



# Legacies and Lessons

Sexual violence against men and boys  
in Sri Lanka and Bosnia & Herzegovina

# MISSION STATEMENT

All Survivors Project provides research to improve the global response to every survivor of sexual violence in situations of conflict and displacement. We document cases of abuse against boys and men to supplement work on girls and women to support a global response that includes all victims of violence. We are an independent, international research project working with individuals and organizations to strengthen communities by upholding the dignity of each individual.

## **CONTENTS**

<b>I. Acronyms</b>	1
<b>II. Executive summary</b>	2
<b>III. Introduction</b>	5
Legacies and Lessons: Sexual violence against men and boys in armed conflicts in Sri Lanka and BiH	5
Missing information on men and boys	5
The vulnerability of men in detention during armed conflicts	6
The failure of laws to protect men and boys	7
Protecting and supporting male survivors to access justice	8
<b>IV. Scope of study and methodology</b>	9
<b>V. Sri Lanka: Ongoing abuse, hidden victims</b>	10
Background	10
Patterns of conflict-related sexual violence against men	10
<b>Box 1: Patterns of conflict-related sexual violence against men and boys in (BiH)</b>	13
The persistence of sexual violence against men and boys in post-war Sri Lanka	14
The victims, locations and perpetrators of sexual violence against men and boys	14
A broader context of sexual abuse of men and boys	16
Lack of legal protection for men and boys from sexual violence	17
Lack of reporting	19
Lack of awareness, expertise and capacity	19
Fear of reprisal and lack of protection for victims	20
Stigma and shame	21
<b>Box 2: The role of the ICTY in delivering justice to male survivors in BiH</b>	22
The judicial response	23
<b>Box 3: Domestic prosecutions in the Bosnian courts for sexual violence against men and boys</b>	25
Non-legal support for victims	27
Opportunities and prospects for redress	28
Transitional justice	28
Security sector reform	29
<b>Box 4: The right to reparation in BiH</b>	30
<b>VI. Conclusion and recommendations</b>	31
Recommendations on Sri Lanka	32



## **I. ACRONYMS**

BiH – Bosnia and Herzegovina

CID – Criminal Investigation Department (Sri Lanka)

CTF – Consultation Task Force on Reconciliation Mechanisms (Sri Lanka)

FBiH – Federation of Bosnia and Herzegovina

GA – Government Analyst Department (Sri Lanka)

ICTY – International Criminal Tribunal for the former Yugoslavia

IDPs – internally displaced persons

ITJP – International Truth and Justice Project

JMOs – Judicial Medical Officers (Sri Lanka)

JVP – Janatha Vimukthi Peramuna (Sri Lanka)

LGBTI – lesbian, gay, bisexual, transgender and intersex

LTTE – Liberation Tigers of Tamil Eelam

OISL – (UN) Office of the High Commissioner for Human Rights Investigation on Sri Lanka

ONUR – Office of National Unity and Reconciliation (Sri Lanka)

PTA – Prevention of Terrorism Act (Sri Lanka)

RS – Republika Srpska

TID– Terrorism Investigation Division (Sri Lanka)



## II. EXECUTIVE SUMMARY

Eight years on from the end of armed conflict in Sri Lanka, the country is grappling with the legacy of massive human rights abuses committed during the war. As it does so, sexual violence against men and boys has only recently been recognised as among the violations that took place. However, the issue remains little understood and responses have so far been even less adequate than for other serious violations of international human rights and humanitarian law committed by all parties to the conflict.

Sri Lanka is not unique in this regard, but nevertheless represents an important example of how and why sexual violence against men and boys is committed in conflict settings, and the impact it has. It also presents opportunities to break the old pattern of denial that has been typical in many other conflict-affected countries. In particular, commitments by the government of Sri Lanka to establish various judicial and non-judicial transitional justice mechanisms could, if honoured, create an opportunity for developing the specialised structures, strategies and capacities necessary to ensure that sexual violence against men and boys is appropriately addressed as part of broader transitional justice processes. The fact that sexual violence by state security forces in Sri Lanka against both males and females continues today, albeit at reduced levels, creates an added urgency to act.

Although this report focuses mainly on the 26-year-long conflict between the government of Sri Lanka and Tamil armed groups, principally the Liberation Tigers of Tamil Eelam (LTTE), it also draws on experiences from the 1992-1995 armed conflict in Bosnia and Herzegovina (BiH) which was assessed at the time as having “taken sexual violence to new levels”. The response in BiH has been inadequate in many ways, ongoing efforts to provide redress for male and female survivors of sexual violence have delivered important lessons, both positive and negative, that are relevant to Sri Lanka and elsewhere.

In both Sri Lanka and BiH, lack of documentation has proved to be a first and fundamental stumbling block to responding appropriately to sexual violence against men and boys, which is attributable in part to widespread lack of understanding and awareness of the issue. In Sri Lanka, interviews conducted by All Survivors Project with lawyers, human rights defenders, medical professionals and others reveal significant confusion around the issue and a tendency to conflate sexual violence against men and boys with homosexuality. Consequently, even these frontline human rights defenders are ill-equipped to document or otherwise respond to the problem.

However, this confusion is rooted in much broader societal understandings and attitudes. Despite evidence suggesting that sexual abuse of boys is common in the context of sex tourism, schools, care homes, religious establishments and other similar settings in Sri Lanka, and that male-on-male sexual violence outside such settings is also not uncommon, the problem is buried under silence and denial.

But stigma and shame are far from being unique to Sri Lanka. Rigid masculinity norms and other forms of gender-stereotyping, while somewhat differently manifested, are also deeply entrenched in BiH and often cited as among the reasons that male survivors are unwilling to come forward. Rather than accepting under-reporting as an inevitable, the challenges faced in both BiH and Sri Lanka speak to the need for the development of gender-sensitive understandings of stigma and for specific strategies to encourage and support survivors of male sexual violence to speak out and seek assistance.

The still relatively few cases of conflict-related sexual violence against men and boys in Sri Lanka that have been documented in detail nevertheless point to patterns of rape and other brutal forms of abuse. While these differ in some notable respects from the types of sexual violence perpetrated against males during the war in BiH, men and boys in both contexts were subjected to rape, genital

violence, enforced nudity and other forms of sexual abuse, and in neither case, were these isolated incidents.

In both situations male detainees were, and in the case of Sri Lanka continue to be, at risk of sexual violence. In BiH, male rape and other forms of sexual violence typically occurred in the context of mass internment of civilians. In Sri Lanka, most reported cases of sexual violence against men are perpetrated during detention by state security forces under repressive anti-terror legislation. Although attention is also needed to other potential situations of vulnerability, effective safeguards to protect detainees from sexual violence should be a priority in both countries.

In Sri Lanka, a wholly inadequate legal framework also limits protection available to men and boys and undermines efforts to hold perpetrators to account. Sri Lankan law does not recognise and therefore does not proscribe male rape. Similarly, the prohibition of statutory rape applies only to girls (under the age of 16 years) and not to boys. Added to this is widespread discrimination, also enshrined in law, against homosexuals and the criminalisation of consensual same-sex sexual acts, which may further discourage male survivors from reporting or accessing services for fear that they may be accused of homosexual activity and themselves be prosecuted.

In BiH, legal provisions regarding sexual violence against men are now more advanced, although still not completely adequate. Both international and national prosecutions of cases of conflict-related sexual violence against men and boys have been important in bringing a degree of visibility to the issue, some accountability, and at the same time advancing international law and jurisprudence relating to sexual violence.

There are nevertheless other impediments to investigations and prosecutions in BiH that have direct parallels in Sri Lanka and affect the prospects for redress for male survivors in both contexts. Lack of effective protection for victims and witnesses has prevented male survivors from lodging official complaints and taking forward criminal proceedings in both Sri Lanka and Bosnia. Similarly, the absence of dedicated capacity and expertise within the justice sector to investigate and prosecute conflict-related sexual violence cases in both BiH and Sri Lanka continues to remain a significant barrier to justice.

Establishing criminal accountability is a priority but represents only one part of the necessary response. Survivors also need support services and have the right to reparations to ensure effective redress and enable their recovery and rehabilitation. However, this is not possible unless sexual violence against men and boys is acknowledged in law and survivors are protected and supported to come forward to seek medical and other services, as well as engage in truth-seeking, reparations programs and other transitional justice processes. Again, Sri Lanka has much to learn from BiH where truth-seeking processes that might have produced a more complete picture of sexual violence against men and boys have never got off the ground, and where male survivors are largely excluded from accessing reparations including because of poorly drafted legislation, a lack of adequate outreach to male survivors and arbitrary deadlines for applications.

In Sri Lanka, the proposed commission for truth, justice, reconciliation and non-recurrence represents an important opportunity to establish a fuller picture of sexual violence against men and boys and its impact, and therefore for harms to be addressed more fully. Likewise, the establishment of the planned reparations office offers the possibility of engaging and including survivors of sexual violence, both male and female from the start.

This report is the first in a planned series of reports on sexual violence against men and boys in different situations of armed conflict, past and present, to be published by All Survivors Project during the next four years. While it is premature to draw general conclusions based on a first case study, some provisional findings have already clearly emerged which have universal applicability and which also highlight immediate actions that are necessary in Sri Lanka to respond to past patterns of sexual violence against men and boys and to prevent and protect against their re-occurrence. These include:

- **Laws relating to rape and other forms of sexual violence should provide legal protection to men and boys as well as women and girls.**
- **Legal safeguards should be enacted and implemented and other prevention measures taken to protect detainees from sexual violence and from torture and other forms of ill-treatment or punishment during arrest and detention.**
- **Transitional justice processes should recognise that men and boys have frequently been specifically targeted for sexual violence, and transitional justice mechanisms should be designed and implemented such that the differing but equally serious consequences of male and female sexual violence are addressed.**
- **Survivors of sexual violence should receive prompt treatment and support for physical and mental harms resulting from their treatment.**



### III. INTRODUCTION

#### **LEGACIES AND LESSONS: SEXUAL VIOLENCE AGAINST MEN AND BOYS IN ARMED CONFLICTS IN SRI LANKA AND BiH**

Eight years on from the end of armed conflict in Sri Lanka, the country is grappling with the legacy of massive human rights abuses committed during the war. As it does so, sexual violence against men and boys has only recently been recognised as among the numerous egregious violations that took place. However, the issue remains little understood and responses have so far been even less adequate than for other serious violations of international human rights and humanitarian law committed by all parties to the conflict.

Sri Lanka is not unique in this regard, but nevertheless represents an important example of how and why sexual violence against men and boys is committed in conflict settings, and the impact it has. It also presents opportunities to break the old pattern of denial of sexual violence against men and boys that has been typical in many other conflict-affected countries. In particular, commitments by the government of Sri Lanka to establish various judicial and non-judicial transitional justice mechanisms could, if honoured, create an opportunity for developing the specialised structures, strategies and capacities necessary to ensure that sexual violence against men and boys is included and appropriately addressed in these processes.

The fact that sexual violence against males and females by state security forces continues today, albeit at reduced levels, creates an added urgency to act in Sri Lanka. Despite the war having ended nearly a decade ago, the laws and institutions that facilitated violations have not been reformed. In this context, incidents of sexual violence against men continue to be reported during arrests and detentions under the draconian Prevention of Terrorism Act (PTA) which has yet to be repealed or reformed despite commitments to so, as well as in the regular criminal justice system.

Although this report focuses primarily on Sri Lanka, it also draws on experiences from the 1992-1995 armed conflict in BiH which was assessed at the time as having “taken sexual violence to new levels”.<sup>1</sup> Although the response in BiH has also been inadequate in many ways, the ongoing efforts to provide redress for survivors of conflict-related sexual violence against both males and females have delivered important lessons, both positive and negative, that are applicable in Sri Lanka and elsewhere.

#### **Missing information on men and boys**

In both Sri Lanka and BiH, lack of documentation has proved to be a first and fundamental stumbling block to responding appropriately or fully to sexual violence against men and boys. In BiH, reports during and since the war have focused predominately on the horrific experience of women and girls,<sup>2</sup> despite there being early indications that sexual violence against men and boys was occurring, with incidents documented by NGOs and UN experts even as the conflict raged. Yet, 22 years on from the end of the fighting, and despite being the most thoroughly investigated conflict to date in terms of sexual violence, there are still no reliable estimates of the numbers of victims of sexual violence either male or female, let alone any meaningful attempt to reach male survivors with services and support.

In Sri Lanka, the extent and impact of conflict-related sexual violence against men and boys remains even more hidden. It is only in the last few years that details have begun to emerge which offer a fuller picture of the scale and patterns of conflict-related sexual violence, dispelling the notion

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1 M Cherif Bassiouni and Marcia McCormick, *Sexual Violence, an Invisible Weapon of War in Former Yugoslavia*, Occasional Paper No.1, International Human Rights Law Institute, De Paul University College of Law, 1996.

2 Exact figures are disputed, but the figure of an estimated 20,000 Bosniac, Croat and Serb women and girls who were subjected to rape and other forms of sexual violence during the wars in former Yugoslavia is commonly used. See, Parliamentary Assembly of the Council of Europe, Resolution 1670, Sexual violence against women in armed conflict, adopted 29 May 2009, <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=17741&lang=en>

that it affected only women and girls. Rather recent reports highlight an apparently widespread pattern of conflict-related sexual violence against men and boys by Sri Lankan security forces both during and since the war, most notably a 2015 report resulting from UN investigations which concluded that men were as likely to be victims of sexual violence as women.<sup>3</sup>

Given how commonplace conflict-related sexual violence against men and boys appears to have been, there remains disturbingly little recognition of the phenomenon in Sri Lanka. This applies not only to the authorities who have typically denied or sought to play down allegations, but also among those working with or on behalf of survivors of human rights violations. Interviews conducted in Sri Lanka by All Survivors Project with lawyers, human rights defenders, medical professionals and others reveal significant confusion around the issue and a tendency to conflate sexual violence against men and boys with homosexuality. This lack of understanding means that even these frontline human rights defenders are ill-equipped to document or otherwise respond to the problem.

This confusion is, however, rooted in much broader societal understandings and attitudes. Despite evidence suggesting that sexual abuse of boys is common in the context of sex tourism, schools, care homes, religious establishments and other similar settings in Sri Lanka, and that male-on-male sexual violence outside such settings is also not uncommon, there is unwillingness to acknowledge the problem or the enormous shame and stigma associated with it, and a tendency to ignore or ridicule complainants. Such is the taboo associated with it that one psychiatrist interviewed for this study admitted to advising families of children who have been sexually abused in schools not to report it.

