CRIMES AGAINST HUMANITY IN SRI LANKA'S NORTHERN PROVINCE

A LEGAL ANALYSIS OF POST-WAR HUMAN RIGHTS VIOLATIONS

March 4, 2014

This report was published and commissioned by the Sri Lanka Campaign for Peace and Justice Ltd. We are a multi-ethnic non-partisan group who campaign for a just and lasting peace in Sri Lanka based upon accountability and respect for human rights. We are not affiliated with any political or ethnic group inside or outside of Sri Lanka. You can contact us at info@srilankacampaign.org or via our website www.srilankacampaign.org.

Media Contact
Fred Carver
Campaign Director, Sri Lanka Campaign for Peace and Justice
director@srilankacampaign.org
+44 (0) 7763745402

COMMENTS FROM EXPERTS IN THE FIELD

"This report challenges the Government of Sri Lanka's narrative of accountability as it remains trapped in a cycle of impunity. It is significant in that it is one of the first of its kind to document post-war human rights violations against the Tamil civilian population in the Northern Province carrying out a legal analysis in terms of international law. It presents a compelling case of credible violations committed by the Sri Lankan Government after the end of civil war in May 2009.

Some of these credible allegations, if proven, would amount to serious violations of international human rights law committed by the Government of Sri Lanka, amounting potentially to crimes against humanity against the Tamil civilian population in the Northern Province."

-- **Yasmin Sooka**

Member, U.N. Secretary General's Panel of Experts' on Accountability Sri Lanka (2011); Member, Human Rights Violations Committee of the Truth and Reconciliation Commission in South Africa.

"This well researched and rigorously reasoned report is an essential contribution to what is now a very substantial body of material concerning alleged crimes against humanity committed during and after the armed conflict in Sri Lanka. Nobody can now deny the evidence. This report underscores the obligation to ensure that thorough and authoritative inquiries by relevant governments, and in particular the government of Sri Lanka, as well as by inter-government organisations are now undertaken with a view to ensuring that perpetrators of crimes against humanity are brought to book. Justice demands nothing less."

-- **William Schabas**

Professor of International Law, Middlesex University School of Law.

"These documented allegations of torture, rape, sexual violence, enforced disappearance, murder, and other inhumane acts against Tamil civilians are troubling in any context and they elicit an affirmative obligation on the State to investigate, prosecute and punish those responsible. This report raises the disturbing possibility that they have been committed as part of a widespread or systematic attack on the civilian population, which would make them international crimes that should trigger the jurisdiction of international courts if the Sri Lankan judiciary proves unable or unwilling to prosecute them.

It is therefore crucial for Sri Lanka to explore, independently and impartially, whether or not these crimes were committed pursuant to a policy of the Sri Lankan state. Beyond its legal obligations, however, Sri Lanka needs to break the cycle of impunity and account for these tragic incidents, persisting nearly five years after the war has ended, if it is ever going to build a society where different ethnic groups are reconciled."

-- **Juan Méndez**

U.N. Special Rapporteur on Torture; President Emeritus. International Center for Transitional Justice.

"Having twice carried out official fact-finding missions to Sri Lanka in my previous functions as member of the UN Working Group on Enforced or Involuntary Disappearances and as UN Special Rapporteur on Torture, I am deeply familiar with the Sri Lankan human rights context. This report, presented by the Sri Lanka Campaign for Peace and Justice, contains disturbing evidence of gross and systematic violations of human rights committed in Sri Lanka after the armed conflict. Since these crimes and human rights violations during the war have not been duly investigated by the Sri Lankan authorities, time has come for the United Nations Human Rights Council to establish an independent international inquiry commission with a broad mandate of investigating these crimes with a view to bringing the perpetrators to justice and to providing the victims with adequate reparation for the harm suffered."

-- **Manfred Nowak**

Former U.N. Special Rapporteur on Torture; Professor of Constitutional Law and Human Rights, University of Vienna.

"Impunity paves the way for new crimes. This valuable report gathered information about allegations of ongoing grave human rights violation in the North of Sri Lanka. As Sri Lanka failed to impartially investigate international crimes, the report shows what terrifying consequences such a state's failure can have for a post-conflict society. But it is not only the responsibility of the state to effectively investigate international crimes. Likewise every single state worldwide should exercise its jurisdiction over international crimes committed in Sri Lanka. All available international mechanisms have to face the ongoing harassments and have to seek measures bringing those committing and overseeing the crimes to justice. Only if all people in Sri Lanka can be free from fear of violence and impunity, they have the chance to build their future."

-- **Wolfgang Kaleck**

Founder, European Centre for Constitutional and Human Rights.

"This report's analysis further contributes to the U.N. High Commissioner's most recent investigation and findings that potential violations of international criminal law and human rights abuses against civilians have persisted in Sri Lanka after the war ended in May 2009. These findings underscore the urgent need for a credible and independent investigation into post-war violations. Peace will only be achieved when true justice and accountability are delivered. In order to secure peace and stability, which are so important in this post-war period, the cycle of impunity must end. The Human Rights Council should call for the investigation and prosecution of alleged post-war crimes and monitor Sri Lanka's domestic processes to ensure real protection and redress for all Sri Lankan people."

-- **Almudena Bernabeu**

Transitional Justice Program Director, The Center for Justice and Accountability.

"I am honored to be asked to endorse a report of what is essentially the first detailed, and credible collation of accusations of crimes against humanity following the end of the conflict in Sri Lanka in 2009. Given the ever-mounting evidence of the commission of crimes against humanity, a full and credible investigation must now take place to enable the perpetrators of the same to be brought to justice.

Sri Lanka should see this as an opportunity to address the crimes of the past, and truly begin to look towards the future of a nation. The victims of those atrocities that undoubtedly occurred on both sides of the conflict must be allowed to seek justice and have their voices heard."

-- **Toby Cadman**

Founder, TMC Advisory Group; Former senior legal counsel to the Chief Prosecutor of the Bosnian war crimes chamber; Defence counsel at the Bangladeshi war crimes tribunal.

FOREWORD

The Center for Justice and Accountability (CJA) is pleased to introduce and endorse *Crimes Against Humanity in Sri Lanka's Northern Province: A legal analysis of post-war human rights violations*. This non-partisan Report documents credible allegations of ongoing human rights abuses by Sri Lankan government security forces against Tamils in the Northern Province, long after a nearly three-decade civil war between government forces and the Liberation Tigers of Tamil Eelam (LTTE) ended in May 2009. These post-war abuses, including rape and sexual violence, torture, imprisonment, murder, enforced disappearance, and other inhumane acts, illustrate the consequences of impunity for crimes committed during the war. Absent accountability, human rights abuses continue—and in this case, potentially point to the commission of crimes against humanity under international criminal law.

This ground-breaking Report is the first to analyze and apply the framework of international criminal law to post-war human rights violations against Tamils in Sri Lanka's Northern Province. The application of this framework to post-war Sri Lanka is important for two reasons. First, it provides an indication of the wide scale and systemic nature of violations that continue to be committed in at least some parts of the country, nearly five years after the end of the war. Second, it broadens the current discussions on accountability beyond war-time abuses alone, suggesting that international criminal law, and its corollary obligation to hold perpetrators of international crimes accountable, may be appropriately applied in the context of Sri Lanka to war-time and post-war violations alike.

This Report maps allegations of post-war violations in the Northern Province onto the legal elements of crimes against humanity charges, using the framework of the Rome Statute of the International Criminal Court. Its methodology is modeled on that adopted by the U.N. Panel of Experts on Accountability in Sri Lanka, and its analysis relies only on those allegations of post-war violations that satisfy a three-factor credibility assessment. CJA has carefully reviewed the Report's methodology and underlying research and can attest to the rigor and quality of both. CJA has also examined the legal analysis, which is cautious and methodical and strongly supports the conclusions drawn in the Report. The Report concludes that there are credible allegations of ongoing violations against Tamils in the Northern Province, which, if proven, point to the commission of post-war crimes against humanity and may give rise to individual criminal liability. The Report calls for an independent investigation of these allegations and builds a legal case that supports that call.

The Report makes a significant contribution to the debate on accountability in Sri Lanka, raising new arguments that support the urgent need to end impunity. As underscored by the U.N. High Commissioner for Human Rights, since the war ended, and despite mounting evidence of alleged violations of international law during the last stages of war, Sri Lanka has not initiated a credible national investigation process.[i] Instead, the government of Sri Lanka has tried to silence those who seek accountability for alleged international crimes.[ii] The breakdown of the rule of law—culminating with the irregular impeachment of the Chief Justice in January 2013—also contributes to impunity.[iii] It is clear that there are no domestic avenues for justice for war-time violations of international law, nor for post-war violations.

CJA's work in post-conflict societies around the world has strengthened our conviction that the absence of accountability paves the path for future human rights abuses and places lasting reconciliation further from reach. Sri Lanka is no exception. As this Report shows, "if Sri Lanka's culture of impunity is allowed to persist, crimes against Tamils in the Northern Province will continue."

The U.N. Human Rights Council is convening in March 2014 to consider a third-consecutive resolution on accountability in Sri Lanka for international crimes allegedly committed by both government forces and the LTTE in the final stages of the war. It is crucial that this inquiry proceed in order to break the cycle of impunity and promote the rule of law. As this Report demonstrates, patterns of abuse that manifested during the war persist years after the war ended, and related patterns of abuse have since emerged. CJA supports the recommendations made in this Report calling for a credible and independent investigation into both war-time and post-war allegations of international crimes in Sri Lanka.

This Report underscores the urgent need to fight impunity with accountability and pave the way for lasting peace.

Pamela Merchant
Executive Director, CJA

About the Center for Justice and Accountability

CJA is a San Francisco-based human rights organization dedicated to deterring torture and other severe human rights abuses around the world and advancing the rights of survivors to seek truth, justice and redress. CJA uses litigation to hold perpetrators individually accountable for human rights abuses, develop human rights law, and advance the rule of law in countries transitioning from periods of abuse. CJA has litigated cases involving human rights abuses committed in Bosnia, Cambodia, Chile, China, Colombia, El Salvador, Guatemala, Haiti, Honduras, Indonesia, Peru, Somalia and the United States. CJA's clients, survivors of torture and other human rights abuses, come from a total of 21 countries. www.cja.org.

---

[i] Report of the Office of the United Nations High Commissioner for Human Rights on Promoting reconciliation and accountability in Sri Lanka, A/HRC/25/23 (24 Feb. 2014)

[ii] Opening remarks by High Commissioner Navi Pillay in Colombo (31 Aug. 2013), available at http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13673&LangID=E (last visited 28 Feb. 2014)

[iii] International Bar Association, *A Crisis of Legitimacy: The Impeachment of Chief Justice Bandaranayake and the Erosion of the Rule of Law in Sri Lanka* (Apr. 2013), available at http://www.ibanet.org/Article/Detail.aspx?ArticleUid=C90B7A2F-5EE2-4E5B-BE6C-F7FCB9864E81 (last visited 28 Feb. 2013)

TABLE OF CONTENTS

I. INTRODUCTION 1

A. Background: End of the Civil War in Sri Lanka and Post-War Realities 1

B. About the Report 4

1. Objective and Scope 5
2. Research Terms of Reference (TOR) 6
3. Methodology 7
   a. Information Gathering 8
   b. Credibility Evaluation 9
4. Legal Framework 9
   a. Applicable Law: International Criminal Law 9
   b. Elements of a Claim for Crimes Against Humanity 10
   c. Demonstrating Crimes Against Humanity Outside Criminal Justice 12

II. CONTEXTUAL ELEMENTS OF CRIMES AGAINST HUMANITY 14

A. An Attack Pursuant to a State Plan or Policy 15

1. Existence of an Attack 15
   a. Legal Requirements 15
   b. There is Credible Evidence of an Attack in the Northern Province 15
2. In Pursuance of State or Organizational Plan or Policy 16
   a. Legal Requirements 16
   b. There is Credible Evidence that the Attack in the Northern Province is Committed in Pursuance of a State Plan or Policy 17
      i. Characterisation and Evidence of the Policy 17
      ii. Implementation of the Policy by Resorting to Violence or Deprivation of Fundamental Rights 20
      iii. A policy Devised and Planned at the Highest Levels of the Sri Lankan Government and Military Hierarchy 25
3. Attack Directed "Against the Civilian Population" 26
   a. Legal Requirements 26
   b. There is Credible Evidence that the Attack is Directed Against the Tamil Population of the Northern Province 26

B. Widespread or Systematic Nature of the Attack 27

1. Widespread 27
   a. Legal Requirements 27
   b. There is Credible Evidence that the Attack Against the Tamil Population of the Northern Province is Widespread 28
2. Systematic 28
   a. Legal Requirements 28
   b. There is Credible Evidence that the Attack Against the Tamil Population in the Northern Province is Systematic 29

C. Nexus Between the Underlying Act and the Attack 30

III. CREDIBLE ALLEGATIONS OF CRIMES AGAINST HUMANITY AGAINST THE TAMIL POPULATION OF THE NORTHERN PROVINCE 31

A. Rape and any Other Form of Sexual Violence of Comparable Gravity 31
1. Definition of Crimes 31
a. Rape 31
b. Sexual Violence 32
2. Factual Allegations 33
3. Preliminary Conclusions 41
a. Rape 41
b. Sexual Violence 41
c. Link to the Attack 42
B. Torture 44
1. Definition of the Crime 44
2. Factual Allegations 44
3. Preliminary Conclusions 50
C. Other Inhuman Acts 54
1. Definition of the Crime 54
2. Factual Allegations 54
3. Preliminary Conclusions 58
D. Imprisonment 60
1. Definition of the Crime 60
2. Factual Allegations 60
3. Preliminary Conclusions 65
E. Murder 68
1. Definition of the Crime 68
2. Factual Allegations 68
3. Preliminary Conclusions 69
F. Enforced Disappearances of Persons 70
1. Definition of Crime 70
2. Factual Allegations 71
3. Preliminary Conclusions 72
G. Persecution 74
1. Definition of the Crime 74
2. Legal Analysis and Evaluation of Factual Allegations 75
a. Severe Deprivation of Fundamental Rights 75
i. Acts Causing Severe Bodily or Mental Harm 76
ii. Land Confiscation 77
b. Discriminatory Intent 82
i. Acts Causing Bodily or Mental Harm 82
ii. Land Confiscation 84
c. The Conduct was Committed in Connection with any Act Referred to in Article 7(1) 86
d. Nexus with the Attack 87
IV. CONCLUSION: THE SPECTRE OF RECURRING INTERNATIONAL CRIMES 88
V. RECOMMENDATIONS 90

LIST OF ABBREVIATIONS

UK	United Kingdom
NGO	Non-Governmental Organization
INGO	International Non-Governmental Organization
UN	United Nations
TOR	Terms Of Reference
MP	Member of Parliament
IHL	International Humanitarian Law
IHRL	International Human Rights Law
CIL	Customary International Law
ICC	International Criminal Court
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
TNA	Tamil National Alliance
TNPF	Tamil National Peoples' Front
UPFA	United People's Freedom Alliance
LTTE	Liberation Tigers of Tamil Eelam
CID	Criminal Investigation Department
TID	Terrorist Investigation Department
TAG	Tamil Against Genocide
FFT	Freedom From Torture
HRW	Human Rights Watch
PAFFREL	People's Action for Free and Fair Elections
CaFFE	Campaign for Free and Fair Elections
EPDP	Eelam People's Democratic Party
TMVP	Tamil Makkal Viduthalai Pulikal

EXECUTIVE SUMMARY

This Report is the first of its kind to map the facts of well-documented, post-war human rights violations in Sri Lanka's Northern Province to the legal elements of crimes against humanity. Amidst growing calls that the UNHRC mandate an international investigation at its March 2014 Session, the Sri Lankan government has resisted external pressure for accountability for crimes committed during the last stages of the civil war. Citing transitional justice as an obstacle to post-war stability, Sri Lanka has tried to redirect attention to post-war infrastructural development and purported progress on human security for Tamils in the Northern Province. However, Sri Lanka's claims to post-war progress are undermined by allegations reported and analyzed in this Report.

This Report fundamentally challenges the government's narrative on accountability. Its findings demonstrate that, contrary to government assertions, human rights violations credibly amounting to international crimes continue to be committed nearly five years after the end of a decades-long civil war in May 2009. For many Tamils in the North, the end of the internal armed conflict has not put an end to grave and recurring human rights violations, including rape, sexual violence, torture, enforced disappearance, imprisonment, murder, and deprivation of land rights.

This report analyses these violations, using the framework set forth by the Rome Statute of the International Criminal Court. Under the Rome Statute, a charge of crimes against humanity involves the multiple commission of certain inhumane underlying acts within a particular context: a widespread or systematic attack directed against the civilian population, pursuant to a State or organizational policy.

For purposes of this Report, the research team focused solely on allegations of post-war violations in the Northern Province reported by public sources, and that satisfied a three-part credibility test, as well as information gathered through interviews. Analyzing these credible allegations of recurring post-war crimes, this Report makes a conservative case that such violations, if proven, point to the commission of crimes against humanity against the Tamil civilian population in the Northern Province long after the war's end in May 2009.

Findings: Credible Allegations pointing to the Commission of Crimes Against Humanity Against Tamils in the Northern Province from May 2009-December 2013

- This Report finds credible allegations that, since May 2009, agents and individuals acting on behalf of the government of Sri Lanka committed multiple underlying acts of rape and sexual violence, torture, other inhuman acts, imprisonment, murder, enforced disappearance and persecution against Tamils from the Northern Province of Sri Lanka (*See* Part III).

- If proven, the multiple underlying acts identified in Part III would cumulatively constitute an attack directed against the Tamil civilian population of the Northern Province that was widespread and systematic.

- The credible allegations set forth in this Report point to an attack perpetrated pursuant to a coordinated policy to centralize control over aspects of Tamil civil and political life in the Northern Province and repress the pursuit of Tamil political aspirations, including through resort to violence and deprivation of fundamental rights (*See* Part II). The allegations herein suggest that this policy is being pursued through at least four discrete but interlinked strategies pursued by the government of Sri Lanka, all involving a resort to violence or the deprivation of fundamental rights:

    - Targeting members of the population having had connections with, or perceived as having had connections with, the LTTE; and those espousing or perceived as espousing Tamil nationalist claims;

    - Targeting members of the population involved in or perceived as being involved in mobilizing international opinion on accountability issues and human rights issues concerning Tamils in Sri Lanka;

    - Targeting members of the population defiant of, or perceived as being defiant of, the government and military, and those involved in protests against the government and military; and

    - Establishing a heavy and permanent military presence in the Northern Province, including through the mass appropriation of private lands.

- As a result, each of the credible allegations of underlying acts documented in the Report point to the commission of discrete crimes against humanity, each potentially giving rise to individual criminal liability.

<u>Conclusions and Recommendations: the Need to Address Impunity to Halt the Ongoing Commission of International Crimes in the Northern Province of Sri Lanka</u>

The end of Sri Lanka's civil war in May 2009 should have heralded a bright and peaceful future for the country. However, entrenched impunity has paved the way for recurring crimes against Tamils in the Northern Province. To move forward toward lasting peace, justice, and reconciliation, there is an urgent need to break the cycle of impunity and pursue meaningful justice for international crimes committed both during and after the end of the war.

Given Sri Lanka's unwillingness to prevent, contain, investigate or punish these alleged crimes, the onus is on the international community to devise and properly authorize mechanisms for their investigation with a view to determining the veracity of the allegations. Further, where sufficient evidence exists, the international community must take steps to prosecute these crimes in lawfully constituted tribunals, or in courts in countries that may exercise jurisdiction over the events and alleged perpetrators, in full conformity with international standards of due process.

For these reasons, the research team recommends:

To the Office of the High Commissioner for Human Rights:

- Publicly raise the issue of potential ongoing international crimes against the Tamil population of the Northern Province as part of the UN's expression of concern over the situation in the Northern Province;

- Address the need for ongoing international monitoring of the human rights situation in the Northern Province, including of potential recurring crimes under international law;

To the member states of the UN Human Rights Council and other states:

- Make reference to the applicability of international criminal law, and in particular, crimes against humanity, in the text of a resolution on Sri Lanka at the 25th Session of the UN Human Rights Council in March 2014;

- Mandate an international commission of inquiry to investigate alleged international crimes committed by both sides during the last stages of the war and to further investigate the alleged commission of international crimes since May 2009;

- Request the High Commissioner for Human Rights to report to the Council on the implementation of the above mandate, including steps taken by Sri Lanka to cease the commission of acts giving rise to allegations of international crimes;

To INGOs, NGOs and other activists working on Sri Lanka based issues:

- Publicly call for the investigation of alleged ongoing international crimes against the Tamil population in the Northern Province, emphasizing that when impunity persists, violations continue.

- Monitor, document and report on ongoing human rights violations against the Tamil population in the Northern Province with a view to protecting and preserving potential evidence of alleged international crimes.

I. INTRODUCTION

A. Background: End of the Civil War in Sri Lanka and Post-War Realities

1. Since the late 1970s, Sri Lanka has been ravaged by a civil war pitting the Liberation Tigers of Tamil Eelam (LTTE) against the Sri Lankan armed forces. The LTTE was an armed group fighting for a separate Tamil state in the Northern and Eastern Provinces of Sri Lanka. It was widely condemned by the international community for their recruitment of child soldiers and use of suicide attacks and was prescribed as a terrorist group in many countries. A February 2002 Ceasefire Agreement between the LTTE and the Government of Sri Lanka had steadily eroded, and hostilities renewed in 2006. In July 2007, the Government of Sri Lanka wrested control of the Eastern Province from the LTTE.[1] By September 2008, the Government of Sri Lanka began its final military offensive in the Northern Province, closing in on the LTTE stronghold of Kilinochchi.[2]

2. The conduct of both the armed forces and the LTTE during the last stages of the war, in which tens of thousands of civilians were killed in the final months,[3] highlighted the urgent need for accountability for violations of international human rights law and international humanitarian law by both sides during the armed conflict.

3. Moreover, the government's conduct after the end of the war raises serious concerns over the trajectory of governance and human rights in Sri Lanka. Since May 2009, the Sri Lankan Government has been criticized for (among others): continued militarisation of the North and East of the country;[4] attempts to change the demographic composition of the Northern and Eastern Provinces;[5] continuing impunity and grave violations of

---

[1] Report of the U.N. Secretary-General's Panel of Experts on Accountability in Sri Lanka (March 31, 2011), at http://www.un.org/News/dh/infocus/Sri_Lanka/POE_Report_Full.pdf [last accessed 7 February 2014] [hereinafter POE Report], ¶¶ 40-47

[2] *Ibid.,* ¶¶ 47

[3] *Ibid.*, ¶¶ 137, 421

[4] *See, e.g.*, International Crisis Group, 'Sri Lanka's North II: Rebuilding under the Military', 16 March 2012, pp. 15-23, at http://www.crisisgroup.org/en/regions/asia/south-asia/sri-lanka/220-sri-lankas-north-ii-rebuilding-under-the-military.aspx [last accessed 7 February 2014] [hereinafter International Crisis Group, Sri Lanka's North II Report]; Nirupama Subramanian, 'Sri Lankan Army still has vast presence in North & East', *The Hindu*, 19 September 2012, at http://www.thehindu.com/news/sri-lankan-army-still-has-vast-presence-in-north-east/article3915391.ece [last accessed 7 February 2014]

[5] *See, e.g.*, International Crisis Group, 'Sri Lanka's North I: The Denial of Minority Rights', 16 March 2012, at http://www.crisisgroup.org/en/regions/asia/south-asia/sri-lanka/219-sri-lankas-north-i-the-denial-of-minority-rights.aspx [last accessed 7 February 2014] [hereinafter International Crisis Group, Sri Lanka's North I Report]; The Social Architects, 'The Social Architects on "Sinhalisation"', *Sri Lanka Campaign for Peace and Justice Blog*, 21 March 2012, at http://blog.srilankacampaign.org/2012/03/social-architects-on-sinhalisation.html [last accessed 7 February 2014]; 'Northern Sinhalisation: Government To Settle 500 Sinhala Families In Mannar Despite Muslim Anger',

human rights, including disappearances and sexual violence;[6] a clampdown on journalists throughout the country,[7] in which Tamil journalists were predominantly targeted;[8] growing intolerance to dissent;[9] the breakdown of the rule of law and the independence of the judiciary;[10] the unwillingness to countenance reasonable demands for power sharing with the Tamil community;[11] and a turn toward authoritarianism through the centralisation of power in the Rajapaksa family.[12]

4. The Northern Province, where Tamils predominate, together with the Eastern Province, witnessed the worst ravages of the war. In the post-war context, Tamils in the North and East continue to face immense hardships and mass scale deprivations of their rights. The twin processes of militarization and 'Sinhalization'[13] have combined to effect a large scale takeover of private properties from Tamils,[14] whilst the continuing suppression and

---

Colombo Telegraph, 17 August 2013, at https://www.colombotelegraph.com/index.php/northern-sinhalisation-government-to-settle-500-sinhala-families-in-mannar-despite-muslim-anger/ [last accessed 7 February 2014]

[6] *See, e.g.*, Human Rights Watch, 'We will teach you a lesson, sexual violence against Tamils by Sri Lankan Security Forces', February 2013, at http://www.hrw.org/sites/default/files/reports/srilanka0213webwcover_0.pdf [last accessed 11 February 2014] [hereinafter HRW Report, 'We will teach you a lesson']; WATCHDOG, 'A disappearance every five days in post-war Sri Lanka', *Groundviews*, 30 August 2012, at http://groundviews.org/2012/08/30/a-disappearance-every-five-days-in-post-war-sri-lanka/ [last accessed 7 February 2014]; WATCHDOG, 'Enforced Disappearances in Sri Lanka: 2006-2013', *Groundviews*, 9 January 2014, at http://groundviews.org/2014/01/09/enforced-disappearances-in-sri-lanka-2006-2013/ [last accessed 7 February 2014]

[7] *See, e.g.*, Amnesty International, 'Sri Lanka's Assault on Dissent', 30 April 2013, at http://www.amnestyusa.org/sites/default/files/asa370032013en.pdf [last accessed 7 February 2014] [hereinafter Amnesty International, Assault on Dissent Report]; 'Joint Civil Society Submission to the UN Universal Periodic Review (Sri Lanka) UPR Submission', April 2012, pp.8-9 at http://lib.ohchr.org/HRBodies/UPR/Documents/Session14/LK/JS1_UPR_LKA_S14_2012_JointSubmission1_E.pdf [last accessed 7 February 2014] [hereinafter Sri Lanka Civil Society, Joint Submission to the UPR]

[8] *See,* ¶¶ 173, 174, 180

[9] *See, e.g.*, Amnesty International, Assault on Dissent Report, *supra* note 7

[10] Sri Lanka Civil Society, Joint Submission to the UPR, *supra* note 7, pp. 3-5; International Commission of Jurists, 'Authority without accountability: The crisis of impunity in Sri Lanka', November 2012, at http://www.refworld.org/pdfid/50ae365b2.pdf [last accessed 7 February 2014]; International Bar Association, 'A Crisis of Legitimacy: The Impeachment of Chief Justice Bandaranayake and the Erosion of the Rule of Law in Sri Lanka', April 2013, at http://www.ibanet.org/Article/Detail.aspx?ArticleUid=C90B7A2F-5EE2-4E5B-BE6C-F7FCB9864E81 [last accessed 28 Feb. 2013]

[11] *See generally*, International Crisis Group, 'Sri Lanka: Tamil Politics and the Quest for a Political Solution', 20 November 2012, at http://www.crisisgroup.org/en/regions/asia/south-asia/sri-lanka/239-sri-lanka-tamil-politics-and-the-quest-for-a-political-solution.aspx [last accessed 7 February 2014]

[12] See, *e.g.*, Sri Lanka Campaign for Peace and Justice, 'Infographic: nepotism in Sri Lanka', *Colombo Telegraph*, 20 March 2013, at https://www.colombotelegraph.com/index.php/infographic-rajapaksa-family-and-nepotism/[last accessed 7 February 2014]; 'The Rajapaksas: who are Sri Lanka's ruling dynasty?', *Channel 4*, 12 November 2012, at http://www.channel4.com/news/sri-lanka-mahinda-rajapaksa-commonwealth-meeting-2013 [last accessed 7 February 2014]

[13] *See, supra* notes 4 and 5. For a discussion on the concept of 'Sinhalazation' *see, e.g.* International Crisis Group, Sri Lanka's North II Report, *supra* note 4, p. 17.

