



A ROADMAP TO VICTIMS' JUSTICE

THIRD SPOT REPORT

***How the International Community's Passivity Has
Enabled Further Mass Atrocities in Sri Lanka: the Case
of Ongoing Illegal Detention, Torture, and Sexual Violence***

7 March 2018

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EXECUTIVE SUMMARY

1. In October 2015, the Government of Sri Lanka (GSL) committed to a broad transitional-justice agenda pursuant to UN Human Rights Council (HRC) Resolution 30/1. The measures included accountability mechanisms to address some of the worst crimes of the 21st Century. Since then, the GSL has proceeded in bad faith, reneged on its international commitments, and violated its legal obligations to victims. To make matters worse, Sri Lankan security forces have continued to commit serious crimes—including arbitrary deprivations of liberty, torture, and sexual violence—with impunity. Seemingly, the failure of the international community to hold Sri Lanka to account for past crimes has encouraged the continuation of violations.
2. Since the filing of the MAP's last report in November 2017, the GSL has made *zero progress on its transitional justice agenda*, despite damning assessments by UN Special Rapporteurs and human rights organizations. Calls for a time-bound benchmarked action plan for implementation of Resolution 30/1 have fallen on deaf ears. The US and EU appear to be more interested in nurturing bilateral relationships with the GSL in reaction to China's increasing influence. And President Sirisena has maintained his position that any special court set up to investigate war crimes will not include foreign participation. Observers lament that 'Sri Lanka has shown how it's possible to hoodwink the international community, always asking for space and time'.
3. Meanwhile, as states play politics, the number of victims steadily grows. According to credible observers, '[a]bduction and *torture of Tamils* by the Sri Lankan security forces remain systematic' and 'includes torture chambers in one of the country's largest army camps, immigration fraud, human smuggling and extortion by government allies'. UN Special Rapporteur, Ben Emmerson, expressed 'extreme alarm' at the failure of the GSL to investigate either credible allegations of past torture or corroborated cases of on-going torture and sexual abuse. After his July 2017 visit, the Special Rapporteur confirmed that: 'The use of torture has been, and remains today, endemic and routine, for those arrested and detained on national security grounds,' and noted that the Tamil community has 'borne the

brunt of the state's well-oiled torture apparatus.' Many of those tortured had been arrested under the Prevention of Terrorism Act (PTA), which the GSL had failed to repeal or amend, despite having promised to do so. The UN Working Group on Arbitrary Detention called for the immediate repeal of the PTA, calling it 'one of the key enablers of arbitrary detention for over four decades'.

4. In 2015, the UN Secretary General called the conflict-related *sexual violence* 'one of the major unaddressed issues' of the Sri Lankan civil war but noted that, 'there are indications that abduction, arbitrary detention, torture, rape, and other forms of sexual violence have increased in the post-war period.' Despite the stark assessments, NGOs have documented ongoing sexual violence perpetrated by the security forces over the last year or so. The shocking details of military 'rape camps' were reported to the UN Committee on the Elimination of Discrimination against Women. And, in November 2017, an Associated Press investigation uncovered 'more than 50 men who said they were raped, branded, or tortured as recently as [that] year'. Justice C.V. Wigneswaran, chief minister for Sri Lanka's Northern Province and a former Supreme Court judge, complained that his efforts to bring such information to light was being ignored and observed that 'if the international mechanism was in place it would have acted as a deterrent to these military sadists'. The fact that the sexual violence assaults 'are not just routine but standardized' has led some to suggest that they are part of an on-going GSL policy, with military commanders 'ordering their men to rape [...] detainees as part of their counter-insurgency strategy'.
5. In the first three quarters of 2017, the Human Rights Commission of Sri Lanka received 5614 complaints, 1174 of them related to unlawful arrest and torture by police. Unsurprisingly, many Tamils in the North fear they might be abducted, arbitrarily detained, tortured, sexually abused, or killed as security forces continue their surveillance, harassment, and intimidation.
6. In his written report on Resolution 30/1 published ahead of the 37th Session of the HRC, the UN High Commissioner for Human Rights stated that he 'was deeply concerned over serious allegations in foreign media about on-going abductions, extreme torture, and sexual violence, as recently as in 2016 and

2017'. He rightly concluded that the Sri Lankan 'authorities have not yet demonstrated the capacity or willingness to address impunity for gross violations and abuses of international human rights law and serious violations of international humanitarian law'.

I. INTRODUCTION

7. The Sri Lanka Monitoring and Accountability Panel (MAP) was established to provide independent monitoring, advice, and recommendations on the progress of transitional justice in Sri Lanka.¹ Its members are senior legal practitioners with considerable expertise in national and international criminal justice mechanisms designed to address wartime atrocities.²
8. Since its formation, the MAP has actively engaged in the ongoing debate over the most appropriate manner in which to deal with allegations of war crimes and crimes against humanity committed during the protracted civil war between the GSL and the Liberation Tigers of Tamil Eelam (LTTE), which ended in 2009 and left more than 40,000 dead and some 280,000 displaced. Beginning with the publication of its report of 15 February 2016,³ the MAP has argued that the right choices will help foster accountability and reconciliation in Sri Lanka, while the wrong ones will waste an opportunity to deliver meaningful justice to the many victims and their families.
9. In October 2015, pursuant to HRC Resolution 30/1,⁴ Sri Lanka committed to a broad transitional-justice agenda made up of four distinct pillars, namely: an office on missing persons (OMP); an office on reparations; a truth and reconciliation commission, and a special court. Notably, with respect to the last pillar, the GSL initially agreed to the participation of international judges and prosecutors—something the MAP considers to be essential in helping to ensure a credible judicial process. However, since the passage of Resolution 30/1, Sri Lankan President Maithripala Sirisena's shaky coalition government appears to have reneged on many of the country's international commitments and legal obligations to victims.

¹ For the latest news and developments, please visit <http://war-victims-map.org>.

² The members of the MAP are Heather Ryan (USA), Richard J Rogers (UK), and Andrew Ianuzzi (USA). Geoffrey Robertson QC (UK) is an advisor to the MAP. Member biographies can be found on the MAP website.

³ See <http://war-victims-map.org/wp-content/uploads/2016/02/MAP-SPOT-REPORT-18.02.16.pdf>.

⁴ UN Human Rights Council, 30th Session, Resolution 30/1, 'Promoting reconciliation, accountability, and human rights in Sri Lanka', Document No A/HRC/RES/30/1, 14 October 2015.

10. As noted by the MAP over one year ago, the GSL has been proceeding in bad faith with respect to Resolution 30/1.⁵ Yet, despite demonstrable shortcomings, the HRC granted the GSL an additional two years in which to implement its ostensible justice agenda—without imposing any further demands on the GSL or setting any clear benchmarks for its compliance with the original resolution.⁶ The extended process is up for initial review by the HRC at its current 37th Session. On 9 November 2017, the MAP issued a thematic report emphasizing, again, the GSL’s lack of meaningful progress to date; highlighting the government’s continued obstruction; suggesting alternative avenues for redress and accountability; and setting out the MAP’s renewed and additional recommendations going forward.⁷
11. In addition to recapping recent developments since November 2017, the instant report—which is issued in advance of the HRC’s 37th Session⁸—is intended to call attention to the fact that, while the GSL and international actors have dithered over the implementation of transitional justice mechanisms, serious violations of international law have continued in Sri Lanka with impunity.

II. RECENT DEVELOPMENTS

A. Continued GSL Bad Faith and International Dithering

12. Since the filing of the MAP’s last report in November 2017, the GSL has made zero progress on its transitional justice agenda. In the face of a damning assessment issued by UN Special Rapporteur on the promotion of truth, justice,

⁵ See MAP ‘Second Spot Report: A Roadmap to Victim’s Justice’, 28 February 2017 (issued in advance of the HRC’s 34th Session).

⁶ See UN Human Rights Council, 34th Session, Resolution 34/L.1, ‘Promoting reconciliation, accountability, and human rights in Sri Lanka’, Document No A/HRC/34/L.1, 15 March 2017.

⁷ See MAP ‘Thematic Report: An Alternative Roadmap to Victims’ Justice’, 9 November 2017.

⁸ See ‘UNHRC to be briefed on progress achieved so far in Sri Lanka’, *Colombo Gazette*, 16 February 2018 (‘The briefing on Sri Lanka at the UN Human Rights Council (UNHRC) by the Office of the UN High Commissioner for Human Rights (UNHRC) has been set for March 21. The UN Human Rights Council adopted a resolution on Sri Lanka last March giving the country two more years to show progress on addressing post war issues. The March 2017 resolution provides a two-year extended timeline for the Government of Sri Lanka to tackle its commitments on post-war reconciliation and allegations of war crimes laid out in the 2015 UNHRC resolution. The draft resolution calls for a written report from the High Commissioner at the 37th Session of the council in March 2018.’); see also Draft Program of Work for the 37th Session of the Human Rights Council (26 February – 23 March 2018), version of 23 February 2018.

reparation, and guarantees of non-recurrence, Pablo de Greiff, the GSL—in the person of Foreign Secretary Prasad Kariyawasam—gave its usual bland reply:

We will study his statement carefully, and continue to engage with him and his mandate, as well as other experts and local stakeholders in charting the way forward on all pillars of transitional justice, and on progressing on the path of reconciliation that is essential for sustainable peace and economic progress of the country.⁹

The Foreign Secretary went on to explain ongoing stalling in typical GSL-fashion: '[T]here are delays due to several reasons including administrative reasons, but the Government remains committed to the process.'¹⁰

13. The GSL's calls for applicants to staff the still non-functioning OMP were seen as yet another attempt to stall and buy time. Further, contrary to the spirit of Resolution 30/1, the OMP was designed without any input from foreign experts. According to the National Legal Advisor to the International Commission of Jurists, Thyagi Ruwanpathirana:

The government makes piecemeal progress each time it is in the international spotlight, and this time it appears that publicly calling for applications for OMP membership is their progress point. That despite numerous calls to adopt a timeline to implement the transitional justice mechanisms, there is still no action on this, raises questions around whether the government is serious about transitional justice at all.¹¹

Ruwanpathirana described GSL steps as 'once again, tokenistic box ticking'.¹² Finally, on 28 February 2018, the OMP was officially launched with the announcement of 'the letters of appointment [...] to the chairman and seven [...] commissioners'.¹³ The GSL gave no explanation for the two-year delay, but the

⁹ 'Sri Lankan government says it will study UN Special Rapporteur's statement "carefully"', *Tamil Guardian*, 29 October 2017.

