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ITJP Submission to the Committee Against Torture

17 October 2016.

ABOUT THE INTERNATIONAL TRUTH AND JUSTICE PROJECT (ITJP) AND BACKGROUND TO INFORMATION GATHERING / DOCUMENTATION PRODUCTION

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 team includes former prosecutors from the Ad Hoc Tribunal for the Former Yugoslavia (ICTY), lawyers who have worked for the United Nations, the Special Court of Sierra Leone and the International Criminal Court who collectively have decades of experience in investigation of sexual violence and torture, and in many instances firsthand knowledge of investigations relating to Sri Lanka that are germane to this Committee's focus.

The ITJP specializes in documentation and gathering evidence related to war crimes committed during the final phase of the conflict in Sri Lanka as well as sexual violence and torture in post-war Sri Lanka from a legal perspective; this provides an important complement to the forensic approach of our medical colleagues. The ITJP also supported the 2014-2015 "OHCHR Investigation on Sri Lanka" (OISL) conducted by the Officer of the High Commissioner for Human Rights (OHCHR) by providing the OISL team with evidence of both war crimes and sexual violence in the post-conflict period[1]. ITJP investigators have to date worked primarily outside the country, focusing on exiled victims of torture and sexual violence, as the ongoing security situation does not allow us to operate inside Sri Lanka without endangering victims and their families in the former conflict areas in the North and East. Activists in the North and East of the country have warned of reprisals to witnesses. The ITJP has not named its investigators in order to preserve confidentiality and also as a precautionary measure to help protect witnesses who meet them as well as their family members in Sri Lanka. It is critical that further efforts are made by the Sri Lankan (GoSL) government and international community (IC) to rectify this situation.

The ITJP documents and gathers evidence outside the country from victims who leave Sri Lanka shortly after their release. In some instances, victims point out that they have been specifically warned by their captors to leave Sri Lanka. Many of the victims interviewed by the ITJP are deeply traumatized having just arrived in Europe. In some instances, they manifest open bleeding wounds as well as fresh scars from the torture.

METHODOLOGY

ITJP investigators spend several days with a victim, establishing the sequence of events and related details, testing and corroborating their story. This is done in a secure environment with a trusted interpreter. ITJP investigators also ensure that medico-legal evidence, forensic and psychological reports from impartial experts are gathered and attached, as well as other corroborating documents such as correspondence from the International Committee of the Red Cross (ICRC) regarding detention, release certificates from the GoSL's rehabilitation programme, International Organization for Migration (IOM) identity cards and photographs, inter alia. This ensures that case files regarding each witness are robust in terms of evidence supporting their claims.

[1] "Report of the OHCHR Investigation on Sri Lanka (OISL)", A/HRC/30/CRP/CRP.2, Advance Version, 16 September 2015.

ITJP invests considerable time assessing the background and profile of the victims, who are questioned about their experience of the final phase of the war. This facilitates the assessment of their credibility, as well as their mental state given the prevalence of trauma. Comprehensive descriptions of detention sites are compiled; this is especially important where such locations remain secret. Details include the kind of cells in which detainees are held and interrogated, modalities of abduction and release, and testimony relating to ongoing reprisals against family members. In addition, the ITJP has a growing database of photographs of alleged perpetrators which is utilized for purposes of identification and corroboration. Considerable progress has been made in the identification of individual perpetrators and commanders allegedly responsible for torture and sexual violence.

DOCUMENTATION AND PUBLICATIONS

Since 2013, the ITJP has interviewed 219 war and/or torture survivors relating to violations perpetrated since the official end of the war in May 2009. Witnesses have been interviewed by the ITJP in Holland, Switzerland, France, the UK, Norway, Germany, Malaysia, India and Australia among other countries. In addition we have been given documentation (statements, asylum bundles and /or medico legal reports) for an additional 92 Sri Lankans.

Based on these testimonies and the supporting corroborative materials, the ITJP has published three reports [in March 2014, July 2015, January 2016] relating to abduction, torture, sexual violations[2]. In addition the ITJP published an online report in May 2014 on the white flag surrenders and in June 2016 its consultation report on the Transitional Justice process in Sri Lanka, taking account of the views of victims in exile in Europe[3]. In this regard, the ITJP this year conducted an external victim consultation programme with 75 exiled Tamil final war survivors and post war detention victims in the UK, Norway, Switzerland and France[4]. Each person was interviewed confidentially with the help of an interpreter. 73% of those interviewed had been tortured by the security forces after the end of the war, 54% had been subjected to rape or other forms of sexual violence. 44% of them also reported that a family member had been tortured; in some cases multiple generations had suffered torture. The consultation found victims, in the UK in particular, had not the received medical and social care they needed to begin the rehabilitation process; many were suicidal and still had untreated war injuries.

[2] (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.
[3] Copies of all reports are available on our website, www.itjpsl.com
[4] Forgotten: Sri Lanka’s exiled victims, International Truth and Justice Project Project, June 2016.

PART 1. Regarding ongoing violations of the Convention Against Torture and other cruel, inhuman or degrading treatment or punishment.

INTRODUCTION

The history of violations of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment by the Sri Lankan government and its security forces has been well documented over the years as evidenced by the plethora of reports and submissions made to this body.

These violations occurred in the context of the decades long war that finally resulted in the defeat of the LTTE, and despite undertakings by the former government of Mahinda Rajapaksa to pursue a policy of reconciliation after the war. The Office of the High Commissioner for Human Rights (OHCHR), the UN Panel of Experts and a number of organisations including the ITJP-SL have established a well-documented pattern of widespread and systematic violations perpetrated against the Tamil community by former President Rajapaksa's regime long after the war ended.

In January 2015, a new administration under President Maithripala Sirinsesa came to power, with hopes and promises of a new dispensation. Despite the commitment of the new government to build a new democratic rights-based culture, violations have continued to be perpetrated, reinforced by endemic impunity over decades. This legacy of a securitized state which has militarised the North and East of the country manifests in multiple layers of violations by the Sri Lankan security forces and its surrogate Tamil Paramilitary groups against members of the Tamil population, undermining prospects of a meaningful broad-based reconciliation project. This is evident from the limited progress made in respect of that reconciliation[5].

