



**Submission to Sri Lanka's Consultation Task
Force on Reconciliation Mechanisms**

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Introduction

The Public Interest Advocacy Centre

The Public Interest Advocacy Centre (PIAC) is an independent, non-profit law and policy organisation that works for a fair, just and democratic society, empowering citizens, consumers and communities by taking strategic action on public interest issues.

PIAC identifies public interest issues and, where possible and appropriate, works co-operatively with other organisations to advocate for individuals and groups affected. Established in July 1982 as an initiative of the (then) Law Foundation of New South Wales (NSW), with support from the NSW Legal Aid Commission, PIAC was the first, and remains the only broadly based public interest legal centre in Australia.

Although PIAC's work is primarily focussed on law and policy issues in Australia, it is also concerned with social justice and human rights issues affecting the international community. PIAC's International Crimes Evidence Project (ICEP – see below) is maintained with financial support from a range of private donors, including the Oak Foundation, Bertha Foundation, Open Society Foundations and the Sigrid Rausing Trust, as well as one foreign government.

PIAC's work on the Sri Lankan civil war

In 2012, PIAC established ICEP to provide key decision-makers with independent and credible analysis of alleged violations of international humanitarian law (IHL) and international human rights law committed in the final stages of the Sri Lankan civil war (focussing on the period from September 2008 to May 2009). PIAC conducts its work on Sri Lanka independently, without any affiliation or favour shown to anyone – including any of the participants in the civil war.

ICEP's mandate is to gather the best available evidentiary material of alleged violations of international law committed by all parties to the civil war. To conduct its investigation, ICEP relies primarily on two sources of information: open-source material and confidential material provided to ICEP by victims, witnesses and others.

Information provided by victims and witnesses has been key to ICEP's investigation. To date, ICEP has taken or received over 50 witness statements about violations allegedly committed during the final stages of the civil war. The majority of these statements are from victims and witnesses now residing outside Sri Lanka, particularly in Australia.

ICEP's February 2014 report, *Island of impunity? Investigation into international crimes in the final stages of the Sri Lankan Civil War*, relied on 31 such witness statements. On the basis of that and other evidentiary material, the report found that it was reasonable to conclude that members of the Sri Lankan Security Forces and the Liberation Tigers of Tamil Eelam (LTTE) were responsible for serious violations of IHL and international human rights law. The report further found that reasonable grounds existed to suspect that many of the violations amounted to war crimes and crimes against humanity.

Having called for an independent and comprehensive international investigation into the alleged violations of international law committed during the civil war, PIAC welcomed the March 2014

decision of the United Nations Human Rights Council (UNHRC) to request the UN High Commissioner for Human Rights to undertake an investigation into the conflict. The results of that investigation – to which PIAC provided important assistance – led to the landmark UNHRC resolution on Sri Lanka in October 2015, which laid the foundation for a comprehensive transitional justice process in Sri Lanka.

Now, more than two years since the release of the *Island of Impunity* report, PIAC is pleased to contribute to efforts underway in Sri Lanka to implement the October 2015 UNHRC resolution, both through its expertise in the area of evidence collection and documentation management¹, and by working with victims and witnesses outside Sri Lanka to ensure they can contribute to the transitional justice process.

Overview and purpose of submission

This submission is in response to the call for submissions made on 5 April 2016 by Sri Lanka's Consultation Task Force on Reconciliation Measures. While the submission has been prepared by PIAC, it summarises views expressed by a group of 16 victims and witnesses of serious crimes allegedly committed during the Sri Lankan civil war who now reside in Australia. The views reflected in the submission are those of the victims and witnesses themselves.

The Consultation Task Force was tasked with 'consulting members of the public on the processes and mechanisms for reconciliation in Sri Lanka to seek truth and justice, ensure accountability for human rights violations and provide measures for redress.'

The press release announcing the appointment of the Task Force speaks of the importance of 'broad-based island-wide consultations as a critical step in the transitional justice process, to ensure public legitimacy, ownership and participation, particularly to give voice to victims from all communities.'

However, a significant number of victims and witnesses of crimes allegedly committed during the civil war no longer live in Sri Lanka, either on a temporary or permanent basis.

Despite their distance, those who now reside beyond Sri Lanka's shores have a critical stake in the country's transitional justice process. They want to see that process succeed and to engage with it. They have important views and perspectives to contribute to the design of the Sri Lankan Government's proposed reconciliation measures. They want to see the truth come out about violations allegedly committed by both parties. And they have crucial evidence and information about those violations to provide to the new transitional justice mechanisms, including the special court, truth commission and office of missing persons, once they are established.

Crucially, these victims and witnesses also have unique needs in order to facilitate their participation in Sri Lanka's transitional justice process.

Although the Consultation Task Force has helpfully provided for the electronic filing of submissions through its online questionnaire, PIAC became aware that many victims and

¹ See, for example, PIAC's submission to the Consultation Task Force on Reconciliation Measures on the importance of documentation in the transitional justice process, dated 28 April 2016, available here: <http://www.piac.asn.au/publication/2016/05/role-documentation-sri-lanka's-transitional-justice-process>

witnesses in Australia either were not aware of the consultations process or were reluctant to make a submission themselves through the website.² As such, PIAC conducted interviews with a group of victims and witnesses to ensure that the voices of those located outside of Sri Lanka are also heard as part of the consultation process.

Interview methodology

Following the Consultation Task Force's call for submissions on 5 April 2016, PIAC conducted one-on-one interviews (with the assistance of interpreters) with 16 people directly affected by Sri Lanka's civil war.

Each interviewee was either a direct victim of the war, had immediate family members who were victims or were witness to the commission of human rights violations and abuses – or a combination of all three. The range of international crimes and other human rights violations reported to have been suffered or witnessed by the interviewees include: torture; rape and sexual violence; enforced disappearances; indiscriminate attacks, including against hospitals; and violence to life and person, resulting in both death and permanent disability.

