No Trials, Only Tribulations for Tamil Victims of Sri Lanka's Conflict-related Sexual Violence
People for Equality and Relief in Lanka (PEARL) is a Tamil advocacy group, based in Washington D.C. and registered as a 501(c)(3) non-profit organization in the United States. PEARL advocates for human rights, justice, and a political solution for Tamils in the North-East of Sri Lanka.

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Cover image: An artist’s rendition of Tamil women bathing in the river in an IDP detention camp, afraid of being raped. © 2022 House of Thulasi

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Summary

Since Sri Lanka’s independence in 1948, Sinhala-Buddhist nationalism has incited discrimination, physical violence, and conflict on the island. Decades of structural discrimination and five anti-Tamil pogroms later (the last one in July 1983 deemed “acts of genocide” by the International Commission of Jurists), the situation developed into a full-fledged armed conflict between the Sinhalese Sri Lankan government and the Liberation Tigers of Tamil Eelam (LTTE). The LTTE was fighting to establish a separate state in the Tamil homeland in the northern and eastern parts (North-East) of the island, controlling 76% of the region at its peak.

The 26-year-long war, which ended on May 18, 2009, was marked by war crimes and crimes against humanity, but only the Sri Lankan government perpetrated violations with the specific intent to destroy an ethnic group, or genocide. The government was also the only party to the conflict that used sexual violence as a weapon of war. Sri Lankan security forces raped Tamil women and girls while conducting military and police “operations” and systematically tortured both Tamil male and female detainees, particularly those with actual or suspected ties to the LTTE, with rape and other forms of sexual violence.

Female rape victim-survivors and the families of murdered rape victims rarely, if ever, saw justice in Sri Lanka’s highly politicized courts, which took their cue from successive presidents who almost exclusively protected the security forces rather than Tamil victims and victim-survivors.1

Thanaluxmi Arumathurai, a teenage child; Krishanthi Kumaraswamy, an 18-year-old secondary student; Ida Carmelitta, a 21-year-old former LTTE cadre; Vijikala Nanthakumar, a pregnant 22-year-old; and Sivamany Sinnathamby, a 24-year-old mother are among the security forces’ countless wartime gang rape victims. Their stories are exceptional for Tamils because their cases proceeded to at least the charging stage. However, with the exception of Krishanthi’s case, which concluded within two years, they illustrate the Sri Lankan government’s legal and scare tactics used to entrench impunity, namely witness intimidation campaigns, yearslong delays, and case transfers to predominantly Sinhalese areas.

Krishanthi’s gang rape and murder received unparalleled, and arguably unmatched, contemporaneous international, domestic, and legal attention. Nevertheless, only her direct rapists and murderers were prosecuted and convicted; even though one soldier credibly testified to receiving orders to rape and kill, no higher-ups were investigated.

1 This report uses the phrase “victims and victim-survivors,” where “victims” were killed and “victim-survivors” survived. “Victim-survivor” always refers to an individual who survived. “Victim” generally refers to an individual who was killed; however, when used as a standalone term and not part of the phrase, “victim” refers to a rights-holder under international law.
Notably, all five victims and victim-survivors’ rapes and legal actions occurred under the same president, Chandrika Bandaranaike Kumaratunga, who, despite her platform of “speedy justice,” did not demonstrate the political will to consistently hold security forces accountable as the war against the LTTE continued.

The final years of the war — architected by then-President Mahinda Rajapaksa and his brother then-Defense Secretary Gotabaya Rajapaksa, both of whom were in power from November 2005 to January 2015 — saw no justice delivered for rape victims and victim-survivors.

Under the Rajapaksas, from January 2009 to May 18, 2009 alone, the number of Tamil people unaccounted for and presumed dead ranged from 40,000 to 169,796, and most civilian casualties were caused by government shelling. Tamil women and girls, including Isaipriya, a singer and news presenter for the LTTE, were brutalized with rape and sexual mutilation — before or after being killed — on an unprecedented scale. Fleeing female Tamil civilians and female LTTE hors de combat were subjected to these heinous violations with utter impunity. According to one soldier who was on the battlefield, “If [the troops] wanted to rape a Tamil girl, they could just beat her and do it. If her parents tried to stop them, they could beat them or kill them. It was their empire.”

Approximately 284,000 Tamils became internally displaced, held in detention-like camps, including Menik Farm, for years; Tamils suspected of being part of the LTTE were outright detained. In the internally displaced persons camps, women and girls were sexually humiliated and raped; in the detention centers, both men and women were sexually tortured, including with rapes. The security forces’ sexual torture of detainees, which occurred throughout the war, continues to date.

Tamil women and girls living in the still heavily militarized North-East — where, at the peak of its militarization, one district had one Sri Lanka Army (SLA) soldier for every two civilians — are at high risk for sexual violence, exploitation, and harassment. In another exceptional instance of justice, SLA soldiers who gang raped a 28-year-old mother and sexually assaulted another 38-year-old mother in 2010 were prosecuted and convicted five years later. Notably, the legal proceedings lagged during the Rajapaksa years, only concluding in 2015 in the first year of Maithripala Sirisena’s presidency, a political change embraced by an international community that wrongly believed he would consistently pursue accountability. Toward the end of his tenure, in 2019, the perpetrators were acquitted and the victim-survivors left unprotected. Since then, those soldiers have harassed the rape victim-survivor into seeking refugee status to flee Sri Lanka, even though she is waiting for the Supreme Court’s decision on her appeal at time of writing.

There is also anecdotal evidence that security forces perpetrated a range of acts of reproductive violence. Soldiers hit pregnant Tamil women in the stomach to cause miscarriages, and security forces raped and threatened to either force Tamil detainees to abort any pregnancy from rape or to remain pregnant from rape. Under the guise of regular checkups, a government doctor performed forced abortions on “Tamil women suspected of being aligned with the LTTE” during the war, and
government medical staff forced long-term contraception onto Tamil women in the North a few years after the war ended.

Using open-source research, this report describes and analyzes the aforementioned incidents of conflict-related sexual violence (CRSV) — which may constitute international crimes, namely torture, war crimes, crimes against humanity, and genocide — to demonstrate the Sri Lankan government’s unwillingness to consistently serve justice for Tamil victims and victim-survivors. Although various incidents and forms of security forces’ CRSV are presented, they do not fully reflect the scale of wartime and postwar sexual violence, which is under-reported due to the stigma of rape and fear of reprisals. Accordingly, the incidents in this report should not be taken as comprehensively representative of the extent of security forces’ CRSV against Tamils.

Given the lack of domestic accountability, Tamils have looked to universal jurisdiction and the International Criminal Court (ICC), using creative lawyering to argue personal or territorial jurisdiction. In fact, states with universal jurisdiction laws — which allow third-party states to try alleged perpetrators of international crimes, regardless of where they were committed or the nationality of the accused or the victim — have a duty to investigate and prosecute Sri Lankan government perpetrators most responsible for CRSV as an international crime. Without the involvement of third-party states and international criminal justice mechanisms, impunity will continue.

Consequently, since 2011, civil society organizations, including Tamil diaspora groups, have made civil and criminal filings, as well as submissions to the ICC arguing its jurisdiction, against political and military leaders concerning their involvement in international crimes during the final phase:

- Mahinda Rajapaksa, then-President, who had command responsibility over the security forces;
- Gotabaya Rajapaksa, then-Defense Secretary, who had command responsibility over the security forces;
- Jagath Jayasuriya, then-Vanni Security Forces Commander, who had command responsibility over the military operations in the Vanni and over Joseph Camp, a detention center rife with the sexual torture, including with rapes, of Tamil male and female detainees;
- Shavendra Silva, then-commander of the 58 Division of the SLA, whose soldiers not only sexually harassed, sexually humiliated, and raped female LTTE cadres, but also sexually mutilated executed female cadres’ bodies;
- Jagath Dias, then-commander of the 57 Division of the SLA, whose soldiers have not been the subject of sexual violence allegations yet but who helped cultivate the culture of

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2 This report defines conflict-related sexual violence (CRSV) as any act of rape or other form of sexual violence — namely sexual mutilation, genital torture, sexual exploitation, forced abortion, forced pregnancy, forced birth control, and forced nudity — directly or indirectly linked to Sri Lanka’s internal armed conflict.
impunity for sexual violence by SLA soldiers against Tamils and by Sri Lankan UN peacekeepers outside Sri Lanka; and

- Palitha Kohona, then-Foreign Secretary, who was not involved in sexual violence but actively denied that rapes occurred and is an Australian-Sri Lankan dual citizen.

Unfortunately, despite all the credible evidence and legal filings, neither the Sri Lankan state nor any alleged Sri Lankan government perpetrators have been held responsible for international crimes, including rape and other forms of sexual violence. Diplomatic or head-of-state immunity protected defendants at the time of most filings, which were made to highlight their alleged responsibility for international crimes. Some filings did, however, affect a litigation target’s diplomatic status: Jagath Jayasuriya, Shavendra Silva, and Jagath Dias have not held diplomatic roles in several years. Moreover, following the recent resignations of President Gotabaya Rajapaksa and Prime Minister Mahinda Rajapaksa from those respective positions, the Rajapaksas are no longer protected by immunity and can — and urgently must — face justice before this window of opportunity closes.

With swift action, members of the international community can address longstanding Tamil grievances about impunity for international crimes and human rights violations, including CRSV, by initiating or urging legal actions.

UN Human Rights Council should:
- Establish an international criminal justice mechanism to investigate alleged Sri Lankan perpetrators of international crimes, including CRSV, and prosecute those most responsible.
- Urge the UN Security Council to refer the situation in Sri Lanka to the ICC.

UN Human Rights Council Member States should:
- Actively apply extraterritorial and universal jurisdiction principles to investigate allegations of CRSV by the Sri Lankan security forces and prosecute those most responsible.
- Bring claims against Sri Lanka to the International Court of Justice for breaches of the Convention against Torture or the International Convention for the Protection of All Persons from Enforced Disappearance.
- Ensure individuals responsible for human rights violations, including CRSV, do not receive or retain diplomatic roles and diplomatic immunity.

International Financial Institutions should:
- Urge Sri Lanka to deliver justice for international crimes, including CRSV, in order to promote inclusive and meaningful participation in commerce as well as foreign investments.
Urge Sri Lanka to decrease military expenditure, demilitarize the North-East, and remove from the security forces individuals responsible for human rights violations, including CRSV, in order to reduce unsustainable debt.

UN Human Rights Council Member States and International Financial Institutions should:

- Urge Sri Lanka to ratify the Rome Statute of the ICC with retroactive effect to July 1, 2002.
- Make bilateral and multilateral ties with Sri Lanka contingent on the Sri Lankan government taking effective and consistent steps to end ongoing CRSV and impunity for historical and ongoing CRSV.
Background

The 26-year-long internal armed conflict in Sri Lanka ended on May 18, 2009, when the Sri Lankan government defeated the Liberation Tigers of Tamil Eelam (LTTE), which had launched an armed liberation struggle to establish a separate state of Tamil Eelam in the Tamil homeland in the northern and eastern parts (North-East) of the island. At its peak, the LTTE controlled 76% of the North-East.\(^3\) The war was marked by violence, killing, injuring, and the displacement of hundreds of thousands of Tamils. Since the beginning of the war until January 2009, more than 70,000 civilians were killed,\(^4\) predominantly Tamils in the North-East.\(^5\) Under President Mahinda Rajapaksa’s government, the number of Tamil people unaccounted for and presumed dead during the final five months of the war ranged from 40,000 to 169,796,\(^6\) and most civilian casualties were caused by government shelling.\(^7\)

Both parties to the conflict committed war crimes and crimes against humanity.\(^8\) However, only the Sri Lankan security forces committed rape as a weapon of war; allegations of rape by LTTE members were extremely rare.\(^9\)

During the war, Sri Lankan security forces raped Tamil women and girls as part of military and police “operations” and systematically tortured Tamil male and female detainees, particularly

\(^7\) Report of the Secretary-General’s Panel of Experts on Accountability in Sri Lanka, p. ii.
actual or suspected LTTE members and supporters, with rape and other forms of sexual violence. In the final months of the war, the Sri Lanka Army (SLA) raped and killed Tamil women and girls, and hundreds of bodies bore visible signs of sexual mutilation as well. Fleeing female Tamil civilians, as well as female LTTE hors de combat, were victimized and murdered in this way. Reports indicated that other Tamils were subsequently held in internally displaced person (IDP) camps, where women and girls suffered sexual humiliation and rapes, or in detention centers, where both men and women were sexually tortured, including with rapes.

Despite evidence collected by Tamil organizations, international civil society organizations, and UN bodies implicating the state and individuals, neither the Sri Lankan state nor any alleged Sri Lankan government perpetrators have been held responsible for international crimes, including rape and other forms of sexual violence.

Root Causes of Conflict

Structural and physical violence, incited by Sinhala-Buddhist nationalism, have been primary drivers of the post-independence ethnic and armed conflict in Sri Lanka. Impunity, including for sexual violence, is a related key grievance for Tamils that remains ongoing and unaddressed.

Prewar Anti-Tamil Discrimination and Pogroms

The precolonial history of Sri Lanka featured periods of war and peace between the Tamil and Sinhalese kingdoms at different times. European colonization of the island began in 1505, first by the Portuguese, then the Dutch, and finally the British, who seized control of the entire island in 1815. Following the island’s independence in 1948, Sinhalese governments promulgated a series of discriminatory policies, laws, and even constitutions to promote Sinhala-Buddhist nationalism.

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10 Wood, 145.
14 State-Sponsored Sinhalization of the North East, pp. 10-11.
The structural discrimination and anti-Tamil violence are closely linked, as exemplified by five prewar anti-Tamil pogroms in 1956, 1958, 1977, 1981, and 1983.

The first pogrom followed the introduction of the Sinhala Only Act in Parliament on June 5, 1956. That day, 300 Tamils peacefully demonstrated outside the building before a Sinhalese parliamentarian led a Sinhalese mob attack against the protesters while police stood idly by. Over the next few days, the government-instigated violence — and accompanying looting and arson — spread across the capital, Colombo, and then to other parts of the island. In Gal Oya, Eastern province, where the government had settled 250,000 Sinhalese people as part of an irrigation and Sinhalization scheme, Sinhalese settlers seized government vehicles and explosives to “terrorize” Tamils in the area. At least 150 Tamils were killed.