Violations which continue to be perpetrated under the Sirisena administration include ongoing harassment and intimidation, "white van" abductions and torture including sexual violence of Tamils suspected of even low level association with the LTTE or involvement in legitimate democractic political activity. Targeting is based on intelligence gathered by covert networks, including ex LTTE informers, that remain actively engaged. The parameters of such intelligence objectives now appear to extend to preventing and constraining legitimate political and human rights activities.

The ITJP's report is based on ongoing documentation of statements of 33 victims detained in 2015 and 2016 supported by corroborating evidence collated by the ITJP. An analysis of the statements reveals a pattern of "white van" abduction followed by further violations of torture, rape and other forms of sexual violence. An analysis of the documentation reveals a pattern of extortion and the practice of profiteering off torture by state and proxy elements[6]. The statements highlight the organised nature of violations, reflected in a division of labour, keeping separate the teams that (a) abduct, (b) interrogate and torture and (c) then release for ransom. Reference to record keeping and documentation processes reflect the systematised nature of these operations. In some cases victims are asked about information they gave during previous periods of detention, indicating a connection between information gathered in official and unofficial detention sites[7].

[5] "Sri Lanka: Jumpstarting the Reform Process", International Crisis Group, Asia report Number 278, 18 May 2016.
[6] See also "Mercy for Money: Torture's Link to Profit in Sri Lanka", Canadian Centre for Victims of Torture, (forthcoming).
[7] By official sites we mean recognised places of detention such as police stations, jails and "rehabilitation" camps. By secret sites we mean places deliberately kept unknown to the detainee. By known sites we mean places like the Wanni Security Forces Headquarters (otherwise known as Joseph Camp – properly Joint Operational Security Force Headquarters].

"White van" abductions and accompanying violations, are a proven pattern of violation in the Sri Lankan context as demonstrated in the "OHCHR Investigation on Sri Lanka" (OISL) in 2015. The OISL report includes, "incidents that occurred before, during and beyond the OISL investigation period"[8]. The report sets out the modus operandi of these "unlawful and arbitrary arrests" and responsible security structures; it concludes in its *Principal Findings,* "these violations were and still are facilitated by the extensive powers of arrest and detention provided in the Prevention of Terrorism Act (PTA) still in force"[9]. The OISL further found that, "those abducted or arbitrarily detained as described above were frequently subjected to torture and/or other cruel, inhuman or degrading treatment or punishment and/or sexual violence. These violations were not isolated or sporadic but rather were committed in a widespread manner"[10]. The OISL report concludes that, "All of the information gathered by OISL indicates that 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"[11].

In addition, the recent report of the UN Special Rapporteur for Torture points to the "common use" of torture in Sri Lanka facilitated by the continuation of "total impunity". The report identifies various subsets of victims, from criminal suspects to "real or perceived threats to national security" and responsible state security structures; importantly, recognition is given to allegations of continuing "white van" abductions and the need for more investigation[12].

The GoSL has denied these allegations, countering that they are, "a sensationalised allegation that appeared in some media reports, rather than being based on realistic facts"[13], repudiating evidence adduced by these official inquiries. The denial demonstrates a lack of political will to undertake credible inquiries as well as a failure to acknowledge that without a comprehensive security sector reform programme these violations will not stop. Conditions inside Sri Lanka do not permit credible secure and independent investigations, all of which perpetuate the GoSL's lack of accountability by avoiding addressing this issue and by extension perpetuating the culture of impunity. At the heart of this challenge is an unwillingness and a lack of political will to address the issue of torture, abductions, enforced disappearances and sexual violence. Such denials also contradict and undermine stated commitments made by the GoSL to the international community to address the ongoing violations and impunity.

It is in this context that the ITJP has collected further evidence that reinforce the findings of the OISL and the Special Rapporteur on Torture's preliminary observations that "white van" and other targeted abductions and related violations require urgent further attention.

An analysis of the ITJP case documentation points to the following patterns and trends:
(i) the continued targeting of Tamil citizens who have been profiled as enemies of the state by specialised units of Sri Lanka's security services;
(ii) continued violations and unlawful practices by specialised units of Sri Lanka's security services;

[8] "Report of the OHCHR Investigation on Sri Lanka" (OISL), op cit. page.71.
[9] "Report of the OHCHR Investigation on Sri Lanka" (OISL), op cit. page.220.
[10] "Report of the OHCHR Investigation on Sri Lanka" (OISL), op.cit. page.221.
[11] "Report of the OHCHR Investigation on Sri Lanka" (OISL), op.cit. para 591.
[12] "Sri Lanka: Preliminary Observations and Recommendations of the UN Special Rapporteur Juan E. Mendez, 7 May 2016.
[13] "Report of the OHCHR Investigation on Sri Lanka" (OISL), op.cit., page.84.

(iii) the ongoing impunity of the security forces and the failure of the GoSL to address the ongoing impunity through effective independent investigations and prosecutions of those responsible particularly at command and control level;
(iv) the failure of the GoSL to exercise political will to reign in the security services and prevent further violations;

The ITJP cases confirm the following patterns in respect of the methodologies of violations:

(i) a continuation of past patterns in terms of the modalities of abuse perpetrated Sri Lanka's security services;
(ii) the failure of the command structures of these services to prevent these ongoing violations and to provide monitoring and reporting mechanisms, as well as ongoing programmes raising awareness that these violations amount to crimes. This includes establishing complaint mechanisms and the provision of remedies for these violations, that highlight the state's responsibilities, at the very least by virtue of acts of omission;
(iii) the de facto complicity of Sri Lanka's (new) political leadership and lack of political will to make a demonstrable break from the past and implement public undertakings to intervene to put an end to such practices;
(iv) further detail of the use of child soldiers, forced recruitment and related violations committed by the LTTE during the conflict.

The ITJP submits that the violations referred to in this submission reflect enduring patterns of abuse perpetrated by Sri Lankan security forces and constitute prima facie evidence that such violations continue to be widerspread and systematic.

