Tamil paramilitary leaders and informers be prosecuted for their crimes of complicity and their role in the ongoing persecution, torture and sexual violence as well as extortion. Many of the interviewees felt strongly that this should include the crimes committed while under LTTE command as well as while working for the Government. However interviewees were divided over the issue of prosecution in cases where Tamil informers themselves acted

under duress including torture and were deeply conflicted over this question. In some instances this may be because they too were compelled under duress to become informers. Responses reveal how effective the government’s strategy has been in infiltrating communities using informers to identify LTTE members on behalf of the security forces. Information from informers has resulted in white van abductions, torture and rape.

In almost every post-conflict society the issue of informers and those who collaborate with the government against their own people creates cleavages and raises deep questions of morality. The South African Truth and Reconciliation Commission eventually decided not to list the names of informers as it was usually the intelligence services of the former Government who provided such information. This issue has continued to divide and polarize South Africans over the years as allegations emerge about informers who were deeply implicated in passing on information about human rights activists who were then killed. The issue of informers and collaborators in Sri Lanka remains a deeply divisive issue for Tamils.

## Witness protection

The Special Rapporteur stressed in his August 2014 report which focussed on prosecutorial strategies to the Human Rights Council that victim and witness protection is an important precondition for justice<sup>90</sup>. Interviewees stated that it was imperative for them

to feel safe. These responses emphasize how important it is for the Government to establish an effective witness protection program which will require an amendment of the current witness protection laws to comply with international law and best practices. One aspect of this is how such a witness protection program will guarantee and allow witnesses to provide evidence and testify before any of the transitional justice mechanisms not just in Sri Lanka but from abroad as well.

## International involvement in evidence gathering and investigations

Interviewees stressed the importance of security and trust in the evidence gathering process. Interviewees said that they would be willing to provide evidence only to international human rights groups as they placed their trust in them. This speaks directly to the issue of including internationals in the staff component as per the Sri Lankan Foreign Minister’s commitment in his September 2015 statement to the Human Rights Council. This needs to be factored into the process



and the composition of the investigation unit.

“Allow international monitors to help create space for investigations to be done. People will not give information to Tamils or the Government. They will give to international human rights organisations if done face to face and confidentially.”

(Male Interviewee)

Both the South African and Sierra Leone Truth Commissions as well as the Special Court of Sierra Leone included internationals in the investigation and research units as well as other staff components. The rationale behind this is to build trust and ensure that there is expertise in societies where a lack of trust may inhibit the transitional justice process.

### Appointment of judges to the hybrid special court

Despite the Government of Sri Lanka's stated commitment to establishing a Judicial mechanism in the form of a 'Hybrid Special Court' for

War Crimes with international involvement and participation in response to the consensus UN Human Rights Council Resolution on Promoting Accountability and Human Rights in Sri Lanka in September 2015, President Sirisena reneged on this commitment, stating: “I will not agree to get foreign judges in to any kind of investigations into human rights violations allegations”<sup>91</sup>. Tamil interviewees have stated clearly that they will not be able to participate in a process in which the international community is not involved. Interviewees stipulated that they wanted at least fifty percent of all of the judges of the Special Court to be drawn from the international community.

“The majority of judges in any special court should be international. I don't always believe in my own community and not the other communities so we need international involvement.”

(Male Interviewee)

### No blanket amnesties

Accountability for war crimes and crimes against humanity remains a key concern for witnesses and this was underlined by their assertion that amnesties should never be considered for those responsible for war crimes and crimes against humanity including those who committed rape or murder, extra judicial killings, genocide or war crimes. Some added that those who had attacked civilians or those surrendering should also not be given amnesty<sup>92</sup>.

# Perspectives on the missing and the disappeared:

The distinction between a person who has gone missing, and a person who has been disappeared lies in the intention of the crime, as an enforced disappearance is almost always part of a systematic policy of making people disappear. This distinction is of importance for the establishment of the Office of Missing Persons (OMP) in Sri Lanka regarding criminal accountability of those responsible.

### Missing persons

The International Committee of the Red Cross (ICRC) defines missing persons as,

“those whose whereabouts are unknown to their families and/or who, on the basis of reliable information, have been reported missing in connection with an international or non-international armed conflict, a situation of internal violence or disturbances or any other situation that may require the intervention of a neutral and independent intermediary<sup>93</sup>”.

Missing persons can refer to people who are either dead or alive<sup>94</sup>. Missing persons may

include people captured during conflict; combatants missing in action (MIAs) who probably died during combat; victims of mass killings; bodies not properly identified and buried as unidentified people; displaced people and refugees and victims of natural catastrophes<sup>95</sup>. Under international law families have the right to know the fate of their missing relatives.

### Enforced disappearances

An “enforced disappearance” however occurs when “persons are arrested, detained or abducted against their will or otherwise deprived of their liberty by officials of different branches or levels of Government or by organized groups or private individuals acting on behalf of, or with the support, direct or indirect, consent or acquiescence of the Government, followed by a refusal to disclose the fate or whereabouts of the persons concerned or a refusal to acknowledge the deprivation of their liberty, which places such persons outside the protection of the law”<sup>96</sup>.

The Working Group on Enforced

Disappearances has pronounced that States are not bound to the definition contained in the Declaration on the Protection of All Persons from Enforced Disappearance<sup>97</sup> but should ensure that the act of an enforced disappearance is defined in a way that clearly distinguishes it from related offences such as abductions and kidnapping<sup>98</sup>. States are also required to ensure that appropriate measures are established by law in order to investigate acts comparable to enforced disappearances committed by persons or groups of persons acting without the authorization, support or acquiescence of the State and to bring those responsible to justice<sup>99</sup>.

Families of the disappeared are in need of a responsive State willing to ensure that their rights are protected and that the fate and whereabouts of loved ones who surrendered into the custody of the security forces are established and the truth about the disappearance

communicated<sup>100</sup>. Interviewees expressed the need for the State to publish a complete list with the names of the all of the disappeared and to indicate whether their loved ones are alive or in the custody of the security forces or dead. Interviewees also demanded that the Government acknowledge the crimes perpetrated against them by their security forces. A third of the interviewees had personally experienced the disappearance of a family member after surrendering or being handed over into the custody of the security forces at the end of the war in May 2009.

#### Observations of the Working Group on Enforced or Involuntary Disappearances (WGEID)

The Working Group on Enforced or Involuntary Disappearances

(WGEID) on return from their visit to Sri Lanka in 2015 observed that enforced disappearances have been used in a massive and systematic way in Sri Lanka for many decades to suppress political dissent, counter terrorist activities, or in the context of the internal armed conflict<sup>101</sup>. WGEID noted that enforced disappearances were even used for purely economic extortion during and after the war by some State officials and affiliated paramilitaries<sup>102</sup>.

#### Office of Missing Persons (OMP)

The Office of Missing Persons (OMP) is one of four transitional justice mechanisms that the Government of Sri Lanka committed to establishing with the assistance of the International Committee of the Red Cross (ICRC)<sup>103</sup>. This mechanism was established by the Sri Lankan Prime Minister on 25 May 2016 and approved by Cabinet. The Working Group observed that previous Commissions of Inquiry in Sri Lanka had suffered from a lack of credibility, pointing out consultation with and participation of those affected by the violations is essential not only to secure legitimacy and support from those most directly affected but also because truth, justice and reparation processes depend, to a large extent, on the willingness of victims and others to participate<sup>104</sup>.

Regrettably the OMP has been established without consultations and input from victims and their families. This

flouts the advice of the Working Group as well as the Special Rapporteur who not only set out the need for consultations but also ensuring input from victims and their families in the design of the transitional justice mechanisms. The haste and manner in which the OMP has been established fuels suspicion about the motives of the Government and deepens distrust amongst the Tamil victims and civil society.

A leaflet published by the Government indicates that under the OMP process, prosecutions relating to enforced disappearance will be dealt with by another Transitional Justice mechanism. The leaflet uses the terminology of “tracing inquiry” which may be appropriate to dealing with missing persons but is not consistent with the State’s obligations to investigate and clarify the whereabouts and fate of the disappeared and to identify and prosecute those responsible<sup>105</sup>. If the OMP is to deal with the crime of an enforced disappearance, it will need to have investigative powers including the powers of search and seizure and subpoena. If families of victims are to appear before the OMP witness protection remains an unresolved issue. The Government also needs to clarify the relationship between the OMP and the other Transitional Justice mechanisms and in particular the role of the Hybrid Special Court in ensuring that those responsible for enforced disappearances are identified and prosecuted.

