



A ROADMAP TO VICTIMS' JUSTICE

Sri Lanka Monitoring and Accountability Panel

SECOND SPOT REPORT:

A Roadmap to Victims' Justice

28 February 2017

I. INTRODUCTION

1. The Sri Lanka Monitoring and Accountability Panel (the 'MAP') was established to provide independent monitoring, advice, and recommendations on the progress of transitional justice in Sri Lanka.¹ Its members are senior legal practitioners with considerable expertise in national and international criminal justice mechanisms designed to address wartime atrocities.²
2. Since its formation, the MAP has actively engaged in the ongoing debate over the most appropriate manner in which to deal with allegations of war crimes and crimes against humanity committed during the protracted civil war between the Government of Sri Lanka (the 'GSL') and the Liberation Tigers of Tamil Eelam, which ended in 2009 and left more than 40,000 dead and some 280,000 displaced. Over the course of the last year – beginning with the publication of its spot report of 15 February 2016 (the 'First Spot Report')³ – the MAP has taken the position that the right choices will help foster accountability and reconciliation in Sri Lanka, while the wrong ones will waste an opportunity to deliver meaningful justice to the many victims and their families.
3. In October 2015, pursuant to UN Human Rights Council Resolution 30/1 (the 'HRC Resolution'),⁴ Sri Lanka committed to a broad transitional-justice agenda made up of four distinct pillars (the 'Four Pillars'), namely: an office on missing persons; an office on reparations; a truth and reconciliation commission, and a special court. Notably, with respect to the last pillar, the GSL initially agreed to the participation of international judges and prosecutors – something the MAP

¹ For the latest news and developments, please visit <http://war-victims-map.org>.

² The Members of the MAP are (alphabetically): Peter Haynes QC (UK), Andrew Ianuzzi (USA), Richard J Rogers (UK), Heather Ryan (USA), and Justice Ajit Prakash Shah (India). Geoffrey Robertson QC (UK) is an advisor to the MAP. Member biographies can be found on the MAP website.

³ See <http://war-victims-map.org/wp-content/uploads/2016/02/MAP-SPOT-REPORT-18.02.16.pdf>.

⁴ UN Human Rights Council, 30th Session, Resolution 30/1, 'Promoting reconciliation, accountability, and human rights in Sri Lanka', Document No A/HRC/RES/30/1, 14 October 2015.

considers to be essential in helping to ensure a credible judicial process. Since the passage of the HRC Resolution, very little in the way of concrete progress has been made. Instead, there has been much talk and—unconscionably—much continued violence. Indeed, Sri Lankan President Maithripala Sirisena’s shaky coalition government appears to have reneged on many of Sri Lanka’s international commitments and legal obligations to victims. At the time of writing, ‘a lot is still unknown and plenty remains to be done’.⁵

4. As stated in the MAP’s First Spot Report—and subsequently reiterated in numerous press releases, interviews, and panel discussions⁶—the consistent focus of the MAP’s advocacy efforts has been twofold: (1) the GSL’s legal obligations to the victims of the civil war and (2) the essential ingredients for an effective hybrid judicial mechanism. As to the latter, it has been the MAP’s firm position that such a mechanism must include, at a minimum: (a) a genuine political commitment from the GSL; (b) a proper substantive and procedural legal framework based on the relevant principles of international law; (c) competent, independent, and impartial judges and prosecutors; (d) meaningful victim participation; and (e) adequate protection for witnesses.

5. One year on, the publication of this Second Spot Report—which includes an overview and assessment of recent developments and the MAP’s renewed and additional recommendations going forward—is intended to coincide with the 34th session of the UN Human Rights Council (the ‘HRC’) scheduled for 27 February to 24 March 2017 in Geneva. Unfortunately, the twelve intervening months since the MAP’s First Spot Report have not been promising ones for the cause of justice in Sri Lanka.

⁵ Taylor Dibbert, ‘Reconsidering US Leadership at the Human Rights Council’, *Diplomat*, 11 November 2016.

⁶ See <http://war-victims-map.org>.

II. OVERVIEW AND ASSESSMENT OF RECENT DEVELOPMENTS

A. The GSL Lacks the Political Will to Implement the Four Pillars and is Proceeding in Bad Faith

6. It has become increasingly obvious in recent months that what little political will existed on the part of the current GSL one year ago has now evaporated, almost entirely. Seemingly, the Sirisena administration has been acting in bad faith for some time with respect to its commitments under the HRC Resolution. This has become most evident in the government's senseless and shrill reaction to the proposals put forward recently by the Consultation Task Force (the 'CTF')—a wholly domestic body put in place and empowered by the GSL itself. (Given the significance of the CTF's recent report, it is discussed at length below in a separate section.⁷)

7. After several months of paying lip service to its commitments to bring justice to victims, the GSL's anti-justice-agenda rhetoric escalated in August 2016. Reacting to the long-awaited passage of the Office on Missing Persons Act (the 'OMP Act'), President Sirisena declared that his government would never target 'war heroes',⁸ a none-too-veiled reference to members of the Sri Lankan armed forces, some of whom are likely to be prime war crimes suspects. The following month, GSL Justice Minister Wijeyadasa Rajapakshe categorically rejected all allegations of war crimes committed by government forces and indicated that his 'government would take legal action against anyone who alleges' the contrary.⁹ Moreover, he stated that 'anyone who discusses mass graves in Sri Lanka's North is an enemy of the nation and war heroes'.¹⁰ Overly concerned with placating the country's 'vast southern Sinhalese nationalist constituency', the president

⁷ See Section II.D, *infra*.

⁸ 'President Sirisena reassures impunity for "war heroes"', *Ceylon News*, 23 August 2016.

⁹ 'USTPAC Deeply Disturbed by Sri Lankan Justice Minister's Statement', *PR Newswire*, 23 September 2016.

¹⁰ *Ibid*.

himself 'loses no opportunity to publicly declare that he would never compromise on national security or let down the armed forces'.¹¹

8. With respect to the Four Pillars, protracted GSL deferral has been the name of the game for some time. Government proxies and apologists continue to toe the tired line that patience and more time are needed in order to arrive at something close to the stated goals.¹² 'Sequencing' of the pillars¹³ and ongoing efforts at constitutional reform—the latter obviously a laudable goal—have been the common justifications employed to account for delays to the implementation of the justice mechanisms:

'President Maithripala Sirisena and Prime Minister Wickremesinghe have reiterated the importance of finding a solution to the ethnic conflict through constitutional reform. However, it would be naïve to assume that there was no nexus between the Geneva resolution and the constitutional reform process. **One of the unstated objectives of the reform process has been to mitigate the demand for an international investigation.** [...] The strategy worked. We witnessed the watering down of the Geneva resolution since this government came to power in 2015.'¹⁴

9. Naturally, the success of this ploy has only further emboldened the GSL to continue on its disingenuous course. Whilst international justice processes can take a long time to implement, the GSL could and should have made significant progress by now. As the former US Ambassador-at-Large for War Crimes Issues, Stephen Rapp, rightly noted: 'there [is] no reason the [GSL] could not begin

¹¹ 'Sri Lanka should fulfil human rights conditions by early 2017 to get EU trade concessions', *New Indian Express*, 2 November 2016.

