



29 March 2017

Dear OHCHR colleagues,

Please find attached a submission from Freedom from Torture in relation to the third cycle Universal Periodic Review (“UPR”) of Sri Lanka, scheduled for 15 November 2017.

Freedom from Torture (formerly the Medical Foundation for the Care of Victims of Torture) is the only UK-based human rights organisation dedicated to the treatment and rehabilitation of torture survivors. We offer services to around 1,000 torture survivors each year, including psychological and physical therapies, forensic documentation of torture, legal and welfare advice, and creative projects.

Since our foundation in 1985, more than 57,000 survivors of torture have been referred to us making us one of the world’s largest torture treatment centres. Our expert clinicians use forensic methods to document physical and psychological evidence of torture via medico-legal reports which are used in connection with torture survivors’ claims for international protection and in research reports which aim to hold torturing States to account.

Currently, Freedom from Torture does not have consultative status with ECOSOC.

This submission focuses on evidence of ongoing torture collected since Sri Lanka’s last UPR in November 2012 and sets out Sri Lanka’s slow progress in implementing the recommendations of the United Nations human rights mechanisms.

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Yours sincerely,

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1. Freedom from Torture makes this submission in connection with the third cycle Universal Periodic Review (“UPR”) of Sri Lanka.
2. Torture continues to be a significant problem and impunity pervasive in Sri Lanka. Despite a number of encouraging developments since the election of the new government in January 2015 and its willingness to engage with United Nations (UN) human rights bodies, Freedom from Torture continues to receive referrals for individuals who have been tortured.

**Evidence of torture since Sri Lanka’s second cycle UPR**

3. In 2016 Sri Lanka was - for the fifth successive year - the top country of origin for torture survivors referred to Freedom from Torture for clinical services and medico-legal reports. We have observed a general increase in the number of Sri Lankan referrals during the last UPR period.<sup>1</sup>

<b>Year of Referral</b>	<b>Number of Sri Lankan referrals</b>
<b>2012</b>	228
<b>2013</b>	307
<b>2014</b>	341
<b>2015</b>	327
<b>2016</b>	230
<b>TOTAL</b>	1433

*Figure 1: Sri Lankan referrals to Freedom from Torture between 2012 and 2016*

4. Freedom from Torture has completed 297 medico-legal reports (“MLR”) for people who have experienced torture in Sri Lanka since the end of the civil war in 2009. This includes 134 people who have experienced torture since 2012, when Sri Lanka underwent its second cycle UPR. Freedom from Torture expects to see an increase over this year in the number of completed MLRs for those tortured in the last two or three years, given the significant time lag between the incidence of torture and referral to the organisation. This delay occurs because of the time it takes for a survivor to escape or be released from detention, to reach the UK, to find legal representation, to be referred to Freedom from Torture, and for the report and documentation process to be completed.

<b>Year of Torture</b>	<b>Number of MLRs Completed</b>
<b>2009</b>	81
<b>2010</b>	43
<b>2011</b>	39
<b>2012</b>	38
<b>2013</b>	56
<b>2014</b>	28
<b>2015</b>	12
<b>2016</b>	0
<b>TOTAL</b>	297

<sup>1</sup> Please note that the year of referral is not an indication of the year or years in which torture occurred.

Figure 2: Total number of MLRs completed for Sri Lankans tortured since the end of the civil war in May 2009, by year of detention and torture