## Sequencing:

Given the multiple violations that victims and the families of the disappeared have suffered it may be necessary to consider the issue of sequencing. The current assumption that the Transitional Justice process should begin with the establishment of an OMP should be thoroughly canvassed as it may well be more rational to begin with an investigation by the Truth Commission before a referral is made to the OMP. While families of the disappeared have been much more vocal inside Sri Lanka about the need for justice than other survivors of torture or sexual violence who have been utterly silenced, the current construction of the OMP may be prejudicial to their cause.

Tamil survivors who searched for answers about “disappeared family members” have themselves suffered torture at the hands of the security forces.

Civil society groups in Sri Lanka have also emphasized that transparency and independence are crucial in the establishment of this mechanism, as well as its processes and the method for appointing members of this structure and the manner in which it conducts its work.

Best practice suggests that appointments to the OMP should be made in close consultation with families of the disappeared who must be consulted and allowed to participate in the nomination, vetting and screening, shortlisting and interview process prior to appointments. Interviewees expressed their skepticism that this process will work.

“I don’t think they will be able to implement this accountability plan properly. Here they say they will have an office for the missing with the help of ICRC. But when I was in detention and rehabilitation the IOM [International Organisation for Migration] were considered part of the UN organisations and they came and gathered our information but the people in the IOM vehicles were all Sinhalese and they couldn’t even type our names or village names. We were told they are all Sinhalese and also CID people who impersonated IOM staff to gather information.”

(Male Interviewee)

# Building complementarity and linkages between transitional justice mechanisms:

The experience of Sierra Leone found the Transitional Justice mechanisms such as the Truth and Reconciliation Commission and the Special Court for Sierra Leone established and operating side by side. Although these were complementary mechanisms, key questions arose related to which mechanism had primacy, the sharing of evidence between the two bodies and access to witnesses. Donors too were confronted with questions of which institution to fund. The two institutions had a major spat regarding the testimony of one of the key accused of the Special Court, Chief Hinga Norman, before the Truth Commission. This issue raised critical questions about relationships between Transitional Justice mechanisms when they operate in the same context.

Given that Sri Lanka will have four key mechanisms established there is a need to consult on the question of

sequencing, as well as linkages. An example of this is the need to clarify which institution will deal with investigations of Enforced Disappearances given that the OMP will not deal with criminal justice issues. Will it be done by the Truth Commission or will an Enforced Disappearance be referred to the Hybrid Special Court. Most Truth Commissions have followed the South African example of naming perpetrators and referring cases to prosecution. Is this going to happen in Sri Lanka?

Interviewees expressed the view that it was essential for the Truth Commission to refer cases to the Special Court for prosecutions. They also raised concerns about security and trust - this was a common theme of all of the interviews. Most interviewees expressed the view that the Hybrid Special Court and the Truth Commission should be established within one year to allow for national consultations as well as consultations abroad. There were those who felt that the process of establishing these mechanisms should take as long as necessary to build effective mechanisms.

Reparations programmes seek to redress systemic violations of human rights by providing a range of material and symbolic benefits to victims. Reparations include monetary compensation, medical and psychological services, health care, educational support, return of property or compensation for loss thereof. Reparations can also include official public apologies, building museums and memorials, and establishing days of commemoration<sup>106</sup>.

States are required to develop a comprehensive reparations programme when implementing Transitional Justice programmes. This includes initiatives to memorialize victims, educate society and preserve historical memory. Reparations provide acknowledgment of the wrongdoing to victims and provide recognition to the victim. The most successful reparations programmes are designed in consultation with victims. The Government of Sri Lanka has committed to establishing a reparations office to address the issues of reparations.

Interviewees consulted on reparations considered accountability and truth recovery more important than reparations and said they did not believe that compensation can bring the dead back to life or compensate for the suffering they experienced. They also do not believe that the government will ever address their suffering and expressed the view that they would not want to accept compensation without an acknowledgment of the crimes

# Perspectives on reparations:

perpetrated against them. During the consultations interviewees articulated their needs arising from the harm suffered as a consequence of the violations perpetrated against them.

*"I am worried, anxious, depressed and have horrible dreams. I dream about my torture and about being suffocated. I have body pain in my back and lower legs and soles of the feet."*

*(Male Interviewee)*

National Consultations could also establish the scope and size of the victim/survivor community with a view to establishing immediate needs and priorities paving the way for a program on urgent interim reparations. This would also pave the way for the Office of Reparations to conduct a needs assessment, which would provide a basis for discussions on reparations. This should include recent victims outside the country some of whom are still in dire need of help.

## Apologies

Official public apologies are now recognised as an important symbolic element of reparations and a Transitional Justice policy. The public acknowledgement by leadership that human rights

violations were committed in the past, that they caused serious and often irreparable harm to victims, and that the State, a group, or individual apologizing and accepting some or all of the responsibility for what happened is an important aspect of Transitional Justice.

In several countries leaders have apologized to the nation for the violations suffered by the victims and have committed to measures to ensure that they never happen again<sup>107</sup>. Apologies alone are insufficient and do not provide sufficient reparation to victims of serious violations. While apologies have value in themselves and can address both moral and physical harm, they should be combined with material forms of reparation. In particular, care needs to be taken to ensure that a disproportionate emphasis on apologies does not diminish the likelihood that other reparative measures, such as restitution and medical care, will be implemented, to help limit the long-term harm caused to victims or address their physical needs<sup>108</sup>.



# Memorialization:

The Joinet/Orentlicher principles acknowledge the integral role of memory and memorialization in truth recovery as a collective right to the truth owed to societies and as a tool to guard against revisionism and negationism<sup>109</sup>. Memorialisation is seen as an important component of reparations. The United Nations Basic Principles on the Right to a Remedy and Reparation recognizes “commemorations and tributes to the victims” as a form of reparation<sup>110</sup>.

Memory and Memorialisation in the context of the Right to the Truth are crucial to the preservation of history. The right of communities to honour the dead is fundamental to their sense of identity and human dignity<sup>111</sup>. However memorialisation also involves contestation between forces calling for forgetting and those calling for remembering. It’s an intensely political action, which has the potential to contribute to the struggle against impunity. It is also important for the next generation to understand the reasons for the conflict and how the underlying causes continue to perpetuate violence.

## Perspectives on memorialisation

### Sri Lankan Army war monuments

The callous erection of war memorials in the Vanni by Sinhala Security Forces, accompanied by war tourism, constitutes a violation of the rights of the Tamil community. Interviewees reacted extremely negatively when questioned about these war monuments and have said that the statues honoring the government’s military victory in 2009 and are an insult to them:

“Sri Lankan military memorials were built to celebrate victory over Tamils and to show we are defeated. It makes me feel angry”.

(Male Interviewee)

### Commemoration, mourning and desecration of graves

The LTTE had 20 graveyards across the North East Sri Lanka in the areas they controlled comprising thousands of graves and commemorative plaques for LTTE fighters. Without exception, every single one was bulldozed after the war resulting in the desecration of a staggering number of graves and commemorations for the dead. This constitutes a crime under international law. For many Tamil families in the North and East of Sri Lanka the dead fighters were their children - their bones have been

bulldozed, with army camps built on the earth where they lay. This is just one more sign for them that there is neither compassion nor willingness to allow them the right to honour the dead, the right to mourn and erect their own memorials in the place of their birth, in their land that is now under military occupation. In this context how is reconciliation, which is a national imperative, possible?

In 2015 the newly elected Sri Lankan government indicated that it was departing from the triumphalism of the Rajapaksa regime in the way it marked the anniversary of the end of the war, 18 May 2015<sup>112</sup>. However Tamils who hosted events in North and East of Sri Lanka in 2015 marking the anniversary reported that they continued to face considerable harassment and intimidation from the security forces despite Government’s official policy.

Interviewees also said it was important to them to remember dead comrades on the LTTE Heroes Day on 27 November.

“On Heroes’ day we commemorate our lost friends – we gather in the cemetery and cry. Now parents of children who were in the LTTE cannot go anywhere to mourn – they are even banned from lighting candles. Memorials are really important but the Sri Lankan Army ones are there to destroy our identity and I cannot accept them”.

(Male Interviewee)

# Views on testimony of exiles before transitional justice mechanisms from outside of the country:

All the interviewees in this study are victims or witnesses of war crimes or crimes against humanity. They were asked if they would consider testifying long-distance through video link up to a Truth Commission inside Sri Lanka or a Special Court, if their safety and anonymity were guaranteed. The majority indicated that they would be willing to testify through video link up, from behind a screen, without using their names or identifying details, and in some cases with their voices disguised. Given many are survivors of sexual violence anonymity is essential. Some interviewees also suggested that they provide written statements only.

