



## Response to Country Policy and Information Note Sri Lanka: Tamil Separatism July 2020

Freedom from Torture is concerned with some of the conclusions reached by the Home Office in the Country Policy and Information Note Sri Lanka: Tamil Separatism, Version 6.0, May 2020 ('the CPIN'). The guidance provided to decision makers by the CPIN fails to take into account evidence of torture post-2015 that Freedom from Torture has documented, as well as the findings from several United Nations bodies and human rights organisations. We note that it relies heavily on the report of a Home Office Fact-finding Mission undertaken in October 2019<sup>1</sup> that fails to acknowledge the implications of the recent change in government for the advancement of human rights in the country, and, in particular, for Tamils. The CPIN was published in May 2020, six months after the election of Gotabaya Rajapaksa as president, but does not contain a full picture of the current situation in the country.

Freedom from Torture has evidence that contradicts guidance provided by the Home Office in the CPIN, namely:

- Torture of Tamils by Sri Lankan state officials has continued post-2015. This is verified by independent and specialist doctors;
- Individuals with a real or perceived association with the Liberation Tigers of Tamil Eelam (LTTE) continue to be targeted for detention and torture. The association can be direct or indirect through family members or friends, and at any level;

Given that the CPIN is already being used to revoke refugee status for Sri Lankan nationals, its limitations have serious consequences. Freedom from Torture asks that it is reviewed and updated.

### 1. Existence of torture post-2016

Despite referencing evidence of the torture of Tamils in a security context post-2015 in recent reports by Freedom from Torture<sup>2</sup> and other organisations, the CPIN completely disregards the weight of this evidence.

In section 2.4.52 of the *Assessment*, the CPIN concludes that:

"There have been a few **unverified** reports of torture having occurred post 2016 but country sources, including the independent Human Rights Commission, told the 2019 Fact-Finding Team

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<sup>1</sup> Home Office, *Report of a Home Office fact-finding mission to Sri Lanka*, 20 January 2020

<sup>2</sup> The CPIN references Freedom from Torture's 2019 published report, *Too Little Change: Ongoing Torture in Security Operations in Sri Lanka* in paragraphs 6.6.3, 6.6.4 and 6.8.2

that they were unable to verify these reports with their contacts in the north and east of the country but some judicial medical officer reports have indicated signs of torture (see ill-treatment/torture)." [emphasis added]

This conclusion is inconsistent with recent findings cited in reports by the Office of the High Commissioner for Human Rights (OHCHR), the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, and international NGOs including Freedom from Torture and the International Truth and Justice Project (ITJP).

### *1.1. Freedom from Torture evidence of torture*

Freedom from Torture's evidence is based on a systematic review of reports prepared by the organisation's independent Medico-Legal Report Service and where the individual has given consent for their information to be used for research. 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'.<sup>3</sup> Details of the process of forensic documentation undertaken by Freedom from Torture's expert doctors are readily available in the public domain including in *Too Little Change*, which is cited in the CPIN, but have been included again in appendix 1.

Freedom from Torture continues to receive referrals for Sri Lankan individuals who have been tortured and has documented 33 cases of people tortured between 2015 and 2018. Sixteen of these cases were included in the publication of the 2019 report, *Too Little Change: Ongoing Torture in Security Operations in Sri Lanka*. Beyond the evidence included in that report, Freedom From Torture has produced medico-legal reports for a further 17 people who have been detained and tortured in the country since 2015 - 15 men and two women.

In a similar pattern to that presented in the 2019 report, 14 of these 17 individuals were detained due to an actual or perceived link with the Liberation Tigers of Tamil Eelam (LTTE). Of these, nine described having previous links to the LTTE during the conflict. One of these was detained and tortured following a period of study in the UK where he had become involved in diaspora activities. During detention, this individual was interrogated about their contact with the LTTE and the Tamil diaspora. Two were detained due to family or friendship ties to the LTTE. Three were detained after attending demonstrations, memorial, or thanksgiving events. None of these individuals had a high profile within the LTTE however.

All experienced forms of physical torture, including beating with various instruments, burning, positional torture and asphyxiation. Most experienced psychological torture (13), including threats and humiliation. Most survivors were sexually tortured (13), the majority of whom disclosed being raped (8).

