

USTPAC: Submission to the Committee against Torture

17 October 2016

Introduction

1. United States Tamil Political Action Council (USTPAC) respectfully makes this submission to the Committee against Torture (CAT) ahead of the CAT's 59th session from 7 November to 7 December 2016. The submission provides information on the government of Sri Lanka's implementation of the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment.
2. USTPAC is a diaspora organization seeking accountability from both sides for war crimes and crimes against humanity committed during the ethnic conflict in Sri Lanka, cessation of human rights violations, and reform of the country's political and constitutional structures. USTPAC is concerned with all forms of torture against all communities in Sri Lanka. Due to the discriminatory and unrepresentative nature of Sri Lanka's security and judicial sectors, members of the Tamil community disproportionately suffer torture, ill-treatment and sexual violence by the state. USTPAC is compelled to provide this submission on behalf of the victims and their families who have undergone horrific abuse and injustice.
3. USTPAC is the primary organization of Tamil Americans addressing issues of concern to Tamils in the United States. We maintain a close relationship with sister diaspora organizations around the world. Overall, the Sri Lankan Tamil diaspora numbers approximately one million; most fled or left Sri Lanka since the 1970s as a direct response to racial discrimination and state or state-sponsored violence against Tamils. USTPAC also works with a broad band of civil society organizations and international human rights organizations to achieve our goals. We have been active at the Human Rights Council (HRC) since 2012, where we advocated for the passage of four successively stronger resolutions, 19/2, 22/1, 25/1 and consensus-based 30/1, which promote accountability, reconciliation and human rights in Sri Lanka.¹
4. The legitimacy of the diaspora as stakeholders for accountability, reconciliation, and human rights in Sri Lanka is now well recognized, most recently by the UN High Commissioner for Human Rights (the High Commissioner) in his oral report to the HRC in June 2016.² The ongoing engagement of the Office of the High Commissioner for Human Rights (OHCHR) and the Committee against Torture process now underway pursuant to the Convention are crucially important to support the reform process now in its infancy, end the practice of torture, and address unresolved torture cases.

History of Systematic torture, including sexual violence, in Sri Lanka

5. From 1983 to 2009, Sri Lanka suffered a brutal civil war between the government of Sri Lanka and the Liberation Tigers of Tamil Eelam (LTTE). In the government's efforts to eradicate the

¹ USTPAC also provided a submission to the Committee on the Elimination of Racial Discrimination for its August 2016 review of Sri Lanka.

² Paragraph 25, "The High Commissioner emphasizes the need to include the voices of victims abroad and encourages further outreach in the diaspora."

LTTE, it created an enabling environment for the military, paramilitary, intelligence and police forces to perpetrate widespread and systematic human rights violations, including torture and sexual violence. The LTTE also committed terrible human rights abuses, including abductions and forced recruitment of fighters. A consistent pattern of gross, flagrant and mass violations of human rights, including torture, perpetrated by government forces has been documented in numerous reports including the 2011 Report of the Panel of Experts in Sri Lanka³, the 2012 Report of the Secretary-General's Internal Review Panel (the Petrie Report)⁴, and the 2015 Report of the OHCHR Investigation on Sri Lanka (OISL). The OISL report described the pervasiveness of torture in Sri Lanka as follows:

Torture has long been prevalent in Sri Lanka, both in relation to the armed conflict and the regular criminal justice system...OISL documented the use of torture following similar patterns by a range of security forces in multiple facilities, including army camps, police stations and "rehabilitation" camps, as well as secret, unidentified locations. On the basis of the information obtained by OISL, there are reasonable grounds to believe that this torture was committed on a widespread scale.⁵

6. Abuses reached their height during the final stages of the civil war. A large, but unknown number of Tamils in government-held areas were swept up in counter-insurgency efforts, with most disappearing, likely after torture. Most of the 250 cases of Tamils detained in the State party's report remain from this era. As the military closed in on LTTE-held territory in 2008 and 2009, the government set up detention camps guarded by the military for civilians fleeing from the war areas. These camps were the largest refugee camps in the world at the time, holding ultimately 282,000 people with no neutral or independent oversight.⁶ Disappearance, torture and sexual violence on a large scale were reported from these camps, as the military, paramilitary and intelligence forces combed through the camps for suspicious people. In addition, as LTTE cadres surrendered they were held in custody of the security forces, again with no independent oversight of any kind. Reports of egregious torture, including widespread sexual violence, followed by large-scale extrajudicial executions were common. Some cases were filmed by soldiers, and made their way onto independent documentaries, such as the 'No Fire Zone.' The continuing failure of the state to address or acknowledge this creates an ongoing climate of fear and culture of impunity in which torture, sexual violence and other human rights abuses continue unabated. This period remains a source for ongoing trauma among the Tamil community as a whole.
7. The OISL confirmed that victims of government torture during the war were targeted on the basis of their Tamil ethnicity.⁷ Torture methods included beating, whipping, burning with cigarettes, branding with heated metal rods, water torture, asphyxiation in a plastic bag soaked in petrol or chili and tied around their necks, hanging upside down, beating on the soles of the feet and the use of electric currents through their body. Many victims also suffered repeated rapes and other forms of sexual torture.⁸

³ Page 3, "All IDPs were detained in closed camps. Some persons in the camps were interrogated and subjected to torture."