¹⁰ *Ibid.*

¹¹ Raisa Wickrematunge, 'Beyond Box-Ticking: Unpacking Pablo de Greiff's Statement on Sri Lanka', *Groundviews*, 6 November 2017.

¹² *Ibid.* N.b. 'With the next written update on the transitional justice process only due in March 2018, and a comprehensive report due in March 2019, there does not appear to be any sustained pressure to keep the transitional justice process moving forward. This will only add to the frustration and despair of conflict-affected communities.' *Ibid.*

¹³ 'OMP – A major step towards reconciliation', *Daily Mirror*, 2 March 2018. N.b. '[M]ost analysts said they were happy about the caliber, stature, and good reputation of the OMP commissioners specially its chairman Saliya Peiris who is one of Sri Lanka's widely respected fundamental rights and constitutional lawyers. [...] Along with Mr Peiris the other commissioners appointed for a three-year term are Jayatheepa Punniyamoorthy, Major General (Rtd) Mohanti Antonette Peiris, Nimalka Fernando, Mirak Raheem, Somasiri K. Liyanage, and Kanapathipillai Venthan. Ms Punniyamoorthy, a lawyer, has been appointed to represent the missing persons because her husband went missing while they were living in Mullaitivu during the war. Retired Major General Mohanti Peiris was the

announcement seemed obviously timed to curry favor with the HRC.¹⁴ The appointments were criticized by both sides of the country's political divide, with Tamil civil-society groups complaining of 'the inclusion of military personnel and the presence of only two Tamil commissioners'¹⁵ and backers of former president Mahinda Rajapaksa 'alleging that some of its members have campaigned in favor of the LTTE'.¹⁶ A leading supporter of the opposition called the OMP 'nothing but a mechanism to try war heroes' and accused Sirisena of 'buckl[ing] under pressure from the West and the UN'.¹⁷

14. The US, for its part, 'defended the reconciliation process underway in Sri Lanka',¹⁸ with Under-Secretary of State for Political Affairs Thomas Shannon, noting that 'the US recognizes the need for the process to also be sustainable' while 'welcom[ing] progress on constitutional reform, the return of private land held by security forces, and the establishment of an independent and permanent [OMP]'.¹⁹ The diplomatic message is clear: the US will not employ any stick on transitional justice issues. Rather, it is busy feeding carrots to the GSL as part of the US government's recently-articulated 'Indo-Pacific' Strategy—pursuant to which, geopolitical security imperatives trump human rights issues²⁰ and only superficial support is provided for justice mechanisms.²¹

head of the Army's Legal Department, Nimalka Fernando is a widely respected civic rights activist, Mirak Raheem is a researcher working on human rights, reconciliation, land, displacement and minority issues, Somasiri K. Liyanage a lawyer who worked on the Prison Riot Report, and Kanapathipillai Venthan a human rights activist from Mullaitivu.' *Ibid.*

¹⁴ See P.K. Balachandran, Sri Lanka Moves on Enforced Disappearances, *The Citizen*, 4 March 2018 ('With the 37th Session of the UN Human Rights Council (UNHRC) on in Geneva, the Sri Lankan government has hurriedly taken [...] steps to ward off criticism that it has done precious little to implement [Resolution 30/1] [...].')

¹⁵ 'Sri Lanka appoints commissioners to OMP as HRC37 commences', *Tamil Guardian*, 1 March 2018.

¹⁶ 'Sri Lanka's missing persons office under fire as opposition raises allegations of LTTE campaigning', *The New Indian Express*, 4 March 2018.

¹⁷ *Ibid.*

¹⁸ 'US defends ongoing reconciliation process in Sri Lanka', *Colombo Gazette*, 6 November 2017.

¹⁹ *Ibid.*

²⁰ See 'US defends ongoing reconciliation process in Sri Lanka', *Colombo Gazette*, 6 November 2017 (outlining US goals in the region, including: 'free and open Indo-Pacific region'; 'security, stability, and prosperity of the Indian Ocean region'; 'particular importance of the freedom of navigation and overflight and of maintaining a maritime order based on the rule of law including unimpeded commerce'; 'maritime security and safety, including anti-piracy measures'; 'vision to develop Sri Lanka as a regional hub for trade and investment in Asia, which would connect trade flows among ASEAN, India, the Middle East, and Africa through free and open seas that would be the key to growth of the region'; 'trade, investment, foreign assistance and direct partnership with stakeholders throughout the country'; 'strong economic partnership and robust trade relationship with Sri Lanka'; 'cooperation in law enforcement, counter-narcotics, counter-terrorism'; 'shared concerns about the grave threats to global security posed by terrorist groups such as ISIS').

According to one commentator, by making concessions to Sri Lanka's security forces—'[a]n institution that's rotten to the core'—the US 'is getting Sri Lanka dangerously wrong'.²²

15. While the GSL cites improved bilateral relations with the US and the EU in reaction to China's increasing influence in the country, critics 'say the easing of foreign pressure [on transitional justice issues] reflects a broader disengagement by major powers that had previously been vocal in their criticism of human rights violations'.²³ According to Paikiasothy Saravanamuttu, founder of Colombo's Centre for Policy Alternatives: 'If this government does nothing about the Geneva resolution, what [...] is going to happen to them internationally? [...] The Americans are turning away; the Brits are mired in Brexit. There are no champions.'²⁴ According to Dharsha Jegatheeswaran of the Adayaalam Centre for Policy Research in Jaffna, the GSL has shrewdly taken advantage of the current climate: 'Sri Lanka has shown how it's possible to hoodwink the international community, always asking for space and time.'²⁵

²¹ 'Partnership Dialogue commences, US reiterates support for implementation of UNHRC resolution', *Tamil Guardian*, 6 November 2017.

²² Taylor Dibbert, 'American Obsequiousness in Sri Lanka Continues', *The Diplomat*, 8 February 2018 ('Sri Lanka's security forces are widely (and credibly) believed to have committed crimes against humanity and other egregious human rights violations during the country's three-decade-long civil war – in addition to major violations that have occurred post-war [...]. As I've previously argued, increasing ties with the island nation's military needs to be rethought immediately: "[T]he flurry of increased US-Sri Lanka security cooperation is an especially bad idea – because such activity ensures that legitimate security sector reform won't come any time soon. Recent Associated Press reporting has reiterated that sexual violence and the torture of ethnic Tamils continue to be big problems. (The alleged perpetrators are Sri Lankan security personnel.)" [...] Suffice it to say that the US ambassador to Sri Lanka, Atul Keshap, has basically ignored Sri Lanka's human rights issues since he moved to Colombo. He seems far too busy emphasizing how robust US-Sri Lanka relations have become on his watch. When Maithripala Sirisena unexpectedly won the presidency in January 2015, many people – perhaps naively – believed that Sirisena would usher in an era of dramatic change. Three years on, it's clear that their hopes have not materialized. While there have been some positive changes, Sri Lanka's reform agenda has mostly fallen apart. Essentially, the naiveté that permeated official thinking in Washington about the "new" Sri Lankan government is a thing of the past. Those still bloviating about how terrific Colombo's performance has been are not being remotely transparent about what's happening inside the country. Surely that's worth mentioning.')

²³ Simon Mundy, 'Sri Lanka counts high cost of war and peace', *Financial Times*, 6 November 2017.

²⁴ *Ibid.*

²⁵ *Ibid.*

16. In advance of last November's Universal Periodic Review (UPR), HRW called on the HRC to 'press Sri Lanka for a time-bound action plan on reforms'.²⁶ Echoing HRW, many UN member states similarly urged the GSL 'to deliver a time-bound benchmarked action plan on full implementation of its commitments' under Resolution 30/1 during its UPR.²⁷ Additional calls were made for Sri Lanka to: ratify the Rome Statute of the International Criminal Court; sign up to the Optional Protocol of the Convention Against Torture (OPCAT); criminalize enforced disappearances; repeal the PTA; and demilitarize the North-East and return military-occupied land to its rightful civilian owners.²⁸ Such calls have repeatedly fallen on deaf ears.
17. For its part, the GSL—while 'reiterat[ing] its commitment to' Resolution 30/1—stopped 'short of accepting calls for a time-bound benchmarked action plan for its implementation'.²⁹ Notably, among the 53 UPR recommendations that did not enjoy Sri Lanka's full support were proposals to end 'military involvement in civilian functions, returning lands to civilian owners, and establishing judicial mechanism with the participation of foreign investigators, prosecutors and judges'.³⁰ The GSL did however pledge to ratify the OPCAT, repeal and replace the PTA, and fulfill commitments under Resolution 30/1.³¹ Given the GSL's obstructionist behavior to date, whether and when such pledges are converted into concrete action remain open questions.

²⁶ 'Sri Lanka: Adopt Timeline for Action', *Human Rights Watch*, 15 November 2017. *N.b.* 'Under the Universal Periodic Review, each UN member state provides updates and undergoes scrutiny of its human rights situation every four years. At the Human Rights Council, other countries are given a chance to express their concerns and make recommendations for improvement.' *Ibid.*

²⁷ 'UN member states push for time bound implementation of Sri Lanka's UNHRC commitments, call for ratification of Rome Statute', *Tamil Guardian*, 16 November 2017.

²⁸ See 'UN member states push for time bound implementation of Sri Lanka's UNHRC commitments, call for ratification of Rome Statute', *Tamil Guardian*, 16 November 2017; see also 'Sri Lanka: Adopt Timeline for Action', *Human Rights Watch*, 15 November 2017 ('Other resolution undertakings, such as security sector reform and land reform, remain largely unfulfilled.') ('In particular, the draconian Prevention of Terrorism Act (PTA) has not yet been repealed; although the government claims it has not enforced the act for the last six months, many PTA suspects remain in prison and those finally released after years of detention without charge have not received redress. Protests across the country in recent months have demanded reform and justice including for PTA detainees.')

²⁹ 'Sri Lanka fails to commit to time-bound action plan and Rome statute ratification', *Tamil Guardian*, 18 November 2017.

