

Sri Lanka

SUBMISSION TO THE UNITED NATIONS HUMAN RIGHTS COMMITTEE
128th SESSION, 2-27 MARCH 2020
ALL SURVIVORS PROJECT

All Survivors Project (ASP) is an independent, impartial, international organisation that conducts research and advocacy and facilitates inter-disciplinary dialogue and learning to improve global responses for every victim/survivor of sexual violence including men and boys in situations of armed conflict and forced displacement. Through our work with governmental and non-governmental stakeholders and with male survivors of sexual violence, we seek to ensure that conflict-related sexual violence is prevented and that the rights of all victims/survivors, including men and boys, are fulfilled, and the dignity of all survivors is respected and protected.

Summary

ASP makes this submission to the United Nations (UN) Human Rights Committee in advance of its adoption of the list of issue on Sri Lanka at the 128th Session. This submission focuses on sexual violence against men and boys in the context of the armed conflict in Sri Lanka and its aftermath. It relates to Articles 7 and 9 of the International Covenant on Civil and Political Rights (the Covenant).

In 2017, All Survivors Project published a report addressing conflict-related sexual violence against men and boys in the context of the war between the government of Sri Lanka and Tamil armed groups, principally the Liberation Tigers of Tamil Eelam (LTTE). The report focuses on sexual violence against men and boys perpetrated by the Sri Lankan security forces. This submission updates the findings contained in this report.¹

1. Sexual violence against men and boys during and in the aftermath of the armed conflict

Torture and other forms of cruel, inhuman and degrading treatment were widely documented in Sri Lanka during and in the immediate aftermath of the armed conflict. Information on sexual violence was scant, particularly with regards to men and boys. However, reports and further investigations into the events of the conflict and its immediate aftermath led the UN to conclude in 2015 that male detainees in Sri Lanka “were as likely to be subjected to sexual violence as female detainees”. The Report of the Office of the High Commissioner for Human Rights Investigation on Sri Lanka (OISL) further concluded that incidents of sexual violence were not isolated acts but were part of a deliberate institutional policy of torture by the Sri Lankan security forces, designed to obtain information, intimidate, humiliate and inflict fear.²

ASP has found the following as the most common forms of male sexual violence:³

- **Rape.** Multiple forms of rape carried out against men or boys including the insertion of a penis or other objects such as bottles, poles and police batons into the anus or mouth of the victims. In some

1 See ASP and UCLA School of Law, “Legacies and Lessons Sexual violence against men and boys in Sri Lanka and Bosnia & Herzegovina,” 2017, <https://allurvivorsproject.org/country/sri-lanka/>

2 Report of the OHCHR Investigation on Sri Lanka, UN Doc. A/HRC/30/CRP.2 (2015), 16 September 2015, paras 586 and 603.

3 See ASP, “Legacies and Lessons,” 2017 report for details and sources.

cases, the objects were covered with chilli before insertion; in other instances hollow tubes were inserted into the anus and a wire or barbed wire pushed through it. Incidents of victims being subjected to anal rape over several days by a series of different people are recorded, as well as cases where victims were forced to rape one another while perpetrators watched on. In some instances, victims were reportedly unconscious when raped. Incidents have also been reported of detainees being forced to perform oral sex. There are additionally reports of small objects being forced into the genitals, such as metal wire, pins or small metal balls being inserted into the urethra of the penis.

- **Enforced nudity** (full or partial). There are reports of victims being kept fully or partially naked in their cells and in front of other detainees including those of the opposite sex. Detainees were also forced to remove some or all clothing during interrogation/torture sessions.
- **Genital violence**, such as blunt trauma to the testicles or penis, with common forms including the slamming of drawers on the genitals, punching and kicking the genitals, and hitting of sexual organs with sticks and other objects. Other forms of pressure to testicles or penis, with commonly reported forms including squeezing or twisting of testicles or penis, and pulling on a string tied around the penis and burning and electric shocks to the genitals.
- **Other acts of sexual violence**, such as forced masturbation, forced manual stimulation of perpetrators, ejaculation by perpetrators in victims' mouths or on their bodies, and other forms of sexual humiliation such as being forced to swallow semen or urine.

Reports by the UN experts and international non-governmental organizations reaffirm that sexual violence against men and boys was not only commonplace during the armed conflict, but that it did not stop when the fighting ended. Rather, recent reports indicate that it continues.

The UN Special Rapporteur on counter-terrorism and human rights concluded at the end of his visit to Sri Lanka in July 2017 that the "use of torture has been, and remains today, endemic and systematic for those arrested and detained on national security grounds".⁴ In its February 2019 report, the London-based organisation Freedom from Torture documented sexual violence, including rape among the forms of torture twelve men and four women were reportedly subjected to between 2015 and 2017.⁵

The vast majority of documented survivors of conflict-related sexual violence (CRSV) against men and boys in Sri Lanka are ethnic Tamils. These include ex-LTTE combatants and members, as well as others allegedly associated with the LTTE. Some cases of non-Tamil male survivors have also been reported including individuals of Sinhala and Muslim ethnicity.

