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Freedom from Torture up-dated submission to the Human Rights Committee for the 5th periodic review of Sri Lanka in October 2014

Freedom from Torture (formerly the Medical Foundation for the Care of Victims of Torture) is a UK-based human rights organisation and one of the world's largest torture treatment centres. We are the only organisation in the UK dedicated solely to the care and treatment of survivors of torture and organised violence. Since we were established in 1985, now nearly 30 years ago, more than 50,000 people have been referred to us for rehabilitation and other forms of care and practical assistance. We provide services across the following five regions of the UK: London and the South-east, the North-west, the North-east, the West Midlands and Scotland.

Freedom from Torture runs a Medico-Legal Report Service which uses forensic methods to document physical and psychological evidence of torture for use in connection with survivors' claims for international protection in the UK. Our medico-legal reports (MLRs) are prepared in accordance with the *UN Manual on the Effective Investigation and Documentation of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*, known as the 'Istanbul Protocol'.¹ Each MLR is subject to a detailed clinical and legal review process. We aim through our Country Reporting Programme to contribute evidence drawn from these MLRs, presented in an anonymised and aggregated format, to UN bodies capable of holding torturing states to account.

Freedom from Torture's submission to the Human Rights Committee (the Committee) in December 2013 for its List of Issues prior to the fifth examination of Sri Lanka was based on a review of 50 MLRs completed by our clinicians in 2010-2011, documenting torture committed in Sri Lanka in the *post-conflict* period. Evidence from this review has been previously submitted by Freedom from Torture to the Committee Against Torture for its examination of Sri Lanka in 2011 and for its follow-up procedure in 2012.²

This submission presents *additional evidence* of torture in the *post-conflict* period from a review of 40 recently completed MLRs, prepared by Freedom from Torture clinicians between November 2013 and August 2014.

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

UK Home Office statistics for the *post-conflict* period in Sri Lanka show a steady increase in the number of Sri Lankans making applications for asylum in the UK, either at port or

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

² Freedom from Torture's submissions are available at:
http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/LKA/INT_CAT_NGO_LKA_47_9519_E.pdf
http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/LKA/INT_CAT_NGS_LKA_12933_E.pdf.
See also Freedom from Torture, 'Out of the Silence: New Evidence of Ongoing Torture in Sri Lanka 2009-2011', available at: http://www.freedomfromtorture.org/feature/out_of_the_silence/5980.

in-country, from a total of 1,115 in 2009 to 1,808 in 2013.³ Freedom from Torture has consistently received a high number of referrals for survivors of torture from Sri Lanka and the high rate of referrals has not diminished following the end of the armed conflict in 2009. In fact, Sri Lanka continued to be the top country of origin for those referred to us for clinical services in 2013, with a total of 299 Sri Lankans referred to us during this period.⁴

According to monitoring of MLRs produced for Sri Lankans by Freedom from Torture, as of August 2014 our Medico-Legal Report Service had forensically documented **160** cases of Sri Lankans tortured since the conclusion of the civil war.⁵

Reviews of a total of 50 of these MLRs carried out in 2011-12 indicated that torture - including sexual forms of torture - continued to be practised throughout Sri Lanka by a variety of state actors including the police and military in the *post-conflict* period.⁶ The lack of due process reported in these cases combined with the acute scarring evident in a high proportion of the cases was heavily suggestive of impunity for perpetrators of torture in Sri Lanka. The accounts given also suggested that, in addition to the denial of due process rights, detainees were not treated with humanity and with respect for the inherent dignity of the human person.

A further 40 MLRs, produced by Freedom from Torture since our submission to the Committee in December 2013, and reviewed for the purpose of this submission, corroborate and up-date our earlier findings.⁷ They document torture perpetrated as recently as 2013, adding weight to the evidence of *post-conflict* torture, and strongly indicate the persistence of the practice and continued impunity for perpetrators.