¹² See Taylor Dibbert, 'Looking at Some Important Issues in Sri Lanka', *Huffington Post*, 27 November 2016 (interview with Gehan Gunatilleke, Research Director, Verité Research, a think tank based in Colombo) ('However, we need to place the transitional justice agenda in context. I believe we are making steady progress in terms of constitutional reform. So rushing the transitional justice process to meet the March 2017 deadline is not prudent if it means compromising on substance. It is better to be sensible and defer the process for a further period of time, and ensure that all the mechanisms including the judicial mechanism is delivered together to the satisfaction of those actually affected. Let us not forget that we began this process to deliver accountability — not anything that falls short of it.')

¹³ See Nick Cumming-Bruce, 'Torture Is "Common Practice" in Sri Lanka, U.N. Panel Finds', *New York Times*, 7 December 2016 ('A proposed delay in setting up a special war crimes court by "sequencing" transitional justice mechanisms deepened concerns about the process being independent.')

¹⁴ SI Keethaponcalan, 'Donald Trump And Sri Lanka's Constitutional Reform', *Eurasia Review*, 20 January 2017 (emphasis added).

setting up the office of the prosecutor and putting frameworks in place, even if the court would not get off the ground immediately'.¹⁵ To date, not a single step has been taken. In fact, the GSL 'has not even enacted statutes criminalizing war crimes, crimes against humanity, and genocide'.¹⁶ According to former Ambassador Rapp: 'Putting off the establishment of justice mechanisms could be an attempt to avoid it entirely.'¹⁷ It was hardly surprising when Sirisena admitted to 'giving the UN Human Rights Council necessary messages' to save former President Mahinda Rajapaksa and the Sri Lankan military from prosecution.¹⁸

10. The reaction of the GSL to the US presidential election in November 2016 provides further evidence of its intent to avoid real accountability. Sirisena has stated that he would write to the then US President-elect Donald Trump, seeking his help to forego accountability: 'I will write to President (Donald) Trump to ask him to free us from these accusations'.¹⁹ Commentators suggest that Sirisena may make a similar request to the new Secretary General of the United Nations, António Guterres of Portugal.²⁰ According to Alan Keenan, a Sri Lanka specialist for the International Crisis Group: 'If it's true, it completes the reversion which was already underway. There was always a doubt about the commitment of the president and prime minister. As time goes on, those doubts have grown.'²¹
11. Reports in the GSL-backed press that UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein has recently noted 'positive steps taken in Sri Lanka on

¹⁵ 'Delay in Setting up Justice Mechanism Could be Attempt to Avoid Doing so Opines US Ex- War Crimes Envoy Stephen Rapp', *DBSJeyaraj.com*, 22 November 2016.

¹⁶ Taylor Dibbert, 'A Tamil Diaspora Perspective on Sri Lanka', *International Policy Digest*, 10 October 2016 (interview with Visuvanathan Rudrakumaran, Prime Minister, Transnational Government of Tamil Eelam (TGTE)).

¹⁷ 'Delay in Setting up Justice Mechanism Could be Attempt to Avoid Doing so Opines US Ex- War Crimes Envoy Stephen Rapp', *DBSJeyaraj.com*, 22 November 2016.

¹⁸ 'Sirisena to write to Trump seeking relief for Sri Lanka from human rights allegations', *New Indian Express*, 27 November 2016.

¹⁹ 'Sirisena to write to Trump seeking relief for Sri Lanka from human rights allegations', *New Indian Express*, 27 November 2016.

²⁰ Nick Cumming-Bruce, 'Torture Is "Common Practice" in Sri Lanka, U.N. Panel Finds', *New York Times*, 7 December 2016.

²¹ *Ibid.*

the human rights issues'²² and 'expressed his satisfaction towards the positive steps taken by Sri Lanka to improve the country's human rights conditions'²³ are rather clumsy attempts at setting the stage for more lip service to come in Geneva. It is safe to say that anyone who expects anything other than more 'necessary messages' from the GSL at the 34th Session will be disappointed.

12. As announced by Sri Lanka's Foreign Minister, Mangala Samaraweera, in London earlier this year, the GSL 'will go for a "technical rollover resolution", or a procedural extension that will allow it more time to implement its undertakings'.²⁴

Yes, March is soon approaching', he said. 'As I said, we are rather happy, not sure what the word is, with the progress we have made so far. But, of course, we hope, maybe, to go for a technical rollover, because we need a little more time, especially [...] to work out the architecture or contours of the judicial mechanism.'²⁵

Obviously, the word Samaraweera was looking for was 'delay'. Admitting 'that the subject of a judicial mechanism has become "rather controversial"',²⁶ the minister went on to provide bland reassurance of the need 'to look into various allegations against what happened during the last so many years of war'²⁷ without committing to 'the level at which international participation should take place'.²⁸ Having succeeded with such tactics in the past, it now appears that the

²² 'Human rights chief notes positive steps taken in Sri Lanka', *Colombo Gazette*, 20 January 2017.

²³ 'UNHRC Chief satisfied with Sri Lanka's progress on improving Human Rights', *Colombo Page*, 20 January 2017.

²⁴ Namini Wijedasa, 'Govt to "buy time" at UNHRC in March: FM', *Sunday Times*, 29 January 2017.

²⁵ Namini Wijedasa, 'Govt to "buy time" at UNHRC in March: FM', *Sunday Times*, 29 January 2017 (emphasis added).

²⁶ *Ibid.*

²⁷ *Ibid.*

²⁸ *Ibid.*

GSL's renewed plea for additional time²⁹ will almost certainly be granted at the upcoming HRC session.³⁰

13. Unfortunately, it seems that as long as the current government – which continues to be hampered by a tenuous power-sharing agreement – remains in office, there will continue to be a drip feed of progress with respect to the Four Pillars.³¹ Given political realities in Sri Lanka and the lack of meaningful progress to date, Sirisena does not appear to be a credible partner in the envisaged endeavors. And with all carrot and no stick from those countries that have the ability to influence events in Sri Lanka, it is unlikely that he will feel compelled to change his current course any time soon.³²

²⁹ See Bharatha Mallawarachi, 'Sri Lanka to ask UN for more time to probe war crimes', *Associated Press*, 8 February 2017 ('Sri Lanka says it needs more time to fulfil promises given to the UN human rights body to investigate war crime allegations from the nation's long civil war, which ended nearly eight years ago. Foreign Minister Mangala Samaraweera told foreign correspondents late Tuesday that the government will seek more time at the next UN human rights session, starting February 27 in Geneva.');

see also 'No U-turn on war probe but wants time - Mangala will call for patience at HRC', *Island*, 11 February 2017 ('Mangala Samaraweera said he will attend the United Nations Human Rights Council sessions in Geneva later this month and plead for patience. [...] "Obviously, we need more time", the minister told the Foreign Correspondents' Association of Sri Lanka on Tuesday night. Asked how much time was needed, he said: "Not for ever." [...] "There will be no u-turn, but occasionally there could be a detour, but the destination remains the same", Samaraweera said.')