Almost all of the recorded conflict-related cases took place while victims were detained by security forces, principally the Sri Lankan Army and Navy and special units of the police, in particular the Terrorism Investigation Division (TID) and the Criminal Investigation Department (CID).

⁴ See Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, visit to Sri Lanka, UN doc. A/HRC/40/52/Add.3 (2018). See also Report of the UN Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment on his mission to Sri Lanka, UN Doc. A/HRC/34/54/Add.2 (2016).

⁵ See Freedom From Torture, "Too Little Change: Ongoing Torture in Security Operations in Sri Lanka," February 2019. A previous report by the same organisation also contained details of sexual violence in detention against men and boys (see Freedom from Torture, "Tainted Peace, Torture in Sri Lanka since May 2009," August 2015. Post-conflict cases of torture have also been documented by The International Truth and Justice Project (ITJP).

2. Inadequacies of the national criminal law

A lack of legal protection for men and boys from sexual violence contributes to an environment in which violations can take place and perpetrators cannot be held to account.

In Sri Lankan law, the possibility of rape of men is not recognised. Men are defined only as perpetrators of rape under Article 363 of the Penal Code, under which “a man is said to commit rape who has sexual intercourse with a woman under any of the following descriptions...”.⁶ Similarly, the prohibition of statutory rape applies only to girls (under the age of 16 years) and not to boys.⁷

Other provisions under the Penal Code mischaracterise or define sexual violence in such a way that they do not reflect the lived experience of survivors, are inconsistent with the more inclusive, gender-neutral definitions under international law, or are otherwise inadequate for prosecuting sexual violence against men and boys. For example, forms of sexual violence that do not constitute rape are prohibited under Section 365B of the Penal Code relating to “grave sexual abuse” which is defined as any act “committed by any persons, who for sexual gratification... by the use of his genitals or any other part of the human body or any instrument on any orifice or part of the body of any other person...” without consent or under force, threat or intimidation. Rape of men (and other forms of sexual violence) could be prosecuted under this provision. However, it offers an inadequate recourse, not only because it carries a lesser sentence than rape under Article 363, thereby effectively treating the rape of males as a lesser crime than the rape of females, but also because it requires the act to be committed ‘for sexual gratification’, thereby mischaracterising sexual violence against men.

Other provisions under the Penal Code may deter male survivors from seeking justice. Sections 365 and 365A criminalise certain homosexual acts, categorising them as “unnatural offences”. These provisions have been used to persecute members of the LGBTI community and serve to reinforce discriminatory gender stereotypes. As such it can tacitly encourage violence and it act to deter survivors of sexual violence from seeking justice or medical and other support for fear of being arrested and prosecuted.

3. Impunity

Impunity for sexual violence is widespread. The government previously reported that 39 investigations had been initiated into acts of rape and sexual violence allegedly committed by the security forces during the war, but the UN Committee against Torture criticised the Sri Lankan government for failing to provide updated information on the progress of these investigations.⁸ Prosecutions have taken place in only a handful of cases involving sexual violence, all of them against women, and most judicial outcomes have been inadequate.⁹

In its January 2017 Concluding Observations on Sri Lanka, the UN Committee against Torture noted with concern that only 17 cases of torture have been led under the Torture Act since 2012 suggesting that only a small number of allegations of torture have actually been investigated.

⁶ Section 363 of the Penal Code (Ordinance No. 2 of 1883 as amended).

⁷ Section 363(e) in describing conditions for statutory rape refers to “...with or without her consent when she is under sixteen years of age” (emphasis added).

⁸ UN Committee against Torture, Concluding Observations on the 5th Periodic Report of Sri Lanka, UN Doc. CAT/C/LKA/CO/5 (2017).

⁹ For further information see, Kishali Pinto-Jayawardena, “Still Seeking Justice in Sri Lanka, Rule of Law, the Criminal Justice System and Commissions of Inquiry since 1977,” *International Commission of Jurists*, January 2010.

Of the two convictions of military personnel for sexual violence, one was overturned on appeal. In 2015 four soldiers were found guilty and sentenced to 25 years in prison in October 2015 of sexually assaulting two Tamil women in Vishvamadu in 2010. The case was brought under the Torture Act and it recognised rape as torture, although the sexual nature of the offence and the specific harms relating to it were not acknowledged. In October 2019, the Court of Appeal overturned that judgment and acquitted the four individuals.¹⁰

There is no known case in which CRSV against men and boys has been prosecuted in Sri Lanka. Senior police officers speaking to ASP under conditions of anonymity maintained that no cases of sexual violence against male Tamils have been investigated or brought before the courts because no complaints have been received by the police. However, although many survivors do not report for stigma and fear of reprisal, this contradicts the experience of human rights defenders in Sri Lanka who are aware of attempts by male victims of sexual violence to report crimes, but where the police have either refused to record the complaint or have dissuaded victims from pursuing it.

Beyond the general lack of effective investigations and prosecution for crimes committed by security forces, including in detention settings, victims of sexual violence face additional challenges to securing justice that relate to the specific nature of the crimes against them. These include a lack of expertise and capacity in the police and judiciary.