But stigma and shame are far from being unique to Sri Lanka. The same is also true in BiH where rigid masculinity norms and other forms of gender-stereotyping, while somewhat differently manifested, are also deeply entrenched and often cited as among the reasons that male survivors are unwilling to come forward. Cumulatively, these and other factors continue to constitute major barriers to reporting.

The relatively few cases of conflict-related sexual violence against men and boys in Sri Lanka that have been documented in detail so far nevertheless point to patterns of rape and other brutal forms of sexual violence against men that differ in some notable respects from those in BiH. In BiH, for example, there was a high incidence of enforced sterilisation, particularly castration, which appears not to have been the case in Sri Lanka.<sup>4</sup> The use of chilli on objects used for anal rape or applied directly to the penis to create burning pain is remarkable in its cruelty. Despite these and other differences, it is clear that men and boys in both contexts were subjected to rape, genital violence, enforced nudity and other forms of sexual abuse, and that these acts were not isolated incidents.

### **The vulnerability of men in detention during armed conflicts**

The evidence shows that most known incidents of sexual violence against men in both BiH and Sri Lanka took place in situations of detention. In BiH, male rape and other forms of sexual violence typically occurred in the context of mass internment of civilians. In Sri Lanka, most reported cases of sexual violence against men were perpetrated during detention by state security forces. Although, incidents of sexual violence against men and boys also took place in other settings such as during house raids by security forces, the extent of sexual violence against men in detention in both conflicts is notable. In both cases it is directly attributable to conditions arising from large-scale detentions of civilians as well as combatants; the existence of numerous official and unofficial

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3 The Human Rights Council mandated investigations (through Resolution 25/1) into allegations of violations of international law following the breakdown of the 2002 Ceasefire Agreement to the end of the conflict. See, Report of the Office of the High Commissioner for Human Rights Investigation on Sri Lanka (OISL), 16 September 2015, UN Doc. A/HRC/30/CRP.2, [www.ohchr.org/EN/HRBodies/HRC/Pages/OISL.aspx](http://www.ohchr.org/EN/HRBodies/HRC/Pages/OISL.aspx)

4 It has been noted that the clearest evidence of genital violence comes from the conflict in former Yugoslavia, not necessarily because it was the conflict with the highest incidence of the practice, but because sexual violence has been more thoroughly investigated there than elsewhere. See, Sandesh Sivakumaran, "Sexual Conflict Against Men in Armed Conflict" in *The European Journal of International Law*, Vol. 18 no.2, 2007, <http://ejil.org/pdfs/18/2/224.pdf>

places of detention to which independent monitors had little or no access; and where standards of detention were poor and rights of detainees were systematically flouted.

### **The failure of laws to protect men and boys**

Sri Lanka is also an example of how a wholly inadequate legal framework can limit the protection available to men and boys and undermines efforts to hold perpetrators to account. Among the shortcomings, and as is common in many other conflict-affected countries, Sri Lankan law does

not recognise and therefore does not proscribe male rape.<sup>5</sup> Rather, existing legislation reinforces pre-existing gender stereotypes in which only women can be raped and only men can commit rape.



Interviews conducted for this report suggest that the discrimination against men and boys reflected in Sri Lankan laws on sexual violence also permeates other institutions and sectors and contributes to the chronic lack of medical, counselling and other support services available to male survivors. One respondent noted, for example, that some medical teaching institutions continue to advance the understanding that only women can be raped, and another admitted that sexual violence against men was neither monitored nor responded to during the conflict by the humanitarian community. Added to this is widespread

discrimination, also enshrined in law, against homosexuals and the criminalisation of consensual same-sex sexual acts which may also discourage male survivors from reporting or accessing services for fear that they may be accused of homosexual activity.

Legally at least, the situation in relation to sexual violence against men in BiH is now more advanced, although still not completely adequate. Reforms over the years to provisions relating to rape and sexual violence have brought the BiH Criminal Code (which is applied in the state-level War Crimes Chamber) into line with international standards. However, laws applied in entity and canton-level courts remain unsuitable for prosecuting cases of wartime sexual violence, including against men and boys, and contribute to impunity for these crimes (see Box 3).

In BiH and beyond, the International Criminal Tribunal for the former Yugoslavia (ICTY) has played a particularly significant role in the elucidation of law and development of jurisprudence in relation to cases of sexual violence,<sup>6</sup> and was the first international tribunal to try cases featuring charges of sexual violence against men. These, together with cases involving sexual violence against men that have been investigated and prosecuted in BiH's domestic courts, have provided some visibility to the issue and brought a degree of accountability.

However, the handful of cases prosecuted nationally or internationally, relative to the many incidents thought to have taken place, remains low. Moreover, concerns have been raised about the failure to fully acknowledge the sexual nature of crimes against males in both international and domestic prosecutions and the way in which this results in the specific harms associated with sexual violence being ignored and limits accountability for them (see Boxes 2 and 3). Similar dangers exist in Sri Lanka where outdated laws make misclassification of sexual violence against men and boys inevitable and contribute to a situation where there is effectively structural impunity for perpetrators.

5 A 2014 survey found that 62 countries only recognise female victims of rape. See, Dr Chris Dolan, "Into the Mainstream: Addressing Sexual Violence Against Men and Boys in Conflict", Briefing prepared for Overseas Development Institute, London, 14 May 2014. Available at: [www.refugeelawproject.org/files/briefing\\_papers/Into\\_The\\_Mainstream-Addressing\\_Sexual\\_Violence\\_against\\_Men\\_and\\_Boys\\_in\\_Conflict.pdf](http://www.refugeelawproject.org/files/briefing_papers/Into_The_Mainstream-Addressing_Sexual_Violence_against_Men_and_Boys_in_Conflict.pdf)

6 For further information on the record of international and hybrid tribunals in relation to male sexual violence see, International Center for Transitional Justice, *When No One Calls It Rape, Addressing Sexual Violence Against Men and Boys in Transitional Contexts*, December 2016, [www.ictj.org/publication/sexual-violence-men-boys](http://www.ictj.org/publication/sexual-violence-men-boys)

## **Protecting and supporting male survivors to access justice**

There are also other impediments to investigations and prosecutions in BiH that have direct parallels in Sri Lanka, and which have a bearing on the prospects for redress by male survivors in both contexts. Chief among these are (a) the lack of effective protection for victims and witnesses and (b) the lack of dedicated capacity and expertise to investigate and prosecute conflict-related sexual violence cases female and male among law enforcement and judicial officials as well as other key domestic agencies (see Boxes 3 and 4).

Information gathered for this study in both Sri Lanka and BiH highlight individual cases in which men have refused to lodge official complaints or co-operate with criminal investigations because of fear of reprisal or of having their identities publicly exposed. Based on what is known about sexual violence against men in both contexts, these examples represent only the tip of the iceberg, and hundreds if not thousands of men in both settings have taken the decision to remain silent to avoid the risks involved in seeking justice.

Criticisms levied in BiH at the lack of expertise and skills needed to analyse and investigate sexual and gender-based crimes, to interview and support survivors, gather evidence and build strong cases, also apply equally to Sri Lanka, where All Survivors Project's fact-finding suggests there is little or no training for relevant judicial or law enforcement officials. The extent to which the proposed special judicial mechanism, intended to investigate and prosecute conflict-related crimes in Sri Lanka, as well as other promised transitional justice mechanisms are successful in delivering accountability, truth and reparations for conflict-related crimes of sexual violence will in considerable part depend on their having the requisite specialist expertise on sexual violence and capacity to engage, support and protect survivors' participation in them.

Although establishing accountability is a priority and efforts to establish the judicial mechanism must be accelerated, the proposed commission for truth, justice, reconciliation and non-recurrence also represents an important opportunity to establish a more complete picture of sexual violence against men and boys in Sri Lanka. If successful its findings could also result in harms being more fully responded to than has been the case in BiH, where proposed truth-processes have never got off the ground.

Likewise, the promised reparations commission, although also yet to be set up, offers the prospect of compensation, rehabilitation and restitution to survivors in Sri Lanka. But it must also draw on lessons from the experience of reparations in BiH, from which available information suggests that male survivors have been largely excluded. The obstacles encountered by male survivors include laws on reparations that fail to recognise sexual violence per se, which discriminate on the basis of gender, or which have been interpreted as applying to women only (See Box 4).

The experience of Sri Lanka, both during the war and since, is a sobering reminder that lessons in relation to sexual violence against men and boys from previous conflicts including BiH have yet to be learnt and applied. The following case study seeks to contribute to advancing the agenda in Sri Lanka by providing an overview of conflict-related sexual violence against men and boys there both past and present, identifying the principal opportunities and challenges to addressing the issue, and showing how the experience of BiH can inform responses. It is followed by a conclusion that elaborates some provisional lessons from both situations, and then by more detailed recommendations on law, policy and other issues specifically on Sri Lanka.

#### IV. SCOPE OF STUDY AND METHODOLOGY

The following case study on Sri Lanka addresses conflict-related sexual violence against men and boys in the context of the war between the government of Sri Lanka and Tamil armed groups, principally the LTTE.<sup>7</sup> It focuses particularly on the final stages of the war and its aftermath (2009-15), for which there is more available data. The study focuses on sexual violence against men and boys perpetrated by the Sri Lankan security forces. Although the LTTE was responsible for many abuses of human rights and there are unverified reports of isolated acts of sexual violence by LTTE members, neither secondary information nor primary research for this report identified specific cases of sexual violence against men and boys by the LTTE.

The Sri Lanka case study is based on a desk review of existing UN and I/NGO documentation on the topic, media reports, scholarly articles and legal documents where available.<sup>8</sup> In addition, interviews were conducted during February and March 2017 with 34 lawyers, human rights defenders, medical professionals, psycho-social professionals, an ex-detainee/former combatant and retired military and police officers in Colombo (Western Province), Jaffna (Northern Province) and Trincomalee (Eastern Province). Representatives of the Sri Lankan state were also interviewed for this research. Many of those interviewed are quoted directly, but some participated under condition of confidentiality so their quotes have been anonymised to protect their identity.

Information on sexual violence against men and boys in BiH in this study relies more heavily on secondary sources including IGO and I/NGO reports, ICTY court documents, and scholarly articles. However, interviews were also conducted in BiH during February and March 2017 with 30 representatives of national civil society organisations working with survivors of conflict-related sexual violence which corroborated existing data and provided new and updated information and analysis on some issues. Again, confidentiality has been respected where requested.

In view of ethical considerations, male survivors were not consulted directly in either Sri Lanka or BiH.<sup>9</sup> A more in-depth understanding of the experiences of and responses to sexual violence from a survivor's perspective will require more time to ensure that ethical concerns are fully addressed, including the availability of support to which participating survivors can be referred.

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7 Although it is possible that sexual violence against men and boys also took place during earlier insurgencies, specifically during the armed insurrections in the south by the Marxist, Janatha Vimukthi Peramuna (JVP), these are not addressed within the scope of the report due to the lack of available information and time available for research.

8 Research on legal cases in Sri Lanka was limited by the lack of available documentation including court records, submissions and pleas filed by lawyers, as well as access to judgments which are available in hard copy but are not coded or categorized and therefore would have required additional time to locate and review. Although judgments by the Supreme Court and the Court of Appeal are mostly available online, they are not electronically searchable and could not be reviewed in the time available.

9 All Survivors Project is in the process of receiving Institutional Review Board (IRB) approvals for future fact-finding and will conduct direct interviews with survivors and witnesses of sexual violence against men and boys once approval is obtained.

## V. SRI LANKA: ONGOING ABUSE, HIDDEN VICTIMS

### Background

An ethnic struggle demanding greater autonomy for Tamils in the North and East of the island developed into a fully-fledged armed conflict in 1983 between the government of Sri Lanka and Tamil militant groups, principally the LTTE.<sup>10</sup> During the course of the war, which ended in May 2009 following the military defeat of the LTTE, grave human rights abuses by all parties were documented including extrajudicial killings, enforced disappearances, arbitrary detention, torture and other forms of cruel, inhuman and degrading treatment, as well as abductions, unlawful military recruitment and use of children. UN investigations have subsequently found that there are reasonable grounds to believe that gross violations of international human rights law, serious violations of international humanitarian law and other international crimes were committed and that if established before a court of law, many of these allegations would amount to war crimes and/or crimes against humanity.<sup>11</sup>

Despite a wealth of credible evidence and repeated calls for accountability, impunity remains deeply entrenched in post-war Sri Lanka. Such has been the level of resistance to addressing past violations that a UN Panel of Experts on Accountability in Sri Lanka, established to advise the UN Secretary-General on modalities for accountability, concluded in 2011 that the government had not conducted a genuine investigation, “nor shown signs of any intention to do so”, and that its approach to accountability “does not correspond to basic international standards that emphasize truth, justice and reparations for victims”.<sup>12</sup>

The political landscape has since changed with the presidential elections in 2015 and the establishment of a national unity government, which has indicated its willingness to acknowledge and address the legacy of conflict and human rights abuses.<sup>13</sup> In relation to transitional justice, the clearest statement of intent so far is in UN Human Rights Council Resolution 30/1 of October 2015 which the government co-sponsored and in which various commitments were made to provide redress to victims and to initiate reforms aimed at ensuring non-recurrence.<sup>14</sup>

However, progress has been slow and confidence that the government will deliver fully on its promises is beginning to wane. In the meantime, the legacy of armed conflict remains, levels of militarisation are still high, and serious human rights violations by the security forces, including sexual violence against men, continue to be reported.

### Patterns of conflict-related sexual violence against men

“In my experience documenting cases of detention and torture, we haven’t directly received many cases where victims have specified that they’ve been raped or abused, but it’s sometimes implied. Many prisoners had been stripped naked and searched, sometimes even daily. In one instance, I was told of a case where about 10-15 detainees were stripped and chained to each other, so that when one wanted to go to the toilet, all had to go to and fro with him.”<sup>15</sup>

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10 Other Tamil armed groups involved in the conflict included the Eelam People’s Democratic Party (EPDP), Eelam People’s Revolutionary Front (EPRLF), People’s Liberation Organization of Tamil Eelam (PLOTE), Tamil Eelam Liberation Organization (TELO), and a breakaway faction of the LTTE, the Karuna Faction (later the Tamil Makal Vidduthalai Pullikal, TMVP).

