

23 April 2012

Dear OHCHR colleagues,

Please find attached a submission from Freedom from Torture for the forthcoming Universal Periodic Review of Sri Lanka, scheduled for the 14th UPR session in 2012.

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. Our clinicians also use forensic methods to document physical and psychological evidence of torture via medico-legal reports which are used in connection with survivors' protection claims. We have centres in London, Manchester, Newcastle, Birmingham and Glasgow.

Our submission focuses on evidence of **ongoing torture in Sri Lanka since the conclusion of the civil war**.

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1. Freedom from Torture is pleased to make this submission in connection with the second Universal Periodic Review (UPR) of Sri Lanka.

Ongoing torture perpetrated by state actors despite the end of hostilities

2. The civil war has concluded since Sri Lanka's last UPR, however the human rights situation in Sri Lanka remains dire and it is essential that the forthcoming UPR is used to expose and seek accountability for the repressive practices that continue. Freedom from Torture is particularly concerned about the persistence of torture in the post-conflict period.
3. Between January 2010 and September 2011, Freedom from Torture received 170 referrals for Sri Lankans in the UK requiring medico-legal reports documenting physical and psychological evidence of torture inflicted in Sri Lanka.¹ The rate of Sri Lankan referrals for the last quarter of 2011 and the first quarter of 2012 has remained very high.²
4. In November 2011, **Freedom from Torture published a report 'Out of the Silence: New Evidence of Ongoing Torture in Sri Lanka'³ based on a detailed analysis of 35 of our medico-legal reports documenting torture committed in Sri Lanka between May 2009 and early 2011.**
5. This report demonstrated that:
 - Torture perpetrated by state actors within both the military and police has continued in Sri Lanka following the end of the conflict in May 2009 and was still occurring in 2011;
 - Those at particular risk of torture include Tamils who have an actual or perceived association with the Liberation Tigers of Tamil Eelam (LTTE);
 - A variety of different types of torture have been perpetrated in a significant number of locations around Sri Lanka during the post-conflict period;
 - A wide range of different forms of torture have been used, often in combination, to inflict severe suffering on victims of torture with devastating psychological and physical consequences; and
 - Many Sri Lankan torture victims are left with visible scarring attributable to both

¹ Freedom from Torture's medico-legal reports are detailed forensic reports which document physical and psychological consequences of torture. They are prepared by specialist clinicians – who act as independent experts in this task to assist decision makers in the context of asylum and other legal proceedings – according to standards set out in international guidelines for the documentation of torture called the Istanbul Protocol and each is subject to a detailed clinical and legal review process. The possibility of fabrication of evidence is explicitly considered in each case.

² As of 16 April 2012, Freedom from Torture has received 54 medico-legal report referrals for Sri Lankans since 'Out of the Silence' was published. Of these referrals we have accepted 42. Three of the 54 referrals were withdrawn after asylum was granted by the UK Border Agency without the need for a medico-legal report. Of the 42 accepted referrals, we have completed 10 medico-legal reports, five of which relate to torture in 2010-2011. In five additional cases that are pending, our Medico Legal Report Service was asked to grant urgent appointments to document very recent scarring.

³ Freedom from Torture, 'Out of the Silence: New Evidence of Ongoing Torture in Sri Lanka 2009-2011', November 2011, available at http://www.freedomfromtorture.org/feature/out_of_the_silence/5980

blunt force trauma and burns which suggests impunity for perpetrators of torture in Sri Lanka.

6. Since this report was published, we have continued to forensically document a steady stream of torture cases from Sri Lanka. A significant proportion of these newer cases relate to torture committed very recently in the post-conflict period.⁴