The second pogrom happened about two years later, in May 1958. The month before, Sinhala-Buddhist nationalist monks had successfully pressured the prime minister into abrogating a political pact that would have devolved some powers and given the Tamil language greater status than before. Toward the end of May, Sinhalese mobs at the Polonnaruwa railway junction began attacking Tamils who had traveled to the Northern province for a political

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17 Ponnambalam, p. 106; State-Sponsored Sinhalization of the North East, pp. 16-17.
19 Ponnambalam, p. 106; “Remembering 1956 - Sri Lanka’s First Anti-Tamil Pogrom” (citing William Howard Wriggins, Ceylon: Dilemmas of A New Nation (2015)).
20 Ponnambalam, pp. 110-12.
conference. After the radio began stoking anti-Tamil sentiments on May 25, the violence escalated.21 About 300 to 1,500 Tamils were killed from May 22 until May 27, when the government finally declared a state of emergency.22 In that time, Sinhalese mobs pulled Tamils off of trains and buses, burned Tamils alive in their homes, and looted Tamil homes and shops.23 They also raped about 100 Tamil women.24 As in 1956, the police stood idly by.25

The third pogrom occurred as Tamil political calls for peaceful separatism solidified, as evidenced by the Tamil-majority areas’ overwhelming votes for a separatist platform in the 1977 elections.26 This victory, coupled with the anti-Tamil, Sinhala-Buddhist nationalistic rhetoric espoused by then-Prime Minister J.R. Jayewardene’s government fueled more anti-Tamil violence.27 A presidential commission of inquiry documented widespread killings, assaults, and rapes in nearly every part of the island from August 13 through September 15, 1977.28 The commission only recorded just over a dozen Tamil women being raped or gang raped by Sinhalese men;29 however, according to a Tamil politician, the numbers were much higher and about 200 women were raped.30 Sinhalese mobs also looted and burned Tamil homes and shops.31 This time, the police either stood idly by, as before, or actively participated in the government-architected and -incited anti-Tamil violence.32

The fourth pogrom happened around the June 4, 1981 local elections in Jaffna. The United National Party, led by Jayewardene — who, in 1978, became the first executive president, a

21 Id., p. 113.
23 Ponnambalam, p. 113.
25 Ponnambalam, p. 113.
28 Leary, p. 20.
31 Ponnambalam, p. 194; Sansoni Commission Report.
position that further institutionalized and centralized Sinhala-Buddhist nationalism in the
government — hoped to win seats and reduce the political representation of Tamil separatists.33

To influence the election’s outcome in its favor, the government deployed 100 to 300 specially
selected Sinhalese policemen to Jaffna.34 Then, on May 31, 1981, during an election rally of the
leading Tamil political party, an unidentified shooter killed one Sinhalese and one Tamil
policeman and injured one or two others, including a Muslim.35 Police rampaged for three days,
defacing or destroying Tamil statues as well as burning the market area and more than 100 Tamil
shops, a Tamil minister of parliament’s home, and a Tamil newspaper’s office. Security forces
killed several people too.36 Most infamously, police and security forces burned the Jaffna Public
Library — one of the largest libraries in Asia at the time and home to at least 95,000 to 97,000 rare
or irreplaceable documents37 — in an act of cultural genocide.38 Ultimately, Jayewardene’s
political party did not win any seats in Jaffna.39 Subsequently, the government instigated and
organized violence against Tamils across the island in July and August.40 While the reported death
toll was only 25, “scores of women were gang raped,” thousands lost their homes, and many shops
were burned.41

Jayewardene was still in power during the fifth and worst pogrom, which occurred from July 23 to
30, 1983, against Tamils across the island, though primarily in Colombo. Tamils remember this
period as Black July.

A common misconception is that Black July was in response to the LTTE’s killing of 13 SLA soldiers
on July 23, 1983. In reality, state violence against Tamils had already been increasing for months:
security forces had detained, tortured, and even killed dozens of Tamil civilians.42 The government
then exploited the soldiers’ deaths to trigger mass violence against the Tamil people.43 For one

33 Ponnambalam, p. 206; Vinorshan R. “The Burning and Rebuilding of Jaffna Public Library” 47 Roots (May 31, 2020),
34 Ponnambalam, p. 206; Leary, p. 31.
35 Ponnambalam, p. 207; Leary, p. 31; Santasilan Kadirgamar “Jaffna in 1981- Days of Terror” 46 Economic & Political
Weekly 27, 28-29 (June 4-10, 2011).
36 Leary, pp. 3-4, 31; Ponnambalam, p. 207 (quoting a statement by the opposition parties); Vinorshan R.
37 Leary, pp. 3-4, 31-32; Vinorshan R.
38 See Damien Short, Redefining Genocide, Settler Colonialism, Social Death and Ecocide, pp. 110 (2016).
39 Leary, p. 33.
(Sept. 20, 1981)).
43 Callum Macrae “Sri Lanka Massacred Tens of Thousands of Tamils While the World Looked Away” Vice News (Aug.
“Remembering the Black July Pogroms” (July 31, 2010),
week, the government provided Sinhalese mobs with voter lists and the addresses of every Tamil-owned shop, house, and factory,\textsuperscript{44} transporting them around Colombo in government-owned vehicles.\textsuperscript{45} These state-sponsored mobs killed about 3,000 Tamils through beatings, hackings, and burning.\textsuperscript{46} They threw Tamil children into burning cauldrons of tar, set on fire cars and buses filled with Tamil passengers,\textsuperscript{47} and raped at least 500 Tamil women.\textsuperscript{48} The police and army once again stood idly by.\textsuperscript{49}

In December 1983, the International Commission of Jurists found that “the evidence points clearly to the conclusion that the violence of the Sinhala rioters on the Tamils amounted to acts of genocide.”\textsuperscript{50}

There has been no justice for the anti-Tamil physical and sexual violence during these five pogroms.

\textit{Sexual Violence}

The prewar pogroms featured Sinhalese mobs raping Tamil women and the government’s abject failure to prevent or investigate and prosecute those responsible. State-sanctioned rapes of Tamil women, alongside the attached impunity, were among the human rights violations that drove the armed conflict.

In fact, according to \textit{The Times} (UK), the LTTE’s ambush just before Black July was in retaliation for the SLA abducting three Tamil girls in Jaffna, taking them to their camp, and raping them.\textsuperscript{51}

Black July itself also included the rapes of at least 500 Tamil women.\textsuperscript{52}

\begin{thebibliography}{9}
\setlength{\bibitemsep}{0pt plus 0.3em}
\bibitem{id} Id.
\bibitem{id2} Id., p. 23 (referencing a report published in \textit{The Times} (UK) on July 27, 1983).
\bibitem{northern2} Northern Provincial Council, Resolution: Sri Lanka’s Genocide against Tamils, p. 2.
\end{thebibliography}
According to Yogi (a pseudonym), during Black July, several men broke down his door, dragged his mother out to the road, and gang raped her. They forced Yogi to watch the rape by hurting him and his mother every time he closed his eyes. The men left a few hours later, saying “this is what Tamil whores deserve.” When Yogi went to check on his mother, she was dead.  

Another form of sexual violence, forced nudity, which is a type of sexual humiliation, occurred when Sinhalese mobs stripped Tamils before killing them. In an iconic photograph, four Sinhalese men surround a naked Tamil man; one grins at the camera with his leg lifted to kick the cowering Tamil.  

The physical, sexual, and property violence of Black July is often considered the spark for the LTTE’s 26-year-long armed liberation struggle. Since then, Sri Lankan security forces raped Tamil women and girls at checkpoints and during operations, and they sexually tortured Tamil male and female detainees, including with rapes. Although exact figures do not exist, a Tamil human rights organization in the North-East documented about 150 unique incidents of killings and massacres from Black July until January 2009 by the security forces, a figure that the organization’s methodology considered conservative; 15 of these incidents also involved the rape of Tamil women and girls. Given under-reporting due to stigma and fear of reprisals, the number of Tamil rape victims and victim-survivors is believed to be much higher.

Tamil women have cited fear or anger about the Sri Lankan security forces’ rape of women and girls — or even their personal experiences of rape — as a reason they joined the LTTE. In fact, as the call for an armed struggle grew in the 1970s and 1980s, Tamil women were conceptualized not...
only as wives and mothers, but also as rape victims of the government, an understanding that Tamil nationalists rallied around.\footnote{See Radhika Coomaraswamy “Being Tamil in a Different Way: A Feminist Critique of the Tamil Nation” in R. Cheran, \textit{Pathways of Dissent}, pp. 119-20, 122-23 (2022).}
International Legal Obligations

Rape and other forms of sexual violence are universal weapons of war and oppression that have been employed throughout history. Since the 1990s, international human rights treaty bodies and criminal courts have expanded our understanding of sexual violence as an international crime. Sexual violence is prohibited, and criminalized, under customary international law and treaty law.

International law has evolved to understand sexual violence as physical acts, such as rape, sexual slavery, and enforced prostitution, and non-physical acts, such as forced nudity. Reproductive violence is a form of sexual violence that targets a person’s reproductive capacity and includes forced pregnancy, forced sterilization, forced abortion, and forced contraception. This report defines conflict-related sexual violence (CRSV) as any act of rape or other form of sexual violence — namely sexual mutilation, genital torture, sexual exploitation, forced abortion, forced pregnancy, forced birth control, and forced nudity — directly or indirectly linked to Sri Lanka’s internal armed conflict.

In 2008, the UN Security Council adopted the binding Resolution 1820, which noted that rape and other forms of sexual violence can constitute a war crime, a crime against humanity, or a constitutive act of genocide while stressing the need to end impunity for such crimes. Sexual violence can also constitute torture.

This section will overview human rights and international criminal jurisprudence pertaining to CRSV as each of the four international crimes — torture, war crimes, crimes against humanity, and genocide — and states’ duty to investigate and appropriately prosecute allegations of CRSV.

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65 UN Security Council Res. 1820, ¶ 4 (June 19, 2008).

Torture

In his inaugural report in 1986, the UN Special Rapporteur on Torture wrote a non-exhaustive list of methods of physical torture, which included rape. Under international human rights law, sexual violence and gender-based violence — which include violations of reproductive rights, such as forced sterilization, forced abortion, and forced pregnancy — may amount to torture, emphasizing that the purpose and intent requirement of torture is satisfied if an act is gender-specific or perpetrated on the basis of sex.

Within a couple months of each other in 1998, the International Criminal Tribunal for Rwanda (ICTR) and the International Criminal Tribunal for the former Yugoslavia (ICTY) held that rape constitutes torture if the rape satisfies the constituent elements of torture under customary international law, as defined in the Convention against Torture.

War Crimes

Customary international humanitarian law explicitly prohibits rape and other comparable forms of sexual violence.

War crimes are defined as grave breaches of the Geneva Conventions and other serious violations of international humanitarian law, including rape, forced pregnancy, forced sterilization, and any other form of sexual violence of comparable gravity. Common Article 3 to the Geneva Conventions, which applies to internal armed conflicts, broadly requires the non-discriminatory humane treatment of civilians and hors de combat and prohibits “mutilation, cruel treatment and torture” and “outrages upon personal dignity, in particular humiliating and degrading treatment.”

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67 P. Kooijmans (Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment), 42nd Session Report, p. 29, UN Doc. E/CN.4/1986/15 (Feb. 19, 1986).
70 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 1.
71 “Rule 93: Rape and Other Forms of Sexual Violence” International Committee of the Red Cross IHL Database, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule93.
72 Rome Statute of the International Criminal Court, art. 8(2)(a).
74 Rome Statute, art. 8(2)(b)(xxii) & (e)(vi).
75 Common Article 3 to the 1949 Geneva Conventions, Aug. 12, 1949, art. (1)(a) & (c).
Forced contraception and forced abortion may fall under “any other form of sexual violence.”

**Crimes against Humanity**

Both the ICTR and the ICTY, using slightly different chapeau elements from each other, codified the crime against humanity of rape in the 1990s.

Under the Rome Statute of the International Criminal Court (ICC), which largely reflects customary international law, crimes against humanity are certain enumerated acts “when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.” These acts include rape, forced pregnancy, forced sterilization, and “any other form of sexual violence of comparable gravity.” Forced contraception and forced abortion may fall under “any other form of sexual violence of comparable gravity.”

In its first conviction for forced pregnancy as a crime against humanity, the ICC determined that “forced pregnancy depends on the unlawful confinement of a (forcibly made) pregnant woman, with the effect that the woman is deprived of reproductive autonomy.”

**Genocide**

Genocide is defined as any of the following acts committed with the specific intent to destroy, in whole or in part, a national, ethnic, racial, or religious group, as such: killing, causing serious bodily or mental harm, deliberately inflicting conditions of life calculated to bring about the group’s physical destruction, imposing measures intended to prevent births, and forcibly transferring children to another group.

In the *Prosecutor v. Jean-Paul Akayesu*, the ICTR delivered the first-ever judgment holding that sexual violence, if committed with the requisite specific intent, can constitute genocide by inflicting “serious bodily and mental harm on the victims” and is “one of the worst ways of inflicting harm.” The Elements of Crimes accompanying the Rome Statute explicitly mention

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76 See Dieneke de Vos “Prosecuting Sexual and Gender-Based Violence at the International Criminal Court” in *Handbook on Gender and Violence*, p. 401 (2019).
78 Rome Statute, art. 7(1)(g).
79 See Dieneke de Vos “Prosecuting Sexual and Gender-Based Violence at the International Criminal Court” in *Handbook on Gender and Violence*, p. 401 (2019).
82 *Akayesu*, ¶ 731.
“rape” and “sexual violence” as examples of conduct that can cause serious bodily or mental harm.\textsuperscript{83}

The ICTR further held that measures intended to prevent births within a group included, inter alia, sexual mutilation, sterilization, and forced birth control.\textsuperscript{84} A UN genocide risk analysis framework added forced abortion as an example of a program intended to prevent procreation.\textsuperscript{85} Finally, in patriarchal societies,\textsuperscript{86} where group membership is determined by the identity of the father, the ICTR emphasized that the deliberate impregnation of a woman by rape by a man of another group “with the intent to have her give birth to a child who will consequently not belong to its mother’s group” is a measure intended to prevent births.\textsuperscript{87} The court also stated that rape alone can be a measure intended to prevent births if it results in the victim refusing to procreate due to trauma.\textsuperscript{88}

**Duty to Investigate and Prosecute**

Sri Lanka,\textsuperscript{89} and all other states with universal jurisdiction laws, should investigate and prosecute CRSV as an international crime.