PIAC interviewed 14 males and two females, all of whom are Tamil. They currently live in five different capital cities in Australia, either as permanent residents (4) or on bridging visas (12 – four of whom have been accepted as refugees and are awaiting Temporary Protection Visas).

Of the 16 interviewees (identified in the submission as Interviewees A to P), 13 had previously given a witness statement to PIAC and one had given a statement directly to a UN body.

In each interview, PIAC posed questions based on those contained in the Consultation Task Force's online questionnaire (questions 1 to 15), but also asked a number of additional questions related to the unique needs of victims and witnesses now living outside of Sri Lanka. The answers to those additional questions about diaspora participation in the transitional justice process are included under the relevant topic in the body of the submission below.

Acknowledgements

PIAC would like to acknowledge the kind and generous help of our interpreters, without whom this submission would not have been possible. We thank them for giving many hours of their time to give voice, literally, to the people we interviewed, and we thank them for the warmth and support they provided to those people during the often difficult and traumatic interview process.

PIAC would also like to thank the victims and witnesses we interviewed for trusting us to speak on their behalf and for their preparedness to re-live painful memories in the hope it might help bring about a lasting peace in Sri Lanka.

² Of the 16 people interviewed by PIAC, over half had not heard of the online questionnaire. Those who were aware that consultations were underway said they were either unclear about how they could take part, were sceptical about whether the process was genuine or were afraid that by making an individual submission, their identity and location would become known and their safety, and that of their families, would therefore be at risk.

Responses to interview questions

The questions below, and the numbering used, are the same as set out in the Consultation Task Force's online questionnaire. Where PIAC posed additional or different questions to those in the questionnaire, that is made clear in the response.

General

1. Are you Male or Female?

PIAC interviewed 14 males and 2 females.

2. How old are you?

The ages of the people interviewed by PIAC ranged from 25 to 46.

3. What is your ethnicity?

Each person interviewed by PIAC identified as Tamil.

4. What is your 'district' of residence?

The people interviewed by PIAC currently live in five different capital cities in Australia. They identified as coming from the following districts in Sri Lanka: Jaffna; Vavuniya; Killinochchi; Mullaitivu; and Trincomalee.

5. If you have sought redress (ie. information, justice, and compensation) in the past for events or circumstances that have directly affected you, your family or your community, please describe both positive and negative aspects of your experiences. Please share ideas for improving the systems of redress that you have engaged with.

Instead of asking this question directly, PIAC asked those interviewees who had previously given a witness statement to PIAC or the UN to share their experiences of that process and to recall what they hoped would be achieved as a result of speaking out.

What was clear in each of the responses was a simple hope that by giving a witness statement, the truth about what happened during the civil war would be told and acknowledged by the Government:

'What I hoped when I gave my statement was that by telling about the destruction that I witnessed, the truth would be known to everyone and with that truth, there could be a political solution for our people so that they could live in peace in Sri Lanka.' (Interviewee O)

'I wanted the truth to be heard by the UN and the international community because no one was acknowledging what was happening – and what was happening was the complete elimination of the Tamil race. That story had to come out, and no one knew about it.' (Interviewee N)

'I gave my statement not only for what I hoped to achieve, but on behalf of the hundreds of people at home who could not raise these issues ... I wanted the truth to be known to the UN and the powerful international community so that the coming generation of Tamils can live like any other community, with peace of mind, dignity and a feeling of belonging.' (Interviewee L)

'When I gave my evidence, the driving factor was that the Sri Lankan Government was conducting a successful propaganda campaign that there were no civilian casualties and they were only fighting the LTTE. I wanted the UN, the international community and even the people of Sri Lanka to know what happened to us.' (Interviewee H)

For many interviewees, the search for truth was also closely connected to a desire to see justice served and to ensure that the war never happens again:

'A lot of truth is hidden in Sri Lanka; what happened to the Tamils is hidden. The Sinhalese people, more than the Tamils, need to hear the truth so that they – and the international community – understand. That is the only way to pave the way for a solution that the Sinhalese people will accept.' (Interviewee B)

'My main hope was to get the truth out, because the Sri Lankan Government was denying what happened and I wanted the UN and international community to know what really happened to us during the war. I also hoped that justice would be provided so that it would never happen again, not just to our community but to anyone else in the world.' (Interviewee E)

'I managed to escape the country, but others did not. When I gave my statement, I wanted victims and people who died to get justice.' (Interviewee F)

'What happened in the last stages of the war was completely blocked from view of those outside, and I wanted people to know how we suffered and what happened to us. I wanted justice for the people I left behind.' (Interviewee G)

Many interviewees also spoke of their hope that by giving a witness statement, an international court would be set up to investigate violations and abuses committed during the war:

'I hoped the truth would come out and that the [Sri Lankan] Government and people would hear the truth about what happened during the war. I hoped to speak to the UN directly and that an international court would be set up to look into the war.' (Interviewee A)

'Since my childhood, I had only ever run away from the Sri Lankan apparatus. I saw so many atrocities – it instilled a fear in me and I don't trust the Sri Lankan Government's systems. So when I gave my witness statement, I hoped it would be passed to the UN and that bigger players, like the United States, would get involved and would give us justice.' (Interviewee B)

‘When I gave my witness statement, I wanted the truth to surface. I wanted the truth to be known to the international community so that there could be an international process to prosecute those who slaughtered Tamils.’ (Interviewee C)

‘When I gave my statement, it wasn’t because my family was in jail and I wanted to help them. The whole Tamil community was put through torture and the Sri Lankan Government continued to refuse to accept that. So I wanted the truth to come out. I wanted my statement to get to the UN and I hoped there would be an international court to inquire into what happened to Tamils during the war.’ (Interviewee D)

‘My expectation was mainly to bring out the truth so the world and the UN, and even the people in Sri Lanka, could hear about what really happened to us. I hoped the truth would come out, that there would be an international investigation and that things would be put right for us.’ (Interviewee P)

6. Please rank in order of importance the issues that the government should address to deal with the past events that have affected you, your family, your community or other individuals and communities across Sri Lanka. Please number your priorities from 1 (most important) in descending order of importance, and explain why.