5. In August 2015 Freedom from Torture published *Tainted Peace: torture in Sri Lanka since May 2009* (“**Tainted Peace**”),<sup>2</sup> which forensically documented 148 torture cases in accordance with the standards set out in the UN Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the “**Istanbul Protocol**”). The key findings of this report are that:
  - The Sri Lankan military, police and intelligence services continue to practice torture in a network of torture facilities across Sri Lanka, including unofficial detention centres;
  - Those at particular risk of torture are Tamils with a real or perceived association with the Liberation Tigers of Tamil Eelam (“**LTTE**”), (whether direct or indirect through family members) at any level and whether current or historic; and
  - The lack of due process reported and the heavy scarring left on the bodies of victims suggest that the perpetrators commit torture with impunity and without fear of the consequences.
6. The methods of torture documented in *Tainted Peace* include blunt force trauma (100% of cases), burning (78%), sexual torture including rape (71%), suspension and forced positioning (45%), asphyxiation (38%), cutting or stabbing with sharp implements (17%) and / or electric shock (5%). Psychological and environmental forms of torture included prolonged solitary confinement (70%), threats of being killed and / or further torture (51%) and mock execution (4%).
7. Freedom from Torture has completed MLRs for twelve survivors of torture who have been detained since January 2015. The overwhelming majority of these survivors are ethnic Tamils. They have reported torture by a range of state actors including the Criminal Investigation Department, the Terrorism Investigation Department, the police and the army, in a range of locations such as prisons, police stations and army sites. The methods of torture disclosed are consistent with previous findings in *Tainted Peace* and include beating, burning with cigarettes and heated objects, suspension, partial or near suffocation, sexual assault and / or male and female rape.
8. As part of his mission to Sri Lanka in 2016, the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“**Special Rapporteur**”) reviewed cases of torture survivors from 2015 and 2016, and concluded that, despite progress in recent years, a “culture of torture” persists in Sri Lanka.<sup>3</sup>

### **Lack of due process rights**

9. Of the 148 survivors whose cases were documented in *Tainted Peace* 136 (92%) were detained without observance of any due process rights. This means that there was no formal charge or sentencing, no access to legal representation, no hearing before a judge, no official notification to family members and no access to an independent medical examination. Only 12 survivors reported appearing before a judge, and of these 12 just three said that they had access to legal advice or representation and just two said they were formally charged with an offence.
10. These patterns are continuing. In the twelve MLRs documenting torture from 2015 only one person stated they had been taken before a judge, while three people reported that they had signed documents that were blank or written in a language that they did not understand.
11. The experiences documented in these MLRs highlight the lack of fundamental legal safeguards also noted by the UN Committee against Torture, including the right to have prompt access to a lawyer, the right to notify a

<sup>2</sup> Available at: [https://www.freedomfromtorture.org/sites/default/files/documents/sl\\_report\\_a4\\_-\\_final-f-b-web.pdf](https://www.freedomfromtorture.org/sites/default/files/documents/sl_report_a4_-_final-f-b-web.pdf).

<sup>3</sup> Available at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/34/54/Add.2](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/34/54/Add.2). See paragraphs 20-22, Report of the Special Rapporteur on his mission to Sri Lanka, UN Document A/HRC/34/54/Add.2

friend or relative of the detention and the right to challenge the legality or necessity of the detention before a judge or magistrate.<sup>4</sup> These failures are particularly acute for those subject to prolonged administrative detention under the Prevention of Terrorism Act. The normative gaps in the rights of detainees - and the lack of practical application of standards - are also detailed by the Special Rapporteur.<sup>5</sup>

### **Torture of individuals associated with the LTTE**

12. The civil war in Sri Lanka ended in 2009. However, the majority of the survivors included in the *Tainted Peace* study reported that a key factor in their detention and torture was their association with the LTTE, whether real or wrongly imputed to them by the authorities. All of the 12 survivors who have disclosed that they were tortured after the change in government in January 2015 describe that they were questioned about their association with the LTTE.
13. The evidence documented by Freedom from Torture supports the findings of the Committee against Torture, which received information that numerous individuals suspected of having a link, even remote, with the LTTE had been abducted and subjected to brutal torture.<sup>6</sup>

### **Risk of torture on return from UK**

14. Freedom from Torture has identified a significant number of people who report having been tortured on their return to Sri Lanka from the UK. This totalled 55 out of 148 survivors studied during the period 2009-2013, and a further 26 survivors in the last three years.
15. In 2015 alone nine survivors reported that they were detained on arrival at the airport or shortly after their return and subjected to a range of torture methods including suffocation, beating, sexual torture and burning with heated objects. Four of these survivors disclosed that they were specifically interrogated about their activities in the UK, including their participation in lawful demonstrations and the people with whom they had had contact. This mirrors evidence documented in *Tainted Peace*, where 21 people were accused of attending specific demonstrations in the UK, and 11 were shown photographs taken at these events and questioned about their involvement and the participation of others.