“It is not safe to give evidence in Sri Lanka – we may face prosecution. We can’t trust these people – they may allow at the time but later they may harass or pose a threat to our life.”

(Male Interviewee)

## Perspectives on Security and Ongoing Harassment and Fear of Reprisals

A key consideration is the safety of family members inside Sri Lanka. None would agree to have a Sri Lankan government official present sitting in the room with them abroad when giving testimony.

Some Interviewees said the risks meant they would only submit written testimony<sup>113</sup>. Others said the details of their case would identify them<sup>114</sup>. A mechanism that could possibly be considered is that of “Letters Rogatory ” also known as letters of request. They constitute a request, from one judge to another, asking for the examination of a witness by commission in the jurisdiction which is foreign to the requesting court<sup>115</sup>.

The interviewees who participated in this study have been compelled to leave Sri Lanka because of the war and the ongoing repression experienced in the post-war period because of their links to the LTTE, support for Tamil nationalism or involvement as witnesses in war crimes. Many of them have also been tortured, raped and sexually violated in the post-conflict period by the security forces. This sample represents only a fraction of those who left Sri Lanka post-2009, who likely number many thousands now<sup>116</sup>.

## Trust deficit, and perceptions of broken promises

A common thread in all interviews conducted is the total lack of trust in the State and its institutions. This distrust and betrayal has been exacerbated over the years by the ongoing violations and the continued military occupation of the North and East of Sri Lanka. The Government has failed to establish a holistic comprehensive Transitional Justice policy which should include a security sector reform programme as well.

Prime Minister, Ranil Wickremesinghe's recent repudiation of the terms of the consensus Human Rights Council Resolution that the Hybrid Special Court (Government's accountability mechanism) will be a domestic mechanism and not include foreign Judges has been chilling for the victims, our interviewees and civil society. This coupled with the Cabinet's approval of a law on the Office of Missing

Persons (OMP) without the participation and consultations with family members of those who have been disappeared fuels and deepens the distrust in the Government. There is a perception that the Government is disingenuous in its public speeches treating Transitional Justice as a foreign policy public relations exercise. Government Communications in Geneva, New York and Washington are quite different to the message communicated at home.

The Sirisena Government has failed to date to engage in a real dialogue with the Sri Lankan security forces on their culpability for war crimes. The President's message to the Security Forces is that they are 'war heroes', and that they will not be tainted by any accountability process. This policy of appeasement intended to assuage their fears has not served the security forces well as it has given them a false sense of security that they will never have to deal with the war crimes perpetrated.

Furthermore the failure to engage with the broader Sri Lankan Sinhala society on the dividends for the whole society has resulted in a disengagement by the majority Sinhala society as well as a sense of persecution at the hands of the international community. This perception of persecution has also been fuelled by the whipping up of nationalism and hostility towards the involvement of the international community by some elements within the Government, creating an environment that is incredibly hostile and resentful. Of course

what we never discuss but cannot wish away, is a general perspective shared by the majority Sinhala community and the security forces that if the Government won the war, there is no reason that they should have to accommodate the rights of Tamils and Muslims. This is an important aspect of the Guarantee of Non-Recurrence, the building of an inclusive society and the recognition of Tamils and Muslims as Sri Lankan citizens with the full rights as citizens.

The Government has, to date, failed to engage internally on the necessity of building an inclusive plural society, spelling out what the dividends are for the whole society. This is imperative for the way forward and is alluded to by the Special Rapporteur Pablo de Greiff in his report following his first visit to Sri Lanka that a Transitional Justice program should benefit the entire society.

Tamil victims including many of our interviewees are directly affected by the establishment of these mechanisms. People in the North and East of the country have indicated their dissatisfaction at not having been consulted resulting in their views and perspectives not shaping these institutions. This is in direct contravention of the normative framework that exists on participation and national consultations. The Government could have addressed the distrust of people in the North

and East of the country had they demonstrated the political will to implement the measures set out in the OISL inquiry, which constitute confidence building measures, such as demilitarizing the North and East of the country and returning land to those who own it. This calls into question the commitment by the Government to build a new society in which Tamils and Muslims have a stake as citizens.

For the interviewees what exacerbates this distrust is the ongoing repression with violations perpetrated against them and family members include “White Van” abductions, torture, rape and sexual violence, as well as the continued surveillance, harassment and reprisals against families left behind in Sri Lanka. This is compounded by the triumphalist war memorials erected in the North and East of the country, as well as war tourism.

The ultimate test of Sri Lanka’s commitment to accountability and guarantees of non-repetition is the extent to which constitutional reform will require such measures to be taken. At a minimum the new constitution ought to guarantee the rights of victims to reparations and to the truth behind past conflicts. It should require that the mechanisms agreed to under the UNHRC Resolution are established under law. Finally it should require the reforms of state institutions responsible for past and ongoing human rights abuses. A constitutional oversight body should be created to facilitate and monitor such reforms.



## 1. Confidence building measures

The Government of Sri Lanka needs with immediate effect to institute confidence building measures which include what the OISL Inquiry recommended.

### 1.1 Publicly declare a zero tolerance policy on rape, torture, sexual violence and other human rights violations

The Government should issue a clear and unambiguous message to all branches of the security forces to desist from perpetrating torture, rape, sexual violence, enforced disappearances and “white van” abductions as well as other human rights violations. This message should be made public and include an explicit instruction that Commanders will be held responsible for the violations perpetrated by lower ranking members under their command. The prohibition should be unequivocal and clear, stating that, subject to due process, anyone suspected of being involved in such acts will immediately be suspended until the investigating has been completed and the matter referred for prosecution.

### 1.2 Declare an end to the ongoing surveillance, harassment and reprisals against civil society activists, human rights defenders and journalists.

### 1.3 Demilitarize the north and east of Sri Lanka and return private land

Prioritize the return of private land, which has been occupied by the military and end military involvement in civilian activities. According to statistics made available by the Prime Minister in his recent interview, some 58.73 acres of private land in the Jaffna area (outside the High Security Zone) are still being occupied<sup>117</sup>. This is besides an extent of 86.22 acres of state land that is over and above the extent where military installations existed. Whilst some of the land area has served as a buffer, new cantonments have been established in others<sup>118</sup>.

### 1.4 Prevention of Terrorism Act (PTA)

Initiate a high-level review of the Prevention of Terrorism Act (PTA) and its regulations as well as the Public Security Ordinance Act with a view to their repeal and the formulation of a new national security framework fully complying with international law. Already there are rumours that new draft of the Prevention of Terrorism Act already exists on which there has been no consultations to date.

### 1.5 Witness protection law

Review as recommended by the OISL, the Victim and Witness Protection Act with a view to aligning it with international standards and best practices, incorporating better safeguards for the independence and effectiveness of the witness protection programme. This should be complemented by the appointment of officials who will be vetted and screened with public participation in order to ensure the independence and

integrity of those appointed to the Witness Protection Authority. The establishment of a Witness Protection Authority should be supported by the international community and resourced appropriately. The proposed legislation should provide for specialized protection measures for children and victims of sexual violence.

## 2. Creating and enabling environment for transitional justice

In unpacking the Transitional Justice framework that the Government has outlined, a common thread has emerged - the failure of the Government to create an enabling environment for any Transitional Justice programme to thrive. What is marked is the issue of who is in charge - is it the Prime Minister's office or that of the Foreign Minister and who decides what the policy issues are? The manifest lack of ownership has sent mixed incoherent messages as have hastily constructed laws and policies. This is evidenced by the establishment of the OMP without consultation, as well as the announcement on the “domestic court” in clear violation of a commitment made at the Human Rights Council.

There is a need for ownership and the implementation of a range of pertinent recommendations regarding the environment in which the Transitional Justice measures will be enacted. These include the following:

### 2.1 Domesticating War Crimes

Enact legislation to criminalize war crimes, crimes against humanity, genocide and enforced disappearances, without a statute of limitation. Enact various modes of criminal liability, notably command or superior responsibility;

### 2.2 Domesticate the international covenant on the protection of all persons from enforced disappearances

Incorporate at domestic level the International Convention on the Protection of All Persons from Enforced Disappearances and criminalize the crime of Enforced Disappearances, the Additional Protocols to the Geneva Conventions and the Rome Statute of the International Criminal Court<sup>119</sup>;

### 2.3 Determine an appropriate security sector reform policy

The OISL report confirmed the need for the Government of Sri Lanka to develop with some urgency a comprehensive plan for security sector reform. The security forces have recently questioned the Prime Minister about whether they could be prosecuted jointly or individually, highlighting the need to engage with them on the Transitional Justice Programme which will affect them at a fundamental level.

