

Introducing State Protection for Torture Survivors in Sri Lanka

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This brief highlights to policy makers the need for a policy for protection of torture survivors in Sri Lanka to address the specific challenges survivors and their families experience. This brief is based on a study that describes the multiple personal, societal and external challenges survivors experience and gaps in state protections.

Introduction

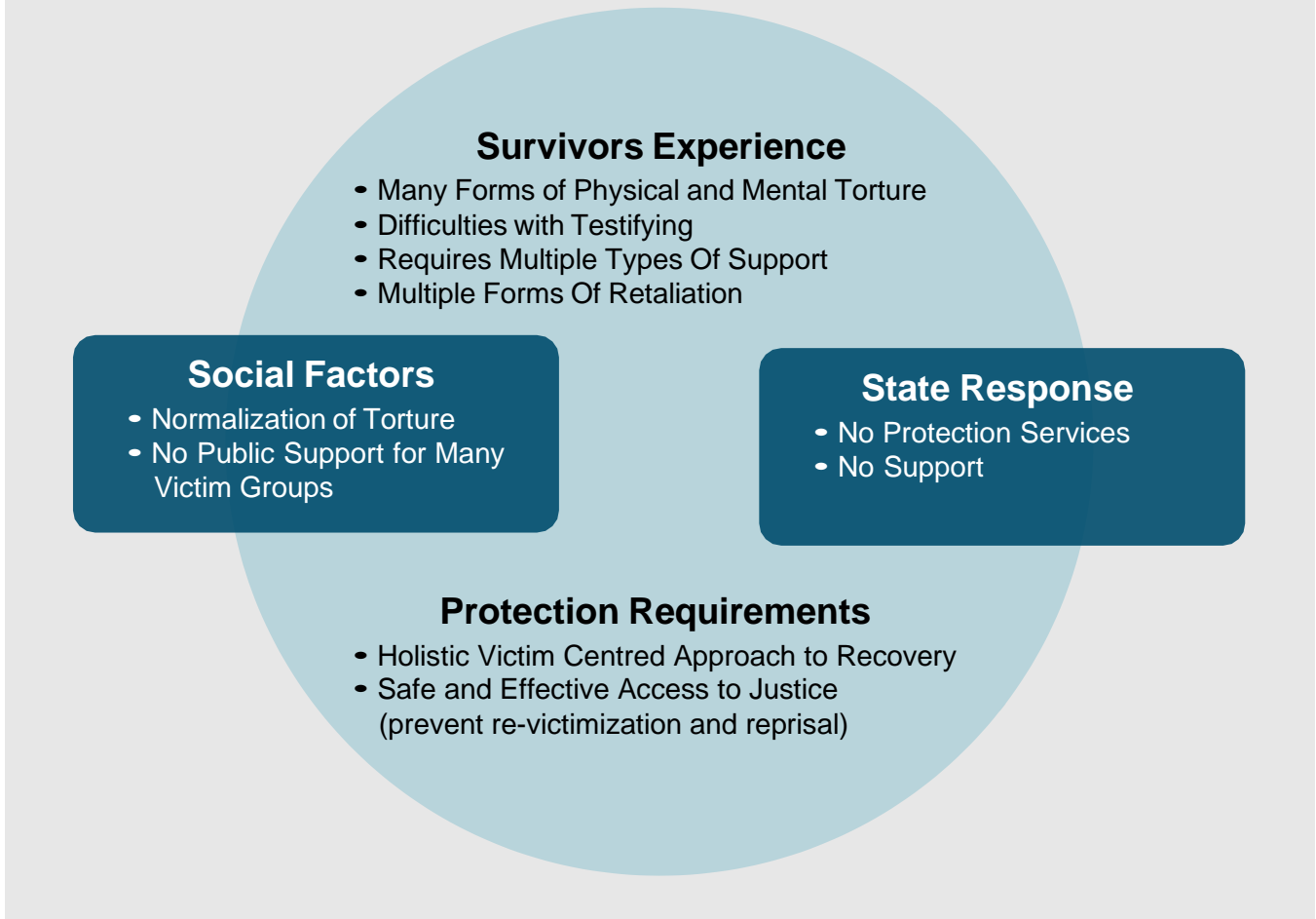
The legal and policy framework in Sri Lanka commits to zero tolerance of torture under Article 11 of the Constitution and is prohibited under the Convention Against Torture And Other Cruel, Inhuman Or Degrading Treatment Or Punishment Act No. 22 of 1994 (CAT Act) and Sri Lanka's National Action Plan for the Protection and Promotion of Human Rights 2017-2022. Sri Lanka is party to the United Nations Convention Against Torture, recognizing the competence of the Committee against Torture to receive and consider individual complaints since August 2016, and adopted the Optional Protocol to the Convention against Torture (OPCAT) in January 2018.

