

INTERNATIONAL
TRUTH
AND JUSTICE
PROJECT

Public Submission to the Committee on the Elimination of Discrimination against Women for its examination of Sri Lanka in February 2017.

Date: 23 January 2017

W ITJPSL.COM
E ITJPSL@GMAIL.COM

EXECUTIVE DIRECTOR:
YASMIN SOOKA

Summary

This submission focuses on how impunity for conflict-related torture and sexual violence by the Sri Lankan security forces has been institutionalized with violations continuing to this day. In support of this submission, the ITJP has sworn statements from 55 women describing torture and horrific assaults while held in state custody, 48 of them detained under the Government of former President Rajapaksa and 7¹ of them under the new Government of President, Maithripala Sirisena. Since he assumed power two years ago, President Sirisena and his government have failed in their duty to investigate credible allegations, inter alia from the UN, that there was a deliberate policy of using sexual violence to inflict torture². The Sirisena Government is complicit in the continuation of the violations through the omission to investigate and prevent the ongoing violations including through holding those responsible accountable. The ITJP has identified numerous officers in the Sri Lankan police and military allegedly with either direct involvement and/or command responsibility for the torture and rape of women. However impunity is systemic and entrenched in Sri Lanka as the government lacks the political will to bring these individuals to account.

ABOUT THE INTERNATIONAL TRUTH AND JUSTICE PROJECT (ITJP)

The ITJP was established in December 2013 in response to emerging evidence regarding war crimes and crimes against humanity committed in Sri Lanka both during the final phase of the civil war in 2009 and its aftermath. The project is administered by the Foundation for Human Rights in South Africa under the guidance of its director, transitional justice expert, Yasmin Sooka. The ITJP takes statements from survivors of torture and/or sexual violence who have fled the country. It published three reports [in

¹ One case straddled both Governments but is counted as a Rajapaksa era abduction though detained and tortured under the Sirisena period too.
² A/HRC/30/CRP.2, September 2015, OHCHR Investigation into Sri Lanka (OISL): “...incidents of sexual violence were not isolated acts but part of a deliberate policy to inflict torture (to obtain information, intimidate, humiliate, inflict fear). The practices followed similar patterns, using similar tools over a wide range of detention locations, time periods, and security forces, reinforcing the conclusion that it was part of an institutional policy within the security forces.” (Para 591)

Torture and Sexual Violence by State Forces (Article 5)

1. Background

1.1 OISL

The OHCHR Investigation into Sri Lanka (OISL⁴) reported on widespread torture and sexual violence by the security forces in the aftermath of the civil war in Sri Lanka. It covered the period from 2002-2011. The OHCHR also has an ongoing mandate to monitor and report on ongoing violations. In September 2015, the High Commissioner for Human Rights said, “14 cases of torture have been reported to us by credible sources since January 2015⁵”. These were cases that occurred under the new Government in Sri Lanka. ITJP was one of the two “credible” organizations that submitted this information to OHCHR.

1.2 Post-OISL

The ITJP has continued to document the testimony of male and female victims of abduction, torture and sexual violence perpetrated by the security forces in Sri Lanka that has occurred during 2015 and 2016. For detailed information on these 36 cases⁶ occurring under the new Government please see our submission to the 59th session of UNCAT⁷ which includes a chart⁸ summarising the cases and scar photos with quotations from victims⁹. Of those 36 cases, 8 involved female victims¹⁰.

UNCAT¹¹ concluded that based on credible reports from the UN and NGOs, the so called “white van abductions” had continued in Sri Lanka post-war (para 11) and it referenced ITJP's 48 identified torture sites from our 2015 report¹².

The UK Country of Origin Information reports¹³ and the US State Department annual Human Rights reports have frequently cited ITJP's work on post-war abductions and torture. The latter in 2016 cited 11 cases we had documented under the Sirisena government¹⁴.

1.3 Impunity

Widespread impunity persists for conflict related torture and sexual violence committed against women and has become entrenched over decades given the failure of successive governments to hold those responsible to account. The ITJP submits that the Government of President Sirisena too, is unwilling to investigate senior members of the armed forces and police against whom there are serious allegations that they

³ (a) “An Unfinished War: Torture and Sexual Violence in Sri Lanka 2009 – 2014”, Yasmin Sooka, The Bar Human Rights Committee of England and Wales and the International Truth & Justice Project, Sri Lanka, March 2014.

(b) “A Still Unfinished War: Torture and Sexual Violence in Sri Lanka 2009 – 2015”, International Truth and Justice Project Project, July 2015.

(c) “Silenced: Survivors of Torture and Sexual Violence in 2015”, International Truth and Justice Project Project, January 2016.