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<sup>3</sup> 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.

Where perpetrators were known, all were state agents. At least 58% were detained and ill-treated in state-run facilities (10), including police facilities and the headquarters of the Criminal Investigation Division.

In the majority of cases, release was arranged upon the payment of a bribe (11). Over half reported that after release the authorities continued to target them and their families (11). Survivors reported that the authorities visited their homes, questioning or threatening relatives or neighbours, and in one case even using violence. Threats included survivors or their families being told that they should leave the country, that the survivor would be detained again if they continued their activities, or would be shot if they did not hand themselves into the authorities. No survivors reported their torture to the Sri Lankan authorities. In one case, a survivor explained that they felt unable to tell anyone about their ill-treatment for fear that this would constitute a complaint, and get them into even more trouble with the authorities.

We note that the guidance provided in section 2.4.25 of the CPIN states: “*The onus is on the person to demonstrate that they have or are perceived to have a ‘significant role’ in relation to post-conflict Tamil separatism within the diaspora and/or an interest in the renewal of hostilities within Sri Lanka and/or that their activities will be, or will be perceived as being, a threat to the integrity of Sri Lanka as a single state.*” Yet in the case of the individuals documented by Freedom from Torture, including in previous years also, none had a ‘significant role’ and they were still targeted for detention and torture.

The circumstances described by individuals when they were released from detention, including ongoing threats and harassment towards them or their families, is a clear indication of why there is little evidence of torture reported in-country. During a field visit to Sri Lanka in 2019, Freedom from Torture staff heard reports from civil society representatives that many families with past associations with the LTTE mistrusted civil society groups after the opening up of civil society space from 2015 onwards, due to the increasing engagement of these groups with the new government and the lack of change to their own circumstances.

## 1.2. Other evidence of torture

The Assessment section also inadequately reflects reports provided by the International Truth and Justice Project (ITJP) of torture post-2015, the patterns of which are markedly similar to those documented by Freedom from Torture. This information is referenced in sections 6.6.7 and 6.6.9 (as part of a section quoting the Australian Government’s Department for Foreign Affairs and Trade’s (DFAT) ‘Country Report for 2019’) but the weight of this information is disregarded by the assessment provided in section 2.4.52. It is also interesting to note that four ITJP reports are included in the bibliography but only one excerpt is directly cited – at section 6.6.7.

In section 2.4.55 of the *Assessment*, the CPIN states “... and also consider that the Human Rights Council have been unable to substantiate claims that torture continues to take place in detention.”

This guidance directly contradicts the finding of an independent investigation undertaken in 2018 by the Office of the High Commissioner for Human Rights into allegations of ongoing torture of

Tamils. This investigation concluded that there were reasonable grounds to believe unlawful abductions, detention and torture in the country continues. Paragraph 56, A/HRC/40/23 summarises the findings of the investigation:

"OHCHR has continued to receive credible information about cases of abduction, unlawful detention, torture and sexual violence by Sri Lanka security forces, which allegedly took place in 2016 to 2018. A preliminary assessment of the information received indicates that there are reasonable grounds to believe that accounts of unlawful abductions and detention and of torture, including incidents of sexual violence against men and women, are credible, and that such practices might be continuing in northern Sri Lanka. Such allegations should be the subject of prompt, effective, transparent, independent and impartial investigations. In the past, the government has condemned any act of torture, and indicated that any allegation of torture would be properly investigated and prosecuted. OHCHR is not aware of any investigations undertaken to date into the above-mentioned allegations."<sup>4</sup>

Whilst this finding is reported in section 6.6.5 of the CPIN, it is not afforded the weight it deserves and is undermined by the assessment presented to decision makers in section 2.4.55.

The UN High Commissioner for Human Rights further elucidated the current situation in March 2020: "Very little action has been taken to remove individuals responsible for past violations, to dismantle structures and practices that have facilitated torture, enforced disappearance and extrajudicial killings, and to prevent their recurrence".<sup>5</sup>

United Nations special rapporteurs have made similar conclusions. 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..."<sup>6</sup>

The CPIN references this conclusion by the Special Rapporteur in section 6.6.8 (as part of a section quoting the Australian Government's Department for Foreign Affairs and Trade's (DFAT) 'Country Report for 2019') but again this finding by an independent international expert it is undermined by the conclusion presented to decision makers in section 2.4.55.