There is, however, a significant gap between this commitment and the lived realities of Sri Lankans. In fact, the practice of torture and ill-treatment by state officials, has been repeatedly recognized, by international and local human rights defenders, as systemic and widespread. Sri Lanka has also historically failed to develop effective institutional responses to grave and mass forms of violence. The country also struggles to effectively address violence in homes, schools, higher education institutions and religious institutions.

Specific to the crime of torture, in the 26 years of the CAT Act, 47 incidents of torture were prosecuted, leading to convictions in a mere 9 instances, of which 6 are now under appeal.¹ In comparison with complaints reported to the Human Rights Commission of Sri Lanka (HRCSL),² roughly over 99% of the complaints lodged are not prosecuted and less than 0.2% result in convictions.³ Partly responsible is Sri Lanka's criminal justice system which involves alienating experiences, inadequate protections for victims and witnesses and long delays.⁴ The experience of survivors of torture and their families is situated in this broad context of a social and institutional fabric in which violence is accepted, impunity is rife and attempts to secure redress are negotiated within a weak justice system.

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1. Response to Right to Information Application by Law and Society Trust from Attorney General, July 2018.
 2. HRCSL reports receiving 4362 complaints of torture and ill treatment within 8 years (between January 2010 to December 2018). Information extracted from the Human Rights Commission of Sri Lanka (HRCSL) report to the UN Committee Against Torture in 2016 <https://www.hrcsl.lk/wp-content/uploads/2020/01/Report-to-CAT-Committee-.pdf> and statistics of complaints on the HRCSL website.
 3. These figures compare information provided by the Attorney General's Office on prosecutions in 26 years with the number of complaints received in 8 years by the Human Rights Commission. This means the percentage of convictions are in fact much lower.
 4. A serious criminal case takes on average 17 years as stated in the 'Recommendations Pertaining to the Expedious and Efficient Administration of Criminal Justice by the Parliamentary Sectoral Oversight Committee on Legal Affairs (Anti Corruption) and Media' dated 20th September 2017. As of December 2020, Sri Lanka had 4620 unresolved cases pending before the courts for more than 20 years as reported in the Newswire - shorturl.at/dyL58

Summary of Findings on Protection for Torture Survivors in Sri Lanka



The Research

A study was conducted in Sri Lanka to understand the formal protection mechanisms available to survivors of torture and ill treatment, the practical experiences of human rights organisations and survivors of torture and ill-treatment from poor communities in accessing these protection mechanisms, and the different ways in which people from such communities attempt to secure a measure of protection for themselves, and the gaps in protection they face. The method included a review of the legal framework, a literature review of reports on torture in Sri Lanka covering the past ten years, twenty key informant interviews with psychologists, medical professionals, lawyers, researchers and activists, and three case studies of the experiences of torture survivors and their families.

Findings

1. Many Forms of Torture (Physical, Mental and Sexual): Survivors of torture experienced derogatory words, threats, insults, intimidation, shoving and slapping, beating, kicking, trampling, removal of clothing, rape, sexual abuse and harassment, use of implements such as batons, wooden or bamboo sticks, firewood, poles or wickets, wires, and metal chains to inflict pain, made to kneel, made to walk on knees, beaten on soles of feet, hung by thumbs, by wrists and ankles, burns, various forms of asphyxiation and use of chillie powder or petrol to cause a stinging sensation. Humiliation by beating or handcuffing in public, use of media during arrest and raids, defamatory public announcements and messages about survivors or their families and the cruelty of laughing during torture, was also experienced. Survivors also report being deprived of food, water and sleep.

2. Difficulties with Testifying: Survivors of torture experience powerlessness, shame and fear associated with speaking about violence. They also lack validation of suffering and vulnerability. The very personal experience often requires long periods of time to grapple with why it occurred, what it means, whether it can be shared and how it is perceived by others. Most often survivors of torture are poor and have limited social or political influence and therefore do not lodge complaints. Survivors did not have the necessary non-judgmental support to identify sexual violence as a form of torture.

3. Multiple Supports Required:

- a. Support for Physical, Psychological, Social and Economic Recovery:** Survivors required support for personal recovery in terms of their physical and psycho-social health, their family and social relationships, their livelihood and financial security. Support is required to recover from feelings of loss of dignity. Support must respond to permanent and long term physical and psychosocial disability and distress and intergenerational harm. Support is required also by family and friends affected by secondary victimization.
- b. Support to Engage Formal Institutions for Redress:** Survivors needed support to deal with institutions if they have lodged complaints, to understand the process and possible outcomes. They required support to meet institutional challenges including re-traumatization: the distress of sharing the experience multiple times, experience of being disbelieved, blamed, reprimanded and threatened by persons in authority and refusal to accept complaints based on legal time bars. They often required legal representation and caseworker support.