³⁰ *Ibid.*

³¹ *Ibid.*

18. To date, the GSL ‘has only established the [OMP]’, and ‘even there has procrastinated’.³² Tellingly, the ‘budget outline for fiscal year 2018 contains no reference or allocation for the remaining three mechanisms’.³³ Indeed, ‘while the UPR team referred to draft legislation on a truth-seeking mechanism and a reparations mechanism, they stayed silent on the fourth: a special court with authority to prosecute, which was a key plank in the October 2015 resolution’.³⁴
19. As to the latter, President Sirisena has emphatically maintained his previously-stated position on foreign participation:

[H]e was ‘of the strict view that foreign judges should not be brought to the country at any time’. The Sri Lankan President went on to blame ‘some LTTE members living abroad and members of some organizations as well as NGOs affiliated to the LTTE’.³⁵

In late November, Sri Lankan President Maithripala Sirisena declared that ‘There won’t be electric chairs, international tribunals, or foreign judges. That book is closed’.³⁶

President Sirisena ‘reiterated his refusal to allow foreign judges into any inquiry examining human rights violations during the final stages of the armed conflict, whilst claiming that Sri Lanka had not been accused of committing international war crimes’. [...] Additionally, he announced that former foreign minister Mangala Samaraweera had been ‘removed from his post for agreeing to co-sponsor the UN Human Rights Council resolution which included the participation of foreign judges in a hybrid inquiry’.³⁷

³² ‘Sri Lanka: Adopt Timeline for Action’, *Human Rights Watch*, 15 November 2017; see also World Report 2018, *Human Rights Watch*; see also ‘Sri Lanka: One Step Forward, Two Back – Government Delays Implementing Rights Pledges to UN’, *Human Rights Watch*, 18 January 2018 (‘One of the four pillars of the 2015 resolution was to create an [OMP]. Although the government enacted a law in August 2016, efforts operationalize it remained stalled until September 2017. The OMP had yet to be formally set up at time of writing, and as of November, commissioners to the OMP had not been appointed. Families of the disappeared said that the OMP was decided without proper consultation with affected groups, particularly as it was passed before the national consultation was finished. The act therefore does not address some of its central recommendations, including the need for psychosocial support, victim and witness protection measures, a minority rights commission, and symbolic gestures to allow public grieving, such as commemorating their dead.’)

³³ ‘Sri Lanka: Adopt Timeline for Action’, *Human Rights Watch*, 15 November 2017.

³⁴ Tejshree Thapa, “‘Making Haste Slowly’ is a Tired Refrain in Sri Lanka: Officials Cite Politics for Failing to Implement Promised Reforms”, *Human Rights Watch*, 28 November 2017.

³⁵ ‘Sri Lankan president blames NGOs for calling for foreign judges’, *Tamil Guardian*, 21 December 2017.

³⁶ Ana Pararajasingham, ‘Why Is Sri Lanka Defying the United Nations?’, *The Diplomat*, 22 December 2017.

³⁷ ‘Sri Lanka not accused of war crimes says president, Mangala sacked as FM for cosponsoring resolution’, *Tamil Guardian*, 7 February 2018.

The MAP has previously characterized this stance as a sop to his political base.³⁸ And in the face of increasing political turbulence in Sri Lanka—with a Rajapaksa reemergence appearing all too possible³⁹—Sirisena’s position on a special court with international assistance seems more entrenched than ever.

20. According to HRW’s World Report 2018, the events of 2017 were not promising:

Despite a presidential pledge to release names of people in government custody, particularly those forcibly disappeared since the war’s final months in 2009, the list was not produced.

The government failed to properly implement promised security sector reforms to ensure human rights protections. It failed to repeal or revise the draconian [PTA] and reform the Witness and Victim Protection Law. With a few exceptions [...] Sri Lankan police were not held accountable for routine torture and ill-treatment in custody.

In April-May 2016, the UN special rapporteur on torture visited Sri Lanka. The report, presented to the March 2017 Human Rights Council session expressed ‘extreme alarm’ at the failure to investigate credible allegations of torture, and corroborated accounts of ongoing torture, including sexual abuse.

The UN special rapporteur on counterterrorism and human rights, following a visit in July 2017, similarly reported that use of torture by Sri Lankan security forces is routine, and continues despite government claims of security sector reforms.⁴⁰

Likewise, Amnesty International has documented ‘evidence of backsliding’ in Sri Lanka.⁴¹ And yet—stubbornly, cynically, and in the face of much evidence to the contrary—the GSL insists it is making progress on human rights.⁴²

³⁸ See MAP Thematic Report, *op cit*, para 18.

³⁹ See ‘Sri Lanka’s former president seeks snap polls after big win in local elections’, *Phnom Penh Post*, 13 February 2018 (‘Sri Lanka’s former President Mahinda Rajapaksa has called on President Maithripala Sirisena to dissolve Parliament immediately and hold a general election to end the current political instability. Sri Lanka’s ruling coalition suffered a huge defeat in local elections held on February 10.); see also ‘Diplomatic community concerned over MR returning’, *Colombo Gazette*, 18 February 2018; ‘In Sri Lanka, local elections have rattled the government’, *The Economist*, 17 February 2018.

⁴⁰ World Report 2018, *Human Rights Watch*; see also ‘Sri Lanka: One Step Forward, Two Back – Government Delays Implementing Rights Pledges to UN’, *Human Rights Watch*, 18 January 2018.

⁴¹ See Amnesty International Report 2017/18, February 2018 (‘The authorities continued to detain Tamils suspected of links to the LTTE under the PTA, which permitted extended administrative detention and shifted the burden of proof to a detainee alleging torture or other ill-treatment. During his visit to Sri Lanka in July, the UN Special Rapporteur [...] stated that over 100 un-convicted prisoners (pre- and post-indictment) remained in detention under the PTA, some of whom had been held for over a decade. [...] Reports of torture and other ill-treatment in detention continued. In March [...] the Human Rights Commission of Sri Lanka said that it had continued to document widespread incidents of violence against detainees, including torture and other ill-treatment, which it described as “routine” and practiced throughout the country, mainly by police. The Special Rapporteur [...] found that 80% of those arrested under the PTA in late 2016 had complained of torture and other ill-treatment. [...] Impunity persisted for alleged crimes under international law committed during the armed conflict.’)

21. Most recently, the Sri Lankan Campaign for Peace and Justice released a report highlighting the GSL's ongoing surveillance, harassment, and intimidation of Tamils in the North—from human rights activists to ordinary citizens engaged in dissent:

'Amid much optimism about the relative increase in space under the current government, it appears that many serious ongoing restrictions faced by those living in the North of the country are being ignored', said the report, based on a series of interviews carried out in late 2017 across the Northern Province. 'In the context of ongoing impunity for past cyclical mass violence in Sri Lanka, the risks associated with a continuation of the status quo cannot be understated.'⁴³

According to the report, 96% of those interviewed faced visits or questioning from Sri Lankan military intelligence, and 63% were subjected to threats or physical violence: "Almost all of those interviewed described serious fears for their personal safety and well-being as a result of their interactions with security agencies", added the report. Many expressed concerns that they might be abducted, arbitrarily detained, tortured, sexually abused, or killed.'⁴⁴

B. Revisionism Rears its Ugly Head

22. In October 2017, the GSL embarked on an offensive political exercise designed to discredit the UN's previous findings on the civil war's civilian death toll at the hands of the Sri Lanka armed forces:

Colombo sought and obtained the help of British parliamentarian Lord Naseby to downplay a report by the UN Secretary General's Panel of Experts, which in March

⁴² See Harsha de Silva, 'Struggle for human rights in Sri Lanka: Progress despite a difficult legacy', *The Island*, 16 November 2017 ('On 1 November, the government launched Sri Lanka's National Human Rights Action Plan 2017–2021, which outlines our vision for human rights during the next five years. The plan, informed by wide consultations, contains feasible, actionable and relevant action points pertaining to ten thematic areas — Civil and Political Rights, Prevention of Torture, Rights of Women, Rights of Internally Displaced Persons and Returning Refugees, Rights of Migrant Workers, Rights of Persons With Disabilities, Economic, Social and Cultural Rights, Rights of Children, Labour Rights and Environmental Rights. The goals set out in the plan are clear, and they will strengthen the existing national mechanisms for the protection and promotion of human rights through substantial constitutional, legislative, policy and administrative frameworks. The recently enacted budget clearly shows we are serious about seeing this plan through, and have created effective ways of monitoring and evaluating its implementation.') *N.b.* Dr Harsha de Silva, MP is Sri Lanka's Deputy Minister of National Policies and Economic Affairs.

⁴³ 'Sri Lanka Campaign report outlines ongoing intimidation of Tamils in North', *Tamil Guardian*, 23 February 2018 (citing "'I Live in Fear and Go To Work": Ongoing Surveillance, Harassment, and Intimidation in Sri Lanka's North', Sri Lanka Campaign for Peace and Justice, February 2018).

⁴⁴ *Ibid.*

2011 found 'credible allegations' that as many as 40,000 civilians may have been killed in the final months of the civil war, mostly as a result of indiscriminate shelling by the Sri Lankan military. Naseby had called on the UN to reduce the number from 40,000 to between 7,000 and 8,000 based on his own research.⁴⁵

While much was made by the Sri Lankan press about the call for a revision of the number of casualties, the attempt was 'summarily dismissed by the British government via its High Commissioner in Colombo'.⁴⁶ Lord Naseby's bias was plain for everyone to see.⁴⁷

23. In November 2017, the Jaffna High Court summoned Sri Lanka Army commander Lieutenant General Mahesh Senanayake along with two other state officials 'over the disappearance of 24 Tamils since their arrest in 1996 by security forces during the internal conflict with the LTTE'.⁴⁸ A case had been filed 'by parents and relatives of the 24 missing persons' alleging that 'security forces had arrested them in Navatkuly, Jaffna'.⁴⁹ Later in the month, President Sirisena attempted to use the case in support of his preferred narrative that only a few rogue troops were responsible for crimes committed during the war.⁵⁰ According to him: 'There is something that you should accept according to your conscience. There were things outside the control of the military. They were carried out by a few in the military to appease politicians. These were illegal, against democracy, and the freedom of our people.'⁵¹ He added that 'investigations are underway into a small number of officers who acted at the

⁴⁵ Ana Pararajasingham, 'Why Is Sri Lanka Defying the United Nations?', *The Diplomat*, 22 December 2017. *N.b.* 'Naseby's links to Sri Lanka go back to 1975, when he founded the All-Party Parliamentary Group on Sri Lanka. Naseby has been an advocate for Sri Lanka in the British parliament and in 2005, was awarded Sri Lanka Ratna, the highest national honor bestowed upon foreigners for exceptional and outstanding service to the nation by the then Sri Lankan government. In November 2017, Sirisena thanked Naseby for calling for a reduction in numbers of the people killed.' *Ibid.*

⁴⁶ *Ibid.*

⁴⁷ *Ibid.* ('Naseby's links to Sri Lanka go back to 1975, when he founded the All-Party Parliamentary Group on Sri Lanka. Naseby has been an advocate for Sri Lanka in the British parliament and in 2005, was awarded Sri Lanka Ratna, the highest national honor bestowed upon foreigners for exceptional and outstanding service to the nation by the then Sri Lankan government. In November 2017, Sirisena thanked Naseby for calling for a reduction in numbers of the people killed.')

