



Freedom from Torture

TOO LITTLE CHANGE:

ONGOING TORTURE IN SECURITY OPERATIONS

IN SRI LANKA

February 2019

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SUMMARY

Freedom from Torture finds that torture has continued in a context of ongoing security operations in post-conflict Sri Lanka, despite the new government's promise of a "zero tolerance" policy on torture.

This briefing examines 16 medico-legal reports prepared by Freedom from Torture for Sri Lankan nationals who were detained and tortured between 2015 and 2017.

All of the people detained and tortured in our case set were Tamil. Most of those targeted and detained were accused by state authorities of ongoing involvement with the Liberation Tigers of Tamil Eelam (LTTE) - as part of a so-called "revival" or failing to surrender after the war, even though none disclosed any current affiliation. Those alleged to have been involved in anti-government activity were also targeted. None were formally charged, under the Prevention of Terrorism Act or any other legislation.

The majority of people were arrested and detained in districts of the Northern Province, though four were arrested in Colombo. In all cases, state officials used torture to extract information or confessions about alleged LTTE or anti-government activities. All experienced physical and psychological torture including beating with various instruments, burning, positional torture and asphyxiation, as well as threats and humiliation. Over half were raped and most disclosed sexual torture.

In 2015, the new government of President Maithripala Sirisena pledged to promote accountability and human rights, which was seen as vital for reconciliation. Sri Lanka has made some progress on a broader human rights reform agenda. This has included the establishment of an Office on Missing Persons, and allowing several visits by United Nations special mechanisms.

However, these steps have fallen short of the commitments made by the government in September 2015 to the UN Human Rights Council to promote reconciliation, accountability and human rights in Sri Lanka. The continued use of torture is a clear example that Sri Lanka continues to flout its own promises.

Sri Lankan torture survivors see a direct link between continued violations, successive failures of justice and accountability and the culture of impunity with the undermining of reconciliation efforts.

The political and constitutional crisis that unfolded in Sri Lanka in late 2018 also highlighted the fragility of the coalition government that committed to accountability processes, and demonstrated how quickly any progress could be reversed.

None were formally charged, under the Prevention of Terrorism Act or any other legislation

In March 2019, the UN Human Rights Council will decide whether to retain its focus on Sri Lanka, following up on a resolution first agreed in 2015 and renewed in 2017. The evidence in this briefing, combined with the slow progress made by the government on commitments undertaken four years ago, suggests that the imperative for ongoing international monitoring and oversight is strong. Freedom from Torture believes that ongoing international scrutiny and support through a renewed Human Rights Council mandate is essential to ensure that progress towards reform, reconciliation and accountability is not stalled, with serious implications.

The government of Sri Lanka needs to move beyond verbal assurances and agree to a set of time-bound commitments to implement the pledges it made to its citizens and the international community regarding accountability.

INTRODUCTION

Freedom from Torture continues to receive referrals for Sri Lankan individuals who have been tortured in recent years, despite some encouraging developments since the election of the Sirisena government in 2015.

In 2018 Sri Lanka was - for the seventh successive year - the top country of origin for torture survivors referred to Freedom from Torture for clinical services and medico-legal reports. Since the end of the civil war in 2009, 2,316 Sri Lankan survivors have been referred to Freedom from Torture.¹

In 2015 Freedom from Torture published *Tainted Peace: Torture in Sri Lanka since May 2009*,² which analyses 148 torture cases that occurred after the end of the 2009 conflict, when President Mahinda Rajapaksa was still in power. The key findings of that report were:

- 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;
- Sri Lankan citizens 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.

The evidence presented in this briefing shows that little has changed, despite the assurances of the government to the contrary.

¹ Most, but not all, of our Sri Lankan clients have been Tamil and most, but not all, were tortured at the hands of Sri Lankan police, security and intelligence services. Torture is also known to have been used by the Liberation Tigers of Tamil Eelam (LTTE) and over the years we have provided clinical services to survivors of LTTE torture.

² Available at: https://www.freedomfromtorture.org/sites/default/files/documents/sl_report_a4_-_final-f-b-web.pdf.

METHODOLOGY

Data for this briefing is based on a systematic review of 16 reports that were prepared by the organisation's independent Medico-Legal Report Service between April 2016 and August 2018. Each of the 16 people whose reports form the basis of this briefing gave consent for their information to be used for research.³

Medico-legal reports are commissioned by legal representatives on behalf of their clients and prepared by specialist doctors according to standards set out in the UN Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, otherwise known as the 'Istanbul Protocol'.⁴ For further detail on the process of forensic documentation undertaken by Freedom from Torture's expert doctors, see appendix one.