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<sup>4</sup> UN, *Report of the United Nations High Commissioner for Human Rights: Promoting reconciliation, accountability and human rights in Sri Lanka*, 8 February 2019, para 56

<sup>5</sup> UN, *Report of the United Nations High Commissioner for Human Rights: Promoting reconciliation, accountability and human rights in Sri Lanka*, 26 February 2020, para. 34

<sup>6</sup> UN, *Report of the Special Rapporteur on the promotion and protection of human rights while countering terrorism*, 2018, para 24

## 2. Disregard for the implications of the Rajapaksa regime

The CPIN heavily relies on findings from the Australian DFAT Country Information Report published on 4 November 2019<sup>7</sup> and the Home Office Fact Finding Mission Report published on January 2020. Both reports are based on information collected before the November 2019 presidential elections. The election of Gotabaya Rajapaksa as president of Sri Lanka and the return of his brother, Mahinda Rajapaksa, as Prime Minister, has serious repercussions for the promotion of human rights and the prohibition of torture in the country. The decision of the Home Office to undertake a Fact Finding Mission to Sri Lanka one month before a presidential election that was likely to have profound implications for the future trajectory of the country was unfortunate and badly timed.

The CPIN itself was published in May 2020, six months after the election of Gotabaya Rajapaksa as president, and yet does not contain a full picture of the current situation in the country.

The CPIN makes very little mention that both Rajapaksa brothers are implicated in war crimes and crimes against humanity during Sri Lanka's long and brutal civil war in what the United Nations described as "a grave assault on the entire regime of international law".<sup>8</sup> The extent of the serious human rights violations that occurred during their time in power cannot be underestimated. During Mahinda Rajapaksa's presidential mandate (2005-2015), when his brother Gotabaya served as Defence Secretary, torture in Sri Lanka was routine. Freedom from Torture doctors have documented more than 300 cases of torture by the state between 2009 and 2015. People of Tamil ethnicity were overwhelmingly the victims in all of these instances.

Since President Gotabaya Rajapaksa came into office, civic space and freedom of expression have been rapidly shrunk, and an important number of civilian agencies have been placed under the Defence Ministry, including the Immigration and Emigration Department and the NGO Secretariat. A total of 31 state institutions are now under the purview of Sri Lanka's defence ministry. Kamal Gunaratne, a former military commander who is accused of war crimes and crimes against humanity, is Sri Lanka's defence secretary.<sup>9</sup>

In recent months, journalists have been physically attacked, and death threats had been issued against those perceived to be critical of the government. This includes those perceived to have financial links to the Tamil Tigers abroad, as is referenced at section 6.4.11. Human rights defenders have also reported being intimidated and threatened by intelligence officers.<sup>10</sup> The country's Muslim minority has been particularly affected by these developments, and there has been a rise in communal tensions and religious freedom.<sup>11</sup>

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<sup>7</sup> Australian Government, Department of Foreign Affairs and Trade (DFAT), *DFAT Country Information Report: Sri Lanka*, 4 November 2019

<sup>8</sup> U.N. Secretary-General, *Report of the Secretary-General's Panel of Experts on Accountability in Sri Lanka*, ii 31 March 2011, para 258

<sup>9</sup> Tamil Guardian, *Sri Lanka's defence ministry assigned control of immigration*, 27 January 2020

<sup>10</sup> Human Rights Watch, *Sri Lanka: Security Agencies shutting down Civic Space*, 3 March 2020.

<sup>11</sup> Human Rights Watch, *Sri Lankan Officials stoke Covid-19 Communal Hate*, 19 May 2020.