11 Report of the Office of the High Commissioner for Human Rights investigation on Sri Lanka (OISL), 16 September 2015, UN Doc. A/HRC/30/CRP.2, <http://www.refworld.org/docid/55ffb1d04.html>

12 Report of the UN Secretary General’s Panel of Experts on Accountability in Sri Lanka, 31 March 2011, [http://www.un.org/News/dh/infocus/Sri\\_Lanka/POE\\_Report\\_Full.pdf](http://www.un.org/News/dh/infocus/Sri_Lanka/POE_Report_Full.pdf)

13 A coalition government known as the National Unity Government was established in August 2015 bringing together President Maithripala Sirisena’s Sri Lanka Freedom Party (SLFP) and Prime Minister Ranil Wickremesinghe’s United National Party (UNP).

14 UN Human Rights Council resolution (15 March 2017, UN Doc. A/HRC/34/L.1) on Sri Lanka further requested the government to fully implement fully the outstanding recommendations contained in Resolution 30/1.

15 V. Yogeswaran Veerasan in “The Dark Corners of Sri Lanka”, Documentary by the Centre for the Promotion and Protection of Human Rights (CPPHR), 2017, [https://youtu.be/-\\_xLrA8Dt-8](https://youtu.be/-_xLrA8Dt-8).

Torture and other forms of cruel, inhuman and degrading treatment were widely documented in Sri Lanka during and in the immediate aftermath of the armed conflict. Information on sexual violence was scant, although some cases of rape of Tamil women and girls by military personnel and police officers were documented by UN special procedures, INGOs and human rights NGOs during the war.<sup>16</sup> Although reports of rape of women and girls increased towards the end and in the immediate aftermath of the war, accusations that rape had been used as a “tactic of war” were strongly refuted by the government.<sup>17</sup>

If information about sexual violence against women and girls was incomplete, data on conflict-related sexual violence against men and boys was virtually non-existent. One of the earliest in-depth accounts of male victims that presented several cases among asylum-seekers from Sri Lanka appeared in a prominent medical journal in 2000.<sup>18</sup> However, it is only very recently that television documentaries and international reports have begun to expose the scale of the problem.<sup>19</sup>

These reports and further investigations into the events of the conflict and its immediate aftermath led the UN to conclude in 2015 that male detainees in Sri Lanka “were as likely to be subjected to sexual violence as female detainees”. The Report of the Office of the High Commissioner for Human Rights Investigation on Sri Lanka (OISL) further concluded that incidents of sexual violence were not isolated acts but were part of a deliberate institutional policy of torture by the Sri Lankan security forces, designed to obtain information, intimidate, humiliate and inflict fear.<sup>20</sup>

Nevertheless, there is still limited documentation on sexual violence against men and boys, and significant gaps remain in terms of knowledge and understanding of the phenomenon, its victims and its consequences. Most of the documentation that does exist is the product of INGOs and UN investigations and reports by UN special procedures in which most detailed cases relate to the later stages of the war and to individuals who have fled abroad and can therefore be accessed relatively safely and provided with support. Published reports by national human rights organisations only rarely refer to sexual violence against men and boys. When they do, sexual violence against men and boys is typically categorised as torture and addressed alongside other, non-sexual forms of torture. While it is important to treat sexual violence as a form of torture when it meets this definition under international law, it is also important to recognise the unique nature of sexual violence so as not to downplay the sexual component of the suffering.

Despite these limitations, it is possible to discern a distinct pattern of the types of sexual violence committed against men and boys in Sri Lanka. Such acts commonly take place in the context of, and are accompanied by, torture or other cruel, inhuman or degrading treatment. Threats, intimidation and verbal abuse accompanying sexual violence are also frequently reported as well as

<sup>16</sup> See for example, various reports of the UN Special Rapporteur on violence against women, its causes and consequences and the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment to the UN Commission on Human Rights. In addition, DBS Jeyaraj, “Sexual Violence against Tamil Women,” 8 July 2001, <http://dbsjeyaraj.com/dbsj/archives/1149>; and Amnesty International, *Sri Lanka: Rape in Custody*, 28 January 2002, Index no. ASA 37/001/2002, [www.amnesty.org/en/documents/asa37/001/2002/en/](http://www.amnesty.org/en/documents/asa37/001/2002/en/). Reports of rape of women began to emerge in the late 1980s, most notably in documentation by the University Teachers for Human Rights (UTHR). See for instance, Rajan Hoole, *The Broken Palmyra: The Tamil Crisis in Sri Lanka: An inside account*, Sri Lanka Studies Institute, 1990.

<sup>17</sup> See Anthony David, “Lanka – US in diplomatic ding-dong duel”, *The Sunday Times*, 11 October 2009, [www.sundaytimes.lk/091011/News/nws\\_27.html](http://www.sundaytimes.lk/091011/News/nws_27.html)

<sup>18</sup> M Peel et al, “The sexual abuse of men in detention in Sri Lanka,” *The Lancet*, Vol I 355, 10 June 2000, [www.download.thelancet.com/journals/lancet/article/PIIS0140-6736\(00\)02368-0/fulltext](http://www.download.thelancet.com/journals/lancet/article/PIIS0140-6736(00)02368-0/fulltext)

<sup>19</sup> See for example, Channel 4, *Sri Lanka's Killing Fields*, 3 June 2011, [www.channel4.com/programmes/sri-lankas-killing-fields/on-demand](http://www.channel4.com/programmes/sri-lankas-killing-fields/on-demand); BBC Newsnight, *Sri Lanka atrocities: An investigation*, 7 November 2013, [www.youtube.com/watch?v=nldVJ6PKUrw](http://www.youtube.com/watch?v=nldVJ6PKUrw); Human Rights Watch, “We Will Teach You a Lesson”, *Sexual Violence against Tamils by Sri Lankan Security Forces*, February 2013, [www.hrw.org/report/2013/02/26/we-will-teach-you-lesson/sexual-violence-against-tamils-sri-lankan-security-forces](http://www.hrw.org/report/2013/02/26/we-will-teach-you-lesson/sexual-violence-against-tamils-sri-lankan-security-forces); Freedom from Torture, *Tainted Peace, Torture in Sri Lanka since May 2009*, August 2015, [www.freedomfromtorture.org/sites/default/files/documents/sl\\_report\\_a4\\_-\\_final-f-b-web.pdf](http://www.freedomfromtorture.org/sites/default/files/documents/sl_report_a4_-_final-f-b-web.pdf); International Truth and Justice Project Sri Lanka, *Silenced: Survivors of torture and sexual violence in 2015*, January 2016, [www.itjpsl.com/assets/Silenced-jan-2016.pdf](http://www.itjpsl.com/assets/Silenced-jan-2016.pdf)

<sup>20</sup> Report of the OISL, 16 September 2015, UN Doc. A/HRC/30/CRP.2, paras 586 and 603.

mockery and racial slurs.<sup>21</sup> Based on existing literature and information gathered through interviews conducted for this study the following are the most common forms of male sexual violence identified:

- Multiple forms of rape carried out against men or boys are documented including the insertion of a penis or other objects such as bottles, poles and police batons into the anus or mouth of the victims. In some cases, the objects were covered with chilli before insertion; in other instances hollow tubes were inserted into the anus and a wire or barbed wire pushed through it. Incidents of victims being subjected to anal rape over several days by a series of different people are recorded, as well as cases where victims were forced to rape one another while perpetrators watched on. In some instances, victims were reportedly unconscious when raped. Incidents have also been reported of detainees being forced to perform oral sex. There are additionally reports of small objects being forced into the genitals, such as metal wire, pins or small metal balls being inserted into the urethra of the penis.<sup>22</sup>
- Enforced nudity (full or partial) is among the most common forms of sexual violence reported. There are reports of victims being kept fully or partially naked in their cells and in front of other detainees including those of the opposite sex. Detainees were also forced to remove some or all clothing during interrogation/torture sessions.<sup>23</sup>
- Blunt trauma to the testicles or penis, with common forms including the slamming of drawers on the genitals, punching and kicking the genitals, and hitting of sexual organs with sticks and other objects.<sup>24</sup>
- Other forms of pressure to testicles or penis, with commonly reported forms including squeezing or twisting of testicles or penis, and pulling on a string tied around the penis.<sup>25</sup>
- Burning and electric shocks to the genitals. Although less frequently reported, there are individual cases documented in which electric shocks have been applied on sensitive parts of the body such as the tongue or sexual organs. There are also reports of victims being burned on their genitals, most commonly with cigarettes but also with heated metal.<sup>26</sup>
- Forced masturbation, forced manual stimulation of perpetrators, ejaculation by perpetrators in victims' mouths or on their bodies, and other forms of sexual humiliation such as being forced to swallow semen or urine.<sup>27</sup>

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21 Report of the OISL, 16 September 2015; M Peel et al, "The sexual abuse of men in detention in Sri Lanka", *The Lancet*, June 2000.

22 Interviews conducted by All Survivors Project in Colombo and Negombo, February 2017; Report of the OISL, September 2015; Freedom from Torture, *Tainted Peace, Torture in Sri Lanka Since May 2009*, August 2015; Human Rights Watch, "We Will Teach You a Lesson", *Sexual Violence against Tamils by Sri Lankan Security Forces*, February 2013; M Peel et al, "The sexual abuse of men in detention in Sri Lanka", *The Lancet*, June 2000.

23 Interviews conducted by All Survivors Project research team with respondents in Colombo, Jaffna and Trincomalee, February 2017; Report of the OISL, 16 September 2015; Report of the Human Rights Commission of Sri Lanka to the UN Committee against Torture, October 2016, [tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/LKA/INT\\_CAT\\_NHS\\_LKA\\_25601\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/LKA/INT_CAT_NHS_LKA_25601_E.pdf); Freedom from Torture, *Tainted Peace: Torture in Sri Lanka since May 2009*, August 2015.

24 Interviews conducted by All Survivors Project research team with respondents in Colombo, Jaffna and Trincomalee, February 2017; Report of the OISL, 16 September 2015; Freedom from Torture, *Tainted Peace: Torture in Sri Lanka since May 2009*, August 2015.

25 Interviews conducted by All Survivors Project research team with respondents in Colombo, Jaffna, Trincomalee, February 2017; Report of the Human Rights Commission of Sri Lanka to the UN Committee against Torture, October 2016; Report of the OISL, September 2015.

26 M Peel et al, "The sexual abuse of men in detention in Sri Lanka", *The Lancet*, June 2000; Interviews conducted by the All Survivors Project research team in Colombo, February 2017; Amnesty International, *Sri Lanka: Briefing to the UN Committee against Torture October 2011, 14 October 2011*, Index no. ASA 37/016/2011, [www.amnesty.org/en/documents/asa37/016/2011/en/](http://www.amnesty.org/en/documents/asa37/016/2011/en/)

27 Report of the OISL, September 2015; Freedom from Torture, *Tainted Peace, Torture in Sri Lanka since May 2009*, August 2015; International Truth and Justice Project, *Sri Lanka, Silenced: Survivors of torture and sexual violence in 2015*, January 2016; M Peel et al, "The sexual abuse of men in detention in Sri Lanka", *The Lancet*, June 2000.



**Box 1: Patterns of conflict-related sexual violence against men and boys in (BiH)**

Media reports of rape and other forms of sexual violence emerged within months of the outbreak of war in Bosnia. The majority of these reports focused on assaults against Muslim and Croat women and girls by Bosnian Serbs. However, there were also early reports of sexual violence against men and boys. For example, in October 1992, just six months into the conflict, Amnesty International reported that men detained in a ceramics factory near Prijedor in northwest Bosnia had been forced to perform sexual acts with each other.<sup>28</sup>

Subsequent investigations and war crimes trials have painted a fuller picture. Although the stigma and shame associated with sexual violence against men and boys in a culture with deeply entrenched masculinity norms, combined with other factors, still results in widespread under-reporting and denial.<sup>29</sup> It has been suggested that 3,000 men and boys may have been raped during the three-year conflict,<sup>30</sup> but in the absence of an accurate database of survivors of wartime abuses, including sexual violence, there are no reliable or definitive numbers.

The majority of cases that are documented took place in detention, often in concentration camps in which civilians were interned in appalling conditions, although there were also cases of sexual violence against men in other contexts including during lootings and household interrogations. Male survivors of internment camps were among those interviewed by the UN Commission of Experts on the Former Yugoslavia in the course of its investigations during the war. Its 1994 final report recorded instances of sexual violence against men, including crude circumcision and other forms of sexual mutilation, as well as being forced to rape women and to perform sex acts on guards or each other.<sup>31</sup> Male oral and anal rape, enforced nudity, being forced to perform oral sex or eat castrated genitals, and being threatened with forced sex on corpses have also been documented elsewhere,<sup>32</sup> as have instances of forced rape by men and boys of female family members<sup>33</sup>.

28 Amnesty International, *Bosnia-Herzegovina: Gross abuses of basic human rights*, 22 October 1992, Index no. EUR 63/001/1992, [www.amnesty.org/en/documents/eur63/001/1992/en/](http://www.amnesty.org/en/documents/eur63/001/1992/en/)

29 For further discussion of this issues see, D. Žarkov, *The Body of War: Media, Ethnicity, and Gender in the Break-up of Yugoslavia*, Duke University Press, 2007.