The dominant view amongst interviewees was that uncovering the truth of what happened during the war is the most important issue. Many expressed the belief that it will only be after the Sri Lankan Government accepts and acknowledges, without reservation, what happened during the war that other issues, such as dealing with perpetrators and providing reparations, can be addressed. As Interviewee A said: ‘First the Government needs to accept the wrongdoings that were committed and make an apology. From that, the rest will follow.’

On the importance of the truth being told, one interviewee explained:

‘For me, the truth has to come out first. I really want the world to know how much I suffered during the war, caused by both sides [the Sri Lankan Security Forces and LTTE]. What happened to me should be known by the whole world and should not die with my generation. The future generations should know what happened to me and others in the war. Punishment alone by a court will not stop it happening again. What I want to see is the truth come out and for the Government to accept and acknowledge it – to acknowledge our suffering.’
(Interviewee O)

Many interviewees observed that an important component of uncovering the truth is finding out what has happened to missing persons. As Interviewee H said:

‘All of the issues are intertwined. For me, what is most important is the issue of missing persons. In my village, there are 380 female single-headed households – 150 are widows, but the rest don’t know where their husbands are. They cannot move on and they live in fear as the village is surrounded by the military and they have no husbands. So that issue must be looked at first, but linked to that is that the truth must come out – the truth about missing persons, about war crimes and about everything that happened.’

In answering this question, five interviewees also said it is important that the Government address the root causes of the war and find a permanent political solution to the overall issue. It should be noted, however, that all interviewees spoke about the root causes of the conflict and their desire to see a political solution in response to question 11, and from those answers, it was clear that interviewees believe this to be a critical issue. As Interviewee B said in response to this question, finding a political solution that satisfies the Tamil community ‘is the only way it will end’.

One interviewee said the most important thing is that a public apology be made so everyone knows that what was done in the war was wrong. For another, the most important issue to be addressed is that of punishing perpetrators and the demilitarisation of the north and east.

The government plans to establish a Truth, Justice, Reconciliation and Non-Recurrence Commission.

7A. (i) What issues do you think it should deal with?

In line with the importance that all interviewees placed on the truth of what happened in the war being told and acknowledged (see question 6 above), most spoke in response to this question of the need for the Commission to look at the entire range of abuses and violations that are alleged to have occurred in the conflict. More specifically:

- a number of interviewees said the Commission should not be restricted at all in the issues it deals with, as ‘the whole truth needs to come out’ (Interviewee O);
- some spoke of the Commission needing to address war crimes and crimes against humanity in general, and others gave specific examples of violations to be addressed, such as indiscriminate attacks on hospitals, the use of banned weapons, torture and sexual violence;
- one interviewee specifically said the Commission should determine why the war happened as well as the truth about what happened in the war itself:

‘[The Commission] should bring out the truth of why the Tamil struggle began in the first place, so it should look at the longer period. It should also look at the truth of what happened in the war. Then even the Sinhalese will understand and it will be easier to bring about a solution ...

That is why the truth needs to come out – if people know, then they understand.’

(Interviewee H)

As referred to in question 5 above, many interviewees highlighted the issue of missing persons as the first ‘truth’ that needs to be revealed. One interviewee (Interviewee N) suggested that the Commission should work closely with the Office of Missing Persons, noting that the truth is needed so that mothers can know what happened to their children.

7A. (ii) What period of time should it cover?

Interviewees expressed a range of views as to the time period the Commission should cover, though the dominant view was that it should focus on the latter stages of the war. Other suggestions included:

- from 1948 (for those who believed the Commission should also look at the discrimination that led to the war);
- from 1983;
- from the mid-1990s (interviewees referred to this as the time when people starting going missing);
- from 2006 onwards (when the ceasefire broke down).

7B. Who should serve on it?

In addressing this question, the interviewees seemed concerned to ensure that the truth be told impartially, and that this should also be reflected in the composition of the Commission.

All interviewees spoke of the need for some level of international participation in, and/or monitoring of, the Commission. None said they would be satisfied if it were a purely Sri Lankan mechanism.

A number of interviewees said that as long as there is international monitoring, the Commissioners themselves could be well respected Sri Lankans. Interviewee D said they could be 'eminent people who really want the truth to come out.' Interviewee H said:

'The head commissioner should be an eminent, trusted person, like the Chief Minister. It does not have to be a Tamil – I'm just giving the Chief Minister as an example of someone who was elected by Tamils ... But the reporting mechanism needs to go outside to a UN body or committee of experts so the Government cannot have any influence over the findings. They should be free to present whatever they find and that is only possible if they report to a body outside Sri Lanka.'

Other interviewees spoke of the need not just for international monitoring, but also for key roles in the Commission itself to be held by non-Sri Lankans. A number said that a mix of international and Sri Lankan people could serve on the Commission, but decisions should be made by a neutral (i.e. international) person. Interviewee N said the international Commissioners, who should have experience bringing out the truth in similar contexts, should work closely with eminent people from Sri Lanka on the Commission. Interviewee F spoke of the need for both Tamil and Sinhalese representatives on the Commission, but said that the head Commissioner should be from outside Sri Lanka:

'If the head commissioner were Tamil or Sinhalese, neither party would accept [the results] because they would assume it was biased.'

Interviewee L said that if there is no international participation in and monitoring of the Commission, there would be no trust in the mechanism. Others explained the need for international participation as follows:

‘It has been seven years since the end of the war and no truth has come out – nothing has been accepted by the Sri Lankan Government, even after a series of UN reports that have revealed some of the allegations. Therefore, I have no hope in anyone from Sri Lanka telling the truth. So the truth commission needs to be monitored by a UN committee.’ (Interviewee P)

‘What I fear is that if the Government has control over the truth commission, it will bring out something that it calls the truth, but is not the real truth ... So in terms of who should serve on [the Commission], it definitely cannot be anyone the Government appoints.’ (Interviewee N)

Interviewee K also said that international participation is important as many people would be afraid to come forward to provide information if there are only Sri Lankans on the Commission.