⁴ A/HRC/30/CRP.2

⁵ Statement by UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein via videolink to the Human Rights Council, 30 September 2015, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16539&LangID=E#sthash.XmlbQlxm.dpuf>

⁶ 14 November 2016, ITJP Press Release: UN Committee Against Torture should Investigate Secret Torture Sites Still Operating in Sri Lanka. <http://itjpsl.com/assets/press/UNCAT-ITJP-press-release.pdf>

⁷ Submission is at <http://www.itjpsl.com/reports/submission-to-un-committee-against-torture> but please note it reflects 33 cases while the press release mentions 3 additional cases.

⁸ Chart of 2015 and 2016 cases: <http://www.itjpsl.com/assets/ITJP-Chart-2015-and-2016-cases.pdf>

⁹ Survivors in their own words: http://www.itjpsl.com/assets/ITJP_scar_photos_v1.2.pdf

¹⁰ See ITJP Chart of 2015/2016 cases at <http://www.itjpsl.com/assets/ITJP-Chart-2015-and-2016-cases.pdf>

¹¹ UNCAT, Concluding Observations on the 5th Periodic report of Sri Lanka, December 2016.

¹² A Still Unfinished War, ITJP, July 2015, <http://www.refworld.org/pdfid/56e2e1584.pdf>

¹³ Sri Lanka COI Query Response- UPDATE, March 2016. Country of Origin Information, <http://www.refworld.org/pdfid/56e2e1584.pdf>

¹⁴ SRI LANKA 2015, Country Reports on Human Rights Practices for 2015, United States Department of State, Bureau of Democracy, Human Rights and Labor, See also many references to ITJP in the 2014 report: <https://www.state.gov/j/drl/rls/hrrpt/2014humanrightsreport/#wrapper>

committed, ordered or condoned torture and/or sexual violence. The reasons for this are:

I
T
J
P

- (i) The Government included in its delegation to UNCAT 59 in November 2016 a man who ran Sri Lanka's most notorious torture site at the end of the war where men and women were routinely tortured and sexually violated. This individual was also named in the OISL report. Sufficient evidence exists to launch an investigation into his conduct. However the deputy defence minister ruled this out altogether as a possibility, illustrating (a) the blanket impunity that all officials even those from the previous regime enjoy and (b) the mendacity of the Government's stated commitment to the Human Rights Council that it will vet and screen public officials alleged to have committed serious crimes¹⁵. The country's Foreign Minister indicated that this case could be dealt with when a special judicial mechanism is established; when asked why it couldn't be handled under existing anti-torture legislation, he said the Attorney General was swamped with thousands of such cases¹⁶.
- (ii) In 2015 the UN Working Group on Enforced and Involuntary Disappearance visited the secret underground torture site whose location ITJP had published six months earlier¹⁷ in the heart of the Trincomalee naval base. Men and women were detained and tortured here but there has been no credible investigation. ITJP spelt out in detail the steps that should be taken and named the two naval intelligence commanders said by survivors to have been in charge of the site: Commodore Ranasinghe and Commodore Welegedara. The latter is a witness in another case but does not appear to have been investigated in connection with the detention and torture of Tamil detainees post-war¹⁸.
- (iii) As UNCAT pointed out (para 41-2)¹⁹ only 23 of more than 100 Sri Lankan UN peacekeeping soldiers repatriated for alleged child sexual exploitation on an extraordinary scale were indicted and convicted; with no information as to whether they received punishments commensurate with the crimes. The country's Foreign Minister²⁰ indicated that this case could also be dealt with by the future special judicial mechanism which makes no sense given the suspects have already been tried by an Army Court of Inquiry.
- (iv) The current witness protection system is so inadequate that it actually increases the risks to witnesses. Furthermore witnesses abroad (and their families in Sri Lanka who are vulnerable) also have no protection as they are compelled to testify in a diplomatic mission. Serious credibility questions have been raised in respect of two individuals in the National Authority²¹:
 - a) Concerns have been raised about the integrity and impartiality of Additional Solicitor General, Yasantha Kodagoda who is alleged to have covered up serious human rights abuses when he worked for the Rajapaksa

¹⁵ *Government not raised against of Sisira Mendis - Ruwan Wijewardena*, 11 December 2016, Lankaenewsweb at <http://lankaenewsweb.net/news/item/4869-government-not-raised-against-of-sisira-mendis-ruwan-wijewardena>;

Commitment to Vet is in UN Resolution: A/HRC/30/L.29. Mr Mendis was brought out of retirement by the new Government to serve as an intelligence chief.