It should be noted that according to Freedom from Torture's methodology for the preparation of MLRs, all scars - whether attributed to torture or not - are examined, recorded and assessed during the clinical examination and documentation process. The whole of the individual's testimony is assessed in the light of, among other things: health reported prior to and after torture; the history and detail given of the torture; and, the individual's affect and behaviour. Doctors specifically consider the possibility of

³ See UK Home Office, immigration statistics, asylum data tables, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/311790/asylum1-q1-2014-tabs.ods.

⁴ For information about the countries of origin for those referred to us for clinical services please see Freedom from Torture, *Annual Review 2013/14* at page 3, available at: http://www.freedomfromtorture.org/sites/default/files/documents/fft_annual_review_2014_v2_130814.pdf.

⁵ While Freedom from Torture has continued to monitor the production of MLRs for Sri Lankans tortured since the end of the civil war, detailed review of all these MLRs has not been carried out due to resource constraints. A total of fifty MLRs were reviewed in 2011-12 for submissions to UN CAT (see footnote 6 for selection criteria) and 40 new MLRs produced November 2013 - August 2014 were reviewed in order to provide up-dated evidence for this submission (see footnote 7 for selection criteria).

⁶ The criteria for selection of the 50 cases (35+15), other than consent for use of the medico-legal report for research, was that the MLR documented torture that had occurred since the end of the conflict in 2009. The 35 MLRs examined in 2011 for the initial submission to UN CAT were *all* those produced by Freedom from Torture in 2010-2011 meeting the above criteria. The additional 15 MLRs examined for the follow-up submission in 2012 were *all* new MLRs documenting torture that had occurred in 2010 onwards.

⁷ The 40 cases were *all* new MLRs produced since November 2013 documenting evidence of post-conflict torture (2009 onwards).

fabrication of the clinical condition and other possible causes of the scarring before drawing their conclusions about the strength of the evidence of torture.⁸

Freedom from Torture is greatly concerned that Sri Lanka's fifth periodic report to the Committee fails to adequately address the concerns expressed by the Committee in its last concluding observations about '*persistent reports of torture and cruel, inhuman or degrading treatment or punishment of detainees by law enforcement officials and members of the armed forces*' and also the voluminous evidence, including from Freedom from Torture and other human rights NGOs, of ongoing torture in Sri Lanka in the *post-conflict* period. We note that in the concluding observations to its most recent examination of Sri Lanka in November 2011, the Committee Against Torture expressed concern at '*reports that suggest torture and ill-treatment perpetrated by state actors, both the military and the police, have continued in many parts of the country after the conflict ended in May 2009 and is still occurring in 2011*'.⁹

In its List of Issues for the fifth periodic review, the Committee asked the Sri Lankan government to respond to '*allegations that torture and ill-treatment of detainees remain common and widespread ... mainly due to legal and procedural shortcomings and the lack of political will on the part of the authorities*'.¹⁰ The Committee also asked for information about '*cases of rape and other acts of sexual violence that occurred in war and following the end of the conflict*'.¹¹ We urge the Committee to take account of the following up-dated evidence of ongoing torture - including sexual torture - in its examination of Sri Lanka on these issues in October 2014.

Article 7 - Prohibition of torture and other cruel, inhuman or degrading treatment or punishment

Forms of torture used in state detention facilities

In the section of its periodic report devoted to Article 7 of the International Covenant on Civil and Political Rights (Covenant), Sri Lanka makes reference to its '*commitment to eliminate torture and all forms of cruel, inhuman and degrading treatment or punishment*' and the constitutional and other legal provisions it has enacted to prohibit torture in Sri Lanka's domestic legal system.¹² While recognising that '*sporadic and isolated incidents of torture have occurred within its territory in the past*' Sri Lanka rejects any suggestion that torture is widespread.¹³

⁸ A detailed description of Freedom from Torture's methodology for preparing medico-legal reports is available at <http://www.freedomfromtorture.org/sites/default/files/documents/methodology%20mlr.pdf>. The UK Home Office has accepted the expertise of Freedom from Torture clinicians in the assessment of the effects of torture and that they are 'objective and unbiased'. See Home Office Asylum Policy Instruction, Medico-Legal Reports from the Helen Bamber Foundation and the Medical Foundation Medico-Legal Report Service [at Freedom from Torture], 14 January 2014, paragraph 3.1, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/275522/medico-legal.pdf.