⁴ Page 5, "During the decades [of the war] Sri Lanka had one of the world's highest rates of disappearances by the State, as well as widespread cases of unlawful killings by both State and non-State actors."

⁵ Report of the OHCHR Investigation on Sri Lanka (OISL), A/HRC/30/CRP.2, paras. 1129-1130.

⁶ Report of the Secretary-General's Internal Review Panel on UN Action in Sri Lanka, November 2012, pg. 90.

⁷ Ibid, para. 540.

⁸ Ibid, paras. 555-556.

8. Given the longstanding complicity of the government in allowing torture and ill-treatment, this submission will show its use continues to be widespread throughout the country. Decades of pro-Sinhalese policies, Tamil exclusion and war caused individuals of the Sinhalese ethnicity to hold a disproportionate number of public sector positions.⁹ The situation is most extreme in the security services, where it is believed 95% to 98% of the armed forces are Sinhalese.¹⁰ Tamils, therefore, remain most at risk for becoming torture victims due to the near all-Sinhalese security sector's collective perception of the community as a national security risk. However, all communities, Sinhala, Tamil, Muslim and otherwise, regardless of ethnicity, religious belief or location, are at risk of torture.
9. In its 2011 concluding reservations, the CAT raised serious concern that both the military and police (together referred to as the security forces) continued to perpetrate torture and ill-treatment in many parts of Sri Lanka after the end of the civil war in 2009. It recommended that the government of Sri Lanka take immediate and effective measures to:
 - investigate all acts of torture and ill-treatment,
 - prosecute those responsible,
 - ensure torture is not used by law enforcement or the military.¹¹

Serious efforts to fulfil those recommendations and eradicate the systems and culture of impunity that sustain torture have not taken place under the Rajapaksa administration then in power, nor has the current Sirisena administration addressed compliance with the obligations Sri Lanka has under the Convention with a determined, effective and serious program to address significant deficiencies.

Torture continues despite constitutional and legislative framework

10. The government of Sri Lanka's State party reports to this Committee, dated 11 December 2015 and 20 June 2016, demonstrate that the government's primary response to the allegations and ongoing reportage of torture in Sri Lanka is to point to provisions of the Constitution of Sri Lanka and its accompanying legislative framework, including the enabling legislation for the Convention against Torture, to safeguard against torture and illustrate compliance with the Convention. As the UN Secretary-General's Panel of Experts Report (2011) found, formal legal and constitutional protections have done little to protect against human rights violations, including torture.¹² This has been echoed by reports of the High Commissioner for Human Rights, the OISL report, the Special Rapporteur on torture Juan Mendez and a number of independent reports. The sad reality is that the practice of torture is part of a broader degraded human rights landscape in Sri Lanka, which has been exacerbated by the culture of impunity for serious transgressions that has existed in Sri Lanka for decades and continues to this day. The current government has made welcome statements about its intentions to tackle some of these issues, but it lacks either the political will or ability to take on the most essential basic tasks necessary such as reform of the security sector.

⁹ The CERD Committee requested the government provide statistics on ethnic and ethno-religious groups' participation in the public services. See, Committee on the Elimination of Racial Discrimination, Concluding observations on the tenth to seventeenth periodic reports of Sri Lanka, Committee on the Elimination of Racial Discrimination, CERD/C/LKA/CO/10-17, 26 August 2016, para. 7.

¹⁰ K.M. de Silva, Sri Lanka's Political-Military Relations, Netherlands Institute of International Relations, November 2001, p. 18.

¹¹ Consideration of reports submitted by States parties under article 19 of the Convention: Sri Lanka, Committee against Torture, CAT/C/LKA/5/Add.1, 20 June 2016

¹² Report of the Secretary-General's Panel of Experts on Accountability in Sri Lanka, United Nations, 30 March 2011, para. 37.