The Committee against Torture recently adopted a "List of issues in relation to the fifth periodic report of Sri Lanka"; this included reference to "continued and consistent allegations of widespread use of torture and other cruel, inhuman or degrading treatment"[14]. The Committee noted a paucity of information required in Sri Lanka's State Party report regarding statistical data on related complaints, and investigations into sites of alleged torture, many of which sites are also contained in the statements referred to in this submission. The CAT report outlines a catalogue of deficits and concerns about torture and the failings of the GoSL to take appropriate action to address these concerns and put in place the necessary safeguards, and to strengthen existing remedial options against further violations. Once again, the GoSL has been given an opportunity to furnish this information and progress in this regard will be assessed closely as an indicator of the GoSL's bona fides.

PROFILE OF ITJP VICTIMS INTERVIEWED
2016 CASES: 7 (all male).
2015 CASES: 26 (7 female, 20 male).

This submission relates to the testimonies and corroborative evidence of 33 victims of abduction, illegal detention, torture, sexual violence and other cruel, inhuman and degrading treatment.

All the victims are of Tamil origin. 26 are male, 7 female. They are currently in exile in three European countries. All have applied for asylum with eight having already been granted asylum by the immigration authorities in Europe.

[14] "List of issues in relation to the fifth periodic report of Sri Lanka", Committee Against Torture, 7 June 2016, CAT/C/LKA/Q/5

In most cases, victim statements are corroborated by evidence, which includes medico legal reports, psychiatric reports to hospital, letters, scar photos and Rule 35 reports from detention sites in the United Kingdom. Of the 2015 cases all but 5 now have medico legal reports corroborating torture.

All of these victims were tortured during the time of the current Sirisena administration. These include former child soldiers forcibly recruited by the LTTE in the final months of the war, who were accused by the Security Forces responsible for their abduction of not handing themselves in to be sent to "rehabilitation" camps. For a number this was not the first experience of violation at the hands of the Sri Lankan security establishment. For some of the victims documented this was their third experience of being detained and tortured.

Before being abducted many of these victims had been involved in a variety of peaceful protests or election activities demanding rights for Tamils. These included attending campaign meetings during presidential and parliamentary elections in 2015 for MP's from the Tamil National Alliance (TNA) and the Tamil National People's Front (TNPF) - to attending memorial events marking the anniversary of the end of the war or campaigning to know the fate of the disappeared in their own families.

TYPOLOGIES OF VIOLATON

The abuses documented by ITJP reflect multiple violations of the Convention Against Torture and are characterised by a total absence of due process. This enables denial, which in turn reinforces a well-honed culture of impunity.

Arbitrary arrests described in these statements are characterised by the victims first being abducted, in a phenomenon referred to in Sri Lanka as "white van" abductions. Victims are snatched at various locations, and /or taken from security force facilities they have been instructed to come to, which the ITJP has referred to as "transit points". "Arrest" is followed by arbitrary detention; victims were detained for varying periods, from 24 hours to six months or more; they are kept in difficult conditions without adequate food, water or sanitation faciliaties.

Interrogations are characterised by predetermined assertions and allegations which interrogators seek confirmation of. The torture generally occurs in well-equipped rooms with cables, pipes, water barrels and other instruments, indicating foresight and preparation. The torture methods recorded included beating, whipping, burning with cigarettes, branding with heated metal rods, water torture, asphyxiation in a plastic bag soaked in petrol or chilli and tied around the neck, hanging upside down, falaka, and the use of electricity. These allegations resonate strongly with those reported by OISL and documented in the period before 2015 by ITJP and and other organisations. Systematic abuses are often supplemented by arbitrary and ad hoc abuses by guards.

SEXUAL VIOLENCE AND RAPE

The ITJP has been surprised by the high prevalence of male rape and other forms of sexual violence perpetrated by the Sri Lankan security forces in the post-war years. This is not, however, a new phenomenon or restricted to men. Many women have also been subjected to rape and sexual violations[15]. A pattern of male rape in previous years

[15] (a) "We will teach you a lesson: Sexual violations against Tamils by Sri Lankan Security Forces", Human Rights Watch, 26 February 2013.
(b) "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.

was established.[16] Sexual violence has also been integral to the pattern of violations accompanying "white van" abductions[17].

Approximately 75% of 2015-16 ITJP torture cases referred to in this submission involve the sexual abuse and rape of men. The victims, often young men in their early twenties, remain deeply traumatised by their rape and sexual abuse while in detention.

The ITJP would like to point out to the Committee that these incidents of male rape are not being documented inside Sri Lanka given the general taboo surrounding male rape, which discourages disclosure and given the shame associated with rape and sexual violence. Non-disclosure is also exacerbated by the lack of experience of NGOs and activists in dealing with male rape and male sexual violence. It is notable that most human rights organisations active in Sri Lanka still consider rape to be a primarily an issue that affects women. The testimonies relating to this submission debunk this notion. Comparative international experience indicates that these victims are likely to suffer long term consequences, medically, psychologically and socially and are unlikely to receive necessary support and rehabilitation, both inside or outside Sri Lanka.

THE COMMODIFICATION AND ECONOMIC EXPLOITATION OF ABDUCTION AND TORTURE – RANSOMS FOR RELEASE

All but one of the ITJP victims' families appear to have paid extortion money to the security forces to escape from detention and the country. In the majority of these cases the family had already paid at least one previous ransom to the security forces for the release of this victim or a sibling during the post-war period. In many of these cases the pro-government party, the Eelam People's Democratic Party or EPDP, is alleged to have brokered the ransom for the release deal. Extortion deals in exchange for release are in all cases secured after the torture has been perpetrated. The clear involvement of the security forces and alleged complicity of ransom 'brokers' and others linked to the exfiltration of victims, indicates a wider network of criminal enterprise perpetrating economic crimes that warrants serious investigation by Sri Lankan authorities and the international community.

