

19 December 2013



Sir Nigel Rodley
Chairperson, Human Rights Committee
Office of the High Commissioner for Human Rights
UNOG-OHCHR
Ch 1211 Geneva 10
Switzerland

Dear Sir Nigel

110th session of the Human Rights Committee: Pre-sessional meeting on Sri Lanka

We write in relation to the pre-sessional meeting of the Country Report Task Force on Sri Lanka during the forthcoming 110th session of the Human Rights Committee from 10 to 28 March 2014.

We understand that the task force will adopt a list of issues for Sri Lanka's examination at the 112th session of the Human Rights Committee from 13 to 31 October 2014.

The Public Interest Advocacy Centre (**PIAC**) is of the view that Sri Lanka's compliance with articles 2, 6, 7, 9, 10 and 12 of the International Covenant on Civil and Political Rights (the **Covenant**) requires close examination. The evidentiary material and reasoning on which that view is based are outlined below. PIAC urges the Country Report Task Force to include the questions set out below in the list of issues it adopts in March 2014.

1 Background

A International Crimes Evidence Project (ICEP)

ICEP is a project of PIAC, an Australia-based law and policy organisation. ICEP was established to conduct independent and impartial investigations into allegations of grave violations of international humanitarian law and international human rights law. ICEP's mandate is to gather the best available evidentiary material of alleged violations of international humanitarian law and international human rights law and provide that evidentiary material to relevant international and domestic institutions to assist those institutions in making informed and impartial decisions about the commission of, and accountability for, these alleged violations.

The focus of ICEP's current work is the final phase of the Sri Lankan civil war, with particular scrutiny on the period from September 2008 to May 2009, when serious and widespread violations of international humanitarian law and international human rights law are alleged to have been committed.

Consistent with its mandate, ICEP has obtained many witness statements and corroborating expert reports concerning alleged violations of international humanitarian law and international human rights law in Sri Lanka. Given ICEP's

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focus, most of these witness statements concern events that occurred in 2008 and 2009. However, many statements unique to ICEP suggest that ongoing Covenant violations are occurring in Sri Lanka. In addition, they suggest that credible evidence of serious Covenant violations exists that the Sri Lankan Government is not investigating. As you will appreciate, any failure by the Sri Lankan Government to investigate serious violations of the Covenant is a failure by it to ensure the persons whose Covenant rights have been violated have an effective remedy, as article 2(3)(a) of the Covenant demands.

B Purpose

ICEP's purpose in providing this submission is to put before the Committee evidentiary material unique to ICEP to assist the Committee's examination of Sri Lanka. Accordingly, this submission responds specifically to assertions made in Sri Lanka's Fifth Periodic Report in accordance with article 40 of the Covenant dated 29 October 2012 (the **Fifth Periodic Report**).

(i) Scope

ICEP aims to draw the Committee's attention to, and encourage further investigation of, evidentiary material from ICEP witnesses that suggests serious human rights violations continue to occur without appropriate accountability or legal redress in Sri Lanka. ICEP's experience is that ongoing impunity for serious Covenant violations creates the conditions in which further violations may be committed, because State organs and agents consider they can escape accountability. The witness evidence this submission puts before the Committee demonstrates this.

ICEP has also taken many unique witness statements dealing with events in its focus period: the final phase of the civil war from September 2008 to May 2009. It also has access to witness statements that have been before other inquiries into alleged violations of international humanitarian law and international human rights law in Sri Lanka. ICEP is in the process of finalising a report that synthesises and analyses the evidentiary material it has collected in relation to violations of international humanitarian law and international human rights law during the conflict. ICEP therefore considers it can be most useful to the Committee's questioning of Sri Lanka by bringing to light evidence of more recent allegations of serious Covenant violations. For this reason, evidentiary material relating to the conflict period is not referred to in this submission.

ICEP nevertheless presses the Committee to ensure Sri Lanka is held to its article 2(3) obligation to ensure that allegations of serious Covenant violations during the civil war are duly investigated, that those responsible are brought to justice and, where appropriate, that compensation is paid to victims and their families.¹

(ii) Confidentiality

Witnesses have provided evidentiary material to ICEP on a strictly confidential basis, so as to protect the identity and security of the witnesses and others. For this reason, the witness accounts are described below at a high level of generality. All witness statements were taken in accordance with strict internal evidence collection protocols and detailed assessments were made by interviewers with respect to the credibility of witnesses.