4. Multiple Forms of Retaliation:

- a. Compelled to Defend Fabricated Charges:** False criminal charges are made against survivors, often for possession of illicit liquor or drugs or for obstruction of a public officer. This appears to be a form of punishment or a means of deterring complaints about torture. These cases become the immediate threat that survivors deal with: the threat that non-appearance on court dates may result in arrest, the fear of fabricated evidence or corrupt practice could lead to imprisonment. Due to the delays in the legal system, survivors experience frustration, financial, physical and emotional toll, and also stigma and loss of support from community members, sometimes family.
 - b. Threat, Harassment and Coercion of Survivors:** Survivors experience further violence, threats to physical safety of family members and homes, and loss of livelihood and financial security. Survivors also experience coercion by perpetrators, others from the institution representing the perpetrator, and even community leaders such as school principals and religious leaders on behalf of the perpetrator. In a few instances retaliation resulted in the killing of the survivor. Due to continued harassment some survivors are forced to permanently relocate either alone or with their families. Those who choose to stay have faced prolonged harassment.
 - c. Severed Social Support:** Survivors of torture experience attempts to publicly shame and isolate them. Perpetrators have publicized that the survivor or members of his/her family deals in illegal drugs or that the survivor has a mental illness, or informs family and friends that the survivor is a criminal. This has affected survivors' relationships with spouses and children. Community leaders have been influenced to discredit or dissuade support to survivors.
- 5. Normalization of Torture:** The normalization of torture means that such treatment is not recognized as extraordinary, or even as violence. It is justified as acceptable treatment. Survivors believe it is not worthy of mention, or complain nor worth the risk of a complaint. This also means State and non state sector service providers fail to recognize and respond to torture.
- 6. No Public Support for Many Groups of Victims:** Public opinion, often based on moral evaluations, appear not to recognize or support victims, from low-income communities, those engaged in sex work, people with gender identities perceived as non-conforming, people who are prisoners. Social disaffection towards drug use and associations with terrorism was also seen to delegitimize and stifle complaints of survivors. Public satisfaction at extra-legal punishment was identified as enabling perpetrators. State institutions failed to protect survivors from stigmatization and attacks, and failed to publicly promote language and actions about securing dignity, safety and rights of victims.

7. No Protection and Inadequate State Response

- a. **No Protection Services:** There are no state sponsored programs for timely and effective protection and recovery of survivors of torture in Sri Lanka. There is also a confidence deficiency in state interventions in protection services.
- b. **No Support:** Officials within and responsible for redress mechanisms are not found to be supportive of survivors. Reporting to Judicial Medical Officers and Magistrates does not convert to an official complaint and investigation or support for the survivor. Survivors are not provided with information about steps taken regarding their complaints. The Attorney General when prosecuting criminal cases of torture fails to account for the impact of reprisals on the survivor and the case. In cases filed at the Supreme Court for determinations of a rights violation, survivors face several challenges including time bars, failure to consistently hold responsible supervising officials for failing to act, and failure to place before Court evidence in favour of the survivor that is available to the State.

Policy Recommendations for the State

Ensuring effective protection for survivors of torture is proposed achieving two aims: (a) a holistic victim centered approach to recovery and (b) a safe and effective access to justice.

1. Holistic Victim Centered Approach to Recovery: Survivors and their families must receive support and protection to recover from their experience of torture or ill treatment. It is recommended that the State:

Adopt a State Resourced Multi-Sectoral Programme for the recovery and protection of survivors of torture and their families by the Victim and Witness Protection Authority of Sri Lanka. The programme must provide support for recovery (physical, emotional, financial and social), must train and engage medical and psychology professionals in the state sector, must provide support for family and others affected by secondary victimization. Provide for referral systems also with non-governmental organizations working within communities to support social reintegration of survivors. The programme must be designed to ensure independence from state institutions and actors who are implicated in perpetrating or enabling torture or ill treatment.

2. Safe and Effective Access to Justice: To ensure survivors experiences of re-victimization and reprisal are addressed to ensure meaningful access to justice it is recommended that:

Each State Institution Dealing with Survivors of Torture Design, Adopt and Implement Institutional Policies with Specific Protection Obligations Towards Survivors of Torture. Institution specific policies must be adopted by the Police, Prisons, Public Administration, Judiciary, Judicial Medical Officials and Health Administration, Office of the Attorney General, National Authority for the Protection of Victims and Witnesses, National Police Commission, Legal Aid Commission and National Human Rights Commission. Policies must emphasize safe and non judgmental support, prioritise and center survivor recovery, remove legal prescriptions on time bars on complaints, and expeditious action with consent of and in collaboration with survivors. Policies must especially recognize and address forms of threat and retaliation survivors face.

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THE UNIVERSITY of EDINBURGH
School of Social and
Political Science

The views expressed in this brief are those of the authors and do not represent the official positions of Dignity or The University of Edinburgh.

For further information contact authors:

Ermiza Tegal: ermiza@gmail.com

Thiagi Piyadasa: thiagip@gmail.com



Law and Society Trust
3, Kynsey Terrace,
Colombo 8,
Sri Lanka

Tel: + 94 (0) 112684845
Fax: +94011-2686843
Email: admin@lstlanka.org
www.lstlanka.org