⁹ CAT/C/LKA/CO/3-4 at para 6.

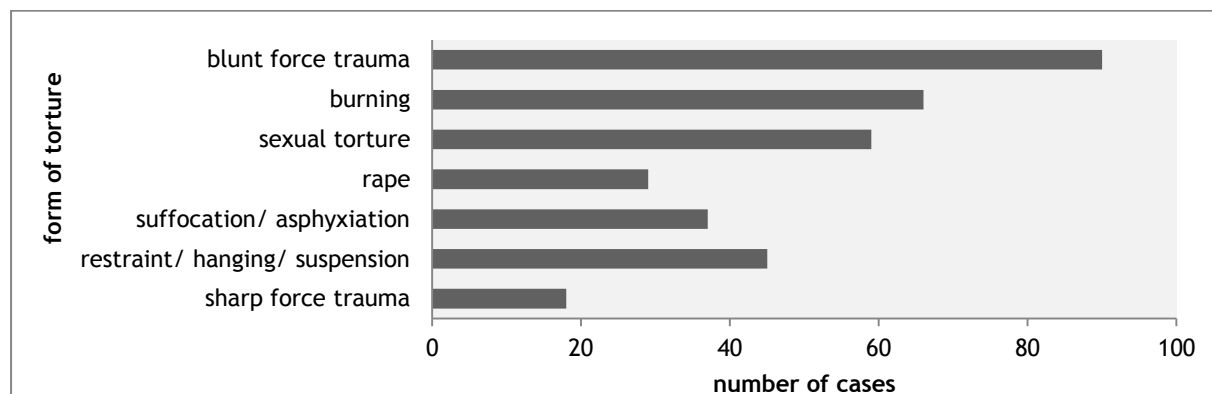
¹⁰ CCPR/C/LKA/Q/5 at para 14

¹¹ *Ibid.*, para 7

¹² CCPR/C/LKA/5 at para 175.

¹³ *Ibid.*, paras 203-4.

The 50 MLRs reviewed in our submission for the List of Issues document evidence of torture in the *post-conflict* period, 2009-2012. A review of an additional 40 MLRs produced by Freedom from Torture clinicians since November 2013 provides further evidence of torture, perpetrated in the years 2009-2013. The findings from these 90 MLRs include the following evidence of torture:



- **Blunt force trauma:** blunt force trauma was documented in all 90 MLRs (100% of the MLRs reviewed). This included scars and other lesions attributed to beatings with a variety of instruments including the butts of rifles and/or metal or plastic pipes filled with a material such as sand or cement. Other forms of blunt force trauma include beatings on the soles of the feet (*falaka*), whipping with rope or cables and trampling with heavy boots.

- **Burning:** in 66/90 MLRs (73% of the MLRs reviewed) our clinicians documented evidence of scarring caused by burning from lit cigarettes and/or heated metal objects such as metal rods (see further below). In a small number of instances, a caustic substance such as chilli powder (or an unknown caustic substance) was reported to have been forced into the eyes or onto the skin of detainees.

Of the 40 MLRs reviewed most recently for this submission, 30 documented torture by burning (75% of the MLRs reviewed). Ten of the 13 individuals detained in 2013 and seven of the ten detained in 2012 were burned. Those burned were also subjected to multiple other forms of torture including beatings with a variety of instruments in all cases. Nineteen of these 40 individuals also disclosed sexual torture, including 9 who were raped. These cases provide evidence that the practice of torture by burning persists in Sri Lanka in the *post-conflict* period and that burning occurs in a detention context where other forms of torture are also perpetrated.

- **Sexual torture:** in 59/90 MLRs (66% of the MLRs reviewed) our clinicians documented the disclosure of sexual forms of torture and associated evidence. Sexual torture included rape (anal, vaginal, oral and/or instrumental), beatings on and violence to the genital area, sexual molestation and individuals being forced to commit sexual acts on others.