⁴⁸ 'Lanka Army chief summoned by court over disappearance of 24 Tamils', *Hindu Business Line*, 17 November 2017.

⁴⁹ *Ibid.*

⁵⁰ See 'Sri Lankan President Sirisena Acknowledges Troops Committed War Crimes', *Asiantribune.com*, 26 November 2017.

⁵¹ *Ibid.*

behest of politicians’, rejecting opposition claims that ‘this is a witch-hunt of war heroes’ and urging the military to ‘clear its name’.⁵²

24. Taking his revisionist line a step further in February 2018, Sirisena went on to flatly deny accusations of any crimes committed by government forces: ‘Some people are incorrectly defining that we have been accused of international war crimes. At no point has the Human Rights Council said that we have committed international war crimes. There is clearly no such thing.’⁵³ Of course, clarity is a matter of political perspective. On this point, the factual record speaks for itself.

C. The Fernando Incident

25. On 4 February 2018, at a rally in London, Brigadier Priyanka Fernando, the Sri Lankan High Commission’s defence attaché in the UK, ‘motioned a death threat to Tamil protestors’⁵⁴ who were demonstrating against the ‘continued occupation of private Tamil land in the island’s war-scarred north, nine years after the end of fighting’.⁵⁵ The menacing signal was caught on video.⁵⁶ As one protestor put it, an officer ‘wearing the much-hated military uniform ran a finger across his neck [...], a gesture that he would slit our necks’.⁵⁷ Fernando ‘has been identified as a commander who led troops in a military offensive in 2009, that massacred tens of thousands of Tamil civilians’.⁵⁸ According to the ITJP:

Brigadier Fernando was clearly active in the final offensive in the north of Sri Lanka from at least April 2008—and on those grounds alone should have been subjected to a scrupulous vetting process by both the Government of Sri Lanka and the UK which should have precluded his diplomatic appointment to London.⁵⁹

⁵² ‘Sri Lankan President Sirisena Acknowledges Troops Committed War Crimes’, *Asiantribune.com*, 26 November 2017.

⁵³ ‘Sri Lanka not accused of war crimes says president, Mangala sacked as FM for cosponsoring resolution’, *Tamil Guardian*, 7 February 2018.

⁵⁴ ‘Sri Lankan officer that threatened Tamil protestors implicated in war crimes’, *Tamil Guardian*, 5 February 2018.

⁵⁵ ‘Sri Lankan diplomat suspended over throat-slitting gesture’, *AFP*, 6 February 2018.

⁵⁶ *Ibid.*

⁵⁷ *Ibid.*

⁵⁸ ‘Sri Lankan officer that threatened Tamil protestors implicated in war crimes’, *Tamil Guardian*, 5 February 2018. *N.b.* ‘As part of the military offensive in 2009, Brigadier Fernando fought in Welikama and Janakapura for the 11 Gemunu Watch Battalion as part of the 59 Division of the Sri Lankan Army.’ *Ibid.* And the UN OHCHR investigation ‘detailed multiple incidents, implicating the 59 Division in the shelling of hospitals south of Mullaitivu’. *Ibid.*

⁵⁹ ‘Sri Lankan officer that threatened Tamil protestors implicated in war crimes’, *Tamil Guardian*, 5 February 2018.

Two days after the incident, Sri Lanka's foreign ministry suspended Fernando 'pending a disciplinary inquiry'.⁶⁰ However, the next day, President Sirisena ordered Fernando 'to resume his duties [...] in London',⁶¹ amid mounting pressure for his expulsion from the UK.⁶² Army commander Mahesh Senanayake rejected calls for a suspension, stating 'they could not remove officials merely because of a social-media video',⁶³ and went on to defend Fernando 'as an official who rendered an immense service as the commanding officer of the 11th Gemunu Watch to rescue villagers in Mullaitivu and elsewhere during the Wanni humanitarian operation'.⁶⁴

26. Citing evidence to the contrary, the Transnational Government of Tamil Eelam (TGTE) urged the UK not to accept the reinstatement, 'thus denying [Fernando] diplomatic cover from prosecution for war crimes, crimes against humanity, and genocide'.⁶⁵ According to the TGTE:

As a country that co-sponsored a Resolution at the UN Human Rights Council on accountability for the mass killings and sexual assault in Sri Lanka and as a Permanent Member of the UN Security Council, we urge the UK to not to accept the re-instatement of a suspected war criminal as a Military Attaché, thus denying him diplomatic cover from prosecution under Universal Jurisdiction. [...]

While denying diplomatic cover, we urge you to initiate proceedings against Fernando under Universal Jurisdiction for war crimes, crimes against humanity, and genocide committed against the Tamil people.⁶⁶

In his statement to the UN Human Rights Council in March 2017, the UN High Commissioner for Human Rights urged countries around the world to initiate actions under universal jurisdiction to hold those responsible for committing

⁶⁰ 'Sri Lankan diplomat suspended over throat-slitting gesture', *AFP*, 6 February 2018.

⁶¹ 'Sri Lanka's president revokes suspension of military official at London embassy', *Tamil Guardian*, 7 February 2018.

⁶² See 'Sri Lanka's president revokes suspension of military official at London embassy', *Tamil Guardian*, 7 February 2018.

⁶³ "Cannot remove officer due to social media video" – Sri Lankan army', *Tamil Guardian*, 7 February 2018.

⁶⁴ *Ibid.*

⁶⁵ 'UK Urged Not to Accept Re-instatement of Sri Lankan Military Attaché to Deny Cover from War Crimes Prosecution: TGTE', *EIN News*, 7 February 2018.

⁶⁶ *Ibid.*

international crimes in Sri Lanka.⁶⁷ The MAP has called for similar action wherever possible.⁶⁸

27. In a similar vein, after human rights groups called ‘for the deployment of a Sri Lankan military commander implicated in war crimes as the head of a peacekeeping force [in Lebanon] to be halted’,⁶⁹ the UN announced that his assignment has been put ‘on hold pending a review of the matter’.⁷⁰

D. The High Commissioner Begins a Bitter Swansong

28. In his first opening speech to the HRC since announcing his decision not to seek a second term, the UN High Commissioner for Human Rights, Zeid Ra’ad Al Hussein laid blame for many of the world’s worst human-rights crises squarely on the shoulders of the UN Security Council.⁷¹ Speaking on the first day of the 37th Session on 26 February 2018, Zeid sounded a highly pessimistic note:

Some states view human rights as of secondary value—far less significant than focusing on GDP growth or geopolitics. While it is one of the three pillars of the UN, it is simply not treated as the equal of the other two. The size of the budget is telling enough, and the importance accorded to it often seems to be in the form of lip service only. Many in New York view it condescendingly as that weak,

⁶⁷ ‘UK Urged Not to Accept Re-instatement of Sri Lankan Military Attaché to Deny Cover from War Crimes Prosecution: TGTE’, *EIN News*, 7 February 2018.

⁶⁸ See MAP Thematic Report, *op cit*, paras 24 *et seq*.

⁶⁹ ‘UN urged to halt deployment of Sri Lankan commander as peacekeeper’, *Tamil Guardian*, 15 February 2018 (‘The Sri Lankan Army stated that Lt Col Rathnappuli Wasantha Kumara Hewage is due to head the 12th Force Protection Company (FPC) for the United Nations Interim Force in Lebanon (UNIFIL). “We believe that under the UN’s current vetting criteria, this commander should have been screened out of all UN peacekeeping duties,” said the letter. Lt Col Hewage was involved in the massive Sri Lankan military offensive that ended in May 2009, and resulted in the deaths of tens of thousands of Tamil civilians. Reports of gross violations of international humanitarian law emerged from the military offensive, including repeated targeted attacks on civilians, hospitals and extrajudicial killings. “If the UN is seriously committed to ensuring that peacekeeping forces are fit for purpose, then DPKO-DFS and the troop contributing country (Sri Lanka in this case) need to ensure that the troops and senior personnel are properly vetted so as to prevent human rights violators from going on peacekeeping operations”, the letter continued. It also noted that the vetting procedure for Sri Lankan troops deployed on peacekeeping missions needs urgent review as “the same issue comes up for the last four commanders sent to Lebanon”.’)

⁷⁰ ‘UN suspends deployment of Sri Lankan peacekeeper over human rights concerns’, *Tamil Guardian*, 20 February 2018 (‘The Sri Lankan commander was involved in the massive military offensive that ended in May 2009 and resulted in the deaths of tens of thousands of Tamil civilians.’).

⁷¹ See ‘With Sri Lanka on the agenda UNHRC opens its 37th session’, *Colombo Gazette*, 26 February 2018; ‘UN human rights chief attacks “pernicious” Security Council veto use’, *Wiltshire Business Online*, 26 February 2017.

emotional, Geneva-centered, pillar—not serious enough for some of the hardcore realists in the UN Security Council.⁷²

The remarks were especially dispiriting given the circumstances surrounding his decision not to continue in his current role beyond September 2018.⁷³

29. In his written report on Resolution 30/1 published ahead of the 37th Session, Zeid made the following observations (which, given their scope, merit lengthy quotation herein):

A comprehensive transitional justice strategy, including a clearly defined timeline for implementation, has yet to be made publicly available and consulted. The report of the Consultation Task Force on Reconciliation Mechanisms, one of the few positive elements highlighted in the previous reports of the High Commissioner, has not yet been endorsed or officially reviewed by the [GSL] or the parliament.