[14] *See,* ¶¶ 240-247

surveillance of the community have resulted in a range of human rights problems, some of which are detailed later in this report.[15]

5. The international community's response to Sri Lanka's post-war trajectory has been mixed. In May 2009, shortly after the end of the war, the UN Human Rights Council (UNHRC) passed a congratulatory resolution in favour of Sri Lanka,[16] after more critical amendments urged by some countries were voted down.[17]

6. Since that time, there has been increasing pressure on the Sri Lankan government on questions of justice and accountability and ongoing human rights and governance issues.[18] Responding to this pressure, in June 2010, UN Secretary General Ban Ki Moon appointed a Panel of Experts, consisting of Marzuki Darusman (Chair), Steven Ratner, and Yasmin Sooka, to advise him on accountability in Sri Lanka.[19]

7. The Panel released its report on 31 March 2011, concluding that credible allegations pointed to the commission of war crimes and crimes against humanity by both the Sri Lankan Government and the LTTE during the last stages of the war (September 2008-May 2009).[20] The Panel recommended that the Sri Lankan Government immediately commence genuine investigations into violations of international law committed during the last stages of the war and implement several immediate as well as long term accountability measures. The Panel also recommended that the Secretary General establish an independent mechanism *inter alia* to conduct independent investigation into the allegations found credible by the Panel and monitor the Sri Lankan government's

---

[15] *See also*, Tamil National Alliance, 'Situation Report: North and East Sri Lanka', 21 October 2011, at http://www.sangam.org/2012/02/TNA_SituationReport.pdf [last accessed 7 February 2014]; M.A. Sumanthiran, 'Situation in North-Eastern Sri Lanka: A series of serious concerns'*, D.B.S. Jeyaraj.com*, 21 October 2011, at http://dbsjeyaraj.com/dbsj/archives/2759 [last accessed 7 February 2014]; WATCHDOG, 'Women and children in the North: Sexual harassment, grievances and challenges', *Groundviews*, 31 October 2013, at http://groundviews.org/2013/10/31/women-and-children-in-the-north-sexual-harassment-grievances-and-challenges/ [last accessed 7 February 2014]

[16] UN Human Rights Council, *Assistance to Sri Lanka in the promotion and protection of human rights*, 11th Special Session (May 27, 2009), UN Doc. A/HRC/S-11/2

[17] UN Human Rights Council, *Draft resolution on the Human Rights situation in Sri Lanka*, 11th Special Session (May 25, 2009), UN Doc. A/HRC/S-11/L.2, ¶¶ 11-12

[18] Human Rights Watch, 'Sri Lanka: US Report Shows No Progress on Accountability', 11 August 2010, at http://www.hrw.org/news/2010/08/11/sri-lanka-us-report-shows-no-progress-accountability [last accessed February 2014]

[19] 'Ban appoints panel to advise on human rights issues during Sri Lankan conflict', *UN News Centre*, 22 June 2010, at http://www.un.org/apps/news/story.asp/realfile/www.unesco.org/story.asp?NewsID=35099&Cr=lanka&Cr1#.UvVupLS-7z0 [last accessed 7 February 2014]

[20] POE Report, *supra* note 1, ¶ ¶ 247 & 251

progress on accountability. Finally, the Panel recommended that the UN Human Rights Council reconsider its 2009 resolution.[21]

8. In March 2012, the UN Human Rights Council passed a U.S.-led resolution calling upon the Sri Lankan government to implement recommendations on good governance and ethnic relations made by the Lessons Learnt and Reconciliation Commission (LLRC)—a government appointed body created in May 2010 in response to international pressure[22]—but also called on the government to take the necessary steps to "initiate credible and independent actions to ensure justice, equity, accountability and reconciliation for all Sri Lankans".[23] The UN Human Rights Council passed an even stronger resolution in March 2013, which noted the call by the UN High Commissioner for Human Rights for an international investigation into alleged violations of international human rights law and international humanitarian law.[24]

9. Amidst growing calls for an international investigation to be mandated at the March 2014 Session of the UNHRC, the Sri Lankan government has reacted angrily to external pressure. It has attempted to use the pressure it faces to shore up its Sinhala Buddhist base by projecting strength against a purported neo-colonial endeavour to divide Sri Lanka. At the same time, government functionaries continue to claim that the emphasis on justice and accountability is harmful to the country's development and to reconciliation. Pointing to its ambitious physical infrastructure development drive, it has accused those insisting on justice and accountability of reopening closed wounds and refusing to assist in the country's post-war progress.

B. About the Report

10. This Report fundamentally challenges the government's narrative on accountability. It demonstrates that, contrary to the government's claims, questions of accountability and justice for international crimes are not merely questions relating to the past. Instead, patterns of abuses visible during the war persist in the post-war targeting of the Tamil civilian population of the Northern Province. The failure of the Sri Lankan state to investigate and prosecute crimes committed by both sides during the final stages of the civil war has led to a continuing climate of impunity for post-war violations, particularly

---

[21] POE Report, *supra* note 1, pp. 121-122
[22] Report of the Commission of Inquiry on Lessons Learnt And Reconciliation (November 2011), pp. 5-6, at http://slembassyusa.org/downloads/LLRC-REPORT.pdf [last accessed 7 February 2014]
[23] UN Human Rights Council, Resolution 19/2, *Promoting reconciliation and accountability in Sri Lanka*, 19th Session (3 April 2012), UN Doc. A/HRC/RES/19/2
[24] UN Human Rights Council, Resolution 22/1, *Promoting reconciliation and accountability in Sri Lanka*, 22nd Session (19 March 2013), UN Doc. A/HRC/22.L.1/Rev.1

in the Northern Province. Many of these post-war violations, such as rape and sexual assault are the direct consequence of the Sri Lankan government's post-war policies, including the failure to demilitarize, devolve power, and resolve military land grabs in the North. These post-war violations, which continue to this day, independently warrant justice and criminal liability for the perpetrators as a matter of international law.

11. This Report is the first of its kind to map the facts of well-documented post-war human rights violations in the Northern Province to the legal elements of a claim for crimes against humanity under international criminal law. While there have been some isolated public assertions of the widespread and systematic nature of the commission of certain crimes—rape for instance[25]—there has hitherto been no effort made to detail the legal case that ongoing violations in the Northern Province may point to crimes against humanity. This Report makes a conservative case for the need to investigate crimes under international law that are continuing in the Northern Province post-war; its findings suggest that the failure to prioritize accountability for wartime violations can lead to a climate in which gross human rights violations persist.

1. **Objective and Scope**

12. This Report aims to draw attention to the patterns of violations against the Tamil population of the Northern Province of Sri Lanka and determine whether these recurrent and systematic patterns of abuse may amount to crimes against humanity.

13. The Report focuses on allegations of crimes under international law in the post-war context. While alleged atrocities committed during the last stages of the war have attracted the attention of the international community through the lens of international criminal law, human rights violations committed in the post-war context have hitherto not been characterized as international crimes.

14. This Report analyses allegations of severe rights violations in this region through the lens of international criminal law, in particular, with reference to crimes against humanity. While the claims in this Report will be of evident interest to lawyers, this particular lens also provides a compelling framework within which to meaningfully assess and understand the patterns of grave abuses ongoing in the Northern Province.

15. The research team focused on assessing whether there are credible allegations of crimes against humanity being committed in the four and a half years since the end of the war.

---

[25] *See, e.g.*, Frances Harrison, 'Tamils still being raped and tortured' in Sri Lanka', *BBC News Asia*, 8 November 2013, at http://www.bbc.co.uk/news/world-asia-24849699 [last accessed 7 February 2014]

The focus on the Northern Province is on account of time and resource constraints. Thus, the limited focus of the Report should not in any way be interpreted to suggest that rights violations against Tamils in the Eastern Province, or any other population elsewhere in the island, do not potentially constitute crimes against humanity. Consideration of whether patterns of abuses against other populations also point to the commission of crimes against humanity would require separate research and analysis.

2. **Research Terms of Reference (TOR)**

16. The research aims at assessing the relevance of the crimes against humanity framework to allegations of human rights violations in the Northern Province. The terms of reference for the research are as follows:

> ***Information Gathering.*** Gather allegations of human rights violations in the Northern Province of Sri Lanka committed after May 2009.
>
> ***Credibility Evaluation.*** Assess the credibility of the information gathered.
>
> ***Legal Analysis.*** Determine whether credible allegations of rights violations in the Northern Province of Sri Lanka—if proven—point to the commission of crimes against humanity.

17. Restrictive security conditions in Sri Lanka—particularly in the Northern Province—hinder large-scale fact-finding initiatives. This prevents researchers working on Sri Lanka from mapping violations occurring in the Northern Province in a comprehensive manner. This Report does not comprehensively document all grave human rights violations committed post-war. It does not purport do so, and a large number of incidents that may potentially amount to international crimes do not feature in this Report.

18. The standard of proof adopted in this research—that of credible allegations—is identical to that adopted by the UN Panel of Experts on accountability in Sri Lanka. As the Panel clarified, an allegation was considered credible where there was reasonable basis to believe the underlying act or event took place.[26] The Panel deemed findings of credible allegations of war crimes and crimes against humanity sufficient to impose a responsibility on the relevant state to investigate the allegations.[27] Incidentally, the 'credible allegations' standard is also near identical to that envisaged by the Rome Statute

[26] POE Report, *supra* note 1, ¶ 51
[27] POE Report, *supra* note 1, p. ii-viii, ¶¶ 259-260, 396

for the initiation of an investigation by the Prosecutor of the International Criminal Court (ICC).[28]

19. The Report analyses whether credible allegations documented herein—if proven—point to the commission of crimes against humanity. **Part II** of this Report analyses whether credible allegations collected by the research team fulfil the contextual requirements of crimes against humanity—that is, whether there has been a widespread and systematic attack against the civilian population in the Northern Province of Sri Lanka since May 2009. **Part III** focuses on specific underlying crimes which, within the aforementioned context, point to the commission of crimes against humanity. For each underlying offence considered by the research team, the Report contains a detailed account of relevant credible allegations, an analysis of the applicable law and the preliminary findings reached by the research team. **Parts IV and V** contain general conclusions and recommendations.

20. Hundreds of cases for which the research team lacked the corroborative material to establish credibility have not been detailed in this Report. In addition, a number of cases were also excluded because the research team did not find sufficient reason to demonstrate a nexus between the case and the attack.

21. The research team did not include identifying information about alleged individual perpetrators, given the gravity and nature of allegations of the international crimes reported. This is especially justified because the standard of proof adopted in the Report is lower than that enabling conclusions to be drawn with respect to individual criminal responsibility.

22. Definitive proof of these allegations and of the many other incidents that could also point to crimes against humanity, as well as the identification of alleged perpetrators would require an independent inquiry.

3. **Methodology**

23. Prior to designing the research methodology, researchers extensively reviewed the relevant literature on monitoring, fact-finding and reporting, including manuals, guidelines and academic studies.

---

[28] Article 15(3) and (4) and article 53(1) of the Rome Statute refer to a 'reasonable basis to proceed' and 'reasonable basis to believe a crime has been committed' standard for the initiation of an investigation by the Prosecutor. This standard is almost identical, if not identical, to the 'credible allegations' standard used in this Report. *See Israel's Mechanisms for Examining and Investigating Complaints and Claims of Violations of the Laws of Armed Conflict According to International Law: February 2013*. S.l: s.n., 2013, ¶46

24. The research team was given a clear and limited mission. In particular, the TOR does not require members of the research team to conduct fact-finding. Instead, the research team conducted interviews within and outside Sri Lanka to evaluate the credibility of the allegations documented in public sources and to assess whether these were committed as part of a widespread and systematic attack against the civilian population. In doing so, the research team was mindful of, and endeavoured to comply fully with, best practices in the field of human rights monitoring and reporting, to the extent that these best practices applied to its specific mission.

25. The following is a detailed explanation of the research methodology for the gathering of the information and evaluation of its credibility. It also explains choices made by the research team in light of the mission's objectives and of security constraints faced by the researchers in the fulfilment of their mission.

a. Information Gathering

26. Information gathering methods included the review of reports from different sources as well as interviews with victims, witnesses and other persons who could provide relevant information about the human rights situation in the Northern Province of Sri Lanka.

27. The research team studied NGO reports and press releases in English and in Tamil and extracted detailed reports of human rights violations committed in the Northern Province of Sri Lanka. The research focused on cases potentially constituting the underlying offences of crimes against humanity. The research team compiled hundreds of reports of human rights violations committed after May 2009 in the Northern Province of Sri Lanka, mainly from open-source research.

28. This open-source research was also complemented by information obtained first-hand and documented by researchers. The research team conducted 26 interviews within and outside Sri Lanka. Interviewees were selected on the basis of their knowledge of—and exposure to—the human rights situation in the Northern Province of Sri Lanka. These included victims or witnesses of human rights violations, human rights defenders, lawyers, community workers, political and religious leaders, journalists and businessmen from the Northern Province of Sri Lanka or those working in this region. The research team was careful to select interviewees from different backgrounds in order to avoid bias. However, due to security constraints, the research team could not interview persons closely associated with the government or known for their support of the incumbent regime. Interviews were conducted in Colombo, Jaffna, Mannar and Vavuniya. The research team also conducted some interviews outside the country. Researchers were mindful that they did not influence responses. This is why, although the research team explained to each interviewee that the information collected would be included in a public report, it did not specify the legal framework used to analyze the information. In

addition, the research team asked exclusively open-ended questions and interviewed witnesses outside the presence of third persons.

b. Credibility Evaluation

29. The credibility of the information collected was thoroughly assessed by the research team. Different methods of assessment were used, depending on the source of the information.

30. Cases collected through open-source research were submitted to a credibility test that considered three broad factors. First, the team assessed the reliability of each of the sources used. Allegations were only treated as credible when based on sources that the team deemed relevant and trustworthy. This assessment was based on the reputation of the sources and the research team's knowledge of their documentation and investigative methods. Second, the research team assessed the methodology used by sources to document each case, including by contacting the researcher or journalist to obtain clarification whenever necessary. Third, the team used information obtained during interviews, other general information contained in UN and NGO reports, and media reports pertaining to the human rights situation in the Northern Province of Sri Lanka to corroborate or support the credibility of the allegations.

31. The research team applied this credibility test to all cases of rape, sexual violence, enforced disappearances, torture, murder, imprisonment, persecution and other inhuman acts reported in this report. Other cases—including those reported in the media, but not corroborated by field research or other credible sources—were considered secondary evidence and were used only to corroborate allegations from credible sources.

4. **Legal Framework**

a. Applicable Law: International Criminal Law

32. International Criminal Law (ICL) is the body of law that deals with individual criminal responsibility for the most serious violations of human rights (IHRL) and international humanitarian law (IHL) violations. ICL defines international crimes and delineates modes of individual responsibility for these crimes. International crimes are defined by treaties and customary international law (CIL). Under customary international law, torture, enforced disappearances, war crimes, crimes against humanity, genocide and aggression are international crimes. Increasingly, ICL has become a necessary instrument for the enforcement of IHL and IHRL, particularly given the proliferation of international, internationalized and domestic tribunals empowered to try individuals suspected of having committed some of these crimes: namely war crimes, crimes against humanity and genocide.

b. Elements of a Claim for Crimes Against Humanity

33. A crime against humanity is a grave violation of International Criminal Law that "involves the commission of certain inhumane acts, such as murder, torture, rape, sexual slavery, or other inhumane acts, in a certain *context*: they must be part of a widespread or systematic attack directed against a civilian population".[29] Crimes against humanity have been defined in a number of international legal instruments, including treaties or statutes of international tribunals. The law on crimes against humanity has also been developed through customary international law.

34. The most recent international treaty defining crimes against humanity is the Rome Statute establishing the International Criminal Court. Crimes against humanity are defined by article 7(1) of the Rome Statute as follows:

> For the purpose of this Statute, 'crime against humanity' means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:
>
> (a) Murder;
>
> (b) Extermination;
>
> (c) Enslavement;
>
> (d) Deportation or forcible transfer of population;
>
> (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
>
> (f) Torture;
>
> (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
>
> (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;

[29] Cryer, Robert. *An Introduction to International Criminal Law and Procedure*. Cambridge: Cambridge University Press, 2007, p. 187

(i) Enforced disappearance of persons

(j) The crime of apartheid;

(k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

35. Article 7(2) expands on the elements of article 7(1) and defines the phrase "attack directed against any civilian population" to mean "a course of conduct involving the multiple commission of [underlying] acts referred to in [article 7(1)] against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such an attack." The ICC's Elements of Crimes document sets forth the elements of specific underlying acts as crimes against humanity, including: rape and sexual violence, torture, imprisonment, murder, enforced disappearance and persecution.

36. The Rome Statute reflects—to a degree—the state of customary international law at the time of enactment. Some provisions, however, depart from CIL. Nevertheless, because of the Rome Statute's stricter requirements, discussed below, an allegation that meets the Rome Statute criteria would *a fortiori* meet the criteria under CIL.

37. The Rome Statute's definition of crimes against humanity is narrower than the definition under CIL with respect to three elements that are relevant here. First, the Rome Statute requires that an attack involve "the multiple commission" of underlying acts constituting crimes, even though this requirement is not a part of CIL.[30] Second, the Rome Statute requires that an attack be "pursuant to or in furtherance of a State or organizational policy to commit such attack", which is also not an explicit requirement under CIL.[31] Third, under article 7(1)(h) of the Rome Statute, the underlying act of persecution falls under the jurisdiction of the Rome Statute only if the act to be perpetrated "in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court".[32] Under customary international law, no such link is required.[33]

38. Although the Rome Statute departs from customary international law in these and other respects, it is increasingly used as the relevant legal framework to assess the commission

---

[30] *See, e.g.,* UN General Assembly, Rome Statute of the International Criminal Court (last amended 2010), 17 July 1998, ISBN No. 92-9227-227-6, article 7(2)(a), [hereinafter Rome Statute of the International Criminal Court]; Judgment, *Prosecutor vs. Kunarac et al.* (IT-96-23 & 23/1-A), Appeals Chamber, 12 July 2012, ¶ 89; Judgment, *Prosecutor vs. Blagojevic and Jokic* (IT-02-60-T), Trial Chamber, 17 January 2005, ¶ 543

[31] Rome Statute of the International Criminal Court, *supra* note 30, article 7(2)(a).

[32] Rome Statute of the International Criminal Court, supra note 30, article 7(1)(h). *See also Ibid.* articles 10 and 22 (3), which clarify that the Rome Statute does not constrain interpretations under customary international law.

[33] Judgment, *Prosecutor vs. Kupreškić* (IT-95-16-T), Trial Chamber, 14 January 2000, ¶¶ 579–581.

of international crimes by fact-finding missions and similar mechanisms. Bearing in mind that an actual commission of inquiry or *ad hoc* tribunal similar to the ICTY or ICTR would not be limited by the Rome Statute's construction, this Report examines the situation in the Northern Province through the lens of the Rome Statute as a conservative approach. For all the underlying acts and crimes considered in this Report, except that of torture,[34] where there are credible allegations that point to the commission of crimes against humanity under the Rome Statute, they *a fortiori* point to credible allegations of crimes against humanity under CIL.

c. Demonstrating Crimes Against Humanity Outside Criminal Justice

39. Crimes against humanity are a set of international crimes for which perpetrators may be held individually criminally liable. In a criminal trial, the conviction of an individual defendant is contingent on proof of all of the material and mental elements constituting the crime. The mental state element of a crime against humanity relates to the criminal defendant's state of mind.

40. This Report does not identify alleged perpetrators. Therefore, the legal findings in this Report rely exclusively on analysis of the material elements of the crime. This approach is consistent with the practice of fact-finding missions or similar mechanisms, including the UN Panel of Experts in Sri Lanka.[35] Similarly the International Criminal Court does not examine mental elements of crimes to decide whether to authorize an investigation into a given situation.[36]

41. The sole exception is with respect to the crime of persecution as a crime against humanity, for which discriminatory intent is a material element of the crime.[37] To meet this element, this Report relies on policies devised by military and civilian leaders, as is consistent with ICC practice in authorizing an investigation into the crime of persecution.[38]

---

[34] The definition of the underlying act of torture adopted under the Rome Statute differs from—and is somewhat broader than—the definition of torture under CIL, *see infra* note 232. Paragraph 159 examines the fulfilment of the legal requirements under both the Rome Statute and CIL.
[35] POE Report, *supra* note 1, ¶¶ 244-245
[36] Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya (ICC-01/09), Pre-Trial Chamber II, 31 March 2010, ¶ 79 [hereinafter Decision Pursuant to Article 15 (Kenya)]
[37] Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute, *Prosecutor vs. William Samoei Ruto and Joshua Arap Sang* (ICC-01/09-01/11-373), Pre-Trial Chamber II, 23 January 2012, ¶ 280
[38] *See,* Decision Pursuant to Article 15 (Kenya), *supra* note 36

42. Finally, for an act to amount to a crime against humanity, it must be part of an attack against a civilian population and the perpetrator must know that the act was part of that attack.[39] This knowledge element is not examined in the Report for the same reasons as explained in paragraph 40 above.

[39] *See,* Elements of Crimes, ISBN No. 92-9227-232-2, p. 5

II. CONTEXTUAL ELEMENTS OF CRIMES AGAINST HUMANITY

43. As set forth above, the Rome Statute defines a "crime against humanity" as the "multiple commission" of enumerated underlying acts "when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack" and "pursuant to or in furtherance of a State or organizational policy to commit such an attack".[40]

44. Thus, there are four contextual elements (known as *chapeau* elements) to establish a crime against humanity. These are:

- An attack pursuant to a State or organizational plan or policy
- The attack is directed against any civilian population
- The attack is widespread or systematic
- Nexus between underlying act and the attack

45. The *chapeau* elements in customary international law have been elucidated by a number of domestic, hybrid and international courts, including the International Criminal Tribunal for former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR). As explained in Paragraph 37, the definition of a crime against humanity pursuant to the Rome Statute and the ICC's Elements of Crimes document depart from CIL, at least in some respects. Nevertheless, the ICC recognizes that the "rules and principles of international law" may be used to interpret the textual requirements contained in the Rome Statute, where relevant.[41]

[40] Rome Statute of the International Criminal Court, *supra* note 30, articles 7(1) & 7(2)
[41] Rome Statute of the International Criminal Court, *supra* note 30, article 21(1)(b)

A. An Attack Pursuant to a State Plan or Policy

1. Existence of an Attack

a. Legal Requirements

46. For underlying acts enumerated under article 7(1) of the Rome Statute to qualify as crimes against humanity, they must be part of an attack against any civilian population.

47. The attack itself encompasses any mistreatment of the civilian population and "need not constitute a military attack".[42] Although the ICTY Statute limits the application of crimes against humanity to crimes committed "in armed conflict",[43] that Tribunal has unequivocally recognized that a nexus to armed conflict is not a requirement of CIL.[44] Likewise, the ICTR has recognized that an attack need not be "violent in nature", and may include situations such as a "system of apartheid [...] or exerting pressure on the population to act in a particular manner".[45] The Elements of Crimes document recognizes that the term refers to "a campaign or operation carried out against the civilian population".[46]

48. Under the Rome Statute, the attack consists of a course of conduct involving the multiple commission of acts delineated in Article 7(1), though it need not be exclusively constituted by such acts.[47]

b. There is Credible Evidence of an Attack in the Northern Province

49. Based on the field research and desk research undertaken, this Report records credible allegations that, between May 2009 and December 2013, officials and agents of the Sri Lankan government committed a "campaign or operation" of underlying acts enumerated in paragraph 1 of Article 7 of the Rome Statute, which are set out in Part III

---

[42] Elements of Crimes, *supra* note 39, p.5
[43] Rome Statute of the International Criminal Court, *supra* note 30, article 5
[44] Judgment*, Prosecutor vs, Galic*, (IT-98-29-T), Trial Chamber, 5 December 2003, ¶ 141; Judgment*, Prosecutor vs. Limaj et al.* (IT-03-66-T),Trial Chamber, 30 November 2005, ¶ 194; Judgment, *Prosecutor vs. Kunarac et al.* (IT-96-23 & 23-/1-A), Appeals Chamber, 12 July 2012, ¶ 86 ("[T]he attack in the context of a crime against humanity is not limited to the use of armed force; it encompasses any mistreatment of the civilian population.")
[45] Judgment*, Prosecutor vs. Akayesu*, (ICTR-96-4-T),Trial Chamber, 2 September 1998, ¶ 581
[46] Elements of Crimes, *supra* note 39, p.5
[47] Decision Pursuant to Article 61(7)(a) and(b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo, *Prosecutor vs. Jean-Pierre Bemba Gombo* (ICC-01/05-01/08), Pre-Trial Chamber II, 15 June 2009, ¶ 75

of this Report. If proven, the multiple commission of these underlying acts would constitute an attack.

50. This attack has taken place over a period of nearly five years. This is not an unusually long period relative to other cases in which criminal prosecutions have followed. For instance, the Extraordinary Chambers of the Courts of Cambodia accepted the prosecution's claim that the attack was carried out over a period of nearly four years.[48] Moreover, in the case of Sudan, the Pre-Trial Chamber affirmed the prosecution's characterization of the attack as one that was carried out over a period of more than five years.[49]

2. **In Pursuance of State or Organizational Plan or Policy**

a. Legal Requirements

51. Under the Rome Statute, the attack on the civilian population must be committed "pursuant to or in furtherance of a State or organizational policy to commit such attack". The Elements of Crimes elaborates on this requirement, explaining:

> [i]t is understood that "policy to commit such an attack" requires that the State or organization actively promote or encourage such an attack against a civilian population.[50]

52. The Elements of Crimes document further states:

> A policy which has a civilian population as the object of the attack would be implemented by State or organizational action. Such a policy may, in exceptional circumstances, be implemented by a deliberate failure to take action, which is consciously aimed at encouraging such attack. The existence of such a policy cannot be inferred solely from the absence of governmental or organizational action.[51]

53. In *Gombo*, Pre-Trial Chamber II explained that the requirement of "a State or organizational policy" requires that the attack "follows a regular pattern" and is "planned, directed, or organized—as opposed to spontaneous or isolated acts of violence":

---

[48] Judgment, *Prosecutor vs. Kaing Guek Eav alias Duch,* (001/18-07-2007/ECCC/TC), Trial Chamber*,* 26 July 2010, ¶ 320

[49] Decision on the Prosecution's Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir, *The Prosecutor vs. Omar Hassan Ahmad Al Bashir* (ICC-02/05-01/09-3), Pre-Trial Chamber I, 4 March 2009, ¶ 39

[50] Elements of Crimes, *supra* note 39, p. 5

[51] *Ibid.*, note 6

> [t]he requirement of "a State or organizational policy" implies that the attack follows a regular pattern. Such a policy may be made by groups of person who govern a specific territory or by any organization with the capability to commit a widespread or systematic attack against a civilian population. The policy need not be formalised. Indeed, an attack which is planned, directed, or organized—as opposed to spontaneous or isolated acts of violence—will satisfy this criterion.[52]

54. In the case of a "State policy", the policy does not necessarily need to have been conceived "at the highest level of the state machinery".[53] Thus, a policy conceived even at provincial or local levels would satisfy the 'plan or policy' requirement.

55. The presence of the policy elements can be gathered from the totality of the circumstances. Significant evidence includes actual events, political platforms or writings, public statements or propaganda programs and the creation of political or administrative structures.[54]

b. There is Credible Evidence that the Attack in the Northern Province is Committed in Pursuance of a State Plan or Policy

i. Characterisation and Evidence of the Policy

56. The attack described in paragraph 49 is perpetrated in pursuance of a coordinated policy to centralize control over aspects of Tamil civil and political life in the Northern Province and repress the pursuit of Tamil political aspirations, including through resort to violence and deprivation of fundamental rights.[55] Since the war's end in May 2009, the Sri Lankan government has repressed efforts among Tamils to obtain a greater voice in regional politics in the Northern Province, by invariably treating such efforts as threats to security and sovereignty. As discussed in greater detail below, the government has

---

[52] Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo, *Prosecutor vs. Jean-Pierre Bemba Gombo* (ICC-01/05-01/08-424), Pre-Trial Chamber II, ¶ 81 (footnotes omitted). See also Judgment, *Prosecutor vs. Tadic* (IT-94-1-T), Trial Chamber, 7 May 1997, ¶ 653; R. Dixon, C. K. Hall, "Article 7", in Triffterer, Otto, and Kai Ambos. *Commentary on the Rome Statute of the International Criminal Court: Observers' Notes, Article by Article*. München: C.H. Beck, 2008, p. 236 [hereinafter Triffterer, Otto, and Kai Ambos. *Commentary on the Rome Statute of the International Criminal Court*]

[53] Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya (ICC-01/09), Pre-Trial Chamber II, 31 March 2010, ¶ 89; Judgment, *Prosecutor vs. Blaskic*, (IT-95-14-T) Judgment, Trial Chamber, 3 March 2000, ¶ 205.