It is important to acknowledge the difficulty that survivors of torture often face when disclosing sexual torture, especially rape, due to intense feelings of shame and humiliation. It can take many sessions with a clinician writing a MLR before a survivor of torture feels comfortable enough to disclose sexual torture. Some survivors are never able to disclose all aspects of sexual torture due to the high levels of distress and trauma felt

when recounting the experiences. As a result, the incidences of rape and other sexual torture in the MLRs reviewed here may be higher than the levels indicated.¹⁴

Of those 59 individuals who reported sexual torture, nearly half disclosed that they were raped - 29 individuals (49% of those who disclosed sexual torture and 32% of the 90 MLRs reviewed).

Prevalence of rape was particularly high among women, with 13 of the 17 women whose MLRs were reviewed reporting rape as well as other sexual torture (76% of all female MLRs reviewed, all but one of those who disclosed sexual torture). Sixteen of the 45 men who reported sexual torture disclosed rape (36%), which is 22% of all 73 male MLRs reviewed. In many cases individuals reported being subjected to repeated episodes of rape and other sexual torture and to rape by multiple perpetrators. Additional forms of violence inflicted during rape include beatings, cutting and stabbing and burning.

Of the 40 MLRs reviewed most recently for this submission, 14 documented rape as well as multiple other forms of torture (35%). Five of these individuals were detained in 2012-2013, providing evidence that the practice of sexual torture persists in Sri Lanka.

- **Suffocation and asphyxiation:** in 37/90 MLRs (41% of MLRs reviewed) the use of suffocation and asphyxiation techniques was reported, including being held underwater for repeated periods to simulate drowning or having a bag filled with petrol or similar substances tied around the head to cause pain and suffocation, often resulting in loss of consciousness.
- **Restraint / Hanging / Suspension:** in 45/90 MLRs (50% of MLRs in the study), our clinicians documented evidence of positional forms of torture including the use of stress positions to cause severe pain such as suspension and/or having limbs tied (for example to tables or chairs) to restrict movement for long periods, often concurrently with other forms of torture.
- **Sharp force trauma:** in 18/90 MLRs (20% of MLRs in the study), our clinicians documented scars arising from being cut with a knife or other sharp implements or material or having the skin under finger nails pierced with needles.
- **Other physical torture:** additional forms of torture documented in these MLRs included electric shock, removal or partial removal of finger and toe nails and the traumatic partial amputation of fingertips.

The large number of cases involving burning continues to be particularly notable. Evidence of burning used as a form of torture in 2012 - 2013 from the most recent review of 40 new MLRs described above, indicates both that the practice is ongoing and prevalent. Many of the individuals had permanent and highly visible scars attributed to hot metal rods being pressed against the skin documented in their MLRs. Freedom from Torture is concerned that this evidence could reflect the continuation of a policy of permanently 'branding'

¹⁴ The following article examines issues of sexual violence and non-disclosure: '*Impact of sexual violence on disclosure during Home Office interviews*' by Bogner, Herlihy and Brewin (2007), in the British Journal of Psychiatry, available at <http://bjp.rcpsych.org/content/191/1/75.full#ref-20>.

people not only to inflict long term psychological and physical damage but also to ensure that the individual is easily identified in future as having been of adverse interest to the authorities. These ‘branding’ practices, which leave permanent scarring, along with the context of detention without due process, are also strongly suggestive of a prevailing situation of impunity for the perpetrators.

The physical and psychological evidence of rape and other forms of sexual torture documented in these MLRs, perpetrated against both men and women, is notable. The psychological impact of torture, including symptoms of post-traumatic stress disorder and depression, is routinely documented in Freedom from Torture MLRs. In these cases psychological symptoms documented by our clinicians and specifically associated with sexual torture include persistent nightmares and flashbacks to rape as well as intense and profound feelings of grief, shame and guilt, of low self-esteem and of loss of hope. Survivors of sexual torture describe a persistent inability to trust others, sexual dysfunction and fear of rejection by society and those close to them. Many report persistent symptoms of depression and ideas of self-harm or suicide.

