

Sri Lanka. Rape of Tamil women, men and children by the Sri Lankan Armed Forces and their collaborators

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Executive summary

The rape of Tamil civilians (women, girls and even men) in the Sri Lankan North and East by the Sri Lankan (Sinhalese) Armed Forces (at all levels), Police, specialised Police units such as the Criminal Investigation Department (CID), the Terrorism Investigation Department (TID), the Colombo Crime Division (CCD), National Intelligence Bureau (NIB), and the Sri Lankan Intelligence Service (SIS), pro-government Tamil paramilitary groups, and even Sinhalese workers relocated or sent to the Tamil areas to work on several projects, has now become a major problem.

With the brutal (Sinhalese) military and police running the North and East, treating the Tamil civilians as the 'spoils of war', and the area as 'conquered territory', backed by the Government of President Mahinda Rajapaksa that does what it likes to whoever it likes with no accountability, international intervention is mandatory and urgent.

A leading organisation for women in Sri Lanka said, on 14 July 2013, that in Sri Lanka a woman is raped every 90 minutes. With well-documented under-reporting because of shame or fear, the actual number of people subjected to rape and sexual violence in the Tamil areas, is much higher.

Rape is defined in the Rome Statute of the International Criminal Court (ICC). Rape is a war crime when inflicted with impunity by victorious armies. Broader than rape, any form of sexual violence is prohibited under both customary International Humanitarian Law and Common Article 3 of the Geneva Conventions. International human rights law prohibits sexual violence.

Sexual violence consists of actions of a sexual nature committed with a person without their consent, which besides including the physical invasion of the human body, may include acts that do not imply penetration or even any physical contact whatsoever. Examples include forced nudity or virginity tests. Covering a broad range of gender-based offences such as rape, sexual slavery, molestation, sexual mutilation, forced marriage, forced abortion, enforced prostitution, forced pregnancy and enforced sterilisation, sexual violence is defined as any act of a sexual nature that is committed on a person under circumstances that are coercive.

Acts of sexual violence may constitute war crimes or crimes against humanity.

In addition to direct criminal responsibility for crimes committed on the ground, commanders or other superiors (military or civil) may be guilty for failing to prevent or punish crimes by their subordinates.

The increased (Sinhalese) militarisation of the North and East is one of the most important factors (if not *the* most important factor) for the large number of documented instances of rape and sexual violence unleashed on the local (Tamil) population. The corollary is that unless/until the Armed Forces are removed from the Tamil areas, the 'epidemic' of rape will continue.

The Sri Lankan government's policy of protecting criminals and allowing local politicians and others who support the regime in power, to carry out such crimes with impunity has compounded the problem.

The criminal justice system in the country has collapsed. There are serious concerns about the independence of the judiciary and the adequacy of other checks on Executive and Military/Police power. The increase in rape cases is a sign of lawlessness.

It is crucial to appreciate that rape and other gross violations of human rights are going on today in the Tamil North and East, nearly five years after the end of the armed conflict. The current problem is due to four factors:- 1)The GoSL and its Armed Forces believing that the Tamil people are the 'victims of war'. 2) The Sri Lankan Armed Forces running the Tamil areas – behaving like an Army of Occupation with no accountability. 3) The collapse of Law and Order and even the judicial system. 4) The exclusion of internationally credible human rights groups, independent observers and the media from the area by the GoSL.

As a doctor of medicine in Australia, there have been several Sri Lankan asylum seekers referred to me who are in need of medical attention. Many of them had been raped, and have physical and psychological problems.

Since much of the rape in the Tamil areas is associated with the 26-year long war in Sri Lanka, this is briefly described.

Wikileaks has released a document sent in 2006 by then US Ambassador (Robert O.Blake Jr) in Colombo, to the USA, titled, *Sri Lanka: GSL complicity in paramilitary factions' Human Rights abuses*.The Ambassador's report deals with two separate parts of the Tamil North and East under two (Tamil) people, Douglas Devananda (in Jaffna in the North), and 'Karuna' (Vinayagamoorthy Muralitharan) (in the East). This is reproduced.

The ground situation in the Tamil North and East is described, and the options available to the (Tamil) people who live there – 1)To conceal the fact that they have been raped. 2) To struggle and cope with the consequences, including pregnancy. 3)To seek (physical) refuge. 4)To complain. 5). To leave the country if possible. 6)To commit suicide.

The legal dimension is gone into in detail - both International Law, Conventions and Treaties and Sri Lanka's Laws and the Constitution.

Major international publications on Rape in Sri Lanka are cited and discussed.

The urgent need to admit Amnesty International, Human Rights Watch and International Crisis Group into Sri Lanka in general, the Tamil North and East in particular, for humanitarian reasons, is stressed. This, of course, the Sri Lankan regime will not allow. Hence the absolute need for international pressure, with force if necessary. The use of force is permitted in the UN R2P (Responsibility To Protect). The Tamil civilians in the North and East are most definitely in need of protection.

The question of addressing the problem locally and internationally are set out. The publication ends with a series of suggested actions.

International Women's Day 2014

This publication is being released on International Women's Day 2014, March 8th.

The United Nations declares an 'Annual Theme'. The theme for 2014 is "Inspiring Change".

One place where 'change' is most urgently needed is the Tamil areas in Sri Lanka – the North and East – now under military occupation - where there is an 'Epidemic' of Rape of Tamil women, girls and even men, by the (Sinhalese) Armed Forces, Police and their collaborators. It is a place where 'change' is most unlikely to occur, unless there is decisive international action – not mere words.

This paper is to draw international attention to the desperate plight of Tamil women and girls in the North and East in the 'Democratic Socialist Republic of Sri Lanka' as it is inappropriately called. It is neither 'democratic' nor 'socialist', but a Totalitarian State under a despotic regime and a brutal, murderous (Sinhalese) military that does what it wants to whoever it wants with absolute impunity and no accountability. International human rights groups are banned from entering the area so that what is done can be done without independent observers. It is a gross violation of human rights without witnesses.

Australian Parliamentarian Christine Milne, the leader of the Greens Party, got it right when she said that "*Sri Lanka has a democratically elected dictatorship engaged in the abuse of its people, particularly the Tamils*"

Despite a scathing report on Sri Lanka submitted to the UN Secretary General Ban Ki-Moon on 31 March 2011 by a Panel of Experts appointed by him, nothing has been done to address the escalating abuse of human rights. So much for 'Inspiring Change'.

The theme for 2013 was "A promise is a promise. Time for action to end violence against women." In Sri Lanka the 'promise' (to end violence against women) was not a promise. 2013 saw a marked increase in the violence against Tamil women, and the situation is deteriorating.

In 2007, it was "Ending Impunity for Violence against women and girls." In Sri Lanka, the violence, including some of the most serious crimes including rape, torture, murder and 'disappearances' of Tamil civilians is done with absolute impunity. It is not 'ending impunity' but 'continuing impunity'.

In 2005, it was "Gender equality beyond 2005: Building a more secure future". That has been partially achieved in that Tamil women and men stand an equal chance of being raped or sexually molested. As for 'a secure future', the future of the Tamil people has never been more insecure in 2,500 years of recorded history. The only people with a 'secure future' are members of President Mahinda Rajapaksa's junta and scores of his relatives, and the (Sinhalese) Armed Forces. Their future is very secure.

In 1998, it was "Women and Human Rights". In Sri Lanka, women in the Tamil areas have no rights, not even basic human rights. They do not even have the right to survive, which is a violation of Article 3 of the Universal Declaration of Human Rights: 'Everyone has the right to life, liberty and security'. The Universal Declaration did not state 'Everyone, other than the Tamils in Sri Lanka, have the right to life, liberty and security'. That is what it has come to.

Rape is only one of a multitude of human rights abuses suffered by the Tamil people. This abuse has sky-rocketed after President Rajapaksa came into power in November 2005.

It is time to move beyond '*Themes*' and act to implement these themes. If '*change*' does not occur, the UN will become yet another talk-shop where little of significance happens. The UN is fast becoming a (major) part of the problems in the world rather than the solution.

It is not that the UN does not have the power to act. UN R2P¹ (Responsibility to Protect – see later) gives the necessary power to act. The question is whether the UN and its questionable Secretary General have the intention to act. As for the humanitarian crisis in Sri Lanka, the UN Secretary General has more than a case to answer. He was warned in early 2009, that there was going to be a blood-bath, but opted to do nothing - not even to go to Sri Lanka, saying that there was nothing he could do.

After the blood-bath, he literally dropped in, arrived at a 'concentration camp', was garlanded, smiled, and left – saying that he had not seen such a disaster in his life. Cold comfort for the victims.

If the UN and its dubious Secretary General do not act, it is time for the world to act and bring the perpetrators of war crimes and crimes against humanity to book, and stop the escalating violation of human rights in Sri Lanka, using force if necessary (as is permitted by the UN R2P). History has shown that this is about the only way to deal with dictators, tyrants and criminals who have State protection and are above the law.

Courts

The International Court of Justice (ICJ) (the so-called 'World Court') is a possibility. It is the judicial organ of the United Nations and countries can be taken before it, but only by another UN country – not by individuals. It sits in The Hague, Netherlands.

The UN Human Rights Committee is more promising. It is not a Court but a group of 18 world experts (mainly judges and lawyers) who sit in Geneva. It is the expert body that monitors the compliance of States with the UN International Covenant on Civil and Political Rights (ICCPR) and looks into whether these have been violated. It is a powerful UN organ with direct access to the UN.

Sri Lanka has signed the ICCPR. As such, the Human Rights Committee will investigate complaints. Any individual, or group, whose rights have been violated can complain against Sri Lanka, and the Committee will act (as it has in other cases where complaints have been lodged). Expensive lawyers and a complicated legal process are not needed.

All that is needed is an individual whose rights have been violated, to appear before the Committee and lodge a complaint. It might help to have a lawyer or a legal team but it is not required.

¹ <http://www.un.org/en/preventgenocide/adviser/responsibility.shtml>

Although not a 'Court', to have one's complaint looked into and certified by a group of 18 judges and lawyers who make up the Human Rights Committee, is clearly important.

I do not know why this has not been done. The least that can be done is that such a complaint be lodged now. It should have been done four years ago. The Human Rights Committee would have looked into it and submitted a Report to the UN a long time ago.

The International Criminal Court (ICC), is also an independent institution and not part of the United Nations system but 'maintains a cooperative relationship with the U.N.' It is the first permanent, treaty based, international criminal court governed by the Rome Statute, established to end impunity for the perpetrators of the most serious crimes that are of concern to the international community. It sits in The Hague. To take Sri Lanka and the perpetrators of crimes against humanity before the ICC is a possibility.

Sri Lanka is not a party to the Rome Statute and is unlikely to sign up. However, the UN Security Council could refer the matter to the ICC. However, Sri Lanka has 'friends' in the UN Security Council, such as China, which can, and will, block this and any other action taken against Sri Lanka.

The UN Human Rights Council (UN HRC) sits in Geneva every three months. It is just a talk-shop. Country representatives are not human rights experts but, in many cases, political lackeys. The HRC has an outstanding Head, High Commissioner Navanethem Pillay. Pillay is only the Head of the HRC² – not *the* HRC. She has asked for an Independent International Investigation into what happened in the closing stages of the armed conflict in Sri Lanka (18 May 2009) for years. Yet nothing has happened.

The UN HRC can best be judged by what happened after the mass murder of thousands of Tamil civilians in the North and East of Sri Lanka, which ended on 18 May 2009. On May 26 and 27, 2009, just a week after this outrage, the UN HRC in a 'Special session', clearly sponsored by Sri Lanka, passed a Resolution commending Sri Lanka³. Human Rights Watch slammed the Resolution: "*Sri Lanka: UN Rights Council Fails Victims*".⁴

With a return to sanity in 2012 and 2013, UN HRC passed two Resolutions critical of Sri Lanka but still gave time (a year each time) for rape, murder, 'disappearance' and other major human rights violations in the Tamil areas to continue. These Resolutions were 'watered down' to make them politically more acceptable so that what was finally passed was quite meaningless. Even these 'watered down' Resolutions have been ignored by Sri Lanka.

In a few weeks time (end of March 2014), yet another 'Resolution' will be passed on Sri Lanka's human rights record, and possibly on the need for an International Independent Inquiry. Whether that too be 'watered down', and even if it is not, whether it will simply be ignored by Sri Lanka, remains to be seen. Given the past record, I am not optimistic.

² Appointed for a 4-year term on 1 Sept 2008, and extended for another 2 years in 2012

³ 20 in favour, 12 against, 6 abstentions

⁴ <http://www.hrw.org/news/2009/05/27/sri-lanka-un-rights-council-fails-victims>

The Rajapaksa junta has already said that an international investigation into war crimes is 'interfering with a sovereign State' and is unacceptable. It has also said that international 'meddling' will 'complicate' the issue. That, of course, is arrant nonsense. International action to stop abuse will greatly simplify the problem (and even stop it), not 'complicate' it.

If an important Resolution is passed against Sri Lanka and the Sri Lankan regime tells the UN HRC to get lost, nothing will happen. There is no talk of economic sanctions being imposed on Sri Lanka should Sri Lanka simply ignore the Resolution. Without penalties, these Resolutions are useless. People like 'President' Mahinda Rajapaksa and his all-powerful brother, Gotabaya Rajapaksa, Defence Secretary (in reality the *de facto* President – his brother being only the *de jure* President), will probably ask the UN HRC to get lost (as they have in the past), or say that they need more time – endless years of time – 'to sort things out', and that any other alternative is an attempt to 'bully a small country' or support Tamil Tiger 'terrorists (even if they have been crushed, on the Government's own claim). Incidentally, with a land area of 25,200 sq miles, Sri Lanka is not a particularly small country and is much larger than many UN countries.

If none of these are possible, then Sri Lanka will have to be taken before the 'Bar' of 'International Public Opinion'. This means apprising the world of what is going on behind the closed and censored doors of Sri Lanka. Amnesty International (AI), Human Rights Watch (HRW) and International Crisis Group (ICG), among others, have done an outstanding job. Our duty is to get this information to the rest of the world. That is easier said than done because the international media are not interested. There is no way of getting this crucial information and carefully documented evidence to the people outside Sri Lanka – or for that matter, even in Sri Lanka, because of the silencing of the media by the Government of Sri Lanka (GoSL).

With this lengthy, but essential, introduction as to what is possible and not possible, I will get on to the problem to be addressed.

The 'epidemic' of rape of Tamil women, girls and men

The rape of Tamil civilians (women, girls and even men) in the Sri Lankan North and East by the Sri Lankan (Sinhalese) Armed Forces (at all levels), Police, specialised Police units such as the Criminal Investigation Department (CID), the Terrorism Investigation Department (TID), the Colombo Crime Division (CCD), National Intelligence Bureau (NIB), and the Sri Lankan Intelligence Service (SIS), pro-government Tamil paramilitary groups, and even Sinhalese workers relocated or sent to the Tamil areas to work on several projects, has now become a major problem.

With the brutal (Sinhalese) military and police running the North and East, treating the Tamil civilians as the 'spoils of war', and the area as 'conquered territory', backed by the Government of President Mahinda Rajapaksa that does what it likes to whoever it likes with no accountability, international intervention is mandatory and urgent.

Immediate Action

The very least that can be done is the **immediate** admission of AI, HRW and ICG into Sri Lanka in general, the Tamil North and East in particular, for humanitarian reasons. There is no other way to even curb, let alone reverse, the escalating violation of human rights, including rape. This, of course, the Sri Lankan regime will

not allow. Hence the absolute need for international pressure, with force if necessary. The use of force is permitted in the UN R2P (Responsibility To Protect) which I have mentioned and will detail later. The Tamil civilians in the North and East are most definitely in need of protection.

The 'Advanced Edited Version' of the Report of UN Secretary General for Human Rights to be submitted to the 25th Session of the UN Human Rights Council (UN HRC) that started on 3 March 2014, was released on 24 February 2014. It is of serious concern that in this highly commendable Report, "*Promoting reconciliation and accountability in Sri Lanka*", there is not a word about the absolute need to admit these major human rights organisations (one of them a Nobel Prize winner) into Sri Lanka to monitor the escalation of human rights violations, including rape and other serious violations of human rights. It is a major deficiency in this outstanding Report.

If this one act (the admission of AI, HRW and ICG) is achieved, it would be more important than passing a dozen useless 'Resolutions' which is what the UN HRC has done, and will almost certainly do in March 2014. It will be another exercise in futility as have been so many Resolutions passed by the UN and its various bodies. They are only 'talk-shops' which achieve nothing. It is not about to change. President Rajapaksa and other dictators know this full well.

The possible legal action that can be taken was set out by Geoffrey Robertson QC, a leading British barrister and a world authority on Crimes Against Humanity. Addressing an International Conference in London recently⁵ he said :

"So it's clear that soft power, arguments, the diplomatic solutions, have failed to bring home, to punish the perpetrators, or to bring pressure on the Sri Lankan Government..... we've got to ask what remedies might there be in international law to bring the perpetrators to account."

What he suggested is summarised at the end of this publication.

Legal consequences

Rape and sexual violence (defined later) are prohibited under International Humanitarian Law (IHL), International Human Rights Law, and International Criminal Law, predominantly through the prohibition of torture and cruel, inhuman and degrading treatment.

Rape and sexual violence are explicitly listed as war crimes in Non-International Armed Conflicts (NIACs) and crimes against humanity by the International Criminal Court (ICC) Statute.

Since legal action may well be necessary to deal with the perpetrators of these crimes in Sri Lanka, it is important to go into this in some detail.

⁵ September 28th and 29th 2013, "*Accountability for Tamil Genocide in Sri Lanka
Its significance for the world*"

The numbers affected

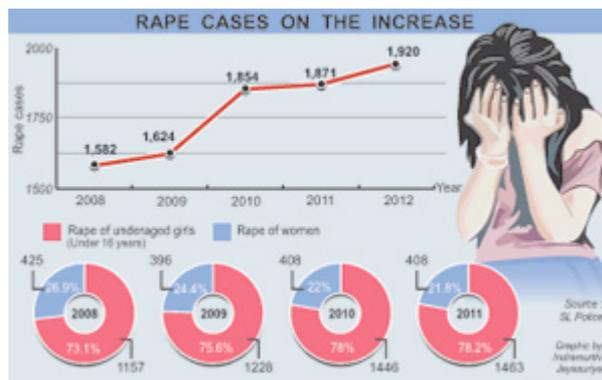
'*Women for Rights*'⁶, one of the leading organisations for women in Sri Lanka, at a press conference in Colombo on 14 July 2013 said that in Sri Lanka a woman was raped every 90 minutes⁷.

Sri Lanka is 5th in the list countries where domestic violence occurs. Crimes causing violence relating to women and children are on the rise. In Sri Lanka the citizens live in an environment that has no respect for women. It is estimated that 95% of women using public transport are at risk of being subjected to sexual harassment.

The number of people being raped is increasing:

Rapes 2008-2011

Year	Total number	Under-age (under 15 years)
2008	1,592	1,157
2009	1,624	1,228
2010	1,854	1,146
2011	1,871	1,463



Presenting these shocking figures in the Sri Lankan Parliament, Cabinet Minister and Chief Government Whip, Dinesh Gunawardena, said that the majority of rape cases had been reported from Kandy, Anuradhapura and Colombo (all in the Sinhalese area), clearly indicating that the large number of people raped in the Tamil areas had not been included. Presumably the Sri Lankan authorities do not see that the rape of Tamil women, girls and men in the North and East should be included in the statistics. They seem to be 'non-people'.

This is similar to what happened in 1948 when the Plantation Tamils of Indian origin were disenfranchised and decitizenised by the newly independent country, Ceylon as it then was. Nearly a million people, one seventh of the population of the country at that time, were made 'non-people'.

65 years later, the indigenous Tamil population in the North and East, who have been in the country for thousands of years, are being made 'non-people',

⁶ <http://whr.org.np/about-us/>

⁷ <https://www.colombotelegraph.com/index.php/every-90-minutes-a-woman-is-raped-in-sri-lanka-rape-and-other-crimes-against-women-on-the-increase-ahrc/>

Gross under-reporting

With well-documented under-reporting because of shame or fear (see below), the actual number of people subjected to rape and sexual violence in the Tamil areas, is much higher. Several victims (and witnesses) are unwilling to discuss rape or sexual violence when asked about these issues but are willing to discuss other forms of mistreatment or use terms other than 'rape'. Several victims of rape seen by me said that they had been 'stroked' or 'hugged' by members of the Armed Forces. When I said, "you mean you were raped", they agreed. The Report of the Secretary General's Panel of Experts on Accountability in Sri Lanka ("UN Expert Panel")⁸ stated:

"Rape and sexual violence against Tamil women during the final stages of the armed conflict and, in the aftermath, are greatly under-reported. Cultural sensitivities and associated stigma often prevented victims from reporting such crimes, even to their relatives"⁹

With the exclusion of independent human rights organisations such as AI, HRW and ICG from the Tamil areas, the exact number of rape victims is not known. From the information available, all that can be said is that it is very high – and rising.

For example, the Judicial Medical Officer in Jaffna (in the Tamil North) reported that there had been 56 cases of rape and severe violence against women and girl children who had presented to his hospital in February and March alone in 2012, compared to a total of 102 incidents in 2010, and 182 in 2011¹⁰. Jaffna is effectively a Police State run by the Sri Lanka (Sinhalese) Armed Forces, and Tamil thugs whose leader is in President Rajapaksa's Cabinet.

In 2011, *Women's Action Network* (WAN) in a Submission to the UN Commission on the Status of Women¹¹, stated that community-based organizations had received numerous reports of gender based violence in Sri Lanka.

The reason for the escalating problem

The increased (Sinhalese) militarisation of the North and East is one of the most important factors (if not *the* most important factor) for the large number of documented instances of rape and sexual violence unleashed on the local (Tamil) population. The corollary is that unless/until the Armed Forces are removed from the Tamil areas, the 'epidemic' of rape will continue.

A bad situation is made worse by the Sri Lankan government's policy of protecting criminals and allowing local politicians and others who support the regime in power, to carry out such crimes with impunity. It involves people from the very top to the bottom of the government's hierarchy and the military/police.

