



TORTURE

SUMMARY OF KEY ISSUES FROM PREVIOUS UPR CYCLES

Impunity

In the first cycle, Portugal's recommendation to "Combat impunity" was noted. While the second cycle recommendation made by Argentina to "pursue its efforts to fight against impunity for serious human rights violations committed during the internal armed conflict" was accepted, the recommendation by the United States of America to "end impunity for human rights violations and fulfil legal obligations regarding accountability" was noted. Other noted recommendations concerned accession to the Rome Statute and contained elements on zero tolerance for impunity, and non-impunity in the judicial process on all alleged enforced disappearance cases.

Extrajudicial executions

Six recommendations in its first UPR concerned extrajudicial killings concerning investigations and prosecutions of all allegations of extrajudicial, summary or arbitrary killings and to implement the recommendations made by the Special Rapporteur on extrajudicial, summary or arbitrary executions. Sri Lanka was further recommended to enhance its capacity in the areas of crime investigations, the judiciary and the NHRC with the assistance of the international community. In the second cycle Sri Lanka noted the one recommendation that referred to extrajudicial executions; the Holy See recommended investigating all allegations of extrajudicial killings and follow-up according to justice requirements.

Torture

Over two UPR cycles, Sri Lanka received 19 recommendations on torture. Eight recommendations concerning ratification of the Optional Protocol to the Convention Against Torture were noted. In 2008, a recommendation on supporting the establishment of a OHCHR field presence was also noted. A Senior Human Rights Advisor has been working in the UN Country Team in Sri Lanka since June 2004. At the same review, Sri Lanka accepted to implement the recommendations of the Special Rapporteur on torture. In its second review in 2012, all recommendations relating to torture were noted.

NATIONAL FRAMEWORK

The Sri Lankan Constitution guarantees freedom from torture, inhuman, cruel and degrading treatment as a non derogable right. The Convention Against Torture, Cruel, Inhuman and Degrading Treatment Act No. 22 of 1994 criminalizes torture. No new cases were filed under this Act since 2011. The Police and the National Police Commission are empowered to inquire into and take action against police officers against whom complaints of torture has been alleged. The Supreme Court of Sri Lanka has jurisdiction to hear and determine complainants of fundamental rights violations including torture.

The Human Rights Commission of Sri Lanka is empowered to inquire into complaints yet can only make recommendations to the respective state institutions. Despite the introduction of Assistance to and Protection of Victims of Crime and Witnesses Act, No. 4 of. 2015, the situation of witnesses and victims has not changed.

The State of Sri Lanka has time and time again declared at international fora including to UN Committees that Sri Lanka has a zero tolerance policy towards torture.



NATIONAL FRAMEWORK

The Prevention of Terrorism Act creates conditions for state officers to torture detainees with impunity. The draft Counter Terrorism Act which is to replace the PTA continues practices of administrative detention and reverse burden of proof on the victim to show that statements were obtained coercively.

CHALLENGES

The ordinary criminal procedure fails to sufficiently safeguard against torture

Lack of independent and effective avenues for recording complaints and seeking remedy for allegations of torture.

IMPACT

Domestic law on rights of persons under arrest and detention do not explicitly provide for a right to a lawyer, an interpreter, a right to inform one’s family or friends of the arrest. As a result family members are not formally informed of detentions, are not provided reasons for the arrest, and are unable to challenge the arrest and detention. Those under arrest or detention are unable to secure the advice of a lawyer.

In 2016, Sri Lanka (CAT/C/LKA/5) submitted to the UN Committee Against Torture that only 3 cases of torture were reported in 2014 while the Human Rights Commission of Sri Lanka (HRC SL) received 481 complaints of torture. It is clear that a majority of complaints are not under investigation by the State.

The judicial medical officers (JMOs) are not obligated to refer complaints of torture to an independent investigation mechanism and in practice do not refer the complaint to any state institution for investigation.

JMOs also do not provide copies of the medico legal form to the complainant. The complainant cannot assess the nature of the injuries and take a considered decision on pursuing redress. Magistrates too, to whom complaints of torture are made, do not refer complaints of torture to any appropriate state institution for further action.

The constitution provides a one month time limitation after which complaints of torture are not entertained by the Supreme Court. It is extremely difficult for complainants to access the Supreme Court, which only sits in Colombo and legal costs are also prohibitive. The epistolary jurisdiction of the Supreme Court is often cited as a means of accessing justice, however organizations that assist complainants state that no response or action has resulted from written communications on violations to the Supreme Court. There is no public and transparent mechanism to track such complaints made, including no acknowledgement of receipt of any complaint. The Legal Aid Commission’s means test also excludes many victims of torture.



CHALLENGES

IMPACT

Lack of independent and effective avenues for recording complaints and seeking remedy for allegations of torture.

Where the alleged perpetrators are police officers, complainants are reluctant to complain or have no faith that the complaint will result in any meaningful remedy. Those who have pursued complaints state that the inquiries conducted by some of the senior police officials demonstrated partiality towards the police and sometimes resulted in intimidation. Complainants have also reported lack of action by the police on complaints against police officers. The lack of an independent complaints mechanism that is empowered to inquire into police action and has no dependency or connection with the police structure/hierarchy has jeopardized the complaints mechanism and the safety of complainants.

Impunity as a result of long delays in providing redress.

There are long delays in every forum in which human rights cases involving complaints of torture are instituted. For example in the recent judgments of the Supreme Court: (1) arrest and disappearance case instituted in October 2008 of Selvarajah Gunaseelan and K Kugadas of Batticaloa, judgment was delivered in July 2017 (after 9 years). (2) In Case no. 608/2008 relating to an incident of torture in July 2008 judgment was delivered in January 2017 (after 9 years). (3) In SC FR 244/2010 relating to an incident in May 2009 judgment was delivered in June 2017 (after 7 years).