The principle of universal jurisdiction allows third-party states to try alleged perpetrators of certain international crimes — namely torture, war crimes, crimes against humanity, and genocide — regardless of where they were committed or the nationality of the accused or the victim. States Parties to the Convention against Torture and the Geneva Conventions are obligated to exercise universal jurisdiction over torture and war crimes. Customary international law permits states to use universal jurisdiction over crimes against humanity and genocide.\textsuperscript{90}

Furthermore, the Rome Statute to the ICC calls on States Parties to exercise their criminal jurisdiction over those most responsible for international crimes.\textsuperscript{91} In other words, States Parties with universal jurisdiction laws have both treaty and domestic duties to discharge regarding accountability for international crimes.

\textsuperscript{83} Elements of Crimes, art. 6(b)(t) & n. 3, [https://www.icc-cpi.int/sites/default/files/Publications/Elements-of-Crimes.pdf](https://www.icc-cpi.int/sites/default/files/Publications/Elements-of-Crimes.pdf).

\textsuperscript{84} Akayesu, ¶ 507.


\textsuperscript{86} “Rwanda: Crimes against Humanity” [WomenAid International](http://www.womenaid.org/press/info/humanrights/rwanda%20hr.html).

\textsuperscript{87} Akayesu, ¶ 507.

\textsuperscript{88} Id., ¶ 508.

\textsuperscript{89} Sri Lanka currently lacks legislation that criminalizes war crimes, crimes against humanity, and genocide and various modes of liability, notably command or superior responsibility.


\textsuperscript{91} Rome Statute, preamble.
This report examines emblematic incidents of CRSV, which may constitute international crimes, that demonstrate Sri Lankan government perpetrators’ long-standing impunity. Our analysis proves that, given the Sri Lankan government’s unwillingness to consistently serve justice for Tamil CRSV victims and victim-survivors, third-party states must fulfill their international legal obligations to investigate and prosecute those responsible for CRSV, especially individuals with command or superior responsibility, to ensure justice is served.
Emblematic Wartime Domestic Court Cases

This section presents four Sri Lankan court cases against security forces for the gang rapes of four young Tamil women and one Tamil girl in the North-East, all of which remain exceptional for Tamils because their cases proceeded to at least the charging stage. However, only one of the four cases progressed in a timely manner and resulted in convictions and sentences. The other three were riddled with witness intimidation campaigns and case transfers from Tamil to Sinhalese areas in order to ensure impunity for the security forces instead of justice for the rape victims and victim-survivors.\(^92\) The unlikelihood of justice and fear of reprisals largely discouraged Tamil victim-survivors and victims’ families — even those who reported security forces’ rapes to civil society organizations — from taking legal action.\(^93\)

**Kumarapuram Massacre (February 11, 1996)**

At about 5 p.m., eight to ten soldiers from the 58th Mile Post deliberately and arbitrarily killed, beat, and tortured Tamil civilians in Kumarapuram in retaliation for the LTTE’s killing of two soldiers. Some victim-survivors recalled hearing the soldiers shout “death to the Tamils” in

\(^{92}\) Criminal proceedings led in the Tamil-speaking North, including in Jaffna, Mullaitivu, and Vavuniya, have regularly been transferred to the Anuradhapura High Court, whose language is Sinhala and which is not easily accessible to Tamils, to help perpetrators avoid justice. Pinto-Jayawardena and Anantharajah, pp. 30-31, 48 n. 141.

\(^{93}\) Kodikara & Emmanuel, pp. 2-3, 7-8.
Sinhalese as they went through the village. At least 24 people were killed, and 24 others were injured.  

Thanaluxmi Arumathurai, a teenage child, was riding her bicycle with her neighbor when they heard gunshots and hid in a roadside tea shop along with some others. The soldiers entered the tea shop, dragged out Thanaluxmi, and took her outside a milk collection center where they gang raped and killed her. SLA Corporal N.M. Ajith Sisira Kumara, who confessed to shooting her, stated that she was badly injured with several bite marks made by the soldiers who gang raped her.

Legal Action

In March 1996, witnesses identified eight army personnel who were arrested but then promptly released. On November 4, 1998, the Muthur magistrate charged each of the eight soldiers with 120 counts; committed the case to the Trincomalee High Court, which is in a predominantly Tamil-speaking area; and shared the relevant documents with the Attorney General's Department.

The Attorney General's Department took no action until June 3, 2002, when it indicted six of the accused on 101 charges each (the other two soldiers had died while out on bail). The six indicted were Corporals H.M. Abeyratne, H.M. Abeysinghe, M.P. Kapila Darshana, N.M. Ajith Sisira Kumara, S.G. Nishantha, and P.P. Upasena. No commanding officers in the area were indicted. Following this indictment, all six corporals were suspended from active service. By that time, they had been on active service for eight years after the massacre.

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95 Different sources reported Thanaluxmi as between 15 to 17 years of age.
97 Id.; Sri Lanka: Wavering Commitment to Human Rights, p. 15.
98 NESOHR, p. 144.
102 Id., p. 8.
103 Id., p. 10.
In 2004, all physical evidence pertaining to the case, including the weapons allegedly used by the soldiers, was destroyed in a fire at a government office in Colombo. The case was repeatedly postponed until, as the war was escalating in 2008, it was transferred from the Trincomalee High Court to the Anuradhapura High Court, in a predominantly Sinhalese area, without consulting the Tamil victim-survivors.

For 20 years after the massacre, security officials harassed victim-survivors and witnesses until the jury trial began on June 27, 2016, at the Anuradhapura High Court. One month later, all six soldiers were acquitted of all charges. The victim-survivors and numerous human rights lawyers on the island believed the defendants’ ability to choose the language of the jury (Sinhala), thus obtaining an all-Sinhalese jury, precluded a fair verdict. Days later, victim-survivors and affected families sent an appeal to then-President Maithripala Sirisena requesting him to direct the Attorney General to appeal the court decision and retry the accused.

In November 2016, the Attorney General filed an appeal application, which was scheduled to be heard on January 23, 2019. There has been no public action since.

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Krishanthi Kumaraswamy, 18, passed through the Chemmani military checkpoint in Kaithady, Jaffna district, on her way home from a school examination.¹¹¹ A soldier called her into the checkpoint under the pretext of being questioned, and when she got off her bicycle, she was taken inside a bunker and gagged. When Krishanthi did not return home, her mother (Rasamma), younger brother (Pranavan), and neighbor (Kirubamoorthy) went to the military checkpoint to search for her.¹¹² All three disappeared from the checkpoint. This happened during a time of widespread enforced disappearances and other human rights violations in the Jaffna peninsula.¹¹³

After about a month of outrage and pressure, then-President Chandrika Bandaranaike Kumaratunga herself ordered an investigation,¹¹⁴ and all four bodies were exhumed from a ditch.

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¹¹³ Amnesty International “Sri Lanka: Landmark Judgment - End to Climate of Impunity” (July 2, 1998),

¹¹⁴ Coomaraswamy, 54th Session Report, ¶ 53; “Remembering the Krishanthi Kumaraswamy Case” Groundviews (Sept. 1, 2016),
near the Chemmani checkpoint. Rasamma, Pranavan, and Kirubamoorthy had been strangled with rope. Krishanthi had been gang raped “continuously,” killed, and dismembered.

**Legal Action**

In October 1996, 11 members of the security forces were arrested. Six officers confessed to the murders; two Reserve Police Constables, A.H. Nazaar and P.A. Samarawickrema, who had not participated in Krishanthi’s gang rape or murder, were released after becoming witnesses for the prosecution. Their testimony was pivotal to advancing the rape charge due to the degradation of physical evidence, as the bodies were recovered 1.5 months after the incident.

The trial occurred thanks to pressure — from the media, high-profile domestic and international human rights organizations, such as Amnesty International, and the UN — and, surprisingly, military cooperation. In September 1997, indictments of nine men were filed in the Colombo High Court, and the Attorney General sought and secured the infrequently used trial-at-bar, in which a three-judge panel hears the case without a jury. This is important given the general consensus that trials-at-bar are fairer and faster than jury or single-judge trials in ethnically or politically charged cases.

During the trial, Somaratne Rajapakse, one of the soldiers who had confessed, gave information about nearby mass graves where soldiers allegedly buried 300 to 400 bodies on orders from their superiors. His disclosure shocked the country and sensationalized the trial, further propelling the trial’s unprecedented speed.

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115 NESOHR, p. 148.
118 NESOHR, p. 148.
120 *Post-War Justice in Sri Lanka*, p. 52; Kodikara & Emmanuel, pp. 3-4; Pinto-Jayawardena & Anantharajah, p. 32.
121 Kodikara, pp. 204-05.
123 Gaps in the Krishanthy Kumaraswamy Case; Post-War Justice in Sri Lanka, p. 154; Kodikara, pp. 208-09.
127 Kodikara & Emmanuel, p. 4; Pinto-Jayawardena & Anantharajah, p. 32.
On July 3, 1998, the Colombo High Court sentenced Corporal Somaratne Rajapakse, Lance Corporal Mudianselage Jayatileke, Mudianselage Jayasinghe, Priyantha Perera, and Reserve Police Constable Pradeep Priyadharshana to death and prison for rape, disappearance, and murder. Of the four men who were not sentenced, W.S.V. Alwis died during the course of the trial, D.G. Muthubanda and A.P. Nishantha were acquitted, and D.V. Indrajith Kumara absconded from the trial.

In 2003, the five sentenced men appealed to the Supreme Court to overturn their convictions for rape and murder, including on the grounds that their confessions were inadmissible. The court agreed the confessions were inadmissible but concluded there was still enough other evidence to convict them on all charges. It found all other grounds to lack merit and thus affirmed their convictions. In a missed opportunity, the court made only minimal reference to the victims and mentions neither the armed conflict nor the implications of conflict-related rape and murder.

This is the only publicly known case where Sri Lankan soldiers were convicted for a wartime rape of a Tamil, and it was also the first time that members of the security forces received a heavy sentence for human rights violations. However and notably, only lower-ranking soldiers who were directly responsible were prosecuted and convicted; despite one soldier credibly testifying to receiving orders to rape and kill, no higher-ups were even investigated.

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128 Gaps in the Krishanthy Kumaraswamy Case.
129 “Sri Lanka: Landmark Judgment - End to Climate of Impunity.”
130 Krishanthi Kumaraswamy Rape Case, S.C. Appeal, p. 119.
131 Id., pp. 113-14.
132 Id., pp. 150-51.
135 “Sri Lanka: Landmark Judgment - End to Climate of Impunity.” Sri Lanka has not executed anyone since 1976, and the death sentences were automatically commuted to life sentences. Kodikara & Emmanuel, p. 4.
136 Pinto-Jayawardena & Anantharajah, p. 16.
Rape and Killing of Ida Carmelitta (July 12, 1999)

Ida Carmelitta, 21, was a former LTTE cadre who had surrendered to the police in June 1999 and received a temporary pass to return home to Pallimunai village, Mannar island.137 A month later, Ida and her family were asleep at home when five masked and heavily armed men suddenly arrived.138 The soldiers pulled Ida outside, ordered everyone else to go back inside, and gang raped Ida while she screamed for help.139 The soldiers ultimately killed Ida by shooting her through her vagina. The district medical officer who examined her body documented evidence of rape and sexual violence, including bite marks on her breasts and lips.140

Legal Action

After her murder, Ida’s family received threats, causing her siblings to flee to a refugee camp in India and thus decreasing the number of witnesses available for a trial.141 Ida’s mother stayed until

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140 Sri Lanka: Rape in Custody, p. 8.
141 “Remembering Ida Carmelitta.”
the January 2000 assassination of the lawyer handling Ida’s case, allegedly orchestrated by the government, after which she fled as well.\textsuperscript{142}

The Mannar magistrate ordered an identification parade on July 20, 1999, during which Ida’s brother and neighbor identified two soldiers, U. Dayananda Upul Gurusinghe and N.K.H.D. Rjah Somaratne,\textsuperscript{143} who were arrested and remanded to prison.\textsuperscript{144} Kaliyan Murukai Mahalingam, another soldier, named five others in court;\textsuperscript{145} and in June 2000, the courts ordered the arrest of these soldiers\textsuperscript{146}: Lieutenant B.B. Mahinda Perera, Lance Corporal M.K. Ruvan Kumara, R. Dissanayake, K.P. Jayamande Hewawasam, and S.D. Uppali Karunaraten. However, their lawyers claimed they were “serving in the war-front,” so they never appeared in court.\textsuperscript{147} Investigations during the year also determined that the weapons used in the killing belonged to army personnel, and witnesses testified at various hearings.\textsuperscript{148}

The case subsequently began to stall, as key witnesses fled the country due to intimidation by the security forces. The accused requested a transfer to Colombo in the last trimester of 2000, where they were released on bail.\textsuperscript{149} In rape cases in Sri Lanka, release on bail is equivalent to the “end of the matter.”\textsuperscript{150} No action has been taken since.