To compound the problem, the criminal justice system in the country has collapsed. There are serious concerns about the independence of the judiciary and the adequacy of other checks on Executive and Military/Police power. The investigative function of the police has now been virtually suspended and this acts in favour of the criminals. The responsibility for the collapse of the policing system lies firmly with the

⁸ http://www.un.org/News/dh/infocus/Sri_Lanka/POE_Report_Full.pdf

⁹ Expert Panel Report (above) section 152 page 44

¹⁰ "Alarming rise of sexual abuse in Jaffna". BBC 9 March 2012

¹¹ <http://www2.ohchr.org/english/bodies/cedaw/cedaws48.htm>

government, particularly with the promulgation of the 18th Amendment to the Constitution which has virtually invalidated even the limited reforms of the police and other public institutions initiated by the 17th Amendment.

Today Sri Lankan citizens are not protected by the law. Thus, the GoSL has failed in the most primary function that any government is expected to fulfil, which is the protection of its citizens. Instead, the government has removed all the legal obstacles that were there to prevent criminal activity. As would be expected, the worst affected are the most vulnerable sections of society - women and children.

Women's groups have held public protests demanding, among other things, the stopping of the granting of suspended sentences to criminals found guilty of rape and other serious crimes against women. This practice of giving suspended sentences is now widespread in Sri Lanka. The practice itself arose as a result of the collapse of the criminal justice system. The courts often pressurise lawyers to reach 'settlements' even in serious criminal cases, offering as an incentive the possibility of obtaining a suspended sentence.

Several lawyers interviewed by the Asian Human Rights Commission (AHRC) said that the practice of criminal law has virtually become a farce. Police officers manipulate the system and the Attorney General's Department makes no attempt to resist the extreme degeneration that is taking place. The Courts themselves have become party to this dismal state of affairs by attempting to force 'settlements'.

Under these circumstances the call that has been made by *Women for Rights* for government intervention to stop crimes against women is very unlikely to succeed. The challenge now is for all, including women's organisations, to deal with the collapse of the criminal justice system and the rule of law as a common problem affecting everyone. It is only the development of the solidarity of all those who have become victims of criminals that the government's neglect can be confronted.

Lawlessness and Political interference

A Senior Lecturer in Sociology in Colombo, Dr Harini Amarasuriya, said that the increase in rape cases was a sign of lawlessness:

"The culprits are sure that they can get away with the crime. The people have lost trust in law enforcement agencies".

When perpetrators are not held accountable for gross violations of human rights (not only rape), it fosters a culture of impunity that enables such violations to continue, indeed to escalate.

It is not surprising that the incidence of rape in the Tamil areas, under the brutal Sri Lankan (Sinhalese) Armed Forces who are a law unto themselves and where an independent judicial system is virtually non-existent, is very high. It will continue to be so as long as the Sri Lankan Armed Forces are in the area.

The Attorney General gets into the act

Justice Mohan Seneviratne, the High Court Judge in Ratnapura (in the Sinhalese South), said that the Attorney General's department has on many occasions (emphasis mine) submitted affidavits for victims when politicians were involved in rape cases, and had even decided not to prosecute the suspects.

He referred to a Court case before a Colombo Magistrate where a politician was charged with the rape of an under-age girl. The case was withdrawn on the Attorney General's 'advice'.

This is such a serious problem that it merits further comment (see below).

If this is the situation in the Sinhalese area where there is still a remnant of a legal system, one can imagine what the situation is in the Tamil area which is under the Sri Lankan (Sinhalese) military – effectively military occupation – where the legal system (and every other, for that matter), is what the military decides. As I have said, the Sri Lankan military treats the Tamil area as 'conquered territory', and the people (Tamils) as the 'spoils of war'. The Sri Lankan Military and Police are above the law.

The sweeping powers of the Attorney General

The Attorney General is the Sri Lankan Government's chief legal adviser. The sweeping powers of the Executive President have been adversely commented on by many observers. No other President in the world has the powers of the Sri Lankan President. What has escaped such scrutiny are the sweeping powers of the Attorney General (AG).

The Sri Lankan AG has very wide powers over the investigation and prosecution of criminal offences such as rape or even murder. Investigations carried out by police and magistrates are subject to the AG's control and direction. Similarly, decisions to indict or not in cases of serious offences, and the framing of charges and prosecution lie fully within the AG's control.

The AG thus holds a central position within the criminal justice system and plays a critical role. The effective exercise of accountability within the criminal justice system requires the AG to act effectively and independently, as well as a legal framework that permits the AG to proceed. The two cases cited below show the degree to which the AG's independence has been compromised and politicised.

The independence of the AG's Department has been weak since the Executive Presidential system was established by President J.R Jayawardene in 1978. It has recently been further weakened by President Mahinda Rajapaksa elected in November 2005. It is a matter of serious concern where the AG takes on the absolute power to investigate, or not investigate, members of the Government, their supporters, or the military, for criminal acts such as rape or murder.

Following the 2010 elections, a gazette notification setting out each ministry's functions and responsibilities removed both the AG's Department and the Legal Draftsman's Department, whose primary task is drafting new laws, from the Ministry of Justice where they should be. These departments now fall under direct presidential control by virtue of Article 44(2) of the Constitution, and, I gather, are even physically located in the Presidential Secretariat!

Investigations and prosecutions in Sri Lanka have been highly selective and often involved abuses of power on the part of law enforcement, rather than a fair and even-handed pursuit of justice. The United Nations Human Rights Committee has gone so far as to hold that a decision of the AG not to initiate criminal proceedings against police officers responsible for death in custody was so arbitrary as to amount to a denial of justice.

Investigations of allegations against state officials have often taken extraordinary amounts of time, if they are completed at all. Victims making such allegations have routinely been harassed by law enforcement personnel following filing of a complaint. Unsurprisingly, they make no complaints.

Delay

As the recently published US State Department *US State Department. Bureau of Democracy, Human Rights and Labor: Country Reports on Human Rights Practices for 2013. Sri Lanka*¹² states (p 63):

“An average rape case took six to 12 years to be resolved”.

So, the victim or complainant has to hang around for a decade to see justice. This is in striking contrast to the 18th Constitutional Amendment to give President Rajapaksa even more powers than the sweeping powers he already has, which was passed through the Courts and Parliament in less than 72 hours!

The legal system on Sri Lanka is in no hurry to address violations of human rights, however serious they may be. Where politicians are the culprits, it might never be addressed.

Breathtaking hypocrisy

Like so many actions by the GoSL and its various institutions in Sri Lanka, there is breathtaking hypocrisy. The Bureau for the Prevention of Abuse of Women and Children (BPWC), established by the Police, conducts awareness programs in school and at grassroots level, encouraging women to file complaints. In March 2013, the Government reported that training in the prevention and management of gender-based violence was also provided by the Public Health Midwives and Primary Health Care Workers Groups. Police also continued to establish women’s bureaus in Police stations.

What is not reported is that women who went to the Police stations to get the necessary information or help were raped by the police officers.

None of these measures are intended to address the problem of rape or sexual violence or their consequences. They are, like so much in Sri Lanka, mere ‘window dressing’, or hopes (by some NGOs) that have not worked.

Sexual harassment is a criminal offence carrying a maximum sentence of five years in prison. Those who know the reality of the situation on the ground in Sri Lanka acknowledge that sexual violence is widespread. As with domestic violence, discussion of the problem is not common. If this term in prison is implemented in Sri Lanka, the jails will be full and overflowing with perpetrators of rape and sexual offences. The possibility of jail is not taken seriously, especially by the Armed Forces, Police or the Rajapaksa henchmen and supporters. It simply does not happen.

Reassuringly, if they do commit rape or any serious violation of human rights, the Attorney General’s department is likely to come to their rescue as has already been stated. So, all is well, whatever the crime – be it rape, sexual mutilation, murder or any other crime. It is who you know that matters, not what you do.

¹² <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dldid=220404#wrapper>

That is the '*Democratic Socialist Republic of Sri Lanka*' under its almost Regal Head, President Mahinda Rajapaksa, his brothers and numerous relatives, who have absolute power to do whatever they want to whom ever they want with no accountability. To question them is treason, and dealt with as such. To question what is going on is, by definition, to support the Tamil Tigers, whether they exist or not. If they do not exist, they will have to be reincarnated by the Sri Lankan regime who 'needs' them. To have enemies, real or imaginary, is an essential 'requirement' for a Totalitarian regime or a dictatorship. If they are not there, they have to be created.

These are not opinions to be debated but facts to be faced and addressed. To address these problems is almost impossible with a tyrannical regime with absolute power running the country and complete control of the media, the Armed Forces running riot, hooligans and thugs who are part of governance, a legal system in chaos, and countries such as China that will support the Sri Lankan regime – financially and internationally (specially in the UN), for their own geopolitical and economic gains. To address the problem of rape alone, or any of the other major human rights violations, is impossible. There is a much more that has to be done.

That said, the immediate admission of AI, HRW and ICG will make a difference.



Rape and sexual violence – WHERE?

Rape and sexual violence have occurred, and continues to occur in several places – mainly in the Tamil North and East.

1. In the large number of Sri Lankan Army and Navy camps that have opened all over the North and East
2. In Police stations
3. In camps for Internally-displaced persons (IDP) – there are still such camps whatever the denials of the GoSL
4. In interrogation centres – they too are still there
5. In Government Hospitals eg the Kilinochchi hospital
6. In the homes of Tamil people in the North and East especially where there are no males
7. In the community at large in the North and East

There does not seem to be any area in the Tamil North and East where Tamil women and girls (and even men) are safe from being raped or from suffering sexual violence. If the GoSL denies this, can Amnesty International and Human Rights Watch check this out?

The large number of cases of rape of Tamil women and girls in the IDP camps has been well documented in the UN Expert Panel Report, the HRW Report '*We will teach you a lesson*' and the ICEP report, among others.

The Manik Farm and other IDP sites were closed camps, guarded by the military and surrounded by barbed-wire. At the end of the armed conflict, some 350,000 Tamil and Muslim people were detained in these camps by the GoSL, and not allowed to leave. There were severe restrictions preventing international organisations from entering these camps or speaking with the IDPs in private.

Young Tamil females were taken to isolated areas in these camps 'for investigation' or 'questioning'. They were generally taken in at night and returned in the morning. There is overwhelming evidence that they were repeatedly raped or sexually assaulted – usually by the Armed Forces who ran the camps.

What happened in these camps has been detailed in the Reports I have referred to but they only document a tiny fraction of what has been done and what continues to be done. There is a lot more that has not been reported because of the reluctance of the victims to speak out because of shame or fear. I have just heard from a Sri Lankan who has visited the North and East that there are many people who are prepared to testify as to what has happened (and is still occurring) but no one whom they can trust. This is why it is mandatory for AI and HRW to open a 'reporting centre' in the area.

Interrogation

There is good evidence that rape has taken place, and still takes place, during 'interrogations'. The UN Expert Panel recognised that a deliberate lack of transparency by the Sri Lankan Government had resulted in there being very little information on conditions at various places especially the separate 'surrender' sites of former members of the Liberation Tigers of Tamil Eelam (LTTE): The UN Expert Panel stated that these circumstances:

*'alleged LTTE cadre highly vulnerable to violations such as rape ... which could be committed with impunity.'*¹³

Kilinochchi Hospital

The events that have occurred in the Kilinochchi Hospital are particularly alarming. Some 50 girls were kept in the doctors' quarters by day, and by night, were taken to a larger building used as a guest house for Sri Lankan Army Officers. The ground floor was the Officer's mess hall. The girls were taken upstairs and sexually abused.

There is no point in my repeating what has already been published in international reports except to say that what was committed were war crimes and crimes against humanity that demand investigation and prosecution, in an International Court.

Rape and sexual violence – BY WHOM?

These criminal acts were committed (and continue to be committed) by a range of people mainly from the Sri Lankan Army, Navy, Police, and others who work with them. They include those who work in the Police, Terrorism Investigation Department (TID), Criminal Investigation Department (CID), the Colombo Crime Division (CCD), the National Intelligence Bureau (NIB) and the Sri Lankan Intelligence Service (SIS). The fourth floor of the TID in Colombo has been described as *'the torture facility in Colombo run by the TID'*.

¹³ UN Secretary-Generals Report para 167

One of the DVDs recorded by me “*Sri Lanka; Genocide, Crimes against Humanity, Violation of International Law*”, shows the notorious Police CID “4th Floor” and evidence of what went on (and still goes on) there.

Those who go to Sri Lanka, especially politicians, should visit the CID “4th Floor” in Colombo. They will almost certainly be told that it is not a tourist attraction or that it is too dangerous because “there are terrorists there”. There most certainly are terrorists - Government terrorists - who inflict terror in all who are brought there.

In addition, there is evidence of rape of Tamil women and girls by Tamil paramilitary groups whose leaders are in President Rajapaksa’s Cabinet (see below), and by Sinhalese workers in the Tamil areas who seem to enjoy protection from the (Sinhalese) Military and Police.

I have described (see below) victims seen by me where some of the rapists were officers in the Sri Lankan Armed Forces. The ICEP report also has first-hand witness accounts from two young Tamil women who were repeatedly raped and subjected to sexual violence by the CID. One described some officers in military uniform wearing gold insignia or badges, indicating that they were of higher rank.

It is impossible to believe that this was not known to those at the top – including members of the Sri Lankan government. The claim by the GoSL that all this was done by ‘rogue elements’ in the Armed Forces is arrant nonsense.

Impunity

Although rape and sexual violence were widely known and extensively reported, there is little evidence that any steps have been taken to stop this or prosecute those responsible. There is no evidence that it will happen in the future. It is mandatory that the necessary action be taken internationally, whether the GoSL allows this or not. Both rape and sexual violence committed in the setting of a ‘war’ are war crimes and crimes against humanity. As such, the International community has a duty to act.

Destruction of evidence

There is now witness testimony that the Sri Lankan Armed Forces are destroying forensic evidence. Human remains from mass burial sites in the former conflict zone are being exhumed and covertly destroyed. This highlights the urgent need for an internationally-mandated investigation and the immediate admission of internationally credible human rights groups such as AI, HRW and ICG into the area. This is urgent and imperative.

Collection and documentation of evidence

Increasingly, women and men, especially those who have left the country (refugees and asylum seekers) are willing to come forward and speak of their experience of sexual violence. It is crucial that this (now) readily available evidence of criminal acts be properly collected and documented since it will be important for international legal action if/when it is taken to charge those responsible. This action will be dealt with later.

Credible reports on Rape

a) International Reports on Rape

There have been five important recent Reports on Rape in Sri Lanka.

(1) International Crisis Group (ICG) “Sri Lanka: Women’s Insecurity in the North and East”¹⁴, Asia Report No 217 (20 December 2011). A summary of the important ‘Recommendations’ in this Report are in Appendix 1.

(2) Human Rights Watch (HRW) Report “We will teach you a lesson” Sexual Violence against Tamils by Sri Lankan Security Forces”¹⁵. (February 26, 2013). This is a major publication. The Appendix in this Report gives details of torture and rape which must be read in detail since some of the facts are legally important. It is the most carefully documented report of rape and torture in Sri Lanka ever published. A summary of the ‘Recommendations’ is in Appendix 2.

(3) “Wiki leaks” which has detailed accounts of rape sent by the US Ambassador in Sri Lanka to the USA.

(4) Minority Rights Group (MRG) International. This is the leading international human rights organisation to secure the rights of ethnic, religious and linguistic minorities and indigenous peoples. It has more than 150 partners in over 50 countries. The 16 October 2013 report is on the Tamil areas of Sri Lanka:

“Living with Insecurity: Marginalisation and sexual violence in north and east Sri Lanka”¹⁶.

(5) Human Rights Watch World Report 2014¹⁷

This has just been published. There is serious concern expressed on sexual violence in Sri Lanka and the involvement of the Armed Forces. Short extracts from this most recent international publication will be quoted later.

b) International human rights and legal Reports

There have also been six other important international publications:

(1) UN Secretary General’s Expert Panel Report - Report of the Secretary-General’s Panel of Experts on Accountability in Sri Lanka (“UN Expert Panel”)¹⁸ This is a massive 196-page Report by three international legal experts¹⁹ appointed by the UN Secretary General Ban ki-Moon, in June 2010. They submitted the Report on 31 March 2011. He should have handed it to the United Nations immediately. He has done nothing to date (March 2013).

(2) Amnesty International Submission to the UN Universal Periodic Review (Oct-Nov 2012):

¹⁴ <http://www.crisisgroup.org/en/regions/asia/south-asia/sri-lanka/217-sri-lanka-womens-insecurity-in-the-north-and-east.aspx>

¹⁵ <http://www.hrw.org/reports/2013/02/26/we-will-teach-you-lesson-0>

¹⁶ http://www.google.com.au/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&ved=0CDMQFjAB&url=http%3A%2F%2Fwww.minorityrights.org%2Fdownload.php%3Fid%3D1296&ei=A72VUraOK8fxiAea_oHQA&usg=AFQjCNH6lg0Lkn3XrYgz1WfW1yzABS7onw&sig2=Fbfr4EVVJsEkMhdBV4t49A&bvm=bv.57155469,d.dGI

¹⁷ <http://www.hrw.org/world-report/2014/country-chapters/sri-lanka?page=1>

¹⁸ http://www.un.org/News/dh/infocus/Sri_Lanka/POE_Report_Full.pdf

¹⁹ Marzurki Darusman – (Indonesia) –Chair, Steven Ratner (USA), Yasmin Sooka (South Africa)

*'Sri Lanka. Reconciliation at a crossroads: Continuing impunity, arbitrary detention, torture and enforced disappearances'*²⁰

(3) Asian Human Rights Committee (AHRC):

*'The State of Human Rights in Sri Lanka in 2011 - Sri Lanka: International Human Rights Agencies failed to notice the Collapse of Sri Lanka's Public Institutions of Justice'*²¹. It is an impressive 99-page publication.

(4) International Commission of Jurists

*'Authority without accountability. The Crisis of impunity in Sri Lanka'*²² November 2012. This is a major 160 page report on the drift to authoritarianism in Sri Lanka.

(5) Public Interest Advocacy Centre (PIAC) – International Crimes Evidence Project (ICEP)²³

PIAC is an independent non-profit Law and Policy organisation based in Sydney, Australia. It is funded by the New South Wales Public Purpose Fund and Commonwealth/State Community Legal Services.

PIAC's "International Crimes Evidence Project" (ICEP) has just published a major 235-page Report (6 February 2014) – "Sri Lanka: *'Island of Impunity? Investigation into international crimes in (Sri Lanka)'*". It is one of the most damning indictments of what has gone on, and is still going on, in Sri Lanka.

It has an extensive legal analysis with more than 2,000 references. It covers the vast array of human rights violations, and extends certain instances, such as the murder of the LTTE leaders who had surrendered, going into far greater detail than the Report of the UN Secretary General.

The Report will almost certainly be submitted to the next UN Human Rights Council meeting in Geneva (March 2014), where the human rights situation in Sri Lanka will be taken up.

c) Reports from Sri Lanka

There are two publications/submissions from within Sri Lanka:

(1) *'Situation Report. North and East'*²⁴ by the Members of Parliament who represent the people in the area - the Tamil National Alliance (TNA), tabled in the Sri Lankan parliament on 21 October 2011. It is a comprehensive report of the ground realities.

(2) *'Submission to the 'Lessons Learnt and Reconciliation Commission' (LLRC)* by the Most Rev Dr Rayappu Joseph, Roman Catholic Bishop of Mannar in the Tamil North West. My booklet on Bishop Joseph sets out some of what he presented²⁵.

²⁰ <http://reliefweb.int/sites/reliefweb.int/files/resources/asa370082012en.pdf>

²¹ http://reliefweb.int/sites/reliefweb.int/files/resources/Full%20Report_403.pdf

²² <http://www.refworld.org/pdfid/50ae365b2.pdf>

²³ International Crimes Evidence Project (ICEP) *'Island of Impunity? Investigation into International Crimes in (Sri Lanka)*. 6 June 2014, para 1.34 p 11

<https://www.colombotelegraph.com/wp-content/uploads/2014/02/here.pdf>

²⁴ <http://dbsjeyaraj.com/dbsj/archives/2759>

²⁵ <https://www.colombotelegraph.com/index.php/why-bishop-joseph-and-his-roman-catholic-clergy-have-been-targeted/>

d) Other important documents

(1) *International Criminal Court – Elements of Crime*²⁶

This is a very important publication by the International Criminal Court (ICC) that sets out what will be judged as an International criminal act by the ICC. It is important in that much of what has been done in Sri Lanka during and after the armed conflict are international crimes which can be taken up in the ICC and those who are responsible charged.

(2) *US State Department. Bureau of Democracy, Human Rights and Labor: Country Reports on Human Rights Practices for 2013. Sri Lanka*²⁷

This is a detailed and accurate Report on Human Rights that has just been released (February 2014). All these annual US State Department Country Reports are well worth reading. The one for 2013 is no exception.

Rape and Sexual violence

Rape

Rape is defined in the Rome Statute of the International Criminal Court (ICC)²⁸:

“Rape is a form of sexual violence during which the body of a person is invaded, resulting in penetration, however slight, of any part of the body of the victim, with a sexual organ, or of the anal or genital opening of the victim with any object or other part of the body”.

Let me turn to the question of coercion, consent and resistance of the victim. The ‘standard’ view is that:

“the invasion was committed by force, or threat of force or coercion such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or another person, or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent”.

This legal definition of Rape has evolved over time. While the early jurisprudence focused on coercion or force or threat of force, in the case of *Junarac*²⁹ and others, the Trial Chamber concluded that in rape it:

“understands that the actus reus of the crime of rape in international law is constituted by: the sexual penetration, however slight: (a) of the vagina or anus of the victim by the penis of the perpetrator or any other object used by the perpetrator; or (b) of the mouth of the victim by the penis of the perpetrator; where such sexual penetration occurs without the consent of the victim.

²⁶ <http://www.refworld.org/docid/4ff5dd7d2.html>

²⁷ <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dliid=220404#wrapper>

²⁸ Official Records of the Review Conference of the Rome Statute of the International Criminal Court, Kampala, May 31-June 11 2010; International Criminal Court, “Elements of Crime,” ICC-PIDS-LET-03-002/11_Eng, 2011, <http://www.icc-cpi.int/NR/rdonlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/0/ElementsOfCrimesEng.pdf>

²⁹ *Prosecutor v Kunarac* (International Criminal Tribunal for the Former Yugoslavia, Trial Chamber, Case No ICTY-96-23-T, 22 February 2001).

Confirming this approach, the Appeals Chamber recognised that force, or the threat of force, provides clear evidence of non-consent in rape. Thus there is no requirement of resistance on the part of the victim. Moreover, most cases of rape as a war crime or a crime against humanity are committed in coercive circumstances where genuine consent is not possible.