Complaints to any authority including the National Police Commission, Inspector General of Police, Human Rights Commission of Sri Lanka etc, does not result in the offending of officers being suspended from service pending a decision after inquiry. At most the practice is to re-assign or transfer police officers, which is grossly insufficient as they are able to continue to influence the complainant and the risk of future acts by the same officer is not addressed.

Impunity as a result no criminal or disciplinary action.

The state fails to initiate immediate criminal investigation and disciplinary inquiry into complaints of torture. Police officers against whom complaints have been lodged are more likely to be transferred and are rarely suspended from service. The Attorney General's Department has stopped prosecution under the Act against torture. The institutions which receive complaints relating to torture, in practice do not trigger other processes of prosecution and disciplinary inquiries.

No effective witness and victim protection system

The government is yet to allocate funds to establish the administrative framework necessary to implement the provisions of the Witness and Victim Protection Act of 2015. Witnesses and victims continue to be intimidated to date, and pressured into withdrawing complaints and pursuing remedies.



CHALLENGES

IMPACT

Human Rights commission recommendations have no force and fail to be implemented

The Human Rights Commission is only empowered to make 'recommendations' at the conclusion of an inquiry into a violation. There is no effective means of causing the implementation of the 'recommendation'. Such recommendations do not extend to advice to the Attorney General to consider prosecution of incidents of torture, neither does it extend to recommendations to the National Police Commission to consider taking disciplinary action against the offending officer.

Prison overcrowding

There insufficient infrastructure to support the overwhelming number of prisoners. In the prison of Vavuniya, the UN Special Rapporteur on Torture noted that there is only 0.6 square meters of space per prisoner available.

There is no mechanism to remedy the full physical and psychological impact of torture or provide restitution to victims.

There are no state sponsored programs for victims of torture to be provided with medical, psychological and other restorative relief. As a result victims are compelled to personally pay for medical attention, usually does not access psychological assistance and may suffers loss of income. There is no assistance towards reintegrating and restoring the victim's life as far as possible to prior to the incident of torture occurring. The medical and psychological impact of torture affects the future lives and productivity of victims.

RECOMMENDATIONS

1. Amend the Code of Criminal Procedure in order to ensure that the human rights of prisoners and detainees are fully observed in the criminal justice system. Ensure that the Attorney General commence prosecutions under the Convention Against Torture, Cruel, Inhuman and Degrading Treatment Act No. 22 of 1994 against every person who is suspected of any involvement to an incident of torture.
2. Provide targeted training and capacity-building to law enforcement officials and judges to improve criminal investigation methods. Ensure that all avenues of complaint are independent, safe, effective, confidential and accessible for victims of torture, including for persons deprived of their liberty.
3. Establish an independent body tasked with investigating complaints of torture against law enforcement officers..
4. Ensure the independence of the prosecutorial authority responsible for acting on cases of torture.



RECOMMENDATIONS

5. Provide prosecutors with the ability to mandate ex officio investigations into torture.
6. Revise the 'Assistance to and Protection of Victims of Crimes and Witnesses Act' to ensure that witnesses to and victims of human rights violations, including torture, are effectively protected and assisted, in particular by ensuring that the Victims and Witness Protection Division is an autonomous entity independent of the police hierarchy and that its members are fully vetted.
7. Take immediate criminal and disciplinary action against police officers responsible for threats or reprisals against victims of and witnesses to torture.
8. Ensure that persons under investigation in cases of torture are immediately suspended from duty for the duration of the investigation.
9. Ensure that all allegations of unlawful detention, torture and sexual violence by security forces are promptly, impartially and effectively investigated by an independent body.
10. Immediately embark upon an institutional reform of the security sector and develop a vetting process to remove from office military and security force personnel at the higher and lower ranks, as well as any other public official, individuals for which there are reasonable grounds to believe that they were involved in human rights violations, as recommended in the report of the OHCHR Investigation on Sri Lanka.
11. Take prompt legislative measures to repeal the Prevention of Terrorism Act (PTA) and abolish the regime of administrative detention.
12. Ensure that a medical examination is performed promptly at the beginning of the deprivation of liberty by independent doctors, including doctors of the detainee's own choosing, who have been trained in the use of the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol);
13. Ensure that the medico-legal report is made directly available to the detainee or the detainee's counsel on request
14. Ensure that all examinations are performed out of earshot and sight of police officers and prison staff;
15. Ensure that all doctors are able to report any signs of torture or ill-treatment to an independent investigative authority in confidence and without risk of reprisals.



RECOMMENDATIONS

16. Make necessary legislative amendments to ensure that national legislation, and any legislative proposals to replace the security legal framework, strictly guarantees that coerced confessions are inadmissible in practice as evidence in court, including in cases concerning State security.
17. Provide the Human Rights Commission of Sri Lanka with sufficient resources and staff to enable it to fulfill its mandate effectively.
18. Reinforce the mandate of the Human Rights Commission by legislating on its powers to refer cases directly to the courts, as recommended in the OHCHR Investigation on Sri Lanka report.
19. Introduce programs to reduce overcrowding in prisons.
20. Guarantee that victims of torture access and benefit from effective remedies and redress, including restitution, adequate compensation, rehabilitation, satisfaction and guarantees of non-repetition.
21. Provide periodic and compulsory training on the provisions of the CAT Convention, the Istanbul Protocol and non-coercive interrogation techniques to all officials involved in the treatment and custody of persons deprived of their liberty.