[54] Judgment, *Prosecutor vs. Blaskic* (IT-95-14-T), Trial Chamber, 3 March 2000, ¶204 and following

[55] *See, e.g.,* R Sampanthan, 22nd August 2012, Parliamentary Debates Hansard Vol 210-9, pp.1276 - 1267: "But, one of your Ministers, the Hon. Patali Champika Ranawaka has given an interview where he has clearly stated his position. He states, '……..It is the old paradigms that believed in political solutions. The vocabulary even exists only within the NGOs and the INGOs and embassy officials of western nations. This will ensure that the dream of Tamil Eelam of the TNA […] will not be realized when our approach works'."

characterized Tamil non-violent demands for devolution, federalism, and greater political power as "separatist" or "terrorist" and deemed such views a threat to national security, justifying violent suppression.

57. To provide necessary context for the government's policy, paragraphs 58 to 60 describe the landscape of Tamil political aspirations in the Northern Province. While the following discussion is necessary to contextualize the government policy to 'centralize control over aspects of Tamil civil and political life in the Northern Province and repress the pursuit of Tamil political aspirations', the research team does not endorse or support any particular political position or demand presented below in paragraphs 58 to 60.

58. While there is significant diversity of political opinions and aspirations within Tamils in Sri Lanka, the demand for a greater degree of regional autonomy, including but going beyond the full implementation of the Thirteenth Amendment to the Sri Lankan Constitution—which introduced a limited form of devolution while preserving the unitary structure of the state—is a defining factor in Tamil political life.[56]

59. The dispute over the issue of devolution lies at the heart of the ethnic conflict in Sri Lanka. From shortly after the country attained independence until the mid-1970's, Tamil political leaders led a non-violent movement for greater regional autonomy. When these efforts failed—cumulating in the entrenchment of the unitary character of the state in 1972—a number of Tamil youth joined Tamil militant organisations, leading to the outbreak of a three-decade war.[57] The LTTE, the dominant Tamil militant group, was wedded to the demand for a separate sovereign state for Tamils in the North and East,[58] although it briefly expressed willingness to explore the possibilities of a federal solution during several rounds of structured dialogue with the government in 2002.[59] In the

---

[56] *See generally,* Cheran, R. Pathways of Dissent: Tamil Nationalism in Sri Lanka. New Delhi, India: SAGE, 2009; Wilson, A J. Sri Lankan Tamil Nationalism: Its Origins and Development in the Nineteenth and Twentieth Centuries. Vancouver: UBC Press, 2000. The Thirteenth Amendment to the Sri Lankan Constitution was introduced as a follow up to the 1987 Indo-Sri Lankan Accord in an effort to explore political solutions to the ethnic conflict. The Amendment provides for the creation of provincial councils in each of nine provinces, a mechanism enabling the merger of two or more provinces and delineation of powers between the central government and the provinces. However, the Thirteenth Amendment functions within the unitary structure of the constitution, whereby the centre is supreme and devolved units are subsidiaries. The Thirteenth Amendment has never been implemented in full. The initial north-eastern provincial council was dissolved in 1990. In 2006, the Supreme Court of Sri Lanka "demerged" the Northern and Eastern Provinces. There was no functioning provincial council in place between 1990 and 2008, when the Eastern Province held provincial council elections. The Northern Provincial Council, led by the Tamil National Alliance, was elected in 2013.

[57] Cheran, R. Pathways of Dissent: Tamil Nationalism in Sri Lanka. New Delhi, India: SAGE, 2009

[58] *See e.g.,* Balasingham, A S. The Politics of Duplicity: Re-visiting the Jaffna Talks. Mitcham: Fairmax, 2000

[59] 'Norway's Peace Effort in Sri Lanka: Third Session', 2 – 5 December 2002, at http://www.norway.lk/News_and_events/Relations-between-Norway-and-Sri-Lanka/Peace-Process/peace/third/#.UwMWX_ldVe8 [last accessed 7 February 2014]: "Responding to a proposal by the

aftermath of the war, Tamils in the North and East have overwhelmingly supported the TNA, which rejects violence, eschews the demand for a separate state and seeks a federal solution.[60]

60. All major Tamil political parties—except parties within the governing coalition such as the EPDP and TMVP[61]—demand increased devolution beyond the Thirteenth Amendment of the Constitution. The Tamil National Alliance (TNA)—the electorally dominant alliance of five political parties—continues to articulate a vision for a federal form of government and extensive power sharing between the centre and provinces.[62] Meanwhile the Tamil National People's Front (TNPF)—the second largest opposition Tamil party—has been critical of the TNA's negotiations with the government, and insisted that any negotiations be contingent on prior acknowledgement of the right to self-determination and nationhood of Tamils.[63]

61. As noted above, the policy described in paragraph 56 to centralize control over aspects of Tamil civil and political life in the Northern Province and repress Tamil political aspirations is evidenced primarily by the Sri Lankan government's constant characterization of these aspirations as being synonymous with terrorism, which in turn necessitates suppression. For instance, Major General Mahinda Hathurusinghe has referred to the continuation of a 'terrorist mindset' among Tamils in the Nothern Province.[64] Similarly, a military spokesman has described the prevalence of a threat to

---

leadership of the LTTE, the parties agreed to explore a solution founded on the principle of internal self-determination in areas of historical habitation of the Tamil-speaking peoples, based on a federal structure within a united Sri Lanka. The parties acknowledged that the solution has to be acceptable to all communities."

[61] 'TMVP demands 13th amendment', *Daily Mirror*, 10 March 2010, at http://www.dailymirror.lk/news/2264-tmvp-demands-for-13th-amendment.html [last accessed 7 February 2014]; 'Devananda says solution based on 13th amendment', *Sunday Leader,* 9 July 2011, at http://www.thesundayleader.lk/2011/07/09/devananda-says-solution-based-on-13th-amendment/ [last accessed 7 February 2014]

[62] *See, e.g.*, Colombo Telegraph, 'Full Text: TNA's Northern Provincial Council Election Manifesto – 2013', 3 September 2013, at https://www.colombotelegraph.com/index.php/full-text-tnas-northern-provincial-council-election-manifesto-2013/ [last accessed 7 February 2014]; Tamil National Alliance, 'Tamil National Alliance, Full Text: General Election 2010 Manifesto', *Transcurrents,* 12 March 2010, at http://transcurrents.com/tc/2010/03/full_text_general_election_201.html [last accessed 7 February 2014]

[63] "TNPF press Conference in Jaffna on 13 May" at https://www.youtube.com/watch?v=_GM4AHp0N1s&list=PLnkMxkZnA0gg5dbrqOz5Lapm9CFZH85EO [last accessed 24 February 2014]

[64] *See, e.g.*, Camelia Nathaniel, 'We Have No Role In Politics – Maj. Gen. Mahinda Hathurusinghe', *Sunday Leader*, 15 September 2013, at http://www.thesundayleader.lk/2013/09/15/we-have-no-role-in-politics-maj-gen-mahinda-hathurusinghe/[last accessed 7 February 2014]. Maj. Gen. Hathurusinghe: "Prabhakaran's ideology caught on to a vast majority as he too was not of the upper caste Tamils. They used this as their platform to convert people to their terrorist mindset and that still prevails in some as they identified with him. These are all politics. The distance between the South and North was further strained and widened. It is very difficult to undo this overnight and it takes time for their suspicions and concerns to change given the brainwashing they have been through to think that Southerners are not willing to share power with the Tamils, and their dream of a separate state. Although we have

national security in the form of a 'separatist ideology' among Tamils within and outside the country.[65] Moreover, President Rajapaksa himself acknowledged that "federalism is a negative word in Sri Lanka because people think it synonymous with dividing the country".[66] Thus, the gamut of shades of political opinion situated along the devolution-secession continuum are characterized by the government and military as 'separatist' or 'terrorist', and deemed a threat to national security; thus necessitating suppression.[67]

ii. Implementation of the Policy by Resorting to Violence or Deprivation of Fundamental Rights

62. The policy to centralize control over all aspects of Tamil civil and political life in the Northern Province and repress the pursuit of Tamil political aspirations, is pursued through discrete but interlinked strategies all involving resorting to violence or deprivation of fundamental rights.[68] These include:[69]

---

defeated terrorism, the ideology is very much engraved in their minds; it is not impossible to erase that, but it takes time."

[65] Camelia Nathaniel, 'Army Denies its Presence is Responsible for Insecurity of Northern Women', *Sunday Leader,* 13 October 2013, at http://www.thesundayleader.lk/2013/10/13/army-denies-its-presence-is-responsible-for-insecurity-of-northern-women/ [last accessed 7 February 2014]

[66] *See, e.g.*, Inderjit Badwar, 'I am not a Sinhala chauvinist but a Sri Lankan nationalist - Mahinda Rajapakse', *Asian Tribune*, 20 September 2007, at http://www.asiantribune.com/node/7435 [last accessed 7 February 2014]

[67] *See,* 'Defence sec. opposed to police powers for PCs', *Daily Mirror*, 24 May 2013, at http://www.dailymirror.lk/news/29876-defence-sec-opposed-to-police-powers-for-pcs.html [last accessed 7 February 2014]; Meera Srinivasan, 'Gotabaya Rajapaksa opposes holding of NPC elections', 26 May 2013, *The Hindu*, at http://www.thehindu.com/news/international/south-asia/gotabaya-rajapaksa-opposes-holding-of-npc-elections/article4749705.ece [last accessed 7 February 2014]

[68] The government perceives a number of activities, behaviours, or expressions as 'strategies' to advance separatism. In response, the government has devised strategies, all involving resorting to violence or deprivation of fundamental rights to repress Tamil political aspirations–perceived as separatist–and centralize control over aspects of Tamil civil and political life. For example, Defence Secretary Gotabhaya Rajapaksa stated in 2013: "Their intention is the division of Sri Lanka and the establishment of a separate state for Tamil Eelam. There are several strategies through which they will try to achieve their objective. These include winning of international opinion for the separatist cause, increasing international pressure on Sri Lanka, undermining the Government's efforts for reconciliation and economic development, and pushing for the resumption of conflict through reorganizing local militant activities in Sri Lanka." Ministry of Defense and Urban Development, 'Full Text of the Speech delivered by Secretary Defence at the 'Defence Seminar 2013' on 03rd September 2013 at the Galadari Hotel in Colombo', 3 September 2013, at http://www.defence.lk/new.asp?fname=full_text_Post_Conflict_Sri_Lanka_Challenges_20130903 [last accessed 21 February 2014].

[69] The policy to conduct the attack may be composed of several limbs as it was the case in Kenya, see Document containing the charges, *Prosecutor vs. William Samoei Ruto and Joshua Arap Sang* (ICC-01/09-01/11-261-AnxA), Pre-Trial Chamber II, 15 August 2011, ¶ 41. However each of the limbs must aim at committing an attack against the population, *see* Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute, *Prosecutor vs. William Samoei Ruto and Joshua Arap Sang*, (ICC-01/09-01/11-373), Pre-Trial Chamber II, 23 January 2012, ¶ 273. The research team is cognizant of the controversy over the construction of the organizational policy element in the Kenya ICC cases. However, those issues are immaterial to the analysis here, where a State policy is at

1) Targeting members of the population having had connections with, or perceived as having had connections with, the LTTE; and those espousing or perceived as espousing Tamil nationalist claims;[70]

2) Targeting members of the population involved in or perceived as being involved in mobilizing international opinion on accountability issues and human rights issues concerning Tamils in Sri Lanka;[71]

3) Targeting members of the population defiant of, or perceived as being defiant of the government and military, and those involved in protests against the government and military;[72]

4) Establishing a heavy and permanent military presence in the Northern Province, including through the mass appropriation of private lands.[73]

63. Each of these strategies is carried out through the multiple commission of underlying acts enumerated in Article 7(1) of the Rome Statute, as set forth in Part III. These acts collectively constitute an attack directed against the Tamil civilian population of the Northern Province. Taken together, these strategies aim at repressing Tamil political aspirations described in paragraphs 58 to 60 and at centralizing control over all aspects of Tamil civil and political life in the Northern Province.

64. The first strategy of the policy—the targeting of those perceived to have had connections with the LTTE, or those espousing Tamil nationalist claims—is employed to deter victims and other members of the population from advancing Tamil political aspirations.[74] Persons having connections with the LTTE—perceived or real—are regarded by the government to be those most likely to sustain continued demands for

---

issue. The following list is not intended to be an exhaustive list of the strategies pursued by the government and military that involves the alleged commission of crimes. Instead the claim made by this report is merely that credible allegations of underlying acts committed in the course of pursuing the enumerated strategies–if proven–point to the commission of crimes against humanity.

[70] *See,* ¶¶ 136, 162, 184, 203, 224

[71] *See,* ¶¶ 163, 204, 225

[72] *See,* ¶¶ 164, 185, 215, 225

[73] *See,* ¶¶ 268

[74] *See also generally*, 'Dy Minister calls for ban on TNA', *Island,* 18 December 2013, at http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=94313 [last accessed 7 February 2014]; 'MOD ponders rehabilitating NPC member Ananthi', *Island,* 14 January 2014, at http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=95913 [last accessed 7 February 2014]; Human Rights Watch, 'Legal Limbo: The Uncertain Fate of Detained LTTE Suspects in Sri Lanka', February 2010, at http://www.hrw.org/sites/default/files/reports/srilanka0210webwcover.pdf [last accessed 11 February 2014]; Human Rights Watch, 'We will teach you a lesson', supra note 5

secession.[75] Those espousing or perceived to be espousing Tamil nationalist claims include members and supporters of the TNA or members and supporters of the TNPF;[76] journalists supportive of regional autonomy for Tamils;[77] and leaders of student unions from the University of Jaffna.[78] While there may be differences between these groupings on the degree of autonomy desired and the means of struggle employed, they all represent political shades of opinion urging, at the very least, a departure from the unitary state structure entrenched by the Sri Lankan constitution. As discussed above, the government and security forces target these disparate groups in like manner, as a separatist threat to national security requiring suppression.

65. As evidenced by the discussion in Part III, these underlying acts have occurred at periodic intervals between 2009 and 2013. The most recurrent acts committed in pursuance of this strategy are rape, torture, other inhuman acts or causing serious injury, imprisonment and persecution.[79] There are also credible allegations of enforced disappearances.[80]

66. The second strategy of the policy is that of targeting those involved in or perceived as being involved in mobilizing international opinion with respect to accountability and human rights issues.[81] This includes those involved in collecting information regarding human rights abuses and atrocities against Tamils;[82] those involved in disseminating information regarding human rights abuses and atrocities against Tamils to the international community;[83] and Tamils returning to Sri Lanka after being involved in Tamil political or human rights activism outside the country.[84] Government and military officials have consistently asserted that growing international pressure on human rights

---

[75] For incidents where persons having perceived or real connections with the LTTE are targeted, *see,* ¶¶ 97-128, 143, 144, 146-152, 154, 194-195
[76] *See,* ¶¶ 172, 179, 191
[77] *See,* ¶¶ 173, 174, 180
[78] *See,* ¶¶ 175-178
[79] *See,* ¶¶ 136, 162, 184, 203, 268
[80] *See,* ¶ 224
[81] *See*, 'Navi Pillay warns Lanka for reprisals against rights defenders', *Hindu,* 9 September 2013, at http://www.thehindu.com/news/international/south-asia/navi-pillay-warns-lanka-for-reprisals-against-rights-defenders/article5109741.ece [last accessed at 7 February 2014]; 'Mannar Bishop Concerned', *Sunday Leader,* 24 November 2013, at http://www.thesundayleader.lk/2013/11/24/mannar-bishop-concerned/ [last accessed 7 February 2014]; Navi Pillay, 'Opening Remarks at Press Conference in Colombo, Office of the High Commissioner for Human Rights', 31 August 2013, at http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13673&LangID=E [last accessed 11 February 2014].
[82] *See,* ¶ 221
[83] *See,* ¶ 196
[84] *See,* ¶ 163

and accountability issues are part of a conspiracy to divide the country.[85] Individuals contributing to international pressure on Sri Lanka's record are thus perceived by the government as being motivated by a desire to ensure a measure of autonomy for Tamils.[86]

67. The most recurrent underlying acts committed in pursuance of this particular strategy of the policy are torture, imprisonment, and persecution.[87] There are some credible allegations of enforced disappearance.[88]

68. The third strategy of the policy outlined by this Report is the targeting of those defiant or perceived as being defiant of the government and military[89] and those involved in protesting the government and military.[90] This strategy is aimed at exerting significant control over the population; imposing heavy costs on those who are perceived as intransigent; and discouraging mobilizations by those opposed to the government and military.[91] This strategy is designed to stultify any mass mobilization of people in the Northern Province capable of challenging the dominance of the military and government in social, cultural, personal and political life, and thus undermines the pursuit of Tamil political aspirations.

69. The most recurrent underlying acts committed in pursuance of this particular strategy of the policy are torture, other inhuman acts, murder, and persecution.[92] There are some credible allegations of enforced disappearance.[93]

---

[85] Ministry of External Affairs Sri Lanka, 'Sri Lanka is still under threat - warns Secretary Defence', at http://www.mea.gov.lk/index.php/news-from-other-media/3266-sri-lanka-is-still-under-threat-warns-secretary-defence [last accessed 7 February 2014]

[86] Ministry of External Affairs Sri Lanka, 'Sri Lanka is still under threat - warns Secretary Defence', at http://www.mea.gov.lk/index.php/news-from-other-media/3266-sri-lanka-is-still-under-threat-warns-secretary-defence [last accessed 7 February 2014]; *see also* Rear Admiral Dr. Sarath Weerasekara, Deputy Minister of Labour and Labour Relations, Parliamentary Debates, Hansard Volume 216-2, p. 330, 6 March 2013: "There is a diabolical attempt[on the part of TNA Members of Parliament] to distort the real picture and give a wrong picture to the international community with ulterior motives. One of their objectives can be the seeking of foreign funds to resuscitate the LTTE by spreading the untruth that Tamil people in the North are not looked after properly." (informally translated from Singhalese)

[87] *See,* ¶¶ 163, 204, 268

[88] *See,* ¶ 221

[89] *See,* ¶¶ 145, 192, 212, 213

[90] *See,* ¶¶ 145, 177, 193

[91] *See generally*, Amnesty International, Assault on Dissent Report, *supra* note 7; Tamil Guardian, 'Sri Lanka to prosecute LLRC critics', 23 December 2011, at http://www.tamilguardian.com/article.asp?articleid=4144 [last accessed 11 February 2014].

[92] *See,* ¶¶ 164, 185, 215, 268

[93] *See,* ¶ 225

70. The fourth strategy of the policy identified by this Report is that of establishing a heavy and permanent military presence in the Northern Province, including by the mass scale appropriation of private lands for military purposes.[94] The purpose of this strategy is to provide the infrastructure necessary for the military to control the local population and pursue the aim of the attack by executing the other strategies of the attack. The massive military presence in the Northern Province is used to maintain control over the population[95] and thwart mobilizations by members of the population;[96] intimidate, conduct surveillance and gather intelligence on those opposed to the government;[97] depress voter turnouts at elections;[98] support and facilitate the government program to settle Sinhalese in the Northern Province;[99] control the flow of information regarding human rights violations and other abuses, including crimes committed during the last stages of the war, out of the Northern Province;[100] and entrench the military in the

---

[94] *See,* ¶¶ 237-247. *See also generally,* International Crisis Group, Sri Lanka's North II Report, *supra* note 4; Center for Policy Alternatives, 'Policy Brief: Politics, Policies and Practices with Land Acquisitions and Related Issues in the North and East of Sri Lanka', November 2013, at http://www.cpalanka.org/policy-brief-politics-policies-and-practices-with-land-acquisitions-and-related-issues-in-the-north-and-east-of-sri-lanka/ [last accessed 11 February 2014]

[95] *See, generally*, Tamil National Alliance, 'Situation Report: North and East Sri Lanka', 21 October 2011, at http://www.sangam.org/2012/02/TNA_SituationReport.pdf [last accessed 7 February 2014], pp. 12-17; International Crisis Group, Sri Lanka's North I Report, *supra* note 5, pp. 8-12; International Crisis Group, Sri Lanka's North II Report, *supra* note 4, pp.4-5;

[96] *See, e.g.*, 'TNA meeting in north Lanka attacked, 13 injured', *The Hindu*, 30 March 2013, at http://www.thehindu.com/news/international/south-asia/tna-meeting-in-north-lanka-attacked-13-injured/article4564517.ece [last accessed 7 February 2014]; 'Tamils protest at Nelliyadi amidst Army presence', *Tamil Guardian*, 18 July 2012, http://www.tamilguardian.com/article.asp?articleid=5305 [last accessed 7 February 2014]; 'Military personals carried out attack against peaceful protest campaign at Thellipalai area', *LankaSri News*, 19 June 2012, at http://www.lankasrinews.com/view.php?22BmSac2MA34eSY5303lOSdd3Oln20T5Y3e4oMCca3mBB2 [last accessed 7 February 2014]

[97] *See, e.g.*, 'TNA Captures Military Intelligence In Action', *Colombo Telegraph*, 16 November 2013 https://www.colombotelegraph.com/index.php/tna-captures-military-intelligence-in-action/ [last accessed 7 February 2014]; 'EPDP – Army intelligence suspected of attacks in Jaffna to terrorise TNA candidates', *D.B.S. Jeyaraj*, 11 July 2011, at http://dbsjeyaraj.com/dbsj/archives/2550 [last accessed 7 February 2014]

[98] *See, e.g.*, Namini Wijedasa, 'Heavy and peaceful poll in Jaffna: TNA victory expected', *Sunday Times*, 22 September 2013, at http://www.sundaytimes.lk/130922/news/heavy-and-peaceful-poll-in-jaffna-tna-victory-expected-63444.html [last accessed 7 February 2014]; 'Northern Provincial Election 2013: Mainstream print media front-Page coverage', *Centre for Policy Alternatives*, 22 and 23 September 2013, at http://www.cpalanka.org/wp-content/uploads/2013/10/Northern-Provincial-Election-2013-Media-Monitoring.pdf [last accessed 7 February 2014]

[99] *See, e.g.*, 'New Sinhala colony on state land in Navatkuli?', *Vimarsanam-Vimansa*, 15 March 2013, at http://vimarsanam-vimansa.org/report/new-sinhala-colony-on-state-land-in-navatkuli/ [last accessed 7 February 2014]; WATCHDOG 'State Facilitated Colonization of Northern Sri Lanka – 2013', *Groundviews*, 19 September 2013, at http://groundviews.org/2013/09/19/state-facilitated-colonization-of-northern-sri-lanka-2013/ [last accessed 7 February 2014]

[100] *See,* ¶¶ 221

economy of the North.[101] Each of these purposes is aimed at undermining the pursuit of Tamil political aspirations. While restricting political mobilization by the population and conducting surveillance are direct forms of preventing the emergence of stronger political activism, the military is also indirectly forestalling the political aspirations of Tamils by attempting to ensure that the Northern economy is controlled by the military. The military is currently a major player in tourism, crop cultivation and farming.[102] The military also runs hundreds of retail outlets in the North, particularly on the main A9 arterial road linking the North to the rest of the country.[103] By controlling large parts of the Northern economy, the military is in a position to create the conditions for the economic dependency of Tamils on the military, thereby impeding the sustained pursuit by Tamils of their political aspirations described in paragraphs 58 to 60.

71. In pursuance of this fourth strategy, the government has facilitated the occupation by the military of thousands of square-kilometres of private lands, resulting in protracted displacement and loss of livelihoods for thousands of Tamils.[104] In light of this, the most recurrent underlying acts committed under this particular strategy is persecution.

iii. A policy Devised and Planned at the Highest Levels of the Sri Lankan Government and Military Hierarchy

72. The policy described in paragraph 56 above is evidenced by public statements by government officials and military officers.[105] The four strategies described in paragraphs 62 to 71 are implemented by military personnel and other state agents. The highly centralized nature of the government apparatus,[106] the consolidation of power in the Rajapaksa family,[107] and the structured military hierarchy under which the military

---

[101] *See, e.g.*, 'Military hampering Northern economy - EU delegation', *Tamil Guardian*, 19 July 2013, at http://www.tamilguardian.com/article.asp?articleid=8338 [last accessed 7 February 2014]; R.M.B.Senanayake, 'How has Northern Province economy fared since the end of the war in 2009?', *D.B.S. Jeyaraj*, 10 June 2012, at http://dbsjeyaraj.com/dbsj/archives/7035 [last accessed 7 February 2014]

[102] *See, e.g.*, International Crisis Group, Sri Lanka's North II Report, *supra* note 4, p. 22

[103] *Ibid.*, p. 23; *see also* M.A. Sumanthiran, 'Militarization of North and East: Most Serious Problem Faced by People in the North-East on a Day to Day Basis is that of Militarisation', *Sri Lanka Guardian,* 28 January 2012, at http://www.srilankaguardian.org/2012/01/militarization-of-north-and-east.html [last accessed 7 February 2014]; C.V. Wigneswaran, 'Engagement With Diaspora, Accelerated Provincial Development: The Way Forward', *Colombo Telegraph*, 13 February 2014, at https://www.colombotelegraph.com/index.php/engagement-with-diaspora-accelerated-provincial-development-the-way-forward/[last accessed on 18 February 2014]

[104] *See,* ¶ 237-247

[105] *See,* ¶ 61 and *supra* notes 55, 64, 66, 67, 68, 74, and 76.

[106] *See generally,* International Crisis Group, 'Sri Lanka's Authoritatian Turn: The Need for International Action', 20 February 2013 at http://www.crisisgroup.org/~/media/Files/asia/south-asia/sri-lanka/243-sri-lankas-authoritarian-turn-the-need-for-international-action.pdf [last accessed on 7 February 2013]

[107] *Ibid.*

functions points to these underlying acts being committed pursuant to policies conceived at the highest levels of the government and military.

3. **Attack Directed "Against the Civilian Population"**

a. Legal Requirements

73. The attack must be directed "against the civilian population." As the ICTY has held, this element requires proof that the attack was directed against a specific population, rather than against random individuals:

> The use of the word 'population' does not mean that the entire population of the geographical entity in which the attack is taking place must have been subjected to that attack. It is sufficient to show that enough individuals were targeted in the course of the attack, or that they were targeted in such a way as to satisfy the Chamber that the attack was in fact directed against a civilian 'population,' rather than against a limited and randomly selected number of individuals."[108]

b. There is Credible Evidence that the Attack is Directed Against the Tamil Population of the Northern Province

74. The attack described in paragraph 49 is against the Tamil civilian population of the Northern Province. This is evidenced by a number of factors. The policy pursuant to which the attack is committed aims at repressing Tamil political aspirations by violent means. Thus, the attack, which consists of a number of underlying acts, is in effect carried out against the Tamil civilian population as whole.

75. The underlying acts against the Tamil civilian population are connected, not random. They are committed against members of the population perceived as having supported, supporting, providing leadership to, enabling, or otherwise being potentially useful to the population's political aspirations. Acts involving militarization in the Northern Province are directed at the Tamil civilian population as a whole, on account of the ethnicity and (perceived) political orientation of the entire population.

76. The research team acknowledges the possibility that the policy to attack may in fact be targeted at the entire Tamil population in Sri Lanka, or alternatively, the Tamil civilian population in the Northern and Eastern Provinces. However, the Report only examines allegations committed in the Northern Province or in respect of persons from the

---

[108] Judgment, *Prosecutor vs. Kunarac et al.* (IT-96-23 & 23-/1-A), Appeals Chamber, 12 July 2012, ¶ 90; Judgment, *Prosecutor vs. Blaskic* (IT-95-14-A), Appeals Chamber, 29 July 2004, ¶ 95

Northern Province. Thus, the research team is unable to, and did not, consider the existence of an attack of broaders scope than described in this Report.