7C. What should be done with the information received?

PIAC did not ask interviewees this question.

7D. If you think that such a commission would be insufficient/inadequate for Truth Seeking what other measures and structures would you suggest?

As explained above, interviewees believe the Commission will be sufficient if it is properly monitored by an international body (with a significant number of interviewees also believing that international participation in the Commission itself is essential).

The government plans to establish a Judicial Mechanism with a Special Counsel.

8A. What kinds of violations do you think it should deal with?

‘War happens in every country, and losses on both sides are generally accepted when two armed forces are fighting. But what needs to be investigated is the civilian deaths – small children, the elderly, those not linked to the LTTE at all who were bombed and shelled.’ (Interviewee O)

Interviewees listed a range of violations, both specific and general, that should be the subject of investigation by the judicial mechanism: war crimes; crimes against humanity; the use of chemical and cluster bombs; sexual violence; torture; direct attacks on hospitals and civilians; ethnic cleansing; abductions; land that was taken by the Government; and enforced disappearances, especially in the case of people who surrendered at the end of the war but are missing.

A number of interviewees said that crimes and violations were committed on ethnic grounds, stating that the judicial mechanism should deal with any crimes that were committed against a person because they were Tamil. One interviewee described it as follows:

‘Deaths [of civilians] and war crimes need to be investigated. The war almost eliminated the entire race. It was not a war to eliminate the LTTE – that could easily have been done. It was a war to eliminate the race as a whole. Even after the war ended, the Government claimed victory ... the Tamils who came out of the war zone were just the remnants ... and they couldn’t even let us live in peace. They tortured and harassed and abused, so that has to be investigated.’ (Interviewee O)

In terms of perpetrators that the judicial mechanism should focus on, one interviewee (Interviewee K) said that army commanders and the ‘higher up’ people (in the Government) should be punished so that it won’t happen again and to set an example. Another (Interviewee N) said the judicial mechanism should look at those in command who were responsible: ‘the prosecution should start from the top.’

Interviewee H also observed that the Government was assisted in its war effort by foreign governments, for example regarding the purchase of chemical and phosphorous weapons. The interviewee said the judicial mechanism should investigate this so it does not happen to another community anywhere in the world.

**** PIAC also asked interviewees what period of time they think the judicial mechanism should cover:**

The overwhelming majority of interviewees said that the judicial mechanism should focus on violations committed in the last stages of the war, including the period after the war when people continued to go missing and violations continued to take place. In terms of when the ‘last stages’ of the war began, interviewees cited a range of dates: the breakdown of the ceasefire in 2006; 2007; the end of 2008; and even 2009.

Many of those interviewees felt that although violations had taken place before the last stages of the war, the earlier years of fighting had constituted a war in the more traditional sense (i.e. between two competing armed forces) and there had been losses on both sides. They saw a distinction between that period and the final stages of the war, when civilians were attacked *en masse*. As one interviewee explained:

‘Before [2008], we were still displaced and hiding, but there was a war happening then so we expected it. But it is the period after that when most of the crimes happened; when it was just one side [the Government] indiscriminately killing Tamils.’ (Interviewee G)

One interviewee believed the judicial mechanism should look at events from 1992 onwards, and another three interviewees said it should look at events from 1983 onwards.

8B. Who should serve on it?

All interviewees insisted there must be international participation in the judicial mechanism for it to be credible.

Some interviewees said that all judges serving on the judicial mechanism need to be foreign, whereas others were willing to accept that a majority of judges, but not all, come from the international community. One interviewee (Interviewee O) suggested that an international judge could have a casting vote. Another (Interviewee J) commented on the importance of the international judges understanding the Sri Lankan context, and some specifically noted the importance of having Tamil judges on the court (but with a majority of international judges).

Only one interviewee (Interviewee I) said that a majority of judges should be Sri Lankans (both Tamil and Sinhalese).

The main reason cited for wanting the participation of international judges in the judicial mechanism was a strong belief that judges from Sri Lanka could not be impartial or at least be seen to be impartial. For example:

‘Whether Tamil or Sinhalese, no one from Sri Lanka will be seen to be impartial. So whatever the judgment, victims will never accept it and we will miss a great opportunity to bring this to a closure. So if the judges are not from Sri Lanka, then victims will accept [their judgment] and move forward.’ (Interviewee A)

‘Whichever mechanism the Sri Lankan Government puts forward, there needs to be some kind of international participation and monitoring, otherwise they will bury the truth. Non-recurrence will never happen without international participation because otherwise the Government will just bury the truth.’ (Interviewee E)

‘Sri Lanka is one of the parties accused of war crimes, so there definitely cannot be Sri Lankan judges. There needs to be neutral people from other countries.’ (Interviewee F)

In terms of the independence of the special court and its judges, a number of interviewees also said that it must have the power to execute punishments without influence from the Government.

Many interviewees also commented on the appointment process for judges, noting that it should be conducted by a neutral body or panel (made up of people from the UN or international community), and should not be influenced by the Sri Lankan Government. One interviewee made the following suggestion:

‘The UN needs to appoint the judges and Navi Pillay, or someone of her calibre, should be part of the process to appoint the judges. She, or someone like her, should decide who the judges should be.’ (Interviewee H)

8C. For what other issues, if any, are special judicial mechanisms required?

PIAC did not ask this question to interviewees.

**** PIAC asked interviewees a number of questions about the participation of victims and witnesses now living outside Sri Lanka in the judicial mechanism. PIAC asked whether interviewees would consider travelling to Sri Lanka to give evidence before the special court, and if not, whether they would like the opportunity to give evidence from a remote location.**

Interviewees made a number of general comments about the location of the judicial mechanism and their view that it should conduct its hearings where victims are located. For example:

‘The court should be established where the victims are, so it should be in the north and the east, and the south too if there is an incident that happened there. There are also lots of victims outside of Sri Lanka, so wherever victims are located, there should be a court hearing there. If hearings are held outside of Sri Lanka, and protection can be guaranteed, then the system will work better.’ (Interviewee A)

Only one interviewee said they would be willing to travel to Sri Lanka to give evidence before the judicial mechanism, and even then, only if their protection could be guaranteed by a body like the UN.

