



Open Dialogue with Civil Society

SCRM Takeaways

20th September 2016

Introduction

Mr. Mano Tittawella, Secretary General of the SCRM, outlined the functions of the SCRM; which include:

1. Coordination and facilitation of the design and establishment of all TJ mechanisms
2. Coordination and facilitation of all reconciliation and non-recurrence facilities in partnership with ONUR and state organizations such as line ministries, provincial councils, etc. and other non-state organizations.
3. Capacity building, especially at grassroots level, to ensure that potential implementing arms and partners have the required expertise and knowledge

SG/SCRM Mr. Tittawella brought to attention some of the successes and challenges that the Secretariat was facing at present. The OMP bill has been passed in to law, and this is an important milestone. The SCRM is currently awaiting the CTF report while in parallel looking at best practices and models from across the world, that can be adapted to the Sri Lankan context, for the other transitional justice mechanisms.

The floor was opened to questions and suggestions from civil society members.

1. What are some effective processes of risk management that have been taken so far?

Scrutinizing challenges faced by other commissions around the world undergoing similar processes, and Sri Lanka's own failure and best practices. Conducting wide-ranging consultations in order to gather as much information as possible that can be used to guide the processes ahead and ensure risks are managed.

2. Can there be some clarity with regard to the sequencing process envisioned by the GoSL?

- a. Office of Missing Persons- has been established by Act. While SG/SCRM admitted that ideally the report by the consultations task force would have preceded the establishment of the OMP by Act, the OMP is the least controversial of the four mechanisms, and Sri Lanka has some prior experience

with commissions on Missing Persons, unlike the other envisioned mechanisms. OMP Commissioners are likely to be appointed by the end of the 2016 - so they may commence work at the beginning of 2017.

- b. Laws criminalizing disappearances will be established by the 1st quarter of 2017, and likely before the OMP is fully operational.
- c. Office of Reparations to be established and functioning by the end of the 1st quarter of 2017
- d. Truth Commission to be established and functioning by the end of the 3rd quarter of 2017
- e. Special Courts to be established after that.
- f. The 'PTA' to be repealed as soon as possible and replaced with a more modern Act - work is being done on this at present.

3. There has been a loss of trust among people, where do the special courts stand?

Any government in a country that has experienced a conflict of this nature begins with a deficit of trust. However we are taking every effort to decrease that deficit. The CTF has been conducting a wide and extensive consultation process. This is a significant effort to effectively dialogue with people and to understand their views - especially on controversial subjects like the Special Courts - and in the process to regain the trust and confidence of victims. The Special Courts (or any accountability mechanism) cannot be established without fully comprehending the views of victims, and other stakeholders, through a transparent consultations process.

4. OMP has talked a lot about truth but what about measures for accountability?

The OMP in essence is a humanitarian body and will not prosecute; its findings will be used to determine the fate and whereabouts of missing persons, and as per clause 13(2), these findings will not result in criminal or civil liability.

The OMP shall protect the rights and interests of missing persons and their relatives, including their right to justice. This is abundantly clear in the preamble and enunciation of its mandate (clause 2(c) and (d)); its objectives (clause 10 (b), (c), and (d)); its investigative powers (clause 12(i)); and its functions (clause 13 (1) (i)). Accordingly, if there is indication of an offence within the meaning of the Penal Code, as per Clause 12 (i), information will be passed on to the relevant prosecuting authority.

5. Will the selection of commissioners be transparent? What procedure will be taken?

The SCRM is aware of the importance of transparent appointment procedures in the current transitional justice context; we have made note of recommendation 6.5 (i) in the Consultation Task Force's *Interim Report* on appointment processes. The President through the recommendation of the Constitutional Council (CC) will appoint commissioners independently. The SCRM can provide a list of qualities or skills that the SCRM believes essential for such positions, based on research. However the Constitutional Council cannot be compelled to act on those suggestions.

6. A suggestion was made that one of the commissioners must be a family of a missing person.

This is at the discretion of the Constitutional Council and since it has been captured and recommended in the CTF's publically available interim report (6.5 ii), it is at the discretion of the CC to take the suggestion on board.

7. A concern was raised as to the protection and safety of current witnesses and participants of the consultations. Until the relevant law is operational, would there be any measures to provide safety to victims and witnesses appearing before consultations, the OMP or other mechanisms?

The question of Victim and Witness Protection in general, falls under the Ministry of Justice, with the Victim and Witness Protection Authority and the Police being the main focal points. The OMP must by law, have its own Victim and Witness Protection Division, and this may be developed and monitored independently by the OMP members, due to the sensitivity of providing information to such a mechanism.

8. What role does SCRM play in the process of reconciliation? How effective is the role of SCRM in coordinating the work done by the different ministries involved?

The SCRM is a coordinating body and has been tasked to design and set up the TJ mechanisms. We work in partnership with ONUR and closely with other departments and ministries, the Prime minister's Office and the President's Office. Since this is a new office, we are still building our own cadre and capacity, but by the end of the year we hope to be fully operational and to be able to strengthen our working relationship with other Ministries and organizations.