#### 2.3.1 Design of a security sector reform plan

Develop an overall plan for security sector reform in order to ensure the civilian nature, independence and

professionalism of the law and order forces, and reduce the role of the military in internal security matters. Any plan should incorporate consultations with victims and citizens whose rights have been violated by the security forces.

#### 2.3.2 Clarify role and chain of command

Clarify the roles and chain of command for all branches of the security forces, including the different intelligence services, the Criminal Investigations Department (CID), the Terrorism Investigations Division (TID) and Special Task Forces.

#### 2.3.3 Vetting and screening process

Develop a fully-fledged vetting process with respect to due process to remove from office military and security force personnel and any other public official in instances where there are reasonable grounds to believe that they were involved in human rights violations.

#### 2.3.3.1 Importance of vetting for peacekeeping

Ensure that all Sri Lankan security forces personnel joining UN Peacekeeping Missions have been properly vetted and screened in order to establish that those including commanders and officers have not been involved in War Crimes and Human Rights Violations or other Criminal Acts. This has Important ramifications for both the United Nations and the Sri Lankan security forces given their past record in Haiti and speculation that

a new 900 strong Sri Lankan contingent was at the time of publication of this report to be dispatched to Mali<sup>120</sup>. In designing an appropriate vetting and screening process due regard should be given to the ‘Independent Review on Sexual Exploitation and Abuse by International Peacekeeping Forces in the Central African Republic’; Resolution 2272 endorsing special measures to prevent and combat sexual exploitation and abuse by United Nations peacekeepers and the Secretary General's Zero Tolerance Policy on Sexual Exploitation<sup>121</sup>.

#### 2.3.4 Disarmament and demobilization of paramilitary groups

Take immediate steps to identify and disarm groups affiliated with political parties and sever their linkages with security forces, intelligence services and past funding by the Sri Lankan Government authorities.

## 3. National consultations

National Consultations on Transitional Justice are considered a pre-requisite for developing an appropriate Transitional Justice policy and programme under international law. This process in Sri Lanka has to date privileged elite interests over the marginalized and excluded, such as Tamil citizens whose rights to accountability have been violated. The approval by the Cabinet in Sri Lanka of legislation establishing the OMP without any consultations

with the families of Disappeared and civil society is deeply problematic.

### 3.1 Conduct national consultation in accordance with international human rights standards

The Government of Sri Lanka should conduct National Consultations on the Transitional Justice process in accordance with international accepted practices as set out in the “OHCHR Rule of Law Tool on National Consultations” taking account of the Observations made by the Special Rapporteur on the Promotion of Truth, Justice, Reparations and Guarantee of Non-Recurrence pursuant to his visits to Sri Lanka in 2015. The Special Rapporteur emphasised that,

“Consultation with those affected by the violations is essential from a conceptual standpoint for rights cannot simply be foisted but need to be exercised. Citizens cannot be simply presented with ‘solutions’ in the design of which they were given no role”.

The Government of Sri Lanka must ensure that national consultations move beyond perfunctory tick box and tokenistic approaches and enable local participation of the most marginalised and vulnerable. To date consultations have been limited to an online process as well as a few meetings mainly with elite groups.

### 3.2 Transparency and participation

Consultations should be conducted in an open transparent and participatory manner. Consultations should focus on the design and implementation of such measures consistent with accountability and democratic values promoting inclusions and the rights of all citizens.

### 3.3 Engage all stakeholders

Consultations should involve all the key stakeholders, including victims and witnesses of past patterns of abuse and oppression whether in Sri Lanka or abroad; ensuring that they are provided with the requisite information of the transitional justice options open to them as well as the specific purpose of the consultations, so that they can express their views on an informed basis.

### 3.4 Culturally sensitive processes

Consultations should be conducted in a manner that is culturally sensitive to local conditions, demonstrating respect for victims.

### 3.5 Enabling environment

That the Government of Sri Lanka create an enabling environment for participation through adoption of appropriate laws and establishment of institutions, in which confidentiality is promoted ensuring that people are not at risk of violations or prosecution for anything they might say. Under the current provisions of

the PTA you could be prosecuted if you were a member of the LTTE and testified without the necessary provisions guaranteeing protection through immunity. Another issue is the confidentiality of information relating to the personal data of protected witnesses within witness protection units and should not be included in the investigation files, but are made available to the prosecution or the truth commission investigation unit on request.

### 3.6 Minimum standards policy

That the Government of Sri Lanka establish and enforce minimum standards in respect of participatory processes, particularly for people marginalised and excluded, allocating adequate resources to facilitate participatory processes, particularly with regard to previously excluded and disadvantaged groups. In many countries which have gone through these processes the consultation authority provided travel expenses for people to attend the public meetings. In countries that have undergone these processes, the consultation authorities have provided participants either with the logistics or covered travel expenses to attend public meetings.

### 3.7 Participation of women

That the Government of Sri Lanka ensure that participatory processes are designed and implemented to ensure the full participation of women, taking account of gender differences and other forms of inequalities

that may hinder the active participation of vulnerable and marginalized groups in decision-making.

### 3.8 Gender

Ensure that participation takes account of gender and that data collected is disaggregated to ensure that gender differentials are taken into account in the design and implementation plans of the different Transitional Justice Mechanisms.

### 3.9 Child combatants

The Consultations should seek to engage with those who were Child Combatants at the time of the conflict, on their experiences and how their participation can be reflected and taken account of in the Transitional Justice processes.

### 3.10 Consultations should reflect a plurality of voices

Ensuring that the consultation report reflects the voices of victims and witnesses, at the same time ensuring their security in order to prevent them from being exposed to retaliation. All of the ITJP interviewees were guaranteed anonymity and confidentiality.

### 3.11 Consultations with the security forces

The Government of Sri Lanka should with immediate effect initiate discussions with the Security Forces on the proposed Transitional Justice mechanisms with the specific purpose of obtaining their views and perspectives as well as

responding to issues raised by them in regard to accountability mechanisms. This offers the Security Forces an opportunity to engage with the issues.

### 3.12 Participation of Sri Lankan exiles in the transitional justice mechanism

As this consultation with Sri Lankan exiles has revealed, they would like to participate in the Transitional Justice process. The ITJP will ensure that their perspectives on the Transitional Justice process are communicated to the Task Force on Consultations in Sri Lanka and the Minister of Foreign Affairs.

#### 3.12.1 Testifying from abroad

Sri Lankan exiles from abroad should be allowed to participate in the Transitional Justice process including giving evidence before the Transitional Justice Mechanisms. Interviewees expressed the view that they would be willing to participate from abroad provided that their testimony takes place in a confidential environment in which their identities are protected. Confidentiality and the protection of identity are common to the work of Transitional Justice mechanisms. The Government of Sri Lanka should explore in consultation with the international community how this could be secured. Examples of best practice include the Liberian example of Diaspora testifying abroad as well as the use of Rogatory Letters which can secure such

testimony. The Government of Sri Lanka needs to consider the giving of viva voce (oral) or recorded testimony of a witness by means of video or audio technology, as well as the introduction of documents or written transcripts, subject to this Statute and in accordance with the Rules of Procedure and Evidence. Lessons should be learnt from the IIGEP process on the issue of video testimony<sup>122</sup>.

## 4. Transitional justice mechanisms

### 4.1 Law establishing the truth commission

Consultations on legislation establishing the Truth Commission should precede any drafting so that the aims and objective, the mandate and operations of the Truth Commission are designed in consultation with victims. A key issue is victim centred processes which ensure that the rights of victims are prioritized and mainstreamed throughout the process. Families and Civil Society particularly those with lived experience in the North and East of the country must be consulted. Issues that should be considered include the fact finding mandate, the naming of names, hearings, confidentiality proceedings, powers of search and seizure, subpoena, the public nature of hearings, access to archives of all respective departments particularly with regard to the war. Access to the OISL archive as well as archival material gathered by the international community.

4.2 Law establishing the hybrid special court

The Government should immediately clarify its intentions in respect of the consensus Human Rights Council resolution regarding the inclusion of foreign and Commonwealth Judges as well as international involvement.

In drafting legislation the Government of Sri Lanka should ensure National Consultations are concluded before drafting, in order to ensure the input of victims and Civil Society in the process. This consultation has confirmed that the interviewees have perspectives that should be taken account of.

Adopt specific legislation establishing an ad hoc hybrid special court, integrating international judges, prosecutors, lawyers and investigators, mandated to try war crimes and crimes against humanity, including sexual crimes and crimes committed against children, with its own independent investigative and prosecuting organ, defence office, and witness and victims protection programme. Resource the court so that it can effectively try those responsible.