B. Widespread or Systematic Nature of the Attack

77. To constitute a crime against humanity, the attack must be either widespread or systematic, but not necessarily both. In conformance with ICTY and ICTR jurisprudence,[109] the ICC has read the phrase 'widespread or systematic' disjunctively, according to its plain meaning.[110]

1. Widespread

a. Legal Requirements

78. The term 'widespread' refers to both the large-scale nature of the attack and the number of resultant victims.[111] The attack must therefore be "massive, frequent, carried out collectively with considerable seriousness and directed against a multiplicity of victims".[112] The Pre-Trial Chamber, however, specifies that "the assessment is neither exclusively quantitative nor geographical, but must be carried out on the basis of the individual facts".[113] Accordingly, a widespread attack may be the "cumulative effect of a series of inhumane acts or the singular effect of an inhumane act of extraordinary magnitude".[114]

---

[109] Judgment, *Prosecutor vs. Kunarac et al.* (IT-96-23 & 23/1-A), Appeals Chamber, 12 July 2012, ¶¶ 93, 97; Judgment, *Prosecutor vs. Muvunyi* (ICTR-2000-55A-T), Trial Chamber, 12 September 2006, ¶ 512

[110] Application on behalf of Henry Kiprono Kosgey Pursuant to Article 19 of the ICC Statute, *Prosecutor vs. William Samoei Ruto, Henry Kiprono Kosgey And Joshua Arap Sang* (ICC-01/09-01/11), Pre-Trial Chamber II, 30 August 2011, ¶ 24

[111] Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya (ICC-01/09), Pre-Trial Chamber II, 31 March 2010, ¶95

[112] *Ibid.*; Decision on the confirmation of charges, *Prosecutor vs. Germain Katanga and Mathieu Ngudjolo Chu* (ICC-01/04-01/07-717), Pre-Trial Chamber I, 30 September 2008 , ¶¶ 395 &398; Judgment, *Prosecutor vs. Akayesu*, (ICTR-96-40-T), Trial Chamber, 2 September 1998, ¶ 580; Judgment, *Prosecutor vs. Blagojevic et al.* (IT-02-60-T), Trial Chamber, 17 January 2005, ¶ 545

[113] Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya (ICC-01/09), Pre-Trial Chamber II, 31 March 2010, ¶ 95

[114] *Ibid.*; Judgment, *Prosecutor vs. Blaskic* (IT-95-14-T), Trial Chamber, 3 March 2000, ¶ 206; Judgment, *Prosecutor vs. Kordic and Cerkez,* (IT-95-14/2-A), Appeals Chamber, 17 December 2004, ¶ 94; *see also* Werle, Gerhard. *Principles of International Criminal Law. The Hague*: TMC Asser Press, 2005, p. 225, ¶ 656 [hereinafter, G. Werle, *Principles of International Criminal Law*]

b. There is Credible Evidence that the Attack Against the Tamil Population of the Northern Province is Widespread

79. As detailed in Part III, the attack on the Tamil population of the Northern Province comprises hundreds of underlying acts, which were committed over a period of close to five years. Based on the desk and field research undertaken, the research team believes actual numbers to be far greater than reflected in this Report. Moreover, underlying acts were committed in each of the Districts in the Northern Province and were frequent throughout the entire period under consideration in this Report. The underlying acts victimized a large number of individuals and communities.[115] For example, the acts of persecution committed through land grabs by the military have themselves resulted in the displacement and loss of livelihoods for tens of thousands of victims, and entire villages have been kept in displacement.[116]

80. Therefore the large number of underlying acts committed; the frequency of the commission of these acts; the seriousness of the acts themselves; the broad geographical spread of the locations where the acts are committed; the victimization of a range of different segments of the population; and the large number of victims, provide credible evidence of the widespread nature of the attack.

2. **Systematic**

a. Legal Requirements

81. The term 'systematic' refers to the "organized nature of the acts of violence and the improbability of their random occurrence"[117] The ICC jurisprudence does not define a set of criteria defining 'systematic'. ICTY and ICTR jurisprudence diverge on whether a

[115] *See generally,* Part III
[116] *See,* ¶ 248
[117] Decision on the confirmation of charges, *Prosecutor vs. Germain Katanga* and *Mathieu Ngudjolo Chu* (ICC-01/04-01/07-717), Pre-Trial Chamber I, ¶ 394; Decision on the Prosecution Application under Article 58(7) of the Statute, *Prosecutor vs. Ahmad Muhammad Harun ("Ahmad Harun") and Ali Muhammad Ali Abd-Al*-Rahman (ICC-02/05-01/07-1-Corr), Pre-Trial Chamber I, 27 April 2007, ¶ 62; See also Judgment, *Prosecutor vs. Tadic* (IT-94-1-T), 7 May 1997, Trial Chamber ¶ 648; Judgment, *Prosecutor vs. Kordic and Cerkez* (IT-95-14/2-A), Appeals Chamber, 17 December 2004, ¶ 94; Judgment, *Prosecutor vs. Blaskic* (IT-95-14-A), Appeals Chamber, 29 July 2004, ¶ 101

plan or policy is required to establish the systemic nature of the attack.[118] Interpreting this jurisprudence,[119] the ICC has explained that

> [t]he term "systematic" has been understood as either an organized plan in furtherance of a common policy, which follows a regular pattern and results in a continuous commission of acts **or** as "patterns of crimes" such that the crimes constitute a "non-accidental repetition of similar criminal conduct on a regular basis."[120]

82. The first definition is inferred by the existence of a State or organizational policy.[121] As discussed above, there is a State or organizational policy behind the attack on the Tamil civilian population in the Northern Province by the Sri Lankan Government, satisfying the "systematic" element.

b. <u>There is Credible Evidence that the Attack Against the Tamil Population in the Northern Province is Systematic</u>

83. Almost all of the underlying acts detailed in Part III and forming part of the attack were committed by members of the security forces, police or government officials in the Northern Province. The continuous and recurrent commission of underlying acts against anti-government politicians, political activists and supporters; those perceived as having had connections with the LTTE; journalists critical of the government and military; those engaging in protests; and those perceived as mobilizing international pressure against the Sri Lankan government provide credible evidence of a strategy of targeting these groupings. Further, the occupation of the military in the Northern Province is undertaken in accordance with the dictates of the highest civilian and military authorities, which are reflective of government policy.[122] In addition, as detailed in paragraphs 137, 165 and 181, the *modus operandi* of most underlying acts follow similar patterns, which

---

[118] Judgment, *Prosecutor vs. Blaskic* (IT-95-14-T), Trial Chamber, 3 March 2000, ¶ 203; Judgment, *Prosecutor vs. Limaj et al.,* (IT-03-66-T), Trial Chamber, 30 November 2005, ¶ 184; Judgment, *Prosecutor vs. Akayesu* (ICTR-96-4-T), Trial Chamber, 2 September 1998, ¶ 580

[119] Judgment, *Prosecutor vs. Akayesu*, (ICTR-96-40-T), Trial Judgment, 2 September 1998, ¶ 580; Judgment, *Prosecutor vs. Kayishema*, (ICTR-95-1-T), Trial Judgment, 21 May 1999, ¶ 123; Judgment, *Prosecutor vs. Kordic and Cerkez,* (IT-95-14/2-T), Trial Chamber, 26 February 2001, ¶ 179; Judgment, *Prosecutor vs. Kordic and Cerkez,* (IT-95-14/2-A), Appeals Chamber, 17 December 2004, ¶ 94; Judgment, *Prosecutor vs. Blaskic* (IT-95-14-A), Appeals Chamber, 29 July 2004, ¶ 101; Judgment, *Prosecutor vs. Kunarac et al.* (IT-96-23&23-1-T), Trial Chamber, 22 February 2001, ¶ 580; and Judgment, *Prosecutor vs. Kunarac et al.* (IT-96-23&23-1-A), Appeals Chamber, 12 June 2002, ¶ 94

[120] Decision on the confirmation of charges, *Prosecutor vs. Germain Katanga and Mathieu Ngudjolo Chui* (ICC-01/04-01/07-717), Pre-Trial Chamber I, 30 September 2008, ¶ 397

[121] Decision on the Prosecutor's Application under Article 58, *Prosecutor vs. Bosco Ntaganda* (ICC-01/04-02/06), Pre-Trial Chamber II, 13 July 2012, ¶ 19

[122] *See,* ¶ 72

further evidences the systematic nature of the attack and the improbability of their random occurrence.[123]

84. The systematic nature of the attack is therefore evidenced by the use of state resources and personnel to carry out the attack; the organized nature of the commission of the underlying acts; the recurrent targeting of certain segments of the population; and the recurrent patterns of conduct involving the deprivation of fundamental rights. As described in detail above, the attack is pursuant to an organized policy devised at the highest levels of the Sri Lankan civilian and military leadership aimed at centralizing control over aspects of Tamil civil and political life in the Northern Province and repressing the pursuit of Tamil political aspirations, including through resort to violence and deprivation of fundamental rights.[124] Further, as detailed previously, this policy is pursued through the adoption of at least four discrete but interlinked strategies involving the commission of underlying acts enumerated in Article 7 of the Rome Statute.[125]

C. Nexus Between the Underlying Act and the Attack

85. The final chapeau element involves a nexus between the underlying act and the widespread or systematic attack against a civilian population—to constitute a crime against humanity, the underlying act must be "part of" the widespread or systematic attack.[126] In determining the existence of this nexus, consideration must be given to "the nature, aims and consequences of such act".[127] Isolated acts which clearly differ, in their nature, aims and consequences, from other acts forming part of an attack, would fall outside the scope of article 7(1) of the Statute.[128]

86. The nexus between underlying acts and the attack will be discussed in Part III under the discussion of each crime.[129]

---

[123] *See, e.g.,* Judgment*, Prosecutor vs. Limaj et al.,* (IT-03-66-T), Trial Chamber, 30 November 2005, ¶ 183 ("[T]he phrase 'systematic' refers to the organized nature of their random occurrence.")
[124] *See,* ¶ 56
[125] *See,* ¶¶ 62-71
[126] Rome Statute of the International Criminal Court, *supra* note 30, article 7(1).
[127] Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo, *Prosecutor vs. Jean-Pierre Bemba Gombo* (ICC-01/05-01/08-424), Pre-Trial Chamber II, 15 June 2009, ¶ 86. See also Judgment, *Prosecutor vs. Kalelijeli* (ICTR-98-44A-T), Trial Chamber, 1 December 2003, ¶ 866; Judgment, *Prosecutor vs. Semanza* (ICTR-97-20-T), Trial Chamber, 15 May 2003, ¶ 326
[128] Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya (ICC-01/09), Pre-Trial Chamber II, 31 March 2010, ¶ 84; Judgment, *Prosecutor vs. Simic, Tadic and Zaric* (IT-95-9-T), Trial Chamber, 17 October 2003, ¶ 41
[129] Establishing the nexus between the act and the attack also requires proof that the perpetrator knew that the act was part of the attack. However, as explained in paragraphs 39-42, knowledge elements are only relevant for the determination of individual criminal responsibility and are therefore not examined in this Report.

III. CREDIBLE ALLEGATIONS OF CRIMES AGAINST HUMANITY AGAINST THE TAMIL POPULATION OF THE NORTHERN PROVINCE

87. Part II established the contextual elements for a claim of crimes against humanity—namely, a widespread or systematic attack against the Tamil civilian population in the Northern Province, pursuant to or in furtherance of a State or organizational policy to commit this attack. This section shifts focus to the prohibited acts, which viewed within the aforementioned context and with the requisite nexus, point to the commission of crimes against humanity.

88. The prohibited *acts* discussed herein need not be widespread or systematic; only the *attack* itself must be.[130] As long as there is a link with the attack, a single act could qualify as a crime against humanity.[131]

A. Rape and any Other Form of Sexual Violence of Comparable Gravity

1. Definition of Crimes

a. Rape

89. Rape is listed as a crime against humanity in article 7(1)(g) of the Rome Statute.

90. Elements of the crime against humanity of rape are the following[132]:

1) The perpetrator invaded the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body. 2) The invasion was committed 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 another person, or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent.

---

[130] *See, e.g.,* Judgment, *Prosecutor vs. Kunarac* (IT-96-23/1-A), Appeals Chamber, 12 June 2002, ¶ 96
[131] *See, e.g.,* Review of Indictment Pursuant to Rule 61, *Prosecutor vs. Msksic* (IT-95-13-R61), 3 April 1996, ¶ 30; Judgment, *Prosecutor v. Kunarac*, Appeals Chamber, (IT-96-23/1-A), 12 June 2002, ¶ 96
[132] Elements of Crimes, *supra* note 39, p. 7

3) The conduct was committed as part of a widespread or systematic attack directed against a civilian population

4) The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

91. The elements of crime specify that the term 'invaded' is gender neutral.[133]

92. The fourth element is only relevant to the determination of individual criminal guilt and will not be discussed in this Report. [134]

b. Sexual Violence

93. Sexual violence is listed as a crime against humanity in article 7(1)(g) Rome Statute.

94. Elements of the crime against humanity of sexual violence are the following[135]:

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

2) Such conduct was of a gravity comparable to the other offences in article 7, paragraph 1 (g), of the Statute.

3) The perpetrator was aware of the factual circumstances that established the gravity of the conduct.

4) The conduct was committed as part of a widespread or systematic attack directed against a civilian population.

5) The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

95. The fifth element is only relevant to the determination of individual criminal guilt and will not be discussed in this Report.[136]

---

[133] *Ibid.*
[134] *See, supra* ¶ 40
[135] Elements of Crimes, *supra* note 39, p. 10

2. **Factual Allegations**

96. Allegations of rape have been documented by domestic and international NGOs including Human Rights Watch (HRW)[137] and journalist Frances Harrison in a documentary aired by the BBC.[138] The research team is satisfied of the credibility of the allegations reported below in paragraphs 97 to 128. All these cases were documented through individual interviews with the victims themselves.[139] In most of the cases allegations were corroborated by medical reports.[140] These allegations are consistent with the evidence gathered independently by the research team through field work. The research team received reports of a large number of incidents of rape against women perceived to have been members of, or closely associated with a member of, the LTTE.[141]

97. In 2013, a Tamil woman from the Northern Province was picked up at home by five or six men and taken into a white van. She was blindfolded and taken to an unknown destination. She was tortured. The first night, she was raped by men in military uniforms who took turns raping her. They continued raping her the following morning. She was tortured including by cigarettes burns all over her body and her genitals.[142]

98. In August 2012, in Vavuniya, a Tamil man in his early twenties was forced inside a white van by two or three men in civilian clothes, when he returned home after visiting a friend. He was blindfolded and driven to an unknown destination. When the blindfold was removed, he was in a room with five men, one of whom was in military uniform. Because he had just returned from the UK where he was studying, he was questioned about his connections to the LTTE abroad. He was tortured and stripped naked during the interrogation. His clothes were given back to him the following day and he was left alone in a small room. That night, a person that he was not able to see due to the dark entered the room. That person banged his head against the wall, pushed his face against the wall and anally penetrated him.[143]

---

[136] *See, supra* ¶ 40
[137] HRW Report, 'We Will Teach You a Lesson', *supra* note 6
[138] 'Sri Lanka's unfinished war', *BBC World News*, Part 1 and 2 Ravi's testimony, at http://www.bbc.co.uk/programmes/n3cstnpt [last accessed 7 February 2013] [hereinafter BBC, Sri Lanka's unfinished war]
[139] HRW Report, 'We Will Teach You a Lesson', *supra* note 6, p. 10
[140] *Ibid.*
[141] Interview #019; Interview #006; Interview #007; Interview #005; Interview #002; Interview #009
[142] BBC, Sri Lanka's unfinished war, *supra* note 138, Part 1 and 2, Nandini's testimony
[143] HRW Report, 'We Will Teach You a Lesson', *supra* note 6, p. 53

99. In August 2012, in Vavuniya, a Tamil male in his early twenties was stopped on his way back home by two men who jumped out of a white van. After confirming his name, they asked him to come for an inquiry. He was blindfolded and taken in the van. When his blindfold was removed, he found himself in a room of which the floor was covered in dry blood. He was accused of being an LTTE member. He was severely tortured. At night, a man in civilian clothes came in the room and asked him to perform oral sex. When he refused the man in civilian clothes beat him and anally penetrated him. The victim was subsequently raped for four or five nights in a row. He eventually signed a confession but was raped even after doing so.[144]

100. In April 2012, in Vavuniya, a Tamil man in his late twenties was arrested by five men in uniform at his home. His uncle who was present was handed an arrest receipt. He was blindfolded and taken to the Vavuniya Police station. There, he was accused of being an LTTE member and questioned. He was stripped down in his underwear and tortured for several days. He was kicked in his genitals during interrogation. He was raped by anal penetration by different people for three nights. He could not see their faces because it was dark. After the rapes he broke down and agreed to confess and sign anything.[145]

101. In April 2012, in Kilinochchi, a Tamil woman in her early thirties was stopped on her way home from work by a white van. Two men in civilian clothes got off and asked her to accompany them for questioning. She was taken in a room in a derelict building, where three men in civilian clothes interrogated her. She was asked to take off her clothes and was photographed naked. She was questioned about her activities with the LTTE and when she refused to confess, she was tortured. On the second day, a man came and raped her by vaginal penetration. She was subsequently raped by different men who spoke Sinhalese for at least three days in a row.[146]

102. In March 2012, a Tamil man in his late twenties was on his way back from Jaffna to Colombo when he was abducted by a group of armed men in civilian clothes. They blindfolded him and pushed him into a van. He was taken to an unknown location and stripped to his underwear. He was tortured including by pulling his genitals and accused of being an LTTE member. At night, he was anally penetrated by his interrogators for three consecutive days. Eventually, he signed a confession.[147]

103. In August 2011, in Vavuniya, a Tamil man in his early thirties was on his way to his parents' home when a white van stopped him. Five men—two in civilian clothes and

---

[144] *Ibid.*, p. 54
[145] *Ibid.*, p. 56
[146] *Ibid.*, p. 57
[147] *Ibid.*, p. 58

three in military uniforms—forced him inside a van and blindfolded him. When his blindfold was removed, he was in a small room where he was questioned about his links with the LTTE and tortured over the next 10 days, including by squeezing his penis. During questioning, he was forced to masturbate interrogators and one of them also masturbated him. During the first interrogation, the official in military fatigues forced him to undress and tried to force him to perform oral sex. The official then anally penetrated him. He was also raped two different nights by prison guards. When he finally signed a confession, the sexual abuse stopped.[148]

104. In May 2011, in Vavuniya, a Tamil woman in her mid-thirties was stopped by a van on her way back home. She was forced into the van by two men and blindfolded. She was taken inside a building, where her blindfold was removed. Four men and a woman in civilian clothes and speaking Sinhalese accused her of being an LTTE member. She was tortured. She was also raped by vaginal penetration on three or four occasions. She finally signed a confession in Sinhalese.[149]

105. In March 2011, in Colombo, a Tamil man in his late twenties returned to the UK from Sri Lanka to help his brother's wife trace his mother and brother who disappeared in the Vanni in the last months of the Sri Lanka conflict in 2009. One day, outside a church in Kotahena, he was surrounded by five or six men in civilian clothes who told him they were officers from the Criminal Investigation Department (CID). They took him to the Kotahena police station where he was detained. The next day he was blindfolded and taken to an unknown destination. There he was kept in a small room, questioned about his links with the LTTE and tortured. His interrogator groped his penis during questioning. He was anally penetrated twice by two different men in his cell and was also forced to perform oral sex on them.[150]

106. In February 2011, in Mullaithivu, a Tamil woman in her late thirties was visited at home by seven soldiers. They questioned her about her husband and accused him of being an LTTE member and asked where he was. One of them beat her with his belt. One of them pulled off her clothes. She lost consciousness. When she regained consciousness, she knew she was vaginally penetrated because she was bleeding profusely.[151]

107. In February 2011, in Colombo, a Tamil woman from Vavuniya in her late twenties, arrived at the international airport. She was taken to a separate room in the airport by two officers from the Terrorist Investigation Department (TID). Another person in

---

[148] *Ibid.*, p. 60
[149] *Ibid.*, p. 63
[150] *Ibid.*, p. 67
[151] *Ibid.*, p. 69

civilian clothes came to the room and accused her of supporting the LTTE while abroad and spreading propaganda against the government. She was taken into a white van in an unknown destination. She was interrogated and tortured. She was forced to sign a confession. On the fifth day of detention, the two men who had been interrogating her came to her room, tried to undress her, and kicked her. She lost consciousness. When she regained consciousness she had terrible pain and realized she had been vaginally penetrated.[152]

108. In January 2011, in Kilinochchi, a Tamil women in her mid-twenties was visited at home by a group of CID and men in military uniforms. She was blindfolded, handcuffed and taken to an unknown place. The following day, men in military uniforms forced her to take her clothes off. She was accused of being an LTTE member. She was tortured. Officials who questioned her groped at her breasts while questioning her. At night, two and sometimes three men came to her room and raped her. Some of them were in military uniform. She was vaginally penetrated at least six times. She was made to sign a confession in Sinhalese.[153]

109. In January 2011, in Colombo, a Tamil woman in her late twenties from the Northern Province returned from the United Kingdom (UK). She was arrested by TID officers soon after her arrival and taken to an unknown detention facility. She was questioned about her involvement with the LTTE and tortured. She was stripped and vaginally penetrated by three officers consecutively.[154]

110. In December 2010, in Colombo, a Tamil woman from Vavuniya, in her mid-twenties was arrested by a joint team of the CID and police during a search and seizure operation at a motel in Wellawatte. She was pushed into a van and taken to a CID camp in Colombo. She was questioned about her role in the LTTE. She was tortured. She was also vaginally penetrated repeatedly by her interrogators. She was made to sign a confession in Sinhalese.[155]

111. In December 2010, in Colombo, a Tamil man from Vavuniya, in his late twenties was detained on arrival at the airport by men who introduced themselves as CID officers. He was taken to the fourth floor of the CID headquarters in Colombo. He was questioned about his activities with the LTTE abroad and tortured. He was anally penetrated many

[152] *Ibid.*, p. 68
[153] *Ibid.*, p. 71
[154] *Ibid.*, p. 70
[155] *Ibid.*, p. 72

times. Two men would come in his cell, and take turn to hold him down while the other was raping him.[156]

112. In November 2010, in Vavuniya, a Tamil woman in her early twenties was arrested by soldiers in her house and taken to Jacob Camp. She was stripped naked during questioning. She was tortured and raped by vaginal penetration several times and fell unconscious.[157]

113. In April 2010, around Kilinochchi, a Tamil man in his early forties was returning to Mullathivu from Colombo to reclaim a piece of land to which he lost access during the armed conflict. One evening an army truck stopped at a friend's house where he was staying. Six soldiers got out and dragged him inside the truck. After five days where he was kept in Kilinochchi, he was transferred to Joseph Camp in Vavuniya where he was detained in a small dark room. He was questioned about his links with the LTTE by a group of men in military uniform and civilian clothes as well as members of the EPDP. He was tortured. The men inserted small glass bottles of coke in his anus and an iron rod in his penis. He signed a confession, and the sexual violence stopped.[158]

114. In April 2010, in Colombo, a Tamil woman from the Northern Province, in her mid-twenties, was arrested by three officials at the international airport. She was taken to the fourth floor of the CID headquarters in Colombo. She was questioned about her links with the LTTE and tortured. She was vaginally penetrated four or five times by several officers who would take turn to rape her. The first time she was raped she fainted and when she regained consciousness she was bleeding heavily from her genitals.[159]

115. In March 2010, in Vavuniya, a Tamil teenager was stopped by white van as he was walking back to his parents' house. He was forced inside the van by a group of four to five soldiers, some of whom were in civilian clothes. He was first taken to Joseph Camp then blindfolded and taken to another location. He was left in a dark room. Someone came and asked him to admit his role with the LTTE. He was tortured because he refused to do so. He was stripped to his underwear during his entire detention but was stripped naked during interrogation. During one interrogation session, one of the interrogator squeezed his penis very hard. At night, different people would come either alone or in a group of two. They were in civilian clothes and speaking Sinhalese. While

---

[156] *Ibid.*, p. 73
[157] *Ibid.*, p. 105
[158] *Ibid.*, p. 79
[159] *Ibid.*, p. 78

one held him down the other would anally penetrate him. He was made to sign a confession just before his release.[160]

116. In February 2010, in Kondavil, Jaffna, a Tamil woman in her late twenties was at her home when, at about 11 pm, a white van stopped outside. Five men in civilian clothes entered her house and two of them dragged her out and into the van. She was gagged, blindfolded and handcuffed. She was taken in a room in a building and was accused of being in the LTTE cultural wing. The following day, she was beaten with the back of a rifle until she signed blank sheets of paper. That night, a senior officer who was present during the beating came in the room where she was locked, pushed her on the ground, kicked and beat her, tore her clothes off and raped her by vaginal penetration.[161]

117. In May 2010, in Vavuniya, a Tamil woman in her late twenties was visited at home by five or six men in civilian clothes who asked her to accompany them at the police station. They told her that they were police officers and wanted to record her statement. As soon as they reached the police station, she was handcuffed and pushed into a cell. Late at night, she was brought into a room where she was questioned about her husband's links with the LTTE. She was beaten with a stick across her legs and back. Later that night, four persons forced her into a van and took her to a house where she was asked to identify two men. Later a man in civilian clothes came to the room where she was kept, tore her clothes and raped her. A second person burnt her breasts, inner thighs and legs with a cigarette, and also raped her. Both beat her and bit her breast and thighs. She was brought back to the police station the next day. She started bleeding heavily. She believed she was pregnant and that the rapes induced a miscarriage.[162]

118. In January 2010, in Colombo, a Tamil man from the Northern Province, in his mid-forties, was arrested at the international airport by CID. He had been deported from the UK where his asylum claim failed. He was taken to the fourth floor of the CID headquarters in Colombo and after two to three days was transferred to Joseph Camp in Vavuniya. He was questioned about his links with the LTTE and tortured. In both detention sites, he was stripped naked. In Joseph Camp, he was forced to perform oral sex to the interrogators one two or three occasions. [163]

119. In November 2009, in Vavuniya, a Tamil man in his mid-twenties was at his home when a white van pulled outside his home. A few men in civilian clothes got out of the van and introduced themselves as CID officers. They pushed him inside the van and told him

---

[160] *Ibid.*, p. 80
[161] *Ibid.*, p. 82
[162] *Ibid.*, p. 84
[163] *Ibid.*, p. 86

that they would take him to the Chetti Kulam police station for questioning. Instead he was taken to the Joseph Camp in Vavuniya. There he was stripped and photographed. He was tortured including by having his penis inserted in a wooden pipe for three weeks. For three weeks, he was left alone in a small dark room. At night, two or three officers in civilian clothes would come to the room and force him to perform oral sex. He was also routinely anally penetrated during his detention. At first, one officer would hold him down while the other raped him. Subsequently, only one person came at a time. After three weeks, he was moved to a room with six other Tamil men. He was anally penetrated fifteen to twenty times in the second detention room.[164]

120. In November 2009, in Jaffna, a Tamil male teenager was arrested on his way back from school by a joint team of police and army officers. He was blindfolded and taken to an unknown detention facility. There he was questioned about his activities with the LTTE. Because he refused to answer, he was stripped naked and tortured. One officer anally penetrated. He lost consciousness and when he regained consciousness, he was bleeding heavily from his anus. Eventually, he signed a confession in Sinhalese.[165]

121. In October 2009, near Vavuniya, a Tamil woman in her early twenties who was detained in Arunachalam camp in Menik Farm was transferred to another camp by army personnel. There she was questioned about her links and activities with the LTTE. She was beaten and kicked until she lost consciousness. When she regained consciousness she realized that she had been vaginally penetrated. She was also subsequently raped by many different soldiers throughout her detention.[166]

122. In September 2009, around Vavuniya, a Tamil woman teenager was arrested by a group of soldiers and men in civilian clothes from the Ramanathan Camp in Vavuniya. She was blindfolded and pushed into a van. She was taken into a small dark room. She was questioned about LTTE hidden weapons and other LTTE members. She was tortured during interrogation. At night, she was vaginally penetrated by two or three different persons who spoke Sinhalese. After the rapes, she signed a blank sheet of paper and documents in Sinhalese.[167]

123. In August 2009, near Vavuniya, a Tamil woman in her late twenties was detained at the Arunachchalam Camp, when four officers in plainclothes who introduced themselves as CID came to her tent and asked her to go with them for questioning. She was taken to an office within the camp premises. She was threatened that if she did not tell them her

---

[164] *Ibid.*, p. 64
[165] *Ibid.*, p. 88
[166] *Ibid.*, p. 89
[167] *Ibid.*, p. 91

husband's whereabouts, they would kill her. She was then vaginally penetrated by a number of officers who took turns raping her. She was allowed to go back to her tent only in the dawn. In the evening, they would come again and rape her again. They wanted to know who helped her husband escape and because she did not tell them, they would rape her. [168]

124. In August 2009, in Colombo, a Tamil man in his late twenties from Puthukkudiyiruppu was stopped by TID agents at the international airport when returning from India. He was taken to a small room and was questioned about his links with the LTTE. He was tortured. The following day, he was taken to the fourth floor of the TID, He was stripped naked and tortured. On the second day of torture, his interrogators pushed a piece of pipe into his anus, inserted a piece of barbed wire into to pipe, pulled out the pipe and then ripped out the piece of barbed wire from his anus. He fell unconscious.[169]

125. In July 2009, in Vavuniya, a Tamil woman in her late thirties was inquiring at the gate of an army camp about six members of her family who had been reported killed during the fighting, when four or five soldiers asked her name and then pushed her into a military jeep. She was taken to Nelukkulam camp in Vavuniya and kept in a small room. She was questioned and tortured every day. She was kept naked during her torture. She was raped by vaginal penetration at night time by one or two people each time. She signed a confession but was raped even afterward.[170]

126. In June 2009, a Tamil woman from the Northern Province, in her early twenties, was arrested at a lodge in Colombo by army soldiers accompanied by some masked men in civilian clothes. She and another woman were brought to a police station. She was kept in the police station for a few days and then moved to another location. She was questioned about her links with the LTTE. She was stripped naked during interrogation and tortured. She was vaginally penetrated repeatedly at night by two or more perpetrators.[171]

127. In June 2009, in Vavuniya, a Tamil man in his late thirties was detained by military personnel and CID officers at the Vellikulam School detention camp. During the detention period, he was stripped to his underwear but during the interrogation, he was

[168] *Ibid.*, p. 92
[169] *Ibid.*, p. 93
[170] *Ibid.*, p. 94
[171] *Ibid.*, p. 96

stripped naked. He was severely tortured. His testicles were rubbed against a rough wall on numerous occasions, which has left numerous scars.[172]

128. Immediately after the end of the war, a Tamil man former LTTE cadre was detained for nearly four years in the government official rehabilitation program. He was tortured, including by crushing his testicles and putting his testicles in a drawer and slamming the drawer shut. He was also forced to perform oral sex. The torture was performed by group of people, some in civilian clothes and others in military uniform.[173]

3. **Preliminary Conclusions**

a. Rape

129. All the cases reported—other than cases reported in paragraphs 127 and 128—involve credible allegations of the crime against humanity of rape.