Sexual violence. No physical contact necessary

Broader than rape, any form of sexual violence is prohibited under both customary International Humanitarian Law and Common Article 3 of the Geneva Conventions. International human rights law prohibits sexual violence mainly through the prohibition of torture and cruel, inhuman or degrading treatment or punishment.

According to the Inter-American Court of Human Rights, sexual violence consists of actions of a sexual nature committed with a person without their consent, which besides including the physical invasion of the human body, may include acts that do not imply penetration or even any physical contact whatsoever.

Examples of sexual violence include forced nudity or virginity tests.

The UN Special Rapporteur on systematic rape, sexual slavery, and slavery-like practices in armed conflict characterised sexual violence as encompassing *‘any violence, physical or psychological, carried out throughout sexual means or by targeting sexuality’* and includes situations where one person is forced to perform sexual acts or harm another person in a sexual manner.

All of these (and more) have been done by the Sri Lankan Armed Forces, the Police and others working with them or known to them. This has been well-documented in several international reports, especially by HRW.

Acts of sexual violence may constitute war crimes or crimes against humanity. Sexual violence as such was not included in the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) Statutes. Nonetheless, both tribunals confirmed in their case law that sexual violence can constitute a crime against humanity, and the war crime of violations of Common Article 3 prohibitions of ‘outrages upon personal dignity’ and ‘cruel treatment’.

Covering a broad range of gender-based offences such as rape, sexual slavery, molestation, sexual mutilation, forced marriage, forced abortion, enforced prostitution, forced pregnancy and enforced sterilisation, sexual violence was defined as any act of a sexual nature that is committed on a person under circumstances that are coercive. Moreover, sexual violence can cover conduct that does not involve physical conduct, such as forced nudity in public. The ICC Statute explicitly included sexual violence as both a crime against humanity, and a war crime.

In cases of sexual violence, the ICC shall be guided by and, where appropriate, apply the following principles:

(a) Consent cannot be inferred by reason of any words or conduct of a victim where force, threat of force, coercion or taking advantage of a coercive environment undermined the victim’s ability to give voluntary and genuine consent;

(b) Consent cannot be inferred by reason of any words or conduct of a victim where the victim is incapable of giving genuine consent;

(c) Consent cannot be inferred by reason of the silence of, or lack of resistance by, a victim to the alleged sexual violence;

(d) Credibility, character or predisposition to sexual availability of a victim or witness cannot be inferred by reason of the sexual nature of the prior or subsequent conduct of a victim or witness.

Although Common Article 3 of the Geneva Conventions does not explicitly mention sexual violence, it prohibits 'violence to life and person', including 'cruel treatment and torture', and 'outrages upon personal dignity, in particular humiliating and degrading treatment'. The latter expression includes any form of sexual violence.

In the Special Rapporteur's Final Report on Systematic Rape, Sexual Slavery and Slavery-Like Practices during Armed Conflict³⁰, sexual violence included such acts as forcing a person to strip naked in public, mutilating a person's genitals, or slicing off a woman's breasts.

Article 3 prohibitions of 'outrages upon personal dignity' and 'cruel treatment' covers a range of gender-based offences such as rape, sexual slavery, molestation, sexual mutilation, forced marriage, forced abortion, enforced prostitution, forced pregnancy and enforced sterilisation.

Sexual violence was defined as any act of a sexual nature that is committed on a person under circumstances that are coercive. Moreover, sexual violence can cover conduct that does not involve physical conduct, such as forced nudity in public. The ICC Statute explicitly included sexual violence as both a crime against humanity, and a war crime.

The ICC Elements of Crimes define 'sexual violence' as where a perpetrator committed an act of a sexual nature against one or more persons or caused such person or persons to engage in an act of a sexual nature by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or persons or another person, or by taking advantage of a coercive environment or such person's or persons' incapacity to give genuine consent.

For sexual violence to amount to a crime against humanity or a war crime, the conduct must be of comparable gravity to other offences. This it most certainly is in Sri Lanka.

Sexual mutilation

The ICEP Report has this to say:

11.34 A local employee of an international agency identified the mortuary at a Government Hospital as the holding place of large numbers of bodies of deceased and mutilated Tamil women in February and March 2009. He observed at least 200 bodies, of mainly Tamil women and young girls, on three or four occasions when he visited the facility during this period. He reported that many of the bodies of the women were naked and bore physical evidence of rape and sexual mutilation, with knife wounds in the nature of long slashes, bite marks or deep scratches on the breasts, and vaginal mutilation by knives, bottles and sticks. The bodies also typically

³⁰ UN Doc. E/CN.4/Sub.2/1998/13, 22 June 1998.

bore signs of gunshot wounds to the forehead, which appeared to have been inflicted at close range due to the lack of peripheral damage”.

As the International Criminal Court has stated in *Elements of Crimes of the Rome Statute*”, these are international crimes which will be acted on by the ICC. It is mandatory that action be instituted in the ICC for the necessary legal action.

Cases reported to me

As a doctor of medicine in Australia, there have been several Sri Lankan asylum seekers referred to me who are in need of medical attention. Some of them are in Australian detention centres, others in community detention.

Those in detention centres cannot be accessed directly because of the closed-doors policy of the British-based ‘security’ firm, *Serco*, which runs Australia's detention centres. *Serco* has a highly questionable reputation, not only in Australia but even in Britain³¹. The prestigious ‘*Sydney Morning Herald*’ newspaper ran a recent article “*What is Serco hiding?*”³² They are certainly hiding a lot. *Serco* will not allow outside medical access to detainees, however much they are in need of medical help.

I was able to access some of the detainees by getting them (Hindus) to claim that they were Christians and wanted to attend Church. They came with two *Serco* guards who sat in the car. I arrived at the church, watched closely by the guards. When the service was over I took the detainees to the vestry and took their history.

They, and others whom I saw on various other occasions, had all been raped. In addition to having serious physical injuries, most were seriously depressed and what some of them wanted was help ‘to end it all’. They said that if they were sent back to Sri Lanka, they would be tortured or killed. So they might as well end it here.

Most Rev Dr Rayappu Joseph, Bishop of Mannar, has sent a circular letter asking us to urge the Australian government not to send asylum seekers back to Sri Lanka since all of those who had arrived in his parish had been arrested, tortured, killed or had ‘disappeared’.

I saw some of the asylum seekers (those in community detention) in my office. They were frightened, very frightened, especially when they worked out that I was a Sinhalese (since I needed an interpreter).

What I heard from them confirmed what has been published in the Human Rights Watch Report: “*We will teach you a lesson*” *Sexual Violence against Tamils by Sri Lankan Security Forces*”. The Appendix to the Report documents 75 cases of rape and torture in detail.

Almost all of the people referred to me had been raped. Many had suffered anal rape, others were forced to submit to oral sex, and one had even been raped at both ends simultaneously in what I can only describe as an ‘orgy of sexual violence’.

Many had serious psychiatric issues in addition to medical problem. Some were near suicide – a problem which seemed to be of no importance to *Serco* or the Australian government.

³¹ https://en.wikipedia.org/wiki/Serco_Group

³² <http://www.smh.com.au/business/what-is-serco-hiding-20130507-2j4pv.html>

One of them (whom I will call 'John') said things that might be legally important and makes nonsense of the claim by the Government of Sri Lanka (GoSL) that the rape was done by rogue elements in the Army. It also involves people outside the Armed Forces, in the chain of command all the way to the top.

'John' said that three men took him to the local Naval headquarters in Mannar, in the North West. His clothes were removed and a Navy man was about to rape him when a fourth person walked in. The Navy man stood back and saluted him: "*Sir, you go first*". He did. Before he left he told his subordinates "*Make sure you do a good job. Our boss Gota* (reference to Gotabaya Rajapaksa, Defence Secretary and the President's brother) *told us not to spare them*". He added, "*Make sure that this man ('John') is brought back tomorrow since there will be two other Officers who will 'want to have a go'*". One could call this an 'Official Order for Sex'.

Similar claims have been made by other asylum seekers who have been raped by the Army's 58th Division in the North East. They say that the rapists (members of the Armed Forces), were told by their 'boss' - "*do whatever you want to do to them*". The Commanding Officer of this Division was Brigadier Shavendra Silva. He was, after the conflict, promoted to Major General, and is now the Deputy Permanent Representative to the United Nations in New York! It is impossible to believe that the Brigadier did not know what was going on, or that he was unable to prevent it. There is a 'Chain of Command' responsibility, which has legal consequences (see below).

I will not go into the just-published report of the alleged 'activities' of the Sri Lankan Deputy Permanent Representative to the UN in New York. I will only draw attention to what is in the public domain in *Lanka News web*³³ which might be of importance to the subject being dealt with in this publication. I do not know what happened in that office in New York, anymore than I know what happened in President Bill Clinton's office.

What I do know is that Commodore Thisara Samarasinghe, Head of the Sri Lankan Navy (2009-2011), is now 'His Excellency The Sri Lankan Ambassador to Australia'! He might like to explain what happened to 'John' and the victim described in detail below.

Those in community detention were brought to my office where a proper history could be taken and the person examined.

The HRW Report documents that a 20 year old Tamil woman was raped by a Brigadier for 3 months. Cases reported to me also involved high-ranking military Officers.

The worst case

The worst case (of many) was a 27 year old Tamil man from Mannar whom I will call 'Peter'. He had no connection with the Liberation Tigers of Tamil Eelam (LTTE, Tamil Tigers), not that it matters.

In 2009, he and his father were fishing, when the Navy fired a shell which hit the boat. He sustained a broken left femur (thigh) and left tibia (lower leg).

The Navy arrested them, dropped his father on the seashore and took him to the Navy camp (not the hospital). When he regained consciousness his leg was

³³ http://www.lankanewspapers.com/news/2012/1/73758_space.html

bandaged. While in the Navy camp, he says that he was repeatedly raped (anus), sometimes by one, sometimes by more, Navy people. He was in the camp for some 10 months (September 2009 to July 2010) during which he says he was raped a large number of times.

After 10 months in the Navy camp he was sent home. He did not tell anyone about the multiple rapes or the rectal bleeding because of shame and fear. He was asked to report regularly to the Navy camp, and was raped each time. He was told that if he did not come back, they would rape his girl-friend.

Despite the fact that he did go back, his girl-friend was repeatedly raped at her home.

On one occasion 'Peter' was taken to a room and approached by a 'high-level' Naval Officer (because when others came into the room they saluted him).

He was raped by the 'high-level' Officer and several others who referred to the Officer as "the boss".

'Peter' tried to leave Mannar, but found that the Navy seemed to know what he was about to do. He later found that his father's sister had been informing the Navy of his and his girl-friend's whereabouts for a long time for payment.

Four days before he left, the Navy got information (probably from his father's sister) that he was about to leave. This time they came for him, took him to the Navy camp and tortured him. They inserted a plastic pipe into his rectum and a barbed wire put down the pipe. The pipe was withdrawn leaving the barbed-wire in the rectum. This (the barbed wire) was withdrawn and inserted several times, in what I can only describe as mind-boggling sadism. He was told "*you are getting out, this is what you deserve*".

In September 2012, he paid Sri Lanka Rs 1.2 million (about A\$ 12,000) to a people smuggler in Sri Lanka, got on a boat which came from Negombo (between Colombo and Mannar on the West coast), to Cocos Island. After 4 or 5 days, he was taken to Christmas Island, and a month later flown to the Darwin detention centre (Wickham Point) in mainland Australia.

After 5 months there, because of a deteriorating mental state, he was transferred to the Toowong (Private) mental hospital in Brisbane. We were made aware of his presence here after several weeks. A friend of mine, a former Consultant Gynaecologist, a Tamil, had to take him several packets of menstruation pads because of rectal bleeding. I was asked to see him and I did. The photograph of his ripped anus is too dreadful to reproduce here.

There were multiple perforations of the rectum consistent with his claim of barbed-wire being inserted into the rectum. The HRW Report also documents a case where a barbed-wire was inserted into the rectum.

He clearly needed surgical attention for the ripped anus (in addition to psychiatric treatment). Unable to provide either, he was sent to Villawood detention centre in Sydney. He has had surgery and is now in Community detention with an Australian family at a location which I know but will not disclose. He is severely disturbed mentally.

His girl-friend, who became his wife, unable to put up with repeated rapes, became a nun and escaped to India where she lives with a relative. She is unable to get to

Australia because of Australia's inhuman refugee policy, which is a gross violation of the Refugee Convention, signed and ratified by Australia.

I have a discharge summary given to her in the District General Hospital, Mannar where she was admitted on 15 June 2013.

“(Name suppressed by me) Age 25 years. She gave a history of sexual assault by an unknown group of people. She complained of lower abdominal pain, bleeding per vaginam, pain in her genitals and breasts. On examination there were multiple simple linear abrasions over lower and upper limbs and face. Both breasts showed multiple contusions and bite marks and were very tender. The genitalia showed the vulva to be oedematous (swollen). Both labia majora (the external female genitalia) were swollen. Speculum examination showed an active bleeding site about 3cm in the vaginal vault”.

His Excellency, the Sri Lankan Ambassador in Australia, former Head of the Sri Lankan Navy, Commodore Thisara Samarasinghe, might like to throw some light on this since there is overwhelming evidence that the “unknown group of people” were members of his Navy. On the ‘Chain of Command’ responsibility, he is criminally liable, as was the Japanese General Tomoyuki Yamashita, who was charged, convicted and executed in 1946 for failing to prevent atrocities done by those under his command (see below). Samarasinghe cannot claim ‘diplomatic immunity’ when faced with such serious charges. He has to answer.

The mental make-up of the rapists

Aside from the outrageous acts that have been committed, the mental make-up of the rapists must be looked at. It is clear that it is pathological since it is well beyond what can be regarded as ‘normal’. It would not be unreasonable to call them ‘pathological rapists’, just as there are ‘pathological liars’, ‘pathological murderers, and serial murderers.’

What is so worrying is that it is these people from the Armed Forces (among others) who are being settled in the Tamil areas by the Sri Lankan government. It is this that is of even greater concern than the ‘Sinhalisation’ of the Tamil areas.

The Human Rights Watch (HRW) Report

Using the ICC definition of Rape, the HRW Report³⁴ carefully documented 75 cases of rape and sexual abuse by the Sri Lankan Military, Police and those working with them. All 75 victims were Tamils, 41 women, 31 males, and 3 boys under 18 years of age. This is only a small fraction of the actual numbers as the Report makes clear:

“Because of (Sri Lankan) government access restrictions Human Rights Watch was not able to conduct research openly in Sri Lanka. As a result, we were able to reach only a small number of the detainees held by the Sri Lankan authorities.....”

“.....this report represents only a fraction of the total cases.....We received many other cases of sexual violence from Sri Lanka which we were unable to investigate ourselves or in which victims were unable, afraid, or unwilling to seek assistance or speak of their abuse, and these cases have not been included here.”

The publication is important legally:

³⁴ http://hrw.org/sites/default/files/reports/srilanka021webcover_0.p.pdf

“...the report contains detailed descriptions of 75 cases of rape and sexual abuse documented by Human Rights Watch. We have medical documentation in 67 of the 75 cases, and obtained other independent corroborating information in the remaining eight cases”³⁵.

An important finding is that the systematic rape of Tamils continues today, nearly five years after the end of the armed conflict. James Ross, Legal and Policy Director, HRW, commenting on ‘youtube’ said:

“What we found was that this abuse not only was widespread during the final months of the fighting which ended in May 2009 but have continued in the years since then, and the Government has taken no action either to stop the abuse or punish those responsible”.

The cases are so well documented that they can be used as evidence in any Court case e.g the International Criminal Court, if legal action is launched, not only against those who committed these crimes but against those who were in charge (all the way to the top). The report clearly states this:

“The Sri Lankan government has an obligation not only to prevent such violations, but also to investigate credible allegations of abuse and prosecute those responsible. Officials who knew or should have known of such abuses and failed to take action, are criminally liable as a matter of command responsibility.”

The report documents the dangers facing Tamils who have voluntarily returned to Sri Lanka, or asylum seekers who have been sent back to Sri Lanka by other countries, (such as Australia and the UK).

Continuing abuse

It is crucial to appreciate that rape and other gross violations of human rights are going on today in the Tamil North and East, nearly five years after the end of the armed conflict. I have carefully avoided saying “the end of the conflict” because the conflict between the GoSL and the Tamil people is anything but over. To claim otherwise is to be blind to the ground reality in the Tamil North and East.

A number of cases of rape and torture in the HRW Report *“We will teach you a lesson” Sexual Violence against Tamils by Sri Lankan Security Forces* occurred well after the end of the armed conflict (18 May 2009).

Many of the cases seen by me were people who had been raped and tortured after the end of the armed conflict.

The ICEP *Island of Impunity?* released 6 February 2013, had this to say:

“1.42 A witness, who was detained by the Sri Lankan Police’s Criminal Investigations Department (CID) as recently as April 2012, reports being subjected to torture, sexual violence and multiple rapes. On one occasion, the witness reports being physically assaulted by another officer while she was being raped. The witness also stated that while in CID detention she heard other men and women crying and screaming out in pain every day”.

³⁵ Page 13 of the Report.

The raping and branding of 'Kumar' (March 2013)

A particularly disturbing case was of a Tamil man who had arrived in Australia as an asylum seeker. To conceal his identity, he will be called 'Kumar'. He fled Sri Lanka after being interrogated and accused of links to the Tamil Tigers and arrived in Australia in 2008. His family joined him in Australia in 2012.

In March 2013, he needed to return home as his uncle fell ill. Less than a week after he arrived in Sri Lanka, he and his brother were abducted at gunpoint by two men in a white van. The men claimed to be army intelligence officers and grilled him about links to the Tamil Tigers, which he denied.

He was blindfolded and taken to a dark room with "dried blood" on the walls. They raped him repeatedly and tortured him for three days. On the fourth and final day of his ordeal, 'Kumar's' captors branded his back with hot irons.

His uncle paid a \$20,000 bribe to his captors, and he got back to Australia.

Soon after he returned Kumar saw his local doctor who referred him for urgent psychiatric treatment for his trauma. The doctor was so horrified by Kumar's injuries that he also sought help from the Tamil Refugee Council. The Council consulted Louise Newman, an expert adviser on the mental health of asylum seekers.

Ms Newman says Kumar's is a "*credible story*". She said, "*He provides detail and is very preoccupied with some of the minute details of the actual atrocities that were performed on him which is very typical... of the accounts we get from people who have been through these sorts of experiences.*"

Gordon Weiss, who was the United Nations spokesman in Sri Lanka during the civil war, and is now in Australia, was contacted. He agreed Kumar's story is believable.

He said, "*There have been a series of reports in just the last few months from the US state department, from Human Rights Watch, from the UN high commissioner for human rights, detailing this kind of treatment.....One has to remember that the people in charge of Sri Lanka at the moment have got a long history stretching back to the 1980s of using torture and abduction in order to suppress segments of the population.*"

The Australian Broadcasting Corporation (ABC) was contacted. A Reporter interviewed 'Kumar'³⁶ and aired on the ABC TV 7.30 Report on 25 April 2013³⁷. It showed the criss-cross branding of his back which had clearly been recently burnt. To say it was 'shocking', would be a gross understatement.

³⁶ <http://dbsjeyaraj.com/dbsj/wp-content/uploads/2013/04/ABC042313B.jpg>

³⁷ <http://www.abc.net.au/news/2013-04-24/sri-lankan-details-claims-of-rape-and-torture-by-army/4649954>



Brutality - sadism

The sheer brutality of the Sri Lankan Armed Forces is described in one of the cases reported by HRW:

“Two officials held my arms back [while] a third official held my penis and inserted a metal rod inside. They inserted small metal balls inside my penis. These had to be surgically removed after I escaped from the country”.

HRW stated that *“A medical report corroborates his account”*.

Another incident is described in the ICEP Report *“Island of Impunity”*³⁸:

“One witness, whose statement was taken by ICEP, was told directly by a senior SFs (Security Forces) officer that he had personally participated with his officers in the gang rape of female LTTE who had surrendered. The SFs officer also described to the witness that after they raped each woman, they killed them by tying one of their legs to a tree and the other to a tractor which was driven away from the tree, causing the woman’s body to be torn apart.”

UN High Commissioner for Human Rights – 2013 visit

Concluding her seven day visit to Sri Lanka, UN High Commissioner for Human Rights, Navanethem Pillay, held a press conference in Colombo on 31 August 2013³⁹. Referring to sexual violence, she said:

³⁸ International Crimes Evidence Project (ICEP) *“Island of Impunity? Investigation into International Crimes in (Sri Lanka). 6 June 2014, section 11.30, page 175*
<https://www.colombotelegraph.com/wp-content/uploads/2014/02/here.pdf>

³⁹ <http://www.ohchr.org/EN/NewsEvents/Pages/Media.aspx?IsMediaPage=true&LangID=E>

"I was very concerned to hear about the vulnerability of women and girls, especially in female-headed households, to sexual harassment and abuse. I have raised this issue with several ministers, the provincial governors and senior military commanders who attended my meeting with the Secretary of Defence. I challenged them to rigorously enforce a zero tolerance policy for sexual abuse."

The British action (or the lack of it)

On 29 May 2012, The Secretary of State for Foreign Affairs and Trade, William Hague, launched the British Government's '**Initiative on preventing sexual violence in conflict.**' While he referred to women in Darfur and Srebrenica, he did not utter a word about the extensive rape of Tamil women and girls in Sri Lanka.

On 28 November 2013, it was taken up again in the British parliament. '**Sexual Violence in Conflict**'. Foreign Secretary, William Hague, spoke (at length!).

Sri Lanka, where rape is rampant, was not even mentioned. Hague knew perfectly well what was going on in Sri Lanka because his Prime Minister, David Cameron, had just visited Sri Lanka for the Commonwealth Heads of Government Meeting (CHOGM), 15-17 November 2013, and had visited the Tamil areas. I know that the major problem of rape of Tamil women and girls by the Sri Lankan military was mentioned to him.

In addition, there are several accounts by internationally credible organisations such as Human Rights Watch, which I have cited, to document what Hague chose to ignore.

Finally, a member of the Opposition, Simon Danczuk (Rochdale) (Lab):

"A lot of sexual violence is occurring in Sri Lanka, and it has been going on for some time. Is the Foreign Secretary really comfortable with President Rajapaksa playing such a leading role in the Commonwealth at the moment?"

