

Guide to the Recommendations from the Consultation Task Force (CTF) on Reconciliation Mechanisms

**Centre for Policy
Alternatives**

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CENTRE FOR POLICY ALTERNATIVES

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The Centre for Policy Alternatives (CPA) is an independent, non-partisan organisation that focuses primarily on issues of governance and conflict resolution. Formed in 1996 in the firm belief that the vital contribution of civil society to the public policy debate is in need of strengthening, CPA is committed to programmes of research and advocacy through which public policy is critiqued, alternatives identified and disseminated.

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Purpose of this Guide

The observations and recommendations of the Consultation Task Force on Reconciliation Mechanisms (CTF) Report are informed by the consultation process and relate to the context in which reconciliation is being pursued and the proposed mechanisms to achieve it. This guide attempts to capture key recommendations of the CTF Report and is not an exhaustive resource. The entire report can be accessed [here](#).

Establishment of the Consultation Task Force

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

The Report

- The CTF held public consultations across the country between June and September in 2016.
- The CTF received a total of 7,306 submissions of which 4,872 were made at public meetings, 1386 were at focus group discussions and 1048 were sent to the CTF as written submissions.
- The final report was handed over to the Government on 3rd January 2017

RECOMMENDATIONS

The observations and recommendations are informed by the consultation process and relate to the context in which reconciliation is being pursued and the proposed mechanisms to achieve it. The CTF recommendations are grouped accordingly.

A. General

- Effective and unequivocal action must be taken by the Government to prevent the spread of ethnic division and religious intolerance and to hold to account under the due process of law those responsible, without fear or favour in respect of any community however defined.
- Meaningful steps should be taken through consultation with all stakeholders, towards a secular State and with equal respect accorded to the multiple religions practiced in the country
- CTF recommends that there should be constitutional recognition and the provision of the right to transitional justice defined in terms of truth, justice and accountability, reparations and guarantees of non-recurrence.
- Everyone who has suffered harm or loss in such conflicts must have the right to an effective remedy, including: effective accountability, inclusive of criminal justice; and adequate, effective and prompt reparation and rehabilitation.
- The State must take all reasonable measures to ensure that such conflicts and human rights violations never occur again, and in particular steps must be taken to reform institutions that caused or failed to prevent human rights violations. The culture of impunity must be comprehensively reversed.
- Agreement on a political and a constitutional settlement of ethnic conflict based on effective and meaningful power sharing and its full implementation is critical.
- Address as a priority the shortcomings in bi-lingual proficiency throughout the machinery of the State as it was identified as a major impediment to reconciliation.
- Confidence building measures ranging from the expedited return of land held by the military, the release of a list of detainees and detention centres, the repeal of the Prevention of Terrorism Act (PTA) and release of persons held under the PTA without charges to be undertaken without delay.
- The Government must ensure that the Police, security forces and intelligence agencies follow the Presidential Directives on Arrest and Detention reissued in June 2016.
- Legislative measures to be taken without delay to criminalise enforced disappearances in line with the definition of the crime under the International Convention for the Protection of All Persons from Enforced Disappearances.
- International crimes such as war crimes and crimes against humanity must be criminalized and incorporated into Sri Lankan law immediately through legislation.
- The Government must draw up a road map laying out the establishment and functioning of the mechanisms for transitional justice and reconciliation. It should streamline the number of entities involved as well as their mandates; clarify their powers and functions,

relationships to each other as well as to the mechanisms to be established for transitional justice and reconciliation.