3 The number and nature of cases available to Freedom from Torture for research at any one time are defined by many contingent factors. These include whether a person can flee his or her country; the time it takes to escape; at what point they disclose their experience of torture; the availability of specialist immigration lawyers in the context of reduced legal aid and the timing of the instruction for a medico-legal report. Medico-legal reports produced by Freedom from Torture are based on international standards set out in the UN Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, otherwise known as the 'Istanbul Protocol'; on this basis they carry considerable weight within national and international jurisdictions and are capable of providing corroboration of torture. Whilst we cannot infer overall numbers of those detained and tortured in Sri Lanka from the individuals that reach Freedom from Torture, the evidence available to us can indicate what may have happened to others who were also detained in Sri Lanka in the same time period.

4 United Nations, Istanbul Protocol, Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 2004. HR/P/PT/8/Rev.1. Para. 145. [Online]. [Accessed 05/10/2018]. Available at: <https://www.ohchr.org/Documents/Publications/training8Rev1en.pdf> (UN, Istanbul Protocol, 2004).

BACKGROUND AND CONTEXT

A HISTORY OF VIOLENCE

The use of torture in Sri Lanka post-Independence has a long history. Torture has been used to counter popular uprisings since 1971 when a Sinhalese Marxist insurrection was met by state violence, torture and a notorious pattern of disappearances.⁵ The police also routinely use torture in criminal investigations.⁶

Ethnic tension between the Sinhala majority and the minority Tamils, who are concentrated mainly in the north and east of the country, has long dominated the politics and social history of the country. Twenty-six years of violent separatist conflict culminated in massive loss of life – mostly of the Tamil civilian population living in the war zones at the end of the civil war in 2009. The UN has estimated that around 40,000 civilians died during just a few months, though the exact numbers will perhaps never be known. The state has been responsible for human rights violations including torture, disappearances and extra-judicial killings, as well as significant violations of international humanitarian law, or war crimes. The LTTE were also responsible for torture as well as targeted killings, suicide bombings, and other abuses.

The Prevention of Terrorism Act (PTA) was introduced as a temporary measure in 1979 and made permanent in 1982. It enabled a framework under which torture could take place with impunity, including providing for potentially indefinite detention and immunity for abuses by officials deemed to have acted in good faith.⁷

5 See Perera, C. and Verghese, C., Implementation of Istanbul Protocol for effective documentation of torture - review of Sri Lankan perspectives, *Journal of Forensic and Legal Medicine* 18 (2011) 1-5, October 2010. pp.1-2. [Online] [Accessed 14.01.19] Available at: https://www.researchgate.net/publication/49738432_Implementation_of_Istanbul_Protocol_for_effective_documentation_of_torture_-_Review_of_Sri_Lankan_perspectives; and Fernando, B. and Weerawickrame, S.R., A Baseline Study on Torture in Sri Lanka, Asian Human Rights Commission (AHRIC), February 2009, p.6 [Online] Accessed on 14.01.19 Available at: <http://www.ahrchk.net/pub/pdf/AHRC-PUB-004-2009-ABaselineStudyOnTortureSL.pdf> (Fernando, B. and Weerawickrame, S.R., A Baseline Study on Torture in Sri Lanka, 2009)

6 Fernando, B. and Weerawickrame, S.R., A Baseline Study on Torture in Sri Lanka, 2009, p.6

7 United Nations, Report of the Special Rapporteur on the promotion and protection of human rights while countering terrorism, A/HRC/40/XX/Add.3, 23 July 2018. Paragraphs 13,17,38. [Online] [Accessed 14.01.19] Available at https://www.ohchr.org/Documents/Countries/LK/Sri_LankaReportJuly2018.PDF (UN, Report of Special Rapporteur on Counter-Terrorism and Human Rights, 2018)

NEW BEGINNINGS

In January 2015, President Maithripala Sirisena became President of a coalition government that committed to respect, protect and promote human rights, in contrast to the rule of his predecessor, Mahinda Rajapaksa.

In October 2015, the Sri Lankan government agreed to co-sponsor a consensus resolution at the United Nations Human Rights Council. Resolution 30/1 committed the government to ensure accountability for conflict-related abuses. It was to do this by enacting a number of transitional justice mechanisms. In 2017, the resolution was renewed for a further two years (Resolution 34/1). This resolution was hailed as a success for the Human Rights Council in providing support to a member state emerging from long-term conflict, seeking stability and durable peace.