The unwillingness of interviewees to travel to Sri Lanka to give evidence was due to a fear for their safety and the safety of their family members still living in Sri Lanka:

‘I have suffered enough and seen enough, so if I had to go to give evidence – even if I didn’t feel safe – I would be willing to do so if it were just me. But it’s not just me. If I do go to Sri Lanka, or even if they found out I gave a statement in Australia, my family’s lives would be in jeopardy.’ (Interviewee D)

‘I cannot see how any Tamil will go and be a witness [in a Sri Lankan court with Sri Lankan judges], unless they are the only person left in their family and they have nothing to lose. If I were the last one, I would do it, I would not care – but I am not. So the court should hear evidence from people in hearings outside of Sri Lanka.’ (Interviewee H)

‘I have lost a lot, and I really feel like I don’t have anything to lose, so I could travel to Sri Lanka [to give evidence]. But – I have a family and I don’t want them to undergo anymore trauma than they already have, so I will not go to Sri Lanka. But I am willing to go anywhere outside Sri Lanka to give evidence to any internationally affiliated body.’ (Interviewee O)

Interviewees did not feel hopeful that the Sri Lankan Government could take concrete steps to allay these fears in the near future to allow them to feel safe to travel to Sri Lanka:

‘It will be a very long time before I could go back to Sri Lanka and feel safe. There would need to be a long-term political solution and I would need to see that everyone is safe. So in the interim, someone has to listen to the witnesses outside Sri Lanka.’ (Interviewee B)

'There needs to be a permanent solution where I don't fear for my safety before I can consider going back. I have no trust in the Sri Lankan Government to provide that safety in the near future.' (Interviewee C)

'Someone would have to guarantee my and my family's safety, then I would go [to give evidence], but I have no idea how they could guarantee that.' (Interviewee L)

As a statement of fact rather than a reason for being unwilling to travel to Sri Lanka, three interviewees also noted that their visa restrictions would not allow them to leave Australia to give evidence and return.

While generally unwilling to travel to Sri Lanka to give evidence, interviewees expressed a desire to give evidence through some other means:

'Before I die I want to give evidence in a court for what I have gone through and seen. If not, I will not be able to seek justice for all those I saw die. I survived to be a witness to their suffering.' (Interviewee E)

In terms of giving evidence remotely, interviewees all preferred to give evidence in person, subject to various conditions: that the hearing be conducted in a neutral location; that it be conducted before international judges; and that adequate protections and guarantees of privacy be given. Two interviewees said they would only participate in a remote hearing if there were no participation by Sri Lankan judges.

Some interviewees suggested that witness statements that have been given to NGOs like PIAC should be sent to, and accepted by, the judicial mechanism. One interviewee (Interviewee H) also said there needs to be an intermediary, like an NGO, to help witnesses give evidence, including in relation to providing legal help 'as we don't know what our rights are.'

Interviewees said they would not feel safe giving evidence via video-link to Sri Lanka, as they would not know who was watching on the other end.

The government has decided to set up an Office of Missing Persons.

9A. What measures should the office take to address the issue of the missing?

The most commonly expressed view amongst interviewees was that it should be straightforward to address the issue of missing people, and that if the Sri Lankan Government were serious about it, the process should be fast and simple:

'It is only a simple thing that they [the Government] need to do – tell the relatives whether their loved one was shot or is alive. If they are alive, tell them where they are, and if they were shot, tell the family where and when and how it happened.' (Interviewee G)

'I know families with missing people, who lost heads of household, and they are suffering. So first, they need to say whether people are alive or dead, and then after that, they need to say when and how someone was killed, so the families can have closure.' (Interviewee O)

Most interviewees believe that the Government already has the information it needs to determine what happened to each missing person:

'With missing persons, I cannot comprehend why it needs to be such a huge mechanism. The Government has all the information and all the reports ... it should be straightforward if the Government is genuine about it.' (Interviewee H)

'There have been many commissions into missing persons, and they have gone to lots of villages [to seek information], so if they are serious, they should have a list of all the missing people by now. They should make it public and offer answers for each person.' (Interviewee A)

'In a recent court proceeding, a military person said there is a list of the people who surrendered – so the Government does have this information. They have done lots of hearings with the families, so they know who is reported as missing ... So it is time for them to acknowledge if a person was shot or executed, to tell the relatives, and for the court to then deal with it. And if the person is not dead, then to find that person. I cannot believe the Government doesn't have records [of this information].' (Interviewee F)

'There have been past inquiries and people have given exact information about the time and place where people went missing or were abducted, so I think all the Government needs to do is find where people surrendered or which camp they were abducted from. They know which officer was responsible for that area and the [military] division of the people in charge, so they should start inquiring into the evidence already given. It is that simple.' (Interviewee N)

A number of interviewees were sensitive to the trauma suffered by families in having to re-tell their stories before multiple commissions, including a number who know family members or friends who surrendered but are still missing. One interviewee (Interviewee L) said that the first step the Office of Missing Persons should take is to collect all the information and evidence from past commissions, rather than asking families to provide details again. Another (Interviewee M), said an international mechanism should just go and talk to the Government, as 'that is where the answers are', rather than asking the families for information again.

Some interviewees also spoke of the need for a clearer process to follow if someone goes missing, and for offices to be located in the main places where people go missing. One interviewee noted that these offices must be located where people feel safe to make a complaint, and another said the offices must have authority to deal with the complaint once made.

9B. What period of time should it cover?

As with the truth commission and judicial mechanism, interviewees held a range of views on the time period that the Office should cover. The majority said the most important period to look at is the time at the end of the war and its aftermath, when people surrendered to the Sri Lankan

Security Forces and went missing. Others noted that people started going missing in the mid 1990s, and that the Office should investigate all cases from that time.

9C. Who should serve on it?