- The President, and Prime Minister, engaging all stakeholders in an island-wide outreach programme must champion the roadmap on transitional justice and take overall responsibility for it.
- To ensure the overall coherence of the mechanisms and reconciliation process, the policy and operational frameworks for all the mechanisms should be prioritised at the outset, swiftly and made public and operational.
- The State must take responsibility to ensure adequate funding of the mechanisms in a timely manner and as such, appropriate budgetary allocations must be made.
- In order to avoid distortion, inappropriate and harmful terminology, due attention must be paid to the use of appropriate language in the naming and operation of the mechanism and other measures for reconciliation and transitional justice.
- The State must ensure a more transparent and inclusive law making process, particularly with regard to public security and counter-terrorism legislation. It is imperative that Sri Lanka's legal and policy framework conforms to the fundamental rights guaranteed in the Constitution and international human rights obligations.

i) Demilitarisation

- It is imperative that all ranks of the military be kept fully informed of the transitional justice process and the different mechanisms, with a specific focus on the accountability mechanism. There must be a clear recognition and understanding of the role and responsibilities of the military in a post-conflict, functioning democracy by the State, the military and civilian authorities.
- The Government must take steps to ensure demilitarisation and introduce security sector reform. In particular, the military should relinquish its roles in activities that should be undertaken by the civilian administration and Police and from economic activities.
- A process of phased demobilisation of security forces is needed and accompanied by rehabilitation to reintegrate into society and civilian life.
- With regards to private and public land currently held by the military that is claimed by civilians, there needs to be a comprehensive mapping process with public involvement and a detailed plan for release of land. An annual review should be conducted to re-evaluate the release process.

ii) Police and Judicial Reform

- A need to review and reform the structures and processes of justice and law and order. Transitional justice principles framed in terms of the right to truth, justice and accountability, the right to reparation and to guarantees of non-recurrence should be integrated into them.

- Effective remedy and accountability through ordinary courts must involve systematic reform and structural change to address broad issues which impede access to justice and accountability
- In the case of human rights violations that do not meet the threshold of the Special Court's jurisdiction and/or cases that for reasons of prosecutorial policy are not prosecuted by the Special Court, measures must be in place to ensure prosecution within the ordinary justice system.

Key Recommendations

- a. Increase cadre in the Attorney General's Department, the Police (including forensics) and Judicial Medical Officers (JMOs) to address existing gaps, delays and backlog of cases and complaints.
- b. Strengthen capacity and competence of the Judiciary and above institutions.
- c. Measures to be taken to address current practice of Courts including the higher judiciary, which impeded justice, including systemic delays in the hearing and management of cases.
- d. The State must take measures to address the pressing issue of conflict of interest particularly in the Attorney General's Department and the Police. In the case of the Police, the CTF recommends a separate unit to investigate allegations against the Police given the current conflict of interest with the special investigations units.
- e. To increase public confidence, transparency and accountability, key actors involved in the investigative, prosecutorial and judicial processes must formulate and make public their policies and procedures on the treatment of cases involving human rights violations, international crimes and sexual violence.
- f. The CTF recommends developing a national policy on victim centeredness, which will cover procedural and structural aspects at every step of the justice system, while ensuring universally recognized rights of the accused.
- g. The CTF recommends that an effective public complaints and monitoring system of all structures involved in justice delivery must be put in place in order that inaction, delay and other conduct by the State that impedes access to justice is identified and addressed as a matter of priority.
- h. Accountability of errant State officers must be transparent and be proportionate to the alleged violation.
- i. The CTF recommends reviewing current efforts at community policing with a view to expanding such services ensuring it does not reinforce existing problems in the community.

iii) Process of Lustration

- Implement a process of lustration (removing human rights violators from positions of responsibility and preventing appointment or reappointment) to increase confidence in public institutions and the overall reconciliation process.

- A vetting process be instituted in order to ensure perpetrators of mass atrocity and sexual and gender based violence are not allowed to come back to power and are barred from running for political office.
- A careful vetting process of staff of the four mechanisms should be ensured.

iv) Post-War Development, Displacement and Land

- The destruction to both regional and local economy in the conflict affected areas of the North and East and bordering regions must be factored into development programmes in order to ensure that regional disparities are not exacerbated.
- The Government must commit to finding durable solutions for Internally Displaced Persons (IDPs) and refugees.
- The Government must undertake measures to address conflict-related land issues in the North and East and border areas, including destruction/damage, lack of documentation, secondary occupation by State agencies or other civilians, and restrictions on common resources such as fishing water and irrigation schemes.
- Specific measures should be undertaken, such as mobile units to provide missing documents, and the establishment of district level mechanisms bringing together community leaders, district level officials and politicians to address complex inter and intra-ethnic disputes as well as those between civilians and state agencies.
- As per the Constitution, the National Land Commission should be appointed.

v) Women

The State must take due cognizance of this burden placed on women throughout the country, and especially on those affected by conflict.