130. All the rapes against female victims were perpetrated by vaginally penetrating the victims with a male sexual organ. Allegations of rape against male victims involve anal penetration by a male sexual organ and/or oral penetration with a male sexual organ. Two rapes against men involve anal penetration by an object.

131. In all these cases, the victims were undoubtedly coerced, kept in incommunicado detention and sometimes severely tortured before the rape. In addition, the penetration was in most cases committed by force with the victim being immobilized by another perpetrator or the victim being beaten and tortured during the rape.

b. Sexual Violence

132. All the cases above involve coerced acts of a sexual nature. Acts of sexual violence include acts performed by the alleged perpetrators such as forcing the victim to strip naked during the interrogation, photographing the victim naked, kicking a male victim's genitals during interrogation or stamping the victim's genitals with boots, pulling male victims' genitals, rubbing the victim's testicles against a rough wall, slamming a drawer shut on the victim's testicles, squeezing victims' penis, inserting the victim's penis in a wooden pipe for several weeks, inserting an iron rod into the victim's penis, twisting the victim's buttocks with pliers, groping a female victim's breasts, burning a female victim's breasts with cigarettes, biting a female victim's breasts, burning a victim's genitals with

---

[172] *Ibid.*, p. 95
[173] BBC, Sri Lanka's unfinished war, *supra* note 138, Part 1 and 2, Ravi's testimony

cigarettes, and masturbating the victim. In some instances the victim was also forced to perform acts of sexual nature, such as being forced to masturbate the interrogators.[174]

133. These acts of sexual violence were committed as torture techniques used by interrogators against victims who were arrested or kidnaped and kept in incommunicado detention. The coerced and forced nature of the acts is evident.

134. All the acts of sexual violence reported meet the gravity threshold required by article 7(1)(g) of the Rome Statute. Indeed, most of these acts of a sexual nature have caused severe bodily and psychological harm.[175] Both forcing victims to strip naked during detention,[176] and forcing victims to perform acts of a sexual nature have also been recognized as sexual violence.[177]

c. Link to the Attack

135. In all the cases reported above, the rapes and sexual violence were committed as part of a widespread or systematic attack directed against the Tamil civilian population in the Northern Province,[178] as described in Part II. In determining whether an act is part of an attack, one must consider the nature, aims and consequences of the act and assess whether the act is sufficiently connected to the attack and not isolated from it.[179]

136. As described in Part II, the first strategy of Sri Lanka's policy of attack against the Tamil population in the Northern Province consists of violently targeting members of the population perceived as having connections with the LTTE and those espousing Tamil nationalist claims.[180] Victims of the rapes are all Tamil from the Northern Province, and they were targeted because they were suspected of having links with the LTTE and/ or espousing Tamil nationalist claims. (These disparate groups are targeted in like manner, as described in paragraph 61.) This targeting is evidenced by the line of questioning systematically pursued during interrogation. In the cases discussed above, Tamils from

---

[174] *See, supra* ¶¶ 97, 98, 100, 101, 102, 105, 108, 112, 113, 115, 117-120, 124-128
[175] United Nations Commission on Human Rights, *Systematic rape, sexual slavery and slavery like Practices during armed conflict*, Final report submitted by Ms. Gay J. McDougall, Special Rapporteur, 50th Session (22 June 1998), U.N Doc. E/CN.4/Sub.2/1998/13, ¶ 22: "Sexual violence also characterizes situations in which two victims are forced to perform sexual acts on one another or to harm one another in a sexual manner."
[176] Judgment, *Prosecutor vs. Brdjanin* (IT-99-36-T), Trial Chamber, 1 September 2004, ¶ 1013: including the case of a Bosnian Croat woman who was forced to undress herself in front of cheering Bosnian Serb policemen and soldiers; *see also* Judgment, *Prosecutor vs. Akayetsu* (ICTR-96-4-T), Trial Chamber, 2 September 1998, ¶ 688; *supra* note 154 ¶ 21
[177] *See, supra* note 175, ¶ 22
[178] Information confirmed by written communication with the researcher
[179] *See, supra* note 128
[180] *See, supra* ¶ 64

the Northern Province were raped or sexually assaulted while being interrogated about their ties with the LTTE. In several cases, detained Tamils signed forced confessions (sometimes in a language they did not read), admitting to their LTTE links in order to put an end to the sexual violence. The fact that the above instances of rape and sexual violence all took place against Tamils from the Northern Province because of their suspected links with the LTTE or political affiliation evidences a strong link between the acts and the attack. In this respect, whether the rape or sexual violence was committed in the Northern Province or in detention facilities elsewhere in the country is irrelevant.[181]

137. Moreover, the campaign of rape and sexual violence described above fulfils the relevant legal requirements to constitute an attack on its own. The campaign of rape and sexual abuse appears to have been committed in pursuance of Sri Lanka's strategy and policy of violently targeting members of the population perceived as having connections with the LTTE and those espousing Tamil nationalist claims. The campaign of rape and sexual abuse is both widespread and systematic, as demonstrated by their scale, organized nature and improbability of their being a random occurrence. First, allegations of rapes are reported throughout the Northern Province and in large numbers. A government official working with rape victims told an international news network that one or two allegations of rape by soldiers are reported to him every month. He said that this happens especially in the Jaffna, Mullaithivu and Kilinochchi area.[182] Second, allegations point to identical patterns of crimes whereby rapes and sexual violence are part of torture techniques after the person has been unlawfully arrested and detained incommunicado. In many cases, victims were arrested at home or picked up from the streets, forcibly taken into a white van, blindfolded and taken to an unknown destination for interrogation and torture. They were subsequently raped or gang-raped several times.

138. Therefore, all the cases reported above give rise to credible allegations pointing to the ongoing commission of crimes against humanity of rape and crimes against humanity of sexual violence.

---

[181] Judgment, *Prosecutor vs. Brdjanin* (IT-99-36-T), Trial Chamber, 1 September 2004, ¶132: "The acts of the accused [. . .] do not need to be committed in the midst of the attack. For instance, the Kunarac Trial Chamber found that a crime committed several months after, or several kilometres away from the main attack could still, if sufficiently connected otherwise, be part of that attack."

[182] 'Scars of Sri Lanka', *Aljazeera*, 27 December 2013, at http://www.aljazeera.com/programmes/101east/2013/12/scars-sri-lanka-2013122492410187367.html [last accessed 7 February 2013]

B. Torture

1. Definition of the Crime

139. Torture is a crime against humanity in article 7(1)(f) of the Rome Statute and is defined by article 7(2)(e) as:

> [t]he intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions.

140. Elements of the crime against humanity of torture are the following[183]:

1) The perpetrator inflicted severe physical or mental pain or suffering upon one or more persons.

2) Such person or persons were in the custody or under the control of the perpetrator.

3) Such pain or suffering did not arise only from, and was not inherent in or incidental to, lawful sanctions.

4) The conduct was committed as part of a widespread or systematic attack directed against a civilian population.

5) The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

141. The fifth element is only relevant to the determination of individual criminal guilt and will not be discussed in this Report.[184]

2. Factual Allegations

142. Allegations of torture have been reported by several domestic and international NGOs including the Asian Human Rights Commission, Human Rights Watch,[185] Tamils against Genocide (TAG),[186] Freedom from Torture (FFT)[187] and Amnesty International,[188] and

---

[183] Elements of Crimes, *supra* note 39, p. 7
[184] *See, supra* ¶ 40
[185] HRW, 'We Will Teach You a Lesson', *supra* note 6
[186] Tamils Against Genocide, "Returnees at Risk: Detention and Torture in Sri Lanka", 16 September 2012, at http://www.tamilsagainstgenocide.org/Data/Docs/TAG-Report-16-Sep-2012-Returnees-at-Risk.pdf [last accessed 7 February 2014] [hereinafter TAG, Returnees at Risk Report]

by the United Nations Special Rapporteur on Torture. Some allegations have also been documented first hand by members of the research team. The research team is satisfied of the credibility of the allegations detailed in paragraphs 143 to 155 below. Cases reported by FFT, HRW, Amnesty International and AHRC have been documented through individual interviews.[189] One case reported by Amnesty International has been documented based on information provided by the victim's lawyer.[190] Allegations reported by TAG have been documented from asylum applications and decisions in foreign courts as well as medical reports.[191] Allegations reported in 26 of these cases have been found credible by the relevant appellate court in charge of the asylum determination in the UK; 21 other cases were documented from medico-legal reports. The research team relied only on these 47 cases from the TAG report.[192] Allegations reported by HRW and FFT are corroborated by legal and/or medical documentation.[193] All the allegations of torture reported in this report and the torture techniques used by State actors are consistent with the evidence gathered independently by the research team through fieldwork.

143. In January 2013, around Kilinochchi, a Tamil man in his early thirties, was arrested at his home by TID officers. He was detained in the Vavuniya TID office. He was questioned about his links with the LTTE, and officers tried to force him to admit that he was an LTTE member. He was beaten with poles, slapped and TID officers stood on his chest until he was injured and fainted. The torture lasted for 10 days. He was bleeding heavily and was taken to the Vavuniya General Hospital for treatment.[194]

144. In August 2012, in Galle, a Tamil man in his mid-thirties from Jaffna was severely tortured in the custody of the police. He had been detained since 2008 at New Magazine Prison along with hundreds of other Tamils who were detained under the Prevention of

---

[187] Freedom From Torture, " Out of the Silence: New evidence of ongoing torture in Sri Lanka, 2009-2011", February 2012, at http://www.freedomfromtorture.org/sites/default/files/documents/Sri%20Lanka%20Ongoing%20Torture_Freedom%20from%20Torture_Final%20Nov_07_2011.pdf [last accessed 7 February 2014][hereinafter Freedom From Torture, Torture Report]

[188] Amnesty International, 'Locked Away: Sri Lanka's Security Detainees', March 2012, at http://files.amnesty.org/archives/asa370032012eng.pdf [last accessed 7 February 2014] [hereinafter Amnesty International, Locked Away Report]

[189] Amnesty International, Locked Away Report, *supra* note 188, p. 41; FFT, Torture Report, *supra* note 187, p. 18; HRW Report, 'We will teach you a lesson', *supra* note 6, p. 10; written communication with AHRC

[190] *See*, *infra* ¶ 151

[191] TAG, Returnees at Risk Report, *supra* note 186, pp. 4-5

[192] *Ibid.*, p. 4

[193] HRW Report, 'Will Teach You a Lesson', *supra* note 6, p. 10; FFT, Torture Report, *supra* note 187, p. 12

[194] Asian Human Right Commission, Urgent Appeal Case: AHRC-UAC-038-2013, *Asian Human Rights Commission-Urgent Appeal Programme*, 7 March 2013, at http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-038-2013

Terrorism Act. On 21 August 2012, he was brought by the prison officers from New Magazine Prison to the Galle Remand Prison. The following morning, he was brought to the Karapitya Teaching Hospital by the prison officials. He was in a coma and had several injuries on his body, head shoulders and face. The left side of his body was paralyzed.[195]

145. At around 8 pm on 22 August 2011, villagers from Navanthurai, a village in the Jaffna District, spotted five "grease men" in the Navanthurai area. "Grease men" referred to a phenomenon observed throughout the country in the mid to latter part of 2011 where unidentified men whose bodies were covered in grease had been attacking women—particularly in minority areas—throughout the country.[196] When the villagers surrounded and tried to capture the men, they ran into the Navanthurai Army camp. The villagers gathered at the entrance to the Army camp and demanded that the Army produce the grease men who had run into the camp. The Army refused. A short while later, the villagers saw the grease men being driven out of the camp in an army jeep. They had changed into military uniform and one man even brandished a knife at the villagers from inside the jeep. Agitated by the protection given by the military to the grease men the villagers threw stones at the jeep. The crowd was dispersed by around 9.30 pm after soldiers fired shots in the air. Later that night, in retaliation, approximately 100 men were tortured by Sri Lanka Army personnel. In the early hours of 23 August 2011, approximately 100 young men were dragged out of their homes and tortured in an operation in the night conducted by the Sri Lanka Army. The villagers were severely beaten by the army and dragged to the main road near the Navanthurai Army camp located around 300 meters from the village. The men were loaded onto buses and handed over to the Jaffna police around 4 am. At 10 am, they were produced to the Jaffna courts. Many were severely injured with open wounds and broken bones. Twenty of the most seriously injured were admitted to the Jaffna General Hospital after 10 am, on orders by the District Judge. The rest were denied treatment until around 7.30 pm.[197]

146. In January 2010, in Vavuniya, a Tamil man in his late thirties was arrested by TID officers on suspicion of being an LTTE informant. Two days after his arrest, he was transferred to the TID headquarters in Colombo. He was kept in detention for 24

---

[195] Asian Human Right Commission, Urgent Appeal Case: AHRC-UAC-153-2012, *Asian Human Rights Commission-Urgent Appeal Programme,* 29 August 2012, at http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-153-2012 [last accessed 7 February 2014]

[196] *See, e.g.*, 'Grease Yaka still haunts villages', *BBCsinhala.com*, 20 August, 2011, at http://www.bbc.co.uk/sinhala/news/story/2011/08/110820_grease_yaka.shtml [last accessed 7 February 2014]

[197] *See, e.g.*, WATCHDOG, 'Jaffna: brutal assault of civilians in Navanthurai', *Groundviews*, 25 August 2011, at http://groundviews.org/2011/08/25/jaffna-brutal-assault-of-civilians-in-navanthurai/ [last accessed 7 February 2014]

months and repeatedly interrogated and beaten and kicked by his interrogators. Interrogators also threatened to detain his wife and children. In particular, he recalls an incident where an inspector required that he sign blank sheets of paper, and when he refused, the inspector grabbed his throat and beat him.[198]

147. In July 2009, a Tamil man from Vavuniya in his early forties was arrested by army personnel in Omanthai. He was accused of being an LTTE member. He was detained in Boosa detention camp for about six months before being transferred to Anuradhapura Prison. During his detention, he was severely assaulted, hung from his hands, forced to lick the shoes of the military and CID officials and sexually abused. Prior to his detention and torture, he suffered from a disability caused by a previous shell attack and was therefore particularly vulnerable to the torture he underwent.[199]

148. In June 2009, around Vavuniya, a Tamil man in his mid-forties who was employed at the United Nations High Commissioner for Refugees was arrested at his home by a police officer and several other person in civilian clothes. He was taken in a vehicle, handcuffed and blindfolded. He was questioned and beaten and was struck with an iron rod on his head. He was taken to a location and was beaten in the stomach, neck and face including the mouth, ears and jaw, as well as on his legs with a wooden baton. He was taken to a house where other persons were being held. He spent the night handcuffed and with his legs chained. The following day, he was interrogated and beaten again. He was also taken to the Menik Farm and Technical College internally displaced persons camp, where he was ordered to identify LTTE suspects, which he failed to do. He spent the night at the Vavuniya Police Station, where he was forced to sleep with his legs chained. A few days later, he was taken to Colombo and held in a building behind Borella police Station. There he was interrogated and beaten again by several police officers before being taken to the Borella police station. He was then forced to sign a confession in Sinhalese that he did not understand.[200]

149. In June 2009, around Vavuniya, a Tamil man in his early thirties, who was employed by the United Nations Refugee Agency, was forced into a jeep by the same people who arrested his colleague whose case is reported in paragraph 143 above. He was questioned about certain individuals suspected of being LTTE members and was beaten when he did not provide information. He was later taken in a jeep in the direction of the

---

[198] Interview #017
[199] Interview #017; Interview #018
[200] United Nations Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, Addendum, Summary of information, including individual cases, transmitted to Governments and replies received, 13th Session (February 25, 2010), UN Doc. A/HRC/13/39/Add.1, p. 328

Vavuniya Mannar road, taken out at a cemetery in Bharathipuram and was beaten and threatened with death. Later that day he was taken to Colombo, held in a building behind the Borella police station, and questioned and beaten again by several police officers before being taken to the Borella police station. He was then forced to sign a confession in Sinhalese that he did not understand.[201]

150. In May 2009, in Mullathivu district, a Tamil man from Jaffna (foreign national) surrendered to the army at Nandikadal Lagoon. He was first detained by the military police. He was interrogated about the identity and whereabouts of the main LTTE leaders. He was beaten with a baton and hit with wire cutters. He bribed his way out of detention but was recognized as an LTTE member at Omanthai and taken to an interrogation place. He was interrogated by military intelligence. A mock execution was staged and a loaded pistol placed in his mouth. He was cut on both hands by small blades and interrogators threatened to sever his penis. Questions he was asked were similar to those asked previously. He was then sent to a school, were about 3000 people were held. He was taken for interrogation every night for two weeks. During interrogation, he was beaten with bare hands or with batons. After some time, he was sent to a rehabilitation camp center in Vavuniya, where he was frequently beaten. In March 2010, he was transferred to the CID headquarters in Colombo and was held in the fourth floor. He was severely tortured there, including by electrocution.[202]

151. In April 2009, in the Vavuniya District, a Tamil minor (male) was arrested by the Sri Lankan army personnel. He was taken to the Rambaikulam army camp questioned about his links to the LTTE and about the leadership. Twice, he was beaten severely and was forced to sign a document in Sinhalese. During this first detention period that lasted for about a year, he was held incommunicado and in solitary confinement in a dark cell without windows and at times was deprived of water. During his detention, he could hear people screaming and crying. He was routinely beaten all over his body, on average three to four times a week. He recalls being regularly beaten with a plastic pipe, being kicked and burnt with cigarettes all over his body. In April 2010, he was moved to camp where he was kept until October. There, he was beaten with bare hands and burnt with cigarettes. Again, he was questioned about his and his family links with the LTTE and about the leaders' whereabouts. He was beaten at least once a week and sometimes no questions were asked during these sessions. One night, two soldiers entered his room tried to remove his shirt and to touch his genitals. When he resisted they beat him, burnt him with cigarettes butts, threw him on the floor and kicked him on the chest. Three weeks later, the same two soldiers came back, touched his genitals and tried to rape him.

---

[201] *Ibid.*

[202] Amnesty International, Locked Away Report, *supra* note 188, p. 41

He screamed very loudly, at which point the soldiers beat him and burnt him again with cigarette butts. In October 2010, after he was made to sign a handwritten document in Sinhala, he was transferred to Welikada prison, where he was detained until December 2010. While the ill-treatment was not as severe in Welikada as in the other camps, he was nonetheless beaten about twice a week. He recalls being slapped on the face and being hit with fists on his back. The line of questioning was similar as in the previous detention facilities.[203]

152. Asian Human Rights Commission documented another 3 cases that could give rise to credible allegations of torture of Tamil men from the Northern Province. The research team found these allegations to be credible but lacked sufficient information to conclude that the mistreatment of these persons amount to torture.[204]

153. Tamil Against Genocide documented 36 cases of Tamils who were tortured between 2010 and 2012 on their return to Sri Lanka from long periods abroad, often for studies. In 11 other cases documented from medico-legal reports, victims are Tamils who were tortured but have not spent significant periods of time abroad.[205]

154. Freedom from Torture documented 18 cases of torture of people from the Northern Province between May 2009 and February 2011.[206] Victims included former members of the LTTE who surrendered to government forces at the end of the war, those picked up from their home, and others who were detained at checkpoints or at the airport.[207]

155. In addition, the cases reported in paragraphs 97 to 128 all involve torture techniques such as rape and sexual violence. Several of these cases also involve severe acts of torture other than rape and sexual violence. Methods include beatings with plastic pipes filled with sand,[208] placing petrol-infused bags on the head in an attempt to asphyxiate,[209]

---

[203] Amnesty International, Locked Away Report, *supra* note 188, pp. 25-26
[204] *See,* Asian Human Right Commission, Urgent Appeal Case: AHRC-UAC-034-2013, *Asian Human Rights Commission-Urgent Appeal Programme*, 4 March 2013, at http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-034-2013 [last accessed 7 February 2014]; Asian Human Right Commission, Urgent Appeal Case: AHRC-UAC-145-2012, *Asian Human Rights Commission-Urgent Appeal Programme*, 17 August 2012, at http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-145-2012 [last accessed 7 February 2014]; Asian Human Right Commission, Urgent Appeal Case: AHRC-UAC-093-2012, *Asian Human Rights Commission-Urgent Appeal Programme*, 1 June 2012, at http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-093-2012 [last accessed 7 February 2014]
[205]TAG, Returnees at Risk Report, *supra* note 186, pp. 5-6
[206] Freedom From Torture, Torture Report, *supra* note 187, p. 6
[207] *Ibid.*, p.7
[208] HRW Report, 'Will Teach You a Lesson', *supra* note 6, pp. 54, 67, 78, 79, 88
[209] *Ibid.* pp. 54, 60, 67, 79, 80, 88, 91, 95

hanging upside down while being beaten,[210] burning with cigarettes,[211] beatings with hot metal rods,[212] being kicked with boots and beaten with fists a rifle or a rod,[213] and banging the head against a wall or table.[214]

3. **Preliminary Conclusions**

156. All the acts described above involve the infliction of severe mental or physical pain or suffering to the victim. The definition of torture adopted in the Rome Statute does not depart from that of the ICTY and ICTR statutes regarding the severity of the pain and suffering inflicted to the victim. Therefore, guidance may be found in the jurisprudence of these tribunals with respect to this requirement.

157. In assessing the seriousness of any mistreatment, the objective severity of the harm inflicted must be considered, including the nature, purpose and consistency of the acts committed. Subjective criteria, such as the physical or mental condition of the victim, the effect of the treatment and, in some cases, factors such as the victim's age, sex, state of health and position of inferiority are also relevant in assessing the gravity of harm.[215]

158. Some measures described above qualify as torture at all times, irrespective of the individual circumstances of the case.[216] These include burning parts of the body, hanging from a pole, techniques of oxygen deprivation that cause asphyxiation, electric shocks, total deprivation and sensory deprivation, simulated executions, and rape.[217] Therefore, credible allegations reported in paragraphs 144, 147, 150 and 151 constitute torture within the definition of the term. Others such as beating and kicking do not at all times meet the severity requirement of the crime of torture. However, when the beating or kicking causes 'wounds, internal bleeding, fractures, cranial traumatism', those acts amount to torture as well.[218] The credible allegations reported in paragraphs 143, 145,

---

[210] *Ibid.* pp. 56, 60, 74, 79, 80, 86, 88, 93, 95
[211] *Ibid.* pp. 54, 56, 58, 60, 63, 79, 72, 74, 80, 88, 91, 94
[212] *Ibid.* pp. 60, 72, 86
[213] *Ibid.* pp. 56, 58, 60, 63, 67, 72, 78, 79, 82, 84, 86, 88, 89, 91, 94, 95
[214] *Ibid.* pp. 68, 89, 93
[215] Judgment, *Prosecutor vs. Brdjanin*, (IT-99-36-T), Trial Chamber, 1 September 2004, ¶ 484
[216] Judgment, *Prosecutor vs. Kvocka* (IT-98-30/1-T), Trial Chamber, 2 November 2001, ¶ 144
[217] Judgment, *Prosecutor vs. Kunarac et al.*, (IT-96-23 & 23/1-A), Appeals chamber, 12 June 2002, ¶ 150; *Prosecutor vs.* 496; Judgment, *Prosecutor vs. Kvocka* (IT-98-30/1-T), Trial Chamber, 2 November 2001, ¶ 145; Judgment, *Prosecutor vs. Brdnin* (IT-99-36-T), Trial Chamber, 1 September 2004, ¶ 485; Judgment, *Prosecutor vs. Akayesu,* (ICTR-96-4-T),Trial Chamber, 2 September 1998, ¶¶ 597& 687; *see also* United Nations Human Rights Commission, *Question of the human rights of all persons subjected to any form of detention or imprisonment, in particular: torture and other cruel, inhuman or degrading treatment or punishment*, Report of the Special Rapporteur, Mr. Nigel S. Rodley, submitted pursuant to Commission on Human Rights resolution 1992/32, 42nd Session (19 February 1986), U.N. Doc. E/CN.4/86/15, ¶ 119 [hereinafter Report of the Special Rapporteur on Torture, 42nd Session UN Human Rights Commission]
[218] Report of the Special Rapporteur on Torture, 42nd Session UN Human Rights Commission, *supra* note 217

146, 148 and 149 also constitute torture by virtue of their severity of physical injury or severity of mental suffering caused by threats of further violence[219] or execution.[220]

159. In all the cases reported above, acts that caused severe pain or suffering were committed while the person was in the custody or under the control of the perpetrator. Indeed, the term custody includes any form of detention or imprisonment including arrest by security forces and other restrictions on liberty by security forces such as crowd control or enforced disappearances.[221]

160. The acts are not the result of lawful sanctions. Torture is a criminal offense in Sri Lanka in terms of the Torture Act, No. 22 of 1994.[222]

161. In all the cases reported above, the reported acts of torture appear to have been committed as part of a widespread or systematic attack directed against the Tamil population of the Northern Province. Victims of the reported acts of torture were all Tamils from the Northern Province. In determining whether an act is part of an attack, one must consider the nature, aims and consequences of such act.[223] Whether or not the acts of torture have been committed in the Northern Province or in detention facilities elsewhere in the country is irrelevant, provided that the act is sufficiently linked to the attack due to its nature aims and consequences.[224]

162. In some of the cases reported above, victims are targeted because they were suspected of having links with the LTTE and/ or espousing Tamil nationalist claims. This targeting is evidenced by the line of questioning systematically adopted during interrogation.[225] These acts were therefore evidently committed pursuant to the first strategy of the policy to attack the Tamil civilian population in the Northern Province, as described in Part II.

163. In other cases, victims were targeted because they were suspected of having engaged in activities or publicly expressed opinions susceptible of mobilizing public opinion

---

[219] U.N. Office of the High Commissioner for Human Rights, *Interpretation of Torture in the Light of the Practice and Jurisprudence of International Bodies*, at http://www.ohchr.org/Documents/Issues/Torture/UNVFVT/Interpretation_torture_2011_EN.pdf [last accessed 20 February 2014]

[220] *Ibid.*

[221] G. Werle, Principles of International Criminal Law, *supra* note 114, p. 163 ¶105

[222] Section 2(1), Convention Against Torture and other Cruel. Inhuman or Degrading Treatment or Punishment Act, No. 22 of 1994.

[223] *See, supra* note 128

[224] Judgment, *Prosecutor vs. Brdjanin*, (IT-99-36-T), Trial Chamber, 1 September 2004, ¶132: "The acts of the accused [. . .] do not need to be committed in the midst of the attack. For instance, the Kunarac Trial Chamber found that a crime committed several months after, or several kilometers away from the main attack could still, if sufficiently connected otherwise, be part of that attack."