Notably, the US embassy in Colombo had highlighted Ida’s gang rape, her murder, and the impunity for these crimes in the US State Department’s annual \textit{Country Reports on Human Rights Practices} in 2000, 2001, and 2002. In July 2003, the embassy received a new ambassador who did not prioritize her case, thus removing this political pressure.\textsuperscript{151}

\begin{flushleft}\small\textsuperscript{142} “Murder of PSD’s Al Capone” \textit{The Sunday Leader} (Nov. 11, 2001), \url{https://web.archive.org/web/20101015203842/http://www.thesundayleader.lk/archive/20011111/issues.htm}; “Remembering Ida Carmelaitta.”
\textsuperscript{143} “Remembering Ida Carmelitta”; “Two Detained in Ida Hamilitta Case” \textit{TamilNet} (July 20, 1999), \url{https://www.tamilnet.com/art.html?artid=3620&catid=13}.
\textsuperscript{144} Kodikara & Emmanuel, p. 3.
\textsuperscript{145} “Remembering Ida Carmelitta.”
\textsuperscript{147} “Remembering Ida Carmelitta.”
\textsuperscript{150} Pinto-Jayawardena & Anantharajah, p. 30.
\textsuperscript{151} Special Report No. 25.\end{flushleft}
At about 11 p.m., the Mannar police’s Counter Subversive Unit (CSU) arrested Vijikala Nanthakumar, 22 and pregnant, and Sivamany Sinnathamby, 24, under the Prevention of Terrorism Act (PTA), on the charges of acting as accomplices to the LTTE and took them — and Vijikala’s partner and Sivamany’s son — into custody in a white van.\footnote{Radhika Coomaraswamy (Special Rapporteur on Violence against Women, Its Causes and Consequences), \textit{58th Session Report}, ¶ 134, UN Doc. E/CN.4/2002/83/Add.1 (Jan. 28, 2002); \textit{Sri Lanka: Rape in Custody}, p. 1; Kodikara & Emmanuel, p. 3.}

Police brought Vijikala into a room in the CSU office, where she was blindfolded and told to remove her clothes.\footnote{Sri Lanka: Rape in Custody, p. 1.} When she refused, she was beaten, forcibly stripped, and raped by at least two officers.\footnote{\textit{Id.}; University Teachers for Human Rights (Jaffna), \textit{Information Bulletin No. 25: The Fatal Conjunction: Women, Continuing Violations & Accountability} (July 11, 2001), \texttt{https://www.uthr.org/bulletins/bul25.htm#_Toc519425445}.}

Sivamany had been left in the van, where she was raped by two navy personnel.\footnote{Information Bulletin No. 25.} She was then taken to the room where Vijikala was being held. Members of the security forces, including the Officer in Charge, Inspector of Police M.P.M. Suraweera,\footnote{“Sri Lanka Security Forces Rape Tamil Women with Impunity” \textit{Tamil Nation}, \texttt{https://tamilnation.org/indictment/rape/010328wijikala.htm}; “Police Suspects in Mannar Torture, Rape to Be Indicted” \textit{TamilNet} (Dec. 20, 2003), \texttt{https://www.tamilnet.com/art.html?catid=13&artid=10749}.} beat Sivamany, ordered Vijikala to remove Sivamany’s clothes, and forced both women to parade naked in front of the men. Then the men tortured the women until they signed already typed statements in Sinhalese that they were
members of the LTTE who had brought bombs to Mannar. Prior to their rapes and torture, both women had maintained they were not part of the LTTE.

Although the CSU took Vijikala and Sivamany to the district medical officer, due to threats from the CSU officers accompanying them, the women refused to be examined. Instead of stating that they were not examined, the medical officer marked the “no injuries” box in his report.

After the Mannar Bishop visited the two women, who were on remand in prison, on March 27, the matter received greater publicity. Due to increased attention to these rapes, the magistrate ordered further medical examinations of Vijikala and Sivamany, but they were performed too late to positively conclude rape.

**Legal Action**

The magistrate ordered the police to investigate the rape allegations and arrest the suspects, but the police did not follow these instructions. After widespread domestic protests and a ministerial- and parliamentary-level directive to the police, the police conducted an identification parade. Fourteen security forces officers were arrested in April 2001 but later released on bail.

Although the proceedings began in Mannar, on August 25, 2005, indictments against three policemen — Inspector of Police M.P.M. Suraweera and police constables M. Rajendra and D.B. Wimalaretna — and nine navy personnel were filed in Anuradhapura, in a predominantly Sinhalese area. The transfer came at the request of the accused, blatantly ignoring the rape victim-survivors and witnesses’ safety concerns. In the four years between the rapes and the indictments, the police intimidated Vijikala and Sivamany, their community, their advocates, and the journalist who broke the story. Consequently, neither woman traveled to Anuradhapura for the trial. The Attorney General’s Department decided not to proceed with the rape case and joined the two cases into one torture case instead. In 2008, the Court of Appeal stayed the case because one rape victim-survivor went into hiding and the other fled the country because of threats.

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157 *Sri Lanka: Rape in Custody*, p. 1; Pinto-Jayawardena & Anantharajah, p. 28.
158 “I Was Screaming and Pleading” *Tamil Guardian* (Sept. 26, 2005), [https://www.tamilguardian.com/content/%E2%80%98i-was-screaming-and-pleading%E2%80%99](https://www.tamilguardian.com/content/%E2%80%98i-was-screaming-and-pleading%E2%80%99).
159 *Sri Lanka: Rape in Custody*, p. 2.
160 Information Bulletin No. 25.
161 *Sri Lanka: Rape in Custody*, p. 2.
162 Sri Lanka: Rape in Custody, pp. 2-3; Kodikara & Emmanuel, p. 3; Special Report No. 25.
163 “Police Suspects in Mannar Torture, Rape to Be Indicted.”
166 Special Report No. 25.
167 Pinto-Jayawardena & Anantharajah, pp. 29-30, 47 n. 99.
Impunity Reigns

The rapes of Thanaluxmi, Krishanthi, Ida, Vijikala, and Sivamany occurred in the context of the internal armed conflict and may constitute torture (as an international crime) and war crimes.

The successful investigation, prosecution, and conviction of Krishanthi’s rapists and killers is an outlier among Sri Lankan security forces’ incidents of CRSV against Tamils for which impunity is systemic. Even the feeble attempts to deliver justice for Thanaluxmi, Ida, Vijikala, and Sivamany are unique in Sri Lanka because their cases received a modicum of legal action, unlike the vast majority of the military’s wartime rapes. To date, no other Tamil CRSV victim or victim-survivor has received the same level of attention or justice as Krishanthi, despite the dedicated work of local, Tamil, and international human rights organizations.

A number of factors, in addition to the extraordinarily high-profile nature of Krishanthi’s gang rape and court case, may have influenced the positive outcome in her case as compared to the others.

Krishanthi was a high school student, while Ida was a former LTTE cadre and Vijikala and Sivamany were perceived LTTE members. Ida, Vijikala, and Sivamany’s actual or perceived status as LTTE members may have contributed to the absence of justice in their cases, even though rape is always prohibited under international law regardless of civilian, combatant, or former combatant status.

The Krishanthi case itself also had unique features: the testimony of multiple witnesses, including cooperative Sinhalese persons, and significant visibility due to high-profile pressure and Somaratne Rajapakse’s disclosure about the Chemmani mass graves. By contrast, witness intimidation played a key role in stopping the Ida and Mannar Women Rape proceedings. Furthermore, the Ida and Mannar Women Rape cases, like the Kumarapuram case before them, were transferred to jurisdictions more sympathetic to the accused without considering the needs and demands of the affected Tamils.

Moreover, justice is highly politicized in Sri Lanka, especially when the security forces are involved. Chandrika Bandaranaike Kumaratunga, president during all five rapes, was elected in 1994 on a platform of peace, human rights, and democracy, including “speedy justice.” However, as her term progressed and the war against the LTTE continued, any political will to bring security forces to justice decreased. Consequently, despite initially backing the investigation into Ida’s case, for example, President Kumaratunga’s priorities shifted as the trial dragged on.

168 Pinto-Jayawardena & Anantharajah, pp. 16-17.
171 Kodikara & Emmanuel, pp. 3-4.
Finally, the success in the *Krishanthi* case may have had a paradoxical effect on impunity for CRSV. In fact, local human rights activists and the United States Committee for Refugees expressed concern that the extraordinary attention paid to the *Krishanthi* case overshadowed numerous unaddressed rapes by the Sri Lankan security forces. Accordingly, Sri Lanka used the *Krishanthi* case as a smokescreen for the otherwise entrenched impunity for CRSV against Tamil victims and victim-survivors, most of whose violations never entered the justice pipeline, let alone saw a courtroom. Post-*Krishanthi*, CRSV against Tamils has persisted with extreme impunity.

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172 “Death Sentence for Krishanthi Accused.”
Final Phase Rapes, Sexual Mutilation, and Killings
(January 2009 to May 18, 2009)

While the military’s sexual violence, and impunity, had always pervaded the armed conflict, it came to the forefront during the war’s final months and aftermath. In those final months, a “large number of women fleeing from the conflict areas during the peak of fighting were sexually assaulted,” according to a former UN field officer. A Tamil minister of parliament accused the military of sexually abusing Tamil women who had surrendered to the armed forces. Although this section captures various forms of CRSV, these incidents do not fully reflect the scale of rape and other forms of sexual violence against Tamil women and girls in the war’s final phase and immediate aftermath. A UN panel of experts, mandated to focus on the period of September 2008 through May 2009, noted that these crimes were “greatly under-reported.” Stigma, as well as fear of reprisals, likely contributed to the lack of direct accounts from victim-survivors. There are, however, many witness accounts.

173 Kodikara & Emmanuel, pp. 1-3.
175 Sooka et al., p. 78.
177 Id., ¶ 152; Kodikara & Emmanuel, pp. 2-3.
One witness recounted how a group of civilians crossed into government-controlled territory in the jungle, where security forces separated the men from the women and raped several of the women before killing some of them.178

On three or four different occasions in February and March 2009, a local employee of an international agency witnessed at least 200 bodies at a government hospital mortuary, mainly Tamil women and girls, many of which were naked, with slashes, bites, or scratches on the breasts and signs of vaginal mutilation by knives, bottles, and sticks. Most appeared to have been shot in the forehead at close range.179

The account of “Fernando” — who operated with the 58 Division of the SLA in the final phase and saw multiple rape scenes and naked, decapitated, and mutilated women’s bodies — corroborates this pattern. He described the troops’ rampant impunity for sexual violence: “If they wanted to rape a Tamil girl, they could just beat her and do it. If her parents tried to stop them, they could beat them or kill them. It was their empire.”180

An insider witness saw drunk army officers kicking and stepping on the dead bodies of LTTE fighters, stripping them, and sexually abusing them. He said, “They inserted sticks into their private parts and some of them cut the breasts with knives [sic].”181 Another witness was told by a senior security forces officer that he had participated in the gang rape of female LTTE members who had surrendered. These security forces then dismembered and killed each woman by tying one of their legs to a tree and the other to a tractor driving away from the tree.182

The SLA soldiers even photographed and filmed their victims as war trophies. Many of the photographs show dead female LTTE cadres lying on their backs with exposed breasts, genitals, and spread legs.183

One video shows the naked bodies of dead or nearly dead women who appear to have been raped or sexually assaulted.184 The video shows SLA soldiers loading these naked bodies onto a truck in a highly disrespectful manner while making sexual comments about the dead women’s bodies.185

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182 Island of Impunity, ¶ 11.30.

183 Id., ¶ 11.29; OISL Report, ¶ 323.


A family witnessed the defilement of female LTTE cadres’ corpses in Kilinochchi, which the government took over on January 2, 2009. One member of that family heard Sri Lankan soldiers “uttering deranged, hateful things as if to an animal” during the act.\(^{186}\)

The aforementioned local employee of an international agency also reported that, on six or seven occasions from February to April 2009, he saw backhoe machinery digging large trenches outside the hospital premises and trucks dumping many naked bodies, mostly young females.\(^{187}\) While he did not speak to observing signs of CRSV, given the prevalence of rapes and sexual mutilation, it is highly likely the females — or their bodies — suffered some form of sexual violence.

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**Rape and Killing of Isaipriya (May 18, 2009)**

One of the women in the video evidence is Isaipriya, a singer and news presenter for the LTTE. The Defense Ministry claimed that she was killed in combat by the 53 Division of the SLA on May 18, 2009.\(^{188}\) However, video evidence revealed that Isaipriya was taken alive and uninjured by SLA soldiers, who found her half-naked in a muddy area and then covered her with a white cloth.\(^{189}\) Another video, as well as photographs, shows the dead bodies of Isaipriya, whose breasts and genitals are exposed, and seven naked or partially naked individuals in what appears to be the aftermath of soldiers’ summary executions of prisoners.\(^{190}\) Experts who analyzed the footage believe Isaipriya was raped and then executed.\(^{191}\)

In a 2011 interview, then-Defense Secretary Gotabaya Rajapaksa denied her rape and execution, saying “she was never under custody.”\(^{192}\)

Similar to Thanaluxmi, Krishanthi, Ida, and the many Tamil women and girls who were both raped and murdered in a pattern-like fashion,\(^{193}\) the final phase rapes, including of Isaipriya, featured CRSV and murder, albeit not necessarily in that order.

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\(^{187}\) Island of Impunity?, ¶ 11.35.


\(^{190}\) OISL Report, ¶ 315; Island of Impunity?, ¶ 9.80.


\(^{193}\) Kodikara & Emmanuel, p. 3.
The final phase rapes may constitute torture (as an international crime), war crimes, crimes against humanity, and genocide.

**Legal Action**

There has been no justice for these rapes, despite photographic and video evidence and even insider accounts. Instead, military and political officials categorically denied security forces’ CRSV.

An anonymous senior army official in Mullaitivu told a journalist in June 2010 that his soldiers could not have raped Tamil women because “they see [LTTE members] as disgusting animals, not fit to live” and their hate would have precluded soldiers from committing rapes.194

Responding to video evidence of international crimes during the final phase, including sexual violence footage, the High Commissioner of Sri Lanka in the United Kingdom called the allegations “unmitigated and unsubstantiated rubbish” and part of a campaign to denigrate Sri Lanka.195

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194 Mohan, p. 93.
Forced Nudity and Rapes in IDP Detention Camps
(January 2009 to September 24, 2012)

As the fighting intensified, hundreds of thousands of Tamil civilians, and LTTE *hors de combat* and political members, fled from the beginning of 2009 until the end of the war. Tens of thousands of civilians crossed into government-controlled territory in the final days alone.\(^{196}\) Before being placed in internally displaced person (IDP) detention camps, these Tamils underwent an abusive screening process.\(^{197}\)

The Office of the High Commissioner for Human Rights Investigation on Sri Lanka (OISL) — mandated to investigate human rights violations, abuses, and related crimes from February 2002 to November 2011 — determined “the likelihood of sexual harassment and assault at the various screening and checkpoints was considerable.”\(^{198}\) The following is an overview of incidents of forced nudity and rapes documented by OISL and civil society, both of which were hampered by safety concerns and restricted access to the camps.\(^{199}\)

**Forced Nudity**

The screening process was an opportunity for Sri Lankan security forces to sexually harass, humiliate, and intimidate Tamils entering government-controlled territory. Strip-searching became routine after an LTTE suicide bombing in February 2009; however, soldiers exploited the

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\(^{196}\) *OISL Report*, ¶ 1023-1024.