³⁰ See 'Britain to sponsor resolution on Sri Lanka at UNHRC', *Colombo Gazette*, 14 February 2017 ('Britain is to sponsor a new resolution on Sri Lanka at the UN Human Rights Council (UNHRC) at its upcoming session in Geneva. The decision was communicated to the Council at the organizational meeting for the 34th session of the UNHRC held in Geneva yesterday. *The resolution will look to give Sri Lanka time to address the accountability issue on the war.*') (emphasis added).

³¹ See Taylor Dibbert, 'Looking at Some Important Issues in Sri Lanka', *Huffington Post*, 27 November 2016 (interview with Gehan Gunatilleke, Research Director, Verité Research, a think tank based in Colombo) ('As mentioned above, my concerns relate to the ideological factions within government. A lot depends on which faction prevails. If those who champion the counterterrorism law prevail, I am certain we will not see a credible transitional justice program. But if a more progressive faction within government is empowered to deliver on its promises made in Geneva [at the UN Human Rights Council] last year, we could still see this process put back on track.')

³² See Taylor Dibbert, 'Looking at Some Important Issues in Sri Lanka', *Huffington Post*, 27 November 2016 (interview with Gehan Gunatilleke, Research Director, Verité Research, a think tank based in Colombo) ('I hope local civil society and international actors understand these dynamics and act strategically over the next few months. They must understand that this government and the constituent political parties are not homogeneous. Transitional justice will ultimately depend on whose voices in government are empowered. [...] I'm starting to wonder about this. Let me say at the outset that international actors have been an indispensable part of getting Sri Lanka on the international agenda and putting pressure on the government to commit to a transitional justice agenda. But this involvement has given us diminishing returns over the last year or so. Some international actors have not understood the dynamics at play and have at times overestimated the government's sincerity. A good example is the discourse on sequencing. Local civil society actors

B. The GSL Continues to Commit Human Rights Abuses and Has Failed to Make the Necessary Reforms to the Nation's Security and Justice Sectors

14. Despite a commitment to repeal the Prevention of Terrorism Act (the 'PTA'),³³ the GSL 'continues to rely regularly on the act in order to arbitrarily detain Tamils'.³⁴

The promise to repeal the draconian [PTA] is yet to be kept, though moves were made to replace it. At first, the Law Commission was asked to draft a law in accordance with international best practices. And it did do a good job, according to those who had access to it. But its report was shelved and the government is presently working on a law more in line with the original PTA on the advice of the Security Establishment, [Tamil National Alliance MP M.A.] Sumanthiran says.³⁵

Not only has the law been kept in place, 'security forces made new arrests under the PTA throughout [2016]'.³⁶ And there has been 'little or no progress in bringing about a Witness Protection Act to remedy the situation in which witnesses are routinely threatened'.³⁷ To the contrary, a recent report suggests that the GSL has appointed 'at least one alleged perpetrator of torture named in a UN report [...] to the body in Sri Lanka supposed to protect victims and witnesses, known as the National Authority for Victim and Witness Protection'.³⁸

have been pressing for sequencing that does not place accountability on the back burner. But this has not been the consistent view of international actors and advisors. I'm afraid the lack of deference to local demands has cost this process important momentum in terms of establishing an accountability mechanism. So I think it's time international actors trust and defer to local civil society actors and play more of a supportive role. At the end of the day, Sri Lanka's transitional justice process has to be locally owned and driven.')

³³ See HRC Resolution 30/1.

³⁴ Taylor Dibbert, 'A Tamil Diaspora Perspective on Sri Lanka', *International Policy Digest*, 10 October 2016 (interview with Visuvanathan Rudrakumaran, Prime Minister, Transnational Government of Tamil Eelam (TGTE)).

³⁵ 'Sri Lanka's chances of getting EU trade concessions hinge on meeting human rights requirements', *New Indian Express*, 30 October 2016.

³⁶ 'Sri Lanka: Delays Set Back Justice', *Human Rights Watch*, 12 January 2017.

³⁷ 'Sri Lanka's chances of getting EU trade concessions hinge on meeting human rights requirements', *New Indian Express*, 30 October 2016.

³⁸ 'Sri Lanka accused of violating commitment to UN resolution', *Colombo Gazette*, 13 February 2017; see also *ibid* ('At least two other appointments are very troubling, says the new [International Truth and Justice Project (ITJP)] dossier released today. "Nobody testifying against the state or security forces should expect witness protection under the current system", said ITJP's Executive Director, Yasmin Sooka, "quite the reverse – they would risk their lives if they asked for protection from the state; these appointments clearly show the new Government's aim is to protect the perpetrators".') (emphasis added).

15. Worse still, in early-December 2016, the UN Committee Against Torture:

questioned the [GSL's] commitment to fulfilling [...] promises [made regarding political changes and human-rights protections], pointing to the **continued use of torture by the police and a failure to rapidly investigate and prosecute atrocities committed by security forces** [...], [and] said it was deeply concerned by evidence that torture was 'a common practice' routinely inflicted by the police Criminal Investigation Department 'in a large majority of cases', regardless of the suspected offense.³⁹

Moreover, the committee noted that 'the [GSL] has not embarked on institutional reform of the security sector'.⁴⁰ These findings reinforce the deepening concern (discussed above in Section II.A) that the government is 'backpedaling on the promised institutional cleanup for fear of antagonizing the country's powerful security services'.⁴¹ In this regard, it was found that the administration:

had made **no progress on longstanding investigations into extrajudicial killings** and expressed concern at its failure to set up promised mechanisms to prosecute crimes. A **wide range of continuing abuses** were also noted by the committee, which cited a **revival of so-called white van abductions**, named after the vehicles used in the kidnappings of suspects who disappeared into unregistered places of detention. In addition, the committee criticized the continued use of administrative detention under draconian antiterrorism legislation and the lack of credible witness protection.⁴²

These concerns were underscored by the GSL's alarming decision to include Sri Lanka's national intelligence chief, Sisira Mendis, as part of 'the delegation sent to meet the committee'.⁴³ Mendis, who served as deputy inspector general of the Criminal Investigations Department for a period of 15 months up to June 2009, 'was the person with command responsibility over the most notorious center for abuse in the country just at the end of the civil war, at a time when so many of the horrendous things happened'.⁴⁴

³⁹ Nick Cumming-Bruce, 'Torture Is "Common Practice" in Sri Lanka, U.N. Panel Finds', *New York Times*, 7 December 2016 (emphasis added).

⁴⁰ *Ibid.*

⁴¹ *Ibid.*

⁴² *Ibid.* (emphasis added).

⁴³ *Ibid.*

⁴⁴ Nick Cumming-Bruce, 'Torture Is "Common Practice" in Sri Lanka, U.N. Panel Finds', *New York Times*, 7 December 2016.