Undertake a comprehensive mapping of all pending criminal investigations, habeas corpus, and fundamental rights petitions related to serious human rights violations, as

well as the findings of all Commissions of Inquiries which have identified specific cases, and refer these cases to the Special Court upon its establishment; initiate prosecutions in all cases in which the Presidential Commission to Investigate Complaints Regarding Missing Persons has identified perpetrators and prima facie evidence. The OISL also has an archive regarding units involved in the crimes committed as well as names of alleged perpetrators. Any mechanism established should explore how access to these kinds of archives should be facilitated. This should include satellite footage.

4.3 Office of missing persons (OMP)

4.3.1 The Government must ensure that it develops a comprehensive transitional justice plan which situates the OMP within that framework.

The OMP is a complementary Transitional Justice Mechanism to the Truth Commission, the Hybrid Special Court, and Office of Reparations that should be established within the context of a comprehensive Transitional Justice plan. Consultations should consider how these mechanisms will build complementarity and linkages to ensure that the goals of the Transitional Justice plan are achieved. This includes clarity on its linkages, relationships and the information sharing as well as confidentiality procedures, witness protection measures to ensure the protection needs of witnesses and their families

as well as a division of labour with the other mechanisms. The challenge that exists currently is that Cabinet has already approved the establishment of the OMP without consulting with those most affected. The Government needs to immediately move to reassure victims and their families as well as Civil Society that they will conduct a proper consultations in order enabling them to have a voice.

4.3.2 Transparency in the process of establishing and operationalizing the OMP

Now that the Government of Sri Lanka has published its proposals on the OMP it should ensure that appropriate consultations take place with the affected families and communities on the draft proposals.

4.3.3 Reasonable period for comment and consultation

The Government of Sri Lanka should also inform victims and their families as well as Civil Society that they will announce a reasonable period of time for National Consultations to take place on the OMP as well as on the remaining Transitional Justice mechanisms. Such consultations should take account of the fact that the Office of Missing Persons will have the mandate to address the issue of enforced disappearances, which is a crime in terms international law. That legislation in respect of the OMP must incorporate Sri Lanka’s compliance with its international obligations in accordance with the Convention

on Enforced Disappearances which is to investigate acts of enforced disappearance and bring those responsible to justice.

4.3.4 Prior Steps to be Taken before the OMP becomes fully functional

Ensure that prior to the establishment of this Office, the Government of Sri Lanka take the following steps:

Review all of the cases submitted to the Disappearance Investigation Unit where the courts subsequently acquitted the accused, to identify those which require further investigation, including chain of command responsibilities and the Missing Persons Unit by the Zonal and All Island Commissions, including cases where the courts subsequently acquitted the accused, to identify those which require further investigation, including chain of command responsibilities;

Review all the cases of the more than 11,000 individuals perceived or known to be linked to the LTTE reported to have been registered and rehabilitated to account for their current whereabouts to ensure that none subsequently disappeared<sup>124</sup>.

Review all cases of detainees held under the PTA and either release them or immediately bring them to trial.

Review the cases of those convicted under the PTA and serving long sentences, particularly where convictions

were based on confessions extracted under torture. This should also include the cases of those who have become lost in the current prison system.

5. Principles to be incorporated in establishing all of the transitional justice mechanisms

5.1 Victims’ right to truth must be fulfilled and cannot be compromised

Victim families have the right to know the fate and whereabouts of the disappeared or missing person, and to know the identities of persons who bear responsibility for the disappearance. They also have the right to have remains returned to them in case of death. Moreover, families’ right to be informed on the progress and results of investigations must be protected. Article 24 of the Convention of Enforced Disappearances<sup>125</sup> which the Government signed and recently ratified.

5.2 Collective dimension of the right to truth

The Transitional Justice mechanisms must also recognize the collective dimension to the Right to Truth, and give effect to a society’s right to know the details and patterns of violations, particularly in respect to enforced disappearances.

5.3 Victims’ right to justice cannot be compromised

The Right of victims to Justice including through criminal prosecution of perpetrators

must be ensured. The Truth Commission and the OMP must facilitate access to justice for crimes such as Enforced Disappearances. Investigations must be conducted in accordance with international standards.

6. Composition of transitional justice mechanisms

6.1 Comply with consensus UNHCR resolution on including internationals

Ensure that the GOSL complies with its commitment in terms of the UNHCR resolution of October 2015 to ensure that appropriate qualified international professionals with proven independence and integrity are appointed as judges to the Hybrid court and ensure the same requirements are demanded of the Commissioners of the Truth Commission and members of the OMP.

6.2 Involvement of international community in establishment

Ensure the inclusion of the international community in the appointment and selection of Hybrid Court judges; Commissioners serving on the Truth Commission and OMP members must include representatives trusted by the victim community and



include members of minority communities in Sri Lanka with an equal number of women.

### 6.3 Transparent appointment process

Consultations by the Government of Sri Lanka should include the issue of how Commissioners should be appointed to the OMP, the Truth Commission and the Office of Reparations. The process should be an open transparent appointment process, which guarantees the independence of the appointment process seeking to appoint credible independent persons.

### 6.4 Appointment of international judges

That the Government of Sri Lanka honour its commitments in terms of the consensus resolution UNHRC 30/1 as well as the commitment made by the Foreign Minister before the Council session on 14 September 2015 to include foreign nationals in the Hybrid Special Court<sup>126</sup>.

### 6.5 Office of special prosecutor

That the establishment of the Office of Special Prosecutor be in accordance with international standards and best practises to guarantee independence and transparency.

### 6.6 Special office of investigations

The GOSL should consider establishing a Special Office of Investigations which is independent of existing investigations units and has the capability and independence to investigate international crimes linked to the past conflict and the ongoing violations.

### 7. Resources

THE GOSL must ensure that all of the Transitional Justice Mechanisms are properly resourced. In addition reference is made to Paragraph 4 of the consensus UNHRC Resolution 30/1 which commits the Government to ensuring that each mechanism (has) the freedom to obtain financial, material and technical assistance from international partners.

### 8. Gender composition

The GOSL must ensure that the composition of all of the Transitional Justice Mechanisms include a minimum number of women, with the numbers to be determined through the consultations as well as ensuring that women be represented at every level within these transitional justice institutions.

### 9. Participation of witnesses and victims outside the country

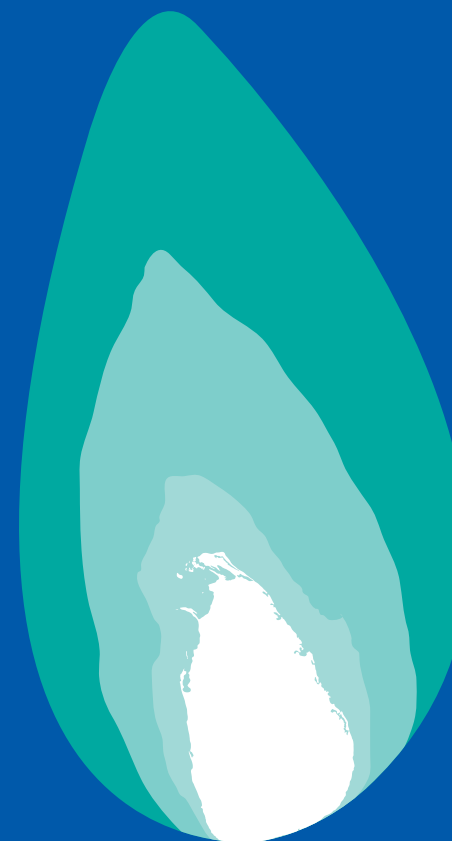
It is necessary that the GOSL ensure that those victims and witnesses who are outside of the country are able to participate in the National Consultation and in the Transitional Justice

processes using innovative approaches including Rogatory Letters and/or Special Committees empowered to take evidence abroad. This should include viva voce evidence as well as video evidence subject to the considerations set out above in 3.1.2.1.

### 10. Due process and confidentiality

It is necessary that all of the Transitional Justice mechanisms ensure the incorporation of special provisions including confidentiality best practices and special hearings to ensure that both men and women can testify to violations of sexual violence perpetrated against them. These provisions should facilitate participation and testimony without fear of identification, outing and stigma with adherence to due process considerations consistent with international law.

The international community and the Government of Sri Lanka need to consider how best to enable the worst affected victims – those who survived the war, surrender, multiple detentions and abductions, torture and rape – to participate safely and confidentially in any future process. Any process that excludes them will be a “diminished truth” about past violations. Any reconciliation process that excludes them will be meaningless. Their willingness to testify signals their commitment to accountability so that they can stop what is happening and prevent anyone else suffering the way they have.