\(^{197}\) *Id.*, ¶ 1037.

\(^{198}\) *Id.*, ¶ 613.

\(^{199}\) See, e.g., *id.*, ¶ 5; *We Will Teach You a Lesson.*
process for abusive purposes, particularly regarding Tamil females. Some were forced to strip in an area with no privacy; others were taken to makeshift sentry posts or enclosures, but even there, female IDPs reported soldiers peering over the top of the enclosures and taking nude pictures with their mobile phones. SLA insiders corroborated this type of sexual violence.

One Tamil woman, originally from Kilinochchi and whose family experienced multiple displacements during the war, told a think tank in the North how her family entered government-controlled territory at the end of April 2009. She recounted being separated from her family before being forced to strip in front of military officers. “Our dignity was the last thing we were carrying,” she said. “They made sure we had to lose it as well to be alive.”

Male soldiers also inappropriately touched the naked or semi-naked women and girls. One woman told OISL that after she was forcibly stripped in a sentry post made of sandbags, soldiers poked her breasts through the holes in the makeshift walls. Another Tamil woman, 30 when she “surrendered” to the army in April 2009 and living in Germany at the time of her interview, described to Human Rights Watch how everyone in her group was stripped naked. “The soldiers asked all the women and men to bend over and laughed when we did,” she said. “They groped us and felt our breasts.”

Commanding officers were present but did nothing to stop acts of sexual harassment.

These acts of sexual humiliation, including forced nudity, occurred in the context of the internal armed conflict and may constitute war crimes and crimes against humanity.

Rapes

The screening process also presented an opportunity to rape young Tamil women. Several witnesses reported seeing soldiers take young women toward the jungle, including behind sentry posts and into the bushes, and then hearing their screams. One witness heard gunshots afterward.

Human Rights Watch documented an account of public rapes, as shared by a Tamil grandmother, 50 when she and her daughter “surrendered” to the SLA in March 2009 and living outside Sri Lanka at the time of her interview. She described being placed in a group of 20 before being sexually humiliated and raped:

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200 OISL Report, ¶ 608.
201 Id., ¶ 609.
203 OISL Report, ¶ 610.
204 We Will Teach You a Lesson.
205 OISL Report, ¶ 610.
206 Id., ¶ 612.
The army made us strip completely in front of the children. All the women were made to walk around the soldiers in a circle. The soldiers were laughing at us. All the women were then raped in front of everyone. My daughter and I were raped in front of her children. I was raped in front of my grandchildren.\textsuperscript{207}

The likelihood of rape worsened inside the camps.

\textit{Menik Farm}

At the peak of its operation, which ran from February 2009 to September 24, 2012, Menik Farm was one of the largest IDP camps in the world, holding about 220,000 of the total 284,000 IDPs.\textsuperscript{208} Menik Farm consisted of four camps: Anandakumaswamy, Arunachalam, Kadirgamar, and Ramanathan.\textsuperscript{209}

A local employee of an international agency informed the Public Interest Advocacy Centre, an international civil society organization, that he heard of women and girls being “sexually assaulted and/or raped” while bathing in the river or collecting firewood in the jungle. He also described an incident of a woman without male relatives being raped at night.\textsuperscript{210}

A Human Rights Watch Tamil interviewee, 28 when she was detained in Ramanathan camp, said soldiers would often physically touch her and “misbehave” with her and the others with her.\textsuperscript{211} One evening, they raped her after her bath in the river:

\begin{quote}
We would go to bathe in the river but only when it got a bit dark. The river was guarded by police. Nobody else could access that area without being checked by the police. One evening, I was returning to the camp from the river with five other women. Suddenly, a group of soldiers appeared. It was dark, so I couldn’t see how many. Some girls managed to run away. The rest of us were overpowered. The soldiers tore my clothes off and raped me. When I got back to the tent everybody knew what happened but nobody said anything.\textsuperscript{212}
\end{quote}

In addition, rapes happened when women were taken for questioning. The aforementioned local employee of an international agency saw security forces take 10 to 12 young females to

\begin{footnotes}
\item[207] We Will Teach You a Lesson.
\item[210] Island of Impunity?, ¶ 11.19.
\item[211] We Will Teach You a Lesson.
\item[212] Id.
\end{footnotes}
“particular buildings within isolated areas of the camps for the purpose of ‘investigation’.” He believed they were raped or sexually assaulted.213 Other IDPs shared with the Public Interest Advocacy Centre stories of “young women and girls” being raped or witness accounts of security forces taking girls for overnight questioning, after which “generally the girls would just be crying and refuse to say what had happened to them.”214

The aforementioned Tamil woman, 30 when she “surrendered” in April 2009, was not only sexually humiliated, but also raped. She was questioned about the whereabouts of her husband, who went missing in April 2009, before and after her detention in Arunachalam camp. She informed Human Rights Watch how soldiers summoned her for nighttime interrogations:

They asked about my husband’s whereabouts and how he supported the LTTE. I told them I didn’t know anything. They slapped me and then said they would fix me. They raped me by turn. There were four or five people. I went back to my tent after they finished. They would call different girls from the tent and I was called at least six times.215

Another woman in Menik Farm recounted an incident to OISL in which five men in uniforms summoned her while she was queuing for food. They took her somewhere in the camp and violently raped, bit, kicked, and scratched her. They also asked if her husband was part of the LTTE before releasing her. She recalled seeing two other women taken away and returning in a similar manner.216

Human rights and UN investigations had difficulty uncovering the extent of rapes in Menik Farm due to a host of reasons, ranging from government access restrictions to victim-survivors’ fear of stigma and reprisals.217 Consequently, OISL could not obtain a sufficient number of accounts to indicate security forces’ CRSV in Menik Farm was “systematic,” but it recommended this issue receive “further serious investigation” given the prevalence of security forces’ CRSV more generally.218

A mother whose daughter had been raped by a soldier in a makeshift IDP detention camp in January 2009 expressed the torment caused by the consequent injustice: “They could have shot us down. But rape is harder to prove. And if it is a soldier—forget it!”219

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213 Island of Impunity?, ¶ 11.18.
215 We Will Teach You a Lesson.
216 OISL Report, ¶ 617.
217 See, e.g., id., ¶ 618; We Will Teach You a Lesson.
218 OISL Report, ¶ 618.
219 Mohan, p. 99.
IDP detention camp rapes are additionally evidenced by stories about unmarried pregnant women and recent mothers who had been in the camps but separated from the IDP population and about suspected LTTE cadres who gave birth to, and usually adopted out, babies fathered by soldiers under coercive or violent circumstances.220

Disturbingly, the security forces’ wartime pattern of raping and murdering also continued. A senior employee of the civil society organization HUDEC-Caritas reported that security forces had raped and killed nearly 15 girls in a camp in just a short period of time.221

The sexual humiliation and rapes in the IDP detention camps may constitute torture (as an international crime). The acts that occurred in the context of the internal armed conflict may also constitute war crimes.

**Legal Action**

True to form, the government denied allegations that security forces were raping women. In 2009, then-Permanent Secretary to the Ministry of Disaster Management and Human Rights Rajiva Wijesinha admitted “there was a lot of sex going on” in the camps. Instead of promising to investigate further, he argued the facts were not abuse: “We received a report that a soldier went into a tent at 11pm and came out at 3am. It could have been sex for pleasure, it could have been sex for favours, or it could have been a discussion on Ancient Greek philosophy, we don’t know.”222

A news team from Channel 4 (UK), which uncovered and aired evidence of alleged international crimes, was deported for broadcasting a report from the IDP detention camps that featured allegations of “bodies left for days, children crushed in the rush for food, the sexual abuse of women, disappearances.” Within four days, then-Defense Secretary Gotabaya Rajapaksa called that journalist, saying “You have been accusing my soldiers of raping civilians? Your visa is canceled, you will be deported.” The police then took the team into custody for 10 hours, searched their vehicles, and interrogated them before deporting them.223

In a 2011 interview, Gotabaya rejected rape allegations by attempting to discredit a key witness, Vany Kumar, who was 25 when she was caught in the end-stage hostilities in Mullivaikkal and detained in Menik Farm.224 His offensive and flawed argument centered on the fact that this

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221 Island of Impunity?, ¶ 11.21.
224 “Gotabhaya’s Sexist Comments on War Victim Giving Evidence on Rape.”
witness, an “attractive” young woman, was not raped but should have been if soldiers were
perpetrating such crimes. In a media interview, Gotabaya said: “Now she is talking about rape,
when she was safe ... a person so attractive ... safely came into this area [and] was in [an] IDP
camp. On release, she was not raped, she was not killed. How can she comment like that?”226

226 “Gotabhaya’s Sexist Comments on War Victim Giving Evidence on Rape.”
Militarization has plagued the North-East since 2009, as the government took control of former LTTE territory in the final months of the war. Although the situation improved somewhat under President Sirisena, who came between Mahinda and Gotabaya’s presidencies, it re-escalated after Gotabaya came to power. The high presence of security forces and military checkpoints made Tamil women and girls more vulnerable to sexual violence. Even in the relative lull during the Sirisena era, militarization and impunity for CRSV went mostly unaddressed. All this recalls Krishanthi, Ida, Vijikala, and Sivamany, whose rapes resulted from the presence of security forces and their easy access to vulnerable young women.

Mullaitivu district, where the final phase of the armed conflict was fought, has experienced staggering rates of postwar military occupation: at its peak, there was one SLA soldier for every two civilians.
Because of the soldiers near their homes and the impunity they act with, Tamil women and girls are at high risk for sexual violence, exploitation, and harassment. One woman from Vishvamadu captured the prevalence of military harassment: “Ask any woman in the north and she’ll tell you she got a call from a soldier on some pretext.”

Tamil women and girls’ postwar fear of sexual harassment, even violence, starkly contrasts with the feelings of safety they had while walking or cycling alone at night under the LTTE.

The 89,000 war widows in the North-East, of whom half became single parents and heads of households following the killing, enforced disappearance, or arrest of their husbands, are particularly vulnerable to stigmatization and subsequent sexual exploitation by the security forces.

In Mullaitivu town, in February 2011, seven SLA soldiers interrogated a woman about her husband and his ties to the LTTE. When she said she did not know anything, they beat her unconscious. “I lost consciousness but when I came round, I knew I had been raped because I was bleeding heavily,” she said. “I don’t know, but I think I was raped many times.”

Documenting rape under militarization has presented difficulties stemming from Tamil women’s need to navigate the surveillance state occupying their villages and towns, which implicates their fear of reprisals. A human rights activist in Colombo noted the silencing effect militarization has on reports of rape:

The one thing women have now to negotiate with is sex. They are exposed everywhere. They may be bathing in a closed space, but then there will be a military tower looking down on them. Is the military watching women bathe? Yes. Are they taking photos? Yes. Are they topping up or charging girls’ cellphones? Yes. But are we hearing about lots of cases of rape or sexual abuse by the army? No.

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232 Mohan, p. 100.
233 Normalising the Abnormal: The Militarisation of Mullaitivu, p. 29; Mohan, p. 102.
235 Normalising the Abnormal: The Militarisation of Mullaitivu, p. 29. See, e.g., Sri Lanka: Women’s Insecurity in the North and East, p. 27.
236 We Will Teach You a Lesson.
238 Sri Lanka: Women’s Insecurity in the North and East, p. 28.
A priest in the North aptly captured the situation of Tamil women: “So many things are hidden when it comes to rape. Rape by the military is the most hidden. It is only the doctors who really see it.” The Tamil women who choose not to hide and thus report being raped by the military — which almost exclusively yields injustice — are particularly concerned about consequent rape, sexual assault, and sexual harassment.239

### Vishvamadu Rape and Sexual Assault (June 6, 2010)

Two mothers, Aaravi (a pseudonym), 28, and Banu (a pseudonym), 38,240 were released from Ramanathan camp, Menik Farm, and returned with their children to Vishvamadu in June 2010.241 On June 6, 2010, four SLA soldiers went to the temporary shelter shared by their

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240 Aaravi and Banu are the pseudonyms used in the Gender, Justice and Security Hub’s *Conjunctures of Silence* report.

families, raped Aaravi, and sexually assaulted Banu, who escaped being raped because she was menstruating.\textsuperscript{242}

\textit{Legal Action}

Aaravi went to file a complaint with the police, who redirected her to the military, who tried to convince her to “wash herself” first and to buy her silence. She refused, so they detained her until the police came and received her formal complaint. The medical examination confirmed sexual assault.\textsuperscript{243}

The Kilinochchi Magistrate Court held an identification parade on June 14, 2010, and four members of the 572 Brigade were identified: Corporal Danushka Priyalal Ratnayake, Pathinaratne Bandaranayake Priyantha Kumara, Delgolelage Dunushka Pushpakumara, and Pandithagethera Shantha Subasinghe.\textsuperscript{244} To intimidate Aaravi from proceeding, approximately 100 soldiers had attended the identification hearing.\textsuperscript{245} This was the first time a Tamil rape victim-survivor identified her rapists in court.\textsuperscript{246}

On November 19, 2010, the accused were released on bail after only five months in remand, after which one absconded.\textsuperscript{247} Since the first hearing on June 14, 2010, the police and military harassed, insulted, intimidated, and threatened Aaravi with physical harm for years.\textsuperscript{248}

Charges and indictments were not filed until 2011 and late 2012, respectively, and the trial finally began on April 1, 2013.\textsuperscript{249} More than five years later, on October 6, 2015, the Jaffna High Court convicted and sentenced all four soldiers to 20 years of imprisonment for the rape and 5


\textsuperscript{243}“Vishwamadu Military Rape Case: These Crimes are Not Committed by the Military Alone – WAN”; Pinto-Jayawardena & Anantharajah, p. 17.

\textsuperscript{244}“Vishwamadu Military Rape Case: These Crimes are Not Committed by the Military Alone – WAN.”

\textsuperscript{245}Pinto-Jayawardena & Anantharajah, p. 17.


\textsuperscript{247}“Vishwamadu Military Rape Case: These Crimes are Not Committed by the Military Alone – WAN”; Pinto-Jayawardena & Anantharajah, p. 34.

\textsuperscript{248}“Vishwamadu Military Rape Case: These Crimes are Not Committed by the Military Alone – WAN”; Pinto-Jayawardena & Anantharajah, p. 17; Sooka et al., p. 85.