[225] *See also*, Freedom From Torture, Torture Report, *supra* note 187, p.6

internationally on accountability issues and of human rights issues concerning Tamils in Sri Lanka. This is also evidenced by the line of questioning adopted during interrogation and torture. Indeed, about 40% of the cases documented by TAG from medico-legal reports or found to be credible by a court of law, victims returning from abroad were interrogated about protests against the Sri Lankan government abroad. One was also questioned about activities with a European Human Rights NGO.[226] These acts were, therefore, evidently committed in pursuance of the second strategy of the policy to attack the Tamil population of the Northern Province.[227]

164. Finally in the incident described in paragraph 145, reported acts of torture were committed after a crowd from the village gathered to defy the military and demand the punishment of persons associated with the military who they believed were involved in the commission of crimes. These acts were, therefore, evidently committed in pursuance of the third strategy to commit an attack against the Tamil population.[228]

165. In any event, the reported acts of torture fulfil the relevant legal requirements to constitute an attack on their own. Indeed, the campaign of torture described is both widespread and systematic. The cases reported above and those documented by TAG, FFT and HRW evidence credible allegations of torture of Tamils from the Northern Province in large numbers.[229] The gathered evidence points to very similar patterns of torture. Acts of torture frequently include burning with metal objects and cigarette burns, sexual violence, asphyxiation with bags filled with petrol tied around the head, forceful slapping and punching. Other techniques are sustained kicking all over the body including the genitals, head, face and back with metal capped and studded military boots; stomping on limbs and feet, hands and stomach with hard boots; sustained beating all over the body with implements such as wooden sticks and poles, gun butts, bamboo sticks, plastic pipes filled with sand or cement, metal tipped objects, whips and wires; throwing victims against a wall and banging heads against a wall; forceful twisting of the limbs and joints; beating on the soles of feet (falaka); and suspension.[230] In addition, a significant number of victims interviewed by HRW mentioned being taken to a room in unknown detention facility and that the floor and walls of the room were stained with

---

[226] TAG, Returnees at Risk Report, *supra* note 186, p. 10
[227] *See,* ¶ 66
[228] *See,* ¶ 68
[229] *See,* ¶¶ 153-155. In two thirds of the cases documented by TAG, the victims are from the Northern Province (information obtained through written communication with the researcher)
[230] Freedom From Torture, Torture Report, *supra* note 187, pp. 13 and 16. The use of these methods in torture committed by state functionaries is also corroborated by statements made by lawyers and others during interviews carried out for this research. In particular, *see* Interview #005; Interview #013; Interview #002; Interview #014; Interview #026; Interview #017.

dry blood.[231] This points out to the existence of secret detention facilities specifically used for interrogation and torture.

166. Although not a requirement under the Rome Statute,[232] in all the cases reported above, the acts inflicting severe pain and suffering to the victim were perpetrated for a prohibited purpose and therefore also constitute torture under CIL. Prohibited purposes under CIL include obtaining information or a confession, punishing, intimidating or coercing the victim or a third person, or discriminating on any ground against the victim or a third person.[233]As evidenced by the line of questioning to which they were subjected, victims were tortured to extract information or confession about the LTTE activities and their links with the organization or to obtain information or confession about anti-government activities abroad. In addition, in some cases, one of the purposes of torture may have been to punish the victim for their involvement with the LTTE. In the incident reported in paragraph 145, the circumstantial evidence clearly indicates that the protesters were tortured as punishment for their act of defiance against the military earlier that night.

167. Therefore, the cases reported give rise to credible allegations pointing to the ongoing commission of crimes against humanity of torture.

---

[231] HRW, 'Will Teach You a Lesson', *supra* note 5, pp. 54, 71, 82

[232] Under CIL, the crime against humanity of torture requires that severe pain or suffering is inflicted in order to attain a certain result or prohibited purpose see Judgment*, Prosecutor vs. Brdjanin*, (IT-99-36-T), Trial Chamber, 1 September 2004, ¶¶ 486-487; Judgment*, Prosecutor vs. Akayesu,* (ICTR-96-4-T), Trial Chamber, 2 September 1998, ¶¶ 593-95; Judgment*, Prosecutor vs. Kunarac et al.* (IT-96-23 & IT-96-23/1-T), Trial Chamber, 22 February 2001, ¶¶ 485& 497; Judgment*, Prosecutor vs. Krnojelac* (IT-97-25-T) , Trial Chamber, 15 March 2012, ¶ 186; see also UN General Assembly, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984, United Nations, Treaty Series, vol. 1465, p. 85, article 1 This is not required under the Rome Statute, *see,* Elements of Crimes, p.7 note 14

[233] *See, e.g.*, Judgment, *Prosecutor vs. Kunarac et al.*, (IT-96-23&IT-96-23/1-A), Appeals Chamber, 12 June 2002, ¶ 142; Judgment, *Prosecutor vs. Kvocka et al.*, (IT-98-30/1-T), Trial Chamber, 2 November 2001, ¶ 140

C. Other Inhuman Acts

1. Definition of the Crime

168. Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health is listed as a crime against humanity in article 7(1) (k) of the Rome Statute.

169. Elements of the crime against humanity of other inhumane acts are the following: [234]

> 1) The perpetrator inflicted great suffering, or serious injury to body or to mental or physical health, by means of an inhumane act.
>
> 2) Such act was of a character similar to any other act referred to in article 7, paragraph 1, of the Statute.
>
> 3) The perpetrator was aware of the factual circumstances that established the character of the act.
>
> 4) The conduct was committed as part of a widespread or systematic attack directed against a civilian population.
>
> 5) The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

170. The third and fifth elements are only relevant to the determination of individual criminal guilt and will not be discussed in this Report.[235]

2. Factual Allegations

171. Allegations of acts of violence amounting to inhumane acts under the Rome Statute are regularly reported in the media and by human rights activists. The research team is satisfied as to the credibility of the allegations detailed in paragraphs 172 to 180 below. These allegations have all been corroborated through interviews conducted in the course of the research.

172. On 20 September 2013, in the Jaffna District, the residence and campaign office of a TNA candidate, was attacked by a group of men in military uniform carrying assault weapons and heavy poles during the night. The attack took place less than twenty-four

---

[234] Elements of Crimes, *supra* note 39, p.12
[235] *See, supra* ¶40

hours before the end of the election campaign for the Northern Provincial council election. The TNA candidate noticed about 50 uniform personnel outside her home. She tried to call Police Emergency but she was told that they do not respond to political calls. Assailants slashed the tyres of her vehicle. Two attacks took place separated by 15 minutes. In between the two attacks, the candidate's supporters removed her and her three daughters from the house to safety. A Peoples' Alliance for Free and Fair Elections (PAFFREL) polls monitor who had been warned of the military gathering outside the house by a phone call from the candidate was also present during the second attack. He reports that 15 to 20 persons in military uniform entered the house. Assailants brandished large poles, shouting "So you want to create Tamil Eelam, so you want to rule the Northern Province?" The PAFFREL polls monitor and several other young men campaign staff were asked to kneel and to place their hands behind their backs. Guns were pointed to their head and the members of the military threatened to shoot them. One of the individuals described the scene as very similar to that broadcast in the Channel 4 execution video. They were assaulted with poles and with the butts of the rifles. [236] Eight TNA supporters were injured in the attacks. Most injuries from the attack were relatively minor with a few exceptions. Another election monitoring group the independent Campaign for Free and Fair Elections (CaFFE) has said that they had been prevented from rushing to the house by soldiers who had deployed in numbers just as the incident took place. The PAFFREL polls monitor reported that twenty-five incidents of a similar nature had been reported the previous day, twelve of which were confirmed.[237]

173. On 6 February 2013, in Jaffna, a distributor of another Tamil daily, *Thinakkural*, was assaulted with metal rods at Point Pedro. The attackers burned his motor bicycle and the newspapers. As a result of his serious injuries, he was rushed to the Jaffna Base hospital.[238]

174. On 10 January 2013, in Jaffna, an *Uthayan* newspaper distributor was brutally attacked by men with heavy poles. The attackers tried to bludgeon his head, and when he tried to

---

[236] Interview #012. "I thought it was chapter closed [colloquial expression used throughout Sri Lanka to describe finality, sometimes in reference to death]. We had to kneel and they were pointing guns. It was just like in the Channel 4. I thought it was all over."

[237] *See, e.g.*, 'Northern Provincial Council Election 2013 – Communiqué No 6', *Centre for Monitoring Election Violence*, 20 September 2013, at http://cmev.wordpress.com/2013/09/20/northern-provincial-council-election-2013-communique-no-6/ [last accessed 7 February 2013]; Interview #005; Interview #019; Dharisha Bastians, '"Some Men who Attacked my House Wore Military Uniforms Over Collared Shirts"-Ananthi Sasitharan', dbsjeyaraj.com, 20 September 2013, at http://dbsjeyaraj.com/dbsj/archives/25952 [last accessed 7 February 2013]

[238] *See, e.g.*, 'Another newspaper burning in North, agent beaten', *Vimarsanam-Vimansa*, 2 August 2013,http://vimarsanam-vimansa.org/report/another-newspaper-burning-in-north-agent-beaten/ [last accessed 7 February 2014]; Interview #020

protect his head with his hands, his arm was fractured. The attackers burned his motor bicycle and the newspapers. The distributor was admitted to the Jaffna Hospital.[239]

175. On 18 May 2012, in Jaffna, the secretary of the Jaffna University Student Union was attacked by four men while he was on his way to observe a remembrance event to commemorate those killed during the war. He was beaten with iron rods and suffered serious injuries to his head. The student leader was rushed Jaffna Teaching Hospital. Prior to the attack, the military had threatened the Jaffna students not to participate in the event. The students went ahead with the memorial event, stating that it was their democratic right to remember the dead, and protested against the military operated administration of civil affairs in the peninsula.[240]

176. On the 27 November 2012, in Jaffna, the army entered the university and stood guard throughout the male student dormitories to prevent the lighting of lamps on Great Heroes Day—a day on which the LTTE remembered their dead. In the morning, military personnel rushed into the Jaffna University student hostels ostensibly to prevent the lighting of lamps. Having heard that the lamp lighting had been shifted to the female hostels, the Army entered the hostel through the water tank, broke open the doors of the women's hostel, and put out the lamps. They also threatened the girls by placing guns to their heads and threatening to shoot them. Some girls fainted out of fear and shock.[241] The following days, students gathered at the University to conduct a silent protest against the previous day's incident. The riot police unit, military personnel and officers dressed in civil clothes baton charged the unarmed students. Many students were injured, with four students requiring hospitalization.[242]

177. On 24 October 2011, in Jaffna, a final year student of Art Faculty of the Jaffna University was severely assaulted with iron bars by an armed gang who arrived in a three wheeler. He fell to the ground and the attackers continued to assault him with stones, resulting in serious facial injuries. He was admitted to the Kilinochchi General Hospital and on the next day, considering the severity of his condition, was transferred to the Intensive Care Unit of the Jaffna Teaching Hospital. The victim organized many protests against the attack on the President of the Jaffna University Student Union which took

---

[239] *See, e.g.*, "'Udayan" Newspaper delivery employee attacked, by unidentified persons. Papers burnt', *Online Uthayan*, 10 January 2013, at http://onlineuthayan.com/english-news/uthayannews/x214y233h1h1r2p2 [last accessed 7 February 2014]; Interview #021; Interview #019

[240] *See, e.g.*, Amnesty International, Assault on Dissent Report, *supra* note 7, p. 44; Interview #019, Interview #023; Interview #006

[241] *See, e.g.*, WATCHDOG, 'The death of Freedom of Assembly, Expression and Religion in the North of Sri Lanka', *Groundviews*, 1 December 2012, at http://groundviews.org/2012/12/01/the-death-of-freedom-of-assembly-expression-and-religion-in-the-north-of-sri-lanka/ [last accessed 7 February 2014]

[242] *Ibid;* Interview #023

place on 16 October 2011. Eye-witnesses to the attack as well as the victim believe that the attackers were from military intelligence units. This is on account of the behavior of the perpetrators and because student protests in which the victim had participated were videotaped by military intelligence officers.[243]

178. On 16 October 2011, in Jaffna, the President of the Jaffna University Student Union was assaulted with iron bars and was badly injured, minutes after meeting with leaders of the TNPF.[244] The victim had been mobilizing students in protests against the military.[245] Unidentified men armed with sharp iron rods followed him in more than 8 motorbikes and attacked him at Kantharmadam in Jaffna. The 24-year-old student was seriously wounded and admitted at the Intensive Care Unit of Jaffna Teaching Hospital.[246]

179. On 16 June 2011, in Jaffna, several persons were severely beaten at a TNA meeting held in Alaveddy, in advance of local government elections. Army officers and troops walked into the meeting to disrupt and cancel it on the pretext that no permission had been obtained for the meeting. The soldiers armed with poles nonetheless started attacking the participants. Some bodyguards of the TNA parliamentarians were severely injured. They were admitted to hospital with blood injuries caused by blunt force trauma to their heads and limbs.[247]

180. On 28 July 2011, the news editor of Uthayan, was hospitalized after being severely assaulted by armed attackers.[248] He was attacked at around 7:45 pm, by two unidentified men who arrived at the scene in a motorbike. The timing of the attack was significant, given that it came in the immediate aftermath of the local government elections in Jaffna, where the Uthayan newspaper was predictably scathing in its criticism of the

---

[243] *See, e.g.*, 'Perpetrators of a brutal attack have not been arrested', *Asian Human Rights Commission*, 27 October 2011, at http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-223-2011[last accessed 7 February 2014]; Dasun Edirisinghe, 'Military accused of attack on Jaffna Uni. Students', *Island*, 27 October 2011, at http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=37777; Interview #022; Interview #002

[244] *See, e.g.*, 'Student leader 'assaulted by military", *BBC Sinhala*, 17 October 2011, at http://www.bbc.co.uk/sinhala/news/story/2011/10/111017_jaffna_student.shtml [last accessed 7 February 2014]. The attack was near an army checkpoint, and the victim reported he had received threats due to his rights activism and his Tamil nationalist political positions. *See also* Interview #008.

[245] Interview #008

[246] *See, e.g.*, 'Perpetrators of brutal attack on student leader of Jaffna University have not been arrested', 19 October 2011, at http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-211-2011 [last accessed 24 February 2014]; Interview #008

[247] *See, e.g.*, Ranga Jayasuriya, 'North ruled via army violence? Army denies vehemently', *Lakbima News via Sri Lanka Brief*, 26 June 2011 at http://www.srilankabrief.org/2011/06/north-ruled-via-army-violence-army.html; Interview #005

[248] *See, e.g.*, 'Suspected EPDP goons assault 59-year-old editor of Jaffna newspaper', *D.B.S. Jeyaraj.com*, 30 July 2011, at http://dbsjeyaraj.com/dbsj/archives/2606 [last accessed 7 February 2014]; Interview #019; Interview #020

government and expressed support for the TNA. The victim was placed in the intensive care unit of the Jaffna Hospital due to his injuries, which were so severe they required the victim to be placed on life support machines.[249]

3. **Preliminary Conclusions**

181. The incidents reported in paragraphs 173 to 175 and 177 to 180 were severe assaults with metal rods, stones, and poles.[250] These resulted in serious injuries to the body such as blood injuries, fractures and cranial trauma. The incidents reported in paragraph 172, and 176 involve threats to the life of the victim and mock executions. In paragraph 176, witnesses report that soldiers pointed their guns to the head of some girls in the dormitory and threatened to shoot them. Some girls fainted. In paragraph 172, the victims were made to kneel and guns were pointed to their head. One of the victims reported that he was convinced that he was going to be shot dead. Whether these acts will have a long-lasting effect on the mental health of the victims is immaterial to assessing the severity of the injury;[251] severity instead depends on the personal circumstances of each victim. In any event, these acts are traumatic by nature and, if proven, reach the threshold gravity required for the crime against humanity of other inhumane acts.[252]

182. The acts reported above are of similar character to other acts referred to in article 7, paragraph 1 of the Rome Statute. Indeed, these acts are similar in nature and gravity to acts of torture and are distinguished only because they were not conclusively committed when the person was in the custody or the control of the perpetrator.

183. In all the cases reported above, the acts of inhumane treatment appear to have been committed as part of a widespread or systematic attack directed against the Tamil population of the Northern Province. Victims of the acts of inhuman treatment reported are all Tamil from the Northern Province. They were targeted in furtherance of the first and third strategy to commit the attack described in Part II.[253]

---

[249] *See, e.g.*, 'SRI LANKA: Still no arrest after vicious attack on the news editor of Uthayan Newspaper' 10 August 2011, at http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-138-2011 [last accessed 24 February 2014], Dinidu de Alwis 'Uthayan News Editor in critical condition', *Nation*, at http://www.nation.lk/2011/07/31/news4.htm [last accessed 7 February 2014]

[250] Interview #005: "Beating with poles and suspension are the most common by police. The military intelligence and army men often use metal rods and bars to attack people. This has happened in a number of cases. It is almost a signature of their attacks."

[251] Judgment, *Prosecutor vs. Krnojelac,* (IT-97-25-T), Trial Chamber, 15 March 2002, ¶131: "The suffering inflicted by the act upon the victim does not need to be lasting so long as it real and serious."

[252] Report of the Special Rapporteur on Torture, 42nd Session UN Human Rights Commission, *supra* note 217, p. 30

[253] *See, supra* ¶¶ 66, 68

184. In most of the incidents, victims of the acts described in paragraphs 173-176, and 180, were evidently targeted pursuant to the first strategy described in Part II because they were perceived as espousing or supporting Tamil nationalist claims. In paragraphs 172 inhuman acts were committed against TNA supporters while they were campaigning for an upcoming election. Several other inhuman acts—such as the assault of journalists perceived as supporting Tamil nationalist ideology or political parties, as well as the assault of students participating in commemorations for those killed during the war—were also evidently committed pursuant to this first strategy.

185. The other incidents reported appear to have been committed pursuant to the third strategy to commit the attack. In cases reported in paragraphs 176 and 177, the students from the Jaffna University were targeted because they were mobilizing fellow students in protests against violent acts committed by the military or by groups or individuals associated with the military.

186. Therefore, all the incidents reported give rise to credible allegations pointing to the ongoing commission of crimes against humanity of other inhumane acts.

D. Imprisonment

1. Definition of the Crime

187. Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law is listed as a crime against humanity in article 7(1)(e) of the Rome Statute.

188. The elements of the crime of imprisonment are:[254]

> 1) The perpetrator imprisoned one or more persons or otherwise severely deprived one or more persons of physical liberty.
>
> 2) The gravity of the conduct was such that it was in violation of fundamental rules of international law.
>
> 3) The perpetrator was aware of the factual circumstances that established the gravity of the conduct.
>
> 4) The conduct was committed as part of a widespread or systematic attack directed against a civilian population.
>
> 5) The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

189. The third and fifth elements are only relevant to the determination of individual criminal guilt and will not be discussed in this Report.[255]

2. Factual Allegations

190. Numerous allegations of imprisonment are publicly documented and reported. The research team is satisfied as to the credibility of the allegations detailed in paragraphs 191 to 197 below. The mass-scale detention detailed in paragraphs 198 and 199 were publicly reported, tacitly and sometimes explicitly acknowledged by officials, and sometimes litigated. With reference to cases where individuals were detained or imprisoned separately, the research team verified the circumstances surrounding the detention of these individuals through interviews with lawyers and close associates.

---

[254] Elements of Crimes, *supra* note 39, p. 7
[255] *See, supra* ¶40

191. In January 2013, in Kilinochchi, TID officers searched the office of a TNA MP twice, and claim to have found explosives, pornographic material and condoms in his office. The TID officers arrived at the MP's office alongside journalists, who took pictures of the TNA MP's private secretary and assistant posing with the pornographic material and explosive purportedly found at the office. These images appeared in leaflets that were distributed in and around Kilinochchi town shortly thereafter. The TID officers detained The MP private secretary and assistant. The two were later transferred to Boosa detention camp, in terms of an administrative detention order issued under the Prevention of Terrorism Act. They challenged their detention in a fundamental rights application to the Supreme Court. They were later released in November 2013. No charge was filed against them at any point, nor was the TNA MP even questioned regarding the alleged discovery of explosives at his office.[256]

192. In December 2012, in Kilinochchi, a doctor was taken into custody by the army in Bharathipuram, after he entered the army camp with a young Tamil woman who had been recruited into the army—allegedly without her informed consent—but wanted to return to her parents instead. He entered the army camp with the young recruit and her parents to petition army officials. The military alleges that the doctor questioned some of the other Tamil recruits within the camp after entering the camp. The doctor—a vocal critic of the government and occasional columnist at the *Uthayan* newspaper—was then transferred to TID custody at the Mankulam Police Station. Thereafter, a detention order was issued on him under the PTA. In June 2013, the doctor was released. No charges were brought against him while he was in detention.[257]

193. In November 2012, in Jaffna, following a demonstration by Jaffna University students which was broken up violently by the police and military, four students leaders from the University of Jaffna were detained under 'rehabilitation orders' issued under PTA regulations and held at the Welikanda rehabilitation centre. The demonstration coincided with the birthday of the deceased leader of the LTTE as well as a Hindu festival. Two of the students were released in January 2013 and the other two in February 2013.[258]

---

[256] *See, e.g.*, 'Sridharan's staff discharged', *Daily Mirror*, 6 November 2013, at http://www.dailymirror.lk/news/38276-sritharans-staff-discharged-.html [last accessed 7 February 2014]; Interview #005; Interview #022

[257] *See, e.g.*, 'Dr. Sivashankar arrested by military', *Online Uthayan*, 30 December 2012, at http://onlineuthayan.com/english-news/uthayannews/535403l1h1h1r2 [last accessed 7 February 2014]; 'Udayan columnist arrested', *Ceylon Today*, 1 January 2013, at http://www.ceylontoday.lk/16-20830-news-detail-udayan-columnist-arrested.html[last accessed 7 February 2014]; Interview #002; Interview #013

[258] Human Rights Watch, 'Sri Lanka free or charge detained students', 20 December 2012, at http://www.hrw.org/news/2012/12/20/sri-lanka-free-or-charge-detained-students [last accessed 7 February 2014]

194. Also in November 2012, in Jaffna, more than 40 individuals were arrested in Jaffna and detained en masse in the Boosa detention centre. Almost all of those arrested were those who had already undergone 'rehabilitation' since they were suspected by the military of having assisted the LTTE.[259]

195. In November 2009, in Kandy, 22-year-old student of Peradeniya University's Arts Faculty, was arrested by the TID. Her relatives could not locate her for two months, and when they did, discovered that she was being held at the Boosa detention centre. The student—whose hometown is Kilinochchi—was arrested after she submitted certificates she had won in Kilinochchi bearing the LTTE insignia along with her application to take part in an athletic event. She filed a fundamental rights petition challenging her unlawful detention in June 2010. She was subsequently released.[260]

196. In May 2009, the three government-employed doctors and two medics attached to the LTTE who continued to provide medical services to the thousands of injured in the 'no fire zones' in the Vanni were detained and held in incommunicado detention.[261] Throughout the last stages of the war, these doctors had provided public updates on the situation within the theatre of conflict, disputing the government's claims of low civilian casualties. In these updates, they had accused the government of shelling civilians and hospitals.[262] In July 2009, the doctors appeared at a press conference organized by the Media Centre for National Security—an arm of the Ministry of Defence—and publicly recanted their earlier reports. The doctors later reported that they were threatened into

---

[259] *See, e.g.*, '44 persons arrested in Jaffna are detained at Booza camp', *Online Uthayan*, 18 January 2013, at http://onlineuthayan.com/english-news/uthayannews/x2143343h1h1r2p2 [last accessed 7 February 2014]; Interview #005; Interview #013

[260] Amnesty International, Locked Away Report, *supra* note 188, p. 27

[261] *See, e.g.*, Amnesty International, 'Document - Sri Lanka. Craintes pour la sécurité / Détention au secret. Médecins: T. Sathiyamoorthy ; T. Varatharajah ; Shanmugarajah', 18 May 2009, at https://www.amnesty.org/fr/library/asset/ASA37/011/2009/fr/c97f4cbf-6613-4480-aee3-f08c9c644daa/asa370112009en.html [last accessed 7 February 2014]; Interview #024

[262] *See, e.g.*, 'Emergency Situation Report from Dr. Sathiyamoorthy: Disaster at hospital on 13 May 2009', *War without witness in Sri Lanka*, 13 May 2009, at http://www.warwithoutwitness.com/index.php?option=com_content&view=article&id=173:emergency-situation-report-from-dr-sathiyamoorthy-disaster-at-hospital-on-13-may-2009&catid=39:by-war-without-witness&Itemid=62 [last accessed 7 February 2014]; 'Hospital is full of patients - Dr.T.Sathiyamoorthy', *War without witness in Sri Lanka*, 10 May 2009, at http://www.warwithoutwitness.com/index.php?option=com_content&view=article&id=161:hospital-is-full-of-patients-drtsathiyamoorthy&catid=41:daily-hr-report&Itemid=65[last accessed 7 February 2014]

doing so, and were coached to give the answers they provided.[263] The following month, they were released on bail, before the cases against them were dropped.[264]

197. In most of the cases reported in paragraph 97 to 128 and paragraphs 143 to 154, the victims were detained illegally, often held incommunicado for several months. They were eventually released, without being produced before a judge and without being charged.

198. In the early months of May 2009, in Mullaitivu, the entire population of close to 300,000 persons including civilian men, women and children who were trapped in LTTE-controlled territory and escaped the fighting were detained and subsequently interned in a cluster of camps. While the largest batch of IDPs emerged from the 'no fire zones' in May, many had crossed over to government held territory earlier were already placed in internment camps. The largest of these camps was Menik Farm in Vavuniya, where approximately 250,000 individuals were held. The military was in control of the camps and internees were not allowed to leave. The access of aid-workers, human rights groups, independent journalists and opposition politicians to the camp was heavily restricted. Many families were separated for months in different camps, without knowledge of the fate of the others. The detention of the inmates of the camps had no known legal basis. None was offered. In June 2009, a public interest application challenging the detention of these 300,000 individuals was heard by the Supreme Court on the question of preliminary leave to proceed and the matter was reserved for order. However, to date, the order was never issued and the matter is formally pending before the court.[265] The presiding judge who heard the matter has now retired.[266] While the government's stated plan at the initial stages was to keep civilians detained in Menik Farm for up to three years,[267] resettlement was expedited under heavy international pressure. In December 2009, the government eased some restrictions by permitting inmates to leave the camp for limited periods, but military officials threatened to 'track down' those who did not

---

[263] *See, e.g.*, James R. Moore, U.S. Embassy Cable, 'Doctors from No-Fire Zone Released on Bail', *Wikileaks*, 24 August 2009, at http://wikileaks.org/cable/2009/08/09COLOMBO830.html [last accessed 14 February 2014]

[264] *See, e.g.*, 'Judge orders Sri Lanka police to release Vanni doctor if no evidence found', *Colombo Page*, 15 June 2010, at http://www.colombopage.com/archive_10A/Jun15_1276540383CH.php [last accessed 7 February 2014]

[265] *See, e.g.*, Centre for Policy Alternatives, *The Centre for Policy Alternatives Vs. Minister of Defence* (SC FR 457/09), 2 November 2009, at http://www.cpalanka.org/the-centre-for-policy-alternatives-vs-minister-of-defence-sc-fr-45709/ [last accessed 7 February 2014]; Human Rights Watch, 'Sri Lanka: The Government Breaks Promises that Displaced Can Go Home', 19 October 2009, at http://www.hrw.org/en/news/2009/10/19/sri-lanka-government-breaks-promises-displaced-can-go-home[last accessed 7 February 2014]; Interview #005; Interview #013

[266] Interview #005

[267] *See, e.g.*, 'Sri Lanka civil war refugees to be housed in 'welfare villages'', *Guardian*, 12 February 2009, at http://www.theguardian.com/world/2009/feb/12/sri-lanka-refugees-welfare-camps [last accessed 7 February 2014]

return.[268] The conditions in at least some zones in Menik Farm were known to be appalling, with credible reports of repeated flooding and overflowing sewage.[269] There were more than 30 confirmed cases of death due to starvation and malnutrition by 27 April 2009.[270] Menik Farm was closed in September 2012, more than three years after the end of the war, when the last batch of IDPs from Keppapilavu who were not permitted to return home were settled in Seeniyamottai.[271]

199. Also, in and around May 2009, the military and police initiated a course of action to arrest and detain individuals among those who escaped the fighting during the last stages with any connections to the LTTE. A total of approximately 12,000 individuals, including children, were kept separately from the rest of the population under this programme. Among these were cadres who surrendered to the forces; civilians who heeded the request by the military that all those who had any connections with the LTTE surrender immediately; individuals identified as having links with the LTTE by other IDPs or paramilitary members; and others who did not surrender but were arrested by military and police intelligence.[272] As the International Commission of Jurists notes:

> Other detainees responded to public calls from the SLA for the surrender of anyone who had spent "even one minute with the LTTE in any way". This blanket call led many detainees with minimal involvement with the LTTE to report themselves, including children brought forward by their parents. UN Special Envoy Patrick Cammaert reported that, "[a]s a result, many children's families, fearing later harassment, encouraged their children to report themselves, even if they only spent hours in the custody of the LTTE in the final days of the fighting." The SLA promised that, once registered, those who 'surrendered' would be

---

[268] *See, e.g.*, 'Sri Lanka war refugees leaving military camps', *BBC News*, 1 December 2009, at http://news.bbc.co.uk/2/hi/south_asia/8387537.stm [last accessed 7 February 2014]

[269] *See, e.g.*, 'Monsoon threatens Sri Lankan refugees with 'humanitarian disaster', warns UN', *Guardian*, 10 October 2009, http://www.theguardian.com/world/2009/oct/11/sri-lanka-monsoon-flooding-refugees [last accessed 7 February 2014]; 'Sri Lanka refugees plead for freedom', *BBC News*, 6 October 2009, at http://news.bbc.co.uk/2/hi/8293982.stm; 'My life in Menik farm IDP camp from March to July 2009', *Transcurrents*, at http://transcurrents.com/tc/2009/10/my_life_in_menik_farm_idp_camp.html ;Interview #009; Interview #016

[270] Order, Magistrate's Court of Vavuniya, Case no. B/827/9, 27 April 2009.