30 See, European External Action Service, Report, EU Member States annual meeting on UNSCR 1325 Transitional justice and gender: reducing impunity, Brussels, 27 May 2013, [http://eeas.europa.eu/archives/features/features-working-women/working-with-women/docs/11-eu-ms-annual-meeting-on-unscr-27052013\\_en.pdf](http://eeas.europa.eu/archives/features/features-working-women/working-with-women/docs/11-eu-ms-annual-meeting-on-unscr-27052013_en.pdf)

31 Final Report of the Commission of Experts established pursuant to Security Council Resolution 780 (1992), UN Doc. S/1994/674, 27 May 1994, [www.icty.org/x/file/About/OTP/un\\_commission\\_of\\_experts\\_report1994\\_en.pdf](http://www.icty.org/x/file/About/OTP/un_commission_of_experts_report1994_en.pdf)

32 See for example, ICTY: *Prosecutor v Albina Terzić* (S1 1 K 005665 11 KrŽ), Second Instance Verdict, 5 July 2013; *Prosecutor v Milomir Stakić*, Trial Judgment, IT-97-24; *Prosecutor v Blagoje Simić* et al, Trial Judgment, IT-95-9-T; *Prosecutor v Karadžić*, Trial Transcript from 2 July 1996, IT-95-18-R61, 5 Case No. IT-95-5-R61. For documents relating to trials at ICTY, see [www.icty.org/en/action/cases/4](http://www.icty.org/en/action/cases/4)

33 See for example; G. Mlinarević, J. Čaušević and J. Čaušević, Association Alumni of the Centre for Interdisciplinary Postgraduate Studies, Sarajevo, 2012, <http://www.civilsocietylibrary.org/CSL/529/Prosecution-of-Wartime-Sexualized-Violence-at-the-Court-of-Bosnia-and-Herzegovina-What-Happened-to-The-Interest-of-Justice>; ICTY: *Prosecutor v Albina Terzić* (S1 1 K 005665 11 KrŽ), Second Instance Verdict, 5 July 2013; *Prosecutor v Milomir Stakić*, Trial Judgment, IT-97-24; *Prosecutor v Blagoje Simić* et al, Trial Judgment, IT-95-9-T; *Prosecutor v Karadžić*, Trial Transcript from 2 July 1996, IT-95-18-R61, 5 Case No. IT-95-5-R61. For documents relating to trials at ICTY, see [www.icty.org/en/action/cases/4](http://www.icty.org/en/action/cases/4) See also *The Human Rights Watch Global Report on Women's Human Rights*, August 1995, [www.hrw.org/sites/default/files/reports/general958.pdf](http://www.hrw.org/sites/default/files/reports/general958.pdf)

## **The persistence of sexual violence against men and boys in post-war Sri Lanka**

While the full extent of sexual violence against men and boys described above (and possibly other practices) is not known, recent INGO reports reinforce the UN's conclusion that sexual violence against men and boys was not only commonplace during the war, but that it did not stop when the fighting ended. Rather, recent reports indicate that it continues today.

The London-based organisation Freedom from Torture, which provides treatment and rehabilitation to torture survivors and which has worked with survivors from Sri Lanka for decades, has reported an "exceptionally high volume of referrals for Sri Lankans" in recent years. In a 2015 report for which it reviewed the cases of 148 Sri Lankan torture survivors (125 men and 23 women), it found widespread evidence of "sexual torture". Although the prevalence was particularly high among women (22 of the 23 reviewed cases), two-thirds of men also reported some sort of sexual violence (83 of 125 men), and nearly one-third of men reported being raped (38 men or 30 per cent of all male cases). All the reported violations were alleged to have been committed by members of the military, police or intelligence services and all took place in the context of detention since May 2009.<sup>34</sup>

Post-conflict cases of torture have also been documented by The International Truth and Justice Project (ITJP) relating to 225 individuals (170 men and 55 women) interviewed by them, the vast majority of whom are Tamil. According to ITJP, most of the men and boys had suffered sexual violence ranging from the slamming of testicles in drawers to repeated anal gang rape by members of the Sri Lankan security forces.<sup>35</sup>

UN experts have likewise found that torture and other ill-treatment, including of a sexual nature, still occur in Sri Lanka, particularly in the early stages of arrest and interrogation by the police and security forces.<sup>36</sup> These findings are reinforced in the report of the National Human Rights Commission of Sri Lanka to the UN Committee against Torture in October 2016 which referred to the cases of 13 persons arrested since April 2016 under the administrative detention regime established under the Prevention of Terrorism Act (PTA). The 13 persons all complained of torture or other ill-treatment of which the methods described include forms of sexual violence, including among other things, forced nudity, squeezing of genitals and insertion of pins into the genitals.<sup>37</sup>

## **The victims, locations and perpetrators of sexual violence against men and boys**

The vast majority of documented survivors of conflict-related sexual violence against men and boys in Sri Lanka are ethnic Tamils. These include ex-LTTE combatants and members, as well as others allegedly associated with the LTTE. Some cases of non-Tamil male survivors have also been reported including individuals of Sinhala and Muslim ethnicity. While in most cases they were also accused of association with the LTTE, others including political activists and human rights defenders unrelated to the LTTE have been detained and tortured in Sri Lanka and in some instances subjected to sexual violence.<sup>38</sup>

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34 Freedom from Torture, *Tainted Peace, Torture in Sri Lanka since May 2009*, August 2015

35 Private communication with ITJP, 28 April 2017, London. See also, ITJP, Sri Lanka, *Silenced: Survivors of torture and sexual violence in 2015*, January 2016, [www.itjpsl.com/reports/silenced-report](http://www.itjpsl.com/reports/silenced-report); ITJP, *Forgotten: Sri Lanka's exiled victims*, June 2016, [www.itjpsl.com/reports/forgotten-report](http://www.itjpsl.com/reports/forgotten-report); ITJP unpublished submission to the UN Human Rights Council's Universal Periodic Review of Sri Lanka, March 2017; ITJP, Joseph Camp, March 2017, [www.itjpsl.com/assets/ITJP\\_Joseph\\_camp\\_report\\_FINAL.pdf](http://www.itjpsl.com/assets/ITJP_Joseph_camp_report_FINAL.pdf)

36 Report of the UN Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment on his mission to Sri Lanka, 22 December 2016, UN Doc. A/HRC/34/54/Add.2, [http://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/34/54/Add.2](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/34/54/Add.2)

37 Human Rights Commission of Sri Lanka report to the UN Committee against Torture, October 2016.

38 See for example, Freedom from Torture, *Tainted Peace, Torture in Sri Lanka since May 2009*, August 2015; Human Rights Watch, *"We Will Teach You a Lesson", Sexual Violence against Tamils by Sri Lankan Security Forces*, February 2013.

Almost all of the recorded conflict-related cases took place while victims were detained by security forces, principally the Sri Lankan Army and Navy. There are, however, also reports of sexual violence against men and boys by the police, including special units of the police, in particular the Terrorism Investigation Division (TID) and the Criminal Investigation Department (CID).<sup>39</sup> The violations took place in both official and unofficial places of detention, such as police and intelligence headquarters, prisons, military camps, camps for internally displaced persons (IDPs) and “rehabilitation centres”.<sup>40</sup> Among the named locations in which cases of sexual violence against men and boys is reported to have taken place are: the CID Headquarters (4th floor), TID Headquarters (known as 6th floor) and Welikada Prison in Colombo; Kaluthara Prison near Colombo; Boosa Detention Centre in Galle District; Joseph Camp, Nelukkulam and Veppankulam Army Camps and Menik Farm IDP camp which are all in Vavuniya District.<sup>41</sup>

Reports also suggest that some more recent cases of sexual violence have taken place in secret detention camps, but that detainees were regularly moved from one facility to another with the result that they often do not know where they were held or where incidents of sexual violence had taken place.<sup>42</sup>

In many cases of sexual violence against men and boys, the individuals were held under the 1979 PTA which has been widely used to detain LTTE suspects and under which many fundamental rights and guarantees to protect detainees are suspended. Despite repeated calls for its repeal and promises by the new government to do so, the PTA remains on the statute books and continues to be applied. It permits administrative detention for up to 18 months with only limited judicial supervision, irregular access to legal representation, and without the possibility of challenging the legality of detention. The PTA also creates an environment in which forced confessions are effectively encouraged because statements made to police officers at any time during custody can be admitted in court as evidence, with the burden placed on the accused to prove that the confession was extracted under duress. According to a February 2017 report by the UN High Commissioner for Human Rights, 129 cases are pending under the PTA and most of the detainees currently held under the Act are of Tamil origin.<sup>43</sup>

In addition, and in lieu of prosecution, thousands of alleged LTTE members were detained for “rehabilitation” in the aftermath of the war.<sup>44</sup> Once released “rehabilitated persons” remain under surveillance and in some cases are required to report to a police station or military post on a regular basis. Those reporting regularly are, according to a UN expert, frequently threatened and ill-treated and, in some instances, arbitrarily detained and subjected to torture, including acts of sexual torture.<sup>45</sup>

Almost all reports refer to men as perpetrators of conflict-related sexual violence against men and boys. However, there are indications that female members of the security forces and police may also have been involved on some occasions. One activist interviewed for the study recalled

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39 Although rare, there are reports of male sexual violence outside of the context of detention: for example, one human rights activist interviewed for this study had spoken to a woman who was forced to witness the “sexual torture” of her father in their home in 2001 by army personnel.

40 See, UN Committee against Torture, Concluding Observations on the 5th Periodic Report of Sri Lanka, 27 January 2017, UN Doc. CAT/C/LKA/CO/5, [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolNo=CAT/C/LKA/CO/5&Lang=En](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolNo=CAT/C/LKA/CO/5&Lang=En)

41 Freedom from Torture, *Tainted Peace: Torture in Sri Lanka Since May 2009*, August 2015; International Truth and Justice Project, Sri Lanka, *Silenced: Survivors of torture and sexual violence in 2015*, January 2016; Human Rights Watch, “We Will Teach You a Lesson”, *Sexual Violence against Tamils by Sri Lankan Security Forces*, February 2013.

42 International Truth and Justice Project, Sri Lanka, *Silenced: Survivors of torture and sexual violence in 2015*, January 2016.

43 Report of the Office of the United Nations High Commissioner for Human Rights on Sri Lanka, 10 February 2017, UN Doc. A/HRC/34/20, [http://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/34/20](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/34/20)

44 The programme comprises six months of rehabilitation and six months of re-education, which can be extended to up to 15 months. Upon completion, the individual is deemed “rehabilitated” and released.

45 Report of the UN Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment on his mission to Sri Lanka, 22 December 2016, UN Doc. A/HRC/34/54/Add.2.

gathering affidavits in Boosa detention camp in the 1980s and early 1990s in which a female police officer was reported to have been actively engaged in torturing detainees, including kicking men in the genitals with her boots. Another interviewee described a case in which a male detainee was stripped naked while a female officer walked around him, ordered him to touch her and used abusive and profane language toward him before she hit him and other male officers joined in the abuse.<sup>46</sup>

### **A broader context of sexual abuse of men and boys**

The problem of sexual violence against men and boys in Sri Lanka is not confined to armed conflict. It is also reported in the context of the regular criminal justice system and in prisons. “Undressing a person” and “applying chilli juice to genitals” are among the common methods of torture of criminal detainees described by the Human Rights Commission of Sri Lanka in its 2016 submission to the UN Committee against Torture.<sup>47</sup> One interviewee for this study noted that some forms of sexual violence, such as forced nudity and the slamming of the genitals in a drawer that are reported by conflict-related detainees, are also experienced by persons accused of regular crimes, including petty offences, while in police detention.<sup>48</sup>

Beyond this there is also a wider pattern of sexual violence and abuse against men and boys in Sri Lanka which reveals a broader lack of protection as well as societal attitudes towards the issue. A 2013 study by CARE International Sri Lanka on intimate partner violence and gender-based violence in four districts found that of the 1,658 male respondents in the study, 28 per cent reported that they had experienced sexual abuse during childhood. Additionally, 12.1 per cent of male participants reported having perpetrated sexual violence on men in the context of their membership in gangs – a phenomenon linked to the legacy of a militarised, violent environment that is typical of societies emerging from armed conflict.

The CARE International study also found that sexual abuse of boys occurred in schools and universities in the context of “ragging” (verbal, physical or emotional abuse of newcomers to education institutions), and that three per cent of male respondents reported having been forced to have “sex or physical relations” with a community leader or schoolboy before the age of 18 years.<sup>49</sup>

Elsewhere, sexual abuse of children (girls and boys) is reported to be widespread including in children’s homes and in the context of child sex tourism,<sup>50</sup> in religious establishments,<sup>51</sup> and in the home by family members.<sup>52</sup> Police statistics show that approximately 800 cases of child rape were

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46 Interviews conducted in Colombo, February 2017.

47 Human Rights Commission of Sri Lanka report to the UN Committee against Torture, October 2016.

48 Interview with lawyer in Jaffna, February 2017.

49 CARE International and Partners for Prevention, Broadening gender: *Why masculinities matter – Attitudes, practices and gender-based violence in four districts in Sri Lanka*, April 2013, [www.care.org/sites/default/files/documents/Broadening-Gender\\_Why-Masculinities-Matter.pdf](http://www.care.org/sites/default/files/documents/Broadening-Gender_Why-Masculinities-Matter.pdf)

50 See for example, Nirmala Kannangara, “Child Abuse In Vavuniya?”, *Sunday Leader*, 27 October 2013, [www.thesundayleader.lk/2013/10/27/child-abuse-in-vavuniya/](http://www.thesundayleader.lk/2013/10/27/child-abuse-in-vavuniya/); UNICEF, “Zero tolerance for child sex tourism in Sri Lanka”, 18 June 2006, [www.unicef.org/media/media\\_34596.html](http://www.unicef.org/media/media_34596.html)

51 BBC Sinhala Service, “Sri Lanka’s hidden scourge of religious child abuse”, 1 June 2012, [www.bbc.com/news/world-south-asia-15507304](http://www.bbc.com/news/world-south-asia-15507304); Tiran Kumara Bangagamaarachchi, “Buddhists! Wake Up To Protect Novice Monks!!”, *Colombo Telegraph*, 11 June 2016, [www.colombotelegraph.com/index.php/buddhists-wake-up-to-protect-novice-monks/](http://www.colombotelegraph.com/index.php/buddhists-wake-up-to-protect-novice-monks/)

52 *Sri Lanka Brief*, “Sexual Abuse By Fathers & Uncles Is Prevalent In Some Sri Lankan Sub-Cultures”, 15 October 2015, <http://srilankabrief.org/2015/10/sexual-abuse-by-fathers-uncles-is-prevalent-in-sri-lankan-some-sub-cultures/>; and Anjani Trivedi “Sri Lanka Struggles to Contain a Growing Epidemic of Child Abuse”, 13 August 2013, <http://world.time.com/2013/08/13/sri-lanka-struggles-to-contain-a-growing-epidemic-of-child-abuse/>

reported between January and October 2016, and more than 1,550 cases were reported in 2015.<sup>53</sup>

The response to sexual abuse in such contexts reveals attitudes of shame, the stigmatisation of survivors and other social constraints in reporting incidents. In schools, for example, allegations are often met with denial and survivors are subjected to ridicule.<sup>54</sup> Preserving social respectability, family or school honour are highly prized in Sri Lanka and, according to a psychiatrist interviewed for this study: *“Protecting your school name, your culture, your religion is more important than individual suffering... As a society we are still governed by cultural elements that don’t look at individual suffering as an issue... Appearances seem much more important than individual or group suffering.”*<sup>55</sup>

So entrenched is this culture and so little support available for victims, that another interviewee, a psychologist, admitted that he now advises families of children abused in schools not to report to the school authorities. He explained: *“If they report it, the family and child will go through a terrible time, and be ostracised by teachers and students.”*<sup>56</sup>

Deeply rooted attitudes towards what constitutes acceptable expressions of masculinity in Sri Lanka also result in discrimination, and in some cases sexual violence against those who challenge accepted gender norms concerning sexual orientation and gender expression, including lesbian, gay, bisexual, transgender and intersex (LGBTI) persons. “Gender policing” in which boys and girls are pressured into conforming to accepted gender roles, as well as other types of discrimination based on sexuality, takes place in a wide variety of settings including in schools, communities, universities, the workplace and at home. Gay men have reported being targeted by the police because of their “feminine” appearance and there are documented cases of LGBTI people being detained, harassed, raped, threatened with rape and sexually assaulted by police officers.<sup>57</sup>

### **Lack of legal protection for men and boys from sexual violence**

A lack of legal protection for men and boys from sexual violence informs the types of social attitudes described above, but also contributes to an environment in which violations can take place and perpetrators cannot be held to account.