OBJECTIVES OF ABDUCTION, INTERROGATION AND TORTURE

Several objectives appear to determine who is abducted and why they are tortured, interrogated and forced to sign confessions. In some instances LTTE affiliation (direct and / or family members) is a factor. In other instances those who have chosen to participate in advocacy and lobbying campaigns against the government including protests have also been abducted.

In terms of the objectives of such abductions, interrogations and torture, in almost every case victims have been forced to sign a confession in Sinhala, a language they do not understand, or alternatively to sign on a blank piece of paper. This practice, a direct violation of Article 14 of the CAT, has been a routine practice by Sri Lankan interrogators and investigators, as described by those who have been incarcerated in different types of detention sites spread across the country. This adds further weight to the assertion that these continued practices are part of a broader operation. It is unclear how such confessions are subsequently employed. It is noteworthy that the Sri Lankan authorities in the past have devoted considerable resources to establishing a parallel narrative on every alleged violation or war crime, as part of broader endeavors to

[16] Testimonies refer to incidents from the end of the war following process of surrender at the frontline, at Manik Farm and other IDP camps, at "rehabilitation" camps, detention sites, army camps and in secret sites, as well as police stations.
[17] "Report of the OHCHR Investigation on Sri Lanka" (OISL), op.cit. p.120

obfuscate the truth, which is particularly important for interested parties in the context of promised transitional justice processes.

The modus operandi of perpetrators as described in the victim statements strongly suggests ethnic targeting tantamount to persecution; punishment and revenge against the LTTE are also core motivations. Testimonies also suggest other reasons such as deterrence from engagement in advocacy and lobbying around political and human rights issues, including families who campaign for information about missing and disappeared close relatives as well as relatives who were taken into custody by the security forces and who have not been heard of since. In addition, many victims are witnesses to indiscriminate atrocities perpetrated against civilians committed by Sri Lanka's security forces in the closing stages of the war and are potential war crimes eyewitnesses. It is patently clear that most Tamil witnesses are unlikely to participate in the new government's transitional justice programme given their lack of trust in the government and its mechanisms, as well as the real possibility of reprisals. The trust deficit by victims in the State and its transitional justice processes emerged strongly in the ITJP's June 2016 victim consultation report.

Several victims had been subjected to harassment and intimidation by security force elements in the period before their abduction. This reflects an ongoing modus operandi around security and state hyperbole around LTTE resuscitation, which has accompanied resistance to the demands for demilitarisation, reflecting the continued influence of a hardline militarised approach in government policy making. This presents a major challenge for any meaningful developments towards rebuilding relations with Sri Lanka's Tamil population and prospects for a credible engagement with transitional justice processes.

KNOWN SITES OF TORTURE

The ITJP's July 2015 report, "A Still Unfinished War: Sri Lanka's Survivors of Torture and Sexual Violence" identified 48 known sites where torture had occurred or which were used as a transit points to torture locations between 2009 and 2015. These included IDP camps, "rehabilitation" camps, CID and TID offices, army camps and police stations. This reflects the extent to which security infrastructure has been utilised to perpetrate and facilitate torture.

Army

1) Chavakachcheri Army Camp, Jaffna Peninsula
2) Uduvil Army Camp (near Uduvil Girls College), Jaffna Peninsula
3) Urelu Army Camp, Jaffna Peninsula
4) Kilinochchi Army Camp (in Ex LTTE police HQ), Vanni
5) Orr's Hill Camp, Trincomalee
6) Veppankulam Army Camp, Vavuniya District
7) Army Camp near Omanthai School, Vavuniya District
8) Palali Army Camp, Jaffna Peninsula
9) Achchuveli Army Camp, Jaffna Peninsula
10) Iyakkachchi Army Camp, Elephant Pass
11) Joseph Camp, Vavuniya Town
12) Sampath Nuwara Camp, on the border of Trincomalee and Mullaitivu Districts
13) Trincomalee Naval Dockyard
14) Urumpirai Army Camp, Jaffna Peninsula
15) Camp near Paranthan Junction

Police sites

16) TID/CID Headquarters ('Fourth Floor') and also a naval compound across the street
17) Nelliady Police Station
18) Borella CID Building
19) Colombo Harbour Police Station
20) Welawatte Police Station
21) Dematagoda TID office/Police station
22) Kotahena Police Station
23) Bambalapitiya Police Station
24) Hettiyawatte Police station
25) Nugegoda CID office
26) CID Offices in Amapara
27) Mt. Lavinia Police Station
28) CID in Kalmunai Town, Ampara District
29) CID in Kaluwanchikudy on the Ampara/Batticaloa border
30) Iniyabharathy's office in Thambiluvil, CID operated here

"Rehabilitation" sites
31) Nellukkulam Technical College, Vavuniya District
32) Pampaimadu, Vavuniya District
33) Poonthottam Cooperative Training School, Vavuniya District
34) Rambaikulam H/F Convent/Girls' School, Vavuniya District
35) Welikanda/Senapura Camp, Eastern Sri Lanka
36) Kovilkulam Maha Vidalaya, Vavuniya District
37) Maradamadu, Vavuniya District
38) Dharmapuram Welfare Centre, Vavuniya District
39) Vellikkulam Muslim Girls College, Vavuniya District
40) Pothanichchur Muslim Maha Vidalaya Youth Rehabilitation and Training Centre, Vavuniya District.

Military Camps or Police Stations used as transit points for "white van" abductions
41) Thanthirimale Army Camp, Vavuniya District
42) Iranaipalai Army Camp, Vanni
43) Kanagapuram Army Camp, Vanni
44) Kurumankadu Camp, Vavuniya District
45) Ampara – a military building next to the terminal on Air Force Road
46) Plantain Point in Trincomalee
47) Tellipillai Police Station, Jaffna Peninsula

IDP camps
48) Manik Farm Camp

Cases captured by the ITJP since July 2015 corroborate how these sites have been used for torture. A number of these sites have been identified as sites of alleged torture by the CAT in its May 2016 "List of Issues" document, which should also be looked at in relation to the OISL investigation. The ITJP's victim statements referred to in this submission corroborate many of these allegations, as well as identifying other sites used during 2015 and 2016. The ITJP has documented the testimony of victims who suspect that they may have been held and tortured in Joseph Camp (Wanni Security Force Headquarters) in Vavuniya in 2015 and 2016.