16. Echoing the concerns of the Committee Against Torture, the UN Special Rapporteur on Torture, Juan Mendez, 'present[ed] a grim picture of systematic torture and the concomitant impunity which continue to plague the island nation'.⁴⁵ Referring to torture as a 'legacy of the country's armed conflict',⁴⁶ Mendez 'conclude[d] that a "culture of torture" persists'⁴⁷ in Sri Lanka:

[P]hysical and mental coercion is used against suspects being interviewed, by both the Criminal Investigations Department in regular criminal investigations and by the Terrorism Investigation Division in investigations under the Prevention of Terrorism Act. In the latter case, a causal link seems to exist between the level of real or perceived threat to national security and the severity of the physical suffering inflicted by agents of the Division during detention and interrogation.⁴⁸

Additionally, he noted the glacial progress on transitional justice mechanisms:

However, progress has been slow and differing opinions on the type of mechanism and the extent of its powers seemingly have paralyzed the process. **Impunity for past crimes continues to be an obstacle to reconciliation** and sustains mistrust between the communities, especially in the North and East, breeding impunity for present instances of abuse. It is therefore essential that any transitional justice mechanism provide for effective remedies to victims of torture and other serious violations that occurred during or in connection with the armed conflict.⁴⁹

Reacting to the report, Yasmin Sooka, director of the International Truth and Justice Project,⁵⁰ was struck by the GSL's lack of progress: '[W]hat we are instead getting is box ticking – at best [...]. Singing the national anthem in Tamil isn't going to stop the ongoing abductions and torture. It's time the denial stops: of course, the violations continue if you don't do anything to stop them.'⁵¹

⁴⁵ Taylor Dibbert, 'Sustained Concerns About Torture in Sri Lanka', *Diplomat*, 28 January 2017.

⁴⁶ 'Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his mission to Sri Lanka', Document No A/HRC/34/54/Add.2, 22 December 2016 (the 'UN Torture Report'), para 8.

⁴⁷ *Ibid*, para 22.

⁴⁸ UN Torture Report, para 22.

⁴⁹ *Ibid*, para 108 (emphasis added).

⁵⁰ See www.itjpsl.com.

⁵¹ Taylor Dibbert, 'Sustained Concerns About Torture in Sri Lanka', *Diplomat*, 28 January 2017.

17. Sooka's point begs several questions – sadly, questions without easy answers: Who in Sri Lanka has such stopping power? What type of effective pressure could be brought to bear on such individuals? And, crucially, who is presently willing and able to apply such pressure? Seemingly we cannot rely on the 'international community' that backed Sirisena. 'Two years on, there's no question that international actors moved far too quickly to support Colombo, relying on a carrot-heavy approach that reflected neither the realities on the ground nor the government's true intentions regarding its own reform agenda.'⁵²

C. The GSL Has Maintained its Militarization and Illegal Occupation of Large Segments of Sri Lanka's Northern and Eastern Provinces

18. Despite the GSL's commitment to demilitarize the war-torn northern and eastern provinces of the country,⁵³ a vast number of troops continue to be stationed in Tamil-majority areas. Sadly, years after the cessation of hostilities in Sri Lanka, land belonging to displaced Tamils continues to be appropriated by the military, thwarting reconciliation efforts and justice for victims.
19. In June 2016, the UN High Commissioner for Human Rights reported that 'the military presence in the north and east remains heavy and a culture of surveillance and, in certain instances, intimidation and harassment persists'.⁵⁴ In addition to systematic abuses by GSL security forces, 'little progress has been reported'⁵⁵ regarding the release of large tracts of civilian land that continue to be held by the military. Well into President Sirisena's tenure, numerous civilian owners remain internally displaced and without access to their rightful homes, while the military exploits their property for 'commercial activities, including farming and tourism'.⁵⁶

⁵² Taylor Dibbert, 'Sustained Concerns About Torture in Sri Lanka', *Diplomat*, 28 January 2017.

⁵³ See HRC Resolution 30/1.

⁵⁴ 'Promoting reconciliation, accountability and human rights in Sri Lanka', Document No A/HRC/32/CRP.4, 28 June 2016, para 13.

⁵⁵ *Ibid.*

⁵⁶ *Ibid.*

20. Echoing the concerns raised by the High Commissioner, former UN Chief Ban Ki-moon urged the GSL 'to speed up the return of land so the remaining communities of displaced people can return home' and emphasized that 'the size of the military force in the north and east could be reduced, helping to build trust and reduce tensions'.⁵⁷
21. Additionally, in reaction to reports of widespread militarization, Rita Izsák-Ndiaye, UN Special Rapporteur on minority issues, expressed concern after visiting the island in October 2016:

[P]eople spoke of how the military presence is negatively felt in many spheres of life, often affecting their livelihood. Worrying **allegations of intimidation and harassment** were also made. With the Army's ethnic make-up being almost entirely Sinhalese, and its disproportionately heavy presence in the Northern province, the military is seen as an occupational force, which is believed to continue stigmatizing the Tamils as militants.⁵⁸

Moreover, she recommended immediate and effective resolution of the issue:

[L]ands currently not in use or whose use cannot be adequately justified for military purposes must be returned without delay to their rightful owners in a condition that is usable. Where private lands have been acquired without due process or compensation, these lands must be returned and/or compensated for.⁵⁹

She concluded that the GSL must 'put in place some urgent, important and concrete measures to clearly demonstrate its political will and commitment to better protect Sri Lanka's minorities'.⁶⁰

22. Yet to date, the GSL has taken no meaningful steps to bring the situation into line with the recommendations of the High Commissioner, the former Secretary-General, or the Special Rapporteur. While Sri Lanka's Foreign Minister

⁵⁷ 'Secretary-General's remarks at event in Sri Lanka on SDG16: Sustaining Peace - Achieving the Sustainable Development Goals', *United Nations*, 2 September 2016.

⁵⁸ 'Statement of the United Nations Special Rapporteur on minority issues, Rita Izsák-Ndiaye, on the conclusion of her official visit to Sri Lanka', *United Nations*, 20 October 2016.

⁵⁹ *Ibid.*

⁶⁰ *Ibid.*

previously indicated that the demilitarization process would be completed by 2018,⁶¹ it must be recalled that such resolution has been continually postponed. Accordingly, the Sirisena administration's actual commitment to demilitarization and the return of occupied territory remains an open question.

D. The Office on Missing Persons, Established by Law in 2016, Has Yet to Begin Functioning

23. On 11 August 2016, Sri Lanka's Parliament adopted into law the Office on Missing Persons (Establishment, Administration, and Discharge of Functions) Act, No 14 of 2016 (the 'OMP Act'). The OMP Act represents the GSL's effort at constructing the first of the Four Pillars – in sequence, as it continues to insist. It is estimated that up to 65,000 persons are unaccounted for as a result of the civil war.
24. On 27 September 2016, the MAP issued its 'Initial Statement on the Recent Passage of the Office on Missing Persons Act',⁶² criticizing the consultative process and noting two areas of particular concern: (1) the appointment process does not ensure the independence and impartiality of OMP members and (2) the confidentiality and immunity provisions threaten to impede the consequent efforts of a special court. These issues, among others, were addressed at a panel discussion in Geneva on 22 September 2016 during the HRC's 33rd Session. All of these previously stated positions are hereby incorporated by reference.
25. It is likely that the OMP was expediently passed last August simply 'to meet the deadline of the September session of the Human Rights Council'.⁶³ Since then, the office has 'yet to take concrete shape',⁶⁴ and officials have 'not been

⁶¹ 'Sri Lanka aims to demilitarise island by 2018', *The Straits Times*, 6 July 2016.

⁶² See <http://war-victims-map.org/wp-content/uploads/2016/09/Initial-Statement-on-OMP-Act-.pdf>.