Mr Hague was 'comfortable' to raise these issues with Sri Lanka but not necessarily to act!

Mr Hague: *"I am comfortable that it was right to raise all these issues in Sri Lanka.....If we had not been to Sri Lanka, we would not have been able to do anything of this: to secure the communiqué; to make a speech on sexual violence; to raise the issue with the Sri Lankan Government and to have coverage all over the Sri Lankan media. The answer is that I am comfortable that we did the right thing to raise this issue in a big way in Sri Lanka."*

So it ended. At least it was documented that there is 'a lot' of sexual violence in Sri Lanka. Yes, indeed, he might well have raised "this issue in a big way in Sri Lanka". He did not say what he and his government would do if Sri Lanka said: "Get lost".

The Australian Prime Minister's outrageous comment (2013) and actions

On 15 November 2013, the Australian Prime Minister Tony Abbott, in Colombo to attend CHOGM, told reporters that while his government "*deplores the use of torture we accept that sometimes in difficult circumstances difficult things happen*".



The disgraceful Australian Prime Minister

This is an outrageous comment. The use of torture is never justifiable. There is never a 'difficult' circumstance where torture should be accepted. In an unprecedented action, leading rights groups, Human Rights Watch, the Human Rights Law Centre, Amnesty International Australia, Australian Lawyers for Human Rights, and the Castan Centre for Human Rights, called for a retraction of the remarks made by the Australian Prime Minister. He is not about to do so.

Abbott was heartily applauded and had 'red-carpet' treatment from the Sri Lankan President, Mahinda Rajapaksa. When he left Sri Lanka after CHOGM - the band played "*Waltzing Matilda*".

In contrast, the courageous British Prime Minister, David Cameron, who challenged the Sri Lankan Government's failure to address the allegations of criminal acts during the ethnic conflict, and said that he would take this up at the next UN Human Rights Council meeting in Geneva (March 2014) if Sri Lanka did not act, was told by President Rajapaksa that '*people in glass houses should not throw stones*'

To get back to the Australian Prime Minister Tony Abbott and his Immigration Minister, they have just (in the past month) appointed a former Sri Lankan Army Officer, Dinesh Perera, as the acting Head of the notorious Manus Island Detention Centre in Papua New Guinea. It is a thoroughly inappropriate appointment.

This detention centre has at least 30 Sri Lankan Tamil males. The Tamils being held there have fled persecution at the hands of the Sri Lankan military. It is completely inappropriate for anyone with links to the Sri Lankan military to be in charge of the welfare and well-being of vulnerable asylum seekers, especially Tamils.

It is not the activities of one man, Dinesh Perera, that is in question. It is the way that Australia takes care of asylum seekers who are in its custody. The placing of an ex-military commander from a source country for refugees like Sri Lanka, highlights Australia's complete insensitivity to the very real risks and suffering that those asylum seekers are fleeing.

A more serious problem is that the records of the Tamils being detained will be readily available to Perera. Given his obvious contacts with his friends in the Sri Lankan Armed Forces, this information could be sent to them. This could have disastrous consequences for those who the asylum seekers have left behind in Sri Lanka. It is an invitation to the Sri Lankan Armed Forces to commit crimes, including rape. Will the Australian government monitor this? Of course it will not. The Australian Government line will predictably be that rape in Sri Lanka is a domestic problem for Sri Lanka to deal with.

Australia accepting a man who has questions to answer on war crimes as the Sri Lankan Ambassador, and now appointing another Army Officer as the acting head of a detention centre that has very vulnerable Tamils, calls for an international protest and condemnation of Australia.

Human Rights Watch World Report 2014⁴⁰

This is the most recent international Report on sexual abuse in Sri Lanka. There are important references to sexual violence and the Sri Lankan military.

“Torture and other ill-treatment of persons in custody by the security forces has been a widespread problem both during and since the armed conflict. Human Rights Watch published new evidence in February that rape and sexual violence has been a key element of broader torture of suspected LTTE members and supporters ever since the war’s end. The torture is used to obtain “confessions” of LTTE involvement, and to instil terror in the broader Tamil population to discourage involvement with the LTTE.

The government rejected these findings and claimed they were fabrications by individuals seeking to embellish their overseas asylum claims. Human Rights Watch is unaware of any government investigations into the reported sexual abuse”.

As for the Sri Lankan military, the Report goes on:

“The government contends to have considerably decreased its military presence in the north and east, but credible accounts indicate that military personnel still frequently intervene in civilian life. The Defence Ministry and army websites both regularly post articles about the role of the military in civilian affairs that appear intended to exert control over the local population and development. Independent observers of provincial council elections in September expressed concern about military campaign activities in favor of the ruling party there, and the resulting heightened sense of insecurity and tension among the Tamil population ahead of the elections.

Women and girls in the north and east remained especially vulnerable to sexual harassment and violence that the army neither prevented and may have contributed to. Women’s rights groups working in Tamil areas reported particular difficulty documenting abuses because of an oppressive military presence.”

Rape – a war crime

Geoffrey Robertson QC

Geoffrey Robertson, a British barrister and a world authority on human rights, in his authoritative book, *Crimes against Humanity. The struggle for Global Justice*⁴¹, has this to say:

‘.....international law has been slow to recognise rape for the war crime it invariably constitutes when inflicted with impunity by victorious armies”.

International Criminal Tribunal for Rwanda (ICTR) in 1998.

⁴⁰ <http://www.hrw.org/world-report/2014/country-chapters/sri-lanka>> <http://www.hrw.org/world-report/2014/country-chapters/sri-lanka>>

⁴¹ Penguin Books Ltd, 80 Strand, London WC2 ORL, England, 2nd Ed 2002, page 100

Jean-Paul Akayesu, a politician from Rwanda, was also the Mayor of the Taba commune. As such, he had command of the police and gendarmes assigned to the commune. During the Rwandan Genocide of 1994, many Tutsis were killed in Akayesu's commune, and many others were subject to violence.

Akayesu was extradited from Zambia, charged, and convicted of genocide and crimes against humanity. He was sentenced to life imprisonment.

It was a landmark case being the first time the 1948 Convention for the Prevention and Punishment of the Crime of Genocide was enforced.

The Presiding Judge, none other than Navanethem Pillay (the current High Commissioner for Human Rights) said:

“From time immemorial, rape has been regarded as spoils of war. Now it will be considered a war crime. We want to send a strong message that rape is no longer a trophy of war”.

The Geneva Conventions of 1949

Geneva Convention IV *“For the protection of Civilian Persons in Times of War”*, secures humane treatment for persons in occupied territories (such as the Tamil North and East), and those who have been interned on suspicion of involvement in resistance movements (eg the LTTE - Liberation Tigers of Tamil Eelam – ‘Tamil Tigers’). The former class of ‘protected persons’ are entitled to respect for their family, and customs and religion, and women are guaranteed protection from rape and forced prostitution (both of which have gone on, and are still going on, in Sri Lanka’s Tamil North and East).

The occupying power (eg the Sri Lankan Armed Forces) cannot punish civilians for activities prior to the occupation.

These four Geneva Conventions begin with three Articles which are common to each of them. The first (Common Article 1) pledges respect for the Conventions *“in all circumstances”*, thereby excluding any excuse of ‘national necessity’.

Common Article 2 applies the Convention rules not only to declared wars but to *‘any other armed conflict’* among the parties. It requires signatories to abide by the rules even if the other party does not. This excludes a familiar reservation to previous treaties entered by States that they are prepared to stick to the rules as long as their enemies did. In the Sri Lankan conflict, the Sri Lankan Government that has signed the Geneva Conventions, cannot claim that it will stick to the rules provided the LTTE also did so.

Common Article 3 promises humane treatment in *“armed conflict not of an international character”*, to all civilians and non-combatants. This covers all the civilians in the conflict zone in Sri Lanka (the Tamil North and East).

It is clear that the GoSL has violated all the Geneva Conventions.

Rape and torture

Rape is a form of torture (as was pointed out by Geoffrey Robertson QC at the recent (28 September 2013) meeting in London on Genocide in Sri Lanka which I have referred to.

The Universal Declaration of Human Rights was adopted by the UN General Assembly on 10 December 1948. Article 5:

“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”.

It was followed in 1984 by the ‘Torture Convention’ (Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (CAT). Sri Lanka acceded to CAT in 1994 and it has an obligation under Article 4 of CAT to criminalise torture under its domestic law.

CAT defines torture as

“any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the instigation of a public official on a person for such purpose as obtaining from him or a third person information or confession, punishing him for an act he has committed or is suspected of having committed, or intimidating him or other persons”.

The prohibition of torture is well established in international law. It is an absolute prohibition in numerous human rights treaties, and is prohibited under Common Article 3. The prohibition of torture is also recognised as a rule of customary international law, amounting to a jus cogens norm.

Both under customary international law and the ICC Statute, torture is a war crime and a crime against humanity.

There is overwhelming evidence from several publications by internationally credible human rights organisations that torture is widespread in Sri Lanka, especially in the Tamil North and East, now under the Sri Lankan military and police (overwhelmingly Sinhalese – 99.9% and 95% respectively).

A medical dimension

‘Torture’ clearly has a medical dimension, in addition to a legal one. As such, it is relevant to quote from the *Medical Foundation for the Care of Victims of Torture*, *“Freedom from Torture”*.

In the recently published 2012/2013 Annual Review, Sri Lanka surged ahead to become the top country of origin for those referred to *Freedom from Torture* in 2012. Of 1,301 people referred in 2012 for torture rehabilitation and forensic documentation, 228 were of Sri Lankan nationality, the vast majority of them Sri Lankan Tamils.

Rape as a war crime and crime against humanity

The International Crimes Evidence Project (ICEP), a project of the Public Interest Advocacy Centre (PIAC), in an extensive Report published on 6 February 2014 had this to say⁴²:

“The Sri Lankan Government has denied or ignored credible allegations of rape and sexual violence committed by SFs (Security Forces) members in the final months of the conflict and the post-conflict period. Second-hand witness accounts obtained by ICEP are consistent with cases reported by Human Rights Watch (HRW) and the UN Expert Panel. These indicate that SFs members committed rape and sexual violence in the context of the Sri Lankan Army’s screening process, in IDP camps and surrendee detention facilities, during interrogations and at Government hospitals. Such conduct could amount to war crimes and crimes against humanity”.

Rape and Genocide

Professor Francis Boyle, Professor of International Law, University of Illinois College of Law, who represented nearly 40,000 raped “Women of Bosnia” and argued their case in the World Court for the Republic of Bosnia and Herzegovina against Yugoslavia. He won two World Court Orders of Provisional Measures of Protection on their behalf.

In his book *Genocide in Sri Lanka*⁴³, Professor Boyle has written extensively on rape and genocide in Sri Lanka. He has made a major contribution over a prolonged period of time to address the mounting problem of the violation of human rights in Sri Lanka and on the absolute need to charge the criminals whoever they are.

Widespread and systematic rape of the Tamils by the GoSL and its Armed Forces violates Article II(b) of the 1948 Genocide Convention, to which Sri Lanka is a contracting party. The relevant part of article II states:

“In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group as such:

(b) Causing serious bodily or mental harm to members of the group;....”

Command responsibility

In addition to direct criminal responsibility for crimes committed on the ground, commanders or other superiors (military or civil) may be guilty for failing to prevent or punish crimes by their subordinates. Criminal responsibility is an established principle of customary international law and has been incorporated into the Rome Statute⁴⁴.

The International Criminal Tribunal for the Former Yugoslavia (ICTY), established by the UN Security Council on 27 May 1993, had caught just one criminal (a foot soldier

⁴² International Crimes Evidence Project (ICEP) *“Island of Impunity? Investigation into International Crimes in (Sri Lanka). 6 June 2014, para 1.34 p 11*
<https://www.colombotelegraph.com/wp-content/uploads/2014/02/here.pdf>

⁴³

⁴⁴ ICRC Customary International Humanitarian Law, Rule 153, Rome Statute art.28

at that) after two years. ICTY finally lifted the protection offered to the Bosnian Serb leadership. The Tribunal prosecutor reminded the Court of the Nuremberg ruling that “*a plea of head of state immunity will not constitute defence, nor will it mitigate punishment*”, and the ‘Command Responsibility’ rule for military and political leaders.

It was applied in the trial of the Japanese General Tomoyuki Yamashita. He had failed in his duty as Commander of Japanese forces in the Philippines to prevent them from committing atrocities. He was tried and convicted by a military Court in the Philippines. He appealed to the US Supreme Court which rejected the appeal:

“ a person in a position of superior authority should be held individually responsible for giving the unlawful order, a crime, and he should also be held responsible for failure to deter the unlawful behaviour of subordinates if he knew they had committed or were about to commit crimes yet failed to take necessary and reasonable steps to prevent their commission or to punish those who had committed them”.

He was executed by hanging in the Philippines on 23 February 1946. Just for the record, Yamashita's Chief of Staff in the Philippines, Akira Mutō, was executed on 23 December 1948 after having been found guilty of war crimes by the International Military Tribunal for the Far East.

‘Command responsibility’ makes the Sri Lankan Armed Forces Commander, former General Sarath Fonseka, his many Armed Force Commanders (many of them now Sri Lankan ‘diplomats’ in some countries and even in the UN), his non-military bosses, including Gotabaya Rajapaksa, Defence Secretary, and Mahinda Rajapaksa, Commander-in-Chief of the Armed Forces (and the President of the country), criminally liable.

The War

Since much of the rape in the Tamil areas is associated with the 26-year long war in Sri Lanka, it is instructive to make some brief comments on this.

It is a war between the Sinhalese-dominated Sri Lankan Government and the Tamil *people* – not, as is popularly believed, only against the Liberation Tigers of Tamil Eelam (LTTE), a militant Tamil group. I will deal with this important point later.

The Sinhalese-Buddhist ethnoreligious chauvinism of a succession of Sinhalese-dominated governments has been to get the political support of the majority Sinhalese (74% of the country) and Buddhist (70%), by discriminating against the Tamil-Hindu minority. This anti-Tamil discrimination in the Official Language (changed from English to Sinhalese only), education (entry into Universities) and employment, was resisted by the Tamil people, first by non-violent protests and, when these failed, by a resort to an armed struggle to free the Tamil people from Sinhalese domination.

It was a liberation struggle no different from that of the African National Congress (ANC) in apartheid South Africa, and liberation struggles against oppression in many situations down the ages.

What has gone on, and, disturbingly, is still going on, is a serious violation of human rights of the Tamil people, and even their right to life, the most fundamental human right – guaranteed by Article 8 of the Universal Declaration of Human Rights.

The GoSL has made a mockery of the Universal Declaration which it has signed and ratified. The human rights of the Tamil people in the North and East has taken a bashing, and what is worse, the violations have escalated after the 'end' of the armed conflict.

There has also been a serious violation of the UN Convention on Torture, the Conventions on the Rights of the Child, The Convention on the Elimination of All Forms of Discrimination against Women, and even the Genocide Convention. This has been done, and *continues* to be done, with internationally credible human rights groups, humanitarian agencies, independent observers and the media denied access to the area where the worst violations of human rights are occurring (the Tamil North and East).

It is important to stress that the Tamil Tigers, the politically-active Buddhist monks, one of whom assassinated the father of the previous President, Chandrika Bandaranaike Kumaratunga, Prime Minister S.W.R.D. Bandaranaike, the Sinhalese so-called 'Marxists' in the Janatha Vimukthi Peramuna (JVP), who assassinated her visionary husband, and the Sinhalese hooligans and thugs who are running amok with the blessings of the President Mahinda Rajapaksa's government, have not signed internationally binding Conventions and Agreements. The GoSL has signed these, and has a legal and moral responsibility to honour them. This has not happened. Indeed they have been flouted.

The Agenda of Sri Lanka's ruling Rajapaksa junta

The election of Mahinda Rajapaksa as President of Sri Lanka (19 November 2005) had serious consequences for the Tamil people, especially those in the North and East, the area of historical habitation of the Tamils. It was clear that he and his even more ruthless brother, Gotabaya Rajapaksa – a former member of the Armed Forces who had retired prematurely and had gone to the USA in search of greener pastures, returned to Sri Lanka to support his brothers election.

When Mahinda Rajapaksa was elected President, he appointed Gotabaya as his Defence Secretary. They were determined to crush the LTTE, whatever the cost in terms of civilian (Tamil) lives.

In Sarath Fonseka, the Army Chief-of-Staff, they found a like-minded military man. On 6 December 2005, less than three weeks after the election of Mahinda Rajapaksa as President, Fonseka was appointed as the Army Commander.

The Rajapaksa-Fonseka combination was prepared to destroy the LTTE, irrespective of (Tamil) civilian casualties. Even though the Sri Lankan government under Rajapaksa and the Sri Lankan Armed Forces under Fonseka, had the ultimate objective of destroying the LTTE, the evidentiary material indicates that the civilian (Tamil) population was the primary, rather than an incidental, object of the attack.

This conclusion is based on the means and methods of warfare used, the number of civilian casualties, the lack of precautionary methods taken by the Armed Forces, the consistent and sustained breaches by the GoSL and its Armed Forces of the 'Laws of War' and the devastating effect that these attacks had in the civilian population.

Whether or not a civilian population was the primary objective of the attack has been set out by the appeals Chamber in the International Criminal Tribunal for the Former

Yugoslavia.⁴⁵ Applying these criteria, there is no doubt that the primary objective was the destruction of the Tamil civilian population in the North and East.

There is overwhelming evidence that the policy of the Rajapaksa junta, (the Government of Sri Lanka) is to make multiethnic, multilingual, multicultural, multireligious Sri Lanka into a Sinhala-Buddhist nation. If this meant Genocide of the Tamil people or committing war crimes, the Rajapaksa-Fonseka combination could not care less

Legally, to commit such a crime, the International Criminal Court Statute requires that there must be a 'State or Organisational policy'. However, both the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda have asserted that a policy element is not required under their respective statutes or customary international law.

All that is required is that a party to the conflict eg the GoSL, has the capability to perform acts which infringe on basic human values or has the capability to commit widespread and systematic attacks against a civilian population. This the GoSL and the Sri Lankan Armed Forces certainly had.

The International Criminal Court has declared⁴⁶ that a policy to commit such an attack requires that the State or organisation 'actively promotes or encourages such an attack against a civilian population.'⁴⁷

There is evidence that the attacks by the GoSL and its Armed Forces were perpetrated pursuant to a State policy to commit such a crime. In particular, the military attacks were undertaken under the authority of the highest military and civilian command. The Sri Lankan Armed Forces were a sophisticated military force under the command of General Fonseka, and under the ultimate command of the Commander-in-Chief (President Rajapaksa). Further, the Army directly reported to the Secretary of Defence (Gotabaya Rajapaksa) and there is some evidence that he (Gotabaya) conveyed orders directly to the field commanders.

The stage was now set for a massive assault on the (Tamil) civilian population. What was now 'necessary' was to remove international observers from the area so that the crime could be committed without witnesses. This was done on 8 September 2008, when the GoSL announced that it no longer ensure the safety of humanitarian workers in the North and East and requested all international staff of the UN and other NGO's (non-government organisations) to leave the area. This was despite the fact that the offensive of the Armed Forces was the biggest threat to these workers.

The attacks launched by the Sri Lankan Armed Forces were both systematic and widespread. The widespread nature of the attacks is evident from the geographical scale of the attacks as well as from the large number of civilian casualties.

In addition, there is overwhelming evidence that the GoSL and the Armed Forces severely restricted food and medical supplies to the area, which resulted in a large number of civilian deaths (in addition to those cause by extensive military attacks).

Even after the end of the armed conflict (18 May 2009), when the 'reason' put forward for the expulsion of the international organisations was no longer present, the

⁴⁵ *Prosecutor v Kunarac* ICTY-96-23-A, 16 June 2002

⁴⁶ International Criminal Court, Elements of Crimes, U.N. Doc. PCNICC/2000/1/Add.2 (2000).

⁴⁷ ICC Elements of Crime, Article 7, Introduction, point 3.

GoSL refused to allow international organisations into the area or to the detention centres set up by the GoSL for the civilian population.

There is indisputable evidence that torture, disappearances, rape and other forms of sexual violence against (Tamil) civilians occurred (and continue to occur) in police stations, army camps, detention centres and even civilian homes in the Tamil North and East under the control of the Armed Forces and the Police.

The Sinhalese Armed Forces and Police are notoriously brutal, including immolations on beaches, bodies dumped in rivers and decapitated heads stuck on pikes. The Tamils have not been the only recipients of this government crackdown. Tens of thousands of young Marxist Sinhalese were slaughtered in the 1971 and again in 1988.

As such, it is not surprising what these brutal regimes, Rajapaksa's being the worst, have done to the Tamils. The final assault on the Tamils began in January 2008 when the Rajapaksa regime began the all-out assault on the Tamil North and East.

In January 2009 Government Forces captured the LTTE administrative headquarters in Kilinochchi. In February, Rajapaksa rejected international calls for a temporary cease-fire amid humanitarian concerns for civilians trapped in the conflict zone as required by the Geneva Conventions and the 'Rules of War'. In March, UN Human Rights Commissioner Navi Pillay, expressed grave concerns on human rights abuses.

By the middle of May 2009, the Rajapaksa government had overrun the final patch of LTTE held territory, the Tiger leader was dead and the Tigers had laid down their arms. It is crucial to appreciate this because once arms have been laid down, those who had done so were *hors de combat* ('out of combat') and, on international law, entitled to special protection – not to be the victims of murder, rape, summary executions etc. If *hors de combat* is violated, it is a serious war crime.

With no international observers, the number dead and displaced is unclear. The UN estimates up to 40,000 civilians killed in the last months of the conflict but local government estimates are that some 160,000 people are unaccounted for.

This publication will not address the escalating violation of the human rights of the Tamil people during the conflict and after it had ended, but will focus on just one – the rape of Tamil women, girls and men, in the Tamil areas by the 'victorious' Sinhalese Armed Forces, Sinhalese administrators, workers and others currently running the area, or working in it.

The Laws that are being breached

It is important to set out the legal dimension (nationally and internationally) which the Sri Lankan government and its Armed Forces and Police have breached, and are continuing to breach.

The Legal dimension

Human rights are protected by a) International Law, Conventions and Treaties
b) National (Sri Lankan) Law and the Constitution.

Both have been, and are being, violated in Sri Lanka.

A) International Law

Human rights are protected by two sets of laws, depending on whether or not there is an armed conflict (external or internal).