PROGRESS MADE

There has been some progress in the past four years. The independence of the Sri Lankan Human Rights Commission was strengthened following a constitutional amendment in 2015, increasing the effectiveness of their existing oversight and monitoring responsibilities. The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment entered into force in Sri Lanka in 2018, with the Human Rights Commission designated as the national preventative mechanism. The government signed an agreement with the International Committee of the Red Cross (ICRC), allowing the ICRC access to detention facilities.⁸

The new government committed to repealing the draconian Prevention of Terrorism Act (PTA). A proposed Counter Terrorism Bill was approved by the Cabinet of Ministers, which limits the admissibility of confessions in court.⁹ Given that the UN Special Rapporteur on Counter-terrorism and Human Rights found 80% of individuals arrested under the PTA in 2016 had experienced torture,¹⁰ this is an important step forward.

8 United Nations, Report of the Working Group on Arbitrary Detention on its visit to Sri Lanka, 23 July 2018. A/HRC/39/45/Add.2 Para 12 [Online] [Accessed 14.01.19] Available at: <http://undocs.org/A/HRC/39/45/Add.2> (UN, Report of the Working Group on Arbitrary Detention, 2018)

9 Centre for Policy Alternatives, Comparing the Proposed Counter Terrorism Bill to the Prevention of Terrorism Act, October 2018. P. 82 [Online] [Accessed 14.01.19] Available at: https://www.cpalanka.org/wp-content/uploads/2018/10/CTAPTA_final-.pdf

10 UN, Report of Special Rapporteur on Counter-Terrorism and Human Rights, 2018, para 25.

TICKING BOXES

Despite various commitments made by the new government and progress in some areas, ongoing violations continue to be met by a failure of domestic justice, a fragile rule of law and impunity for perpetrators. The structural change and legislative framework to ensure meaningful change, including combating impunity, has been missing. The government appears to have “ticked boxes” rather than put in place building blocks for a long-term process of reform, reconciliation and accountability. The conditions, laws and institutions that allowed mass human rights violations to occur in Sri Lanka for decades remain in place.

The political crisis that exploded in 2018, described by some observers as a constitutional coup, seriously threatened Sri Lanka’s democracy.¹¹ It also demonstrated that the steps taken towards reconciliation and accountability have not resulted in meaningful institutional change and could easily be reversed. The robust response by civil society, the judiciary and parliament offers hope that the conditions exist to ensure a meaningful process of reconciliation and transitional justice. But the political will appears to be missing, with no clear and firm commitments made by government or any of the main political parties since.

In spite of its flaws, Sri Lankan torture survivors receiving Freedom from Torture’s services have identified the Human Rights Council process as an important mechanism for delivering justice and accountability.¹² The involvement of the Human Rights Council is not a panacea. But it is clear that much of the most significant progress has taken place only at times of international scrutiny.

Survivors have identified the Human Rights Council process as an important mechanism for delivering justice and accountability.

11 On 26 October 2018, President Maithripala Sirisena dismissed his coalition partner, Prime Minister Ranil Wickremesinghe, replacing him with former president Mahinda Rajapaksa. Wickremesinghe and the majority of parliamentarians refused to acknowledge the appointment of Rajapaksa, stating it was unconstitutional. On 9 November, Sirisena attempted to dissolve parliament and called for general elections in January 2019. Parliament attempted to pass two motions of no confidence in Rajapaksa as Prime Minister, which the President refused to accept. The legality of Parliament’s dissolution was brought before the Supreme Court, which temporarily stayed Sirisena’s dissolution until 13 December 2018, when it ruled that the move was unconstitutional and illegal. On 15 December, Rajapaksa backed down from claiming the office of Prime Minister and Wickremesinghe was reinstated.

12 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

EVIDENCE OF ONGOING TORTURE

The Sri Lankan government has declared it has a 'zero tolerance policy' on torture.¹³ The President and the Sri Lankan Human Rights Commission issued directives to security forces and police in respect to the arrest and detention of suspects under the Prevention of Terrorism Act (PTA), which specifically prohibit torture.¹⁴

Nonetheless, as part of his mission to Sri Lanka in 2016, the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 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.¹⁵ Following a July 2017 visit to the country, the Special Rapporteur on the Promotion and Protection of Human Rights while Countering Terrorism, found that "the use of torture has been, and remains today, endemic and systematic for those arrested and detained on national security grounds..."¹⁶

The government says that no new arrests have been made under the PTA since 25 June 2016 pending the introduction of new counter-terrorism legislation that is in line with international standards.¹⁷

The evidence presented below shows that not only has torture continued but that people continue to be detained within a counter-terrorism context, even if they are not formally charged under the PTA or other legislation.