SECRET SITES OF TORTURE

The ITJP wishes to highlight that the June 2016 amended submission from the GoSL which states, "No secret detention centres remain in Sri Lanka at present" is flagrantly untrue and must be challenged[18]. In fact 29 of the ITJP 2015 and 2016 cases refer to abduction with victims being taken to secret (or unknown to the victim) torture sites, and in some cases following reporting to known police and military facilities. In most instances, however, perpetrators take precautions to ensure that the sites of torture remain unknown to victims who are blindfolded during transit to and from these facilities. This is the same modus operandi as in previous years and was also well documented in the 2015 OISL report on Sri Lanka. The ITJP detects an array of sites are 'in play' on the basis of limited overlaps in detail derived from statements that provide comprehensive descriptions of facilities including holding cells, toilets and interrogation rooms. The fact that torture continues without any attempt to stop the security forces and that these sites continue to be used as torture sites fuels the impunity of the security forces in Sri Lanka.

INTIMIDATION OF FAMILY MEMBERS

Family members are subject to intimidation and harassment both before and after the abductions and releases. All but one of the families of victims in the ITJP case pool have had members questioned by the security forces after the victim fled abroad. This practice instils fear. Details of these experiences are documented in the ITJP's July 2015 and January 2016 reports. Continuing surveillance and intimidation acts as a deterrent to speaking out, sending ripples of fear through exile communities who remain in close touch with their loved ones in Sri Lanka.

PERPETRATORS

Perpetrators have not felt it necessary to hide their identity from the victims; this reflects the levels of impunity association with these violations. Several perpetrators have been identified in victim statements as belonging to the security forces - both military and police structures - by virtue of their transit points to torture sites, uniforms and so on. In some instances, the perpetrators have identified themselves as being part of a particular section of the security forces. In one case, the interrogator had a photograph of himself shaking hands with the former President, Mahinda Rajapaksa; in another they switched to English when they realised the victim knew some Sinhala. This is indicative of high ranking officials being involved in these violations.

"REHABILITATION" PROGRAMME

The ITJP wishes to raise its concern in respect of reports that the GoSL's "rehabilitation" programme continues to be used, given the allegations of how torture has been an indelible part of the "rehabilitation" process in the past. In this regard, the ITJP has collected more than 30 cases where the victims allege torture during the "rehabilitation" programme and in half those cases were also unlawfully abducted, detained and tortured after temporary release. The "rehabilitation" programme remains shrouded in secrecy with the government unwilling to be transparent about the programme. Most survivors interviewed by the ITJP indicate that there was absolutely nothing to rehabilitate them (save learning the national anthem in Sinhala) or teach them useful skills for the future.

The following questions should be put to the GoSL in regard to the "rehabilitation" programme so that the GoSL:

[18] CAT/C/LKA/5/Add.1

(i) Provides the Committee with the precise number of men, women and children detained in this programme since 2009 with disaggregated data based on gender, age and ethnicity as well as the dates when they were released.

(ii) Specify the names and locations of all the “rehabilitation” camps (something that is not public information) and the time frame during which they operated. Please indicate the names and ranks of commanders of all the camps.

(iii) Confirms whether there has been any investigation of allegations that first surfaced in 2013 that the “rehabilitation” programme involved torture and in some cases sexual violence against detainees?

(iv) Confirms whether anyone has ever been charged in relation to torture or sexual violence in these camps?

(v) Confirms the number of people who remain in “rehabilitation” camps with data disaggregated by gender, age and ethnicity – where and for how long and why?

(vi) Indicates the kind of screening process utilised for persons detained in “rehabilitation” camps as well as whether detainees had access to a lawyer and a doctor of their choice, and whether relatives of detainees had been promptly informed of their detention and location.

(vii) Confirms the length of detention for those held in these detention facilities? Are these detainees effectively guaranteed the ability to challenge the lawfulness of the detention before an independent court?

(viii) Confirms the extent to which INGOs, NGOs and the private sector involved in providing or funding services or having access to these camps?

(ix) Confirms the numbers of women who were transferred from the female “rehabilitation” camp to the Ratmalana TriStar Garment factory? Advise on how many are still working there? What proportion of rehabilitees were given skills training and what the precise nature of the skills training was?

(x) Confirms whether any independent evaluation was carried out assessing the impact of the “rehabilitation” programme including the skills training?

(xi) Advises on exactly what access ICRC had to all these “rehabilitation” sites after June 2009?

(xii) Advises on whether it has established any mechanism for victims to apply for compensation on the basis of wrongful detention and “rehabilitation”, including for torture and sexual violence perpetrated during the “rehabilitation” process? Has any victim been compensated, including victims who are now abroad?

PART 2. Response to Government of Sri Lanka Claims

[Reference is to paragraph numbers in the original documents].

1. RESPONSE TO SOME GoSL POINTS IN "Consideration of reports submitted by States parties under article 19 of the Convention", Addendum (June 2016)[19] .

Para 4 The GoSL endorsement of the "Declaration against Sexual Violence in Conflict" has not been followed up with any other meaningful action. This appears to be a mere box ticking exercise.

(a) **Clear Instructions:** The GoSL in the 2015 co-sponsored UN Resolution[20] committed itself, "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". To date, it appears that the GoSL has made no effort to issue such instructions to the security forces and in the event that they have been issued, it cannot be construed to have been *clearly* given because they have not been made public and widely advertised so that every soldier or policeman and the public is aware of them.

(b) **Addressing all reports:** In addition, the UN Resolution encouraged the GoSL "to address all reports of sexual and gender-based violence and torture". To date the GoSL has not taken any action to address these reports or the allegations made in them. The GoSL has taken no concrete steps to conduct independent investigations or prosecutions to deal with the allegations of widespread and systematic torture and sexual violence.

In response to a written invitation to visit Sri Lanka from the Foreign Minister, Mangala Samaraweera, the ITJP offered to assist him in setting up an independent investigation team (with international experts) but he did not respond to the ITJP's letter. The ITJP has seen nothing to indicate this is being planned.