Key Recommendations

- a. Women's economic, social and political, legal and cultural rights irrespective of any constraints on the basis of custom, caste or any other consideration should be safeguarded and ensured in the Constitution, law, policy and practice.
- b. Establishment of the National Commission on Women without delay.
- c. Ensure women's representation in key decision-making positions in all mechanisms as well as in everyday operational positions.
- d. Take into account all measures required for affected women to access and engage with the proposed four mechanisms.
- e. Gender sensitivity training at all levels of society including in educational institutions and in training for the public services.
- f. Recognition of the harassment of women as a punishable crime within the establishment code of the public service, and the institution of a complaints mechanism for such harassment.
- g. Ensure that the private sector also takes the above into account.

vi) Children and Youth

- Youth should be encouraged to participate and opportunities provided for them to take leadership roles in public affairs. Opportunities and facilities should be created for them in the arts, media, modern technology, sports and other social endeavours to express themselves and find meaning, particularly in mixed ethnic and gender settings.
- Educational curricula and spaces must be designed to promote a more inclusive and pluralist society.
- Special attention and services should be provided for war-affected youth such as young refugees, internally displaced persons, former child soldiers and young single mothers.

vii) Civil Society

- The media, the business community, religious actors, professional organizations and all civil society groups as well as political parties should support the State initiatives on transitional justice and reconciliation. In addition, they should take initiative of their own to promote the transitional justice and reconciliation.
- The indispensable role of civil society in transitional justice process needs to be recognised. The legal framework enabling civil society organizations to fulfil this role needs to be strengthened, and the space for them to do so provided and protected.
- Imperative that civil society and policy makers invest energy at the district community level to strengthen existing forums or networks for this and in establishing new ones to address issues of coexistence and tensions, in parallel to national efforts at transitional justice.
- Consultations should be continuous and integral to the transitional justice process.

viii) Archiving

- Appropriate measures must be taken to ensure the archiving and protection of data produced by the consultation process and the operations of the reconciliation mechanisms.
- The Government should publish, widely disseminate and make easily accessible to the public a compilation of the submissions made to the CTF.

B. Cross-cutting Recommendations on the Mechanisms

- Legislation setting up the mechanisms should be introduced without delay
- From the very outset of the establishment of the reconciliation mechanisms, urgent steps must be taken to put in place a protection system to guarantee the security of those who participated in the consultation process as well as those who will access the mechanisms once established.
- Establish a Special Victim and Witness Protection Unit that will include Police personnel and which will be overseen by a board that includes representation from the Human Rights Commission and the mechanisms once operational. The Unit should be independent from political and other interference, have the necessary powers for training, for enforcement, for rapid response and continuing protection of affected persons and witnesses throughout their engagement with the mechanisms and beyond. The Unit should be represented in each of the mechanisms and report to the President.
- There should be a monitoring body appointed by the President comprised of representatives of affected families, human rights defenders, civil society activists and the international community, and should be mandated to report to the President. This body must follow-up on the security and protection of those who were subjected to surveillance, questioning and intimidation, detention and torture during the consultation process.
- The mechanisms must ensure tri-lingual and sign language capacity at headquarters and regional sub-offices, as well as in outreach activities.
- The representation of stakeholders on the mechanisms, including families of those affected must be ensured.
- CTF recommends both the participation of both international and national personnel on the four mechanisms ranging from the provision of advice and expertise to active membership of the mechanisms including as judges and prosecutors, as spelt out in the UN Human Rights Council Resolution of October 2015, co-sponsored by the Government of Sri Lanka.
- National representation on the mechanisms should be by competent and experienced persons of integrity and independence, drawn from the main ethnic communities in Sri Lanka.
- There must be clear criteria and justifications for the positions that internationals will occupy and for the choice of internationals – especially their independence, integrity, training and experience must be ensured.
- Internationals should be phased out once trust and confidence in exclusively national mechanisms, national capabilities and competence have been built up.
- A careful vetting process of staff of the four mechanisms should be ensured.
- Measures need to be put in place at the outset to prevent sexual exploitation, bribery, breaches of confidence and intimidation of those accessing the mechanisms by staff of the mechanisms.