Profile of the torture survivors in the Freedom from Torture study

7. The 35 individuals whose medico-legal reports were analysed in the study came from a range of areas around Sri Lanka and all reported that they were targeted due to an actual or perceived association with the LTTE, often through family members, or an opposition party. It is widely known that the LTTE forcibly recruited Tamils into membership and other support roles during the civil war⁵, suggesting that a very large proportion of the Tamil population is at risk of being targeted on this basis.
8. Thirty-three of the cases in our sample were Tamil, one was of Malay descent and one was of Sinhalese ethnicity. Twenty-seven of the cases were male and eight were female. The majority were aged 25-40. Of the 31 cases where a place of origin was recorded, 18 were from the Northern Province (11 from Point Pedro and Jaffna and seven from Vanni), six were from the Eastern Province, two were from Colombo and there was one each from the Western, Southern and North Western Provinces.
9. Fourteen of the 35 cases involved Sri Lankans who had lived or travelled abroad prior to their detention and torture: five travelled abroad for educational purposes, three for family reasons and four for the purpose of seeking refuge outside of Sri Lanka. In the remaining two cases, the purpose of travel was not stated. Of the four who sought refuge abroad, three were forcibly returned to Sri Lanka. In one case the individual had unsuccessfully claimed asylum in the UK a number of years earlier but was returned to Sri Lanka from another European state. Another was returned from a European state after two years of residence, having been refused asylum there. Of the 10 cases involving individuals who travelled abroad for non-asylum purposes, nine returned voluntarily to Sri Lanka (all from the UK). Several report returning for temporary visits for a variety of family reasons and two due to the disappearance of their fathers. One individual was en route to a non-European state for family reasons, but was returned en route due to the use of false documents.
10. All of the 14 individuals who had returned to Sri Lanka after a period abroad, whether they left Sri Lanka through a legal route or otherwise, were subsequently detained and tortured. In five cases, the episode of detention and torture documented in the medico-legal report occurred over a year and up to seven years after return. However, in nine cases the individual was detained within days, weeks or a month of their return. Of these nine cases, six were detained in Colombo, either from their home, at checkpoints or from a lodging house. Others were detained at checkpoints

⁴ Torture survivors may take many months to flee from Sri Lanka and assemble their asylum claim in the UK and it can take five or more months for us to finalise a medico-legal report, especially where there are multiple injuries to document or the survivor is highly traumatised. See also footnote 2 for a summary of our recent referrals for medico-legal reports involving Sri Lankans.

⁵ UN Secretary General, *Report of the Secretary-General's Panel of Experts on Accountability in Sri Lanka*, 2011 http://www.un.org/News/dh/infocus/Sri_Lanka/POE_Report_Full.pdf, p. 8-9.

elsewhere in the country or directly from the airport upon arrival.

11. These findings suggest that return (voluntarily or forcibly) to Sri Lanka from abroad is a risk factor, especially for Tamils. Since 'Out of the Silence' was published, Human Rights Watch has released information concerning eight people forcibly returned to Sri Lanka who were subjected to torture, including refused asylum seekers removed from the UK on charter flights in 2011.⁶ On 25 February 2012, this new information combined with our own research findings led Freedom from Torture to call on the UK government to stop all forcible removals of Tamils to Sri Lanka.⁷

Detention

12. Sixteen of the cases in our report were 'surrendeers' who were rounded-up or surrendered to government forces at the end of the civil war and continued to be detained and tortured in the post-war period. The 16 'surrendeers' report being detained at facilities in Wiswamadu, Arunachalam, Omanthai School, Ananda Kumaraswamy, Vavuniya, Vanni, Anuadapura, Chettikulam, and Nelukulam. Notably, the second place of detention is reported as unknown in 10 cases. In the remaining five cases, the following were identified: Menik Farm, Verpankulam, Joseph Camp and Arunaselem. The six individuals taken to a third place of detention identify them as: Menik Farm, Chettikulam, Pavatkulam, Bossa Prison, Negombo, and '4th floor CID' in Colombo. In almost all cases, torture was not perpetrated in the first place of detention, though in at least two cases interrogations took place with beatings aimed at forcing a confession. The majority of cases report being identified as LTTE supporters in the first detention camp, as described above, and then transported elsewhere, in most cases after a relatively short period of time (a number of days).
13. The 19 'other' detainees were picked up in their homes, at checkpoints and the airport over the two year period. The majority of these individuals report being taken straight to the place of detention in which they were tortured. Only three were taken first to a police station and then transferred to a second facility. A high incidence of detention and torture in 'unknown' or unofficial facilities is reported in this group of cases. Named facilities included CID Colombo, Anurathapuram camp, Maruthane police station, Manthikai, Walikada prison, Karathivu, Nelliady, Verpankulam, and Joseph camp.
14. The length of detention reported in these cases ranged from one day to 16 months, with the majority of cases reporting one to six months.

Lack of due process rights

15. All 35 individuals whose cases were examined were detained without effective access to due process rights. In 27 of the 30 cases who describe having been detained due to their perceived association with LTTE, there was no observation of due process rights: no formal charge or sentencing, no access to legal

⁶ Human Rights Watch, 'UK: Halt Deportations of Tamils to Sri Lanka – Credible Allegations of Arrest and Torture Upon Return', 25 February 2012, available at <http://www.hrw.org/news/2012/02/24/uk-halt-deportations-tamils-sri-lanka>

⁷ Freedom from Torture, 'UK must stop removals of Tamils to Sri Lanka after damning new evidence of torture on return', 25 February 2012, available at <http://www.freedomfromtorture.org/news-events/news/6133>

representation, no trial before a judge, no informing family members of their whereabouts and no access to an independent medical examination. Of the remaining five individuals that reported no association with the LTTE, four report that due process rights were not observed during their detention.