In regard to the newly revamped Sri Lankan Human Rights Commission (SLHRC), reports from within Sri Lanka suggest that despite the hope that it would provide some support to victims of abductions, unlawful detentions, torture and sexual violence, the perception exists that the Commission currently has no credible internal investigative capacity or witness protection plan and still maintains many of the staff members who worked under the Rajapaksa period when the organization was discredited. The ITJP has also received reports from victims and organisations inside Sri Lanka that that in some places (Jaffna, Mullaitivu and Colombo) the SLHRC has referred complainants to the police instead of agreeing to accept their cases. This is a major problem particularly in those cases where the security forces are themselves the alleged perpetrators. This presents – at the very least - a huge witness protection problem. If these perceptions and policies exist in respect of the SLHRC then it is highly unlikely that they will obtain Grade "A" status, as the GoSL hopes will happen, "in light of recent legislative changes and the reconstitution of the Commission[21]". Reconstituting the Commission with credible figureheads is not enough; it is only action taken to promote accountability and address impunity and facilitate access to justice for victims that will secure such status.

[19] CAT/C/LKA/5/Add.1, 7 June 2016.
[20] A/HRC/30/l.29, 1 October 2015.
[21] Para 70, A/HRC/30/l.29, 1 October 2015.

Para 6: NHRAP - the new National Action Plan for the Protection and Promotion of Human Rights or NHRAP. To our knowledge a number of prominent and respected human rights lawyers whose appointment to the NHRAP committees[22] was announced without consulting them first, have declined the positions, indicating their lack of faith in the credibility of the process. Furthermore the choice of Mr. Yasantha Kodagoda, Additional Solicitor General, to head the NHRAP drafting committee on "Prevention of Torture" undermines the entire initiative. Serious concerns have been raised about the integrity and impartiality of this senior state law officer in covering up serious human rights abuses when he worked for the Rajapaksa government. These concerns were raised not only in the media by the Asian Human Rights Commission, but also in a confidential report to donors who funded the International Independent Group of Eminent Persons (IIGEP) process which the ITJP has had sight of[23].

Para 10: Witness Protection - the Government cites the passing of the Assistance to and Protection of Victims of Crime and Witnesses Act, No. 4 of 2015 as a sign of progress. However there is consensus among civil society groups inside and outside Sri Lanka that this Act is deeply flawed and needs revising[24]. Again the National Authority for the Protection of Victims and Witnesses of Crime, according to media reports, includes the aforementioned Mr. Yasantha Kodagoda who is perceived not to be independent and is totally discredited[25].

Para 25: Trincomalee - the GoSL says further investigations are being carried out into the Trincomalee secret naval torture site but it has to date not released any information publicly about this. The ITJP released publicly the GPS coordinates for this site as early as July 2015 in its report based on witness testimony from survivors. The ITJP also published a list of steps the GoSL should have taken to investigate at the time when WGEID visited the site (Attached).

The ITJP has been advised that the naval chief has been taking visiting military officials on tours of some of the secret underground sites in order to display transparency and openness. However these "tours" are unacceptable as they run the risk of contaminating the forensic evidence. In addition, the "tours" are done by naval officials who may be complicit in the operation of the site.

The ITJP's 2015 July report also named two of the naval intelligence officers (Ranasinghe and Welegedara) alleged to be in charge of the detainees at the secret site in Trincomalee. The ITJP also informed the Government that it had names and photos of other suspected perpetrators alleged to have been guards and interrogators involved in torture and sexual violence, which it was willing to disclose to an independent credible inquiry. Despite this information, the GoSL did not follow up on these leads. One of the men named by the ITJP, Commodore Welegedara, is a witness in an abduction case of schoolboys in Colombo involving the Trincomalee site but bizarrely has not been investigated regarding his role in the detention of approximately

[22] Drafting "The National Action Plan for the Protection and Promotion of Human Rights (2017-2021)".
[23] APPOINTMENT OF YASANTHA KODAGODA TO TORTURE COMMITTEE OF HRC-SL INAPPROPRIATE – AHRC, Sri Lanka Brief, 22 September 2016, Accessed at http://srilankabrief.org/2016/09/appointment-of-yasantha-kodagoda-to-torture-committee-of-hrc-sl-inappropriate-ahrc/
[24] The Draft Bill for the Assistance and Protection of Victims of Crime and Witnesses: Critique and Recommendations, Rosalind Sipos, CPA, Accessed at https://cpalanka.org/wp-content/uploads/2007/10/_and_Witness_Protection_Bill.pdf
[25] "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 Samaranayake. The Chair resigned from the position within a few months of appointment and was succeeded by Solicitor General Suhada Gamlath. It was further found that there was a legal defect in the appointment of the members necessitating re-appointment several months after the body was established. The negative impact on the credibility of the Authority was considerable.

75 ex LTTE cadres in the underground site between 2009-2012[26]. The ITJP has taken testimony from a number of witnesses held in the underground site who were tortured whose confidentiality needs to be preserved in order to protect them. However the ITJP would be willing to make some of the information available to an independent investigative unit if established.

Para 33: Journalists. The Government says: "The GoSL has also taken steps to investigate *all past attacks* on journalists, and where appropriate, institute criminal proceedings against any persons accused of attacking journalists and other media personnel."

This is simply not true. Media organisations have collected lists of scores of assasinations and abductions and attacks and there has been no investigation of the bulk of these. To list some of the famous murder cases never properly investigated: Nimalarajan Mylvaganam (BBC), Sivaram (Tamilnet) and Isaipriya (LTTE TV).

Para 41: Reporting Torture. The Government says: "The Police Headquarters conducts a Public Day on every Friday where the public is encouraged to complain against the acts and omissions of the Police".

Given the trust deficit in the security forces, the fear of reprisals and retaliation as well as the fact that the police themselves are complicit in the violations, it is unlikely that victims of violations will come forward to complain to those perceived to be perpetrators. This approach belies a total lack of understanding of witness protection and is quite shocking.