- Mechanisms must have balanced gender representation at all levels of operation and be sensitive to the gendered needs of those who access/utilise them.
- The staff of the mechanisms must
 - a) be sensitive to the needs of all communities and individuals that access the mechanisms, including minorities, indigenous peoples, the marginalised, depressed castes, and LGBTQI community, ensuring in particular that stigma and discrimination do not deter or impeded their engagement with them;
 - b) take into consideration the special needs of those who are differently abled and the mechanisms should be designed and located to ensure easy access to all.
- An independent body must be established to advise, design and coordinate the services within the mechanisms, to set up the proposed psychosocial units within each mechanism. This body could work closely with the Psychosocial Task Force of the Office of National Unity and Reconciliation.
- Psychosocial services must be made available to those affected at the community level before, during and after their engagement with the transitional justice mechanisms.
- A Victim's Trust Fund must be established so as to ensure sufficient funds to address various needs of affected persons.
- Trustees of the Fund should be appointed by the President on the recommendations of the Constitutional Council.
- Each mechanism should have an Outreach and Information Unit to liaise with the general public and those directly affected on the work of the mechanism. Each mechanism should have a clear public information and dissemination strategy and its own website.
- Efforts must be made to ensure outreach to non-resident Sri Lankans abroad and their engagement with the mechanism.

C. Specific Mechanisms

1. Office on Missing Persons (OMP) and the Certificate of Absence (CoA)

- The name of the mechanism must clearly reflect the enforced and involuntary nature of disappearances.
- From the outset, the OMP should establish regional offices in central locations and later in district offices to ensure accessibility for families in the districts.
- Appropriately skilled members of families of the disappeared should be employed as staff of the Office including in the monitoring mechanism of its operation for specific activities as such exhumation of mass graves and for the vetting of forms to be used by the Office.
- There should be international technical involvement in the OMP including foreign persons specifically with regard to forensics.

- The OMP should make public its rules of procedure and the criteria it will adopt in the exercise of its direction over the sharing of information with prosecutorial authorities.
- The OMP should clearly spell out its obligations under the impending Right to Information regime.
- Excavations and exhumations must take place bearing in mind not only the identification of skeletal remains, but also of the possibility of prosecutions. The procedures must pay heed to sensitivities and psychological needs of families and communities.
- The role of the Judicial Mechanism, the Office of a Special Counsel and the OMP in investigations, has to be clarified and made public.
- All available information on disappearances from national bodies and past commissions must be made available to the OMP.
- The OMP must periodically update families concerned of progress in respect of the case/s of disappearances reported by them.
- Families accessing the OMP must have access to witness and victim protection.
- Terminology for the Certificate of Absence (CoA), particularly the word 'absence' must be sensitive and appropriate in the Sinhala and Tamil languages, reflecting the nature of disappearances and absence rather than death. An amendment to the Registration of Deaths (Temporary Provisions) Act will be required.
- Given the time factor to verify if a disappeared person is alive or not, the current validity period of 2 years for a CoA is inadequate. The Registration of Deaths (Temporary Provisions) Act be amended to extend the validity of the CoA to 10 years, in order to avoid burdening families with having to renew the certificate every two years.

2. Office of Reparation

- Acceptance of reparations should not in any way preclude or lead to the forfeiting of the right to access truth and justice via the other transitional justice mechanisms and the regular judicial system.
- A mapping of past and on-going efforts at compensation and reparation, including of existing institutions and programmes that have a bearing on reparations, and of existing criteria for beneficiary selection of social welfare and development projects must be undertaken.
- A clear policy on reparations that recognises the right to reparations and a clear set of normative and operational guidelines to give effect to this, should be set out and made public.
- The right to reparations should be seen as distinct from and in addition to the right to development.
- The clear and transparent guidelines for the provision of reparations, particularly the form and quantum of awards, must take into account the following:
 - Eligibility for reparations must be based on a broad definition of 'victim' and 'victim family' as to recognise the diversity of relationships.