¹ *General Comment No. 31: The Nature of the General Legal Obligation Imposed on States, Human Rights Committee*, 29 March 2004, UN Doc. CCPR/C/21/Rev.1/Add.13, para.18.

2 Ongoing Covenant violations

A Abductions and enforced disappearances

(i) Introduction

Article 9 of the Covenant enshrines ‘the right to liberty and security of person’, and thus to freedom from arbitrary detention. Article 12 of the Covenant enshrines the right to free movement within the State. Article 10 provides that ‘all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person’.

ICEP has been provided with accounts that indicate that people have been unlawfully abducted by State organs as recently as 2012. In addition, ICEP has unique witness evidence of enforced disappearances carried out by State organs or agents during the final stage of the conflict. ICEP outlines that evidence below where it suggests an ongoing violation of article 9 is occurring because the disappeared person or persons have not been seen or heard of since they were abducted.

(ii) Disappeared persons

A person who visited Internally Displaced Person (IDP) camps in a professional capacity between January and May 2009 has stated to ICEP that he regularly heard reports of LTTE cadres being separated from civilians during screening by the Sri Lankan Security Forces (SFs). The witness stated that to his knowledge some of these cadres are still missing.

In addition, ICEP witnesses report enforced disappearances from IDP camps themselves. A witness, who was a local teacher and was detained for several months at Menik Farm in 2009, recalled seeing members of the Karuna Group accompanied by Army soldiers, identifying people in shelters and dragging them into armoured vehicles. The witness believed that these people were not seen again. ICEP has also taken a statement from a witness detained at an IDP camp from early to mid 2009, who described a senior non-government organisation (NGO) worker being arrested and taken into custody by the SFs from the camp. The witness believed the NGO worker has not been seen or heard from since.

Further, the Lessons Learned Reconciliation Commission (LLRC) has detailed the accounts of two women who reported that their husbands had been missing since surrendering to the SFs with a Catholic priest, Father Francis Joseph, and other LTTE cadres at ‘Wattuwal’ on 18 May 2009. Each reported that they had not seen or heard from her husband since.² ICEP has obtained three witness accounts corroborating this incident. One of these witnesses stated that Father Francis Joseph and the group of cadres were placed in a bus, while their families were allowed to go through the rest of the surrender process. Witness accounts and media articles indicate that Father Francis Joseph and some other members of the group have not been seen or heard from since 18 May 2009.³

² LLRC Report, at [4.246]-[4.247].

³ The Sunday Leader, *Sri Lanka’s Missing*, 19 February 2012 (available at: <http://www.thesundayleader.lk/2012/02/19/sri-lankas-missing/> visited 22 July 2013); D.B.S. Jeyaraj, *What is happening to the Ex-LTTE cadre surrendees?*, 30 July 2010, available at: <http://dbsjeyaraj.com/dbsj/archives/1599>; Siva Sundaram, ‘List of names of LTTE men unaccounted for by the Government’, *The Sri Lankan Guardian*, 10 June 2012, available at: <http://www.srilankaguardian.org/2012/06/list-of-names-of-ltte-men-unaccounted.html>.

(iii) Abductions during the post-conflict period

ICEP has also collected first-hand witness accounts from three individuals who described being abducted in 2012, before finding themselves in the custody of a division within the police, the Criminal Investigation Department (CID), where they were interrogated and tortured.

An example of the nature of these abductions is the account of one female ICEP witness. She reported that she was approached by two men in civilian clothing while riding home from work on her bicycle. The two men stopped the woman, asked to see her identification card, and then pushed her into a white van. She was blindfolded and her hands were tied behind her back. She reports being driven around for several hours before being taken out of the van and discovering herself in CID custody where she was later interrogated and tortured.