If there is no armed conflict, Human Rights Law applies. If there is an armed conflict, Humanitarian Law applies.

Both bodies of law prohibit acts of sexual violence.

Human Rights Law

Sri Lanka has signed several major human rights treaties:

1. International Covenant on Civil and Political Rights (ICCPR)⁴⁸
2. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“Convention against Torture”)⁴⁹
3. Convention on the Elimination of all Forms of Discrimination against Women (CEDAW)⁵⁰
4. Convention on the Rights of the Child (CRC)⁵¹
5. Other Human Rights Law⁵²

International Human Rights Law (to be specific – ICCPR), contains protection from rape and other forms of sexual abuse through its prohibition on torture and other ill-treatment, and discrimination based on sex⁵³. The UN has reaffirmed these principles specifically in relation to eliminating violence against women.⁵⁴

It also enshrines the right to effective remedy, which obligates the State to prevent, investigate, and punish serious human rights violations.⁵⁵

States must also provide reparation to victims of Human Rights Violations, such as compensation for damages.⁵⁶

⁴⁸ ICCPR - G.A res 2200A (XXI), U.N. Doc A/6316 (1966), entered into force March 23, 1976. Sri Lanka acceded to it on 11 June, 1980.

⁴⁹ Convention against Torture – G.A.Res 39/46, U.N.Doc. A/39/51, entered into force June 26, 1987. Ratified by Sri Lanka on February 2, 1994.

⁵⁰ CEDAW – adopted December 18, 1979, G.A. res 34/180, 34 GAOR Supp. (No 46) at 193, U.N.Doc. A/34/46, entered into force September 3, 1981, ratified by Sri Lanka on October 5, 1981.

⁵¹ CRC – G.A.res. 44/25, annex, 44 U.N.GAOR Supp. (No 49) at 167, U.N.Doc.A/44/49 (1989), entered into force Sept. 2, 1990. Ratified by Sri Lanka on July 12, 1991.

⁵² eg Standard Minimum Rules for the Treatment of Prisoners, adopted Aug.30, 1955, by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, U.N.Doc. A/CONF/611, annex 1, E.S.C res 663C, 24 U.N.ESCOR Supp. (No 1) at 11 U.N. Doc.E/3048 (1957), amended E.S.C. res.2076, 62 U.N. ESCOR Supp. (No.1) at 35, U.N. Doc E/5988 (1977)

⁵³ ICCPR prohibits torture and other cruel, inhuman, or degrading treatment (art.7), and protects women’s right to be free from discrimination based on sex (art. 2(1) and 26).

⁵⁴ UN Declaration on the Elimination of Violence Against Women December 20, 1993, G.A.ref. 48/104, 48U.N. GAOR Supp. (No. 49) at 217, U.N. Doc.A/48/49 (1993).

⁵⁵ See UN Human Rights Committee, General Comment 31, Nature of the General Legal Obligation on States Parties to the Covenant, U.N. Doc. CCPR/21/Rev.1/Add.13 (2004), para.15. Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity (“Impunity Principles”), U.N.

⁵⁶ UN Human Rights Committee, General Comment 31, Nature of the General, Legal, Obligation of States Parties to the Covenant, U.N. Doc. CCPR/C/21/Rev.1/Add.13(2004), para 16.

Sri Lanka is also obliged under human rights law to provide reproductive, sexual and mental health services, to victims of torture, sexual assault and other forms of cruel, inhuman and degrading treatment. This has not happened.

In its December 2011, the Committee Against Torture in its "Concluding Observations to Sri Lanka" stated:

"As a matter of urgency, the Committee calls upon the State party to take immediate and effective measures to investigate all acts of torture and ill-treatment and prosecute and punish those responsible with penalties that are consistent with the gravity of their act.

It calls upon the State party to ensure that torture is not used by law enforcement personnel and members of the military.

In addition to these measures, the State party should unambiguously reaffirm the absolute prohibition of torture and publicly condemn practices of torture, accompanied by a clear warning that anyone committing such acts of otherwise complicit or participating in torture will be held personally responsible before the law for such acts and will be subject to criminal prosecution and appropriate penalties⁵⁷."

International Human Rights Law also provides protection to individuals in custody during an internal armed conflict. These include the right to be promptly notified of the reasons for arrest, to the presumption of innocence, to be brought promptly before a judicial authority and be informed of any criminal charges, to have access to Counsel, and to communicate and meet with family members. This is not done in Sri Lanka.

Those detained on criminal charges must be promptly tried before a Court that meets international fair trial standards, or be released.⁵⁸ This is far from what happens in Sri Lanka and the situation is getting worse.

The ICCPR permits the suspension or restriction (derogation) of certain due process rights during a state of emergency. States have frequently misused 'states of emergency' as an excuse to deny fundamental rights. According to the UN Human Rights Committee, the expert body that monitors State compliance with the ICCPR, any measure of derogation must be "*limited to the extent strictly required by the exigencies of the situation*"⁵⁹.

The fundamental requirements of a fair trial must always be respected in order to protect against torture, rape and other non-derogable rights: "*the right to take proceedings before a Court to enable the Court to decide without delay on the lawfulness of detention*"

The armed conflict between the GoSL and the LTTE has met the criteria of a non-international armed conflict under the 1949 Geneva Conventions. The GoSL and the

⁵⁷ Concluding Observations of the Committee Against Torture, Sri Lanka, December 8, 2011, UN Doc CAT/C/LKA/CO/3-4

⁵⁸ ICCPR, art 9 and 14

⁵⁹ Human Rights Committee, General Comment No.29: States of Emergency (article 4), UN Doc CCPR/C/21/Rev.1/Add.11 (2001), reprinted in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Body, UN.Doc HRI/GEN/1/Rev.6 at 186(2003), para. 16.

LTTE were bound by Common Article 3 which applies to internal armed conflicts and customary international humanitarian Law.

The Sri Lankan government has signed and ratified all four Geneva Conventions of 1949 in 1959. For the purposes of this publication it is only the 4th that is relevant:-

Geneva Convention IV For the Protection of Civilians in times of War

This Convention secures humane treatment of persons in occupied territory and those who have been interned on suspicion of involvement in resistance movements. These persons are entitled to respect for their family, customs and religion, and women are guaranteed protection from rape and forced prostitution.

Acts of sexual violence committed as part of a widespread or systematic attack against civilians are crimes against humanity and should be prosecuted as such.

The Protocol Additional to the Geneva Convention of August 12, 1949, relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), was not signed by Sri Lanka but many of its provisions are recognised as customary International Law;

International Humanitarian Law

Customary International Humanitarian law has been set out in the International Committee of the Red Cross (ICRC)⁶⁰,

International Humanitarian Law has long prohibited torture and cruel or inhuman treatment. As has been mentioned, Common Article 3 to the 1949 Geneva Convention prohibits “*cruel treatment and torture*” and “*humiliating and degrading treatment*”⁶¹

Therefore, during the 26 year armed conflict which ended on 18 May 2009, Sri Lanka was obligated to abide by international humanitarian law, which regulates the conduct of hostilities and persons affected by armed conflicts, including civilian and captured combatants.

Rape and other forms of sexual violence are prohibited.⁶²

International Tribunals

International Tribunals, particularly the International Criminal Tribunal for the former Yugoslavia, ruled that grave breaches apply not only to international conflicts but to internal armed conflicts. These provisions are considered customary international law, allowing war crimes prosecution by the United Nations or the International Court of Justice.

Rape

As has been stated, International law has been slow to recognise rape as the war crime it invariably is when inflicted with impunity by the victorious army. Although clearly prohibited by the by Geneva Convention IV (see above), and as a form of

⁶⁰ Customary International Humanitarian Law (Cambridge University Press, 2005).

⁶¹ Common Article 3 to the Geneva Convention, 1(a) and (c)

⁶² Customary International Humanitarian Law, rule 93, citing Common Article 3, Protocol II, art 4(2)

torture by all human rights conventions, 'spoils of war' rape was not taken seriously until judgement was handed down by the Tribunal for Yugoslavia which I have just referred to.

States are therefore under clear international law to ensure that military commanders and those in charge of them, whether they be military or civilians, take all the necessary steps to prevent and punish sexual abuse of civilians. Those who do not will be criminally liable themselves, as well as the soldiers who commit rape. On the now firmly established 'Chain of Command' – the Yamashita principle – (which I have described in detail earlier), so will those civilians eg the politicians and bureaucrats who control the Armed Forces.

If there was any doubt, it was settled in The International Criminal Tribunal for Rwanda (ICTR) in 1998. It declared rape as a war crime.

I have already dealt with the Jean-Paul Akayesu case. He was charged in the ICTR, for not taking the necessary steps to stop the atrocities. He was convicted and sentenced to life imprisonment on 2 October 1998.

What all these mean is that when crimes of sexual violence are committed during an armed conflict, they can be prosecuted as war crimes. States have an obligation to investigate alleged war crimes by their nationals, including (indeed, especially) by members of the armed forces and police, and prosecute those responsible⁶³

Acts of sexual violence committed as part of a widespread or systematic attack against civilians are crimes against humanity and have to be dealt with as such.

To restate this very important point, International Law has tried to regulate wars in two ways. Initially by restricting the justification for waging them (*jus ad bellum*) and, when they failed, by prescribing rules for conducting them humanely (*jus in bello* –or International Humanitarian Law).

The Hague Convention (1899, updated and expanded 1907) was among the first formal 'rules' of the Laws of War. This has been violated by almost every country.

Humanitarian Law (1949) followed. The term 'humanitarian law' implies a 'humane war', which is a contradiction in terms. Wars always seem 'just' to those who die fighting for them or are prepared to send people to die fighting. States that are civilized enough to abide by these Laws are unlikely to start them. Those who are not, and start wars, are unlikely to abide by what warring parties can and cannot do to prisoners of war, and most importantly, what they must do for the protection of non-combatant civilians during the war or in occupied territories.

Sri Lankan National Law and the Constitution

The Law in Sri Lanka prohibits rape and domestic violence, but is not enforced. The law specifically addresses sexual abuse and exploitation, and contains provision in rape cases for an equitable burden of proof and stringent punishment.

Sri Lanka's Constitution guarantees fundamental human rights, including the right to life, liberty, the security of person, the right to a fair trial and the prohibition of torture.

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That said, the Constitution did not expressly recognise the right to life till 2003. This had significant implications for the prohibition of torture and other cruel, inhuman or degrading treatment or punishment. However, in 2003, the Sri Lankan Supreme Court inferred the Right to Life as flowing from Article 3 (4) of the Constitution which provides that *“no person shall be punished with death or imprisonment except by Order of a competent Court made in accordance with procedure established by Law”*.

The Constitution of the Democratic Socialist Republic of Sri Lanka (1978) prohibits torture under Chapter 3, article 11: *“no person shall be subjected to torture or cruel, inhuman or degrading treatment or punishment”*.

Article 11 is an entrenched safeguard and as such can only be amended with approval of a two-thirds majority of Members of Parliament or by a simple majority in a public Referendum.

Emergency Provisions

It is important to go into this since a number of serious human rights violations, including rape and torture, have been committed using the ‘Emergency Provisions’.

Emergency Provisions (Emergency Regulations – ER) and the Prevention of Terrorism Act (PTA) have been in place intermittently since 1971. The Sri Lankan Constitution in Article 155, authorises the President to issue Emergency Regulations, amending or suspending the operation of any Law, except the provisions of the Constitution.

Such Emergency Laws and Regulations have been used to supersede Constitutional guarantees.

The Constitution makes the Public Security Ordinance (PSO) (introduced by the British colonial authorities in 1947), part of Sri Lanka Law. Section 5 of the PSO empowers the Executive to issue Emergency Regulations that may authorise detention of subjects without charge or trial, authorise entry, search and seizure of property; amend any law (other than the Constitution) or suspend the operation and create special courts to prosecute offenders.

The PSO and ER’s enacted by various Sri Lankan governments have been widely criticised by national and international legal experts for contradicting International human rights standards and undermining the rights enshrined in Sri Lanka’s Constitution.

Emergency Regulations have consistently deviated from international standards such as the ICCPR, and the Convention against Torture. Specifically ERs are in conflict with ICCPR:

Article 6 on the freedom from arbitrary deprivation of life,
Article 7 on the prohibition of Torture and Cruel and Inhuman or Degrading Treatment or Punishment,
Article 9(1) on the right of liberty and security and the prohibition of arbitrary arrest and detention,
Article 9(2) on the right to be informed of the reasons for one’s arrest, Article 9(3) on the right to be promptly produced before a judge,
Article 9 (4) on the right to take proceedings before a Court,
Article 9 (5) on the entitling of a victim of a human rights violation to compensation
Article 14 on the right to a fair trial.

While Sri Lanka on several occasions submitted its derogation from ICCR to the UN Secretary General under Article 4, it has often failed to indicate the specific provision from which it has derogated and the reasons for its derogation⁶⁴.

In August 2011, with much fanfare, the Sri Lankan government finally lifted the State of Emergency but almost immediately (August 29, 2011), President Mahinda Rajapaksa introduced new regulations under the PTA. Under these new regulations, authorities can still detain suspects without charge for up to 30 days, pending issuance of detention under the PTA or remand by a Magistrate⁶⁵.

The Government passed a new law on January 2013, which allows Police to hold suspects for up to 48 hours without a warrant. This is more than enough time for rape and torture to occur. The victim can be released in 48 hours and rearrested!

Persons mistreated under ER's or PTA are unlikely to come forward and make an official complaint because of immunity provisions in these laws. The ER's provide immunity from prosecution of Government officials who commit wrongful acts when they implement the regulations. Legal proceedings are prohibited if an official acted "*in good faith and in the discharge of his official duties*" and prosecutors and Courts interpret this language broadly⁶⁶.

A Presidential directive to the Security Forces, initially published in July 2006, and recirculated in April 2007, instructed the Security Forces to respect basic human rights. Those directives specify Security Forces' obligation, including providing suspects of the reasons for arrest, identifying themselves while carrying out the arrest and allowing arrested persons to inform family members of their whereabouts. The directives also instruct the Security Forces to inform the National Human Rights Council (NHRC) within 48 hours of any arrest and allow the Commission unimpeded access to all detainees.⁶⁷

The Secretary of Defence (Gotabaya Rajapaksa, the President's brother) recirculated the Presidential directive on protecting Fundamental Rights of Persons Arrested and/or Detained⁶⁸.

However it is widely known in Sri Lanka and abroad⁶⁹ that these directives remain only on paper – with no legal force and no penalties for non-compliance.⁷⁰

The Government has reformed Sri Lanka's rape laws to better address the rape of detainees. Beginning in 1995, the Government put in place a legal framework which in principle, should have allowed more effective prosecution of alleged rapists.

⁶⁴ Asian Centre for Human Rights, *The State of Civil and Political Rights in Sri Lanka* (University of Michigan Press 2003 USA)

⁶⁵ "Prevention of Terrorism (detainees and remandees) Regulation No 4 of 2011", The Prevention (Temporary Provision) Act No 48, of 1979. Read with paragraph 2 of Article 44 of the Constitution, nothing in fact changed. It was 'business as usual'.

⁶⁶ Emergency (Prevention and Prohibition of Terrorism and Specified Terrorist Activities) Regulation No 7 of 2006, art. 15; a similar provision is found in PTA art 26

⁶⁸ Statement by the Ministry of Defence, Public Security, Law and Order, April 25, 2007 – http://www.defence.lk/new.asp?fname=20070425_02

⁶⁹ International Crisis Group "Sri Lanka's Human rights Crisis" Asia Report No 135, June 14, 2007 – [http://www.crisisgroup.org/~media/Files/asia/south.asia/srilanka/135_sri_lanka_s_human-rights_crisis.ashx](http://www.crisisgroup.org/~media/Files/asia/south.asia/srilanka/135_sri_lanka_s_human_rights_crisis.ashx).

⁷⁰

Among the changes to the penal code was the inclusion of a new provision (section 364 (2)) recognising the phenomena of rape in custody and gang rape as acts constituting grave crimes. The minimum and maximum punishment for rape in custody as a form of aggravated rape is 10 years and 20 years imprisonment, respectively.⁷¹

What Sri Lanka has not done

1. Sri Lanka has not signed the strongly encourage the Sri Lankan government to sign the UN Declaration of Commitment to End Sexual Violence in Conflict.
2. Sri Lanka has not signed the Rome Statute, established to end impunity for the perpetrators of the most serious crimes that are of concern to the international community.
3. The UN General Assembly Resolution 263 session 54 had two Optional Protocols:
 1. On the involvement of children in armed conflict. That was promptly signed.
 2. On the sale of children, child prostitution and child pornography. That was **not** signed. Sri Lanka clearly 'needs' children for prostitution to 'service' the tourist trade. I have dealt with this in some detail later.

Violations by Sri Lanka

When sexual violence is committed as part of Armed conflict, they can be prosecuted as war crimes. States have an obligation to investigate alleged war crimes by their nationals, including members of the Armed Forces and Police, and prosecute those responsible.

The obligation of States to prosecute serious breaches of International Humanitarian Law is outlined in each of the Geneva Conventions and in ICRC Customary International Humanitarian Law.⁷²

The Sri Lankan Government has violated every one of the International Conventions it has signed, Humanitarian Law and even its own Laws and Constitution.

The 350,000 Tamil men, women and children locked up in razor-wire fenced camps by the GoSL were, in a sense, 'prisoners of war' (where rape by the Armed Forces was common). The 300,000 Tamils released to homes that no longer exist in the North and East, now run by the military, live in an 'occupied territory' where rape and abuse by the military is a daily occurrence.

This does not mean that the Humanitarian Law and its Conventions are useless if they can be flouted. They do set standards, the breach of which will be a propaganda windfall for the opposing side. The party that ignores them do so at its peril because now with videos, DVDs and television, these outrages will put pressure on politicians 'to do something', by way of intervention.

⁷¹ Penal Code (Amendment) Act No.22 of 1995 and 29 of 1998; the Code of Criminal Procedure (Amendment) Act, No 28 of 1998; the Judicature (Amendment) Act No 27 of 1998 and the Evidence (Special Provisions) Act of 1999.

⁷² Rule 158

In this way the collective anger of ordinary people in distant countries can result in 'forcing' a reluctant UN to intervene, or even for humanitarian intervention without specific UN approval, if they are regularly and systematically flouted.

This is why it is so important for the (UK) Channel 4 videos *Sri Lanka's killing fields*, *Sri Lanka. War Crimes unpunished*, and the most recent, *No Fire Zone. Killing Fields of Sri Lanka* (released 9 February 2013), to be shown as widely as possible, and as often as possible. It shows Tamil women and girls, blindfolded and bound, being executed by the Sri Lankan military, and comments by the soldiers who recorded these 'war trophies' which strongly suggested that they had been raped before they were executed.



In the dvds I have recorded of the atrocities, I was pressured to remove a scene which showed a 8 year old girl raped by the Armed Forces, and her 9 year old brother gutted and hanged. I was told that this would 'be unacceptable' for public display. I foolishly withdrew this and several other similar scenes when my response should have been that the purpose of the dvds were to shock the world and that if it is acceptable for the Sri Lankan military to do such things, it must also be acceptable for the world to see this.



(The woman was raped before being killed. A badge such as those worn by Officers of the Armed Forces was found on the ground)

The current problem

The entire problem is due to four factors:-

1. The GoSL and its Armed Forces (95% Sinhalese), believing that the Tamil people are the 'victims of war', to be used or abused.
2. The Sri Lankan Armed Forces running the Tamil areas – behaving like an Army of Occupation with no accountability.
3. The collapse of Law and Order, and even the judicial system. Hoodlums and thugs do as they please, with no questions asked and with even less action by the Government to control them.
4. The exclusion of internationally credible human rights groups, independent observers and the media from the area by the GoSL.

The Geneva Conventions apply to conflicts between *nations*. The Sri Lankan conflict is between two nations, the Sinhalese nation and the Tamil nation. Those who challenge this (usually the Sinhalese struggling to defend the indefensible actions of the Government), should be reminded that even if their contention is correct (that it is a conflict in one nation), the Genocide Convention still applies.

Common Article 3 relates to non-international conflicts “*contained within the boundaries of a single country*”. Modern warfare continues to evolve, and the lines between combatants and civilians are blurred eg Sri Lanka (Sudan and Columbia). Common Article 3 deals with these situations, supplemented by Protocol 2 (1977).

These set out minimal legal standards that must be followed for internal conflicts.

Human Rights in Sri Lanka

Denial of the ‘Right to Life’. Torture and Rape, are among the most serious violations of human rights. This is of no concern to the GoSL that considers human rights an irrelevant issue, an alien concept and a means that western countries use to ‘punish’ the Sri Lankan government. The Sri Lankan government view is not held by many civilised countries.

Victor Ivan, one of Sri Lanka’s most respected journalists, a Sinhalese, had this to say in his book, *The Queen of Deceit*:

“I have never considered Sri Lanka to be a particularly civilized country. It has instead appeared to me to be a particularly immoral country, whose leaders embodied iniquity and baseness”

Of all such ‘leaders’ the country has ever had, the current one, Mahinda Rajapaksa and his all-powerful (unelected) brother, Gotabaya, must be, by far, the worst. The result is that the abuse of human rights, mass murder, torture and rape, have hit new heights. This is of serious concern, as is the dismantling of democracy and its replacement by authoritarianism, and the country rapidly sliding into a Totalitarian State under one family, the Rajapaksas.

Irrespective of what the GoSL thinks about human rights, those of us who believe that must be protected, must confront the Sri Lankan government on these issues.

Torture is prohibited absolutely. Article 5 of the Universal Declaration:-

“No one shall be subjected to torture or cruel or degrading treatment or punishment”

In international law, it has evolved into a *jus cogens* prohibition (a principle or norm from which derogation is not permitted), which every State has a duty to the international community to outlaw and to punish. Rape is *torture or cruel or degrading treatment*, and hence prohibited by Article 5 of the Universal Declaration.

Anti-torture legislation came into force in Sri Lanka in 1994. However, it is widely ignored with only 3 convictions for torture despite hundreds, if not thousands, of well-documented cases since the legislation came into force.

Rape. Rape is criminalised under Section 363 of the Sri Lankan Penal Code. Sri Lanka has also signed the Universal Declaration of Human Rights, and the 4th Geneva Convention, of 1948.

In addition, there is a specific Convention, “*For the Protection of civilian Persons in times of War*”. This Convention guarantees protection from rape and forced prostitution.