In Sri Lankan law, the possibility of rape of men is not recognised. Men are defined only as perpetrators of rape under Article 363 of the Penal Code, under which “a man is said to commit rape who has sexual intercourse with a woman under any of the following descriptions...”.<sup>58</sup> Similarly, the prohibition of statutory rape applies only to girls (under the age of 16 years) and not to boys.<sup>59</sup>

53 Anushiya Sathisraja, “3 to 5 innocents sexually abused every day”, *The Sunday Times*, 30 October 2016, <http://www.sundaytimes.lk/161030/news/3-5-innocents-sexually-abused-every-day-215490.html>

54 The Sunday Times, “*BE THOU FOREVER WITH HONOUR*”, <http://www.thesundayleader.lk/2011/02/27/be-thou-forever-with-honour/>; Vimukthi Yapa, *St Thomas’ College Prefects Assault Fellow Thomian*, <http://www.vivalanka.com/news/page.jsp?articleid=159327>; *Colombo Telegraph*, *The Inside Story: Sri Lankan Court Orders Frederica Jansz To Pay Rs 1 M To Ladduwahetty*, 6 May 2013, <https://www.colombotelegraph.com/index.php/the-inside-story-sri-lankan-court-orders-frederica-jansz-to-pay-rs-1-m-to-ladduwahetty-2/>

55 Interview with psychiatrist, Colombo, February 2017.

56 Interview with psychologist, Colombo, February 2017.

57 For further information on gender discrimination see, Human Rights Watch, *All Five Fingers Are Not the Same: Discrimination on Grounds of Gender Identity and Sexual Orientation in Sri Lanka*, August 2016, [www.hrw.org/sites/default/files/report\\_pdf/srilanka0816web.pdf](http://www.hrw.org/sites/default/files/report_pdf/srilanka0816web.pdf); and Andrea Nichols, *Dance Ponnaya, Dance! Police Abuses Against Transgender Sex Workers in Sri Lanka*, published in the *Feminist Criminology*, 17 May 2010, <https://www.scribd.com/document/347114667/Dance-Ponnaya-Dance>

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

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

Other provisions under the Penal Code mischaracterise or define sexual violence in such a way that they do not reflect the lived experience of survivors, are inconsistent with the more inclusive, gender-neutral definitions under international law, or are otherwise inadequate for prosecuting sexual violence against men and boys.

For example, forms of sexual violence that do not constitute rape are prohibited under Section 365B of the Penal Code relating to “grave sexual abuse” which is defined as any act “committed by any persons, who for sexual gratification... by the use of his genitals or any other part of the human body or any instrument on any orifice or part of the body of any other person...” without consent or under force, threat or intimidation. Rape of men (and other forms of sexual violence) could be prosecuted under this provision. However, it offers an inadequate recourse, not only because it carries a lesser sentence than rape under Article 363, thereby effectively treating the rape of males as a lesser crime than the rape of females, but also because to prosecute rape as “grave sexual violence” mischaracterises and diminishes the nature of the crime.

In addition to the Penal Code’s definition of “rape” being exclusively applied to women, it is also otherwise unduly narrow and inconsistent with international standards. Other examples of outdated laws includes provisions relating to “emasculatation” which is proscribed under the Penal Code as a form of grievous hurt.<sup>60</sup> The use of “emasculatation” reinforces regressive ideas about what comprises masculine identity and notions that masculine and/or feminine identities are reducible to anatomy alone.

In addition, other provisions under the Penal Code may deter male survivors from seeking justice. Sections 365 and 365A criminalise certain homosexual acts, categorising them as “unnatural offences”. These provisions have been used to persecute members of the LGBTI community and serve to reinforce discriminatory gender stereotypes.

Constitutional protection is also lacking for survivors of sexual violence (male and female). Sri Lanka’s Constitution, while prohibiting torture, does not explicitly reference rape or sexual violence. Remedy for victims of sexual violence can therefore only be sought under Article 11, which prohibits torture and other cruel, inhuman or degrading treatment or punishment. As such the sexual nature and specific harms resulting from the act are not recognised and cannot be addressed. Moreover, although sexual violence often has consequences for the victims’ physical and mental health that are distinct from non-sexual forms of torture, remedies under Article 11 do not include specific services to address the sexual element of these forms of torture. Although a few fundamental rights applications have been filed under Article 11 by female survivors of conflict-related sexual violence, outcomes have generally been unsatisfactory. In the meantime, time limits on filing Fundamental Rights cases (generally within one month of the violation having occurred),<sup>61</sup> the financial costs involved (including in compensating complainants) and other challenges act as an effective obstacle to pursuing justice via this route.

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<sup>60</sup> Section 310 of the Penal Code.

<sup>61</sup> The one-month bar is only suspended pending an inquiry by the Human Rights Commission of Sri Lanka into the same case as per Section 13 of the National Human Rights Commission Act.

### **Lack of reporting**

The absence of laws that adequately recognise and protect against male rape and other forms of sexual violence presents a fundamental obstacle to reporting the crime. But this is compounded by other factors such as fear, stigma, lack of confidence in the justice system and absence of services and support for survivors. Reporting is hampered in turn by lack of awareness and understanding of the issue, even among lawyers, human rights defenders and others who work on behalf of victims of human rights violations in Sri Lanka and would typically be the among the first to document, respond to and provide support to survivors.

Interviewees told All Survivors Project that survivors are generally unwilling to report cases of sexual violence, and of the few that do inform lawyers of specific incidents, a smaller fraction still are willing to lodge formal complaints or pursue legal processes. For instance, a human rights defender spoke of two cases in which former members of the LTTE and the Karuna Group from Batticaloa (Eastern Province) were abducted in 2004 and 2005 in the same district by the Sri Lankan military. Both survivors had told him that they had been subjected to sexual violence during their detention but were not willing to make an official complaint to the police.<sup>62</sup>

### **Lack of awareness, expertise and capacity**

In interviews conducted with lawyers, human rights advocates and medical and psychosocial practitioners, the lack of awareness on the issue of sexual violence against men was evident.<sup>63</sup> Many were uncertain of what would constitute sexual violence against men and boys and showed an unexpected degree of confusion about the issue. A lawyer who was asked to explain his understanding of sexual violence against men responded: *"I can't explain... we can't give a correct explanation about men."*<sup>64</sup> Other interviewees listed cases and types of violations in order to ascertain if they constituted sexual violence or not, as they were not aware of what was meant by sexual violence against men.

While this sort of confusion is symptomatic of broader societal attitudes, it is also revealing of some of the challenges involved in documenting and reporting cases of sexual violence against men and boys. Human rights defenders and lawyers in Sri Lanka (as is the case elsewhere) commonly lack the experience and skills needed to identify the signs.<sup>65</sup> Some interviewees also expressed their hesitation in directly questioning survivors about whether they had been sexually abused, expressing reluctance to pressure victims to relate experiences of such a sensitive and distressing nature. While showing sensitivity towards victims during questioning is critical, it can be problematic if incidents of sexual violence against men and boys remain undocumented and victims do not receive the support that they need.

Several interviewees conflated male sexual violence with homosexuality or cited laws proscribing homosexual acts, reflecting both a lack of awareness of the definition of rape and other forms of sexual abuse but also misconceptions about the nature and prevalence of sexual violence against men. In the words of one senior human rights activist, *"in order for a male officer to rape a male inmate, he would need to have homosexual tendencies, wouldn't he?"*<sup>66</sup> In reality, perpetrators of same-sex sexual victimisation often maintain a heterosexual identity. Moreover, consensual

62 Interview with former humanitarian aid worker, Colombo, February 2017.

63 The lack of clarity on what constitutes sexual violence is not only restricted to sexual violence against men and boys. For instance, on the issue of forced nudity of both women and men, there does not seem to be recognition among practitioners that this constitutes a form of sexual violence; it is seen as a general practice, even in contexts outside of the conflict.

64 Interview with lawyer in Jaffna, February 2017.

65 One human rights defender told All Survivors Project researchers that until the issue was discussed with him he had failed to understand the significance of sexual violence against men and boys, and that was the possible reason for many such incidents being defined as torture and not as sexual violence; interview in Colombo, February 2017.

66 Interview with lawyer working for detainees, Colombo, February 2017.

same-sex sexual activity is irrelevant to concerns about sexual violence. Consent should be the focus, rather than the sexual orientation of either the perpetrator or victim. A preoccupation with homosexuality, often informed by homophobic attitudes, contributes to the confusion surrounding the issue.

### **Fear of reprisal and lack of protection for victims**

Individual victims fear not just the filing of police complaints and cases in court but also talking about the abuse to lawyers, doctors, psychosocial workers or others. Fear of repercussions both to themselves and to family members therefore remains a significant barrier to reporting in Sri Lanka. According to one Colombo-based human rights activist: *“I think that the low reportage of sexual violence can be mainly attributed to a real fear of reprisal... Also, why would anyone want to lodge a complaint with the same institution/system perpetrators are part of? Why put yourself at risk of further torture to themselves or their family, spend time, money and energy when you know you’re not going to get justice?”*<sup>67</sup>

The fear of reprisals is not unique to male victims of sexual violence; a combination of impunity, heavy militarisation particularly in the North and East of the country, a culture of surveillance, intimidation and harassment and the risk of re-arrest deters many victims of conflict-related violations from pursuing justice.<sup>68</sup> According to one interviewee, there are instances where survivors have been explicitly warned by officials not to lodge formal complaints or have been deterred from doing so.<sup>69</sup>

A long-pending law on victim and witness protection (the Victim and Witness Protection Act No. 4), was adopted in 2015 and a Victim and Witness Protection Authority (the Authority) appointed in January 2016. However, multiple concerns have been raised including the lack of independence of the Authority, which is located within the police and to which police officials are appointed despite the culpability of the police for many human rights violations.<sup>70</sup>

In the meantime, protection remains ineffectual and concerns continue to be raised that victims and witnesses continue to be intimidated.<sup>71</sup> According to interviewees, victims of sexual violence calculate the risks they face and accordingly decide whether to report or not. For those in custody there is the risk of being subjected to further ill-treatment or prolonged detention, and those that have been released fear re-arrest and persecution. One lawyer noted that detainees in particular are often unwilling to relate their experiences to their legal representatives: *“When we go and meet them they don’t talk. It is only later. In TID and Boosa detention centres mainly most people don’t come with these things. Later when going regularly they will talk about torture, they are afraid we will file issues.”*<sup>72</sup>

In other cases, male survivors of sexual violence fear their experiences becoming public and the risk that they will lose control of their “story” and that their experiences will be used by others for political or other ends without consulting them. Silence is therefore a coping mechanism for

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67 Interview with Human Rights defender Ruki Fernando, Colombo, February 2017.

68 International Truth and Justice Project, *Sri Lanka, Silenced: Survivors of torture and sexual violence in 2015*, January 2016.

69 Interview with lawyer, Northern Province, February 2017.

70 Esther Hoole, “Victim and Witness Protection and Transitional Justice: The Imperative Need for Urgent Reform,” South Asia Centre for Legal Studies, 14 January 2016; Aruni Jayakody, “Victim and Witness Protection: The need for further reform,” South Asia Centre for Legal Studies, 2 September 2016; UN Committee against Torture, Concluding Observations, 27 January 2017, UN Doc: CAT/C/LKA/CO/5.

71 Statement by the UN High Commissioner for Human Rights Zeid Ra’ad Al Hussein via videolink to the Human Rights Council, 30 September 2015, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16539&LangID=E - sthash.GM0UXBPZ.dpuf>

72 Interview with lawyer working with detainees, Colombo, February 2017.



survivors in response to fear and to try to “normalise” their lives in the militarised and repressive post-war context.<sup>73</sup>

### **Stigma and shame**



Fear of retaliation is compounded by the shame and stigma associated with sexual violence generally and with sexual violence against men and boys in particular. One lawyer working with detainees explained that “*victims of sexual abuse or violence find it very difficult to return to and face their communities, if they come out and speak about their experiences.*”<sup>74</sup> The same point was reinforced by a Catholic priest working with detainees who told All Survivors Project that: “*Male survivors who share their experiences, experience stigma, ostracism, and a loss of social standing even among their closest and most sympathetic friends, and are re-victimised and further traumatised as a result of opening up about their experience and attempting to seek justice.*”<sup>75</sup>

For former fighters, reporting may be especially difficult. As one interviewee noted: “*It’s the shame factor, it’s emasculating. If you are a Tamil from the North and from LTTE, it is doubly worse, it is the worst. What you said could happen to women [being raped] and they could escape by joining the LTTE, it’s happening to you.*”<sup>76</sup>

Social expectations and masculinity norms in Sri Lankan society, in which men are seen as protectors and providers (as well as perpetrators), informs decisions by survivors about whether to report or not. Family members may also be similarly constrained. One human rights activist recalled two cases where it was evident that male relatives had been subjected to sexual violence, but where family members had avoided talking about it directly: “*They would say ‘terrible things’ happened. Not wanting to get into detail because of the degrading nature of it.*”<sup>77</sup>

An additional factor contributing to under-reporting is the interrelated but distinct issue of stigmatisation and criminalisation of homosexuality. The fact that men and boys perceived to be gay or who are effeminate are subjected to vilification, social ostracism and in some cases violence has specific implications for male survivors. For them to admit to having been forced to carry out a sexual act with another man may be perceived as an admission not only of their inability to protect themselves but also as an expression of their own sexual desires. Rather than being treated as victim of crime, survivors also risk being subjected to abuse and ostracism, including by members of their own community. Thus, victims may choose to omit details of sexual violence in their narratives and testimonies.