It is to be seen if the [OMP] will be able to overcome the distrust and frustration that has festered among civil society and victims' groups, particularly in the north, as a result of the multiple delays, amendments, and insufficient consultation with respect to the legislation establishing the [OMP].

The ratification [...] of the International Convention for the Protection of All Persons from Enforced Disappearance on 25 May 2016 has yet to be translated into domestic legislation.

Legislation establishing a truth commission must not be further delayed, as it is a key tool for uncovering patterns of serious violations, creating a demand for accountability, and fostering consensus around a non-partisan view of victimhood that recognizes that victims of the conflict come from all communities.

Reparations, irrespective of the format they take, must be accompanied by an acknowledgement of responsibility that differentiates them from ordinary state responses to social needs.

With respect to accountability, there has been very little preparatory work for the judicial mechanism envisaged in resolution 30/1. Crimes under international law have not been incorporated into domestic law to allow for their prosecution, and few consistent efforts have been made to strengthen the forensic, investigative and prosecutorial capacities in Sri Lanka. It is critical that the [GSL] move forward in creating these preconditions while at the same time designing the special court and its procedures.

The restitution of land held by the military in the Northern and Eastern Provinces is still incomplete.

The authorities have not yet demonstrated the capacity or willingness to address impunity for gross violations and abuses of international human rights law and serious violations of international humanitarian law. [...]

⁷² Opening Statement by UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein, 37th Session of the Human Rights Council, 26 February 2018.

⁷³ See, e.g., 'UN human rights chief quits after Trump Jerusalem decision, saying he will not "bend a knee in supplication"', *The Independent*, 21 December 2017 (noting that Zeid 'suggest[ed] that his re-election would involve "lessening the independence and integrity of [his] voice" after his outspoken criticism of world powers—including the US').

The use of torture remains a serious concern. The High Commissioner was deeply concerned over serious allegations in foreign media about ongoing abductions, extreme torture, and sexual violence, as recently as in 2016 and 2017.⁷⁴

Among the High Commissioner's conclusions and recommendations are urgent calls for 'the [HRC] to continue to play a critical role in encouraging progress in accountability and reconciliation in Sri Lanka' and for 'member states to explore other avenues, including the application of universal jurisdiction, that could foster accountability'.⁷⁵

30. The MAP can only hope that the HRC will honor Zeid's looming departure with—among other things—a renewed commitment to Resolution 30/1 and, crucially, a fresh approach to the means and mechanisms by which to enforce its terms.

III. INTERNATIONALLY-SANCTIONED IMPUNITY: 2015–2018

31. As thoroughly documented in the OISL Report and elsewhere—and contrary to President Sirisena's hollow claims—the armed forces of Sri Lanka are very likely responsible for, among many other crimes: (a) 'violations related to the deprivation of liberty';⁷⁶ (b) 'torture and other forms of cruel, inhuman, or degrading treatment';⁷⁷ and (c) 'sexual and gender-based violence'.⁷⁸ Sadly, but equally well-documented, it appears that such crimes have continued with impunity from the adoption of Resolution 30/1 (and before) up to the present day. A cynic might argue that, rather than '[p]romoting reconciliation,

⁷⁴ Office of the United Nations High Commissioner for Human Rights, 'Promoting reconciliation, accountability and human rights in Sri Lanka', Human Rights Council, Thirty-Seventh Session, 26 February–23 March 2018, Document No A/HRC/37/23, 25 January 2018 (The document is an update on progress achieved in promoting reconciliation, accountability and human rights in Sri Lanka. It is submitted pursuant to Human Rights Council resolution 34/1, which followed the adoption of resolution 30/1. Both resolutions were co-sponsored by Sri Lanka, and were adopted by consensus. It provides an update to the comprehensive report of the United Nations High Commissioner for Human Rights to the Council at its thirty-fourth session (A/HRC/34/20)).

⁷⁵ Office of the United Nations High Commissioner for Human Rights, 'Promoting reconciliation, accountability and human rights in Sri Lanka', Human Rights Council, Thirty-Seventh Session, 26 February–23 March 2018, Document No A/HRC/37/23, 25 January 2018.

⁷⁶ See OISL Report, Chapter VI, paras 326–385.

⁷⁷ See OISL Report, Chapter IX, paras 532–570.

⁷⁸ See OISL Report, Chapter X, paras 571–631.

accountability, and human rights in Sri Lanka', the so-called 'Geneva Process' has perversely provided a measure of cover for the GSL's anti-Tamil agenda.

A. Violations Related to the Deprivation of Liberty

32. According to a recent HRW report, '[h]undreds of people [...] have been arbitrarily detained in Sri Lanka under the [PTA], which was enacted in 1979 to counter separatist insurgencies, notably the LTTE'.⁷⁹ Overly broad in both its terms and application, the PTA 'allows arrests for unspecified "unlawful activities" without warrant, and permits detention for up to 18 months without the authorities producing the suspect before a court pre-trial'.⁸⁰ Since the end of hostilities in May 2009, 'the PTA [...] has been used to arrest and hold people without charge or trial for months, even years'.⁸¹ The PTA has also been used for politically motivated arrests of peaceful activists.⁸² As part of its commitment to transitional justice in 2015, the GSL committed—among so many other unfulfilled things—to repeal the PTA. Yet it remains in effect today, and the GSL continues 'to use the PTA to arrest and detain supposed counterterrorism suspects'.⁸³
33. In May 2017, the GSL cabinet approved with little public consultation a draft Counter Terrorism Act, intended to replace the PTA. According to HRW: 'The

⁷⁹ 'Locked Up Without Evidence: Abuses Under Sri Lanka's Prevention of Terrorism Act', *Human Rights Watch*, 29 January 2018. *N.b.* 'There is still no clarity on the number of people held under the PTA. In August 2017, the government released a list of 84 people in custody under the PTA and facing trial, and 12 others who had not been charged. A month earlier, the government had told Special Rapporteur Ben Emmerson that of the prisoners "currently in the judicial phase of their pre-trial detention, 70 had been in detention without trial for over five years and 12 had been in detention without trial for over 10 years".' *Ibid.* See also 'Sri Lanka: Repeal Draconian Security Law', *Human Rights Watch*, 29 January 2018 ('The Sri Lankan government has failed to fulfill its pledge to abolish the abusive Prevention of Terrorism Act (PTA), Human Rights Watch said in a report released today. For decades, the PTA has been used to arbitrarily detain suspects for months and often years without charge or trial, facilitating torture, and other abuse.')

⁸⁰ 'Locked Up Without Evidence: Abuses Under Sri Lanka's Prevention of Terrorism Act', *Human Rights Watch*, 29 January 2018.

⁸¹ *Ibid.*

⁸² See 'Locked Up Without Evidence: Abuses Under Sri Lanka's Prevention of Terrorism Act', *Human Rights Watch*, 29 January 2018. *N.b.* 'In March 2014, prominent human rights campaigners Ruki Fernando and Father Praveen Mahesan were arrested while attempting to assist a 12-year-old girl whose mother, Jeyakumari Balendran, had been arrested under the PTA. An international outcry quickly led to Fernando and Father Praveen's release on bail. The charges have yet to be dropped, and they continue to occasionally face harassment by immigration authorities when they are leaving the country for travels abroad.' *Ibid.*

⁸³ 'Locked Up Without Evidence: Abuses Under Sri Lanka's Prevention of Terrorism Act', *Human Rights Watch*, 29 January 2018.

bill falls far short of the government's pledges to the Human Rights Council to end abusive detention without charge, and it remains unclear whether the government has taken on board recommendations from the UN Counter-Terrorism Committee Executive Directorate and other UN agencies.⁸⁴ Among his concerns with the draft law, UN Special Rapporteur on 'the promotion and protection of human rights and fundamental freedoms while countering terrorism' noted that the broad definition of terrorism 'poses a real risk that the legislation could be used in circumstances very far removed from acts of real terrorism, or against minorities or human rights defenders in a discriminatory and sectarian manner'.⁸⁵

34. As recently as 28 November 2017, the GSL invoked the PTA to arrest Tamils who had organized peaceful events to honor the memory of their comrades:

Participants were photographed, people were warned that any display of Tamil Tiger symbols including photographs of the fallen in uniform was illegal, and there was a menacing army presence outside the premises where the commemoration events were conducted. The very next day, Sri Lanka's state minister of defense, Ruwan Wijewardene, ordered the Terrorism Investigation Division, notorious for its use of torture, to investigate and arrest those involved in organizing the commemoration.⁸⁶

Such action followed shortly in the wake of the GSL's commitment at the UPR to repeal and replace the PTA.⁸⁷ Following a two-week country visit in December 2017, the UN Working Group on Arbitrary Detention called for the immediate repeal of the PTA, calling it 'one of the key enablers of arbitrary detention for over four decades'.⁸⁸

⁸⁴ 'Locked Up Without Evidence: Abuses Under Sri Lanka's Prevention of Terrorism Act', *Human Rights Watch*, 29 January 2018. *N.b.* 'The bill would in some ways improve upon the previous law, but it would still allow arbitrary and abusive detention. Some provisions provide potential safeguards against abuses, but as long as prolonged detention without charge is permitted, the likelihood of abuse remains high. Ultimately, the proposed law does not comply with security sector reforms sought by the Human Rights Council and required by Sri Lanka's international obligations, and suggests that the government does not intend to fully relinquish the broad and too easily abused powers available to it under the PTA.' *Ibid.*

⁸⁵ 'Locked Up Without Evidence: Abuses Under Sri Lanka's Prevention of Terrorism Act', *Human Rights Watch*, 29 January 2018.

⁸⁶ Ana Pararajasingham, 'Sri Lankan regime backing away from conflict resolution vows', *Asia Times*, 5 December 2017.

⁸⁷ See para 17, *supra*.