Torture throughout Sri Lanka

11. While the Sirisena government has signaled a willingness to address torture in HRC Resolution 30/1, the structure of abuse that facilitated torture under the previous government remains in place, violating the Convention, in particular Article 2.¹³ After visiting Sri Lanka from 29 April to 7 May 2016, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan Mendez, stated:

I am persuaded that torture is a common practice carried out in relation to regular criminal investigations in large majority by the Criminal Investigation Department (CID) of the police. In cases where there is a real or perceived threat to national security there is a corresponding increase in acts of torture and ill-treatment during detention and interrogation in Terrorism Investigation Division (TID) facilities.¹⁴

12. In its 2011 concluding observations, the CAT raised serious concern about the widespread use of torture and ill-treatment by the security sector to extract confessions and called on the State, “as a matter of urgency” to ensure that torture is not used by law enforcement and members of the military. During his visit this spring, Special Rapporteur Mendez found that torture by police is incentivized in part due to the justice system’s reliance on confessions. Ninety percent of convictions are based on confession alone or use confession as the main evidence.¹⁵ Police thus turn to torture to extract confessions and build their cases. A 2015 report by Human Rights Watch (HRW) similarly found that the police frequently use torture to obtain confession rather than taking the time to gather evidence through investigations, even for minor offences. HRW reported that the methods of coercion used by police are remarkably similar to those applied during the war: severe beatings; electric shocks; use of stress positions, including suspending detainees from ropes and iron bars in painful positions; the rubbing of chili paste over the body, including the genitals. Police also ignore important procedural safeguards such as informing the accused of criminal charges, providing them access to a lawyer, and promptly bringing them before a judge.¹⁶ HRW concluded that this conduct persists due to the wide discretion given to police by superiors and the longstanding bias within the criminal justice system favoring police and allowing torture. It is apparent that in the five years since the CAT’s last review, the government has not taken adequate steps to prevent torture and ill-treatment as a routine method of law enforcement.¹⁷

13. We note that in the State party’s 20 June 2016 report to the CAT, the government of Sri Lanka praised the successful visits of Special Rapporteur Mendez and his counterpart, Monica Pinto, the Special Rapporteur on the Independence of Judges and Lawyers. While USTPAC welcomes the government’s facilitation of visits by UN special procedures, we find that the State party’s report is selectively written, both failing to acknowledge Special Rapporteur Mendez’s conclusion of widespread torture in Sri Lanka and Special Rapporteur Pinto’s conclusion that institutional steps must be taken to improve judicial independence and accountability. Rather

¹³ Promoting reconciliation, accountability and human rights in Sri Lanka, Human Rights Council, A/HRC/30/1, 14 October 2016, para. 17.

¹⁴ Preliminary observations and recommendations of the Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment, Mr. Juan E. Mendez on the Official joint visit to Sri Lanka, 7 May 2016, UN Special Procedures.

¹⁵ Ibid.

¹⁶ “We Live in Constant Fear” Lack of Accountability for Police Abuse in Sri Lanka, Human Rights Watch, October 2015, pgs 1-3.

¹⁷ Consideration of reports submitted by States parties under article 19 of the Convention: Sri Lanka, Concluding observations of the Committee against Torture, CAT/C/LKA/CO/3-4, 8 December 2011

than remain quiet on such matters, USTPAC believes the government could show its commitment to ending torture and promoting a strong judiciary by explaining its specific plans to fulfill the Rapporteurs' recommendations.

14. The police are not alone in their use of torture. While it is difficult to account for all torture cases due to the continued atmosphere of fear, especially in the Tamil-dominated North East, the UK's Freedom from Torture (FFT) has tracked cases among individuals who have fled abroad. A study conducted by FFT found that torture in state detention occurs throughout the country under the control of the military, police, and intelligence services. In 2015, FFT reported that one hundred and forty-eight people were detained and tortured in facilities of different types located in fifteen districts and seven of the nine provinces in Sri Lanka.¹⁸ This study found that for the largest number of cases, the arresting authority was the military (60 out of 181 detention episodes), followed by unknown or unstated personnel, police, and intelligence or Special Task Force officers. FFT received 17 referrals to its Medico-Legal Report Service or therapeutic treatment service since January 2015. Of these referrals, 15 are Tamil, 1 Sinhalese, and 1 of an unknown ethnic background¹⁹. These 17 referrals mention detention by a range of state actors including the Criminal Investigation Department, the terrorism Investigation Department, the police, "security," and the army. These reports indicate that torture is an accepted and readily used tool by all branches of the security sector.

Security force targeting of Tamils under the Prevention of Terrorism Act

15. While torture is common across Sri Lanka, the Prevention of Terrorism Act (PTA) is primarily used to target and abuse Tamils on national security grounds. The Act is notorious. Its repeal has been called for consistently by the UN, including by this Committee. In 2011, the CAT raised concern with the "sweeping measures" of the PTA and specifically called on the government to ensure all anti-terror legislation respected fundamental legal safeguards and complied with the Convention, especially Article 2, paragraph 2.²⁰ Despite this, the PTA remains a draconian piece of anti-terror legislation that allows arrests for unspecified "unlawful" or "terrorist" activities without warrant.²¹ Its broad powers continue to restrict freedom of expression, association, movement and due process and facilitate arbitrary arrest, torture, and enforced disappearance. Prominent Sri Lankan activist Marisa De Silva recently described the PTA:

From subjecting suspects to indefinite detention based on coerced confessions, often obtained under duress, to seizing private property without issuing receipts at the time of arrest, or the Defence Minister being able to extend at will, a detention order up to 18 months, to not producing identification to suspects or their families at the point of arrest, the PTA gives law enforcement officials expansive and arbitrary powers. As long as PTA is in place and justice is not ensured for political prisoners, reconciliation will remain elusive.²²

16. In October 2015, the government of Sri Lanka committed in HRC Resolution 30/1 to repeal and replace the PTA with anti-terror legislation in accordance with international standards. However, it has not done so over the last ten months, nor has it issued a moratorium on PTA arrests. This delay enables the police and other security forces to continue to arrest and detain

¹⁸ Tainted Peace – Torture in Sri Lanka since May 2009, Freedom from Torture, August 2015, Page 4, 28

¹⁹ Sri Lanka – Update on Torture since 2009, Freedom from Torture, May 2016, Page 4

²⁰ Consideration of reports submitted by States parties under article 19 of the Convention: Sri Lanka, Concluding observations of the Committee against Torture, CAT/C/LKA/CO/3-4, 8 December 2011

²¹ Sri Lanka: Enforce Commission Directives on Terror Detainees, Human Rights Watch, 13 June 2016.

²² INFORM Human Rights Documentation Centre, Human Rights Situation in Sri Lanka: August 17, 2015 – August 17, 2016, August 2016, page 45.

individuals under the Act, which in turn fosters an environment conducive to torture. The Act still allows for confessions obtained under duress by police at or above the rank of Assistant Superintendent of the Police to be admissible in court.²³ This directly contradicts Sri Lanka's obligations under the CAT, and we welcome the Committee's questions on this matter. The Human Rights Commission of Sri Lanka (HRCSL) has issued a directive to officials to protect the fundamental rights of PTA detainees.²⁴ While this is a welcome step, it is not mandatory for officials to follow such directives, nor does it appear that the directive has had a significant impact of the conduct of officials.

17. High Commissioner for Human Rights reported to the HRC in June 2016 that more than 40 new PTA arrests occurred in 2015-2016.²⁵ According to INFORM, a human rights monitoring group in Sri Lanka, 28 individuals, 24 of them Tamil, were arrested between March and June 2016. As of 23 June, 23 of them had not been charged with any crime. In most cases, detainees were arrested by officers in civilian clothes who claimed to be from the police or Terrorist Investigation Department (TID), but did not show any form of identification at the time of arrest. In at least five cases, relatives did not know the whereabouts of their detained family member for 48 hours. Several family members also reported observing signs of torture or being harassed themselves by members of the security forces after the arrests.²⁶ In addition, the UN Working Group on Enforced or Involuntary Disappearances (WGEID) visited Sri Lanka from 9 to 18 November 2015 to learn more about the situation regarding the disappeared and their families. It heard reports that at least one individual was abducted in a white van and subsequently found detained under the PTA by the TID.²⁷ Despite government pledges to repeal the PTA, its continued application flouts legal safeguards and provides the pretenses for torture and ill-treatment.
18. Particularly distressing for the Tamil community is the situation for existing long term PTA detainees who are believed to number around 250.²⁸ Many detainees have been deprived of due process, languishing in prisons for 5, 15, or 20 years either waiting to be released, charged with a crime or for their court cases to advance.²⁹ Frustrated by the unfulfilled promises of government leaders, detainees have staged multiple hunger strikes over the past year, including in September 2016, to draw more attention to their plight. While the government has made announcements to expedite their cases in March and again in August, efforts appear to be ineffective. These detainees' cases should be urgently reviewed and decisions made to move forward with the judicial process or release them. Detaining individuals for such prolonged periods of time amounts to cruel treatment and should not be tolerated.

²³ Consideration of reports submitted by States parties under article 19 of the Convention: Sri Lanka, Concluding observations of the Committee against Torture, CAT/C/LKA/CO/3-4, 8 December 2011

²⁴ Human Rights Commission of Sri Lanka, Directive Issued by the Human Rights Commission of Sri Lanka on Arrest and Detention Under the Prevention of Terrorism Act No 48 of 1979, 18 May 2016.

²⁵ Annual Report of the United Nations High Commissioner for Human Rights: Promoting reconciliation, accountability and human rights in Sri Lanka, A/HRC/32/CRP.4, Human Rights Council, 28 June 2016, para. 15.

²⁶ INFORM Human Rights Documentation Centre, Human Rights Situation in Sri Lanka, page 43-45.

²⁷ Report of the Working Group on Enforced or Involuntary Disappearances on its mission to Sri Lanka, A/HRC/33/51/Add.2, Human Rights Council, para. 16.

²⁸ Annual Report of the United Nations High Commissioner for Human Rights: Promoting reconciliation, accountability and human rights in Sri Lanka, A/HRC/32/CRP.4, para. 14.