¹⁶ Foreign Minister, Mangala Samaraweera, answering questions at Chatham House, London (Chatham House rules did not apply), 11 January 2017.

¹⁷ A Still Unfinished War, July 2015, <http://www.itjpsl.com/reports/a-still-unfinished-war>

¹⁸ ITJP Press Release: Trincomalee Torture Site, 20 November 2015, <http://www.itjpsl.com/assets/press/20.11.15-Press-Release-TIJP-on-Trincomalee-Secret-Site-2.pdf>; *Victims and witnesses: No protection, but persecution*, By Namini Wijedasa, The Sunday Times Lanka, 31 July 2016, <http://www.sundaytimes.lk/160731/news/victims-and-witnesses-no-protection-but-persecution-202919.html>

¹⁹ Concluding Observations on the 5th Periodic report of Sri Lanka, December 2016.

²⁰ Ibid.

²¹ *NA for protecting victims and witnesses set up*, 8 January 2016, Ceylon Times, no longer available online, it says the appointments include: "Hamid Ghazali Hussain, Additional Solicitor General, **Yasantha Kodagoda**, Additional Secretary to the Ministry of Law and Order, Neel Hapuhinne, Senior Assistant Secretary to the Ministry of Women and Child Affairs, W.U.P. Premachandra and Senior Deputy Inspector General of Police (Crimes and Motor Vehicle/Traffic) **Nandana Munasinghe**). The chairperson was the retired High Court Judge Wimal Nambuwasam. Other members include Senior Lecturer at the Department of Public and International Law at the Faculty of Law, the University of Colombo, Dr. M.A.D.S.J. Shiranjani Niriella, Dr. Nimal Fernando, Deputy Inspector General of Police, Ashoka Wijethilake and Attorney-at-Law Sanjeewa Samaranyake.

government. These concerns were raised not only by the Asian Human Rights Commission, but also in a confidential report to donors who funded the International Independent Group of Eminent Persons (IIGEP), a document the ITJP has studied²².

- b) Nandana Munasinghe had a long career in TID and CID during the civil war, until April 2010 when he was transferred to the Colombo Crimes Division. In 2007 in Colombo he was the officer who received the UN Special Rapporteur, Manfred Nowak, as Director of TID²³. Mr Nowak says that detainees were transferred to avoid meeting him on the orders of Nandana Munasinghe (para 25) and his report goes on to call Mr Munasinghe one of the alleged perpetrators of torture who merited investigation (para 13, page 30)²⁴. It is of grave concern that this man should be appointed by President Sirisena's Government to a newly formed body intended to protect witnesses. Again this is a violation of the Government's commitment in the 2015 UN Resolution to vet public officials.

2. Female Victims of Torture and Sexual Violence Interviewed by ITJP

2.1 Case profile:

Total: 55 cases.

Marital Status

Married: 30

Single: 22

Widowed: 2

Separated: 1

LTTE Status:

Civilians: 20

Forced LTTE recruits: 8

Left LTTE before 2009: 5

LTTE: 22

Timeline

It is worth noting the timeline reflects ITJP's focus at different times in terms of witness selection more than the prevalence of the violations.

Fifteen women were either detained for many years in multiple sites, or were abducted on multiple occasions and violated.

In two cases the women were detained and raped after returning from abroad after failed asylum applications in Europe. Women were interviewed by ITJP in 6 different countries.

2016: 1

²² *APPOINTMENT OF YASANTHA KODAGODA TO TORTURE COMMITTEE OF HRC-SL INAPPROPRIATE – AHRC*, Sri Lanka Brief, 22 September 2016, <http://srilankabrief.org/2016/09/appointment-of-yasantha-kodagoda-to-torture-committee-of-hrc-sl-inappropriate-ahrc/>

²³ A/HRC/7/3/Add.6, REPORT OF THE SPECIAL RAPPORTEUR ON TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT, MANFRED NOWAK, ON HIS MISSION TO SRI LANKA,

http://www2.ohchr.org/english/bodies/hrcouncil/docs/7session/A.HRC.7.3.Add.6_ch.pdf

²⁴ "The Special Rapporteur recommends that prompt and independent investigations of all allegations of torture and ill-treatment be carried out in order to bring those responsible to justice (i.e. the alleged perpetrators, Inspector of Police Saman, Police Constable Perera, and the management of TID, including the Director of TID, Senior Superintendent of Police, **Nandana Munasinghe**, as well as the CID officers allegedly responsible for the ill-treatment of Nicholas Stephen)".