(iv) The Fifth Periodic Report

Paragraphs 183-189 of the Fifth Periodic Report address Sri Lanka's compliance with article 9. Those paragraphs stipulate the constitutional and legislative means by which that right is protected in Sri Lanka. They do not address the enforcement of those laws in practice by the Sri Lankan Government, nor do they record any investigations, prosecutions or compensation payments made under them. The witness accounts referred to above suggest that not only are those provisions not being implemented adequately, but also that officials or agents of the State itself are potentially in violation of them and of articles 9, 10 and 12 of the Covenant.

Paragraph 250 reports on Sri Lanka's response to recommendations of the March 2012 Report of the UN Working Group on Enforced or Involuntary Disappearances (A/HRC/19/58/Rev.1). That Report identified 5,671 outstanding cases of enforced or involuntary disappearances in Sri Lanka.⁴ Sri Lanka notes that an inter-ministerial working group to verify cases of alleged disappearances has been established. Sri Lanka further notes that it has reported back to the Working Group on 59 cases, sought further clarification on 100 cases and is continuing to investigate the remainder of cases the Working Group identified. Finally, it states that 'the Police report a relatively good rate of success in tracing alleged missing persons.' A footnote specifies:

The total number of persons reported allegedly missing in 2010 was 7,940 out of which 6,653 have been found. The corresponding numbers for 2011 are 7,296 and 5,185. In 2010 the number of persons allegedly "abducted" was 225 of whom 207 were later traced. The number of allegedly abducted in 2011 was 239 of whom 226 have been traced. Investigations continue into unresolved cases.

The Fifth Periodic Report does not detail how, if at all, the inter-ministerial working group has advanced substantiated cases of abductions or enforced disappearances for investigation by appropriate bodies; how, if at all, perpetrators of abductions have been sanctioned; or how, if at all, victims or their families have been compensated.

As outlined above, Sri Lanka is obliged by article 2(3) of the Covenant to ensure that persons who are victims of abductions or enforced disappearances and their families are given an effective remedy. Recognising the extreme distress that family members endure when their relatives are forcibly disappeared, the Committee has found that the family members themselves are also the victims of inhumane treatment (article 7).⁵ Given Sri Lanka's article 2(3)

⁴ UN Human Rights Council, Report of the Working Group on Enforced or Involuntary Disappearances, 2 March 2012, A/HRC/19/58/Rev.1, para. 492.

⁵ *Sarma v. Sri Lanka*, Views of the Human Rights Committee of 16 July 2003, UN Doc. CCPR/C/78/D/950/2000, para. 9.5.

obligation and its alleged involvement in the incidents described above, the paucity of Sri Lanka's response to the issue in the Fifth Periodic Report puts its compliance with the Covenant into question.

(v) *Proposed questions for the list of issues*

ICEP urges the Committee to include the following questions in the list of issues:

1. Please advise what steps the Sri Lankan Government has taken to investigate and prosecute allegations of enforced disappearances occurring at sites controlled by State organs or agents during the conflict and, if appropriate, to pay compensation to the disappeared persons or their families. In particular, please detail what disciplinary or punitive sanctions have been issued against those responsible.
2. Please advise what steps the Sri Lankan Government has taken to investigate and prosecute allegations or reports of abductions occurring after May 2009 and, if appropriate, to pay compensation to the disappeared persons or their families. In particular, please detail what disciplinary or punitive sanctions have been issued against those responsible.
3. Please advise what protections and support the Sri Lankan Government provides for persons who claim to have been abducted by State forces, so as to ensure their complaints can be adequately reported and investigated.
4. Please advise what measures the Sri Lankan Government takes to ensure detainees are held only in places officially recognised as places of detention and to ensure their names and places of detention, as well as for the names of persons responsible for their detention, are kept in registers readily available and accessible to persons concerned for them, including relatives and friends.
5. Please advise what internal controls prevent the people within the various divisions of the Police force and the Security Forces from abducting people without engaging in the formal process of arrest and/or detention.
6. In the case of an alleged abduction perpetrated by people within the various divisions of the Police force and the Security Forces, what body investigates the allegation? What ensures the investigation is independent, thorough and timely?