As with the truth commission, many interviewees spoke of the need for international participation in, and/or monitoring of, the Office of Missing Persons, noting the number of times the Sri Lankan Government has tried but failed to address the issue:

‘We are pleading with the international community and UN to take charge of this, because Sri Lanka has been forming commission after commission yet nothing has come out about missing people.’ (Interviewee P)

‘The UN or other international body should be the main group driving the Office. Sri Lanka had its chance with several commissions.’ (Interviewee F)

No interviewees insisted that the Office be composed of solely Sri Lankan staff, but many did focus on the need for some international involvement:

‘Seeing as the Sri Lankan Government has done so many inquiries but there are still no answers, the Office should include some experts from outside Sri Lanka.’ (Interviewee A)

‘[The Office] needs someone who is able to find the truth [about missing persons], and I don’t have any faith that anyone in Sri Lanka can do that, as they have not done it to date. So I would prefer that someone from outside monitor the work of the office, but people from Sri Lanka can also be a part of it.’ (Interviewee O)

One interviewee (Interviewee A) also noted the need for the Office of Missing Persons to secure the assistance of the military in its work.

9D. What should be done with the information received?

PIAC did not ask interviewees this question.

The government proposes to establish an Office for Reparations.

10A. For what kinds of problems, losses or violations do you feel compensation is required?

This question about compensation, and a discussion about reparations more generally – including an apology by the Government – elicited a range of reactions from interviewees.

Some interviewees spoke first about the general inadequacy of financial compensation for the losses they have suffered:

'[The Government] can never compensate us in kind, because it was a loss of our dignity as a whole, and they cannot compensate for that.' (Interviewee G)

'My life was saved, but my soul was killed. I suffered without food and medication, and now for the last seven years, I have been separated from my family. How can they compensate me for that?' (Interviewee F)

Others said that the best compensation need not be financial, stating that they would prefer to see a political solution that allows Tamils to live as equal citizens in Sri Lanka with the right to take care of themselves:

'As Tamils, we are living and able to rebuild [our lives]. We don't look for charity. We never have and we don't want to. All the Government and international community need to do is make sure our rights are restored by a permanent political solution that addresses our grievances for the past 50-60 years. That is the best compensation. Then we will rebuild our lives with certainty, knowing no one will bomb us again in a few years and that we can live in peace, feeling we belong and are part of the country.' (Interviewee L)

'The compensation need not be financial alone – it could also be the truth coming out and an apology. As Tamils, we have lost our rights and our dignity. I have never felt so insignificant. That needs to be addressed by a political solution, so that we feel we are human beings who can live again in our own homeland.' (Interviewee O)

'The main compensation the Government can give is to address the root causes of the conflict. The main issue is the denial of rights that all human beings should enjoy – that is what caused the conflict. The best compensation would be for the Government to identify [those issues] and offer a political solution that allows Tamils to enjoy the freedom and dignity of living in their homeland.' (Interviewee N)

Another interviewee said that punishment of perpetrators would be adequate compensation:

'I just need to see the perpetrators punished. I feel that would be the compensation for the loss I have gone through. We all know Rajapakse was in charge and committed war crimes, but he is living like a king now and the victims are worse off than they were.' (Interviewee M)

Despite the commonly held belief that the losses suffered in the war could never be properly compensated with money, many interviewees spoke of the need to provide financial assistance to help people re-build their lives, particularly those who are most vulnerable (those who received permanent disabilities in the war; those who lost the breadwinner in their family; and those who still need medical attention). For example:

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

'What people lost can never be compensated. However, if the truth [of what happened in the war] is accepted and missing persons are dealt with, then people are ready to start a new life. And in starting that new life, they need help to re-start livelihoods and get back their land.'
(Interviewee F)

In terms of an apology for the losses and violations suffered in the war, some interviewees commented that it would need to be genuine and come not just from the Government, but from every citizen of the country so as to prevent on-going racism and discrimination. Interviewee B noted that the Government would need to create momentum so that the public as a whole will understand the need for such an apology.

10B. What period of time should it cover?

Given that reparations, as defined by the Consultation Task Force in its online questionnaire, includes the taking of symbolic steps such as public apologies, many interviewees felt the Office for Reparations needs to look at the period dating back to independence when discrimination began, or to the mid-1990s when people were displaced from Jaffna. As Interviewee O said:

'We started losing our rights a long time ago, so this process of 'reparations', if it is to include a political solution and recognition of what happened and why, then it needs to go back and look at a longer period than just the period from 2006 onwards.'

10C. Who should serve on it?

Many interviewees spoke of the need for Sri Lankans to serve on the Office for Reparations, but also of the importance of international participation in and/or monitoring of the Office given that it will be responsible for determining the distribution of financial compensation. As one interviewee said:

'The reason I say there needs to be Sri Lankan people driving this is that when the apology is provided and compensation given, it will only have value if done by Sri Lankans, not by outsiders ... But to make sure it is done properly and compensation is distributed equally, and for accountability reasons, it needs to somehow be done under the guidance of an external body.' (Interviewee P)

Some interviewees cited the unequal distribution of funding in response to the 2004 tsunami as an example of why such international involvement is necessary. Another interviewee (Interviewee F) referred to the recent allocation of 65,000 houses in the north and east of Sri Lanka, saying that the whole process was flawed and that the Government should not be allowed to select the victims to receive compensation.