2015: 6²⁵
2014:2
2013:10
2012:8
2011:4
2010:2
2009:18
2008:2
2007:1
2006:1

Surrendered/Captured at the end of the war: 19 (including those taken from Manik Farm)

Abducted or arrested in: Colombo (8), Vavuniya (8), East (3), Vanni (9), Kandy (1), Jaffna Peninsula (5) unknown because not asked (2).

Members of the Security Forces Allegedly Involved in the Detention and Abuse:²⁶

Army²⁷: 30

Police²⁸ (including CID, TID):24

Navy: 2

Unsure which unit: 7

2.1 Categories of Detention

a) **Abductions, Torture and Rape**

29 of the women had been abducted in a vehicle²⁹ by plain-clothes officers and taken in 28 cases to an unknown site, in several instances a site that was obviously an army camp. One woman had been abducted twice in different years. Their release was conducted in the same manner as the abduction, with the victim being blindfolded to hide the location of the detention site. The pattern of these abductions has been fully described in our earlier reports.

b) **“Rehabilitation” Cases**

10 cases involved former female LTTE cadres detained in “rehabilitation” camps but the sexual violence often occurred when they were removed from these camps to other sites.

c) **Frontline, Checkpoint or while surrendering**

In 2 cases the women had been raped by military officers either at a checkpoint or upon surrender at the frontline (at Wadduvakkal Bridge) at the end of the war. In other cases women were identified by informers upon surrender or while in Manik Farm camp and then detained.

d) **Arrests/Abductions:** in 5 cases women were arrested or abducted when reporting to or visiting a police station. One young woman described being raped with a stick by TID officers at Pulmoddai police station in 2009. Other police stations named were: Mount Lavinia,

²⁵ One woman was abducted before 2015 but continued to be detained and tortured in 2015.

²⁶ Numbers exceed total number of women because some were detained in multiple sites or on multiple locations.

²⁷ When a witness says the alleged perpetrators were wearing army uniforms.

²⁸ When alleged perpetrators in plain clothes introduced themselves as CID/TID or wore police uniforms.

²⁹ Such as a white, grey or black van or occasionally a jeep.

Vavuniya, Nelliady CID room at the back of the station and the TID/CID headquarters in Colombo.

I
T
J
P

- e) **Rape Camps:** Three female victims were detained for prolonged periods by the military and used as sexual slaves. These cases occurred in different years (2007, 2009-13, 2012-15) and represent four distinct sites³⁰: one near Vavuniya, one near Puttalam, one in Colombo itself and one outside Colombo but not in the North or East. Two of the women describe being detained in a group in one room, available for any soldier to come and chose from and take to an adjacent room or tent to be raped³¹; the third woman was kept in a cell alone in the pitch dark for 6 months but heard other women next door screaming³². In two cases, the women described regularly being given pills³³ or injections³⁴ by the security forces, which they assumed were for birth control; in the third case the woman became pregnant as a result of the rape.

2.3 Sites

Post-war, women were detained and violated in: Manik Farm IDP camp, Sampath Nuwara army camp (not far from Pulmoddai), Joseph Camp (or the Vanni Security Force Headquarters), Boosa, Orr's Hill army camp, Palali camp, Kangarpuram Camp (processed but not tortured here), Chavakachcheri 512 camp, among others³⁵. This is in addition to Pampaimadu and Poonthotham "rehabilitation" camps and the abovementioned police stations and 28 secret/unknown camps.

2.4 Rape and Torture

All the women alleged that they were raped except 4 held in rehabilitation camps, 2 who were sexually violated in other ways and 3 who did not want to talk about it. That means 46 women declared they had been raped, in many cases by multiple perpetrators and on multiple occasions. 43 of the women also described other forms of severe physical torture.

2.5 Bribes

42 of the women's families paid bribes to their captors escape detention, 11 were released without bribes and in 2 cases the information was not collected.

3. Identified Individual Perpetrators

The ITJP has identified a group of army officers allegedly involved in the torture and rape of Tamil women (and men) in their roles as (a) commanders, and/or (b) as direct perpetrators or (c) being complicit in the knowledge of the acts. This information is based on the sworn testimony of 18 witnesses and survivors.

³⁰ Two of the women were held in multiple sites over several years.

³¹ "A senior officer came into the room and was asked to take his pick, like we were meat in a meat market. He looked around and chose me. He took me to another room and raped me";

"In my two years of my captivity in this camp, I was raped so many times I cannot give a number. It was countless. There were so many different men and many of them raped me on many occasions. I even tried not to keep clean - to be dirty and stinky but that did not make any difference. On many occasions the men would ejaculate in my mouth or all over my body. I could never get used to it in my mouth and I always gagged or tried to spit it out. Often there was anal sex often leaving me bleeding from my anus. Sometimes there were so many men at one time who all wanted sex they would take me or the others into the hall or on the veranda or the kitchen to rape us."