73 Ambika Satkunathan, *What is Represented and What is Made Invisible: Women and Transitional Justice Processes in Sri Lanka*, March 6 2015.

74 Interview, with attorney-at-law Anton Punethanyagam, Vavuniya, February 2017.

75 Interview with human rights lawyer, Colombo, February 2017.

76 Interview with member of a human rights institution, Colombo, February 2017.

77 Interview with human rights worker, Northern Province, February 2017.

## Box 2: The role of the ICTY in delivering justice to male survivors in BiH

The International Criminal Tribunal for the former Yugoslavia (ICTY) has played a critical role in establishing rape as a violation of the laws and customs of war and as a crime against humanity, as well as clarifying the law governing conflict-related sexual violence. The ICTY's pursuit of justice in cases of sexual violence against men has also been influential in broadening understandings and acknowledgement of the phenomenon. Ten of the 78 cases prosecuted by the ICTY have featured sexual violence against men, bringing recognition that certain acts against men constitute international crimes, including forced oral sex, other forced sexual acts, genital mutilation, blunt trauma to genitals and threats of sexual mutilation.<sup>78</sup>

Despite its positive contribution, there are concerns that the sexual nature of offences against men and boys has not been fully recognised by the ICTY. Among the most notorious cases is that of Duško Tadić, a former Bosnian Serb Democratic Party local official from northwestern BiH, who was found guilty of involvement in forcing a male camp detainee to perform oral sex on another detainee and then bite off his testicles. These acts were defined as cruel treatment (a violation of the laws and customs of war) and inhumane acts (a crime against humanity) but their sexual nature was not acknowledged in either the indictment or judgment. Only in one case (*Prosecutor v Češić*) was a defendant convicted of rape (as a crime against humanity) for his role in forcing two Muslim brothers to perform oral sex on each other at gunpoint and in the presence of others, but this interpretation was not applied in other cases.<sup>79</sup>

The roots of this issue lie in the framing of the definition of rape in the ICTY statute, which although gender-neutral, seems to require the perpetrator to be physically involved in an act of penetration whether by the penis or another object. As such, this element of the definition risks excluding from the crime of rape one of the most common forms of sexual violence against men perpetrated during the Yugoslav wars, that of forced oral sex or sexual intercourse between male detainees.

It has been noted that the definition of rape in the Rome Statute of the International Criminal Court also does not explicitly encompass scenarios where two persons are forced to engage in sexual intercourse with each other without the perpetrator's physical involvement.<sup>80</sup> However, under Article 7(1)(g) of the Rome Statute (crimes against humanity) there is an underlying offence relating to "any other form of sexual violence of comparable gravity" which is defined under the "Elements of Crimes" as follows: "The perpetrator committed an act of a sexual nature against one or more persons or caused such person or persons to engage in an act of a sexual nature by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or persons or another person, or by taking advantage of a coercive environment or such person's or persons' incapacity to give genuine consent." Although this would not qualify as rape, it is nevertheless an offence constituting a "crime against humanity of sexual violence" and could be used in prosecutions that involve the type of violation described above.

<sup>78</sup> See, International Center for Transitional Justice, *When No One Calls It Rape: Addressing Sexual Violence against Men and Boys in Transitional Contexts*, December 2016.

<sup>79</sup> For further information see, International Center for Transitional Justice, *When No One Calls It Rape: Addressing Sexual Violence against Men and Boys in Transitional Contexts*, December 2016; and M. Isaac, "The Prosecution of Sexual Violence against Men in International Criminal Law", 11 February 2016, [IntLawGrrls](https://ilg2.org/2016/02/11/the-prosecution-of-sexual-violence-against-men-in-international-criminal-law/), <https://ilg2.org/2016/02/11/the-prosecution-of-sexual-violence-against-men-in-international-criminal-law/>

<sup>80</sup> For further details see, M. Isaac, "The Prosecution of Sexual Violence against Men in International Criminal Law", 11 February 2016.

## The judicial response

Reporting is also deterred by a well-founded lack of confidence in a justice system which has largely failed to deliver accountability for human rights violations committed during and since the armed conflict. Access to justice is particularly challenging for survivors of sexual violence, male or female, who must not only contend with the lack of political will, institutional failures and other obstacles encountered by all victims of human rights violations in Sri Lanka, but also with the stigma, shame, misunderstanding and misrepresentation of the crimes to which they have been subjected.

Consequently investigations into, let alone prosecutions of sexual violence are rare. The government previously reported that 39 investigations had been initiated into acts of rape and sexual violence allegedly committed by the security forces during the war, but in January 2017 the UN Committee against Torture criticised the Sri Lankan government for failing to provide updated information on the progress of these investigations.<sup>81</sup> Prosecutions have taken place in only a handful of cases involving sexual violence, all of them against women, and most judicial outcomes have been inadequate.<sup>82</sup> To date, there have been just two convictions in cases of war-related rape of women, including one case in which four soldiers were found guilty and sentenced to 25 years in prison in October 2015 of sexually assaulting two Tamil women in Visuvamadu in 2010. The case was in many ways a landmark, brought under the Torture Act (No. 22 of 1994) the rapes were recognised as torture in the indictment and judgment, although the sexual nature of the offence and the specific harms relating to it were not acknowledged.

There is no known case in which conflict-related sexual violence against men and boys has been prosecuted in Sri Lanka. Senior police officers speaking under conditions of anonymity maintained that no cases of sexual violence against male Tamils have been investigated or brought before the courts because no complaints have been received by the police.<sup>83</sup> However, although many survivors do not report for the reasons set out above, this contradicts the experience of human rights defenders in Sri Lanka who are aware of attempts by male victims of sexual violence to report crimes, but where the police have either refused to record the complaint or have dissuaded victims from pursuing it.<sup>84</sup>

There is, however, also the additional possibility that cases involving sexual violence against men and boys have been prosecuted under the Torture Act, but that when submissions are made to the courts details of the sexual violence are omitted either because victims do not wish for it to be included or because their legal representatives do not recognise it as a distinct issue. As one interviewee noted: *“Torture, I assume, would include any form of sexual abuse. It’s part of torture. It’s not defined separately... Sexual organs are used as ways of extracting information and so on... It’s not separated [from torture]. That’s why it’s not reported [as a separate issue].”*<sup>85</sup> However, in reality few cases have ever been prosecuted under the Torture Act and, given the numerous and well-documented obstacles to justice for conflict-related crimes in Sri Lanka, the prospects of success in obtaining redress under that (or indeed under any other legislation) by male survivors of

81 See, UN Committee against Torture, Concluding Observations on the 5th Periodic Report of Sri Lanka, 27 January 2017, UN Doc. CAT/C/LKA/CO/5.

82 Including the gang rape and killing of Ida Carmelita in 1999 and rape of two women from Mannar in 2001. For further information see, Kishali Pinto-Jayawardena, *Still Seeking Justice in Sri Lanka, Rule of Law, the Criminal Justice System and Commissions of Inquiry since 1977*, International Commission of Jurists, January 2010, [http://humanitariansrilanka.org/newchapdf/IHR/Sri%20Lanka\\_final\\_3.pdf](http://humanitariansrilanka.org/newchapdf/IHR/Sri%20Lanka_final_3.pdf)

83 Interviews with two former police officers, Colombo, February 2017.

84 Based on experience of researchers for this case study.

85 Interview with clinical psychologist Professor Gameela Samarasinghe, Colombo, February 2017.

sexual violence are currently low.<sup>86</sup>

However, victims of sexual violence face additional challenges to securing justice that relate to the specific nature of the crimes against them. These include a lack of expertise and capacity in the police and judiciary. Information gathered by All Survivors Project indicates that there is no specific training available to help the police to identify and investigate sexual violence. Judges, magistrates and other judicial officials also lack understanding of and sensitivity towards victims of sexual violence, and procedures to ensure the privacy and confidentiality of victims at all stages, including during court hearings, are lacking.<sup>87</sup> There are additionally no guidelines in policies to ensure effective institutional responses to sexual violence.

Capacity and expertise in other specialist areas is also lacking and concerns about political interference persist. Judicial Medical Officers (JMOs), whose role it is to examine individuals alleging physical injury or harm resulting from their treatment in detention, receive no training on the identification of sexual violence against men and boys who do not specifically report that it has occurred. Physical examinations take place with consent, but stigma and shame may prevent victims from reporting injuries, particularly to the genitals, and may cause them to withhold consent. Moreover, although guidelines require that examinations take place in a private setting, there are reports of police officers being present during medical examinations.<sup>88</sup>

Forensic capacity is also low and this has caused delays of up to several years in investigations. Regular forensic analysis of samples collected by the police is the responsibility of the Government Analyst Department (GA), but concerns exist about the way in which evidence is collected by the police and delays by the GA in reporting on its findings. DNA testing is outsourced to a private facility<sup>89</sup> which has also been criticised for the length of time taken to produce reports in cases involving sexual crimes. According to one lawyer interviewed for this study, she was compelled to lodge a complaint to the Magistrate over the three-year delay in obtaining a forensic report in a regular criminal case relating to the rape of a foreign national.<sup>90</sup> Such delays contribute to inordinately lengthy trial processes in Sri Lanka, which create additional uncertainty and distress for victims.

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

87 In prosecutions relating to rape, the public and media are in practice often cleared from the court. However, this is at the discretion of the judges and does not occur in all cases.

88 Interviews with lawyer with human rights NGO, Colombo, and with Dr. Ajith Tennakoon, Chief Judicial Medical Officer, Colombo, February 2017.

89 Gene Tech Private Ltd.

90 Interview with Ermiza Tegal, attorney-at-law Colombo, March 2017.

### Box 3: Domestic prosecutions in the Bosnian courts for sexual violence against men and boys

In addition to international trials, domestic courts in BiH have investigated and prosecuted sexual violence against males and females, charging defendants with conduct including forced nudity, forced oral sex and other forms of sexual humiliation against men. While the State Court of BiH has prosecuted more cases than the ICTY with a fraction of the budget, progress has been slow and deadlines set out in the 2008 National Strategy for Processing of War Crimes Cases to process the most complex and highest priority war crimes cases within seven years, and other war crimes cases within 15 years, have already slipped.

Prosecution of conflict-related crimes in BiH is complicated by the fragmented and uncoordinated legal and institutional justice system in which cases can be conducted in state, entity and district courts.<sup>91</sup> This, combined with other factors including lack of resources and political opposition, contributes to delays.<sup>92</sup> However, there has also been a range of other impediments that have had a bearing on sexual violence-related cases:

**An inadequate domestic legal framework and gender-biased application of the law:** The 2003 BiH Criminal Code includes definitions of sexual violence as underlying offences of war crimes and crimes against humanity that are gender-neutral. Moreover, an amendment in 2015 removed the requirement to prove the direct use or direct threat of the use of force in establishing that sexual violence had been non-consensual, thereby bringing the law into line with international criminal standards and jurisprudence of international courts. However, entity and district-level courts continue to apply the 1976 Criminal Code of the Former Socialist Republic of Yugoslavia, which is regarded as having an inadequate normative framework for the effective repression of sexual violence in armed conflicts. For example, the SFRY Criminal Code does not criminalise crimes against humanity, does not recognise command responsibility and does not define the full array of sexual violence crimes recognised in international law, including enforced sterilisation.<sup>93</sup>

Additionally, acts that amount to rape of men have not been recognised as such in indictments and judgments of domestic courts, and concerns have also been raised that elements of rape have sometimes been applied differently depending on the gender of the victim. In some cases, where conflict-related sexual violence against men is prosecuted as an act of torture the sexual nature of the harm has not been recognised. For example, similar to the ICTY, conducts such as forced oral sex or forced sexual intercourse, including forced oral sex between male detainees, has been characterised

91 The jurisdictions responsible for war crimes cases in BiH comprise the Court of BiH and BiH Prosecutor's Office at the State level, ten cantonal courts/prosecutor's offices in the Federation of Bosnia and Herzegovina (FBiH), five district courts/prosecutor's offices in Republika Srpska (RS), and the Basic Court and Prosecutor's Office in Brčko District BiH

92 For detailed analysis of progress and challenges in relation to war-related trials in BiH see, OSCE Mission to BiH reports, *Combating Impunity for Conflict-Related Sexual Violence in Bosnia and Herzegovina: Progress and Challenges, An analysis of criminal proceedings before the Court of Bosnia and Herzegovina between 2005 and 2013*, February 2014, <https://www.files.ethz.ch/isn/179069/English.pdf>; and *Combating Impunity for Conflict-Related Sexual Violence in Bosnia and Herzegovina: Progress and Challenges: An analysis of criminal proceedings before the courts of the Federation of Bosnia and Herzegovina, Republika Srpska and Brčko District BiH between 2004 and 2014*, June 2015, <http://www.osce.org/bih/171906?download=true>

93 See for example, Amnesty International, *Bosnia and Herzegovina: Submission to the United Nations Human Rights Committee 119th Session*, 13 February 2017, Index no. EUR 63/5554/2017, [www.amnesty.org/en/documents/eur63/5554/2017/en/](http://www.amnesty.org/en/documents/eur63/5554/2017/en/); OSCE report *An analysis of criminal proceedings before the courts of the Federation of Bosnia and Herzegovina, Republika Srpska and Brčko District BiH between 2004 and 2014*, June 2015.

in BiH courts, among other things, as torture or otherwise inhuman treatment, outrages on personal dignity, violations of physical and personal integrity and serious abuse and humiliation. As the OSCE mission to Bosnia has noted, *“it is of paramount importance that the interpretation of gender neutral provisions be free from gender stereotypes in order to avoid past discrimination patterns which may affect persons differently depending on their gender”*.