- Prioritisation of reparations should be according to the level of vulnerability and need.
- Reparations should be proportional to the loss and trauma suffered.
- Primary consideration to be paid to the type of harm for which reparation is sought.
- Loss and trauma suffered as a result of structural violence and/or marginalization in addition to conflict-related loss must be considered.
- Compensation, based not only on original loss but on the current situation of the claimant and any other specific vulnerabilities.
- Interim reparations, primarily material, should be considered so people can meet immediate needs.
- There should be a one-off payment to families for family members killed in conflicts. The payment for the loss of life of civilians should be made commensurate to that for armed forces and public officials.
- There should be one-off reparation in kind, in the form of scholarships for the children and employment for the vulnerable family members of those who have been killed or disappeared.
- Efforts should be made to ensure the recovery and return of items, specifically gold, jewellery, monies and other movable properties taken from individuals during armed conflicts.
- The State should recognise and respect the right of affected persons to mourn and commemorate the death or disappearance of loved ones.
- Any State process to create a memorial should not override existing memorials or rituals performed by the families and communities who are directly affected.
- The CTF recommends that the sanctity of all sites, where those who perished or disappeared in armed conflict are buried, interred or symbolically remembered is respected and families be granted the ownership of individual plots to mourn and practice whatever cultural and religious rites or ceremonies, they think appropriate. Any buildings or structures built subsequently on these sites should be removed.
- A memorial day for victims of all armed conflicts in Sri Lanka should be declared and the sensitivities of all affected persons respected in commemoration activities by the State on that day.
- There should be official acknowledgement by the State and pledges by it to ensure non-recurrence of the losses and suffering endured by the many communities, including but not limited to the persons affected in 1983 and of Aluthgama 2014, for instance. The suffering endured in the final stage of the war, the Southern insurrections, the eviction of Northern Muslims, recognition of structural violence and/or marginalisation faced by certain groups such as the Malaiyaha community, must also be considered in this regard.

3. Truth, Justice, Reconciliation and Non-Recurrence Commission (TJRNRC)

- Imperative that the purpose and scope of the mechanism, types of violations it should address and the key tasks to be performed by it be carefully formulated. Given the TJRNRC is part of a larger reconciliation process promised by the Government its relationship to the other mechanisms should be spelt out.
- There must be clarity on whether the TJRNRC will take up individual or emblematic cases that speak to collective experiences and suffering.
- The purpose of the TJRNRC must be to establish the truth of what happened in the conflicts in Sri Lanka including discriminatory practices, and official acknowledgement of the truth once established. Official acknowledgement must include legislative measures where appropriate.
- Truth in this context entails responsibility, but establishing criminal responsibility, i.e. the determination of who is a perpetrator, is best suited to a judicial mechanism or the existing judicial system. The TJRNRC is not an appropriate mechanism to ascertain and assign criminal responsibility and therefore should not be empowered to grant amnesties.
- The TJRNRC should conduct investigations in order to find the truth and share information relating to criminal conduct with a prosecutorial body.
- The TJRNRC should have a fixed term at the end of which, it should present a report to Parliament, which will be simultaneously released to the public. They should publish annual reports with clear actionable recommendations. These too should be presented to Parliament and simultaneously released to the public.
- The TJRNRC should consider particular themes, issues and/or subjects for investigation and report.
- It is important that a review of these recommendations be undertaken to highlight what actions can and should be undertaken in a timely manner.
- The TJRNRC should devise proactive ways for truth seeking as well as make specific and actionable recommendations in respect of it.
- TJRNRC's reports detailing historical incidents must inform contemporary history and school curricula. Historical confirmation official acknowledgement and acceptance of responsibility for human rights violations, accountability as well as the individual and collective understanding of the consequences of these, are central to reconciliation.
- It is imperative that the TJRNRC has a strong investigation unit made up of researchers with relevant skills including in the law, history, anthropology, forensics, criminology, psychology and sociology. Additionally, the TJRNRC should have regional investigative offices employing and involving local expertise, which will also conduct research.
- Prior to the public sitting of the TJRNRC and island-wide awareness raising strategy and outreach programme must be devised. There must be full and substantive coverage of all sittings and hearings of the TJRNRC. Social media must be mobilized in all three languages. A media or communications unit for the TJRNRC must be