# Endnotes:

<sup>1</sup> Accessed at: [http://www.ohchr.org/Documents/Publications/NationalConsultationsTJ\\_EN.pdf](http://www.ohchr.org/Documents/Publications/NationalConsultationsTJ_EN.pdf)

<sup>2</sup> The Truth and Reconciliation Commissions of Sierra Leone and Liberia respectively collected statements from members of their diaspora in Nigeria, the US, UK and Burundi in 2012. Liberia's National Vision 2030 Forum Comes to Minnesota, 31 May 2012, The Liberian Journal, Accessed at: <http://theliberianjournal.com/index.php?st=news&bst=details&rid=2452> and Diaspora Project Overview and Methods, Accessed at: [http://www.theadvocatesforhumanrights.org/uploads/chapter\\_3-diaspora\\_project\\_overview\\_and\\_methods.pdf](http://www.theadvocatesforhumanrights.org/uploads/chapter_3-diaspora_project_overview_and_methods.pdf)

<sup>3</sup> ITJP, Silenced, 6 January 2016, Available at [www.itjpsl.com](http://www.itjpsl.com)

<sup>4</sup> Preliminary observations and recommendations of the Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment, Mr. Juan E. Mendez on the Official joint visit to Sri Lanka –29 April to 7 May 2016, 7 May 2016, Accessed at: <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=19943&LangID=c#sthash.O7IacD9G.dpuf>

<sup>5</sup> Interestingly we could not find a Tamil version of this important policy document available online anywhere so we had to translate it ourselves.

<sup>6</sup> This is a statistical analysis software.

<sup>7</sup> Report of the Secretary-General's Panel of Experts on Accountability in Sri Lanka, Introduction, Para 2

<sup>8</sup> Sri Lankan President Mahinda Rajapaksa rejects demand for probe into war crimes, PTI, 6 November 2013, Accessed at <http://www.ndtv.com/world-news/sri-lankan-president-mahinda-rajapaksa-rejects-demand-for-probe-into-war-crimes-541324>.

<sup>9</sup> ITJP, Ibid.

<sup>10</sup> The author of this report was one of those UN experts.

<sup>11</sup> Report of the Secretary-General's Internal Review Panel on United Nations Action in Sri Lanka, November 2012, Accessed at: [http://www.un.org/News/dh/infocus/Sri\\_Lanka/The\\_Internal\\_Review\\_Panel\\_report\\_on\\_Sri\\_Lanka.pdf](http://www.un.org/News/dh/infocus/Sri_Lanka/The_Internal_Review_Panel_report_on_Sri_Lanka.pdf)

<sup>12</sup> Ibid.

<sup>13</sup> LLRC Report accessed at: [http://www.priu.gov.lk/news\\_update/Current\\_Affairs/ca201112/FINAL%20LLRC%20REPORT.pdf](http://www.priu.gov.lk/news_update/Current_Affairs/ca201112/FINAL%20LLRC%20REPORT.pdf); Count of Inquiry: Sri Lankan army given clean chit by military court, Meera Srinivasan, The Hindu, 10 April 2013, accessed at <http://www.thehindu.com/news/international/south-asia/sri-lankan-army-given-clean-chit-by-military-court/article4602557>.

<sup>14</sup> ece; Paranagama Commission report, Accessed at <https://www.colombotelegraph.com/wp-content/uploads/2015/10/Paranagama-Report-.pdf>

<sup>15</sup> Promoting reconciliation, accountability and human rights in Sri Lanka, UNResolution A/HRC/RES/25/1, Accessed at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/RES/25/1](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/25/1)

<sup>16</sup> Zeid requests "one time only" deferral of key report on Sri Lanka conflict , UN, 16 February 2015, Accessed at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15574#sthash.MgohKGVH.dpuf>

<sup>17</sup> ITJP Report, Freedom from Torture, Special Rapporteurs. The UNP-led United National Front for Good Governance (UNFGG) won 106 of the 225 seats in the 17 August 2015 parliament elections. Former President Mahinda Rajapaksa's United People's Freedom Alliance (UPFA), most of whose legislators are in the SLFP, won 95 seats.

<sup>18</sup> Statement by UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein via video link to the Human Rights Council, 30 September 2015, Accessed at: <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=16539&LangID=E#sthash.Igg725hd.dpuf>

<sup>19</sup> Ibid.

<sup>20</sup> Statement of 14 September 2015, Accessed at: <http://www.lankamission.org/images/pdf/Hon.%20Ministers%20Statement%20-%20%20HRC%2030th%20Session%20-%2014th%20September%202015.pdf>

<sup>21</sup> OHCHR, 16 September 2015; Report of the OHCHR Investigation on Sri Lanka (OISL), Accessed at: A/HRC/30/CRP.2, 16 September 2015

<sup>22</sup> Promoting reconciliation, accountability and human rights in Sri Lanka, UNResolution A/HRC/RES/25/1, Accessed at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/RES/25/1](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/25/1)

<sup>23</sup> Ibid.

<sup>24</sup> An Israeli built supersonic fighter jet commonly used by the Sri Lankan Air Force.

<sup>25</sup> For descriptions of the methods of torture commonly used by the Sri Lankan security forces please see ITJP's previous reports.

<sup>26</sup> For example: "I still have shrapnel in my body. I am disabled because of injuries to my leg, and nerve damage in my arm and foot."; "I still have shrapnel in body and need more screening to be done."; "I have nightmares about my treatment in detention – I wake up screaming and sweating. I still have flashbacks about the detention and what I witnessed in the war. I have numbness under my knee and shrapnel in my chest but it is too dangerous to remove according to the doctors."; "We were treated so badly (in Sri Lanka) that this (UK) feels very respectful. I need more medical care for shrapnel in my thigh."

<sup>27</sup> Those that did go to the hospital tended to be the elderly who are less likely to be suspected of being LTTE but their children report they are just given painkillers.

<sup>28</sup> For example: "I have pain in my back and heels after the torture – they beat me on the soles of my feet. I have trouble sleeping and am disturbed by nightmares."

<sup>29</sup> Report of the Secretary-General's Internal Review Panel on United Nations Action in Sri Lanka, November 2012, as above.

<sup>30</sup> A confidential memo to donors from IIGEP raised concern that a draft amendment to the Witness Protection Amendment (S28 and S29) prepared by the then Deputy Solicitor General Kottegoda, would require a representative of the Government approved of by the Attorney General present in the foreign land with the witness when the witness testifies by video link up. IIGEP was the first time witnesses from outside testified to a commission inside the country. IIGEP reported there were attempts by the Special Task Force counsel to ask questions that may have identified the location of the witnesses.

<sup>31</sup> For example: "I cannot testify even anonymously as my story is well known."

<sup>32</sup> "To testify is not safe for my family but I would submit a written anonymous statement."; "I wouldn't trust technology to testify through video link up; sometimes they may be able to find me. I can only give written statements."

<sup>33</sup> Interviewees chose multiple options so the percentages do not add up to 100%.

<sup>34</sup> For example: "Why were Tamils treated the way we were in the war?" "How and why were innocent Tamils killed?"; "The truth about why and how Tamils were killed."; "Truth for me means finding the reason and circumstances surrounding all the killing and punishing those who did it."; "The truth about all the murders and extra-judicial killings."

<sup>35</sup> For example: "Clarifying the fate of the missing. I want in particular to know what happened to two close friends who disappeared in the last phase of the war."; "The details of the missing should be released and publically announced".

<sup>36</sup> For example: "I want to know the truth about those who went missing, including ex-LTTE, those who surrendered and those who were arrested or captured by the Sri Lankan Army."; "I want the truth about those who surrendered. I personally know 15 who are missing."; "I want to know the fate of the disappeared, and what happened to my friends on the bus [who surrendered]."; "I want to know what happened to the LTTE cadres shown on the Channel 4 videos, who was responsible for what happened to them. I knew 5 of them."; "I want to know what happened to the missing. I want to know what happened to those captured by the army."; "What happened to cadres who surrendered? I want to know exactly what happened and who was involved. I want to know if the Sri Lankan Army used banned weapons."

<sup>37</sup> For example: "Finding out the identities of perpetrators."; "Truth should lead to punishment."

<sup>38</sup> For example: "I want to know the identity of the commanders who ordered the killing and abductions of civilians from 1983 until now."

<sup>39</sup> For example: "Examine the root cause, what caused Tamils to demand an independent homeland."; "The international community needs to accept that the successive Sri Lankan governments have been responsible for the genocide of Tamils."

<sup>40</sup> For example: "If there are those who want to give justice to Tamils then the only way is to provide a separate homeland."; "If we have a separate country for Tamils I would say we have got justice."; "We need Tamil Eelam. Prosecution of a few thousands won't help. We still have to live with them."