B Torture and cruel, inhuman or degrading treatment

(i) *Introduction*

Article 7 enshrines the prohibition on torture and other forms of cruel, inhuman or degrading treatment or punishment. The prohibition is non-derogable.⁶ The perpetration of rape and other forms of sexual violence by State organs or agents is a subset of article 7 violations. Both the European Court of Human Rights and the Inter-American Court of Human Rights have found that certain instances of rape of detainees amounted to torture.⁷ The European Court of Human

⁶ Human Rights Committee, *General Comment No 20: Concerning the Prohibition of Torture and Cruel Treatment or Punishment (Art 7)* (1992), para. 3.

⁷ European Court of Human Rights, *Aydin v. Turkey* (ibid., § 1741); Inter-American Commission on Human Rights, *Case 10.970 (Peru)* (ibid., § 1743).

Rights has also found that a strip search of a male prisoner in the presence of a female prison officer to be degrading treatment.⁸

In paragraphs 200-202 of the Fifth Periodic Report, Sri Lanka acknowledges the sanctity of the right not to be subject to torture or cruel treatment. At paragraph 203, it accepts that 'sporadic and isolated incidents of torture have occurred within its territory in the past'.

ICEP has obtained witness accounts suggesting that the use of torture in Sri Lanka is neither sporadic and isolated, nor confined to the past. ICEP witnesses report undergoing torture and cruel treatment while in State custody at detention camps, rehabilitation centres, CID premises and Police premises since the end of the war in 2009. In addition, ICEP has four unique witness accounts describing incidents of rape and sexual violence occurring in the period following the conflict which would amount to torture or cruel treatment.

(ii) Detention camps and rehabilitation centres

ICEP has directly obtained witness accounts from two individuals detained and tortured at detention camps and rehabilitation centres. One witness, a former LTTE cadre, was detained at various facilities between May 2009 and September 2011. The other witness, also a former LTTE cadre, was detained at various facilities between May 2009 and September 2010. At these facilities, both witnesses described being questioned by the Security Forces in relation to their involvement with the LTTE, the location of weapons supplies, and the identity and whereabouts of other LTTE members. Both witnesses claim to have been tortured during their detention.

One witness described being slapped, punched, and beaten severely with electrical wire and wooden batons. This witness also reported having his head submerged in a barrel of water to the point of losing consciousness. ICEP has obtained a medico-legal report supporting the account of one of these witnesses.

ICEP has also obtained a witness account of sexual violence against a man during interrogations at separate LTTE 'surrendee' detention and rehabilitation facilities. This witness was detained at several rehabilitation and detention camps between May 2009 and December 2010 after surrendering to SFs. He stated that, during questioning by SFs at both of these camps, his clothing was removed and SFs personnel touched his penis and mocked him.

(iii) CID custody

ICEP has recorded first-hand witness accounts from two young Tamil women who stated that they were repeatedly raped and subjected to sexual violence, among other forms of torture, by the CID. These accounts relate to incidents that are reported by the witnesses to have occurred in 2011 and 2012. One of these witnesses described being tortured by both plain-clothed CID officers, and officers wearing military uniform. The witness observed that some of the officers in military uniform wore gold insignia or badges, indicating to the witness that they were of higher rank. Both women's accounts are supported by medico-legal reports.

In addition to these accounts, a male witness reported having his genitals tightly squeezed during questioning by the CID in 2012, causing ongoing pain. He has also experienced ongoing bleeding from his anus since his interrogation and torture by the CID, which he attributed to receiving severe kicks to his stomach. He did not experience this bleeding prior to his detention.

⁸ European Court of Human Rights, *Valasinas v. Lithuania* (*ibid.*, § 1742).

He stated that he does not know the extent of mistreatment he was subjected to, as at times he was unconscious from pain. ICEP has sighted a medico-legal report provided by the witness supporting his statement.