⁶³ Taylor Dibbert, 'Insights on Sri Lanka's Transitional Justice Process', *Huffington Post*, 15 January 2017.

⁶⁴ 'Sri Lanka should fulfil human rights conditions by early 2017 to get EU trade concessions', *New Indian Express*, 2 November 2016.

appointed'.⁶⁵ While the law's enactment was a positive step in theory,⁶⁶ the fact that the 'government disregarded inclusive decision-making by announcing the framework for the [OMP] just as [...] [the CTF] began public consultations'⁶⁷ has undermined the GSL's commitment to genuine domestic buy-in.⁶⁸ In any case, the OMP 'now needs to be operationalized'.⁶⁹ This 'requires the president to assign the subject of the act to a particular minister'.⁷⁰ As this has yet to happen, 'we are still a fair distance away from having even the first of the four promised mechanisms established'.⁷¹

E. The GSL Has Rejected the Results of the National Consultation Process

1. The Consultation Process

26. On 17 November 2016, the CTF issued its final report on reconciliation mechanisms (the 'CTF Final Report').⁷² Comprised of eleven members of Sri Lankan civil society, the CTF 'was appointed by the [Prime Minister] in late-January 2016 to seek the views and comments of the public on the proposed mechanisms for transitional justice and reconciliation per' UN HRC Resolution

⁶⁵ Taylor Dibbert, 'Insights on Sri Lanka's Transitional Justice Process', *Huffington Post*, 15 January 2017.

⁶⁶ See 'Delay in Setting up Justice Mechanism Could be Attempt to Avoid Doing so Opines US Ex- War Crimes Envoy Stephen Rapp', *DBSJeyaraj.com*, 22 November 2016 ('Rapp hailed a decision by the Sri Lankan Government to remove a "firewall" of information initially contained in the draft legislation of the Office of Missing Persons that would have prevented information gathered during the search for the disappeared being used for prosecutions in the future. "Removing that blockade was important because it is from truth-seeking that justice processes begin. The clamour for criminal justice springs from a truth-seeking process. It's important for Sri Lanka to move from truth-seeking to delivering justice," Ambassador Rapp told Daily FT.')

⁶⁷ 'Sri Lanka: Delays Set Back Justice', *Human Rights Watch*, 12 January 2017.

⁶⁸ See <http://war-victims-map.org/wp-content/uploads/2016/09/Initial-Statement-on-OMP-Act-.pdf>.

⁶⁹ Taylor Dibbert, 'Looking at Some Important Issues in Sri Lanka', *Huffington Post*, 27 November 2016 (interview with Gehan Gunatilleke, Research Director, Verité Research, a think tank based in Colombo).

⁷⁰ *Ibid.*

⁷¹ *Ibid.*

⁷² Final Report of the Consultation Task Force on Reconciliation Mechanisms – Executive Summary and Recommendations, 17 November 2016 (the 'CTF Final Report').

30/1.⁷³ At the request of the CTF, a representative of the HRC was involved in the process.⁷⁴ Individuals and organizations from the following sectors were consulted: families of the disappeared, lay religious, military, professional, media, women's groups, and the creative arts.⁷⁵ A total of 7306 submissions in three languages were received by the CTF.⁷⁶

27. Throughout the country, the CTF noted 'considerable frustration, bitterness, and anger at yet another initiative, despite the inconclusive nature and abysmal failure of past efforts to provide any relief or redress'.⁷⁷ Unsurprisingly, submissions from the security forces warned that the 'process of reconciliation would be counter-productive, compromise national security, deepen wounds, and open new ones as well as exacerbate inter-ethnic and religious division'.⁷⁸ All security forces personnel 'categorically rejected international involvement in the accountability mechanism in particular'.⁷⁹ While the army expressed 'a lack of solidarity and support at present', it conceded 'support for a truth-seeking process and [...] the prosecution of the guilty'.⁸⁰
28. Despite preventative measures taken by the CTF, 'there were a number of [security] incidents'.⁸¹ At certain meetings, 'CTF members had to personally intervene [...] to ask security/police personnel inhibiting participation at the consultations to leave'.⁸² And, throughout the consultation process, the CTF and the UN Special Rapporteur on Torture reported on-going human rights violations in the North and East of the country, including abductions, intimidation, and harassment by security forces. As a result, consultations in the

⁷³ CTF Final Report, para A1.

⁷⁴ CTF Final Report, para A4.

⁷⁵ CTF Final Report, para A5.

⁷⁶ CTF Final Report, para A6.

⁷⁷ CTF Final Report, para B2.

⁷⁸ CTF Final Report, para B3.

⁷⁹ CTF Final Report, para B3.

⁸⁰ CTF Final Report, para B4.

⁸¹ CTF Final Report, para B7.

⁸² CTF Final Report, para B7.

North recorded the lowest number of submissions, shedding light 'on the deficit of trust and confidence in the Government's commitment to transitional justice and reconciliation'.⁸³

2. The CTF's Findings and Recommendations

29. The CTF Final Report identified a number of major issues, including: credible witness and victim protection; cessation of military involvement in civilian affairs; expedited return of civilian lands acquired by the military; demilitarization; release of detainees held without charge; repeal of the PTA; publication of names and locations of detainees; and incorporation of international crimes into Sri Lankan law.⁸⁴
30. Regarding the Agenda, the CTF noted the urgent need for coherence on the GSL's existing policy:

Therefore, the crucial requirement that the government simultaneously spell out a road map for reconciliation along with the policy and operational framework for the mechanisms envisaged, their relationships to each other, as well as to existing bodies tasked with reconciliation including government ministries is singled out for immediate, urgent attention.⁸⁵

Equally, the CTF highlighted the 'importance of ensuring the accessibility of the mechanisms in terms of their location, working languages, and composition'.⁸⁶

31. A number of specific findings and recommendations were made with respect to the Four Pillars. As to the first three:
- a. Missing Persons: 'The urgent task, as [family members of the disappeared] saw it, was to immediately ascertain whether disappeared persons from

⁸³ CTF Final Report, para 55; *see also ibid*, para A6.

⁸⁴ CTF Final Report, paras B8, B9, B11, B14.

⁸⁵ CTF Final Report, para B15.

⁸⁶ CTF Final Report, para B16.

both the war and the southern insurrection were still in detention, either in Sri Lanka or abroad.’⁸⁷

- b. Reparations: ‘Submissions also revealed both a reluctance and fear of reparations, on the grounds that development of the country as a whole had rendered them redundant and that reparations—primarily in the form of compensation—would thwart justice and accountability processes or be provided and an alternative to them. This fear was expressed largely in the North and East, particularly by families of the disappeared.’⁸⁸ ‘Very few submissions noted the need for a separate Office of Reparations.
- c. TRC: ‘Particular emphasis was placed on the awareness-raising, outreach, and communications functions of the [TRC], pointing to the importance of involving media personnel and artists in the dissemination of information.’⁸⁹ ‘Submissions called for public hearings for select groups of the affected, with the option of giving testimonies in private being made available to others. Receiving complaints and imposing penalties was also seen as an important function, as was reporting.’⁹⁰

32. Regarding the envisaged special court, the following findings are notable:

- a. Widespread Support: ‘The overwhelming call for justice from across the island must be viewed in terms of the failure of the judicial system to deliver redress, recognize violations, establish accountability, and ensure the security of victims and witnesses from reprisals. Accordingly, a judicial mechanism with a special court and counsel, which has also been reflected in reports of previous commissions of the state, is seen as a measure that will restore confidence in the judicial process [...].’⁹¹

⁸⁷ CTF Final Report, para C2.

