

# Sri Lanka Monitoring and Accountability Panel: Publication of the Third Spot Report

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

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The Sri Lanka Monitoring and Accountability Panel ('MAP') issues its Third Spot Report. The international legal experts provide an independent assessment of the transitional justice efforts by the Sri Lankan Government, and recommendations going forward. The Third Spot Report coincides with the Human Rights Council's 37th Regular Session.

In October 2015, the Government of Sri Lanka committed to a broad transitional-justice agenda. The measures included accountability mechanisms to address some of the worst crimes of the 21st Century. Since then, the GSL has proceeded in bad faith, reneged on its international commitments, and violated its legal obligations to victims. To make matters worse, Sri Lankan security forces have continued to commit serious crimes – including torture and sexual violence - with impunity. Seemingly, the failure of the international community to hold Sri Lanka to account for past crimes has encouraged the continuation of violations.

According to MAP Member Richard J Rogers:

"The Sri Lanka situation clearly shows the risks of impunity, namely, a continuation of mass crimes. The fact that the on-going torture and sexual violence against Tamils are still so systemic and organised, leaves the impression that it's an integral part of the Sri Lankan Government's counter-insurgency strategy."

In its Recommendations, the MAP urges:

"The HRC to lobby the UN Security Council to refer the Sri Lanka situation to the International Criminal Court, as a statement of support to the victims and human-rights defenders seeking accountability in Sri Lanka."

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## EXECUTIVE SUMMARY

1. In October 2015, the Government of Sri Lanka (GSL) committed to a broad transitional-justice agenda pursuant to UN Human Rights Council (HRC) Resolution 30/1. The measures included accountability mechanisms to address some of the worst crimes of the 21st Century. Since then, the GSL has proceeded in bad faith, reneged on its international commitments, and violated its legal obligations to victims. To make matters worse, Sri Lankan security forces have continued to commit

serious crimes—including arbitrary deprivations of liberty, torture, and sexual violence—with impunity. Seemingly, the failure of the international community to hold Sri Lanka to account for past crimes has encouraged the continuation of violations.

2. Since the filing of the MAP's last report in November 2017, the GSL has made zero progress on its The MAP provides independent monitoring, advice, and recommendations, focusing on the effectiveness of accountability measures from a victims' perspective. The views and recommendations of the Panel enable transitional justice agenda, despite damning assessments by UN Special Rapporteurs and human rights organizations. Calls for a timebound benchmarked action plan for implementation of Resolution 30/1 have fallen on deaf ears. The US and EU appear to be more interested in nurturing bilateral relationships with the GSL in reaction to China's increasing influence. And President Sirisena has maintained his position that any special court set up to investigate war crimes will not include foreign participation. Observers lament that 'Sri Lanka has shown how it's possible to hoodwink the international community, always asking for space and time'.

3. Meanwhile, as states play politics, the number of victims steadily grows. According to credible observers, '[a]bduction and torture of Tamils by the Sri Lankan security forces remain systematic' and 'includes torture chambers in one of the country's largest army camps, immigration fraud, human smuggling and extortion by government allies'. UN Special Rapporteur, Ben Emmerson, expressed 'extreme alarm' at the failure of the GSL to investigate either credible allegations of past torture or corroborated cases of on-going torture and sexual abuse. After his July 2017 visit, the Special Rapporteur confirmed that: 'The use of torture has been, and remains today, endemic and routine, for those arrested and detained on national security grounds,' and noted that the Tamil community has 'borne the brunt of the state's well-oiled torture apparatus.' Many of those tortured had been arrested under the Prevention of Terrorism Act (PTA), which the GSL had failed to repeal or amend, despite having promised to do so. The UN Working Group on Arbitrary Detention called for the immediate repeal of the PTA, calling it 'one of the key enablers of arbitrary detention for over four decades'.

4. In 2015, the UN Secretary General called the conflict-related sexual violence 'one of the major unaddressed issues' of the Sri Lankan civil war but noted that, 'there are indications that abduction, arbitrary detention, torture, rape, and other forms of sexual violence have increased in the post-war period.' Despite the stark assessments, NGOs have documented ongoing sexual violence perpetrated by the security forces over the last year or so. The shocking details of military 'rape camps' were reported to the UN Committee on the Elimination of Discrimination against Women. And, in November 2017, an Associated Press investigation uncovered 'more than 50 men who said they were raped, branded, or tortured as recently as [that] year'. Justice C.V. Wigneswaran, chief minister for Sri Lanka's Northern Province and a former Supreme Court judge, complained that his efforts to bring such information to light was being ignored and observed that 'if the international mechanism was in place it would have acted as a deterrent to these military sadists'. The fact that the sexual violence assaults 'are not just routine but standardized' has led some to suggest that they are part of an on-going GSL policy, with military commanders 'ordering their men to rape [...] detainees as part of their counter-insurgency strategy'.

5. In the first three quarters of 2017, the Human Rights Commission of Sri Lanka received 5614 complaints, 1174 of them related to unlawful arrest and torture by police. Unsurprisingly, many Tamils in the North fear they might be abducted, arbitrarily detained, tortured, sexually abused, or killed as security forces continue their surveillance, harassment, and intimidation.

6. In his written report on Resolution 30/1 published ahead of the 37th Session of the HRC, the UN High Commissioner for Human Rights stated that he 'was deeply concerned over serious allegations in foreign media about on-going abductions, extreme torture, and sexual violence, as recently as in 2016 and 2017'. He rightly concluded that the Sri Lankan 'authorities have not yet demonstrated the

capacity or willingness to address impunity for gross violations and abuses of international human rights law and serious violations of international humanitarian law’.

The MAP provides independent monitoring, advice, and recommendations, focusing on the effectiveness of accountability measures from a victims’ perspective. The views and recommendations of the Panel enable victims and other stakeholders to participate more effectively in the transitional justice processes. For more information, please visit: <http://war-victims-map.org/>

Sri Lanka Monitoring and Accountability Panel

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