

Impunity for Sexual Violence Question

The Government of Sri Lanka has the primary obligation to promote, protect and prevent human rights violations and abuses in terms of both domestic and international law. This requires that it investigates and prosecutes serious crimes. Under the current legal framework in Sri Lanka, acts of sexual violence can be prosecuted in domestic courts as rape, custodial rape, gang rape, or grave sexual abuse. Rape includes intercourse where the woman is in detention or where 'consent is obtained through intimidation, threat, or force'. Article 365(B) of the Penal Code covers grave sexual abuse not amounting to rape, and would be applicable to the many other forms of conflict related sexual violence. Cases can also be brought as violations of fundamental rights under the constitution and under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment Or Punishment Act No. 22 of 1994 (Convention Against Torture Act. Sri Lanka has been urged to effect penal reform to include serious international crimes.

Legally, Sri Lanka has an institutional structure and legislative framework capable, in many ways, of offering protection from and redress for human rights abuses committed by state actors. The Sri Lankan Penal Code, for example, provides, at least on a legal basis, for significant punishment of state officials who commit abuses. However, because of the pernicious effect of the Prevention of Terrorism Act (PTA) and an unwillingness to use the mechanisms for investigation and punishment that are in place, impunity has become entrenched. Sri Lanka has also recently signed the G8 PSVI declaration but taken no meaningful steps to follow up with investigation.

It is also worth noting that the majority of sexual violence cases documented by ITJP involve unlawful abductions and detentions in unauthorized secret sites.

The extensive nature of security force torture and sexual violence in known and secret sites has been brought to the Government of Sri Lanka's attention in a number of NGO and UN reports (OISL, UNCAT, Special Rapporteurs) but years have gone by and nothing has been done to establish a credible investigative mechanism independent of the Attorney General's office and police force units which have been compromised by their role in the abductions. There is a distinct lack of political will to address these crimes which is also evidenced by the failure to act despite being in possession of prima facie evidence and also the continued appointments of alleged perpetrators to crucial bodies meant to deal with victims. An example of this are the appointments of alleged perpetrators to the witness protection body the new Government established.

It is now known that Sri Lankan security forces stationed in Haiti between 2004 and 2007 were alleged to be responsible for sexual violence involving girls and even setting up brothels. 114 were repatriated to Sri Lanka under the expectation that the government would deal with accountability for these grave crimes. To date, the Government has failed to prosecute and punish soldiers in keeping with the gravity of the alleged violations. Despite requests for information on whether the peacekeepers implicated have been held criminally accountable, there is a deathly silence. This confirms the lack of accountability on the part of the Government to deal with the issue of serious international crimes. The Haiti peacekeeper incident is dealt with in greater detail in the annex to our submission.

The Government of Sri Lanka does not have the political will to investigate and indict any member of the security forces for the widespread and systematic sexual violence reported or hold anyone accountable even for past and current violations and abuses. Had it the political will and commitment to deal with these heinous crimes it could do so under the current legal framework that exists. It is for this reason that the ITJP cannot but draw the conclusion that the current Government is complicit in the continuation of the violations and has sent out a signal that no one will be held accountable for any crimes ultimately entrenching impunity.

Points on Conflict Related Sexual Violence

1. Directives

The GOSL maintains (Paras 45-6) in its response to the LOI that it has in March and June 2016 issued directives to the security forces not to violate human rights:

- (a) There is no corroboration to say this actually was done; in any case it should have been done publicly. To be really effective this would require the President saying these things in person (broadcast on state run TV) in Sinhala to an audience of the military or police.
- (b) The directives should have specifically mentioned the issue of torture, rape and sexual violence as per the wording of the UN Resolution 30/1¹.

2. Statistics

Noting that the Government's cited statistics blur the distinction between domestic violence and conflict and non conflict sexual violence (para 53):

- (a) Please ask the Government for a breakdown of statistics specifying conflict related sexual violence reported cases, whether the alleged perpetrator is from the security services including police, the ethnicity of the victim, and at what point the cases are in the legal system.

3. Investigation

Para 55 of the Government's response to LOI's cites the National Human Rights Action Plan (NHRAP), which recommends a special unit to expedite sexual violence cases sited in the Attorney General's department.

- (a) The NHRAP subcommittee on torture was headed by Yasantha Kottagoda. Concerns have been repeatedly raised about the integrity and impartiality of Additional Solicitor General Yasantha Kodagoda who is alleged to have covered up serious human rights abuses under several different governments.
- (b) The Attorney General's Department is the chief legal adviser to the President and to all departments and ministries of government, including the State security forces and the police. The role of the Attorney General's staff in the investigation of the State, especially the security forces, by its very nature

¹ Resolution 30/1 says: *Also welcomes* the commitment of the Government of Sri Lanka to issue instructions clearly to all branches of the security forces that violations of international human rights law and international humanitarian law, including those involving torture, rape and sexual violence, are prohibited and that those responsible will be investigated and punished, and encourages the Government to address all reports of sexual and gender-based violence and torture".

places them in conflict of interest as far as any inquiry into the administration of justice.

© Instead please ask the Government to establish a credible investigative mechanism independent of the Attorney General's office and police force units, which have been compromised by their role in the abductions and torture.

(d) Ensure CEDAW visits Sri Lanka to inspect sites and takes time to meet key witnesses and victims of ongoing conflict related sexual violence who have fled abroad.

4. Witness Protection

Para 57 of the Government of Sri Lanka response to LOI references its witness protection steps.

- (a) Please reference [ITJP's report](#) on the National Authority, which details the problematic nature of several appointments to this body which call into question the good will of the Government to protect witnesses.
- (b) Please ask the Government of Sri Lanka to modify its procedures to allow victims and witnesses abroad to testify through video link ups without being present in an Embassy or forced to have a Sri Lankan government official with them. Thousands of victims, including women subjected to rape, torture and sexual slavery, have fled abroad since 2009 and are excluded from the transitional justice process.

6. Peacekeeping

Sri Lanka had the largest repatriation of its peacekeepers from any country involving 114 soldiers returned from Haiti in 2007. From 2004-7 at least 134 Sri Lankans sexually exploited and abused at least 9 Haitian children and 100 of the alleged perpetrators were identified. The Troop Contributing Country is responsible for holding these alleged perpetrators of sexual violence criminally accountable. To date there is no submission from the GoSL to indicate that those responsible were indeed punished in accordance with the gravity of the crimes. If there is no justice in a high profile case where action was needed to ensure continued engagement with prestigious UN peacekeeping roles, what hope does a woman in the NE of Sri Lanka have in securing justice?

- (a) The GoSL says² disciplinary action was taken against 10 officers and 13 soldiers (3 killed in action in the war which suggests no disciplinary action was taken against them between 2007-9 on return to Sri Lanka) but it is not clear why the 91 others repatriated have been exonerated and what the basis for the exoneration is. The GoSL says disciplinary action was taken against one officer and his commission withdrawn. One other was made to retire in his substantive rank. One soldier was discharged. This does not indicate the men were imprisoned for their alleged role in the organized rape of Haitian children. Was there any criminal punishment awarded and if not how does this sit with Sri Lanka's signing of the Preventing Sexual Violence Initiative (PSVI) accord? Did the GoSL provide any form of

² CAR/C/LKA5, 11 December 2015.

reparations or compensation to the victims of sexual violence in Haiti?

- (b) Please ask the UN for details of its vetting of Sri Lankan peacekeeping troops and what steps it is taking to uphold the SG's policy of zero tolerance for sexual violence by peacekeepers.