²⁹ INFORM Human Rights Documentation Centre, Human Rights Situation in Sri Lanka, page 44-45. See also, What is Happening with the PTA Detainees in Sri Lanka Now?, Centre for Human Rights and Research Sri Lanka via the Sri Lanka Brief, 13 June 2016.

19. Recently, the government has suggested that some PTA detainees will be released to rehabilitation centers if they agree to a plea facilitated by the Attorney-General's Office.³⁰ Many PTA detainees reject the option of rehabilitation on the grounds that they are innocent and have already suffered prolonged arbitrary detention due to the government's continued postponement of their cases. Moreover, as demonstrated in numerous human rights reports including the OISL, rehabilitation camps during and after the war have been notorious for their use as torture centers. There is concern that PTA detainees sent to government rehabilitation centers will be further abused.
20. In addition, human rights defenders have noted that Tamils suspected of LTTE affiliation, including those who have been held under the PTA or undergone rehabilitation, endure harassment and surveillance by intelligence officers, police officers, military or paramilitary personnel in Sri Lanka's Tamil-dominated North and East after their release.³¹ This community is especially at risk for further human rights violations, including torture and ill-treatment.

Sexual violence as a tool for torture

21. In his report on the principal findings of the OISL investigation, the High Commissioner reported that "rape and other forms of sexual violence by security forces personnel was widespread against both male and female detainees, particularly in the aftermath of the armed conflict." Sexual violence was used deliberately to extract information and humiliate individuals with alleged links to the LTTE.³² Sexual violence by the security forces has not stopped. In January 2016, a report by a South African NGO called the International Truth and Justice Project (ITJP) found that "one year after the change of government in Sri Lanka the security forces continue to detain, torture and sexually violate Tamils in a network of sites across the island."³³ The organization collected sworn testimony from twenty victims of torture in 2015. In every case, the victims reported that they experienced sexual violence and in eight cases victims reported experiencing group sexual abuse.³⁴ The continued use of sexual violence by security forces and the impunity enjoyed is an obvious violation of Sri Lanka's obligations under the Convention.

Examples of Torture in 2016

22. The following case studies of Santhiyogu Anton Dani and Velauthapillai Renukaruban serve to illustrate the persistence of torture and ill-treatment perpetrated by security forces in Sri Lanka. They also depict the surveillance that civilians, especially Tamils in the war-affected areas of Sri Lanka's North East, are subject to by security forces.

Santhiyogu Anton Dani

23. On 29 June 2016, the High Commissioner presented an oral update on Sri Lanka to the 32nd session of the Human Rights Council. In it he commended the steps Sri Lanka has taken, while also expressing concern that tangible measures for reform were not moving fast enough.³⁵ That same day, Tamil resident of Mannar, Santhiyogu Anton Dani, was illegally arrested and subsequently detained by military officers.

³⁰ "Sri Lanka's Tamil prisoners launch hunger strike for release, Global Times, 24 September 2016.

³¹ See, for example, *Withering Hopes*, PEARL, April 2016.

³² Comprehensive report of the Office of the United Nations High Commissioner for Human Rights on Sri Lanka' Human Rights Council, A/HRC/30/61, 28 September 2016, pg 8.

³³ *Silenced: survivors of torture and sexual violence in 2015*, International Truth and Justice Project, January 2016.

³⁴ *Ibid.*

³⁵ Statement by Zeid Ra'ad Al Hussein, United Nations High Commissioner for Human Rights, on the situation on Sri Lanka and Myanmar, OHCHR 29 June 2016.

24. Dani was arrested previously in 2001 on suspicion of having links with the LTTE. During his detention, he suffered torture. He was later released by a Sri Lankan court without any charges as there was no substantial evidence of him belonging to the LTTE.³⁶ Despite this, military special operations officers have repeatedly visited his home and harassed his family for the past two years. In April 2016, a military operative pointed a gun at one of Dani's two eldest daughters. Out of fear for his and his family's safety, Dani sought refuge at St. Peter's Church in Mannar. On the dawn of his abduction, Dani opened the door to four military officers pointing a gun at his head, one of whom was fluent in Tamil. They then blindfolded him and gagged his mouth before throwing him in a van without alerting anyone inside the church premises. Dani was badly beaten, burned all over his body with heated rods, and hung by his neck.³⁷ He was released in a farm two kilometers away from St. Peter's Church and admitted to Mannar Government Hospital two days later. Dani's wife was warned to not make any trouble about the attack, with threats made to kill him if she did.³⁸

Velauthapillai Renukaruban

25. Velauthapillai Renukaruban is a British national of Tamil ethnicity who has lived in the UK for 16 years. He traveled to North East Sri Lanka in June 2016 to get married and celebrate with his family. Soon after his arrival in the country, Renukaruban was approached by two plainclothes men on motorcycles, beaten by the two men in front of his mother and older sister in Jaffna, and bundled into a van.³⁹ He was then taken to an empty house with dried blood on the walls; a house that Renukaruban believes is used for torture. He was beaten unconscious with wooden sticks and metal bars.