\textsuperscript{249}The Gender, Justice and Security Hub, p. 11.
years for the sexual assault,\footnote{250} for a total of 25 years.\footnote{251} They were also ordered to pay compensation to both women and a fine or serve additional prison time.\footnote{252}

The soldiers appealed, and the Attorney General failed to inform Aaravi of this process; she learned of the appeals hearing too late and was thus denied her right to be present.\footnote{253} On October 10, 2019, the Court of Appeal acquitted all four after deciding that the trial judge had not “considered the infirmities of the identification,” which the court alleged was flawed.\footnote{254} Aaravi appealed the acquittals to the Supreme Court, and this process remains underway at time of writing.\footnote{255} Since the soldiers’ acquittals, Aaravi has been arrested twice without charge, and due to fear of reprisals, she has sought refugee status to flee Sri Lanka.\footnote{256}

As in the Krishanthi case, the Vishvamadu trial may have concluded due to conducive political conditions under Presidents Kumaratunga and Sirisena, respectively.\footnote{257} Members of the international community welcomed Sirisena’s election in January 2015 and his ostensible willingness to pursue accountability.\footnote{258} It is possible that the political will that had been lacking under Mahinda Rajapaksa’s government became high enough to galvanize convictions and sentences for Aaravi. Importantly, the successful Vishvamadu convictions and sentences were, as in the Krishanthi case, exceptional and not illustrative of a trend toward justice for CRSV. Unlike the Krishanthi case, the guilty verdicts in Vishvamadu did not hold.

Actual or attempted forced marriages have also been reported. In one incident, although the police originally arrested an older soldier who had asked a Tamil girl to marry him, they released him soon after, leaving the girl and her family in fear of reprisals from the soldier and others in the military.\footnote{259}

A former LTTE cadre told a think tank in the North how she was continuously harassed by members of the security forces after she was released from a so-called rehabilitation camp and was living with her parents in Vaharai. She was harassed over the phone and at home to marry a

\footnote{250} The soldier who absconded was tried and sentenced in absentia. “Vishwamadu Military Rape Case: These Crimes are Not Committed by the Military Alone – WAN.”
\footnote{252} “Vishwamadu Military Rape Case: These Crimes are Not Committed by the Military Alone – WAN.”
\footnote{253} The Gender, Justice and Security Hub, p. 14.
\footnote{254} Id., pp. 9, 15.
\footnote{255} Id., p. 9.
\footnote{256} Id., p. 16.
\footnote{257} Id., pp. 15, 21 & n. 14.
\footnote{258} In reality, Sirisena had no plans to allow war heroes to be prosecuted for international crimes. See generally PEARL, Delayed or Denied: Sri Lanka’s Failing Transitional Justice Process (May 14, 2018), \url{https://pearlaction.org/wp-content/uploads/2018/05/pearl-ti-report-final-portrait.pdf}.
\footnote{259} Normalising the Abnormal: The Militarisation of Mullaitivu, p. 29.
man in the army, so she lied and even wore a red pottu (a dot on the forehead that indicates a woman is married). The security forces visited her every day for a few days; as of 2018, they came every month. She described this treatment as a “kind of torture.” She spoke to Ministry of Rehabilitation staff, but they did nothing to help her. Despite this, she remained committed to having “a life of service and dignity.”

Legal Action

In spite of global and Sri Lanka-specific studies to the contrary, the Sri Lankan government has repeatedly denied the link between militarization and CRSV.

The Vishvamadu case remains the only trial to produce convictions and sentences for CRSV against Tamils under military occupation. Although the soldiers were later acquitted, the Supreme Court has yet to deliver the final judgment. However, following the soldiers’ release, they relentlessly intimidated Aaravi, forcing her to choose between fleeing to safety and seeing her appeal to the Supreme Court through. This underscores the utter lack of rewards even for the Tamil women courageous enough to engage in Sri Lanka’s justice system.

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Sexual Torture of Detainees

Both men and women have been subjected to the Sri Lankan security forces’ “almost universal practice” of torturing and ill-treating those in their custody, even before Black July in 1983.\textsuperscript{262} Since 1979, the government has used the Prevention of Terrorism Act (PTA) to arbitrarily arrest and detain, disappear, and torture individuals, mostly Tamils.\textsuperscript{263} The authorities have sweeping powers to make arrests without warrant for any broadly defined “unlawful activity,”\textsuperscript{264} Tamils with real, imputed, or simply suspected ties to the LTTE\textsuperscript{265} have been detained for years without charge or the possibility of judicial review or release.\textsuperscript{266}

The PTA has contributed to Sri Lanka’s “backlog” of 60,000 to 100,000 enforced disappearances since the 1980s. While tens of thousands were Sinhalese youths during a short-lived insurgency in the predominantly Sinhalese parts of the island, the remaining tens of thousands were Tamils disappeared in the context of the internal armed conflict.\textsuperscript{267} Enforced disappearance places the

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\textsuperscript{264} Special Rapporteur on Countering Terrorism, ¶ 13.

\textsuperscript{265} The authorities have historically targeted Tamils under the PTA, but since the 2019 Easter Sunday bombings, Tamil-speaking Muslims are also vulnerable. Human Rights Watch, “In a Legal Black Hole”: Sri Lanka’s Failure to Reform the Prevention of Terrorism Act (Feb. 7, 2022), https://www.hrw.org/report/2022/02/07/legal-black-hole/sri-lankas-failure-reform-prevention-terrorism-act.

\textsuperscript{266} Special Rapporteur on Countering Terrorism, ¶ 15.

victim at high risk of torture and ill-treatment, including rape and other forms of sexual violence, because the disappearance keeps the victim completely outside the protection of the law.  

During the war, torture of both male and female detainees was “endemic,” and many were also sexually tortured, including with rapes. Tamils suspected of being part of the LTTE were particularly targeted by this type of custodial violence. Sri Lankan security forces’ CRSV featured raping detainees, including with plantain flowers soaked in chilis, bottles, or other objects; forcing them to rape each other; shocking or applying chili powder to their genitals; and slamming testicles into a drawer.  

In addition to physical torture, victim-survivors in the 1980s reported beatings on their genitals with sticks, batons, and sand-filled plastic pipes; the insertion of iron rods into their anus; and chili powder being put on their genitals. According to an analysis of 184 Tamil men who had been detained in the 1990s, 21% were sexually tortured by being raped, including with sticks; forced to rape each other; electroshocked or beaten on their genitals; and/or forced to perform oral sex on or masturbate soldiers. Based on interviews with Tamil male and female CRSV victim-survivors who were raped or sexually assaulted in detention from 2006 through 2012, Human Rights Watch determined “rape and other sexual violence was a systematic practice that was known or should have been known at the highest levels of the state security apparatus.”

Since the end of the war, international human rights organizations and UN experts have covered ongoing arbitrary arrests followed by widespread and systematic custodial sexual torture, including with rapes. Their reports have relied heavily on accounts from victim-survivors who fled Sri Lanka to safer havens. In the postwar period, security forces have weaponized sexual violence, similar to the forms described already, against Tamil male and female detainees on an equal basis. OISL, for example, documented incidents of forced nudity and being photographed or filmed, breasts being burned or squeezed with pliers, genital beatings and torture, penile torture, forced oral sex on perpetrators, and high rates of vaginal and anal rape with body parts

272 See generally We Will Teach You a Lesson.  
274 OISL Report, ¶ 586.
and objects. The physical acts were often accompanied by derogatory epithets like “Tamil dog.”

Many times, the purpose of this CRSV was not to obtain information or “confessions,” but “a combination of sexual gratification, degradation and humiliation of the victims, and the instilling of fear through degrading abuse of the detainees who were at the mercy of their captors and had no power to protect themselves.” For victim-survivors arrested under the PTA (who are mostly Tamil), the torture and ill-treatment, including CRSV, continued even after they “confessed.” These “confessions” were either Sinhalese documents, which they did not understand, or blank pieces of paper that the victim-survivors signed.

Junior to senior members of the military, military intelligence, and police committed CRSV against Tamil detainees, and it occurred in both official (gazetted) and unofficial (ungazetted) detention centers, including inside military camps.

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**Joseph Camp**

The Vanni Security Forces Headquarters, also known as Joseph Camp and located in Vavuniya town in the North, was a commonly reported location of custodial sexual torture, including rapes. From August 7, 2007 to July 14, 2009, Jagath Jayasuriya commanded Joseph Camp.

According to UN reports, human rights organizations, and court rulings, Joseph Camp had been a torture facility since 1984. Of the victim-survivors interviewed for the International Truth and Justice Project’s *Joseph Camp* report, more than half were raped or sexually assaulted at this facility between August 2008 and December 2016. While Menik Farm was operating, security forces would often transport women from Menik Farm to Joseph Camp, where they would be raped, according to an individual with close ties to the SLA.

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275 *Id.*, ¶¶ 594, 597, 600.
276 *Id.*, ¶ 587.
277 *Id.*, ¶ 603.
278 Special Rapporteur on Torture, ¶ 27.
279 Special Rapporteur on Countering Terrorism, ¶ 18.
280 *We Will Teach You a Lesson*; OISL Report, ¶¶ 588-89.
282 OISL Report, ¶ 589; Joseph Camp, p. 5.
284 Joseph Camp, p. 10.
285 See *id.*, pp. 8, 10.
286 OISL Report, ¶ 602.
CRSV against Tamil male and female detainees may constitute torture (as an international crime).

**Legal Action**

CRSV against Tamil male and female detainees is ongoing and continues with impunity.
Reproductive Violence

In addition to patterns of rape by security forces, there is anecdotal evidence that the Sri Lankan government perpetrated reproductive violence, a form of sexual violence, against Tamil women during and after the war. Security forces intentionally caused unwanted abortions with physical violence, and they intentionally attempted to impregnate by rape Tamil detainees to either force an abortion or force a pregnancy. Sri Lankan government medical staff performed forced abortion and forced birth control procedures on Tamil women.

Forced Abortions

Two Tamils recounted family accounts of SLA soldiers hitting pregnant Tamil women in the stomach and asking them if they were carrying a kotiya (“tiger” in Sinhala and a slur for Tamil). Many women miscarried due to this treatment.

A leaked US diplomatic cable contained information about a medical doctor with the pro-government Eelam People’s Democratic Party, Dr. Sinnathambi, who performed forced abortions under the guise of regular checkups on “Tamil women suspected of being aligned with the LTTE” during the war.

During her detention in the postwar period and before February 2014, one Tamil female was told “you Tamil, you slave, if we make you pregnant we will make you abort … you are Tamil we will rape you like this, this is how you will be treated, even after an abortion you will be raped again.”

These forced abortions may constitute torture (as an international crime) and, depending on their scale, crimes against humanity. Those that occurred in the context of the internal armed conflict may also constitute war crimes and, by preventing Tamil births, genocide.

Forced Pregnancies

In addition, Tamil women raped by the (Sinhalese) security forces experienced threats of impregnation. When an LTTE surrendee asked why they were raping Tamil women, she was told

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287 Mohan, p. 93.
290 Sooka et al., p. 38.
“they wanted the wombs of our women to bear their children. That’s what they said during the rapes.”

These forced pregnancies may constitute torture (as an international crime) and, depending on their scale, crimes against humanity and genocide. Ethnicity among Sinhalese and Tamil people is patrilineal. Therefore, if a Tamil woman were forced to give birth to a child conceived during her rape by a (Sinhalese) security forces officer, that child would be considered Sinhalese, not Tamil, and the forced pregnancy would constitute an act of genocide by preventing Tamil births. The forced pregnancies that occurred in the context of the internal armed conflict may also constitute war crimes.

**Forced Birth Control**

After the war, activists in Sri Lanka reported that Tamil women were victims of manipulative medical practices and forced birth control, which was uncovered in 2013 in Keranchi, Malaiyalapuram, Umaiyalpuram, Valaipaddu, and Veravil, five villages in the North where IDPs settled after the armed conflict ended.

Nurses and midwives from the Veravil government divisional hospital went door-to-door in Keranchi, Valaipaddu, and Veravil, asking every woman with a child to come to the hospital to weigh their children and receive a vaccination. At the hospital, doctors and nurses used coercive language and manipulated medical information to convince the mothers to accept a long-term hormonal birth control subdermal implant inserted into their upper arm.

Initially, all of them were opposed to receiving the implant, but the nurses said that if they did not accept it, they might be barred from receiving any future treatment at the Veravil government divisional hospital. When some women said they needed their husband’s permission, the medical staff responded that if they did not get the implant now, their husbands would be brought to the hospital so a procedure could be done on them too. Some of the women were happy to have

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295 “Coercive Population Control in Kilinochchi.”
long-term contraception but felt “tricked”; one husband said that “bringing the women under false pretenses bothers me and my wife and we feel deceived.”

The medical professionals who performed the procedure gave the women cards with medical information, but they were only in English, not Tamil, and they lacked the contact information for the pharmaceutical company. When asked what she knew about the implant, one woman replied “nothing, just that I will not get pregnant.”

Furthermore, the doctors and nurses lied about potential side effects, did not tell the women that the implant can be removed at any time, and even told some women that removal would cost 10,000 Sri Lankan rupees (US$75 in a country where half the population lived on $5 per day in 2013). Consequently, many women experienced side effects but did not report them to a doctor because it was too difficult to return to the hospital and too expensive to receive treatment. One woman had not had her period in a year and worried she had a tumor or cancer, but she has kept quiet because she fears the doctor will both remove her implant and deny her access to future contraceptives.

This program of forced contraception may constitute crimes against humanity and, by preventing Tamil births, genocide.

**Legal Action**

Not only is there inadequate documentation of forced abortions and forced pregnancies, despite anecdotal evidence pointing to possible patterns, but also there are no publicly known police or court investigations into forced abortions or forced pregnancies.

Other than the aforementioned human rights investigation into the government-forced contraception in five villages in the North, there are no publicly known police or court investigations into forced birth control programs.

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297 “Coercive Population Control in Kilinochchi.”

298 Above the Law: Interviews with Women and Local and District Health Experts and Service Providers, p. 6.

299 “Coercive Population Control in Kilinochchi.”