Guarantees of non-recurrence

11. What measures should the state take to address the root causes of conflict and ensure non-recurrence?

The overwhelming majority of interviewees said the conflict came about due to discrimination against the Tamil community, with the result that Tamils did not feel they were equal citizens with equal rights, nor that they belonged in their country. These were identified as the root causes of the conflict and the reason for Tamil youth having taken up arms in the first place:

‘Ever since I was a kid, all I have experienced is discrimination and the fact that they [the Government] want the Tamils eliminated from the country, even though we have been settled for generations in the north and east and belong there.’ (Interviewee E)

‘No one picked up arms because they wanted to – they wouldn’t want to sacrifice life unless it was needed. From the day of independence, Tamils have been discriminated against ... Systematic discrimination and elimination of the race was why the armed struggle started.’ (Interviewee H)

To ensure non-recurrence, most interviewees said a political solution was needed to address these root causes and deal with the long-term discrimination against Tamils. Most interviewees spoke of the need for self-determination in the north and east as part of the political solution:

‘The Government needs to put in place a political solution recognising the Tamil call for self-rule. That has been the only thing Tamils have ever asked for. We live mainly in the north and the east and have our own language and culture and traditions. We just need to be treated as equal citizens and need a political solution to address our desire for self-determination.’ (Interviewee D)

‘The Government needs to come up with a solution that allows Tamils to have the right to live in their own land and enjoy freedom there. The solution must recognise that we are not just a minority; that we can rule ourselves, either through a federal solution or something in the new constitution.’ (Interviewee E)

A number of interviewees emphasised that they were not asking for a separate state as part of the political solution:

‘We are not asking for a separate country – it is about power sharing and having our own power to determine issues in our area.’ (Interviewee B)

‘We are not asking for a separate state. We just want to be recognised as a majority [in the north and east] and to have a place where we can govern ourselves and live with respect and dignity.’ (Interviewee C)

‘I am not asking for the UN to divide the country. I am saying the north and east is our homeland, and we need the right to live there and be treated as equals and rule ourselves. A federal solution will achieve that.’ (Interviewee H)

Other interviewees commented on the need for equal rights for Tamil citizens, stating that any laws that are currently discriminatory or result in different rights for different ethnic groups must be changed.

Memorialisation

12. How should the various events of violence be acknowledged, memorialized, or commemorated by the state? Should this be done nationally/locally?

There was universal agreement in response to this question: that all citizens should be given the freedom to mourn and commemorate the losses suffered in the war in their own way:

‘What is very sad is that my wife, who is at home [in Sri Lanka] ... we lost our dear son and she could not even light a lamp in accordance with the Hindu tradition on the day he passed away. I mourn for him here in Australia, but my wife can’t even light a lamp in the house.’ (Interviewee E)

‘Each individual should be given the right to practice their way of mourning on [a declared day] or any other day of their choice, because mourning is a person’s right and I need to choose when and how I should do it. Mourning is something I feel inside me, and my inner feelings should be respected.’ (Interviewee P)

‘At the moment, Tamils don’t have the freedom to mourn or commemorate anything, whether for LTTE cadres or family members. The Government should allow mourning as and when the community wishes. If a child died in February, the mother should be allowed to mourn on that day, and others on different days ... People should be given the freedom to decide themselves.’ (Interviewee D)

‘The Government shouldn’t need to ask about giving us a right to mourn – it is our right. The Government should not do anything other than let us exercise our rights.’ (Interviewee F)

While emphasising the importance of having the freedom to mourn on the day and in the manner they want, many interviewees also spoke of official commemoration days:

‘The Government should allow communities to mourn whenever and however they want. For example, a mother who lost a son who was an LTTE cadre should be allowed to commemorate in November [on Heroes’ Day] or in May [on Remembrance Day (previously Victory Day)] or whenever.’ (Interviewee C)

‘Recently there has been a Victory Day, but this should be a ‘sorry day’, a day for mourning given how many died on both sides during the war.’ (Interviewee E)

Many emphasised that there needs to be an official commemoration day to remember civilians:

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

[the Government having a day for its soldiers], but it cannot be the same day as is declared for mourning civilians. The Government should declare a day to commemorate the loss of civilians, and it should be for the community to choose how they mourn.' (Interviewee N)

'People often say that two sides were affected in the war, but in my opinion, both sides of the military are always affected in a conflict. What needs to be commemorated is the innocent civilians who were affected. We, as Tamils, need to be acknowledged as the victims – both sides are not victims.' (Interviewee L)

One interviewee also spoke about the importance of remembering what happened in the conflict through education and through war memorials that reflect the sacrifices by soldiers on both side:

'[What happened in the war] is history. People in the future should be taught about what happened.' (Interviewee K)

'The Government declared a Victory Day and they also decided on all the war memorials. They destroyed the LTTE cemeteries and memorials. That does not help Tamils feel they are being given an equal opportunity. So there has to be a new balance ... LTTE cadres were labelled as terrorists, so families do not feel included in the community because they are not allowed to mourn them. That stigma has to be removed. The Government should not say there cannot be a commemoration for them just because they were LTTE. They sacrificed their lives for the cause, so their families should be free to commemorate.' (Interviewee K)

Other

13. Are there any other structures or processes that you would propose for addressing the problems you experienced in the search for truth, justice and accountability?

PIAC asked interviewees about the specific problems they see in searching for truth, justice and accountability from outside Sri Lanka, including what measures they think need to be taken to include the diaspora in the reconciliation process.

Interviewees referred to two key obstacles to their participation in the transitional justice process: first, a lack of trust in the Government's desire to conduct a genuine reconciliation process; and second, on-going concerns about their safety and that of their family members still in Sri Lanka.

In terms of trust, many interviewees said they needed to see some concrete action before they could believe the Government is genuine. As one interviewee said:

'For me and other affected persons outside of Sri Lanka who have claimed asylum, if we are to participate, we need to start trusting the mechanisms. And for that, the Sri Lankan Government needs to start doing something concrete – like offering a political solution – so we can trust they are genuine. Also, when there is international monitoring and participation, then we will feel we can participate. But the Government needs to win our trust, and for now nothing has been done and we are just victims. There have been recent statements that Sri Lanka will not accept international participation and that the armed forces will not be

punished. Statements like that make us think the Government is not genuine, that nothing is being done. These statements do the opposite of winning our trust.' (Interviewee E)

In terms of both safety and trust, the dominant view was that if the transitional justice process is done in consultation with (and including participation by) the UN and international community, victims and witnesses outside Sri Lanka would feel comfortable participating:

'The only way to have genuine participation of the diaspora is by having international participation in all four mechanisms [the truth commission; judicial mechanism; office of missing persons; and office for reparations] – then the diaspora will trust the process enough to provide their views and participate.' (Interviewee L)