26. Renukaruban was found in prison several days later with multiple lacerations and head injuries consistent with torture. He was then taken from Jaffna prison for hospital treatment. In the hospital, Renukaruban was chained to his bed and watched by two armed police officers. Law enforcement charged him with assault, but his family believes the charge was baseless. As there was no victim and no evidence provided. The case against him has since been dropped.

The government of Sri Lanka has not demonstrated a sufficient commitment to eradicate torture

Training and instructions alone insufficient to end culture of impunity

27. Under HRC consensus Resolution 30/1, the government committed itself to undertake comprehensive security sector reforms to ensure no scope exists for the retention in or recruitment into the security forces of anyone credibly implicated in serious crimes involving human rights violations or abuses.⁴⁰ No such security sector reforms, including the vetting of security forces, have taken place and the High Commissioner raised concerns in June 2016 that the government does not have full civilian control over the military.⁴¹ Likewise, as committed in the resolution, the government has yet to establish a judicial mechanism, including the special counsel's office, of international judges, defense lawyers, prosecutors and investigators, to investigate violations of human rights and international humanitarian law.

³⁶ Asian Human Rights Commission – Urgent Appeals Programme, 7 July 2016

³⁷ Abducted Tamil man found dumped with severe torture injuries, Ceylon News, 1 July 2016

³⁸ Asian Human Rights Commission – Urgent Appeals Programme, 7 July 2016

³⁹ British Tamil 'tortured and detained' during Sri Lanka wedding trip, The Guardian, 11 July 2016

⁴⁰ Promoting reconciliation, accountability and human rights in Sri Lanka, A/HRC/30/1, Human Rights Council, 14 October 2015, para 8.

⁴¹ Annual Report of the United Nations High Commissioner for Human Rights: Promoting reconciliation, accountability and human rights in Sri Lanka, A/HRC/32/CRP.4, para. 15.

28. In its State report, the government of Sri Lanka discussed at length measures to build the capacity and raise awareness among police officers and security forces of fundamental rights, human rights standards, and international humanitarian law. These are positive steps and would appear to abide by Article 10 of the Convention. The International Committee of the Red Cross began offering training seminars on humanitarian law to Sri Lanka's military forces in 1986.⁴² Over the years, recipients of these trainings have expanded beyond the armed forces to include the Special Task Force, Terrorist Investigation Division (TID), Criminal Investigation Department (CID), and the Narcotics Bureau of the Sri Lanka Police.⁴³ In line with this Committee's statement in paragraph 15 of its List of Issues, USTPAC supports the notion that the government develops and implements a methodology to publicly monitor and assess the effectiveness of training programs by the ICRC and other entities to reduce the incidence of torture and ill-treatment.
29. It is also welcome that, as noted in the State party's report, the Inspector General of the Police has issued instructions on police conduct during arrest and published information on the rights of persons in custody, while the Ministry of Defense has issued instructions to all branches of the security forces that violations of human rights, including torture, will be punished.
30. While commendable steps, training and instructions are not enough. In the same thirty years that the security forces have received training in human rights and humanitarian law, they have been accused of widespread and egregious human rights violations, including a consistent pattern of torture and sexual violence, both in peace time and during the war. Similarly, the previous sections of this submission demonstrate that instructions have not stopped the practice of torture in 2016. Given the widespread use of torture by Sri Lanka's police and security forces for decades, training and instructions are insufficient unless paired with acknowledgement of the crimes, comprehensive security sector reform, credible investigations into allegations of torture, trials for alleged perpetrators, and, if proven guilty, sentences for perpetrators consistent with the gravity of their crimes, along with reparations for victims as the Convention requires.

Government actions raise concern over commitment to end torture

31. Article 13 of the Convention states that individuals who allege torture and witnesses are to be protected against all ill-treatment or intimidation. In Sri Lanka, an atmosphere of fear and intimidation, along with a very high risk of reprisal, has long existed for victims and witnesses. Those who attempt to report official corruption, police misconduct, or other instances of criminal behaviour by politicians and members of the security forces have been disappeared, jailed, and tortured. The situation is especially grave for human rights defenders, journalists, and members of Sri Lanka's Tamil and Muslim communities. In an effort to improve victim and witness protection, Sri Lanka's Parliament passed the Assistance to and Protection of Victims of Crime and Witnesses Act in February 2015. While this is a commendable step, significant changes to the Act are required to ensure stringent protection of witnesses. The OISL Report⁴⁴ and the Working Group on Enforced and Involuntary Disappearances (WGEID)⁴⁵ have both identified problems with the Act:

- The Act does not offer protection to witnesses who are charged with or convicted of crimes, officers of the court, members of the Bar or members of the judiciary.