Para 42: Investigation. The Government says: "A Special Investigation Unit (SIU) of the Police is mandated to launch prompt investigations into complaints of torture. These investigations are monitored by the Prosecution of Torture Perpetrators (PTP) Unit of the Attorney General's Department."

This is not an independent and credible process which would have the trust of victims who have suffered torture at the hands of state forces. The Attorney General's conflict of interest in the IIGEP investigations has been well documented in the past[27].

2. RESPONSE TO SOME GoSL POINTS in "Consideration of reports submitted by States parties under article 19 of the Convention" (Dec 2015)[28]

Para 108-11: Haiti UNPKF. These paragraphs refer to reports regarding the return and repatriation of between 114 and 117[29] Sri Lankan troops from Haiti, where they served as UN Peacekeepers, in 2007 for allegations of rape of male and female children which was, "frequent and occurred usually at night, and at virtually every location where the contingent personnel were deployed"[30]. Reports suggest transactional sex by Sri Lankan peacekeepers was rampant[31] and that soldiers had set up a prostitution network

[26] Victims and witnesses: No protection, but persecution, By Namini Wijedasa, The Sunday Times Lanka, 31 July 2016, Accessed at http://www.sundaytimes.lk/160731/news/victims-and-witnesses-no-protection-but-persecution-202919.html
[27] See ITJP report Annex http://www.itjpsl.com/wp-content/uploads/2015/07/Stop-Torture-Annexes-III.pdf which is the IIGEP report.
[28] CAR/C/LKA5, 11 December 2015.
[29] Conduct and Discipline in UN Peacekeeping Operations: Culture, Political Economy and Gender
Report submitted to the Conduct and Discipline Unit Department of Peacekeeping Operations United Nations, October 19, 2009, Catherine Lutz, Matthew Gutmann, and Keith Brown Watson Institute for International Studies Brown University, accessed at http://watsoninstitute.org/images_news/un_report_2009_10_19.pdf
[30] UN confirms sex charges: 114 Lankan troops in Haiti involved in child abuse, 31 March 2008, Sunday Times Lanka, Accessed at http://www.lankanewspapers.com/news/2008/3/26245_space.html
[31] United Nations in Haiti, Kathie Klarreich, Accessed at http://www.kogainon.com/100Reporters/HAITI/Title.html

involving underage children by giving them mobile phones, the numbers of which were passed on to incoming contingents. Several young women became pregnant as a result of these interactions. We understand that from late 2004 to mid-October 2007, at least 134 military members of the current and previous Sri Lankan contingents, were alleged to have sexually exploited and abused Haitian children. It remains unclear as to whether the GoSL took any steps to hold those responsible accountable for such violations.

The ITJP recommends that the Committee request a copy of the OIOS investigation report into the Haiti incidents before accepting the validity of paragraphs 108-11 in resolving this issue. This is for the following reasons:

a) The GoSL claims that "punitive action according to the gravity of the offences" was taken but without reading the OIOS report that outlines the offences it is impossible to confirm the veracity of this claim.
b) The GoSL says disciplinary action has been 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.
c) 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 reparations or compensation to the victims of sexual violence in Haiti?
d) Para 111 says action has been taken to disbar these soldiers from future missions. This is highly unlikely and given the "zero tolerance" policy of the Secretary-General and the requirement that Troop Contributing Countries carry out their own vetting and screening processes before submitting their names for peacekeeping, the ITJP suggests the Committee questions both DPKO and the GoSL as to whether these soldiers implicated in the Haiti incident are amongst those names submitted by GoSL to serve among the hundreds of peacekeepers going to Mali this year and if so what steps have been taken to vet them out before they are sent on mission. After all the responsibility for ensuring that sexual predators and rapists are not included in peacekeeping missions lies with both the UN and the GoSL. We understand there is an agreement that a total of 3,500 Sri Lankan troops will be going abroad as UN peacekeepers now.

The ITJP recommends that the Committee asks the GoSL to provide records in support of its assertion on how it dealt with soldiers repatriated from Haiti including disciplinary and court martial proceedings.

Para 9: Widespread. The Government submission states: "The Government of Sri Lanka rejects the allegations that torture remains widespread and unpunished. Whenever credible evidence is available, steps have been taken…".

This assertion is problematic because:

(a) This statement contradicts the findings of OISL. Furthermore it is not possible to share evidence with GoSL given the lack of current witness protection provisions, the current harassment and intimidation of families of victims abroad

and the lack of safe mechanisms for victims and witnesses outside the country to testify through video link up.

(b) The ITJP has collected detailed testimony from more than 200 survivors of torture abroad. For the most part these cases do not overlap with the hundreds investigated by colleagues at Freedom From Torture and not at all with the 75 by Human Rights Watch (2013 report). Paragraph 12 cites 30 cases of police torture post-war in Sri Lanka which is absurd.

Para 13 -14: Despite the Government's assertion that there are safeguards for detainees, credible evidence exists that the Sri Lankan security forces continue to use illegal methods of abduction and unauthorized secret detention sites where victims have no recourse to lawyers, medical attention, habeas corpus writs, the ICRC or magistrates.

In its 2015 submission to the Committee the GoSL said it was investigating if there were secret sites for torture and "more information can be provided once investigations are completed". By June 2016 GoSL submission says there are none but no information has been given as to how it reached this conclusion.

Para 15: Enforced Disappearance. The ITJP is aware of one case of disappearance in 2015 in army custody. The family has been too terrified to pursue an official complaint, though they have been advised of the new powers of the SLHRC to visit authorised detention sites.

Para 37: cites the number of detainees recommended for "rehabilitation" but not those already in it, or already released from it.

Para 59: The Government says: "As at present, any torture survivor can get admission to any Government or major private hospital in Colombo after they are released by the Police or Courts."

The ITJP notes in the past, many ex LTTE cadres have been detained or abducted outside hospitals in the North and East of Sri Lanka. It has not been safe for them to report to hospitals.

Para 60: The Government says: "All patients who have been subjected to medico legal examination have a right to get a Medico Legal Report (MLR) or a copy of the MLR which was sent to the courts. When a report is submitted to the courts, it will become a public document…".

