

## **Freedom from Torture submission to the UN Human Rights Committee – List of Issues for the 5<sup>th</sup> periodic review of Sri Lanka**

Freedom from Torture (formerly the Medical Foundation for the Care of Victims of Torture) is a UK-based human rights organisation and one of the world's largest torture treatment centres. We are the only organisation in the UK dedicated solely to the care and treatment of survivors of torture and organised violence. Since our foundation over 25 years ago, more than 50,000 people have been referred to us for rehabilitation and other forms of care and practical assistance. We have centres in London, Manchester, Newcastle, Birmingham and Glasgow.

Freedom from Torture runs a Medico-Legal Report Service which uses forensic methods to document physical and psychological evidence of torture for use in connection with survivors' claims for international protection in the UK. Our medico-legal reports are prepared in accordance with 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>1</sup> Each is subject to a detailed clinical and legal review process. We aim through our Country Reporting Programme to contribute evidence drawn from these medico-legal reports, presented in an anonymised and aggregated format, to UN bodies capable of holding torturing states to account.

This submission for the Committee's List of Issues prior to the fifth examination of Sri Lanka is based on in-depth analysis of 50 medico-legal reports completed by our clinicians documenting torture committed in Sri Lanka in the *post-conflict* period.

### **Forensic evidence of ongoing torture in Sri Lanka in the post-conflict period**

Freedom from Torture has consistently received a high number of referrals for survivors of torture from Sri Lanka and the high rate of referrals has not diminished following the end of the armed conflict in May 2009. In fact Sri Lanka became the top country of origin for those referred to us for clinical services in 2012, with a total of 228 Sri Lankans referred to us during this period.<sup>2</sup>

As of November 2013, our Medico-Legal Report Service had forensically documented 120 cases of Sri Lankans tortured since the conclusion of the civil war. An analysis of 50 of these medico-legal reports indicates that torture – including sexual forms of torture – continues to be practiced throughout Sri Lanka by a variety of state actors including the police and

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<sup>1</sup> *Istanbul Protocol, Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment*, United Nations New York and Geneva, 2004, available at <http://www.ohchr.org/Documents/Publications/training8Rev1en.pdf>.

<sup>2</sup> For information about the countries of origin for those referred to us for clinical services please see Freedom from Torture, *Annual Review 2012/13* at page 3, available at [http://www.freedomfromtorture.org/sites/default/files/documents/FFT\\_Annual\\_Rev\\_2013\\_WEB.pdf](http://www.freedomfromtorture.org/sites/default/files/documents/FFT_Annual_Rev_2013_WEB.pdf).

military in the post-conflict period and that impunity exists for perpetrators of torture. The evidence also suggests that detainees are not treated with humanity and with respect for the inherent dignity of the human person and that they are denied due process rights.

It should be noted that according to Freedom from Torture's methodology for the preparation of medico-legal reports, all scars – whether attributed to torture or not – are examined, recorded and assessed during the clinical examination and documentation process. The whole of the individual's testimony is assessed in the light of, among other things: health reported prior to and after torture, the history and detail given of the torture and the individual's affect and behaviour. Doctors specifically consider the possibility of fabrication of the clinical condition and other possible causes of the scarring before drawing their conclusions about the strength of the evidence of torture.<sup>3</sup>

Freedom from Torture is highly concerned that Sri Lanka's fifth periodic report to the Committee fails to adequately address the concerns expressed by the Committee in its last concluding observations for Sri Lanka in 2003 about '*persistent reports of torture and cruel, inhuman or degrading treatment or punishment of detainees by law enforcement officials and members of the armed forces*' and also the voluminous evidence, including from Freedom from Torture and other human rights NGOs, of ongoing torture in Sri Lanka in the post-conflict period. We also note that in the concluding observations to its most recent examination of Sri Lanka in November 2011, the Committee Against Torture expressed concern at '*reports that suggest torture and ill-treatment perpetrated by state actors, both the military and the police, have continued in many parts of the country after the conflict ended in May 2009 and is still occurring in 2011*'.<sup>4</sup>

We urge the Committee to use the List of Issues to further probe the following issues prior to its forthcoming examination of Sri Lanka in 2014.

### **Article 7 – Prohibition of torture and other cruel, inhuman or degrading treatment or punishment**

#### **Forms of torture used in state detention facilities**

In the section of its periodic report devoted to Article 7 of the Covenant, Sri Lanka makes reference to its '*commitment to eliminate torture and all forms of cruel, inhuman and degrading treatment or punishment*' and the constitutional and other legal provisions it has enacted to prohibit torture in Sri Lanka's domestic legal system.<sup>5</sup> While recognising that '*sporadic and isolated incidents of torture have occurred within its territory in the past*' Sri Lanka rejects any suggestion that torture is widespread.<sup>6</sup>

The 50 medico-legal reports we have analysed document evidence of torture in the post-conflict period including:

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<sup>3</sup> A detailed description of Freedom from Torture's methodology for preparing medico-legal reports is available at <http://www.freedomfromtorture.org/sites/default/files/documents/methodology%20mlr.pdf>.