**Inadequate protection for victims and witnesses:** A 2014 Law on Witness Protection Programme provides for protection of witnesses during criminal proceedings before the Court of BiH. The law is not however applicable to cases before the cantonal or district courts where there have been long-standing concerns about standards and the capacity to deliver effective protection, and the negative impact this has had on the security of survivors of sexual violence and their willingness to testify. Indeed, individual cases have been documented of male survivors, including boys, who have refused to testify, or have withdrawn co-operation from an entire case upon realising that investigators had information about the sexual violence he had endured, or who have objected even to the initiation of criminal proceedings. Stigma, slow judicial prosecutions, and fear of re-traumatisation are among additional reasons which prevent victims and witnesses from coming forward. Other concerns include breaches of confidentiality and the negative consequences for witnesses of having to repeat their testimonies multiple times.<sup>94</sup>

In response to such concerns, international donor-funded projects have supported efforts to strengthen protection, including measures to establish the physical and technical conditions for protection in courts conducting war crime trials (for example, provision of technical capacity to transfer and distort images and sound and the construction of witness antechambers), as well as training of judicial and law enforcement officials.<sup>95</sup> In the meantime, joint state/NGO networks are being developed in various regions and cantons to co-ordinate and strengthen available protection services before, during and after trial proceedings. These are designed to draw on existing links and expertise of civil society organisations working with survivors of camps and of sexual violence, and to connect these with official institutions responsible for providing psychosocial, mental health, medical and legal support to witnesses. The set up and training of those involved in the networks is ongoing, and although it is too early to assess their impact, this model is thought to serve as a sound basis to providing integrated protection, support and services to survivors of sexual violence.<sup>96</sup>

**Lack of expertise:** Criticism has been levied at the state-level BiH Prosecutors Office for its lack of dedicated capacity for managing and conducting investigations into sexual violence. Comparisons have been drawn with the good practice established by international tribunals which have had specialised units dealing with sexual violence.<sup>97</sup> Inadequate investigative capacity in entity-level prosecutors' offices has likewise been identified and concerns raised about the lack of training of prosecutors, police and other key stakeholders in how to deal with cases of wartime rape and sexual violence, including against men and boys (out of 29 prosecutors surveyed by the OSCE in

<sup>94</sup> See, OSCE report *An analysis of criminal proceedings before the courts of the Federation of Bosnia and Herzegovina, Republika Srpska and Brčko District BiH between 2004 and 2014*, June 2015. See also, Her Honour Judge Joanna Korner CMG QC, *Processing Of War Crimes At The State Level In Bosnia And Herzegovina*, OSCE, 16 June 2016, <http://www.osce.org/bih/247221?download=true>

<sup>95</sup> See, OSCE report, *An analysis of criminal proceedings before the courts of the Federation of Bosnia and Herzegovina, Republika Srpska and Brčko District BiH between 2004 and 2014*, June 2015.

<sup>96</sup> Phone Interviews with representatives of two civil society organisations working to support war-crimes survivors, “Udružene Žene” and “Vive Žene”, 13 February and 9 March 2017 respectively.

<sup>97</sup> OSCE report, *An analysis of criminal proceeding before the Court of Bosnia and Herzegovina between 2005 and 2013*, February 2014.

2011/12, just one had received training on handling sexual violence cases, and support provided by law enforcement agencies was found to vary widely).<sup>98</sup> Significant investment has since been made in training in response to such concerns including via OSCE trainings of war-crimes investigators and UK government-supported trainings on the application of the International Protocol on the Documentation and Investigation of Sexual Violence in Conflict, under its Preventing Sexual Violence Initiative.<sup>99</sup>

### Non-legal support for victims

Recent reports on sexual violence against men and boys provide some insight into the harms suffered and the types of support needed, but it is far from a complete picture. In its review of 148 cases of torture from Sri Lanka, Freedom from Torture found that some men who reported rape or other forms of sexual violence showed enduring impacts such as lesions on and trauma to the genital or anal regions; chronic pain and genito-urinary conditions and injuries to other parts of the body. Freedom from Torture's doctors working with survivors also described the "intense difficulty" and "high-levels of distress evoked" in recalling events of sexual violence.<sup>100</sup> Men interviewed by Human Rights Watch who had experienced anal rape, including forced penetration with objects, likewise reported ongoing pain and anal bleeding and also described a range of psychological symptoms including difficulties in sleeping, nightmares, "jumpiness", irritability and depression.<sup>101</sup>

There is little available in Sri Lanka in the way of medical or psychosocial support for survivors or understanding of their needs. While considerable resources have been invested in programmes to respond to gender-based violence, including community awareness-raising, sensitisation of state officials and establishment of women's desks in police stations, these do not comprehensively address needs of survivors of sexual violence (male and female) and the few that exist are focused on women and girls. Humanitarian, NGO and civil society support networks for victims of conflict-related sexual violence are also primarily female-focused. As one humanitarian worker noted: "*Even within the humanitarian sector we did not ask... it was not seriously looked at as a cross-cutting issue. We did not give equal treatment [to men].*"<sup>102</sup> There is more generally a lack of counselling and other support for torture survivors and survivors of sexual violence. A psychologist interviewed for this study described the psychiatry profession as "*being in total denial about torture*".<sup>103</sup> Although a few NGOs do provide counselling services, their reach is limited and state services are largely unavailable.

There are however ongoing efforts to address issues of psychosocial support at least for conflict-affected areas. The Office of National Unity and Reconciliation (ONUR) has set up a special task force of leading psychiatrists and psychosocial experts to design an action plan, but this is still in development.<sup>104</sup>

98 OSCE, *Combating Impunity for Conflict-Related Sexual Violence in Bosnia and Herzegovina: Progress and Challenges: An analysis of criminal proceedings before the courts of the Federation of Bosnia and Herzegovina, Republika Srpska and Brčko District BiH between 2004 and 2014*, June 2015.

99 See, Government Response to the Report of the House of Lords Sexual Violence in Conflict Committee (HL123), 30 June 2016, [www.parliament.uk/documents/lords-committees/sexual-violence-in-conflict/SVC-committee-Gov-Response-CM-9277.pdf](http://www.parliament.uk/documents/lords-committees/sexual-violence-in-conflict/SVC-committee-Gov-Response-CM-9277.pdf); British Embassy Sarajevo, "UK experts from Preventing Sexual Violence Initiative deployed to Bosnia and Herzegovina," 13 November 2013, [www.gov.uk/government/world-location-news/uk-experts-from-preventing-sexual-violence-initiative-deployed-to-bosnia-and-herzegovina](http://www.gov.uk/government/world-location-news/uk-experts-from-preventing-sexual-violence-initiative-deployed-to-bosnia-and-herzegovina)

100 Freedom from Torture, *Tainted Peace: Torture in Sri Lanka since May 2009*, August 2015.

101 Human Rights Watch, "*We Will Teach You a Lesson*", *Sexual Violence against Tamils by Sri Lankan Security Forces*, February 2013.

102 Interview with humanitarian worker, Jaffna, February 2017.

103 Interview with psychologist, Colombo, February 2017.

104 Achieving national unity and reconciliation was a key feature of January 2015 Presidential campaign by the SLFP. To give effect to this commitment, the new government established the Office for National Unity and Reconciliation (ONUR) which is responsible for formulating and coordinating the implementation of the policies and programmes to build national unity and reconciliation, <http://www.onur.gov.lk/index.php/en/about-onur>

## Opportunities and prospects for redress

The change in the political context since 2015 and commitments by the new government to remedy conflict-related violations and institute reforms to prevent their recurrence offers victims of sexual violence and other human rights violations in Sri Lanka the hope of redress. Although positive steps have been taken, overall progress has been slow and there is increasing concern about whether the government is willing to implement all aspects of its pledges, including those relating to transitional justice.

### Transitional justice



Specific commitments and an overall framework for transitional justice were laid out in a UN Human Rights Council Resolution 30/1 of October 2015 which was co-sponsored by the government of Sri Lanka.<sup>105</sup> These included a commitment to establish four transitional justice mechanisms: a commission for truth, justice, reconciliation and non-recurrence; an office for missing persons; an office for reparations; and an independent judicial mechanism with special counsel to investigate allegations of violations and abuses of human rights and violations of international humanitarian law.

The government also committed to a nationwide consultation process on the proposed transitional justice mechanisms, which took place during 2016 and the 11-member Consultation Task Force on Reconciliation Mechanisms (CTF) released its report in 2017.<sup>106</sup> Almost 7,500 people participated in the consultations through focus-group discussions, public meetings or via written submissions. However, no known survivors of sexual violence participated in the public meetings and only one male survivor of sexual violence spoke about his experiences in a focus group discussion.

Nevertheless, according to the final report, demands for justice and reparations were made repeatedly during the consultations and in submissions to the CTF. Moreover, while submissions indicated willingness by some participants to consider amnesties for some crimes, amnesties were not seen as appropriate in the case of war crimes, crimes against humanity, genocide or “crimes of sexual violence”.

Although specific references to sexual violence against men in the CTF’s final report are relatively few, the gender-neutral language contained in the recommendations is broad enough in scope to include male survivors of sexual violence. Specifically, the CTF recommended that: *“Everyone [emphasis added] who has suffered harm or loss in such conflicts must have the right to an effective remedy including (a) effective accountability inclusive of criminal justice; and (b) adequate, effective and prompt reparation and rehabilitation.”*

Submissions to the CTF on sexual violence primarily addressed violence against women and the need for accountability and redress, although a few also specifically addressed issues relating to sexual violence against men and boys and the need for this to be addressed within the transitional justice framework. The need for special procedures in prosecutions of sexual violence was also raised by participants, including for a separate chamber to be set up within the special judicial mechanism that would be dedicated to prosecuting cases of sexual violence, as well as for special processes to ensure the participation of survivors in truth and reparation processes. Sexual violence against both men and women is recognised in the report as having formed part of the suffering

<sup>105</sup> Human Rights Council Resolution on Promoting Reconciliation, Accountability and Human Rights in Sri Lanka (Resolution 30/1), 25 September 2015, UN Doc. A/HRC/30/L.29.

<sup>106</sup> The Final Report of the Consultation Task Force on Reconciliation Mechanisms, is available at <http://www.scrm.gov.lk/documents-reports>



caused by structural violence and discrimination, and addressing this is proposed as part of the purpose of reparations.

It remains unclear whether and how the government of Sri Lanka plans to engage with the CTF's report findings, and indeed when the promised transitional mechanisms will be established and what form they will take. Moreover, although legislation establishing one of the four transitional justice mechanisms, the Office of Missing Persons, has been adopted,<sup>107</sup> several ad hoc bodies on reconciliation set up, and technical working groups established to draft blueprints for the proposed mechanisms, there are concerns about lack of co-ordination, potentially overlapping responsibilities between the different mechanisms and lack of clarity about how survivors are to be engaged beyond the CTF consultations.

### **Security sector reform**

UN Human Rights Council Resolution 30/1 also included a commitment to security sector reform, with specific reference to vetting processes that would ensure that, “no scope exists for retention in or recruitment into the security forces of anyone credibly implicated through a fair administrative process in serious crimes involving human rights violations or abuses or violations of international humanitarian law, including members of the security and intelligence units.” While necessary in its own right, vetting of security forces as part of broader efforts to assert civilian control over the military and strengthening public confidence in the military are essential to creating conditions conducive to ending impunity and furthering protection of human rights in Sri Lanka.

There is no indication that plans have been developed or that vetting processes have begun in any meaningful way. However, an opportunity exists to initiate screening for all personnel (military and other) deploying to UN peacekeeping missions that could potentially be used as the basis for a more expansive program.

The UN's 2012 Policy on Screening of United Nations Personnel requires states contributing troops, police or other personnel to serve with the UN to screen and certify that they have not committed, nor are alleged to have committed, criminal offences and/or violations of international human rights law and international humanitarian law.<sup>108</sup> Sri Lanka has traditionally been a significant troop-contributing country to UN peace operations and a deployment of troops to the UN peacekeeping mission in Mali is currently planned. However, its troops have also been implicated the sexual abuse and exploitation of children (boys and girls) during past deployments, which further underscores the need for stringent pre-deployment screening processes and for effective accountability processes for criminal acts whether committed at home or abroad.<sup>109</sup> The UN has indicated that it will work with the government to put in place screening procedures for personnel to be deployed to Mali. However, at the time of writing an adequate pre-deployment vetting procedure had yet to be established.<sup>110</sup>

<sup>107</sup> Legislation for the establishment of the Office on Missing Persons was adopted in August 2016, but the law has yet to be gazetted and Commissioners have not yet been appointed.

<sup>108</sup> United Nations Policy, Human Rights Screening of UN Personnel, 11 December 2012. Available at: <http://dag.un.org/bitstream/handle/11176/387395/Policy%20on%20Human%20Rights%20Screening%20of%20UN%20Personnel%20December%202012.pdf?sequence=1&isAllowed=y>

<sup>109</sup> At least 134 Sri Lankan peacekeepers exploited nine children (including boys) in a sex ring from 2004 to 2007. Fourteen were subsequently sent home, and Sri Lanka initiated investigations. However, none of the alleged perpetrators were ever imprisoned, and some were reported to still be in the Sri Lanka military in 2016. See for example, Reuters, “Peacekeepers accused of abuse in Haiti,” 2 November 2007, <http://uk.reuters.com/article/uk-un-abuse-srilanka-idUKN0259118620071102>; and P Dodds, “AP Exclusive: UN child sex ring left victims but no arrests,” 12 April 2017, <https://apnews.com/e6ebc331460345c5abd4f57d77f535c1>

<sup>110</sup> Report of the Office of the United Nations High Commissioner for Human Rights on Sri Lanka, 10 February 2017, UN Doc. A/HRC/34.20.

#### **Box 4: The right to reparation in BiH**

Until now, survivors of wartime sexual violence in BiH have faced a range of obstacles in accessing social benefits or other reparative measures.<sup>111</sup> There is no state-level reparations programme, leaving survivors to access their rights at the level of entities – the Federation of Bosnia and Herzegovina (FBiH) and Republika Srpska (RS), and Brčko District. Each has its own laws relating to civilian victims of war which, according to Amnesty International, results in survivors of wartime sexual violence being entitled to vastly different welfare packages and, in some cases, completely excluded from the system.<sup>112</sup>

It is not known how many male survivors of sexual violence have received benefits under the respective systems – including pensions, free health care, rehabilitation and psychological support. However, representatives of NGOs interviewed for this study were aware of only a handful of male survivors who had been granted or were in the process of applying for the status of civilian victims of war (which in addition to denoting official acknowledgement, also entitles individuals to benefits). In one case, the application was reportedly rejected because provisions on sexual violence in relevant FBiH legislation were interpreted by the authorities as applying only to female survivors. The decision has since been overturned following a legal challenge, but is indicative of how male survivors can be excluded on the basis of poorly drafted or overly narrow interpretation of laws.