If the GoSL argues that there is no longer a ‘war’, and therefore the Geneva Conventions do not apply, it must be challenged. The Sri Lankan government is still at war, not with the Tamil Tiger militants, but with the Tamil people in the North and East.

The rape of Tamil women and girls, and even of Tamil men and boys, by the Sri Lankan Armed Forces, occurred not only during the war, but also in the ‘concentration camps’ (laughably called ‘welfare villages’ by the GoSL) where some 350,000 Tamil men, women and children who survived the massacre were rounded up and held behind razor-wire fenced camps run by the Sri Lankan Armed Forces.

Of serious concern is that this gross violation of human rights has gone on, indeed has escalated, since the end of the fighting, and after most of the detainees were released from the camps.

They were released to a heavily militarised, devastated land (the North and the East) with virtually nothing. It has been reported that they were given six poles, a tarpaulin and two tin sheets and asked to build themselves a home. It was barely possible to erect a shelter that could keep out the rain, let alone members of the military. With most of the families headed by females (the males having been killed or locked up), what protection the family might have had from a male, is not there. To have women and children in accommodation which cannot be secured, and an undisciplined military who could do what they want with no accountability, is a recipe for rape. Unsurprisingly, rape is at epidemic levels.

Jaffna in the North, once the cultural capital of the Tamils, has become the ‘rape capital’ of Sri Lanka. To say that it is militarised and a ‘police state’ is an understatement. There is one member of the military for every 3 civilians.

In addition to the Conventions already cited, there are two more that specifically protect women and children.

The Convention on the Elimination of All Forms of Discrimination against Women (1981), ratified by most countries.

This Convention, together with the 4th Geneva Convention and the recognition of rape as a form of torture by all human rights Conventions, makes rape a war crime.

The Convention on the Rights of the Child (1989)

“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative orders, the best interests of the child shall be a primary consideration”

For the Sri Lankan Armed Forces and those who work with them to rape children can hardly be in “*the best interests of the child*”. Nor is the forced separation of children from their parents or those who care for them, which is being done in Sri Lanka, and for that matter, in Australia in its disgraceful handling of Tamil (and other) asylum seekers. The GoSL has taken Tamil (Hindu) children from orphanages in the North and sent them to the Sinhalese South, including Buddhist temples or homes run by

Sinhalese Buddhists. This separation from Tamil culture, language and religion cannot be in 'the best interests of the child'. It is a Violation of the Rights of the Child. There is also evidence that these children are being abused by those to whom they are sent, including Buddhist temples or homes run by them.

There is a point of interest in the Convention on the Rights of the Child. There are two Optional Protocols.

One is the Optional Protocol on the involvement of children in armed conflict. That was promptly signed by the GoSL, (which did not prevent it being seriously violated by the GoSL).

The other is the Optional Protocol on the sale of children, child prostitution and child pornography. That Protocol was not even signed by the GoSL. The reason was that it would seriously affect the tourist trade where some tourists 'need' such 'services'. It is estimated that there are at least 20,000 children working as domestic servants (to be used and abused by their 'masters'), or as child prostitutes in the tourist industry.

There are few, if any, who have taken this up with the GoSL when it claims to be concerned about the Rights of the Child.

The Ground situation in the Tamil North and East

It is not possible to appreciate the problem of rape, or what can be done about it, without an understanding of the ground situation during the war (with international observers and human rights groups excluded from the area by the GoSL), the situation in the camps run by the military, and now, in the (Tamil) North and the East generally which is dominated in every possible way by the (Sinhalese) Armed Forces and Police. As has been mentioned, international observers and credible human rights groups are still excluded from the area.

1. The continuing exclusion of human rights observers

All international humanitarian and human rights organisations and observers were expelled by the GoSL from the North and East in September 2008. They remain excluded, despite the end of the armed conflict in May 2009. The GoSL has given no reason, not even a bogus reason, for this. It does not think it necessary to do so.

What was conducted by the GoSL was a genocidal war without witnesses. What is being conducted today is a serious violation of human rights of the Tamil people without witnesses.

The Sri Lankan Armed Forces (99% Sinhalese), and Police (95% Sinhalese), can do what they want to the Tamil (and Muslim) people, with absolute impunity. Rape is only a part, albeit an important part, of the spectrum of human rights that is being violated behind the closed and censored doors of Sri Lanka. No foreign government has demanded an explanation for this.

2. A military State.

The Sri Lankan Military (overwhelmingly males and Sinhalese), control every aspect of civilian life in this Tamil area. Thousands of families are headed by females, the males having been killed, locked up or detained in camps (to this very day). The combination of a thoroughly undisciplined military with absolute power and a large number of vulnerable females in insecure places (see below), to be 'used' and

abused with no accountability, is a recipe for rape and the abuse of human rights. Unsurprisingly, rape has reached epidemic levels.

In June 2012, the UNHCR report on IDPs stated that there was a generalized sense of insecurity in the north and east, especially among women, who headed over a quarter of households in the Northern Province. The report also stated that almost 60 percent of IDPs interviewed lived within a mile of an army camp.

3. Torture and Rape

Torture and other ill-treatment of detainees, and even members of the public who go with their complaints to the Army or the Police is an *ongoing* problem in Sri Lanka, in particular in the Tamil areas. Every known method of torture is being used to force confessions, to act as a deterrent to complaints, as a demonstration of absolute power, and, in some instances, just 'for the fun of it'.

An international body, Committee against Torture (CAT), has a periodic review of the Implementation of the Convention against Torture and Other Cruel, Inhuman or degrading Treatment and Punishment. In October 2011, Amnesty International submitted its concerns, *Sri Lanka: Briefing to Committee against Torture*⁷³, a devastating 30-page document. As such, I do not need to deal with it here.

The visible evidence of this was seen in the (UK) Channel 4 News *Killing Fields of Sri Lanka*. A Tamil youth was tied to a tree and sliced with a penknife, slice by slice till he died. If the object of the Sri Lankan Armed Forces was to kill the youth, he could have been shot. They preferred to slice him.

The same video shows unarmed bound Tamil girls executed. The comments (in Sinhalese) indicated that they had been raped before they were killed. Of even greater concern was what I was told by some who escaped (and are now in detention centres in Australia) and were witnesses to all this, that some of the women were executed and then raped by the Armed Forces.

The '*Situation Report: North and East Sri Lanka*' tabled in the Sri Lankan Parliament on 21 October 2011 by Tamil members of parliament, has this to say:-

'Sexual violence – Most disturbing are the increasing number of sexual assaults carried out against women and girls in the Jaffna, Mullaitivu and Kilinochchi districts, by government officials and the military. The brutality with which these assaults are carried out is especially disturbing.'

What is of serious concern is that it is the perpetrators of these crimes that are now being settled in the Tamil areas by the GoSL.

A further point of concern is that the various projects in the Tamil North and East are being handed over to Sinhalese contractors from the South who bring their own (Sinhalese) work force (often unemployed Sinhalese youths).

The Report referred to⁷⁴ has this to say:

"The labour force generally stays near the site next to the (Tamil) villages and has proven to be a threat of molestation and harassment to local (Tamil) women and

⁷³ ASA 37/018/2011

⁷⁴ *Situation Report: North and East Sri Lanka. 21 October 2011* – tabled in the Sri Lankan Parliament

girls. Reports also indicate that when such complaints of harassment and molestation are made the complainants are often threatened and sometimes abused by the military personnel concerned. There are also reports of complaints to the police being generally met with inaction when the alleged perpetrators are either security forces or labourers or workmen from the South”.

4. Forced Contraception and Sterilisation of Tamil women and girls

This is serious problem, for which there now is definite evidence, although it has been known for some time. There is clear evidence of violations of women’s reproductive rights in the Tamil North.

For some time there have been reports of the Sri Lankan government sending health workers to villages in the North asking women to bring their children to medical clinics ‘to be weighed and checked’. Transport was provided.

When they arrived, they got a lot more than a check of their babies. They were offered sterilisation. Those who refused were told that if they did, their children would not be treated in that clinic in the future.

Those who said that they would have to as their husbands were told that if their husbands opposed it, they (the husbands) would be sterilised.

“*The Social Architects*” (TSA) are a group of writers, intellectuals and professionals who seek to provide information on a range of topics related to Sri Lanka. They write under the pseudonym “The Social Architects” because of the risk of retaliation against those who speak out against the Sri Lankan government.

In early September 2013, activists in Kilinochchi in the North, discovered that public health workers had administered a sub-dermal contraceptive device, Jadelle, to women from the Veravil, Keranchi and Valaidppu villages in the North during a ‘nutrition clinic’⁷⁵. This was without informed consent from the women.

TSA decided to do a field trip to the three areas mentioned and also to Umaiyalpuram and Malaiyalapuram where Internally Displaced People (IDP) had begun to rebuild their post-war lives. They interviewed 25 women from ages 15-43, members of the Sri Lankan Ministry of Health, Kilinochchi, field health workers and community leaders. They were under constant military surveillance throughout the trip.

They confirmed that public health workers used coercive tactics to convince women to accept Jadelle implants.

⁷⁵ <http://groundviews.org/2013/10/11/above-the-law-violations-of-womens-reproductive-rights-in-northern-sri-lanka/>



Jodelle
implants in
arm

In November 2012, a 26 year old Tamil woman in Kilinchchi died 10 weeks after the administration of the contraceptive. Subsequent tests showed that the woman was two months pregnant at the time of the implant.

This is an egregious disregard for medical ethics and constitutes a serious violation of a woman's right to informed consent, reproductive autonomy and health.

The World Health Organisation (WHO) and the International Conference on Population Development (ICPD) clearly defines reproductive rights as *“the recognition of the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health. They include the right of all to make decisions concerning reproduction free of discrimination, coercion and violence”*.

The clear intention of the Sri Lankan government, that is responsible for all this, is to clamp down on the births of Tamil children – part of a wider intention of committing Genocide of the Tamils.

It is such illegal activities by the Sri Lankan government that explains why internationally recognised human rights groups such as Amnesty International, Human Rights Watch and International Crisis Group, have been banned from visiting this area. There is simply too much to hide.

5. Destruction of Tamil civilian property

The GoSL not only crushed the Tamil Tiger militants, but slaughtered the Tamil *people* in the North and East and destroyed their homes, businesses, schools, and the entire infrastructure in the area.

This is a flagrant violation of Humanitarian Law as specified in the 4th Geneva Convention that I have already dealt with. The Sri Lankan government (not the Tamil Tigers) has signed these Conventions. This does not mean that armed militant forces (such as Tamil Tigers) can do what they want, but the Sri Lankan Government (and its Armed Forces) has a special responsibility to protect civilians. That was most certainly not done, indeed the opposite.

Worse still, after the fighting was over, and the Tamil Tigers crushed (19 May 2009), the GoSL Armed Forces went on to bulldoze whatever was left standing, including Tamil homes. The result was an area that was literally flattened.

6. 'Concentration camps'

Those who survived the slaughter (some 350,000 civilians), were rounded up and put in 'concentration camps' fenced by razor-wire and guarded by the Sinhalese military. They were amusingly called 'welfare villages' by the GoSL. There is documented rape of Tamil women and girls in these camps by the Armed Forces. Some of those who got pregnant were aborted in Government hospitals.

There are claims that some females in the Manik Farm camps were forcibly sterilised, presumably to be 'used again' without the fear of getting them pregnant.

There is now a widely held belief that food products sold by the Army welfare stores are mixed with drugs that could cause sterility. That is genocide.

The GoSL will, of course, deny these but with the well-documented record of absolute lies coming from the Government, such denials simply cannot be accepted.

These serious crimes against humanity must be investigated by independent international investigators, not by the GoSL whose officials and employees have a case to answer.

7. Released, but not to their homes

Facing mounting international pressure, the GoSL released most, but not all, of the detainees. The Government's own figure (1st July 2011), 258,466 people had been 'returned' or 'resettled' from these camps, leaving some 12,600 people still in these camps.

What the Government claims do not reveal is that over 200,000 people who have been returned or resettled in the North and East, have not been returned to their places of origin. They continue in 'transit camps' or have been compelled to take shelter with host families. They are unable to return to their homes as large areas of land have been taken over by the military for military camps or as hoc "High Security Zones".

Thousands of families unable to return to their homes, live in camps without the most basic facilities.

8. Insecure shelters

Those who have been released have been given six poles, a tarpaulin and two tin sheets with which they are expected to make a 'home'. With this material it is barely possible to construct a shelter to keep out the rain, and certainly not sufficient to keep out (Sinhalese) soldiers and workmen brought from the Sinhalese South who are literally swarming in the area. Small wonder that rape of Tamil women and girls is a major problem.

'Houses' for the Tamils in the N&E

Houses for the Sinhalese in the N&E



9. Economic factors contributing to forced prostitution

The Sri Lankan government considers human rights an irrelevant issue and only talks about 'development'. The concept of 'development' does not include the human rights of the Tamil people in the area. On the contrary, the 'development' of the North and East has resulted in a significant increase in the violation of human rights of the people most in need of protection and where the development of that which has been destroyed should have been a priority.

Development is very definitely occurring in the Tamil North and East but all these projects have been for the 'development' of the military, especially economically, and Sinhalese brought from the South to work on these projects or even undertake them. The local Tamil people are either left out of all this or actively discriminated against in several areas which have been their traditional means of survival – fishing and agriculture. Sinhalese fishermen brought to the area by the Government encouraged to go there, are being given financial incentives that are not afforded to the local (Tamils).

The result is not only physical insecurity but economic insecurity. This has resulted in forced prostitution as a means of survival. This is a violation of the 4th Geneva Convention, signed by Sri Lanka, which, as I have stated earlier, guarantees protection from rape and forced prostitution.

"Survival sex"

There are increasing reports of the prevalence of "survival sex," where vulnerable women engage in sexual acts for monetary and other kinds of support and compensation, especially from the Armed Forces and Police.

The Sri Lankan Government estimates that there are more than 60,000 women-headed households in the Tamil North in 2012. This is almost certainly an underestimate. Women bear economic burdens once carried out by their fathers, husbands or brothers. Poverty and the lack of options are driving women and girls to adopt commercial sex as an income generator.

For centuries, the Tamil North has had a patriarchal and highly conservative social structure, linked to Hinduism, the predominant religion in the North among Tamils. The loss of so many of the traditional breadwinners (men), total disruption of women's livelihood, and the absence of a return to normalcy, are key reasons for women turning to sex work.

A typical comment sets out the problem. A 29 year old Tamil sex worker in Kilinochchi in the North, widowed at the age of 20, said:

“I do not want to be a sex worker. I come from a respectable Hindu family. My father and husband both died due to the war. I am the eldest in a family of three girls. I have to provide for my mother, two sisters and my only son.”

The Sri Lankan (Sinhalese) government could not care less.

The Report of the Secretary-General on Children and Armed Conflict found that some women were forced to perform sexual acts in exchange for food, shelter or assistance in camps⁷⁶. This Report also states that *“Within the internally displaced person sites, exploitation of women and girls appeared to be perpetrated by various actors through promises of favours, money or marriage and through threats.”*⁷⁷

The massive military presence (Sinhalese men) and (Sinhalese) men from the South taking jobs in the building boom in the North, are major reasons for the increase in commercial sex.

Shanthini Vairamuttu, a community worker in Jaffna, said that the increased number of Sri Lankan-born Tamils from the diaspora visiting their place of origin since the end of the armed conflict, has also increased the demand for commercial sex.

According to local groups, the number of women engaged in sex work in the North is said be as many as 7,000, considered by some to be a conservative estimate.

Sex work has always been taboo in the Tamil areas, where for generations, women were discouraged from leaving their homes except for agricultural pursuits or education.

This long-established tradition and culture has crumbled because with the loss of thousands of males, women have to fend for themselves. *“Structures have changed and the trends are changing, causing the emergence of fresh social concerns. There would have been the occasional sex workers in the villages but not to the extent that it became known to the community”*, said Shanthini Vairamuttu.

“There is no point in sweeping this issue (of women turning to sex work) under the carpet of cultural conservatism. It is happening” said Shreen Saroor, founder of the Mannar Women’s Development Federation and the Mannar Women for Human Rights and Democracy, which work with conflict-affected women in the North.

This was echoed by Saroja Sivachandran, Director of the Jaffna-based Centre for Women and Development. This organisation conducted a survey from 2010 to date of 1,500 female-headed households in the North. She said that the sex trade was *“slowly taking root in a region that boasts of tradition and culture”*.

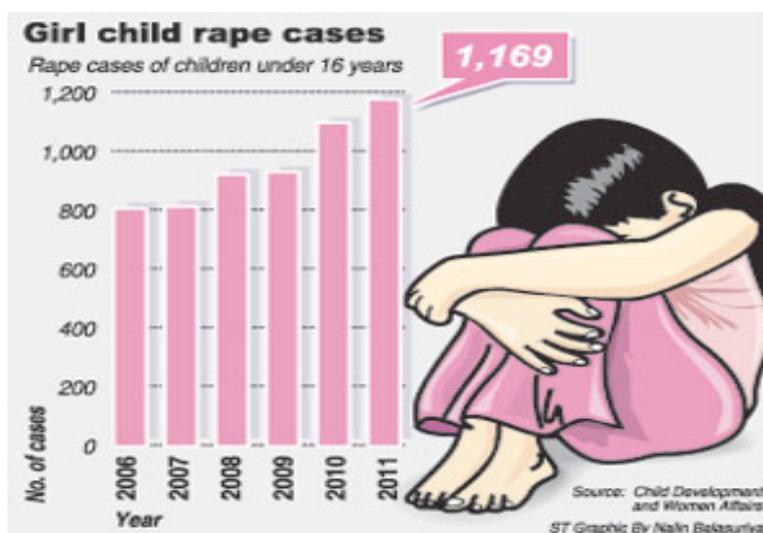
10. Sexual Exploitation of Children:

The government advocated greater international cooperation to bring persons guilty of sexual exploitation of children to justice. The law prohibits sexual violations

⁷⁶ 13 April 2010. A/64/742-S/2010/181, para 148

⁷⁷ para 151

against children, defined as persons younger than 18, particularly in regard to child pornography, child prostitution, and the trafficking of children.



Penalties for violations related to pornography and prostitution range from two to five years' imprisonment. These penalties mean nothing where the sexual violations are committed by the Armed Forces, Police or those who support the GoSL.

Sri Lanka's National Crime Protection Authority (NCPA) warned in 2011 of an increase in child sexual exploitation related to the rapid growth of tourism. The government's tourist police and the NCPA conducted island-wide awareness programs focusing on children, travel guides, and the coastal communities close to tourist destinations.

The Department of Probation and Child Care Services provided protection to children who were victims of abuse and sexual exploitation and worked with local NGOs that provided shelter. The NCPA created an undercover operation in the southern coastal region to identify sexual tourism perpetrators and victims. As a preventive measure, the NCPA also implemented an awareness program conducted at all schools.

Despite all this activity, there is not the slightest doubt that child sex tourism is on the rise. The GoSL is happy to turn a blind eye since the Government 'needs' the tourist dollar, irrespective of what the tourists do. If the rape of children is what the tourists 'need', action by the Government is most unlikely to occur.

11. The 'Grease Devils'

This is a relatively recent and most disturbing phenomenon that has generated a great deal of fear in the civilian population, in addition to being a blatant violation of human rights.

There have been several incidents recently in the North, East and other areas of Sri Lanka where ordinary citizens have faced threats to their safety by unidentified individuals who have injured and murdered civilians, and who have commonly come to be known as 'Grease Yaks' (Grease Devils). Individuals (usually from the Armed Forces, Police, or hooligans working with them), have removed their clothes and greased themselves (so that when they are caught, they slip off). In this 'slippery state', they have come into homes and have raped women.

These attacks resulted in mass paranoia, fear and outrage in the North and East including in Jaffna, Puttalam, Mannar, Trincomalee, Batticaloa and Ampara. Public protests erupted in response to the widely believed involvement of the police and the armed forces in the 'grease devils' phenomenon. Protests erupted over the refusal of the police and other authorities to apprehend the suspects. The protests were met with violent retaliation from the authorities, with the military and police arresting and detaining scores of these individuals.

In addition to this, the police and military also carried out brutal, humiliating and degrading attacks against these people. The severe brutality with which these assaults were carried out have resulted in serious injuries and even in death. Often, individuals who were not even involved in the protests were arrested and assaulted.

(12). UN Trafficking in Persons (TIP)

For a second consecutive year, Sri Lanka is on the Tier 2 Watch List for failing to provide evidence of increasing efforts to combat severe forms of human trafficking, particularly in the area of law enforcement; the government failed to arrest, prosecute, or convict any person for trafficking offences and continued to punish some victims of trafficking for crimes committed as a result of being trafficked; Sri Lanka has not ratified the 2000 UN TIP Protocol.

Sri Lanka is a source and destination country for men and women trafficked for the purposes of involuntary servitude and commercial sexual exploitation; Sri Lankan men and women migrate willingly to the Persian Gulf, Middle East, and East Asia to work as construction workers, domestic servants, or garment factory workers, where some find themselves in situations of involuntary servitude when faced with restrictions on movement, withholding of passports, threats, physical or sexual abuse, and debt bondage; children are trafficked internally for commercial sexual exploitation and, less frequently, for forced labor.

The Wiki-Leaks releases on Sri Lanka

Wikileaks has released a document sent in 2006 by then US Ambassador (Robert O.Blake Jr) in Colombo, to the USA, titled, *Sri Lanka: GSL complicity in paramilitary factions' Human Rights abuses*.

It is too long to reproduce in full here, but is on the net. Although it deals with human rights abuse and is therefore relevant here, I will quote only the parts specifically dealing with rape, prostitution and child abuse.

The Ambassador's report deals with two separate parts of the Tamil North and East under two (Tamil) people, Douglas Devananda (in Jaffna in the North), and 'Karuna' (Vinayagamorthy Muralitharan) (in the East).

Devananda is an MP for Jaffna, head of a 'political party' the Eelam People's Democratic Front (EPDP) (the former Eelam People's Revolutionary Liberation Front (EPRLF, a rival to the Tamil Tigers). He was appointed Minister of Social Services and Social Welfare by President Rajapaksa. He runs a virtual fiefdom in Delft, an island off Jaffna, and even extends this fiefdom to parts of the Jaffna Peninsula.