<sup>4</sup> CAT/C/LKA/CO/3-4 at para 6.

<sup>5</sup> CCPR/C/LKA/5 at para 175.

<sup>6</sup> *Ibid.*, paras 203-4.

- **Blunt force trauma:** blunt force trauma was documented in all 50 cases. This included scars and other lesions attributed to beatings with a variety of instruments including the butts of rifles and/or metal or plastic pipes filled with a material such as sand or cement. Other forms of blunt force trauma included beatings on the soles of the feet (falaka), whipping with rope or cables and trampling with heavy boots.
- **Burning:** in 36 cases (72% of the cases in the study) our clinicians documented evidence of scarring caused by burning from lit cigarettes and/or heated metal objects such as metal rods (see further below). In a small number of instances, a caustic substance such as chilli powder (or an unknown caustic substance) was forced into the eyes or onto the skin of detainees.
- **Sexual assault:** in 31 cases (62% of the cases in the study) the victim disclosed and our clinicians documented evidence of sexual forms of torture including rape (anal, vaginal, oral and/or instrumental), beatings on and violence to the genital area, sexual molestation and individuals being forced to commit sexual acts on others.<sup>7</sup>
- **Suffocation and asphyxiation:** in 18 cases (36% of cases in the study) our clinicians documented evidence of suffocation and asphyxiation techniques including being held underwater for repeated periods to simulate drowning, or having a bag filled with petrol or similar substances tied around the head to cause pain and suffocation often resulting in loss of consciousness.
- **Restraint / Hanging / Suspension:** in 28 cases (56% of cases in the study), our clinicians documented evidence of positional forms of torture including the use of stress positions to cause severe pain such as suspension and/or having limbs tied (for example to tables or chairs) to restrict movement for long periods, often concurrently with other forms of torture.
- **Sharp force trauma:** in 10 cases (20% of cases in the study), our clinicians documented scars arising from being cut with a knife or other sharp implement or material or having the skin under finger nails pierced with needles.
- **Other physical torture:** Additional forms of torture documented in these cases included removal or partial removal of finger and toe nails and the traumatic partial amputation of fingertips.

The large number of cases involving burning is particularly notable. Many victims in the study had permanent and highly visible scars attributed to hot metal rods being pressed against the skin. Freedom from Torture is concerned that this could reflect a policy of permanently 'branding' victims not only to inflict long term psychological and physical

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<sup>7</sup> It is important to acknowledge the difficulty that survivors of torture often face when disclosing sexual torture and rape to others, due to intense feelings of shame and humiliation. It can take many sessions with a clinician writing a medico-legal report before a survivor of torture feels comfortable enough to disclose those types of experiences. Some survivors of sexual torture are never able to disclose all aspects of sexual abuse due to the high levels of distress and trauma felt when recounting the experiences. As a result, the incidences of rape and sexual assault amongst survivors in this study may in fact be higher than the levels indicated here. The following article examines issues of sexual violence and non-disclosure: '*Impact of sexual violence on disclosure during Home Office interviews*' by Bogner, Herlihy and Brewin (2007), in the British Journal of Psychiatry, available at <http://bjp.rcpsych.org/content/191/1/75.full#ref-20>.

damage but also to ensure that the individual may be easily identified in future as having been of adverse interest to the authorities. These 'branding' practices also suggest impunity for the perpetrators.

Sri Lanka's periodic report recognises that the definition of torture includes both mental and physical suffering and refers to domestic jurisprudence confirming that torture '*embrace[s] the sphere of the soul or mind*'.<sup>8</sup> Psychological forms of torture were documented in all 50 cases. In many instances, the forms of psychological torture inflicted are relevant to Article 10 of the Covenant concerning conditions of detention (see further below).

- **Psychological torture:** psychological forms of torture documented across the 50 cases included being held for long periods in solitary confinement, being kept blindfolded or in darkness, forms of humiliation such as forced nakedness, being subject to mock executions, and/or verbal abuse and being threatened with continuing violence and sexual assault.<sup>9</sup>

### Profile of victims

Forty of the cases were male and 10 were female. Forty-eight of the cases were of Tamil ethnicity (96% of the cases in the study – the remaining two cases were of Malay descent and Sinhalese ethnicity respectively) and the key factor that appears to have led to their detention and torture by state authorities was a real or perceived connection to the Liberation Tigers of Tamil Eelam (LTTE) – either their own and/or a family member or acquaintance. Those who had personal involvement with the LTTE had often participated in a non-combat capacity, for example by providing services. Some reported voluntary involvement with or membership of the LTTE and others claimed to have been forcibly recruited or coerced into assisting the LTTE.