<sup>41</sup> When asked what crimes should there be no amnesty for, 56 said rape, 52 added to that no amnesty for commanding officers, as well as for crimes such as murder, torture and attacks on civilians along with war crimes and genocide. 8 specifically mentioned the latter list of crimes, but did not mention rape.

<sup>42</sup> 2 people said women should comprise 25% of the officers, while an additional 2 people said there was no need for a quota.

<sup>43</sup> Yes: 6, No: 46, Maybe/depends: 15.

<sup>44</sup> "I feel very angry, this is our traditional homeland and they erected this to humiliate us."; "It is difficult to see the SLA memorials they destroyed our identity by building those memorials."

<sup>45</sup> Ruti G. Teitel, Transitional Justice in a New Era, 26 Fordham Int'l L.J. 893 (2002).

<sup>46</sup> Available at: <http://ir.lawnet.fordham.edu/ilj/vol26/iss4/2>

<sup>47</sup> Neil J. Kritz, ed., Transitional Justice: How Emerging Democracies Reckon with Former Regimes, vol. 1: General Considerations (Washington, DC: US Institute of Peace, 1995) TRANSITIONAL JUSTICE.

<sup>48</sup> Promotion Of National Unity And Reconciliation Act 34 Of 1995 <http://www.justice.gov.za/legislation/acts/1995-034.pdf> (Accessed 22 May 2016)

<sup>49</sup> 2004 Guidance Note of the Secretary-General United Nations Approach To Transitional Justice March 2010 [https://www.un.org/ruleoflaw/files/TJ\\_Guidance\\_Note\\_March\\_2010FINAL.pdf](https://www.un.org/ruleoflaw/files/TJ_Guidance_Note_March_2010FINAL.pdf) (Accessed 22 May 2016)

<sup>50</sup> Ibid

<sup>51</sup> Report of the independent expert to update the set of principles to combat impunity, Diane Orentlicher: Addendum, " UN Doc. E/ CN.4/2005/102/Add.1, February 8, 2005

<sup>52</sup> Louise Arbour, "Economic and social justice for societies in transition", International Journal of Law and Politics, vol. 40, No. 1 (Fall 2007). See also A/HRC/12/18, paras. 3 and 59–65. Annual Report Of The United Nations High Commissioner For Human Rights And Reports Of The Office Of The High Commissioner And The Secretary-General\* Analytical Study On Human Rights And Transitional Justice <http://www.refworld.org/pdfid/4a9d1be40.pdf> (Accessed 22 May 2016)

<sup>53</sup> Guidance Note of the Secretary-General United Nations Approach To Transitional Justice March 2010 [https://www.un.org/ruleoflaw/files/TJ\\_Guidance\\_Note\\_March\\_2010FINAL.pdf](https://www.un.org/ruleoflaw/files/TJ_Guidance_Note_March_2010FINAL.pdf) (Accessed 22 May 2016)

<sup>54</sup> General Fonseka who led the Sri Lankan security forces to victory was prosecuted for corruption and misuse of powers rather than for war crimes

<sup>55</sup> Observations by the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Mr. Pablo de Greiff, on the conclusion of his recent visit to Sri Lanka, <http://www.ohchr.org/en/NewsEvents> (Accessed 29 May 2016)

<sup>56</sup> Sirisena asserted in March 2016 that it is a government victory that no-one in Sri Lanka now even knows when the HRC meets, as the government "is working confidently with the international community while protecting the dignity of the war heroes and the motherland." [http://www.defence.lk/new.asp?fname=The\\_world\\_electric\\_chair\\_removed\\_from\\_our\\_dictionaries\\_President\\_20160329\\_03](http://www.defence.lk/new.asp?fname=The_world_electric_chair_removed_from_our_dictionaries_President_20160329_03) (Accessed 22 May 2016)

<sup>57</sup> ITJP Report and A/HRC/30/CRP. Report of the OHCHR Investigation on Sri Lanka (OISL) 16 September 2015 <http://www.refworld.org/docid/55ffb1d04.html> (Accessed 22 May 2016)

<sup>58</sup> OISL Report, Ibid

<sup>59</sup> Inclusive Transitions Framework - Institute for Integrated Transitions, [www.ift-transitions.org](http://www.ift-transitions.org) July 2015 ... Seth Kaplan & Mark Freeman, <http://www.ift-transitions.org/publications/inclusive-transitions-framework/ift-inclusive-transitions-framwork.pdf> view (Accessed 06 May 2016)

<sup>60</sup> Ibid

<sup>61</sup> Paige Arthur.Identities in Transition: Developing Better Transitional Justice Initiatives in Divided Societies <https://www.ictj.org/publication/identities-transition-developing-better-transitional-justice-initiatives-divided> (Accessed 22 May 2016)

<sup>62</sup> Ibid

<sup>63</sup> Stop Torture- A Still Unfinished War: Sri Lanka's Survivors of Torture and Sexual Violence 2009-2015, [www.itjpsl.com/wp-content/uploads/2015/07/Stop-Torture-Report.pdf](http://www.itjpsl.com/wp-content/uploads/2015/07/Stop-Torture-Report.pdf)

<sup>64</sup> ITJP Consultations

<sup>65</sup> ITJP consultations

<sup>66</sup> UN Commission on Human Rights, Human Rights Resolution 2005/70: Human Rights and Transitional Justice, 20 April 2005, E/CN.4/RES/2005/70, available at: <http://www.refworld.org/docid/45377c836.html> [accessed 22 May 2016],

<sup>67</sup> Ibid

<sup>68</sup> Ibid.

<sup>69</sup> Ibid.

<sup>70</sup> Ibid.

<sup>71</sup> UN Human Rights Council, Report of the OHCHR Investigation on Sri Lanka (OISL), 16 September 2015, A/HRC/30/CRP.2, available at: <http://www.refworld.org/docid/55ffb1d04.html> [accessed 22 May 2016]

<sup>72</sup> United Nations General Assembly (2013) Report of the Special Rapporteur on Extreme Poverty and Human Rights, Magdalena Sepúlveda Carmona. Available online at <http://www.ohchr.org/EN/Issues/Poverty/Pages/ParticipationOfPersonsLivingInPoverty.aspx>. (Accessed 22 May 2016)

<sup>73</sup> Observations by the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Mr. Pablo de Greiff, on the conclusion of his recent visit to Sri Lanka Geneva/ Colombo, 11 April 2015 <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=15820&LangID=E#sthash.1AcPXcYh.dpuf> (Accessed 22 May 2016)

<sup>74</sup> Ibid

<sup>75</sup> Observations by the Special Rapporteur on the conclusion of his second advisory visit to Sri Lanka (26 January to 1 February 2016) <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=17029&LangID=E#sthash.UBUuoSN4.dpuf> (Accessed 22 May 2016)

<sup>76</sup> Ibid)

<sup>77</sup> Updated Set of Principles for the Protection and Promotion off Human Rights through Action to Combat Impunity, E/ CN.4/2005/102/Add.1. In 2006 and 2007, the Council welcomed two studies prepared by the OHCHR on the Right to Truth as a legal standard and instrument (E/CN.4/2006/91 and A/ HRC/5/7, respectively). In 2009, a more specific investigation followed on the role of archives and witness protection in realizing the Right to Truth (A/HRC/12/19).

<sup>78</sup> UN Human Rights Council, Report of the OHCHR Investigation on Sri Lanka (OISL), 16 September 2015, A/HRC/30/CRP.2, available at: <http://www.refworld.org/docid/55ffb1d04.html> [accessed 28 May 2016]

<sup>79</sup> Ibid

<sup>80</sup> Some interviewees did not specify how many relatives had been killed.