Who was detained and tortured, and why

- Twelve men and four women.
- All are of Tamil ethnicity.
- Ages range from 17 to 43 years old. Three people were detained as legal minors (all at 17 years old), one at the time of their most recent detention, and two others at the time of a previous detention.

13 United Nations, National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Sri Lanka, Working Group on the Universal Periodic Review, Twenty-eighth session, 6–17 November 2017, A/HRC/WG.6/28/LKA/1. Para 57. [Online] [Accessed 14.01.19] Available at https://www.upr-info.org/sites/default/files/document/sri_lanka/session_28_-_november_2017/a_hrc_wg.6_28_lka_1_e.pdf (Sri Lanka National Report, Universal Periodic Review, 2017)

14 Sri Lanka National Report, Universal Periodic Review, 2017, para 60

15 United Nations, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his mission to Sri Lanka, 22 December 2016. A/HRC/34/54/Add.2. paras 20–22 [Online] [accessed 14.01.19] Available at: http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/34/54/Add.2

16 UN, Report of Special Rapporteur on Counter-Terrorism and Human Rights, 2018, para 24

17 Response of the Government of Sri Lanka to the List of Issues raised by the UN Committee Against Torture, 7 November 2016. P.15 [Online] [Accessed 14.01.19] Available at https://tbineternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCAT%2fRLI%2fLKA%2f25821&Lang=en

- All 16 were detained between 2015 and 2017 in a context of ongoing security operations carried out by military and specialised police units in post-conflict Sri Lanka.
- Nine had been detained on a previous occasion, all for reasons related to previous or alleged involvement with the LTTE.

Several people – all of whom lived in the Northern Province – described a situation of ongoing surveillance of the Tamil population by the Sri Lankan authorities through spot checks at people’s homes, or at checkpoints, where they were asked for proof of formal processing at the end of the war. Failure to produce the required documentation raised the authorities’ suspicion. Others described a context in which legitimate political activities or human rights activism, in particular campaigning for justice for the missing, led to targeting by the authorities.

In all cases, the authorities linked detention to an alleged or actual past association with the LTTE, or some form of anti-government activity. Ten of the 16 described having previous links to the LTTE during the conflict, half of whom had been forcibly recruited, although none were active in the LTTE post-2009.¹⁸ Previous LTTE involvement included the supply of food, tending the wounded, managing arms, digging bunkers and sentry duty. Two mentioned having worked for the “Sea Tigers”. Only one person described seeing active combat during the war. During interrogation, the authorities commonly claimed that either the person had not surrendered, rehabilitated, or been processed as required at the end of the conflict; or that they were involved in a so-called LTTE “revival”. Some were also accused of specific ongoing LTTE activity, including hiding or helping the flow of weapons, or channelling funds to the LTTE. A few were detained due to current legitimate political activity with the Tamil National Alliance, a legal political party, which is represented in Parliament.

A historical family link precipitated arrest or was raised by the authorities during detention in three cases. One person had pursued the authorities for information of a missing family member and was consequently deemed to be “making problems for the authorities”. Another could not produce a death certificate for their father, a former LTTE combatant, since none had been produced in the wake of mass casualties. The authorities did not accept this, leading to his arrest. A third person was apparently arrested due to a land dispute, but in detention, the authorities accused him of ongoing LTTE involvement on the basis of a false confession that he had been forced to submit during a previous detention.

A further three people had no personal connection to the LTTE, but all were accused by the authorities of aiding the LTTE. One was a humanitarian worker who worked with Tamil communities. Another inadvertently gave accommodation to two people suspected of LTTE activity. The person was unaware of their association with the LTTE, and had never been involved in politics. The third person had been involved in demonstrations demanding justice for people still missing following the conflict.

“...[He] described how in 2015 the Army were targeting youths his age as being likely LTTE supporters. They began house searches...”

Excerpt from
medico-legal report

¹⁸ One person described how they had been recruited as part of a local policy that each family would provide one LTTE recruit.

ARRESTS

The majority of people lived and were detained in districts of the Northern Province, formerly controlled by the LTTE, and where the majority is Tamil. Four people were arrested in Colombo. Most were arrested at their home, or the home of family members; others were arrested in a public place, including on the street, at the airport, at a checkpoint, or at their place of work.

Six people were detained by the police, including specialised units: the Criminal Investigation Department (CID) and the Terrorism Investigation Division (TID). Five were arrested by the Army and a further five were detained by unspecified state agents. In all but one of the cases, the detaining authority did not identify themselves when making the arrest. More than half described being transported to detention in unmarked vehicles, including jeeps and vans. Of those who were arrested in the Northern Province, some were able to name the place where they were detained, including the following military facilities: Joseph Camp, Kadeikadu Camp and Kepapulavu Camp. One person was detained at Mannar Police station. Among those arrested in Colombo, named detention sites included CID building, 4th Floor, and Welikada prison.