16. In four cases involving detention in police stations in Colombo and Kandy, the individual reports that some form of legal process appeared to have occurred, including conviction in absentia, access to a solicitor followed by a trial and release on bail before a second episode of detention involving torture, repeat court appearances always followed by adjournments, and trial followed by conviction and release on bail only to be apprehended again and tortured.
17. In every case we assessed, a bribe was paid to the authorities to allow the individual to escape detention, often by family members who had eventually tracked down their whereabouts. This begs serious questions about the number of others who were not able to escape.

Forensic evidence of torture

18. Blunt force trauma was reported in 100% of the cases in the report; burning with heated metal objects and cigarette burns in 65%; sexual violence in 60%; and asphyxiation (included bags filled with petrol tied around the head) in 31%. Other forms of torture reported included suspension, exposure to caustic substances, cuts and penetrating injuries, threats to self or others and mock executions, forced confession and forced identification.
19. Methods of blunt force trauma reported included forceful slapping and punching to bring about unconsciousness in some cases and sustained damage to sight and hearing; sustained kicking all over the body including the genitalia, head, face and back with metal capped and studded military boots; stamping on limbs and feet, hands and stomach with hard boots; sustained beating all over the body with implements such as wooden sticks and poles, gun butts, bamboo sticks, plastic pipes filled with sand or cement, metal tipped objects, whips and wires; throwing victims against a wall; banging of head against a wall; forceful twisting of the limbs and joints; and beating on the soles of feet (falaka).
20. Freedom from Torture publicly voiced concerns about the escalation of scarring seen by the organisation's clinicians on Sri Lankan torture victims during the final stages of the civil war.⁸ Our research in 'Out of the Silence' confirms that these patterns have continued in the post-conflict period.
21. Specific forms of sexual violence reported included kicking in the genital area; testicles repeatedly manually and forcefully squeezed; penis slammed in a door, hit with objects or pierced with a sharp pointed instrument; 'burning' of genitals with caustic substances; molestation of genitals and enforced masturbation of interrogators (female and male); sexual assault, including forced penetration of anus and vagina with fingers (female) and forced insertion of objects including ice cubes

⁸ Freedom from Torture, 'Victims of Sri Lankan conflict arriving with increasingly severe scars', 9 April 2009, available at <http://www.freedomfromtorture.org/news-events/news/2434>

and unknown instruments into the anus (male); oral, anal and vaginal rape (repeated many times in some cases, in one case twice weekly during a seven-month detention) (female and male).

22. Freedom from Torture clinicians recorded symptoms of depression and/or Post Traumatic Stress Disorder (PTSD) related to the history of trauma in all cases bar two. Psychological responses to torture which were recorded, according to the categories set out in the Istanbul Protocol, included re-experiencing the trauma, avoidance and emotional numbing, hyperarousal, symptoms of depression, damaged self-concept and foreshortened future, and somatic complaints. Twelve of the cases involved individuals with PTSD meeting the diagnostic criteria, while a further 17 others displayed symptoms of PTSD related to their trauma though not reaching a diagnostic threshold. Of the 12 individuals diagnosed with PTSD, eight are reported to meet the diagnostic criteria for both PTSD and depression. Symptoms of depression are commonly reported in survivors of torture and some symptoms are typical of both depression and PTSD. However in these cases, 15 individuals are reported by clinicians to have symptoms that meet the diagnostic criteria for clinical depression or moderate depressive episodes. A further 10 individuals had symptoms of depression that did not meet the diagnostic threshold.

Conclusions from Freedom from Torture's research

23. Freedom from Torture's forensic evidence demonstrates that, notwithstanding the formal conclusion of hostilities, **Tamils with an actual or perceived association with the LTTE remain at particular risk of detention and torture in Sri Lanka and return to Sri Lanka, whether voluntarily or forcibly, is a further risk factor.**
24. **The lack of due process reported in these cases combined with the acute scarring evident in a high proportion of the cases is heavily suggestive of impunity for perpetrators of torture in Sri Lanka.** Moreover, these **high levels of scarring could reflect a policy of permanently 'branding' victims not only to inflict long-term psychological and physical damage, but also to ensure that the individual may be easily identified in future as having been suspected of links to the LTTE.** Given that release from detention in each case in this data set occurred only after payment of a bribe and was otherwise arbitrary, the implication is that those carrying such scars are at risk of detention and possible further torture if returned to Sri Lanka. Beyond the impact on the individual, these enduring signs of torture must be intended to send a signal to the wider Tamil community about the consequences of association with the LTTE.