Sri Lanka’s periodic report recognises that the definition of torture includes both mental and physical suffering and refers to domestic jurisprudence confirming that torture ‘embrace[s] the sphere of the soul or mind’.¹⁵ As well as the psychological impact of the torture described above, psychological forms of torture are also documented in MLRs and were present in all 90 cases. In many instances, the forms of psychological torture inflicted are relevant to Article 10 of the Covenant concerning conditions of detention (see further below).

- **Psychological torture:** psychological forms of torture documented across the 90 MLRs include being held for long periods in solitary confinement, being kept blindfolded or in darkness, forms of humiliation such as forced nakedness, being subject to mock executions, and/or verbal abuse and being threatened with continuing violence and sexual assault.¹⁶

Profile of victims

Seventy-three of the individuals whose MLRs were reviewed were male and 17 were female. Eighty-six were of Tamil ethnicity (96%); one of the other four individuals was of Malay descent and three were of Sinhalese ethnicity.

The key factor that appears to have led to the detention and torture of these men and women by state authorities was a real or perceived connection to the Liberation Tigers of Tamil Eelam (LTTE) - either their own connection and/or that of a family member or acquaintance. Those who had personal involvement with the LTTE had typically participated in a non-combat capacity, for example by providing services. Some reported voluntary involvement with or membership of the LTTE and others claimed to have been forcibly recruited or coerced into assisting the LTTE.

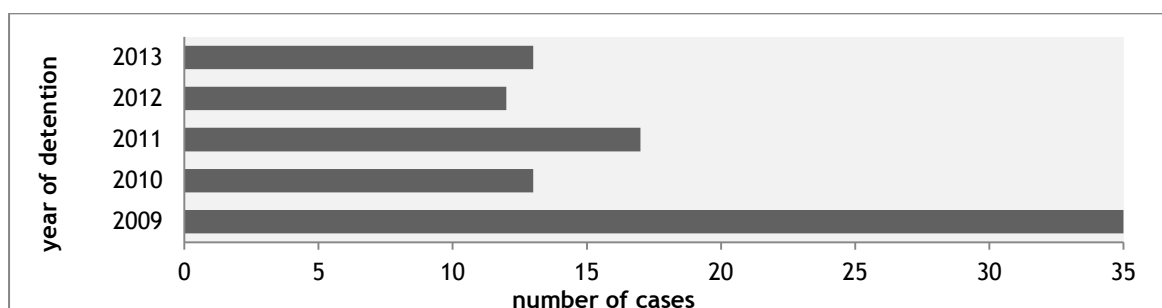
The evidence from our reviews contradicts Sri Lanka’s assertion in its periodic report that

¹⁵ CCPR/C/LKA/5 at para 180.

¹⁶ Psychological forms of torture can be highly damaging and traumatic to individuals despite leaving no physical scarring. See Hernán Reyes’ article ‘The Worst Scars are in the Mind’ (2007), available at <http://www.icrc.org/eng/assets/files/other/irrc-867-reyes.pdf>.

*‘The Government treated ex-combatants humanely and respected their Civil and Political Rights’.*¹⁷ Instead, our evidence demonstrates that people of Tamil ethnicity with even minimal or merely suspected links to the LTTE have been detained and tortured and that these practices continue in the *post-conflict* period.