Sri Lanka's decision to withdraw from the United Nations Human Rights Council resolution 30/1, which outlines the country's commitment to promote reconciliation, accountability and human rights reflects the high level of impunity in the current government. Since Gotabaya Rajapaksa came into power, several generals and commanders implicated in serious human rights violations had been given positions in government; such as Kamal Gunaratne, as defence secretary.<sup>12</sup> He also pardoned one of the few soldiers convicted for crimes committed during the civil war; Sargent Sunil Ratnayake, who was convicted of massacring eight civilians, including children.<sup>13</sup>

On 2 June 2020, President Gotabaya Rajapaksa established a “Presidential Task Force to build a Secure Country, Disciplined, Virtuous and Lawful Society.” The Task Force is composed entirely of military, intelligence and police officials and is headed by Defence Secretary, Kamal Gunaratne. The mandate of this particular task force is overly broad and includes among others “taking legal action against persons responsible for illegal and antisocial activities conducted in Sri Lanka while locating in other countries”.<sup>14</sup>

All of these events contribute to a climate of fear returning to Sri Lanka, including for Tamil populations. The Swiss State Secretariat for Migration (SEM) stated in a February 2020 report: “Sri Lankan sources mentioned to the SEM a great fear of the Tamil people for their future under President Gotabaya Rajapaksa. This fear is based, amongst others, on the fact that military personnel detained for violations of human rights have been released, new checkpoints have been set up in the Tamil-dominated areas and non-governmental organizations have been controlled and intimidated.”<sup>15</sup> There have also been a number of security operations across the North East in recent months, including the arrest of Tamil youths, ostensibly for ‘regrouping’ the LTTE.<sup>16</sup>

This has been further exacerbated by the Covid-19 pandemic as outlined by the Adayaalam Centre for Policy Research (ACPR):

“Worryingly in Sri Lanka contact-tracing efforts are being led by the State’s intelligence services who are notorious for their use of torture against primarily Tamil civilians and ex-combatants. They are using the assistance of telecommunication companies to trace individuals’ contacts and the places they have visited, in addition to looking through people’s immigration records. ... Reports have also emerged of the military leaking details of individuals they have traced discriminatorily against Tamils and Muslims. In a context where the military has consistently used surveillance as a tool of intimidation and harassment of human rights defenders, journalists, and the Tamil community, the broad powers and technology being given to them without any apparent oversight or end date is of grave concern to ACPR.”<sup>17</sup>

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<sup>12</sup> Human Rights Watch, *Sri Lanka: Security Agencies shutting down Civic Space*, 3 March 2020.

<sup>13</sup> Human Rights Watch, *Sri Lanka: Justice Undone Massacre Victims*, 27 March 2020

<sup>14</sup> International Commission of Jurists, *Sri Lanka: Newly constituted Presidential Task Force threatens rule of law*, 5 June 2020

<sup>15</sup> Cited in Asylum Research Centre, *Sri Lanka: Country Report*, July 2020. p. 269

<sup>16</sup> Sri Lanka Brief, *Sri Lankan police arrest Tamil youth for ‘regrouping the LTTE’*, 2 July 2020

<sup>17</sup> Adayaalam Centre for Policy Research (ACPR), *Situation Brief No. 3 COVID-19: Sri Lanka’s militarised response poses grave threats to human rights*, 30 April 2020, *Key Areas of Human Rights Concerns around COVID-19 Response*, B. Militarisation of the COVID-19 Response, (iv) Military’s role in Contact-Tracing, p, 8

## 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'.<sup>i</sup> 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.'<sup>ii</sup> 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.'<sup>iii iv</sup>

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.<sup>v</sup> 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. 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 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?<sup>vi</sup>

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.<sup>vii</sup>

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.<sup>viii</sup> 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.<sup>ix</sup>

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<sup>i</sup> 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>.

<sup>ii</sup> 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](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/275522/medicolegal.pdf). (Home Office, Asylum Policy Instruction, 2014)

<sup>iii</sup> This refers to the Medical Foundation Medico-Legal Report Service and the Helen Bamber Foundation.

<sup>iv</sup> 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)

<sup>v</sup> UN, Istanbul Protocol, 2004. Freedom from Torture, Methodology, 2006.

<sup>vi</sup> United Nations, Istanbul Protocol, 2004, para 105.

<sup>vii</sup> 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.’

<sup>viii</sup> United Nations, Istanbul Protocol, 2004, para 161.

<sup>ix</sup> United Nations, Istanbul Protocol, 2004, paras 157-159.