DUE PROCESS

All were detained arbitrarily and without due process during their most recent detention, breaching international human rights standards. No one reported any formal charge against them, despite being detained in the context of ongoing post-conflict security operations. All survivors were held incommunicado. None received access to a lawyer at any point during their detention, or had their case heard before a judicial authority. Only one person received any medical treatment, after falling unconscious in an overcrowded cell.

The experiences documented 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 friend or relative of the detention and the right to challenge the legality or necessity of the detention before a judge or magistrate.¹⁹ These failures are disturbing given the Sri Lankan government's assertions that no new arrests were being made under the PTA pending new counter-terrorism legislation that is in line with international standards.²⁰

PERPETRATORS

All were tortured in the custody of state officials. Most survivors knew little about the perpetrators, though some specifically described them as agents of the Criminal Investigation Department, Terrorism Investigation Division or Sri Lankan Army. Several mentioned that the perpetrator(s) spoke in Sinhalese, or broken Tamil, and some said that perpetrators were intoxicated during the interrogation and torture.

19 United Nations, Committee against Torture Concluding Observations on the Fifth Periodic Report of Sri Lanka, 27 January 2017. CAT/C/LKA/CO/5. Paragraphs 21-22 and 27-28. [Online] [Accessed 14.01.19] Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT/C/LKA/CO/5&Lang=En.