Findings of the Committee Against Torture

25. Freedom from Torture presented detailed evidence from this research to the UN Committee Against Torture for its examination of Sri Lanka in November 2011. In its concluding observations, the Committee stated that despite the conclusion of the conflict it remained *'seriously concerned about the continued and consistent allegations of widespread use of torture and other cruel, inhuman or degrading treatment of suspects in police custody'* and *'concerned at reports that suggest that 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 2011.⁹

Failings of the Lessons Learnt and Reconciliation Commission

26. Although it released its final report just weeks after the Committee Against Torture published its conclusions, the Lessons Learnt and Reconciliation Commission did not make a single reference to torture in Sri Lanka in its 388-page report. This remarkable failure to acknowledge at all, let alone address, widespread use of torture – either during or following the conflict – is indicative of serious flaws in the government's efforts to promote reconciliation by recognising the losses and suffering of the past.

Recommendations

27. During its first UPR in 2008, the Government of Sri Lanka admitted that it was concerned about allegations of torture, though it denied that torture was systematic¹⁰, and accepted a series of recommendations regarding implementation of its international legal obligations in relation to torture.¹¹ Notwithstanding the formal end of the hostilities, Freedom from Torture's evidence and the findings of the Committee Against Torture strongly suggest that torture is indeed widespread and ongoing. Freedom from Torture proposes the following recommendations for the forthcoming UPR.

28. Recommendation 1: Accept and fully implement all of the recommendations made by the UN Committee Against Torture following its recent examination of Sri Lanka, and in particular the recommendations to:

- 'take immediate and effective measures to investigate all acts of torture and ill-treatment and prosecute and punish those responsible with penalties that are consistent with the gravity of their acts';
- 'ensure that torture is not used by law enforcement personnel and members of the military';
- 'unambiguously reaffirm the absolute prohibition of torture and publicly condemn practices of torture, accompanied by a clear warning that anyone committing such acts or otherwise complicit or participating in torture will be held personally responsible before the law for such acts and will be subject to criminal prosecution and appropriate penalties';

⁹ Committee Against Torture, CAT/C/LKA/CO/3-4 available at http://www2.ohchr.org/english/bodies/cat/docs/co/CAT.C.LKA.CO.3-4_en.pdf

¹⁰ Universal Periodic Review, Report of the Working Group on the Universal Periodic Review, Sri Lanka, A/HRC/8/46, para 52.

¹¹ For example, Sri Lanka accepted recommendations from the Czech Republic to 'ensure full incorporation and implementation of international human rights instruments at the national level, in particular ICCPR and CAT, unless already done', from Denmark and France to 'implement the recommendations of the Special Rapporteur on the question of torture', from Iran to 'increase its efforts to strengthen its legal safeguards for eliminating all forms of ill treatment or torture in the prisons and detention centres', and from Greece to 'take all necessary measures to prosecute and punish perpetrators of violations of international human rights law and humanitarian law'.

- 'consider... the possibility of accepting an international investigatory body, which would address past concerns over the lack of credibility of previous investigations [into all allegations of violations of the Convention Against Torture]';
 - 'strengthen efforts to provide victims of torture and ill-treatment with redress, including fair and adequate compensation, and as full rehabilitation as possible.'
29. Recommendation 2: Fully implement recommendations made by both the Committee Against Torture and the UN Special Rapporteur on Torture relating to due process rights for all detainees held in both military and police facilities, including those held in administrative detention.
 30. Recommendation 3: Disclose all unofficial detention sites and facilitate effective and independent monitoring of detainees to ensure Sri Lanka's international human rights obligations are met.
 31. Recommendation 4: Issue a standing invitation to all thematic special procedures of the Human Rights Council and welcome visits as quickly as possible by the UN Special Rapporteur on Torture, the UN Working Group on Arbitrary Detention, and the UN Working Group on Enforced and Involuntary Disappearances.
 32. Recommendation 5: Sign and ratify the Optional Protocol to the Convention Against Torture establishing a system of regular visits to detention facilities by international and national monitors.
 33. Recommendation 6: Fully comply with Human Rights Council resolution A/HRC/19/2 on promoting reconciliation and accountability in Sri Lanka.