300 Above the Law: Interviews with Women and Local and District Health Experts and Service Providers, pp. 7, 12, 18.


Emblematic International Justice Filings and Outcomes

The incidents highlighted in this report are emblematic of the Sri Lankan government’s unwillingness to serve justice for Tamil CRSV victims and victim-survivors. Moreover, after the armed conflict ended, the government rewarded military commanders with high-ranking government positions or ambassadorships with attached diplomatic immunity. This left Tamil victims, victim-survivors, and their loved ones with little hope that Sri Lanka would deliver on accountability, let alone criminal justice.

Thus, Tamils have looked to (1) universal jurisdiction, which is a key path to justice for victims and victim-survivors of international crimes committed in jurisdictions that enshrine impunity and in situations where international legal bodies are unlikely to intervene, and (2) the International Criminal Court, using creative lawyering.

Since 2011, civil society organizations, including Tamil diaspora groups, have filed civil and criminal cases against political and military leaders. Although defendants typically enjoyed diplomatic or head-of-state immunity at the time of filing, all universal jurisdiction filings were symbolically important in highlighting alleged Sri Lankan perpetrators’ responsibility for international crimes.

A window of opportunity recently opened in the midst of Sri Lanka’s economic crisis, when mass protests about the economic situation forced the resignation of President Gotabaya Rajapaksa and Prime Minister Mahinda Rajapaksa from those respective positions. For now, the Rajapaksas are not protected by immunity and can face civil and criminal prosecutions.

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305 See “Delayed or Denied? Sri Lanka’s Failing Transitional Justice Process” pp. 41-42.


Civil Universal Jurisdiction

In the United States, foreign victims and their families can sue perpetrators of egregious human rights violations, human rights abuses, and international crimes committed abroad under the Alien Tort Statute (ATS). Both US citizen and foreign victims and their families can specifically sue perpetrators of torture and extrajudicial killings committed abroad under the Torture Victim Protection Act (TVPA).

Mahinda Rajapaksa

Mahinda Rajapaksa was President from November 2005 to January 2015. He served as Prime Minister from October to December 2018 and again from November 2019 to May 2022. The President is Commander-in-Chief of the Armed Forces and appoints the Defense Secretary.

On January 28, 2011, three Tamil plaintiffs filed a complaint against Mahinda in the District Court for the District of Columbia under the TVPA and as the legal representatives of their relatives who were extrajudicially killed by Sri Lankan security forces. Dr. Kasippillai Manoharan’s son was among the “Trinco Five” Tamil students killed in January 2006, Kalaiselvi Lavan’s husband was among the 17 Action Contra la Faim humanitarian workers killed in August 2006, and Jeyakumar Aiyathurai’s aunt’s family was killed toward the end of the war. The plaintiffs alleged that Mahinda had “virtually unlimited government power” and exercised command responsibility over the security forces. The facts referenced patterns of rape during his presidency.

On February 29, 2012, the court held that head of state immunity applies to TVPA claims and dismissed the case, albeit noting the “shocking allegations of human rights abuses and violations

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309 The US Supreme Court limited the scope of ATS in Kiobel v. Royal Dutch Petroleum Co., 621 F. 3d 111 (2013), which held that ATS claims must “touch and concern the territory of the United States ... with sufficient force to displace the presumption against extraterritorial application.” “Kiobel v. Shell” The Center for Justice & Accountability, https://cja.org/what-we-do/litigation/amicus-briefs/kiobel-v-shell/.
313 Sri Lanka Constitution, arts. 30(1), 32(2)(f).
316 Manorohan v. Rajapaksa (Memorandum Opinion), 261.
317 Manorohan Complaint, ¶ 7.
of United States and international law.” The plaintiffs appealed, but the dismissal was affirmed.

Separately, in September 2011, Vathsala Devi — the widow of an LTTE commander, Colonel Ramesh, who was extrajudicially executed after surrendering to the 58 Division of the SLA — brought suit against Mahinda Rajapaksa under the TVPA. The judge dismissed the case, rejecting the argument that head of state immunity does not extend to *jus cogens* violations. On January 30, 2013, the appeal was denied.

**Shavendra Silva**

Shavendra Silva commanded the 58 Division of the SLA, which was on the frontline of the hostilities from 2008 to the end of the armed conflict on May 18, 2009. The 58 Division fought in almost every major battle in the North during this period. War trophy mobile phone videos and witness testimony, including from SLA insiders, provide evidence of sexual violence by members of the 58 Division. They sexually harassed, sexually humiliated, and raped female LTTE cadres and also sexually mutilated executed female cadres’ bodies by inserting sticks in their vaginas and cutting off their breasts.

An SLA soldier showed a witness a six-minute mobile phone video of two soldiers holding down a female cadre while a third raped her. The witness could hear other women screaming and crying outside the video frame and thus believed other female cadres were being raped nearby. He said the soldier who showed him the video was laughing and saying they had executed those “girls.”

In August 2010, Sri Lanka appointed Shavendra Silva as its Deputy Permanent Representative to the United Nations in New York. Despite the high probability of dismissal due to diplomatic
immunity, in September 2011, the UNROW Human Rights Impact Litigation Clinic at American University, Washington College of Law, in partnership with PEARL, brought a suit in the Southern District of New York against Shavendra Silva under the ATS and TVPA.\(^{329}\) The Tamil plaintiffs — Vathsala Devi and Seetharam Sivam, the son of a postmaster who was wounded and killed by SLA shelling in early 2009\(^{330}\) — were keen on exposing Silva’s responsibility for international crimes even if the case was dismissed. The plaintiffs alleged that Silva — as the commander of the 58 Division, which exercised control over the territories where Devi’s husband and Sivam’s father were killed — was responsible for the torture; cruel, inhuman, or degrading treatment; and wrongful death of their respective relatives.\(^{331}\) The complaint referenced sexual violence as well as Silva’s command responsibility for the men under his control who raped or sexually assaulted LTTE cadres.\(^{332}\)

Silva asserted diplomatic immunity as a UN ambassador, and the case was dismissed on February 8, 2012.\(^{333}\) The plaintiffs appealed, but their arguments were rejected.\(^{334}\)

Just a couple of weeks prior to the dismissal, a group of strategic litigation organizations publicly condemned Silva’s appointment to the UN Secretary-General’s Special Advisory Group on Peacekeeping Operations.\(^{335}\) The Canadian diplomat leading the group deemed his participation “not appropriate or helpful,” no members spoke to him, and no documents were given to him at the first meeting. He was removed by late February.\(^{336}\)

On June 1, 2022, Shavendra Silva was appointed Chief of Defense Staff after leaving his position as Army Commander.\(^{337}\)


\(^{331}\) Id.

\(^{332}\) Complaint at p. 2, ¶¶ 11-12, Devi v. Silva.

\(^{333}\) Silva, F. Supp. 2d at 143.


Gotabaya Rajapaksa

Gotabaya Rajapaksa was Defense Secretary from 2005 to 2015 and exercised command responsibility over the military and the police.\(^{338}\) He was a naturalized US citizen until August 2019, when he renounced his US citizenship to run in the November 2019 presidential election.\(^{339}\)

Although Tamil-speaking citizens overwhelmingly voted for Gotabaya’s opponent — not because they supported his opponent, but because they were afraid of Gotabaya — Sinhala-Buddhist nationalist sentiments propelled him back to power.\(^{340}\) Gotabaya served as President from November 2019 to July 2022, when he resigned due to mass protests about the economic situation.\(^{341}\) Consequently, Gotabaya fled to the Maldives and then Singapore, where he and Mahinda had frequented for medical reasons.\(^{342}\) He stayed in Singapore until his visa expired on August 11, 2022, when he flew to Thailand.\(^{343}\) At time of writing, sources were telling the media that Gotabaya may return to Sri Lanka in early September.\(^{344}\)

In April 2019, the International Truth and Justice Project (ITJP), in partnership with the law firm Hausfeld and human rights lawyer Scott Gilmore, filed a civil case in the Central District of California against Gotabaya on behalf of a Tamil torture victim-survivor, Roy Samathanam, under


the TVPA. Samathanam was arrested on false charges in Colombo in September 2007 by Sri Lankan police who reported directly to Gotabaya at the time. He was detained for three years, during which the guards tortured him, threatened to rape and kill his wife and child, and made him watch the electrocution of other prisoners. In June 2019, eight Tamil and two Sinhalese individuals joined the complaint as plaintiffs.

In September 2019, the court stayed the case pending the results of the Sri Lankan presidential election. After Gotabaya won, the plaintiffs withdrew their complaint with the intent of refiling when Gotabaya could no longer assert head-of-state immunity.

Also in April 2019 and in the Central District of California, the Center for Justice and Accountability filed a civil suit against Gotabaya for the January 8, 2009 murder of Lasantha Wickrematunge — a Sinhalese journalist, newspaper editor, and government critic — by masked assailants in Colombo, on behalf of his daughter. The plaintiff alleged that the security forces were involved and Gotabaya had command responsibility over them. In October 2019, the district court dismissed the case due to Gotabaya’s common law foreign official immunity. In February 2020, the Court of Appeals for the Ninth Circuit vacated the earlier ruling and dismissed the case, clearing the path for future litigation once Gotabaya ceases to enjoy immunity as head-of-state.

Criminal Universal Jurisdiction

As of 2012, three-fourths of states in the world can exercise criminal universal jurisdiction over at least one of the following as an international crime: torture, war crimes, crimes against humanity, and genocide.

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346 Id.
347 Id.
350 “Torture Victims Plan to Refile Case against Sri Lankan President When He Leaves Office.”
**Mahinda Rajapaksa**

On October 24, 2011, then-President Mahinda Rajapaksa visited Australia for the Commonwealth Heads of Government Meeting. That same day, Arunachalam Jegatheeswaran, a Sri Lanka-born Tamil Australian who was a volunteer aid worker in the warzone in the North from 2007 to 2009, filed an indictment against Mahinda in the Melbourne Magistrates Court. The indictment alleged Mahinda’s responsibility for shelling civilians as a crime against humanity, attacks on hospitals as a war crime, and the deprivation of civilians’ rights.

For prosecutions of international crimes to proceed in Australia, the written consent of the Attorney General is required; however, a person may be arrested, charged, and remanded in custody or released on bail in connection with an international crime before the Attorney General’s consent is given. There are no guidelines or criteria for the Attorney General to follow in determining whether to grant consent, meaning they have full discretion.

The Attorney General’s office stated that allowing the case to proceed would breach Australia’s domestic and international legal obligations that provide immunity to heads of state and heads of diplomatic missions. Thus, he did not give consent.

**Jagath Dias**

From February 2007 through September 2009, Jagath Dias commanded the newly created 57 Division of the SLA, which was one of the main fighting units in the final phase of the armed conflict. While no sexual violence allegations have been directed at Dias or the 57 Division yet, sexual violence was so prevalent in the region where he operated that a UN investigation labeled it “part of a deliberate policy to inflict torture” and “part of an institutional policy within the security forces.” Dias himself did, however, help cultivate a culture of impunity for sexual

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357 Australian Criminal Code § 268.121.


361 OISL Report, ¶ 591.
violence in the military, claiming that charges of sexual violence were invented by Tamil diaspora
groups to damage Sri Lanka’s reputation.\textsuperscript{362}

In September 2009, Dias was appointed Deputy Ambassador of Sri Lanka to Switzerland,
Germany, and the Holy See.\textsuperscript{363} In January 2011, the European Center for Constitutional and Human
Rights (ECCHR) sent a dossier to the German and Swiss governments requesting they revoke Dias’
diplomatic visa and consider initiating criminal investigations into the 57 Division’s war crimes
from April 2008 through May 2009.\textsuperscript{364} ECCHR presented this dossier to force Dias’ withdrawal
from the embassy, as a criminal complaint would have been unlikely to succeed due to his
diplomatic immunity.\textsuperscript{365}

TRIAL International and the Society for Threatened Peoples launched a campaign to remove Dias’
diplomatic status, but to no avail. In August 2011, they filed a criminal report with the Office of the
Attorney General of Switzerland.\textsuperscript{366} In September 2011, Dias had his diplomatic status revoked.\textsuperscript{367}
Although the Attorney General decided not to open an investigation after Dias left the country, the
Attorney General will launch a criminal investigation if Dias returns to Switzerland.\textsuperscript{368}

In 2013, Dias was put in charge of an inquiry by the Sri Lankan military into an allegation that a Sri
Lankan UN peacekeeper raped a Haitian teenager while stationed in Haiti. Dias did not interview
the rape victim-survivor or the medical staff who examined her; instead, he cleared the
peacekeeper and allowed him to remain in the Sri Lankan military. He further defended soldiers
by refuting the gravity of the sexual exploitation and abuse of nine Haitian children by at least 134
Sri Lankan UN peacekeepers, saying, “None of the cases was, to my knowledge, serious at all.”\textsuperscript{369}

\textsuperscript{362} “UN Peacekeepers: How a Haiti Child Sex Ring was Whitewashed” AP News (May 26, 2017),
34d9f971edf0e92e2082c.
\textsuperscript{364} Major General Jagath Dias.
\textsuperscript{365} European Center for Constitutional and Human Rights, Legal Responses to High-Ranking Diplomats’ Involvement in
Crimes against International Law, p. 1 (Oct. 31, 2013),
\textsuperscript{366} “Jagath Dias.”
\textsuperscript{367} “Diplomatic Status of Sri Lankan War Crimes Suspect Revoked” TRIAL International (Oct. 31, 2019),
\textsuperscript{368} “Jagath Dias Will Face Investigations if He Returns to Switzerland, Federal Attorney General Confirms” TRIAL
International (Oct. 31, 2019),
https://trialinternational.org/latest-post/jagath-dias-will-face-investigations-if-he-returns-to-switzerland-federal-a
ttorney-general-confirms/.
\textsuperscript{369} “UN Peacekeepers: How a Haiti Child Sex Ring was Whitewashed.”
Jagath Jayasuriya

As the Vanni Security Forces Commander from August 2007 through July 2009, Jagath Jayasuriya had overall command of the military operations in the final stages of the armed conflict in the Vanni and was responsible for coordinating the attacks in the final war zone. In addition, the Vanni Security Forces Headquarters, also known as Joseph Camp, was under Jayasuriya’s command.

There are numerous allegations of sexual torture and violence in Joseph Camp during Jayasuriya’s command. OISL concluded that incidents of sexual violence in detention were not isolated acts but part of a deliberate policy to inflict torture on Tamils.