20 UN, Report of Special Rapporteur on Counter-Terrorism and Human Rights, 2018, para 27.

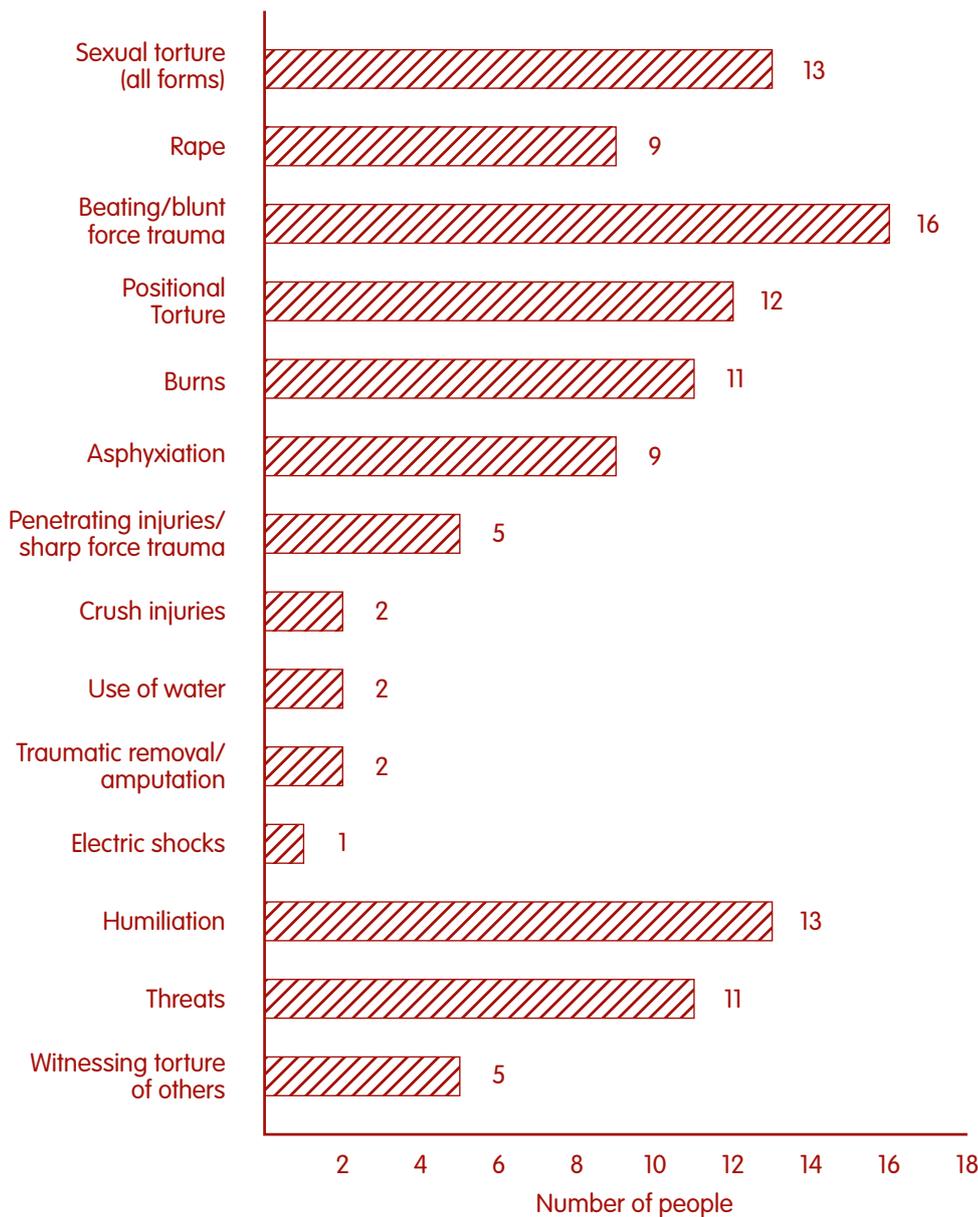
INTERROGATION AND FORCED/FALSE CONFESSION

All were tortured during interrogation, where torture was invariably used to extract information about alleged LTTE or anti-government activities and/or to force a confession.

Eight confessed to a real historic association with the LTTE; while four were forced to make false confessions. Ten were forced to sign a document, some directly commenting that they had done so to avoid further “unbearable treatment”. In some cases this was written in Sinhalese, which they could not read, or was a blank sheet of paper.²¹ Some were pressured to inform on others for the authorities.

“...if you don’t sign these papers, we won’t let you or your family live...”

Words of a perpetrator, as recalled by a torture survivor



²¹ The UN Working Group on Arbitrary Detention was informed during their December 2017 visit that this practice is no longer happening and that Tamil suspects are “instead forced to write and sign their own confessions in Tamil to avoid any accusations regarding their ability to speak Sinhala.” See Report of the Working Group on Arbitrary Detention on its visit to Sri Lanka, 2018, Para 32.

TORTURE METHODS

All experienced physical and psychological forms of torture during their most recent detention episode. This included beating with various instruments, burning, positional torture and asphyxiation techniques, as well as threats and humiliation (see Figure 1). Thirteen people (nine men, all four women) disclosed sexual torture, of whom nine were raped (six men, three women). Most described poor detention conditions, including the use of solitary confinement.

SEXUAL TORTURE

“They raped me. It was 4 or 5 of them who raped me. They were on top of me’...She wanted to die. She could not move. She had no energy left to struggle.”

Medico-legal report excerpt

The majority disclosed sexual torture, most of whom experienced some form of rape (anal, vaginal, oral and/or penetration with instruments including bottles and plastic objects). Three reported multiple rapes and five people were gang raped.

Twelve people were held naked or partially naked during detention, nine of whom were also raped. Others were sexually assaulted and forced to perform sexual acts. Seven men experienced genital trauma, including kicking, punching, beating, squeezing, and/or twisting of the genitals, or use of a ligature tied around the penis. Chilli powder was also used around the genitals to induce a burning sensation in one case. One person was subjected to sexual torture in front of witnesses and the assault was filmed.

PHYSICAL TORTURE

All were beaten using plastic pipes filled with sand or cement (S-lon pipes), electric cables, cricket bats, the butt of a gun and wooden or bamboo sticks. Most also described being punched, slapped and kicked. A number were dragged or slammed against a hard surface, beaten on the soles of the feet (falaka), and beaten about the face/head and/or ears.

Other prevalent forms of torture included positional torture, burns and asphyxiation. People described different forms of positional torture including prolonged binding, forced stress positions and suspension. Burns were commonly inflicted with cigarettes and/or heated metal, though hot wax was used in one case. Three people were burned in a context of sexual torture. Various -- and sometimes multiple --forms of asphyxiation were described, including submersion of the head in (sometimes foul) water, use of a petrol soaked plastic bag over the head, the burning of chilli, and use of a high pressured hose directed at the face while suspended.

“Only after
we burn you,
then you will
tell the truth”

Words of a
perpetrator, as
recalled by a torture
survivor

Biting, cutting, stabbing or puncturing including with a knife, needles, scissors and razor wire were reported in a smaller number of cases. One man described being placed in a cage made of wire with metal blades (razor wire) in which he was subjected to interrogation; if he moved he was cut by the blades and if he fainted his whole body was lacerated. One woman was bitten during rape.