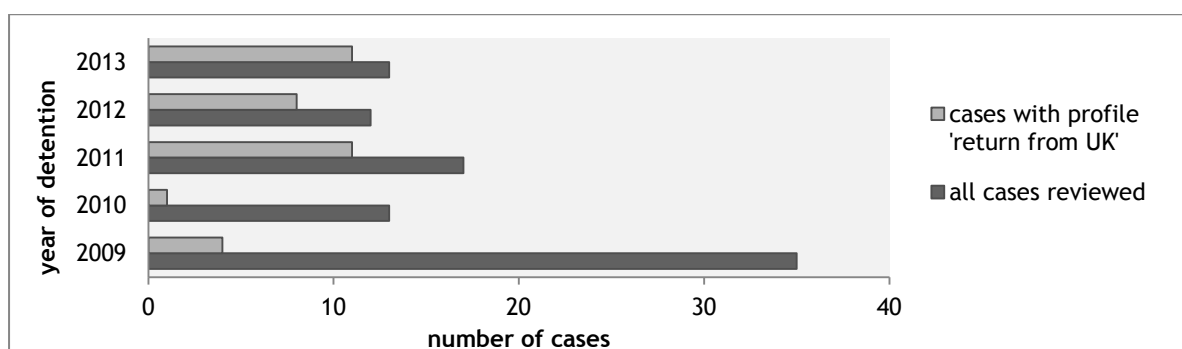
The year of detention and torture for the 90 individuals is as follows:



Torture on return to Sri Lanka

The UK government recommenced forcible removals to Sri Lanka shortly after the civil war ended. This policy has been highly controversial in light of evidence provided by Freedom from Torture and others of ongoing torture and other human rights violations in Sri Lanka and the situation of impunity that continues to prevail. Freedom from Torture’s concerns have been heightened significantly by the increasing number of Sri Lankan Tamils, for whom we have prepared MLRs, who have been tortured after returning *voluntarily* to Sri Lanka in the *post-conflict* period.¹⁸ These individuals were lawfully present in the UK on student or other visas and had returned to Sri Lanka either at the end of their period of stay or temporarily for family reasons. In its briefing of 13 September 2012, Freedom from Torture concluded that its evidence indicated *‘Sri Lankan Tamils who in the past had an actual or perceived association at any level with the LTTE but were able to leave Sri Lanka safely now face risk of torture on return’*.¹⁹

Of the 90 MLRs reviewed by Freedom from Torture, 35 documented torture of individuals who had returned to Sri Lanka from the UK (39%). The year of detention for all 90 individuals and for those 35 who were tortured following return from the UK, is as follows:



Twelve of the 50 MLRs reviewed for the List of Issues submission to the Committee were

¹⁷ CCPR/C/LKA/5 at para 52.

¹⁸ Twenty-four of these cases were reported on in: Freedom from Torture, ‘Sri Lankan Tamils tortured on return from the UK’, 13 September 2012

¹⁹ Ibid., page 2

for individuals who returned to Sri Lanka from the UK in the years 2009-2012, where they were subsequently tortured (24%).²⁰ Twenty three of the 40 additional MLRs reviewed for this up-dated submission had returned from the UK in similar circumstances (58%). All 23 individuals had returned to Sri Lanka in the years 2011-2013, with nearly half returning in 2013 (11 of the 23 individuals). Indeed the majority of those who were tortured in 2013 had returned to Sri Lanka from the UK (11 of the 13 individuals).

This evidence indicates that the risk of torture for Sri Lankan Tamils returning from the UK, voluntarily or otherwise, has not diminished and may be increasing.

Perpetrators

All 90 MLRs documented torture perpetrated in detention by state actors including the Sri Lankan military and/or branches of the police force such as the Criminal Investigation Department (CID) or the Terrorism Investigation Department (TID).

Location of torture facilities

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

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

In most of the 90 MLRs reviewed individuals were detained without any observance of due process rights, for example there was no formal charge or sentencing, no access to legal representation, no trial before a judge, no official informing of family members of their whereabouts and no access to an independent medical examination. A handful of cases reported appearing before a judge but with varying degrees of due process. For example, in one case the individual appeared in court but with no access to a lawyer or other rights observed.

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

Furthermore, in the majority of the 90 MLRs reviewed, the individual was only able to secure release from detention after family members were able to locate them and bribe officials or staff at the facilities to secure their release.