⁸⁸ 'Locked Up Without Evidence: Abuses Under Sri Lanka's Prevention of Terrorism Act', *Human Rights Watch*, 29 January 2018; see also 'UN experts say Sri Lankan detainees denied basic rights', *Associated Press*, 19 December 2017 ('A group of United Nations human rights experts said Friday that Sri Lanka has yet to respect individual rights, with people kept in custody for

B. Torture and Other Forms of Cruel, Inhuman, or Degrading Treatment

35. HRW and other organizations have long documented widespread torture of individuals in custody, particularly ethnic Tamils detained under the PTA for suspected involvement with the LTTE. Former Special Rapporteur Ben Emmerson said after his July 2017 visit to the country: 'The use of torture has been, and remains today, endemic and routine, for those arrested and detained on national security grounds' and noted that the PTA was used 'disproportionately against members of the Tamil community' and that such community 'has borne the brunt of the state's well-oiled torture apparatus'.⁸⁹
36. Describing an 'open door policy' for the routine use of torture by security forces, Juan Méndez, then the UN Special Rapporteur on 'torture and other cruel, inhuman, or degrading treatment or punishment', gave the following account after his 2016 visit to Sri Lanka:

Torture and ill-treatment, including of a sexual nature, still occur, in particular in the early stages of arrest and interrogation, often for the purpose of eliciting confessions. The gravity of the mistreatment inflicted increases for those who are perceived to be involved in terrorism or offences against national security. The police resort to forceful extraction of information or coerced confessions rather than carrying out thorough investigations using scientific methods.⁹⁰

Many of those detained under the PTA said that they were tortured to extract confessions or intelligence. And a 'senior judge responsible for handling PTA cases said in July 2017 that he was forced to exclude confession evidence in over 90 percent of the cases he had heard in 2017 because it had been obtained through the use or threat of force'.⁹¹ Detainees and their family members 'said that despite coerced confessions, they agreed to plead guilty

excessive periods pending investigations, and reliance on confessions that are often extracted under torture or duress. A three-member delegation of the UN Working Group on Arbitrary Detention concluded a 10-day visit to the island nation on Friday. They told reporters that individuals are being deprived of their rights in a range of facilities such as police stations, prisons, open work camps, centers for juveniles, mental health institutions and rehabilitation camps for former combatants and drug addicts. [...] They said detainees in general do not enjoy basic guarantees of due process such as immediate access to legal counsel.')

⁸⁹ 'Locked Up Without Evidence: Abuses Under Sri Lanka's Prevention of Terrorism Act', *Human Rights Watch*, 29 January 2018.

⁹⁰ *Ibid.*

⁹¹ *Ibid.*

simply to end the indefinite detention'.⁹² In the first three quarters of 2017, the Human Rights Commission of Sri Lanka 'received 5614 complaints [...] and 1174 of them have been incidents of unlawful arrest by police and torture'.⁹³

37. A July 2017 ITJP report notes that '[a]bduction and torture of Tamils by the Sri Lankan security forces remain systematic' and 'includes torture chambers in one of the country's largest army camps, immigration fraud, human smuggling and extortion by government allies'.⁹⁴ According to Yasmin Sooka, ITJP's Executive Director: 'It is hardly surprising that Sri Lanka's white van abductions continue as those in charge of past system crimes have been promoted and rewarded by this Government, which reassures perpetrators that they will never be held accountable. In addition, torturing Tamils has become a highly lucrative business'.⁹⁵ In the same report, the ITJP reveals the testimony of '57 Tamil victims of illegal detention and torture under the Sirisena government—24 of them tortured in 2016 or 2017'.⁹⁶ At the time of filing, no official has been investigated or held accountable for such torture.⁹⁷ Among other things, the report reveals the following information:

In a third of cases in 2016–17, senior officers are described entering the torture chamber, indicating knowledge on the part of those in command.

Twelve victims in 2016–17 heard other prisoners screaming from their solitary cells, indicating (a) more people were tortured and (b) all the security personnel present at the site would have had knowledge of the torture.

Biometric fingerprinting has been used in the torture chambers, technology that was only recently introduced for passports. Organized crime would be unlikely to use this or want to fingerprint in the first place.

Victims describe being asked questions about information given during previous interrogations that was not widely known, indicating those involved in torture now have access to a centralized database of past interrogation records.

Eight victims describe some of their perpetrators wearing military uniforms.

In seven cases the victim was tortured in a known site—the Vanni Security Force Headquarters (also known as Joseph Camp).

⁹² 'Locked Up Without Evidence: Abuses Under Sri Lanka's Prevention of Terrorism Act', *Human Rights Watch*, 29 January 2018.

⁹³ 'Sri Lanka Human Rights Commission receives 5614 complaints in 2017', *Colombo Page*, 5 January 2018.

⁹⁴ ITJP Press Release, 'Unstopped: State Torture & Sexual Violence in 2016/17', 14 July 2017.

⁹⁵ *Ibid.*

⁹⁶ *Ibid.*

⁹⁷ *Ibid.*

Victims are held in purpose-built cells and tortured in rooms already equipped for torture.

The abductions, releases, and detentions follow a similar *modus operandi* as during the Rajapaksa years.

Reprisals continue against family members after the victim has fled.⁹⁸

The report further details ‘graphic descriptions of the torture methods used in 2016–17, which include beating with cricket wickets and pipes, burning with cigarettes and branding with hot metal rods, asphyxiation, and hanging upside down’.⁹⁹

38. Regrettably, ‘rights groups and survivors of police torture—not everyone escapes with their life, it seems—say the practice is becoming widespread if not institutionalized in Sri Lanka’.¹⁰⁰ According to one story:

The 31-year-old was strung up and beaten relentlessly during a “routine” interrogation as police quizzed him about a robbery he claims he knew nothing about back in 2003. Intent on bending him to their will, officers at Ankumbura police station in the ancient capital of Kandy allegedly stepped things up a gear by filling a plastic bag with petrol and tying it around his face. The whole time blows kept raining down on him as the guards used their boots, fists and even cricket stumps to persuade him to change his statement, he says, wincing at the memory.¹⁰¹

The situation is such that the ‘UN, several national governments, and human rights groups have consistently raised serious concerns over the return of Tamil asylum seekers to Sri Lanka, particularly those with known links to the LTTE’.¹⁰² Human rights advocates have reported that a Tamil asylum seeker only recently deported from Australia and at liberty in Sri Lanka is currently ‘facing ongoing harassment and intimidation from security forces’.¹⁰³

⁹⁸ ITJP Press Release, ‘Unstopped: State Torture & Sexual Violence in 2016/17’, 14 July 2017.

⁹⁹ *Ibid.*

¹⁰⁰ Niranjani Roland, ‘Torture the “new normal” as Sri Lankan police stumble’, *UCA News*, 15 February 2018; see *ibid* (‘Last year, two people died in police custody after they were arrested in February. The Asian Human Rights Commission documented nine extrajudicial killings and one attempt on a suspect’s life for 2017 as a whole.’)

¹⁰¹ Niranjani Roland, ‘Torture the “new normal” as Sri Lankan police stumble’, *UCA News*, 15 February 2018.

¹⁰² Ben Doherty, ‘Tamil asylum seeker to be deported after UN committee withdraws torture concerns’, *The Guardian*, 20 February 2018.

¹⁰³ *Ibid.* *N.b.* The man, a former LTTE member called Shantaruban, ‘has twice been visited by state security officers at the house where he is staying. On the first visit, officers checked through his phone and queried his activities during the Sri Lankan civil war [...]. On the second visit, the security officers took the details of Shantaruban’s wife and his children, including the school they

C. Sexual and Gender-Based Violence

39. In March 2015, the UN Secretary General called impunity for conflict-related sexual violence (CRSV) ‘one of the major unaddressed issues’ of the Sri Lankan civil war:

The Government has adopted a zero-tolerance policy on sexual and gender-based violence and committed to take stringent action in response to such crimes, including discharging and prosecuting offenders from the security forces. However, *there are indications that abduction, arbitrary detention, torture, rape, and other forms of sexual violence have increased in the post-war period.* Notably, Tamil women and girls have reported sexual abuse in the context of the ongoing militarization of their areas of residence. Allegations of sexual violence by the Sri Lankan security forces against members of the Tamil community in the closing months of the war and in the post-conflict period have been extensively documented, but rarely addressed. Testimony of women released from detention in 2014 indicates that *acts of sexual torture were accompanied by racial insults* and specifically directed against individuals perceived as having been linked to the Liberation Tigers of Tamil Eelam.¹⁰⁴

The report ‘called upon the new Government of Sri Lanka to investigate allegations of sexual violence, including those against the security forces, and to provide services, including reparations, for survivors and those at risk’.¹⁰⁵

40. Later the same year, the OISL Report found that ‘incidents of sexual violence were not isolated acts but part of a deliberate policy to inflict torture’ on the part of the Sri Lankan security forces¹⁰⁶ and, therefore, *could* amount to war crimes

attend. KS Ratnavale, a human rights lawyer who is representing Shantaruban, said security officials had come from Point Pedro naval camp in Jaffna and repeatedly asked questions he had already faced in earlier interrogations.’ *Ibid.*

¹⁰⁴ Report of the Secretary-General on Conflict-Related Sexual Violence, Document No S/2015/203, 23 March 2015, para 77 (emphasis added).

¹⁰⁵ ITJP Press Release, ‘Sri Lanka Should Invite Special Rapporteur on Sexual Violence in Conflict’, 12 January 2016.