Other forms of torture were reported by smaller numbers. Two people experienced crush injuries, in one case of the genitals and the other to the heels and ankles. Two people were subjected to different forms of water torture, including high pressure hosing, and being doused in water that contained chilli powder. Two people reported traumatic removal in some form, including one whose toenail was removed with pliers, and another who described their hair being chopped off during rape. One person described receiving electric shocks to their hands and the soles of their feet while they were tied up.

PSYCHOLOGICAL TORTURE

The majority described torture intended to cause humiliation, including all who were subjected to sexual torture. Other forms of humiliation included verbal abuse, such as use of racist language and sexual insults, and being forced to urinate and defecate in the cell.

The majority described threats, including of death, of further torture and of harm to family members. A number reported hearing others being tortured and one person witnessed people being beaten in front of them. Small numbers described other forms of psychological torture, including mock executions, which in one case was repeated several times and being forced to ingest urine or contaminated food and water.

ESCAPE

All 16 people were detained for relatively short periods, ranging from less than a week to six months. Most people were released from detention after the payment of a bribe, usually paid by a family member. Two escaped, two were released with reporting conditions and two were released unconditionally.

“...Tell us
the truth
and we’ll
give you a
chance, if
you don’t
we’ll take
your mother
and treat her
like you”

Words of a
perpetrator, as
recalled by a
torture survivor

RECOMMENDATIONS

The evidence of this briefing establishes troubling trends that require urgent attention from the Government of Sri Lanka and the international community alike. The recommendations of Freedom from Torture include:

TO THE GOVERNMENT OF SRI LANKA:

With regard to its obligations under international human rights standards and domestic legislation, the government must:

1. Make its 'zero tolerance' policy on torture a reality by:
 - (a) suspending from duty those accused of torture and launching criminal investigations and prosecuting those responsible no matter how powerful or senior they are within government or the military, police and security services;
 - (b) commencing a nationwide public information campaign outlining the zero tolerance policy and providing information on how survivors can access rehabilitation and accountability.
2. Ensure anyone arrested is afforded due process including:
 - (a) prompt access to legal representation of their choosing and to independent medical examinations;
 - (b) any detainee, including in unofficial detention centres, is released unless they are charged with an internationally recognisable crime or sentenced after a fair trial meeting international standards; and
 - (c) exclusion in all circumstances of 'confessions' and other evidence obtained via torture.
3. Ensure that the Human Rights Commission of Sri Lanka is adequately funded to ensure that it can effectively deliver its mandate across the country.
4. Reaffirm the commitment to promoting reconciliation, accountability and human rights through a renewed Human Rights Council resolution that includes a clear timeline for implementation.

TO THE INTERNATIONAL COMMUNITY:

Member states of the United Nations should:

1. Ensure that concerns about human rights abuses, including torture, are raised in all bilateral and multilateral discussions on human rights with the Government of Sri Lanka and encourage it to fulfil its obligations under international human rights standards and its constitution.
2. Maintain ongoing support and scrutiny to the Government of Sri Lanka through a renewed Human Rights Council mandate to ensure that progress towards reform continues, especially in a context of continued political instability.
3. Investigate and prosecute any Sri Lankan individuals, either government official or LTTE, suspected of committing crimes against humanity, war crimes, torture and enforced disappearances under universal jurisdiction.

APPENDIX ONE:

TORTURE DOCUMENTATION PROCESS

Medico-legal reports are commissioned by legal representatives on behalf of their clients and prepared by specialist doctors according to standards set out in the UN Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, known as the 'Istanbul Protocol'.²² Each is subject to a detailed clinical and legal review process.

Freedom from Torture's Medico-Legal Report Service has been accepted by the United Kingdom Home Office as 'having recognised expertise in the assessment of the physical, psychological, psychiatric and social effects of torture.'²³ Policy instructions to Home Office decision-makers state the following: 'Clinicians and other health care professionals from the Foundations are objective and unbiased. Reports prepared by the Foundations should be accepted as having been compiled by qualified, experienced and suitably trained clinicians and health care professionals.'^{24 25}

The torture documentation process includes reviewing an individual's history as presented in documents relating to their application for asylum, taking a history as narrated by the individual, and assessing the history in relation to clinical findings in accordance with the Istanbul Protocol and Freedom from Torture's own methodology.²⁶ Clinical findings are obtained through a full physical examination, including an assessment of physical symptoms and the observation and documentation of all lesions (injuries and wounds including scars), a full mental state examination and the documentation of psychological symptoms and signs of torture.

22 Freedom from Torture will only accept a referral for an MLR, and proceed to full documentation, where the person is deemed to fall within the organisation's remit and where they meet the other intake criteria. For further information about Freedom from Torture's remit and referral process please see our website at: <http://www.freedomfromtorture.org/make-a-referral/5175>.