'Karuna', a former Tamil Tiger leader who broke away from the LTTE, was sent to London on a 'diplomatic passport', was arrested, tried, convicted and jailed in Britain. On his return to Sri Lanka at the request of the GoSL, he was promptly nominated by

President Rajapaksa as an MP, and appointed the Minister of National Rehabilitation. Amnesty International expressed its outrage. Karuna runs a fiefdom in the East.

Here is what Ambassador Blake's communication says about Devananda and the EPDP.

"EPDP: "Political Party" and Paramilitary

14. (S) Although registered as a formal political party, the EPDP remains a feared paramilitary group, wielding non-official power over parts of the Jaffna peninsula and especially the offshore islands with the tacit approval of the Sri Lanka Army.

Extra-Judicial Killings with the Military's Support

15. (S) *Working in concert with SLA soldiers stationed in the Jaffna peninsula, the EPDP is able to conduct extortion, abductions, extra-judicial killings and other criminal acts without fear of consequences, according to numerous sources.* XXXXXXXXXXXXX told us about EPDP's involvement in extra-judicial killings in Jaffna. Independently, XXXXXXXXXXXXX confirmed much of XXXXXXXXXXXXX's account..... While police investigations are common, they almost never lead to arrests. XXXXXXXXXXXXX also told us of a XXXXXXXXXXXXX doctor XXXXXXXXXXXXX who performs forced abortions, often under the guise of a regular check-up, on Tamil women suspected of being aligned with the LTTE.

16. (S) XXXXXXXXXXXXX Child Trafficking

17. (S) XXXXXXXXXXXXX said he believes that EPDP is operating child trafficking rings in Jaffna with a base on Delft island, which the EPDP "owns." XXXXXXXXXXXXX explained that because of the large number of widows in Jaffna, men associated with the EPDP, often from neighbouring villages, are used to seduce women with children, especially girls, with the promise of economic protection. After establishing a relationship, the men then take the children, sometimes by force and sometimes with the promise that they will be provided a better life. The children are sold into slavery, usually boys to work camps and girls to prostitution rings, through EPDP's networks in India and Malaysia. XXXXXXXXXXXXX maintains that children are often smuggled out of the country with the help of a corrupt Customs and Immigration official at Bandaranaike International Airport in Colombo.

18. (S) XXXXXXXXXXXXX's story was partially verified by XXXXXXXXXXXXX who stated that the EPDP works in concert with the Sri Lanka Army (SLA) to operate Tamil prostitution rings for the soldiers. XXXXXXXXXXXXX stated that young women were taken and forced to have sex with between five and ten soldiers a night. Sometimes they are paid approximately a dollar for each "service." The young women's parents are unable to complain to authorities for fear of retribution and because doing so would ruin the girls' reputation, making it impossible for them ever to marry. Families have begun arranging marriages for their daughters at a very young age in the hopes that the EPDP and soldiers will be less likely to take them. In addition to trafficking in children, XXXXXXXXXXXXX detailed how the EPDP operates an illicit alcohol smuggling ring using child "mules."

2. (S) The GSL sees several advantages in allowing paramilitary groups to operate in the country..... Frequent abductions by paramilitaries keep critics of the GSL fearful and quiet. Ultimately, the GSL's objective is to turn Karuna and EPDP leader Douglas Devananda into pro-GSL political leaders in the East and North,

respectively. The government hopes this will ensure long term control over these areas even if some form of devolution is instituted.

3. (S) In the meantime, these paramilitary groups give the GSL a measure of deniability. XXXXXXXXXXXXX told us that some military commanders in Jaffna want to clamp down on paramilitaries but have orders from Defense Secretary Gothabaya Rajapaksa to not interfere with the paramilitaries on the grounds that they are doing "work" that the military cannot do because of international scrutiny. On XXXXXXXXXXXXX confided to XXXXXXXXXXXXX that the Defense Ministry had instructed him not to interfere with "military intelligence" operations". (end of quote)

Here is what Ambassador Blake wrote about 'Karuna'

"6. (S) The Karuna group is probably the most active Sri Lankan paramilitary in abductions and extrajudicial killings.

7. (S) XXXXXXXXXXXXX confirmed that Karuna has extended his activities to Jaffna from his base in the East. XXXXXXXXXXXXX has documented XXXXXXXXXXXXX abduction cases in Jaffna XXXXXXXXXXXXX, many of which he believes are the responsibility of the Karuna group.

Extortion and Prostitution Rings

9. (S) Karuna does not have the international fund-raising network among the Tamil Diaspora that the LTTE has built over the past 25 years. As a result, he has resorted to a wide range of criminal activities.

11. (S) XXXXXXXXXXXXX also explained that Karuna operates prostitution rings out of the IDP camps to "take care of" GSL soldiers, stating that the women "had no choice" but to acquiesce to Karuna cadres' demands. XXXXXXXXXXXXX and XXXXXXXXXXXXX independently described how women are forced into prostitution, or to give up their children to traffickers. The methods are similar to those in Jaffna (paras 17-18). Families sometimes try to arrange their daughters' marriages at the age of 12 or 13 in the hope that it will reduce the likelihood of their being forced into prostitution.

12. (S) Although the GSL has consistently denied supporting Karuna, XXXXXXXXXXXXX allowed PoOff to listen to tapes of his interview with Gothabaya. The Defense Secretary was effusive in his praise for Karuna." (end of quote).

To claim that the US government does not know about the organised rape of Tamil women and girls, child prostitution and other crimes against humanity, and the involvement of the GoSL in all this, is clearly nonsense.

The consequences

There are increasing numbers of reports of young Tamil girls becoming pregnant to Sinhalese soldiers, and even to Sinhalese settlers arriving in the area. There is undoubtedly a breakdown in the social fabric especially where young adults have to deal with the social and economic hardships which will have a long term detrimental impact on the functioning of these communities. The GoSL could not care less.

There is not the slightest doubt that there is an increase in psychiatric problems in the Tamil areas of people (women and men) being unable to cope with the escalating violation of their human rights with no light at the end of the tunnel.

What options are available for the victims of Rape (and other human rights violations) in the Tamil areas?

1. To conceal the fact that they have been raped.
2. To struggle and cope with the consequences, including pregnancy.
3. To seek (physical) refuge.
4. To complain.
5. To leave the country if possible
6. To commit suicide.

Concealing the fact of rape.

The lives of young Tamil rape victims are shattered, as in their culture, virginity is highly prized and critical for marriage. The social consequences of rape are so serious, that many women and girls in particular, opt to conceal the fact that they have been raped. The psychological damage that could, and does occur, results in serious mental problems and in long-term psychiatric problems, even suicide.

There can be serious family problems. I am aware of several cases where the husband of a woman who has been raped, has left her because she has been raped.

Coping with the consequences

'Coping', mentally and physically – the latter including coping with the addition of yet another child to a family, already struggling to cope.

Trauma counselling is an essential part of 'coping mentally'. This is not a priority of the GoSL. Disturbingly, there are reports that the military has refused to allow counsellors into the area. Clear instructions have been received from the government to Churches and non-government organisations prohibiting the provision of any kind of counselling to those suffering psychological or emotional damage.

Infanticide and child abandonment in the North and East has been reported throughout 2011. There is no evidence that this is decreasing – on the contrary, despite attempts by the GoSL and its Armed Forces to suppress information, there is information leaking out that it is increasing.

Adopting out the child is an option, but to whom and where? The forced separation can and does have a sense of guilt with the expected mental problems.

To 'quieten' increasing demands from those in Sri Lanka and outside, the GoSL launched a new program to 'assist mothers and children in the area'. The Government has failed to produce precise details of this program but there are reports in the Media that the plan is to remove children from the care of unwed mothers or war widows and institutionalise them – in the Sinhalese South, or even 'export' them. Should this happen (and there is evidence that it is happening), it would be a gross violation of the 'Rights of the Child' and the Universal Declaration of Human Rights.

To seek refuge

Refuge where? In the North? In the South? If what happened in the South recently is an indication, it is not reassuring.

'Prem Nivasa' (House of Love) is an orphanage and a shelter for destitute and unwed pregnant women in Moratuwa, a suburb near Colombo, in the Sinhalese South. It is run by Sister Mary Elizer, an Indian nun who belongs to the Missionaries of Charity founded by the Nobel Laureate, Mother Theresa. On 26 November 2011, acting on one single anonymous telephone call, the Police and the National Child Protection Authority (NCPA), swooped down and arrested Sister Mary, and charged her with 'child trafficking'. She has been remanded and her passport impounded.

If those who run an orphanage or a refuge for unwed or destitute mothers, face such problems in the Sinhalese South, it is an even more difficult and dangerous operation in the Tamil North and East under the heel of the Sinhalese military.

There is overwhelming evidence, confirmed by the Wiki-Leaks, that a (Tamil) Minister and his political party in President Rajapaksa's government is doing this on a large scale in Jaffna which is virtually the fiefdom of this Minister. Yet no one has 'swooped down' to arrest anyone despite overwhelming evidence. It speaks volumes for the way President Rajapaksa's Democratic Socialist Republic, functions.

To complain

To complain to the (Sinhalese) Police is even riskier, and serves no purpose. When complaints of molestation and rape are made to the police, there is no action when the alleged perpetrators are either the security forces or workmen from the Sinhalese South. Indeed, it could be worse. The complainant is sometimes abused by the military or their details taken, for a nocturnal 'visit' from the military.

To leave the country if possible

The lucky few with the necessary money, can contact a 'people smuggler', get on a leaking boat, risk their lives and try to get to Australia (or elsewhere), to be locked up in dreadful detention centres as illegal refugees. They might sink to the bottom of the ocean – the 'Indian Ocean solution' to the refugee problem.

If they arrive in these hell-holes in Malaysia, Indonesia and Australia, they can expect to stay years and be subjected to further violations of human rights, in violation of the Refugee Convention (which Australia – but not the other countries in the area - has signed). Rape is not unknown in these detention centres. The Australian government could not care less.

An alternative is to escape to the Middle East as domestics or workers. The rape of women and girls (Tamil and Sinhalese) is well-documented. A single example, of many hundreds, will suffice.

On 9 June 2011, Global Labour and Human Rights released a report, "*Sexual Predators and Serial Rapists run wild at Wal-Mart Supplier in Jordan*". Young Sri Lankan women sewing clothes for 'Classic' the largest garment factory in Jordan produces clothes for Wal-Mart, Hanes, Target and Macy's, have been routinely and repeatedly raped. Those who get pregnant are forcibly returned to Sri Lanka or killed.

The General Manager, Anil Santha, sends a van to bring four or five young women to his hotel, where he rapes them. Those who refuse to be raped, are beaten and deported. One Bangladesh woman recently deported from the 'Classic' factory, said that any of the workers there will testify that Anil Santha regularly rapes women from Sri Lanka.

Classic garments enter the US duty-free under the US-Jordan Free Trade Agreement.

Suicide

Suicide is, of course, an alternative. I cannot find figures to document this (which is not surprising, given the level of censorship and military repression), but I am aware that there is an increasing incidence of suicide in the Tamil North and East, rape being one reason for this.

Fundamental factors responsible for Rape

The three fundamental factors responsible for the epidemic of rape are:

- The sweeping power of the President, Mahinda Rajapaksa, (and now his brother Gotabaya Rajapaksa, supposedly the 'Defence Secretary') who have set themselves above the Judiciary and the Law.
- The collapse of Law and order – with the thoroughly corrupt and dysfunctional Police and Armed Forces, and a politicised (or intimidated) Judiciary.
- Complete apathy of the public through fear or just a lack of concern.

Presidential powers.

The 1978 Constitution gives the Executive President absolute power. An attempt to limit some of this power (the 17th Amendment to the Constitution) was negated by the 18th Amendment, rushed through the Supreme Court as an 'urgent' Bill, and rubber-stamped by Rajapaksa's sterile Parliament.

The Sri Lankan President can do whatever he likes to whomever he likes, the Judiciary included. If he decides that a rapist cannot be convicted, he will not be. What matters is whether the criminal supports the ruling regime, not what he has done.



The collapse of Law and order

A recent (2011) 100-page review of this by the Asian Human Rights Commission, "*Sri Lanka: International Human Rights Agencies failed to notice the Collapse of the Sri Lanka's Public Institutions and of Justice*", looks at this in detail.

It says, "...the international community has failed to grasp the real situation in Sri Lanka and has failed to develop an effective strategy to ensure protection for the human rights of the people.

It refers to the servile Judiciary by setting out the powers of the President and the result, "The result is that the judiciary is incapable of protecting the rights of the individual as against the powers of the state".

Politicians and even their children commit rape (and other major crimes) with absolute impunity. So do others who have influence or links with the Rajapaksa family and their supporters.

The apathy of the public

There is widespread apathy rather than a sense of outrage among civilians, at all levels, in Sri Lanka.

The exception is Fr Nandana Manatunga, a Sinhalese Catholic priest in the South, who has defied this culture of silence and impunity in incidents of rape and torture. He has challenged religious leaders to use their moral authority to advocate for human rights. He has gone further and has organised volunteers to collaborate with agencies to document abuse, support victims during trials, and influence societal attitudes

Rape in the former LTTE-run *de facto* "State of Tamil Eelam"

The question at issue is whether the Tamil people in the North and East are better off now, under the GoSL and its Armed Forces, or under the LTTE. Where rape is concerned, they are far worse off now.

In order to appreciate this, it is necessary to go back to the time when the area was under the control of the LTTE.

For a decade prior to May 2009, the Liberation Tigers of Tamil Eelam (LTTE, Tamil Tigers) ran a *de facto* State. I have not been to this area and can only quote what Professor Kristian Stokke, Professor of Sociology and Human Geography, University of Oslo, Norway, told me when I met him in Zurich. What he told me was later published by him⁷⁸.

The most striking feature was a well-organised legal system and an excellent police service, as a result of which serious criminal activity was rare, and rape virtually unknown. This is in marked contrast to the rest of the country run by the GoSL.

The Judicial system of the *de facto* Tamil State, (Eelam judicial system), included several District Courts, two High Courts, to try certain criminal cases such as murder, rape and arson, a Court of Appeal, and an apex Supreme Court.

Particular care was taken to ensure that the Courts were just. Despite their relative youth, the Judges were perceived by the public as professional and the entire Judicial system carried substantial legitimacy and public confidence.

⁷⁸ *Building the Tamil Eelam State – Emerging State Institutions and Forms of Governance in LTTE controlled areas of Sri Lanka*. 3rd World Quarterly. ISSN 0143-6597, 26(6) s 1021-1048, 2006

Penalties were strict, varying from fines to jail terms, but also including rare cases of capital punishment for rape and certain types of murder. They were, in general, more severe than those imposed by the Sri Lanka government-run Courts which also functioned in the same area.

Critics have questioned the autonomy of the Courts in regard to the LTTE. However, despite the more severe penalties that were imposed, the people had so much confidence in the efficiency and fairness of these Courts, that they opted to take their claims to the Courts run by the *de facto* State rather than Courts run by the GoSL.

The Police (Tamil Eelam Police) was the other key institution for maintaining law and order. It was formed in 1991 by B. Nadesan, a retired officer from the Sri Lankan police. (Nadesan was later executed by the Sri Lankan military on the orders of Gotabaya Rajapaksa, the President's brother, despite the fact that he had surrendered - the "White Flag" incident⁷⁹).

The 'Tamil Eelam Police' established local police stations throughout LTTE-controlled areas, with assigned duties of preventing and detecting crime, regulating traffic and disseminating information about crime prevention to the civilian population, both to give them legitimacy among the Tamil population and as a strategy to prevent crime.

This community involvement with the Police was a key factor behind the low crime rates in the North-East in the *de facto* State run by the LTTE.

Critics of LTTE, argue that the Police force was an integral part of the LTTE armed forces, implying that the low crime rate was due to authoritarian control rather than community policing. In either case, it is a fact that the police and judiciary maintained a high degree of rule of law, which is acknowledged by both LTTE supporters and opponents.

The GoSL had a lot to learn from this, given the completely corrupt police force (said to be the most corrupt in the world), and a judicial system in disarray, in the rest of the country.

Sarvodaya is Sri Lanka's largest people's organisation. Over the last 50 years it has set up a network of some 15,000 villages in the Sinhalese South. Later it was engaged in relief efforts in the war-torn North. *Sarvodaya* published a comment on the safety of women and children in the LTTE-run *de facto* State in the Vanni.

"The head of the UNICEF programme in the Vanni, an Australian with long experience in Sri Lanka, described the children there as being different from those that she had seen elsewhere in the North East. It was only in the Vanni that children could be seen to play freely, frolicking and jumping into and swimming in the water tanks and irrigation channels. Outside visitors were amazed at the order, organization, sanitation and activity. The Sarvodaya leader from the south remarked that in the whole of Sri Lanka it was only in the LTTE controlled areas that women felt safe to walk by themselves late in the night. Unlike in the rest of Sri Lanka, military weapons, check points, barbed wire and round ups were not visible."

There you have it from people who are not Tamil Tigers.

⁷⁹ Major General Sarath Fonseka, the Army Commander, who said he was prepared to testify to this in a Criminal Court, was jailed on a trumped-up charge by the Rajapaksa regime. He is unlikely to get out.

There is not the slightest doubt that where law and order, especially serious offences such as rape are concerned, the civilian population in the North and East, are far worse off now, after the demise of the LTTE and its replacement by the thoroughly corrupt and undisciplined Sri Lankan (Sinhalese) Armed Forces and Police, and the highly dubious judicial system. Rape is now a fact of life, and is done with absolute impunity. This is one reason why the GoSL will not allow human rights organisations into the area. It is this that makes the outlook for the prevention of rape so bleak.

The Sri Lankan Penal Code (Section 363) which criminalises rape, is only a bit of paper and is treated as such by the Sri Lankan regime, and disturbingly, by the Legal system.

The Sri Lankan Government's response

As would be expected, the Sri Lankan government has denied allegations of rape and sexual violence in Government-controlled areas, claiming that the allegations are fabricated or LTTE propaganda to spread a false image of the Sri Lankan Armed Forces.

Some of these denials are hilarious. Let me quote from the recently released ICEP publication *Island of Impunity- Investigation into International crimes (in Sri Lanka)*.

11.11 "The Government has down played allegations of rape and sexual violence at IDP camps. When a foreign journalist raised allegations with Professor Rajiva Wijesinha, who was at the time the Permanent Secretary to the Ministry of Disaster Management and Human Rights, Prof Wijesinha responded, '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.'

It is precisely because "we don't know" that an independent international inquiry is needed. I do not think that the claim that it was to discuss Ancient Greek philosophy is believable.

11.12 The Sri Lankan High Commissioner to India, Prasad Kariyawasam, responded to HRW's report on torture and sexual violence by claiming there was no evidence to substantiate its claims. He stated, "Until we do a proper inquiry, we have to believe that these are all sob stories for the sake of obtaining asylum or refugee status in a developed country." He went on to label HRW's report 'a well-timed effort' to discredit Sri Lanka.

Again, this is what so many people (including the UN Human Rights Commissioner, Navi Pillay), want - "a proper inquiry". So we are on the same page as the Sri Lankan High Commissioner to India!

The Sri Lankan Ambassador to USA comments:

Jaliya Wickremasuriya (a kinsman of President Rajapaksa and not someone with an abundance of brain cells), was asked for his comments on the International Crisis Group Report's assertion that assault on women in Sri Lanka is on the rise. The Ambassador denied the very existence of rape or violence against women in Sri Lanka – "Rapes, this and that not taking any place in Sri Lanka". I am not sure what the Ambassador meant by "this and that".

Having denied that rape is not taking place in Sri Lanka, he admits that it does exist, by saying that *“Like any other country, we have, like couple of cases”*. He went on to say that Sri Lanka has so many women in key positions of authority, that it is impossible to think any woman is a victim of violence. He said: *“100% I don’t agree with the report”*.

The LLRC

The GoSL has repeatedly claimed that its so-called “Lessons Learnt and Reconciliation Commission” (LLRC) is all that is necessary and that international investigation and action is neither appropriate nor necessary.

Despite a number of reports of rape and sexual violence obtained by the UN Expert Panel, the Channel 4 videos, and victims documented in detail by the HRW report (*We will teach you a lesson*), rape and sexual violence were largely ignored by the LLRC. It certainly does not engage in looking into these allegations. Its only reference to rape and sexual violence was to doubt the authenticity of the Channel 4 report.

This omission, among others, is evidence that the LLRC is a sham Commission, yet another of a series of sham Commissions launched by the Sri Lankan government to bluff foreign governments and aid donors.

The blatant lies of the Sri Lankan President

A serious problem has been downright lies of President Rajapaksa, his junta in Sri Lanka and his Ambassadors abroad. Rajapaksa has dismissed overwhelming evidence of war crimes saying that the Army was involved in a *“humanitarian operation with zero civilian casualties”*.

On the first anniversary of the end of the conflict, Rajapaksa said that his troops went to war *with a gun in one hand and the Human Rights Charter in the other”*.

Repeating this in 2011, he said, *“I will recall what I said in the past that our troops went to the battlefield carrying a gun in one hand, the Human Rights Charter in the other, food for the innocent displaced on their shoulders, and love of their children in their hearts. They did not target any communities or religions, and did not march ahead with hatred towards anyone.”*

Today, they are not marching anywhere, but are hanging around raping Tamil women and girls in the North and East

To cite a recent example of Rajapaksa’s downright lies, on 19 January 2014, opening a cancer hospital in Thellipazhai in the Tamil area, he said that there were only 12,000 Sri Lankan soldiers in the North.

Credible sources put the figure of the occupying military at a minimum of 136,000. At least 36,000 soldiers are in the Jaffna peninsula and 100,000 are in the Vanni mainland.

Rajapaksa is not only the Executive President, but the Minister of Defence and the Commander-in-Chief of the Armed Forces. He must know that what he said was a blatant lie.

What all this means is that not a word uttered by the Sri Lankan President or any of his cronies (including Sri Lankan Ambassadors abroad) can be believed.

This is why it is mandatory that international human rights groups such as AI and HRW should be admitted immediately to Sri Lanka in general, the Tamil North and East in particular, not only to determine what has gone on during the closing stages of the war, but what is going on today, nearly five years after the end of the armed conflict.

Addressing the problem locally

The Sri Lankan government will not address this problem. I will quote the ICEP publication *Island of Impunity?* which I have referred to several times.