⁴² Sri Lanka: The human rights training given to the police/army in the North and/or Colombo since January 1997, Canada: Immigration and Refugee Board of Canada, 1 February 1999.

⁴³ ICRC in Sri Lanka, ICRC, October 2015.

⁴⁴ Ibid, paras. 1186-1188.

⁴⁵ Report of the Working Group on Enforced or Involuntary Disappearances on its mission to Sri Lanka, A/HRC/33/51/Add.2, para. 18.

- There is no specified procedure to determine whether a victim or witness should be provided protection.
 - The Act fails to guarantee the autonomy of the National Authority for the Protection of Victims of Crime (the Authority). Key appointments for the Authority can be made on the sole discretion of the President, providing the opportunity for political interference.
 - The Victims of Crime and Witnesses Assistance and Protection Division (the Division), lacks independence from Sri Lanka's police force. The Division is to be established by the Inspector General of the Police and managed by a Senior Superintendent of the Police. This is worrisome. The Division should be fully autonomous given the likelihood that it will protect witnesses who provide evidence against the police and investigate cases of reprisals perpetrated by the police.
32. Since the Act was passed in February 2015, the OISL, the High Commissioner, the Working Group on Enforced and Involuntary Disappearances, and the Special Rapporteur on Torture, as well as many human rights groups, have recommended the government take steps to strengthen the Act. To USTPAC's knowledge, no efforts have been made by the government to do so.
33. It is also important to note that operationalization of the Act has been slow. Although the Act passed in February 2015, it has yet to become fully functional. In January 2016 the Authority was established, but the Division has not been constituted. Whether due to a lack of resources or will, this shows another failure of the government, which again points this Committee to a legislative act that stands in isolation from the necessary administrative framework and practice necessary to give full effect to the legislation, thus leaving victims and witnesses at continuing risk.
34. Whereas the government has taken no steps to improve the Victim and Witness Protection Act, its efforts to replace the PTA point to a desire to cement the current degraded human rights landscape. As noted earlier, the government committed to repeal the PTA in Resolution 30/1. After prolonged consultation, the Sri Lankan Cabinet has approved draft replacement legislation entitled the Counter Terrorism Act.⁴⁶ At the time of writing, a draft version of this Act has just been leaked to the press. The draft is both disturbing and telling of the government's commitment to eradicate torture. Rather than constraining the state's abusive powers under the PTA, the draft Counter Terrorism Act would widen the scope for abuse and ease restrictions for targeting Tamils, human rights defenders and anyone in opposition to government policies. The Tamil National Alliance, the elected leaders of the Tamils and the Sri Lanka's official opposition, has warned that the Counter Terrorism Act in its current form will be worse than the PTA.⁴⁷
35. USTPAC strongly urges the CAT to closely monitor developments regarding the draft Counter Terrorism Act and speak with Sri Lankan legal experts about the legislation ahead on Sri Lanka's review on 15 and 16 November.
36. While the Counter Terrorism Act will apply specifically to anti-terrorism activities, recent efforts by the Ministry of Justice to amend the Code of Criminal Procedure would impact all policing activities. A bill published on 12 August 2016 in Sri Lanka's Gazette proposes amendments that would only allow suspects arrested and detained by the police access to an attorney *after* the recording of their statement. These amendments would deprive detainees of their right to an attorney at the earliest point after arrest and increase the likelihood of torture. Both Sri Lanka's Human Rights Commission and Bar Association have protested and urged the Prime Minister

⁴⁶ Sri Lanka's proposed counter terror legislation leaked, Tamil Guardian, 17 October 2016.

⁴⁷ New anti-terror act may be worse than PTA warns TNA, Tamil Guardian, 10 October 2016

and President to reject the amendments, warning that they will violate the fundamental rights of the arrested.⁴⁸ A final determination on the amendments to the bill has not been made by Parliament. If passed, the amendments would send a message to the security forces that the government supports the practice of torture and ill-treatment to extract confessions.