⁸⁸ CTF Final Report, para C5.

⁸⁹ CTF Final Report, para C19.

⁹⁰ CTF Final Report, para C20.

⁹¹ CTF Final Report, para C22.

- b. International Judges and Lawyers: ‘The need for independence, capacity, competence, and transparency underpins the call for international judges, prosecutors, investigators, and other staff of the judicial mechanism.’⁹² ‘The CTF recommends a hybrid court with a majority of national judges as well as a sufficient number of international judges. [...] It also recommends international participation in the office of the special counsel of prosecutors and investigators, in addition to the provision of technical assistance. [...] International participation should be phased out once trust and confidence in domestic mechanisms are established and when the required expertise and capacity has been built up nationally.’⁹³
- c. Jurisdiction: ‘The *material jurisdiction* of the judicial mechanism is to prosecute war crimes, crimes against humanity, and violations of customary international law. Particular crimes such as torture, sexual violence, massacres, deliberate targeting of civilians including bombing of hospitals, denial of medicine and food supplies, used of banned weapons, the disappearance of persons who surrendered to armed forces, forcible expulsion of civilians, the use of civilians as human shields, and the forcible recruitment of children were specifically mentioned in submissions as crimes to be investigated. The submissions on *temporal jurisdiction*, though not couched in technical terms, broadly suggest that the judicial mechanism should not be limited to crimes committed during the war or to specific periods within the war. Taking into account the range of submissions, the CTF recommends that there should be no temporal limitation on the jurisdiction of the special court.’⁹⁴
- d. Prosecutorial Discretion: ‘In the event that the special court is unable for reasons of practicality/time/resources to prosecute all individual cases of violations, the prosecutorial policy must ensure that, at a minimum, those

⁹² CTF Final Report, para C23.

⁹³ CTF Final Report, para C24.

⁹⁴ CTF Final Report, para C25.

bearing the greatest responsibility for international crimes are held accountable.’⁹⁵

- e. Modes of Liability: ‘The importance of command responsibility is reiterated to ensure that those who ordered crimes and/or the most senior leaders who may not themselves have directly perpetrated crimes are covered by the mechanism.’⁹⁶ ‘[Submissions] point to the need to introduce modes of liability such as ordering, superior and command responsibility, and joint criminal enterprise into Sri Lankan law.’⁹⁷
- f. Evidence, Procedure, and Witnesses: ‘Submissions call for the incorporation of [...] relevant rules of evidence and procedure into the domestic system.’⁹⁸ ‘Some technical submissions also address the collection, handling, and storing of evidence and the treatment of witness testimonies.’⁹⁹
- g. Selection and Appointment of Judges, Prosecutors, and Support Staff: ‘[S]ubmissions emphasize the importance of an independent and rigorous process whereby each candidate is vetted for their capacity, moral character, and conflict of interest by an independent authority. There is no consensus on whether judges, particularly international judges, should be appointed through a purely domestic process or one with international participation. [...] The CTF recommends the setting out of criteria for the selection of judges and the special counsel by the Constitutional Council in consultation with the Human Rights Commission, professional bodies, and civil society and, in the case of international judges, with the [OHCHR] as well. The criteria should be made public and the Constitutional Counsel should submit a list of names to the president for appointment in respect of the special court and the office of the special counsel.’¹⁰⁰

⁹⁵ CTF Final Report, para C26.

⁹⁶ CTF Final Report, para C27.

⁹⁷ CTF Final Report, para C28.

⁹⁸ CTF Final Report, para C28.

⁹⁹ CTF Final Report, para C28.

¹⁰⁰ CTF Final Report, para C31.

33. In line with the foregoing, the CTF has recommended, *inter alia*:
- a. Confidence Building: 'A number of confidence-building measures ranging from the expedited return of land held by the military, to the release of a list of all detainees and detention centers, the repeal of the Prevention of Terrorism Act (PTA) and the immediate release of persons held under the PTA without charges, must be undertaken without delay to bridge the considerable deficit in trust and confidence.'¹⁰¹
 - b. Incorporation of ICL: 'International crimes such as war crimes and crimes against humanity must be criminalized and incorporated into Sri Lankan law immediately through legislation, without temporal prescriptions and in a manner that allows for the prosecution of these crimes committed in the past, in line with [...] the Constitution and [...] the [ICCPR].'¹⁰²
 - c. Coherent Public Roadmap: 'The government must draw up a roadmap laying out the establishment and functioning of the mechanisms for transitional justice and reconciliation.'¹⁰³ 'The President and Prime Minister, engaging all stakeholders in an island-wide outreach program, must champion the roadmap on transitional justice and take overall responsibility for it. Continuing dialogue and consultation between Government and all stakeholders beyond the CTF consultations, in the preparation of legislation on mechanisms and thereafter, also remains of fundamental and critical importance bridging the prevailing deficit of trust and confidence with the general public and the armed forces. Public outreach with a clear media strategy is important for its success.'¹⁰⁴

¹⁰¹ CTF Final Report, rec 1.9; *see also ibid*, rec 1.11 ('The necessary legislative measures should be taken without delay to criminalize enforced disappearances in line with the definition of the crime under the International Convention for the Protection of All Persons from Enforced Disappearance.')

¹⁰² CTF Final Report, rec 1.12.

¹⁰³ CTF Final Report, rec 1.13.

¹⁰⁴ CTF Final Report, rec 1.14; *see also ibid*, rec 1.15 ('To ensure the overall coherence of the mechanisms and reconciliation process, especially the prevailing confusion over the relationships between the respective mechanisms, and in order to counter public cynicism as to whether all four mechanisms

- d. Funding: 'The state must take the responsibility to ensure adequate funding of the mechanisms in a timely manner and, as such, appropriate budgetary allocations must be made.'¹⁰⁵

Additional recommendations were made with respect to demilitarization;¹⁰⁶ police and judicial reform;¹⁰⁷ post-war development, displacement, and land;¹⁰⁸ women;¹⁰⁹ children and youth;¹¹⁰ civil society;¹¹¹ and archiving.¹¹²

34. Detailed, cogent, and sensible *general* recommendations have been made with regard to all Four Pillars on the following issues: implementing legislation; security guarantees for all participants; victim and witness protection; independent monitoring; accessibility; languages; stakeholder representation; national and international participation; competency and selection criteria for all personnel; vetting; codes of conduct; gender balance; sensitivity of needs of various communities; gender crimes/issues; psycho-social support; victim trust fund; and outreach.¹¹³ Equally detailed, cogent, and sensible *specific* recommendations have been made with regard to all Four Pillars based on the findings set out above.¹¹⁴
35. With regard to the fourth pillar – the 'Judicial Mechanism (Special Court and Office of Special Counsel)' – recommendations are made on the following issues:

would be established, the policy and operational frameworks for all the mechanisms should be prioritized at the outset, swiftly made public and operational.')