“1.45 More than four years since the end of the Sri Lankan civil war, the Sri Lankan Government has failed to address serious and credible alleged violations of international law. The Sri Lankan Government has not complied with the UN Human Rights Council’s March 2012 resolution on reconciliation and accountability. There is strong concern about the independence of Sri Lanka’s judiciary and the inadequacy of other checks on executive and military power. Accordingly, there remains serious doubt that the Sri Lankan Government will establish a credible investigation into allegations of war crimes, crimes against humanity and breaches of international human rights law and IHL.

1.46 An independent and comprehensive international investigation is needed into these alleged violations of international law. Failure to do so can only damage the prospects of meaningful and enduring reconciliation in Sri Lanka. The absence of such an investigation will also ensure the ongoing impunity of those on both sides of the conflict who have committed violations of IHL and international human rights law, thereby emboldening those who may continue to abuse the civilian population”. (IHL – International Humanitarian Law).

I have already referred to the fact that rape and sexual violence have been largely ignored in the LLRC Report.

Addressing the problem internationally

If the outlook for the prevention of rape (and other major human rights abuse) locally is bleak, there is no option to addressing it internationally.

Sri Lanka is in violation of several international Conventions signed and ratified by that country. Among them are the Universal Declaration of Human Rights, the Convention on the Elimination of All Forms of Discrimination against Women, and the Convention on the Rights of the Child.

There is certainly a case to take those responsible (including, and especially, the President, the Defence Secretary who is effectively in charge of the Armed Forces and Police, and the Army Commanders and others in charge), to the International Criminal Court. The necessary evidence is most certainly there and can be increased substantially, if necessary, since those who were witness to all this and even the actual victims of abuse are now out of the country, in refugee camps or absorbed into the community in several countries and are prepared to speak.

R2P

Words must have meaning. If “**Responsibility to Protect**” (R2P) is to have any meaning, then not to act will make these mere words. R2P are a set of principles drawn up at the World Summit in 2005, adopted by the United Nations General Assembly and reaffirmed (in April 2006) by the UN Security Council.

They are based on the principle that sovereignty is not a privilege but a responsibility. If a State fails to protect its citizens from genocide, war crimes, ethnic cleansing and crimes against humanity, then the international community has to intervene diplomatically, and if this fails, then ‘as a last resort’, with military force. The Sri Lankan State has failed to protect a significant section of its citizens from these crimes, and continues to do so. Therefore, action is mandatory.

Action

In the Appendix of this paper I have reproduced the paper on the same subject by the International Crisis Group (December 2011) and their recommended actions.

Admirable though they are, the recommendations will be rejected *in toto* by the Sri Lankan Government, wallowing in triumphalism. Nor will Sri Lanka’s ‘International Partners’ or to the “UN and Member States” will be. That is reality – *realpolitik*’.

Realpolitik still rules when human rights, including rape and torture, comes up against superpower interests. Examples are simply too numerous to recount.

It must be remembered that the name of the game is for international players to get a foothold in Sri Lanka for the control of the economically crucial Indian Ocean astride which Sri Lanka is located. Just as oil is the ‘problem’ in the Middle East, it is Sri Lanka’s geographical position astride the Indian Ocean that is the ‘problem’ for the Tamils.

It is countries such as China, India, and even the US, that supplied the necessary money and weapons for the GoSL to crush the Tamils. They now want the ‘spoils of war’ – a foothold in Sri Lanka, just as the Sri Lankan Armed Forces want their share of the ‘spoils of war’ – the ‘right’ to plunder the Tamil North and East for personal financial gain, with the ‘right’ to rape Tamil women and girls as a bonus. The Sri Lankan government could not care less.

It is an exercise in futility to plead with tyrants, write letters, or send missions, to plead with them not to be cruel. Nor is it worthwhile passing resolutions. As Geoffrey Robertson has put it, “*the road to hell is paved with good Conventions*”.

This ‘defensive stance’ has never worked with tyrants – the Rajapaksas are no exception.

The way forward is to get on the offensive and hit where it hurts. Any other strategy will be like pouring water on a duck’s back.

Action is needed, both in Sri Lanka, and even more so, outside that country to force the regime to address the problem(s).

1. Action within the country is difficult, if not impossible, with a Totalitarian brutal regime in power. That said, the ‘Middle East Spring’ does demonstrate what is possible. A crucial point is that in all the countries where tyrants have been

overthrown, it has been a local uprising but aided from outside. Such outside aid might not be forthcoming in Sri Lanka. Nonetheless, a propaganda campaign in the Sinhala South that what has happened (and is happening) to the Tamils might well happen to them tomorrow (if it has not started already).

An outstanding group of 75 Tamils who label themselves "Tamil Civil Society" has recently written a "Public Memo" which challenges the politicians to 'do something'. They include highly committed people such as the Roman Catholic Bishop of Mannar, the Most Rev Dr Rayappu Joseph. They are likely to play a critical humanitarian role in the North and East.

There are also concerned Sinhalese, who can rally the working classes in the Sinhalese South, which will pose a serious threat to the tyrants in power.

2. Action taken outside the country is crucial. Essentially this means two things.
 - 1) to take the criminals to Court and charge them with crimes against humanity.
 - 2) to isolate the regime (as was done in apartheid South Africa) which resulted in the dismantling of that dreadful regime. Discussing this on a recent visit to South Africa I was told that only two things worked in dismantling the apartheid regime - trade sanctions and the sports boycott, especially cricket.

There is not the slightest doubt that a boycott of goods and services in and out of Sri Lanka is essential, *until* the human rights abuse is stopped, and humanitarian organisations, human rights groups and international observers are admitted to the North and East. This must be well organised and conducted. This is not something that can be delayed, given the rapidly deteriorating human rights situation.

There is also no doubt that criminal proceedings must be initiated. It is imperative to engage lawyers such as Geoffrey Robertson QC who has a vast experience in this area, so that the criminals (past and present) can be held accountable (as happened in the former Yugoslavia and Rwanda trials I have referred to).

Mr Robertson dealt with some of this in an interview in London which I have recorded in my dvd, *Sri Lanka: Genocide, Crimes against Humanity, Violation of International Law*.

He said:

***"The Human Rights Council** is a highly politicised body. It is made up not of experts on human rights, but of paltering diplomats. Europe only has seven seats ... We have countries like Russia and China obviously concerned to keep their own internal problems down and away from international oversight.*

However that's not the end of the story in the UN sense. UN officials can still look into it. Sir John Holmes is concerned. Judge Navi Pillay wants to conduct an investigation.

*More importantly, there is the **UN Human Rights Committee** which sits in Geneva. It is a kind of court and individuals can complain to it. Unusually, Sri Lanka has actually signed up to the International Convention on Human Rights which has this body that investigates complaints. So any individual can complain against Sri Lanka."*

So there is certainly going to be an inquiry, I would have thought, by Human Rights Committee.

And there are other possibilities - the Convention on Torture, the Convention on Rights of the Child, even the Genocide Convention, could all be applied in due course.

So there are ways and means of finding out – fact-finding in effect - as to whether there have been breaches of the Geneva Convention, the targeting of civilians, the bombing of hospitals, and so forth as has been alleged.”

Geoffrey Robertson’s 2013 address in London

One of the most important addresses delivered on what specific action can be taken (legally) against those guilty of war crimes and crimes against humanity was by Geoffrey Robertson QC.

Addressing a meeting on “*Accountability for Tamil Genocide in Sri Lanka: Its significance for the world*” (September 28th and 29th 2013), he set out what can be done. I will put this most important address on the net.

To summarise what can be done:

1. **International Court of Justice (ICJ – the “World Court”)**
2. **UN Human Rights Committee**

International Court of Justice

In 1950, Sri Lanka signed and ratified the Genocide Convention. Article 1 states:

“The contracting parties confirm that Genocide whether committed in time of peace or in time of war is a crime under international law which they undertake to prevent and to punish”.

The obligations extend beyond the obligation ‘to prevent and to punish’. It makes clear that a State such as Sri Lanka can commit the crime and be held liable for it. It was this obligation that recently enabled Bosnia to take Serbia to the World Court, and the World Court upheld it.

The question is whether the Sri Lankan Government can be held accountable in the World Court for failing to prosecute any of its nationals for genocide or crimes against humanity, or for committing it itself? The answer is “Yes”.

The problem is that Sri Lanka has refused to sign up to the World Court, and never will. However, that is not the end of the story.

Article 9 of the Genocide Convention states:

“Disputes between the contracting parties including disputes relating to the responsibility of a State for genocide shall be submitted to the International Court of Justice at the request of any of the parties to the dispute”.

The problem is that only States have the power to bring actions to the World Court, and the Sri Lankan Tamils are not a ‘State’.

However, a well-intentioned State that wants to uphold international law can take up the case for the Tamils. That is what happened in Senegal. Senegal violated the

Torture Convention by refusing to prosecute Hissene Habre, a former dictator of Chad, who had tortured and killed some 40,000 people in Chad, escaped to Senegal and was living there.

Those who wanted Habre held accountable, could not, because they were not a 'State'. However, Belgium (a State) took up the case and took Senegal to the World Court and had them condemned and forced to put Habre on trial.

It is possible that the Tamil people can get some State - Canada or Mauritius (both of which took such a strong stance against the GoSL for its human rights record and boycotted CHOGM), or Belgium or Holland or a sympathetic European State, to take Sri Lanka to the World Court.

This clearly involves political pressure which can be mounted.

The UN Human Rights Committee

As has been mentioned earlier, this is not a Court but a group of 18 world experts (mainly judges and lawyers) who sit in Geneva and decide whether Civil and political Rights have been violated. It is a powerful United Nations organ with direct access to the United Nations.

Sri Lanka has signed the 1st Optional Protocol to the International Covenant on Civil and Political Rights, which allows complaints (group or even individual complaints) to be brought to the Human Rights Committee for violation of Civil and Political rights.

If these complaints are upheld by this UN body, it can result in a range of remedies, including compensation, for those affected.

- a) This can, as mentioned, be a group complaint – say by members of the expatriate Tamil community on behalf of the people in the Tamil North and East whose rights have been violated.
- b) It can be an individual complaint by an affected individual, as long as he/she is prepared to testify before the Human Rights Committee and be specific as to what happened, when and by whom.

The most sensible action is for some organisation to get a powerful legal team together that can do the necessary research (which is readily available from asylum seekers and also from Human Rights Watch – documented in the Appendix of their publication –“*We shall teach you a lesson*”) and submit it to the UN Human Rights Committee.

I have gone into this in some detail - including the costs involved which are negligible given the proficiency of the legal expertise involved.

Urgency of Action and the action needed

Life for Tamil women and girls in the Sri Lankan North and East is now so dangerous that it can be called a crisis. In more than six decades that I have been involved in addressing this problem of equality, dignity and safety of the Tamil people, I cannot remember a time when life has been so dangerous for Tamil women and girls in the North and East. There is an absolute need to act and to do so without further delay.

I will set out what has to be done immediately:

1. The immediate admission of Amnesty International, Human Rights Watch and International Crisis Group into the North and East.
2. If this is blocked by the Sri Lankan Government (which it will be), then it will have to be done by force – by the UN or a foreign country – the most obvious being India.
3. The UN will have to apply the R2P. There is provision in R2P for the application of force ‘as a last resort’. That time has now come.
4. There is a case for a UN ‘rescue operation’ and the taking over of the Sri Lankan North and East as a UN administered ‘protectorate’ at least for the moment. As the UN Forces move in, the Sri Lankan military will have to move out.
5. India – the major regional power – will have to be co-opted by the UN to do some of this under the UN flag.
6. An immediate international investigation will have to be launched to look at not only what has happened but what is happening right now. To state that this is an ‘internal problem’ that Sri Lanka will have to address, is absolute nonsense. It will not happen.
7. An international criminal investigation has to be launched to charge those responsible for criminal activity, past or present, irrespective of their ethnicity, status or position.
8. A boycott of goods and services in and out of Sri Lanka – as was done against Apartheid South Africa – will have to be done at once, and maintained until the serious abuse of human rights ceases and international human rights groups are admitted to the country in general, the Tamil areas in particular.
9. People outside Sri Lanka will have to be apprised of what is going on behind the closed and censored doors of Sri Lanka. The GoSL has mounted a massive disinformation campaign, hiring some of the most expensive firms in the world. To a large extent this disinformation campaign has been ‘successful’ in that the vast majority of people outside Sri Lanka believe the downright lies by the GoSL and the heavily censored media.
10. It must be stressed that if, as the Sri Lankan government claims, ‘Tamil terrorism’ has been crushed, and ‘all is well in the Tamil areas, it is impossible to justify the continuing exclusion of internationally recognised human rights organisations from the area.
11. All foreign aid to Sri Lanka must be put on hold until the human rights abuses cease – something that must be confirmed by AI and HRW.

It is simply not good enough to hope that the UN Human Rights Council will act. It has not done so for more than 4 years and to hope that it will do so now is completely unrealistic. There is no place for more and more ‘Resolutions’ urging Sri Lanka to address the problem. It will not happen. The absolute incompetence of the Human Rights Council has been demonstrated year in year out for five years. To hope that this will change is an exercise in futility.

A British colonial construct has collapsed, as have so many colonial constructs across the world. The price for this has been paid by the Tamils. The epidemic of rape of Tamil women and girls is just one of a multitude of human rights abuses of the Tamil people. Britain has more than a slight responsibility for the chaos in Sri Lanka.

If Britain was part of the problem, it must also be part of the solution. That has not happened. Indeed, Britain continues to keep Sri Lanka in the British Commonwealth despite the outrageous human rights abuse that has occurred.

An entire ethnic group, the Tamils in the North and East of Sri Lanka are ceasing to exist as a people and are suffering indescribable misery. The world cannot remain unaware of this. A democracy has been replaced by a murderous Totalitarian State under one family – a ‘Family autocracy’ that can do what it wants to anyone with no accountability.

If the Sri Lankan regime gets away with this, it will be triumph of evil where ‘good men’ have done nothing. The world has watched as tyrant after tyrant has established tyrannical regimes. Sri Lanka cannot be added to this list. If it is, then the rest of the world will have to open its doors to asylum seekers fleeing a tyrannical regime.

Appendix 1 International Crisis Group (ICG)

“Sri Lanka: Women’s Insecurity in the North and East”⁸⁰,
Asia Report No 217 (20 December 2011).

RECOMMENDATIONS

The following recommendations supplement and complement Crisis Group’s continuing calls – as set forth in Crisis Group Asia Report N°209, *Reconciliation in Sri Lanka: Harder than Ever*, 18 July 2011 – for an international inquiry into the alleged war crimes and crimes against humanity committed by both the LTTE and government forces in the final stages of the war, as well as for the restoration of the rule of law and an end to corruption, impunity and authoritarianism throughout the country. While the government has promoted the Sri Lankan Government’s Lessons Learnt and Reconciliation Commission (LLRC) as the cornerstone of its post-war accountability process, serious deficiencies in its independence, mandate and witness protection capacity have crippled it. The LLRC’s report, which acknowledges important grievances and makes a number of sensible recommendations, ultimately fails to question the government’s version of events with any rigour. Thus, in terms of accountability, the question remains: is the government willing and able to hold accountable those responsible for alleged crimes? To date it has failed to demonstrate that it is.

To the Government of Sri Lanka:

1. Acknowledge that women and girls in the north and east face serious threats to their economic and physical security and commit to reduce those threats, including by:

⁸⁰ <http://www.crisisgroup.org/en/regions/asia/south-asia/sri-lanka/217-sri-lanka-womens-insecurity-in-the-north-and-east.aspx>

a) reducing the military presence in those areas substantially by closing military camps and checkpoints, returning all property seized by the military to rightful owners, ending the military's involvement in commercial activities, fully demobilising troops – including investigating and prosecuting alleged abuses – and reintegrating soldiers with their families and into their communities;

b) devolving power to provincial and local government structures and officials in the north and east, including by expediting elections for the Northern Provincial Council and decentralising decision-making on economic development;

c) reforming the police presence in those areas by recruiting male and female Tamils and Muslims at all ranks and giving them real authority to better reflect the populations served, and by training the police to anticipate and respond to the security needs of women and girls, including as regards gender-based violence; and

d) prioritising reconstruction and development projects that will protect the rights of and empower women in those areas, including by committing government funds (see Recommendation 5 below for suggested projects).

2. Revise government policies that are increasing women's vulnerability in the north and east, including by:

a) ending what is still in effect a state of emergency and military rule and ensuring anti-terrorism laws and practices are brought into line with international legal standards;

b) making available to family members the names and locations of all individuals detained for suspected involvement in the LTTE, including those in rehabilitation centres; providing detainees with access to lawyers and ensuring basic due process rights; and allowing the International Committee of the Red Cross (ICRC) to monitor conditions of detention and facilitate family visitation and communication with detainees in all parts of the country;

c) stopping all ad hoc visits by the military to women's homes as well as all surveillance of alleged former LTTE cadres unless it is demonstrated through a credible judicial process that they pose a threat to public safety; and otherwise ending the exercise of civilian functions by the military;

d) issuing accurate death certificates or declarations of absence for those who were killed or went missing in the conflict, without compromising the rights of family members to seek further information or remedies;

e) permitting full freedom of movement and assembly in the north and east, including for local women's organisations; and

f) reducing restrictions on and improving access for humanitarian and civil society groups, and allowing them to increase levels of assistance – including to address psycho-social issues, reproductive health and gender-based violence – with input from local communities and local women's groups.

To Sri Lanka's International Partners, including China, India, Japan, the U.S., UK, EU and UN:

3. Evaluate all aid, investment and engagement in light of the risks of a return to conflict and of increasing women's insecurity in the former war zone, and insist on meeting international standards and ensuring the highest levels of transparency, external monitoring and non-discriminatory community participation in setting priorities.

4. Highlight consistently in public and private communications the issues that affect all of Sri Lanka's ethnic communities, including growing authoritarianism, militarisation, weak rule of law, impunity, corruption and repression of dissent, as well as gender-based violence and economic inequities for women.

5. Convene a high-level meeting of donors and other development partners, including the World Bank and Asian Development Bank, as well as community leaders and activists knowledgeable about women's issues in the north and east, to agree upon and ratify with the government a strong set of principles for the delivery and monitoring of assistance – including accountability for past and continuing human rights abuses; and to fully fund a concrete set of reconstruction and development projects to be completed in 2012 that will help protect and empower women in the north and east, such as:

- a) a comprehensive, independent assessment of the needs and vulnerabilities of this population;
- b) expedited construction of safe, permanent housing and sanitation facilities for those at greatest risk of violence;
- c) training, equipment and professional support for mobile health clinics staffed in part by local female residents;
- d) support to and protection for local women's groups to establish women's centres for meetings, training and collective work spaces;
- e) a nationwide program led by ICRC and local non-governmental partners to register and trace missing persons and facilitate family access to detainees;
- f) initiatives to start collecting comprehensive data on, and better respond to, gender-based violence, including a nationwide violence-against-women helpline, the appointment of judicial medical officers (JMOs) for every district, and the establishment of women-friendly desks in all police stations so women can make complaints in their own language and in the presence of female officers;
- g) training on gender-based violence and national domestic violence laws for all government officials and police officers in the north and east; and
- h) training on gender-based violence and national domestic violence laws, reproductive health education and support, psycho-social support and demobilisation counselling for current and, as needed, former members of the security forces – provided by qualified local or international experts, not by other national militaries.

To the UN and Member States:

6. Endorse the findings and recommendations of various UN bodies regarding Sri Lanka, including the forthcoming report of the Secretary-General's Special Representative on Conflict-related Sexual Violence; the Secretary-General's upcoming review of UN actions during the final stages of the war, as announced in September 2011; the November 2011 report of the Committee Against Torture; the April 2011 report of the Secretary-General's Panel of Experts on Accountability, and the February 2011 report of the Committee on the Elimination of Discrimination against Women – and ensure that the UN system, including the country team in Sri Lanka, works toward fulfilment of these recommendations.

7. Take action on these findings and recommendations, including at the Human Rights Council session in March 2012 and during Sri Lanka's second Universal Periodic Review in September 2012.

8. Ensure, in particular, that the UN country team in Sri Lanka takes a strong stand to demand access and speak out about protection concerns, including for women and girls in the north and east, and that all UN staff and staff for UN-funded programs working in the north and east are adequately trained on the post-war needs and concerns of women in those areas and to engage the expertise of local women's groups.

9. Review Sri Lanka's contributions to UN peacekeeping operations and refrain from accepting new participation of its troops until there is a credible investigation of the allegations against the military in the UN panel of experts report.

Colombo/Brussels, 20 December 2011

Appendix 2

Human Rights Watch

26 February 2013

This is one of the most important publications ever published on this subject. It is not a paper that can be summarised, nor should it be. It is essential reading for anyone interested on the subject. Of particular importance is the Appendix which documents in detail the sexual abuse of 75 (Tamil) people.

It is legally important since if legal action is taken, the evidence documented can be used in a charge of crimes against humanity or even genocide. HRW has the necessary papers which will presumably be produced when necessary.

"We Will Teach You a Lesson"

Sexual Violence against Tamils by Sri Lankan Security Forces

Key Recommendations

Human Rights Watch urges the Sri Lankan Government to:

- Investigate all allegations of rape and other sexual violence by Sri Lankan security forces, including from the armed conflict period as well as the years since. Prosecute those responsible for these crimes, including persons with command or other superior responsibility, in proceedings that meet international fair trial standards. Publicize the outcome of such prosecutions, including by providing information on the punishments meted out, and the redress and compensation provided to victims;
- Repeal the Prevention of Terrorism Act (PTA), and abolish the system of detention without charge or trial;
- Immediately lift access restrictions imposed by the Presidential Task Force on Resettlement, Reconstruction and Security in the Northern Province (PTF) so that medical personnel, counsellors, and NGOs providing psycho-social support and independent medical examination and treatment can reach victims of human rights violations;

- Release all individuals who have been arrested under emergency or anti-terrorism laws, unless they are charged with recognized criminal offenses. Conduct prompt trials that meet international due process standards;

^[1] UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Sri Lanka, December 21, 2012, HCR/EG/LKA/12/04, available at: <http://www.unhcr.org/refworld/docid/50d1a08e2.html> (accessed December 25, 2012).

^[2] UN Secretary-General, Report of the UN Secretary General's Panel of Experts on Accountability in Sri Lanka, March 31, 2011, http://www.un.org/News/dh/infocus/Sri_Lanka/POE_Report_Full.pdf

^[3] Human Rights Watch interview with Peter McKay, field officer with the UN Office for Project Services in Sri Lanka from January-April 2009, Sydney, December 19, 2011.