[271] *See, e.g.*, 'Sri Lanka shuts Menik Farm IDP camp', *Hindu*, 25 September 2012, at http://www.thehindu.com/news/sri-lanka-shuts-manik-farm-idp-camp/article3935374.ece[last accessed 7 February 2014]. *See also*, *infra* ¶ 243

[272] *See,* Human Rights Watch, 'Legal Limbo: The Uncertain Fate of Detained LTTE Suspects in Sri Lanka', February 2010, at http://www.hrw.org/sites/default/files/reports/srilanka0210webwcover.pdf [last accessed 7 February 2014]

released, but surrender instead triggered continuing indefinite detention without charge or trial.[273]

Once detained, these individuals were held in camps known variously as 'rehabilitation' camps, 'surrendee' camps and 'ex-combatant' camps, with release dates varying arbitrarily from person to person. The legal framework for the detention of these individuals allowed for up to two years' detention without charge, trial or access to legal representation, with the Minister of Defence exercising discretion over the length of the detention.[274] Further, the framework provided no opportunity to challenge these executive decisions restricting their liberty.

3. **Preliminary Conclusions**

200. All the cases mentioned above give rise to credible allegations of the crime against humanity of imprisonment. All the cases referred to are characterized by the arbitrary nature of the arrest and detention, which appear to have been for reasons other than those permitted by domestic or international law. All the cases listed above involve individuals detained by the executive, and not detention pursuant to the exercise of judicial review. This is evidenced by the release of many of the victims after prolonged detention, without charges ever being brought against them in a court of law.

201. The mass detention of over 300,000 civilians in May 2009 give rise to credible allegations of the crime of imprisonment, as the camps in which they were detained resembled open prisons. However, the commentary on the 1996 Draft Code notes that 'severe deprivation of liberty' would cover "systematic and large scale instances of arbitrary imprisonment such as concentration camps or detention camps or other forms of long term detention."[275] The severity element required by the formulation of the crime is satisfied by the prolonged nature of the detention, the limitations of access to aid and legal assistance, the separation of families, and appalling conditions in at least some zones of the Menik Farm camp where most detainees were held.[276]

---

[273] *See, e.g.*, International Commission of Jurists, 'Beyond Lawful Constraints: Sri Lanka's Mass Detention of LTTE Suspects', September 2010, at http://reliefweb.int/sites/reliefweb.int/files/resources/28738E40D73D48AB492577AF000B5BD6-Full_Report.pdf?bcsi_scan_76859af71b923077=0&bcsi_scan_filename=28738E40D73D48AB492577AF000B5BD6-Full_Report.pdf [last accessed 7 February 2014]

[274] Emergency (Miscellaneous Powers and Provisions) Regulations No. 1 of 2005, section 22; Prevention of Terrorism (Surrendees Care and Rehabilitation) Regulations No. 5 of 2011, sections 5-9

[275] G. Werle, Principles of International Criminal Law, *supra* note 114, p. 317

[276] *See, e.g.,* Charles Haviland, 'Sri Lanka refugees plead for freedom', *BBC News*, 6 October 2009, at http://news.bbc.co.uk/2/hi/8293982.stm [last accessed 7 February 2014]; 'My life in Menik farm IDP camp from

202. In all the cases reported above, the acts of imprisonment and severe deprivation of liberty appear to have been committed as part of a widespread or systematic attack directed against a civilian population, described in Part II. In determining whether an act is part of an attack, one must consider the nature, aims and consequences of such act.[277]

203. As described in Part II, the first strategy of the attack against the Tamil population in the Northern Province consists in targeting members of the population perceived supporting the LTTE or those espousing Tamil nationalist claims.[278] All of the acts of imprisonment described in paragraphs 194 to 196 and 198 to 199 targeted individuals with some degree of connection to the LTTE, or in cases reported in paragraphs 191 to 193, those known for their Tamil nationalist positions.

204. In addition, in cases reported in paragraphs 153 and referred to in paragraph 197, many victims were targeted because they were suspected of having engaged in activities or publicly expressed opinions susceptible of mobilizing public opinion internationally on accountability issues and of human rights issues concerning Tamils in Sri Lanka.[279] These acts were therefore evidently committed pursuant to the second strategy to commit the attack.

205. In addition, the acts of imprisonment describe above fulfil the legal requirements to constitute an attack on their own. First, cases detailed in paragraphs 97 to 128 and 143 to 154 point to a widespread and systematic campaign of rape, sexual violence and torture. In all these cases, the person was detained illegally and sometimes held incommunicado. There are therefore reasons to believe that imprisonment is also widespread.[280] Second, with regard to the mass detention of 300,000 individuals in the immediate aftermath of the war, notwithstanding the claim that these detentions were committed as part of an attack on the civilian population of the Northern Province, these detentions fulfil the relevant legal criteria to constitute an attack on their own, as they were widespread and systematic and directed against the civilian population of the Vanni. The widespread nature of the detentions is evidenced by the massive numbers of those detained without charge, and without regard to any assessment of their individual guilt or threat profile. The systematic nature of the attack is manifest by the fact that every single member of the civilian population of the Vanni was subject to detention, and by the control wielded over the camps by the government and military.

March to July 2009,' *Transcurrents*, 6 October 2009, at
http://transcurrents.com/tc/2009/10/my_life_in_menik_farm_idp_camp.html
[277] *See, supra* note 128
[278] *See, supra* ¶ 64
[279] *See, supra* ¶ 163
[280] *See,* ¶¶ 137,165

206. Therefore, all the incidents reported give rise to credible allegations pointing to the ongoing commission of crimes against humanity of imprisonment and other severe deprivation of liberty.

E. Murder

1. Definition of the Crime

207. Murder is listed as a crime against humanity under article 7(1)(a) of the Rome Statute.

208. Elements of the crime against humanity of murder are:[281]

> 1) The perpetrator killed one or more persons.
>
> 2) The conduct was committed as part of a widespread or systematic attack directed against a civilian population.
>
> 3) The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack against a civilian population.

209. The third element is only relevant to the determination of individual criminal guilt and will not be discussed in this Report.[282]

2. Factual Allegations

210. A number of allegations of murders have been reported in the media and by human rights activists in Sri Lanka. The research team is satisfied as to the credibility of the allegations detailed in paragraphs 211 to 213 below. The credibility of these allegations have been confirmed by several persons contacted during the research.

211. In June 2012, two Tamil prisoners Ganesan Nimalaruban (age 28) and Mariyadas Delrukshan (age 34)—detained under national security law—died after being severely beaten by prison officials as punishment for their involvement in a prison riot. These two prisoners had participated in a riot in the Vavuniya prison on 28 June 2012. They were protesting their prolonged detention without charges. During the riot, prisoners held prison guards hostage. The guards were freed the following day by a rescue operation. After the operation, the prisoners were transferred from Vavuniya to Anuradhapura, where they were severely beaten by prison guards.[283] Ganesan Nimalaruban suffered severe injuries and was subsequently transferred to Mahara prison. Shortly thereafter, he was admitted to Ragama Hospital, where he died five days after the riot. Following his death, the authorities initially refused to release his body or allow him

[281] Elements of Crimes, *supra* note 39, p. 5
[282] *See, supra* ¶ 40
[283] Interview #005

to be buried in Vavuniya, his hometown, citing national security concerns. Mariyadas Delrukshan was admitted to hospital in a coma and eventually died from his injuries.[284]

212. On 15 March 2011 Sampanthan Sakthitharan, a 28-year-old teacher at Chaavakachcheari Hindu College, Jaffna, died after he was abducted, attacked and tortured, reportedly following a dispute with military officers in Tirunelveli in Jaffna. [285]

213. On 26 November 2010, the Deputy Director of Education of Jaffna District, Markandu Sivalingam, was shot dead by armed men in Urumpiai, Jaffna. He had reportedly refused to instruct schools in his educational zone to sing the national anthem in the Sinhala language.[286]

3. **Preliminary Conclusions**

214. In the first two incidents reported, the deaths of the victims were caused by severe beating and torture. In the third, the victim was shot dead. Thus, in all the cases, death was caused by the direct action of the perpetrators.

215. A small number of—or even a single—act of murder can constitute a crime against humanity if it is part of the attack.[287] The murders reported above in paragraphs 211 to 213 are part of the attack against Tamils of the Northern Province because they were committed in pursuance of the third strategy to commit the attack described in Part II.[288] In all these cases, the victims were tortured to death or shot dead because they were perceived as defying the government or the military either because they took part in an unequivocal act of defiance—such as the riot—or merely because they expressed disagreement or refused to comply with government policies enforced by the military.

216. Therefore, the cases reported give rise to credible allegations pointing to the ongoing commission of crimes against humanity of murder.

---

[284] *See, e.g.*, 'Justice denied: The denouement of Sri Lanka's Nimalaruban case', *Asian Correspondent*, 15 October 2013, at http://asiancorrespondent.com/114446/justice-denied-the-denouement-of-sri-lankas-nimalaruban-case/ [last accessed 7 February 2014]; Charles Haviland, 'Parents of dead Sri Lankan Tamil prisoner denied last rites', *BBC News*, 9 Jul 2012, at http://www.bbc.co.uk/news/world-asia-18770072 [last accessed 14 February 2014]; Interview #005. *See also* Letter to Pres. Rajapaksa, Death of Tamil political prisoner Ganesan Nimalaruban at the Mahara remand prison, *Colombo Telegraph*, 5 July 2012, at https://www.colombotelegraph.com/index.php/death-of-tamil-political-prisoner-political-and-civil-society-leaders-demand-an-impartial-enquiry/ [last accessed 23 February 2014]

[285] Minority Rights Group, "International submission on Sri Lanka to the 14th Session of the Universal Periodic Review", ¶ 6

[286] *Ibid.*, ¶ 4

[287] *See, e.g.*, Judgment, *Prosecutor vs. Tadic* (IT-94-1-T), 7 May 1997, Trial Chamber ¶ 646: 'Even an isolated act can constitute a crime against humanity, if it is the product of a political system based on terror or persecution'

[288] *See, supra* ¶ 68

F. Enforced Disappearances of Persons

1. Definition of Crime

217. Enforced disappearance of persons is listed as a crime against humanity in article 7(1) of the Rome Statute. Article 7(2)(i) of the Statute specifies that:

> [e]nforced disappearance of persons' means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.

218. Elements of the crime against humanity of enforced disappearances are:[289]

1) The perpetrator:

(a) Arrested, detained, or abducted one or more persons; or

(b) Refused to acknowledge the arrest, detention or abduction, or to give information on the fate or whereabouts of such person or persons.

2) (a) Such arrest, detention or abduction was followed or accompanied by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of such person or persons; or

(b) Such refusal was preceded or accompanied by that deprivation of freedom.

3) The perpetrator was aware that:

(a) Such arrest, detention or abduction would be followed in the ordinary course of events by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of such person or persons; or

(b) Such refusal was preceded or accompanied by that deprivation of freedom.

4) Such arrest, detention or abduction was carried out by, or with the authorization, support or acquiescence of, a State or a political organization.

[289] Elements of Crimes, *supra* note 39, p.11

5) Such refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of such person or persons was carried out by, or with the authorization or support of, such State or political organization.

6) The perpetrator intended to remove such person or persons from the protection of the law for a prolonged period of time.

7) The conduct was committed as part of a widespread or systematic attack directed against a civilian population.

8) The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

219. The third, sixth and eighth elements are only relevant to the determination of individual criminal guilt, and will therefore not be discussed in this Report.[290]

2. **Factual Allegations**

220. Since the end of the war, numerous allegations of enforced disappearances have be reported in the Northern Province.[291] However, specific factual allegations concerning, for instance, the involvement of State agents or individuals acting on behalf of the State have not been corroborated by other sources. Therefore, the credibility of many allegations of enforced disappearances reported in media sources could not be determined conclusively in the course of this research.[292] The research team is however satisfied as to the credibility of the allegations detailed in paragraph 221 below.

221. On 9 December 2011, in Jaffna, Lalith Kumara Weeraraj and Kugan Muruganandan were disappeared close to Neerveli. Some eyewitness accounts have confirmed that a group of men on two bikes and a white van stopped the motorbike on which Mr. Weeraraj and Mr. Muruganandan were travelling near the Aththiyar Government School, opposite an abandoned glass factory. Mr. Weeraraj and Mr. Muruganandan had been forced into the white van by the men and the bike had been left on the road. The bike was later recovered by Kopay Police.[293] Mr. Weeraraj's father and Mr. Murugananthan's wife thereafter made police complaints, complaints to the Human Rights Commission and have filed habeas corpus applications, pursuant to which the Magistrate's Court of

[290] *See, supra* ¶ 40
[291] *See, e.g.*, WATCHDOG, 'A disappearance every five days in post-war Sri Lanka', *Groundviews*, 30 August 2012, at http://groundviews.org/2012/08/30/a-disappearance-every-five-days-in-post-war-sri-lanka/ [last accessed 7 February 2014]
[292] *Ibid.*
[293] Interview #014; Interview #015; Interview#013

Jaffna is conducting an inquiry into the alleged disappearance of the two men. However, the eyewitnesses who witnessed the incident have not come forward to testify, as they are fearful for their safety.[294] Mr. Weeraraj's husband and Mr. Murugananthan's wife have been threatened—including with death—since the commencement of the inquiry before the Jaffna Magistrate's Court.[295] Prior to their disappearance, Mr. Weeraraj and Mr. Muruganandan were mobilizing family members of the disappeared and compiling lists of those who had disappeared during the last stages of the war.[296] Mr. Weeraraj was a well-known political activist belonging to the leftist "We are Sri Lankans" movement which is in turn associated with the Frontline Socialist Party, and had previously been threatened, detained and physically attacked a number of times while engaging in human rights and political activities in the Northern Province.[297]

222. Several cases of enforced disappearances are reported to have taken place during and after the last days of the war, in May 2009. According the Lessons Learnt and Reconciliation Commission, there were at least 45 cases of disappearances of those who surrendered to the Armed Forces between the 17 May and 19 May 2009.[298] This number merely reflects only the complaints made to the LLRC. The real figures are unknown and likely to be much higher than that recorded by the LLRC. Incidentally, the LLRC records that in fact 1,018 persons had allegedly 'disappeared' after arrest by the Armed Forces.[299]

3. **Preliminary Conclusions**

223. The disappearances of persons who surrendered during the last stages of the war, as well as the disappearance of Mr. Weeraraj and Mr. Murugananthan are credibly alleged to have been carried out by state actors. The surrenders of persons who later disappeared were observed by a large number of witnesses, including family members who saw their relatives be taken into military custody.[300] Similarly, the facts surrounding the incident involving Mr. Weeraraj and Mr. Murugananthan points strongly to government involvement in their disappearance. The high levels of militarization in the Northern

---

[294] Interview #013
[295] *Ibid.*
[296] *Ibid.*
[297] *Ibid.*
[298] *See,* Annexes to the Report of the Commission of Inquiry on Lessons Learnt and Reconciliation (November 2011), Annex 4.15
[299] *Ibid.*, Annex 5.1
[300] *See, e.g.*, 'Ananthi to brief Pillay about the disappeared', *Ceylon Today*, 19 August 2013, at http://www.ceylontoday.lk/51-40489-news-detail-ananthi-to-brief-pillay-about-the-disappeared.html[last accessed 7 February 2014]; 'Relatives of Sri Lanka's missing vent grievances at U.N', *TheIndependent.lk*, at http://www.theindependent.lk/feature/sports/item/1129-no-plans-to-shift-ipl-matches-out-of-chennai-bcci [last accessed 7 February 2014]

Province render it near impossible for such acts to take place without the collusion of those at the highest levels of the military hierarchy. Further, the signature method of abduction involving white vans, prior threats to Mr. Weeraraj and the testimony of Mr. Weeraraj's colleague who was abducted in April 2012 and interrogated about Mr. Weeraraj and Mr. Murugananthan, all point to the involvement and collusion of state functionaries in this disappearance.[301]

224. Because the disappearance of surrendees during the last stages of the war were acts deliberately targeting of individuals perceived to be members of the LTTE, these disappearances fall under the first strategy of the attack directed against the Tamil population of the Northern Province, described in Part II.[302]

225. The disappearance of Mr. Weeraraj and Mr. Murugananthan was linked to their involvement in mobilizing the families of disappeared and collating information relating to those who disappeared during the last stages of the war. Moreover, Mr. Weeraraj had previously been warned many times by members of the military to desist from engaging in human rights activities in the North. As such, their disappearances fall under the second and third strategies to attack the Tamil population of the Northern Province, described in Part II.[303]

226. Therefore, the incidents reported give rise to credible allegations pointing to the ongoing commission of the crime against humanity of enforced disappearances.

---

[301] *See, e.g.*, 'VIDEO: Kumara and I were interrogated in turns – Attygalle', *Adaderana.lk*, 10 April 2012, at http://www.adaderana.lk/news.php?nid=17685[last accessed 7 February 2014]
[302] *See, supra* ¶ 64
[303] *See, supra* ¶¶ 66, 68

G. Persecution

1. Definition of the Crime

227. Persecution is listed as a crime against humanity in article 7(1)(h) of the Rome Statute and defined by article 7(2)(g). The crime against humanity of persecution is defined by the Rome Statute to mean:

> persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court.[304]

228. Persecution, in this context means the "intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity."[305]

229. Elements of the crime against humanity of persecution are the following[306]:

1) The perpetrator severely deprived, contrary to international law, one or more persons of fundamental rights.

2) The perpetrator targeted such person or persons by reason of the identity of a group or collectivity or targeted the group or collectivity as such.

3) Such targeting was based on political, racial, national, ethnic, cultural, religious, gender as defined in article 7, paragraph 3, of the Statute, or other grounds that are universally recognized as impermissible under international law.

4) The conduct was committed in connection with any act referred to in article 7, paragraph 1, of the Statute or any crime within the jurisdiction of the Court.

5) The conduct was committed as part of a widespread or systematic attack directed against a civilian population.

6) The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

---

[304]Rome Statute of the International Criminal Court, *supra* note 30, article 7(1)(h)
[305] Rome Statute of the International Criminal Court, *supra* note 30, article 7(2)(g)
[306] Elements of Crimes, *supra* note 39, p. 10

230. The sixth element is only relevant to the determination of individual criminal guilt and will not be discussed in this Report.[307]

231. Thus, in addition to the contextual elements for a crime against humanity discussed in Part II, the crime of persecution involves: (1) a severe denial of fundamental rights; (2) on discriminatory grounds; and (3) a nexus with the widespread or systematic attack.

2. **Legal Analysis and Evaluation of Factual Allegations**

a. Severe Deprivation of Fundamental Rights

232. Persecution requires that the perpetrator severely deprived, contrary to international law, one or more persons of fundamental rights.

233. The Rome Statute's requirement of a severe deprivation of fundamental rights mirrors the claim elements for persecution under the ICTY and ICTR statutes. Under customary international law, "fundamental rights" are determined on a case-by-case basis. As the Trial Chamber of the ICTY has held:

> [t]he Trial Chamber does not see fit to identify which rights constitute fundamental rights for the purposes of persecution. The interests of justice would not be served by so doing, as the explicit inclusion of particular fundamental rights could be interpreted as the implicit exclusion of other rights (expressio unius est exclusio alterius). This is not the approach taken to crimes against humanity in customary international law, where the category of "other inhumane acts" also allows courts flexibility to determine the cases before them, depending on the forms which attacks on humanity may take, forms which are ever-changing and carried out with particular ingenuity. Each case must therefore be examined on its merits.[308]

234. In assessing whether an act violates a "fundamental right," international tribunals have looked to the Universal Declaration of Human Rights of 1948, the two U.N. Covenants on Human Rights of 1966, Articles 1 and 55 of the U.N. Charter, and the International Covenant on Civil and Political Rights.[309] "[T]he crime of persecution encompasses a variety of acts, including, inter alia, those of a physical, economic or judicial nature, that violate an individual's right to the equal enjoyment of his basic rights."[310]

---

[307] *See, supra* ¶ 40
[308] Judgment, *Prosecutor vs. Kupreskic et al.* (IT-95-16-T), Trial Chamber, 14 January 2000, ¶ 623
[309] *Ibid.*, ¶ 621; Judgment, *Prosecutor vs. Tadic* (IT-94-1-T), Trial Chamber, 7 May 1997, ¶ 697
[310] *See,* Judgment, *Prosecutor vs. Tadic* (IT-94-1-T), Trial Chamber 7 May 1997, ¶ 710

235. To constitute persecution under the Rome Statute, there must further be a "severe" denial of a fundamental right. The jurisprudence of the ad-hoc tribunals has interpreted the severity requirement to mean that the denial of fundamental rights must rise to the level of gravity of other crimes enumerated in the statute.[311] The Pre-Trial Chamber in the *Kenyatta* confirmation decision held that crimes constituting the underlying acts of other crimes against humanity—in that case, acts such as killings, displacement, rape, serious physical injuries, causing serious mental suffering—constituted acts that entailed severe deprivation of fundamental rights.[312] Likewise, in *Kvocka* before the ICTY, the Trial Chamber specified that the persecutory acts include: "those crimes enumerated in other sub-clauses of Article 5, crimes found elsewhere in the Statute, and acts not enumerated in the Statute but which may entail the denial of other fundamental human rights [...]"[313]

i. *Acts Causing Severe Bodily or Mental Harm*

236. Thus, each of the underlying acts of rape,[314] torture,[315] other inhumane acts,[316] imprisonment,[317] disappearance,[318] and murder[319] discussed above constitute severe deprivations of the rights of individuals that are contrary to international law. These acts violate the elementary and inalienable rights of humankind—the rights of Tamil civilians in the Northern Province to the "security of person."[320] These acts rise to the gravity of a

---

311 *See, e.g.,* Judgment, *Prosecutor vs. Blaskic,* Appeals Chamber, ¶ 135 ("[T]he acts underlying persecutions as a crime against humanity, whether considered in isolation or in conjunction with other acts, must constitute a crime of persecutions of gravity equal to the crimes listed in Article 5 of the Statute."); Judgment, *Prosecutor vs. Kupreskic et al.* (IT-95-16-T), Trial Chamber, 14 January 2000, ¶ 619 ("[I]t can be said that at a minimum, acts of persecution must be of an equal gravity or severity to the other acts enumerated under Article 5."); Judgment, *Prosecutor vs. Ruggiu* (ICTR-97-32-I), Trial Chamber, 1 June 2000, ¶ 21 (predicate act must "reach[] the same level of gravity as other acts prohibited under[the statute]")

312 Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute, *Prosecutor vs. Uhuru Muigai Kenyatta* (ICC-01/09-02/11-382-Red), Pre-Trial Chamber II, 23 January 2012, ¶ 283

313 Judgment, *Prosecutor vs. Kvocka et al.*, (IT-98-30/1-T), Trial Chamber, 2 November 2001, ¶ 185

314 *See,* ¶¶ 97-128

315 *See,* ¶¶ 143-155

316 *See,* ¶¶ 172-180

317 *See,* ¶¶ 191-199

318 *See,* ¶¶ 211-213

319 *See,* ¶¶ 221-222

320 *See, e.g.,* Judgment, *Prosecutor vs. Blaskic* (IT-95-14-T), Trial Chamber, 2 March 2000, ¶ 207 ("There is no doubt that serious bodily and mental harm and infringements upon individual freedom may be characterised as persecution when, as will be indicated below, they target the members of a group because they belong to a specific community. The Trial Chamber considers that infringements of the elementary and inalienable rights of man, which are "the right to life, liberty and the security of person", the right not to be "held in slavery or servitude", the right not to "be subjected to torture or to cruel, inhuman or degrading treatment or punishment" and the right not to be "subjected to arbitrary arrest, detention or exile" as affirmed in Articles 3, 4, 5 and 9 of the Universal Declaration of Human Rights, by their very essence may constitute persecution when committed on discriminatory grounds.");

"severe" violation of a fundamental right, as evidenced by their enumeration in article 7(2) of the Rome Statute.[321]

ii. Land Confiscation

237. Under international law, persecution is not limited to acts causing or threatening bodily harm. Attacks on property may, under certain circumstances, constitute a "severe deprivation of fundamental rights" sufficient to constitute persecution as a crime against humanity. In *Prosecutor vs. Kupreskic*, a case alleging the comprehensive destruction of homes and property, the Trial Chamber held that "attacks on property can constitute persecution":[322]

> [s]uch an attack on property in fact constitutes a destruction of the livelihood of a certain population. This may have the same inhumane consequences as a forced transfer or deportation. Moreover, the burning of a residential property may often be committed with a recklessness towards the lives of its inhabitants. The Trial Chamber therefore concludes that this act may constitute a gross or blatant denial of fundamental human rights, and, if committed on discriminatory grounds, it may constitute persecution.[323]

238. Thus, persecution may "take the form of confiscation or destruction of private dwellings or businesses, symbolic buildings or means of subsistence belonging to [the targeted group]." [324] To constitute persecution, the confiscation or destruction of civilian property must be militarily unjustified and carried out unlawfully, wantonly, and discriminatorily.[325] The confiscation of individuals' homes and means of livelihood satisfies the gravity or severity requirement.[326]

239. The research team has found credible evidence of persecution through the appropriation of—and exclusion of legitimate residents from—vast swathes of private land belonging to Tamils in the Northern Province. Listed below are instances of military land grabs of Tamil civilian land that the research team has found credible. Each claim has been

---

Judgment, *Prosecutor vs. Kordic* (IT-95-14/2-A), Appeals Chamber, 17 December 2004, ¶¶ 672-73 (finding grave denial of fundamental rights based, *inter alia,* on "killings, beatings, [and] unlawful attacks on civilians and civilian objects")

[321] Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute, *Prosecutor vs. Uhuru Muigai Kenyatta* (ICC-01/09-02/11-382-Red), Pre-Trial Chamber II, 23 January 2012, ¶ 283

[322] Judgment, *Prosecutor vs. Kupreskic* (IT-95-16-T), Trial Chamber, 14 January 2000, ¶ 361

[323] Judgment, *Prosecutor vs. Kupreskic* (IT-95-16-T), Trial Chamber, 14 January 2000, ¶ 361; Judgment, *Prosecutor vs. Simic, Tadic, and Zaric* (IT-95-9-T), Trial Chamber, 17 October 2003, ¶ 50; *See also* G. Werle, *Principles of International Criminal Law*, *supra* note 114, p. 321

[324] Judgment, *Prosecutor vs. Blaskic* (IT-95-14-T), Trial Chamber, 2 March 2000, ¶227

[325] Judgment, *Prosecutor vs. Blaskic* (IT-95-14-T), Trial Chamber, 2 March 2000, ¶ 233

[326] Judgment, *Prosecutor vs. Kordic* (IT-95-14/2-T) Trial Chamber, 26 February 2001, ¶ 205

corroborated by a number of sources, and many have been reported widely by the local and international media. In addition, the research team corroborated each instance of land grabbing reported in the section through interviews and in cases of lands subject to acquisition proceedings, official government documents. Moreover, the government and military have acknowledged the military's occupation of several of these tracts of land, and have made attempts at regularizing this occupation through the Land Acquisition Act which provides for the acquisition by the state of private land for 'public purposes'.[327]

240. In Valikamam, in Jaffna District, the military has continued in occupation of approximately 6,381 acres (25.8 square kilometers) of private land since 1995. In 1995, all the residents within the area left in a mass exodus of almost every single person from the peninsula. This population transfer was mandated by the LTTE in the face of a military campaign by the army to take control of the peninsula, which had until then been under LTTE control. When the people eventually returned to Jaffna, the army had taken over vast swathes of land in the northernmost point in Jaffna, deeming it to be a High Security Zone. Despite this nomenclature, the area was never officially declared and gazetted as a High Security Zone, unlike other areas throughout the country that were officially recognised.[328] Notwithstanding this, the area's residents were not permitted to resettle within this area.[329]

241. After the end of the war, the military has taken steps to release only a small fraction of the entire area under occupation since 1995. The Sri Lankan government has sought to formally acquire the remaining land—amounting to approximately 6,400 acres—on which approximately 26,200 persons belonging to 7,203 families previously resided, [330] under an urgent procedure provided by the Land Acquisition Act,[331] ostensibly for the purpose of "regularising handover of area on which Defence Battalion Headquarters (Jaffna) - High Security Zone (Palaly and Kankesanthurai) is established."[332] The area alone contains an airport, port, a long coastal stretch, and several thousands of acres of arable land. The military has admitted that it is engaged in cultivation and agricultural

---

[327] Land Acquisition Act No. 9 of 1950 (as amended), section 2
[328] Interview #005; Interview #013
[329] *Ibid.*
[330] *See, e.g.*, 'Land Return and Resettlement Reconciliation Non-resettlement in Valikamam – North and impact of 20 years in IDP camps', *Vimarasanam-virasama*, 14 February 2013, http://vimarsanam-vimansa.org/report/non-resettlement-in-valikamam-north-and-impact-of-20-years-in-idp-camps/[last accessed 7 February 2014]
[331] Gazette Extraordinary 1807/23, 26 April 2013. *See also,* Land Acquisition Act, section 38A
[332] Notice under section 2 of the Land Acquisition Act, 27 April 2013 (exhibited near the barricades erected outside the Valikamam 'HSZ' area on or about 20 April 2013, some 7 days prior to the purported date of the issuance of the notice)

production within the area,[333] and it is also running a beachfront tourist hotel.[334] While more than two thousand landowners from the area have challenged the acquisition of their lands on procedural and substantial grounds,[335] the government has continued to issue orders in respect of the acquired land.[336]

242. In addition to these large tracts of land, the military also continues to occupy individual houses throughout the Jaffna district. As at December 2012, over 500 houses in the Jaffna district were occupied by the Army,[337] although the government has since claimed that it has released approximately 77 houses.[338]

243. Similarly, in Mullaitivu District, the military continues to occupy, and has sought to acquire, 526 acres (2.1 square kilometers) of land. The purpose of acquisition is tautologically reflected as "acquire the land where the National Cadet Corps (Mullathievu) is established" in the section 2 notice which signified the initiation of proceedings under the Land Acquisition Act. The inhabitants of the coastal village of Keppapilavu were the last batch of internally displaced persons released from Menik Farm,[339] the largest camp in which the estimated 250,000 Tamils who were previously in LTTE controlled territory were interned.[340] However, they were not permitted to resettle

---

[333] *See, e.g.*, 'The Sri Lanka Army Farm, established and maintained in Jaffna', *Adaderana*, 28 January 2011, at http://www.youtube.com/watch?v=gWuGCzaTRuM [last accessed 7 February 2014]; International Crisis Group, Sri Lanka's North II Report, *supra* note 4, pp. 22-23

[334] *See, e.g.*, Official website of the military run Thalsevana Holiday Resort in Jaffna at http://www.thalsevanaresort.com/ [last accessed 7 February 2014]: "Thalsevana Holiday Resort functioning under the Security Forces Headquarters—Jaffna". *See also* International Crisis Group, Sri Lanka's North II, *supra* note 4, p. 23

[335] CA Writ Applications 125. 135. 205/2013. The total number of petitioners combined is in excess of two thousand.