¹⁰⁵ CTF Final Report, rec 1.16.

¹⁰⁶ CTF Final Report, recs 1.19–1.21.

¹⁰⁷ CTF Final Report, recs 1.22–1.24.

¹⁰⁸ CTF Final Report, recs 1.25–1.30.

¹⁰⁹ CTF Final Report, rec 1.31.

¹¹⁰ CTF Final Report, recs 1.32–1.34.

¹¹¹ CTF Final Report, recs 1.35–1.38.

¹¹² CTF Final Report, recs 1.39–1.40.

¹¹³ See CTF Final Report, recs 2.1–2.26. *N.b.* These are styled as 'Cross-Cutting Recommendations on the Mechanisms'.

¹¹⁴ See CTF Final Report, recs 3.1–3.12. (in re Office on Missing Persons (OMP) and Certificate of Absence (CoA)); recs 4.1–4.14 (in re Office of Reparations); recs 5.1–5.14 (in re Truth, Justice, Reconciliation, and Non-Recurrence Commission (TJRNR)); and recs 6.1–6.15 (in re Judicial Mechanism (Special Court and Office of Special Counsel)).

international participation; selection criteria; adequate judges; majority national judges with at least one international judge per bench; gender and ethnic representation; specific needs of affected persons; international standards on procedure and practice; ICL with no temporal limitations; expedition; broad prosecutorial policy; ‘greatest responsibility’ and international modes of liability; special counsel with investigative unit including international personnel; no amnesty; effective representation for all affected persons; and legal advice and representation for all accused.¹¹⁵

36. By far, the most controversial sentence in the Final Report – and the one the GSL has seized upon so fiercely – is Recommendation 6.4: ‘The Court shall ensure that there will be a majority of national judges and *at least one international judge on every bench.*’

3. The Government Reaction

37. The CTF’s Final Report was made public on 5 January 2016. And the GSL’s reaction was swift, shrill, and reliably partisan:

Justice Minister Wijeyadasa Rajapakshe said today said he had no confidence in the Consultation Task Force on Reconciliation Mechanisms (CTF) appointed by the Prime Minister. [...] The minister said some of the members of the CTF Committee were representatives of Non-Governmental Organizations (NGO). ‘No one is complaining about the independence of the judiciary anymore. We have reconciliation and peace processes in place. This report, at this juncture, is totally unwarranted. Therefore, we don’t have to follow these recommendations by the CTF’, he told the Daily Mirror. The minister said no one could force us to have foreign judges or make us do things for the sake of reconciliation and impartiality. [...] He said even the UN could not force the government to include foreign judges, as it was against the UN charter to force or to pressure member states, be it large or small, powerful or weak. Having foreign judges in local tribunals is also a violation of the Constitution. The minister said this situation was the result of the agreement signed by former President Mahinda Rajapaksa with former UN Chief Ban Ki-moon.¹¹⁶

¹¹⁵ See CTF Final Report, recs 6.1–6.15.

¹¹⁶ ‘I have no confidence in the CTF: Wijeyadasa’, *Daily Mirror*, 6 January 2017.

While the president has yet to publicly react to the findings, Lakshman Yapa Abeywardena, State Minister of Finance, claimed to clarify his stance: 'President Sirisena's position was very clear on this matter and he has more than once said there will be no foreign judges in the local judicial mechanism and it will not be a hybrid court as suggested by certain groups, Abeywardena explained.'¹¹⁷ Obviously, '[t]he problem that the government seems to be having is that the Task Force recommendations do not correspond to the general sentiment in the ethnic majority Sinhalese population.'¹¹⁸

38. The GSL's position that 'Sri Lanka's Constitution or the Criminal Procedure Code do not provide for the establishment of a judicial mechanism with foreign judges to adjudicate alleged war crimes',¹¹⁹ is a red herring. The fact that neither of those documents specifically envisages such a scenario does not amount to a prohibition in any sense. Hybrid courts with international judicial assistance have functioned around the world in various legal environments that have been adapted for such specific purposes. There is simply no *legal* reason why Sri Lanka could not do the same – as recommended by the CTF.
39. As expected – and as clearly warranted, according to the MAP – mainstream human rights NGOs (including Amnesty International, Human Rights Watch, and the International Commission of Jurists) came out in support of the CTF's recommendations and in opposition to the GSL's reaction.¹²⁰

¹¹⁷ 'Reconciliation move: potentials and liabilities', *Daily News*, 12 January 2017.

¹¹⁸ 'Sri Lanka Govt Loses Ground Even As 'Nationalist' Forces Hover in the Wings', *Citizen*, 20 January 2017.

¹¹⁹ 'Sri Lanka President rejects foreign judges', *Sri Lanka Brief*, 7 January 2017.

¹²⁰ See 'Sri Lanka: Consultation Task Force report must lead to justice', *Amnesty International*, 11 January 2017 (Amnesty International 'is dismayed by the Sri Lankan government's casual disregard for the findings compiled by the Consultation Task Force on Reconciliation Mechanisms (CTF). The CTF published a detailed more than 700 page report with important recommendations on 3 January. However, neither the President nor the Prime Minister attended the handover of the report, while the Minister of Justice told reporters that he has "no confidence" in its findings. '); 'Sri Lanka: Adopt Task Force's Justice Proposals', *Human Rights Watch*, 12 January 2017 ('Sri Lanka's government should promptly implement recommendations on transitional justice proposed by the Consultation Task Force (CTF) in a report released on January 3, 2017, Human Rights Watch said today. [...] The task force reported that there had been no government interference or attempts to impede their work, and that the report reflected the views of all eleven members. [...] However, the immediate

40. While the GSL upheld its commitment to establish an impartial CTF, its overblown reaction to the CTF Final Report – which, while in no way perfect, amounts to a considered and comprehensive roadmap for justice *based exclusively on the views of Sri Lankans* – is further evidence of the Sirisena government’s bad faith vis-à-vis the transitional justice process and, more worryingly, the clear desires of its own citizenry.

III. CONCLUSION AND RECOMMENDATIONS

41. Based on the documented events of the last twelve months, the MAP concludes that: (1) the GSL is not acting in good faith with respect to its commitments under HRC Resolution 30/1; (2) international crimes and abuses continue to be committed in Sri Lanka with impunity; (3) key reforms to the country’s justice and security sectors have failed to materialize; and (4) the GSL’s initial reaction to the CTF Final Report amounts to a cynical and reckless repudiation of the stated aspirations of Sri Lanka’s citizens.
42. Given the GSL’s current posture as set out above, the MAP hereby:
- a. adopts by reference and reiterates the various recommendations made in the **MAP** First Spot Report – in particular, its call for a special court with a *majority* of international judges, a co-international prosecutor, adequate witness protection, participation of victims, and independent monitoring;

response by senior officials has been disappointing. Justice Minister Wijedasa Rajapaksa and Health Minister Rajitha Senarathne both separately ruled out the participation of foreign nationals on the special court, while Finance Minister Lakshman Yapa Abeywardene said that President Maithripala Sirisena rejected the inclusion of foreign judges and would not allow the government to prosecute “war heroes.” The cabinet spokesperson claimed that Al Hussein had agreed that there should be no foreign involvement in the court during a previous meeting – a claim that Al Hussein himself immediately rejected.’); ‘ICJ calls for immediate implementation of Consultation Task Force recommendations’, *Sri Lanka News*, 20 January 2017 (‘The International Commission of Jurists or ICJ says that the Sri Lankan government must deliver on the clear demand for justice from Sri Lankans nationwide by implementing the Consultation Task Force recommendations without further delay.’)