9. Are there plans to conduct open dialogues outside of Colombo?

The first few open dialogues will be held in Colombo, however we to plan to conduct open dialogues outside of Colombo in the North and South starting in November.

10. Are there measures envisaged to target fundamental issues? How much attention is being paid to issues that perpetuate these issues and cause divisions?

The Truth Seeking mechanism to be set up will focus in part on understanding the fundamental issues, along with other findings. Such a mechanism by definition must engage not only with the consequences of conflict but also the root causes that led to and sustained the conflict. This is inherent in the definition of such a mechanism, and this is why it differs from other 'Commissions of Inquiry', that Sri Lanka has had in the past. Commissions of inquiry, by contrast, often focus on a specific and narrow period of time or a specific event or series of events.

11. What is the role of civil society in the setting up of these TJ mechanisms?

Civil society has a crucial role to play in the setting up of TJ mechanisms. The SCRM welcomes constructive criticism at all times. We need active civil society participation in

order to generate healthy dialogue, the best ideas, and thus to craft effective mechanisms. Civil society will also need to play a significant role in assisting victims, managing expectations, helping to build awareness and building effective feedback mechanisms, in order that the mechanisms function effectively once set up. The government cannot be successful in such a large endeavor, if it functions alone or isolated from civil society.

12. What does SCRM plan to do in order to regain the trust confidence that has been lost during the OMP process, particularly in regards to affected families?

Trust has largely been perceived to be lost as a result of a perception that the OMP did not take into account consultations - but (1) many recommendations were considered, (2) others can be incorporated by the Commissioners as policy, since these Commissioners have the powers to form their own guidelines, policies, units/division and appoint their own staff, as long as they are in line with the objectives set out in the law. Because of the nature of conflict, as is the case in many other nations as well, there is already a shortage of trust among the people in regards to the governments efforts. I wouldn't say that confidence has been entirely lost during the OMP process - many well-reputed organizations have welcomed and conveyed their appreciation of the established Act. The SCRM will recommend that the widespread and extensive consultations by the CTF feed into the operations and policymaking of the OMP, into the decisions made regarding the budget and also into all future decisions made on designing mechanisms. The real confidence - building, however, will only happen when the OMP is functioning and providing answers to victims.

13. Does SCRM have a clear communication strategy that can especially appeal to those that have shown animosity towards this process?

We recognize this is an area of weakness and are currently working on creating a clear communication strategy and message.

14. Will there be psychosocial support provided for those who might be hesitant to even come forward and make use of the services of the OMP?

Yes. We have reached out to ONUR who have already begun identifying resource personnel to be trained. The OMP staff will also undergo psychosocial training.

15. Has SCRM thought about consulting the differently abled?

Yes. While the OMP Act does not explicitly mention the matter of differently abled people there is space within the legislation to receive recommendations on this and create policies accordingly.

16. How will CTF/ZTF engagement transfer to the institutions that will be set up? Will there be continued engagement of the CTF?

Although the consultations process will officially end in the following months, the report submitted by the CTF and their recommendation will be critical in setting up TJ mechanisms.

17. Where will the financial resources for these institutions come from?

The Treasury will provide the funds and it is hoped that the International Community could raise funds as well. Global best practices are being considered to form a sustainable funding strategy for the TJ mechanisms.

18. Will the OMP start to operate before disappearances are criminalized?

This is unlikely. The laws criminalizing disappearances will be established by the 1st quarter of 2017, however the Members of the OMP are likely to take some time to set up their offices, to set their guidelines/policies, appoint staff, collate databases, and procure the necessary equipment, before they can begin their substantial work.

19. What measures will be taken to protect the confidentiality of evidence and the protection of witnesses?

Clause 15 of the OMP Act makes provisions for the confidentiality of information given to OMP staff and officers. It would be considered a serious offence to violate the confidentiality provisions set out by the OMP Act or to otherwise hinder the work of the OMP.

20. Will the SCRM take steps to avoid re-traumatization of those appearing before the TJ mechanisms? Will there be efforts made to have a fair gender representations in both offices?

Gender sensitivity is an urgent and important policy issue and as such is allowed for in the OMP legislation. The appointments to the OMP are required to represent the pluralistic nature of Sri Lankan society. Furthermore, the design and establishment of the mechanisms is being coordinated by a central organization, the SCRM, so that re-traumatization does not occur as a result of a victim having to appear before multiple mechanisms, or as a result of poor design of the links between mechanisms. By establishing models that are aligned with each other and based on victim needs, or victim-centered, there is a reduced chance of re-victimization or re-traumatization.

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For more information visit our website <http://www.scrm.gov.lk/> follow our face-book page www.facebook.com/scrmsl, or contact SCRM staff directly at 0112325620. Civil Society members are also encouraged to contact members of the Strategic Consultants Group (SCG) Louis James Gentile (lgentile@scrm.gov.lk) and Eduardo Gonzalez-Cueva (elfjcgcc@scrm.gov.lk), who play an advisory role to the SCRM and maintain an open-door policy.