The evidence in our study contradicts Sri Lanka's assertion in its periodic report that '*The Government treated ex-combatants humanely and respected their Civil and Political Rights*'.<sup>10</sup> Instead, our evidence demonstrates that people of Tamil ethnicity with even minimal or merely suspected links to the LTTE have been detained and tortured and that these practices continue in the post-conflict period.

### Perpetrators

All 50 cases involved torture perpetrated by state actors including the Sri Lankan military and/or branches of the police force such as the Criminal Investigation Department (CID) or the Terrorism Investigation Department (TID).

### Location of torture facilities

Torture was practiced in a variety of state-run facilities in Colombo and in different regions of Sri Lanka including but not limited to the north and eastern regions. In many cases detainees were moved around between police stations, TID camps and unknown/undisclosed locations as well as conventional prisons, camps for Internally Displaced People and so-called

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<sup>8</sup> CCPR/C/LKA/5 at para 180.

<sup>9</sup> Psychological forms of torture can be highly damaging and traumatic to individuals despite leaving no physical scarring. See Hernán Reyes' article 'The Worst Scars are in the Mind' (2007), available at <http://www.icrc.org/eng/assets/files/other/irrc-867-reyes.pdf>.

<sup>10</sup> CCPR/C/LKA/5 at para 52.

'Rehabilitation Centres'.

**Freedom from Torture proposals for the List of Issues:**

***With reference to the Committee's previous concluding observations (CCPR/CO/79/LKA, para 9), please comment on forensic and other evidence indicating that torture persists in Sri Lanka, including in the post-conflict period, and that Tamils with a real or perceived association with the LTTE at any level are at particular risk. Please respond to allegations that 'branding' is often used to inflict long term psychological and physical damage on torture victims and that this reflects impunity for torture in Sri Lanka. Please outline the measures taken to address these issues and to ensure that victims have effective legal recourse and adequate reparation, including rehabilitation.***

***Please provide up-to-date information on the number of reported cases of torture and ill-treatment, the investigations and prosecutions initiated, the number of actual criminal convictions, sentences imposed and remedies granted.***

**Articles 9 and 10 – Right to be free of arbitrary arrest and detention and right of persons deprived of liberty to be treated with humanity**

In most of the 50 cases in our study the victim was detained without any observance of due process rights, for example there was no formal charge or sentencing, no access to legal representation, no trial before a judge, no official informing of family members of their whereabouts and no access to an independent medical examination. A handful of cases reported appearing before a judge but with varying degrees of due process. For example, in one case the individual appeared in court but with no access to a lawyer or other rights observed.

Despite references in Sri Lanka's periodic report to legislation recognising the right of an alleged criminal offender '*not to be compelled to testify against himself or to confess guilt*' in more than half the cases in our study the individual was forced to sign documents that they did not understand (usually because they were written in Sinhala), blank sheets of paper, or confessions of guilt.

Furthermore, in the majority of the 50 cases in our study, the individual was only able to secure release from detention after family members were able to locate them and bribe officials or staff at the facilities to secure their release.

Very poor detention conditions were reported in the 50 cases including:

- **Denial of food and water** including being given rotten and fouled food, in quantities insufficient to prevent hunger and meet even basic nutritional requirements.
- **Unsanitary conditions and poor toilet facilities:** Many individuals in the study reported irregular or no access to toilet facilities and detainees were forced to urinate or defecate in their cells. In some cases toilet facilities were provided but inadequate,

for example buckets or bottles in cells.

- **Solitary confinement:** The use of solitary confinement for prolonged periods was highly prevalent across the 50 cases in our study. Some individuals reported being forced to share small cells with large groups of others in overcrowded conditions.

**Freedom from Torture proposals for the List of Issues:**

***Please respond to reports that arbitrary arrest and detention remains common in Sri Lanka and that detainees are often forced to sign documents in a language they do not understand.***

***With reference to the Committee's previous concluding observations (CCPR/CO/79/LKA, para 15), please provide up-to-date information on the programme of prison visits undertaken by the Human Rights Commission including sites and dates of visits undertaken to date, the findings and recommendations made and the official responses to these.***

***Please also provide up-to-date information on the sites and dates of unannounced visits to places of detention by magistrates, and on access to detention facilities by international monitors.***

## **Conclusions**

In all 50 of the cases described in this study our clinicians found there to be sufficient physical and/or psychological evidence to support the account of torture and an overall congruence between the clinical findings and the history provided by the individual of detention and torture in Sri Lanka in the given period. Taken together, these cases indicate that:

- Torture has continued to be perpetrated by both the military and police in Sri Lanka since the end of the civil war in May 2009;
- Tamils with a real or perceived association with the LTTE are at particular risk of torture, even if this association is at a low level and/or where it is indirect through family members;
- There is a common practice of permanently 'branding' victims via burns which suggests impunity for perpetrators of torture in Sri Lanka; and
- Other widespread forms of torture include blunt force trauma (often leading to extensive scarring), sexual torture and asphyxiation/suffocation.

## **For further information please contact:**

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