Very poor detention conditions were reported by the 90 individuals including:

- **Denial of food and water** including being given rotten and fouled food, in quantities

²⁰ See: Freedom from Torture, 'Sri Lankan Tamils tortured on return from the UK', 13 September 2012

insufficient to prevent hunger and meet even basic nutritional requirements.

- **Unsanitary conditions and poor toilet facilities:** many individuals in the study reported irregular or no access to toilet facilities and detainees were forced to urinate or defecate in their cells. In some cases toilet facilities were provided but were inadequate, for example buckets or bottles in cells.
- **Solitary confinement:** the use of solitary confinement for prolonged periods was highly prevalent across the 90 individuals in our study. Some reported being forced to share small cells with large groups of others in overcrowded conditions.

Conclusions

In all 90 of the MLRs reviewed here our clinicians found there to be sufficient physical and/or psychological evidence to support the account of torture and an overall congruence between the clinical findings and the history provided by the individual of detention and torture in Sri Lanka in the given period. Taken together, these cases indicate that:

- Torture has continued to be perpetrated by both the military and police in Sri Lanka since the end of the civil war in May 2009;
- Sri Lankan Tamils with a real or perceived association with the LTTE are at particular risk of torture, even if this association is at a low level and/or where it is indirect through family members;
- Sri Lankan Tamils who in the past had an actual or perceived association at any level with the LTTE but were able to leave Sri Lanka safely now face risk of torture on return;
- There is a common practice of permanently ‘branding’ victims via burns which is suggestive of impunity for perpetrators of torture in Sri Lanka; and
- Other widespread forms of torture include blunt force trauma (often leading to extensive scarring), sexual torture and asphyxiation/suffocation.

Recommendations

Freedom from Torture calls on the Committee to:

- Take account of persistent reports of torture - including sexual torture - and cruel, inhuman or degrading treatment or punishment of detainees by Sri Lankan law enforcement officials and members of the armed forces *since the end of the civil war*, in its examination of Sri Lanka in October 2014 and give prominence to this issue in its review and its concluding observations.

Freedom from Torture calls on the Committee to recommend to the Human Rights Council:

- That the OHCHR investigation on Sri Lanka, mandated by Resolution A/HRC/25/1, takes note of persistent reports of torture - including sexual torture - and cruel, inhuman or degrading treatment or punishment of detainees by Sri Lankan law enforcement officials and members of the armed forces since the end of the civil war, and gives prominence to this issue in its investigation.

Freedom from Torture calls on the Committee to recommend that the State party should:

- Allow the OHCHR free and unfettered access to Sri Lanka, in accordance with the Human Rights Council Resolution A/HRC/25/1, for the purpose of investigating human rights violations, including torture, during and since the end of the civil war.
- Ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
- Strengthen legal safeguards for eliminating all forms of ill-treatment or torture in prisons and detention centres in line with the recommendations of the UN Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment following his visit in 2007.
- Ensure the prompt and fair investigation of allegations of torture or ill-treatment, including those in secret detention centres, by an independent authority different from the authority investigating or prosecuting the case against the alleged victim.
- Enforce administrative and penal sanctions against agents of the government that have been found guilty of perpetrating or otherwise sanctioning torture or other forms of ill-treatment against detainees.
- Enforce all laws, regulations and directives aimed at preventing torture and abuse of detainees and ensure police and all relevant security officials are fully trained to be aware of this framework and that those who are in breach are appropriately disciplined.
- Ensure that victims of torture and other forms of ill-treatment are provided with full and effective reparation and have full access to redress including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.
- Ensure that all detainees are guaranteed prompt and unimpeded access to legal counsel in pre-trial detention and while on trial, including having a lawyer present during interrogation by police.
- Release all detainees, including all persons held in detention centres, “rehabilitation” facilities and all other places of detention unless they are charged with internationally recognizable crimes and tried in full conformity with international standards for fair trial and without recourse to the death penalty.

- Immediately end all use of incommunicado detention, including by closing all unofficial and secret places of detention and enact legislation to make it illegal to detain anyone in any place other than an officially recognized detention facility accessible to families, lawyers and courts, as well as independent monitors.

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