Information gathered by ASP indicates that:

- There is no specific training available to help the police to identify and investigate sexual violence. Judges, magistrates and other judicial officials also lack understanding of and sensitivity towards victims of sexual violence, and procedures to ensure the privacy and confidentiality of victims at all stages, including during court hearings, are lacking.
- There are additionally no guidelines in policies to ensure effective institutional responses to sexual violence.
- Capacity and expertise in other specialist areas is also lacking and concerns about political interference persist. Judicial Medical Officers (JMOs), whose role it is to examine individuals alleging physical injury or harm resulting from their treatment in detention, receive no training on the identification of sexual violence against men and boys who do not specifically report that it has occurred. Physical examinations take place with consent, but stigma and shame may prevent victims from reporting injuries, particularly to the genitals, and may cause them to withhold consent. Moreover, although guidelines require that examinations take place in a private setting, there are reports of police officers being present during medical examinations.
- Forensic capacity is also low and this has caused delays of up to several years in investigations. Regular forensic analysis of samples collected by the police is the responsibility of the Government Analyst Department (GA), but concerns exist about the way in which evidence is collected by the police and delays by the GA in reporting on its findings. Such delays contribute to inordinately lengthy trial processes in Sri Lanka, which create additional uncertainty and distress for victims.

¹⁰ Chitra Weeraratne, "CA acquits four soldiers sentenced to 30 years in gang rape case," *The Island*, 10 October 2019, http://island.lk/index.php?page_cat=article-details&page=article-details&code_title=211917

4. Stalled legal reforms and delays in setting up transitional justice mechanisms

The 2017 report of the Consultation Task Force on Reconciliation Mechanisms (CTF) recommended that: “Everyone who has suffered harm or loss in such conflicts must have the right to an effective remedy including (a) effective accountability inclusive of criminal justice; and (b) adequate, effective and prompt reparation and rehabilitation.” It recognises that sexual violence against both men and women has formed part of the suffering caused by structural violence and discrimination, and recommend addressing as part of the purpose of reparations.

Further, the Sri Lanka’s 2017-2021 National Action Plan for the Protection and Promotion of Human Rights includes commitments to revise the legal definition of torture to include sexual violence, and to conduct “a credible domestic inquiry against perpetrators when sexual violence and torture is used on women and men held in detention”.¹¹

On 1 October 2015, the UN Human Rights Council adopted resolution 30/1. The resolution welcomes the government of Sri Lanka’s proposal for four transitional justice mechanisms (a commission for truth, justice, reconciliation and non-recurrence; an office for missing persons; an office for reparations; and an independent judicial mechanism with special counsel to investigate allegations of violations and abuses of human rights and violations of international humanitarian law). Of these mechanisms, only the Office of Missing Persons and the Office for reparations have been established by law.¹² The truth commission and the judicial mechanism stand unimplemented.¹³

During his successful presidential election, Gotabaya Rajapaksa questioned the commitments to accountability and justice.¹⁴ Civil society has expressed serious doubts that the new government will take effective steps to address impunity for the crimes committed during the armed conflict.¹⁵

Recommendations

ASP’s 2017 report contains a range of specific recommendations to the government of Sri Lanka which, if implemented, would prevent and address sexual violence of men and boys in detention settings and elsewhere and bring Sri Lankan laws and policies in line with its obligations under the Covenant. Regrettably these recommendations have by and large not been implemented.

ASP encourages the Human Rights Committee to include the following issues in the List of Issues for Sri Lanka:

11 Sri Lanka, National Action Plan for the Protection and Promotion of Human Rights 2017-2021, www.mfa.gov.lk/ta/6587-the-national-action-plan-for-the-protection-and-promotion-of-human-rights-2017-2021/

12 Five Commissioners were appointed to the Office of Reparations on 1 April 2019 for a three year term. As of December 2019, the Office for Reparations was still recruiting its director and other key staff. See Office for Reparations, <https://www.scrm.gov.lk/office-for-reparations>

13 See Sri Lanka Campaign, “A decade of impunity,” November 2019, <https://www.srilankacampaign.org/wp-content/uploads/2019/11/A-Decade-of-Impunity-Sri-Lanka-Campaign-November-2019.pdf>

14 See Meena Srinivasan, “Will not honour UN deal on accountability, says Gotabaya,” *The Hindu*, 15 October 2019,

<https://www.thehindu.com/news/international/will-not-honour-un-deal-on-accountability-says-gotabaya/article29693188.ece>
15 For an example of the government’s stance on accountability and the commitments contained in the UN Human Rights Council resolution, see Ministry of Defence Sri Lanka, “The Government will not allow foreign interference - Prime Minister Rajapaksa,” 13 December 2019, http://www.defence.lk/Article/view_article/774

- Provide figures and information on investigations, prosecutions and convictions for sexual violence disaggregated by gender;
- Confirm whether Sri Lanka will review its penal code to bring it into line with international standards, including by amending the definition of rape, the definition of torture and by decriminalising consensual same sex relationship;
- Provide information on the steps taken to provide reparations to victims of sexual violence, including of men and boys.