37. The internal debate regarding the Code of Criminal Procedure points to an important dynamic in Sri Lankan politics. Since the CAT's last review of Sri Lanka, the Human Rights Commission has become significantly more outspoken. Its re-emergence as a potential leader on human rights has been noted and is encouraging. However it is too soon to ascertain whether the Commission will be allowed to operate independently and will be able to secure guaranteed funding, absent from political influence. Both are essential if the Commission is to become a true guardian of human rights and an effective bulwark against abuses such as torture and ill-treatment, sexual violence and other human rights abuses that are endemic in the Sri Lankan system.
38. By contrast, the Ministry of Justice has repeatedly shown itself as an unfair arbiter of justice.⁴⁹ Without doubt, the Ministry plays a central role in perpetuating the "total impunity" Special Rapporteur Mendez has identified in torture cases.⁵⁰ The Ministry acts in defence of the security apparatus rather than promoting reforms to end violence by officials, uphold human rights and protect civilians. The Minister of Justice is an ardent supporter of the above Code of Criminal Procedure amendment, stating in September that it is necessary to strengthen law enforcement and protect victims.⁵¹ This same minister rejected all allegations of war crimes by Sri Lanka's armed forces and committed the government to take legal action against anyone who alleges the armed forces committed war crimes.⁵² This is despite repeated reports and inquiries that have found the opposite to be true. The Minister's inclination to support and empower the security forces points to a culture within the justice sector that prevents reform and propels impunity for serious violations such as torture. The obstructionist Ministry has played a key role in slowing the repeal of the PTA, extending arbitrary detention under the PTA, preventing amendments to the Witness and Victim Protection Act, enacting domestic legislation to enable international obligations such as those on enforced disappearances, and interfering in investigations of past instances of torture, torture sites and enforced disappearances.
39. The Attorney-General's Office, which falls under the Ministry of Justice, plays a key role in compromising the judicial sector by protecting security forces from reform and prosecution – a role this Committee recognized in its 2011 concluding observations. Following her visit to Sri Lanka in May, Special Rapporteur Pinto stated that Sri Lanka "needs to conduct a strict exercise of introspection, so as to improve the quality of its judiciary and of the Attorney-General's office."⁵³ Special Rapporteur Pinto, along with the High Commissioner, Special Rapporteur Mendez and the WGEID have all cited a serious conflict of interest in the Office that

⁴⁸ Proposed Amendment to the Code of Criminal Procedure Act Depriving Suspects of Access to Lawyers Until their Statements are Recorded, Human Rights Commission, 21 September 2016; and Wiser counsel prevails: Criminal Procedure Code amendment put on hold, the Sunday Times, 9 October 2016.

⁴⁹ Keenan, Alan, Sri Lanka: Jumpstarting the Reform Process, International Crisis Group, 18 May 2016, pg. 9.

⁵⁰ Preliminary observations and recommendations of the Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment, Mr. Juan E. Mendez on the Official joint visit to Sri Lanka, 7 May 2016, UN Special Procedures.

⁵¹ Justice Minister Flays BASL, HRC for ignoring victims' rights, The Island, 2 October 2016.

⁵² Government Rejects War Crimes Allegations By Armed Forces, News Radio, 17 September 2016.

⁵³ Preliminary observations and recommendations of the Special Rapporteur on the independence of judges and lawyers — Ms. Mónica Pinto, Sri Lanka Brief, 7 May 2016.

compromises justice.⁵⁴ Rather than acting out of the public interest, the Office has repeatedly shown itself to act in the interest or defense of police officers or military officers. Despite the cacophony of recognition that the Attorney-General is obstructing justice for human rights violations, including torture and ill-treatment, the government has not taken any steps to reform the Office or replace officials who display a pattern of bias.

Conclusion

40. USTPAC sincerely thanks the Committee for its work to uphold the Convention and end torture worldwide. We underscore the importance of the Committee's work in shining light on the ongoing use of torture in Sri Lanka and the institutional laws, policies and practices that enable its use, as well as the value of the Committee's recommendations to promote compliance with the Convention.
41. In the simplest terms, the government has failed to uphold its treaty obligations. While the political signals from the government to stop torture are a welcome change from the prior regime, torture by the security forces continues unabated. We are confident it will not stop until there is a concerted effort to tackle all previous cases and undertake transformative reforms of the security and judicial sectors.
42. With such transformative change in mind, we ask the Committee to underscore to the government the importance of fully implementing HRC Resolution 30/1. Many provisions in that resolution, if implemented in good faith, would serve to drastically improve the human rights landscape in Sri Lanka and end torture and ill-treatment. This includes the essential provision to establish a judicial mechanism with international judges and other legal experts to investigate allegations of human rights violations perpetrated during and after the war. In his 2015 report to the Human Rights Council, the High Commissioner stated, "the unfortunate reality is, however, that the State's criminal justice system is not yet ready or equipped to conduct an independent and credible investigation" into human rights investigations or "hold accountable those responsible for such violations."⁵⁵ Given the compromised judicial sector, USTPAC holds firm in its opinion that outside experts are absolutely necessary to safeguard against further miscarriages of justice.
43. We stand ready to support the Committee in any way we can and welcome further communication.

⁵⁴ Promoting reconciliation, accountability and human rights in Sri Lanka, A/HRC/30/1, Human Rights Council, 14 October 2015; Report of the Working Group on Enforced or Involuntary Disappearances on its mission to Sri Lanka, A/HRC/33/51/Add.2; Preliminary observations and recommendations of the Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment, Mr. Juan E. Mendez on the Official joint visit to Sri Lanka, 7 May 2016, UN Special Procedures.

⁵⁵ Comprehensive report of the Office of the United Nations High Commissioner for Human Rights on Sri Lanka' Human Rights Council, A/HRC/30/61, 28 September 2016, para 75.