¹⁰⁶ OISL Report, para 591. *N.b.* Prior to the OISL Report, NGOs had documented similar abuses. See, e.g., ITJP, ‘Silenced: Survivors of Torture and Sexual Violence in 2015’, January 2016 (based on the sworn statements of twenty individuals, all of whom suffered torture and sexual violence at the hands of the security forces during 2015 while President Sirisena was in office); Yasmin Sooka, ‘An Unfinished War: Torture and Sexual Violence in Sri Lanka 2009—2014’, The Bar Human Rights Committee of England and Wales (BHRC) and The International Truth & Justice Project, Sri Lanka, March 2014 (‘paint[ing] a chilling picture of the continuation of the war in Sri Lanka against ethnic Tamils, five years after the guns went silent’, based on 40 sworn statements of men and women and finding: (1) ‘Abduction, arbitrary detention, torture, rape, and sexual violence have increased in the post-war period. Targeted for these violations are LTTE suspects, or those perceived as having been connected to, or supporters of, the LTTE. The purported aim is to extract confessions and/or information about the LTTE and to punish them for any involvement with the organization.’ (2) ‘These widespread and systematic violations by the Sri Lankan security

and crimes against humanity. The UN High Commissioner for Human Rights said one of the OISL Report's most shocking findings was 'the extent to which sexual violence was committed against detainees, often extremely brutally, by the Sri Lankan security forces, with men as likely to be victims as women' and further indicated that incidents of sexual violence 'were not isolated acts but part of a deliberate policy to inflict torture'.¹⁰⁷

41. Resolution 30/1—agreed in the wake of these findings—contains a firm commitment by the GSL 'to issue instructions clearly to all branches of the security forces that violations of international human rights law and international humanitarian law, including those involving torture, rape, and sexual violence, are prohibited and that those responsible will be investigated and punished'. Yet in the intervening years, ITJP (among others) has been instrumental in documenting additional cases of post-conflict torture and sexual violence at the hands of the GSL security forces. CRSV in Sri Lanka takes many forms, including early or forced marriage, rape (including gang and marital rape), domestic violence, trafficking, unwanted pregnancies, forced contraception, and harassment employed during military surveillance and at checkpoints.¹⁰⁸ Militarization of the war-affected areas has also resulted in other forms of

forces occur in a manner that indicates a coordinated, systematic plan approved by the highest levels of government. Members of the Sri Lankan security forces are secure in the knowledge that no action will be taken against them.' (3) 'This report establishes a prima facie case of post-war crimes against humanity by the Sri Lankan security forces, with respect to (a) torture and (b) rape and sexual violence.') Suriya Women's Development Centre, '[a] women's organization working in Batticaloa has documented 31 cases of sexual violence perpetrated by armed actors between 1996 and 2014'. Shyamala Gomez, 'Post-war Sri Lanka: Specific Needs of Sexual Violence Victim Survivors and Children Born of Rape', *UK Foreign and Commonwealth Office & UN Women*, 2017. 'The same organization reveals that between 2004 and 2014, there were 3279 cases of gender-based violence reported to their organization, which average at approximately 300 women affected by violence each year. These reported cases include 143 grave crimes such as rape, murder, child rape, incest, sexual abuse, trafficking, and sexual harassment.' *Ibid.* Individuals interviewed for a 2013 Human Rights Watch report entitled 'We Will Teach You a Lesson', said that security forces raped them, burned their genitals or breasts with cigarettes, and caused other injuries through beatings and electric shocks. 'Locked Up Without Evidence: Abuses Under Sri Lanka's Prevention of Terrorism Act', *Human Rights Watch*, 29 January 2018. Shyamala Gomez, 'Post-war Sri Lanka: Specific Needs of Sexual Violence Victim Survivors and Children Born of Rape', *UK Foreign and Commonwealth Office & UN Women*, 2017 (citing Sexual Exploitation of Female Heads of Households in the North: Twenty-Five Case Studies, FOKUS WOMEN, January 2016) (documenting sexual exploitation of female heads of household in the north by government officials).

¹⁰⁷ OHCHR Press Release, 'Zeid urges creation of hybrid special court in Sri Lanka as UN report confirms patterns of grave violations', 16 September 2015.

¹⁰⁸ See Shyamala Gomez, 'Post-war Sri Lanka: Specific Needs of Sexual Violence Victim Survivors and Children Born of Rape', *UK Foreign and Commonwealth Office & UN Women*, 2017.

sexual violence, such as sexual humiliation, sexual violence and threats during arrests, forced sexual servicing for armed actors.¹⁰⁹ Such atrocities continue.¹¹⁰

42. Sri Lanka's current legal framework fails to adequately provide for victims of CRSV. The Victim and Witness Protection Act, passed in 2015, 'has been severely criticized due to its failure to address the rights of victims and witnesses adequately'.¹¹¹ And while the Penal Code contains several offences including rape, grave sexual abuse, and sexual harassment, these offences 'provide limited recourse to a CRSV survivor'. The Convention Against Torture Act of 1994 also 'contains several gaps and does not address CRSV directly'. Separate legislation is required to include sexual violence as a crime against humanity and a war crime.¹¹²
43. ITJP has documented the testimony of male and female victims of abduction, torture, and sexual violence perpetrated by the security forces in Sri Lanka during 2015 and 2016.¹¹³ More recently, in February 2017, ITJP presented the cases of three female victims detained alongside others for prolonged periods by Sri Lankan armed forces. The '[s]hocking details of the Sri Lanka military holding women as sex slaves in rape camps [were] handed over'¹¹⁴ to the UN Committee on the Elimination of Discrimination against Women (CEDAW):

These cases occurred in different years (2007, 2009–13, 2012–15) and represent four distinct sites: one near Vavuniya, one near Puttalam, one in Colombo itself,

¹⁰⁹ See Shyamala Gomez, 'Post-war Sri Lanka: Specific Needs of Sexual Violence Victim Survivors and Children Born of Rape', *UK Foreign and Commonwealth Office & UN Women*, 2017 (citing Suriya Women's Development Centre).

¹¹⁰ See Shyamala Gomez, 'Post-war Sri Lanka: Specific Needs of Sexual Violence Victim Survivors and Children Born of Rape', *UK Foreign and Commonwealth Office & UN Women*, 2017.

¹¹¹ *Ibid.*

¹¹² *Ibid.* N.b. 'CRSV survivors, including female heads of households that have been subject to SV require access to socio-economic opportunities and access to justice. These include access to livelihood opportunities, access to health and sexual and reproductive health care, land ownership, access to water and other socio-economic rights. Survivors, in order to access the criminal justice system to seek justice for violations committed against them, require psycho-social support, legal support, psychological and psychiatric services, professional counseling and support services and the guarantee of physical protection due to fear of retaliation from perpetrators. When accessing the criminal justice system, Tamil-speaking CRSV survivors (including Tamil and Muslim women) face a language barrier throughout the criminal justice process in the courts, when accessing health services and when they approach law enforcement officers.' *Ibid.*

¹¹³ See ITJP CEDAW Submission (citing November 2016 UNCAT Submission: www.itjpsl.com/reports/submission-to-un-committee-against-torture).

¹¹⁴ Kithsiri Wijesinghe, 'UN told of Sri Lanka military operating "rape camps"', *Journalists for Democracy in Sri Lanka*, 20 February 2017.

and one outside Colombo but not in the North or East. Two of the women describe being detained in a group in one room, available for any soldier to come and chose from and take to an adjacent room or tent to be raped; the third woman was kept in a cell alone in the pitch dark for 6 months but heard other women next door screaming. In two cases, the women described regularly being given pills or injections by the security forces, which they assumed were for birth control; in the third case the woman became pregnant as a result of the rape.¹¹⁵

The victim testimony itself is nearly unreadable in its description of depravity:

A senior officer came into the room and was asked to take his pick, like we were meat in a meat market. He looked around and chose me. He took me to another room and raped me. In my two years of my captivity in this camp, I was raped so many times I cannot give a number. It was countless. There were so many different men and many of them raped me on many occasions. I even tried not to keep clean—to be dirty and stinky but that did not make any difference. On many occasions the men would ejaculate in my mouth or all over my body. I could never get used to it in my mouth and I always gagged or tried to spit it out. Often there was anal sex often leaving me bleeding from my anus. Sometimes there were so many men at one time who all wanted sex they would take me or the others into the hall or on the veranda or the kitchen to rape us.

I was only beaten, kicked and raped regularly—I may have been raped by more men but I remember the body smell and body type of the same four or five men who came very often to rape me. I could hear only women's voices in the surrounding rooms, I heard female voices on either side of my room. I could often hear screaming from other rooms and I feel convinced that the other women were also raped. I think the rapes happened mostly in the afternoon because it felt really hot.

A man came regularly and gave me two pills in the beginning and later just one from a tin box.

I would watch them load the syringe. They would take a small clear glass bottle with a little label with Sinhalese writing on it and shake it in their hands. It had clear fluid in it that looked like water. They held the glass bottle up and inserted the needle from below and then drew a certain amount into the syringe. They often did the same thing with a second clear glass bottle with clear liquid in it. I am not certain if they were mixing two medicines or they could not get the full amount out of the first bottle.¹¹⁶

ITJP also identified a group of army officers 'allegedly involved in the torture and rape of Tamil women (and men) in their roles as (a) commanders, and/or (b) as direct perpetrators or (c) being complicit in the knowledge of the acts. This information is based on the sworn testimony of 18 witnesses and survivors'.¹¹⁷ According to Yasim Sooka: 'It's hard to convey the extent of the sexual depravity and cruelty of the perpetrators'.¹¹⁸

¹¹⁵ 'Public Submission to the Committee on the Elimination of Discrimination against Women for its examination of Sri Lanka in February 2017', *ITJP*, 23 January 2017 (ITJP CEDAW), section 2.1(e).

¹¹⁶ ITJP CEDAW Submission, nn 31–34.

¹¹⁷ *Ibid*, section 3; see also ITJP Press Release, 'Unstopped: State Torture & Sexual Violence in 2016/17', 14 July 2017.

¹¹⁸ ITJP Press Release, 'Unstopped: State Torture & Sexual Violence in 2016/17', 14 July 2017.

44. In November 2017, an Associated Press investigation uncovered ‘more than 50 men who said they were raped, branded, or tortured as recently as [that] year’.¹¹⁹

Doctors, psychologists, lawmakers and rights groups have appealed to the United Nations to investigate the new allegations published by The Associated Press on Wednesday. The AP reviewed 32 medical and psychological evaluations and interviewed 20 men who said they were accused of trying to revive a rebel group on the losing side of Sri Lanka’s 26-year civil war. All the men are members of the country’s Tamil ethnic minority. Although combat ended in 2009, they say the torture and abuse occurred from early 2016 to as recently as July of this year. [...]

One of the men in the AP investigation said he was held for 21 days in a small room where he was raped 12 times, burned with cigarettes, beaten with iron rods, and hung upside-down. Another man described being abducted from home by five men, driven to a prison, and taken to a “torture room” pocked with blood splatters on the wall.

Most of the men say they their captors identified themselves as members of the Criminal Investigations Department, a police unit that investigates serious crimes.