- established and adequately funded for the purpose of communicating with stakeholders and the wider public.
- The findings of the TJRNRC must be widely disseminated and an easily accessible, simple language version of these findings must be shared with the general public and affected communities that appear before the Commission.
- Adequate attention should be taken to ensure the security of all participants and to create safe spaces for participation.

4. Judicial Mechanism (Special Court and Office of Special Counsel)

- The selection criteria for appointment of national and International judges to be set out by the Constitutional Council in consultation with professional and civil society organisations, and in the case of internationals with the Office of the UN High Commissioner for Human Rights. In both instances, appointments should be made by the President and the criteria should be made public.
- The Court shall ensure that there will be a majority of national judges and at least one international judge on every bench.
- Every effort should be made to ensure gender representation and that all ethnic communities in respect of judges and prosecution on both the Court and the Office of the Special Counsel, respectively.
- The Special Court must be equipped in terms of procedure, staff and composition to address the specific needs of affected persons and witness particularly women and children. It is important that affected persons are not re-traumatised during the Court process.
- Key international standards pertaining to courts hearing war crimes cases should be included by explicit reference in the setting up of the proposed hybrid Court.
- The Special Court should be mandated to try international crimes, including war crimes and crimes against humanity and pay particular attention to crimes of sexual violence and crimes against children. The CTF recommends that there be no temporal limitations to the jurisdiction of the Special Court.
- The Office of the Special Counsel should be established without delay. Its powers, functions and relationship to the other mechanisms must be clearly established and made public.
- In devising prosecutorial policy, the choices of Special Counsel's office must be designed to reflect the broad range of international crimes alleged to have been committed in Sri Lanka, the diversity of persons affected by these crimes and the several categories of perpetrators.
- In the event that the Special Counsel is unable for reasons of practicality, to prosecute all individual cases of violations, the prosecutorial policy must ensure that at a minimum, those bearing the greatest responsibility for international crimes are held accountable.
- The Special Counsel should have its own investigating unit. The staff should have international personnel.
- Amnesties for international crimes such as war crimes and crimes against humanity, as well as gross human rights abuses including torture, enforced disappearances and rape are illegal and unacceptable.
- Affected persons should be capable of being represented in the Judicial Mechanism at every stage, with or without the services of a counsel.

- The provision of legal advice and representation to the defence must be safeguarded.

D. Other Recommendations

- The Inter-Religious Advisory Council should include representations from all religious groups, including the multiple sects in each of the major faiths in order for this mechanism to be effective and inclusive. The terms of reference laying out the role of the Council should be made public. The CTF recommends that the Council should be tasked with providing early warnings and mediation of potential religious tension and violence and the monitoring of incidents of religious violence, without prejudice to the rights of those affected in such incidents of seeking redress through the established procedures of law and order and justice.
- The situation of ex-combatants associated with the former Tamil militant groups, including but not limited to the LTTE, TMVP, EPDP and others needs to be examined, with the aim of drawing up a reintegration programme that will address the existing security, economic, physical, psychological and social challenges that act as obstacles to the reintegration.
- Vulnerable groups among this larger group identified as former combatants need specific attention. These include former child, female and disabled ex-combatants.
- The State needs to provide redress for communities who have been systematically denied land rights. This includes Malaiyaha Tamils who have not been included in state land distribution schemes, depressed castes and also Adivassis whose historical collective rights of access to their traditional forests and other protected areas have been denied without redress.
- The CTF recommends the establishment of a Minority Rights Commission in consultation with stakeholders, to look into these issues affecting minority communities.