'If the whole mechanism is done by the Sri Lankan Government, it will be very hard for us to participate in it because they are one of the parties alleged to have committed crimes. It's like if I were to have done something wrong, and I were to conduct an investigation on myself – that would never be transparent.' (Interviewee P)

Safety clearly remains a huge concern for the interviewees (despite being in Australia) and is a barrier to their participation in the reconciliation process:

'As a victim, I am still very fearful of my security, so unless I and others start feeling safe to come out and talk, there won't be any participation.' (Interviewee M)

'Even as a permanent citizen in Australia, I am still fearful. The Sri Lankan Government really can't have victims participate if they don't trust the process and feel secure. If there were a mechanism outside of Sri Lanka, then I and other victims would participate.' (Interviewee N)

'I know I am outside of Sri Lanka, but I still have relatives and family in Sri Lanka so it is very hard for me to feel safe participating in any mechanism managed by the Sri Lankan Government. But if the process [of giving evidence] is done outside Sri Lanka, for example by an organisation like PIAC, then I could, and would want to, participate.' (Interviewee O)

Like Interviewee O, a number of other interviewees also suggested that NGOs could help facilitate participation of the diaspora in the reconciliation process given their safety concerns. For example, Interviewee H said:

'We as victims cannot liaise with the Sri Lankan Government directly. So the important role lies with the NGOs like PIAC, which can then deal with the UN. Our voices need to be heard – we need an intermediary – someone who is not part of Sri Lanka; an NGO that is independent – so that we can loop in to the transitional justice process.'

For one interviewee, the question of how to include the diaspora in the reconciliation process prompted a different answer: Interviewee J said that people in the diaspora 'who don't have extreme views' should be appointed to positions in the transitional justice mechanisms, and that such people should treat both communities, Sinhalese and Tamil, equally.

14. What are the other measures that should be taken by stakeholders such as political parties, religious groups, civil society organisations, media, local community and members of the public like yourself to address non-recurrence and reconciliation at large?

PIAC tailored this question to the situation of victims and witnesses living outside Australia, asking interviewees what outreach programs should be established to ensure the diaspora are kept informed of news and developments during the reconciliation process.

To prompt ideas, PIAC suggested that options for outreach programs might include: web-casting proceedings from the special court and truth commission (with appropriate witness protections); the publication of reports and transcripts in relevant languages; and holding hearings and meetings outside of Sri Lanka to disseminate information.

As an overall comment, all interviewees spoke of their interest in following the reconciliation process and keeping abreast of developments. As Interviewee H said:

‘I have to be able to watch the court proceedings, because I am the one who lost everything and has pain. So it is essential that I can see what is happening.’

Many interviewees spoke about their scepticism that the Government is genuine in its commitment to reform and said that outreach programs would help them to develop trust in the reconciliation process. They spoke of the importance of transparency and said it would be helpful to be able to watch proceedings to have greater faith in the mechanisms. One interviewee noted the importance of hearings being conducted in (or translated to) Tamil.

A number of interviewees said they keep abreast of developments in Sri Lanka through various Tamil websites, and that if reports and transcripts from the various transitional justice mechanisms could be published there, that would be sufficient.

In terms of whether it would be beneficial to hold meetings to disseminate information, some interviewees thought that people might still be fearful to attend an event in person, especially if Sri Lankan Government representatives were present. However, a number of interviewees expressed an interest in attending meetings held by a neutral party to update the diaspora. Some said they were particularly interested in having people with legal skills explain developments to them:

‘We are not lawyers. People like you with a legal background need to hold meetings to explain to us what is happening and to get feedback from us. We do not trust the [Sri Lankan Government representatives], so it needs to come from NGOs.’ (Interviewee H)

Many interviewees spoke of the need for a mechanism through which members of the diaspora can provide feedback or comments on what they see taking place in proceedings in Sri Lanka, including giving counter or supporting evidence if they have it. The preference of these interviewees was for a neutral NGO to be the conduit, with one interviewee saying:

'I want to watch [the proceedings] and be able to say that something is wrong or right, and that I have evidence to support it. NGOs like you should be able to pass that information to [the relevant officials] so that we are connected to the whole proceedings.' (Interviewee H)

15. If there are any other comments or suggestions that you wish to make which are not addressed by the topics or questions above, please include these details below.

The purpose of this submission is to give voice to a group of victims and witnesses who now live outside Sri Lanka. At the end of each interview, PIAC asked whether the interviewee had any final comments to make. Here are their answers:

'[All of what we discussed today] are just basic asks and needs. If the Government can work on addressing [these issues], then we can all walk forward together.' (Interviewee A)

'What we underwent, what happened to us – no other community in the world should go through.' (Interviewee B)

'A whole race has been destroyed in Sri Lanka in large numbers, so this whole [reconciliation] process should be done in an honest, open way.' (Interviewee C)

'Tamils have lost a lot ... and at the moment we are staring into the abyss ... So the international community and UN and the [Sri Lankan] Government need to come up with something. The ask is simple: we want to live happily in our own country so we don't have to search for asylum elsewhere. We want to live safely in our country with a feeling of belonging.' (Interviewee D)

'We, as Tamils, have encountered [discrimination] since 1948. People protested but were not heard, so our youth took up arms ... We are now in the last phase of our struggle and the Government and UN and international community should recognise this and take the opportunity to put things right.' (Interviewee L)

'As Tamils, all we wanted was to live in our own land and have equal rights as citizens in that country. If you look at me, I have lost my own [limb], I have suffered sexual abuse. I lost my dignity and I have come to a new land, a new country, and left my whole family and everything I knew and had. All I want is to live with my family in my land and feel safe and have that dignity. We are not asking for anything more than that.' (Interviewee O)

'When I was answering your questions, I thought to myself that this all seems too good to be true. But I hope it will eventuate sooner rather than later. The coming generation, unlike me, should not be disabled and have to run to a new country seeking asylum without their family. They should be in their own country, in their homeland with their family, living in peace with their rights restored.' (Interviewee P)