Some, however, said it appeared their interrogators were soldiers.¹²⁰

The systematic rape and sexual torture of men in government custody has been documented as far back as 2000.¹²¹ And in 2016, the British organization Freedom from Torture ‘reported that 71 percent of its predominantly male Tamil clients said they had been raped or endured other sexual torture’.¹²²

45. The recent allegations strongly ‘suggest that Sri Lanka still has not stopped using torture—a practice it was highly criticized for during and after the war against the Tamil Tigers rebel group’.¹²³ And many Tamils ‘contend the government continues to target them as part of a larger plan to destroy their culture’.¹²⁴ According to Justice C.V. Wigneswaran, chief minister for Sri Lanka’s Northern Province and a former Supreme Court judge, his efforts to bring such information to light and the perpetrators to book were not heeded:

¹¹⁹ Jamey Keaten & Paisley Dodds, ‘Sri Lanka gov’t faces pressure over torture, rape allegations’, *The Republic*, 10 November 2017.

¹²⁰ *Ibid.*

¹²¹ See Kate Cronin-Furman, ‘Are Sri Lankan officers ordering soldiers to sexually assault Tamil detainees?’, *The Washington Post*, 16 November 2017 (noting a study in the *The Lancet* that found that one in five Tamil men detained by state forces reported being sexually assaulted while in custody).

¹²² Kate Cronin-Furman, ‘Are Sri Lankan officers ordering soldiers to sexually assault Tamil detainees?’, *The Washington Post*, 16 November 2017.

¹²³ Jamey Keaten & Paisley Dodds, ‘Sri Lanka gov’t faces pressure over torture, rape allegations’, *The Republic*, 10 November 2017.

¹²⁴ *Ibid.*

‘Unfortunately, this was overlooked. [...] *If the international mechanism was in place it would have acted as a deterrent to these military sadists.*’¹²⁵

46. For its part, the GSL has denied the AP allegations, with Defence Secretary Kapila Waidyaratne calling the claims ‘baseless and unfounded’ and insisting that the GSL ‘is for zero tolerance with regard to sexual abuse and so on’.¹²⁶ Nearly all of the men were branded with tiger stripes, and one had nearly ten thick scars across his back.¹²⁷ Yet when asked about the scars, Waidyaratne was cruelly glib: ‘These are sometime inflicted by a friendly hand’, while adding that the charges should not be judged solely on what the victims had to say.¹²⁸ In response to Waidyaratne’s claim that the GSL had conclusively investigated the allegations in the alleged perpetrators’ favor, Yasmin Sooka neatly summarized the government’s crisis of legitimacy: ‘It is precisely this cavalier approach to the justice process that leads victims to reject any domestic processes in Sri Lanka, as it frankly cannot be trusted.’¹²⁹
47. The impact on victims of sexual abuse—both women and men—is difficult to quantify. But it clearly leads to various levels of stigmatization. According to Shyamala Gomez, country director at FOKUS WOMEN, whose organization has ‘begun to document the impact of stigma on women who have been affected by sexual violence during and after the war’, the ‘fear of societal stigma prevents these women not only from accessing support services such as counseling and psychological services and government welfare services, but also deters them from accessing the criminal justice system and other institutions [...] for redress’.¹³⁰ By way of illustration, a woman from the North who had been asked for a sexual bribe had this to say:

I know I did not do the right thing and feel like a coward. We take many victims to court but when it happened to me I did not challenge it in court. I know I could have

¹²⁵ Jamey Keaten & Paisley Dodds, ‘Sri Lanka gov’t faces pressure over torture, rape allegations’, *The Republic*, 10 November 2017 (emphasis added).

¹²⁶ Jeremy Hainsworth, ‘Sri Lankan official denies allegations that state forces tortured, raped suspected rebels’, *Toronto Star*, 15 November 2015.

¹²⁷ *Ibid.*

¹²⁸ *Ibid.*

¹²⁹ *Ibid.*

¹³⁰ Shyamala Gomez, ‘Sexual Violence in Conflict: Women Survivors and Stigma: The “Social Scar”’, *Daily Mirror*, 4 December 2017.

made a complaint at the [Human Rights Commission] without going to the police, but I did not do it. I feared that everyone would know and would start to gossip. I have a grown up boy and if he hears about it, it will be bad because there are many stories about me in the community already. It is not easy to live in a community that sets such high moral standards for single women like me. A slight deviation from such moral expectations can lead to us becoming labeled as prostitutes.¹³¹

And the problem applies equally to men: ‘Given the stigma that conservative Tamil culture attaches to rape, male victims have a strong incentive to remain silent about such crimes.’¹³²

IV. A POLICY TO COMMIT SEXUAL VIOLENCE?

48. All of the above begs a seriously troubling question: Is there currently a GSL policy in place to commit crimes against the country’s Tamil population? As noted recently, ‘it’s not just the brutality of the assaults [described above] that stands out; it’s their routine nature’.¹³³ Regarding potential evidence pointing to attacks of a *widespread and systematic* nature, ‘individuals detained at different locations describe strikingly similar torture chambers, suggesting that these assaults are not just routine but standardized’.¹³⁴ And, in terms of an official impetus for such action, lies the GSL’s continued invocation of ‘the possibility of LTTE resurgence to justify heavy militarization of the former war zone’.¹³⁵ One could argue—as some already have—that such details ‘raise the disturbing possibility that Sri Lankan commanders are ordering their men to rape [...] detainees as part of their counter-insurgency strategy’.¹³⁶

¹³¹ Shyamala Gomez, ‘Sexual Violence in Conflict: Women Survivors and Stigma: The “Social Scar”’, *Daily Mirror*, 4 December 2017; see *ibid* (‘As two other female victims put it: (a) “[I]t is the woman who makes the complaint who ends up getting blamed for inviting such sexual advances”. (b) “I didn’t complain about him to anyone as who would believe that this charming, considerate, and respectable gentleman would proposition his own relative? They would end up defaming my character for making such a despicable accusation! [...] I decided that silence was the best solution so I remained so.”’)

¹³² See Kate Cronin-Furman, ‘Are Sri Lankan officers ordering soldiers to sexually assault Tamil detainees?’, *The Washington Post*, 16 November 2017 (‘The actual incidence is likely to be even higher than the reported rate.’)

¹³³ *Ibid*.

¹³⁴ *Ibid*.

¹³⁵ *Ibid* (‘A recent mapping exercise estimated that in one district, there was at least one soldier present for every two civilians.’)

¹³⁶ *Ibid* (‘It’s also possible that this is opportunistic sexual assault on an epidemic level, facilitated by a culture of aggressive impunity. The distinction matters. Widespread opportunistic rape might be stopped by a significant commitment from the state to reforming the security sector and punishing the perpetrators. But that’s not a solution to top-down, systematic violence. And confusing one for

49. Other questions raised are those that have been pending since the beginning of the Geneva Process: Does the GSL have any real intention of eventually complying with the full terms of Resolution 30/1? Does the UN have the creative capacity to effect positive outcomes in Sri Lanka? And do individual nations with geopolitical interests in the region see any incentive in applying the necessary pressure by way of limiting political and economic largesse to a committed ally?
50. To date, the UN has been unable or unwilling to enforce the terms of Resolution 30/1 by means of anything other than rhetorical scolding and provision of more time. Clearly this strategy has not worked. The GSL has opportunistically interpreted last year's extension without benchmarks as *carte blanche* to do next to nothing while citing 'administrative reasons' for continued delays. With no enforcement powers of its own, the UN can do little more than what it's already done. A classic example of international ineffectiveness, the situation calls to mind a routine by the late American comedian Robin Williams: 'In England, if you commit a crime, the police don't have a gun and you don't have a gun. If you commit a crime, the police will say, "Stop, or I'll say stop again".'¹³⁷ The MAP can only hope that the HRC has something more persuasive to say to the GSL on 21 March.

V. CONCLUSIONS & RECOMMENDATIONS

51. Based on the events of the last twelve months, the MAP concludes that: (a) the GSL continues to act in bad faith with respect to its commitments under Resolution 30/1; (b) international crimes and abuses continue to be committed in Sri Lanka with impunity; (c) key reforms to the country's justice and security sectors have failed to materialize; and (d) the GSL's record of actions with respect to impunity and accountability is, if anything, growing more disturbing

the other will produce the wildly illogical result of expecting those who are ordering the abuses to put in the heroic effort necessary to stamp them out.')

¹³⁷ See www.youtube.com/watch?v=79FICbEFoB4.

with time. GSL excuses for failing to meet obligations under Resolution 30/1—cynical one year ago—are now contemptuous.

52. Given the GSL's current posture as set out above, the MAP hereby:

- a. adopts by reference and reiterates the recommendations made in the MAP's First and Second Spot Reports—in particular, its call for a special court with a majority of international judges, a co-international prosecutor, adequate witness protection, participation of victims, and independent monitoring;¹³⁸
- b. urges the HRC to strongly condemn in detailed terms the failure of the GSL to fulfill: (i) its commitments under Resolution 30/1 as extended and (ii) its legal obligations to victims;
- c. urges the HRC to attach concrete time-bound benchmarks for the implementation of Resolution 30/1's specific commitments;
- d. urges the OHCHR to actively investigate allegations of ongoing illegal detention, torture, and sexual violence committed by state actors since the release of the OISL report;
- e. urges the UN Human Rights Commission and the OHCHR to follow the lead of the Commission in South Sudan¹³⁹ and publicly identify persons who may, according to the OSIL Report and other sources, be responsible for war crimes and crimes against humanity in Sri Lanka;
- f. calls on the United Kingdom, the United States, India, and other concerned governments of means and influence to dispense with purely rhetorical pressure and exercise available diplomatic and economic

¹³⁸ *N.b.* For all of the reasons set out above (and in previous MAP reports), it is clear that any judicial mechanism should be situated outside of Sri Lanka.

¹³⁹ See OHCHR Press Release, 'UN Human Rights Commission collects evidence to hold more than 40 South Sudanese officials accountable for war crimes and crimes against humanity', 23 February 2018.

resources specifically to persuade the GSL to act in accordance with Resolution 30/1 and its international legal obligations to victims—including support for civil-society actors committed to the cause of accountability and realization of the GSL’s commitments under Resolution 30/1;

- g. urges the HRC to lobby the UN Security Council to refer the Sri Lanka situation to the International Criminal Court, as a statement of support to the victims and human-rights defenders seeking accountability in Sri Lanka;
- h. calls upon the UN Security Council to refer Sri Lanka to the ICC;
- i. urges the HRC, civil-society actors, and governments committed to human rights to intensify advocacy to end impunity for ongoing allegations of illegal detention, torture, and sexual assault.

The MAP will continue to closely monitor events in Sri Lanka.