### **Compliance with international mechanisms for tackling torture and promoting human rights**

16. In its 2016 Concluding Observations the Committee against Torture noted that whilst there had been some progress made by Sri Lanka, there were also significant shortcomings.
17. Most of the progress that has been made has come in the form of the Sri Lankan Government adopting policies or passing legislation which aim to protect victims, witnesses and detainees. The Committee against Torture welcomed that Sri Lanka has recognised the competence of the Committee to consider individual communications, and has ratified the International Convention for the Protection of All Persons from Enforced Disappearance and the Convention on the Rights of Persons with Disabilities.
18. However there is a difference between making legislative amendments and ensuring full compliance through monitoring, enforcement and taking additional measures required. Previous recommendations of the Committee against Torture have not yet been implemented, and in particular, there are concerns surrounding:

18.1 Fundamental legal safeguards - victims being detained without warrant, consistent reports of torture

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<sup>4</sup> Available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CAT/C/LKA/CO/5&Lang=En](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT/C/LKA/CO/5&Lang=En). Paragraphs 21-22 and 27-28, Concluding Observations on the Fifth Periodic Report of Sri Lanka, UN document CAT/C/LKA/CO/5

<sup>5</sup> Available at :[http://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/34/54/Add.2](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/34/54/Add.2). See «Assessment of the Situation », Report of the Special Rapporteur on his mission to Sri Lanka, UN Document A/HRC/34/54/Add.2

<sup>6</sup> Available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CAT/C/LKA/CO/5&Lang=En](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT/C/LKA/CO/5&Lang=En). Paragraph 11, Concluding Observations on the Fifth Periodic Report of Sri Lanka, UN document CAT/C/LKA/CO/5

from the UN, civil society and the national human rights institution;

- 18.2 Forced confessions - obtaining confessions under duress, failure to register detainees;
  - 18.3 Investigations of torture allegations - lack of supervision by the judiciary including over the legality of detentions, and failure to investigate allegations of torture; and
  - 18.4 Accountability for past violations - the National Police Commission received 455 complaints in the first quarter of 2016 and at the time of the Special Rapporteur's mission, over 400 of those complaints were still pending investigation. There are concerns about the lack of independence surrounding the handling of these complaints as the investigations are dealt with by police officers.
19. Sri Lanka has taken some steps towards the implementation of the Human Rights Council Resolution of 1 October 2015 on promoting reconciliation, accountability and human rights in Sri Lanka (A/HRC/RES/30/1),<sup>7</sup> but further structural reform is required to strengthen good governance and advance respect for human rights. A failure to take action to deliver on the internationalised accountability mechanisms is a particular area of disappointment for Sri Lankan torture survivors in Freedom from Torture's services who see a direct link between the culture of impunity and continued violations which in turn undermine reconciliation efforts.<sup>8</sup>
  20. Torture and ill treatment are still used to extract information or coerced confessions rather than carrying out investigations using scientific methods. In addition, procedural norms relating to criminal investigations and anti-terrorism entrust the police with arbitrary powers of detention without trial.
  21. At present, the legal framework and structure of the armed forces, police, office of the Attorney General and judiciary perpetuate the risk of torture. To date a lack of comprehensive reform of these institutions has contributed to a failure to eliminate torture and hold the perpetrators of torture accountable for their actions, regardless of their position or status in society. The continued failure to tackle these structural and procedural deficiencies means that Sri Lanka is unable to comply with its international obligations to prevent and prohibit torture.