- b. commends the **CTF** on the publication of its Final Report (without endorsing each and every recommendation contained therein);
- c. urges **the HRC** to adopt a new resolution condemning the failure of the GSL to fulfill (1) its commitments under the HRC Resolution 30/1 and (2) its legal obligations to victims;
- d. calls on **the HRC** to extend its mandate so as to review regularly the GSL's compliance with HRC Resolution 30/1;
- e. calls on the **UN High Commissioner for Human Rights, the HRC, and other international actors** to maintain diplomatic pressure on the GSL to ensure implementation of the word and spirit of HRC Resolution 30/1;
- f. calls on the **United Kingdom, the United States, India, and other concerned governments** of means and influence to dispense with purely rhetorical pressure and exercise the leverage necessary to persuade the GSL to act in accordance with its international legal obligations to victims.
- g. calls on the **GSL** to begin proceeding in good faith pursuant to the HRC Resolution 30/1, in particular:
 - i. to end human-rights abuses in the country and to bring those responsible for their commission to account;
 - ii. to operationalize the OMP as soon as possible and to ensure its independence;
 - iii. to begin taking the preliminary practical steps necessary for the eventual establishment of a special court, including: amending substantive law to include international crimes and modes of liability; developing a system for the collection and preservation of evidence; enhancing witness

protection systems; and establishing an outreach program regarding accountability mechanisms and issues;

- iv. to acknowledge the CTF Final Report as a comprehensive and coherent potential roadmap for justice and to begin genuine and open consideration of the various recommendations contained therein;

43. Should the GSL continue to act in bad faith and/or fail to take significant steps towards implementing the word and spirit of HRC Resolution 30/1, the **United Nations Security Council** should, within one year, refer the Sri Lanka situation to the **International Criminal Court**. These steps must include meaningful progress towards establishing a hybrid war crimes court with the participation of international judges and prosecutors.

Monitoring Accountability Panel, Bios:

The MAP is composed of five international jurists from a variety of backgrounds:

- Peter Haynes QC
- Andrew Ianuzzi
- Richard J Rogers
- Heather Ryan
- Justice Shah

In addition, Geoffrey Robertson QC acts as a Consultant to the MAP.



Peter Haynes QC (UK) - Panel Member

Peter Haynes QC is a British barrister with more than 30 years' experience in domestic and international criminal courts. He currently acts as the Lead Counsel for Jean Pierre Bemba at the International Criminal Court (ICC) and is the Lead Legal Representative of Victims at the Special Tribunal for Lebanon (STL). He is one of the very few practitioners who have led cases before the International Criminal Tribunal for the Former Yugoslavia (where he appeared for the defence of General Vinko Pandurevic in relation to the Srebrenica massacre), the ICC and the STL. He has appeared in cases involving genocide, war crimes, crimes against humanity and international terrorism. He has been responsible for development of the jurisprudence, practice and procedure of the representation of victims in international / hybrid courts. Peter regularly lectures on the functioning of international criminal courts and, in particular, victim representation.



Andrew Ianuzzi (USA) - Panel Member

Andrew Ianuzzi, a US-qualified (NY) lawyer with over twelve years of international experience, began his career as a commercial litigator at a prominent New York law firm. After transitioning into the field of international criminal law, he defended clients in complex cases involving genocide, war crimes, and crimes against humanity before UN-backed tribunals in Sierra Leone and Cambodia and worked as a legal officer in chambers at the ICTY. As an independent legal consultant and investigator, Andrew has advised and assisted individual and institutional clients on a number of human rights issues in Liberia, Nigeria, Kenya, Uganda, Ethiopia, Somalia, Thailand, the Philippines, and Myanmar.



Richard J Rogers (UK) - Panel Member and Secretary

Richard Rogers, a USA (California) and UK qualified lawyer, has 20 years experience in international criminal law and human rights. He has held senior positions in the UN and OSCE: He was the OSCE's Chief legal system monitor in post-conflict Kosovo, the Principal Defender at the UN's Extraordinary Chambers in the Courts of Cambodia, and the head of legal support for the Appeals Chamber at the UN's International Criminal Tribunal for Yugoslavia. Richard is currently assisting several victim groups before the International Criminal Court and has worked with national war crimes courts in Bangladesh, Bosnia and Herzegovina, Croatia, Kosovo, and Uganda. Richard has recently provided expert testimony before the US Congress

House Committee on Foreign Affairs, and spoken to human rights issues before the European Parliament's human rights committee and the Bosnian Parliament. He is a founding partner of Global Diligence LLP.



Heather Ryan (USA) - Panel Member

Heather Ryan, a US lawyer, has been working in the field of international law for over 15 years. She is currently a special consultant for the Open Society Justice Initiative monitoring the Extraordinary Chambers of the Courts in Cambodia (ECCC), a hybrid tribunal set up to prosecute senior leaders of the Khmer Rouge Regime responsible for mass atrocities from 1975-1979. She has been involved since 2005 in evaluating and reporting on the development and implementation of the ECCC in terms of compliance with international fair trial standards, as well as the court's effectiveness in meeting its goals with respect to the victims and public. Her experience also includes work at the Carr Center for Human Rights Policy at Harvard's Kennedy School, Global Greengrants Fund, The Coalition for International Justice, teaching international criminal law, as well as private law practice.



Justice Ajit Prakash Shah (India) - Panel Member

Justice Shah, a renowned Indian jurist, has been practicing law as an advocate and judge for around 40 years. Following his practice as a lawyer in Bombay, Justice Shah was elevated to the bench in 1992, becoming a permanent Judge of Bombay High

Court in 1994. He was promoted to Chief Justice of the Madras High Court in 2005 and Chief Justice of Delhi High Court in 2008. He retired from the bench in 2010. Until August 2015, Justice Shah was the Chairman of the 20th Law Commission of India, a body established by the Indian Government to promote legal reform throughout the justice system. He was also the Chairperson of the Broadcasting Content Complaints Council, a self-regulatory body for non-news TV channels set up by the Indian Broadcasting Foundation in consultation with the Ministry of Information & Broadcasting.

Consultant's Bio



Geoffrey Robertson QC - Consultant

Geoffrey Robertson QC is founder and joint head of Doughty Street Chambers. He has had a distinguished career as a trial and appellate counsel, an international judge, and author of leading textbooks. He has argued many landmark cases in media, constitutional and criminal law, in the European Court of Justice; the European Court of Human Rights; the Supreme Court (House of Lords and Privy Council); the UN War Crimes courts; the World Bank's International Centre for Settlement of Investment Disputes and in the highest courts of many commonwealth countries. Mr Robertson was the first President of the UN War Crimes Court for Sierra Leone and served as a 'distinguished jurist' member of the UN's internal justice council. He is the author of *Crimes Against Humanity: The Struggle for Global Justice*.