The ITJP is surprised that the MLR becomes a public document as this threatens the anonymity of sexual torture survivors and places them at great risk. The GoSL should be required to establish measures in respect of the protection of the identity of sexual violence victims in the Sri Lankan context.

Para 149 Redress. The ITJP deals with exiled torture victims – people who are often told by the security forces to leave. They have no access to services in country. Even those who have been victims of multiple periods of detention and torture never sought access to these services when they were in country for fear of reprisals. We routinely see war and torture survivors arriving abroad who have had no access to new prosthetic limbs, have not had key operations to address nerve damage and shrapnel injuries and certainly no mental health care whatsoever.

Para 150: The GoSL is describing vocational training of people detained without the right to appeal their detention and in sites where torture has regularly occurred. This is not an achievement of which to boast.

RECOMMENDATIONS

For action to be taken by the CAT:

(i) Call for the GoSL to make available to the Committee all reports of investigations carried out into allegations of unlawful detentions (including "white van" abductions), torture, extra-judicial killings and sexual violence;
(ii) Call for an independent investigation into the ongoing unlawful "white van" abductions, related violations including torture and sexual violence as well as extortion and profiteering;
(iii) Call upon the GoSL to make available to the Committee all reports related to the investigation of security force personnel named in the Haiti incidents (in 2007 and a later incident in 2013) as well as screening and vetting processes conducted by the GoSL;
(iv) Call upon the GoSL to provide the Committee with reports of prosecutions conducted by the Attorney General's office regarding unlawful abductions, rape and sexual violence;
(v) Engage the ITJP on the options for protection of sensitive information that would have to be engaged for such an investigation.

In order to strengthen protections that are an integral component for rebuilding confidence in the Sri Lankan security forces and its criminal justice system, the GoSL should:

(I) Urgently respond to the full range of issues raised by the Committee Against Torture in its report "List of Issues in relation to the fifth periodic report of Sri Lanka" at its fifty-seventh session (18 April – 13 May 2016);
(II) Abide by National Human Rights Commission guidelines on arrest and detention;
(III) Take urgent steps to repeal the draconian Prevention of Terrorism Act;
(iv) Ratify the Optional Protocol to the Convention Against Torture and establish an effective torture prevention programme;
(v) Identify all those within the security forces responsible for command and control and indict them for unlawful detentions, "white van" abductions, torture and sexual violence as well as extortion so as to promote accountability and end impunity;
(vi) The GoSL should be put on terms to establish independent mechanisms to review the cases of persons in detention in order to comply with its obligations under Article 11 and 12 and bring them to trial without further delay;
(vii) The Committee should recommend that the GoSL embark on institutional reforms including of the justice sector, taking account of the issues raised by the Special Rapporteur on the Independence of Judges and Lawyers, Monica Pinto, and the Special Rapporteur on Torture, Juan Mendez.

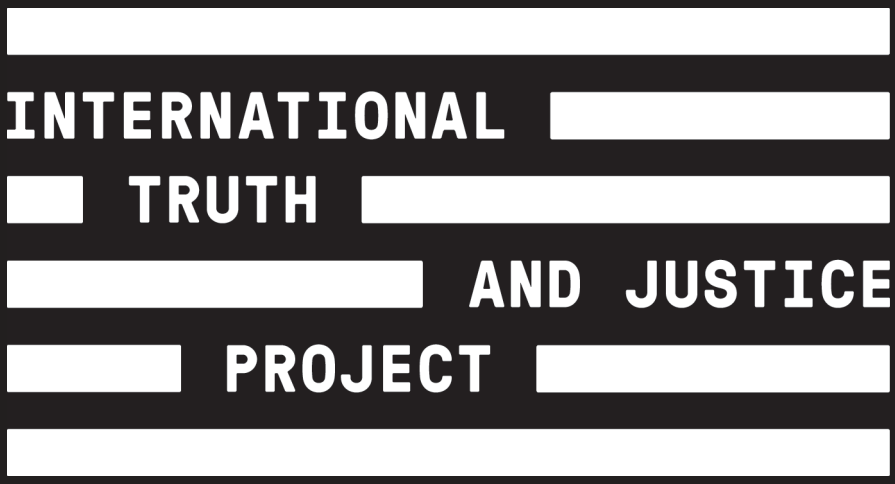
CONCLUSION

Prevention of violations under the Covenant require that those detained unlawfully enjoy rights of access to a lawyer and to a doctor and the right to have family members or a third party informed of such detention. The GoSL should take immediate steps to introduce or reinforce these rights, in the light of the CAT's recommendations. The prohibition of torture and other forms of ill-treatment is undermined each time that officials responsible for such violations are not held to account for their actions. When allegations of violations emerge that are not followed by prompt and effective responses, including holding those responsible accountable, the perpetrators will quickly come to the realisation that they can act with impunity. Conversely, when officials who order, authorise, condone or perpetrate torture and ill-treatment are brought to justice for their acts or omissions, an unequivocal message is delivered that such conduct will not be tolerated. Apart from its considerable deterrent value, this message will also reassure the general public that no one is above the law, not even those responsible for upholding it.

The ITJP wishes to place on record that “white van” abductions carried out by the security forces, and the ongoing torture and sexual violence of victims abducted, are unlawful and may under circumstances amount to serious international crimes. In addition, these “white van” abductions constitute a lucrative source of revenue for the security forces. Unless and until such time as the GoSL commits to a comprehensive security sector reform programme which will identify those responsible at command and control level, no amount of legal reform will stop torture. The GoSL may allow the ICRC and SLHRC to have unfettered access to official sites but as long the GoSL persists with its ongoing denial of the existence of secret torture and detention sites, violations will continue unabated.

This report demonstrates how systematic and endemic “white van” abductions, torture and sexual violence are in Sri Lanka. This is no longer a matter of legislation or policy but rather a matter of political will in which the Sirisena government needs to demonstrate that it is willing to hold accountable the leadership of the security forces through comprehensive independent investigations and prosecutions.

ENDS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