### **Recommendations for Sri Lanka**

22. During its second UPR in 2012, the Government of Sri Lanka did not accept the recommendations made by Member States with regards to the prevention of torture<sup>9</sup> and, instead, maintained that measures are already in place to combat torture and mistreatment, and that these will be enhanced in keeping with the National Action Plan for the Protection and Promotion of Human Rights (2011-2016).<sup>10</sup>
23. Freedom from Torture's evidence outlined above, the findings of the Committee against Torture and the findings of the Special Rapporteur demonstrate that torture is a significant and on-going issue in Sri Lanka.
24. Freedom from Torture proposes the following recommendations for the forthcoming UPR:

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<sup>7</sup> Available at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/RES/30/1](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/30/1).

<sup>8</sup> Our briefing from February 2016 outlines why justice matters to survivors. Available at: [https://www.freedomfromtorture.org/sites/default/files/documents/survivor\\_briefing-final.pdf](https://www.freedomfromtorture.org/sites/default/files/documents/survivor_briefing-final.pdf)

<sup>9</sup> For example, Sri Lanka did not accept recommendations from Tunisia, Austria, Brazil, the Maldives or the Czech Republic to ratify the Optional Protocol to the Convention against Torture and/or the Rome Statute of the ICC (recommendations 128.1, 128.6, 128.7, 128.7 and 128.9), from Australia to "*take action to reduce and eliminate all cases of abuse, torture or mistreatment by police and security forces*" (recommendation 128.60), from the Czech Republic to "*adopt further measures to prevent torture and ill-treatment in particular in prisons and detention centres*" (recommendation 128.61), from Poland to "*establish an effective independent monitoring mechanism to investigate complaints of torture*" (recommendation 128.62) and to "*carry out independent investigations into possible cases of torture as well as reprisals related to cooperation with international human rights bodies*" (recommendation 128.63) or from Spain to "*improve detention conditions and respect for judicial guarantees for inmates, fighting against torture and inhuman and degrading treatment in detention centres in line with commitments taken during the May 2008 UPR session*" (recommendation 128.76).

<sup>10</sup> Human Rights Council, Report of the Working Group on the Universal Periodic Review - Addendum, A/HRC/22/16/Add.1, 21 February 2013, paragraph 2.14, available at: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/LKSession14.aspx>; Government of Sri Lanka, National Action Plan for the Protection and Promotion of Human Rights (2011-2016), available at: <http://www.ohchr.org/EN/Issues/PlansActions/Pages/PlansofActionIndex.aspx>.

- 24.1 **Recommendation 1:** Accept and fully implement all of the recommendations made in the 2016 report of the Special Rapporteur on Torture and the 2016 Concluding Observations by the Committee against Torture following its recent examination of Sri Lanka, and, in particular, the recommendations to:
- *“ensure that all allegations of unlawful detention, torture and sexual violence by security forces are promptly, impartially and effectively investigated by an independent body”;*
  - *“provide periodic and compulsory training of its public officials on the provisions of the Convention, the Istanbul Protocol and on non-coercive interrogation techniques to all officials involved in the treatment and custody of persons deprived of their liberty”;* and
  - *“take the necessary legislative and administrative measures to guarantee that victims of torture and ill-treatment benefit from effective remedies to obtain all forms of redress, including restitution, adequate compensation, rehabilitation, satisfaction and guarantees of non-repetition”.*
- 24.2 **Recommendation 2:** Ratify the Optional Protocol to the Convention against Torture and establish an effective national preventative mechanism to conduct inspections of places of detention; and ratify the Rome Statute of the International Criminal Court
- 24.3 **Recommendation 3:** Make its 'zero tolerance' policy on torture a reality by ensuring prompt and thorough investigations into all allegations of torture, perpetrators brought to trial and those found guilty punished,
- 24.4 **Recommendation 4:** Repeal the Prevention of Terrorism Act, and ensure that any replacement legislation abolishes the system of administrative detention and ensure observance of due process rights, including for those currently in detention.
- 24.5 **Recommendation 5:** Shut down any unofficial detention facilities that may still be in operation in Sri Lanka, ensure that no one is detained in unofficial detention facilities. and put measures in place to prevent the practice of arbitrary detention including so-called 'white van' abductions.