<sup>81</sup> UN Secretary-General (UNSG), Report of the Secretary General's Panel of Experts on Accountability in Sri Lanka, 31 March 2011, available at: <http://www.refworld.org/docid/4db7b23e2.html> [accessed 28 May 2016]; [tp://www.un.org/News/dh/infocus/Sri\\_Lanka/The\\_Internal\\_Review\\_Panel\\_report\\_on\\_Sri\\_Lanka.pdf](http://www.un.org/News/dh/infocus/Sri_Lanka/The_Internal_Review_Panel_report_on_Sri_Lanka.pdf)

<sup>82</sup> Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff, A/ HRC/27/56

<sup>83</sup> Human Rights Committee general comment No. 31, para. 18

<sup>84</sup> UN Human Rights Council, Report of the OHCHR Investigation on Sri Lanka (OISL), 16 September 2015, A/HRC/30/CRP.2, available at: <http://www.refworld.org/docid/55ffb1d04.html> [accessed 28 May 2016]

<sup>85</sup> HRC 30th Session Joint Resolution <http://srilankabrief.org/2015/09/consensus-reached-joint-resolution-on-sri-lanka-tabled-at-HRC-30-last-minute/>

<sup>86</sup> Observations by the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Mr. Pablo de Greiff, on the conclusion of his recent visit to Sri Lanka - See more at <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=15820&LangID=E#sthash.Jh7ak4Yz.dpuf>

<sup>87</sup> Ibid

<sup>88</sup> Report of the Special Rapporteur on the promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence,Pablo de Greiff A/ HRC/27/56. <http://www.refworld.org/pdfid/543fbfe64.pdf>

<sup>89</sup> Sri Lanka: Penal Code [Sri Lanka], Chapter 19, 1 January 1885, available at: <http://www.refworld.org/docid/4c03e2af2.html> [accessed 6 June 2016]

<sup>90</sup> UN Joint Resolution speaks to judicial mechanism. High Commissioner uses the terminology of Hybrid Special Court, Foreign Minister speech to Human Rights Council speaks to Judicial Mechanism with a Special Prosecutor – STATEMENT by Hon. Mangala Samaraweera, M.P.Minister of Foreign Affairs of Sri Lanka, <http://www.lankamission.org/images/pdf/Hon.%20Ministers%20Statement%20-%2020HRC%2030th%20Session%20-%2014th%20September%202015.pdf>

<sup>91</sup> Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff A/HRC/27/56, paras 107 and 117. <http://www.refworld.org/pdfid/543fbfe64.pdf>

<sup>92</sup> National Law Conference in the sea side southern resort of Wadduwa, <http://www.dnaindia.com/world/report-sri-lankan-president-sirisena-rules-out-foreign-judges-in-lanka-war-crimes-probe-2191325> (accessed 22 May 2016)

<sup>93</sup> When asked for what crimes there should be no amnesty, 56 interviewees said rape; 52 specified that this meant no amnesty for commanding officers, as well as for crimes such as murder, torture and attacks on civilians along with war crimes and genocide; 8 specifically mentioned the latter list of crimes, but did not mention rape.

<sup>94</sup> ICRC, Customary IHL Database, [https://www.icrc.org/customary-ihl/eng/docs/v1\\_cha-chapter32\\_rule98](https://www.icrc.org/customary-ihl/eng/docs/v1_cha-chapter32_rule98) (accessed 28 May 2016)

<sup>95</sup> This uncertainty is in itself adds an element of vulnerability and threat. If alive, they may either be secretly detained or separated from their relatives by security forces

<sup>96</sup> ICRC Customary Law Database, <https://www.icrc.org/en/war-and-law/protected-persons/missing-persons>, (accessed 28 May 2016).

<sup>97</sup> General Observation on article 4 of the Declaration for the Protection of All Persons against Enforced Disappearances; Comment on Enforced Disappearances by Working Group, [http://www.ohchr.org/Documents/Issues/Disappearances/disappearance\\_gc.pdf](http://www.ohchr.org/Documents/Issues/Disappearances/disappearance_gc.pdf)

<sup>98</sup> Report of the Working Group on Enforced or Involuntary Disappearances, 1995. document E/CN.4/1996/38

<sup>99</sup> UN Commission on Human Rights, Question of enforced disappearances., 19 April 1996, E/CN.4/RES/1996/30, available at: <http://www.refworld.org/docid/3b00f24830.html> [accessed 28 May 2016]

<sup>100</sup> Ibid

<sup>101</sup> Some interviewees did not specify how many relatives had been killed.

<sup>102</sup> UN Secretary-General (UNSG), Report of the Secretary General's Panel of Experts on Accountability in Sri Lanka, 31 March 2011, available at: <http://www.refworld.org/docid/4db7b23e2.html> [accessed 28 May 2016]; [http://www.un.org/News/dh/infocus/Sri\\_Lanka/The\\_Internal\\_Review\\_Panel\\_report\\_on\\_Sri\\_Lanka.pdf](http://www.un.org/News/dh/infocus/Sri_Lanka/The_Internal_Review_Panel_report_on_Sri_Lanka.pdf)

<sup>103</sup> Preliminary observations of the Working Group on Enforced or Involuntary Disappearances at the conclusion of its visit to Sri Lanka (9-18 November 2015) Report

<sup>104</sup> Ibid

<sup>105</sup> Statement made by Foreign Minister to Human Rights Council September 2015, <http://www.lankamission.org/images/pdf/Hon.%20Ministers%20Statement%20-%20%20HRC%2030th%20Session%20-%2014th%20September%202015.pdf>

<sup>106</sup> Preliminary observations of the Working Group on Enforced or Involuntary Disappearances at the conclusion of its visit to Sri Lanka (9-18 November 2015)

<sup>107</sup> OMP Pamphlet –Tracing Inquiry usually deals with missing persons

<sup>108</sup> Transitional Justice Guidance Note [https://www.un.org/ruleoflaw/files/TJ\\_Guidance\\_Note\\_March\\_2010FINAL.pdf](https://www.un.org/ruleoflaw/files/TJ_Guidance_Note_March_2010FINAL.pdf). The General Assembly has reaffirmed the right of victims to reparations in the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law See A/ RES/60/147

<sup>109</sup> Nelson Mandela on accepting the report of the Truth commission from Archbishop Tutu

<sup>110</sup> ICTJ<https://www.ictj.org/sites/default/files/ICTJ-Report-Apologies-2015.pdf>

<sup>111</sup> Updated Principles To Combat Impunity, E/CN.4/2005/102 18 February 2005

<sup>112</sup> A/RES/60/147. (21 March 2006): Resolution adopted by the General Assembly on 16 December 2005 [on the report of the Third Committee (A/60/509/Add.1)] 60/147. Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law

<sup>113</sup> This right has been affirmed by Updated Principles to Combat Impunity

<sup>114</sup> Sri Lanka shift on civil war anniversary, 19 May 2015, BBC. <http://www.bbc.com/news/world-asia-32805544> (Accessed 21 May 2016)

<sup>115</sup> "To testify is not safe for my family but I would submit a written anonymous statement."

<sup>116</sup> "I cannot testify even anonymously as my story is well known."

<sup>117</sup> A-Dec Inc. v Dentech Products Ltd., 31 BCLR (2d) 320 (1988; BCSC), Duhaime, Lloyd, Hague Service Convention - Treaty Facilitates Cross-Border Service of Court Documents

<sup>118</sup> See. Part 1

<sup>119</sup> <http://www.sundaytimes.lk/160529/columns/alleged-war-crimes-prn-announces-probe-will-be-domestic-no-foreign-judges-195284.html>

<sup>120</sup> Ibid

<sup>121</sup> The International Covenant on the Protection of All Persons from Enforced Disappearances has recently been ratified by the Government of Sri Lanka

<sup>122</sup> UN Insider

<sup>123</sup> United Nations, Taking Action on Sexual Exploitation and Abuse by Peacekeepers, 17 December 2016, available at: <http://www.refworld.org/docid/568d16eb4.html> [accessed 1 June 2016], UN Security Council, Security Council resolution 2272 (2016) [on sexual exploitation and abuse by United Nations peacekeepers] , 11 March 2016, S/RES/2272 (2016), available at: <http://www.refworld.org/docid/56e915484.html> [accessed 1 June 2016]

<sup>124</sup> Under the IIGEP process, concerns were raised by the Commissioners on government authorities insisting on having a representative of the Attorney General's office in the room with the witness.

<sup>125</sup> See OISL Report

<sup>126</sup> Ibid

<sup>127</sup> UN General Assembly, International Convention for the Protection of All Persons from Enforced Disappearance, 20 December 2006, available at: <http://www.refworld.org/docid/47fdfeb0.html> [accessed 1 June 2016]

<sup>128</sup> Statement by Mangala Samaraweera, MP Minister of Foreign Affairs of Sri Lanka General Debate of the 30th Session of the UN Human Rights Council – Geneva, 14 September 2015 [https://docs.google.com/document/d/1X\\_2LgPy531M8dJlUqkX\\_Nlm2wJXWsYgB0alN7PfU5ZeE/edit](https://docs.google.com/document/d/1X_2LgPy531M8dJlUqkX_Nlm2wJXWsYgB0alN7PfU5ZeE/edit) (accessed 01 June 2016)

This report presents the results of an external victim consultation exercise conducted by ITJP. 75 Sri Lankan Tamils were interviewed in the UK, France, Switzerland and Norway. They included recent war, torture and sexual violence survivors. For more information on the work of ITJP in collecting evidence see:

[itjpsl.com](http://itjpsl.com)

[stop-torture.com](http://stop-torture.com)