[336] Interview #005; Order in terms of proviso [a] to section 38 of the Land Acquisition Act, Gazette Extraordinary No. 1807/23, 26 April 2013; Declaration under section 5 of the Land Acquisition Act dated 16 May 2012, Gazette Extraordinary No 1812/10, 28 May 2013

[337] Rajavarodayam Sampanthan, Speech in Parliament, Parliamentary Debates, Hansard, 7 December 2012, at 2949; Interview #005: "[t]he numbers set out in the speech were not contradicted by the relevant Minister or any other member of Parliament."

[338] A recent report in August 2013 in a state-owned newspaper claimed that the Security Forces in Jaffna released 77 houses and 29 plots of land. This is the first known instance of any such release after Mr. Sampanthan reported to Parliament in December 2012 that 551 houses had been illegally occupied by the military. *See, e.g.*, 'Army releases houses, lands to civilians', *Sunday Observer*, 11 August 2013, at http://www.sundayobserver.lk/2013/08/11/new24.asp [last accessed 7 February 2014]

[339] *See, e.g.*, 'The United Nations welcomes the closure of Menik Farm in Sri Lanka but is concerned for the last remaining displaced people', *Reliefweb*, 25 September 2012, at http://reliefweb.int/report/sri-lanka/united-nations-welcomes-closure-menik-farm-sri-lanka-concerned-last-remaining [last accessed 7 February 2014]

[340] *See,* ¶ 198

in their original village. Instead, at least 364 individuals from 110 families[341] have now been compelled to resettle in an area recently cleared from the jungle in Seeniyamottai, which is located away from the coast.[342] Those displaced in Seeniyamottai have also complained that, unlike Keppapilavu, the land in Seeniyamottai is unsuitable for agriculture, affecting the livelihoods of those displaced. Further, because of the distance from the coast, fishermen originally from Keppapilavu are now unable to engage in their trade.[343] The cumulative effect of the denial of property rights, deprivation of livelihoods and protracted displacement has caused severe hardship to the people of Keppapilavu. Moreover, the military imposes tight control over the residents of the area, imposing restrictions on the lives of these individuals.[344]

244. Throughout Mullaitivu and Kilinochchi, at least sixteen tracts of private land—ranging from one acre to hundreds of acres—that were occupied by the military have been sought to be acquired by the government by the issuance of section 2 notices under the Land Acquisition Act on a single day, 10th April 2013. The specific reasons for these acquisitions included the establishment of military bases,[345] hospitals,[346] holiday resorts[347] and farms.[348]

245. Besides these private lands sought to be acquired, many other private lands and houses have been appropriated by the military in the Northern Province. In Kilinochchi, the Kilinochchi-Iranamadu camp, which is situated in a stretch of land formerly used by the LTTE, has been extended to include a part of the village of Shantipuram, displacing 29 families.[349] The military's original plan was to occupy the entire village of Shantipuram, but villagers claim this plan was aborted after representations were made by the villagers

---

[341] *See, e.g.*, Ruki , 'Menik Farm: The tragic end of a bitter saga, from detention to forced relocation', *Groundviews*, 10 February 2012, at http://groundviews.org/2012/10/02/menik-farm-the-tragic-end-of-a-bitter-saga-from-detention-to-forced-relocation/ [last accessed 7 February 2014]

[342] *Ibid.*

[343] *Ibid.*

[344] *See, e.g.*, Dilrukshi Handunnetti, '528 Acres of Residential and 684 Acres of Agricultural Lands in Keppapilavu Occupied by Military Without Paying Compensation to Displaced Owners', *D.B.S Jeyaraj.com*, 14 October 2012, at http://dbsjeyaraj.com/dbsj/archives/11651[last accessed 7 February 2014]; The Social Architects, 'Land Expropriation and Deception in Keppapilavu', *Sri Lanka Campaign for Peace and Justice Blog*, 24 May2013, at http://blog.srilankacampaign.org/2013/05/land-expropriation-and-deception-in.html [last accessed 7 February 2014]
'In search of justice: The story of the people of Kepapilavu', *Sunday Times,* 6 January 2013, at http://www.sundaytimes.lk/130106/news/in-search-of-justice-the-story-of-the-people-of-kepapilavu-27606.html [last accessed 7 February 2014]

[345] Notice under section 2 of the Land Acquisition Act, 10 April 2013

[346] *Ibid.*

[347] *Ibid.*

[348] *Ibid.*

[349] *See, e.g.*, International Crisis Group, Sri Lanka's North II Report, *supra* note 4, pp. 17-18

to an Indian diplomat.[350] On the southwest border of the same camp, the military has occupied several acres of land, and prevented over 115 families from accessing their own homes and private paddy lands in Murigandi.[351]

246. In Kokkuthudivai, in Kilinochchi, around 200 families have been excluded from their homes and paddy lands due to the presence of a military installation.[352]

247. In Mullikulam, in Mannar, the Navy has occupied a large area since 2007 on which they have constructed the North Western Command Headquarters, due to which close to 300 families have been denied permission to resettle, most of whom previously engaged in fishing.[353] Those displaced from Mullikulam were permitted to settle in an area outside the naval installation in mid-2012. However, heavy restrictions have been imposed on fishing and farming, and access to amenities such as water and electricity are restricted.[354]

248. The appropriation of private lands by the military has resulted in the severe deprivation of the fundamental rights of thousands of Tamils from the Northern Province, who have been excluded from their homes and lands. This exclusion and appropriation of property has rendered entire communities destitute, given the loss of the property owned by them, as well as the resultant inability to pursue their livelihoods.[355] Further, farmers and fishermen are deprived access to livelihoods, and are forced to remain unemployed or take up work in areas in which they are not skilled, and thus incapable of earning a meaningful livelihood.[356]

249. Thus, the deprivation of the livelihood and property of many thousands of Tamils across the Northern Province through military appropriation of private lands and houses constitute severe deprivations of the rights of those dispossessed.

---

[350] *Ibid.*, p. 18
[351] *Ibid.*
[352] *Ibid.* p.19
[353] *Ibid.*, p. 21
[354] *See, e.g.*, WATCHDOG, 'Mullikulam: Restrictions on fishing, cultivation, access to the church and school continue', *Groundviews*, 15 March 2013, at http://groundviews.org/2013/03/15/mullikulam-restrictions-on-fishing-cultivation-access-to-the-church-and-school-continue/ [last accessed 7 February 2014]; WATCHDOG, 'Sri Lanka Navy vs. the people of Mullikulam', *Groundviews*, 24 January 2013, at http://groundviews.org/2013/01/24/sri-lanka-navy-vs-the-people-of-mullikulam/ [last accessed 7 February 2014]; Ruki, 'The struggle to go home in post war Sri Lanka: The story of Mullikulam', *Groundviews*, 1 August 2012, at http://groundviews.org/2012/08/01/the-struggle-to-go-home-in-post-war-sri-lanka-the-story-of-mullikulam/ [last accessed 7 February 2014]
[355] *Ibid.*, see also UN Human Rights Council, 19th Session (22 February 2012), Written statement submitted by the Asian Forum for Human Rights and Development, a non-governmental organization in special consultative status, UN Doc. A/HRC/19/NGO/64
[356] *Ibid.*

b. Discriminatory Intent

250. Persecution requires a finding that the victims were targeted on the basis of their group identity. Such targeting must be based on political, racial, national, ethnic, cultural, religious, gender as defined in article 7, paragraph 3, of the Statute, or other grounds that are universally recognized as impermissible under international law.

251. In *Naletilic,* the Trial Chamber held that "a discriminatory basis exists where a person is targeted on the basis of religious political or racial considerations, *i.e.* for his or her membership in a certain victim group that is targeted by the perpetrator group."[357] In *Blagojevic,* the Trial Chamber defined a discriminatory act as one where "a victim is targeted because of his or her membership in a group defined by the perpetrator on a political, racial or religious basis."[358] Similarly, in the confirmation of charges decision in *Kenyatta*, the Pre-Trial Chamber of the ICC treated certain acts as discriminatory where the "victims were targeted by reason of their identity as perceived ODM supporters."[359]

i. Acts Causing Bodily or Mental Harm

252. The acts committed pursuant to strategies one, two, and three of the attack described in Part II target individuals with discriminatory intent for the groups to which they belong. The most commonly targeted victims include those perceived to be former members of the LTTE; those perceived to be espousing Tamil nationalist claims, such as members and supporters of Tamil opposition political parties and leaders of student unions from the University of Jaffna; those perceived to be mobilizing international opinion; and those perceived to be defiant of the military and government and those engaging in protests.

253. Individuals who are perceived to be defiant of the military and government,[360] as well as those involved in protests against the military and government,[361] are targets of violence on account of their political opposition to the government and military. However, the incumbent government has sought to attack dissidents and protestors against the government in other parts of the island using methods similar to those employed in the North. Therefore, in the absence of further evidence, the Report is unable to definitely

---

[357] Judgment, *Prosecutor vs. Naletilić and Martinović*, (IT-98-34-T), Trial Chamber, 31 March 2003, ¶ 636
[358] Judgment, *Prosecutor vs. Blagojevic and Jokic* (IT-02-60-T), Trial Chamber, 17 January 2005, ¶ 583
[359] Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute, *Prosecutor vs. Uhuru Muigai Kenyatta* (ICC-01/09-02/11-382-Red), Pre-Trial Chamber II, 23 January 2012, ¶ 283
[360] *See,* ¶¶ 145, 192, 212, 213
[361] *See,* ¶¶ 145, 177, 193

attribute the targeting of victims pursuant to this third strategy to the victims' ethnicity or politics. The one exception is the series of acts discussed above targeting student union members and protesters at the University of Jaffna. The University Jaffna has been consistently known to be a hotbed of Tamil nationalist politics, and many of the attacks on student union members and protesters occurred around the anniversary of the LTTE's Great Heroes Day, after students were warned not to commemorate the event. There are therefore reasons to believe that these incidents were motivated by the political and ethnic identities of the victims.

254. The research team concludes that acts targeting members and supporters of Tamil opposition political parties[362] were discriminatory on political grounds. The discriminatory intent behind these acts is evidenced by the fact that a high number of violent attacks were directed against members of Tamil opposition political parties but not against political actors supportive of the government. Discriminatory intent is further demonstrated by the fact that violent acts against TNA members and supporters increase dramatically during election months and by statements attributed to senior military and civilian leaders vilifying the TNA and other Tamil nationalist parties as being proponents of LTTE ideology[363] and a threat to national security.[364] Further, because the primary political agendas of Tamil opposition political parties explicitly and exclusively address the ethnic conflict in Sri Lanka, the targeting of these parties are on discriminatory grounds of ethnicity as well.

255. The research team concludes that former members of the LTTE and those perceived to be former members of the LTTE were targeted on discriminatory grounds. The discriminatory intent is primarily evidenced by the nature of questions directed to the victims of rape, torture and imprisonment during interrogation. The discussion in paragraphs 136 and 162 specifies that victims were regularly interrogated on their perceived links to the LTTE, demonstrating the discriminatory nature of these acts. This targeting is clearly on political grounds. Moreover, since the politics of the LTTE was intertwined with ethnicity, the discrimination is also on the basis of ethnicity.

256. Finally, with respect to the targeting of those involved in mobilizing international opinion in respect of human rights abuses and atrocities committed against Tamils,[365]

---

[362] *See,* ¶¶ 172, 179,191

[363] *See,* ¶ 61; *see also* Sri Lanka Army, 'Prabhakaran would have escaped if we allowed Vijay Nambiar to visit Mullaitivu – Gotabaya Rajapaksa', 19 November 2013 at http://www.army.lk/detailed.php?NewsId=7020 [last accessed 7 February 2013]; Sri Lanka fears regrouping of former LTTE cadres due to TNA', *Ada Derana,*16 September 2013, at http://adaderana.lk/news.php?nid=24091 [last accessed 7 February 2013]

[364] *Ibid.*

[365] *See,* ¶¶ 163,196,221

this strategy includes targeting those who are not ethnic Tamils from the Northern Province. Thus, the research team concludes that this targeting is conducted on discriminatory political grounds, and in the absence of further evidence, not on ethnic grounds.

ii. Land Confiscation

257. The mass scale land grabs by the military in the Northern Province are a part of the military's strategy to establish and maintain a heavy and permanent military of occupation in the Northern Province. While the Government justifies this confiscation of private lands by invoking a threat to national security, as detailed in paragraphs 170 to 174 below, this confiscation is in fact in pursuance of a discriminatory policy.[366]

258. Senior military and civilian leaders have on occasion communicated the government's reasoning concerning this strategy. According to Defence Secretary Gotabaya Rajapaksa:

> [e]verybody expects the military to be out of civilian life that is the main complaint from Tamil politicians and NGOs but still we have to remember our main task is the security. It is true Prabhakaran and the leadership is gone and we have dismantled their military capabilities but still their international network is there. […]You can't disregard this. If we relax, if we don't take steps to prevent it there is a possibility it can rise again. But from the security forces, intelligence we have to take steps to change the way we operate. Their international network is intact. You can see how much pressure they brought recently on the government. [367]

259. Explaining the government's rationale for maintaining military camps in the Northern Province, Defence Secretary Rajapaksa stated:

> [t]he other method we are doing is we have positioned military camps in certain areas. There are no longer HSZs (High Security Zones) but we have positioned military personnel—camps in very strategically identified places so that we can control certain areas.[368]

---

[366] The only justification under international law for appropriation of private land is that of military necessity: *see,* Judgment, *Prosecutor vs. Blaskic* (IT-95-14-T), Trial Chamber, 2 March 2000, ¶233. *See also* elements of crime, *supra* note 39, p.15. However 'military necessity' is a specific concept pertaining to the Laws of Armed Conflict that does not apply in the absence of an armed conflict. Military or security purposes cannot therefore justify the appropriation of private land outside the context of an armed conflict. In any event, as detailed below there are reasonable reasons to believe that the confiscation of private land is in pursuance of a discriminatory policy.
[367] *See, e.g.*, Frederica Jansz, 'Gotabaya Rajapaksa -Three Years Later', *Sunday Leader*, 27 May 2012, at http://www.thesundayleader.lk/2012/05/27/gotabaya-rajapaksa-three-years-later/[last accessed 7 February 2014]
[368] *Ibid.*

260. Further, the purported national security threat is deemed to be the separatist ideology dominant among Tamils, outside and within Sri Lanka. Expanding on this idea, Military Spokesman Brigadier Wanigasuriya has stated:

> [w]e have eradicated the direct armed violence in the country by defeating terrorism within the island. However, the separatist ideology still has wings. It is a major threat to national security. As you know, there are several groups amongst the vast Tamil Diaspora active in Western countries propagating the ideology of a separate state. They are far detached from the ground reality and act only for their own wellbeing in those countries where they enjoy special privileges either as refugees or powerful vote blocs. Some politicians openly support them mainly due to the ability of those groups to sway the votes of the Tamils in the respective areas.

261. Professor Rohan Gunaratna, an academic known to be a close adviser to the Defence Secretary, went a step further, claiming that:

> [t]he Sri Lankan government should initiate an investigation against anyone calling for the withdrawal of the Army from the North and they will find the hidden hand of the LTTE. With the military in the North, there will be no Tamil Eelam. While the Police should engage in day-to-day law and order functions, the military should remain in strength in the North to ensure security. As long as the LTTE remains active in Tamil Nadu, operates in the West, and its proxy the TNA is in power in the North, Sri Lanka should ensure a robust security presence in the North and East.[369]

262. These expressions by senior civilian and military leaders, as well as regime ideologues, indicate that the heavy presence of the military in the Northern Province—of which the occupation of private lands is a necessary by product[370]—is not on account of a

---

[369] *See, e.g.*, Nadira Gunatilleke, 'TNA will bring grief, not joy to Tamils - Prof. Rohan Gunaratna', *Daily News*, 10 December 2013, at http://www.dailynews.lk/features/tna-will-bring-grief-not-joy-tamils-prof-rohan-gunaratna#sthash.nQE2NHTF.dpuf [last accessed 7 February 2014]

[370] The appropriation of private lands is a necessary corollary to the government's strategy of maintaining a heavy military presence in the Northern Province. This is evidenced by the fact that in the Jaffna peninsula, most lands are private lands. This necessarily means that any large scale cantonment in the area such as the one being established in Valikamam will necessarily be established on private lands; *see e.g.*, Bhavani Fonseka and Mirak Raheem, 'Land in the Northern Province, Post-war politics policies and practices', *Centre for Policy Alternatives*, December 2011, at http://cpalanka.org/wp-content/uploads/2011/12/Land-Issues-in-the-Northern-Province-Post-War-Politics-Policy-and-Practices-.pdf [last accessed 7 February 2014], p.9. Further, given the scale of the military's presence in the Northern Province, which is conservatively estimated to be around 198,000 (1 security personnel for every 5.04 civilians), coupled with the military's running of farms and other land-intensive economic activities such as tourism, it is inevitable that this level of military presence would require the appropriation of private lands, as it has. For an estimation of the military presence in the Northern Province, *see e.g.*, 'Military Presence in Sri Lanka's Northern Province', *Economic and Political Weekly*, 14 July 2012, at: http://www.epw.in/insight/notes-military-presence-sri-lanka%E2%80%99s-northern-province.html [last accessed 7 February 2014], p.35; 'Notes on the Military Presence in Sri Lanka's Northern Province', *Economic and Political Weekly*, 14 July 2012, at http://www.sangam.org/2012/07/Military_Presence.pdf [last accessed 7 February 2014]

perceivable military threat. Instead, the government and military's perception of a national security threat, in response to which it deems a heavy military presence necessary, is on account of the perceived subscription of Tamils in the diaspora, the TNA and Tamils in Sri Lanka to a 'separatist ideology'.[371] As noted earlier in Part II, the President's own characterization of federalism as being synonymous with secession results in a broad stigmatization of Tamils as being a threat to national security.[372] This is turn is deemed to necessitate preventive security measures, including the maintenance of a heavy military presence in the North.

263. Thus, the occupation of private homes and lands by the military in the Northern Province—a necessary corollary of its strategy to maintain a heavy military presence in the Province—targets the Tamil population of the Northern Province as such, on political and ethnic grounds.

c. The Conduct was Committed in Connection with any Act Referred to in Article 7(1)

264. Under the Rome Statute, Persecution requires that the conduct in question was committed in connection with any act referred to in article 7, paragraph 1, of the Statute or any crime within the jurisdiction of the Court.

265. In terms of the clear language of the Elements of Crimes, this 'connection' requirement is fulfilled if the conduct in question was committed in connection with any *other* act, or with another act of persecution itself.[373]

266. As the Trial Chamber of the ICTY held in *Kupreskic,* this additional element in the Rome Statute does not affect the definition of the crime in CIL.[374] Indeed, even the ICC's Pre-Trial Chambers do not appear to consider this element in its decisions concerning the confirmation of charges against persons accused of the crime of persecution.[375]

267. In any event, the discriminatory acts described above as being committed in pursuance of strategies one, two and three to commit the attack—which are also underlying acts of

---

[371] *See, supra* note 61
[372] *See, e.g.*, Inderjit Badwar, 'I am not a Sinhala chauvinist but a Sri Lankan nationalist - Mahinda Rajapakse', *Asian Tribune*, 20 September 2007, at http://www.asiantribune.com/node/7435 [last accessed 7 February 2014].
[373] Triffterer, Otto, and Kai Ambos, Commentary on the Rome Statute of the International Criminal Court, *supra* note 52, p. 151
[374] Judgment *Prosecutor vs. Kupreškić et al* (IT-95-16-T), Trial Chamber, 14 January 2000, ¶580
[375] *See,* Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute *Prosecutor vs. William Samoei Ruto and Joshua Arap Sang* (ICC-01/09-01/11-373), Pre-Trial Chamber II, 23 January 2012, p.12 ; Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute, *Prosecutor vs. Uhuru Muigai Kenyatta* (ICC-01/09-02/11-382-Red), Pre-Trial Chamber II, 23 January 2012, p.14

crimes *other than* persecution—are all committed in connection with other underlying acts under Article 7, paragraph 1. Further, the discriminatory acts described above as being committed in pursuance of strategy four of the attack are, by virtue of being discriminatory acts targeting the Tamil population in the context of an attack on that population, committed in connection with the other discriminatory acts which also constitute acts of persecution within the same attack.

d. Nexus with the Attack

268. The discriminatory acts described above are committed as part of the attack against the Tamil population of the Northern Province in that the underlying acts are committed in pursuance of strategies one, two, three or four of the attack.

269. Thus, the reports of persecutory acts described above give rise to credible allegations pointing to the ongoing commission of crimes against humanity of persecution.

IV. CONCLUSION: THE SPECTRE OF RECURRING INTERNATIONAL CRIMES

270. This Report documents and compiles credible allegations of post-war violations of international criminal law, which, if proven, point to the commission of crimes against humanity against the Tamil population of the Northern Province. The allegations discussed herein call into question the government's narrative on its purported progress on human security and human rights protection particularly of the residents of the Northern Province, since the end of the war. For many Tamils in the North, the end of a decades-long, debilitating civil war has not halted recurring human rights violations, including rape, sexual assault, torture, forced disappearance, imprisonment, murder, and deprivation of land rights. To the contrary, as set forth in Parts II and III of this Report, there are credible allegations that Tamils in Sri Lanka's Northern Province continue to be targeted pursuant to a State policy to centralize control over aspects of Tamil civil and political life in the Northern Province and repress the pursuit of Tamil political aspirations.

271. The international community has insisted on the need for an independent and credible investigation into violations of international law that are alleged to have occurred during the final stages of the war. The UN Secretary General's Panel of Experts documented credible allegations of international law violations by the Sri Lankan government and the LTTE during the final stages of the war, concluding that the allegations, if proven, call for criminal liability for army commanders, senior government officials, and LTTE leaders.[376] Two UNHRC resolutions later and nearly five years since the end of the war, Sri Lanka has made no effort to credibly investigate or punish alleged crimes under international law committed by civilian or military leaders.

272. In the face of this manifest absence of political will to make progress on accountability, the drive towards the internationalisation of Sri Lanka's post-conflict justice needs has been steady and persistent. The demand that the UN Human Rights Council mandate an independent international investigations has gained momentum slowly, aided in large part by the growing realisation of Sri Lanka's intransigent attitude towards the pursuit of truth, justice and reparations for serious international crimes committed during the war.[377] The research team supports this demand.

---

[376] POE Report, *supra* note 1, ¶ 255

[377] See, e.g., UN Human Rights Council, 24th Session (25 September 2013), *Oral update of the High Commissioner for Human Rights on promoting reconciliation and accountability in Sri Lanka*, UN Doc. A/HRC/24/CRP.3/Rev.1, ¶¶ 16&18, the U.N. High Commissioner "detected no new or comprehensive effort to independently or credibly investigate the allegations which have been of concern to the Human Rights Council." The absence of "a credible national

273. The allegations in this Report point to crimes under international criminal law committed after the end of the war, and also require an independent and credible investigation. Given Sri Lanka's unwillingness to prevent, contain, investigate or punish these alleged crimes, the onus is on the international community to devise and properly authorize mechanisms for their investigation with a view to determining the veracity of the allegations. Further, where sufficient evidence exists, the international community must take steps to prosecute these crimes in lawfully constituted tribunals, or in courts in countries that may exercise jurisdiction over the events and alleged perpetrators, in full conformity with international standards for a fair trial.

274. The research team further believes that, left unaddressed, impunity for crimes during the war precipitates recurring violations long after the war's end. This Report identifies credible evidence that some of the same crimes alleged to have occurred during the war appear to be recurring in the Northern Province long after the war's end, including crimes of murder, persecution, enforced disappearance, rape, and torture.[378] There is credible evidence that these post-war crimes are motivated by similar racial, ethnic, or political objectives as those identified by the UN Panel of Experts for wartime crimes, including the objective of targeting Tamil civilians in the Northern Province "perceived by the government as supporting the LTTE."[379] These recurring post-war violations in the Northern Province can largely be attributed to the persistence of impunity with respect to alleged international crimes committed in the past.

275. Sri Lanka's post-independence history has been chequered by the periodic eruption of violence and the perpetration of serious atrocity crimes during periods of violence, including murder, rape, enforced disappearance and torture. Now, as before, Sri Lanka's unwillingness and inability to punish those most responsible for these crimes have forestalled any effort to dramatically break from the past. This culture of impunity must be brought to an end.

276. This Report points to the urgent need to pursue justice for international crimes committed both during and after the end of the war, recognizing that if Sri Lanka's culture of impunity is allowed to persist, crimes against Tamils in the Northern Province will continue.

---

process with tangible results" since September 2013 has led many in the Human Rights Council to conclude that an independent international investigation is the only realistic option.

[378] *Compare* Report, Part III *with* POE Report, *supra* note 1, ¶¶ 63, 148, 150, 152-153, 163, 167, 176(e), 251, 361.

[379] POE Report, *supra* note 1, ¶ 251(d)

V. RECOMMENDATIONS

To the Office of the High Commissioner for Human Rights:

- Publicly raise the issue of potential ongoing international crimes against the Tamil population of the Northern Province as part of the UN's expression of concern over the situation in the Northern Province;

- Address the need for ongoing international monitoring of the human rights situation in the Northern Province, including of potential recurring crimes under international law;

To the member states of the UN Human Rights Council and other states:

- Make reference to the applicability of international criminal law, and in particular, crimes against humanity, in the text of a resolution on Sri Lanka at the 25th Session of the UN Human Rights Council in March 2014;

- Mandate an international commission of inquiry to investigate alleged international crimes committed by both sides during the last stages of the war and to further investigate the alleged commission of international crimes since May 2009;

- Request the High Commissioner for Human Rights to report to the Council on the implementation of the above mandate, including steps taken by Sri Lanka to cease the commission of acts giving rise to allegations of international crimes;

To INGOs, NGOs and other activists working on Sri Lanka based issues:

- Publicly call for the investigation of alleged ongoing international crimes against the Tamil population in the Northern Province, emphasizing that when impunity persists, violations continue.

- Monitor, document and report on ongoing human rights violations against the Tamil population in the Northern Province with a view to protecting and preserving potential evidence of alleged international crimes.

The Sri Lanka Campaign for Peace and Justice
info@srilankacampaign.org

SRI LANKA CAMPAIGN
FOR PEACE & JUSTICE