Latin America

In June 2015, Jagath Jayasuriya was appointed Ambassador to Argentina, Brazil, Chile, Colombia, Peru, and Suriname. On August 28, 2017, the ITJP filed criminal complaints in Brazil and Colombia against Jagath Jayasuriya for his role in the final phase of the armed conflict, including his responsibility for torture and sexual violence at Joseph Camp, requesting the forum states to open investigations into Jayasuriya, remove his diplomatic immunity, and expel him. Carlos Castresana Fernández, the lawyer coordinating the effort, said similar petitions would be filed in Argentina, Chile, and Peru shortly thereafter; Suriname had refused to accept the one there.

Brazil has universal jurisdiction over torture, war crimes, and genocide perpetrated abroad if the perpetrator is a Brazilian national or resident. Colombia has universal jurisdiction over any foreigner who commits torture, war crimes, or genocide against another foreigner abroad if they are found on Colombian soil. Argentina, Chile, and Peru have universal jurisdiction over

372 OISL Report, ¶ 371.
378 Id., 40.
379 Id., 92.
torture, war crimes, genocide, and crimes against humanity committed abroad. Notably, Argentina is among the few states that may exercise absolute, pure, or genuine universal jurisdiction, meaning jurisdiction exists even if the suspect is not present or a resident.\(^{381}\)

The jurisdiction for the case was accepted by Brazil’s Attorney General, and a prosecutor was assigned in Chile.\(^{382}\)

According to the acting head of the Sri Lankan mission to Brazil, Jayasuriya returned to Sri Lanka the day before the cases were filed; however, the ITJP believes he was tipped off and deliberately fled to avoid justice. Fernández said the petitions can be amended to ask for arrest warrants if Jayasuriya returns,\(^{383}\) because he no longer has diplomatic immunity.

After returning to Sri Lanka, Jayasuriya lost his diplomatic immunity.

**Australia**

On June 24, 2019, the ITJP, the Australian Centre for International Justice, and the Human Rights Law Centre submitted a formal request to the Australian Federal Police to investigate Jayasuriya for allegations of torture, war crimes, and crimes against humanity.\(^{384}\) Rape and sexual violence were among the allegations included in the request. The ITJP and the Australian Centre for International Justice followed up with the Australian Federal Police multiple times for two years, before being told that the matter was never allocated to an investigations team due to an “administrative oversight.”\(^{385}\) On January 31, 2022, the police decided not to start an investigation, relying on flawed reasons, including: “Sri Lanka’s current ‘Domestic Commission of Inquiry into War Crimes Allegations’ announced in January 2021 is the most appropriate mechanism for such matters in the first instance”; “there is current legal action before the International Criminal Court (ICC) in respect to these matters”; and “Jagath Jayasuriya is not in Australia.”\(^{386}\) In reality, since 1948, successive Sri Lankan governments have established domestic commissions of inquiry as


\(^{383}\) “Sri Lankan Ambassador, Accused of War Crimes, Leaves Brazil.”

\(^{384}\) “The Case against Jagath Jayasuriya.”


smokescreens in response to international pressure, and none have resulted in justice. Also, while Article 15 communications were filed in 2021, because the Office of the Prosecutor has not yet assessed the information received, calling these communications “legal action” is misleading. Finally, although Jayasuriya was not in Australia at the time of the Australian Federal Police’s response, he had visited family and participated in public events on multiple occasions in 2019 and 2020 and retains strong ties to the Sinhalese community in Australia, so it would have been reasonable to conclude he may return.

**Gotabaya Rajapaksa**

On July 24, 2022, while Gotabaya was in Singapore, the ITJP submitted a criminal complaint to the Attorney General of Singapore requesting Gotabaya’s immediate arrest for war crimes. The filing alleged that Gotabaya, as Defense Secretary during the armed conflict in 2009, committed grave breaches of the Geneva Conventions, violations of international humanitarian law, and violations of international criminal law, including murder, execution, rape, other forms of sexual violence, torture, and severe bodily and mental harm. It argued that these crimes are subject to prosecution in Singapore under universal jurisdiction. To increase political pressure, PEARL and sixteen Tamil and international human rights organizations issued a joint letter to the Attorney General’s Chambers, urgently requesting the investigation and appropriate prosecution of Gotabaya for his alleged role in international crimes.

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387 *OISL Report*, ¶ 1208.
389 See infra “Territorial Jurisdiction” section.
392 @PEARL_Action, Twitter (July 26, 2022), [https://twitter.com/PEARL_Action/status/1551784821613002757?s=20&t=ih4i2GYvbAylyD5Chz-dXg](https://twitter.com/PEARL_Action/status/1551784821613002757?s=20&t=ih4i2GYvbAylyD5Chz-dXg).
According to Singapore’s Minister of Foreign Affairs, the Singaporean government did not accord any privileges, immunity, or hospitality to Gotabaya. On August 11, 2022, Gotabaya flew to Thailand without Singapore exercising jurisdiction over him.

International Criminal Court

Article 15 of the Rome Statute allows any individual, group, or organization to send information about Rome Statute crimes to the Office of the Prosecutor for the purpose of beginning a criminal investigation. Tamil diaspora groups and activists have been involved in Article 15 communications arguing that the ICC has, and should, exercise personal and territorial jurisdiction over those most responsible for international crimes in Sri Lanka.

Personal Jurisdiction

Palitha Kohona — a naturalized Australian who has held dual Australian-Sri Lankan citizenship since before the final phase of the war — was Foreign Secretary from 2007 to August 2009 and the Permanent Representative to the United Nations in New York from 2009 to 2015. In 2013, the UN General Assembly elected Kohona the chair of its Sixth Committee (Legal), which is troubling because of the committee’s work in considering and commenting on “the role and purpose of universal jurisdiction,” a concept that he, on behalf of Sri Lanka, cautioned against for targeting government officials and diplomats.

The Swiss Council of Eelam Tamils and Tamils against Genocide filed an Article 15 communication in 2011, arguing that the ICC has personal jurisdiction over Kohona — due to his dual

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397 “Ambassador Dr. Palitha Kohona Elected Chairman of the Sixth Committee (Legal) of the UN General Assembly.”
Australian-Sri Lankan citizenship during the final phase of the war and at the time of filing — regarding his role in allegedly perfidious negotiations to deceive LTTE members into surrendering and to facilitate their summary executions. The Office of the Prosecutor did not publicly disclose why the information provided did not constitute a reasonable basis for an investigation.

The Australian Federation of Tamil Associations submitted and resubmitted a legal brief to two consecutive Ministers of Justice: the first did not respond, but the second forwarded it to the Australian Federal Police, which, on March 22, 2012, said it would evaluate the information in the brief.

Kohona was not involved in sexual violence, but he actively denied its occurrence, saying the military “are the guys who were winning the war – they could have raped every single woman on the way if they wanted to. Not one single woman was raped.”

Kohona is currently the Ambassador to China.

Territorial Jurisdiction

A decade later, two Article 15 communications were filed in 2021, arguing that the ICC has jurisdiction over alleged crimes against humanity — such as deportation, deprivation of the right to return, and persecution — against Tamils that began in Sri Lanka and continued into Rome Statute States Parties where Tamils were then subjected to cruel or inhumane asylum seeker detention systems. The legal arguments are analogous to those that led to the opening of an ICC

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400 None of the Office of the Prosecutor’s Preliminary Examination Activities reports have included an initial assessment of the communication concerning Kohona.


403 “The Ambassador – Designate to People’s Republic of China Assumes Duties.”

investigation into the situation in Bangladesh/Myanmar. At time of writing, PEARL is in the process of making an additional Article 15 communication.

Despite the gravity of these crimes against humanity, neither Sri Lanka nor any Rome Statute State Party has investigated, let alone prosecuted, any alleged Sri Lankan government perpetrator. Therefore, the case would be admissible before the ICC under Article 17.
Recommendations

Sri Lankan Government

- Enact legislation that criminalizes enforced disappearances, war crimes, crimes against humanity, and genocide, without statutes of limitation, as well as various modes of liability, notably command and superior responsibility.
- Ratify the Rome Statute of the International Criminal Court (ICC) with retroactive effect to July 1, 2002, and request the Office of the Prosecutor to open an investigation into alleged war crimes, crimes against humanity, and genocide in Sri Lanka.
- Ensure that emblematic rape cases before the courts — and incidents where there is sufficient evidence and perpetrator identifications to proceed to trial — progress promptly, credibly, and impartially, and regularly publicize the progress and outcomes of all cases.
- Investigate allegations of conflict-related sexual violence (CRSV) by the security forces; prosecute those responsible, especially individuals with command or superior responsibility; and regularly publicize the progress and outcomes of all cases.
- Immediately institute security sector reform, including the demilitarization of the North-East and the removal from the security forces of individuals responsible for human rights violations, including CRSV.
- Exclude security forces responsible for human rights violations, including CRSV, from participating in UN peacekeeping duties or specialized trainings abroad.
- Immediately inform Tamil families of the disappeared, who have been continuously protesting for over five years, of the fates and whereabouts of their loved ones, and provide criminal justice for victims of enforced disappearance, including for custodial sexual torture.
- Immediately release all political prisoners.
- Impose an immediate moratorium on the use of the Prevention of Terrorism Act, promptly repeal the law, and ensure any counterterrorism legislation and its application conform to international human rights law.
- Invite and facilitate visits of UN special procedures whose mandates touch on CRSV as it occurs in Sri Lanka, namely the Special Rapporteurs on Torture; Counter-terrorism and Human Rights; Promotion of Truth, Justice, Reparation and Guarantees of Non-recurrence; Violence against Women; and Minorities Issues as well as the UN Working Groups on Arbitrary Detention and Enforced Disappearances.
- Recognize that the root causes of conflict — including Sinhala-Buddhist nationalism that fuels impunity for international crimes and human rights violations against Tamils, including CRSV — remain unaddressed and require a political solution that allows the Tamil people to exercise their right to self-determination.
UN Human Rights Council

- Establish an international criminal justice mechanism to investigate alleged Sri Lankan perpetrators of international crimes, including CRSV, and prosecute those responsible, especially individuals with command or superior responsibility, given that the Sri Lankan authorities are unwilling to even investigate such crimes and the ICC has not yet established jurisdiction over Rome Statute crimes in Sri Lanka.
- Encourage Member States to actively apply extraterritorial and universal jurisdiction principles to investigate allegations of CRSV by the Sri Lankan security forces and prosecute those responsible, especially individuals with command or superior responsibility.
- Urge the UN Security Council to refer the situation in Sri Lanka to the ICC.
- Urge Sri Lanka to ratify the Rome Statute of the ICC as a demonstration of the new government’s commitment to accountability and the rule of law.
- Urge Sri Lanka to investigate allegations of CRSV by the security forces; prosecute those responsible, especially individuals with command or superior responsibility; and regularly publicize the progress and outcomes of all cases.
- Create a mandate of a Special Rapporteur for Sri Lanka to monitor, investigate, and report on the human rights situation in Sri Lanka, including custodial sexual torture and the new government’s progress in delivering criminal justice for emblematic rape cases before the courts and incidents where there is evidence and perpetrator identifications.
- Prioritize the provision of human and financial resources to civil society initiatives and efforts for justice, particularly those led by Tamil organizations, in recognition of the significant research, advocacy, and drafting done by the Tamil community toward universal jurisdiction and ICC investigations and prosecutions.

UN Human Rights Council Member States

- Actively apply extraterritorial and universal jurisdiction principles to investigate allegations of CRSV by the Sri Lankan security forces and prosecute those responsible, especially individuals with command or superior responsibility.
- Collaborate with civil society and submit Article 15 communications requesting the Office of the Prosecutor of the ICC to initiate a preliminary examination into allegations of crimes against humanity — such as deportation, deprivation of the right to return, and persecution, including underlying acts of CRSV — in Sri Lanka that continued into a Rome Statute State Party.
- Bring claims against Sri Lanka to the International Court of Justice for breaches of human rights treaty obligations that touch on CRSV as it occurs in Sri Lanka, such as those under the Convention against Torture or the International Convention for the Protection of All Persons from Enforced Disappearance.
- Ensure individuals responsible for human rights violations, including CRSV, do not receive or retain diplomatic roles and diplomatic immunity.
- Make bilateral and multilateral ties with Sri Lanka contingent on the Sri Lankan government taking effective and consistent steps to investigate and appropriately prosecute allegations of CRSV; resolve cases of enforced disappearances; demilitarize the North-East; and remove from the security forces individuals responsible for human rights violations, including CRSV.

- Prioritize the provision of human and financial resources to civil society initiatives and efforts for justice, particularly those led by Tamil organizations, in recognition of the significant research, advocacy, and drafting done by the Tamil community toward universal jurisdiction and ICC investigations and prosecutions.

**International Financial Institutions**

- Recognize that the entrenched impunity in Sri Lanka for international crimes and human rights violations, including CRSV, prevents positive outcomes in development and good governance and cannot be addressed without a credible, impartial justice process.

- Urge Sri Lanka to ratify the Rome Statute of the ICC as a demonstration of the new government’s commitment to accountability and the rule of law.

- Urge Sri Lanka to respect and protect human rights, including through justice for international crimes, including CRSV, in order to promote inclusive, meaningful participation in commerce and foreign investments from other governments and businesses, which are increasingly concerned with global corporate citizenship and social responsibility.

- Urge Sri Lanka to decrease military expenditure, demilitarize the North-East, and remove from the security forces individuals responsible for human rights violations, including CRSV, in order to reduce unsustainable debt.

- Ensure financing and other economic assistance is focused on the most marginalized communities in Sri Lanka, namely Tamils in the North-East, and is attached to concrete measures to strengthen political stability and the rule of law, including through accountability for international crimes, including CRSV.

- Make bilateral and multilateral ties with Sri Lanka contingent on the Sri Lankan government taking effective and consistent steps to investigate and appropriately prosecute allegations of CRSV; resolve cases of enforced disappearances; demilitarize the North-East; and remove from the security forces individuals responsible for human rights violations, including CRSV.

- Recognize that the root causes of conflict — including Sinhala-Buddhist nationalism that fuels impunity for international crimes and human rights violations against Tamils, including CRSV — require a political solution that allows the Tamil people to exercise their right to self-determination in order to rebuild a robust economy and political stability.