23 Home Office, Asylum Policy Instruction: Medico-Legal Reports from the Helen Bamber Foundation and the Medical Foundation Medico-Legal Report Service, Version 3.0, 17 January 2014, 3.1, Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/275522/medicolegal.pdf. (Home Office, Asylum Policy Instruction, 2014)

24 This refers to the Medical Foundation Medico-Legal Report Service and the Helen Bamber Foundation.

25 Home Office, Asylum Policy Instruction, 2014, 3.1. As explained in our 'Methodology Employed in the Preparation of Medico-Legal Reports', 'Freedom from Torture doctors are mainly general practitioners, so their prior training and practice give them a valuable breadth of experience in all medical fields. Some have additional specialist qualifications and experience in fields such as paediatrics, dermatology, gynaecology and psychiatry. Victims of torture may have physical and psychological symptoms affecting many medical systems of the body, so a generalist approach is vital to their assessment'. See Freedom from Torture (formerly Medical Foundation for the Care of Victims of Torture), Methodology Employed in the Preparation of Medico-Legal Reports on Behalf of the Medical Foundation, June 2006, page 6. Available at: <http://www.freedomfromtorture.org/system/tdf/documents/methodology%20mlr.pdf?file=1&type=node&id=5175> (Freedom from Torture, Methodology, 2006)

26 UN, Istanbul Protocol, 2004. Freedom from Torture, Methodology, 2006.

Previous clinical diagnoses and treatment of physical or psychological ill-health arising from torture, where known, are also considered as part of the overall clinical assessment. Lesions attributed to torture are differentiated - by the individual themselves and independently by the doctor – from those with a non-torture attribution such as accidental injury, self-harm or a medical intervention such as surgery.

The following questions, noted in the Istanbul Protocol, are addressed by experienced clinicians in the formation of a clinical opinion for the purpose of reporting physical and psychological evidence of torture:

- Are the psychological findings consistent with the alleged report of torture?
- What physical conditions contribute to the clinical picture?
- Are the psychological findings expected or typical reactions to extreme stress within the cultural and social context of the individual?
- Where is the individual in the course of recovery?
- What other stressful factors are affecting the individual (e.g. ongoing persecution, forced migration, exile, loss of family and social role etc.)?
- Does the clinical picture suggest a false allegation of torture?²⁷

In all cases, doctors will seek to establish the degree of congruence between what is reported and the clinical findings, while also considering other available evidence (such as previous diagnoses or treatment) and the possibility of fabrication.²⁸

The Istanbul Protocol emphasises that while the presence of evidence provides positive corroboration of an account of torture, its absence or limited presence does not prove that torture, or a particular method of torture, did not take place.²⁹ Similarly, the 'strength' of evidence of torture that can be documented does not necessarily correlate to the 'severity' of the torture that was perpetrated or to the extent of its impact on the individual.³⁰

27 United Nations, Istanbul Protocol, 2004, para 105.

28 United Nations, Istanbul Protocol, 2004, para 287 vi. See also Home Office, Asylum Policy Instruction, 2014. 3.3: 'Foundation clinicians can be assumed to have considered the possibility of 'a false allegation' of torture in forming a clinical view as this is required by the Istanbul Protocol: Paragraphs 105(f) and 287(vi) require the report writer to consider whether the clinical picture suggests a false allegation of torture.'

29 United Nations, Istanbul Protocol, 2004, para 161.

30 United Nations, Istanbul Protocol, 2004, paras 157-159.



Freedom from Torture

TOO LITTLE CHANGE:

ONGOING TORTURE IN SECURITY OPERATIONS IN SRI LANKA

FREEDOM FROM TORTURE

Freedom from Torture is the only UK-based human rights organisation dedicated to the treatment and rehabilitation of torture survivors. We offer services across England and Scotland to around 1,000 torture survivors a year, including psychological and physical therapies, forensic documentation of torture, legal and welfare advice and creative projects.

We are one of the world's largest treatment centres, and since our establishment in 1985, more than 60,000 survivors of torture have been referred to us. Medico-legal reports prepared by our expert clinicians are used as evidence in torture survivors' claims for international protection, and form the basis of research reports such as this, aimed at holding torturing states to account.

Through our Torture Accountability Programme, we work to expose torture in support of efforts to strengthen prevention, secure justice and ensure international protection for survivors of torture. Survivor voices and expertise are at the heart of this work.

We are the only human rights organisation that systematically uses evidence from our in-house expert clinicians, and the torture survivors with whom we work, to work towards a world free from torture.

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