³² "I was only beaten, kicked and raped regularly - I may have been raped by more men but I remember the body smell and body type of the same four or five men who came very often to rape me. I could hear only women's voices in the surrounding rooms, I heard female voices on either side of my room. I could often hear screaming from other rooms and I feel convinced that the other women were also raped. I think the rapes happened mostly in the afternoon because it felt really hot".

³³ "A man came regularly and gave me two pills in the beginning and later just one from a tin box".

³⁴ "I would watch them load the syringe. They would take a small clear glass bottle with a little label with Sinhalese writing on it and shake it in their hands. It had clear fluid in it that looked like water. They held the glass bottle up and inserted the needle from below and then drew a certain amount into the syringe. They often did the same thing with a second clear glass bottle with clear liquid in it. I am not certain if they were mixing two medicines or they could not get the full amount out of the first bottle".

³⁵ Names omitted where it might reveal the identity of the woman.

3.1 Identities of Alleged Perpetrators

Six photographs are attached to this submission in a **CONFIDENTIAL** annexure. ITJP has kept the names, units, ranks and photographs confidential to preserve the rights of the defendants and to enable the Government of Sri Lanka to demonstrate to CEDAW that it now has the political will and ability to investigate such cases credibly and without alerting the suspects first.

3.2 Their Alleged Crimes

Three senior Sri Lankan military officers have been identified as alleged rapists in sworn testimony from their female victims. One of these served as a UN peacekeeper recently. A fourth officer is alleged to have been directly involved in torture; the fifth allegedly ordered torture; while the sixth is alleged to have walked into a torture chamber while the victim was being tortured.

4. Recommendations

4.1 CEDAW

The ITJP recommends that CEDAW provide the ITJP's confidential information on alleged perpetrators to the Government of Sri Lanka for the purpose of vetting and screening. CEDAW should closely monitor if it is used (a) to suspend and (b) to vet these individuals from holding any official positions or UN peacekeeping positions, pending (c) a full investigation with the aim of bringing them to justice.

We also urge CEDAW to recommend to OHCHR that it establish an independent team in Geneva to examine evidence held by ITJP and other groups outside Sri Lanka pertaining to on-going violations under the new Government.

4.2 Government of Sri Lanka

In our opinion there is no reason for the Government of Sri Lanka to wait for the establishment of the proposed judicial mechanism, hybrid or otherwise, before holding military officers accountable for the sexual torture of women (or men), given that it constitutes a crime under the penal code.

The ITJP recommends that CEDAW require the Government to do the following and report back to CEDAW on progress:

- Establish a task team or committee made up of military experts who are independent of those who served in those military units implicated in the final phase of the conflict and/or who continue to serve in the north and east, to investigate these military officers who have been complicit in torture and sexual violence. The task team should be given unfettered access to their military records and access to torture sites as well as access to facial recognition software and legally obtained wire taps. They should conduct monthly lie detector tests on all personnel involved in the investigation and ensure half the officers are ethnically Tamil and also that female investigators are well represented in the team, which should also have at least one gender officer specialised in taking sexual violence testimony from vulnerable and traumatised witnesses.
- Conduct an independent transparent investigation and where evidence exists, indict and prosecute them under the civilian court system and not through a secret court martial.
- Ensure witness protection including by facilitating the secure and confidential testimony of witnesses from abroad, through means such as letters rogatory. Victims should not have to testify at a Sri Lankan Embassy where their

confidentiality cannot be safeguarded. This is essential not just for the safety of the witnesses and their families in Sri Lanka but also to secure the anonymity and identity of women given that in many cases their husbands and children do not know they have been raped.

- Suspend all 6 officers in the confidential annexure pending the outcome of the investigation.
- Report back to CEDAW regularly on the progress of the investigation.

The ITJP repeats its previous offer to the Sri Lankan Foreign Minister to put together an international team of investigators to assist, an offer to which he never responded.

4.3 The High Commissioner for Human Rights

The ITJP has shared the confidential information attached to this submission with the High Commissioner for Human Rights in the expectation that he will monitor progress in holding these 6 individuals accountable and also ensure that Department of Peacekeeping Operations (DPKO) does not accept any of them for UN peacekeeping missions again.

4.4 Governments

The ITJP intends to share the information regarding these and other alleged perpetrators with Governments in the expectation that their immigration departments will vet applications for training courses and visas or, in the case of the United States, consider them for sanctions under the Magnitsy Act of 2016.

ends