(iv) Police custody

ICEP has also directly collected witness accounts indicating that torture of individuals in Police custody has continued after the conflict. ICEP has obtained five first-hand accounts of torture in Police custody in 2011 and 2012. Collectively, these witnesses described being subject to treatment such as being kicked, slapped and punched; being beaten with plastic pipes filled with sand or electric wire; being burnt with cigarettes; and four witnesses reported being suffocated by having a petrol-infused plastic bag placed over their heads. In addition, two witnesses described being hit with a wooden baton on the soles of their feet, one witness described being suspended upside down, with his head close to a pot of boiling water containing chillies, and another two witnesses recounted being suspended by their ankles. One of these witnesses, who was suspended, recalled being severely beaten and burnt with cigarettes while in this vulnerable position.

Two witnesses stated that they repeatedly had their heads forcibly submerged in a barrel of water, which one witness described as continuing almost to the point of drowning. Four of the witnesses were forced to sign documents written in Sinhala, which they did not understand, and in most instances, were not explained to them. ICEP has obtained medico-legal reports supporting the accounts of four of these witnesses.

After being released from CID custody in Colombo, one of the young female Tamil witnesses mentioned above states that she was required to sign an attendance form each week at the local Police station in her home town. She told ICEP that when she attended the Police station the male Police officers would take her to another room, abuse and threaten her and sexually assault her. The witness claimed that this would occur whatever Police officers were on duty.

(v) The Fifth Periodic Report

In paragraphs 200-224 of the Fifth Periodic Report, Sri Lanka addresses its compliance with article 7. It refers to the issuing of directives to Police to ensure the safety of detainees, the permitting of Magistrates to visit prisons unannounced, and the monitoring of criminal investigations into allegations of torture by a bespoke unit of the Attorney-General's Department. At paragraph 209, Sri Lanka states that it is 'committed to conduct[ing] prompt, impartial and comprehensive criminal investigations' into allegations of torture by the Police and the armed forces.

Yet in the next paragraph, Sri Lanka notes that the conducting of those investigations is assigned to the Special Investigation Unit of the Department of the Police – clearly, this puts any investigation's impartiality (real and perceived) into question. And in paragraph 218, Sri Lanka accepts that 'not too many cases end up in convictions'. Sri Lanka refers to its adversarial criminal justice system and notes that, '[e]ither due to lack of evidence or witnesses going back on their statements in certain instances the perpetrators go unpunished'.

(vi) Proposed questions for the list of issues

ICEP considers that the accounts detailed above suggest that Sri Lankan State organs continue to violate article 7, article 9, article 10 and in some instances threaten to violate article 6 (the right to life) of the Covenant. ICEP also considers that they suggest an ongoing failure by Sri

Lanka to ensure that individuals within its territory have an effective remedy for those violations, as article 2(3) requires.

ICEP urges the Committee to include the following questions in the list of issues:

1. Please advise what steps the Sri Lankan Government has taken to investigate and prosecute allegations or reports of torture or cruel treatment, including rape and sexual violence, occurring after May 2009 and, if appropriate, to pay compensation to the mistreated persons or their families. In particular, please detail:
 - a. the number of complaints and how they were dealt with;
 - b. the disciplinary or punitive sanctions have been issued against those responsible (including qualitative and quantitative information about those sanctions); and
 - c. in cases where no disciplinary or punitive sanctions have been issued against an alleged perpetrator of torture or cruel treatment, please explain why they were not issued.
2. Please advise what protections and support the Sri Lankan Government provides for persons who claim to have been tortured or subjected to cruel treatment by Police or the armed forces, so as to ensure their complaints can adequately be reported and investigated.
3. Please advise what internal controls prevent the use of torture and cruel treatment by Police and the armed forces. What protections are available for persons within the Police and armed forces who report torture or cruel treatment perpetrated by their colleagues? What efforts has the Sri Lankan Government made to ensure that the culture of the Police, the CID and the armed forces does not tolerate human rights violations?
4. In the case of an allegation of torture or cruel treatment against the Police, on what grounds does the Sri Lankan Government consider that investigation of the allegation by a body associated with the Police is independent? What steps are being taken to enhance the real and perceived independence of the investigative process?
5. Please advise how Sri Lanka ensures that evidence obtained through torture or cruel treatment is inadmissible in Sri Lankan courts.

3 Conclusion

We hope that this information is useful for the Country Report Task Force in preparing the list of issues. Please do not hesitate to contact us should you require any further details.

Yours sincerely



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