Both NGO and government representatives also noted in interviews with All Survivors Project that male survivors may still be reluctant to seek legal recognition because it requires them to reveal what happened to them. Others may be unaware of what they are entitled to because official and NGO initiatives have tended to focus on women and girls, and there have been fewer attempts to encourage and support male survivors to come forward to claim their rights.<sup>113</sup> However, even if they were to come forward, specific obstacles that prevent or discourage male survivors from accessing support and reparations include:

- The failure of the RS Law on Protection of Civilian Victims of war to recognise survivors of wartime sexual violence as a separate category, its deadline of December 2007 for applications, and the requirement to demonstrate bodily damage of at least 60 per cent as a direct consequence of the violation.
- Issues of registration in FBiH: Applicants were originally required to apply for civilian victims-of-war status with selected civil society organisations, which not all survivors were members of or wanted to be associated with. In 2016, legal amendments addressed this by introducing an independent expert commission with a mandate to issue certificates, but the commission had not begun its work by the time of writing.<sup>114</sup>
- The requirement, under Brčko District legislation, that applicants present a certificate issued by an independent commission confirming that they suffered sexual violence and providing medical proof of permanent psychological harm. This replaced a more discriminatory provision which required that the perpetrator of the sexual violence had been found and convicted. However, the current requirements are still unduly onerous for survivors.<sup>115</sup>

111 The right to reparations is established under Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted by UN General Assembly resolution 60/147 of 16 December 2005.

112 Amnesty International, *Bosnia and Herzegovina: Submission to the United Nations Human Rights Committee 119th Session*, 13 February 2017.

113 Phone interviews with representatives from “Medica Zenica” and “Vive Žene”, 6 and 9 March 2017 respectively, and meeting with the advisor to the Minister of Human Rights and Refugees in BiH, 7 March 2017

114 To the Law on the Basis of the Social Protection, Protection of Civilian Victims of War and Families of Children in the Federation.

115 For further details on the respective laws see, Amnesty International, *Bosnia and Herzegovina: Submission to the United Nations Human Rights Committee 119th Session*, 13 February 2017.

## VI. CONCLUSION AND RECOMMENDATIONS

This report highlights the still pressing need in both Sri Lanka and BiH for comprehensive approaches to delivering justice and responding to the physical, mental and other harms suffered by male survivors of conflict-related sexual violence. As time passes this becomes more difficult as international attention moves on, memories fade and victims and witnesses relocate or pass away. But sexual violence causes serious harm to its victims irrespective of gender, and left unaddressed will continue to damage the fabric of communities, destroy families and prevent survivors from rebuilding their lives.

The research also reinforces the importance of factoring in explicit strategies on sexual violence against men and boys into international and national efforts to prevent and respond to violations of international human rights and humanitarian law in situations of armed conflict. Although there remain many gaps in knowledge and understanding of sexual violence against men in Sri Lanka and BiH, there are already provisional lessons that can be learnt from both which will be built on as All Survivors Project continues its work to document, analyse and deepen understanding of the phenomenon in selected countries over the next four years. These include:

- Laws that fail to recognise and proscribe sexual violence against men and boys not only contribute to impunity for such crimes, but can also inform broader social attitudes and responses in which sexual violence is denied and medical support, counselling and other essential services and support are less likely to be available to survivors.
- There should be a working assumption that sexual violence is highly likely to be perpetrated in situations of armed conflict by both state and non-state armed groups: the absence of reports does not necessarily mean that sexual violence has not occurred, but rather that there may be barriers that inhibit reporting.
- Given the critical role that civil society typically performs in exposing and documenting in response to human rights abuse, greater investment is needed to ensure awareness and understanding of male sexual violence among non-governmental stakeholders including human rights defenders, lawyers, community-level victim support networks, and journalists.
- Lack of specialist expertise and capacity in key institutions is a barrier to addressing conflict-related sexual violence against men and boys. Knowledge and expertise on preventing, investigating and responding to sexual violence should form an integral part of training of all relevant government, official and professional stakeholders including members of law enforcement and security forces, the judiciary, national human rights institutions, medical and mental health professionals and humanitarian workers.
- Humanitarian programming and state-provided services for survivors of sexual violence, including medical and psychosocial services, must be gender-inclusive and designed from the outset to respond sensitively and appropriately to women and girls and men and boys. Where necessary, additional resources including funding should be made available to ensure that programming and provision of services for men and boys is not to the detriment of women and girls who have suffered from sexual or other forms of gender-based violence.
- Stigma and shame will be experienced by many survivors of sexual violence, although factors including context-specific gender-norms will determine how it is experienced by males and females in any given situation. Rather than accepting under-reporting of sexual violence as an inevitable consequence of stigma, gender-sensitive understandings of stigma and shame should be developed through careful inquiry and investigation, and specific strategies adopted to encourage and support all survivors to safely and confidentially report and seek assistance.
- In many situations of armed conflict, men still represent the majority of detainees and without adequate safeguards they are vulnerable to sexual violence. Although attention is also needed to other potential situations of risk, effective safeguards to protect detainees (male or female)

from sexual violence would reduce vulnerabilities in detention settings. All those working in or supervising detention, as well as independent detention monitors, should be attuned to the specific vulnerability of detainees and trained to respond appropriately.

- Sexual violence against men and boys in situations of armed conflict may take place in a wider context of abuse and exploitation, whether within the regular criminal justice system or in broader society. Conflict-related sexual violence may therefore be most effectively tackled as part of or in co-ordination with strategies that respond to wider problems. Such responses may in turn need to challenge prevailing societal attitudes and cultural norms (for example discrimination against LGBTI persons) that can contribute to an environment where men and boys are at heightened risk of sexual violence and/or face barriers to seeking redress.
- Finally, if conflict-related sexual violence, whether against males or females, is denied and suppressed, it will almost inevitably continue in one form or another. Sri Lanka is a case in point, where the failure to recognise the risks to men and boys or to respond appropriately to reported incidents has resulted in a situation in which sexual violence against men and boys continues to be perpetrated by state security forces eight years after the war ended.

## **RECOMMENDATIONS ON SRI LANKA**

### **i. Laws relating to rape and other forms of sexual violence should provide legal protection to men and boys as well as women and girls. Specifically:**

- Amend Section 363 of the Penal Code on rape so that it is gender-inclusive and the definition of rape is consistent with international standards. Repeal Sections 365 and 365A relating to “unnatural offences” and “gross indecency” which criminalise same-sex sexual relations between consenting adults.
- Enact legislation to criminalise war crimes, crimes against humanity, act of genocide, enforced disappearance, torture and other crimes under international law.

### **ii. Legal safeguards should be enacted and implemented and other prevention measures taken to protect detainees from sexual violence and torture and other forms of ill-treatment or punishment during arrest and detention. Specifically:**

- Immediately repeal the PTA, abolish the regime of administrative detention and ensure that any new legislation that is enacted (such as the proposed Counter Terrorism Act) does not facilitate this practice. Any replacement legislation deemed necessary should adhere to Sri Lanka's commitments under the Constitution and International Law and include robust safeguards to protect persons detained under it from torture, sexual violence and other human rights violations.
- Strengthen fundamental safeguards for detainees including the right to prompt and regular access to lawyers from the moment of arrest and ensure that these are reflected in the proposed Counter Terrorism Act and amendments to the Criminal Procedure Code.
- Detainees should only be held in officially recognised and publicly known places of detention and any remaining unofficial places of detention should be immediately shut down.
- Permit medical examinations by the judicial medical officer promptly after deprivation of liberty and following interrogation. Such examinations should be conducted in private, away from police or other officials.
- Permit independent monitoring of all places of detention, including those in which detainees are held under the PTA or replacement laws on national security. In this regard, the Optional Protocol to the Convention against Torture should be ratified and implemented as a matter of

urgency.<sup>116</sup>

- Establish independent complaints mechanisms in all places of detention to allow victims of sexual violence to report incidents, and ensure that individuals reporting sexual violence or other human rights violations are not subject to reprisals.
- iii. **All formal allegations of sexual violence should, with the consent of the victim and guarantees of confidentiality and protection, be promptly investigated and prosecuted. Perpetrators, including superiors who may have tolerated or condoned the act, should be held criminally responsible and subject to adequate disciplinary measures.** Specifically:
- Where formal complaints of sexual violence are made by victims, they should be recorded by the police and, with the victim's consent, investigations immediately initiated. Disciplinary action should be taken if police officers refuse or otherwise obstruct the lodging of complaints.
  - With the informed consent of the survivor, and with due consideration to confidentiality and security, medical examinations should also be carried out promptly by professional and appropriately trained staff after complaints of sexual violence are received and reports of medical examinations provided to the courts in a timely fashion and provided on request directly to the detainee or their legal counsel.
  - The police, attorney general's office, judicial officials and other relevant officials should receive comprehensive training in investigating and prosecuting crimes of sexual violence, including sexual violence against men and boys. A specialised unit on sexual violence should be set up within the planned independent judicial mechanism to ensure the effective investigation and prosecution of conflict-related sexual violence by it.
  - Strengthen the forensic capacity of the police and judiciary and ensure that there are adequate resources including for DNA testing, forensic medical investigation and analysis of sexual violence cases.
  - Indictments in cases involving sexual violence, including those filed under the Torture Act, should reflect the sexual nature of crimes and the specific harms caused.
- iv. **An effective victim and witness programme must be set up to enable survivors of sexual violence to safely report their treatment and pursue justice.** Specifically:
- Review the Victim and Witness Protection Act to ensure effective protection to victims of human rights violations, including sexual violence, including by ensuring the autonomy of the Victim and Witness Authority set up under the Act from the police. The Authority should be adequately resourced and its staff vetted and trained in the protection needs of support for men, boys, women and girls who have been subjected to sexual violence.
- v. **Transitional justice processes should recognise that men and boys as well as women and girls have been subjected to sexual violence. and the proposed transitional justice mechanisms should be designed and implemented such that the differing but equally serious consequences of male and female sexual violence are addressed.** Specifically:
- Develop a comprehensive strategy on transitional justice and accelerate the establishment of

<sup>116</sup> The Optional Protocol of the Convention against Torture (OPCAT) entered into force in 2006 and as of March 2017 had been ratified by 83 states. State parties to OPCAT agree to international inspections of places of detention by the UN Subcommittee on the Prevention of Torture and are also required to establish an independent national mechanism or mechanisms to conduct inspections of all places of detention. Sri Lanka acceded to the Convention against Torture and Other Cruel, Inhuman or Degrading Punishment in 1994.

promised transitional justice mechanisms. Their design and implementation should reflect the findings and recommendations of the Consultation Task Force on Reconciliation Mechanisms, including on the need to specifically address male and female sexual violence and the unique and distinct harms resulting from it. Special procedures and appropriate support should be integrated into transitional justice processes at all stages to encourage and enable the full and safe participation of all survivors in both judicial and non-judicial processes.

- All personnel appointed to transitional justice mechanisms must be vetted and should be trained to identify, include and support both male and female survivors of sexual violence.
  - Pending the establishment of the independent judicial mechanism, investigations into and prosecutions of emblematic conflict-related cases, including cases of sexual violence, should continue and be accelerated.
- vi. Comprehensive vetting processes should be initiated to remove from office any security personnel and other public officials against whom there are credible allegations of involvement in human rights violations, including sexual violence against men and boys.**
- vii. Act on commitments to ensure that no one is retained or recruited into the security forces who is credibly implicated in human rights violations, including sexual violence.**
- Co-operate with the UN to establish effective procedures to screen military and other personnel prior to deployment to UN peace operations. Any individual or unit against which there are credible allegations of sexual violence and other human rights violations should not be deployed.
- viii. Survivors of sexual violence should receive prompt treatment and support for physical and mental harms resulting from their abuse. Specifically:**
- Training should be provided to first responders including humanitarian workers, human rights defenders, and lawyers to assist them in recognising and documenting rape and other sexual violence against men and boys, as well to engage sensitively with survivors and refer them to appropriate services.
  - Services should be established and medical, psychiatric and other relevant professionals trained to provide male sexual violence survivors with appropriate treatment, counselling and other necessary support.
  - Existing government and NGO programmes that respond to gender-based violence should be reviewed and consideration given to how they could be strengthened, adapted, and supplemented to include male survivors of sexual violence, including in the provision of legal, medical, psychosocial support and protection.
  - Funders should support the establishment of programmes to respond to sexual violence against men and boys either as stand-alone initiatives or integrated into broader gender-based violence programming. Such support should not come at the expenses of programming for women and girls.

# ACKNOWLEDGEMENTS

This report was drafted by Lucia Withers. It was edited by Charu Lata Hogg, Director, All Survivors Project. Mirak Raheem, Deanne Uyangoda and Marisa de Silva undertook the primary research for the Sri Lanka case study. The report was copy edited by Saphia Fleury and layout and production assistance provided by James van Den Bergh. The legal and policy review was done by Tomaso Falchetta, and expert reviews on Sri Lanka undertaken by Alan Keenan, Sri Lanka Director, International Crisis Group and on BiH by Marek Marczynski, Legal Adviser at Amnesty International's International Secretariat. Senior advocate, Kishali Pinto-Jayawardena, provided expert guidance on Sri Lankan law. Lara Stemple, Director of the Health and Human Rights Law Project at UCLA School of Law and Co-Principal Investigator reviewed the report and provided policy guidance.

All Survivors Project would like to thank the many representatives of non-governmental organizations, activists, lawyers and human rights defenders who provided information, insights and advice. We acknowledge with gratitude the financial support from the Swiss Agency for Development Cooperation to the All Survivors Project which has made this report possible.

Illustrations by Yarek Waszul

Eight years on from the end of the armed conflict in Sri Lanka, and more than two decades since fighting in Bosnia and Herzegovina (BiH) ended, conflict-related sexual violence against men and boys remains one of the least documented and most inadequately addressed of all the egregious human rights abuses that took place during these wars. Failure to acknowledge and respond effectively to sexual violence against men and boys in both contexts has long-lasting and deeply damaging consequences both for survivors and for wider efforts to deliver justice, establish rule of law and achieve reconciliation. Nevertheless, both countries provide important lessons on strengthening prevention and protection, as well as providing redress to victims.

Failure to learn and apply these lessons is being felt in Sri Lanka where sexual violence against men and boys by state security forces in the context of the conflict continues today. Evidence shows that most known incidents of sexual violence against men and boys in both BiH and Sri Lanka took place in detention settings. In BiH such violence occurred in the context of mass internment of civilians, and in Sri Lanka during detention by state security forces under anti-terror legislation. Yet, in Sri Lanka, the laws and institutions that facilitated sexual violence remain in place thereby sustaining the same risks and vulnerabilities.

In both places, stigma and shame remain powerful deterrents to reporting. However, there are also multiple other factors including inadequate laws, insecurity and risk of reprisals, and lack of awareness of and expertise on responding to sexual violence against men and boys among judicial and other key stakeholders, that cumulatively constitute major barriers for survivors to report their experiences and therefore to accessing justice.